

Country Report: Portugal



CPR

**2019
Update**

Acknowledgements & Methodology

This report was written by Inês Carreirinho at the Portuguese Refugee Council (CPR), and was edited by ECRE.

The information in this report draws on the experience of CPR staff, gathered *inter alia* through research, advocacy, legal assistance and reception services, as well as data and information shared by national authorities, civil society organisations and other stakeholders consisting of CRegC, CRESCER, CSTA, DGE, DGEstE, IOM, ISS, OTSH, SCML, SEF, and UNHCR.

The views expressed in this report are those of the author and do not in any way represent the views of the contributing organisations.

The information in this report is up-to-date as of 31 December 2019, unless otherwise stated.

The Asylum Information Database (AIDA)

The Asylum Information Database (AIDA) is coordinated by the European Council on Refugees and Exiles (ECRE). It aims to provide up-to date information on asylum practice in 23 countries. This includes 19 EU Member States (AT, BE, BG, CY, DE, ES, FR, GR, HR, HU, IE, IT, MT, NL, PL, PT, RO, SE, SI) and 4 non-EU countries (Serbia, Switzerland, Turkey, United Kingdom) which is easily accessible to the media, researchers, advocates, legal practitioners and the general public through the dedicated website www.asylumineurope.org. The database also 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.



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Glossary & List of Abbreviations

ACM	High Commission for Migration Alto Comissariado para as Migrações
AGD	Age, Gender and Diversity Idade, Género e Diversidade
ACSS	Central Administration of the Health System Administração Central do Sistema de Saúde
ANMP	National Association of Portuguese Municipalities Associação Nacional de Municípios Portugueses
ANQEP	National Agency for Qualification and Vocational Education Agência Nacional para a Qualificação e o Ensino Profissional
APF	Family Planning Association Associação para o Planeamento da Família
APIC	Portuguese Association of Conference Interpreters Associação Portuguesa de Intérpretes de Conferência
CA	Steering Commission Comissão de Acompanhamento
CACR	Refugee Children Reception Centre Centro de Acolhimento para Crianças Refugiadas
CAP	Anti-Trafficking Reception and Protection Centre Centro de Acolhimento e Proteção para Vítimas de Tráfico
CAR	Refugee Reception Centre Centro de Acolhimento para Refugiados
CATR	Temporary Reception Centre for Refugees Centro de Acolhimento Temporário para Refugiados
CAVITOP	Centre for the Support of Torture Victims in Portugal Centro de Apoio às Vítimas de Tortura em Portugal
CHPL	Psychiatric Hospital Centre of Lisbon Centro Hospitalar Psiquiátrico de Lisboa
CIT	Temporary Installation Centre Centro de Instalação Temporária
CJEU	Court of Justice of the European Union
CNAIM/CLAIM	National and Local Support Centres for Migrant Integration Centros Nacionais e Locais de Apoio à Integração de Migrantes
CNIS	National Confederation of Solidarity Institutions Confederação Nacional das Instituições de Solidariedade
CPR	Portuguese Refugee Council Conselho Português para os Refugiados
CRegC	Central Registrations Service Conservatória dos Registos Centrais
CSTAF	High Council of Administrative and Fiscal Courts Conselho Superior dos Tribunais Administrativos e Fiscais
CVP	Portuguese Red Cross Cruz Vermelha Portuguesa
DGAL	Directorate General of Local Municipalities Direcção-Geral das Autarquias Locais
DGE	Directorate General for Education Direcção-Geral da Educação
DGEstE	Directorate General for Schools and School Clusters Direcção-Geral dos Estabelecimentos Escolares
DGS	Directorate General for Health Direcção-Geral da Saúde
DRC	Democratic Republic of Congo
EASO	European Asylum Support Office
ECHR	European Convention on Human Rights
ECRI	European Commission Against Racism and Intolerance

ECtHR	European Court of Human Rights
EDAL	European Database of Asylum Law
EPVA	Teams for the Prevention of Violence between Adults Equipas para a Prevenção da Violência entre Adultos
GAR	Asylum and Refugees Department Gabinete de Asilo e Refugiados
GIP	Professional Insertion Office Gabinete de Inserção Profissional
GRETA	Group of Experts on Action Against Trafficking in Human Beings
GTO	Technical Operative Group Grupo Técnico Operativo
ICRC	International Committee of the Red Cross
IEFP	Employment and Vocational Training Institute Instituto do Emprego e Formação Profissional
IGAI	General Inspectorate of Internal Administration Inspeção Geral da Administração Interna
IHRU	Institute for Housing and Urban Rehabilitation Instituto da Habitação e da Reabilitação Urbana
INE	National Institute for Statistics Instituto Nacional de Estatística
INMLCF	National Institute of Legal Medicine and Forensic Science Instituto Nacional de Medicina Legal e Ciências Forenses
IOM	International Organisation for Migration
ISS	Institute of Social Security Instituto da Segurança Social
JRS	Jesuit Refugee Service
MAI	Ministry of Home Affairs Ministério da Administração Interna
MdM	Doctors of the World Médicos do Mundo
MoU	Memorandum of Understanding
NISS	Social Security Identification Number Número de Identificação da Segurança Social
OTSH	Observatory on Trafficking in Human Beings Observatório do Tráfico de Seres Humanos
PAR	Refugee reception platform Plataforma de Apoio aos Refugiados
RSI	Social Insertion Revenue Rendimento Social de Inserção
SCML	Santa Casa da Misericórdia de Lisboa
SEF	Immigration and Borders Service Serviço de Estrangeiros e Fronteiras
SGMAI	General Secretariat of the Ministry of Home Affairs Secretaria Geral do Ministério da Administração Interna
STA	Supreme Administrative Court Supremo Tribunal Administrativo
SNS	National Health Service Serviço Nacional de Saúde
TAC	Administrative Circle Court Tribunal Administrativo de Círculo
TAF Sintra	Administrative and Fiscal Court of Sintra Tribunal Administrativo e Fiscal de Sintra,
TCA	Central Administrative Court Tribunal Central Administrativo
UCAT	Antiterrorism Coordination Unit Unidade de Coordenação Antiterrorismo
UHSA	Unidade Habitacional de Santo António
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund

Statistics

Overview of statistical practice

The Immigration and Borders Service (SEF) publishes a yearly statistical report providing information on asylum applications: number, nationalities, place of application, gender, unaccompanied children, positive first instance decisions, relocation.¹

Applications and granting of protection status at first instance: 2019

	Applicants in 2019	Pending at end 2019	Refugee status	Subsidiary protection	Rejection,	Refugee rate	Sub. Prot. rate	Rejection rate
Total	1,849	-	195	113	634	20.7%	12%	67.3%

Breakdown by top ten countries of origin of the total numbers

Angola	308	-	0	0	172	-	-	100%
Gambia	173	-	0	0	6	-	-	100%
Guinea Bissau	160	-	0	0	31	-	-	100%
Guinea	128	-	2	4	24	6.7%	13.3%	80%
Venezuela	96	-	0	1	40	-	2.4%	97.6%
DRC	82	-	2	1	57	3.3%	1.7%	95%
Nigeria	82	-	1	0	17	5.6%	-	94.4%
Ukraine	80	-	0	13	17	-	43.3%	56.7%
Senegal	73	-	0	0	8	-	-	100%
Cameroon	51	-	0	2	25	-	7.4%	92.6%

Source: SEF. The above figures only include in-merit decisions at first instance (both in the regular and in accelerated procedures). As such, inadmissibility decisions (including Dublin) are not included to the rejection figures. As further explained in the corresponding section of the report, in the national system, an application is examined on the merits if it is deemed admissible (and not processed under an accelerated procedure) or if the corresponding time limit is not complied with by the determining authority. Admissibility decisions are not included in the table above as they do not examine the merits of the application. According to information provided by SEF, in 2019, 542 admissibility decisions were issued (for the top ten countries of origin: Angola (135); Ukraine (54); Venezuela (52); Nigeria (31); DRC (24); Guinea (20); Bissau (16); Cameroon (8); Guinea Senegal (7); Gambia (3)).

¹ SEF, *Yearly Statistical Reports*, available at: <http://sefstat.sef.pt/relatorios.aspx>. These reports are usually published in June (with information on the previous year).

Gender/age breakdown of the total number of applicants: 2019

	Number	Percentage
Total number of applicants	1,849	100%
Men	1,353	73,2%
Women	496	26,8%
Children	360	19.5%
Unaccompanied children	55	3%

Source: SEF. The number on children are part of the total number of men and women, as statistics specifically on children were not available.

Comparison between first instance and appeal decision rates: 2019

According to information provided by the High Council of Administrative and Fiscal Courts (*Conselho Superior dos Tribunais Administrativos e Fiscais*, CSTAF), in 2019, the Administrative Circle Court (*Tribunal Administrativo de Círculo*, TAC) of Lisbon continued to be the only Court with a specific registration string pertaining to asylum-related appeals. While the other first instance administrative courts do not have such a registration string, CSTAF was able to provide data on appeals based on the information available on the corresponding IT system. Higher Courts do not collect autonomous data on asylum-related processes.

In 2019, the TAC of **Lisbon** continued to be (by far) the first instance court with the most abundant asylum-related case law in Portugal. Out of a total of 552 appeals against negative asylum decisions, 525 were registered in front of this Court (i.e. 95% of all appeals), out of which 63 concerned Dublin decisions. This represents an increase of around 40% compared to 2018, where 372 appeals had been registered in the same Court. In 2019, appeals were further lodged in front of the TAF **Porto**, TAF **Braga**, TAF **Castelo Branco**, TAF **Leiria**, TAF **Viseu**, TAF **Funchal**, TAF **Sintra** and TAF **Loulé**. The most representative nationalities among appellants included Guinea-Bissau (86), Gambia (73), Angola (59), the Democratic Republic of Congo (39), and Guinea (35).

In 2019, the TAC of **Lisbon** issued a total of 446 asylum-related appeal decisions, but the statistical information shared does not include a breakdown per type of asylum procedure. Of these, 86 were in favour of the applicant (data is not available on whether these were decisions granting international protection or annulling a first instance decision and ordering the authorities to reassess the application but, according to CPR's observation of national jurisprudence, the former are relatively rare). Additionally, there were 324 decisions ruling against the appellants and 36 rulings of dismissal of the appeal on technical grounds.² 79 asylum-related appeals were pending in TAC Lisbon at the end of 2019. Additionally, 29 asylum-related appeal decisions were issued by other first instance administrative courts.³

² These relate to various legal grounds such as the lack of legal capacity of appellants, *lis pendens*, *res judicata*, etc.

³ Information shared by SEF in 2019 indicates that 843 appeals against negative first instance decisions on asylum applications were lodged, and that 517 decisions on appeals were issued.

The overall success rate of appeals at TAC **Lisbon** (all countries of origin and procedures included) stood roughly at 19.3%. In the case of Guinea-Bissau, the most representative nationality at appeal stage, the success rate of appeals was around 27.8%. With few exceptions, the success rate for other nationalities was equally low. For the most representative countries of origin at appeals stage, the success rates were as follows: Gambia (36.8%); Angola (4%); Democratic Republic of Congo (12%); Guinea (13.6%). The overall success rate of appeals in courts outside Lisbon stood roughly at 31%. TAF **Sintra** was the Court with the highest success rate among asylum cases adjudicated (around 66.7%). The overall success rate of appeals at national level stood at 20%.

Neither the information provided by SEF nor by CSTAF includes a breakdown allowing for clear-cut statistics on decision rates per type of procedure. Nevertheless, according to information available to CPR the main type of asylum procedures used in 2019 per country of origin to reject asylum applications at first instance consisted of (for the most representative countries of origin at appeal stage) accelerated procedures in the case of Angola (172 out of a total of 173 rejections) and the Democratic Republic of Congo (61 out of a total 61 rejections); and Dublin procedures in the case of Guinea-Bissau (92 out of 122), Gambia (144 out of 150), and Guinea (60 out of 85).

Overview of the legal framework

Main legislative acts on asylum procedures, reception conditions, detention and content of international protection

Title (EN)	Original Title (PT)	Abbreviation	Web Link
<p>Act n. 27/2008 of 30 June 2008 establishing the conditions for granting asylum or subsidiary protection, transposing Directives 2004/83/EC and 2005/85/EC</p> <p><i>Amended by:</i> Act n. 26/2014 of 5 May 2014 amending Act n. 27/2008, transposing Directives 2011/95, 2013/32/EU and 2013/33/EU</p>	<p>Lei n.º 27/2008, de 30 de Junho, que estabelece as condições e procedimentos de concessão de asilo ou protecção subsidiária e os estatutos de requerente de asilo, de refugiado e de protecção subsidiária, transpondo para a ordem jurídica interna as Directivas n.ºs 2004/83/CE, do Conselho, de 29 de Abril, e 2005/85/CE, do Conselho, de 1 de Dezembro</p> <p>Lei n.º 26/2014, de 5 de maio, que procede à primeira alteração à Lei n.º 27/2008, de 30 de junho, que estabelece as condições e procedimentos de concessão de asilo ou proteção subsidiária e os estatutos de requerente de asilo, de refugiado e de proteção subsidiária, transpondo as Diretivas n.ºs 2011/95/UE, do Parlamento Europeu e do Conselho, de 13 de dezembro, 2013/32/UE, do Parlamento Europeu e do Conselho, de 26 de junho, e 2013/33/UE, do Parlamento Europeu e do Conselho, de 26 de junho</p>	Asylum Act	<p>http://bit.ly/2npMI5T (PT)</p> <p>http://bit.ly/1jd3hcG (PT)</p> <p>https://bit.ly/2MFwJtK (EN)</p>
<p>Act n. 23/2007 of 4 July 2007 on the legal status of entry, residence, departure and removal of foreigners from the national territory</p> <p><i>Amended by:</i> Act n. 28/2019 of 29 March 2019</p>	<p>Lei n.º 23/2007, de 4 de Julho, que aprova o regime jurídico de entrada, permanência, saída e afastamento de estrangeiros do território nacional</p> <p><i>Última alteração:</i> Lei n.º 28/2019, de 29 de março</p>	Immigration Act	https://bit.ly/2RDIljP (PT)
<p>Act n. 15/2002 of 22 February 2002 approving the Code of Procedure before the Administrative Tribunals</p> <p><i>Amended by:</i> Act n. 118/2019 of 17 September 2019</p>	<p>Lei n.º 15/2002, de 22 de Fevereiro, que aprova o Código de Processo nos Tribunais Administrativos</p> <p><i>Última alteração:</i> Lei n.º 118/2019, de 17 de setembro</p>	Administrative Court Procedure Code	http://bit.ly/2yekj3x (PT)

Act n. 13/2003 of 21 May 2003 establishing the Social Insertion Revenue <i>Amended by:</i> Act n. 100/2019 of 6 September 2019	Lei n.º 13/2003, de 21 de Maio, que cria o rendimento social de inserção	RSI Act	http://bit.ly/2zyQuOc (PT)
Act n. 220/2006 of 3 November 2006 establishing the legal framework for the social protection in case of unemployment of persons working for an employer <i>Amended by:</i> Decree-Law n. 153/2019 of 17 October 2019	Lei n.º 220/2006, de 3 de Novembro - Regime jurídico de protecção social da eventualidade de desemprego dos trabalhadores por conta de outrem <i>Última alteração:</i> Decreto-Lei n.º 153/2019, de 18 de Outubro		https://bit.ly/2sppYFA (PT)
Decree-Law 176/2003 of 2 August 2003 establishing the family allowance to children and youth and defining protection in case of family expenses in the context of the family protection subsystem <i>Amended by:</i> Act n. 114/2017 of 29 December 2017	Decreto-Lei n.º 176/2003, de 2 de Agosto, que Institui o abono de família para crianças e jovens e define a protecção na eventualidade de encargos familiares no âmbito do subsistema de protecção familiar <i>Última alteração:</i> Lei n.º 114/2017, de 29 de Dezembro		https://bit.ly/2IDrmGX (PT)
Act n. 35/2014 of 20 June 2014 governing employment in public functions	Lei n.º 35/2014, de 20 de junho, que aprova a Lei Geral do Trabalho em Funções Públicas		http://bit.ly/2B27JEC (PT)
Act n. 7/2009 of 12 February 2009 approving the Labour Code <i>Amended by:</i> Act n. 93/2019 of 4 September 2019	Lei n.º 7/2009, de 12 de Fevereiro, que aprova a revisão do Código do Trabalho <i>Última alteração:</i> Lei n.º 93/2019, de 4 de setembro	Labour Code	https://bit.ly/2rJtbzm (PT)
Act n. 37/81 of 3 October 1981 approving the Act on Nationality <i>Amended by:</i> Act n. 2/2018 of 5 July 2018	Lei n.º 37/81, de 3 de Outubro, que aprova a Lei da Nacionalidade <i>Última alteração:</i> Lei n.º 2/2018, de 5 de julho	Nationality Act	http://bit.ly/2jukiBm (PT) https://bit.ly/2u63cD5 (EN)
Act n. 81/2014 of 19 December 2014 <i>Amended by:</i> Act n. 32/2016 of 24 August 2016	Lei n.º 81/2014, de 19 de dezembro, alterada pela Lei n.º 32/2016, de 24 de agosto, que estabelece o novo regime do arrendamento apoiado para habitação	Public Leasing Act	https://bit.ly/358KqYn (PT)

Main implementing decrees, guidelines and regulations on asylum procedures, reception conditions, detention and content of international protection

Title (EN)	Original Title (PT)	Abbreviation	Web Link
Decree-Law n. 252/2000 of 16 October 2000 Organisational structure of the Immigration and Borders Service <i>Amended by:</i> Decree-Law n. 121/2008 of 11 July 2008	Decreto-Lei n.º 252/2000, de 16 de Outubro, que aprova a estrutura orgânica e define as atribuições do Serviço de Estrangeiros e Fronteiras <i>Última alteração:</i> Decreto-Lei n.º 121/2008, de 11 de julho	SEF Structure Decree-Law	https://bit.ly/2MFYrqc (PT)
Decree-Law n. 4/2015 of 7 January 2015 - Code of Administrative Procedure	Decreto-Lei n.º 4/2015, de 7 de janeiro, que aprova o novo Código do Procedimento Administrativo	Administrative Procedure Code	http://bit.ly/2mmF8Hw (PT)
Act n. 147/99 of 1 September 1999 - Children and Youths at Risk Protection Act <i>Amended by:</i> Act 26/2018 of 5 July 2018	Lei n.º 147/99, de 01 de Setembro – Lei de Protecção de Crianças e Jovens em Perigo <i>Última alteração:</i> Lei n.º 26/2018, de 5 de julho		https://goo.gl/7G71tX (PT)
Act n. 141/2015 of 8 September 2015 - General Regime of Civil Guardianship Process <i>Amended by:</i> Act 24/2017 of 24 May 2017	Lei n.º 141/2015, de 08 de Setembro – Regime Geral do Processo Tutelar Cível <i>Alteração:</i> Lei n.º 24/2017, de 24 de maio		https://goo.gl/agJ1yJ (PT)
Decree-Law n. 464/80 of 13 October 1980 establishing new conditions of access and entitlement to social pension <i>Amended by:</i> Decree-Law n.136/2019 of 6 September 2019	Decreto-Lei n.º 464/80, de 13 de Outubro, que estabelece em novos moldes as condições de acesso e de atribuição da pensão social <i>Última alteração:</i> Decreto-Lei n.º 136/2019, de 6 de setembro		https://bit.ly/2MVXE4L (PT)
Ministerial Order 25/2019 of 17 January 2019 approving the annual revaluation of pensions and other social allowances for 2019	Portaria n.º 25/2019, de 17 de janeiro, que procede à atualização anual das pensões e de outras prestações sociais, para o ano de 2019		https://bit.ly/35aWeJQ (PT)
Ministerial Order 257/2012 of 27 August 2012 implementing Law 13/2013 on the Social Insertion Revenue (RSI) and determining the value of the RSI	Portaria n.º 257/2012, de 27 de agosto, que estabelece as normas de execução da Lei n.º 13/2003, de 21 de Maio, que		https://bit.ly/2u6W6hL (PT)

<i>Amended by:</i> Ministerial Order 22/2019 of 17 January 2019	institui o rendimento social de inserção, e procede à fixação do valor do rendimento social de inserção. <i>Última alteração:</i> Portaria n.º 22/2019, de 17 de janeiro		
Ministerial Order 24/2019 of 17 January 2019 approving the annual revaluation of the social assistance index value	Portaria n.º 24/2019, de 17 de janeiro, que procede à atualização anual do valor do indexante dos apoios sociais (IAS)		https://bit.ly/37nllVW (PT)
Ministerial Order 22/2019 of 17 January 2019 amending the value of the Social Insertion Revenue	Portaria n.º 22/2019, de 17 de janeiro, que atualiza o valor do Rendimento Social de Inserção		https://bit.ly/366echM (PT)
Decree Law n. 113/2011 of 29 November 2011 regulating access to National Health Service in respect to co-payments and special benefits <i>Amended by:</i> Decree-Law n.131/2017 of 10 October 2017	Decreto-Lei n.º 113/2011, de 29 de novembro, que regula o acesso às prestações do Serviço Nacional de Saúde por parte dos utentes no que respeita ao regime das taxas moderadoras e à aplicação de regimes especiais de benefícios <i>Última alteração:</i> Decreto-Lei n.º 131/2017, de 10 de Outubro		http://bit.ly/2iaqL7 (PT)
Decree-Law n. 227/2005 of 28 December 2005 defining the framework of of granting the recognition of foreign qualifications	Decreto-Lei n.º 227/2005, de 28 de Dezembro, que define o novo regime de concessão de equivalência de habilitações de sistemas educativos estrangeiros a habilitações do sistema educativo português ao nível dos ensinos básico e secundário		https://bit.ly/39ssv26 (PT)
Decree-Law n. 83/2000 of 11 May 2000 on the new regime for the issuance of passports <i>Amended by:</i> Act 49/2018 of 14 August 2018	Decreto-Lei n.º 83/2000, de 11 de Maio, que aprova o novo regime legal da concessão e emissão dos passaportes <i>Última alteração:</i> Lei n.º 49/2018, de 14 de agosto	Travel Documents Order	http://bit.ly/2AjwA7G (PT)
Governmental Decree n. 84/2007 of 5 November 2007 regulating Act n. 23/2007 of 4 July 2007 on the legal status of entry, residence, departure and removal of foreigners from the national territory <i>Amended by:</i> Act 71/2018 of 31 December 2018	Decreto Regulamentar n.º 84/2007, de 5 de Novembro, que regulamenta a Lei n.º 23/2007, de 4 de Julho, que aprova o regime jurídico de entrada, permanência, saída e afastamento de cidadãos estrangeiros de território nacional <i>Última alteração:</i> Lei n.º 71/2018, de 31 de Dezembro		https://goo.gl/Jzaqqw (PT)

Ministerial Order n. 1334-E/2010, 31 December <i>Amended by:</i> Ministerial Order n. 305-A/2012 of 4 October 2014	Portaria n.º 1334 -E/2010, de 31 de Dezembro, que fixa as taxas e demais encargos a cobrar pelos procedimentos administrativos previstos na Lei n.º 23/2007, de 4 de Julho, com as alterações introduzidas pela Lei n.º 29/2012, de 9 de agosto <i>Alteração:</i> Portaria n.º 305-A/2012, de 4 de outubro		http://goo.gl/jWnPVS (PT)
Ministerial Order n. 30/2001 of 17 January 2001 establishing the specific modalities of health care in different stages of the asylum procedure	Portaria n.º 30/2001, de 17 de Janeiro, que estabelece as modalidades específicas de assistência médica e medicamentosa a prestar nas diferentes fases do procedimento de concessão do direito de asilo, desde a apresentação do respectivo pedido à decisão final que recair sobre o mesmo		https://bit.ly/2F8gRMe (PT)
Ministerial Order n. 1042/2008 of 15 September 2008 establishing the terms of access of asylum seekers and their family members to the National Health Service	Portaria n.º 1042/2008, de 15 de Setembro, que estabelece os termos e as garantias do acesso dos requerentes de asilo e respectivos membros da família ao Serviço Nacional de Saúde		https://bit.ly/2u6dyTt (PT)
Ministerial Order n. 224/2006 of 8 March 2006 approving comparative tables between the Portuguese education system and other education systems	Portaria n.º 224/2006, de 8 de Março, que aprova as tabelas comparativas entre o sistema de ensino português e outros sistemas de ensino, bem como as tabelas de conversão dos sistemas de classificação correspondentes		https://bit.ly/2FUHTYE (PT)
Ministerial Order n. 699/2006 of 12 July 2006 approving comparative tables between the Portuguese education system and other education systems	Portaria n.º 699/2006, de 12 de Julho 2006, que aprova as tabelas comparativas entre o sistema de ensino português e outros sistemas de ensino, bem como as tabelas de conversão dos sistemas de classificação correspondentes		https://bit.ly/2HUjgXh (PT)
Decree-Law n. 131/95 of 6 June 1995 approving the Civil Registration Code <i>Amended by:</i> Act 49/2018 of 14 August 2018	Decreto-Lei n.º 131/95, de 6 de Junho, que aprova o Código do Registo Civil <i>Última alteração:</i> Lei n.º 49/2018, de 14 de Agosto		http://goo.gl/wQHHx8 (PT)
Decree-Law n. 237-A/2006 of 14 December 2006 approving the regulation of the Portuguese nationality	Decreto-Lei n.º 237-A/2006, de 14 de Dezembro, que aprova o Regulamento da Nacionalidade Portuguesa	Portuguese Nationality Regulation	http://bit.ly/2nelr5o (PT)

<i>Amended by:</i> Decree-Law 71/2017 of 21 June 2017	<i>Última alteração:</i> Decreto-Lei n.º 71/2017, de 21 de Junho		
Ministerial Order n. 176/2014 of 11 September 2014	Portaria n.º 176/2014, de 11 de setembro, que regulamenta a realização da prova do conhecimento da língua portuguesa, prevista na alínea b) do n.º 2 do artigo 25.º do Regulamento da Nacionalidade Portuguesa, aprovado pelo Decreto-Lei n.º 237-A/2006, de 14 de Dezembro, na sua atual redação.	Nationality Language Assessment Test Order	https://bit.ly/2MHt3aS (PT)
Decree-Law n. 322-A/2001 of 14 December 2001 approving the Regulation of Administrative Fees of Registries and Notary <i>Amended by:</i> Decree-Law 157/2019 of 22 October 2019	Decreto-Lei n.º 322-A/2001, de 14 de Dezembro de 2001, que aprova o Regulamento Emolumentar dos Registos e Notariado <i>Última alteração:</i> Decreto-Lei n.º 157/2019, de 22 de outubro		https://bit.ly/3592YrB (PT)
Ministerial Order n. 302/2015 of 22 September 2015 Template refugee travel document <i>Amended by:</i> Ministerial Order n. 412/2015 of 27 November 2015	Portaria n.º 302/2015, de 22 de setembro, Modelo do título de viagem para os cidadãos estrangeiros residentes em Portugal na qualidade de refugiados <i>Alteração:</i> Portaria n.º 412/2015 de 27 de novembro	Refugee Travel Document Order	https://bit.ly/36cs22b (PT)
Ministerial Order n. 1262/2009 of 15 October 2009 approving the creation of Portuguese language courses for non-native speakers and the rules pertaining to teaching methodologies and certification. <i>Amended by:</i> Ministerial Order n. 216-B/2012 of 18 July 2012	Portaria n.º 1262/2009, de 15 de outubro, alterada pela Portaria 216-B/2012, de 18 de julho, que cria os cursos de Português para Falantes de Outras Línguas, assim como as regras a que obedece a sua lecionação e certificação <i>Alteração:</i> Portaria n.º 216-B/2012, de 18 de julho		https://bit.ly/2tf6kvQ (PT) https://bit.ly/2QvVauP (PT)
Regulation n. 84/2018 of 2 February 2018 governing the public leasing of housing from IHRU, IP	Regulamento n.º 84/2018, de 2 de fevereiro, de Acesso e Atribuição de Habitações do IHRU, I.P., em Regime de Arrendamento Apoiado		https://bit.ly/2SD3PhF (PT)

Overview of the main changes since the previous report update

The report was previously updated in **April 2019**.

Covid 19 related measures

This report has largely been written before the coronavirus outbreak in Portugal. As such, COVID-19 related measures adopted by national authorities are not analysed in detail. This is a summary of the most significant measures adopted in this regard in Portugal until mid-April:

On 13 March, the government enacted Decree-Law 10-A/2020, establishing temporary and exceptional measures in response to the new coronavirus.⁴ Among others, it was determined that documents expired after 24 February 2020 are valid until 30 June 2020. This extension of validity is applicable to visas and documents related to the residency of foreign nationals.

A Resolution from the Council of Ministers reinstated, on an exceptional and temporary basis, controls at the internal borders between 16 March and 15 April 2020.⁵ Most notably, the resolution prohibited road traffic of passengers between Portugal and Spain. A number of exceptions were established, including the right of entry for nationals and holders of national residence permits. On 14 April 2020, these restrictions were extended until 14 May.⁶ These measures were agreed upon by the competent authorities of Portugal and Spain.

The state of emergency due to public calamity was declared by Presidential Decree on 18 March 2020 for the period between 19 March and 2 April 2020.⁷ On 2 April 2020, the state of emergency was extended until 17 April 2020,⁸ and was then renewed again until 2 May 2020.⁹

In line with the Communication from the Commission to the European Parliament, the European Council and the Council of 16 March 2020, regarding the temporary restriction of non-essential travel to the EU,¹⁰ air traffic to and from non-EU countries was prohibited on 18 March 2020. Exceptions were introduced for Schengen Associated States, countries whose official language is Portuguese,¹¹ the United Kingdom, the United States of America, Venezuela, Canada, and South Africa (due to the existence of significant Portuguese communities in such countries).¹²

On 25 March 2020, it was determined that the National and Local Support Centres for Migrant Integration (CNAIM/CLAIM) would continue to provide in-person services upon scheduling.¹³

On 27 March 2020, the Minister of the Presidency, the Minister of Interior, the Minister of Labour and Social Security, and the Minister of Health issued the Order no.3863-B/2020 on the situation of foreign citizens with pending procedures with the Immigration and Borders Service (SEF).¹⁴ The Order covered

⁴ Decree-Law 10-A/2020 of 13 March 2020, available in Portuguese at: <https://bit.ly/2K2dNnb>.

⁵ Resolution of the Council of Ministers No.10-B/2020 of 16 March 2020, available in Portuguese at: <https://bit.ly/2xiZOH2>.

⁶ Resolution of the Council of Ministers No.22/2020 of 14 April 2020, available in Portuguese at: <https://bit.ly/2RD2dTF>.

⁷ Decree of the President of the Republic No.14-A/2020 of 18 March 2020, available in Portuguese at: <https://bit.ly/2RAHCiS>. During this period, the state of emergency was regulated by Decree No.2-A/2020 of 20 March 2020, available in Portuguese at: <https://bit.ly/2V4qRie>.

⁸ Decree of the President of the Republic No.17-A/2020 of 2 April 2020, available in Portuguese at: <https://bit.ly/2Xz3vml>. During this period, the state of emergency was regulated by Decree no.2-B/2020 of 2 April 2020, available in Portuguese at: <https://bit.ly/34E3grY>.

⁹ Decree of the President of the Republic no.20-A/2020 of 17 April, available in Portuguese at: <https://bit.ly/2KrNKGi>. During this period, the state of emergency was regulated by Decree No.2-C/2020 of 17 April, available in Portuguese at: <https://bit.ly/3bA7ROr>.

Available at: <https://bit.ly/3b6bag8>.

¹⁰ Albeit with certain limits to and from Brazil.

¹¹ Order No. 3427-A/2020 of 18 March 2020, available in Portuguese at: <https://bit.ly/2z2pB6R>.

¹² Order No. 3686-A/2020 of 25 March 2020, available in Portuguese at: <https://bit.ly/2ya1hzk>.

¹³ Order No. 3863-B/2020 of 27 March 2020, available in Portuguese at: <https://bit.ly/3cfilwZ>.

a variety of topics such as the scheduling and/or rescheduling of appointments as well as the suspension of deadlines within the asylum procedure. While many issues regarding its interpretation and application were still unclear at the time of writing, it established *inter alia* that¹⁵:

- **Regularisation:** Persons who applied for residence permits under the Immigration Act or for international protection under the Asylum Act until 18 March 2020 are considered to be regularly present in the country. The Order lists the documents that will be used to prove regular presence.¹⁶ This being said, given that all applicants for international protection with pending procedures were already present in the territory in accordance with the Asylum Act,¹⁷ this measure is not expected to have a significant impact on them.
- **Access to services:** The listed documents are valid in all public services and allow their holders to access the National Healthcare System and social support measures, to enter into housing rental contracts and employment contracts, to open bank accounts, and to contract essential public services (non-exhaustive list).¹⁸

The Order does not explicitly state whether such rights are extended to all applicants for international protection (at all stages of procedure). The specific status of applicants for international protection was already established in the Asylum Act (for instance, all these rights were already granted to applicants following admission to the regular procedure and all applicants were entitled to access the National Healthcare Service on a specific regime). That was not the case of persons with pending procedures within the Immigration Act and that are now regularly present in the country. As such, this provision seems to be particularly designed for migrants that have applied for regularisation under the Immigration Act and that were in a more vulnerable situation as they are not normally entitled to the provision of reception conditions, and access to healthcare is usually regulated by a less protective regime.

- **Registration:** The Asylum and Refugees Department will be open to the public for the purposes of receiving and registering new applications for international protection.¹⁹
- **Appointments:** Urgent in-person appointments will be conducted upon decision of the regional directors of SEF. The Order also establishes the regime for scheduling and re-scheduling of appointments.²⁰
- **Suspension of deadlines:** Deadlines within the asylum procedure are suspended.²¹ At the time of writing, the full consequences of this suspension were not yet completely clear as some applicants continued to be notified of decisions by post. According to information available to CPR, no interviews were being conducted at the time of writing following the issuance of this Order.

With regard to **detention**, applicants for international protection that were detained at the border were released from administrative detention according to information available to CPR,

The provision of **material reception conditions**, in particular **housing** to asylum seekers, was quickly flagged by CPR as a concern, not only due to the communitarian setting of most accommodations available, but also because of the previously reported instances of overcrowding in facilities (see [Housing](#)). On 17 April 2020, an asylum seeker was tested positive to COVID-19 in one hostel in Lisbon,

¹⁵ See also: ECRE, 'Portugal: COVID-19 Measure – Services Ensured for People with Pending Applications for Asylum or Regularisation', 3 April 2020, available at: <https://bit.ly/2VtcD9G>; ELENA, 'Portugal: New decision on the situation of foreign citizens with pending procedures with the Immigration and Borders Service', 3 April 2020, available at: <https://bit.ly/3eHe43H>.

¹⁶ Order No. 3863-B/2020 of 27 March 2020, pars.1 and 2.

¹⁷ Articles 11 and 27 Asylum Act.

¹⁸ Order No. 3863-B/2020 of 27 March 2020, para 3.

¹⁹ Order No. 3863-B/2020 of 27 March 2020, para 7.

²⁰ Order No. 3863-B/2020 of 27 March 2020, paras 4-6.

²¹ Ibidem.

which was immediately communicated to the competent authorities. On 19 April 2020, a joint operation ensured that all applicants accommodated in the facility were tested and the building was disinfected.²² Around 170 tests were performed, out of which 138 were positive, with only one person showing symptoms.²³ All persons tested were later transferred to a military base in Ota for the purpose of quarantine. CPR, ACM and SCML continued to accompany the cases.²⁴

Following this incident, the Directorate General for Health (DGS) decided to test asylum seekers accommodated in other hostels in Lisbon. This follows previous similar decisions to conduct tests in other communitarian accommodation facilities (e.g. nursing homes). These are public health operations involving actors such as SEF, the Secretary of State for Integration and Migration, Public Security Police, Civil Protection Authority, Lisbon Firefighters and CPR. In addition to testing, the operations include an information-sharing component, aimed to further raise awareness for social distancing and adequate hygiene measures among asylum seekers.

Support by CPR: Throughout this period, and considering its role in the provision of direct support to applicants and beneficiaries of international protection, CPR also adjusted the provision of services namely through the suspension of non-urgent in-person counselling and the provision of support through alternative means (such as telephone and e-mail).

Asylum procedure

- ❖ **Applicants for international protection:** The increase of spontaneous applications for international protection persisted in 2019. There were 1,849 spontaneous asylum applicants in Portugal, up from 1,270 in 2018.
- ❖ **Arrivals by sea:** While sea arrivals are not common in Portugal, in December 2019 and in the beginning of 2020, two groups of Moroccan nationals arrived by sea in small boats in the region of Algarve. Following disembarkation, all of them applied for international protection and their applications were processed on the territory (i.e. they were not subject to a border procedure).
- ❖ **Relocation:** In the course of 2019, Portugal continued to systematically participate in *ad hoc* relocation following rescue operations in the Mediterranean and disembarkation in Malta and Italy.
- ❖ **Dublin procedure:** The full extent and implications of the right to be heard in Dublin procedures, and the applicability of Article 17 Asylum Act in such procedures, continued to be discussed in national jurisprudence in 2019, including by appeal courts. While it seems undisputed that applicants are entitled to the right to be heard in Dublin procedures, there is still divergence with regard to its legal basis and its scope.

Moreover, jurisprudence regarding transfers to Italy continued to increase with divergent outcomes, both in first and second instance courts. Different reasonings were noted with regard to the extent of the applicant's burden of allegation/substantiation of systemic flaws, and the scope of the duty to assess the situation in the receiving Member State by the Immigration and Borders Service (SEF). A judgment from the Supreme Administrative Court in January 2020 determined that the authorities are only bound to a duty to obtain up-to-date information on the risk of inhuman or degrading treatment where there are valid reasons to believe that there are systemic flaws in the asylum procedure and reception conditions of the receiving Member State and where such flaws amount to a risk of inhuman or degrading treatment.²⁵

²² The following entities were involved in the operation: Civil Protection Authority, Municipality of Lisbon, SEF, National Medical Emergency (INEM), ACM, Public Security Police (PSP), Santa Casa da Misericórdia de Lisboa (SCML), Lisbon Firefighters and the Mosque.

²³ See also Reuters, 'Coronavirus sweeps through Portuguese hostel housing asylum seekers', 20 April 2020, available at: <https://reut.rs/2zvcATq>.

²⁴ The full press release issued by CPR on 22 April 2020 is available in Portuguese at: <https://bit.ly/350aeaV>.

²⁵ Supreme Administrative Court, Decision 2240/18.7BELSB, 16 January 2020, available in Portuguese at: <https://bit.ly/3cq4BFd>.

- ❖ **Vulnerable applicants:** In its Concluding Observations on Portugal published in 2019 the United Nations Committee Against Torture urged Portugal to put in place effective mechanisms for the identification of victims of torture among applicants for international protection.²⁶ Concerns were also expressed by the latter and other entities such as the UN Committee on the Rights of the Child with regard to the gaps in the identification and provision of procedural guarantees for specific categories of vulnerable applicants (e.g. unaccompanied minors, victims of violence and victims of human trafficking).
- ❖ **Age assessment:** While the examination of genitals was not used for the purpose of age assessments in the past, the National Institute of Legal Medicine and Forensic Science (INMLCF) published in 2019 a procedural note that includes the evaluation of sexual development as part of the age assessment procedure. According to information gathered by CPR, these methods were applied in practice in 2019. The Committee on the Rights of the Child recently recommended that Portugal enforces age assessment procedures that are multidisciplinary and in line with international standards and that relevant staff is properly trained.²⁷
- ❖ **Differential treatment of specific nationalities in the procedure:** In the course of 2019, CPR observed that, in a significant number of applications lodged by Venezuelans, SEF deemed the applications unfounded under accelerated procedures and channelled the cases into regularisation procedures through the humanitarian clause foreseen in Article 123 of the Immigration Act which establishes an exceptional regularisation regime. Information on the practical implementation of such regularisation was not available at the time of writing. SEF did not share statistics on the adoption of decisions granting humanitarian protection in 2019.

Reception conditions

- ❖ **Housing:** Overcrowding in reception facilities persisted throughout 2019. CPR provided reception assistance to a total of 1,866 asylum seekers, of which only 12% were accommodated in the Refugee Reception Centre (CAR), 82% in alternative private accommodation (including rooms in private apartments and hostels), and the remaining 6% with relatives. In addition to the continuous increase in the number of referrals, aggravating factors identified in previous years also persisted. This includes significant delays in transiting to private accommodation provided by other organisations, the lack of available apartments and increased rental prices. Between August and October 2019, CPR had to suspend the provision of reception to new adult applicants (with the exception of particularly vulnerable applicants such as pregnant women and families with children) due to overcrowding of CAR and cash flow issues hindering reception in hostels and private accommodation. Applicants arriving within such periods were provided accommodation directly by SEF in hotels in different parts of the country. During such period, a constructive dialogue between CPR and the Government was maintained, with both parties working towards common solutions.

Detention of asylum seekers

- ❖ **Excessive use of detention:** Detention of asylum seekers was one of the issues covered in the recent Concluding Observations of the UN Committee on the Rights of the Child and the Committee Against Torture. The excessive use of detention, the lack of individualised assessments and detention of children were among the concerns observed by both Committees.²⁸
- ❖ **Detention conditions:** In a report published in 2019 (referring to events that occurred in 2018), the Ombudsman analysed detention conditions in border detention facilities and in the *Unidade*

²⁶ UN Committee Against Torture, *Concluding Observations on the seventh periodic report of Portugal*, CAR/C/PRT/CO/7, 18 December 2019, available at <https://bit.ly/2G1F07z>.

²⁷ UN Committee on the Rights of the Child, *Concluding observations on the combined fifth and sixth periodic reports of Portugal*, CRC/C/PRT/CO/5-6, 9 December 2019, available at: <https://bit.ly/2G1F07z>.

²⁸ UN Committee Against Torture, *Concluding Observations on the seventh periodic report of Portugal*, CAR/C/PRT/CO/7, 18 December 2019, available at <https://bit.ly/2G1F07z>; Committee on the Rights of the Child, *Concluding observations on the combined fifth and sixth periodic reports of Portugal*, CRC/C/PRT/CO/5-6, 9 December 2019, available at: <https://bit.ly/2G1F07z>.

Habitacional de Santo António (UHSA).²⁹ Significant deficiencies were reported in border detention facilities namely with regard to the characteristics of the facilities, access to personal belongings, food, contacts with the exterior, identification of vulnerable applicants, access to legal assistance, and access to healthcare. Moreover, while underlining that the Ministerial Order on detention of children adopted in 2018 was a positive development and acknowledging some of the challenges involved, the Ombudsman also considered that the conditions in border detention facilities are inadequate to children, even for periods of up to 7 working days.

Content of international protection

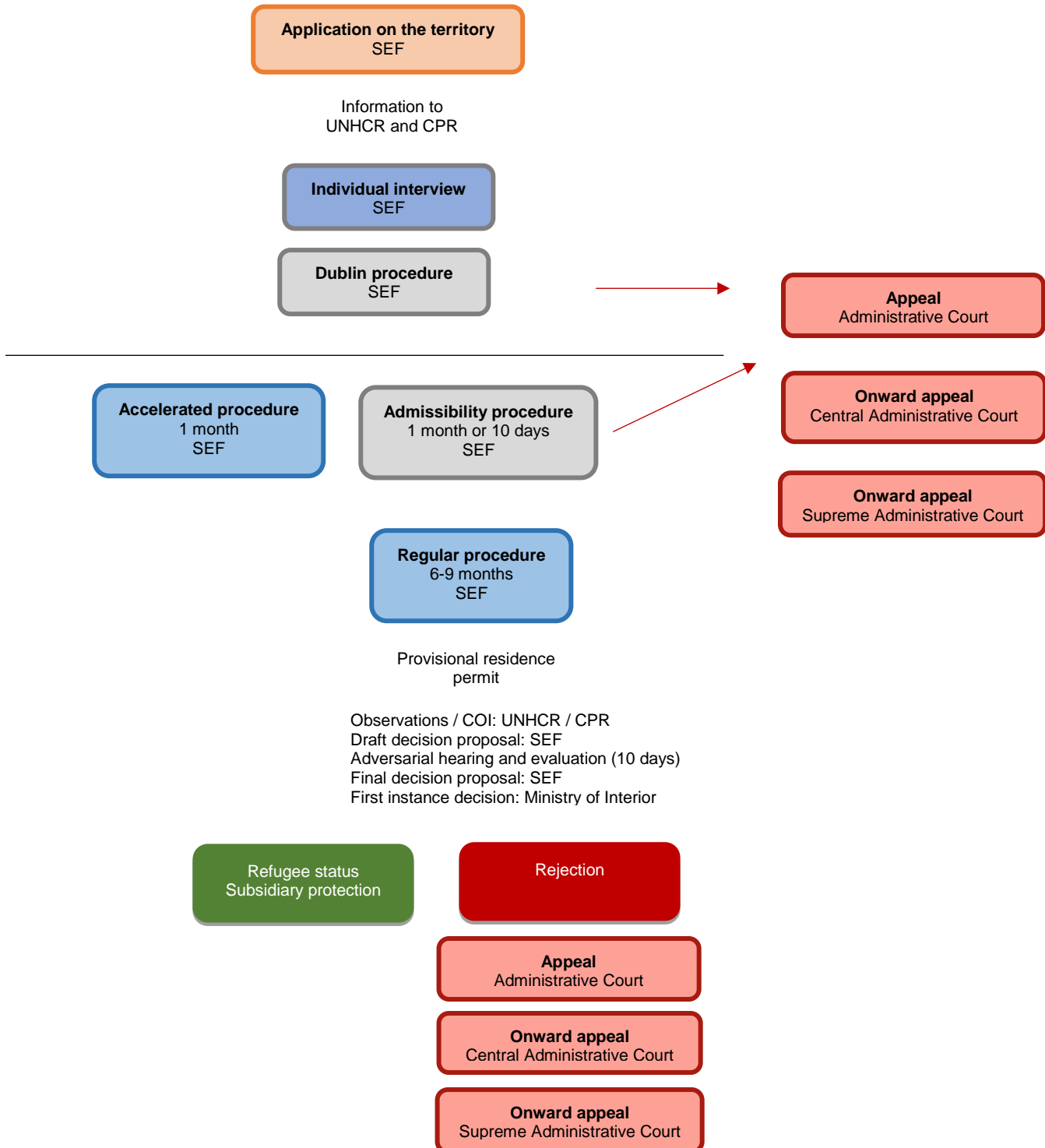
- ❖ **Cessation of protection status:** In 2019, 98 decisions to cease subsidiary protection were adopted, of which 75 concerned Ukrainian nationals. This represents a significant change in practice as no cessation decisions were adopted by the authorities in 2017 and 2018. CPR identified shortcomings in cessation procedures, including the lack of renewal of the residence permits while the cessation proceeding was pending and the poor quality of the assessment conducted on the change in circumstances in the country of origin. Such shortcomings are similar to those identified back in 2016 when cessation procedures had been initiated for subsidiary protection status holders from Guinea.

²⁹ Ombudsman, *National Preventive Mechanism, Report to the Parliament 2018*, 30 May 2019, available in Portuguese at: <https://bit.ly/2S7tdcW>.

Asylum Procedure

A. General

1. Flow chart



2. Types of procedures

Indicators: Types of Procedures

Which types of procedures exist in your country?

- | | | |
|--|---|-----------------------------|
| ❖ Regular procedure: | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| ▪ Prioritised examination: ³⁰ | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| ▪ Fast-track processing: ³¹ | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| ❖ Dublin procedure: | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| ❖ Admissibility procedure: | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| ❖ Border procedure: | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| ❖ Accelerated procedure: ³² | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| ❖ Other: | | |

Are any of the procedures that are foreseen in the law, not being applied in practice? ☐ Yes ☒ No

3. List of authorities that intervene in each stage of the procedure

Stage of the procedure	Competent authority (EN)	Competent authority (PT)
Application ❖ At the border ❖ On the territory	Immigration and Borders Service	Serviço de Estrangeiros e Fronteiras (SEF)
Dublin	Immigration and Borders Service	Serviço de Estrangeiros e Fronteiras (SEF)
Refugee status determination	Immigration and Borders Service Ministry of Home Affairs	Serviço de Estrangeiros e Fronteiras (SEF) Ministério da Administração Interna
First appeal	Administrative Court of Lisbon Administrative and Fiscal Courts	Tribunal Administrativo de Círculo de Lisboa Tribunais Administrativos e Fiscais
Onward appeal	Central Administrative Courts Supreme Administrative Court	Tribunais Centrais Administrativos Supremo Tribunal Administrativo
Subsequent application	Immigration and Borders Service Ministry of Home Affairs	Serviço de Estrangeiros e Fronteiras (SEF) Ministério da Administração Interna

4. Determining 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?
Immigration and Borders Service (SEF), Asylum and Refugees Department (GAR)	15 ³³	Ministry of Home Affairs	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

Source: SEF.

³⁰ For applications likely to be well-founded or made by vulnerable applicants.

³¹ Accelerating the processing of specific caseloads as part of the regular procedure.

³² Labelled as “accelerated procedure” in national law.

³³ This number refers to the number of officers responsible for examining applications (10 officials), conducting Dublin procedures (2 officials), revising files and proposals (2 officials), and issuing final decisions (1 official). According to information provided by SEF, during the first half of the year 2019, SEF-GAR also had an additional 7 administrative support officials, thus bringing the total number of staff at 22 as of June 2019.

In accordance with the Asylum Act and the internal regulation of the Immigration and Borders Service (SEF),³⁴ the responsibility for examining applications for international protection and drafting first instance decisions lies with the Asylum and Refugees Department of SEF (GAR), while decisions granting, refusing (except in accelerated and admissibility procedures), ceasing and withdrawing international protection are formally adopted by the Ministry of Home Affairs. In practice, the latter adopts decisions on the basis of the assessment and recommendations of the determining authority, which thus remains the main entity responsible for the examination of asylum claims.

SEF-GAR is thus the specialised determining authority in the field of asylum whose competences are restricted to the following asylum-related tasks³⁵: (i) to organise and process asylum applications; (ii) to organise and process subsidiary protection applications; (iii) to organise and process Dublin procedures and, where necessary, to issue *laissez passer*; (iv) to issue reasoned opinions on submissions for refugee resettlement; (v) to issue reasoned opinions on applications for the renewal of refugee travel documents presented before the Portuguese Consulates; (vi) to issue refugee identity cards and travel documents as well as residence permits provided for in the Asylum Act and to renew and extend the validity of such documents; (vii) to act as contact point of the European Asylum Support Office (EASO); and (viii) to provide for the strategic planning of EASO-related activities.

SEF-GAR is headed by one coordinator (the Head of Department) and is composed of an examination procedures unit and a support unit (which is responsible for the tasks listed above as v and vi).³⁶ The examination procedures unit is supervised by a Head of Unit. There are (i) 10 case officials responsible for the examination of applications for international protection under all the applicable procedures (except the Dublin procedure), (ii) 2 caseworkers for Dublin procedures; (iii) 2 officials responsible for revising files and proposals drafted by caseworkers which are then submitted to (iv) one official responsible for the final decision. In total, SEF-GAR is thus composed of 15 officials responsible for conducting all interviews and drafting decisions. According to information previously provided, in the first half of 2019, SEF-GAR also had an additional 7 administrative support officers.

5. Short overview of the asylum procedure

The Portuguese asylum procedure is a single procedure for both refugee status and subsidiary protection.³⁷ There are different procedures applicable depending on whether the asylum application: is submitted to the regular procedure; is deemed unfounded (including in the case of applications following a removal procedure) and therefore submitted to an accelerated procedure; or is presented at a national border.

Anyone who irregularly enters or remains on Portuguese territory must present his or her request to SEF or to any other police authority as soon as possible, orally or in writing. In the latter case, the police authority has 48 hours to inform SEF of the application.³⁸ SEF is required to register the asylum application within 3 days of presentation and to issue the applicant a certificate of the asylum application within 3 days after registration.³⁹ Moreover, SEF must immediately inform the United Nations High Commissioner for Refugees (UNHCR) and the Portuguese Refugee Council (CPR), as an organisation working on its behalf, of all asylum applications.⁴⁰ UNHCR and CPR are further entitled to be informed of the most relevant procedural acts (e.g. interview transcripts and decisions) upon consent of the applicant, and to provide their observations to SEF at any time during the procedure.⁴¹

Except for special cases, e.g. applicants lacking legal capacity,⁴² all asylum applicants must undergo either a Dublin interview or an interview that addresses the remaining inadmissibility grounds and the

³⁴ Article 29(1) Asylum Act; Article 17 Decree-Law 252/2000.

³⁵ Article 17(1) Decree-Law 252/2000.

³⁶ Article 17(2) Decree-Law 252/2000.

³⁷ Article 10(2) Asylum Act.

³⁸ Articles 13(1) and (2) and 19(1)(d) Asylum Act.

³⁹ Articles 13(7) and 14(1) Asylum Act.

⁴⁰ Article 13(3) Asylum Act.

⁴¹ Article 28(5) Asylum Act.

