

Access to asylum and detention at France's borders



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Asylum Information
Database

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The visit to France was conducted as part of the Asylum Information Database ([AIDA](#)) managed by ECRE, which provides up-to-date information and analysis of the legal framework and practice with regard to asylum procedures, reception conditions, detention and content of international protection in 23 European countries. This report complements and should be read together with the [AIDA Country Report on France](#).

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[The information contained in this report is valid as of 30 April 2018, unless otherwise stated.](#)

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GLOSSARY

Administrateur <i>ad hoc</i>	<i>Ad hoc</i> administrator i.e. legal representative appointed for unaccompanied children.
Admission au titre de l'asile	Admission to the territory for asylum reasons. In the border procedure applicable in waiting zones, OFPRA issues an opinion advising the Ministry of Interior to admit or not the person into the French territory if the asylum claim is not manifestly unfounded or inadmissible. Admission to the territory is also refused where the Dublin Regulation is applicable.
Asylum seeker(s) or applicant(s)	Person(s) seeking international protection, whether recognition as a refugee or beneficiary of subsidiary protection.
Dublin system	System establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application, under Regulation (EU) No 604/2013 .
Jour franc	'Full day' i.e. 24-hour period during which a person may not be removed. Upon refusal of entry into the territory, the person can claim the right to a clear day to be protected from expulsion for one day. In the case of unaccompanied children, opt-in to the clear day is presumed, unless they specifically waive it.

LIST OF ABBREVIATIONS

AAH	<i>Ad hoc</i> administrator Administrateur <i>ad hoc</i>
AIDA	Asylum Information Database
Anafé	National Association of Border Assistance to Foreigners Association nationale d'assistance aux frontières pour les étrangers
ASGI	Association for Legal Studies on Immigration Associazione per gli Studi Giuridici sull'Immigrazione
Ceseda	Code on Entry and Residence of Foreigners and on Asylum Code de l'entrée et du séjour des étrangers et du droit d'asile
CGLPL	General Controller of Places of Detention Contrôleur Général des lieux de privations de libertés
CJEU	Court of Justice of the European Union
CRA	Administrative detention centre Centre de rétention administrative
CRS	General police reserve Compagnies Républicaines de Sécurité
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
EU	European Union
ISM	Inter Service Migrants
JLD	Judge of Freedom and Detention Juge des libertés et de la détention
LRA	Administrative detention place Local de rétention administrative
OFII	French Office for Immigration and Integration Office français de l'immigration et l'intégration
OFPRA	French Office for the Protection of Refugees and Stateless Persons Office français de protection des réfugiés et des apatrides
OQTF	Order to leave the French territory Ordre de quitter le territoire français
PADA	Orientation platform for asylum seekers Plateforme d'accueil de demandeurs d'asile
PAF	Border police Police aux frontières
QPC	Preliminary constitutionality question Question prioritaire de constitutionnalité
TA	Administrative Court Tribunal administratif
TGI	Civil Court Tribunal de grande instance
ZA(PI)	Waiting zone Zone d'attente (pour personnes en instance)

THE ASYLUM INFORMATION DATABASE (AIDA)

The [Asylum Information Database](#) is a database containing information on asylum procedures, reception conditions and detention and content of international protection across 23 European countries. This includes 20 European Union (EU) Member States (Austria, Belgium, Bulgaria, Cyprus, Germany, Spain, France, Greece, Croatia, Hungary, Ireland, Italy, Malta, Netherlands, Poland, Portugal, Romania, Sweden, Slovenia, United Kingdom) and 3 non-EU countries (Switzerland, Serbia, Turkey).

The overall goal of the database is to contribute to the improvement of asylum policies and practices in Europe and the situation of asylum seekers by providing all relevant actors with appropriate tools and information to support their advocacy and litigation efforts, both at the national and European level. These objectives are carried out by AIDA through the following activities:

- ❖ **Country reports**

AIDA contains [national reports](#) documenting asylum procedures, reception conditions, detention and content of international protection in 23 countries.

- ❖ **Comparative reports**

Comparative reports provide a thorough comparative analysis of practice relating to the implementation of asylum standards across the countries covered by the database, in addition to an overview of statistical asylum trends and a discussion of key developments in asylum and migration policies in Europe. AIDA comparative reports are published in the form of thematic updates, focusing on the individual themes covered by the database. Thematic reports published so far have explored topics including [reception](#), [admissibility procedures](#), [content of protection](#), [vulnerability](#) and [detention](#).

- ❖ **Comparator**

The [Comparator](#) allows users to compare legal frameworks and practice between the countries covered by the database in relation to the core themes covered: asylum procedure, reception, detention, and content of protection. The different sections of the Comparator define key concepts of the EU asylum *acquis* and outline their implementation in practice.

- ❖ **Fact-finding visits**

AIDA includes the development of fact-finding visits to further investigate important protection gaps established through the country reports, and a methodological framework for such missions. Fact-finding visits have been conducted in [Greece](#), [Hungary](#), [Austria](#) and [Croatia](#) and France.

- ❖ **Legal briefings**

Legal briefings aim to bridge AIDA research with evidence-based legal reasoning and advocacy. Eleven [briefings](#) have been published so far. In addition, statistical updates on the Dublin system have been published 2016, the first half of 2017 and 2017.

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INTRODUCTION

The confinement of asylum seekers arriving at the borders in France in order to decide on their right to enter the territory for the purpose of examining their asylum application has been an integral and controversial part of France's asylum system. The European Court of Human Rights held already in the 1996 landmark judgment of *Amuur v. France* that the placement of individuals in hotel accommodation near Orly airport constituted deprivation of liberty and therefore needed to comply with the safeguards set out in Article 5 of the European Convention of Human Rights (ECHR).

At the same time, the creation of waiting zones is not limited to the country's airports or ports. More recently, informal zones have emerged as spaces allowing the *de facto* detention without any formal decision of migrants and asylum seekers arriving from Italy. Parallel to counter-terrorism measures, culminating in the permanent anti-terrorism legislation adopted in October 2017,¹ the French government has stepped up controls at its internal Schengen borders, as well as the use of asylum and immigration detention, thereby suggesting a policy link between migration and counter-terrorism, without such a connection being substantiated by evidence on the ground.

This report analyses the legal and practical implications of the border procedure carried out in the waiting zones of Roissy and Marseille, as well as the procedures in place at the French-Italian border to stem the arrival of migrants and refugees in France. It presents the results of fact-finding visit to France conducted between 23 April and 27 April 2018. During this period, the ECRE delegation visited:

- The waiting zone (ZAPI3) of Roissy Charles de Gaulle Airport, Paris where it met with representatives of the Red Cross, the Commander of the Border Police and attended a session of the "Annex" of the *Tribunal de Grande Instance* de Bobigny in the waiting zone;
- Paris, where it had meetings with representatives of OFPRA, Anafé, Ordre de Malte, France terre d'asile and the General Controller of Places of Deprivation of Liberty;
- Marseille, where it visited the waiting zone of Canet and had meetings with the Deputy Director and the Chief of the Border Police at the port of Marseille;
- Nice and Breil-sur-Roya, where it met with representatives of Cimade and Habitat et Citoyenneté and Roya Citoyenne
- Ventimiglia, where it met with a representative of InterSOS.

Information and data gathered from interviews and observations made in the various sites visited are complemented by desk research and authoritative sources on the treatment of people intercepted at the airport or the French-Italian land border.

The report is structured into two chapters: **Chapter I** analyses the various legal frameworks relating to detention to which persons applying for international protection at the border can be subjected, the procedural safeguards in place to protect individuals from arbitrary detention and the conditions in the waiting zones of Roissy and Marseille; **Chapter II** assesses the obstacles asylum seekers face in accessing the asylum procedure at the land and air border, including the gaps in procedural guarantees for vulnerable applicants and the particular challenges relating to remote OFPRA interviews conducted in all waiting zones except Roissy. A final section contains general conclusions and recommendations to the French authorities.

¹ Loi n. 2017-1510 du 30 octobre 2017 renforçant la sécurité intérieure et la lutte contre le terrorisme.