⁴² Article 16(5) Asylum Act.

merits of the application. This is provided both on the territory⁴³ and at the border.⁴⁴ Following the interview, SEF produces a document narrating the essential facts of the application and in the case of applications on the territory (with the exception of subsequent applications and applications following a removal decision) the applicant has 5 days to seek revision of the narrative.⁴⁵

Admissibility

With the exception of Dublin decisions, the National Director of SEF has 30 days to make a decision on the admissibility of applications on the territory⁴⁶ (10 days for subsequent applications and applications following a removal order)⁴⁷, as opposed to 7 days for applications at the border⁴⁸. If the Director refuses the admissibility of an asylum claim on the territory, the asylum seeker has 8 days to appeal the decision before the Administrative Court, with automatic suspensive effect,⁴⁹ with the exception of inadmissible subsequent applications and applications following a removal order (4 days to appeal),⁵⁰ or, failing an appeal, 20 days to leave the country.⁵¹ In the case of border procedures, the time limit to appeal is reduced to 4 days.⁵² In the particular case of a Dublin procedures, the deadline for the admissibility decision is suspended pending a reply from the requested Member State.⁵³ Upon notification of a “take charge” / “take back” decision from SEF, the applicant has 5 days to appeal before the Administrative Court with suspensive effect.⁵⁴

Regular procedure

As soon as an asylum application is deemed admissible,⁵⁵ it proceeds to the eligibility evaluation.⁵⁶ In accordance with the law, this stage lasts up to 6 months but can be extended to 9 months in cases of particular complexity.⁵⁷ The asylum seeker receives a provisional residence permit valid for 6 months (renewable) that grants access to education and employment.⁵⁸ During this phase, SEF – acting with due diligence - evaluates all relevant facts to prepare a reasoned decision.⁵⁹ This is generally done on the basis of the personal interview conducted during the admissibility stage of the procedure, given that this interview also encompasses the merits of the application. As mentioned above, UNHCR and CPR are entitled to present their observations to SEF at any time during the procedure in accordance with Article 35 of the 1951 Refugee Convention.⁶⁰ Upon notification of the proposal for a final decision, the applicant has 10 days to evaluate SEF’s reasoning and to respond to the proposal.⁶¹ SEF then sends its recommendation to the Director, who has 10 days to present it to the Ministry of Home Affairs. In turn, the Ministry of Home Affairs has 8 days to adopt a final decision.⁶² In case of a negative decision, the applicant may lodge an appeal with automatic suspensive effect before the Administrative Court within 15 days,⁶³ voluntarily depart from national territory within 30 days or face a removal procedure.⁶⁴

⁴³ Article 16 Asylum Act.

⁴⁴ Article 24(2) and (3) Asylum Act.

⁴⁵ Article 17 Asylum Act.

⁴⁶ Article 20(1) Asylum Act.

⁴⁷ Articles 33(4) and 33-A(5) Asylum Act.

⁴⁸ Article 24(4) Asylum Act.

⁴⁹ Articles 22(1) Asylum Act.

⁵⁰ Articles 33(6) and 33-A(6) Asylum Act.

⁵¹ Articles 21(2) and (3) and 33(9) Asylum Act.

⁵² Article 25(1) Asylum Act.

⁵³ Article 39 Asylum Act. This article refers to applications on the territory and border applications with the exception of subsequent applications and applications following a removal decision.

⁵⁴ Article 37(4) Asylum Act.

⁵⁵ Article 20(4) Asylum Act. In the absence of a decision within 30 days the application is automatically admitted to the procedure.

⁵⁶ Article 21(1) Asylum Act.

⁵⁷ Article 28(2) Asylum Act.

⁵⁸ Article 27(1) Asylum Act. Ministerial Order 597/2015 provides for the model and technical features of the provisional residence permit.

⁵⁹ Article 28(1) Asylum Act.

⁶⁰ Article 28(5) Asylum Act.

⁶¹ Article 29(2) Asylum Act.

⁶² Article 29(4) and (5) Asylum Act.

⁶³ Article 30(1) Asylum Act.

⁶⁴ Article 31 Asylum Act.

Accelerated procedure

The law contains a list of grounds that, upon verification, determine that an application is subjected to an accelerated procedure and deemed unfounded. These grounds include, among others, subsequent applications that are not deemed inadmissible and applications following a removal procedure.⁶⁵ While the rules governing accelerated procedures provide for the basic principles and guarantees of the regular procedure,⁶⁶ they lay down time limits for the adoption of a first instance decision on the merits of the application that are significantly shorter than those of the regular procedure.⁶⁷ In addition, these rules entail reduced procedural guarantees such as exclusion from the right of the applicant to seek revision of the narrative of his or her personal interview,⁶⁸ or to be notified of and respond to SEF's reasoning of the proposal for a final decision, as well as shorter appeal deadlines.⁶⁹

Border procedure

The law provides for a special procedure regarding applications made at a national border.⁷⁰ While this procedure provides for the basic principles and guarantees of the regular procedure,⁷¹ it lays down a significantly shorter time limit for the adoption of a decision regarding admissibility or merits (if the application is furthermore subject to an accelerated procedure).⁷² Additionally, the border procedure is characterised by a shorter appeal deadline before the Administrative Court (4 days),⁷³ as well as reduced procedural guarantees such as exclusion from the right of the applicant to seek revision of the narrative of his or her personal interview and shorter appeal deadlines.⁷⁴ Furthermore, asylum seekers are detained during the border procedure.⁷⁵

B. Access to the procedure and registration

1. Access to the territory and push backs

Indicators: Access to the Territory

1. 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
2. Is there a border monitoring system in place? ☐ Yes ☒ No

⁶⁵ Article 19 Asylum Act.

⁶⁶ This includes access to the procedure, the right to remain in national territory pending examination, the right to information, personal interviews, the right to legal information and assistance throughout the procedure, the right to free legal aid, special procedural guarantees, among others.

⁶⁷ These consist of 30 days (Article 20(1) Asylum Act) except for applications following a removal procedure which are subject to a time limit of 10 days (Article 33-A(5) Asylum Act). The time limit is reduced to 7 days in the case of accelerated procedures at the border (Article 24(4) Asylum Act).

⁶⁸ This is limited to accelerated procedures at the border and in the case of applications following a removal procedure.

⁶⁹ These consist of 8 days for accelerated procedures on the territory (Article 22(1) Asylum Act) except for the case of subsequent applications and applications following a removal procedure, where the deadline is 4 days (Articles 33(6) and 33-A(6) Asylum Act). The time limit is reduced to 4 days in the case of accelerated procedures at the border (Article 25(1) Asylum Act).

⁷⁰ Article 23(1) Asylum Act.

⁷¹ This includes access to the procedure, the right to remain in national territory pending examination, the right to information, personal interviews, the right to legal information and assistance throughout the procedure, the right to free legal aid, special procedural guarantees, among others.

⁷² These consist of 7 days for both admissibility decisions and accelerated procedures at the border (Article 24(4) Asylum Act) as opposed to 30 days for admissibility decisions on the territory and between 10 and 30 days for accelerated procedures on the territory.

⁷³ Article 25(1) Asylum Act.

⁷⁴ Article 24 Asylum Act.

⁷⁵ Articles 26(1) and 35-A(3)(a) Asylum Act.

The Portuguese authorities are bound by the duty to protect asylum seekers and beneficiaries of international protection from *refoulement*.⁷⁶ National case law has reaffirmed on different occasions the protection against *refoulement* both on national territory and at the border, regardless of the migrant's status and in cases of either direct or indirect exposure to *refoulement*.⁷⁷ CPR is unaware of national case law that addresses the extraterritorial dimension of *non-refoulement*.

There are no published reports by NGOs about cases of actual *refoulement* at the border of persons wanting to apply for asylum. CPR does not conduct border monitoring and only has access to applicants after the registration of their asylum claim and once SEF has conducted the individual interview, which constitutes an additional risk factor. However, it receives at times third party contacts reporting the presence of individuals in need of international protection at the border. With rare exceptions, and even where CPR does not immediately intervene, the registration of the corresponding applications in these cases is normally communicated by SEF to CPR in the following days.

Notwithstanding this, in 2014 CPR carried out research on access to protection and the principle of *non-refoulement* at the borders and in particular at **Lisbon Airport**.⁷⁸ While no cases of actual push backs at the border were identified, the research allowed for the identification of certain shortcomings such as extraterritorial *refoulement* in the framework of extraterritorial border controls by air carrier personnel in conjunction with SEF in Guinea Bissau. To the extent of CPR's knowledge, no further research has been conducted since then.

Regarding persons refused entry at border points, shortcomings with the potential to increase the risk of *refoulement* included: (a) challenges in accessing free legal assistance and an effective remedy, compounded by the absence of a clear legal/policy framework for the systematic assessment of the risk of *refoulement*; and (b) poor information provision to persons and lack of training to immigration staff on *non-refoulement* obligations.

While the information available does not substantiate ongoing instances of extraterritorial *refoulement*, there have not been significant changes regarding shortcomings for persons refused entry at the border, notably regarding access to free legal assistance and an effective remedy. These risk factors are aggravated by the absence of border monitoring by CPR and/or other independent organisations as well as by the delays in having access to asylum seekers (see [Border Procedure](#)). In this context, the situation in relation to refusals of entry and resulting possible risks of *refoulement* is opaque.

The UN Committee Against Torture recently noted that Portugal should “[e]sure that, in practice, no one may be expelled, returned or extradited to another State where there are substantial grounds for believing that he or she would run a personal and foreseeable risk of being subjected to torture and ill-treatment” and that procedural safeguards and effective remedies with regard to the prohibition of *refoulement* are available.⁷⁹

It should be noted that in 2017 CPR was denied access by the SEF to a stowaway on board of a vessel that docked in Portugal travelling from Spain to the United Kingdom on the grounds that the individual, reportedly of Eritrean nationality, did not intend to apply for asylum in Portugal but rather seek international protection in the UK. This information was later confirmed by the captain of the vessel to UNHCR and CPR and highlights the ongoing constraints on border monitoring by civil society organisations in Portugal. No such incidents were reported since then, however.

Since 2018, Portugal has systematically participated in *ad hoc* relocation mechanisms following rescue operations in the Mediterranean and disembarkation in Malta and Italy. According to information from

⁷⁶ Articles 2(aa), 47 and 65 Asylum Act; Articles 31(6), 40(4) and 143 Immigration Act.

⁷⁷ See e.g. Administrative Court of Lisbon, Decisions No 1480/12.7BELSB and No 2141/10.7BELSB.

⁷⁸ CPR, *Access to Protection: a Human Right, country report, Portugal*, 2014, available at: <http://bit.ly/2xA2aiV>.

⁷⁹ Committee Against Torture, *Concluding Observations on the seventh periodic report of Portugal*, CAR/C/PRT/CO/7, 18 December 2019, available at <https://bit.ly/2G1F07z>, par.38(a) and (b).

SEF⁸⁰, between July and November 2018, 86 applicants for international protection from 13 countries of origin were transferred to Portugal within this context.⁸¹

While sea arrivals are not common in Portugal, in December 2019, a group of seven men and one unaccompanied child from Morocco arrived by sea in a small boat in the region of **Algarve**. Following disembarkation, all of them applied for international protection and their applications were processed under the rules governing applications made in national territory.⁸² In early 2020, another group of eleven men from Morocco arrived in similar circumstances in **Algarve**.⁸³

2. Registration of the asylum application

Indicators: Registration

1. Are specific time limits laid down in law for making an application? ☐ Yes ☒ No
❖ If so, what is the time limit for lodging an application?
2. Are specific time limits laid down in law for lodging an application? ☐ Yes ☒ No
❖ If so, what is the time limit for lodging an application?
3. Are registration and lodging distinct stages in the law or in practice? ☐ Yes ☒ No
4. Is the authority with which the application is lodged also the authority responsible for its examination? ☒ Yes ☐ No

While the asylum application can be presented (“made”) either to SEF or to any other police authority that must then refer the claim to SEF, responsibility to register asylum claims lies solely with this entity.⁸⁴ If an asylum application is presented to a different police authority, it must be forwarded to the SEF within 48 hours.⁸⁵ In accordance with SEF’s internal organisation,⁸⁶ the responsibility for organising asylum files (including registration) lies with its Asylum and Refugees Department (GAR). SEF-GAR is required to inform CPR as an organisation working on UNHCR’s behalf of the registration of individual asylum applications. In 2019, out of a total of 1,849 spontaneous applicants registered by SEF, 1,714 were communicated to CPR.⁸⁷

In accordance with the law, anyone who irregularly enters Portuguese national territory or is refused entry at the border must present his or her request to SEF or to any other police authority as soon as possible.⁸⁸ Despite not laying down specific time limits for asylum seekers to lodge their application, the law provides for use of the **Accelerated Procedure** in case the asylum applicant enters or remains irregularly on national territory and fails to apply for asylum as soon as possible without a valid reason.⁸⁹ This provision has rarely been applied in practice. However, failure to apply for asylum at the earliest possible time, unless the applicant can demonstrate good reason for not having done so, also constitutes a ground for not

⁸⁰ SEF, *Relatório de imigração, Fronteiras e Asilo 2018*, June 2019, available at: <https://bit.ly/2znV7fs>.

⁸¹ For 2019 see for instance: Ministry of Home Affairs and Ministry of Presidency, *Nota à Comunicação Social – Portugal recebe migrantes resgatados ao largo da Líbia*, 25 June 2019, available at: <https://bit.ly/2VDYIEp>; Reuters, ‘EU countries agree to share out Ocean Viking migrants’, 23 August 2019, available at: <https://reut.rs/2VCIEgT>, 49; Público, ‘Portugal disponível para receber oito refugiados do barco Ocean Viking’, 14 September 2019, available at: <https://bit.ly/3bFNtLN>.

⁸² Público, *Jovens que desembarcaram no Algarve transferidos para Conselho Português para os Refugiados*, 12 December 2019, available in Portuguese at: <https://bit.ly/2V85Lzu>; Expresso, *Portugal vai acolher os jovens marroquinos que desembarcaram no Algarve*, 12 December 2019, available in Portuguese at: <https://bit.ly/3ciyrf2>.

⁸³ Público, *Polícia Marítima intercepta barco com 11 migrantes marroquinos em Olhão*, 29 January 2020, available at: <https://bit.ly/2XA6FGs> (in Portuguese).

⁸⁴ Article 13(7) Asylum Act.

⁸⁵ Article 13(2) Asylum Act.

⁸⁶ Article 17 Decree-Law 252/2000.

⁸⁷ While slight discrepancies between the number of registered applications and applications communicated to CPR are common, such a significant difference is unusual. Please note that statistics included in this report whose source is CPR, only include applications communicated to the organisation in accordance with the communication duties established in the Asylum Act.

⁸⁸ Article 13(1) Asylum Act.

⁸⁹ Article 19(1)(d) Asylum Act.

granting the benefit of the doubt.⁹⁰ This provision has been applied by SEF in practice. Additionally, it should be noted that persons refused entry at the border are liable to immediate removal to the point of their departure,⁹¹ meaning that, in practice, they are required to present their asylum application immediately.

Upon presentation of the application, the asylum seeker is required to fill out a preliminary form that among others includes information on identification, itinerary, grounds of the asylum application, supporting evidence and witnesses. The preliminary form is available in Portuguese, English and French. However according to CPR's experience asylum seekers are not systematically provided quality interpretation services at this stage of the procedure, which may result in the collection of insufficient and poor-quality information.

In December 2019, following an agreement between SEF and CPR, two CPR liaison officers were deployed to the premises of SEF-GAR, where the majority of applications are made, to facilitate registration, provision of initial information and referral procedures (e.g. for housing).

SEF is required to register the asylum application within 3 days of presentation and to issue the applicant a certificate of the asylum application within 3 days of registration.⁹² Despite isolated delays in obtaining appointments at SEF-GAR for registration, or delays related to the registration of asylum applications presented in the SEF's regional representations, CPR has not encountered systemic or serious problems regarding the registration of applications as opposed to some instances of delayed issuance and renewal of the certificates of the asylum application.

C. Procedures

1. Regular procedure

1.1. General (scope, time limits)

Indicators: Regular Procedure: General

- | | |
|--|---|
| 1. Time limit set in law for the determining authority to make a decision on the asylum application at first instance: | 6 months |
| 2. Are detailed reasons for the rejection at first instance of an asylum application shared with the applicant in writing? | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |
| 3. Backlog of pending cases at first instance as of 31 December 2019: | Not available |

The first instance determining authority is required to take a decision on the asylum application within 6 months. This time limit is additional to the duration of the admissibility procedure and can be extended to 9 months in cases of particular complexity.⁹³ The Asylum Act does not provide for specific consequences in case of failure to meet the time limit and, in practice, asylum seekers are reluctant to act on the delay on the basis of general administrative guarantees, e.g. by requesting Administrative Courts to order SEF to issue a decision on the application within a given time limit.⁹⁴

The significant increase in the number of spontaneously arriving asylum seekers and relocated asylum seekers has led SEF-GAR to recruit additional staff in the recent years. In 2019, there were 1,849 spontaneous asylum applicants in Portugal, up from 1,270 in 2018.⁹⁵

⁹⁰ Article 18(4)(d) Asylum Act.

⁹¹ Article 41(1) Immigration Act.

⁹² Articles 13(7) and 14(1) Asylum Act.

⁹³ Article 28(2) Asylum Act.

⁹⁴ Article 129 Decree-Law 4/2015; Article 66(1) Administrative Court Procedure Code.

⁹⁵ As a comparison, there were 1,750 in 2017 (both spontaneous and relocated asylum seekers); 1,469 in 2016 (spontaneous and relocated); 896 (spontaneous and relocated) in 2015 and 447 (spontaneous) in 2014.

SEF was not able to share an estimation of the average duration of the procedure at first instance for 2019. In 2018, SEF indicated that the average duration of the asylum procedure was of 7 working days, a reference probably related to the average duration of admissibility and accelerated procedures at the border.

CPR was able to gather information on 26 regular procedure decisions issued in the course of 2019, including decisions communicated by SEF in accordance with the law, and decisions that reached CPR's knowledge by different avenues, i.e. through direct contacts with applicants. In these 26 cases, the duration of the regular procedure⁹⁶ ranged from 107 to 1,595 days, with an average duration of 843 days.⁹⁷ CPR is uncertain whether the low number of notifications of asylum decisions is related to gaps in communication or indicates further delays in the decision-making process.

In the context of the provision of legal assistance to asylum seekers, CPR has also at times observed significant delays in the execution of judicial decisions by SEF. According to CPR's observation, this mostly concerned the execution of judicial decisions that annulled first instance decisions rejecting applications in accelerated procedures and consequently condemned the Administration to channelling them into the regular procedure.

1.2. Prioritised examination and fast-track processing

While no statistics are available,⁹⁸ according to SEF, cases of vulnerable applicants (e.g. pregnant women, applicants accompanied by young children, elderly persons, applicants in need of medical care) are fast-tracked. SEF did not share information on the impact of fast-tracking in the average duration of the procedure.

The statistical information collected by CPR for 2019, which is based on the information received from the SEF, does not indicate a clear trend in this regard. The average duration of the first instance procedure for vulnerable asylum seekers such as unaccompanied children in the regular procedure does not seem to clearly differ from that of other caseloads. In 2017, the National Confederation of Solidarity Institutions (*Confederação Nacional das Instituições de Solidariedade* (CNIS)) reported that the examination of the asylum application of the 4 unaccompanied asylum-seeking children transferred to Portugal from Greece in the framework of its pilot project (see [Dublin: General](#)) were clearly prioritised (processed under 6 months) in relation to other clients in the framework of the relocation programme. No children were transferred to Portugal under this scheme since then.⁹⁹

1.3. Personal interview

Indicators: Regular Procedure: Personal Interview

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

⁹⁶ Time comprised between the date of the application and the date of issuance of the first instance decision on the asylum procedure.

⁹⁷ CRESCER also shared the occurrence of significant delays regarding 19 relocated asylum seekers assisted by the organisation

⁹⁸ Neither regarding the number of cases to which prioritised analysis was applied, nor the impact of the adoption of fast-track procedures in the duration of the analysis.

⁹⁹ However, in March 2020, Portugal was one of the EU Member States that agreed to receive unaccompanied children from the Greek Islands. At the time of writing, information was not publicly available on the details and implementation of this arrangement. See LUSA, 'Portugal: Country offers to take in unaccompanied minors from Greek Islands', 9 March 2020, available at: <https://bit.ly/2yUZQoG>.

The Asylum Act provides for the systematic personal interview of all asylum seekers in the regular procedure prior to the issuance of a first instance decision.¹⁰⁰ The personal interview can only be waived where:

1. The evidence already available allows for a positive decision; or
2. The applicant lacks legal capacity due to long-lasting reasons beyond his or her control.¹⁰¹

In this case, SEF is required to offer the applicant or his or her dependant(s) the opportunity to communicate relevant information by other means.¹⁰²

The asylum seeker is entitled to give his or her statement in his/her preferred language or in any other language that he/she understands and in which he/she is able to communicate clearly.¹⁰³ To that end, the asylum seeker is entitled to the assistance of an interpreter when applying for asylum and throughout the asylum procedure, if needed.¹⁰⁴ The asylum seeker can also be assisted by a lawyer but the absence thereof does not preclude the SEF from conducting the interview.¹⁰⁵

While SEF did not share the number of cases where a decision was adopted in the absence of a personal interview, it affirmed that applicants are guaranteed the right to an interview before any decision regarding their application is adopted, emphasising that interviews can only be waived in the cases listed in the Asylum Act. SEF also noted that interviews are conducted in all types of procedure, including Dublin. According to information shared by SEF for 2018, there were no cases where a decision was taken without a personal interview. However, in the view of CPR, it is not clear whether all asylum seekers were provided a personal interview in the framework of Dublin procedures in 2018 and 2019 (see: [Dublin: Personal Interview](#)).

In some instances in 2019, CPR was informed by SEF of the adoption of decisions not to proceed with the analysis of the application due to the impossibility to perform the personal interview (e.g. because the applicant absconded) on the basis of general administrative procedure rules.¹⁰⁶

The interview is generally conducted by SEF-GAR, although interviews are at times conducted by SEF's regional representations in cases of asylum applications made in more remote locations. Such interviews are conducted on the basis of a questionnaire prepared by SEF-GAR. According to CPR's observations, the interviews conducted by the SEF's regional representations tend to be less technically accurate and sometimes fail to adequately clarify material facts of the claim.

1.3.1. Interpretation

The quality of interpretation services used for interviews remains a serious challenge, as in many cases service providers are not trained interpreters but rather individuals with sufficient command of source languages. While the interpreters are bound by a legal duty of confidentiality, there is no agreed code of conduct used by the SEF. In 2015, CPR conducted training for interpreters in partnership with the Portuguese Association of Conference Interpreters (APIC) focusing on technical aspects of interpretation and on Asylum Law.

In November 2017, the High Commission for Migration (ACM) organised a training for interpreters who work with reception service providers as well as professionals who resort to interpreters in the provision of reception and health services to asylum seekers and beneficiaries of international protection. The training was conducted by experts of the International Rescue Committee in the framework of the European Resettlement and Integration Technical Assistance (EURITA) joint project of the U.S.

¹⁰⁰ Article 16(1), (2) and (3) Asylum Act.

¹⁰¹ Article 16(5) Asylum Act.

¹⁰² Article 16(6) Asylum Act.

¹⁰³ Article 16(1) Asylum Act.

¹⁰⁴ Article 49(1)(d) Asylum Act.

¹⁰⁵ Article 49(7) Asylum Act.

¹⁰⁶ Article 119(3) Administrative Procedure Code.

Department of State and the International Rescue Committee. It consisted of a 2-day training for interpreters and a 1- to 2-hour training for professionals. The training was not focused on interpretation in asylum procedures, however. According to the information shared by ACM, an online training to interpreters and professionals was conducted by EURITA in January 2018.

In the case of rarer languages – e.g. Tigrinya, Pashto, Bambara, Lingala, Tamil, Kurdish and to a lesser extent Arabic and Farsi – securing interpreters with an adequate command of the target language remains very challenging.

1.3.2. Recording and report

The Asylum Act does not provide for the audio and/or video recording of the interview or for conducting interviews and/or interpretation through videoconferencing, and CPR is not aware of its use. For 2019, SEF confirmed that such means were not used.

SEF produces a written report summarising the most important elements raised during the interview. The report is immediately provided to the applicant who has 5 days to submit comments.¹⁰⁷ Upon consent of the applicant, the report must also be communicated to UNHCR and to CPR, and the organisations may submit observations within the same deadline.¹⁰⁸ CPR provides systematic legal assistance to asylum seekers at this stage, with the assistance of interpreters, for the purpose of reviewing and submitting comments / corrections to the report. Given that the written report is drafted during the interview, the case officer is under significant time pressure to complete both the interview and the report and this generally results in the applicant having to make many comments and corrections. Moreover, in many instances, applicants reported to CPR that the document was not read to them in a language they understand before they were asked to sign it. In some instances in 2019, applicants also reported being advised by the interpreter during the interview to renounce to their right to reply to the written report.

CPR has also been made aware that when the interview is conducted following admission to the regular procedure, the applicants are not, at least in some instances, given the corresponding written report. Moreover, such reports are also not communicated to CPR on a systematic basis.¹⁰⁹ This practice is problematic as it curtails the applicant's right to submit comments and corrections to the report and may also impact the applicant's ability to fully exercise other procedural rights at later stages of the procedure. Moreover, it seems to be in contradiction both with the domestic legal framework and the recast Asylum Procedures Directive.¹¹⁰

1.4. Appeal

Indicators: Regular Procedure: Appeal

1. Does the law provide for an appeal against the first instance decision in the regular procedure?

❖ If yes, is it	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
❖ If yes, is it automatically suspensive	<input checked="" type="checkbox"/> Judicial	<input type="checkbox"/> Administrative
	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Some grounds <input type="checkbox"/> No
2. Average processing time for the appeal body to make a decision: 2 to 3 months

¹⁰⁷ Article 17 (1) and (2) Asylum Act.

¹⁰⁸ Article 17(3) Asylum Act.

¹⁰⁹ According to article 17(3) Asylum Act, upon consent of the applicant, the report is to be communicated to UNHCR and to CPR as organisation working on its behalf. Such entities may submit observations.

¹¹⁰ Article 17(3) Asylum Procedures Directive.

1.4.1. First appeal before the Administrative Court

The Asylum Act provides for an appeal against the first instance decision in the regular procedure consisting of judicial review of relevant facts and points of law by the Administrative Court.¹¹¹ The asylum seeker has 15 days to lodge the appeal, which has automatic suspensive effect.¹¹²

A ruling of the Supreme Administrative Court has clarified that appeals against decisions regarding the grant of asylum are free of charge.¹¹³ This is also established by the Asylum Act that provides for the free and urgent nature of procedures regarding the grant or loss of international protection both in the administrative and judicial stages.¹¹⁴

Administrative Courts have a review competence which allows them to either:

- (1) confirm the negative decision of the first instance decision body;
- (2) annul the decision and refer the case back to the first instance decision body with guidance on applicable standards;¹¹⁵ or
- (3) overturn it by granting refugee or subsidiary protection status.¹¹⁶

The Asylum Act qualifies the judicial review as urgent,¹¹⁷ and provides for a simplified judicial process with reduced formalities and time limits with the objective of shortening the duration of the judicial review.¹¹⁸

The information provided by the High Council of Administrative and Fiscal Courts (*Conselho Superior dos Tribunais Administrativos e Fiscais* – CSTAF) for 2019 regarding the duration of judicial reviews of first instance decisions does not make a distinction between the type of asylum procedure. According to these statistics, the average duration of appeals in 2019 was of 2 to 3 months.

While the Asylum Act does not specifically provide for a hearing of the asylum seeker during the appeal procedure, such a guarantee is enshrined in the general procedure that provides for the hearing of the parties.¹¹⁹ This is rarely used in practice by lawyers and accepted by the Court when requested, as procedures before the Administrative Court tend to be formalistic and essentially written.¹²⁰ As a general rule, the hearing of the appeal body is public but the judge may rule for a private audience based on the need to protect the dignity of the individual or the smooth operation of the procedure.¹²¹

In practice, and without prejudice to issues such as the poor quality of [Legal Assistance](#) and language barriers that have an impact on the quality and effectiveness of appeals, CPR is not aware of systemic or relevant obstacles faced by asylum seekers to appealing a first instance decision in the regular procedure.

According to the CSTAF, a total of 552 appeals were lodged against negative asylum decisions in 2019. Out of these, 525 were filled in front of the TAC **Lisbon**, marking a 40% increase compared to 2018. TAC Lisbon rendered decisions on 446 of the appeals filled in 2019 while 79 were pending at the end of the year.

¹¹¹ Article 30(1) Asylum Act; Article 95(3) Administrative Court Procedure Code.

¹¹² Article 30(1) Asylum Act.

¹¹³ Supreme Administrative Court, Decision 408/16, 17 November 2016, available in Portuguese at: <https://bit.ly/2W9NY9L>.

¹¹⁴ Article 84 Asylum Act.

¹¹⁵ Article 71(2) Administrative Court Procedure Code. In practice this is normally the case when the courts find that there are relevant gaps in the assessment of the material facts of the claim, thus requiring the first instance decision body to conduct further investigations.

¹¹⁶ Article 71(1) Administrative Court Procedure Code.

¹¹⁷ Article 84 Asylum Act.

¹¹⁸ Article 30(2) Asylum Act; Article 110 Administrative Court Procedure Code.

¹¹⁹ Article 90(2) Administrative Court Procedure Code; Article 466 Act 41/2013.

¹²⁰ According to the information provided by CSTAF regarding appeals at TAC Lisbon, hearings of the asylum seeker were held in 2 cases in 2019.

¹²¹ Article 91(2) Administrative Court Procedure Code; Article 606 Act 41/2013.

The information provided by the CSTAF for 2019 regarding the outcome of judicial reviews of first instance decisions indicates a poor success rate at appeal stage (19.3% at TAC Lisbon and 20% at national level). However, as mentioned in [Statistics](#), these figures do not make a distinction between the type of asylum procedure. In this regard, it must be acknowledged that the quality of many appeals submitted is often poor, given that very few lawyers have relevant expertise in the field.

1.4.2. Onward appeal

In case of rejection of the appeal, onward appeals are possible before the Central Administrative Court (*Tribunal Central Administrativo – TCA*), consisting of a full judicial review of relevant facts and points of law,¹²² with automatic suspensive effect.¹²³ Furthermore, the law provides for an additional appeal with automatic suspensive effect before the Supreme Administrative Court (*Supremo Tribunal Administrativo, STA*) on points of law but only in exceptional cases of fundamental importance of the appeal for legal and social reasons or to improve the quality of legal reasoning in decision-making more broadly.¹²⁴ The STA makes its own assessment and decision on the facts of the case.¹²⁵ In both cases the asylum seeker has 15 days to lodge the appeal.¹²⁶

The rulings of second instance Administrative Courts (TCA) and the STA are systematically published.¹²⁷ According to information provided by CSTAF, Higher Courts do not collect autonomous data on asylum-related processes.

1.5. Legal assistance

Indicators: Regular Procedure: Legal Assistance

1. Do asylum seekers have access to free legal assistance at first instance in practice?

<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> With difficulty	<input type="checkbox"/> No
---	--	-----------------------------

 - ❖ Does free legal assistance cover:

<input type="checkbox"/> Representation in interview
<input checked="" type="checkbox"/> Legal advice

2. Do asylum seekers have access to free legal assistance on appeal against a negative decision in practice?

<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> With difficulty	<input type="checkbox"/> No
---	--	-----------------------------

 - ❖ Does free legal assistance cover

<input checked="" type="checkbox"/> Representation in courts
<input checked="" type="checkbox"/> Legal advice

The Portuguese Constitution enshrines the right of every individual to legal information and judicial remedies regardless of their financial condition.¹²⁸

1.5.1. Legal assistance at first instance

The Asylum Act in particular provides for the right of asylum seekers to free legal assistance at all stages of the asylum procedure which is to be understood as including the first instance of the regular procedure.¹²⁹ Such legal assistance is to be provided without restrictions by a public entity or by a non-governmental organisation in line with a Memorandum of Understanding (MoU).¹³⁰

Furthermore, under the Asylum Act, UNHCR and CPR as an organisation working on its behalf must be informed of all asylum applications in Portugal and are entitled to personally contact all asylum seekers irrespective of the place of application to provide information regarding the asylum procedure, as well as

¹²² Article 149(1) Administrative Court Procedure Code; Article 31(3) Act 13/2002.

¹²³ Article 143(1) Administrative Court Procedure Code.

¹²⁴ Articles 143(1) and 150(1) Administrative Court Procedure Code.

¹²⁵ Article 150(3) Administrative Court Procedure Code.

¹²⁶ Article 147 Administrative Court Procedure Code.

¹²⁷ Decisions are available at: <http://www.dgsi.pt/>.

¹²⁸ Article 20(1) Constitution.

¹²⁹ Article 49(1)(e) Asylum Act.

¹³⁰ *Ibid.*

regarding their intervention in the procedure (dependent on the consent of the applicant).¹³¹ These organisations are also entitled to be informed of key developments in the asylum procedure upon consent of the applicant,¹³² and to present their observations at any time during the procedure pursuant to Article 35 of the 1951 Refugee Convention.¹³³

In practice, CPR provides free legal assistance to spontaneously arriving asylum seekers during the first instance regular procedure on the basis of MoUs with the Ministry of Home Affairs and UNHCR. The legal assistance provided by CPR at this stage includes:

- Providing information regarding the asylum procedure, rights and duties of the applicant;
- Conducting refugee status determination interviews in order to assist the applicants in reviewing and submitting comments / corrections to the report narrating the most important elements of their interview with the determining authority;
- Providing SEF with observations on applicable legal standards and country of origin information (COI);
- Providing assistance in accessing free legal aid for appeals; and
- Assisting lawyers appointed under the free legal aid system in preparing appeals with relevant legal standards and COI.

Regarding particularly vulnerable asylum seekers, CPR provides specific legal assistance to unaccompanied asylum-seeking children. This includes the presence of one of CPR's legal officers during the personal interview with SEF (see [Legal Representation of Unaccompanied Children](#)) as well as the provision of legal information and assistance in the framework of procedures before the Family and Juvenile Court.¹³⁴

CPR also provides legal information and assistance to relocated asylum seekers upon request. This includes, for instance, providing legal information on the asylum procedure, family reunification procedures and other integration-related matters, and submitting observations on applicable legal standards. In 2019, legal assistance by CPR mostly focused on providing support to family reunification and other integration-related issues.

According to SEF, the total number of requests for legal assistance by asylum seekers during the first instance procedure in 2019 was 783, compared to 378 in 2018. However, these statistics are most likely related to legal aid at appeal stage and do not offer a breakdown of the total number of requests by type of procedure concerned.

In 2019, CPR provided legal support to 1,553 spontaneously arriving asylum seekers in all types of asylum procedures lodged throughout the year, which represents around 90.6% of the total number of spontaneous applications communicated to CPR according to the law (1,714) and 84% of the total number of spontaneous applicants (1,849).

However, the continued increase of spontaneous asylum applications since 2017 has further exacerbated the pressure on CPR's capacity and resulted in gaps in the provision of legal assistance at first instance, particularly regarding asylum seekers placed in detention or private accommodation in more remote locations. Efforts to reduce such gaps focus, for instance, on the remote provision of assistance (e.g. by telephone and/or e-mail communication).

¹³¹ Article 13(3) Asylum Act. See also Article 24(1) concerning applications at the border, Article 33(3) Asylum Act concerning subsequent applications, Article 33-A(3) concerning applications following a removal procedure.

¹³² Article 17(3): document narrating the essential facts of the request; Article 20(1): decision on admissibility and accelerated procedures in national territory; Article 24(5): decision on admissibility and accelerated procedures at the border; Article 29(6) first instance decision in the regular procedure; Article 37(5): Dublin take charge decision.

¹³³ Article 28(5) Asylum Act.

¹³⁴ These procedures are provided in the General Regime of Civil Guardianship Process, 141/2015, and the Children and Youths at Risk Protection Act, 147/99.

It should be noted that there are other organisations that also provide legal information and assistance to asylum seekers during the first instance of the regular procedure such as the Jesuit Refugee Service (JRS) Portugal, CNIS regarding unaccompanied asylum-seeking children who were transferred to Portugal in accordance with the “humanitarian clause” of the Dublin Regulation under a pilot project in 2017, and to a lesser extent the High Commission for Migration (ACM) through their National Centres for Migrants’ Integration (CNAIM) and 100 Local Support Centres for Migrants Integration (*Centro Local de Apoio à Integração de Migrantes*, CLAIM) spread throughout the country. According to the available information, these services remain residual and mostly focused on integration.

1.5.2. Legal assistance in appeals

Regarding legal assistance at appeal stage, the Asylum Act provides for the right of asylum seekers to free legal aid in accordance with the law.¹³⁵ The legal framework of free legal aid provides for a “means assessment” on the basis of the household income,¹³⁶ as only applicants who do not hold sufficient income are entitled to free or more favourable conditions to access legal aid.¹³⁷ The application is submitted to the Institute of Social Security (*Instituto da Segurança Social*, ISS) that conducts the means assessment¹³⁸ and refers successful applications to the Portuguese Bar Association (*Ordem dos Advogados*). The Bar appoints a lawyer,¹³⁹ on the basis of a random/automatic selection procedure.¹⁴⁰ The sole responsibility for organising the selection lies with the Portuguese Bar Association but such procedure should ensure the quality of the legal aid provided.¹⁴¹ While the average duration of this procedure in 2019 was around 1 week, the law provides for the suspension of the time limit for the appeal upon presentation of the free legal aid application and until the free legal aid appointed lawyer submits the judicial appeal.¹⁴²

It should be noted that the national legislation provides for a “merits test” to be conducted by the appointed lawyer according to which free legal assistance can be refused on the basis that the appeal is likely to be unsuccessful. In that case, the free legal aid lawyer can excuse him/herself from the case and the Portuguese Bar Association can choose not to appoint a replacement.¹⁴³

According to the figures provided by the SEF, the likely number of requests for legal assistance by asylum applicants at appeal stage in 2019 was 783. These statistics do not offer a breakdown of the total number of requests by type of procedure concerned.

In general, asylum seekers in the regular procedure enjoy unhindered access to free legal aid at appeal stage as the practical implementation of the “means test” conducted by ISS or the “merits test” conducted by free legal aid appointed lawyers have not resulted in a significant number of refusals so far.

- In the case of the “means test” conducted by the ISS, the fact that asylum seekers admitted to the regular procedure are issued a provisional residence permit and are therefore entitled to access the labour market (see [Access to the Labour Market](#)) has at times resulted in asylum applicants having a level of income that excludes them from free legal aid. In this case, given the usually limited levels of income, they can still be offered more favourable conditions to access legal aid such as instalments.
- In the case of the “merits test”, as reported in previous years, the practice of the Portuguese Bar Association remained inconsistent. In 2019, CPR witnessed an increasing number of cases where, following a refusal by the appointed lawyer to provide free legal aid on the grounds that

¹³⁵ Article 49(1)(f) Asylum Act.

¹³⁶ Act 34/2004; Ministerial Order 10/2008.

¹³⁷ Article 8-A and Annex Act 34/2004.

¹³⁸ Article 22 Act 34/2004.

¹³⁹ Article 30 Act 34/2004.

¹⁴⁰ Article 2(1) Ministerial Order 10/2008.

¹⁴¹ Article 10(2) and (3) Ministerial Order 10/2008.

¹⁴² Article 33(4) Act 34/2004. See e.g. TCA South, Decision 10733/13, 2 April 2014, available in Portuguese at: <http://bit.ly/2gyVQOJ>.

¹⁴³ Article 34(5) Act 34/2004.

the chances of success were limited, the Bar Association chose not to appoint a replacement. In some instances, this happened following the assessment of only one lawyer. While some of these decisions were later reversed following revision requests submitted with the support of CPR, this is a concerning practice that may have an impact on the effective access to legal aid by asylum seekers.

Another concern relates to the overall quality of free legal aid at appeal stage, as the current selection system is based on a random/automatic selection procedure managed by the Portuguese Bar Association. This is done on the basis of preferred areas of legal assistance chosen beforehand by the appointed lawyers.¹⁴⁴ Such areas are general in nature and not specifically related to Asylum Law. In general, appointed lawyers are not trained in Asylum Law and have limited experience in this specific field.

In cooperation with UNHCR, CPR continued its effort to engage with the Portuguese Bar Association with the aim of providing training to relevant lawyers in 2019. Discussions were also held on other measures which could help to improve the quality of appeals.

In September and October 2017, CPR provided a training module to judges, public prosecutors and lawyers on European and EU asylum case law in the framework of an EU funded training programme.¹⁴⁵ In January 2019, CPR also provided a training session for judges and public prosecutors of the Administrative Courts focusing on evidence and credibility assessment, within the framework of a continuous training on asylum and immigration organised by the Centre for Judicial Studies (*Centro de Estudos Judiciários*, CEJ). Throughout 2019, CPR continued to deliver trainings on asylum-related matters to diverse audiences, including judges.

Additional persisting challenges in this regard include the absence of an easily accessible interpretation service, which hinders the communication between the lawyer and the client during the preparation of the appeal. Although ACM's translation hotline can constitute a useful tool in this regard, it is insufficiently used by lawyers according to CPR's experience.¹⁴⁶ Moreover, the expenses for the preparation of the appeal, including for interpretation and translation of documents, need to be paid in advance by the appointed lawyer who can then ask the court for reimbursement.¹⁴⁷ This is an additional obstacle to effective legal representation at this stage.

¹⁴⁴ Article 3(3)(c) Regulation of the Bar Association 330-A/2008 of 24 June 2008.

¹⁴⁵ The Charter of Fundamental Rights of the EU "in action", available at: <https://goo.gl/1G9LBf>.

¹⁴⁶ ACM's interpretation hotline relies on a database of 60 interpreters/translators to enable communication with non-Portuguese speaking citizens. Access is free of charge (cost of a local call) and can be used on working days, between 9:00 and 19:00. It is possible to request the interpretation immediately (upon availability of interpreter) or to schedule a call. Additional information, including the list of languages covered, is available at <http://bit.ly/2A4Ekga>.

¹⁴⁷ Article 8(3) Ministerial Order 10/2008.

2. Dublin

2.1. General

Dublin statistics: 2019

Outgoing procedure			Incoming procedure		
	Requests	Transfers		Requests	Transfers
Total	666	46	Total	1,938	355
Italy	373	12	France	1,090	121
Germany	94	11	Germany	537	145
Spain	56	12	Belgium	114	8
France	49	4	Netherlands	34	14
Switzerland	21	0	Switzerland	32	19
Sweden	20	3	Sweden	30	15
Austria	11	3	Austria	22	12
Belgium	8	0	Finland	17	0
Denmark	7	1	Italy	12	1
Netherlands	7	0	Norway	11	12
Bulgaria	4	0	Luxembourg	10	1
Hungary	4	0	Ireland	7	0
United Kingdom	4	0	United Kingdom	6	2
Slovakia	2	0	Denmark	5	4
Croatia	1	0	Greece	3	1
Finland	1	0	Iceland	3	0
Lithuania	1	0	Slovenia	2	0
Malta	1	0	Malta	1	0
Norway	1	0	Slovakia	1	0
Romania	1	0	Spain	1	0

Source: SEF.

2.1.1. Application of the Dublin criteria

The Asylum Act makes a formal reference to the criteria enshrined in the Dublin III Regulation for determining the responsible Member State.¹⁴⁸ However, CPR is unaware of additional formal guidelines from SEF regarding the practical implementation of those criteria.

Empirical evidence of the implementation of the Dublin criteria pertaining to **family unity** is also scarce given the usually very limited number of incoming or outgoing requests pursuant to responsibility criteria provided in Articles 8-11 of the Regulation. According to the information provided by SEF, in 2019, there were only 2 outgoing requests and 13 incoming “take charge” requests under Articles 8-11.

In the very few instances where CPR has contacted SEF regarding the potential application of family unity criteria, in particular regarding Article 8 on minors, evidence and information required from SEF for applying those provisions included identification documents, address and contacts of relatives residing in other EU Member States. It should be noted that, in general, such contacts did not result in the outgoing

¹⁴⁸ Article 37(1) Asylum Act.

transfer of the unaccompanied children as they generally absconded prior to any relevant development in the procedure.

In 2018, SEF issued multiple transfer decisions regarding asylum seekers claiming to be under 18-years-old but who have been previously registered as adults in other Member States and that were unaccompanied. These decisions made no reference to the applicant's claim of minority. In 2018, there was one case where the applicant eventually disclosed that he was in fact over 18-years-old, but this did not happen in all cases. Moreover, in one case in 2018, SEF overturned a transfer decision *motu proprio* following an appeal on the basis that the applicant was indeed an unaccompanied child. CPR is aware of similar cases in 2019 where a transfer request was issued based on the previous registration in other Member States and no reference was made to the age assessment conducted by the Portuguese authorities as the applicant claimed to be under 18 years old (see below).

In 2017, the TAC of **Lisbon** offered clear guidance to the SEF regarding the interpretation of Article 6 of the Dublin Regulation in a judgment that overturned a transfer decision to Germany of an unaccompanied child under the care of CPR, for failing to give due consideration to the best interests of the child in its reasoning, notably regarding the child's well-being, social development and views.¹⁴⁹

Two similar situations were analysed by the TAC of **Lisbon** in 2019. In both cases, an unaccompanied child applied for asylum in Portugal, and it was determined that there were Eurodac hits in Italy. Following information requests, the Italian authorities informed that the applicants were registered as (young) adults. SEF decided to issue transfer decisions for both applicants despite the fact that they were claiming to be under 18 years old and that no age assessment was conducted. The transfer decisions made no reference to the alleged minority. In one case, the TAC Lisbon upheld the transfer decision as it relied on the information provided by the Italian authorities, according to which the applicant was not a child.¹⁵⁰ In the other case, however, the Court considered that, in the absence of evidence regarding the age of the applicant, he/she must be treated as a child and, as such, Article 8(4) of the Dublin Regulation is applicable. The transfer decision was annulled because the best interest of the child was not taken into account by the national asylum authority.¹⁵¹

As for the remaining family unity criteria, CPR is aware of a "take charge" request in 2017 regarding a border application that was presented by the SEF on the basis of Article 9. The application was rejected by the competent authority of the requested Member State on the basis of insufficient evidence of family ties. This could indicate a flexible interpretation of evidence requirements from the SEF to initiate the procedure.

2.1.2. The discretionary clauses

The "sovereignty clause" enshrined in Article 17(1) of the Dublin Regulation and the "humanitarian clause" enshrined in its Article 17(2) are at times applied in practice but the criteria for their application are unclear and no specific statistics are available on their use, except for the number of outgoing and incoming take charge requests under these clauses.¹⁵²

In 2017 a group of four unaccompanied children and one young adult were transferred from Greece to Portugal in accordance with the "humanitarian clause" enshrined in Article 17(2) of the Dublin Regulation under a [pilot project](#) involving the national authorities, **CNIS** in Portugal and the Greek organisation Metadrasi.

According to the data shared by SEF, there were 3 incoming requests based on the "humanitarian clause" in 2019.

¹⁴⁹ TAC Lisbon, Decision 2334/17.5BELSB, 24 November 2017, unpublished.

¹⁵⁰ TAC Lisbon, Decision 1216/19.1BELSB, 22 October 2019, unpublished. It is interesting to note that the same course of action was followed by the Family Court responsible for the application of the protective measure.

¹⁵¹ TAC Lisbon, Decision 1516/19.0BELSB, 16 October 2019, unpublished.

¹⁵² According to the SEF, in 2019 there were 4 outgoing and 3 incoming take charge requests pursuant to Article 17(2) of the Regulation.

According to SEF, the “sovereignty clause” was applied in two cases in 2017. CPR was informed of the use of the “sovereignty clause” by SEF in the case of an asylum application for health reasons. However, in CPR’s experience, the underlying criteria in the application of the clause remain unclear. According to the information shared by SEF, the sovereignty clause was not applied in 2018 and in 2019.

There have been no transfer decisions to Greece since the *M.S.S. v. Belgium and Greece* judgment of the European Court of Human Rights (ECtHR) with the sovereignty clause being applied in potential transfer cases to Greece assisted by CPR during this period. Unlike in 2016 and 2017, no transfer decisions to Bulgaria or Hungary were communicated to CPR in 2018 or in 2019.¹⁵³ This is confirmed by the data on Dublin transfers provided by SEF for 2019.

In October 2018, the authorities announced a bilateral agreement with Greece to implement a pilot relocation process for 100 asylum seekers from Greece to Portugal.¹⁵⁴ The agreement was signed in early 2019, and covers asylum seekers and beneficiaries of international protection who are in refugee camps in Greece. According to the Ministry of Home Affairs, the process may lead to the transfer of up to 1,000 seekers and beneficiaries of international protection. The Ministry also reported that the project has received green light from the European Commission and will be supported by IOM.¹⁵⁵ No further information on the implementation of the agreement was available at the time of writing.

2.2. Procedure

Indicators: Dublin: Procedure

1. Is the Dublin procedure applied by the authority responsible for examining asylum applications?
☒ Yes ☐ No
2. On average, how long does a transfer take after the responsible Member State has accepted responsibility?
 15 to 20 days

According to the Asylum Act a procedure for determining the Member State responsible for examining an application for international protection under the Dublin Regulation shall be conducted whenever there are reasons to believe that such responsibility lies with another Member State. In such cases, SEF shall make a “take charge” or “take back” request to the competent authorities of the relevant Member State.¹⁵⁶

While the law allows for the detention of asylum seekers submitted to a procedure for determining the responsible Member State pursuant to Article 28 of the Dublin III Regulation,¹⁵⁷ the consequences of an asylum seeker’s refusal to comply with the obligation to be fingerprinted¹⁵⁸ are limited to the application of an **Accelerated Procedure**.¹⁵⁹ There are no legal provisions on the use of force to take fingerprints and CPR is not aware of any operational guidelines to that end. According to the information available to CPR, asylum seekers are systematically fingerprinted and checked in Eurodac in practice. Among those who benefit from CPR’s legal assistance, instances of accelerated procedures due to a refusal to be fingerprinted are a very rare (to non-existent) occurrence.

In practice, SEF systematically determines which country is responsible for examining the asylum application in accordance with the criteria set out in the Dublin Regulation. This is done among others on the basis of the information collected through a preliminary form that must be filled by the asylum seeker

¹⁵³ The transfer decisions to such countries issued in 2016 and 2017 did not include any reference to possible risks of *refoulement*, indicating that detention and reception conditions, guarantees in the asylum procedure and access to an effective remedy in the responsible State are not consistently taken into consideration when deciding whether or not to apply the “sovereignty clause”.

¹⁵⁴ See further AIDA, ‘Portugal/Greece: Bilateral agreement for relocation of asylum seekers’, 24 October 2018, available at: <https://bit.ly/2CUckN6>.

¹⁵⁵ Ministry of Home Affairs, ‘Portugal e Grécia formalizam Acordo Bilateral para transferência de refugiados’, 8 March 2019, available in Portuguese at: <https://bit.ly/2ImWSMI>.

¹⁵⁶ Articles 36 and 37(1) Asylum Act.

¹⁵⁷ Article 35-A(3)(c) Asylum Act.

¹⁵⁸ Article 15(1)(e) Asylum Act.

¹⁵⁹ Article 19(1)(j) Asylum Act.

upon registration and/or the individual interview. The preliminary form includes information on identification, itinerary, grounds for the asylum application, prior stays in Europe and supporting evidence. During the individual interview with SEF, the asylum seeker is also asked to clarify relevant Dublin-related issues such as his/her identity and nationality, travel documents, visas and travel arrangements, itinerary and transportation to Portugal, and prior asylum applications. This information can eventually lead to a Dublin procedure that is preliminary to the assessment of the application and, once initiated, suspends the applicable time limits for the issuance of a decision on the (other) inadmissibility grounds or the merits of the application.¹⁶⁰

The Asylum Act provides for the right of the asylum seeker to be informed of the purpose of fingerprinting as well as of other rights provided in the Eurodac Regulation.¹⁶¹ CPR has no indication on whether this obligation is systematically implemented in practice as, to the extent of its knowledge, the leaflets distributed contain very limited information on fingerprinting and on the Eurodac Regulation. Moreover, CPR has no indication on whether the common information leaflet set out in Article 4(3) of the Dublin III Regulation is systematically distributed. The information contained in the documents that are systematically distributed to asylum seekers by SEF¹⁶² do not include all the relevant information included on the Annex X (Parts A and B) of the corresponding Implementing Regulation.¹⁶³

Even when the personal interview focuses on the grounds of the application for international protection, the document narrating the individual interview that is signed and handed out to the applicant includes a reference to the Dublin Regulation, as well as a waiver for sharing information under Article 34 of the Regulation. In cases where at the time of the individual interview there are relevant indicators that warrant a Dublin procedure, SEF may give the applicant the opportunity at that point to raise any relevant objections to the transfer that should be considered in the procedure. However, according to CPR's observation, even when such objections are raised, they are not specifically addressed by SEF in the reasoning of the inadmissibility decision.

The full extent and implications of the right to be heard in Dublin procedures continued to be discussed in national jurisprudence in 2019 (see [Dublin:Personal interview](#)).

Asylum seekers are systematically informed in writing of the request made to another Member State, the corresponding supporting evidence and the reply of that Member State but only at the time of written notification of the actual transfer decision.¹⁶⁴

2.2.1. Individualised guarantees

According to information available to CPR, SEF does not seek individualised guarantees ensuring that the asylum seeker will have adequate reception conditions upon transfer in practice, either systematically or for specific categories of applicants or specific Member States.¹⁶⁵

In the case of transfer decisions to Italy issued in 2018 and 2019, the reasoning bore no reference to possible risks of ill-treatment in the responsible Member State, with most of the decisions being issued on the basis of the absence of a timely response from the Italian authorities. This has also been the practice in 2017, namely regarding transfer decisions to Italy and Hungary. CPR has no indication that such guarantees are sought following the notification of the transfer decision / prior to the transfer of the asylum applicant to the responsible Member State as well.

¹⁶⁰ Article 39 Asylum Act.

¹⁶¹ Article 49(1)(b) Asylum Act.

¹⁶² While the version distributed to applicants, according to CPR's knowledge, is an handout in Portuguese, English and French, another version of the document (containing similar information) is available online in Portuguese at: <https://bit.ly/2Hq5aEy>.

¹⁶³ Commission Implementing Regulation (EU) no.118/2014 of 30 January 2014, available at: <https://bit.ly/3emtXFT>.

¹⁶⁴ Article 37(2) Asylum Act.

¹⁶⁵ ECtHR, *Tarakhel v. Switzerland*, Application No 29217/12, Judgment of 4 November 2014.

While certain Dublin-related judicial decisions refer to the individual circumstances of the applicant as a relevant element to assess the legality of a transfer decision (for instance in order to determine if there is a risk of inhuman or degrading treatment)¹⁶⁶ CPR is not aware of judicial decisions focusing specifically on individualised guarantees.

2.2.2. Transfers

While the law provides for the detention of asylum seekers subject to the Dublin procedure,¹⁶⁷ this provision is not implemented in practice and CPR is unaware of detentions on this ground.

In accordance with the law, asylum seekers are entitled to a standard *laissez-passer* upon notification in writing of the transfer decision.¹⁶⁸ However, given the high rate of appeals, such a document is usually not issued at this point in time. According to the information available to CPR, all transfers are voluntary and the applicant is informed of the exact date, time and place he/ she should present him/ herself to SEF for travel purposes.

According to SEF, in the absence of a judicial appeal or abscondment, the average duration of the Dublin procedure from the moment an outgoing request is issued until the effective transfer takes place is of 35 days (“take back”) or of 80 days (“take charge”). The average duration from the moment another Member State accepts responsibility until the effective transfer takes place, if the applicant does not abscond or appeal, is of 15 to 20 days. Practical experience in this regard is limited as, only 46 transfers were implemented out of the total of 666 outgoing requests. The transfer rate was thus as low as 6.9% in 2019.

2.3. Personal interview

Indicators: Dublin: Personal Interview

☒ Same as regular procedure

1. Is a personal interview of the asylum seeker in most cases conducted in practice in the Dublin procedure? ☒ Yes ☐ No
 - ❖ If so, are interpreters available in practice, for interviews? ☒ Yes ☐ No
2. Are interviews conducted through video conferencing? ☐ Frequently ☐ Rarely ☒ Never

The Asylum Act provides for the systematic personal interview of all asylum seekers, including of those in a Dublin procedure.¹⁶⁹ The personal interview can only be waived where: (i) the evidence already available allows for a positive decision; or (ii) the applicant lacks legal capacity due to long lasting reasons that are not under his or her control.¹⁷⁰

As mentioned above (see: [Regular Procedure: Personal interview](#)), while SEF did not share the number of cases where a decision was adopted in the absence of a personal interview in 2019,¹⁷¹ it confirmed that applicants are guaranteed the right to an interview before any decision regarding their application is

¹⁶⁶ For instance, TCA South, Decision 1982/18.1BELSB, 22 August 2019, available in Portuguese at: <https://bit.ly/36vzJAV>, confirming a judgement of TAF Sintra (unpublished) that annulled the decision to transfer an applicant with hepatitis B to Italy; TAC Lisbon, Decision 2364/18.0BELSB, 22 March 2019 (unpublished), annulling a transfer decision to Italy, *inter alia*, because the adjudicating authority did not properly assess the nature and severity of health issues referred by the applicant in the personal interview; TAC Lisbon, Decision 2048/19.2BELSB, 13 December 2019 (unpublished), confirming a transfer decision to Italy as it was not proved that there are systemic flaws in the receiving Member State and, even so, the applicant would have to demonstrate that, given his/her specific circumstances, the situation would amount to a risk of inhuman or degrading treatment.

¹⁶⁷ Article 35-A(3)(c) Asylum Act.

¹⁶⁸ Article 37(3) Asylum Act.

¹⁶⁹ Article 16(1)-(3) Asylum Act.

¹⁷⁰ Article 16(5) Asylum Act.

¹⁷¹ According to information shared by SEF for 2018, there were no cases where a decision was taken without a personal interview.

adopted, emphasizing that interviews can only be waived in the specific cases listed in the Asylum Act. SEF also noted that interviews are conducted in all types of procedure, including Dublin.

While in recent years asylum seekers in a Dublin procedure were systematically offered a personal interview, it is not clear to CPR whether all applicants were provided a personal interview in the framework of Dublin procedures in 2018 and 2019. CPR was informed by SEF of 466 transfer decisions regarding applications filed in 2019¹⁷² by adult applicants/unaccompanied minors but only of 93 individual interviews,¹⁷³ raising the question of whether the gap is related to a failure of the authorities to communicate the interviews to CPR in accordance with the law and/or the absence of individual interviews altogether.¹⁷⁴

Case law from the TAC of Lisbon has confirmed the right of an asylum seeker to an individual interview in accordance with Article 5 of the Dublin Regulation and overturned a transfer decision to Denmark because SEF failed to provide the applicant with such an interview.¹⁷⁵

The modalities of the interview are the same as those of the [Regular Procedure](#) and the interview is generally conducted by SEF-GAR, although interviews are at times conducted by regional representations in cases of asylum applications made in more remote locations.

Previous practice regarding the content of the interview seemed to vary depending on the existence and type of Dublin indicators available at that time. The individual interview could either focus on Dublin-related questions only or cover both the admissibility and the merits of the claim, as well as specific questions to clarify relevant Dublin-related issues.

In 2018, the TAC Lisbon annulled transfer decisions on the basis that, according to its interpretation of either Article 17 of the Asylum Act or Article 5 of the Dublin Regulation, SEF has to inform the applicant and give him/her the opportunity to reply not only to the statements provided during the Dublin interview, but also to a report containing the information that underlies the transfer decision.¹⁷⁶ This jurisprudence followed a decision from the Supreme Administrative Court from 2017 that considered that failing to give the applicant the possibility to be heard regarding the “essential information” of the application in similar circumstances amounted to an omission of an essential procedural requirement.¹⁷⁷

These decisions revealed a trend on the part of the Portuguese courts to go beyond the threshold imposed by Article 5(6) of the Dublin Regulation, that establishes that the “*written summary... shall contain at least the main information supplied by the applicant at the interview*”.

In the course of 2018, SEF altered the format of Dublin interviews and corresponding transcripts. According to the current transcripts to which CPR had access, the interview includes an explanation of the aims and criteria of the Dublin Regulation and questions focus on identification and contacts of family members, travel documents/visas, Eurodac registrations, information on entry/stay and previous applications for international protection. The form also contains a section on vulnerability but apparently follows a limited understanding of the concept, as it only includes questions on the health condition of the applicant and family members.

The transcript form also includes a section where the relevant Dublin Regulation criteria for the case are signalled and a question allowing the applicant to reply to such information.

¹⁷² Data may include decisions and interviews issued/performed in early 2020.

¹⁷³ This includes cases where the applicants themselves informed the organisation of the interviews performed by the authorities.

¹⁷⁴ At least since the third trimester of the year, CPR was often contacted by applicants within Dublin procedures that were interviewed by SEF but whose interview reports have not been communicated to the organisation.

¹⁷⁵ TAC Lisbon, Decision 2379/17.6 BELSB, 15 January 2018, unpublished.

¹⁷⁶ TAC Lisbon, Decision 275/18.9BELSB, 12 April 2018.

¹⁷⁷ Supreme Administrative Court, Decision 0306/17, 18 April 2017, available in Portuguese at: <https://bit.ly/2RYEoXW>.

The full extent and implications of the right to be heard in Dublin procedures, and the applicability of Article 17 of the Asylum Act in such procedures, continued to be discussed in national jurisprudence in 2019, including by appeal courts. While it seems undisputed that applicants are entitled to the right to be heard in Dublin procedures, there is still divergence with regard to its legal basis and to the exercise of such right. Three major interpretations were adopted by TCA South and the Supreme Administrative Court in 2019:

- Article 17 of the Asylum Act is applicable to Dublin procedures. As such, it is required that after the personal interview, the applicant is notified of the statements provided and of a report containing all information underlying the decision and the likely result of the procedure. Following the general regime established in article 17 of the Asylum Act, the applicant then has 5 days to submit comments to the report.¹⁷⁸
- The right to be heard may be fully exercised during the interview referred to by article 5 of the Dublin Regulation as long as the applicant is informed of the decision that will likely be adopted by the adjudicating entity (i.e. the transfer to a specific Member State) and if the applicant is furthermore given the opportunity to specifically respond to that possibility.¹⁷⁹
- While article 17 of the Asylum Act is not applicable to Dublin procedures, Article 5 of the Dublin Regulation must be combined with the general administrative rules on the right to be heard about the possible decision before its adoption.¹⁸⁰ As such, the Administration has to inform the applicant of the probable decision and of all the elements underlying such decision and provide a reasonable timeframe for the applicant to respond to all elements relevant to the decision, to request complementary action, and/or to present documentation.¹⁸¹

In late 2019, CPR observed that applicants interviewed within the context of Dublin Procedures started to be notified of the above-mentioned form as well as of a document stating that the application will likely be subject to an inadmissibility decision and corresponding transfer to a concrete Member State according to the Dublin Regulation. This document also notifies the applicant of the possibility to provide written comments according to the general administrative rules¹⁸².

¹⁷⁸ This interpretation, which was already adopted in previous jurisprudence, was reaffirmed by the Supreme Administrative Court in at least three rulings in 2019: Supreme Administrative Court, Decision 1143/18.0BELSB, 28 March 2019, available in Portuguese at: <https://bit.ly/2QDRR4G>; Supreme Administrative Court, Decision 2095/18.1BELSB, 3 October 2019, available in Portuguese at: <https://bit.ly/39Felpp>; Supreme Administrative Court, Decision 1770/18.5BELSB, 17 December 2019, available in Portuguese at: <https://bit.ly/2wcyLws>.

¹⁷⁹ Supreme Administrative Court, Decision 970/18.2BELSB, 30 May 2019, available in Portuguese at: <https://bit.ly/2ZKaCHV>. The judgement argues for a combined reading of the relevant provisions (e.g. Article 16 of Asylum Act, Article 5 of the Dublin Regulation, and Article 121 of the Administrative Procedure Code), emphasising that the applicant must be given the opportunity to provide his/her comments on the possible transfer during the personal interview or in a subsequent moment, allowing the competent authority to duly consider all elements in its decision. TCA South, Decision 557/19.2BELSB, 26 September 2019, available in Portuguese at: <https://bit.ly/2ZMhIkM>; TCA South, Decision 751/19.6BELSB, 26 September 2019, available in Portuguese at: <https://bit.ly/2Ql0GS8>; TCA South, Decision 780/19.0BELSB, 26 September 2019, available in Portuguese at: <https://bit.ly/39Ca5fG>; TCA South, Decision 689/19.7BELSB, 24 October 2019, available in Portuguese at: <https://bit.ly/35gByQx>. Following this interpretation, a decision from the TAC Lisbon (Decision 1680/19.9BELSB, 12 November 2019, unpublished), interestingly underlined that the authority must inform the applicant of the relevant responsibility criteria as well as of the safeguard clause, creating the conditions for the applicant to respond to the possible transfer/application of the clause. It also noted that, if the right to be heard is to be implemented exclusively through an interview, the authorities have to adjust the questions to the concrete situation at stake.

¹⁸⁰ Articles 121 *et seq* Administrative Procedure Code.

¹⁸¹ TCA South, Decision 90/19.2BELSB, 6 June 2019, available in Portuguese at: <https://bit.ly/2FiKOcg>; TCA South, Decision 2379/18.9BELSB, 4 July 2019, available in Portuguese at: <https://bit.ly/36IFzEM>; TCA South, Decision 1026/19.6BELSB, 10 December 2019, available in Portuguese at: <https://bit.ly/37B1aZR>.

¹⁸² Article 121 Administrative Procedure Code. However, despite the general rule prescribed in article 122 Administrative Procedure Code, according to which the deadline for response cannot be of less than 10 days, the deadline prescribed by the above-mentioned notifications is of only 5 days. It is also worth mentioning that such documents are not communicated to CPR by the authorities on a systematic basis.

2.4. Appeal

Indicators: Dublin: Appeal

☐ Same as regular procedure

1. Does the law provide for an appeal against the decision in the Dublin procedure?

- ❖ If yes, is it
- ❖ If yes, is it suspensive

<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
<input checked="" type="checkbox"/> Judicial	<input type="checkbox"/> Administrative
<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No

The Asylum Act provides for an appeal against the decision in the Dublin procedure consisting of a judicial review of relevant facts and points of law by the Administrative Court.¹⁸³ The asylum seeker has 5 days to lodge the appeal.¹⁸⁴ As in the regular procedure, the initial and onward appeals are automatically suspensive,¹⁸⁵ and the law provides for a simplified judicial process with reduced formalities and time limits with the objective of shortening the duration of the judicial review.¹⁸⁶

The available case law indicates that the asylum seeker can challenge the correct application of the Dublin criteria,¹⁸⁷ as per the ruling of the Court of Justice of the European Union (CJEU) in *Ghezelbash*.¹⁸⁸ The court also verifies if all formalities have been respected by the SEF, including applicable deadlines set forth in the Dublin Regulation.¹⁸⁹

According to the information available to CPR, in certain cases where deficiencies have been raised by the applicant, the court has failed to conduct an *ex officio* inquiry on the nature of those deficiencies on the basis of objective criteria such as reception conditions, recognition rates or procedural guarantees (see [Suspension of Transfers](#)).¹⁹⁰

The information provided by the CSTAF for 2019 regarding the number, nationalities of appellants, average duration and results of judicial reviews does not make a distinction between the type of asylum procedures (see [Statistics](#)). However, according to the information available to CPR, Dublin procedures were the main type of asylum procedure used in 2019 to reject asylum applications at first instance in the case of nationals of Guinea-Bissau, Gambia and Guinea (three of the most represented nationalities at appeals stage). Moreover, according to CSTAF, out of the 525 appeals lodged in front of the TAC **Lisbon** in 2019, 63 concerned Dublin cases.

¹⁸³ Article 37(4) Asylum Act; Article 95(3) Administrative Court Procedure Code.

¹⁸⁴ *Ibid.*

¹⁸⁵ Article 37(4) and (6) Asylum Act.

¹⁸⁶ Article 37(5) Asylum Act.

¹⁸⁷ TCA Lisbon, Decision 2183/15.6BESLB, 25 November 2015, unpublished, which states that a Dublin transfer decision can be challenged in case of incorrect application of the criteria enshrined in the Dublin Regulation and then moves on to assess the content of the criteria enshrined in Articles 8 to 10 and 17(1) in light of the particular circumstances of the applicant.

¹⁸⁸ CJEU, Case C-63/15 *Ghezelbash*, Judgment of 7 June 2016.

¹⁸⁹ TCA Lisbon, Decision 1235/16.0BESLB, 14 September 2016, unpublished.

¹⁹⁰ TCA Lisbon, Decision 350/17.7BESLB, 3 May 2017, unpublished; TCA South, Decision 13607/16, 22 September 2016, unpublished.

2.5. Legal assistance

Indicators: Dublin: Legal Assistance

☒ Same as regular procedure

1. Do asylum seekers have access to free legal assistance at first instance in practice?
☒ Yes ☐ With difficulty ☐ No
❖ Does free legal assistance cover:
☐ Representation in interview
☒ Legal advice
2. Do asylum seekers have access to free legal assistance on appeal against a Dublin decision in practice?
☒ Yes ☐ With difficulty ☐ No
❖ Does free legal assistance cover
☒ Representation in courts
☒ Legal advice

With regard to access to free legal assistance for asylum seekers during the Dublin procedure and at appeal stage, the general rules and practice of the regular procedure apply (see section on [Regular Procedure: Legal Assistance](#)).

2.6. Suspension of transfers

Indicators: Dublin: Suspension of Transfers

1. Are Dublin transfers systematically suspended as a matter of policy or jurisprudence to one or more countries?
☒ Yes ☐ No
❖ If yes, to which country or countries?
Greece

Greece: According to the information available to CPR there have been no transfer decisions to **Greece** since the *M.S.S. v. Belgium and Greece* judgment of the European Court of Human Rights (ECtHR). During this period SEF has applied *ex officio* the sovereignty clause in potential transfer cases to Greece assisted by CPR and the asylum seekers were granted access to the asylum procedure.

Hungary: In 2017 SEF issued transfer decisions to countries such as **Hungary** without any relevant reasoning pertaining to possible risks of *refoulement*. In the case of Hungary, in 2016, Administrative Courts failed to conduct an *ex officio* inquiry on the nature of potential deficiencies of the asylum system despite the appeal court stating that systemic deficiencies in the asylum system of the requested Member State could be a valid ground for challenging the authorities compliance with the Dublin Regulation.¹⁹¹

In February 2018, however, the *Tribunal Administrativo e Fiscal de Sintra* (TAF Sintra) annulled a transfer decision to Hungary on the basis that the available information regarding the functioning of the Hungarian asylum system revealed the existence of valid reasons to believe that there were systemic flaws in the asylum procedure and reception conditions amounting to the threshold of inhuman or degrading treatment (namely due to the systematic detention and acts of violence towards asylum seekers in the country).¹⁹²

While CPR is not aware of any transfer decision to Hungary adopted in 2019, according to the information shared by SEF, there were 4 outgoing requests thereto during the year, but no transfer was carried out.¹⁹³

France, Spain and Germany: In 2018, TAC Lisbon upheld transfer decisions to **France** and **Spain**, ruling that it was not demonstrated that there were valid reasons to believe that asylum procedures and reception systems of the Member States do not comply with the applicable standards.¹⁹⁴

¹⁹¹ TCA Lisbon, Decision 1062/16.4BELSB, 12 June 2016, unpublished; TCA South, Decision 13607/16, 22 September 2016.

¹⁹² TAF Sintra, Decision 555/17.0BESNT, 15 February 2018, unpublished.

¹⁹³ In 2018, CPR was not aware of transfer decisions to Hungary, but the data from SEF indicated 3 outgoing requests.

¹⁹⁴ TAC Lisbon, Decision 461/18.1BELSB, 10 April 2018, unpublished; TAC Lisbon, Decision 741/18.6BELSB, 8 August 2018, unpublished.

TCA South underlined in a 2019 judgement that the mere allegation by an asylum seeker that he/she would receive better conditions in Portugal than in the receiving Member State, is not enough to waive the rules on responsibility established by the Dublin Regulation.¹⁹⁵

In the appeal of a judgement of the TAC **Lisbon** that confirmed a transfer decision to Germany, the TCA **South** stated that the applicant did not provide elements showing a risk of inhuman or degrading treatment in the relevant Member State, nor health-related information requiring his/her presence in Portugal. Moreover, the Court noted that there is no indication of systematic flaws in the asylum procedure and reception conditions in Germany.¹⁹⁶

Italy: The jurisprudence regarding transfers to **Italy** continued to increase and vary in 2019, both in first and second instance courts, with divergence with regard to the extent of the applicant's burden of allegation/substantiation of systemic flaws, and the extent of SEF's duty to assess the situation in the receiving Member State.

Two main trends can be observed in the interpretation of TCA South:

- The determining authority must assess whether there are systemic flaws in the asylum procedure and reception conditions of the Member State deemed responsible before issuing a transfer decision. This duty is particularly relevant in situations where, such as in Italy, it is publicly known that the asylum system faces disfunctions which may amount to systemic flaws. As such, SEF must include reliable and up to date information in the process in order to verify if the safeguard clause should be applied. According to this interpretation, the duty to investigate does not depend on the allegation by the applicant of the existence of systemic flaws/risk of inhuman or degrading treatment as the relevant facts are not necessarily personal issues and the determining authority must act in accordance with the inquisitorial principle.¹⁹⁷
- The burden of allegation regarding the conditions in the responsible Member State lies with the applicant. As such, the determining authority only has to assess the existence of systemic flaws/risk of inhuman or degrading treatment when such question is raised by the asylum seeker in the procedure (namely in the personal interview). There are apparently different interpretations on the exact terms in which this burden of allegation must be discharged.¹⁹⁸

In one case, TCA South upheld a judgement from TAF **Sintra** which annulled a transfer of an applicant with hepatitis B to **Italy** and determined that, in the absence of other legal obstacles, the national

¹⁹⁵ TCA South, Decision 235/19.2BELSB, 26 September 2019, available in Portuguese at: <https://bit.ly/2Ql4SdC>. In a similar understanding, TCA South considered that the fact that the applicant affirmed, during the personal interview, that he would like to stay in Portugal because the population was friendly and not racist, without referring to racist acts suffered in Spain was not enough to trigger the obligation of SEF to analyse the existence of systemic flaws in the Spanish asylum system given that it is not publicly known that such system has clear systemic deficiencies, TCA South, Decision 409/19.6BELSB, 7 November 2019, available in Portuguese at: <https://bit.ly/2tu6U8Y>.

¹⁹⁶ TCA South, Decision 1383/19.4BELSB, 10 December 2019, available in Portuguese at: <https://bit.ly/36lL06E>.

¹⁹⁷ Article 58 Administrative Procedure Code; TCA South, Decision 557/19.2BELSB, 26 September 2019, available in Portuguese at: <https://bit.ly/2ZMhIkM>; TCA South, Decision 751/19.6BELSB, 26 September 2019, available in Portuguese at: <https://bit.ly/2Ql0GS8>; TCA South, Decision 1059/19.2BELSB, 21 November 2019, available in Portuguese at: <https://bit.ly/2MS8Z5z>; TCA South, Decision 1157/19.2BELSB, 21 November 2019, available in Portuguese at: <https://bit.ly/2sl56tc>.

¹⁹⁸ In one case, the Court decided that in the absence of any reference from the applicant to the treatment and conditions in Italy, SEF did not have to assess the risk of inhuman or degrading treatment despite recognising that the reception conditions in Italy were deficient and worsening (TCA South, Decision 559/19.9BELSB, 26 September 2019, available in Portuguese at: <https://bit.ly/35kGVOK>). Ruling that invoking a lack of security and a lack of care in the place of accommodation is sufficient to discharge the (mitigated) burden of allegation and proof, see: TCA South 2240/18.7BELSB, 6 June 2019, available in Portuguese at: <https://bit.ly/2Fhewyp>. Deciding that referring to a lack of living conditions is not enough to trigger SEF's duty to assess the existence of systemic flaws, see: TCA South 1013/19.4BELSB, 7 November 2019, available in Portuguese at: <https://bit.ly/2QhJfBI>. See also: TCA South, Decision 817/19.2BELSB, 26 September 2019, available in Portuguese at: <https://bit.ly/2QkakEr>; TCA South, Decision 743/19.5BELSB, 26 September 2019, available in Portuguese at: <https://bit.ly/36nqna7>; TCA South, 1258/19.7BELSB, 21 November 2019, available in Portuguese at: <https://bit.ly/35kaccn>.

authorities must examine the application for international protection. The Court decided that, in light of available information on the situation in Italy and the applicant's health condition, the transfer would amount to a serious risk of inhuman or degrading treatment.¹⁹⁹

In September 2019, the Supreme Administrative Court decided that it would examine an appeal concerning the issue of systemic flaws in Italy and the duties of SEF in this context.²⁰⁰ The judgment from January 2020 established an even higher threshold in these cases. According to the Court, the requesting Member State is only bound to a duty to obtain up-to-date information on the risk of inhuman or degrading treatment where there are valid reasons to believe that there are systemic flaws in the asylum procedure and reception conditions of the receiving Member State and where such flaws amount to a risk of inhuman or degrading treatment.²⁰¹

2.7. The situation of Dublin returnees

The National Director of SEF is the competent authority to accept the responsibility of the Portuguese State for "assessing an application for international protection" presented in other Member States of the European Union.²⁰² In practice, asylum seekers do not face relevant or systematic obstacles in accessing the asylum procedure following a "take charge" decision and their transfer to Portugal.

SEF usually informs CPR beforehand of the date of arrival, flight details and medical reports (if applicable). Upon arrival at the airport, asylum seekers receive a notification to present themselves at SEF-GAR in the following day(s) and are sent to CPR's Refugee Reception Centre (CAR) in **Bobadela** or to other facilities, as applicable, for the provision of reception conditions.

In accordance with the Asylum Act, where the asylum seeker withdraws his/her application implicitly by disappearing or absconding for at least 90 days without informing SEF, the file can be deemed closed by the National Director of SEF.²⁰³ Notwithstanding, the applicant is entitled to reopen his/her asylum case by presenting him/herself to SEF at a later stage. In this case, the file is to be resumed at the exact stage where it was discontinued by the National Director of SEF.²⁰⁴

According to the information available to CPR, asylum seekers who had previously abandoned their application and left the country have not faced relevant or systematic problems in reopening their asylum cases and have not been treated as subsequent applicants following incoming transfers. Indeed, none of the subsequent asylum applications communicated to CPR by SEF in 2019 concerned individuals transferred back to Portugal after having abandoned their application, despite 355 incoming transfers throughout the year.²⁰⁵

On 10 September 2018, Portugal and Germany signed an administrative arrangement pursuant to Article 36 of the Dublin Regulation. The agreement aims to facilitate returns by introducing non-binding shorter timeframes – one month instead of three months for a "take charge" request – and providing for group instead of individual transfers. The European Commission has notified the two countries that the arrangement is generally in line with the Dublin Regulation.²⁰⁶

¹⁹⁹ The decisions also emphasised the duty of the authorities to duly consider information about the asylum procedure and reception conditions in the receiving Member State. Information revealing the existence of gaps in medical treatment provided to persons in similar situations was also taken into account. TAF Sintra, Decision 1982/18.1BELSB, 3 April 2019, unpublished; TCA South, Decision 1982/18.1BELSB, 22 August 2019, available in Portuguese at: <https://bit.ly/36vzJAV>.

²⁰⁰ Supreme Administrative Court, Decision 2240/18.7BELSB, 27 September 2019, available in Portuguese at: <https://bit.ly/2FftdSu>.

²⁰¹ Supreme Administrative Court, Decision 2240/18.7BELSB, 16 January 2020, available in Portuguese at: <https://bit.ly/3cq4BFd>.

²⁰² Article 40(1) Asylum Act.

²⁰³ Article 32(1)(c) and (2) Asylum Act.

²⁰⁴ Article 32(3) of the Asylum Act.

²⁰⁵ According to the statistics collected by the SEF, a total of 8 subsequent applications were lodged in 2019 (see [Subsequent Applications](#)).

²⁰⁶ European Commission, Ares (2018)4489201, 31 August 2018.

In October 2018, the Ministry of Home Affairs publicly stated that Portugal had readmitted at least seven asylum seekers from Germany under the administrative arrangement.²⁰⁷ The applicants have been returned similarly to other Dublin cases, and have been accommodated in CAR. No change has been witnessed so far in the Dublin procedure. SEF did not provide information on the implementation of such agreement in 2019.

3. Admissibility procedure

3.1. General (scope, criteria, time limits)

The law provides for an admissibility procedure that is characterised by: (i) specific grounds for considering an asylum application inadmissible;²⁰⁸ (ii) specific time limits for the first instance decision on admissibility;²⁰⁹ (iii) legal implications in case the deciding authority does not comply with those time limits;²¹⁰ (iv) the right to an appeal against the inadmissibility decision;²¹¹ and (v) specific rights attached to the admission to the procedure which represent a distinctive feature of the Portuguese asylum procedure.²¹²

The grounds laid down in Article 19-A(1) of the Asylum Act for considering an asylum application inadmissible include cases where the asylum seeker:

1. Falls under the Dublin procedure;²¹³
2. Has been granted international protection in another EU Member State;²¹⁴
3. Comes from a **First Country of Asylum** i.e. has obtained refugee status or otherwise sufficient protection in a third country and will be readmitted to that country;²¹⁵
4. Comes from a **Safe Third Country** i.e. due to a sufficient connection to a third country, can reasonably be expected to seek protection in that third country, and there are grounds for considering that he or she will be admitted or readmitted to that country;²¹⁶
5. Has made a subsequent application without new elements or findings pertaining to the conditions for qualifying for international protection;²¹⁷ and
6. Is a dependant who had lodged an application after consenting to have his/her case be part of an application lodged on his/ her behalf, in the absence of valid grounds for presenting a separate application.²¹⁸

The National Director of SEF has 30 days to take a decision on the admissibility of the application,²¹⁹ which is reduced to 10 days in the case of subsequent applications,²²⁰ and applications following a removal order,²²¹ and to 7 days in the case of the **Border Procedure**.²²² In case SEF does not comply with these time limits, the claim is deemed automatically admitted to the procedure.²²³

²⁰⁷ Ministry of Home Affairs, 'Nota à Comunicação Social', 23 October 2018, available in Portuguese at: <http://bit.ly/2zmmVgC>.

²⁰⁸ Article 19-A Asylum Act.

²⁰⁹ Articles 20(1), 24(4), 33(4) and 33-A(5) Asylum Act.

²¹⁰ Articles 20(2) and 26(4) Asylum Act.

²¹¹ Articles 22(1) and 25(1) Asylum Act.

²¹² Article 27(1)-(3) Asylum Act pertaining to the issuance of a provisional residence permit and Article 54(1) pertaining to the right to access the labour market.

²¹³ Article 19-A(1)(a) Asylum Act.

²¹⁴ Article 19-A(1)(b) Asylum Act.

²¹⁵ Article 19-A(1)(c) and Article 2(1)(z) Asylum Act.

²¹⁶ Article 19-A(1)(d) and Article 2(1)(r) Asylum Act.

²¹⁷ Article 19-A(1)(e) Asylum Act.

²¹⁸ Article 19-A(1)(f) Asylum Act.

²¹⁹ Article 20(1) Asylum Act.

²²⁰ Article 33(4) Asylum Act.

²²¹ Article 33-A(5) Asylum Act.

²²² Article 24(4) Asylum Act.

²²³ Articles 20(2) and 26(4) Asylum Act.

In practice, all asylum applicants undergo an interview that assesses the above-mentioned inadmissibility clauses along with the merits of the application,²²⁴ including those at the border. However, except for Dublin-related decisions, the number of asylum applications deemed inadmissible in 2019 was very low.

Statistics shared by SEF for 2019 indicate that among 450 inadmissibility decisions, there were: 1 subsequent application without new elements, 2 “safe third country” decisions, and 2 based on protection in another Member State. The information gathered by CPR on the basis of communications from SEF, however, points to 12 (non-Dublin) inadmissibility decisions issued in 2019 among which: 2 subsequent applications without new elements; 3 “safe third country” decisions; 1 “first country of asylum” decision and 6 decision concerning an applicant granted protection in another EU Member State.

While the SEF generally admits asylum seekers to the regular procedure in case of non-compliance with applicable time limits, the automatic admission and issuance of a provisional residence permit has at times required a proactive intervention of the asylum seeker or of his or her legal counsel. Unlike in previous years, throughout 2018, CPR witnessed a growth of such decisions. While quantitative data is not available, according to CPR’s observation, this trend reversed in the second semester of 2019.²²⁵

3.2. Personal interview

Indicators: Admissibility Procedure: Personal Interview

☒ Same as regular procedure

1. Is a personal interview of the asylum seeker in most cases conducted in practice in the admissibility procedure?

	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
❖ If so, are questions limited to nationality, identity, travel route?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
❖ If so, are interpreters available in practice, for interviews?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
2. Are interviews conducted through video conferencing? ☐ Frequently ☐ Rarely ☒ Never

The Asylum Act provides for the systematic personal interview of all asylum seekers, including for assessing admissibility,²²⁶ except for cases where: (i) the evidence already available allows for a positive decision; or (ii) the applicant lacks legal capacity due to long lasting reasons that are not under his or her control.²²⁷

As mentioned above, while SEF did not share the number of cases where a decision was adopted in the absence of a personal interview in 2019,²²⁸ it confirmed that applicants are guaranteed the right to an interview before any decision regarding their application is adopted, emphasising that interviews can only be waived in the cases listed in the Asylum Act. SEF also noted that interviews are conducted in all types of procedure, including Dublin (see [Regular procedure: Personal interview](#) and [Dublin procedure: Personal interview](#)).

In practice, the individual interview can either focus on Dublin related questions only or cover both the admissibility and the merit of the claim. The modalities of the interview are the same as those of the regular procedure and the interview is generally conducted by SEF-GAR, although interviews are at times conducted by SEF’s regional representations in cases of asylum applications made in more remote locations.

²²⁴ Article 16 Asylum Act.

²²⁵ According to the information provided by SEF, a total of 542 decisions deeming an application admissible to the regular procedure (therefore excluding the application of inadmissibility or accelerated procedures) were issued in 2019.

²²⁶ Article 16(1)-(3) Asylum Act.

²²⁷ Article 16(5) Asylum Act.

²²⁸ According to information shared by SEF for 2018, there were no cases where a decision was taken without a personal interview.

3.3. Appeal

Indicators: Admissibility Procedure: Appeal

☐ Same as regular procedure

1. Does the law provide for an appeal against an inadmissibility decision?

❖ If yes, is it

❖ If yes, is it automatically suspensive

☒ Yes

☒ Judicial

☒ Yes

☐ No

☐ Administrative

☐ Some grounds ☐ No

The Asylum Act provides for an appeal against an inadmissibility decision consisting of a judicial review of relevant facts and points of law by the Administrative Court.²²⁹ The time limit for lodging the appeal varies according to the inadmissibility ground and depending on whether border procedures apply.

Time limits vary as follows:

Time limits for appealing inadmissibility decisions in calendar days		
Inadmissibility ground	Asylum Act provision	Days
Inadmissibility at the border	Article 25(1)	4
Inadmissibility on the territory		
Subsequent application with no new elements	Article 33(6)	4
Dublin decision	Article 37(4)	5
Protection in another EU Member State	Article 22(1)	8
First country of asylum	Article 22(1)	8
Safe third country	Article 22(1)	8
Application by dependant	Article 22(1)	8

As in the regular procedure, the first and onward appeals are automatically suspensive,²³⁰ with the exception of onward appeals concerning inadmissible subsequent applications.²³¹ The law also provides for a simplified judicial process with reduced formalities and time limits with the objective of shortening the duration of the judicial review.²³²

Without prejudice to issues already discussed in [Regular Procedure: Appeal](#), such as the poor quality of legal assistance and language barriers therein that have an impact on the quality and effectiveness of appeals, CPR is not aware of systemic or relevant obstacles faced by asylum seekers when appealing a first instance decision on admissibility in practice.

The information provided by the CSTAF for 2019 regarding the number, nationalities of appellants, average duration and results of judicial reviews of first instance decisions does not make a distinction between the type of asylum procedures (see [Statistics](#)).

²²⁹ Articles 22(1), 25(1), 33(6) and 37(4) Asylum Act and Article 95(3) Administrative Court Procedure Code.

²³⁰ Articles 22(1), 25(3) and 37(6) Asylum Act.

²³¹ Article 33(6) Asylum Act.

²³² Articles 22(2), 25(2), 33(7) and 37(5) Asylum Act.

3.4. Legal assistance

Indicators: Admissibility Procedure: Legal Assistance

☒ Same as regular procedure

1. Do asylum seekers have access to free legal assistance during admissibility procedures in practice?
☒ Yes ☐ With difficulty ☐ No
❖ Does free legal assistance cover:
☐ Representation in interview
☒ Legal advice
2. Do asylum seekers have access to free legal assistance on appeal against an inadmissibility decision in practice?
☒ Yes ☐ With difficulty ☐ No
❖ Does free legal assistance cover:
☒ Representation in courts
☒ Legal advice

With regard to access to free legal assistance for asylum seekers during the first instance admissibility procedure and at appeal stage, the general rules and practice of the regular procedure apply (see section on [Regular Procedure: Legal Assistance](#)).

4. Border procedure (border and transit zones)

4.1. General (scope, time limits)

Indicators: Border Procedure: General

1. Do border authorities receive written instructions on the referral of asylum seekers to the competent authorities? ☒ Yes ☐ No
2. Can an application made at the border be examined in substance during a border procedure? ☒ Yes ☐ No
3. Is there a maximum time limit for a first instance decision laid down in the law? ☒ Yes ☐ No
❖ If yes, what is the maximum time limit? 7 days

The law provides for a specific procedure regarding applications made at a national border.²³³ A distinctive feature of the legal framework of border procedures consists in the provision for the detention of asylum seekers for the duration of the admissibility stage/accelerated procedure (see [Detention of Asylum Seekers](#)).²³⁴

Portugal has 36 external border posts, of which 8 are air border posts and 28 are maritime border posts.²³⁵ SEF is responsible for border controls, including for refusing entry and exit from the territory.²³⁶ The overwhelming majority of border procedures in 2019 were conducted at **Lisbon Airport**. The statistics provided by the SEF indicate a total of 406 border procedures, but do not include a breakdown per border post. The information collected by CPR suggests that at least 327 procedures were conducted at **Lisbon Airport** in 2019, compared to 376 in 2018.

In practice a person who: (i) does not meet the entry requirements set in the law; (ii) is subject to a national or an EU entry ban; or (iii) represents a risk or a serious threat to public order, national security or public health, is refused entry in national territory,²³⁷ and is notified in writing by SEF of the corresponding decision.²³⁸ The notification bears a reference to the right of individuals refused entry at the border to seek asylum as enshrined in the law.²³⁹ SEF also informs the carrier company (i.e. the air company for most cases) for the purposes of return of the individual in the shortest possible time either to: the point where the individual initiated travel with the company; the country that issued the travel document; or any country

²³³ Article 23(1) Asylum Act.

²³⁴ Articles 26(1) and 35-A(3)(a) Asylum Act.

²³⁵ Annex II Decree-Law 252/2000.

²³⁶ Article 2 Decree-Law 252/2000.

²³⁷ Article 32 Immigration Act.

²³⁸ Article 38(2) Immigration Act.

²³⁹ Article 40(4) Immigration Act.

where entrance is guaranteed.²⁴⁰ This is done in accordance to the Convention on International Civil Aviation,²⁴¹ as according to SEF the individual remains in the international area of the airport and is therefore not subject to the rules applicable to removal procedures from national territory.²⁴² When the individual refused entry into national territory applies for asylum, the air company is immediately informed by SEF of the suspension of return.

While the border procedure provides for the basic principles and guarantees of the regular procedure,²⁴³ it lays down time limits for a decision on admissibility or for accelerated procedures regarding applications deemed unfounded on certain grounds (see [Accelerated Procedure](#) grounds) that are significantly shorter than those in national territory. Additionally, border procedures are characterised by shorter appeal deadlines, as well as reduced procedural guarantees such as the exclusion from the right of the applicant to seek revision of the narrative of his/her personal interview,²⁴⁴ or the possibility to consult with CPR prior to the individual interview conducted by SEF.

The National Director of SEF has 7 days to issue a decision either on admissibility or on the merits of the application in an accelerated procedure.²⁴⁵ In the absence of inadmissibility grounds or grounds for deeming the application unfounded in an accelerated procedure, SEF admits the asylum seeker to the regular procedure and authorises entry into national territory/release from border detention.²⁴⁶ Non-compliance with the time limit results in the automatic admission of the applicant to the regular procedure and release from the border.²⁴⁷

The asylum seeker remains in detention in the international area of the airport or port until the National Director of SEF issues a decision on the admissibility/merits of the claim,²⁴⁸ or for up to 60 days in the case of appeal (see [Duration of Detention](#)). While in the overwhelming majority of cases the National Director of SEF issues a decision within the 7-day time limit, the automatic admission of the asylum application is generally upheld in the rare cases where that does not happen.

Exempted categories

The law identifies a sub-category of individuals whose special procedural needs result from torture, rape or other serious forms of psychological, physical or sexual violence and who may be exempted from the border procedure under certain conditions (see [Special Procedural Guarantees](#)).²⁴⁹ Furthermore, the placement of unaccompanied and separated children in temporary installations (detention) at the border – and hence application of border procedures – must comply with applicable international standards such as those recommended by UNHCR, UNICEF and ICRC.²⁵⁰

The border procedure is applied systematically in practice. Until 2016, certain categories of vulnerable asylum applicants such as unaccompanied children, pregnant women and seriously ill persons were released from detention at the border and channelled to an admissibility procedure and/or regular or accelerated procedure in national territory. This changed in 2016 and a significant percentage of vulnerable applicants – including unaccompanied children, families with children and pregnant women – have been detained and subject to the border procedure since then (see [Detention of Vulnerable](#)

²⁴⁰ Articles 38(3) and 41(1) Immigration Act.

²⁴¹ Chicago Convention on International Civil Aviation, 7 December 1944, Annex IX, Chapter V, points 5.9 -5.11.1.

²⁴² CPR, *Access to Protection: a Human Right, country report, Portugal*, 2014, available in Portuguese at: <http://bit.ly/2xA2aiV>, para 2.1.

²⁴³ This includes access to the procedure, the right to remain in national territory pending examination, the right to information, personal interviews, the right to legal information and assistance throughout the procedure, the right to free legal aid, special procedural guarantees, among others.

²⁴⁴ Article 25 Asylum Act.

²⁴⁵ Article 24(4) Asylum Act. On the territory, decisions on admissibility must be taken within 30 days and decisions in the accelerated procedure within 10 to 30 days.

²⁴⁶ Article 26(4) Asylum Act.

²⁴⁷ *Ibid.*

²⁴⁸ Article 26(1) Immigration Act.

²⁴⁹ Article 17-A(4) Asylum Act. Exemption from border procedures is dependent on the impossibility to offer “support and conditions to asylum seekers identified as being in need of special procedural guarantees.”

²⁵⁰ Article 26(2) Asylum Act.

Applicants). Following media coverage and stark criticism by the Ombudsman and NGOs, the Ministry of Home Affairs issued an instruction in July 2018 focusing inter alia on the detention of children at the border (see **Detention of vulnerable applicants**). As a result, CPR has noted shorter detention periods of families with children and unaccompanied children. However, with the exception of unaccompanied children, this had not resulted in significant changes with regard to the exemption from border procedures as the latter are still routinely applied to vulnerable applicants.

According to the available information, no standard operational procedures and tools allowing for the early and effective identification of survivors of torture and/or serious violence and their special procedural needs are in place. As such, asylum seekers who claim to be survivors of torture, rape or other serious forms of psychological, physical or sexual violence are not exempted from border procedures in practice, despite the lack of provision of special procedural guarantees at the border.²⁵¹

The identification of survivors of torture was recently addressed by the UN Committee Against Torture in its recent Concluding Observations on the seventh periodic report of Portugal. The Committee observed that “[...] *the State party has not provided complete information on the procedures in place for the timely identification of victims of torture among asylum seekers [...]*”²⁵², and recommended “[...] *the establishment of effective mechanisms to promptly identify victims of torture among asylum seekers.*”²⁵³

Statistics provided by SEF for 2019 refer to a total of 406 asylum seekers subject to the border procedure (approximately 22% of the 1,849 spontaneously arriving asylum seekers). Figures from SEF indicate that of those, 45 were admitted to the regular procedure and 361 were rejected as inadmissible (a number that likely includes both applications deemed inadmissible and applications rejected on the merits in accelerated procedures conducted at the border). Figures on the number of persons in need of special procedural guarantees that were subject to border procedures were not available, except for unaccompanied children (see also **Detention of Vulnerable Applicants**). According to SEF, 14 unaccompanied children were subjected to the border procedure in 2019.

4.2. Personal interview

Indicators: Border Procedure: Personal Interview

☐ Same as regular procedure

1. Is a personal interview of the asylum seeker in most cases conducted in practice in the border procedure?

<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
❖ If so, are questions limited to nationality, identity, travel route?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
❖ If so, are interpreters available in practice, for interviews?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
2. Are interviews conducted through video conferencing? ☐ Frequently ☐ Rarely ☒ Never

The rules and modalities of the interview are the same as those of the regular procedure and the interview is generally conducted by SEF-GAR. However, given the short time limits applicable to the border procedure, the interview is conducted in detention at the Temporary Installation Centre (CIT) a few days after arrival. This means little time to prepare and substantiate the asylum application and reduced guarantees such as the exclusion from the right of the applicant to seek revision of the narrative of the interview.²⁵⁴ An additional problem regarding interviews conducted at the **Lisbon Airport** are the space constraints of the interview offices which leave very limited space and privacy, notably due to inadequate sound isolation (see **Conditions in Detention Facilities**).

Many asylum seekers arrive at the border without valid identification documents or supporting evidence to substantiate their asylum application and contacts with the outside world from within the CIT are limited

²⁵¹ Italian Council for Refugees *et al.*, *Time for Needs: Listening, Healing, Protecting*, October 2017, available at: <http://bit.ly/2xZqCGh>.

²⁵² Committee Against Torture, *Concluding Observations on the seventh periodic report of Portugal*, CAR/C/PRT/CO/7, 18 December 2019, available at <https://bit.ly/2G1F07z>, para 37.

²⁵³ Ibid. para 38(d).

²⁵⁴ Article 25 Asylum Act.

and rarely effective for the purposes of securing supporting evidence, given the short period of time between the arrival, the personal interview and the first instance decision.

Regarding certain categories of vulnerable asylum seekers such as survivors of torture, rape or other serious forms of psychological, physical or sexual violence, the absence of identification and vulnerability assessments means that potential special needs may not be known to the asylum authorities and may not have been taken into account at the time of interview. CPR is unaware of the implementation of special procedural guarantees at the border such as the postponement of the interview, additional time for submitting supporting evidence or the presence of supporting personnel in the interview in 2019.²⁵⁵

4.3. Appeal

Indicators: Border Procedure: Appeal

☐ Same as regular procedure

1. Does the law provide for an appeal against the decision in the border procedure?

❖ If yes, is it

❖ If yes, is it automatically suspensive

☒ Yes

☒ Judicial

☒ Yes

☐ No

☐ Administrative

☐ Some grounds ☐ No

The Asylum Act provides for an appeal against a rejection decision at the border, either on admissibility grounds or on the merits in an accelerated procedure. The appeal consists of a judicial review of relevant facts and points of law by the Administrative Court.²⁵⁶ The time limit for lodging the appeal is of 4 days for all grounds.²⁵⁷

Similarly to the regular procedure, the first and onward appeals have an automatic suspensive effect.²⁵⁸ The law also provides for a simplified judicial process with reduced formalities and time limits with the objective of shortening the duration of the judicial review.²⁵⁹ However, the Administrative Courts rarely reach a decision on the appeal within the maximum detention time limit of 60 days, meaning that the asylum applicant is granted access to the territory, albeit liable to a removal procedure in case his or her application is rejected by final decision.²⁶⁰

In practice the average duration of the judicial review of a first instance rejection decision at the border is similar to the regular procedure (see [Statistics](#)).

The information shared by CSTAF does not include a breakdown by type or outcome of procedures but indicates a poor success rate at appeals stage. In this regard, it must be acknowledged that the quality of many appeals submitted is often poor as in the other procedures, given that very few lawyers have relevant expertise and training in the field. It should be noted that while CPR may be requested to intervene in the judicial procedure, namely by providing country of origin information or guidance on legal standards, it is not a party thereto and is therefore not systematically notified of judicial decisions by the courts.

Without prejudice to issues discussed in [Regular Procedure: Appeal](#) such as the poor quality of legal assistance and language barriers therein that have an impact on the quality and effectiveness of appeals, CPR is not aware of systemic or relevant obstacles faced by asylum seekers to appealing a first instance decision in the border procedure.

²⁵⁵ Article 17-A(3) Asylum Act. See also Italian Council for Refugees *et al.*, *Time for Needs: Listening, Healing, Protecting*, October 2017, available at: <http://bit.ly/2xZqCGh>.

²⁵⁶ Article 25(1) Asylum Act; Article 95(3) Administrative Court Procedure Code.

²⁵⁷ Article 25(1) Asylum Act.

²⁵⁸ Article 25 Asylum Act.

²⁵⁹ Article 25(2) Asylum Act.

²⁶⁰ Article 21(2) and (3) Immigration Act.

4.4. Legal assistance

Indicators: Border Procedure: Legal Assistance

☐ Same as regular procedure

1. Do asylum seekers have access to free legal assistance at first instance in practice?
☐ Yes ☒ With difficulty ☐ No
❖ Does free legal assistance cover:
☐ Representation in interview
☒ Legal advice
2. Do asylum seekers have access to free legal assistance on appeal against a negative decision in practice?
☒ Yes ☐ With difficulty ☐ No
❖ Does free legal assistance cover:
☒ Representation in courts
☒ Legal advice

There are a few distinctions to be made between the border procedure and the regular procedure regarding access to free legal assistance in law and in practice (see [Regular Procedure: Legal Assistance](#)).

As regards free legal assistance at first instance, the law expressly provides the possibility for UNHCR and CPR to interview the asylum seeker at the border²⁶¹ and to provide assistance.²⁶² However, following the registration of the asylum claim CPR only has access to applicants once SEF has conducted its individual interview covering admissibility and eligibility.

The Asylum Act also provides for an accelerated free legal aid procedure at the border for the purposes of appeal on the basis of a MoU between the Ministry of Interior and the Portuguese Bar Association.²⁶³ However, such a procedure remains to be implemented to date, meaning that securing access to free legal aid at appeal stage is currently an integral part of the legal assistance provided by CPR at the border. To that end, CPR is obliged to resort to the same (bureaucratic and lengthy) procedure used in the territory albeit faced with specific constraints (e.g. shorter deadlines for application, communication problems, timely access to interpreters, etc.). The relevance of broader legal support within the context of detention and the possibility of adopting a specific MoU with the Bar Association for that purpose was also underlined by the Ombudsman.²⁶⁴

As mentioned in [Regular Procedure: Legal Assistance](#), in 2019, CPR, in partnership with UNHCR, continued its efforts to engage with the Portuguese Bar Association with the aim of providing training to free legal aid lawyers. CPR also continued advocating for the Portuguese Bar Association to engage with the Ministry of Interior in order to promote the full implementation of the legal provisions mentioned above regarding an accelerated free legal aid procedure at the border for the purposes of appeal.

While CPR provided support to 1,553 asylum seekers that applied for international protection in 2019, the continued increase of spontaneous asylum applications has further impacted its capacity to provide legal information and assistance to asylum seekers placed in detention at the border, similar to the regular procedure. This problem is aggravated by shorter deadlines, communication problems, bureaucratic clearance procedures for accessing the restricted area of the airport where the CIT is located (in particular regarding interpreters), and limitations in the timely provision of information by SEF on the dates of interviews and language skills of the asylum seekers.

In practice, free legal assistance provided by CPR in first instance procedures at the border includes: (a) providing legal information on the asylum procedure and the legal aid system; (b) accessing free legal aid for the purpose of appeals; (c) assisting lawyers appointed under the free legal aid system in preparing appeals with relevant legal standards and COI; and (d) advocating with SEF for the release of particularly

²⁶¹ Article 24(1) Asylum Act.

²⁶² Article 49(6) Asylum Act.

²⁶³ Article 25(4) Asylum Act.

²⁶⁴ Ombudsman, *National Preventive Mechanism, Report to the Parliament 2018*, 30 May 2019, available in Portuguese at: <https://bit.ly/2S7tdcW>, p.46-47;

vulnerable asylum seekers such as unaccompanied children, families with children, pregnant women and the severely ill.

Similarly to the regular procedure, the overall quality of free legal aid at appeal stage remains a concern due to the current selection system of lawyers.

The unscrupulous activity of a limited number of private lawyers at the **Lisbon Airport's** CIT, providing poor quality services in exchange for excessively high fees, remained a problem in 2019. This concern has been raised by CPR with SEF and the Portuguese Bar Association but is still ongoing despite past criminal investigations conducted by SEF that have resulted in criminal charges related to smuggling and trafficking in human beings. In September 2018, SEF reported that an investigation involving a lawyer in the Lisbon area was ongoing. According to the press note,²⁶⁵ the authorities conducted house and office searches and the lawyer was formally put under investigation ("*constituída arguida*"). The topic was covered by multiple media outlets that emphasised that the lawyer incited "abusive asylum applications".²⁶⁶ No updated information on this case was publicly available at the time of writing.

5. Accelerated procedure

5.1. General (scope, grounds for accelerated procedures, time limits)

The law contains a list of grounds that, upon verification, determine that an application is subjected to an accelerated procedure and deemed unfounded. The accelerated procedure implies that the time limits for the adoption of a decision on the merits at first instance are significantly shorter than those of the regular procedure.