CHAPTER I: OVERLAPPING FORMS OF DEPRIVATION OF LIBERTY

The legal framework of detention in France presents particular complexity due to the interplay of different legal bases for depriving an entrant of his or her liberty. A person arriving at the border to seek asylum may be confronted by a web of regimes, often overlapping or imposed consecutively: placement in a waiting zone (*zone d'attente*), placement in administrative detention (*rétenion administrative*), police custody (*garde à vue*) or even imprisonment (*détention*). For the purposes of this report, the term “detention” will be used to refer to deprivation of liberty for administrative rather than criminal purposes, to be distinguished from the French term “*détention*” which refers to imprisonment in penitentiary institutions.

1. Legal frameworks and their use in practice

Detention following refusal of entry

Persons entering by train, boat or airplane and refused entry into the territory can be placed in waiting zones strictly for the time necessary for their departure.² As explained by the General Controller of Places of Deprivation of Liberty (*Contrôleur général des lieux de privation de liberté*, CGLPL), the “waiting zone” is not merely a physical space. It refers to a legal status triggering a set of procedures and guarantees for people held at the border.³

Designation of waiting zones

The competent police authority, usually the Border Police (*Police aux frontières*, PAF) takes a motivated decision of placement of the person in a waiting zone, for a maximum period of four days.⁴ Waiting zones may be defined by the Prefect of the relevant *département* or the Chief of Police in Ile-de-France. There are several waiting zones in mainland France at the moment. However, the one in **Roissy** – Charles de Gaulle Airport of Paris (ZAPI3) is by far the main point of activity in the country. Out of 1,270 asylum applications made at the border in 2017, 83.1% concerned Roissy.⁵

The placement of an individual in a waiting zone is acknowledged as a measure of deprivation of liberty.⁶ On the one hand, this measure is ordered by a formal administrative decision and subject to regular judicial review by the Judge of Freedoms and Detention (*juge des libertés et de la détention*, JLD). On the other hand, persons held in waiting zones may be accessed by accredited civil society organisations.⁷ Waiting zones also fall within the scope of the mandate of the CGLPL who monitors places of detention as the National Preventive Mechanism for torture in France.

² Article L.221-1 Ceseda. Placement may be ordered due to practical constraints to departure, for example if an airplane is not immediately available or due to legal constraints, in particular the right of individuals refused entry to benefit from the “full day” (*jour franc*). The *jour franc* allows persons refused entry to be protected for removal for one day. In the case of adults, this right must be requested, whereas under the law unaccompanied children cannot be removed before the expiry of the *jour franc* unless they specifically waive it: Article L.213-2 Ceseda.

³ Information provided by CGLPL, Paris, 24 April 2018.

⁴ Articles L.221-3 and R.221-1 Ceseda.

⁵ OFPRA, *2017 Activity report*, April 2018, available in French at: <http://bit.ly/2JUvow1>, 25.

⁶ This has not always been the case. See European Court of Human Rights (ECtHR), *Amuur v. France*, Application No 19776/92, Judgment of 25 June 1996.

⁷ 14 organisations have accreditation until June 2018: Arrêté No INTV1511516A du 3 juin 2015 fixant la liste des associations humanitaires habilitées à proposer des représentants en vue d'accéder en zone d'attente, available in French at: <http://bit.ly/1FXTpav>.

The “temporary detention centre” at the French-Italian land border

The law allows the authorities to temporarily extend waiting zones within 10km of the border for a maximum of 26 days, when it is determined that at least 10 persons have crossed the border.⁸ Yet, in the context of ongoing border controls on the Italian border, discussed in further detail in [Chapter II](#), the French authorities detain people arriving from Italy without having established a waiting zone to that effect.⁹ Since 2017 a so-called “temporary detention centre” has been set up in the premises of the PAF of Menton, where people refused entry are detained before being returned to Italy. The PAF had initially referred to this location as a waiting zone, before revising its designation to a “temporary detention zone for non-admitted persons, as a place of deprivation of liberty for those to be returned to Italy.”¹⁰ No formal decision has been taken by the Prefect of Alpes-Maritimes for the purpose of detaining people in this place, thereby rendering their deprivation of liberty arbitrary and contrary to Article 5 of the European Convention on Human Rights (ECHR).

In response to this development, several French organisations brought an urgent action (*référé-liberté*) before the Administrative Court of Nice, requesting the court to order an on-site visit, to suspend the informal decision of the Prefect of Alpes-Maritimes establishing the detention centre and to end the detention of persons refused entry at the border.¹¹ The Administrative Court of Nice found that, even in the absence of a specific legal basis, detention was permissible for a period not exceeding 4 hours, after which the police would be required to transfer the individuals concerned to a waiting zone, in this case the zone of Nice Airport. This interpretation was upheld by the Council of State on 5 July 2017.¹² At the moment, however, the informal detention zone continues to be used for periods well beyond the 4-hour limit set by the courts. Given that the Italian police ceases its daily activities at 19:00, any person apprehended and refused entry by the PAF after that time spends the night in detention in order to be handed over to their Italian counterparts the next morning. Consequently, many persons are detained for periods exceeding 10-12 hours without legal basis.¹³

Time limits

The placement in waiting zones is ordered for an initial period of four days.¹⁴ It can then be extended by the JLD for a period of eight days,¹⁵ and in exceptional cases or where the person obstructs his or her departure, for eight more days.¹⁶ This brings the maximum period of detention in waiting zones to 20 days in total. If necessary, PAF makes full use of the possibility to prolong detention and hold people in waiting zones for 20 days, although the average period of detention in waiting zones is 5 to 6 days in **Roissy** and **Marseille**.¹⁷

A final exceptional prolongation is applicable in the particular case of asylum seekers. If a person held in a waiting zone makes an asylum application after the 14th day, the law foresees the possibility of a further extension of detention for six more days following the submission of the asylum application, with a view to allowing the authorities to conduct the asylum procedure.¹⁸ The detention period can

⁸ Article L.221-2 Ceseda.

⁹ *Ibid.*

¹⁰ La Cimade, ‘Menton: Des personnes exilées détenues en toute illégalité à la frontière’, 7 June 2017, available in French at: <http://bit.ly/2sjxkJO>.

¹¹ *Ibid.*

¹² Council of State, Order No 411575, 5 July 2017, available in French at: <http://bit.ly/2wmsPLU>.

¹³ Information provided by CGLPL, Paris, 24 April 2018; Roya Citoyenne, Breil-sur-Roya, 25 April 2018; La Cimade, Nice, 26 April 2018. See also CGLPL, *Rapport de visite des locaux de la police aux frontières de Menton (Alpes-Maritimes) – Contrôle des personnes migrantes à la frontière franco-italienne*, June 2018, available in French at: <http://bit.ly/2JjUpzY>, 53.

¹⁴ Article L.221-3 Ceseda.

¹⁵ Article L.222-1 Ceseda.

¹⁶ Article L.222-2 Ceseda.

¹⁷ Information provided by PAF, Roissy, 23 April 2018; PAF Canet, Marseille, 25 April 2018.

¹⁸ Article L.222-2 Ceseda.

thereby extend to 26 days if the person applies for asylum on the 20th day of detention. The specific procedure relating to admission to the territory for the purposes of asylum is discussed in [Chapter II](#).

The review of the legality of detention in a waiting zone and the decision whether to prolong or discontinue detention are carried out by the JLD, who can also receive an appeal by the individual concerned.¹⁹

While in the case of most waiting zones this involves the transfer of the person concerned to the court for the purpose of the hearing, detention-related hearings are conducted *in situ* in **Roissy** as of October 2017. A hearing room has been set up as an “Annex” of the High Court (*Tribunal de Grande Instance*, TGI) of Bobigny, adjacent to the building of the waiting zone of Roissy. Severe concerns have been voiced against the establishment of the court room in the premises of the waiting zone from the perspective of apparent independence and impartiality.²⁰ NGOs also noted that the Annex undermines the public character of hearings given the obstacles to physically accessing the waiting zone, as well as the right to legal representation insofar as lawyers have no access to phone, fax or Wi-Fi to receive urgent documents if needed. Moreover, judges often seem to assume that NGOs providing legal assistance in the waiting zone are present on a daily basis, which is not the case due to capacity constraints.²¹ The PAF, for its part, viewed the Annex as a positive development, insofar as it has eliminated costs of transport and enabled the authorities to organise meals for people attending court hearings. It also noted that it has had no impact on the number of appeals lodged against detention.²²

Detention for the purpose of removal

Persons present on the territory and subject to removal measures may be detained in an administrative detention centre (*centre de rétention administrative*, CRA).²³ Asylum seekers may remain in a CRA after making their application until the Dublin procedure has been conducted or where the Prefect considers the application to be solely aimed at frustrating removal.²⁴ They can also be placed in a CRA in the context of the Dublin procedure where they present a significant risk of absconding, which is broadly defined.²⁵

Immigration detention has increased considerably in 2017. As highlighted by several stakeholders, the political linkage of counter-terrorism objectives with migration control has been epitomised by the government’s response to the 1 October 2017 incident in Marseille.²⁶ The Ministry of Interior has instructed Prefectures to place foreigners under administrative detention every time the conditions for such detention are determined to be present.²⁷ Following the Marseille incident, due to firm Ministry of Interior instructions not to leave any detention place vacant, CRA received people from any part of the country. **Metz**, for example, received people from Perpignan, located at a distance of 870km,²⁸ while **Coquelles** also received people from far-away regions.²⁹ **Nice**, on the other hand, mostly directed persons to other CRA as it was often overcrowded.³⁰

¹⁹ Article L.222-1 Ceseda.