The grounds laid down in Article 19(1) of the Asylum Act for applying an accelerated procedure include:

- a. Misleading the authorities by presenting false information or documents or by withholding relevant information or documents with respect to identity and/or nationality that could have had a negative impact on the decision;²⁶⁷
- b. In bad faith, destroying or disposing of an identity or travel document that would have helped establish identity or nationality;²⁶⁸
- c. Making clearly inconsistent and contradictory, clearly false or obviously improbable statements which contradict sufficiently verified COI, thus making the claim clearly unconvincing in relation to qualification for international protection;²⁶⁹
- d. Entering the territory of the country unlawfully or prolonging the stay unlawfully and, without good reason, failing to make an application for international protection as soon as possible;²⁷⁰
- e. In submitting the application and presenting the facts, only raising issues that are either not relevant or of minimal relevance to the examination of whether the applicant qualifies for international protection;²⁷¹
- f. Coming from a **Safe Country of Origin**;²⁷²
- g. Introducing an admissible subsequent application;²⁷³

²⁶⁵ SEF, 'SEF faz buscas em casa de advogada suspeita de envolvimento numa célula em Dakar', 28 September 2018, available in Portuguese at: <https://bit.ly/2uQ4D5L>.

²⁶⁶ See e.g. Sic Notícias, 'SEF constitui arguida advogada suspeita de pedidos de asilo abusivos', 28 September 2018, available in Portuguese at: <https://bit.ly/2IlvyOv>; Expresso, 'SEF. Advogada suspeita de se dedicar à apresentação abusiva de pedidos de asilo', 28 September 2018, available in Portuguese at: <https://bit.ly/2Kl8LVQ>.

²⁶⁷ Article 19(1)(a) Asylum Act.

²⁶⁸ Article 19(1)(b) Asylum Act.

²⁶⁹ Article 19(1)(c) Asylum Act.

²⁷⁰ Article 19(1)(d) Asylum Act.

²⁷¹ Article 19(1)(e) Asylum Act.

²⁷² Article 19(1)(f) Asylum Act.

²⁷³ Article 19(1)(g) Asylum Act. In the case of subsequent applications admitted to the procedure under Article 19(1)(g) Asylum Act, there seems to be incoherence in the law as Article 33(5) provides for the application of the regular procedure where, following a preliminary assessment within 10 days, the application is deemed admissible because it includes new elements or findings pertaining to the conditions for qualifying as a beneficiary of international protection.

- h. Making an application merely in order to delay or frustrate the enforcement of an earlier or imminent decision which would result in removal;²⁷⁴
- i. Representing a danger to the national security or public order;²⁷⁵ and
- j. Refusing to comply with an obligation to have fingerprints taken.²⁷⁶

The wording of the law does not seem to be fully in line with the recast Asylum Procedures Directive and with the applicable international standards as its literal application may lead not only to the accelerated processing but also to the automatic rejection of applications based on grounds such as the delay in making the application.

A first instance decision on the territory must be taken within 30 days for all grounds, except for cases concerning an application following a removal order which must be decided within 10 days.²⁷⁷ In contrast to the regular procedure,²⁷⁸ the National Director of SEF is the responsible authority for issuing a first instance decision on the merits of the application in the accelerated procedure,²⁷⁹ while non-compliance with the applicable time limits grants the applicant automatic access to the regular procedure.²⁸⁰

While SEF generally admits asylum seekers to the regular procedure in case of non-compliance with applicable time limits, the automatic admission and issuance of a provisional residence permit has at times required a proactive intervention of the asylum seeker or of his or her legal counsel. Unlike in previous years, throughout 2018, CPR witnessed an increase of such decisions. While quantitative data is not available, according to CPR's observation, this trend reversed in the second semester of 2019.²⁸¹

In the context of the provision of legal assistance to asylum seekers, CPR has at times observed significant delays in the execution of judicial decisions by SEF. According to CPR's observation, this mostly concerned the execution of judicial decisions that annulled first instance decisions rejecting applications in accelerated procedures and consequently condemned the Administration to channelling them into the regular procedure.

In practice all applications are channelled through the accelerated procedure where the specific grounds provided in the law apply.²⁸² In 2019, the statistics collected from the SEF indicated a total of 572 asylum applications processed under an accelerated procedure. The statistics provided by SEF indicate that the same number of decisions was taken under the accelerated procedure but a breakdown by outcome was not provided.

According to the information available to CPR, at least 577 applications filled in 2019 were rejected under the accelerated procedure, of which 330 on the territory and 247 at the border.²⁸³ In CPR's experience, most of rejections in accelerated procedures continued to be based on inconsistency or irrelevance.

A concerning practice observed in 2019 relates to the adoption of some decisions excluding an applicant from international protection within accelerated procedures, including at the border.²⁸⁴ The short time limits for analysis and reduced procedural guarantees applicable in accelerated procedures are likely to exacerbate the risks inherent to the application of exclusion clauses.

²⁷⁴ Article 19(1)(h) Asylum Act.

²⁷⁵ Article 19(1)(i) Asylum Act.

²⁷⁶ Article 19(1)(j) Asylum Act.

²⁷⁷ Articles 20(1) and 33-A(5) Asylum Act.

²⁷⁸ Article 29(5) Asylum Act.

²⁷⁹ Articles 20(1) and 24(4) Asylum Act.

²⁸⁰ Articles 20(2) and 26(4) Asylum Act.

²⁸¹ According to information provided by SEF, a total of 542 decisions deeming an application admissible to the regular procedure (therefore excluding the application of inadmissibility or accelerated procedures) were issued in 2019.

²⁸² There is a distinction to be made between border procedures from which certain categories of vulnerable asylum seekers may be exempted and accelerated procedures. While the vulnerable asylum seeker may be exempted from the border procedure and be released from detention, he or she will remain liable to an accelerated procedure in national territory.

²⁸³ As these figures refer to applications filled in 2019, the numbers may include decisions issued in early 2020.

²⁸⁴ Exclusion from international protection is regulated in article 9 of the Asylum Act.

5.2. Personal interview

Indicators: Accelerated Procedure: Personal Interview

☐ Same as regular procedure

1. Is a personal interview of the asylum seeker in most cases conducted in practice in the accelerated procedure?
☒ Yes ☐ No
❖ If so, are questions limited to nationality, identity, travel route? ☐ Yes ☒ No
❖ If so, are interpreters available in practice, for interviews? ☒ Yes ☐ No
2. Are interviews conducted through video conferencing? ☐ Frequently ☐ Rarely ☒ Never

With regard to the personal interview for asylum seekers during the accelerated procedure, the general rules and practice of the regular procedure apply (see section on [Regular Procedure: Personal Interview](#)).

However, the law foresees reduced guarantees in the accelerated procedure, namely by excluding asylum seekers' right to seek revision of the statements made during the personal interview in cases concerning applications following a removal order,²⁸⁵ or the right to be notified of and to respond to SEF's reasoning of the proposal for a final decision.²⁸⁶

The right of the applicant to submit comments to the written report the interview within 5 days is fully applicable in accelerated procedures.²⁸⁷ However, according to information available to CPR, in some instances in 2019, negative in-merit decisions in accelerated procedures were issued prior to the end of such deadline.

5.3. Appeal

Indicators: Accelerated Procedure: Appeal

☐ Same as regular procedure

1. Does the law provide for an appeal against the decision in the accelerated procedure?
☒ Yes ☐ No
❖ If yes, is it ☒ Judicial ☐ Administrative
❖ If yes, is it suspensive ☒ Yes ☐ Some grounds ☐ No

The Asylum Act provides for judicial review of facts and points of law by the Administrative Court against a rejection decision in an accelerated procedure.²⁸⁸

The time limit for lodging the appeal on the territory varies according to the specific ground of the accelerated procedure: it ranges from 4 days for applications following a removal order,²⁸⁹ to 8 days for the remaining grounds.²⁹⁰ Similarly to the regular procedure, the appeal has an automatic suspensive effect.²⁹¹ However, the onward appeal in the case of an application following a removal order does not.²⁹² The law also provides for a simplified judicial process with reduced formalities and time limits with the objective of shortening the duration of the judicial review.²⁹³

The information provided by CSTAF in 2019 regarding the number and nationalities of appellants, as well as the average duration and results of judicial reviews does not make a distinction between the type of

²⁸⁵ Article 33-A(4) and (5) Asylum Act.

²⁸⁶ Article 29(2) Asylum Act.

²⁸⁷ Article 17(1) and (2) Asylum Act.

²⁸⁸ Articles 22(1), 33-A(6) and 25(1) Asylum Act and Article 95(3) Administrative Court Procedure Code.

²⁸⁹ Article 33-A(6) Asylum Act.

²⁹⁰ Articles 22(1) Asylum Act.

²⁹¹ Articles 22(1) and 33-A(6) Asylum Act.

²⁹² Article 33-A(8) Asylum Act.

²⁹³ Article 22(2) and 33-A(7) Asylum Act.

asylum procedures (see [Statistics](#)). However, according to the information available to CPR the main type of asylum procedures used in 2019 to reject asylum applications consisted of accelerated procedures in the case of Angola (172 out of a total of 173 rejections) and the Democratic Republic of Congo (61 out of a total 61 rejections).²⁹⁴

The information provided by CSTAF indicates, in general, a poor success rate at appeals stage. In this regard, it must be acknowledged that the quality of many appeals submitted is often poor, given that very few lawyers have any specific training or relevant expertise in the field.

The issues raised as regards the poor quality of legal assistance and language barriers during the regular procedure also apply to the accelerated procedure and have thus an impact on the quality and effectiveness of appeals. CPR is not aware of additional obstacles faced by asylum seekers to appealing a first instance decision in the accelerated procedure, however.

5.4. Legal assistance

Indicators: Accelerated Procedure: Legal Assistance

☒ Same as regular procedure

1. Do asylum seekers have access to free legal assistance at first instance in practice?

<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> With difficulty	<input type="checkbox"/> No
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 - ❖ Does free legal assistance cover:

<input type="checkbox"/> Representation in interview
<input checked="" type="checkbox"/> Legal advice

2. Do asylum seekers have access to free legal assistance on appeal against a decision in practice?

<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> With difficulty	<input type="checkbox"/> No
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 - ❖ Does free legal assistance cover

<input checked="" type="checkbox"/> Representation in courts
<input checked="" type="checkbox"/> Legal advice

With regard to access to free legal assistance in the accelerated procedure, the general rules and practice of the regular procedure apply (see [Regular Procedure: Legal Assistance](#)).

D. Guarantees for vulnerable groups

1. Identification

Indicators: Special Procedural Guarantees

1. Is there a specific identification mechanism in place to systematically identify vulnerable asylum seekers?

<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> For certain categories	<input type="checkbox"/> No
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 - ❖ If for certain categories, specify which: Unaccompanied children, victims of trafficking

2. Does the law provide for an identification mechanism for unaccompanied children?

<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
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The Asylum Act defines an “applicant in need of special procedural guarantees” in terms of reduced ability to benefit from the rights and comply with the obligations stemming from the Asylum Act due to individual circumstances.²⁹⁵ Even though it does not include an exhaustive list of asylum seekers presumed to be in need of special procedural guarantees, it refers to age, gender, gender identity, sexual orientation, disability, serious illness, mental disorders, torture, rape or other serious forms of psychological, physical or sexual violence as possible factors underlying individual circumstances that could lead to the need of special procedural guarantees.²⁹⁶ The Asylum Act provides for the need to identify persons with special needs and the nature of such needs upon registration of the asylum application or at any stage of the

²⁹⁴ Two of the most representative nationalities at appeal stage.

²⁹⁵ Article 17-A(1) Asylum Act.

²⁹⁶ *Ibid.*

asylum procedure.²⁹⁷ The nature of special procedural needs should be assessed before a decision on the admissibility of the application is taken.²⁹⁸

1.1. Screening of vulnerability

Despite these legal obligations, there are no (specific) mechanisms, standard operating procedures or units in place to systematically identify asylum seekers who need special procedural guarantees. In 2018, SEF-GAR has introduced two general questions in the questionnaire used in first instance asylum interviews that address the applicant's self-assessed health condition and capacity to undergo the interview,²⁹⁹ as well as a couple of questions in Dublin interviews on health-related vulnerabilities.³⁰⁰ According to CPR's observation, there is no clear link between the answer provided by the applicant and the adoption of special procedural guarantees in practice.

Publicly available statistics regarding vulnerable asylum seekers are scarce and relate mostly to unaccompanied children and families with children.³⁰¹ CPR collects statistical information on asylum seekers who self-identify or are identified as vulnerable on the basis of information received from SEF in accordance with the law, collected directly from the applicants or shared by other service providers.³⁰² In 2019, of the 1,714 spontaneous asylum applicants whose cases were communicated by SEF, a total of 503 were identified as vulnerable:

Asylum seekers communicated to CPR and identified as vulnerable: 2017-2019			
Category of vulnerable group	2017	2018	2019
Unaccompanied children	41	67	77
Accompanied children	194	219	236
Single-parent families	67	53	61
Pregnant women	17	9	13
Elderly persons	2	3	5
Disabled persons	1	1	2
Survivors of torture	12	14	19
Survivors of physical, psychological or sexual violence	74	91	49
Persons with chronic or serious illnesses	13	12	40
Persons with addictions	1	0	1
Total	422	468	503

Source: CPR.

According to the information available to CPR, of the 77 declared unaccompanied children who applied for asylum in 2019, 7 were later determined to be adults,³⁰³ including on the basis of the applicants' statements, second-stage age assessment procedures requested by the Family and Juvenile Court, assessments made by SEF, or information received from other EU Member States (e.g. Dublin).

²⁹⁷ Article 77(2) Asylum Act.

²⁹⁸ Article 17-A(1) Asylum Act.

²⁹⁹ The questions read (1) "Do you feel alright, are you comfortable? Do you have any health problems?" and (2) "Do you feel capable of talking to me at the moment?"

³⁰⁰ The questions read (1) "Are you in good health – Y/N? Do you have health problems-Y/N? Which problems?" and (2) "Are you accompanied by a relative with health problems?"

³⁰¹ While according to information provided by SEF all caseworkers have specific training in issues such as identification and interview of vulnerable persons under the EASO training curriculum and special needs of applicants are taken into account at all stages, no official data is available regarding the number of applicants identified as vulnerable.

³⁰² The use of different identification criteria and age assessment procedures by SEF may explain the difference between the number of unaccompanied children identified by SEF (55) and CPR (77). Different registration practices may also contribute to this.

³⁰³ Information available at the time of writing. Other age assessments were still pending.

The Asylum Act provides that the staff handling asylum applications of **unaccompanied children** must be specifically trained to that end.³⁰⁴

The Committee on the Rights of the Child recently expressed concern with “[...] *weaknesses in policy and practice relating to unaccompanied and separated children, particularly in respect of legal representation and guardianship during refugee determination processes*”.³⁰⁵ The Committee recommended Portugal to “*strengthen policies and practices to improve the identification and registration of unaccompanied and separated children, including through ensuring that they are provided with effective legal representation and an independent guardian immediately after they have been identified*”.³⁰⁶ The necessity and consistency of the assessment of the best interests of the child in asylum procedures were also highlighted by the Committee.³⁰⁷

Victims of torture and serious violence

In the case of survivors of torture and/or serious violence, research has demonstrated that identification is conducted on an *ad hoc* basis and mostly on the basis of self-identification during refugee status determination, social interviews or initial medical screenings.³⁰⁸ Staff working with asylum seekers lacks specific training on the identification of survivors of torture and/or serious violence and their special needs.

According to the information provided by the Portuguese authorities to the UN Committee Against Torture in June 2018,³⁰⁹ “[...] *the number of asylum applicants that claimed to have been victims of torture or identified as victims of torture is residual*.” The report also states that “[i]n general, the applicant is assessed as credible when the claims are reliable or visible signs of the act exist. This leads to a positive decision and to the granting of international protection status without the need for medical examinations. Applicants are then subject to evaluation as well as to medical and psychological monitoring in the reception centres in order to address potential traumas. There are no statistical data on these cases.”³¹⁰

Following this report, the identification of survivors of torture was one of the issues addressed by the UN Committee Against Torture in its Concluding Observations on Portugal. The Committee observed that “[...] *the State party has not provided complete information on the procedures in place for the timely identification of victims of torture among asylum seekers [...]*”, and recommended “[...] *the establishment of effective mechanisms to promptly identify victims of torture among asylum seekers*”.³¹¹

Victims of human trafficking

According to SEF, staff with specific training in **trafficking** indicators operate in cases involving victims of trafficking at the **Lisbon Airport**.³¹² The Observatory on Trafficking in Human Beings (*Observatório do*

³⁰⁴ Article 79(12) Asylum Act. The provision of mandatory training on the rights of the child to all relevant professionals, including immigration and asylum officers was also recently recommended by the Committee on the Rights of the Child. See Committee on the Rights of the Child, *Concluding observations on the combined fifth and sixth periodic reports of Portugal*, CRC/C/PRT/CO/5-6, 9 December 2019, par.13 (c), available at: <https://bit.ly/2G1F07z>.

³⁰⁵ Committee on the Rights of the Child, *Concluding observations on the combined fifth and sixth periodic reports of Portugal*, CRC/C/PRT/CO/5-6, 9 December 2019, par.41(c), available at: <https://bit.ly/2G1F07z>.

³⁰⁶ Ibid., para. 42(c).

³⁰⁷ Ibid., paras 41(b) and 42(b).

³⁰⁸ Italian Council for Refugees *et al.*, *Time for Needs: Listening, Healing, Protecting*, October 2017, available at: <http://bit.ly/2xZqCGh>.

³⁰⁹ Committee Against Torture, *Seventh periodic report submitted by Portugal under article 19 of the Convention pursuant to the optional reporting procedure, due in 2017*, CAT/C/PRT/7, 18 December 2018, available at: <https://bit.ly/3cwgaec>.

³¹⁰ Committee Against Torture, *Seventh periodic report submitted by Portugal under article 19 of the Convention pursuant to the optional reporting procedure, due in 2017*, CAT/C/PRT/7, 18 December 2018, available at: <https://bit.ly/3cwgaec>, paras.133-134.

³¹¹ Committee Against Torture, *Concluding Observations on the seventh periodic report of Portugal*, CAR/C/PRT/CO/7, 18 December 2019, par.38(d), available at <https://bit.ly/2G1F07z>.

³¹² See Expresso, ‘SEF cria equipas especializadas para proteção das vítimas de tráfico de seres humanos’, 18 October 2018, available in Portuguese at: <https://bit.ly/2TIN8OU>; Público, ‘SEF vai ter três equipas

Tráfico de Seres Humanos, OTSH) reported that in addition to the internal training provided by SEF, the Anti-Trafficking Unit of the entity developed a flowchart on procedures to address situations involving unaccompanied children at border points.

In 2018, at the request of OTSH, CPR offered recommendations regarding the flowchart of the current National Referral Mechanism which does not provide for clear procedures regarding referrals of unaccompanied asylum-seeking children in the asylum procedure or age assessment procedures.³¹³

OTSH reported that, in 2019, an Intersectoral Working Group³¹⁴ started to develop specific procedures for the prevention, detection and protection of children victims of trafficking in human beings. The aim of this initiative is to create a specific national referral system for children victims of trafficking.

CPR is unaware of instances where asylum applicants were granted international protection on the basis of a well-founded fear of persecution for reasons of trafficking in human beings.

Despite the absence of common identification procedures for unaccompanied children victims of trafficking, CPR systematically flags presumed unaccompanied children victims of trafficking under its care at the Refugee Children Reception Centre (*Centro de Acolhimento para Crianças Refugiadas*, CACR) to the National Observatory on Trafficking in Human Beings (on the basis of an anonymous form with indicators), as well as to SEF's asylum and criminal investigation departments for the purposes of criminal investigation and protection. In the very limited number of instances where CPR caseworkers are able to obtain the unaccompanied child's consent for adequate protection, the cases are further referred to the multidisciplinary team of the Family Protection Association (APF) that conducts an initial assessment that can lead to the placement of the presumed victim in an Anti-Trafficking Reception and Protection Centre (CAP).

In 2018, AKTO, a Portuguese NGO, inaugurated the first CAP in Portugal exclusively dedicated to children victims of trafficking,³¹⁵ and conducted bilateral meetings with relevant stakeholders, including with CPR, to provide information on service provision and referral procedures.

In 2019, a total of 29 out of 103 unaccompanied children accommodated by CPR throughout the year absconded from CPR's reception centres.³¹⁶

Trafficking in persons was also addressed by the UN Committee Against Torture in its Concluding Observations published in 2019. The Committee expressed concern with reports of lack of training of law enforcement officers and with delays in the process of issuance of residence permits to victims.³¹⁷ As such, the Committee recommended Portugal to: “(a) *Intensify its efforts to prevent and combat trafficking in persons, including by putting in place effective procedures for the identification and referral of victims*

especializadas em tráfico de seres humanos’, 29 May 2018, available in Portuguese at: <https://bit.ly/2ANfFfj>. According to these sources, in 2018 the SEF expanded its capacity for the identification and protection of victims of trafficking at the border and on national territory following the concerns raised by the Council of Europe Group of Experts on Action Against Trafficking in Human Beings (GRETA) report published in 2017, available at: <https://bit.ly/2RLfYRy>, which also raised specific concerns regarding the disappearance of unaccompanied asylum-seeking children.

³¹³ The National Referral Mechanism consists of guidance for the identification, referral and integration of trafficking victims in Portugal and aims to set out the procedures to be adopted by relevant professionals. The National Referral Mechanism was developed by the Network for the Support and Protection of the Victims of Trafficking (*Rede de Apoio e Protecção às Vítimas de Tráfico*, RAPVT) and is based on a Manual available in Portuguese at: <https://bit.ly/2uCIYPz>, and a flowchart containing referral procedures developed in 2014, available in Portuguese at: <https://bit.ly/2TzCNV6>.

³¹⁴ Composed by the Ministry of Home Affairs, National Republican Guard (GNR), Public Security Police (PSP), SEF, OTSH, Commission for Citizenship and Gender Equality (CIG), Criminal Policy (PJ), National Commission for the Promotion of Rights and the Protection of Children and Young People; Prosecutor General's Office – Family, Children and Youth Office (PGR), AKTO, Directorate General for Health.

³¹⁵ AKTO, ‘Centro de Acolhimento e Protecção para Crianças Vítimas de Tráfico de Seres Humanos’, available in Portuguese at: <https://bit.ly/2wYsrck>.

³¹⁶ These include unaccompanied children who applied for asylum in previous years.

³¹⁷ Committee Against Torture, *Concluding Observations on the seventh periodic report of Portugal*, CAR/C/PRT/CO/7, 18 December 2019, available at <https://bit.ly/2G1F07z>, para 43.

among vulnerable groups, such as asylum seekers and irregular migrants; (b) Improve the training of law enforcement officers and other first responders by including statutory training on the identification of potential victims of trafficking in persons; (c) Ensure access to adequate protection and support, including temporary residence permits, irrespective of their ability to cooperate in legal proceedings against traffickers.”³¹⁸

1.2. Age assessment of unaccompanied children

Despite the obligation to refer unaccompanied children to Family and Juvenile Courts for the purposes of legal representation,³¹⁹ the Asylum Act does not provide for a specific identification mechanism for unaccompanied children or objective criteria to establish which asylum seekers must undergo an age assessment.

According to the Asylum Act, SEF may resort to medical expertise using a non-invasive examination to determine the age of the unaccompanied child who must be given the benefit of the doubt in case well founded doubts persist regarding his or her age after the examination.³²⁰

The unaccompanied child must be informed that his/her age will be determined by means of such expertise and his/her representative must give prior consent.³²¹ In early 2020, following the results of workshops with children on age assessment funded by the Council of Europe, the National Commission for the Promotion of Rights and the Protection of Children and Young People, published a leaflet with information on age assessment procedures to children. The leaflet is available in Portuguese, English and French.³²²

Refusal to allow an expert's examination shall not result in the rejection of the application for international protection, but does not prevent a decision from being issued in this regard.³²³ The age assessment procedure may also be triggered by the Family and Juvenile Court in the framework of judicial procedures aimed at ensuring legal representation for the child and the adoption of protective measures (see [Legal Representation of Unaccompanied Children](#)) or by the unaccompanied child's legal representative.

In practice, age assessment procedures can be triggered either by SEF after the personal interview when there are significant doubts regarding the age of the applicant on the basis of physical appearance and/or demeanour or by Family and Juvenile Courts in the framework of legal representation and child protection procedures (see [Legal Representation of Unaccompanied Children](#)). While SEF was unable to provide statistics, in 2019, CPR observed that age assessment procedures continued to be increasingly triggered by Family and Juvenile Courts.

The absence of objective criteria to establish what constitutes reasonable doubt, who must undergo an age assessment, and the nature of the initial age assessments is particularly problematic: (a) in the framework of border procedures, where SEF has in the past refused to trigger age assessment procedures and/or give the benefit of the doubt to asylum seekers claiming to be children, with significant implications regarding detention and access to procedural rights in the absence of a legal representative; (b) in cases of asylum applicants who were referred by SEF to the CACR as children despite legitimate doubts regarding the age of the applicant on the basis of his or her physical appearance and/or demeanour thus putting at risk the integrity and security of the facility; (c) in a few cases where asylum applicants claim to be adults but there are legitimate doubts regarding the possibility of them being children on the basis of earlier statements that were later withdrawn, physical appearance and/or

³¹⁸ Committee Against Torture, *Concluding Observations on the seventh periodic report of Portugal*, CAR/C/PRT/CO/7, 18 December 2019, available at <https://bit.ly/2G1F07z>, para 44.

³¹⁹ Article 79(2) Asylum Act.

³²⁰ Article 79(6) Asylum Act.

³²¹ Article 79(7) Asylum Act.

³²² National Commission for the Promotion of Rights and the Protection of Children and Young People, *Une évaluation de l'âge qui respecte les droits des enfants/An age assessment procedure that respects children's rights*, 19 February 2020, available at: <https://bit.ly/3boC2YX>.

³²³ Article 79(8) Asylum Act.

demeanour; and (d) increased use of second stage age assessment by Family and Juvenile Courts without adequate justification of their reasonableness and proportionality.

The initial age assessment is conducted by SEF and does not involve child protection staff. Second stage assessments, however, fail to meet the holistic and multidisciplinary standards recommended by UNHCR.³²⁴ The methods used continue to include wrist and dental X-rays and are conducted by the National Institute of Legal Medicine and Forensic Science (INMLCF).³²⁵ Despite the established technical limitations of such methods, their results have been used by SEF and Family and Juvenile Courts as evidence of the adulthood of the applicant, and as grounds for refusing the benefit of the doubt despite their inability to establish an exact age. This practice has been overturned by Administrative Courts in at least one instance regarding the asylum procedure,³²⁶ and was criticised by the Council of Europe.³²⁷

Moreover, while examination of genitals was not used in age assessment in the past, in 2019, the INMLCF published a procedural note on estimation of age in living and undocumented persons that includes the evaluation of sexual development as part of the age assessment procedure.³²⁸ The grounds for this (regrettable) change of practice are not known but, according to the information gathered by CPR, these methods were indeed applied in 2019.

In 2018, age assessments being applied in other EU Member States have also been used by SEF as negative credibility indicators, notably for those coming from Malta.³²⁹ This concerned asylum seekers who were transferred to Portugal in the framework of *ad hoc* relocation schemes and who claimed to be children upon arrival in Portugal.

In various instances in 2019, SEF suspended the asylum procedure on the basis of general administrative rules in order to wait for the results of age assessment procedures ordered by the Family and Juvenile Courts.

The absence of an initial age assessment from SEF prior to the referral to the CACR in cases where the appearance and demeanour of the applicant raised serious doubts regarding their age has led CPR to refer those applicants to the CAR managed by CPR so as to preserve the security and integrity of the CACR. The Public Prosecutor's Office was informed accordingly.

The initial and second-stage of age assessment procedures are made for different purposes including: (i) the provision of special procedural guarantees i.e. referral to the Family and Juvenile Courts for the purposes of legal representation in the asylum procedure; (ii) the provision and the cessation of special reception conditions i.e. immediate referral to the CACR and referral to the Family and Juvenile Courts for purposes of confirming the provision of special reception conditions there; and (iii) for the purposes of refugee status determination as a material fact of the asylum application.

With regard to legal remedies, the law does not provide for a specific appeal against the initial age assessment procedure conducted by SEF for purposes other than the refugee status determination. However, these procedures remain administrative decisions that can be challenged before the Administrative Courts in accordance with the law.³³⁰ Additionally, the Family and Juvenile Courts also

³²⁴ UNHCR, *The Way Forward to Strengthened Policies and Practices for Unaccompanied and Separated Children in Europe*, July 2017, available at: <http://bit.ly/2ngwmYT>.

³²⁵ In 2019, the methods used by the INMLCF regarding 4 unaccompanied children who applied for asylum in 2018 have exceptionally included an observation of the genitalia which has generated significant discomfort among those concerned.

³²⁶ See e.g. TAC Leiria, Decision 784/14.9 BELRA, 19 July 2014, unpublished.

³²⁷ GRETA, *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Portugal*, GRETA(2017)4, 17 March 2017, available at: <https://bit.ly/2RLfYRy>.

³²⁸ INMLCF, *Norma procedimental – Estimativa da idade em indivíduos vivos indocumentados*, NP-INMLCF-018, 14 October 2019, available in Portuguese at: <https://bit.ly/3dUjIO6>.

³²⁹ According to the information provided by SEF, these assessments were conducted on the basis of physical appearance, demeanour, demography and other types of relevant country of origin information, and X-Rays (FAV Test).

³³⁰ Article 51(1) and (2) Administrative Court Procedure Code.

conduct their own second stage age assessment for purposes of legal representation (following SEF's referral) that can be appealed pursuant to general rules. In practice, however this is rarely – if ever – the case given the individual circumstances, and the lack of available legal expertise.

According to information available to CPR, upon reception of the results of the medical report and before the issuance of a decision on the age assessment procedure, the competent Family and Juvenile Court gave the applicant and the appointed guardian the opportunity to reply to the analysis in some recent cases. This has not been the case in all age assessment procedures however.

In 2019, the UN Committee on the Rights of the Child raised concerns about age assessment procedures and recommended that Portugal “*continue to enforce multidisciplinary and transparent procedures that are in line with international standards and adequately train staff to ensure that the psychological aspects and personal circumstances of the person under assessment are taken into account*”.³³¹

2. Special procedural guarantees

Indicators: Special Procedural Guarantees

1. Are there special procedural arrangements/guarantees for vulnerable people? ☐ Yes ☒ For certain categories ☐ No
- ❖ If for certain categories, specify which: Unaccompanied children, pregnant women, Families with children

While the implementation of certain special procedural guarantees will necessarily require a decision from SEF, the responsibility for implementing these measures lies with the Institute of Social Security (ISS).³³²

2.1. Adequate support during the interview

Applicants identified as needing special procedural guarantees can benefit from the postponement of refugee status determination interviews, extended deadlines for presenting evidence or carrying out interviews with the assistance of experts.³³³

As mentioned in [Identification](#), there is no specific unit in place with specially trained staff that can provide special procedural guarantees such as special interview techniques or tailored support during personal interviews. In practice, with the exception of asylum applicants whose reduced ability to benefit from the rights and comply with the obligations stemming from the Asylum Act are self-evident (e.g. due to serious illness, pregnancy), such guarantees are not implemented.

Recent case law regarding the provision of special procedural guarantees in the asylum procedure has consolidated the approach of not implementing such guarantees.³³⁴ In one isolated case in 2018, SEF invited CPR to attend a first instance interview in order to provide support to a particularly vulnerable applicant suffering from a mental condition.³³⁵ In one instance in 2019, SEF suspended the asylum

³³¹ Committee on the Rights of the Child, *Concluding observations on the combined fifth and sixth periodic reports of Portugal*, CRC/C/PRT/CO/5-6, 9 December 2019, available at: <https://bit.ly/2G1F07z>, pars.41(e) and 42(e).

³³² Article 17-A(5) Asylum Act.

³³³ Article 17-A(3) Asylum Act.

³³⁴ TAC Lisbon, Decision 1502/18.8BELSB, 24 October 2018, unpublished. The case relates to an asylum seeker suffering from documented epilepsies and depression who was not identified as a vulnerable person prior to his interview and was therefore not provided special procedural guaranties by SEF during the first instance procedure. The applicant was unable to review the report of his interview due to his condition and later managed to submit to SEF medical reports of his condition and mental care with the support of CPR prior to the issuance of a first instance refusal decision. According to TAC Lisbon, such issues were not material to the asylum application and were not relevant to assess the need for special procedural guarantees in accordance to the law “*as the serious condition of the appellant was not due to him being a victim of torture, rape or other form of psychological, physical or sexual violence in his country of origin...*”.

³³⁵ Notwithstanding, following a suggestion from CPR on the need to equate a structured approach to the provision of special procedural guarantees in general, and the provision of adequate special procedural guarantees in the particular case, such as a medical evaluation/report and the presence of support staff from the institution that was providing medical and social support to the applicant at the time, SEF decided to conduct the interview in the absence of any support.

procedure of an applicant suffering from a serious mental health condition before issuing a decision on admissibility/accelerated procedure. However, the decision to suspend the procedure was adopted only after the personal interview was conducted and was not framed as a special guarantee for the applicant.

In the particular case of survivors of torture and/or serious violence, research conducted in the framework of the project “[Time for Needs: Listening, Healing, Protecting](#)” found that the practical implementation of special procedural guarantees such as the possibility to postpone the refugee status determination interview is hampered by the lack of a specific identification tool or mechanism.³³⁶ Even where a medical report concerning the vulnerability of the applicant for mental health reasons is presented, SEF may refuse to postpone the interview unless the medical report clearly states the reduced capacity of the applicant, the need for medical assistance, as well as a prediction of when the applicant is expected to be able attend the interview, if need be accompanied by a mental health professional, in order to avoid excessive delays in the procedure. CPR is not aware of additional research on this topic.

In accordance with the law,³³⁷ CPR provides specific legal assistance to unaccompanied asylum-seeking children *inter alia* through the presence of a legal officer during the personal interview with the SEF (see [Legal Representation of Unaccompanied Children](#)).

2.2. Exemption from special procedures

According to the Asylum Act, applicants victims of torture and/or serious violence in need of special procedural guarantees shall be exempted from the border procedure and from detention in the context of border procedures when the necessary support and conditions cannot be ensured within that context.³³⁸ However, no standard operational procedures and tools allowing for the early and effective identification of survivors of torture and/or serious violence and their special procedural needs are in place. As such, asylum seekers who claim to be survivors of torture, rape or other serious forms of psychological, physical or sexual violence are not exempted from border procedures in practice, despite the lack of provision of special procedural guarantees at the border.³³⁹

Until 2016, certain categories of vulnerable asylum applicants such as unaccompanied children, pregnant women and seriously ill persons were systematically released from detention at the border and channelled to an admissibility procedure and/or regular or accelerated procedure in national territory. However, pregnant women, families with children, severely ill persons and victims of torture and/or serious violence were not always exempted from border procedures in practice, since then, including in 2019. Although new guidance from the Ministry of Interior was issued in July 2018 regarding the duration of detention of certain categories of vulnerable asylum seekers, with the exception of unaccompanied children, this had not resulted in significant changes with regard to exemption from border procedures as the latter are still regularly applied to vulnerable applicants (see [Detention of Vulnerable Applicants](#)).³⁴⁰

Similarly to the border procedure, the exemption of vulnerable applicants from the accelerated procedure was not ensured in practice. As regards unaccompanied children, the law provides for their exemption from accelerated procedures, with the exception of subsequent applications that have not been deemed inadmissible, as well as certain grounds for inadmissibility, such as Dublin, first country of asylum and third safe country grounds.³⁴¹

According to information available to CPR, SEF resorted to accelerated procedures only once regarding an unaccompanied asylum-seeking child in 2018 and that decision was later overturned at appeal stage

³³⁶ Italian Council for Refugees *et al.*, *Time for Needs: Listening, Healing, Protecting*, October 2017, available at: <http://bit.ly/2xZqCGh>.

³³⁷ Article 79(3) Asylum Act.

³³⁸ Article 17-A(4) Asylum Act.

³³⁹ Italian Council for Refugees *et al.*, *Time for Needs: Listening, Healing, Protecting*, October 2017, available at: <http://bit.ly/2xZqCGh>.

³⁴⁰ Nevertheless, according to SEF, a total of 14 asylum applications lodged by unaccompanied minors were processed under a border procedure, in 2019.

³⁴¹ Article 79(9) Asylum Act.

for being in breach of the Asylum Act and the recast Asylum Procedures Directive.³⁴² Statistical data from SEF for 2019 indicates that accelerated procedures were not used in such cases. However, according to the information available to CPR, accelerated procedures were indeed applied by SEF to unaccompanied children in 2019 in four cases. When CPR requested clarification on this practice, SEF informed that all procedural guarantees for unaccompanied children were provided in such procedures. This understanding is clearly at odds with the applicable legal provisions as well as with the national jurisprudence. In the beginning of 2020, TAC Lisbon confirmed this assessment by overturning another decision and reaffirming the reasoning adopted in 2018.³⁴³

3. Use of medical reports

Indicators: Use of Medical Reports

1. Does the law provide for the possibility of a medical report in support of the applicant's statements regarding past persecution or serious harm? ☒ Yes ☐ In some cases ☐ No
2. Are medical reports taken into account when assessing the credibility of the applicant's statements? ☒ Yes ☐ No

The Asylum Act contains a general provision on the right of asylum seekers to submit supporting evidence in the asylum procedure.³⁴⁴ It further foresees the possibility for SEF to request reports on specific issues from experts (e.g. cultural or medical) during the regular procedure.³⁴⁵ Nevertheless, there are no specific standards in law or administrative guidance relating to medical reports for those claiming to have been subjected to torture or other serious acts of physical, psychological and sexual violence.

The lack of standard operational procedures regarding the issuance, content and relevance of medical reports in the asylum procedure has been highlighted in the particular case of survivors of torture and/or serious violence.³⁴⁶ Medical reports are currently not issued based on the methodology laid down in the Istanbul Protocol. Even where mental health service providers issue medical reports concerning the vulnerability of the applicant for the purposes of postponing the individual interview, SEF tends to ignore them due to factors pertaining to the content of the report (see [Special Procedural Guarantees](#)).

4. Legal representation of unaccompanied children

Indicators: Unaccompanied Children

1. Does the law provide for the appointment of a representative to all unaccompanied children? ☒ Yes ☐ No

Under the Asylum Act, all unaccompanied child asylum seekers and beneficiaries of international protection are entitled to legal representation.³⁴⁷ Legal representation can be provided by an organisation and can take the form and modalities laid down in law,³⁴⁸ such as those provided by the General Legal Regime of Civil Guardianship Act.³⁴⁹ In this regard, SEF is required to immediately flag the need for legal representation to the Family and Juvenile Court while informing the child of the procedure.³⁵⁰

As regards the scope of legal representation of unaccompanied children, the legal representative must be informed in advance and in a timely manner by SEF of the interview and is entitled to attend the interview as well as to make oral representations.³⁵¹ The presence of the legal representative does not

³⁴² TAC Lisbon, Decision 869/18.2BELSB, 24 June 2018, unpublished.

³⁴³ TAC Lisbon, Decision 2154/19.3BELSB, 17 January 2020, unpublished.

³⁴⁴ Article 15(2) Asylum Act.

³⁴⁵ Article 28(3) Asylum Act.

³⁴⁶ Italian Council for Refugees *et al.*, *Time for Needs: Listening, Healing, Protecting*, October 2017, available at: <http://bit.ly/2xZqCGh>.

³⁴⁷ Article 79(1) and (2) Asylum Act.

³⁴⁸ *Ibid.* See also Article 2(1)(ad) Asylum Act.

³⁴⁹ Act 141/2015 of 8 September 2015.

³⁵⁰ Article 79(1) and (2) Asylum Act.

³⁵¹ Article 79(3) Asylum Act.

exempt the unaccompanied child from the personal interview.³⁵² Additionally, SEF must ensure that the legal representative is given the opportunity to inform the child of the significance and implications of the personal interview as well as to explain how to prepare for it.³⁵³ The legal representative must also give his/her consent to SEF for the purpose of age assessment procedures.³⁵⁴

In practice, the legal representation of unaccompanied children has taken varying legal modalities in accordance with the General Legal Regime of Civil Guardianship Act and the Children and Youths at Risk Protection Act.³⁵⁵ Its scope usually covers the representation of the child for all legal purposes, including the asylum procedure and reception conditions.³⁵⁶ The Family and Juvenile Court usually appoints CPR's Director to act as legal representative. The material protection of the child is provided in accordance with the protective measures set out in the Children and Youths at Risk Protection Act, which includes referring him/her to the CACR managed by the CPR.

CPR's Legal Department provides legal information and assistance to unaccompanied children throughout the asylum procedure. It further attends personal interviews given its legal representative capacity, ensures that children have access to legal aid for appeals when necessary and provides assistance to lawyers appointed within this mechanism. The Family and Juvenile Court at times also appoints a free legal aid lawyer to the child in the framework of the judicial procedures conducted in the framework of the Children and Youths at Risk Protection Act.

In the rare instances where representation and/or accommodation of unaccompanied children were ensured by other organisations, CPR provided legal assistance to their staff and directly, as appropriate.

Except in cases where there is a doubt regarding the age of the applicant (see [Identification](#)), SEF usually flags the need to provide the child with legal representation and refers him or her to the Family and Juvenile Court within a few days following the registration of the asylum application, including in the case of border procedures. Upon admission to one of its reception centres, CPR immediately informs the competent entities.

An additional challenge in this regard concerns children travelling with adult siblings in possession of valid travel documents and entry visas for Portugal or having been transferred to Portugal with adult siblings in the framework of the Dublin Regulation. According to the information provided to CPR by SEF in 2018, in these cases the understanding is that there is a presumption of legal representation by the adult sibling, thus exempting SEF from the legal obligation to refer the child to the Family and Juvenile Court.³⁵⁷

The Family and Juvenile Court usually appoints CPR as a legal representative/guardian of unaccompanied children within a few weeks following SEF's communication, including for the purpose of representation in the asylum procedure, given its knowledge and experience in the field of international protection.

It should be noted that even if SEF does not conduct individual interviews prior to the appointment of a legal representative, there is no best interests' assessment or intervention of a legal representative prior to the registration of the asylum claim. Despite the law providing for the possibility of a child lodging his/her

³⁵² Article 79(5) Asylum Act.

³⁵³ Article 79(4) Asylum Act.

³⁵⁴ Article 79(7) Asylum Act.

³⁵⁵ Act 147/99 of 1 September 1999.

³⁵⁶ Article 25(1)(a) recast Asylum Procedures Directive; Article 24(1) recast Reception Conditions Directive.

³⁵⁷ The current definition of unaccompanied children in the Asylum Act contributes to this problematic understanding from SEF which, in CPR's view, is not in line with the protective duties entrusted to all public authorities regarding children at risk in accordance to relevant provisions in the General Legal Regime of Civil Guardianship Act and the Children and Youths at Risk Protection Act. Indeed, the current Asylum Act has failed to transpose into national law the definition of "unaccompanied minor" enshrined in Article 2(l) recast Qualification Directive and still refers to "third-country nationals (...) unaccompanied by an adult responsible for them *whether by law or custom*" as per the definition contained in Article 2(i) Directive 2004/83/EC.

own asylum application,³⁵⁸ in 2017, SEF refused to register the asylum application of two unaccompanied children in the absence of legal representatives.³⁵⁹

When appointed as legal representative, CPR is normally asked by SEF to give its consent to age assessments in the asylum procedure. However, this is not the case regarding age assessment procedures that are conducted by the Family and Juvenile Courts in the framework of the General Legal Regime of Civil Guardianship Act and the Children and Youths at Risk Protection Act.

While the law does not provide for specific requirements for acting as legal representative of an unaccompanied child, the Children and Youths at Risk Protection Act contains rules governing the composition of the technical staff of reception centres for children. Accordingly, the teams must be multidisciplinary and include personnel which holds at least a BA in the field of Psychology and Social Work. The technical director of the centre must further be appointed among staff members with such a background.³⁶⁰

The UN Committee on the Rights of the Child recently expressed concern with “[...] *weaknesses in policy and practice relating to unaccompanied and separated children, particularly in respect of legal representation and guardianship during refugee determination processes*”.³⁶¹ The Committee recommended Portugal to “*strengthen policies and practices to improve the identification and registration of unaccompanied and separated children, including through ensuring that they are provided with effective legal representation and an independent guardian immediately after they have been identified*”.³⁶²

E. Subsequent applications

Indicators: Subsequent Applications

1. Does the law provide for a specific procedure for subsequent applications? ☒ Yes ☐ No
2. Is a removal order suspended during the examination of a first subsequent application?
 - ❖ At first instance ☒ Yes ☐ No
 - ❖ At the appeal stage ☒ Yes ☐ No
3. Is a removal order suspended during the examination of a second, third, subsequent application?
 - ❖ At first instance ☒ Yes ☐ No
 - ❖ At the appeal stage ☒ Yes ☐ No

The law provides for specific features in the [Admissibility Procedure](#) regarding subsequent applications. This includes (i) a time limit of 10 days for the adoption of an admissibility decision at first instance i.e. preliminary assessment;³⁶³ (ii) the absence of automatic consequences in case of non-compliance with the time limit for deciding on admissibility; (iii) reduced guarantees regarding the right to a personal interview and to seek revision of the narrative of the personal interview;³⁶⁴ (iv) specific criteria for assessing the admissibility of the claim;³⁶⁵ and (v) partially different time limits and effects of (onward) appeals.³⁶⁶

³⁵⁸ Article 13(6) Asylum Act.

³⁵⁹ A prior assessment of the best interest of the child would bring the procedure more in line with UNHCR's recommendations in this regard. See UNHCR, *The Way Forward to Strengthened Policies and Practices for Unaccompanied and Separated Children in Europe*, July 2017.

³⁶⁰ Article 54 Children and Youth at Risk Protection Act.

³⁶¹ Committee on the Rights of the Child, *Concluding observations on the combined fifth and sixth periodic reports of Portugal*, CRC/C/PRT/CO/5-6, 9 December 2019, available at: <https://bit.ly/2G1F07z>, par.41 (c).

³⁶² Committee on the Rights of the Child, *Concluding observations on the combined fifth and sixth periodic reports of Portugal*, CRC/C/PRT/CO/5-6, 9 December 2019, available at: <https://bit.ly/2G1F07z>, par. 42(c).

³⁶³ Article 33(4) Asylum Act.

³⁶⁴ Article 33(2), (4) and (6) Asylum Act.

³⁶⁵ Article 33(1) and (6) Asylum Act.

³⁶⁶ Article 33(6) Asylum Act.

The Asylum Act does not provide, however, for specific rules regarding the right to remain on the territory pending the examination of the application,³⁶⁷ or the suspension of a removal order,³⁶⁸ nor does it provide specific time limits or limitations on the number of subsequent applications a person can lodge.³⁶⁹ However, an “unjustified” subsequent application can lead to the [Reduction or Withdrawal of Reception Conditions](#).³⁷⁰

The National Director of SEF remains the competent authority to take a decision on the admissibility of subsequent applications.³⁷¹

The criteria for assessing the admissibility of the subsequent claim are enshrined in the Asylum Act and consist in whether new elements of proof have been submitted or if the reasons that led to the rejection of the application have ceased to exist.³⁷² The law does not provide further clarifications on what is to be considered as a new element of proof or the cessation of the rejection motives but clarifies that the preliminary admissibility assessment also encompasses cases where the applicant has explicitly withdrawn his or her application and cases where SEF has rejected an application following its implicit withdrawal.³⁷³

A first instance decision on the admissibility of a subsequent application from 2016 makes reference to a “substantial and fundamental” difference as criteria for assessing the admissibility of the subsequent application whereas several first instance decisions from 2018 refer to “any event occurred since prior decisions at first instance and appeal stages”, “new elements of proof regarding the alleged facts” and that the “absence of new facts is also enhanced by the fact that according to his statement the applicant did not return to his country of origin or left European soil since his last application”. According to the available information, decisions from 2019 do not offer further guidance with regards to the interpretation of the relevant concepts.

Recent case law has failed to provide guidance in this regard.³⁷⁴ However, it has ruled that facts that were not presented during the initial application without reason cannot be considered as new facts. At the same time, the Court also conducted an assessment – echoing SEF’s own first instance assessment – of whether the new facts stated by the applicant constitute relevant grounds for a well-founded risk of persecution, which seems to be at odds with the admissibility assessment at hand.³⁷⁵

The limited number of subsequent applications registered – only 8 lodged in 2019, compared to 13 in 2018 and 9 in 2017 – does not allow for a general assessment of existing obstacles in lodging a subsequent application. Nevertheless, the information available to CPR in 2019 shows that out of 7 subsequent asylum applications, 3 were deemed inadmissible, 1 was rejected in accelerated procedures, and 1 was admitted to the regular procedure (information is not available on the outcome of the two remaining subsequent applications communicated to CPR).³⁷⁶

According to information collected by CPR in 2019, 5 out of the 7 subsequent applications communicated to CPR³⁷⁷ underwent a preliminary interview to assess whether new elements were submitted, as laid

³⁶⁷ Articles 13(1) and 33(9) Asylum Act.

³⁶⁸ In this case it should be understood that the general rule providing for the suspension of a removal order until a final decision is reached in the asylum application applies: Article 12(1) Asylum Act.

³⁶⁹ Article 33(1) Asylum Act, according to which the asylum seeker is entitled to present a new application whenever there are new elements in light of the first asylum procedure.

³⁷⁰ Article 60(3)(f) Asylum Act.

³⁷¹ Article 33(6) Asylum Act.

³⁷² Article 33(1) Asylum Act.

³⁷³ Article 2(1)(t) Asylum Act.

³⁷⁴ TAC Lisbon, Decision 1748/18.9BELSB, 26 November 2018, unpublished.

³⁷⁵ A similar approach was followed in a 2019 judgement of TAF Porto that noted that a subsequent application should only go beyond the preliminary evaluation if there are new facts, circumstances or evidence that by themselves show that it is likely that the applicant is eligible for international protection. TAF Porto, Decision 649/18.5BELSB, 17 January 2019, unpublished.

³⁷⁶ According to information provided by SEF, 8 subsequent applications were registered in 2019.

³⁷⁷ Information is not available regarding one subsequent application and a personal interview did not occur in the remaining case.

down in law.³⁷⁸ The preliminary interview to assess the admissibility of the application differed from a personal interview conducted in the admissibility/regular procedure insofar as it mainly sought to ascertain new facts, evidence or changes in circumstances related to persecution since the presentation of the initial asylum application. The reasoning of the corresponding inadmissibility decisions included an assessment of the existence, credibility and relevance of new facts and changes in circumstances since the presentation of the initial asylum application. The evidentiary value of documents and other elements of proof submitted, as well as the inconsistencies between the information provided and the facts described in the context of the original application, were also analysed.

The Asylum Act provides for an appeal against the decision to reject a subsequent application (see [Admissibility Procedure: Appeal](#)). The time limit for lodging the appeal is 4 days.³⁷⁹ The initial appeal before the Administrative Court has automatic suspensive effect,³⁸⁰ as opposed to onward appeals that have no automatic suspensive effect.³⁸¹

With regard to access to free legal assistance for asylum seekers during the preliminary admissibility assessment (*mutatis mutandis* given the specific changes in the procedure e.g. the possible absence of a personal interview) and at appeal stage, the general rules and practice of the regular procedure apply (see [Regular Procedure: Legal Assistance](#)).

In practice, CPR is not aware of systemic or relevant obstacles faced by asylum seekers to appealing a first instance decision on the admissibility of a subsequent application.

Only 8 subsequent applications were lodged in 2019.

F. The safe country concepts

Indicators: Safe Country Concepts

- | | |
|--|---|
| 1. Does national legislation allow for the use of “safe country of origin” concept? | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |
| ❖ Is there a national list of safe countries of origin? | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |
| ❖ Is the safe country of origin concept used in practice? | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |
| 2. Does national legislation allow for the use of “safe third country” concept? | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |
| ❖ Is the safe third country concept used in practice? | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |
| 3. Does national legislation allow for the use of “first country of asylum” concept? | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |

1. Safe country of origin

The Asylum Act provides for a definition of “safe country of origin” that is in line with Article 36 of the recast Asylum Procedures Directive.³⁸² However, the law does not further regulate its application. The only exception is that the “safe country of origin” concept is listed as one of the grounds for the application of the [Accelerated Procedure](#).³⁸³

To date, the authorities have not introduced legislation that allows for the national designation of safe countries of origin for the purposes of examining applications for international protection in line with Annex I of the Directive.

³⁷⁸ Article 33 Asylum Act states that subsequent applications are submitted to the SEF with all available supporting evidence and that the SEF may, following the application, provide the applicant with a reasonable time limit to present new facts, information or evidence.

³⁷⁹ Article 33(6) Asylum Act.

³⁸⁰ *Ibid.*

³⁸¹ Article 33(8) Asylum Act.

³⁸² Article 2(1)(q) Asylum Act.

³⁸³ Article 19(1)(f) Asylum Act.

According to the information available to CPR, SEF does not have a list of safe countries of origin as a matter of administrative guidance and the concept is not used in practice as a ground for channelling asylum applications into an accelerated procedure. According to SEF, in 2019 there were no rejection decisions based on the concept of “safe country of origin”.

2. Safe third country

The Asylum Act provides for a definition of “safe third country” that presents some inconsistencies with Article 38 of the recast Asylum Procedures Directive.³⁸⁴ These inconsistencies were raised in 2014 by CPR during the legislative process that transposed the second-generation *acquis* into national law,³⁸⁵ and include the following:

- a. The provision applies *ratione personae* to asylum seekers alone, as opposed to applicants for international protection;³⁸⁶
- b. The provision does not include the absence of a risk of serious harm as a condition for the application of the concept;
- c. The provision does not include the possibility for the applicant to challenge the existence of a connection between him or her and the third country;
- d. A standard of possibility rather than reasonableness is set in the provision concerning the return on the basis of a connection between the applicant and the third country concerned.³⁸⁷

It should also be noted that the Asylum Act, while excluding EU Member States from the concept of safe third country,³⁸⁸ does not provide for specific rules regarding EU and non-EU European safe third countries.

Although the concept is a ground for inadmissibility (see [Admissibility Procedure](#)),³⁸⁹ the authorities have not introduced further rules in national legislation to date (e.g. relevant connection indicators or rules regarding the methodology used by SEF as regards the application of the concept to a particular country or to a particular applicant).

According to the information available to CPR, SEF does not have a list of countries designated to be generally safe as a matter of administrative guidance. While the number of inadmissibility decisions on safe third country grounds is generally very limited, countries designated as such in the past have included **Morocco, Turkey, South Africa, Ecuador and Brazil**.

According to SEF, in 2019 there were 2 negative decisions based on the concept of “safe third country”, both related to **Brazil** (see [Admissibility Procedure](#)).

Connection criteria

To date, the establishment of a connection rendering the applicant’s transfer to a safe third country reasonable by SEF has been based on indicators such as transit (sometimes as short as a few weeks), the registration of an asylum application or residence rights, and the remaining legal requirements of the clause have usually not been (adequately) analysed. A ruling of TAC Lisbon from November 2017 considered the transit and the holding of a 3-month visa as evidence of a sufficient connection between the applicant and the third country concerned on the basis of which it would be reasonable for that person to go to that country.³⁹⁰ This decision was later overturned by TCA South, according to which the mere transit for 28 days and the submission of an asylum application were not sufficient to establish a

³⁸⁴ Article 2(1)(r) Asylum Act.

³⁸⁵ CPR, *Proposta de Lei 187 - XII que altera a Lei n.º 27/2008, de 30 de Junho – Comentários*, January 2014, available in Portuguese at: <http://bit.ly/2zT1oef>.

³⁸⁶ Article 2(1)(r) Asylum Act.

³⁸⁷ Article 2(1)(r)(i) Asylum Act.

³⁸⁸ Article 19-A(1)(d) Asylum Act that excludes EU Member States from the concept of third safe country.

³⁸⁹ Article 19-A(1)(d) Asylum Act.

³⁹⁰ TAC Lisbon, Decision 2163/17.7BESLB, 30 November 2017, unpublished.

meaningful connection for purposes of rendering the applicant's transfer to the safe third country reasonable.³⁹¹

Asylum seekers assisted by CPR whose applications were rejected on the basis of this inadmissibility ground were not given a document in the language of the safe third country stating that their claim was not examined on the merits. It should be noted that the issuance of such document is currently not enshrined in the law.

3. First country of asylum

The Asylum Act provides for a definition of “first country of asylum” that is in line with Article 35 of the recast Asylum Procedures Directive,³⁹² and that attempts a merger with the criteria listed in Article 38(1) of the Directive.³⁹³ Without prejudice to challenges in clarity resulting from the merger, the current definition seems to exclude formal recognition of refugee status or sufficient protection in accordance to the Refugee Convention as stand-alone criteria to apply the concept as it also requires that (i) life and liberty are not threatened, (ii) the principle of *non-refoulement* in accordance with the Refugee Convention is respected, and that (iii) the prohibition of the right to freedom from torture and cruel, inhuman or degrading treatment is respected. The “first country of asylum” concept is included among the inadmissibility grounds enshrined in the Asylum Act.³⁹⁴

The number of inadmissibility decisions on first country of asylum grounds is generally very limited. According to SEF, in 2019 there were no inadmissibility decisions based on the concept of “first country of asylum”. Nevertheless, one such decision was adopted in 2019 according to information gathered by CPR.

In those limited cases, the analysis conducted by SEF into the conditions of the concept generally focused on the legal status of the applicant, failing to adequately assess security risks in the first country of asylum alleged by the applicant. CPR is aware of one noticeable exception where SEF conducted a thorough assessment of protection conditions in the first country of asylum (Cameroon) following a decision from TAC Lisbon that quashed the initial first instance inadmissibility decision.

According to the information available to CPR, case law regarding the interpretation of the concept is very limited but includes a ruling from a second-instance Administrative Court focusing on the definition of “sufficient protection”. According to the court's interpretation of the provision enshrined in the Asylum Act, such protection should be interpreted to encompass the principle of *non-refoulement* in accordance with the Refugee Convention but also *refoulement* where a civilian's life or person is at risk by reason of indiscriminate violence in situations of armed conflict.³⁹⁵

However, as stressed by the TAC Lisbon in a ruling from November 2017, the formal recognition of refugee status is not *per se* sufficient to qualify a third country as a first country of asylum in the absence on a meaningful assessment of possible risks to the security of the applicant in that country.³⁹⁶

³⁹¹ TCA South, Decision 2163/17.7BESLB, 15 March 2018, available in Portuguese at: <https://bit.ly/2DpS327>. A previous decision from TAC Lisbon had already excluded the mere transit and the presentation of an asylum application as sufficient to establish a meaningful connection: TAC Lisbon, Decision 1792/17.3BESLB, 30 September 2017, unpublished.

³⁹² Article 2(1)(z) Asylum Act.

³⁹³ Indeed certain elements of the definition of the “safe third country” such as that contained in Article 38(1)(b) of the recast Asylum Procedures are not included.

³⁹⁴ Article 19-A(1)(c) Asylum Act.

³⁹⁵ TAC Lisbon, Decision 1791/15.0BESLB, 29 September 2015, unpublished; TCA South, Decision 12873/16, 11 February 2016, available at: <http://bit.ly/2zUrEVt> on **Brazil** as a first country of asylum for a Syrian asylum seeker.

³⁹⁶ TAC Lisbon, Decision 2163/17.7BESLB, 30 November 2017, unpublished. Another TAC judgement from 2019, considered that episodes of robbery in the country of asylum were “personal circumstances” that did not amount to “a situation of indiscriminate violence”. TAC Lisbon, Decision 271/19.9BELSB, 13 September 2019, unpublished.

G. Information for asylum seekers and access to NGOs and UNHCR

1. Provision of information on the procedure

Indicators: Information on the Procedure

1. Is sufficient information provided to asylum seekers on the procedures, their rights and obligations in practice? ☐ Yes ☒ With difficulty ☐ No

❖ Is tailored information provided to unaccompanied children? ☒ Yes ☐ No

The Asylum Act provides for the right to:

- A broad set of information on the asylum procedure and reception conditions in general;³⁹⁷
- Information on key developments and decisions relating to the individual asylum file;³⁹⁸
- Information on detention;³⁹⁹ and
- Specific information rights of unaccompanied children.⁴⁰⁰

Furthermore, the law provides for a general right to interpretation “whenever necessary” during registration of the application and throughout the asylum procedure.⁴⁰¹ This refers to the right to interpretation into a language that the asylum seeker understands or is reasonably expected to understand.⁴⁰²

In practice, while SEF generally complies with the obligation to inform asylum seekers of key developments, decisions and associated rights during asylum procedures, interpretation for that purpose is not systematically available and rarely includes an explanation of the grounds of the decision. The absence of translation has also been problematic in cases where SEF informs asylum seekers of developments in their applications by postal mail and e-mail, using letters written in Portuguese to which are attached documents such as accelerated procedures decisions, Dublin transfer decisions or proposals for a final decision in the regular procedure also in Portuguese. This problem mainly concerns asylum seekers residing in private accommodation. CPR has also received a few complaints from asylum

³⁹⁷ This includes information on assistance and the asylum procedure by the UNHCR and CPR (Article 13(3)); information on the right to an individual application regarding dependant relatives (Article 13(5)); general information on the rights and duties in the asylum procedure (Article 14(2)); information in writing on the rights and duties in border procedures (Article 24(2)); information on the extension of the time limit for the examination and, upon demand, of the grounds for the extension and expected time limit for the decision in the regular procedure (Article 28(2)); oral information or an information brochure on the rights and duties of asylum seekers and in particular regarding the asylum procedure; applicable time limits; the duty to substantiate the claim; available service providers of specialised legal assistance; available reception and health care service providers; legal consequences of failing to cooperate with the SEF in substantiating the asylum claim; the purpose of fingerprinting and of all rights of data subjects in accordance to the EUODAC Regulation; information on the admissibility decision (Article 49(1)(a), (b), (c) and (2)); information on the rights and duties of beneficiaries of international protection (Article 66).

³⁹⁸ This includes the individual notification of first instance decisions in admissibility and accelerated procedures on national territory (Article 20(3)); the individual notification of first instance decisions in admissibility and accelerated procedures and the right to appeal at the border (Article 24(5)); individual notification of the SEF’s proposal for a first instance decision in the regular procedure (Article 29(2)); individual notification of the first instance decision and the right to appeal in the regular procedure (Article 29(6)); individual notification of the first instance decision, the right to appeal and the obligation to abandon national territory within 20 days regarding subsequent applications (Article 33(6) and (9)); individual notification of the first instance decision and the right to appeal regarding applications following a removal procedure (Article 33-A(6)); individual notification of outgoing Dublin take charge or take back decisions (Article 37(2)); individual notification of the SEF’s proposal for the cessation, revocation, ending or refusal to renew the international protection status (Article 41(6)); individual notification of the cessation, revocation, ending or refusal to renew the international protection status (Article 43(2)).

³⁹⁹ This includes immediate information in writing on the grounds of detention as well as the right to appeal and to free legal aid (Article 35-B(2)); information on the internal rules of the detention facility and the detainee’s rights and duties (Article 35-B(5)).

⁴⁰⁰ This includes information on mandatory legal representation (Article 79(1)); information on the purpose, potential consequences and preparation of the personal interview by the legal representative (Article 79(4)); information on the submission to an age assessment expertise (Article 79(7)).

⁴⁰¹ Article 49(1)(d) Asylum Act.

⁴⁰² Articles 14(2), 24(2) and (5), 29(6), 33(6), 35-B(2) and (5), 37(2), 43(2), 49(1)(a), (b) and (2) and 66 Asylum Act.

seekers according to whom SEF did not provide for the interpretation of the document narrating the essential facts at the end of their personal interview. Asylum seekers thus sign a document which states that the content has been translated and agreed with them, although this is not always done in practice.

Upon registration, the asylum seeker receives written information (available in a limited number of languages, e.g. French, English) regarding the rights and duties attached to the certificate of the asylum application. SEF has also produced information leaflets that briefly cover some of its information obligations such as the asylum procedure and the rights and duties of applicants of international protection,⁴⁰³ reception conditions,⁴⁰⁴ the Dublin III and Eurodac Regulations,⁴⁰⁵ and a specific information leaflet for unaccompanied children regarding the asylum procedure, reception conditions, rights and duties including legal representation and age assessment.⁴⁰⁶ The information contained in the leaflets is brief and not considered user-friendly, particularly in the case of unaccompanied children. According to CPR's experience, the leaflets are available in a limited number of foreign languages (e.g. French, English, Arabic) and are not distributed systematically except for information on the Dublin Regulation (see [Dublin: Procedure](#)).

CPR has no indication that the common information leaflet provided for in Article 4(3) of the Dublin III Regulation is being systematically distributed. The only information provided on the functioning of the Dublin system seems to be contained in the general information leaflet on the Dublin III and Eurodac Regulations, which is very limited. Asylum seekers are systematically informed in writing of the request made to another Member State, the corresponding supporting evidence and the reply of that Member State but only at the time of written notification of the actual transfer decision.⁴⁰⁷ This is without prejudice to the practice observed in late 2019, according to which, at the end of the personal interview in the framework of Dublin procedures, in addition to the interview form, the applicant was notified of a document stating that the application will likely be subject to an inadmissibility decision and a corresponding to transfer to the responsible Member State in accordance to the Dublin Regulation (see [Dublin: Procedure](#)).

In the case of asylum seekers detained at the border, the certificate of the asylum application contains a brief reference to Article 26 of the Asylum Act that provides for the systematic detention of asylum seekers in the border procedure. Asylum seekers are not systematically informed or aware of their rights and obligations in detention despite the existence of information leaflets available in a limited number of foreign languages.⁴⁰⁸ According to a recent report of the National Preventive Mechanism⁴⁰⁹, multiple gaps in the provision of information were detected, both with regards to the applicable legal frameworks and the individual situation of the applicants.

Despite having been designated as legal representative for the vast majority of unaccompanied children who applied for asylum in 2019, CPR is unaware of the provision of child-friendly information by the SEF, including the specific information leaflet for unaccompanied children and the information leaflet provided for by Article 4(3) of the Dublin Regulation.

Furthermore, and despite written requests to that end, asylum seekers are very rarely informed of the extension of the time limit for the examination of their application, the grounds for the extension and the expected time limit for the decision in the regular procedure as required by law.⁴¹⁰

⁴⁰³ SEF, *Informação para Requerentes de Proteção Internacional em Portugal*, available in Portuguese at: <https://bit.ly/2MoTRez>.

⁴⁰⁴ SEF, *Acolhimento em Portugal*, available in Portuguese at: <https://bit.ly/2MkBnvC>.

⁴⁰⁵ SEF, *Regulamento Dublin III*, available in Portuguese at: <https://bit.ly/2Hq5aEy>.

⁴⁰⁶ SEF, *Informação para Menores Não-Acompanhados Requerentes de Proteção Internacional em Portugal*, available in Portuguese at: <https://bit.ly/2FFVjc3>.

⁴⁰⁷ Article 37(2) Asylum Act.

⁴⁰⁸ Portuguese Ombudsman, *Tratamento de Cidadãos Estrangeiros em situação irregular ou requerentes de asilo nos centros de instalação temporária ou espaços equipados*, September 2017, available in Portuguese at: <http://bit.ly/2z15JPu>, Chapter II, Section 9.

⁴⁰⁹ Portuguese Ombudsman, *Mecanismo Nacional de Prevenção – Relatório à Assembleia da República 2018*, 30 May 2019, available in Portuguese at: <https://bit.ly/2XTmncn>.

⁴¹⁰ Article 28(2) Asylum Act.

Information by NGOs

CPR provides free legal information to asylum seekers throughout the asylum procedure that broadly cover the information requirements provided in the law, including tailored information to unaccompanied children and to relocated asylum seekers on the basis of individual interviews and legal counselling. CPR has also developed the [HELP](#) information portal which offers among others cultural orientation information, information on the asylum procedure, reception services and relevant institutional contacts. The portal is available in Portuguese, English, French and Spanish. However, challenges in capacity have restricted the provision of legal information during the first instance asylum procedure, particularly regarding asylum seekers placed in detention or private accommodation in more remote locations (see [Regular Procedure: Legal Assistance](#)).

Other organisations also provide legal information and assistance to asylum seekers during the first instance of the regular procedure such as JRS Portugal or CNIS for unaccompanied children under the 2017 pilot project. ACM, through its National and Local Support Centres for Migrants Integration, and [CRESCER](#) also provide information and assistance albeit in a limited number of cases and mostly focused on integration.

2. Access to NGOs and UNHCR

Indicators: Access to NGOs and UNHCR

1. Do asylum seekers located at the border have effective access to NGOs and UNHCR if they wish so in practice? ☐ Yes ☒ With difficulty ☐ No
2. Do asylum seekers in detention centres have effective access to NGOs and UNHCR if they wish so in practice? ☒ Yes ☐ With difficulty ☐ No
3. 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 ☒ With difficulty ☐ No

Regarding access to UNHCR, CPR and other NGOs at the border and in detention, see the sections on [Border Procedure](#) and [Access to Detention Facilities](#).

H. Differential treatment of specific nationalities in the procedure

Indicators: Treatment of Specific Nationalities

1. Are applications from specific nationalities considered manifestly well-founded? ☒ Yes ☐ No
❖ If yes, specify which: Syria, Eritrea (within the context of relocation)
2. Are applications from specific nationalities considered manifestly unfounded?⁴¹¹ ☐ Yes ☒ No
❖ If yes, specify which:

Within the context of relocation, it was observed that SEF generally granted subsidiary protection to Syrians and refugee status to Eritreans.

In the course of 2019, CPR observed that, in a significant number of applications lodged by Venezuelans, SEF deemed the applications unfounded within accelerated procedures,⁴¹² and referred the cases to regularisation procedures through the humanitarian clause of the exceptional regularisation regime of the Immigration Act.⁴¹³ According to these decisions, this was done due to the political, social and humanitarian crisis in the country and its impacts in the regular functioning of institutions and public

⁴¹¹ Whether under the “safe country of origin” concept or otherwise.

⁴¹² Of the 49 cases where CPR was informed of decisions on the admissibility of applications lodged by Venezuelans, 33 were refused in an accelerated procedure.

⁴¹³ Article 123 Immigration Act.

services. While further information on the conduct of such procedures was not available to CPR at the time of writing, this is an uncommon practice from the authorities that was only systematically applied to Venezuelans.⁴¹⁴

SEF did not share statistics on the adoption of decisions granting humanitarian protection in 2019.

⁴¹⁴ The decisions analysed do not clarify whether such procedures are triggered automatically by SEF and if residence permits on humanitarian grounds are effectively granted.

Reception Conditions

A. Access and forms of reception conditions

1. Criteria and restrictions to access reception conditions

Indicators: Criteria and Restrictions to Reception Conditions

1. Does the law make material reception conditions to asylum seekers in the following stages of the asylum procedure?

❖ Regular procedure	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Reduced material conditions	<input type="checkbox"/> No
❖ Dublin procedure	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Reduced material conditions	<input type="checkbox"/> No
❖ Admissibility procedure	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Reduced material conditions	<input type="checkbox"/> No
❖ Border procedure	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Reduced material conditions	<input type="checkbox"/> No
❖ Accelerated procedure	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Reduced material conditions	<input type="checkbox"/> No
❖ First appeal	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Reduced material conditions	<input type="checkbox"/> No
❖ Onward appeal	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Reduced material conditions	<input type="checkbox"/> No
❖ Subsequent application	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Reduced material conditions	<input checked="" type="checkbox"/> No
2. Is there a requirement in the law that only asylum seekers who lack resources are entitled to material reception conditions?

<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
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1.1. Responsibility for reception

The primary responsibility for the provision of material reception conditions lies with the Ministry of Home Affairs.⁴¹⁵ However, the responsibility for reception lies with the Ministry of Employment, Solidarity and Social Security for asylum seekers who pass the admissibility procedure and are in the regular procedure.⁴¹⁶ Moreover, the authorities can cooperate with other public entities and/or private non-profit organisations in the framework of a MoU to ensure the provision of such services.⁴¹⁷

The practical framework for the reception of asylum seekers in Portugal currently stems from both bilateral MoUs,⁴¹⁸ and a multilateral MoU between relevant stakeholders.⁴¹⁹ The latter is coordinated by a Steering Commission (*Comissão de Acompanhamento*, CA) presided by the Institute of Social Security (*Instituto da Segurança Social*, ISS).⁴²⁰ The Memoranda provide for an overall responsibility-sharing mechanism among stakeholders according to which different entities provide reception conditions depending on the type and stage of the procedure and/or the profile of the applicant:

1. The **Institute for Social Security (ISS)** offers material receptions conditions to asylum seekers in the regular procedure;
2. **Santa Casa da Misericórdia de Lisboa (SCML)** assists asylum seekers who have submitted an appeal against a Dublin decision or a first instance decision (with the exception of a first

⁴¹⁵ This includes admissibility procedures (including Dublin procedures); accelerated procedures, border procedures, subsequent applications and applications following a removal decision: Article 61(1) Asylum Act.

⁴¹⁶ Article 61(2) Asylum Act.

⁴¹⁷ Article 61(1) and (2) *in fine* Asylum Act.

⁴¹⁸ Notably MoUs between the Ministry of Home Affairs / SEF and CPR, between ISS and CPR, and between the ISS and Santa Casa da Misericórdia de Lisboa (SCML).

⁴¹⁹ The initial signatories in 2012 included the SEF, ISS, SCML, CPR, ACM and the Employment and Vocational Training Institute (*Instituto do Emprego e Formação Profissional*, IEFP). In 2014, the partnership was extended to include the Directorate General for Health (*Direcção-Geral da Saúde*, DGS), the Central Administration of the Health System (Administração Central do Sistema de Saúde, ACSS), the Directorate General of Education (*Direcção-Geral da Educação*, DGE), the Directorate General of Education Institutions (*Direcção-Geral dos Estabelecimentos Escolares*, DGEE), the National Association of Portuguese Municipalities (*Associação Nacional de Municípios Portugueses*, ANMP) and JRS. In 2018, the National Agency for Qualification and Vocational Education (*Agência Nacional para a Qualificação e o Ensino Profissional*, ANQEP) also joined the partnership. ANQEP is a public entity responsible for the coordination of formative policies for young people and adults.

⁴²⁰ The Steering Commission is assisted by a Technical Operative Group (*Grupo Técnico Operativo*, GTO) tasked, among others, with ensuring operational guidance and coordination of reception and integration services provided to spontaneous asylum seekers and resettled refugees at central and local levels.

instance decision in the regular procedure) as well as certain categories of asylum seekers in the regular procedure (e.g. vulnerable cases such as unaccompanied children initially accommodated at CACR that move into assisted apartments and former unaccompanied children initially accommodated at CACR; or individuals and families with strong social networks in the Lisbon area);

3. The **Portuguese Refugee Council (CPR)** provides reception services to asylum seekers in the admissibility (including Dublin) and accelerated procedures on the national territory. In the particular case of unaccompanied children, CPR also provides for material reception conditions in the regular procedure and at appeal stage in accordance with protective measures adopted by Family and Juvenile Courts in the framework of the Children and Youths at Risk Protection Act (see [Legal Representation of Unaccompanied Children](#)).
4. The **Immigration and Borders Service (SEF)** retains responsibility for material reception conditions in border procedures and procedures in detention following a removal order (see [Conditions in Detention Facilities](#)).⁴²¹

In the particular case of relocation, a special coordination framework, the Working Group for the Agenda for Migration, was launched in 2015 to assess existing capacities, plan and prepare an action plan for relocation under the political coordination of the Deputy Minister.⁴²² The Working Group was composed of various public and private stakeholders and reception service providers.⁴²³

1.2. The right to reception and sufficient resources

The law provides for the right of asylum seekers to material reception conditions regardless of the procedure they are in,⁴²⁴ with the exception of a possible withdrawal or reduction of those conditions in the case of “unjustified” subsequent applications.⁴²⁵ Asylum seekers are entitled to support from the moment they apply for asylum,⁴²⁶ and until a final decision is reached on their asylum application,⁴²⁷ without prejudice to the suspensive effect of appeals⁴²⁸ and the provision of material reception conditions beyond the final rejection in case of ongoing need for support on the basis of an individual assessment of the applicant’s social and financial circumstances.⁴²⁹

Furthermore, there is a requirement in the law according to which only asylum seekers who lack resources are entitled to material reception conditions.⁴³⁰ The law provides for criteria to assess the sufficiency of

⁴²¹ Article 61(1) Asylum Act.

⁴²² Ministerial Order n. 10041-A/2015 and Council of Ministers Resolution n. 5/2016.

⁴²³ These include: SEF, ACM, General Secretariat of Internal Administration (*Secretaria Geral da Administração Interna*, SGAI), Ministry of Foreign Affairs (*Ministério dos Negócios Estrangeiros*, MNE), DGE, ANMP, Directorate General of Local Municipalities (*Direcção-Geral das Autarquias Locais*, DGAL), ISS, DGS, Municipality of Lisbon, Institute for Housing and Urban Rehabilitation (*Instituto da Habitação e da Reabilitação Urbana*, IHRU), IEF, CPR, União das Misericórdias, União das Mutualidades, PAR, JRS, CVP and CNIS. Relocated asylum seekers benefited from an 18-month support programme with reception services mostly provided by civil society organisations and stand-alone municipalities. According to a procedure jointly adopted by ISS and ACM, responsibility for such provision reverted to the ISS following the completion of the initial programme. An evaluation report produced by ACM was published in December 2017 - ACM, *Relatório de Avaliação da Política Portuguesa de Acolhimento de Pessoas Refugiadas, Programa de Recolocação*, December 2017, unpublished. For more, see also AIDA, *Country Report: Portugal – 2018 Update*, p. 67, available at: <https://bit.ly/2VR4cVB>, 67.

⁴²⁴ Articles 51(1) and 56(1)-(2) Asylum Act.

⁴²⁵ Article 60(3)(f) Asylum Act. The meaning of “unjustified subsequent application” seems to indicate that the potential withdrawal or reduction would only intervene at the end of the 10-day admissibility/preliminary assessment as per Article 33(4). According to the information available to CPR, such possibility was not enforced in 2018 and 2019, as SEF referred subsequent applicants in need of housing to the relevant entities.

⁴²⁶ Articles 51(1), 56(1) and 2(1)(ae) Asylum Act that entitle third-country nationals or stateless persons who have “presented” an asylum application to material reception conditions. The presentation of the asylum application is to be understood as preceding the registration of the asylum claim under Article 13(1) and (7) Asylum Act.

⁴²⁷ Article 60(1) Asylum Act.

⁴²⁸ Articles 60(1) *in fine* and 30(1) Asylum Act.

⁴²⁹ Article 60(2) Asylum Act.

⁴³⁰ Articles 51(1) and 56(1) Asylum Act.

resources that consist in either the lack thereof or a level of financial resources which is inferior to the “social support allowance” provided in the law.⁴³¹ To date, ISS has interpreted this provision as referring to the social pension (*pensão social*) that in 2019 stood at € 210,32 per month.⁴³² According to the information provided by ISS, internal procedures determine that processes are reassessed every three months and the provision of material reception conditions is maintained where the indicators of a lack of resources remain.

Asylum seekers can be called to contribute,⁴³³ or reimburse,⁴³⁴ partly or in full, the cost of material reception conditions and health care depending on the level and the point in time when the authorities become aware of their financial resources. However, neither the law nor administrative guidelines specify at what point the asylum seeker is required to declare any financial resources he or she might have.

In practice, the majority of spontaneous asylum applicants are systematically referred by SEF and have benefited from the provision of material reception conditions by CPR in the framework of admissibility and accelerated procedures on the territory. This was done without a strict assessment of resources by SEF as many asylum seekers had recently arrived in the country and were considered manifestly in need of assistance. In cases where they had financial resources or relatives in Portugal, certain asylum seekers chose not to benefit from the accommodation provided by CPR. Along with the fact that asylum seekers are not entitled to access paid employment at this stage (see [Access to the Labour Market](#)), that encouraged a system based on trust.

In the case of referrals to CPR’s Refugee Reception Centre (*Centro de Acolhimento para Refugiados*, CAR) that accommodates isolated adults and families, access is dependent on the applicant presenting an individual certificate of the asylum application or a written request (e.g. email) from SEF-GAR where the timely issuance of the certificate was not possible. As for unaccompanied children, referral by SEF to CPR’s CACR is made by the most expedient means available such as telephone or email, and children released from the border, are escorted by SEF to the premises. Finally, for those asylum seekers who have opted for private housing with relatives, the provision of material reception conditions such as financial assistance by CPR is dependent on the presentation of an individual certificate of the asylum application. CPR does not proactively engage in means assessments for the duration of the provision of material reception conditions given that asylum seekers are not entitled to access paid employment at this stage of the procedure.

Following admission to the regular procedure, or if the application is deemed inadmissible or is rejected in an accelerated procedure,⁴³⁵ the asylum seeker is generally referred by frontline service providers such as CPR to the Technical Operative Group (*Grupo Técnico Operativo – GTO*) using a standard individual monitoring report. The GTO decides on the provision of material reception conditions in the regular procedure (by ISS) or at appeal stage (by SCML) based on the report that includes information on the socio-economic circumstances of the individual. CPR is unaware of asylum seekers refused material reception conditions at this stage due to a strict application of criteria pertaining to sufficient resources. This can be explained by the fact that, at this stage, asylum seekers admitted to the regular procedure are often unemployed, despite being provided access to the labour market. Thus, according to CPR, the contribution or reimbursement of material reception conditions at this stage is not implemented in practice.

While spontaneous asylum applicants do not face systematic obstacles in gaining access to available material reception conditions (e.g. due to delays in the issuance of the individual certificate of the asylum application or a strict assessment of resources), some concerns remain regarding access to support. These include support provided by CPR to asylum seekers accommodated in private accommodation in remote locations due to the lack of information from SEF’s regional representations regarding available assistance and costs associated with travel and communications for initial and follow-up interviews with

⁴³¹ Article 56(3) Asylum Act.

⁴³² Decree-Law 464/80 and Ministerial Order 25/2019.

⁴³³ Article 56(4) Asylum Act.

⁴³⁴ Article 56(5) Asylum Act.

⁴³⁵ This includes rejected asylum seekers released from the border after the expiry of the 60-day time limit (see [Duration of Detention](#)).

social workers at CPR. Another concern stems from the potential exclusion of asylum seekers from material reception conditions in the regular procedure in case of refusal to accept the dispersal policy in place managed by the GTO (see [Freedom of Movement](#)).

2. Forms and levels of material reception conditions

Indicators: Forms and Levels of Material Reception Conditions

1. Amount of the monthly financial allowance/vouchers granted to adult asylum seekers as of 31 December 2019 (in original currency and in €): € 273,42

The Asylum Act provides for a general definition of material reception conditions,⁴³⁶ as well as a closed list of forms of provision of material reception conditions in Article 57(1) that includes:

- a. Housing;⁴³⁷
- b. Food;
- c. Monthly social support allowance for food, clothing, transport and hygiene items;
- d. Monthly complementary allowance for housing; and
- e. Monthly complementary allowance for personal expenses and transport.

Additionally, Article 57(3) establishes a closed list of possible combinations of forms of material reception conditions that consist of:

- a. Housing and food in kind with a [monthly] complementary allowance for personal expenses and transportation; and
- b. Housing in kind or complementary allowance for housing with a social support allowance [for food, clothing, transportation and hygiene items].

However, asylum seekers may exceptionally be offered forms and combinations of material reception conditions other than those provided in the law for a limited period of time where: (i) there is a need for an initial assessment of the special needs of the applicant; (ii) the housing in kind as per the law is not available in the area where the asylum seeker is located; and/or (iii) available reception capacity is temporarily exhausted and/or the international protection applicants are detained at a border that is not equipped housing declared as equivalent to reception centres.⁴³⁸

While the Asylum Act enshrines the right of asylum seekers to the satisfaction of their basic needs to a level that guarantees their human dignity,⁴³⁹ it does not provide for specific criteria to determine what is an adequate standard of living which guarantees their subsistence and protects their physical and mental health as per Article 17(2) of the recast Reception Conditions Directive.

The specific criteria for establishing the value of the financial allowances consists of a percentage of the “social support allowance”,⁴⁴⁰ which to date has been interpreted by the ISS as referring to the social pension (*pensão social*).⁴⁴¹ These percentages represent the upper limit of the allowances and in 2019 consisted of the following:

⁴³⁶ Article 2(1)(e) Asylum Act: housing, food, clothing and transportation offered in kind, through financial allowances, vouchers or daily allowances.

⁴³⁷ Under Article 57(2), housing and food in kind can consist of: (a) housing declared as equivalent to reception centres for asylum seekers in the case of border applications; (b) installation centres for asylum seekers or other types of housing declared equivalent to installation centres for asylum seekers that offer adequate living conditions; and (c) private houses, apartments, hotels or other forms of housing adapted to accommodate asylum seekers.

⁴³⁸ Article 57(4) Asylum Act.

⁴³⁹ Article 56(1) Asylum Act.

⁴⁴⁰ Article 58 Asylum Act.

⁴⁴¹ In 2019 the value of the social pension stood at € 210,32/ month – Decree-Law 464/80 and Ministerial Order 25/2019.

Level of financial allowances per expense: 2019		
Type of monthly allowance	Percentage	Amount
Social support allowance for food, clothing, transport and hygiene items	70%	€ 147,22
Complementary allowance for housing	30%	€ 63,10
Complementary allowance for personal expenses and transport	30%	€ 63,10

In practice, asylum seekers referred by SEF to CPR in the framework of admissibility procedures (including Dublin) and accelerated procedures on the territory benefit from housing at CAR or in other facilities (e.g. hostels, rooms in private accommodation) provided by CPR (see [Types of Accommodation](#)), along with a monthly allowance of € 150 per adult, € 50 per child below the age of four, and € 75 per child over the age of four to cover food and transport expenses.

CPR's Social Department provides asylum seekers with second hand clothes as well as food items on a needs basis and/or weekly with the support of the Food Bank (*Banco Alimentar*), a charity organisation that supports social institutions by providing food items to be distributed to final beneficiaries. Depending on the individual circumstances, CPR also pays for: (i) medication due to problems related to access to State funded medication through the National Health Service (*Serviço Nacional de Saúde*, SNS); (ii) school supplies for children; (iii) differentiated health care e.g. dentists; and (iv) taxi transportation e.g. in case of a medical emergency or for particularly vulnerable individuals.

In the particular case of unaccompanied children in the regular procedure and at appeal stage, CPR provides for material reception conditions in kind such as housing, food, clothing, transportation, school supplies, sports activities, haircuts, as well as a monthly allowance for personal needs that varies according to the age: € 10 for children up to the age of 10; € 12 for children between the age of 11 and 14; and € 16 for children aged 15 and over.

In the regular procedure or pending an appeal against a rejection decision during the admissibility stage or in an accelerated procedure, the financial allowance provided by ISS and by SCML is expected to cover all expenses. In the case of SCML there is the possibility of providing additional financial support for medication, school supplies or other needs following an individual assessment.⁴⁴²

The monthly allowance for all expenses is calculated in accordance to the percentages of the social pension set out in the Asylum Act,⁴⁴³ as mentioned above, albeit with a regressive percentage per additional member of the household:

Level of ISS / SCML financial allowance for all expenses: 2019	
Category of applicant	Amount
Head of household	€ 273,42
Other adult(s) in household	€ 191,39
Child	€ 136,71

Financial allowances for asylum seekers and beneficiaries of international protection in the regular procedure and in appeal saw a sharp decrease in 2012 during the financial crisis and the reasoning of ISS since has been to bring them strictly in line to those provided in the law to destitute nationals. According to the law, the social pension constitutes a measure of solidarity to offer social protection to the most vulnerable populations.⁴⁴⁴

⁴⁴² Moreover, according to information provided by SCML, the organisation also allows asylum seekers under its care to access its healthcare units in accordance with medical needs.

⁴⁴³ Article 58 Asylum Act.

⁴⁴⁴ Preamble to Law Decree 464/80 regarding the social pension that refers to "improving social protection for the most destitute". The social pension is provided among others to nationals, who are not entitled to a pension from the contributory social security system who lack any revenue or whose revenue is below the value of the social pension (Article 1).

Even though no qualitative research has been conducted to date on destitution of asylum seekers in the asylum procedure, the current level of financial allowances is manifestly low and CPR's Social Department receives regular complaints from asylum seekers at all stages of the asylum procedure regarding financial difficulties to meet basic needs and anxiety regarding low levels of income, although short of outright destitution. Such difficulties might constitute a contributing factor to the high level of absconding and cessation of support in the regular procedure and in the relocation programme (see [Reduction or Withdrawal of Reception Conditions](#)).

Following a resolution passed by the Parliament in June 2017 recommending the publication of an evaluation report of the Portuguese reception policy for refugees,⁴⁴⁵ the Government opted for a more limited assessment of the national relocation programme leaving out the reception system for spontaneous asylum seekers. The report, coordinated and drafted by ACM, collected inputs from 39 hosting entities and 1 refugee community organisation and was completed in December 2017.⁴⁴⁶ The evaluation conducted by ACM is based on a set of general indicators drawn from the priority areas of the Working Group's national plan for the reception and integration of relocated persons. Despite the general acknowledgement of some challenges, the overall evaluation of the programme is very positive. However, the results presented regarding reception and integration conditions are based on very general quantitative indicators and provide limited qualitative information.⁴⁴⁷ The qualitative information presented in the report is mostly based on the consultation conducted with hosting and refugee community organisations and points to challenges such as insufficient financial support and the need for longer reception programmes; gaps in pre and post departure information; lack of translators; and insufficient and ill adapted language training as well as insufficient vocational training opportunities.

3. Reduction or withdrawal of reception conditions

Indicators: Reduction or Withdrawal of Reception Conditions

1. Does the law provide for the possibility to reduce material reception conditions?
☒ Yes ☐ No
2. Does the law provide for the possibility to withdraw material reception conditions?
☒ Yes ☐ No

The Asylum Act provides for a closed list of grounds that may warrant the reduction or withdrawal of material reception conditions.⁴⁴⁸ These consist of unjustifiably:

- a. Abandoning the place of residence determined by the authority without informing SEF or without adequate permission;
- b. Abandoning the place of residence without informing the reception organisation;
- c. Failing to comply with reporting duties;
- d. Failing to provide information that was requested or to appear for personal interviews when summoned;
- e. Concealing financial resources and hence unduly benefiting from material reception conditions; and
- f. Lodging a subsequent application.

For the reduction or withdrawal to be enacted, the behaviour of the applicant needs to be unjustified,⁴⁴⁹ implying the need for an individualised assessment of the legality of the decision, which is however not clearly stated in the law. Such decisions have to be individual, objective, impartial, and reasoned.⁴⁵⁰ The

⁴⁴⁵ Resolução da Assembleia da República n.º 167/2017 Recomenda ao Governo a publicação de um relatório de avaliação da política portuguesa de acolhimento de refugiados, available at: <https://bit.ly/2GdX39b>.

⁴⁴⁶ ACM, *Relatório de Avaliação da Política Portuguesa de Acolhimento de Pessoas Refugiadas, Programa de Recolocação*, December 2017, unpublished.

⁴⁴⁷ The indicators used included a 100% rate regarding registration with the SNS and access to medical care; 98% access to Portuguese language classes; around 80% access of children to education; around 80% first instance decisions on the asylum application; 29 births on the territory; 50% of persons in working age that remained in Portugal in training or employment; around 90% and 80% of persons granted fiscal identification numbers and social security numbers.

⁴⁴⁸ Article 60(1) Asylum Act.

⁴⁴⁹ Article 60(3) Asylum Act.

⁴⁵⁰ Article 60(5) Asylum Act.

asylum seeker is entitled to appeal the decision under these grounds before an Administrative Court,⁴⁵¹ with suspensive effect,⁴⁵² and may benefit from free legal aid to that end.⁴⁵³ Reception conditions reduced or withdrawn pursuant to grounds (a) to (c) above can be reinstated if the asylum seeker is found or presents him/herself to the authorities.⁴⁵⁴

CPR is not aware of the adoption of any decision to reduce or withdraw material reception conditions of asylum seekers in the regular procedure under these grounds in 2019. ISS was not able to provide data on the number of reduction or withdrawal decisions and on the number of asylum seekers in the regular procedure that abandoned *proprio motu* the support provided. SCML reported that, from a total of 707 referred persons, 99 abandoned *proprio motu* the support. It cannot be excluded that, in certain instances, such abandonments may be linked to poor living standards offered by material reception conditions.⁴⁵⁵

According to the information available to CPR the absconding of spontaneous and relocated asylum seekers was not followed by formal decisions of reduction or withdrawal of material reception conditions, thus rendering irrelevant the issue of reinstatement of reception conditions provided in the law. In the case of relocation, asylum seekers who have absconded and later transferred back to Portugal in accordance with the Dublin Regulation are systematically provided reception conditions upon arrival either by the initial reception service provider, or by a different service provider.

Nevertheless, according to information shared by SEF, the provision of reception conditions was ceased for 123 applicants who had failed to present themselves for the purpose of Dublin transfers in 2019. CPR is not aware of the issuance of formal decisions in such cases.

The law does not provide for specific sanctions for seriously violent behaviour or serious breaches of the rules of accommodation centres and other housing provided in the framework of material reception conditions. Nevertheless, service providers are required to adopt adequate measures to prevent violence, and notably sexual and gender-based violence.⁴⁵⁶ In the case of **CAR**, both the Regulation of the centre and the individual contract signed between CPR and the asylum seeker include specific prohibitions of abusive and violent behaviour that can ultimately result in withdrawal of support following an assessment of the individual circumstances and taking into consideration the vulnerability of the applicant.⁴⁵⁷ In the case of **CACR**, while the Regulation contains similar prohibitions and age appropriate sanctions,⁴⁵⁸ the accommodation of unaccompanied children stems from and can only be reviewed by the competent Family and Juvenile Court in the framework of the Children and Youths at Risk Protection Act (see [Legal Representation of Unaccompanied Children](#)).

In practice, without prejudice to criminal proceedings where relevant, instances of withdrawal of support from CPR following abusive and/or violent behaviour in breach of internal rules remain a rare event. For most cases, the consequences consist of transfer into private accommodation to ensure the security and well-being of the remaining residents. In the case of unaccompanied children, Family and Juvenile Courts

⁴⁵¹ Article 60(8) Asylum Act.

⁴⁵² Articles 63(1) and 30(1) Asylum Act.

⁴⁵³ Article 63(2) Asylum Act.

⁴⁵⁴ Article 60(4) Asylum Act.

⁴⁵⁵ The rate of absconding in the relocation programme from 2015 to 2017 was also quite significant. See, for instance: Público, 'Quase metade dos 1500 refugiados que chegaram já deixou Portugal', 16 October 2017, available in Portuguese at: <http://bit.ly/2j8gF7J>; News Deeply, 'Portugal Offers Refugees a Warm Welcome, but Can't Get Them to Stay', 1 September 2017, available at: <http://bit.ly/2gMuHdW>. According to the evaluation report of the relocation programme, on 28 November 2017 the overall rate of absconding stood at 45%: ACM, *Relatório de Avaliação da Política Portuguesa de Acolhimento de Pessoas Refugiadas, Programa de Recolocação*, December 2017.

⁴⁵⁶ Article 59(1)(e) Asylum Act.

⁴⁵⁷ The contract is currently available *inter alia* in Portuguese, English, French and is otherwise interpreted to the client if not available in a language that he understands.

⁴⁵⁸ These include, by order of increasing severity, an oral warning; a reprimand; to execute a repairing task; reduction of pocket money; limitation of authorisations to leave the CACR; restriction of ludic and pedagogical activities, notably with fellow children; and transfer to another institution.

generally prioritise the stability of the living environment,⁴⁵⁹ and are extremely reluctant to uproot the child by transfer into another institution.

4. Freedom of movement

Indicators: Freedom of Movement

1. Is there a mechanism for the dispersal of applicants across the territory of the country? ☒ Yes ☐ No
2. Does the law provide for restrictions on freedom of movement? ☐ Yes ☒ No

The Asylum Act does not contain specific restrictions on the freedom of movement or grounds for residence assignment but provides for the duty of asylum seekers to keep SEF informed of their place of residence.⁴⁶⁰ Furthermore, the authorities may decide to transfer the asylum seekers from housing facilities when needed for an adequate decision-making process regarding the asylum application or to improve housing conditions.⁴⁶¹

Since 2012, the operational framework for the reception of asylum seekers in Portugal provides for a dispersal mechanism (see [Criteria and Restrictions to Access Reception Conditions](#)). Following the admissibility procedure and admission to the regular procedure, or if the application is deemed inadmissible or rejected in an accelerated procedure, the asylum seeker is generally referred by frontline service providers such as CPR to the GTO, using a standard individual monitoring report. The GTO meets at least once a month to discuss individual cases and decides on the provision of material reception conditions in the regular procedure (generally by ISS) or at appeal stage (by SCML) on the basis of the report and in accordance to existing reception capacity nationwide. This can either result in a dispersal decision implemented by local Social Security services for those admitted to the regular procedure or their placement in private housing in the **Lisbon** area under the responsibility of SCML for those who have appealed the rejection of their application.

In practice, according to the statistics shared by the ISS, as of December 2019 there were a total of 1,346 spontaneous applicants and beneficiaries of international protection – including relocated persons – who benefited from ISS material support, residing in the following areas:

Dispersal of applicants and beneficiaries of international protection receiving ISS support	
Area	Number
Lisbon	504
Porto	185
Coimbra	111
Santarém	84
Castelo Branco	82
Braga	63
Guarda	57
Setúbal	56
Évora	39
Viseu	30
Portalegre	27
Vila Real	26
Viana do Castelo	21

⁴⁵⁹ Article 78(2)(e) Asylum Act provides for stability of housing as a contributing factor to upholding the best interests of the child.

⁴⁶⁰ Article 15(1)(f) Asylum Act.

⁴⁶¹ Article 59(2) Asylum Act.

Beja	19
Leiria	13
Aveiro	11
Bragança	10
Faro	8
Total	1,346

Source: ISS.

Most asylum seekers and beneficiaries of international protection receiving material reception conditions from ISS in 2019 resided in **Lisbon**. Additionally, SCML supported a total of 931 individuals (including cases from 2018), all of whom resided in Lisbon or in nearby districts due to difficulties in accessing the housing market in Lisbon (see [Types of Accommodation](#)).

There is some flexibility in the implementation of the dispersal policy. According to ISS, asylum seekers admitted to the regular procedure may request a review of their dispersal decision and their accommodation in a particular area where accommodation, education, employment and/or health related grounds justify an exception (e.g. regarding unaccompanied children enrolled in schools, asylum seekers who are employed at the time of the decision or particularly vulnerable asylum seekers who benefit from specialised medical care in Lisbon, see [Responsibility for Reception](#)). Otherwise, the refusal to accept the dispersal decision by failing to report to the local Social Security service or abandoning its support following the dispersal decision will generally result in the withdrawal of material reception conditions. According to the information available to CPR, once the dispersal decision is made by the GTO, asylum seekers are not subjected to onward dispersal decisions resulting in their move from the initial District of assignment.⁴⁶²

Even though no research has been conducted to date to assess the impact of the dispersal policy, according to the information collected by CPR, the main concerns raised by asylum seekers include isolation, lack of interpreters and specialised mental health care, difficulties in accessing specialised legal assistance, including that provided by CPR due to the geographical distance, and lack of tailor-made integration services such as language training and vocational training. In this regard, ISS reported that its caseworkers continue to work with asylum seekers to overcome such obstacles.

B. Housing

1. Types of accommodation

Indicators: Types of Accommodation

1. Number of reception centres: 2
2. Total number of places in the reception system: 65
3. Total number of places in private accommodation (incl. beneficiaries): Not available
4. Type of accommodation most frequently used in a regular procedure:
☐ Reception centre ☐ Hotel or hostel ☐ Emergency shelter ☒ Private housing ☐ Other
5. Type of accommodation most frequently used in an accelerated procedure:
☒ Reception centre ☒ Hotel or hostel ☐ Emergency shelter ☐ Private housing ☒ Detention

As mentioned in [Freedom of Movement](#), asylum seekers are generally referred by frontline service providers to the GTO following admission to the regular procedure or in the case of appeals against

⁴⁶² It should be noted that in accordance to Article 59(2) Asylum Act, decisions ordering the transfer of asylum seekers from housing facilities can only occur when needed for an adequate decision-making process regarding the asylum application or to improve housing conditions.

negative decisions. At this point the provision of housing is relayed by either local Social Security services for the duration of the regular procedure or by SCML in the Lisbon area at appeal stage.

According to information provided by ISS, asylum seekers are mostly provided with private housing (rented flats/houses and rooms) without prejudice to accommodation provided by relatives in Portugal and collective accommodation such as hotels or non-dedicated reception centres e.g. emergency shelters, nursing homes, etc. In the case of SCML, the provision of housing consists mostly of accommodation in private rooms in the Lisbon area. A very limited number of asylum seekers are sometimes referred to homeless shelters managed by the organisation on a temporary basis to address specific vulnerabilities.

In the current reception system, adults and families with children are accommodated at CPR's Refugee Reception Centre (**CAR**) or in private accommodation provided by CPR (rooms in private apartments or hostels) during admissibility (including Dublin) and accelerated procedures on the territory. In the case of unaccompanied children, CPR's Refugee Children Reception Centre (**CACR**) offers appropriate housing and reception conditions during the regular procedure and at appeal stage.

Capacity and occupancy of the asylum reception system		
Centre	Capacity	Occupancy at 31 December 2019
CAR	52	74
CACR	13	27
Total	65	101

Source: CPR.

CAR is an open reception centre located in **Bobadela**, Municipality of Loures, and operates in the framework of MoUs with the Ministry of Home Affairs and the Ministry of Labour, Solidarity and Social Security. Renovation works in the premises were concluded in March 2019. The official capacity of the CAR stands at 52 places but, in practice, the centre can accommodate up to 80 persons due to the recent renovation work. In 2019, CPR provided reception assistance to a total of 1,866 asylum seekers,⁴⁶³ of which only 12% were accommodated at CAR, 82% in alternative private accommodation (including rooms in private apartments and hostels), and the remaining 6% with friends / family. The significant number of applicants for international protection in alternative private accommodation reflects the pressure over the reception capacity and was also noted with concern by CRESCER.

CPR ensures accommodation until ISS or SCML take over and asylum seekers only leave its facilities when alternative accommodation is secured (see [Responsibility for Reception](#)).

The significant increase in the number of referrals from SEF meant that overcrowding in CAR persisted throughout the year. Aggravating factors included the fact that CAR was partially closed for renovation works and that despite the existing arrangements, asylum seekers who have appealed the rejection of their application at the border are systematically referred to the centre upon release for purposes of transitional accommodation during the referral process to the GTO. Furthermore, the transition into private accommodation provided by SCML as per the existing arrangements has experienced significant delays throughout the year. Along with the difficulties faced by asylum seekers in finding private housing due to the lack of available properties and increased market prices all these factors contributed to stays in CPR's CAR or private accommodation of up to 6 months.

In 2019, CPR had to suspend the provision of reception of new adult applicants (with the exception of particularly vulnerable applicants such as pregnant women and families with children) between the end of August and October due to overcrowding of CAR and cash flow issues impairing reception in hostels and private accommodation. Applicants arriving within that period were provided accommodation directly

⁴⁶³ Including applicants for international protection whose applications were lodged before 2019.

by SEF in hotels in different parts of the country. During such period, a constructive dialogue between CPR and the Government was maintained, with both parties working towards solutions.

CACR, on the other hand, is an open reception house for unaccompanied asylum-seeking children located in **Lisbon** that operates since 2012 in the framework of MoUs with the Ministry of Home Affairs, the Municipality of Lisbon and the Ministry of Labour, Solidarity and Social Security. The official capacity stands at 13 places, and, in 2019, CPR provided housing at CACR to a total of 78 unaccompanied children. In order to address overcrowding in the facility, CPR revisited its accommodation policy for unaccompanied children during the year. While some were provisionally accommodated at CAR due to shortage of places at CACR, young applicants at more advanced stages of the integration process were transferred from CACR to CAR II in a process of progressive autonomy. In 2019, CPR thus accommodated a total of 103 unaccompanied children.

Following steady increases in the number of asylum applications in recent years, CPR has established a new reception centre with the financial support of the Council of Europe Development Bank and in partnership with the Ministry of Home Affairs. The new Reception Centre for Refugees (**CAR II**) is located in S. João da Talha, Municipality of **Loures**, has a maximum capacity of 90 places, of which 30 are dedicated to unaccompanied children. The remaining 60 places are dedicated to the transitory accommodation of resettled refugees. The new centre was inaugurated in December 2018 and started to operate in 2019.⁴⁶⁴

In the particular case of asylum seekers arriving through relocation, the hosting organisations offered an initial 18-month support programme – 24-month in the case of PAR – that generally included housing in kind either in private accommodation rented by the hosting organisation or in collective accommodation such as reception centres for vulnerable populations. Since 2016, CPR has established MoUs with 23 municipalities and institutions for the reception of up to 395 relocated asylum seekers that for the most part benefited from rented accommodation. In February 2016, the Lisbon Municipality inaugurated a Temporary Reception Centre for Refugees (*Centro de Acolhimento Temporário para Refugiados*, **CATR**) that provides transitory reception to relocated asylum seekers. The CATR has a capacity of 26 places and is complemented by temporary accommodation in private housing supervised by designated operational partners.

2. Conditions in reception facilities

Indicators: Conditions in Reception Facilities

1. Are there instances of asylum seekers not having access to reception accommodation because of a shortage of places? ☐ Yes ☒ No
2. What is the average length of stay of asylum seekers in the reception centres?
 - ❖ Adults 150 days
 - ❖ Unaccompanied children 174 days
3. Are unaccompanied children ever accommodated with adults in practice? ☒ Yes ☐ No

The main form of accommodation used during admissibility, including Dublin, and accelerated procedures on the national territory are CPR's (funded) private accommodation and reception centres. As regards the regular procedure and in the case of relocation, private accommodation is usually used (see [Types of Accommodation](#)). There is currently no regular monitoring of the reception system.

ISS is among the competent authorities for the licensing, the monitoring and the provision of technical support to the operation of reception centres for asylum seekers.⁴⁶⁵ The applicable rules to collective accommodation facilities have been laid down by ISS regarding temporary reception centres for children

⁴⁶⁴ See CPR, 'Novo Centro de Acolhimento para Refugiados (CAR II)', 19 December 2018, available in Portuguese at: <https://bit.ly/2RQDr3C>.