²⁰ See e.g. Open Letter by Observatoire de l'enfermement des étrangers, ‘La justice dans les tribunaux, pas sur le tarmac!’, 18 September 2017, available in French at: <http://bit.ly/2xEEpnp>.

²¹ Information provided by Anafé, Paris, 23 April 2018.

²² Information provided by PAF, Roissy, 23 April 2018.

²³ Article L.551-1(I) Ceseda.

²⁴ Article L.556-1 Ceseda, as amended by Law n. 2018-187 of 20 March 2018.

²⁵ Article L.551-1(II) Ceseda, as amended by Law n. 2018-187 of 20 March 2018.

²⁶ On the incident, see Le Monde, ‘Marseille : deux femmes tuées dans une attaque au couteau gare Saint-Charles’, 1 October 2017, available in French at: <http://lemde.fr/2g1yKQz>.

²⁷ Ministry of Interior, Instruction No INTV1730666J du 20 octobre 2017 Objectifs et priorités en matière de lutte contre l’immigration irrégulière, available in French at: <http://bit.ly/2mbcFBf>, para 2(3).

²⁸ Information provided by Ordre de Malte, Paris, 23 April 2018.

²⁹ Information provided by France terre d’asile, Paris, 24 April 2018.

³⁰ Information provided by La Cimade, Nice, 26 April 2018.

Systematic and large-scale detention persists in 2018, although the phenomenon of transfers to CRA across the French territory seems to have subsided compared to the end of 2017. Beyond general questions of compatibility with the principles of necessity, proportionality and prior consideration of less coercive alternatives,³¹ the expansion of detention in France raises further issues of legality vis-à-vis asylum seekers falling within the scope of the Dublin Regulation, as well as groups with special reception needs such as families with children.

Detention in Dublin cases

In relation to detention for the purpose of securing a Dublin transfer where the authorities deem there to be a “significant risk of absconding” of the asylum seeker, Article L.552-1 Ceseda was incompatible with the Dublin III Regulation prior to March 2018, given that it contained no definition of the notion of “risk of absconding” with reference to objective criteria.³² The Court of Cassation clarified in September 2017 that Prefectures could not order Dublin detention as long as such a definition did not exist in law,³³ ultimately introduced by an amendment to the Ceseda of March 2018.³⁴

However, the prohibition on Dublin detention during this period has been disregarded on many occasions by Prefectures. Some have continued issuing detention orders on the basis of Dublin transfer decisions, while others have experimented with more extreme means to circumvent the legal constraints imposed by the Dublin Regulation.³⁵ There have been cases of Dublin transfers ordered through Schengen readmission decisions by Prefectures such as Moselle, Doubs, Bouches-du-Rhône, Alpes-Maritimes and Var, which have been annulled by the Administrative Court.³⁶ The JLD has also quashed detention orders issued incorrectly on the basis of Schengen readmissions rather than Dublin transfers.³⁷ In other cases, however, courts have upheld the incorrect use of Schengen readmissions for persons falling within the scope of the Dublin procedure.³⁸

Detention of families with children

The detention of families varies considerably across the territory. Most CRA (**Lille, Oissel, Strasbourg, Marseille, Nice**) do not detain families even though they have available facilities to do so.³⁹ On the contrary, the detention of families is concentrated in a few CRA such as **Mesnil-Amelot, Metz** and recently **Rennes**.⁴⁰ These centres are increasingly being used to deprive families of their liberty; compared to 51 families in 2016, 71 were detained in 2017 in Metz.⁴¹ Overall, the expansion of

³¹ Information provided by Ordre de Malte, Paris, 23 April 2018.

³² On this point, see Court of Justice of the European Union (CJEU), Case C-528/15 *Al Chodor*, Judgment of 15 March 2017.

³³ Court of Cassation, 1st Civil Chamber, Decision No 1130, 27 September 2017, available at: <http://bit.ly/2razAPB>.

³⁴ Article L.551-1(II) Ceseda, as amended by Law n. 2018-187 of 20 March 2018.

³⁵ In **Marseille**, this has been a consistent practice since 2016: Information provided by Forum réfugiés – Cosi, Marseille, 25 April 2018.

³⁶ See e.g. Administrative Court of Lyon, Decision No 1700464, 24 January 2017; Administrative Court of Nice, Decision No 1705188, 6 December 2017; Administrative Court of Marseille, Decision No 1800361, 22 January 2018.

³⁷ See e.g. TGI of Nîmes, Case No 17/00827, 9 February 2017; Court of Appeal of Metz, Case No 17/00857, 29 November 2017; TGI of Metz, Case No 18/00335, 13 February 2018.

³⁸ Information provided by Forum réfugiés – Cosi, Marseille, 25 April 2018.

³⁹ Information provided by Ordre de Malte, Paris, 23 April 2018; France terre d’asile, Paris, 24 April 2018; PAF Canet, Marseille, 25 April 2018; La Cimade, 26 April 2018.

⁴⁰ On Rennes, see La Cimade, ‘Des familles enfermées au centre de rétention de Rennes’, 26 April 2018, available in French at: <http://bit.ly/2r9txuU>.

⁴¹ Information provided by Ordre de Malte, Paris, 23 April 2018.

detention of families has been palpable: 105 children were detained in CRA on the mainland in 2015, 182 in 2016, and 305 in 2017.⁴²

Practice largely depends on the discretion of Prefectures but also CRA managers who often refuse to detain families as a matter of principle. In some cases, this leads Prefectures to transfer people to CRA in other regions; the Prefectures of Doubs and Bas-Rhin have ordered detention of families in **Metz**.⁴³

Conversely, it should be noted that families with children and unaccompanied children are not exempt from detention in waiting zones, even though many facilities are ill-adapted to their situation and needs.⁴⁴

Time limits

Contrary to detention in waiting zones, detention in an administrative detention centre (*centre de rétention administrative*, CRA) for the purpose of removal is ordered for 48 hours,⁴⁵ subject to a possibility of prolongation by the JLD for another 28 days, and an exceptional prolongation of 15 more days if the person obstructs his or her removal or if removal has not been carried out despite the efforts of the authorities.⁴⁶ Accordingly, pre-removal detention may take 45 days in total. The upcoming reform of asylum and immigration law aims to increase these time limits to 60 days, subject to a possibility of prolongation up to a maximum of 90 days.⁴⁷ The extension of the legal time limit of administrative detention raises serious concerns given the current rate of detention and strain on the capacity of CRA.

The interplay of detention regimes

The detention apparatus in France becomes even more complex for those individuals facing a combination or succession of regimes of deprivation of liberty. A person may be placed in a CRA after going through detention in a waiting zone at the border, police custody, or imprisonment *inter alia* for immigration-related offences.

If a person has not been removed from the country upon the expiry of the maximum detention period of 20 days in the waiting zone, he or she is now consequently placed in police custody (*garde à vue*) in most cases. Police custody is permissible if the person refuses to board the plane or has used false documents,⁴⁸ and can last for a period of 24 to 48 hours, after which the person must be released.

Previously people were released and given access to the territory after being placed in police custody close to the expiry of the maximum time limit for detention in the waiting zone, usually the 18th or 19th day. Recently, practice has changed in some waiting zones. Since the beginning of 2018, there has been an emerging trend of admission of the person in the territory and issuance of an obligation to leave the French territory (*obligation de quitter le territoire français*, OQTF) together with an order of placement in a CRA for the purposes of removal, after the person has been released from the waiting zone and was subsequently held in police custody. The detention order is based either on the

⁴² La Cimade, 'Enfants en rétention : le degré zéro de l'humanité', 6 March 2018, available in French at: <http://bit.ly/2FdQ8v1>.