⁴⁶⁵ Decree-Law No 64/2007.

at risk (such as CACR).⁴⁶⁶ Furthermore, the law provides for specific standards regarding housing in kind for asylum seekers,⁴⁶⁷ and children at risk such as unaccompanied children.⁴⁶⁸ The specific material reception standards relevant to CAR and CACR are foreseen in the underlying bilateral MOUs (see [Types of Accommodation](#)) and their internal regulations.

CAR is composed of shared rooms with dedicated bathrooms/toilets and is equipped to accommodate asylum seekers with mobility constraints, e.g. it includes a lift and adapted bathrooms/toilets. The residents are expected to cook their own meals in a communal kitchen and have access to common fridges and cupboards. The centre also has a laundry service, a playground, a day-care/kindergarten for resident and local community children, as well as a library connected to the municipal library system and a theatre/event space that can be rented out. The centre provides psychosocial and legal assistance, Portuguese language training, socio-cultural activities, as well as job search support (see [Access to the Labour Market](#)). Logistical support staff is present 24 hours a day and the overall cleaning of the centre is carried out by a private company, though the residents are expected to contribute to the cleaning of their room and the common kitchen.

The average stay at the CAR was of around 5 months as ongoing problems in the transition into private housing provided by the ISS and SCML tend to extend the stay well beyond the duration of the admissibility (including Dublin) and accelerated procedures on the national territory (see [Types of Accommodation](#)). The official capacity stands at 52 places. However, existing gaps in centralised reception capacity have resulted in chronic overcrowding that has been partially averted by resorting to the private housing market (hostels, rooms, apartments) usually in the Municipality of **Loures** and **Lisbon** but more recently also in other municipalities (e.g. **Torres Vedras**, **Setúbal**) due to shortages in available private accommodation for asylum seekers in the Lisbon district area.

Despite the continuous efforts to accommodate specific needs both at CAR and in external accommodation, systematic overcrowding and renovation works have put severe strains on the living conditions and the access to adequate services. Available staff remains significantly insufficient to address existing needs. This results *inter alia* in conflicts in the use of the common kitchen and storing spaces, tensions with other residents, thefts, and gaps on access to services such as social and legal assistance or socio-cultural activities.⁴⁶⁹ Since September 2019, a community intervention specialist works directly with families to ensure access to support activities.

As mentioned in [Types of accommodation](#), CPR had to suspend the provision of reception of new adult applicants (with the exception of particularly vulnerable applicants such as pregnant women and families with children) between the end of August and October 2019 due to overcrowding of CAR and cash flow issues hindering reception in hostels and private accommodation.

CACR is also composed of shared rooms with dedicated bathrooms/toilets and is equally equipped to accommodate asylum seekers with mobility constraints. A resident cook is responsible for the provision of meals in line with the nutritional needs of children, although children are sometimes allowed to cook their own meals under supervision. The centre also has a laundry service, a playground and a small library, and provides psychosocial and legal assistance, Portuguese language training and socio-cultural

⁴⁶⁶ These rules are contained among others in technical guidelines that provide for quality standards on issues such as capacity, duration of stay, composition and technical skills of staff, hygiene and security standards, location and connectivity, access to the building, construction materials, composition and size of the building, internal regulation, personal integration plans, activities planning, reporting and evaluation etc. An earlier version from 1996 is available at: <http://bit.ly/2meygMC>. According to the information available at: <http://bit.ly/2mljDHo>, the ISS has also adopted quality standards for other temporary reception centres (such as the CAR and the CATR) contained in technical guidelines dated 29 November 1996 (unpublished).

⁴⁶⁷ Article 59 Asylum Act: protection of family life, including the unity of children and parents / legal representatives; right to contact relatives and representatives of UNHCR and CPR; adoption of adequate measures by the management of the facility to prevent violence, and notably sexual and gender-based violence.

⁴⁶⁸ Articles 52-54 Children and Youth at Risk Protection Act.

⁴⁶⁹ Italian Council for Refugees *et al.*, *Time for Needs: Listening, Healing, Protecting*, October 2017, available at: <http://bit.ly/2xZqCGh>.

activities. Children accommodated at CACR are systematically enrolled in local schools or in vocational training programmes. In 2019, the staff of CACR included a social worker, a social educator and support staff, who further receive support from legal officers and a language trainer. There is also logistical support staff present 24 hours a day to ensure the overall functioning of the centre.

CACR offers unaccompanied children appropriate housing and reception conditions for an average stay period of 174 days, regardless of the stage of the asylum procedure. The official capacity stands at 13 places but the existing gap in specialised reception capacity has also resulted in overcrowding that has been partially averted by: changing arrangements in rooms to expand capacity while preserving adequate accommodation standards; resorting to separate accommodation of unaccompanied children above the age of 16 at the **CAR and CAR II**, supervised by the Family and Juvenile Court; and, depending on the individual circumstances, promoting the placement of children above the age of 16 in supervised private housing by decision of the Family and Juvenile Court in line with the protective measures enshrined in the Youths at Risk Protection Act.⁴⁷⁰

Although living conditions remain adequate, overcrowding puts a strain on the timing and the quality of support provided. In order to address overcrowding in the facility, CPR revisited its accommodation policy for unaccompanied children in 2019. While some were provisionally accommodated at CAR due to shortage of places at CACR, young applicants at more advanced stages of the integration process were transferred from CACR to CAR II in a process of progressive autonomy.

A relevant concern is absconding, which concerned a total of 29 out of 103 (28%) unaccompanied children accommodated by CPR in 2019⁴⁷¹ and the subsequent risk of human trafficking (see [Special Reception Needs](#)). In 2019, CACR's team continued to report cases where unaccompanied children were suspected to be victims of human trafficking to the Observatory on Trafficking in Human Beings.

As mentioned in [Freedom of Movement](#), no research has been conducted to date on the impact of the dispersal component of the reception policy implemented by the GTO. According to information collected by CPR, there have not been systemic problems regarding the quality of private housing provided upon dispersal. However, there are difficulties in securing private housing in the **Lisbon** area with conditions that are up to the standard. More recently, the lack of affordable housing in other areas of the country has been also reported by the entities involved in the provision of reception conditions to applicants for international protection.

C. Employment and education

1. Access to the labour market

Indicators: Access to the Labour Market

- | | |
|--|--|
| 1. Does the law allow for access to the labour market for asylum seekers?
❖ If yes, when do asylum seekers have access the labour market? | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
7-30 days |
| 2. Does the law allow access to employment only following a labour market test? | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |
| 3. Does the law only allow asylum seekers to work in specific sectors?
❖ If yes, specify which sectors: | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |
| 4. Does the law limit asylum seekers' employment to a maximum working time?
❖ If yes, specify the number of days per year | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |
| 5. Are there restrictions to accessing employment in practice? | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |

⁴⁷⁰ Act 147/99.

⁴⁷¹ These figures include unaccompanied children who applied for asylum before 2019.

The Asylum Act provides for the right of asylum seekers to access the labour market following admission to the regular procedure and the issuance of a provisional residence permit.⁴⁷² In case of admission to the regular procedure, access to the labour market can therefore be granted after 7 days in the context of the border procedure or after 10 to 30 days in procedures on the territory.⁴⁷³ Furthermore, asylum seekers entitled to access the labour market can also benefit from support measures and programmes in the area of employment and vocational training under specific conditions to be determined by the competent Ministries.⁴⁷⁴

There are no limitations attached to the right of asylum seekers to employment such as labour market tests or prioritisation of nationals and legally resident third country nationals. The issuance and renewal of provisional residence permits by SEF, which clearly state the right to employment,⁴⁷⁵ are free of charge.⁴⁷⁶ The only restriction on employment enshrined in the law consists in limiting access to certain categories of the public sector for all third-country nationals.⁴⁷⁷

Asylum seekers benefit from the same conditions of employment as nationals, including regarding salaries and working hours.⁴⁷⁸ The law provides, however, for specific formalities in the case of employment contracts of third-country nationals such as the need for a written contract and its (online) registration with the Authority for Labour Conditions (*Autoridade para as Condições do Trabalho*, ACT).⁴⁷⁹

With the exception of the submission of beneficiaries of international protection to the same conditions applicable to Portuguese nationals,⁴⁸⁰ there are no specific rules regarding the recognition of diplomas and academic qualifications in the Asylum Act. The general rules for the recognition of foreign qualifications at primary, lower and upper secondary levels include conditions that are particularly challenging for asylum seekers and beneficiaries of international protection,⁴⁸¹ such as:

- The presentation of diplomas,⁴⁸² and, eventually, of additional supporting documents;⁴⁸³
- The presentation of duly translated and legalised documents;⁴⁸⁴
- In the absence of such documents, a sworn statement issued by the applicant or his/her parents or legal guardian accompanied by a statement from an Embassy or a reception organisation related to the country of origin confirming exceptional individual circumstances;⁴⁸⁵ and
- The completion of a competency examination.⁴⁸⁶

To address these challenges, in 2016, the Directorate-General for Education (DGE) issued a circular letter in the framework of the relocation programme regarding the recognition of foreign academic qualifications at primary, lower and upper secondary education levels. Its scope was later extended to all asylum seekers and beneficiaries of international protection.⁴⁸⁷ While these guidelines clarify who may issue statements confirming exceptional individual circumstances and exempt asylum seekers and beneficiaries of international protection from translating and legalising diplomas, the other conditions remain applicable. Moreover, the guidelines are applicable only to children and young adults, given that,

⁴⁷² Articles 54(1) and 27(1) Asylum Act.

⁴⁷³ The 10 days correspond to the time limit of admissibility decisions in subsequent applications and applications following a removal order (on the territory) and the 30 days to the remaining admissibility procedures in the territory: Articles 33(4)-(5), 33-A (5) and 20(1) Asylum Act.

⁴⁷⁴ Article 55 Asylum Act.

⁴⁷⁵ Ministerial Order 597/2015.

⁴⁷⁶ Article 84 Asylum Act.

⁴⁷⁷ Article 15(2) Constitution and Article 17(1)(a) and (2) Act 35/2014.

⁴⁷⁸ Article 4 Labour Code.

⁴⁷⁹ Article 5 Labour Code.

⁴⁸⁰ Article 70(3) Asylum Act.

⁴⁸¹ Decree-Law 227/2005.

⁴⁸² Article 7(2) Decree-Law 227/2005.

⁴⁸³ Article 7(4) Decree-Law 227/2005.

⁴⁸⁴ Article 7(2) Decree-Law 227/2005.

⁴⁸⁵ Article 10(1) and (2) Decree-Law 227/2005.

⁴⁸⁶ The content of the examination varies according to the level of education and the curriculum, but always includes a Portuguese as a Second Language. See Article 10(5) and (6) Decree-Law 227/2005.

⁴⁸⁷ DGE, *Agenda Europeia para as Migrações - medidas a implementar no sistema educativo*, 1 March 2016, available in Portuguese at: <http://bit.ly/2jqFkok> and DGE, *Crianças e jovens refugiados - medidas a implementar no sistema educativo*, 21 October 2016, available in Portuguese at: <http://bit.ly/2z0dgzf>.

in accordance to the law, the competences of the DGE are limited to the primary, lower and upper secondary education levels.

There are no statistics available on the number of asylum seekers in employment at the end of 2019. The Employment and Vocational Training Institute (Instituto do Emprego e Formação Profissional, IEFP),⁴⁸⁸ was not able to provide data on applicants and beneficiaries of international protection registered in their services for 2019.

In the context of relocation, ISS shared in 2017 provisional information concerning asylum seekers who were reaching the end of the 18-month integration programme according to which a third of those in working age who have remained in the country had secured employment since arriving in Portugal.⁴⁸⁹ In this regard, a total of 31 out of the 146 relocated asylum seekers hosted by CPR who remained in Portugal had secured paid employment as of October 2017.

According to CPR's experience, asylum seekers and beneficiaries of international protection face many challenges in securing employment that are both general and specific in nature.

Even though the economic situation of the country has improved from pre-crisis levels, in October 2019 the unemployment rate still stood at around 6.5% for the general working population.⁴⁹⁰ This adverse context is compounded by specific fragilities that include poor language skills and professional skills that are misaligned with the needs of employers.

Challenges of a more bureaucratic nature include: difficulties in obtaining recognition of diplomas as described above which are particularly relevant for regulated professions; lack of a social security identification number (*Número de Identificação da Segurança Social*, NISS) at the time of application and bureaucratic difficulties in the issuance of a NISS on the basis of the temporary residence permit; or the provisional residence permit stating not to be an identification document.⁴⁹¹ As a result, employers are sometimes reluctant to hire asylum seekers. Additional challenges include the lack of support network, limited knowledge about the labour market and cultural norms, as well as the competition in the labour market, among others. In the particular case of victims of torture and/or serious violence, these include specific vulnerabilities related to health, mental health and high levels of anxiety related to the uncertainty of the asylum procedure, separation from relatives, and financial instability that hinder the ability to focus on a medium-long term individual integration process (see [Special Reception Needs](#)).

CPR provides literacy and Portuguese language training free of charge to asylum seekers who are accommodated at **CAR**, **CACR**, in private housing provided by the institution, and to asylum seekers and beneficiaries of international protection assisted by other institutions that live nearby CPR's facilities or that can easily reach them. This training includes a sociocultural element, with activities inside and outside the classrooms, aiming to promote integration in the hosting society.

Asylum seekers are able to register with IEFP to access to Portuguese language training in the framework of the programme "Portuguese for All" (*Português para Todos*), an initiative of the Ministry of Employment, Solidarity and Social Security and the Ministry of Education,⁴⁹² which is managed by ACM and funded by the European Social Fund. *Português para Todos* offers certified language training modules delivered by public schools and training centres of IEFP corresponding to A2 (150 hours) and B2 (150 hours) levels as well as technical Portuguese language training (25 hours) in areas such as business, hotel and tourism,

⁴⁸⁸ The Employment and Vocational Training Institute (IEFP) is the public service responsible for employment at national level. For more information, see the official website available in Portuguese at: www.iefp.pt.

⁴⁸⁹ See Working Group on the European Agenda on Migration, 'Quase 30 por cento dos refugiados inseridos no mercado de trabalho', 26 September 2017, available in Portuguese at: <http://bit.ly/2A1ypZM>.

⁴⁹⁰ Eurostat, 'Euro area unemployment at 7.5%', 29 November 2019, available at: <https://bit.ly/2SWEclQ>.

⁴⁹¹ Ministerial Order 597/2015.

⁴⁹² Ministerial Order 1262/2009 and Ministerial Order 216-B/2012.

beauty care, civil construction and engineering. ACM also funds informal language trainings, that are delivered by municipalities and civil society organisations, including CPR.⁴⁹³

In 2019, CPR provided certified language training at levels to asylum seekers and refugees, as well as literacy and complementary language training for children enrolled in schools. Available language training following admission to the regular procedure consisted mostly of A1-A2 *Português para Todos* language training that is tailored for more advanced users, who are familiar with the Latin alphabet and is therefore not necessarily tailored to asylum seekers and beneficiaries of international protection who may present low levels of education / illiteracy / poor knowledge of the Latin alphabet. Overall, opportunities for alphabetic training for foreigners remained very limited. Furthermore, available *Português para Todos* language training at B1 and B2 levels remained limited according to the experience of CPR's Professional Insertion Cabinet (GIP), thus hindering further employment of asylum seekers and refugees.

Such programmes were available at national level in public schools and training centres following registration with and referral from IEFP employment centres or ANQEP Centres (*Centros Qualifica*),⁴⁹⁴ registration with schools or with ACM. It should be noted that these require putting together groups of a minimum size, which constitutes an additional challenge in certain locations given the current dispersal policy (see [Freedom of Movement](#)). In March 2016, ACM launched an [Online Platform for Portuguese](#) to promote informal learning of Portuguese. The modules are currently available in Arabic in order to tackle the needs of the asylum seekers.

CPR's Professional Insertion Cabinet (GIP), which operates at CAR since 2001 in the framework of a MoU with IEFP, offers individual assistance and training sessions on job search techniques, recognition procedures, search and referrals to vocational training and volunteering opportunities. In 2018, CPR also provided support to 200 refugees and asylum seekers in 17 municipalities throughout the country in the framework of an EU funded project. The implemented activities included detailed analysis of individual profiles, individual counselling, group training sessions on job-search and soft skills and engagement with employers to advocate for inclusive recruiting policies and provide post-hiring support to both refugees and employers.⁴⁹⁵

Other organisations that provide similar employment assistance to spontaneous asylum applicants, and, more recently, to relocated asylum seekers, include JRS that also offers a robust employability programme in partnership with private sponsors as well as personal skills training and vocational training in areas such as food retail, domestic services, geriatric care, food and beverage, hostels or child care.⁴⁹⁶

Upon admission to the regular procedure, asylum seekers can also register as "job applicants" with the IEFP, being able to search for jobs, and benefit from vocational training and assistance.

In this regard, IEFP has included asylum seekers admitted to the regular procedure and beneficiaries of international protection among the target population of some of its employability support measures. These include the Measure for Professional Internships (*Medida Estágios Profissionais*)⁴⁹⁷ that provides for 9 month paid internships without requiring prior recognition procedures or academic diplomas; and the Measure Employment Contract (*Medida Contrato Emprego*)⁴⁹⁸ that provides financial incentives to employers which recruit employees for 12 months or longer under the obligation to provide them with vocational training. IEFP did not share statistics regarding the implementation of such measures in the case of asylum seekers and beneficiaries of international protection.

⁴⁹³ For more information on these programmes see ACM, *Learning of the Portuguese Language*, available at: <http://bit.ly/2iqmXQg>.

⁴⁹⁴ Ministerial Order 232/2016.

⁴⁹⁵ For more information, see CPR, *Começar de Novo*, available in Portuguese at: <https://bit.ly/2TSaAcs>.

⁴⁹⁶ For 2018, see JRS, *Projecto Integra +*, available in Portuguese at: <https://bit.ly/2MXK6EE>, which provided support to 22 trainees, of whom 19 were able to secure employment by the end of the 5-month programme.

⁴⁹⁷ IEFP, *Estágios*, available in Portuguese at: <https://bit.ly/2qrvy5n>.

⁴⁹⁸ IEFP, *Apoios à contratação*, available in Portuguese at: <https://bit.ly/2YfGp26>.

Regarding vocational training, the low level of language skills associated with the lack of diplomas and/or challenging recognition procedures described above, render access to vocational training offered by IEFP and its partners within the public system challenging to most asylum seekers and beneficiaries of international protection while vocational training in the private sector is generally unaffordable. In this regard, as of 2018 asylum seekers admitted to the regular procedure and beneficiaries of international protection whose diplomas and academic qualifications have not been recognised in the Portuguese educational system are registered by IEFP as “literate users” in the SIGO platform.⁴⁹⁹ Other than Portuguese language training courses in the framework of the programme “Portuguese for All” (*Português para Todos*), such registration only provides access to (a) modular training⁵⁰⁰ at basic education level; (b) training in basic skills (reading, writing, calculation and information and communication technologies) in preparation for EFA Courses; and (c) Education and Training Courses for Adults (*Cursos de Educação e Formação para Adultos*, EFA) with equivalence to the 4th or 6th year of basic education or a professional certificate.⁵⁰¹ Neither modular training nor training in basic skills entail an academic certification.

In the context of relocation, ACM has created a Refugee Support Unit as well as tailored services within the National and Local Support Centres for the Support of Migrants (*Centros Nacionais e Locais de Apoio à Integração de Migrantes*, CNAIM/CLAIM) to support asylum seekers (e.g. hiring a permanent Arabic-speaking intercultural mediator, promoting entrepreneurship training for refugees). A number of services, such as free legal support and information on employment, training and recognition of qualifications, provided by multiple institutions, are available at CNAIM, a space also known as one-stop-shop. ACM has also launched the [Refujobs](#) online platform, that aims to match potential employers and asylum seekers and beneficiaries of international protection looking for employment as well as to build their capacity for self-employment. In 2018, ACM and the Institute of Tourism (*Instituto do Turismo*) have provided certified vocational training in the framework of a bilateral Memorandum of Understanding.⁵⁰²

2. Access to education

Indicators: Access to Education

- | | |
|--|---|
| 1. Does the law provide for access to education for asylum-seeking children? | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |
| 2. Are children able to access education in practice? | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |

The Asylum Act provides for the right of asylum-seeking children to public education under the same conditions as nationals and third-country nationals whose mother tongue is not Portuguese.⁵⁰³ This right cannot be curtailed if the asylum seeker reaches adulthood while already attending school to complete secondary education.⁵⁰⁴ The Ministry in charge of education retains sole responsibility to ensure the right of children to education.⁵⁰⁵

Enrolment in schools at primary, lower and upper secondary education levels requires a procedure for the recognition of foreign academic qualifications, but children must be granted immediate access to schools and classes while that procedure is pending.⁵⁰⁶ Given that asylum seekers are rarely in possession of duly legalised diplomas and other supporting documents, the procedure generally entails a placement test conducted by the school that takes into consideration the age and school year of the

⁴⁹⁹ Integrated Information and Management System for Education and Training Courses (*Sistema Integrado de Informação e Gestão da Oferta Educativa e Formativa*, SIGO) which contains a national catalogue of education and training courses offered by training institutions at national level and the certification of individual trainees: DGEEC, ‘Sobre o Sistema Integrado de Informação e Gestão da Oferta Educativa e Formativa’, 3 July 2017, available in Portuguese at: <https://bit.ly/2uok84C>.

⁵⁰⁰ Modular training aims to refresh and improve the practical and theoretical knowledge of adults and improve their educational and vocational training levels. For more information see IEFP, *Formação Modular*, available in Portuguese at: <https://goo.gl/aCPTXi>.

⁵⁰¹ IEFP, *Cursos de Educação e Formação para Adultos (Cursos EFA)*, available in Portuguese at: <https://bit.ly/2HCey7a>.

⁵⁰² ACM, ‘Terminou o primeiro curso em Cozinha/Restaurante para pessoas refugiadas’, 21 May 2018, available in Portuguese at: <https://bit.ly/2WQvKdo>.

⁵⁰³ Article 53(1) Asylum Act.

⁵⁰⁴ Article 53(2) Asylum Act.

⁵⁰⁵ Article 61(4) Asylum Act.

⁵⁰⁶ Article 8(5) Decree-Law 227/2005.

applicant.⁵⁰⁷ In accordance with the law, schools should offer children in these conditions appropriate pedagogical support to overcome their difficulties on the basis of an individual diagnosis, notably regarding their Portuguese language skills.⁵⁰⁸

In 2016, DGE issued a circular letter which grants schools *inter alia* with increased autonomy for adapting pedagogical activities to the specific needs of asylum seekers and beneficiaries of international protection; e.g. by focusing on Portuguese language learning for non-native speakers (*Português Língua Não Materna*, PLNM) and providing additional resources for that purpose (see [Access to the Labour Market](#)).⁵⁰⁹ Such adaptations include a progressive convergence with the regular curriculum by temporarily exempting students from certain subjects and additional Portuguese language classes. The guidelines also clarify the entitlement of asylum seekers and beneficiaries of international protection to the various modalities of social assistance available to students enrolled in the public education sector for the purposes of food, accommodation, financial assistance and school supplies.⁵¹⁰ In 2018, the national curriculum in public and private schools regarding primary, lower and upper secondary education levels further enshrined the principle of access to Portuguese language learning for non-native speakers both in the framework of academic and vocational curricula.⁵¹¹

Regarding higher education, the Government introduced the “student in an emergency situation for humanitarian reasons” status in 2018,⁵¹² following a review of the Portuguese educational system by the Organisation for Economic Co-operation and Development (OECD).⁵¹³ The status can be claimed by any non-Portuguese or EU student who originates from a region affected by armed conflict, natural disaster, generalised violence or human rights violations requiring a humanitarian response.⁵¹⁴ According to the law, beneficiaries of international protection as well as asylum seekers admitted to the regular procedure under the Asylum Act are entitled to the status by operation of law.⁵¹⁵ Students with “emergency situation for humanitarian reasons” status are entitled to alternative procedures for assessing entry conditions in the absence of documentation such as diplomas,⁵¹⁶ equal treatment to Portuguese students regarding university fees and other levies,⁵¹⁷ and full access to social assistance available to higher education students.⁵¹⁸ It should be noted that the new rules do not address the issue of access to entry visas for eligible students living abroad.⁵¹⁹

In practice, accompanied and unaccompanied children are systematically referred to public schools upon accommodation at **CAR** and **CACR** or contact with CPR’s social workers. According to the experience of the organisation, enrolment in local public schools is generally guaranteed within a reasonable period, although the placement of students in secondary education (i.e. over the age of 15) can be more problematic due to more demanding bureaucratic procedures and placement examinations. Additionally, resources available in public schools for the provision of complementary support to foreign students, notably regarding Portuguese language training, are at times limited. These findings regarding access to education by asylum-seeking children have also been confirmed in 2017 by CNIS regarding

⁵⁰⁷ Article 10(3) Decree-Law 227/2005.

⁵⁰⁸ Article 11(2), (3) and (4) Decree-Law 227/2005.

⁵⁰⁹ DGE, *Agenda Europeia para as Migrações - medidas a implementar no sistema educativo*, 1 March 2016, available in Portuguese at: <http://bit.ly/2jqFkok> and DGE, *Crianças e jovens refugiados - medidas a implementar no sistema educativo*, 21 October 2016, available in Portuguese at: <http://bit.ly/2z0dgzf>.

⁵¹⁰ Ministry of Education Legislative Order 8452-A/2015 of 31 July 2015, as amended by Legislative Order 7255/2018 of 31 July 2018.

⁵¹¹ Articles 1, 2(1) and 6(2)(j) Decree Law 55/2018.

⁵¹² Article 8A Decree-Law 36/2014, inserted by Decree-Law 62/2018.

⁵¹³ OECD, *OECD Reviews of School Resources: Portugal 2018*, December 2018, available at: <https://bit.ly/2BlpEbS>.

⁵¹⁴ Article 8A(1) Decree-Law 36/2014.

⁵¹⁵ Article 8A(2) (a) and (b) and 3(a) Decree-Law 36/2014.

⁵¹⁶ Article 14(1)(c) Decree-Law 36/2014.

⁵¹⁷ Article 8A(5) Decree-Law 36/2014.

⁵¹⁸ Article 10(1) Decree-Law 36/2014.

⁵¹⁹ For a critical assessment of Decree-Law 36/2014, see JRS, *Estudante em Situação de Emergência por Razões Humanitárias: Mais um direito sem visto?*, November 2018, available in Portuguese at: <https://bit.ly/2qlpGF3>.

unaccompanied children hosted in the framework of their pilot project,⁵²⁰ and hosting organisations regarding relocated asylum seekers in the framework of informal consultations conducted by UNHCR and CPR.

According to the information provided by DGE in 2019 regarding the implementation of its 2016 circular letter aiming at adapting pedagogical activities to the specific needs of asylum seekers and beneficiaries of international protection, all children and young people under the scope of European Agenda on Migration are included in the national education system. DGE further reported that adapted responses for migrant and refugee children are being implemented in all schools and that, in addition to the measures included in the circular letter, specific requests made by schools are addressed. DGE also reported that, while there are difficulties inherent to these situations, exceptional activities beyond those prescribed by law are also developed in order to address the challenges.

The review of the Portuguese educational system conducted in 2018 by the OECD does not specifically address the situation of asylum seekers and beneficiaries of international protection. While acknowledging the impressive accomplishments of Portugal in recent years, it nonetheless raises concerns regarding persisting differences in the outcomes of students from under-privileged backgrounds, including immigrant students,⁵²¹ with immigrant, language and ethnic backgrounds remaining highly predictive of their performance in school.⁵²²

The Asylum Act limits vocational training to asylum seekers who are entitled to access the labour market i.e. admitted to the regular procedure and in possession of a provisional residence permit.⁵²³

In 2018 and 2019 some unaccompanied asylum-seeking children were referred to Education and Vocational Training Integrated Programmes (*Programas Integrados de Educação e Formação*, PIEF) regardless of their residence status.⁵²⁴

Access to vocational training by adults on the other hand remains particularly limited as opportunities generally require a good command of the Portuguese language and diplomas that asylum seekers and beneficiaries of international protection rarely have or are unable to legalise due to the legal requirements of recognition procedures (see [Access to the Labour Market](#)).

D. Health care

Indicators: Health Care

- | | | | |
|---|---|---|-----------------------------|
| 1. Is access to emergency healthcare for asylum seekers guaranteed in national legislation? | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No | |
| 2. Do asylum seekers have adequate access to health care in practice? | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Limited | <input type="checkbox"/> No |
| 3. Is specialised treatment for victims of torture or traumatised asylum seekers available in practice? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> Limited | <input type="checkbox"/> No |
| 4. If material conditions are reduced or withdrawn, are asylum seekers still given access to health care? | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Limited | <input type="checkbox"/> No |

⁵²⁰ CNIS also reported difficulties in the transition from the regular track to vocational training in the case of unaccompanied children covered by their pilot project.

⁵²¹ OECD, *OECD Reviews of School Resources: Portugal 2018, December 2018*, 13, 19 and 64. It should be noted that according to the report “differences in results are mostly driven by first-generation immigrants... There are no significant performance differences between second-generation immigrants and the native-born population after students’ socio-economic status and home language have been taken into account. In fact, most of these differences in performance are associated with the language spoken at home...”

⁵²² *Ibid*, 22.

⁵²³ Article 55(1) Asylum Act.

⁵²⁴ The PIEFs consist of alternative education / training programmes available to children e.g. who have not completed 4 years of education at the age of 15 or who are 3 years older than the appropriate age of students in any given level at basic or secondary education. Such programmes, initially created to combat the exploitation of child labour, have proved useful in dealing with particularly complex cases of unaccompanied asylum-seeking children with very poor education levels at arrival: DGE, *Programa Integrado de Educação e Formação*, available in Portuguese at: <https://bit.ly/2CR8aVN>.

The Asylum Act enshrines the right of asylum seekers and their family members to health care provided by the National Health System (*Serviço Nacional de Saúde*, SNS),⁵²⁵ and includes a specific provision on the right to adequate health care at the border.⁵²⁶ The primary responsibility for the provision of health care lies with the Ministry of Health,⁵²⁷ except for asylum seekers detained at the border that fall under the responsibility of the Ministry of Home Affairs.⁵²⁸ The latter can however cooperate with public entities and/or private non-profit organisations in the framework of a MoU to ensure the provision of such services.⁵²⁹

In accordance with the Asylum Act,⁵³⁰ the specific rules governing access of asylum seekers and their family members to health care⁵³¹ are provided by Ministerial Order No 30/2001 and Ministerial Order No. 1042/2008,⁵³² according to which:

1. Access to health care encompasses medical care and medication, and is available from the moment the asylum seeker applies for asylum;⁵³³
2. Medical assistance and access to medicines for basic health needs and for emergency and primary health care are to be provided under the same conditions as for Portuguese citizens;⁵³⁴
3. Asylum seekers have access to the SNS free of charge⁵³⁵ for emergency health care, including diagnosis and treatment, and for primary health care,⁵³⁶ as well as assistance with medicines, to be provided by the health services of their residence area.⁵³⁷

Asylum seekers are entitled to health care until a final decision rejecting the asylum application unless required otherwise by the medical condition of the applicant.⁵³⁸ Additionally, the reduction or withdrawal of reception conditions cannot restrict the access of asylum seekers to emergency health care, basic treatment of illnesses and serious mental disturbances or, in the case of applicants with special reception needs, to medical care or other types of necessary assistance, including adequate psychological care where appropriate.⁵³⁹ This provision remains to be tested in practice due to the extremely limited number of such decisions to date (see [Reduction or Withdrawal of Reception Conditions](#)).

⁵²⁵ Articles 52(1) and 56(1) Asylum Act.

⁵²⁶ Article 56(2) Asylum Act. This provision should be read in conjunction with Article 146-A(3) Immigration Act that provides for the right of pre-removal detainees in CIT to emergency and basic health care.

⁵²⁷ Article 61(3) Asylum Act.

⁵²⁸ Article 61(1) Asylum Act. While not included in this provision, SEF should also be considered responsible for providing access to health care to asylum seekers in pre-removal detention given its managing responsibilities of CIT: Article 146-A(3)-(4) Immigration Act.

⁵²⁹ *Ibid.*

⁵³⁰ Article 52(1) *in fine* Asylum Act.

⁵³¹ The legal and operational background pertaining to the access of asylum seekers to health care was revisited by the ACSS and the DGS in an internal guidance note issued on 12 May 2016 in the framework of the European Agenda for Migration, available at: <http://bit.ly/2jdBIFW>.

⁵³² Ministerial Order No 1042/2008 extends Ministerial Order No 30/2001 *ratione personae* to applicants for subsidiary protection and their family members.

⁵³³ Ministerial Order No 30/2001, para 2. Under Article 52(2) Asylum Act, the asylum seeker is required to present the certificate of the asylum application to be granted access to health care under these provisions. The internal guidance note issued on 12 May 2016 by the ACSS and the DGS provides for possible documents entitling the asylum seeker to access health care and includes a complete list of documents issued to the asylum seeker by the SEF during the asylum procedure (e.g. renewal receipts of the certificate of the asylum application, provisional residence permit, etc.)

⁵³⁴ *Ibid.*

⁵³⁵ Article 4(1)(n) Decree-Law 113/2011.

⁵³⁶ For the purposes of free access to the SNS, primary health care is to be understood as including among others: (i) Health prevention activities such as out-patient medical care, including general care, maternal care, family planning, medical care in schools and geriatric care (ii) specialist care, including mental care (iii) in-patient care that does not require specialised medical care, (iv) complementary diagnostic tests and therapies, including rehabilitation and (v) nursing assistance, including home care: Ministerial Order No 30/2001, par.6.

⁵³⁷ Ministerial Order No 30/2001, par.5.

⁵³⁸ Ministerial Order No 30/2001, par.8.

⁵³⁹ Article 60(7) Asylum Act.

The special needs of particularly vulnerable persons must be taken into consideration in the provision of health care,⁵⁴⁰ through adequate medical care,⁵⁴¹ and specialised mental health care including for survivors of torture and serious violence,⁵⁴² including in detention.⁵⁴³ The responsibility for special treatment required by survivors of torture and serious violence lies with ISS.⁵⁴⁴

In practice, asylum seekers have effective access to free health care in the SNS in line with applicable legal provisions. However, persisting challenges have an impact on the quality of health care. According to previous research,⁵⁴⁵ and information available to CPR, these include language and cultural barriers (e.g. the lack of interpreters for certain languages and the reluctance of health care services to use interpretation services such as ACM's translation hotline); difficult access to diagnosis procedures and medication paid by the SNS due to bureaucratic constraints; or very limited access to mental health care and other categories of specialised medical care (e.g. dentists)⁵⁴⁶ in the SNS. The difficulties in accessing specialised care in the SNS, including dentists, also came out as the main concerns in consultations conducted by CPR in October 2017 in the framework of the relocation programme.

It should be noted in this regard that CPR provides financial support to unaccompanied asylum-seeking children and asylum seekers in admissibility and accelerated procedures to cover the costs of diagnosis procedures and medication depending on the individual circumstances and available resources. Unaccompanied children residing at CPR's CACR have also been able to access dental care in SOL, a clinic managed by SCML that provides specialised care in the field for children living or studying in Lisbon.⁵⁴⁷

E. Special reception needs of vulnerable groups

Indicators: Special Reception Needs

1. Is there an assessment of special reception needs of vulnerable persons in practice?

☒ Yes

☐ No

An “applicant in need of special reception needs” is defined in terms of reduced ability to benefit from the rights and comply with the obligations stemming from the Asylum Act due to his or her vulnerability. The Asylum Act provides for a non-exhaustive list of applicants with an increased vulnerability risk profile that could present a need for special reception conditions: minors, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children, victims of human trafficking, persons with serious illnesses, persons with mental disorders and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence, such as victims of domestic violence and female genital mutilation.⁵⁴⁸ While the Asylum Act also refers to guarantees available to particularly vulnerable persons,⁵⁴⁹ the two concepts seem to be used interchangeably, meaning that any person with special reception needs is *a priori* a vulnerable person for the purposes of the Asylum Act.⁵⁵⁰

The identification of persons with special needs and the nature of such needs must take place upon registration of the asylum application or at any stage of the asylum procedure,⁵⁵¹ but within reasonable time following registration.⁵⁵² The provision of special reception conditions should take into consideration:

⁵⁴⁰ Article 77(1) Asylum Act.

⁵⁴¹ Articles 52(5) and 56(2) Asylum Act.

⁵⁴² Articles 78(3)-(4) and 80 Asylum Act.

⁵⁴³ Article 35-B(8) Asylum Act.

⁵⁴⁴ Article 80 Asylum Act.

⁵⁴⁵ Italian Council for Refugees *et al.*, *Time for Needs: Listening, Healing, Protecting*, October 2017.

⁵⁴⁶ In this regard, DGS noted in the past that such difficulties are similar to those faced by Portuguese citizens.

⁵⁴⁷ For more information see: <https://bit.ly/2x2l8Ak>.

⁵⁴⁸ Article 2(1)(ag) Asylum Act.

⁵⁴⁹ Article 2(1)(y) Asylum Act.

⁵⁵⁰ Article 77(1) and (3) Asylum Act.

⁵⁵¹ Article 77(2) Asylum Act.

⁵⁵² Article 77(3) Asylum Act.

(i) the material reception needs of particularly vulnerable persons;⁵⁵³ (ii) their special health needs, including those particular to survivors of torture and serious violence.⁵⁵⁴

The law further details the modalities of some of these categories of special reception conditions particularly regarding the special needs of children⁵⁵⁵ (including unaccompanied children)⁵⁵⁶ and housing conditions.

There are no specific mechanisms, standard operating procedures or unit in place to systematically identify asylum seekers in need of special reception conditions. The only exceptions consist of age assessment procedures to identify unaccompanied children and the identification and protection of potential unaccompanied children victims of trafficking that present practical and technical implementation challenges (see [Identification](#)).

In the framework of admissibility (including Dublin) and accelerated procedures on the territory, asylum seekers who present apparent vulnerabilities entailing special reception needs such as children, disabled people, elderly people, pregnant women, single parents with minor children, persons with serious illnesses or mental disorders would generally be identified by CPR within a reasonable period of time after registration. This is done on the basis of information received from SEF prior to their referral to CPR's reception centres or during legal assistance, social interviews or initial medical screenings conducted during the provision of material reception conditions. However, in 2018 and 2019, overcrowding has generated significant challenges in terms of service capacity (see [Conditions in Reception Facilities](#)).

According to SCML, asylum seekers referred by the GTO benefit from specific social counselling at the appeal stage and may be referred to homeless shelters managed by the organisation on a temporary basis to address specific vulnerabilities. Similarly, ISS claims to assess the special needs and to provide differentiated support to vulnerable asylum seekers during the regular procedure, notably in the case of children, disabled and the elderly. However, no further quantitative or qualitative information is available and to date no research has been conducted to assess the impact of the dispersal policy implemented during the regular procedure (see [Conditions in Reception Facilities](#)).

In 2017, CPR updated its Age, Gender and Diversity (AGD) Strategy that is aimed at preventing Sexual and Gender Based Violence (SGBV) and promoting participation, awareness, and empowerment. From August to December 2017, CPR developed participatory assessments, focus groups and semi-structured discussions, with both asylum seekers and staff. The participatory assessments aimed to identify the specific needs and risks of women and inform the development of a strategy to address these issues. This resulted in 43 actions (focusing on infrastructure, services and activities) related, among others, to the full individualisation of financial support, organisation of gender balanced activities (e.g. painting), and seeking partnerships with feminine hygiene products suppliers. Moreover, since September 2019, a community intervention specialist works directly with families in CAR to ensure access to support activities.

1. Reception of families and children

The accommodation of unaccompanied children who are 16 and over in adult reception centres and the initiation of family tracing are dependent of a best interests assessment.⁵⁵⁷ Under the Asylum Act, the best interests of the child also require that children: (i) be placed with parents or, in their absence, with adult relatives, foster families, specialised reception centres or tailored accommodation; (ii) not be separated from siblings; (iii) are offered stability, notably by keeping changes in place of residence to a minimum; (iv) are ensured well-being and social development; (v) have security and protection challenges

⁵⁵³ Articles 56(2) and 77(1) of Asylum Act.

⁵⁵⁴ Articles 35-B(8), 52(5), 56(2), 78(3)-(4) and 80 Asylum Act.

⁵⁵⁵ Article 78 Asylum Act.

⁵⁵⁶ Article 79 Asylum Act.

⁵⁵⁷ Article 79(10) and (14) Asylum Act.

addressed, notably where there is a risk of human trafficking; (vi) express their opinion, taking into consideration their age and maturity.⁵⁵⁸

The provision of special reception conditions during the asylum procedure includes a specialised reception centre for unaccompanied children, **CACR**, and the accommodation of unaccompanied children who are 16 or older in **CAR** and **CAR II** as a measure of last resort in the absence of appropriate alternatives (see [Types of Accommodation](#)). CPR promotes family tracing in partnership with the Portuguese Red Cross (CVP) if considered to be in the best interests of the child and taking into consideration the child's / opinion.

CPR's reception centres offer facilities to accommodate disabled people and playgrounds for children who are systematically enrolled in public education. Despite the chronic issue of overcrowding, families are generally given separate accommodation either at CAR or in external accommodation. Asylum seekers are generally referred to the SNS for health assessments and care, including differentiated care, even though referral capacity constraints from CPR due to overcrowding and other challenges, particularly for mental health care and certain categories of specialised medical care, were experienced throughout the year.

To the extent possible and upon consent of the applicants the unit of the family should be preserved in the provision of housing,⁵⁵⁹ while adult asylum seekers with special reception needs should be accommodated with adult relatives already present on the territory that are legally responsible for them.⁵⁶⁰ Adequate measures must be adopted to avoid sexual and gender-based violence and harassment in reception centres and other housing provided to asylum seekers.⁵⁶¹

2. Reception of survivors of torture and violence

While ISS is specifically responsible for ensuring access to rehabilitation services for survivors of torture and serious violence,⁵⁶² the provision of material reception conditions and health care adapted to the special needs of vulnerable persons seems to be submitted to the responsibility-sharing rules applicable to asylum seekers in general.

In the specific case of survivors of torture and/or serious violence on the territory, the information collected in 2017 by CPR, including in the framework of the project "Time for Needs: Listening, Healing, Protecting",⁵⁶³ showed that identification and follow-up of their special reception needs also initiates with an individual psychosocial interview at CPR's reception centres conducted by a social worker upon arrival and at regular intervals during the admissibility stage of the asylum procedure. In the case of survivors of torture and/or serious violence, such assessment might result in referrals to the local health centre of the SNS for onward referral to differentiated care such as gynaecology and urology. According to DGS, local health centres are also the gateway to specialised mental health care and have multidisciplinary teams (Teams for the Prevention of Violence between Adults – *Equipas para a Prevenção da Violência entre Adultos*, EPVA) that are responsible for identifying and offering follow-up to vulnerable cases that are victims of violence. However, according to other stakeholders such as CPR and SCML, specialised outpatient mental health care is mainly available through voluntary organisations such as the Centre for the Support of Torture Victims in Portugal (*Centro de Apoio às Vítimas de Tortura em Portugal*, CAVITOP) / Psychiatric Hospital Centre of Lisbon (*Centro Hospitalar Psiquiátrico de Lisboa* – CHPL) whose multidisciplinary team offers free and specialised psychiatric and psychological care upon referral from frontline service providers such as the CPR, SCML and JRS. According to CPR's experience, mental health care for children constitutes an exception and is readily available in the SNS.

⁵⁵⁸ Article 78(2)(a)-(h) Asylum Act.

⁵⁵⁹ Articles 51(2) and 59(1)(a) and (b) Asylum Act.

⁵⁶⁰ Article 59(1)(c) Asylum Act.

⁵⁶¹ Article 59(1)(e) Asylum Act.

⁵⁶² Article 80 Asylum Act.

⁵⁶³ Italian Council for Refugees *et al.*, *Time for Needs: Listening, Healing, Protecting*, October 2017, available at: <http://bit.ly/2xZqCGh>.

In 2018, CPR disseminated a tool and information materials pertaining to the identification and provision of special procedural needs and special reception needs of survivors of torture and/or serious violence developed in the framework of the project.⁵⁶⁴

The provision of reception conditions by ISS in the regular procedure following a dispersal decision by the GTO is done in accordance to agreed standards. In each district there is a responsible officer for reception conditions who reports directly to central services but there is no specialised team dedicated to survivors of torture and/or serious violence. According to ISS, caseworkers can make referrals to specialised services at local level, for instance, for asylum seekers placed in the area of **Coimbra**, ISS has the possibility to make referrals to the **Centre for the Prevention and Treatment of Psychogenic Trauma** that provides differentiated mental health care adapted to the needs of survivors of torture and/or serious violence.

F. Information for asylum seekers and access to reception centres

1. Provision of information on reception

The Asylum Act provides for the right of asylum seekers to be immediately informed about their rights and duties related to reception conditions.⁵⁶⁵ It further foresees that they must be informed about the organisations that can provide assistance and information regarding available reception conditions, including medical assistance.⁵⁶⁶ Furthermore, SEF is required to provide asylum seekers with an information leaflet without prejudice to providing the information contained therein orally.⁵⁶⁷ In both cases the information must be provided either in a language that the asylum seeker understands or is reasonably expected to understand to ensure the effectiveness of the right to information.

In practice, upon registration, asylum seekers receive an information leaflet from SEF that briefly covers some of its information obligations including reception conditions.⁵⁶⁸ The information contained in the leaflets is brief and not considered user-friendly particularly in the case of unaccompanied children. According to CPR's experience, the leaflet is only available in a limited number of foreign languages (e.g. French, English, Arabic). While a specific information leaflet for unaccompanied children which, among others, includes information on reception conditions is available online,⁵⁶⁹ CPR is not aware of its systematic distribution despite having been appointed as legal representative on numerous occasions throughout the year.

In accordance to existing MoUs with the authorities (see **Responsibility for Reception**), CPR provides information to asylum seekers throughout the asylum procedure and particularly during admissibility (including Dublin) and accelerated procedures. This is done through individual interviews as well as through social and legal support. The information provided by CPR broadly covers the information requirements provided in the law as regards the institutional framework of reception, including on the dispersal policy, as well as the types and levels of material reception conditions, access to health care, education, employment, etc. This further includes the provision of tailor-made information to unaccompanied children upon their admission to **CACR** orally and using written materials such as a leaflet that contains child-friendly information on internal rules, available services, geographical location, general security tips and contacts, etc. (available in Portuguese, English, Russian, Tigrinya and French). CPR has also developed the **HELP** information portal which offers among others cultural orientation

⁵⁶⁴ The Questionnaire for the Assessment of the Special Needs of Survivors of Torture and/or Serious Violence Among Asylum Seekers and Beneficiaries of International Protection (QASN) and other information materials are available at: <https://goo.gl/2BP2vh>.

⁵⁶⁵ Article 49(1)(a) Asylum Act.

⁵⁶⁶ Article 49(1)(a)(iv) Asylum Act.

⁵⁶⁷ Article 49(2) Asylum Act.

⁵⁶⁸ SEF, *Acolhimento em Portugal*, available in Portuguese at: <https://bit.ly/2MkBnvC>.

⁵⁶⁹ SEF, *Informação para Menores Não-Acompanhados Requerentes de Proteção Internacional em Portugal*, available in Portuguese at: <https://bit.ly/2FFVjc3>.

information, reception services and relevant institutional contacts. The portal is available in Portuguese, English, French and Spanish.

The serious capacity challenges faced by CPR (see [Conditions in Reception Facilities](#) and [Regular Procedure: Legal Assistance](#)) have however restricted the provision of information during the first stage of the asylum procedure, particularly regarding asylum seekers placed in private accommodation in more remote locations.

During the regular procedure and at appeal stage, asylum seekers should benefit from an individual follow-up with ISS and SCML. While no research has been conducted to date to assess the impact of the dispersal policy, CPR is not aware of serious challenges in accessing social services or in the provision of information regarding reception conditions during this stage of the asylum procedure despite some complaints regarding difficulties in securing an appointment or language barriers. Other organisations also provide information and assistance to asylum seekers during the first instance of the regular procedure such as JRS, CNIS for unaccompanied asylum-seeking children within their pilot project, CRESCER, and ACM through its Local Support Centres for Migrants Integration (CLAIM), albeit in a limited number of cases and mostly focused on integration.

2. Access to reception centres by third parties

Indicators: Access to Reception Centres

1. Do family members, legal advisers, UNHCR and/or NGOs have access to reception centres?

☒ Yes

☐ With limitations

☐ No

The Asylum Act provides for the right of access to reception centres and other reception facilities for family members, legal advisers, UNHCR, CPR and other refugee-assisting NGOs recognised by the State for the provision of assistance to asylum seekers.⁵⁷⁰ The internal regulation of **CACR** provides that unaccompanied children have the right to receive visits from family and friends which have been approved by the Family and Juvenile Court. The internal regulation of **CAR** provides for a general right to visits upon authorisation of the Director of the Centre.

In practice, asylum seekers accommodated at CAR and CACR benefit from legal assistance from CPR's staff (see [Regular Procedure: Legal Assistance](#)) as well as from information and facilitation of contacts and meetings with lawyers at appeal stage. Such meetings can either take place at the reception centres or at the lawyers' offices, in the presence of a representative of CPR in the case of unaccompanied children.

G. Differential treatment of specific nationalities in reception

There is no information available regarding discrimination or preferential treatment of asylum seekers pertaining to reception conditions such as accommodation, health care, employment, education or others, on the basis of nationality.

⁵⁷⁰ Article 59(4) Asylum Act.

Detention of Asylum Seekers

A. General

Indicators: General Information on Detention

1. Total number of asylum seekers detained in 2019:	Not available
2. Number of asylum seekers in detention at the end of 2019:	Not available
3. Number of detention centres specifically for asylum seekers: ⁵⁷¹	3
4. Total capacity of detention centres specifically for asylum seekers:	Not available

SEF was not able to share statistics regarding the overall number of persons placed in detention during 2019 or that were in detention at the end of the year. According to the Ombudsman, a total of 2,444 third-country nationals were placed in detention in 2016 (80% of whom at **Lisbon Airport**), compared to 2,071 in 2015.⁵⁷² However, the figures the Ombudsman obtained from SEF do not include a breakdown by legal status of the persons detained. The recent report from the National Preventive Mechanism does not include such data.⁵⁷³

The legal framework of detention centres is enshrined in Act 34/94 which provides for the detention of migrants in Temporary Installation Centres (*Centros de Instalação Temporária*, CIT) that are managed by SEF either for security reasons (e.g. aimed at enforcing a removal from national territory) or for irregular entry at the border. Detention facilities at the border,⁵⁷⁴ which are not CIT *per se*, have been classified as such by Decree-Law 85/2000 for the purposes of detention following a refusal of entry at the border. Thus, these are detention centres with a strict separation between asylum seekers and other migrants.⁵⁷⁵

According to SEF, detention of asylum seekers in Portugal is limited to applicants at the border. The 3 detention facilities at the border are located in the international areas of **Lisbon**, **Porto** and **Faro** airports and have separate detention zones for asylum seekers. The facilities have an overall capacity of 30, 14 and 14 places respectively. Out of the three, the facility at the **Lisbon** airport is the most relevant to the detention of asylum seekers. Bearing in mind that the Asylum Act provides for detention of asylum seekers at the border⁵⁷⁶ which is systematically applied in practice, the 2019 statistics provided by SEF show that a total of 406 asylum seekers were submitted to border procedures and hence placed in detention for a period of up to 60 days (see [Border Procedure](#)).

Additionally, it should be noted that the law allows for the detention of an asylum seeker who applies for asylum while in detention at a CIT due to a removal procedure.⁵⁷⁷ This possibility is systematically applied in practice by the authorities. According to the statistical information shared by SEF, 27 persons applied for asylum while in detention in 2019. According to the information available to CPR regarding 26 such applications, 10 were filled in **Porto – Unidade Habitacional de Santo António** (CIT – UHSA),⁵⁷⁸ and 7 in **Lisbon** and 9 in **Faro**.

⁵⁷¹ This includes only the detention facilities at international airports, where asylum seekers may be detained. CIT are excluded.

⁵⁷² Ombudsman, *Tratamento dos cidadãos estrangeiros em situação irregular ou requerentes de asilo nos centros de instalação temporária ou espaços equiparados*, September 2017, available in Portuguese at: <https://bit.ly/3eLMNX6>.

⁵⁷³ Ombudsman, *National Preventive Mechanism, Report to the Parliament 2018*, 30 May 2019, available in Portuguese at: <https://bit.ly/2S7tdcW>.

⁵⁷⁴ Council of Ministers Resolution 76/97.

⁵⁷⁵ Indeed, as the Ombudsman recalls “The confinement of foreign citizens, including where it takes place in the international area of an airport, indeed consists in a deprivation of freedom (...) that goes beyond a mere restriction of freedom. On this matter cf. the judgement of the European Court of Human Rights n.º 19776/92, 25 June 1992 (*Amuur v France*).”: *Ibid*, fn. 14.

⁵⁷⁶ Articles 26(2) 35-A(3)(a) Asylum Act.

⁵⁷⁷ Article 35-A(3)(b) Asylum Act.

⁵⁷⁸ Decree-Law 44/2006 provides for the creation and functioning of CIT – UHSA in Porto.

While the Asylum Act also provides for the possibility of placing in detention other categories of asylum seekers,⁵⁷⁹ including those subjected to Dublin procedures, in practice only the aforementioned asylum seekers are systematically detained.

The competent authority to place and review the detention of an asylum seeker in a CIT⁵⁸⁰ or in detention facilities at the border⁵⁸¹ is the Criminal Court which has territorial jurisdiction over the place where detention is imposed. In the case of detention at the border, SEF initially imposes detention but is required to inform the Criminal Court of the detention within 48 hours of arrival at the border for the purpose of maintaining the asylum seeker in detention beyond that period.⁵⁸²

Taking into consideration the absence of special guarantees at the border such as social and psychological assistance, and the negative impact of detention on the mental well-being of certain categories of vulnerable asylum seekers, it is only fair to assume that detention at the border is currently having a negative impact on the quality of procedures, namely for survivors of torture and/or serious violence and victims of trafficking.

In addition, shorter deadlines and reduced procedural guarantees are applicable in the context of detention, e.g. asylum seekers in detention at the border or who apply for asylum from detention are not entitled to a 5-day period to review and offer comments regarding SEF's written report on their status determination interview. Moreover, asylum seekers who are detained at the border, are only entitled to 5 minutes of free telephone communications for the whole period of detention. These reduced guarantees also entail risks of poorer quality decision-making, notably in light of the significant number of applications deemed manifestly unfounded under these procedures.⁵⁸³ While UNHCR, CPR, legal representatives and other NGOs have effective access to asylum seekers in detention at the border in accordance with the law,⁵⁸⁴ access to legal information as well as assistance in detention is hindered in practice by a combination of factors. This includes shorter deadlines, limited capacity of service providers, poor quality of legal assistance provided by lawyers, lack of interpretation services, and lengthy bureaucratic procedures for accessing the airports' restricted areas.

B. Legal framework of detention

1. Grounds for detention

Indicators: Grounds for Detention

1. In practice, are most asylum seekers detained
 - ❖ on the territory: ☐ Yes ☒ No
 - ❖ at the border: ☒ Yes ☐ No
2. Are asylum seekers detained during a regular procedure in practice?
 - ☐ Frequently ☐ Rarely ☒ Never
3. Are asylum seekers detained during a Dublin procedure in practice?
 - ☐ Frequently ☐ Rarely ☒ Never

Under the Asylum Act, the placement of asylum seekers in detention cannot be based on the application for international protection alone,⁵⁸⁵ and can only occur on the following grounds:

- ❖ National security, public order, public health; or

⁵⁷⁹ Article 35-A(3) Asylum Act.

⁵⁸⁰ Article 35-A(5) Asylum Act.

⁵⁸¹ Article 35-A(6) Asylum Act.

⁵⁸² *Ibid.*

⁵⁸³ According to the (partial) statistical information collected by CPR, in 2019, 247 out of 347 asylum applications adjudicated at the border and 6 out of 26 applications from detention due to removal procedures were deemed manifestly unfounded.

⁵⁸⁴ Article 49(6) Asylum Act.

⁵⁸⁵ Article 35-A(1) Asylum Act.

- ❖ Risk of absconding;

based on an individual assessment and if the effective application of less severe alternative measures is not possible.⁵⁸⁶

The possible grounds for detention of asylum seekers also include:

- ❖ Applying for asylum at the border;
- ❖ Applying for asylum following a decision of removal from national territory; or
- ❖ During Dublin procedures,

if it is not possible to effectively implement less severe alternative measures.⁵⁸⁷

Moreover, article 26(1) of the Asylum Act determines that asylum seekers that applied for asylum at the border remain in the international area of the (air)port while waiting for the decision.⁵⁸⁸

As mentioned in [General](#), systematic detention of asylum seekers in Portugal is limited to border procedures in which asylum seekers are detained until their application is admitted to the procedure (7 days)⁵⁸⁹ or for a maximum of 60 days in case of an appeal against the rejection of the application.⁵⁹⁰ Asylum seekers who apply for asylum in detention at a CIT due to a removal procedure will also usually remain in detention during the asylum procedure until their application is admitted to the procedure (10 days)⁵⁹¹ or for a maximum of 60 days in case of an appeal against the rejection of the asylum application.⁵⁹² While the Asylum Act provides for the suspension of all administrative and/or criminal procedures related to the irregular entry of the asylum applicant on the national territory - and thus requires that the competent authorities are informed of the asylum application within 5 days for that purpose -⁵⁹³ detention at a CIT due to a removal procedure will rarely, if ever, be suspended *ex officio* by the Criminal Courts on that basis.

CPR is unaware of the judicial interpretation of detention grounds such as the application of a Dublin procedure, threat to national security, public order, public health, or risk of absconding.

2. Alternatives to detention

Indicators: Alternatives to Detention

- Which alternatives to detention have been laid down in the law?
 - ☒ Reporting duties
 - ☐ Surrendering documents
 - ☐ Financial guarantee
 - ☒ Residence restrictions
 - ☐ Other
- Are alternatives to detention used in practice?
 - ☐ Yes ☒ No

As mentioned in [Grounds for Detention](#), according to the law, the placement of asylum seekers in detention is dependent on an assessment of the individual circumstances of the applicant and of the possibility to effectively implement less severe alternative measures,⁵⁹⁴ thus requiring proof that alternatives to detention cannot be effectively applied before asylum seekers can be detained. The

⁵⁸⁶ Article 35-A(2) Asylum Act.

⁵⁸⁷ Article 35-A(3) Asylum Act.

⁵⁸⁸ It is our understanding that while this article seems to provide for the general detention of asylum seekers within the context of border procedures, it must be applied with due regard for the rules established in Art.35-A of the Asylum Act.

⁵⁸⁹ Article 26(4) Asylum Act.

⁵⁹⁰ Article 35-B(1) Asylum Act.

⁵⁹¹ Article 33-A(5) Asylum Act.

⁵⁹² Article 35-B(1) Asylum Act.

⁵⁹³ Article 12(1) and (3) Asylum Act.

⁵⁹⁴ Article 35-A(2) and (3) Asylum Act. While the need for an assessment of the individual circumstances of the applicant is only mentioned in the case of detention on the grounds of national security, public order, public health or when there is a flight risk, it is difficult to conceive an assessment of less severe alternative measures for the remaining grounds for detention that is not based on the individual circumstances of the applicant.

Asylum Act lays down alternatives to detention consisting either of reporting duties before SEF on a regular basis or residential detention with electronic surveillance (house arrest).⁵⁹⁵

Despite the safeguards enshrined in the law to ensure that detention of asylum seekers, including in the case of detention at the border, is used as a last resort and only where necessary, in practice, criminal courts rarely conduct an individual assessment on whether it is possible to effectively implement alternatives to detention. Nevertheless, following repeated requests for the release of vulnerable asylum seekers at the border, namely unaccompanied children and families with children, CPR has witnessed a growing tendency on the part of the Criminal Court of Lisbon to invite SEF to give due consideration to the release of families with children and to their referral to CAR since 2017.⁵⁹⁶ However, these decisions fall short of conducting an individual assessment of necessity and proportionality and of issuing an order to SEF.

With the exception of the release of vulnerable asylum seekers without conditions from the border (see [Detention of Vulnerable Applicants](#)), CPR is unaware of the application of alternatives to detention in practice. This assessment is corroborated by information provided by SEF in 2019, which indicates that the competent courts never applied alternatives to detention within this context so far.

The report of the European Commission against Racism and Intolerance (ECRI), published in October 2018, referred to the excessive use of detention in the context of asylum.⁵⁹⁷

More recently, the practice was also condemned by the UN Committee Against Torture. It expressed concerns on multiple issues, including the excessive use of detention, the absence of individualised assessments as well as little consideration for alternatives to detention, the lack of adequate detention conditions in the relevant facilities, and entry fees charged to external parties at Lisbon airport.⁵⁹⁸ Among other detention-related observations, the Committee recommended that detention is used only “as a measure of last resort and for as short a period as possible, by ensuring individualised assessments, and promote the application of non-custodial measures”.⁵⁹⁹

3. Detention of vulnerable applicants

Indicators: Detention of Vulnerable Applicants

1. 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
2. Are asylum seeking children in families detained in practice?
☒ Frequently ☐ Rarely ☐ Never

The Asylum Act defines an “applicant in need of special procedural guarantees” in terms of reduced ability to benefit from the rights and comply with the obligations stemming from the Asylum Act due to his or her individual circumstances.⁶⁰⁰ Even though it does not include an exhaustive list of asylum seekers presumed to be in need of special procedural guarantees, it refers to age, gender, gender identity, sexual orientation, disability, serious illness, mental disorders, torture, rape or other serious forms of

⁵⁹⁵ Article 35-A(4)(a) and (b) Asylum Act.

⁵⁹⁶ Judicial Court of the Lisbon District, Local Misdemeanour Court of Lisbon – Judge 2, Applications Nos 3881/17.5T8LSB, 13 February 2017; 19736/17.0T8LSB, 11 September 2017; 22330/17.2T8LSB, 16 October 2017; 22779/17.0T8LSB, 20 October 2017; 23770/17.2T8LSB, 3 November 2017; 25058/17.0T8LSB, 20 November 2017; 25060/17.1T8LSB, 20 November 2017; 8909/19.1T8LSB, 29 April 2019.

⁵⁹⁷ ECRI, *ECRI Report on Portugal (fifth monitoring cycle)*, CRI(2018)35, 2 October 2018, par.84, available at: <https://bit.ly/2sIFsAQ>.

⁵⁹⁸ Committee Against Torture, *Concluding Observations on the seventh periodic report of Portugal*, CAR/C/PRT/CO/7, 18 December 2019, available at <https://bit.ly/2G1F07z>, para 39.

⁵⁹⁹ Ibid. para 40(a).

⁶⁰⁰ Article 17-A(1) Asylum Act.

psychological, physical or sexual violence as possible factors underlying individual circumstances that could lead to the need of special procedural guarantees.⁶⁰¹

Within these applicants, the Asylum Act identifies a sub-category of individuals whose special procedural needs result from torture, rape or other serious forms of psychological, physical or sexual violence that may be exempted from border procedures and hence detention.⁶⁰² Furthermore, the placement of unaccompanied and separated children in detention facilities at the border must comply with applicable international recommendations such as those by UNHCR, UNICEF and the International Committee of the Red Cross (ICRC).⁶⁰³

In practice, asylum seekers are systematically detained at the border for periods up to 60 days. While up to 2016 certain categories of particularly vulnerable applicants such as unaccompanied children, families with children, pregnant women and severely ill persons were generally released without conditions, SEF changed its practice in this regard.

In 2017, the detention of an asylum-seeking family with children at the **Lisbon Airport** detention facility drew criticism from the Ombudsman, particularly regarding the inadequate detention conditions offered to a child with special health needs (see [Conditions in Detention Facilities](#)).⁶⁰⁴

In July 2018, following media reports on detention of young children at **Lisbon Airport**,⁶⁰⁵ and remarks by the Ombudsman and UNICEF,⁶⁰⁶ the Ministry of Home Affairs issued an order determining:⁶⁰⁷

- An internal review of the functioning of the CIT at Lisbon Airport;
- The urgent presentation by SEF of a report on the recommendations issued by the Ombudsman in 2017 regarding the above-mentioned centre;
- That children under 16 years old (whether accompanied or not) cannot be detained in the CIT for more than 7 days;
- That the construction of the Temporary Reception Centre of Almoçageme (CATA), located in the municipality of **Sintra**, is given maximum priority. So far there is no definite public information on whether it will be an open or closed centre.

At the time of writing no information on the results of the internal reviews were publicly available.

The detention of children in Portugal was recently criticised by the UN Committee on the Rights of the Child, emphasising that detention of children, whether accompanied or not, must be avoided and alternatives ensured, and that their transfer to adequate solutions should be a priority.⁶⁰⁸ Focusing specifically on the situation of children in Portugal, both accompanied and unaccompanied/separated, the UN Committee Against Torture has also recently emphasised that they should not be detained solely because of their immigration status.⁶⁰⁹ SEF did not share data on the number of persons with special reception needs detained throughout 2019.

⁶⁰¹ *Ibid.*

⁶⁰² Article 17-A(4) Asylum Act.

⁶⁰³ Article 26(2) Asylum Act.

⁶⁰⁴ Ombudsman, *Tratamento dos cidadãos estrangeiros em situação irregular ou requerentes de asilo nos centros de instalação temporária ou espaços equiparados*, September 2017, available at: <https://bit.ly/3eLMNX6>, 28.

⁶⁰⁵ See e.g. Público, 'SEF detém crianças requerentes de asilo contra recomendações da ONU', 22 July 2018, available in Portuguese at: <https://bit.ly/2uILRNP>.

⁶⁰⁶ See e.g. Público, 'Provedora, "Centros de instalação são o no man's land contemporâneo"', 22 July 2018, available in Portuguese at: <https://bit.ly/2UI9URU>; Expresso, 'UNICEF Portugal exige fim de detenção de crianças no aeroporto', 24 July 2018, available in Portuguese at: <https://bit.ly/2G9xisZ>.

⁶⁰⁷ AIDA, 'Portugal: Persisting detention of children at the airport', 4 September 2018, available at: <https://bit.ly/2LWn4LZ>.

⁶⁰⁸ Committee on the Rights of the Child, *Concluding observations on the combined fifth and sixth periodic reports of Portugal*, CRC/C/PRT/CO/5-6, 9 December 2019, available at: <https://bit.ly/2G1F07z>, par.42(a) and (d).

⁶⁰⁹ Committee Against Torture, *Concluding Observations on the seventh periodic report of Portugal*, CAT/C/PRT/CO/7, 18 December 2019, available at <https://bit.ly/2G1F07z>, para.40(b).

4. Duration of detention

Indicators: Duration of Detention

1. What is the maximum detention period set in the law (incl. extensions): 60 days
2. In practice, how long in average are asylum seekers detained? Less than 60 days

In accordance with the Asylum Act, an asylum seeker either at the airport or land border “who does not meet the legal requirements for entering national territory” can be detained for up to 7 days for an admissibility procedure.⁶¹⁰ If SEF takes a positive admissibility decision or if no decision has been taken within 7 working days, the applicant is released. If the claim is deemed inadmissible or unfounded in an accelerated procedure, the asylum seeker can challenge the rejection before the administrative courts with suspensive effect and remains detained for up to 60 days during the appeal proceedings. However, after 60 days, even if no decision has yet been taken on the appeal, SEF must release the individual from detention and provide access to the territory. The maximum detention period of 60 days is equally applicable in instances where the application is made from detention at a CIT due to a removal procedure.⁶¹¹

The information available to CPR, regarding 26 unaccompanied children, of which one was deemed adult by SEF, indicates that there were instances of detention at the border for periods ranging from 1 to 47 days (on average 7 days) in 2019. The information available to CPR regarding 52 children accompanied by adults reveals that they were detained at the border for periods ranging between 0 and 59 days (on average 12 days).⁶¹² As such, while CPR has observed a tendency to decrease detention periods for children following the order issued in July 2018 by the Ministry of Home Affairs, this practice remains a concern in light of international standards that prohibit any immigration detention of children.⁶¹³

Even though CPR is not aware of instances where the maximum detention duration was exceeded in the case of asylum seekers, in 2017 the Ombudsman raised concerns regarding isolated instances of detention of third-country nationals beyond the 60-day time limit with respect to **CIT – UHSA**; the legal status of such persons was not specified.⁶¹⁴ More recent information on this aspect is not available.

C. Detention conditions

1. Place of detention

Indicators: Place of Detention

1. Does the law allow for asylum seekers to be detained in prisons for the purpose of the asylum procedure (i.e. not as a result of criminal charges)? ☐ Yes ☒ No
2. If so, are asylum seekers ever detained in practice in prisons for the purpose of the asylum procedure? ☐ Yes ☒ No

As mentioned above, asylum seekers may be detained either in Temporary Installation Centres (CIT),⁶¹⁵ or in detention facilities at the border - which are not CIT *per se* but have been qualified as such by law for the purposes of detention following an entry refusal at the border⁶¹⁶ (see [Detention: General](#)).

⁶¹⁰ Article 26 and 35-A(3)(a) Asylum Act.

⁶¹¹ Article 35-B(1) Asylum Act.

⁶¹² In some instances, families were transferred from the EECIT to UHSA during the period of detention.

⁶¹³ Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and Committee on the Rights of the Child *Joint general comment No. 4 (2017) on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return*, 16 November 2017, CMW/C/GC/4-CRC/C/GC/23, available at: <https://bit.ly/2ploRvd>.

⁶¹⁴ Ombudsman, *Tratamento dos cidadãos estrangeiros em situação irregular ou requerentes de asilo nos centros de instalação temporária ou espaços equipados*, September 2017, available at: <https://bit.ly/3eLMNX6>, 23-24.

⁶¹⁵ Article 35-A(2) and (3) Asylum Act. The legal framework of detention centres is enshrined in Act 34/94 of 14 September 1994, available in Portuguese at: <https://bit.ly/359v9Zf>.

⁶¹⁶ Council of Ministers Resolution 76/97 and Decree-Law 85/2000 of 12 May 2000, available in Portuguese respectively at: <https://bit.ly/2xUj1T> and <https://bit.ly/3cS7Ky7>.

According to SEF, detention of asylum seekers is limited to applicants at the border who are subject to detention in transit areas. The 3 detention facilities at the border are located in the international area of Lisbon, Porto and Faro airports and have separated detention areas for asylum seekers:

Detention capacity in border detention centres: 2019		
Detention centre	Occupancy	Total capacity
Detention facility – Lisbon airport	-	30
Detention facility – Porto airport	-	14
Detention facility – Faro airport	-	14
Total	-	58

Source: SEF. This refers to the total capacity of the detention centres and is thus not limited to asylum seekers specifically.

Additionally, **CIT-UHSA** has an overall capacity for 30 persons.

With the exception of instances of temporary overcrowding at the **Lisbon Airport's** detention facility which at times entail the transfer of certain asylum seekers to airport detention facilities in **Porto** and **Faro** airports or to **CIT – UHSA**, where they will be with other migrants in detention following a removal decision, CPR is unaware of the detention of asylum seekers with other migrants, in police stations or in regular prisons for the purposes of the asylum procedure.

2. Conditions in detention facilities

Indicators: Conditions in Detention Facilities

- | | | |
|---|---|--|
| 1. Do detainees have access to health care in practice? | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| ❖ If yes, is it limited to emergency health care? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |

2.1. Overall conditions

In the absence of legal standards for the operation of CIT, the detention facilities at the border and the **CIT – UHSA** in Porto are managed by the SEF pursuant to internal regulations.⁶¹⁷

Regarding **Lisbon Airport**⁶¹⁸ – the most relevant detention facility in the case of asylum seekers – the reception desk and operational assistance are managed by the staff of a private security company which includes male and female employees.⁶¹⁹ The staff is responsible among others for: initial registration; collection and access to personal belongings; administration of medication; registration and referral of requests for medical assistance; and distribution of meals. The detention facility is regularly cleaned by staff of a cleaning company. In his 2017 report, the Ombudsman considered the hygienic conditions of the facility to be good overall.⁶²⁰ CPR concurs this assessment for 2019.⁶²¹

⁶¹⁷ Ministerial Decision n. 5863/2015 of 2 June 2015 regulates in detail detention conditions by police forces, including SEF, but is only applicable to the initial 48-hour detention period.

⁶¹⁸ For a description of the conditions in UHSA, see Ombudsman, *National Preventive Mechanism, Report to the Parliament 2018*, 30 May 2019, available in Portuguese at: <https://bit.ly/2S7tdcW>, 38-49. According to the analysis conducted by the Ombudsman, detention conditions in UHSA are significantly better than the conditions observed in border detention facilities.

⁶¹⁹ According to a 2017 report from the Ombudsman, this was not the case in the **Porto** and **Faro** airport facilities: Ombudsman, *Tratamento dos cidadãos estrangeiros em situação irregular ou requerentes de asilo nos centros de instalação temporária ou espaços equiparados*, September 2017, available at: <https://bit.ly/3eLMNX6>, 22-23.

⁶²⁰ *Ibid*, 30.

⁶²¹ Note that CPR only has systematic access to common areas such as the reception and offices.

The reception area includes an office for a member of SEF's staff who is present at the detention facility during office hours. Additionally, there are two offices in the reception area to conduct individual interviews, one of which is used by SEF and the other by lawyers and NGOs such as CPR. Due to space and structural constraints, the offices are small and do not ensure adequate privacy, notably due to inadequate sound isolation.⁶²²

The detention facility has separate wings for asylum seekers and other persons who were refused entry into the territory. Each wing has two collective dormitories with bunk beds and closets that are separate for men and women. Other than a few clothes, shoes, and hygiene items, detainees are not allowed to keep personal belongings.⁶²³ According to the Ombudsman 2018 report, the organisation of the beds limits privacy and may jeopardise the possibility to properly rest.⁶²⁴ Moreover, according to the Ombudsman, while in **Porto Airport** there is a room specifically prepared to accommodate a family, this was not the case in **Lisbon**, where children stay with one parent in the collective dormitories.⁶²⁵

Each wing has a separate bathroom and toilet facilities that include showers with hot water, toilets, hand washing facilities and urinals, and a common lounge used for meals and leisure that includes tables, chairs, and a television.⁶²⁶

The Ombudsman recalled the risks of mixed detention facilities such as those of the **Lisbon Airport** – as opposed to **CIT – UHSA** where men and women are accommodated on different floors – and the need to adopt adequate measures to tackle potential risks of sexual violence and exploitation against female detainees. Similar risks exist in **Faro Airport**.⁶²⁷ In 2018, a detained female asylum seeker reported to have been victim of sexual harassment from one of the workers of the private security company in charge of operational assistance and from other detainees at the **Lisbon Airport** and the case was referred to the Public Prosecutor's Office.⁶²⁸

The Ombudsman further noted that the specific needs of pregnant women and young mothers should be better accommodated, namely through the accessibility of hygienic items without the need for intervention of the supporting staff.⁶²⁹ Moreover, the analysis published in 2019 confirms the lack of procedures for the identification of vulnerabilities among detainees.⁶³⁰

While underlining that the Ministerial Order on the detention of children adopted in 2018 was a positive development, and recognising some of the challenges involved, the Ombudsman reiterated that the conditions of border detention facilities are inadequate to children even for periods of up to 7 working days (see: [Detention of vulnerable applicants](#)).⁶³¹ The lack of food and hygiene items adequate for small children was also reported.

⁶²² This has been observed and experienced by CPR during visits to the facility.

⁶²³ Ombudsman, *National Preventive Mechanism, Report to the Parliament 2018*, 30 May 2019, available in Portuguese at: <https://bit.ly/2S7tdcW>, 40.

⁶²⁴ Ibid.

⁶²⁵ Ibid.

⁶²⁶ Ibid., 39.

⁶²⁷ Ombudsman, *Tratamento dos cidadãos estrangeiros em situação irregular ou requerentes de asilo nos centros de instalação temporária ou espaços equiparados*, September 2017, 34-36

⁶²⁸ See Público, 'Estrangeiras detidas no aeroporto de Lisboa estão "mais expostas" a assédio', 3 September 2018, available in Portuguese at: <https://bit.ly/2C88KR3>.

⁶²⁹ Ombudsman, *Tratamento dos cidadãos estrangeiros em situação irregular ou requerentes de asilo nos centros de instalação temporária ou espaços equiparados*, September 2017, available at: <https://bit.ly/3eLMNX6>, 34-35. The fact that vulnerable persons, including pregnant women are subjected to the same detention conditions was reiterated in the latest report of the Ombudsman. See Ombudsman, *National Preventive Mechanism, Report to the Parliament 2018*, 30 May 2019, available at: <https://bit.ly/2S7tdcW>, 41-43.

⁶³⁰ Ombudsman, *National Preventive Mechanism, Report to the Parliament 2018*, 30 May 2019, available at: <https://bit.ly/2S7tdcW>, 41-43.

⁶³¹ Ibid., 42.

CPR has at times received complaints from detainees due to difficulties in accessing luggage which requires prior authorisation. This information was also confirmed by the Ombudsman.⁶³²

Detainees at **Lisbon Airport** are served meals provided by the air companies that are similar to those served on airplanes. At times, CPR receives complaints from detainees because of the insufficient or poor quality of the food; such complaints have also been addressed to the Ombudsman.⁶³³

According to information collected by CPR, including in the framework of the project “Time for Needs: Listening, Healing, Protecting”,⁶³⁴ the staff from SEF at the border receives general in-house training on international protection. In late 2018, UNHCR provided training on statelessness to staff from SEF (including border staff). According to the information provided by UNHCR no further training was provided by the organisation to similar audiences in 2019. CPR is unaware of any training provided to other staff working at the airport detention facility regarding human rights and international protection.

In the past, the Ombudsman has raised concerns about the lack of specific training and language skills of supporting staff from security companies to perform their duties and the impact it could have on detainees in terms of isolation and access to services such as health care. It also reported a complaint of physical abuse from staff during its visit to the **Lisbon Airport** facility, corroborated by other detainees.⁶³⁵ In its most recent report, the Ombudsman also refers to accounts of ill treatment by SEF officers during document controls at the border whose veracity was not confirmed.⁶³⁶

CPR has received rare but recurrent allegations over the years from asylum seekers regarding physical abuse by SEF inspectors mainly at the border support unit (as opposed to the detention facility, CIT). In 2017, the CPR has demanded a formal investigation into these allegations and SEF has conducted internal inquiries. According to the information provided by SEF to CPR, the procedures did not lead to any proof of wrongdoing and were therefore classified.

In March 2019, the Criminal Police arrested three SEF inspectors on suspicions of having killed a man in the detention centre at **Lisbon airport**.⁶³⁷ According to media reports, a 40-year-old man from Ukraine who was refused entry into national territory was found dead in the detention centre with signs of having been violently assaulted. Media outlets also reported alleged efforts to conceal the facts. While the case was under investigation at the time of writing, both the Director and Deputy Director of Borders (Lisbon) were removed from office. The Minister of Home Affairs requested an internal investigation to the direction and functioning of the detention centre and ordered disciplinary inquiries to all the involved members of SEF.⁶³⁸ The three inspectors arrested reportedly denied the claims.⁶³⁹ The Minister of Home Affairs was in the meantime at the Parliament where he expressed his outrage and vowed to do his best for the situation not to be repeated. The Minister further announced changes to be implemented in the detention centre that, at the time, was closed due to the coronavirus epidemic. While details were not available at the time of writing, measures such as the provision of better support to persons refused entry by the Bar Association, and the reinforcement of monitoring (including by external entities) and security measures

⁶³² Ibid., 40-41.

⁶³³ Ombudsman, *National Preventive Mechanism, Report to the Parliament 2018*, 30 May 2019, p. 41, available in Portuguese at: <https://bit.ly/2S7tdcW>. Food provision was found adequate in **CIT – UHSA**, however.

⁶³⁴ Italian Council for Refugees et al., *Time for Needs: Listening, Healing, Protecting*, October 2017, available at: <http://bit.ly/2xZqCGh>.

⁶³⁵ Ombudsman, *Tratamento dos cidadãos estrangeiros em situação irregular ou requerentes de asilo nos centros de instalação temporária ou espaços equiparados*, September 2017, available in Portuguese at: <https://bit.ly/3eLMNX6>, 21-22.

⁶³⁶ Ombudsman, *National Preventive Mechanism, Report to the Parliament 2018*, 30 May 2019, available in Portuguese at: <https://bit.ly/2S7tdcW>, 46-47.

⁶³⁷ Polícia Judiciária, *Detenção de três presumíveis autores de crime de homicídio*, 30 March 2020, available at: <https://bit.ly/2VKHkqM>.

⁶³⁸ See, for instance, Público, *Direcção do SEF demitida depois de PJ deter três inspetores suspeitos de matar ucraniano*, 30 March 2020, available at: <https://bit.ly/3cHoYhi>; Público, *Provedora de Justiça: é urgente haver alternativas ao SEF do aeroporto*, 1 April 2020, available at: <https://bit.ly/2xS2J9K>; Renascença, *Morte no aeroporto. Mais inspetores do SEF, enfermeiros, médicos e seguranças sob investigação*, 4 April 2020, available at: <https://bit.ly/2Y0J3eu>.

⁶³⁹ Expresso, *Inspetores do SEF negam agressões fatais a imigrante ucraniano*, 17 April 2020, available at: <https://bit.ly/2Y1gZaO>.

were referred. The Minister also affirmed that asylum seekers would no longer be detained in this detention centre. The implications of such statements are not yet clear.⁶⁴⁰

Following the public debate during the summer of 2018 regarding the detention of vulnerable asylum seekers and the detention conditions at **Lisbon Airport** (see [Detention of Vulnerable Applicants](#)), the Ministry of Home Affairs adopted a decision on 24 July 2018 determining among others an inquiry into the functioning of the detention facility by the General Inspectorate of Internal Administration (*Inspecção Geral da Administração Interna* – IGAi) and a report from SEF to the Ombudsman regarding the state of implementation of its report recommendations from 2017. At the date of writing, CPR was not aware of the publication of the results of these initiatives.

The Ombudsman also expressed concern with frequent overcrowding of the facility in **Lisbon**, opposed to instances of excessive isolation of detainees in the facility in Porto.⁶⁴¹

2.2. Activities

In accordance with the law, detainees in each wing of the detention facility at **Lisbon Airport** have unrestricted access to a courtyard of 70m² with table and chairs during a reasonable period of time in the morning and afternoon.⁶⁴² However, the courtyards in the border detention facilities have been criticised by the Ombudsman in the past for being too small, surrounded by walls and lacking natural light.⁶⁴³ As far as CPR can observe, the situation remained unchanged in 2019.

The detention facility at the **Lisbon airport** does not have a specific leisure area. In the absence of reading materials in different languages and other activities, the television and some toys for children⁶⁴⁴ are the only leisure available to detainees.⁶⁴⁵ The mobile phones and other personal belongings of the detainees are generally confiscated upon arrival at the detention facility.⁶⁴⁶

While the law provides for access to education of children asylum seekers under the same conditions as nationals,⁶⁴⁷ and the rules governing CIT provide for the access of detained accompanied children to education depending on the duration of their detention,⁶⁴⁸ children in detention do not have access to education in practice either at the detention facility or by accessing normal schools. This situation needs to be considered in light of the periods of detention of asylum-seeking children in detention facilities at the border.

⁶⁴⁰ Público, *Eduardo Cabrita: houve ‘negligência grosseira e encobrimento grave’ do SEF na morte de ucraniano*, 8 April 2020, available at: <https://bit.ly/2XYDm0t>.

⁶⁴¹ Ombudsman, *National Preventive Mechanism, Report to the Parliament 2018*, 30 May 2019, available in Portuguese at: <https://bit.ly/2S7tdcW>, 40. The Ombudsman also issued a specific recommendation regarding excessive isolation suggesting the authorities to systematically transfer persons detained in such situations to UHSA following 7 days of detention at the border facility. See Ombudsman, *Recomendação n.º 2/2019/MNP*, 2 October 2019, available at: <https://bit.ly/3bwAP1L>.

⁶⁴² Article 35-B(9) Asylum Act; Ombudsman, *A instalação temporária de cidadãos estrangeiros não admitidos em Portugal ou em processo de afastamento do território nacional – relatório*, March 2011, available at: <https://bit.ly/2S10lo1>.

⁶⁴³ Ombudsman, *Tratamento dos cidadãos estrangeiros em situação irregular ou requerentes de asilo nos centros de instalação temporária ou espaços equiparados*, September 2017, available at: <https://bit.ly/3eLMNX6>, 33.

⁶⁴⁴ Article 146-A(7) Immigration Act governing CIT states that accompanied children in detention must be offered leisure activities, including age appropriate games and recreational activities.

⁶⁴⁵ Ombudsman, *Tratamento dos cidadãos estrangeiros em situação irregular ou requerentes de asilo nos centros de instalação temporária ou espaços equiparados*, September 2017, available in Portuguese at: <https://bit.ly/3eLMNX6>, 33-34. Ombudsman, *National Preventive Mechanism, Report to the Parliament 2018*, 30 May 2019, available in Portuguese at: <https://bit.ly/2S7tdcW>, 39-41.

⁶⁴⁶ Ombudsman, *National Preventive Mechanism, Report to the Parliament 2018*, 30 May 2019, available in Portuguese at: <https://bit.ly/2S7tdcW>, 40-41.

⁶⁴⁷ Article 53 Asylum Act.

⁶⁴⁸ Article 146-A(7) Immigration Act.

2.3. Health care and special needs in detention

The responsibility for providing health care to asylum seekers at the border lies with the Ministry of Home Affairs that can rely on public entities and/or private non-profit organisations in the framework of a MoU to ensure the provision of such services.⁶⁴⁹

The Asylum Act provides for the right of asylum seekers and their relatives to adequate health care at the border (i.e. in detention),⁶⁵⁰ and for the right of vulnerable asylum seekers in detention to regular health care that meets their particular needs.⁶⁵¹ The Asylum Act does not, however, specify this particular standard⁶⁵² and/or whether it differs from the general standard of health care provision in the asylum procedure.⁶⁵³

In practice, there seems to be varying levels of service provision depending on the location of detention.⁶⁵⁴

Until 2018 detainees at the **Lisbon Airport's** detention facility only had access to basic medical screenings conducted by nurses of the Portuguese Red Cross (*Cruz Vermelha Portuguesa*, CVP) following an initial triage conducted by the security staff without any specific training or protocol.⁶⁵⁵ Where needed, asylum seekers were referred to emergency care, including emergency mental health care in hospitals. The triage system generated complaints regarding effective and/or timely access to health care.⁶⁵⁶

In order to address these problems, SEF signed an MoU with the NGO Doctors of the World (*Médicos do Mundo*, MdM) in June 2018 for the provision of enhanced medical care at the Lisbon airport detention area.⁶⁵⁷ According to MdM, the project aims at assessing the health condition of detainees; prevent the deterioration of chronic conditions; whenever possible offer out-patient treatments; assist in dealing with infectious diseases within the detention area and in case of release from the detention area in cooperation with the Directorate General for Health (DGS); training of staff to deal with episodes of acute disease and treatment follow-up.⁶⁵⁸ For that purpose, MdM is expected to provide medical and nursing care, medication, medical tests, referrals to the SNS in case of emergency care or other not eligible for out-patient treatment and referrals to DGS.

According to the Ombudsman, doctors from MdM visit the facility 3 times a week. Moreover, the provision of first aid and nursing care is coordinated with the Portuguese Red Cross (CVP) and more complex

⁶⁴⁹ Article 61(1) Asylum Act.

⁶⁵⁰ Article 56(2) Asylum Act.

⁶⁵¹ Article 35(b)(8) Asylum Act.

⁶⁵² However, Article 146-A(3) Immigration Act states that a foreigner detained at a CIT or an equivalent detaining facility (i.e. at the border) is entitled to emergency and basic health care only and that special attention should be provided to vulnerable individuals, particularly to minors, unaccompanied minors, handicapped persons, elderly persons, pregnant women, families with children and survivors of torture, rape and other forms of serious psychological, physical or sexual violence.

⁶⁵³ In accordance with Article 52(1) Asylum Act and Ministerial Orders ("Portaria") No 30/2001 and No 1042/2008, asylum seekers and their relatives are entitled to medical assistance and access to medicines for basic needs, and for emergency and primary care in the National Health Service (SNS) under the same conditions as nationals. Primary care is to be understood as including at least access to general practitioners, access to specialists, inpatient care, complementary diagnostic tests and therapies, and nursing assistance. Furthermore, Article 4(1)(n) Decree-Law No 113/2011 (recast) provides for free access to the SNS by asylum seekers.

⁶⁵⁴ See Italian Council for Refugees *et al.*, *Time for Needs: Listening, Healing, Protecting*, October 2017, available at: <http://bit.ly/2xZqCGh>.

⁶⁵⁵ Ombudsman, *Tratamento dos cidadãos estrangeiros em situação irregular ou requerentes de asilo nos centros de instalação temporária ou espaços equiparados*, September 2017, available at: <https://bit.ly/3eLMNX6>, 27.

⁶⁵⁶ *Ibid.*

⁶⁵⁷ See Público, 'SEF e Médicos do Mundo juntos na prestação de cuidados de saúde a imigrantes', 4 June 2018, available in Portuguese at: <https://bit.ly/2JdtGcw>.

⁶⁵⁸ MdM, *Embarque na Saúde, Project Information Sheet*, s.d., available in Portuguese at: <https://bit.ly/2RFBnfl>.

situations are addressed with the support of DGS. The Ombudsman considers that medical visits should be more frequent, and expressed concerns regarding the non-provision of psychological assistance.⁶⁵⁹

While in the past CPR received sporadic complaints by asylum seekers detained at **Lisbon Airport** of difficulties in accessing requested medical assistance, including after the MoU between the SEF and the MdM came into force, no such complaints were received in the course of 2019.

In 2017, CPR was informed by DGS of an ongoing risk of chickenpox contagion at the **Lisbon Airport** detention facility and of the need to temporarily suspend the admission of asylum seekers released from that detention facility in CPR's reception centres. In the framework of the legal information and assistance provided to asylum seekers detained at the Lisbon Airport, CPR also became aware of episodes of a contagion risk of scabies that required stringent containment measures. In 2019, CPR learned of another instance of scabies at **Lisbon airport** and was informally told that the situation was limited to the wing where persons refused entry into the territory are confined. It should be noted that the absence of arrangements for the washing of the detainees' clothes in all airport detention facilities was criticised in the past by the Ombudsman as posing a risk to the health of both detainees, SEF inspectors and supporting staff.⁶⁶⁰ In its 2018 report, the Ombudsman also referred to the difficulties in accessing personal belongings (including clothes) as a factor that hampers frequent change and wash of clothes.⁶⁶¹

In the case of asylum seekers detained in **CIT – UHSA** due to removal procedures, medical care is provided by doctors, nurses and psychiatrists and includes basic medical care, including dental care and medical screenings of diseases such as hepatitis and HIV, medication and training of staff on health-related topics. These volunteer health workers from MdM⁶⁶² are also able to identify the needs and to make referrals to the National Health Service (SNS). Moreover, the Public Health Unit performs monthly visits to the facility, ensuring vaccination and issuance of the corresponding official documents. The situation at UHSA has been recurrently described as a good practice by the Ombudsman.⁶⁶³

According to previous research,⁶⁶⁴ and the information available to CPR, there are no specific mechanisms or standard operational procedures for the early identification of vulnerable asylum seekers and their special reception needs at the border or in pre-removal detention. This assessment has been recently confirmed by the Ombudsman.⁶⁶⁵ SEF was not able to provide statistical data on the total number of persons with such needs detained throughout the year.

The detention facilities at the border have separate wings for asylum seekers and other individuals refused entry into the territory, and separate dormitories for men and women.

When kept in detention (see [Detention of Vulnerable Applicants](#)), vulnerable applicants are granted access to services and medical treatment under the same standards that are applicable to all detainees and have been described above.

⁶⁵⁹ Ombudsman, *National Preventive Mechanism, Report to the Parliament 2018*, 30 May 2019, available in Portuguese at: <https://bit.ly/2S7tdcW>, 47-48.

⁶⁶⁰ Ombudsman, *Tratamento dos cidadãos estrangeiros em situação irregular ou requerentes de asilo nos centros de instalação temporária ou espaços equiparados*, September 2017, 28-29.

⁶⁶¹ Ombudsman, *National Preventive Mechanism, Report to the Parliament 2018*, 30 May 2019, available in Portuguese at: <https://bit.ly/2S7tdcW>, 40-41.

⁶⁶² MdM, *Unidade Habitacional de Santo António, Project Information Sheet*, s.d., available in Portuguese at: <https://bit.ly/2Uc068m>.

⁶⁶³ Ombudsman, *Tratamento dos cidadãos estrangeiros em situação irregular ou requerentes de asilo nos centros de instalação temporária ou espaços equiparados*, September 2017, available at: <https://bit.ly/3eLMNX6>, 28; Ombudsman, *National Preventive Mechanism, Report to the Parliament 2018*, 30 May 2019, available in Portuguese at: <https://bit.ly/2S7tdcW>, 48.

⁶⁶⁴ See Italian Council for Refugees et al., *Time for Needs: Listening, Healing, Protecting*, October 2017, available at: <http://bit.ly/2xZqCGh>.

⁶⁶⁵ Ombudsman, *National Preventive Mechanism, Report to the Parliament 2018*, 30 May 2019, available in Portuguese at: <https://bit.ly/2S7tdcW>, 42.

3. Access to detention facilities

Indicators: Access to Detention Facilities

1. Is access to detention centres allowed to

❖ Lawyers:	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Limited	<input type="checkbox"/> No
❖ NGOs:	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Limited	<input type="checkbox"/> No
❖ UNHCR:	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Limited	<input type="checkbox"/> No
❖ Family members:	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Limited	<input type="checkbox"/> No

The Asylum Act and the internal regulation of the detention facility at **Lisbon Airport** provide for the right of detainees to receive visits from legal representatives, embassy representatives, relatives and national and international human rights organisations.⁶⁶⁶ In the particular case of legal assistance, asylum seekers in detention are entitled to receive visits from lawyers, UNHCR and CPR.⁶⁶⁷ Restrictions in the access to the detention facilities can only be based on grounds of security, public order or operational reasons and only to the extent that they do not restrict access in a significant or absolute manner.⁶⁶⁸

According to available information, while the visiting hours during the morning and afternoon are reasonable, visits must be preapproved by SEF depending on the expected duration of detention.⁶⁶⁹ Detainees are entitled to a maximum of three visitors at the same time and the duration of the visit cannot exceed one hour. According to CPR's experience, access procedures for free legal aid and private lawyers are complex, bureaucratic and involve obtaining access cards in advance. Accredited staff from CPR has unrestricted access to asylum seekers detained at the border or in pre-removal detention centres, but only following the status determination interview conducted by SEF, as opposed to lawyers who have unrestricted access to detainees prior to and during the status determination interview. CPR has not received significant complaints from asylum-seeking detainees regarding refused visits from lawyers or relatives.

CPR is aware of concerns raised by free legal aid lawyers regarding an 11€ fee charged by ANA, S.A., the private company in charge of national airports, for accessing the restricted area of the airports where the detention facilities are located which can discourage them from visiting their clients.⁶⁷⁰ This fee, which is applied to all external visitors that are not accredited, has been criticised by the Ombudsman that qualified it as a restriction to article 35-B(4) of the Asylum Act.⁶⁷¹ The UN Committee Against Torture also expressed concern with the application of this access fee in its recent Concluding Observations on Portugal, thereby recommending the State to “*guarantee that retained asylum seekers and irregular migrants have unhindered, prompt and adequate access to counsel, including legal services*”.⁶⁷²

With regard to other forms of contact with the exterior, detainees in facilities at the border are not allowed to keep their mobile phones but are entitled to use public phones that are freely accessible in each wing of the detention facility using coins, prepaid cards or collect calls. Furthermore, each detainee is entitled to 5 minutes of national and international calls using the telephones of the facility.

These limits on communication have been criticised by the Ombudsman due to the inadequacy of the 5-minute plafond, procedures to request additional calls, and difficulties in accessing public phones due to the inexistence of mechanisms to exchange bills for coins.⁶⁷³

⁶⁶⁶ Article 35-B(3) Asylum Act.

⁶⁶⁷ Article 49(6) Asylum Act.

⁶⁶⁸ Article 35-B(4) Asylum Act.

⁶⁶⁹ Ombudsman, *A instalação temporária de cidadãos estrangeiros não admitidos em Portugal ou em processo de afastamento do território nacional – relatório*, March 2011, available at: <https://bit.ly/2S10lo1>.

⁶⁷⁰ See Público, ‘Taxa cobrada a advogados para ver detidos no aeroporto é “nonsense”, acusa bastonário’, 3 September 2018, available in Portuguese at: <https://bit.ly/2NocWka>.

⁶⁷¹ Ombudsman, *National Preventive Mechanism, Report to the Parliament 2018*, 30 May 2019, available in Portuguese at: <https://bit.ly/2S7tdcW>, 43-44.

⁶⁷² Committee Against Torture, *Concluding Observations on the seventh periodic report of Portugal*, CAR/C/PRT/CO/7, 18 December 2019, par.40(d), available at <https://bit.ly/2G1F07z>.

⁶⁷³ Ombudsman, *National Preventive Mechanism, Report to the Parliament 2018*, 30 May 2019, available in Portuguese at: <https://bit.ly/2S7tdcW>, 43-44.

At times, CPR receives complaints from detainees regarding the limited time for calls and having to choose between contacting family or lawyers. According to information available to CPR, access to phone calls after exhausting the 5-minute plafond, may vary. In some cases, phone calls to lawyers and organisations such as CPR for the purposes of legal assistance are provided. However, similarly to 2018, CPR received sporadic complaints in 2019 from detainees who were refused a phone call to contact the organisation, and some calls between its legal officers and detainees were abruptly interrupted by staff of the private security company in charge of operational assistance.

The Ombudsman has received reports of detainees that were unaware of the possibility to request further calls for lawyers, organisations or family members as well as of cases where such requests were systematically refused.⁶⁷⁴ While the issue is not mentioned in its latest report, according to previous reports by the Ombudsman, the contacts of relevant support organisations were only available in the administrative support services.⁶⁷⁵ The Ombudsman considers that this framework of insufficient contact with the exterior may amount to inhuman or degrading treatment.⁶⁷⁶

In accordance with the law, UNHCR and CPR have the right to be informed of all asylum claims presented in Portugal and to personally contact asylum seekers irrespective of the place of application in order to provide information on the asylum procedure, as well as regarding their intervention throughout the process.⁶⁷⁷ In this context, CPR is regularly present (i.e. generally every week) at the **Lisbon Airport** detention facility to provide free legal information and assistance,⁶⁷⁸ in particular regarding the asylum procedure; access to free legal aid at appeal stage; and the promotion of the release without conditions of particularly vulnerable asylum seekers either by SEF *ex officio* or by means of review from the Criminal Courts.

In its visits to border detention facilities, the Ombudsman has observed that detainees are not always provided information on their rights and on the internal functioning of facilities. Gaps were also identified in the provision of information on grounds for detention and status of procedures.⁶⁷⁹

Social assistance, leisure or other occupational activities are not provided by any organisation at the **Lisbon Airport** detention facility.⁶⁸⁰ In the case of **CIT– UHSA** in Porto, the law provides for an MoU with the International Organisation for Migration (IOM) and the Jesuit Refugee Service (JRS) Portugal,⁶⁸¹ that are responsible for training staff and providing social, psychological and legal assistance to detainees. According to CPR's experience regarding asylum seekers who have applied from detention at CIT – UHSA, JRS Portugal has a psychologist and a lawyer in the detention facility that provide in-house assistance while the provision of in-house medical and psychological assistance is performed by volunteer organisations such as MdM. Furthermore, IOM shares information materials at the facility (namely on the rights of detainees, regular migration and risks of irregular migration), organises information sessions and conducts interviews on the circumstances of detention.

⁶⁷⁴ Ombudsman, *National Preventive Mechanism, Report to the Parliament 2018*, 30 May 2019, available in Portuguese at: <https://bit.ly/2S7tdcW>, 44.

⁶⁷⁵ Ombudsman, *Tratamento dos cidadãos estrangeiros em situação irregular ou requerentes de asilo nos centros de instalação temporária ou espaços equiparados*, September 2017, available at: <https://bit.ly/3eLMNX6>, 44.

⁶⁷⁶ Ombudsman, *National Preventive Mechanism, Report to the Parliament 2018*, 30 May 2019, available in Portuguese at: <https://bit.ly/2S7tdcW>, 44.

⁶⁷⁷ Article 13(3) Asylum Act.

⁶⁷⁸ Article 49(1)(e) and (6) Asylum Act.

⁶⁷⁹ Ombudsman, *National Preventive Mechanism, Report to the Parliament 2018*, 30 May 2019, available in Portuguese at: <https://bit.ly/2S7tdcW>, 45-46.

⁶⁸⁰ *Ibid.*, 48..

⁶⁸¹ Article 3 Decree-Law 44/2006.

D. Procedural safeguards

1. Judicial review of the detention order

Indicators: Judicial Review of Detention

- | | | |
|---|---|-----------------------------|
| 1. Is there an automatic review of the lawfulness of detention? | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| 2. If yes, at what interval is the detention order reviewed? | 7 days | |

The law provides for the right of asylum seekers to information in writing regarding the grounds for their detention, access to free legal aid and legal challenges against detention in a language they either understand or are reasonably expected to understand.⁶⁸²

In practice, the declaration issued by SEF to asylum seekers at the border for the purposes of certifying the registration of the asylum application contains a brief reference to the norm of the Asylum Act that provides for the systematic detention of asylum seekers at the border.⁶⁸³ CPR is unaware of the provision of information in writing regarding the grounds of detention, the right to access free legal aid and the right to judicial review of the detention order.⁶⁸⁴ That being said, asylum seekers benefit from legal information and assistance from CPR at the border, which also includes free legal assistance for the purpose of judicial review of the detention order. However, this is limited to vulnerable asylum seekers due to capacity constraints.

The competent authority to impose and review the detention of an asylum seeker in a CIT,⁶⁸⁵ or in detention facilities at the border,⁶⁸⁶ is the Criminal Court which has territorial jurisdiction over the place where detention occurs. In the case of detention at the border, SEF is required to inform the Criminal Court of the detention within 48 hours upon arrival at the border for purposes of maintaining the asylum seeker in detention beyond that period.⁶⁸⁷ The review of detention can be made *ex officio* by the Criminal Court or upon request of the detained asylum seeker at all times on the basis of new circumstances or information that have a bearing on the lawfulness of the detention.⁶⁸⁸

In the case of asylum seekers at the border, the Criminal Court usually requires SEF to provide information on developments of the asylum application within 7 days after their initial request for confirmation of the detention. This procedure allows the Criminal Court to reassess the lawfulness of the detention on the basis of the decision from SEF regarding the admissibility of the asylum application.

To CPR's understanding, once SEF informs the Criminal Court that the asylum application at the border was rejected, there are no additional *ex officio* reviews prior to release even in cases where the court invites SEF to consider the release of vulnerable applicants (see [Alternatives to Detention](#)). Where the applicant appeals the rejection of the asylum application and is therefore not removed from the border, release usually takes place at the end of the maximum detention time limit of 60 days (see [Duration of Detention](#)).

⁶⁸² Article 35-B(2) Asylum Act.

⁶⁸³ Article 26 Asylum Act.

⁶⁸⁴ Even though the declaration issued by the SEF to asylum seekers at the border for the purposes of certifying the registration of the asylum application contains a brief reference to their right to legal aid, it does not specify that such legal aid also encompasses Criminal Court procedures pertaining to their detention at the border.

⁶⁸⁵ Article 35-A(5) Asylum Act.

⁶⁸⁶ Article 35-A(6) Asylum Act.

⁶⁸⁷ *Ibid.*

⁶⁸⁸ Article 35-A(6) Asylum Act.

2. Legal assistance for review of detention

Indicators: Legal Assistance for Review of Detention

1. Does the law provide for access to free legal assistance for the review of detention?
☒ Yes ☐ No
2. Do asylum seekers have effective access to free legal assistance in practice?
☒ Yes ☐ No

The law sets out the right of asylum seekers to free legal aid under the same conditions as nationals,⁶⁸⁹ which thus includes proceedings in front of the Criminal Court regarding detention at the border. Access to legal aid is processed under the same conditions as nationals, which include a “means test”.⁶⁹⁰ In the context of legal aid for the purposes of appealing the rejection of the asylum application, this test is generally applied in a flexible manner. CPR has no experience with legal aid applications for the purposes of detention review, however.

Up to 2018 legal aid procedures tended to exceed 60 days, rendering assistance inefficient in the context of detention review, as the asylum seekers would usually be released from detention before the free legal aid lawyer was appointed by the Portuguese Bar Association (*Ordem dos Advogados*). Recently, these procedures have been reduced to 1-2 weeks which could present an opportunity for effective legal representation of asylum seekers for purposes of detention review. That being said, the current capacity of CPR to process these additional free legal aid applications at the border is very limited and while the law provides for an accelerated free legal aid procedure at the border on the basis of a MoU between the Ministry of Home Affairs and the Bar Association,⁶⁹¹ such procedures are only for purposes of the application and remain to be implemented to date. The relevance of broader legal support within the context of detention and the possibility of implementing specific MoUs with the Bar Association for that purpose was also underlined by the Ombudsman.⁶⁹²

In practice, asylum seekers benefit from legal information and assistance from CPR at the border, which also includes free legal assistance for the purposes of detention review, albeit limited to vulnerable asylum seekers due to capacity constraints.

E. Differential treatment of specific nationalities in detention

CPR is unaware of any increased risk of detention and/or systematic detention and/or longer periods of detention of asylum seekers based on nationality.

⁶⁸⁹ Article 49(1)(f) Asylum Act.

⁶⁹⁰ Act 34/2004.

⁶⁹¹ Article 25(4) Asylum Act.

⁶⁹² Ombudsman, *National Preventive Mechanism, Report to the Parliament 2018*, 30 May 2019, available in Portuguese at: <https://bit.ly/2S7tdcW>, 46-47.