⁴³ Information provided by Ordre de Malte, Paris, 23 April 2018; France terre d'asile, Paris, 24 April 2018.

⁴⁴ Anafé, *Aux frontières des vulnérabilités*, February 2018, 19 et seq.

⁴⁵ Article L.551-1 Ceseda.

⁴⁶ Article L.552-7 Ceseda.

⁴⁷ Assemblée Nationale, *Projet de loi pour une immigration maîtrisée, un droit d'asile effectif et une intégration réussie*, 22 April 2018, available in French at: <http://bit.ly/2raD05G>.

⁴⁸ Articles L.624-1 to L.624-4 Ceseda.

person's refusal to board the plane or on obstruction of the removal procedure due to refusal to cooperate and provide information. In practice, however, the instructions behind the imposition of pre-removal detention following detention in the waiting zone and police custody remain unclear.⁴⁹

This practice also seems to be limited to specific regions at the moment. Civil society organisations are aware of cases of persons being placed in pre-removal detention after having gone through the waiting zones in some CRA in Ile-de-France such as **Mesnil-Amelot**,⁵⁰ as well as in the smaller centres of **Plaisir** or **Palaiseau**.⁵¹ So far, it has not been witnessed in the CRA of **Marseille**, **Nice**, **Lille**, **Coquelles**, **Oissel**, **Metz** or **Strasbourg** either.⁵²

Another intersection of detention regimes occurs in the case of foreigners placed in prison, based on arbitrary criteria and often inconsistent practice.⁵³ Foreigners released from prison (*sortants de prison*) are treated by Prefectures as a matter of priority as per Ministry of Interior instructions.⁵⁴ These people are usually notified an obligation to leave the French territory (*obligation de quitter le territoire français*, OQTF) well before their release from prison. However, prisoners face severe barriers to accessing legal assistance and meeting the 48-hour deadline for appealing a removal order from prison, not least given that Prefectures tend to issue OQTF on a Friday afternoon so that the deadline lapses by the time people can access assistance on Monday morning.⁵⁵ These obstacles have led some courts to annul OQTF,⁵⁶ and recently the Constitutional Court to declare the 48-hour appeal deadline unconstitutional due to its incompatibility with the right to an effective remedy for migrants notified of an OQTF in prison.⁵⁷ Nevertheless, given this practice, as soon as they are released from prison, these persons are placed in a CRA for the purpose of removal. This phenomenon is prevalent in CRA such as **Palaiseau** in Ile-de-France, where 30% of the detained population are former prisoners.⁵⁸

2. Places of detention

As stated above, the waiting zone connotes not only a place of detention but also a set of procedures and guarantees governing a person's stay until his or her right to enter the territory is established. In practice, however, the integration of accommodation and procedures in waiting zones differ considerably from one area to another.⁵⁹ **Roissy** is the most structured and organised waiting zone in France,⁶⁰ insofar it provides adapted infrastructure and concentrates all relevant actors in the same place. These include: the French Red Cross (*Croix rouge française*) which provides humanitarian assistance and counselling; Anafé, which provides legal information and assistance by phone and through a physical presence three days a week; the French Office of Protection of Refugees and Stateless Persons (OFPRA) which conducts interviews with asylum seekers; and as of 2017 the JLD,

⁴⁹ Information provided by Anafé, Paris, 23 April 2018.

⁵⁰ *Ibid.* This was also confirmed by PAF and the Red Cross in Roissy.

⁵¹ Information provided by France terre d'asile, Paris, 24 April 2018.

⁵² Information provided by Forum réfugiés – Cosi, Marseille, 25 April 2018; La Cimade, Nice, 26 April 2018; France terre d'asile, Paris, 24 April 2018; Ordre de Malte, Paris, 23 April 2018.

⁵³ Information provided by Anafé, Paris, 23 April 2018.

⁵⁴ Ministry of Interior, Instruction No INTK17018905 du 16 octobre 2017 Eloignement des personnes représentant une menace pour l'ordre public et les sortants de prison, available in French at: <http://bit.ly/2vW1iVW>, para 2(d); Instruction No INTV1730666J du 20 octobre 2017 Objectifs et priorités en matière de lutte contre l'immigration irrégulière, available in French at: <http://bit.ly/2mbcFBf>, para 1(1).

⁵⁵ Information provided by France terre d'asile, Paris, 24 April 2018; Ordre de Malte, Paris, 23 April 2018.

⁵⁶ See e.g. Administrative Court of Nice, Decision No 1801523, 11 April 2018. For a case concerning an EU citizen notified of an OQTF without interpretation, see Administrative Court of Marseille, Decision No 1603680, 29 April 2016.

⁵⁷ Constitutional Court, Decision 2018-709 QPC, 1 June 2018, available in French at: <http://bit.ly/2LarJKi>.

⁵⁸ Information provided by France terre d'asile, Paris, 24 April 2018.

⁵⁹ For a detailed comparison, see Anafé, *Aux frontières des vulnérabilités*, February 2018, 35 et seq.

⁶⁰ Information provided by Anafé, Paris, 23 April 2018; CGLPL, Paris, 24 April 2018.

stationed in an Annex of the TGI of Bobigny in a building adjacent to the waiting zone. Conversely, neither the Red Cross nor OFPRA are physically present in other waiting zones in the country.⁶¹

The waiting zone of **Marseille** presents a noteworthy example of distinct infrastructural arrangements and responsibilities for the procedures applied to entrants, on the one hand, and their accommodation on the other. Persons refused entry by the PAF at the airport or port of Marseille are issued a decision of placement in waiting zone and, due to the absence of adapted spaces to detain them, they are transferred to the waiting zone located in the premises of the CRA of Canet in Marseille.⁶² The PAF at the waiting zone of Canet is solely responsible for accommodation services (*services hôteliers*). It has no role in their expulsion or asylum procedures, as these remain under the responsibility of the PAF at the airport and port of Marseille.⁶³ This means that for any administrative task required, such as attending a court hearing or visiting the hospital, the responsible unit of the PAF at the airport or the port comes to Canet to escort the person. The only exception in practice concerns interviews with OFPRA conducted by way of videoconference, for which the management of the waiting zone agrees to escort people to the videoconference room located in the CRA section of the building.⁶⁴

Given that Roissy – Charles de Gaulle Airport accounts for the majority of arrivals by air or sea, the configuration, capacity and occupancy of waiting zones across France also varies. The waiting zone of **Roissy** has a maximum capacity of 148 places, of which six for unaccompanied children.⁶⁵ At the time of our visit on 23 April 2018, the number of people held in Roissy was 62, while the average number of residents is usually estimated at 80 to 90 at any given time.⁶⁶ As explained by the Red Cross, the occupancy of the waiting zone fluctuates and remains unpredictable, as there are no identifiable factors behind potential increases in arrivals by air.⁶⁷

⁶¹ Information provided by Anafé, Paris, 23 April 2018.

⁶² Information provided by PAF Port of Marseille, Marseille, 25 April 2018.

⁶³ Information provided by PAF Canet, Marseille, 25 April 2018.

⁶⁴ *Ibid.*

⁶⁵ Information provided by PAF, Roissy, 23 April 2018.

⁶⁶ *Ibid.*

⁶⁷ Information provided by Croix rouge française, Roissy, 23 April 2018.



Courtyard, waiting zone Canet

For its part, the waiting zone of **Marseille** is much smaller and less populated. The zone of Canet has 34 places, split into two living units hosting up to 17 men and 17 women respectively. At the time of our visit on 25 April 2018, only one woman was held there.⁶⁸ This waiting zone raises a number of concerns in terms of conditions, however. It is located in the same building as the CRA of Canet which has a nominal capacity of 136 places, effective capacity being 82, and even though the PAF ensures that people detained in the CRA have no contact and interaction with those detained in the waiting zone,⁶⁹ tensions from the CRA section of the building are often audible in the waiting zone.⁷⁰ The overall infrastructure of the two facilities also does not seem to differ considerably. The waiting zone appears as a prison-like environment,⁷¹ with room windows blocked by metal bars, relatively dark corridors and common rooms, and two plain courtyards surrounded by concrete walls and covered by a wire fence. At the time of our visit, due to a malfunctioning heating system, the temperature in the waiting zone was extremely high. The waiting zone also has two isolation rooms, although these have never been used thus far.⁷²

⁶⁸ Information provided by PAF Canet, Marseille, 25 April 2018.

⁶⁹ *Ibid.* This is required by Article L.221-2 Ceseda.

⁷⁰ At the time of our visit, we were informed that a fire had been set the day before in the CRA. See also Info Migrants, 'Le CRA de Marseille, un centre de rétention administrative à la sinistre réputation', 27 December 2017, available in French at: <http://bit.ly/2HySzyi>.

⁷¹ Le Figaro, 'Centres de rétention : «Je ne pensais pas que cela ressemblait autant à une prison»', 16 February 2018, available in French at: <http://bit.ly/2jeDeEJ>.

⁷² Information provided by PAF Canet, Marseille, 25 April 2018.



PAF Menton

As regards the *de facto* detention of persons issued a refusal of entry at the Italian border, the informal detention zone set up in the PAF of **Menton** consists of a set of containers. A recent visit by parliamentarians revealed that the top of the containers is covered by wire, doors are locked at night, and many people including children sleep on the floor.⁷³ Access to that area is not granted to NGOs since the Prefecture does not classify the zone as a place of detention.⁷⁴ Findings of an earlier visit by the CGLPL denounce *inter alia* insalubrious conditions, as well as the failure of authorities to provide hygiene kits or blankets to people kept in the containers at night.⁷⁵

⁷³ Politis, 'Visite surprise d'élus à la police aux frontières de Menton', 1 April 2018, available in French at: <http://bit.ly/2jdMOaV>.

⁷⁴ Information provided by the CGLPL, Paris, 24 April 2018.

⁷⁵ CGLPL, *Rapport de visite des locaux de la police aux frontières de Menton (Alpes-Maritimes) – Contrôle des personnes migrantes à la frontière franco-italienne*, June 2018, available in French at: <http://bit.ly/2JjUpzY>, 38-44.

CHAPTER II: ACCESS TO ASYLUM AT THE BORDER

The number of asylum applications lodged in waiting zones has slightly increased, from 902 in 2016 to 1,180 in 2017, of which 39 concerned unaccompanied children. This is still far below the record number of 5,100 applications registered at the border in 2008,⁷⁶ after which numbers dropped significantly. The main nationalities were Sri Lanka, Algeria, Turkey, Democratic Republic of Congo and Albania.

The main nationalities applying at the border in 2017 and the first quarter of 2018 were as follows:

Asylum applicants at the border by nationality			
1 Jan – 31 Dec 2017		1 Jan – 31 Mar 2018	
Sri Lanka	120	Morocco	35
Algeria	103	DRC	23
Turkey	99	Algeria	21
DRC	70	Turkey	21
Albania	63	Cuba	18
Others	725	Others	170
Total	1,180	Total	288

Source: OFPRA, 22 May 2018.

The majority of applications are submitted in **Roissy**, far ahead of other waiting zones:⁷⁷

Asylum applicants at the border by waiting zone		
Waiting zone	1 Jan – 31 Dec 2017	1 Jan – 31 Mar 2018
Roissy	981	247
Orly	106	23
Marseille Airport	20	5
Lyon – Saint Exupéry	16	5
Toulouse	15	1
Bâle-Mulhouse	14	0
Marseille Port	7	2
Bordeaux	6	1
Beauvais	5	3
La Réunion	4	1
Nantes	3	0
Nice	2	0
Strasbourg	1	0
Total	1,180	288

Source: OFPRA, 22 May 2018.

Compared to a total of 100,755 asylum applications in 2017, claims at the border seem to represent a very small fraction of the caseload before OFPRA. However, this figure is likely to under-represent the

⁷⁶ OFRA, 2008 Activity report, available in French at: <http://bit.ly/2jQjlyA>, 26.

⁷⁷ OFPRA, 2017 Activity report, 25.

number of persons seeking protection at the border, bearing in mind the persisting barriers to accessing the asylum procedure at the border.

1. Obstacles to accessing the procedure

Persons issued a refusal of entry at the border must be notified of their rights in a language they understand.⁷⁸ In line with Article 8 of the recast Asylum Procedures Directive, the authorities are required to provide information on the possibility to seek asylum when there are indications of such an intention, and make available the necessary interpretation arrangements to that effect. However, information on the right to apply for asylum is not effectively provided in the context of refusal of entry. The notification of rights is often conducted in a rudimentary manner, and often without interpretation in places such as **Nice**.⁷⁹ In **Roissy**, on the other hand, persons expressing the intention to seek asylum when receiving a refusal of entry in the airport (*aérogare*) are sometimes advised to make an application after entering the waiting zone,⁸⁰ or systematically according to other reports.⁸¹

A worrying development has been witnessed in the waiting zone of **Beauvais**, which is now the second main waiting zone after **Roissy** in terms of refusals of entry. The PAF in Beauvais refuses to register asylum applications where it deems that the person falls within the scope of the Dublin Regulation. This is unlawful since the conduct of the Dublin procedure lies within the competence of the Prefecture rather than the PAF. Anafé is aware of asylum seekers arriving from Bulgaria or Greece who repeatedly asked for asylum but were not registered and were removed without being granted the *jour franc*.⁸² Since the PAF in such cases immediately proceeds to return and does not register asylum claims, there is no way to ascertain the scale and number of people affected by this practice.⁸³

⁷⁸ Article L.213-2 Ceseda.

⁷⁹ Information provided by La Cimade, Nice, 26 April 2018.

⁸⁰ Information provided by Croix rouge française, Roissy, 23 April 2018.

⁸¹ Information provided by Anafé, Paris, 23 April 2018.

⁸² An Afghan family managed to apply for asylum following two unsuccessful attempts to return them to Greece: Anafé, 'Cinq jours de calvaire pour un couple d'afghans demandeurs d'asile en zone d'attente de Beauvais', 3 May 2018, available in French at: <http://bit.ly/2HLqWm3>.

⁸³ Information provided by Anafé, Paris, 23 April 2018.



Menton-Garavan train station

Beyond the waiting zones, barriers to access to the asylum procedure have become prominent in the context of refusals of entry on the Italian border following the reintroduction of intra-Schengen border controls. As highlighted by a volume of research,⁸⁴ the reinstatement of border controls has led to a dramatic increase in the number of people returned to Italy without having had the opportunity to access the asylum procedure. However, while the French Ministry of Interior provides some figures on refusals of entry, the exact scale of the problem remains difficult to quantify.⁸⁵

Instructions from the Ministry of Interior have likely installed a practice of racial profiling at the Italian border.⁸⁶ The PAF and general police reserve (*Compagnies Républicaines de Sécurité*, CRS) board trains arriving from Ventimiglia to the station of Menton-Garavan and control any passenger who appears to be of African origin. On the contrary, many families from Albania arriving since the summer

⁸⁴ See e.g. CGLPL, *Rapport de visite des locaux de la police aux frontières de Menton (Alpes-Maritimes) – Contrôle des personnes migrantes à la frontière franco-italienne*, June 2018, available in French at: <http://bit.ly/2JjUpzY>; AIDA, Country Report France, 2016 Update, February 2017, available at: <http://bit.ly/2IPwbCv>, 22-23 ; Country Report France, 2017 Update, February 2018, 21-22; Forum réfugiés – Cosi, *Les obstacles à l'accès à la procédure d'asile dans le département des Alpes-Maritimes pour les étrangers en provenance d'Italie*, April 2017, available at: <http://bit.ly/2oWoa3P>.

⁸⁵ Information provided by CGLPL, Paris, 24 April 2018.