A. Status and residence

1. Residence permit

Indicators: Residence Permit

1. What is the duration of residence permits granted to beneficiaries of protection?
 - ❖ Refugee status 5 years
 - ❖ Subsidiary protection 3 years

The Portuguese authorities are bound by a duty to issue beneficiaries of international protection a residence permit.⁶⁹³ The duration of residence permits is dependent on the type of international protection granted: the residence permit for **refugees** is valid for 5 years,⁶⁹⁴ while the residence permit for **subsidiary protection** beneficiaries is valid for 3 years.⁶⁹⁵ According to the statistics provided by SEF, in 2019 a total of 195 residence permits were issued to refugees and 113 residence permits were issued to beneficiaries of subsidiary protection.

According to CPR's experience in providing legal information and assistance to asylum seekers and beneficiaries of international protection at all stages of the asylum procedure (see [Regular Procedure: Legal Assistance](#)), the average length of the procedure for issuing a residence permit following a decision granting international protection in previous years was considered reasonable, ranging from a few weeks to a month and a half. In the course of 2019, CPR noticed significant waiting periods for the issuance of residence permits, in particular due to difficulties in booking appointments for renewals. During such periods, asylum seekers are issued a declaration from SEF certifying their application for the issuance/renewal of a residence permit. It should be noted that asylum seekers admitted to the regular procedure are in possession of a provisional residence permit, valid and renewable for 6 months, at the time they are granted international protection (see [Short Overview of the Asylum Procedure](#)).⁶⁹⁶

In late 2014 and 2015, the launch of a cessation procedure by SEF regarding Guinean nationals, the first ever to target citizens of a specific nationality in a collective manner, has been characterised by significant shortcomings, including a curtailment of the residence rights of those concerned by failing to renew or by delaying the renewal of expired residence permits during the procedures. The same practice was observed in 2019 as a significant number of cessation procedures was triggered by the authorities (see [Cessation](#)).

2. Civil registration

2.1. Registration of child birth

According to the law, civil registration acts of foreign authorities such as child birth certificates regarding foreigners can only be transcribed into the Portuguese civil registry if the applicant demonstrates a legitimate interest in the transcription,⁶⁹⁷ and if the act is: duly translated;⁶⁹⁸ legal and does not raise well-founded doubts regarding its authenticity.⁶⁹⁹

⁶⁹³ Article 67 Asylum Act. This provision is generally in line with Article 24 recast Qualification Directive.

⁶⁹⁴ Article 67(1) Asylum Act.

⁶⁹⁵ Article 67(2) Asylum Act.

⁶⁹⁶ Article 27(1) Asylum Act.

⁶⁹⁷ Article 6(4) Civil Registration Code.

⁶⁹⁸ Article 49(8) Civil Registration Code.

⁶⁹⁹ Article 49(1) Civil Registration Code. In case the civil registry officer is not satisfied with the credibility of the foreign registration act, it may suspend the procedure and contact *ex officio* the issuing authority for clarifications at the expense of the applicant, an option that is ill adapted to beneficiaries of international protection (Article 49(2) and (3) Civil Registration Code). The applicant may also lodge a judicial appeal against the decision of the civil registration officer to refuse partially or in total the authenticity of the document (Article

In practice, the need of beneficiaries of international protection to transcribe foreign child birth certificates normally arises in the framework of naturalisation procedures that require the registration of their birth by the Central Registrations Service (*Conservatória dos Registos Centrais*, CRC) based on a duly legalised birth certificate prior to the registration of the acquisition of Portuguese nationality.⁷⁰⁰ Furthermore, it also arises in the case of marriage (transcription of foreign marriages and registration of marriages contracted in Portugal) and the regulation of parental authority as both are added to the birth registry of the grooms.⁷⁰¹ However, in the case of [Naturalisation](#) procedures and registration of marriages, the law provides for alternative avenues in case the applicant is unable to produce a duly legalised birth certificate.

According to the experience of CPR, there are no other recurring instances where the need for the registration of child birth arises given that SEF does not require such registration for identification and issuance of international protection residence permits, given the specific standards of proof applicable, and that these in turn replace identification documents for all legal purposes.⁷⁰²

The registration of the birth of a child on the Portuguese territory is mandatory regardless of nationality.⁷⁰³ It must be declared to the civil registry authorities of the Ministry of Justice either by (1) the parents, another legal representative of the child or a person assigned that responsibility in writing by the parents, (2) the next closest relative of the child, or (3) an official of the maternity institution where the birth took place or to which the birth was orally reported.⁷⁰⁴ The time limit and the place for reporting the birth varies depending on the place of birth.⁷⁰⁵

The actual registration of birth that follows the declaration can either take place at the maternity, which is usually the case, or at a civil registry office.⁷⁰⁶ Following the registration of birth, the information is automatically transferred to the Ministry of Health, ISS and, upon request, to the Ministry of Finance for purposes of registration of the child with its services.⁷⁰⁷

The registration of birth requires that identification documents of the parents be produced “whenever possible”.⁷⁰⁸ According to the Immigration Act, the residence permit replaces the identification document for all legal purposes.⁷⁰⁹ An interpreter must be appointed in case the parents are unable to communicate with the civil registry officer in Portuguese and the civil registry officer is not familiar with the language spoken by the parents.⁷¹⁰

If the child or his/her parent(s) are foreign citizens, were born abroad or have an additional nationality, the law allows for their registration under a foreign first name.⁷¹¹

According to CPR’s experience, beneficiaries of international protection whose children are born in Portugal do not face significant or systematic challenges in the registration of their birth as they are in possession of a valid [Residence Permit](#) that is considered an adequate identification document by civil registry offices. However, some problems may arise with the registration of paternity where the father cannot personally declare his willingness to be registered as such before a Portuguese civil registry office and the marriage contracted abroad is not previously registered in Portugal, as is generally the case. In

49(4)-(6) and 292(2) Civil Registration Code) in which case he or she will be allowed to present statements and alternative evidence (Article 49(7) Civil Registration Code).

⁷⁰⁰ Article 50(1) Portuguese Nationality Regulation.

⁷⁰¹ Article 69(1)(a) and (e) Civil Registration Code.

⁷⁰² Article 84 Immigration Act.

⁷⁰³ Article 1(1) and (2) Civil Registration Code.

⁷⁰⁴ Article 97(1) Civil Registration Code.

⁷⁰⁵ Articles 96 and 96-A Civil Registration Code. This can either be at the maternity up to the moment the mother leaves the premises; or at any civil registry office (*conservatória de registo civil*) within 20 days from the date of birth.

⁷⁰⁶ Articles 101, 101-A and 101-B Civil Registration Code.

⁷⁰⁷ Article 102-A Civil Registration Code.

⁷⁰⁸ Article 102 Civil Registration Code.

⁷⁰⁹ Article 84 Immigration Act.

⁷¹⁰ Article 42 Civil Registration Code.

⁷¹¹ Article 103 Civil Registration Code.

these cases, a paternity investigation is usually conducted by the Family Court with uncertain results given the potential difficulties of beneficiaries of international protection to meet evidentiary requirements.⁷¹²

2.2. Registration of marriage

In practice, according to CPR's experience, the need of beneficiaries of international protection to transcribe foreign marriage registries is not a recurring issue given that SEF does not require such registration for the purposes of derivative international protection (i.e. when protection is extended to someone else) or family reunification of procedures (see [Family Reunification](#)).

Marriage between foreigners in Portugal, on the other hand, requires the presentation of the spouses' residence permits,⁷¹³ birth certificates,⁷¹⁴ and certificates of no impediment,⁷¹⁵ that must be either duly legalised or not raise well-founded doubts regarding their authenticity.⁷¹⁶ Where the spouses are unable to produce a legal birth certificate or a certificate of no impediment for the purposes of marriage, the law provides for alternative legal avenues to either replace the birth certificate,⁷¹⁷ or justify the absence of the certificate of no impediment,⁷¹⁸ where there are adequate reasons. To that end, the civil registry officer may choose to conduct the investigations deemed appropriate,⁷¹⁹ and consider alternative evidence such as witness statements.⁷²⁰

According to CPR's experience, beneficiaries of international protection do not face significant or systematic challenges in contracting marriage in Portugal as civil registry offices generally accept alternative legal avenues to either replace the birth certificate or to justify the absence of the certificate of no impediment where relevant reasons pertaining the international protection needs of the applicants were ascertained.

3. Long-term residence

Indicators: Long-Term Residence

1. Number of long-term residence permits issued to beneficiaries in 2019: 0

Competence for issuing a long-term residence permit lies with the National Director of SEF,⁷²¹ that must issue a decision within 6 months of application.⁷²² The residence permit is valid for 5 years and is automatically renewed at the request of the beneficiary of protection.⁷²³ The following criteria must be met to obtain a long-term resident status regardless of the type of international protection held by the beneficiary:⁷²⁴

- ❖ Legal and continuous residence in the national territory for 5 years following the date of the application for international protection (no difference being drawn between refugee status and subsidiary protection);
- ❖ Stable and regular resources to ensure his/her survival and that of his/her family members, without having to resort to the social assistance system;

⁷¹² Article 120 Civil Registration Code and Articles 1847, 1853(a), 1864 and 1865 Civil Code.

⁷¹³ Article 137(1) Civil Registration Code.

⁷¹⁴ Article 137(2) Civil Registration Code.

⁷¹⁵ Article 166(1) Civil Registration Code.

⁷¹⁶ Article 49(1) Civil Registration Code.

⁷¹⁷ Articles 135(5), 137(5) and 266 to 269 Civil Registration Code.

⁷¹⁸ Article 166(2) Civil Registration Code.

⁷¹⁹ Article 268(1) Civil Registration Code.

⁷²⁰ Articles 143(1) and 166(3) Civil Registration Code.

⁷²¹ Article 128 Immigration Act.

⁷²² Article 129(4) Immigration Act. The time limit can be extended by 3 months in particularly complex cases but the applicant must be informed of the extension of the time limit (Article 129(5) Immigration Act) and the application is automatically accepted in the absence of a decision at the end of the 3-month time limit extension (Article 129(6) Immigration Act).

⁷²³ Article 130(2) Immigration Act.

⁷²⁴ Article 126 Immigration Act.

- ❖ Health insurance;
- ❖ Accommodation;
- ❖ Fluency in basic Portuguese.

A former beneficiary of international protection whose refugee status has ceased because he or she has voluntarily accepted protection of the country of nationality or, has voluntarily re-acquired the nationality of his/her country of origin, can be refused long term residence status (see [Cessation](#)).⁷²⁵

According to information shared by SEF, no such permits were issued to beneficiaries of international protection in 2019. As the main provider of legal information and assistance to asylum seekers and beneficiaries of international protection, CPR is not aware of the issuance of long-term residence status to beneficiaries of international protection in 2019 and has provided legal assistance in a very limited number of cases for that purpose. According to its experience, access to such status by beneficiaries of international protection is very rare for reasons mostly related to a lack of information and awareness, adequate financial resources, insufficient language skills and the priority given to applications for [Naturalisation](#).

4. Naturalisation

Indicators: Naturalisation

- | | |
|--|---------|
| 1. What is the minimum residence period for obtaining citizenship? | |
| ❖ Refugee status | 5 years |
| ❖ Subsidiary protection | 5 years |
| 2. Number of citizenship grants to beneficiaries in 2019: | 115 |

Competence for obtaining Portuguese nationality lies either with the Minister of Justice regarding naturalisation,⁷²⁶ or the Central Registry Office (*Conservatória dos Registos Centrais*, CRegC) of the Ministry of Justice regarding other modalities for obtaining Portuguese nationality.⁷²⁷ According to the law, and in the absence of any deficiencies or irregularities in the procedure attributable to the applicant the time limit for taking a final decision on the file is at least 3.5 months in naturalisation cases,⁷²⁸ and 3 months in the remaining cases.⁷²⁹

Some of the modalities for obtaining Portuguese nationality are of particular relevance to beneficiaries of international protection.

Foreign citizens, including refugees and beneficiaries of subsidiary protection, are eligible for naturalisation under the following conditions:⁷³⁰

- ❖ 18 years of age or emancipation in accordance with Portuguese law;
- ❖ Minimum legal residence of 5 years in Portugal;⁷³¹
- ❖ Proof of proficiency in Portuguese (A2);
- ❖ No conviction of a crime punishable with a prison sentence of at least 3 years;
- ❖ Not being a danger or a threat to national security or defence due to their involvement in activities related to the practice of terrorism, in accordance to the law that governs terrorism.

Furthermore, children of foreign nationals born on national territory are eligible for naturalisation under the following conditions:⁷³²

- ❖ Proof of proficiency in Portuguese (A2);
- ❖ No conviction of a crime punishable with a prison sentence of at least 3 years;

⁷²⁵ Article 127(3) Immigration Act.

⁷²⁶ Article 27 Portuguese Nationality Regulation.

⁷²⁷ Article 41 Portuguese Nationality Regulation.

⁷²⁸ Article 27 Portuguese Nationality Regulation.

⁷²⁹ Article 41(1) and (2) Portuguese Nationality Regulation.

⁷³⁰ Article 6(1) Nationality Act; Article 19 Portuguese Nationality Regulation.

⁷³¹ The Nationality Act was recast in July 2018. The recast reduced the residence requirement established in the above-mentioned article from 6 to 5 years.

⁷³² Article 6(2) Nationality Act; Article 20 Portuguese Nationality Regulation.

- ❖ Not being a danger or a threat to national security or defence due to their involvement in activities related to the practice of terrorism, in accordance to the law that governs terrorism;
- ❖ At least one parent resided in the country (regularly or not) at least for the past 5 years at the time of application; or the child completes at least one level of basic education or the secondary education in Portugal.

It should be noted that, on the basis of a reasoned request, the Ministry of Justice may decide to exempt naturalisation applicants from presenting supporting evidence in special and justified cases where it is shown that the facts for which supporting evidence is required are true beyond doubt.⁷³³ The law also provides in detail for the specific modalities regarding supporting evidence of proficiency in Portuguese,⁷³⁴ notably regarding assessment tests that are of particular relevance to beneficiaries of international protection.⁷³⁵

Children born in Portugal to foreigners who are not at the service of their State of nationality are Portuguese by origin if one of the parents has been legally residing in the country for at least 2 years at the time of the birth and if they do not declare that they do not want to be Portuguese.⁷³⁶

Foreign citizens, including refugees and beneficiaries of subsidiary protection, can acquire Portuguese citizenship if they have been married or have been in a civil union with a Portuguese citizen for at least 3 years.⁷³⁷

It is worth mentioning that, while a recast of the Nationality Act was approved in July 2018 and introduced provisions that may have a positive impact for applicants and beneficiaries of international protection (in particular unaccompanied children), the corresponding regulation has not been adopted at the time of writing, thus hindering the possibility of conducting an adequate analysis of its impact.

CPR's experience shows that the main challenges in obtaining naturalisation are related to poor language skills and obtaining supporting evidence. Supporting evidence required in naturalisation applications generally consists of legal and original birth certificates as well as criminal records from the country of nationality and former countries of residence, including EU Member states in the case of Dublin returnees. In accordance with applicable provisions, the CRegC is generally flexible regarding supporting evidence in naturalisation procedures involving refugees and beneficiaries of subsidiary protection who present reasoned justifications. CPR further provides support to that end, e.g. by clarifying the international legal standards that apply to administrative assistance.

According to information provided by CRegC, 180,060 applications for Portuguese citizenship were filled and 127,294 were concluded in 2019. Out of them, 115 beneficiaries of international protection were granted Portuguese nationality in 2019 according to SEF.

5. Cessation and review of protection status

Indicators: Cessation

1. Is a personal interview of the beneficiary in most cases conducted in practice in the cessation procedure? ☐ Yes ☒ No
2. Does the law provide for an appeal against the first instance decision in the cessation procedure? ☒ Yes ☐ No
3. Do beneficiaries have access to free legal assistance at first instance in practice? ☒ Yes ☐ With difficulty ☐ No

⁷³³ Article 26 Portuguese Nationality Regulation.

⁷³⁴ Article 25(2)-(9) Portuguese Nationality Regulation.

⁷³⁵ Ministerial Order 176/2014.

⁷³⁶ Article 1(1)(f) Nationality Act.

⁷³⁷ Article 3 Nationality Act; Article 14 Portuguese Nationality Regulation.

Competence for taking decisions on the cessation of international protection lies with the Ministry of Home Affairs on the basis of a proposal put forward by the national director of SEF.⁷³⁸ The representative of UNHCR or CPR shall be informed of the declaration of the loss of the right to international protection.⁷³⁹

The Asylum Act establishes the grounds for cessation of international protection.⁷⁴⁰

Regarding **refugee status**, the right to asylum ceases when the foreign national or stateless person:⁷⁴¹

- a. Decides to voluntarily accept protection of the country of his/her nationality;⁷⁴²
- b. Voluntarily reacquires his/her nationality after having lost it;⁷⁴³
- c. Acquires a new nationality and enjoys the protection of the country of the newly acquired nationality;⁷⁴⁴
- d. Returns voluntarily to the country he/she left or outside which he/she had remained for fear of persecution;⁷⁴⁵
- e. Cannot continue to refuse the protection of the country of nationality or habitual residence, since the circumstances due to which he/she was recognised as a refugee no longer exist;⁷⁴⁶ or
- f. Expressly renounces to the right to asylum.⁷⁴⁷

Regarding **subsidiary protection**, the right ceases when the circumstances resulting in said protection no longer exist or have changed to such an extent that the protection is no longer necessary.⁷⁴⁸

The ground relating to a change in circumstances justifying the cessation of refugee status or subsidiary protection can only be applied if SEF concludes that the change in circumstances in the country of origin or habitual residence is significant and durable to exclude a well-founded fear of persecution or a risk of serious harm.⁷⁴⁹ Furthermore, this cessation ground is without prejudice to the principle of *non-refoulement*,⁷⁵⁰ and is not applicable to refugees who are able to invoke imperative reasons related to prior persecution to refuse to avail themselves of the protection of the country of their nationality or habitual residence.⁷⁵¹ The latter safeguard is only explicitly provided in the Asylum Act for refugees, failing to transpose article 16(3) of the Qualification Directive.

SEF is required to notify the beneficiary of protection of the intended cessation in order to allow him/her to exercise the right to an adversarial hearing in writing within 8 days.⁷⁵² A decision on cessation is subject to a judicial appeal with suspensive effect.⁷⁵³ In the absence of specific provisions, it should be understood that beneficiaries of international protection are entitled to apply for free legal aid at appeal stage under the same conditions as nationals as legal aid is an integral part of the social security system (see [Regular Procedure: Legal Assistance](#)).⁷⁵⁴

Finally, the cessation of international protection results in the applicability of the Immigration Act to former beneficiaries,⁷⁵⁵ according to which an individual whose refugee status has ceased is entitled to a temporary residence permit without the need to present a residence visa,⁷⁵⁶ even though other requirements such as a travel document, accommodation, and income, still apply.

⁷³⁸ Article 43(1) Asylum Act.

⁷³⁹ Article 43(3) Asylum Act.

⁷⁴⁰ Article 41 (1)-(4) Asylum Act.

⁷⁴¹ Article 41(1) Asylum Act.

⁷⁴² Article 41(1) (a) Asylum Act.

⁷⁴³ Article 41(1) (b) Asylum Act.

⁷⁴⁴ Article 41(1) (c) Asylum Act.

⁷⁴⁵ Article 41(1) (d) Asylum Act.

⁷⁴⁶ Article 41(1) (e) and (f) Asylum Act.

⁷⁴⁷ Article 41(1) (g) Asylum Act.

⁷⁴⁸ Article 41(2) Asylum Act.

⁷⁴⁹ Article 41(3) Asylum Act.

⁷⁵⁰ Article 47 Asylum Act.

⁷⁵¹ Article 41(4) Asylum Act.

⁷⁵² Article 41(6) Asylum Act.

⁷⁵³ Article 44 Asylum Act.

⁷⁵⁴ Article 72 Asylum Act.

⁷⁵⁵ Article 42(2) Asylum Act.

⁷⁵⁶ Article 122(1)(f) Immigration Act.

According to statistics provided by SEF there were 14 cessations of the subsidiary protection status of Guineans in 2016, none in 2017 and 2018. In 2019, a total of 98 decisions cessations of subsidiary protection were adopted, of which 75 concerned Ukrainians. Cessation decisions were also adopted in the case of beneficiaries of subsidiary protection from Guinea Bissau, Gambia, Sierra Leone, Russia, Uzbekistan, Senegal, Ivory Coast, Guinea, Libya, Macedonia, Pakistan, Democratic Republic of Congo, and Georgia. No decision determining the cessation of refugee status was adopted during the year.

In the framework of the legal assistance provided to some of those concerned in 2016, CPR identified several shortcomings in the cessation proceedings including the lack of renewal of the residence permits while the cessation process was pending and the poor quality of the assessment conducted into the change in circumstances in the country of nationality. Indeed, the assessments conducted did not take into consideration the specific/individual circumstances of each person concerned as the same information was used for all persons meaning that it lacked an actual assessment of whether there was a significant and durable change in circumstances for each individual. The same shortcomings were observed in 2019, in particular regarding Ukrainian subsidiary protection status holders.

6. Withdrawal of protection status

Indicators: Withdrawal

1. Is a personal interview of the beneficiary in most cases conducted in practice in the withdrawal procedure? ☐ Yes ☒ No
2. Does the law provide for an appeal against the withdrawal decision? ☒ Yes ☐ No
3. Do beneficiaries have access to free legal assistance at first instance in practice? ☒ Yes ☐ With difficulty ☐ No

The Asylum Act establishes specific grounds for revocation, ending or refusal to renew international protection that are assessed pursuant to the same procedural rules applicable to [Cessation](#).

These include the cases where the beneficiary of international protection:⁷⁵⁷

- (a) Should have been or can be excluded from the right to asylum or subsidiary protection, pursuant to the exclusion clauses;⁷⁵⁸
- (b) Has distorted or omitted facts, including through the use of false documents, that proved decisive for benefitting from the right to asylum or subsidiary protection;⁷⁵⁹
- (c) Represents a danger for national security;⁷⁶⁰
- (d) Having been sentenced by a final judgment for an intentional common law crime punishable with a prison term of more than three years, represents a danger for national security or for public order.⁷⁶¹

According to the statistics shared by SEF, there was one decision to revoke, end or refuse to renew international protection status of a Guinean national in 2017, and no such decisions were adopted in 2018 and in 2019.

⁷⁵⁷ Article 41(5) Asylum Act.

⁷⁵⁸ Article 41(5)(a) Asylum Act.

⁷⁵⁹ Article 41(5)(b) Asylum Act.

⁷⁶⁰ Article 41(5)(c) Asylum Act.

⁷⁶¹ Article 41(5)(d) Asylum Act.

B. Family reunification

1. Criteria and conditions

Indicators: Family Reunification

1. Is there a waiting period before a beneficiary can apply for family reunification?
☐ Yes ☒ No
❖ If yes, what is the waiting period?
2. Does the law set a maximum time limit for submitting a family reunification application?
☐ Yes ☒ No
❖ If yes, what is the time limit?
3. Does the law set a minimum income requirement?
☐ Yes ☒ No

Refugees and beneficiaries of subsidiary protection have the same right to family reunification under the law.⁷⁶² While the right to family reunification encompasses the family members listed in the Asylum Act, its exercise is mostly governed by the provisions of the Immigration Act.⁷⁶³

1.1. Eligible family members

A person granted international protection in Portugal can reunite with the following family members:⁷⁶⁴

- Spouse or unmarried partner,⁷⁶⁵ including same-sex partner, if the relationship is regarded as a sustainable relationship i.e. at least 2 years of living together in conditions analogous to marriage;⁷⁶⁶
- Minor children if dependent on the sponsor and/or on his/her spouse or unmarried partner and regardless of their marital status. The right to family reunification also includes minor children and adopted minor children of the sponsor or of his/her spouse or unmarried partner. Adult children who lack legal capacity (e.g. for reasons of mental health) and are dependent on the sponsor and/or on his/her spouse or unmarried partner are also included;
- Parents, if the sponsor is under 18 years old.

Unaccompanied minor children can apply for family reunification with their parent(s). In the absence of biological parents, they can apply for family reunification with an adult responsible for the child (e.g. grandparents, legal guardians or other family members).

It is not required that family formation predates entry into Portugal.

The list of eligible family members in the case of beneficiaries of international protection is more restrictive than that enshrined in the Immigration Act for migrants. The latter also includes: (i) dependent children over 18 years old who are unmarried and studying in Portugal; (ii) dependent first-degree ascendants in the direct line; (iii) minor siblings, as long as the resident is their guardian, according to a decision issued by the competent authority of the country of origin, recognised in Portugal.⁷⁶⁷ While in the past it was common for SEF to extend the more favourable regime to beneficiaries of international protection, information gathered by CPR shows this is no longer the case as the authorities now tend to restrict family reunification to eligible relatives included in the Asylum Act.

⁷⁶² Article 68(1) Asylum Act.

⁷⁶³ *Ibid.* Articles 98 *et seq* Immigration Act.

⁷⁶⁴ Articles 68 and 2(1)(k) Asylum Act.

⁷⁶⁵ Both the sponsor and the spouse/unmarried partner must be at least 18 years old.

⁷⁶⁶ Unmarried partner unions may be attested by any means of proof provided in the law (testimony, documentary proof, affidavit, common children, etc.) In accordance with the law, when a refugee is unable to present official documents to prove his or her family relations, other means of proof will be taken into consideration.

⁷⁶⁷ Article 99 Immigration Act.

1.2. Family reunification procedure

The request for family reunification can be made immediately following the granting of international protection and there is no time limit for applying for family reunification upon arrival in Portugal.

The sponsor in Portugal must apply for family reunification at SEF's regional office in his/her residence area if the family member is living abroad at the time of application. If the family member is in Portugal at the time of application, the sponsor must apply for family reunification at SEF-GAR, in Lisbon. Applications are *not* accepted at Portuguese embassies.

The following official documents need to be presented with the application:⁷⁶⁸

- a. Copy of the travel document of the family member;
- b. Criminal record of the family member, including country of nationality and any country of residence where the family member has lived for over 1 year;
- c. Where applicable, statement of parental authorisation from the other parent (if not travelling with the child);
- d. Death certificate of the child's other parent or evidence of sole legal guardianship if original death certificate is not obtainable, where applicable.

The following official documents are required to prove family relations:

1. Spouses: marriage certificate;
2. Children: birth certificate, decision of adoption duly recognised by a national authority (if applicable); proof of legal incapacity of adult child (if applicable);
3. Other adults in charge of an unaccompanied minor: decision of guardianship duly recognised by a national authority.

In accordance with the law, all official documents need to be translated and duly legalised by a Portuguese embassy prior to their submission to the SEF.

Regarding refugees, the law explicitly lays down that in the absence of official documents to demonstrate family relations, other types of proof should be taken into consideration. The application for family reunification cannot be denied on the sole basis of lack of documentary evidence.⁷⁶⁹ Other types of proof can consist of interviews of the sponsor and family members, copies of original documents, witness testimonies, or common children in the case of unmarried partnerships. Portuguese authorities do not conduct DNA tests in the framework of family reunification applications. Even though not formally required, the law does not exclude DNA testing as means of proof of family relations.

In practice, this more favourable regime is generally extended to beneficiaries of subsidiary protection, depending on the circumstances of their case.

Furthermore, refugees are exempted from the general obligation to present proof of accommodation and income in family reunification procedures.⁷⁷⁰ This legal provision has also been applied to beneficiaries of subsidiary protection.

The application may be refused on the following grounds: (i) misrepresentation or omission of facts; (ii) non-fulfilment of legal requirements; (iii) where the potential beneficiary family member would be excluded from refugee status or subsidiary protection;⁷⁷¹ (iv) where the potential beneficiary is barred from entrance into Portugal; and/or (v) where the potential beneficiary poses a risk to public order, public security or public health. Non-fulfilment of legal requirements may involve: (a) lack of adequate travel documents; (b) lack of criminal records of the potential beneficiary family member; (c) when a parent other than the

⁷⁶⁸ Article 103 Immigration Act; Article 67 Governmental Decree n. 84/2007 of 5 November 2007.

⁷⁶⁹ Article 106(4) Immigration Act.

⁷⁷⁰ Article 101(2) Immigration Act.

⁷⁷¹ Article 68(3) Asylum Act.

sponsor has not authorised the family reunification of his/her child with the sponsor; or (d) non-eligibility of the family member.⁷⁷²

The application should be decided within 3 months, with a possible extension for an additional 3 months if the delay is duly justified by the complexity of the case. In case of extension, the applicant should be informed of the reasons thereof.⁷⁷³

In the absence of a decision within 6 months from the date of the application and unless the applicant bears responsibility for the delay (e.g. unanswered request for additional information and/or documents), the application is deemed automatically accepted

In recent years, a significant waiting time for an appointment at SEF for the purposes of family reunification has been registered by CPR. In the particular case of SEF's Lisbon regional office, , that deals with a significant number of applications, waiting times rose to 7 months in a couple of cases that were assisted by CPR.

In 2019, SEF received 68 applications for family reunification from beneficiaries of international protection, particularly from Syrians. According to SEF, 68 decisions were adopted during the year but no further information is available.

2. Status and rights of family members

In accordance with the law, family members receive the same legal status and have the same status and rights as the sponsor.⁷⁷⁴ This is generally the case in practice.

C. Movement and mobility

1. Freedom of movement

Beneficiaries of international protection are guaranteed freedom of movement throughout the national territory under the same conditions provided for foreign nationals legally residing in Portugal.⁷⁷⁵ CPR is not aware of any limitations in this regard in practice, with the exception of those possibly arising from the dispersal policy implemented by the GTO that may result in limitations for reasons of access to material support (see [Reception Conditions: Freedom of Movement](#)).

2. Travel documents

The Portuguese authorities are bound by a duty to issue travel documents to refugees and beneficiaries of subsidiary protection.⁷⁷⁶

The **refugee** travel document consists of an electronic travel document,⁷⁷⁷ following the Refugee Convention format,⁷⁷⁸ which is valid for an initial one-year period and is renewable for identical periods.⁷⁷⁹ The authorities competent for granting refugee travel documents consist of the National Director of SEF for applications made on the national territory, and consulates for applications made abroad.⁷⁸⁰ However, on the basis of CPR's experience, refugee travel documents issued in 2019 were still not electronic. This was confirmed by SEF that clarified that only the Portuguese passports for foreigners are electronic.

⁷⁷² Article 106 Immigration Act.

⁷⁷³ Article 105 Immigration Act.

⁷⁷⁴ Article 68(2) Asylum Act.

⁷⁷⁵ Article 75 Asylum Act.

⁷⁷⁶ Article 69 Asylum Act; Article 19 Immigration Act.

⁷⁷⁷ Ministerial Order 302/2015 of 22 September 2015 and Ministerial Order 412/2015 of 27 November 2015.

⁷⁷⁸ Article 69(1) Asylum Act.

⁷⁷⁹ Article 19 Immigration Act.

⁷⁸⁰ Article 20 Immigration Act.

In the case of beneficiaries of **subsidiary protection**, the issuance of travel documents is left to the discretion of national authorities, at odds with Article 25(2) of the recast Qualification Directive. The Asylum Act states that “a Portuguese passport for foreigners may be issued to beneficiaries of subsidiary protection....”.⁷⁸¹

Beneficiaries of subsidiary protection are thus required to present a valid residence permit and to demonstrate their inability to obtain a national passport, notably on the basis of relevant proof or credible statements showing a potential risk to their own safety or the refusal of their country’s consular representation to issue such a passport.⁷⁸² The Portuguese passport for foreigners is valid for a period of up to two years,⁷⁸³ and in 2019 it had a cost of € 110.70.⁷⁸⁴

According to SEF, in 2019 a total of 32 travel documents were issued to beneficiaries of international protection, mostly to refugee status holders.

According to the experience of CPR, the length of the procedure for issuing a travel document can be considered reasonable overall and does not exceed a couple of months.

In 2017, CPR recorded multiple instances of refusal of requests of a Portuguese passport for foreigners by beneficiaries of subsidiary protection from Ukraine. Despite the beneficiaries’ claims, SEF considered that they could contact the Ukrainian authorities for the issuance of travel documents or use passports previously issued by them and that were still valid. According to the statistics provided by SEF, no request was refused in 2019.

D. Housing

Indicators: Housing

- | | |
|--|---------------|
| 1. For how long are beneficiaries entitled to stay in reception centres? | Not available |
| 2. Number of beneficiaries staying in reception centres as of 31 December 2019 | Not available |

The law provides for the right of refugees and beneficiaries of subsidiary protection to housing under the same conditions of foreign nationals legally residing in Portugal,⁷⁸⁵ therefore encompassing public housing.⁷⁸⁶

In practice, the financial assistance provided to asylum seekers admitted to the regular procedure in the framework of the dispersal policy managed by the GTO for renting private housing (see [Forms and Levels of Material Reception Conditions](#)) will usually be maintained beyond a final decision in the asylum procedure. This typically means that beneficiaries of international protection will generally retain the private housing they have rented throughout the regular procedure. Access of beneficiaries of international protection to public housing remains extremely limited for reasons that according to CPR’s experience have traditionally been linked to legal constraints under previous rules, limited stock of available public housing, lack of prioritisation of beneficiaries of international protection in public housing policy and heavy bureaucratic requirements.

⁷⁸¹ Article 69(2) Asylum Act.

⁷⁸² Decree-Law 83/2000 of 11 May 2000, as amended by Decree-Law 138/2006 of 26 July 2006.

⁷⁸³ Article 38 Decree-Law 83/2000 of 11 May 2000.

⁷⁸⁴ Ministerial Order n. 1334-E/2010 of 31 December 2010, as amended by Ministerial Order n. 305-A/2012. Amount applicable as of 1 March 2019, see <https://bit.ly/2V1breZ>.

⁷⁸⁵ Article 74 Asylum Act.

⁷⁸⁶ Article 5 Public Leasing Act; Article 5 Regulation 84/2018.

E. Employment and education

1. Access to the labour market

The law provides for the right of refugees and beneficiaries of subsidiary protection to access the labour market pursuant to general rules.⁷⁸⁷

Similarly to asylum seekers (see [Reception Conditions: Access to the Labour Market](#)), there are no limitations attached to the right of beneficiaries of international protection to employment such as labour market tests or prioritisation of nationals and third-country nationals. The issuance and renewal of residence permits by SEF is free of charge.⁷⁸⁸ The only restriction on employment enshrined in the law consists in limited access for all third-country nationals to certain categories of employment in the public sector.⁷⁸⁹ Furthermore, beneficiaries of international protection benefit from the same conditions of employment as nationals, i.e. in terms of salaries and working hours.⁷⁹⁰ The law provides, however, for specific formalities in the case of employment contracts of third-country nationals such as the need for a written contract and its (online) registration with the Authority for Labour Conditions (*Autoridade para as Condições do Trabalho*, ACT).⁷⁹¹

Beneficiaries of international protection are equally entitled to access work-related training opportunities for adults, vocational training and practical experiences under the same conditions as nationals.⁷⁹²

With the exception of the submission of beneficiaries of international protection to the conditions applicable to nationals of the same country,⁷⁹³ there are no specific rules regarding the recognition of diplomas and academic qualifications in the Asylum Act and the general rules and practical challenges facing asylum seekers apply.

There are no statistics available on the number of beneficiaries of international protection in employment at the end of 2019. According to CPR's experience, despite existing support mechanisms pertaining to language training and employment assistance, asylum seekers and beneficiaries of international protection face many challenges in securing employment that are both general and specific in nature (see [Reception Conditions: Access to the Labour Market](#)).

2. Access to education

The Asylum Act provides for the right of children who are refugees or beneficiaries of subsidiary protection to education under the same conditions as national citizens.⁷⁹⁴ The right to education under the same conditions as nationals is extended to adult beneficiaries of international protection.⁷⁹⁵ The access of children who are beneficiaries of international protection to public education and recognition procedures bares no relevant distinction to asylum seeking children and has already been described in detail. The same holds true for access of adult beneficiaries of international protection to vocational training (see [Reception Conditions: Access to Education](#)).

⁷⁸⁷ Article 71(1) Asylum Act.

⁷⁸⁸ Article 67(4) Asylum Act.

⁷⁸⁹ Article 15(2) Constitution; Article 17(1)(a) and (2) Act 35/2014.

⁷⁹⁰ Article 71(3) Asylum Act; Article 4 Labour Code.

⁷⁹¹ Article 5 Labour Code.

⁷⁹² Article 71(2) Asylum Act. Even though related to the right to education, Article 70(2) Asylum Act seems to enshrine a similar right to training.

⁷⁹³ Article 70(3) Asylum Act.

⁷⁹⁴ Article 70(1) Asylum Act.

⁷⁹⁵ *Ibid.*

F. Social welfare

According to the Asylum Act, the general rules governing the social welfare system are applicable to refugees and beneficiaries of subsidiary protection.⁷⁹⁶ Refugees and beneficiaries of subsidiary protection are entitled to the same rights and to access social welfare under the same conditions as nationals.

The Social Insertion Revenue (*Rendimento Social de Inserção*, RSI) is a social protection measure that aims to support individuals in serious economic need and who are at risk of social exclusion. This is thus the most relevant social allowance available to beneficiaries of international protection.⁷⁹⁷

In addition to the financial allowance, RSI comprises an inclusion programme, based on a contract established with the concerned household. Access by beneficiaries of international protection is subject to the fulfilment of the general conditions prescribed by law, namely:

- If the applicant lives alone – his/her monthly income cannot exceed the amount of the allowance; if the applicant lives with family members – the combined monthly income cannot exceed the amount of the total allowance;
- The applicant must be 18 years of age or older (although there are situations in which younger persons are also eligible);
- The applicant must be registered with IEFP.

The financial allowance of the RSI is as follows:⁷⁹⁸

<i>Rendimento Social de Inserção: 2019</i>	
Category of applicant	Amount
Head of household	€ 189,66
Other adult in household	€ 132,76
Child	€ 94,83

A legislative amendment introduced in 2017 removed the prerequisite of one year of regular residence in the country to access the RSI. Therefore, beneficiaries of international protection are immediately directed to this allowance upon recognition of the refugee status or conferral of subsidiary protection, while the assistance described in [Reception Conditions](#) ceases.

According to the law, refugees and beneficiaries of subsidiary protection are also entitled to other social allowances such as child benefits and family allowances,⁷⁹⁹ unemployment benefits,⁸⁰⁰ and other benefits, under the same conditions as nationals and as long as they meet the applicable requirements.

In practice, the follow up of social welfare matters is provided by ISS and SCML,⁸⁰¹ following the assistance provided throughout the asylum procedure.

In general, refugees and beneficiaries of subsidiary protection are required to present their residence permit in order to have access to such support measures. While CPR is unaware of systemic problems in accessing support, refugees and beneficiaries of subsidiary protection often report difficulties in meeting their basic needs with the low income provided by the social welfare system.

⁷⁹⁶ Article 72 Asylum Act.

⁷⁹⁷ Act 13/2003.

⁷⁹⁸ Ministerial Order 257/12; Ministerial Order 22/2019; Ministerial Order 24/2019.

⁷⁹⁹ Decree-Law 176/2003.

⁸⁰⁰ Act 220/2006.

⁸⁰¹ SCML also supports refugees and beneficiaries of international protection in specific situations, e.g. vulnerable cases such as unaccompanied children that move into assisted apartments and former unaccompanied children previously accommodated at CACR; individuals and families with strong social networks in the Lisbon area.

G. Health care

The Asylum Act enshrines the right of refugees and beneficiaries of subsidiary protection as well as their family members to health care provided by the SNS under the same conditions as nationals.⁸⁰² Furthermore, it provides for the right to tailored health care, including the treatment of mental conditions, for vulnerable refugees under the same conditions as national citizens.⁸⁰³ The special needs of particularly vulnerable persons including beneficiaries of international protection must be taken into consideration in the provision of health care,⁸⁰⁴ notably through rehabilitation and psychological support to children who have been subjected to various forms of violence,⁸⁰⁵ and adequate treatment to survivors of torture and serious violence.⁸⁰⁶ Responsibility for special treatment required by survivors of torture and serious violence lies with ISS.⁸⁰⁷

Asylum seekers and refugees are exempt from any fees to access the National Health System.⁸⁰⁸ Additionally, all children are exempt from such fees.⁸⁰⁹

In practice, beneficiaries of international protection have effective access to free health care in the SNS in line with applicable legal provisions. However, as with asylum seekers (see [Reception Conditions: Health Care](#)) persisting challenges have a significant impact on the quality of the care available. According to research and information available to CPR, these include language and cultural barriers due to the reluctance of health care services to use available interpretation services such as ACM's translation hotline; restricted access to diagnosis procedures and medication paid by the SNS due to bureaucratic constraints; or very limited access to mental health care and other categories of specialised medical care (e.g. dentists) in the SNS.⁸¹⁰

⁸⁰² Article 73(1) Asylum Act.

⁸⁰³ Article 73(2) Asylum Act.

⁸⁰⁴ Article 77(1) Asylum Act.

⁸⁰⁵ Article 78 (3)-(4) Asylum Act.

⁸⁰⁶ Article 80 Asylum Act.

⁸⁰⁷ *Ibid.*

⁸⁰⁸ Article 4(1)(n) Decree-Law 113/2011 of 29 November 2011.

⁸⁰⁹ Article 4(1)(b) Decree-Law 113/2011 of 29 November 2011.

⁸¹⁰ Italian Council for Refugees *et al.*, *Time for Needs: Listening, Healing, Protecting*, October 2017, available at: <http://bit.ly/2xZqCGh>.

ANNEX I – Transposition of the CEAS in national legislation

Directives and other CEAS measures transposed into national legislation

Directive / Regulation	Deadline for transposition	Date of transposition	Official title of corresponding act	Web Link
Directive 2011/95/EU Recast Qualification Directive	21 December 2013	5 May 2014	Act n. 26/2014 of 5 May 2014 amending Act n. 27/2008, transposing Directives 2011/95, 2013/32/EU and 2013/33/EU	http://bit.ly/1jd3hcG (PT) http://bit.ly/2AfJ7sS (EN)
Directive 2013/32/EU Recast Asylum Procedures Directive	20 July 2015 [Article 31(3)-(5) - 20 July 2018]			
Directive 2013/33/EU Recast Reception Conditions Directive	20 July 2015			
Regulation (EU) No 604/2013 Dublin III Regulation	Directly applicable 20 July 2013			

The following section contains an overview of some of the most significant incompatibilities in transposition of the CEAS in national legislation:

Directive	Provision	Domestic law provision	Non-transposition or incorrect transposition
Directive 2011/95/EU Recast Qualification Directive	Article 12 recast QD	Article 9 Asylum Act (exclusion clauses)	Article 9(1)(c)(ii) transposes article 12(2)(b) of the recast Qualification Directive to the national legal order. While the directive refers to the commission of a serious non-political crime, the Asylum Act refers to the commission of an intentional non-political crime punishable with prison sentence of over three years. By operation of article 9(2)(a) of the Asylum Act, this exclusion clause is also applicable to exclusion from subsidiary protection. While CPR is not aware of the practical application of this clause, defining the gravity threshold as a prison sentence of over three years may open the door to the

			<p>exclusion of cases not envisaged by the relevant provision of the recast Qualification Directive.</p> <p>Furthermore, article 9(1)(d) allows for the exclusion from refugee status where there are serious reasons for considering that the person constitutes a danger or substantiated threat to internal or external security or to the public order</p>
	Article 8 recast Qualification Directive	Article 18 Asylum Act (analysis of the application – internal protection alternative)	<p>Article 18(2)(e) of the Asylum Act establishes that an internal protection alternative may be considered in the adjudication of the application for international protection. There is some ambiguity in the transposition as a literal interpretation of the provision of the Asylum Act would determine that the criteria established in article 8(1) <i>in fine</i> of the recast Qualification Directive (“and he or she can safely and legally travel to and gain admittance to that part of the country and can reasonably be expected to settle there.”) would only apply to situations where the applicant “has access to protection against persecution or serious harm”.</p> <p>Furthermore, while the definition mirrors article 8(1) of the recast Qualification Directive, the procedural requirements established in article 8(2) of the Directive were not transposed by the Asylum Act.</p>
	Article 16(3) recast QD	Article 41 Asylum Act (cessation of protection)	The Asylum Act does not contain the safeguard clause determining that subsidiary protection should not cease in situations where the beneficiary can reasonably invoke reasons connected to past serious offense not to return to the country of origin.
	Article 25(2) recast QD	Article 69(1) Asylum Act (issuance of travel documents to beneficiaries of international protection)	According to the Asylum Act, issuance of travel documents to beneficiaries of subsidiary protection is left to the discretion of national authorities.
	Article 12 recast QD	Article 41 Asylum Act (revocation of, ending or refusal to renew international protection)	See <i>supra</i> the analysis of exclusion clauses, relevant to revocation of, ending or refusal to renew international protection per article 41(5)(a) of the Asylum Act.

Directive 2013/32/EU Recast Asylum Procedures Directive	Article 37 recast APD	Article 2(1)(q) Asylum Act (safe country of origin)	<p>The Asylum Act provides for a definition of “safe country of origin” that is in line with article 36 of the recast Asylum Procedures Directive. However, the law does not further regulate its application. Notably, the Asylum Act does not refer to the need to adopt complementary legislation for the designation of safe countries of origin and the substantive and procedural criteria for such designation as provided in article 37 and Annex I of the recast Asylum Procedures Directive. The safe country of origin concept is not applied in practice.</p>
	Article 38 recast APD	Article 2(1)(r) Asylum Act (definition of safe third country)	<p>The Asylum Act provides for a definition of “safe third country” that presents some inconsistencies with article 38 of the recast Asylum Procedures Directive. Most notably:</p> <ul style="list-style-type: none"> - The provision applies <i>ratione personae</i> to asylum seekers alone, as opposed to applicants for international protection; - The provision does not include the absence of a risk of serious harm as a condition for the application of the concept; - The provision does not include the possibility for the applicant to challenge the existence of a connection between him or her and the third country; - A standard of possibility rather than reasonableness is set in the provision concerning the return on the basis of a connection between the applicant and the third country concerned. <p>In this regard, it is worth noting that there is a difference between the English and Portuguese versions of the Directive. While Article 38(2)(a) of the English version refers to the reasonableness of the person returning to the third country, the Portuguese version does not include such reference, simply indicating that the connection between the applicant and the country allows return “in principle”.</p>
	Article 14(2)(b) and (4) recast APD	Article 16 Asylum Act (personal interview)	<p>The circumstances in which the determining authority may omit the personal interview are exhaustively listed in article 16(5) of the Asylum Act and mirror the corresponding provision of the recast Asylum Procedures Directive (article 14(2)). However, with regards to cases where the applicant is deemed unfit/unable due to enduring circumstances beyond his/her control, the final part of article 14(2)(b) of the Directive was not transposed (“<i>When in doubt, the determining authority shall consult a medical professional to establish whether the condition that makes the applicant unfit or unable to be interviewed is of a temporary or enduring nature.</i>”). The safeguard contained in article 14(4) of the recast Asylum Procedures Directive that determines that the absence of personal interview in such situations “<i>shall not adversely affect the decision of the determining authority</i>”, was also not explicitly transposed to the Asylum Act.</p>

	Article 15 recast APD (also article 4(3) in fine recast APD)	Article 16 Asylum Act (personal interview)	With regards to the conditions of the personal interview, the Asylum Act does not fully transpose the requirements set out in the recast Asylum Procedures Directive (article 15), particularly those regarding to the characteristics of the interviewer and on the use of interpreters (article 15(3) recast Asylum Procedures Directive). Furthermore, and without prejudice to article 84 of the Asylum Act that refers to the adequate training of all staff working with applicants and beneficiaries of international protection, the specific training requirement for interviews provided for in article 4(3) <i>in fine</i> of the recast Asylum Procedures Directive was not transposed to the domestic order (<i>“Persons interviewing applicants pursuant to this Directive shall also have acquired general knowledge of problems which could adversely affect the applicants’ ability to be interviewed, such as indications that the applicant may have been tortured in the past.”</i>).
	Article 16 recast APD	Article 16 Asylum Act (personal interview)	With regards to the content of the personal interview, the national legislator did not transpose the final part of article 16 of the recast Asylum Procedures Directive, establishing that the personal interview <i>“shall include the opportunity to give an explanation regarding elements which may be missing and/or any inconsistencies or contradictions in the applicant’s statements.”</i>
	Article 10 recast APD	Article 18 Asylum Act (analysis of the application – country of origin information)	While Article 18(2)(a) orders the national authorities to duly consider country of origin information in the analysis of applications, the domestic law does not fully transpose the requirements set out in Article 10(3)(b) of the recast Asylum Procedures Directive. Namely, it fails to state that the information must be precise and up-to-date. Even though the norm refers to different sources for such information (EASO, UNHCR and relevant human rights organisations) it does not clearly state that different sources must be consulted in each analysis. Furthermore, Article 18(2)(a) of the Asylum Act refers exclusively to the country of origin, as opposed to Article 10(3)(b) of the recast Directive that also refers to the use of information regarding transit countries whenever necessary.
	Articles 31(8) and 32 recast APD	Article 19 Asylum Act (accelerated procedures)	The wording of the Asylum Act does not seem to be fully in line with the recast Asylum Procedures Directive and with the applicable international standards as its literal application may lead not only to the accelerated processing but also to the automatic rejection of applications based on the listed grounds (e.g. a delay in making the application).

	Article 35 recast APD	Articles 2(1)(z) and 19-A(1)(c) Asylum Act (first country of asylum)	Neither article 2(1)(z) of the Asylum Act, that defines the “first country of asylum” concept, nor article 19-A(1)(c) of the Asylum Act that provides for the corresponding inadmissibility clause, explicitly contain the safeguard of article 35 of the recast Asylum Procedures Directive, entitling the applicant to challenge the application of the concept to his/her particular circumstances.
	Article 46(4) recast APD	Article 25(1) Asylum Act (time limits for appeal – border procedure)	Article 25(1) of the Asylum Act establishes a 4-day time limit for the appeal of a refusal (inadmissibility or merits) adopted within the context of a border procedure. While current practical implementation mitigates some of the negative consequences of such a reduced timeframe, this time limit is hardly compatible with the requirement for “ <i>reasonable time limits</i> ” that do “ <i>not render such exercise impossible or excessively difficult</i> ” provided for in article 46(4) of the recast Asylum Procedures Directive.
	Article 24 recast APD (also article 22 recast RCD)	Articles 17-A and 77 Asylum Act (mechanisms for assessing vulnerability and special needs – procedural and reception)	The Asylum Act provides for the need to identify persons with special needs and the nature of such needs but no procedure or mechanism for such identification and assessment has been established so far at domestic level.

	Article 25(5) recast APD	Article 79 (6) and (7) Asylum Act (age assessment)	<p>The Asylum Act does not contain the limitation on the use of medical examination for age assessment enshrined in the first part of article 25(5) recast Asylum Procedures Directive: <i>“Member States may use medical examinations to determine the age of unaccompanied minors within the framework of the examination of an application for international protection where, following general statements or other relevant indications, Member States have doubts concerning the applicant’s age.”</i></p> <p>Furthermore, the right to information of the unaccompanied children regarding the age assessment procedure established in article 79(7) of the Asylum Act does not fully transpose all the requirements of article 25(5)(a), in particular with regards to the methods used and to the consequences of results.</p>
Directive 2013/33/EU Recast Reception Conditions Directive	Articles 8 and 9 recast RCD (also article 26 recast APD)	Article 26(1) Asylum Act (detention at the border)	<p>Article 26(1) of the Asylum Act determines that asylum seekers that applied for asylum at the border remain in the international area of the (air)port while waiting for the decision without establishing further requirements (e.g. necessity and proportionality, individual assessment, alternatives to detention), in contravention with articles 8 and 9 of the recast Reception Conditions Directive and with article 26 of the recast Asylum Procedures Directive. It should be noted that further requirements to detention of asylum seekers are established in article 35-A of the Asylum Act. It is our understanding that a correct application of article 26(1) of the Asylum Act requires due regard for such requirements. Notwithstanding, in practice, asylum seekers that file their applications at the border are indeed systematically detained.</p>
	Article 9(5) recast RCD	Article 35-B(1) Asylum Act (revision of detention)	<p>Article 35-B(1) of the Asylum Act establishes that detention may be reviewed <i>ex officio</i> or upon request of the applicant if relevant circumstances or new information which may affect its lawfulness arise. This seems to fall short from the guarantees provided for in article 9(5) of the recast Asylum Procedures Directive that establishes that revision should be conducted by a judicial authority and does not limit such revision to situations where new circumstances or information becomes available (<i>“Detention shall be reviewed by a <u>judicial authority</u> at reasonable intervals of time, ex officio and/or at the request of the applicant concerned, <u>in particular whenever</u> it is of a prolonged duration,</i></p>

			<i>relevant circumstances arise or new information becomes available which may affect the lawfulness of detention.”).</i>
	Article 14(2) recast APD	Article 53 Asylum Act (access to education)	The Asylum Act does not contain any reference to a maximum time limit with regards of access to education by children.
	Article 22 recast RCD (also article 24 recast APD)	Articles 17-A and 77 Asylum Act (mechanisms for assessing vulnerability and special needs – procedural and reception)	The Asylum Act provides for the need to identify persons with special needs and the nature of such needs but no procedure or mechanism for such identification and assessment has been established so far at domestic level.