⁸⁶ Politis, 'Visite surprise d'élus à la police aux frontières de Menton', 1 April 2018, available in French at: <http://bit.ly/2jdMOaV>.

of 2017 have been able to enter through the border without any particular difficulties.⁸⁷ The peculiar situation of unaccompanied children refused entry in France has been widely documented as a separate issue of concern.⁸⁸ Courts have also condemned the refusal of entry measures taken by the French authorities earlier in 2018.⁸⁹

Persons who explicitly express the intention to seek asylum have been refused entry by the French authorities on the basis that Italy is responsible for their claim, without being placed under the formal procedure foreseen by the Dublin Regulation.⁹⁰ Similar to the practice witnessed in **Beauvais**, the different police entities present in **Menton, Breil-sur-Roya** and their surroundings – including the PAF, the *gendarmerie* and the CRS – take the view that persons for whom France is not responsible under the Dublin system can be refused entry and immediately be returned. As discussed in [Chapter I](#), this process often involves *de facto* detention in informal zones which cannot be accessed by civil society organisations. The systematic violation of the law seems to stem from internal Ministry of Interior instructions,⁹¹ coupled with lack of awareness of and reverence to the legal framework. Interlocutors on both sides of the border confirmed that in particular mobile police teams which are only stationed in the region for short periods, demonstrate a lack of knowledge of procedural guarantees, local practice and sensitivities.⁹²

The refusal of the authorities to register asylum applications has been successfully litigated. On 31 March 2017, the Administrative Court of Nice sanctioned the refusal of the Prefecture to register the claims of an Eritrean family entering from Italy as a severe and manifest violation of the right to asylum.⁹³ The same court condemned the authorities again on 4 September 2017 for failing to register the applications of three Sudanese nationals,⁹⁴ and again on 2 May 2018.⁹⁵ Despite these rulings, people entering France through the Italian border are still deprived of the possibility to have their asylum applications registered and face immediate refusal of entry and removal to Italy.

Access to asylum in the Roya valley appears virtually impossible. Two organisations, *Roya Citoyenne et Défends ta Citoyenneté*, have managed to ensure access to the asylum procedure for those who managed to cross the border by preparing documents attesting asylum seekers' intention to register an application with the Prefecture, containing their picture and personal details. These documents, bearing the logo of the organisations, have enabled some people to register with the orientation platform (*plateforme d'accueil de demandeurs d'asile*, PADA) in **Nice** and are even systematically demanded by police officers.⁹⁶

⁸⁷ Information provided by La Cimade, Nice, 26 April 2018.

⁸⁸ See e.g. ASGI, 'Minori stranieri rinviiati in Italia come maggiorenni : lettera di denuncia alla Commissione europea e alle autorità italiane', 10 April 2018, available in Italian at: <http://bit.ly/2KswQWY>; The Guardian, 'French police accused of falsifying migrant children's birth dates', 12 April 2018, available at: <http://bit.ly/2EFUGKG>.

⁸⁹ Administrative Court of Nice, Order No 1800699, 23 February 2018.

⁹⁰ AIDA, Country Report France, 2016 Update, February 2017, available at: <http://bit.ly/2IPwbCv>, 22-23; Forum réfugiés – Cosi, *Les obstacles à l'accès à la procédure d'asile dans le département des Alpes-Maritimes pour les étrangers en provenance d'Italie*, April 2017, available at: <http://bit.ly/2oWoa3P>.

⁹¹ Politis, 'Visite surprise d'élus à la police aux frontières de Menton', 1 April 2018, available in French at: <http://bit.ly/2jdMOaV>.

⁹² Information provided by Roya Citoyenne, Breil-sur-Roya, 25 April 2018 ; InterSOS, Ventimiglia, 26 April 2018.

⁹³ Administrative Court of Nice, Order No 1701211, 31 March 2017, available in French at: <http://bit.ly/2pUPVWc>.

⁹⁴ See Le Monde, 'Le préfet des Alpes-Maritimes à nouveau condamné pour atteinte au droit d'asile de migrants', 4 September 2017, available in French at: <http://lemde.fr/2ey8cW4>.

⁹⁵ Administrative Court of Nice, Order No 1801843, 2 May 2018.

⁹⁶ Information provided by Roya Citoyenne, Breil-sur-Roya, 25 April 2018. See also France terre d'asile, 'Pierre Henry, Directeur général de France terre d'asile, se rendait le 10 août dernier dans la vallée de la Roya pour y rencontrer Cédric Herrou, condamné en appel à quatre mois de prison avec sursis pour avoir aidé des migrants', 14 August 2017, available in French at: <http://bit.ly/2r91Gvy>.

Further barriers arise for those persons who are allowed to make an asylum application but attempt to travel from Nice to other cities. Despite the absence of any legal obligation on asylum seekers to register their application with a specific Prefecture, the authorities arrest any person found at a train station leaving Nice as an unmeritorious claimant and proceed to his or her return to Italy.⁹⁷ Yet, whereas asylum seekers' movements within France are read as a sign of abusive intentions, Prefectures readily oblige applicants to travel to different cities in order to follow through their procedure. This has namely been the case for applicants in the Dublin procedure, for whom the Prefectures of **Nice** and **Nord** have introduced a pilot procedure since the beginning of 2018. Following the registration appointment at the Prefectures of Nice and Nord, these persons are given second appointment summons (*convocations*) in **Marseille** and **Lille** respectively, and are requested to bring their family members and an interpreter for that appointment.⁹⁸ Asylum seekers are expected to travel on their own means, without being provided with financial and practical assistance to that end. Missing the appointment entails a withdrawal of reception conditions and thereby exposure to destitution.

In light of these obstacles, the right to seek asylum is not guaranteed at France's borders. Beyond persisting difficulties in waiting zones, the large-scale control operation on the Italian border has generated massive and systematic violations of fundamental rights, preventing people in need of protection from accessing the asylum procedure.

2. Admission to seek asylum: the border procedure

The Ceseda foresees a specific procedure for persons held in waiting zones after arriving in train stations, port or airports. Rather than an examination of the asylum claim itself, this procedure concerns the person's admission to the territory for the purpose of seeking asylum (*admission au territoire au titre de l'asile*). Access to the territory is granted if: (a) France is responsible for the claim under the Dublin Regulation; (b) the claim is admissible; and (c) the claim is not manifestly unfounded.⁹⁹

Interview and procedural guarantees

The Border Unit of OFPRA comprises of three Protection Officers, one Secretary and one Head of Division.¹⁰⁰ Contrary to the asylum procedure on the territory, asylum seekers do not fill in a questionnaire for the purpose of lodging their application. OFPRA prepares the interview on the basis of the record of the person's interview with the PAF upon arrival (*procès-verbal*).¹⁰¹ It should be noted that the initial interview with the PAF is not always compliant with procedural guarantees. In **Beauvais**, for example, in the absence of professional interpretation services, the PAF has resorted to interpretation by fellow police officers, air carrier personnel or even passengers in some cases.¹⁰²

Remote interviews

The use of videoconferencing is governed by prescriptive rules in the Ceseda, which specify the technical and IT requirements for the videoconference system, as well as guarantees to ensure confidentiality.¹⁰³ The use of such equipment is allowed where the applicant is unable to travel for

⁹⁷ Information provided by Roya Citoyenne, Breil-sur-Roya, 25 April 2018.

⁹⁸ Information provided by La Cimade, Nice, 26 April 2018.

⁹⁹ Article L.213-8-1 Ceseda.

¹⁰⁰ Information provided by OFPRA, Fontenay-sous-Bois, 24 April 2018.

¹⁰¹ Information provided by OFPRA, Fontenay-sous-Bois, 24 April 2018.

¹⁰² Information provided by Anafé, Paris, 23 April 2018.

¹⁰³ Article R.723-9(2) Ceseda permits the use of videoconferencing when the applicant is held in a place of deprivation of liberty. See also OFPRA Decision No INTV1526500S du 5 novembre 2015 définissant les modalités techniques garantissant la confidentialité de la transmission fidèle des propos tenus au cours

family or health reasons, when he or she is detained, or applies in French overseas territories. At the moment, as far as asylum interviews in waiting zones are concerned, interviews are conducted in person only in **Roissy**. Interviews with asylum seekers in **Orly** and **Marseille** are conducted through videoconference, while they are conducted by phone in all other waiting zones.¹⁰⁴

Asylum seekers in the waiting zone of Canet in **Marseille** often face organisational and practical difficulties in the interview, as they have to be escorted to the videoconference room within the CRA section and the videoconferencing system often runs into technical problems.¹⁰⁵ The interview room in the CRA has a double door to ensure sound isolation but offers little comfort: the room is filled with a strong odour due to the isolation material used and the two available chairs are fixed on the floor. Where technical problems arise, the interview is conducted by phone.¹⁰⁶ However, the Administrative Court of Marseille has invoked procedural irregularities and annulled decisions refusing admission to the territory for the purpose of seeking asylum where the interview with OFPRA has been conducted by phone rather than videoconference.¹⁰⁷

Orly, on the other hand, which uses a computer equipped with a webcam, does not face technical difficulties according to OFPRA.¹⁰⁸ Yet, videoconferencing in Orly had reportedly broken down in November 2017.¹⁰⁹

Interpretation in interviews is available for 40 languages and is readily available through the Inter Service Migrants (ISM) by phone or videoconference. OFPRA has noted that videoconferencing in the border procedure is preferable for the asylum seeker to the physical presence of an interpreter in the room, although the use of videoconferencing places both the applicant and the Protection Officer at less comfortable a position than an interview in person.¹¹⁰ According to organisations assisting asylum seekers, remote interview and interpretation prove particularly challenging for the individual as he or she is often interrupted by the Protection Officer, who is typing notes at the same time. In **Nice**, the interview report is read out to the applicant without being translated and does not mention whether the applicant was interrupted in the course of the interview.¹¹¹ UNHCR guidance on its own refugee status determination procedures cautions on the limitations inherent in remote participation of interpreters in interviews in particular and their potentially adverse effect on the quality of the interview. Therefore, according to UNHCR, remote interpretation arrangements should only be used exceptionally where for instance locally present interpreters lack the required language skills or to avoid long processing delays and backlogs. Where an interpreter cannot be physically present at the interview, the guidance requires that the interpreter works from a space where he or she is free from interruption, noise and the presence of any other individual. It should be noted that UNHCR's guidance deems remote interpretation generally not appropriate in interviews with applicants in detention or applicants with

de l'entretien personnel mené par l'Ofpra en ayant recours à un moyen de communication audiovisuelle, available in French at: <http://bit.ly/2ra9fIL>.

¹⁰⁴ Information provided by OFPRA, Fontenay-sous-Bois, 24 April 2018; Anafé, Paris, 23 April 2018. Note, however, that according to the latest OFPRA Decision, the accredited waiting zones for videoconferencing are: Lyon, Orly and Marseille: OFPRA Decision No INTV1723025S du 11 octobre 2017 fixant la liste des locaux agréés destinés à recevoir des demandeurs d'asile... dans le cadre d'un entretien personnel mené par l'Ofpra par un moyen de communication audiovisuelle, available in French at: <http://bit.ly/2CJZLRP>.

¹⁰⁵ Information provided by OFPRA, Fontenay-sous-Bois, 24 April 2018.

¹⁰⁶ Information provided by PAF Canet, Marseille, 25 April 2018.

¹⁰⁷ Information provided by Anafé, Paris, 23 April 2018. See e.g. Administrative Court of Marseille, Decision No 1704059, 7 June 2017; No 1704319, 16 June 2017. Contrast with Decision No 1706792, 3 October 2017, where the Court found no procedural irregularities.

¹⁰⁸ Information provided by OFPRA, Fontenay-sous-Bois, 24 April 2018.

¹⁰⁹ Information provided by OFPRA, Fontenay-sous-Bois, 24 April 2018. According to Anafé, the videoconferencing system had not been fixed at the time of our visit.

¹¹⁰ Information provided by OFPRA, Fontenay-sous-Bois, 24 April 2018. OFPRA explained that there is no difference in the way the interview is conducted depending on location: the interviewer types the transcription in a Word document and audio recording is also conducted.

¹¹¹ Information provided by La Cimade, Nice, 26 April 2018.

specific needs or vulnerabilities, including children, persons with hearing impairment or persons with other mental or physical disabilities.¹¹²

Presence of a third party in the interview

The possibility for the asylum seeker to be accompanied in the interview by a third party, namely a member of an accredited civil society organisation or a legal representative, does not seem to be largely used in the context of the border procedure. Out of 837 interviews conducted in **Roissy** in 2017, only in 5 was the asylum seeker accompanied by an NGO and in 31 by a lawyer.¹¹³ This means that over 95% of interviews were carried out without a third party being present. The limited use of this guarantee could be due to a lack of awareness on the part of asylum seekers, despite the fact that information sheets to that effect are available in the waiting zones, as well as the shortage in capacity of NGOs such as Anafé which have no permanent presence in the zones.¹¹⁴

According to OFPRA, lawyers are more readily present in interviews in **Roissy** compared to NGOs likely due to the fact that they can combine those with work in the Annex of the TGI of Bobigny. On the contrary, interviews at the OFPRA premises in Fontenay-sous-Bois for applicants on the territory are mostly attended by NGOs, not lawyers.¹¹⁵

Vulnerable persons in the border procedure

When examining a request for admission to the territory on asylum grounds, OFPRA takes into account objective vulnerabilities such as age, illness or pregnancy, as well as vulnerabilities that are related to the reasons for applying for international protection, such as the sexual orientation of the asylum seeker.¹¹⁶ OFPRA does not keep records on the number of vulnerable persons or categories of vulnerability among asylum seekers, although its practice in this field is likely to evolve.¹¹⁷

Identification, adequate support and exemption from the border procedure

OFPRA has developed a system for the signalling of vulnerabilities in places of detention, namely waiting zones and CRA. Any person authorised to be present in waiting zones, including the NGOs accredited to that effect, can alert OFPRA of the existence of vulnerabilities through a functional email address.¹¹⁸ It should be noted, however, that this possibility seems marginally used in practice, as only one referral was made in 2017 and none so far in 2018.¹¹⁹ Protection Officers of the Border Unit are also trained in the detection of vulnerabilities in the same way as other OFPRA staff, while they can also benefit from the support of thematic reference persons on vulnerability (*référénts thématiques*), coordinated by the Head of Vulnerability Mission.¹²⁰

The Ceseda does not define the notion of “adequate support” contained in Article 24(3) of the recast Asylum Procedures Directive or provide examples of the forms of support that may be provided to an asylum seeker requiring special procedural guarantees.¹²¹

¹¹² UNHCR, *Procedural Standards for Refugee Status Determination under UNHCR's Mandate – Interpretation in UNHCR RSD Procedures*, 2016, available at: <http://bit.ly/2Jc6J9G>.

¹¹³ Information provided by OFPRA, Fontenay-sous-Bois, 24 April 2018.

¹¹⁴ Information provided by Anafé, Paris, 23 April 2018. See further Anafé, *Aux frontières des vulnérabilités*, February 2018, 13-19.

¹¹⁵ Information provided by OFPRA, Fontenay-sous-Bois, 24 April 2018.

¹¹⁶ Information provided by OFPRA, Fontenay-sous-Bois, 24 April 2018.

¹¹⁷ Information provided by OFPRA, Fontenay-sous-Bois, 24 April 2018.

¹¹⁸ Information provided by OFPRA, Fontenay-sous-Bois, 24 April 2018.

¹¹⁹ Information provided by OFPRA, email, 22 May 2018. The referral in 2017 was made by an NGO.

¹²⁰ Information provided by OFPRA, Fontenay-sous-Bois, 24 April 2018.

¹²¹ For examples from other countries, see AIDA, *The concept of vulnerability in European asylum procedures*, September 2017, available at: <http://bit.ly/2f9gOmN>, 43-44.

In terms of special procedural guarantees available to vulnerable persons, OFPRA mentioned the possibility of accompaniment by a third party during the interview, the support given to the Protection Officers by the thematic reference persons, as well as the possibility for the applicant to be interviewed by a Protection Officer and through an interpreter whose sex he or she chooses, provided it is justified by the grounds of his or her claim.¹²² Yet, given the tight deadlines of the border procedure, which require OFPRA to issue an opinion to the Ministry of Interior within two working days,¹²³ it is unlikely that vulnerable asylum seekers are able to benefit from “sufficient time” to put forward their claim.¹²⁴ This is with the exception of opinions relating to unaccompanied children, as discussed below. In addition, the design of interview rooms in waiting zones such as **Marseille**, where people can only sit on a fixed chair to be able to undergo the interview via videoconference, remains far from adequate to respond to special procedural needs where these arise.

Asylum seekers in need of special procedural guarantees must be exempted from the border procedure when they are identified as such by OFPRA.¹²⁵ OFPRA made references to cases of such exemptions, often involving children with health conditions or having undergone trauma.¹²⁶ To the knowledge of organisations such as Anafé, however, no exemption on grounds of special procedural needs has been granted to date.¹²⁷

Where OFPRA deems that the border procedure must be terminated for reasons of vulnerability, it emails the Ministry of Interior and PAF. OFPRA has not come across cases where the Ministry would refuse to release the applicant and admit him or her to the territory, for instance for public order or security reasons.¹²⁸

In practice, the application of the exemption from the border procedure remains marginal, however. Out of 902 applications examined in the border procedure in 2016, OFPRA ordered an exemption on grounds of vulnerability only in 5 cases (0.5%),¹²⁹ all concerning unaccompanied children.¹³⁰ No such exemption was ordered by OFPRA in 2017 and so far in 2018.¹³¹

Unaccompanied children

Unaccompanied children are only placed in the border procedure in waiting zones in exceptional cases where they: come from a safe country of origin; make a subsequent application; present false documents or information in order to mislead the authorities; or pose a serious threat to public order or security.¹³² While fraud cannot be invoked for the application of the accelerated procedure vis-à-vis unaccompanied children on the territory, it is one of the four grounds for applying the border procedure in their case, a policy decision which lies with the Ministry of Interior.¹³³ As the majority of unaccompanied children arriving at the border hold false documents, fraud is widely applied as ground to conduct a border procedure for this category.¹³⁴ In carrying out their respective assessments, both OFPRA and the Ministry need to assess the person’s declared minority and fraud is one of the elements affecting such an assessment.

¹²² Information provided by OFPRA, Fontenay-sous-Bois, 24 April 2018.

¹²³ Article R.213-5 Csesda.

¹²⁴ The notion of “sufficient time” is reflected in Recital 29 recast Asylum Procedures Directive.

¹²⁵ Article L.221-1 Csesda.

¹²⁶ Information provided by OFPRA, Fontenay-sous-Bois, 24 April 2018.

¹²⁷ Information provided by Anafé, Paris, 23 April 2018.

¹²⁸ Information provided by OFPRA, Fontenay-sous-Bois, 24 April 2018.

¹²⁹ OFPRA, *2016 Activity report*, April 2017, available in French at: <http://bit.ly/2pHqMI7>, 42.

¹³⁰ Anafé, *Aux frontières des vulnérabilités*, February 2018, 13-19.

¹³¹ Information provided by OFPRA, email, 22 May 2018.

¹³² Article L.221-1 Csesda, citing Article L.723-2(I)(1)-(2), (II)(1) and (III)(5) Csesda.

¹³³ Information provided by OFPRA, Fontenay-sous-Bois, 24 April 2018.

¹³⁴ Information provided by OFPRA, Fontenay-sous-Bois, 24 April 2018. See also Anafé, *Aux frontières des vulnérabilités*, February 2018, 25.

Since 2004 an *ad hoc* administrator must be appointed through the Public Prosecutor once a child is transferred to the waiting zone. *Ad hoc* administrators are made available by the Red Cross and Famille Assistance but here again practice diverges between the waiting zones in France. In **Roissy**, the Red Cross disposes of an extensive network of *ad hoc* administrators guaranteeing appointments within a few hours if necessary. As the number of unaccompanied children arriving in other waiting zones is extremely low, *ad hoc* administrators are less readily available. However, in **Nice**, for instance, PAF practice is to admit persons clearly looking as children to enter the territory in order to avoiding the complex process of appointing an *ad hoc* administrator.¹³⁵

In line with the recast Asylum Procedures Directive, the *ad hoc* administrator can assist the unaccompanied child during the interview with OFPRA in the waiting zone. According to OFPRA, efforts are made to ensure that the *ad hoc* administrator can speak to the child prior to the interview and that interviews are organised at a day and time which allow the administrator's presence. As a result, in such cases, OFPRA may very rarely exceed the deadline for issuing its opinion in order to ensure the presence of an *ad hoc* administrator.¹³⁶ Nonetheless, the absence of the *ad hoc* administrator during the interview does not prevent OFPRA from conducting the interview. In the past, OFPRA acted on the basis of the declared age and therefore had to treat the applicant as of minor age if so stated. Due to the inconsistencies with other procedures where the same applicant was considered an adult by other authorities, OFPRA can now incidentally assess age for the purpose of the asylum procedure, but this does not require the *ad hoc* administrator's presence. However, if minority has been determined through a court decision, OFPRA is bound by it.¹³⁷

A potential protection gap persists at the moment of interception of the unaccompanied child at the airport (*aérogare*) prior to his or her transfer to the waiting zone. Although the law requires the PAF to immediately contact the Public Prosecutor in order to have an *ad hoc* administrator appointed who should assist the child with every step in the process, including in the *aérogare*, in practice it is impossible for *ad hoc* administrators to provide assistance prior to arrival in the waiting zone, due to the speed of the process. This undermines the effective protection of unaccompanied children at the very initial stage of the process as they have to face the PAF without any assistance. As the PAF is reported to assume a person to be over 18 on the basis of identity documents it considers to be fraudulent at the same time, many unaccompanied children may wrongly be assessed as adults and be denied the special protection owed to them under national and EU law.¹³⁸

The grounds for refusing admission to the territory

Dublin cases and inadmissible applications

OFPRA can only issue a negative opinion on admission to the territory for asylum purposes in case the application is inadmissible or manifestly unfounded. OFPRA is not competent to assess and apply the Dublin Regulation, which is the third ground for refusal of admission to the territory on asylum grounds. This competence lies entirely with the Ministry of Interior and such a refusal is issued where there is evidence that the applicant has family ties, documentation from another country or has applied for asylum in another country.¹³⁹ In case elements are submitted by the applicant during the interview with OFPRA that are relevant to the application of the Dublin Regulation, OFPRA issues its opinion to the Ministry of Interior without basing itself on the Dublin-related aspects.¹⁴⁰

¹³⁵ Information provided by La Cimade, Nice, 26 April 2018.

¹³⁶ Information provided by OFPRA, Fontenay-sous-Bois, 24 April 2018.

¹³⁷ Information provided by OFPRA, Fontenay-sous-Bois, 24 April 2018.

¹³⁸ Anafé, *Aux frontières des vulnérabilités*, 23-24.

¹³⁹ Information provided by OFPRA, Fontenay-sous-Bois, 24 April 2018.

¹⁴⁰ Information provided by OFPRA, Fontenay-sous-Bois, 24 April 2018.

Throughout 2017, Anafé has witnessed an increase in Dublin procedures conducted in waiting zones such as **Roissy** or **Beauvais**, whereby asylum seekers are transferred to other countries without being notified of a transfer decision and therefore without any possibility to mount a legal challenge.¹⁴¹ In others like **Nice**, on the other hand, stakeholders are not aware of Dublin procedures taking place at the border.¹⁴²

On the other hand, OFPRA has not issued opinions against admission to the territory for reasons of inadmissibility so far.¹⁴³

¹⁴¹ Information provided by Anafé, Paris, 23 April 2018.

¹⁴² Information provided by La Cimade, Nice, 26 April 2018.

¹⁴³ Information provided by OFPRA, Fontenay-sous-Bois, 24 April 2018.

Manifestly unfounded applications

The Ceseda defines “manifestly unfounded” applications as those which are either manifestly irrelevant (*manifestement dénuée de pertinence*) to the grounds for obtaining asylum or manifestly deprived of any credibility (*manifestement dépourvu de toute crédibilité*).¹⁴⁴ This definition places a high threshold on the determination of manifest unfoundedness, which would not be met solely by the existence of fraudulent information or documentation on the part of the applicant, for instance.¹⁴⁵ In contrast to the Ceseda, the recast Asylum Procedures Directive allows Member States to define “manifestly unfounded applications” much more broadly.¹⁴⁶

As explained by OFPRA, this assessment is not an in-merit examination and therefore relies on a completely different interview to that held in the asylum procedure on the territory.¹⁴⁷ The Border Unit's assessment that an application at the border is not manifestly unfounded does not entail any judgment on the well-foundedness of the application itself. During the interview, OFPRA addresses contradictions between the applicant's statements to the Protection Officer and the relevant country of origin information and assesses whether they fall within the scope of international protection.¹⁴⁸

In practice, however, civil society organisations report that OFPRA goes into the merits of the claim when assessing manifest unfoundedness, including through detailed questions on matters such as the sexual orientation of the applicant.¹⁴⁹

The opinions issued by OFPRA in 2017 and the first quarter of 2018 were as follows:

OFPRA opinions on admission to the territory on grounds of asylum				
Waiting zone	1 Jan – 31 Dec 2017		1 Jan – 31 Mar 2018	
	Positive	Negative	Positive	Negative
Roissy	262	708	50	195
Orly	25	79	9	13
Marseille Airport	5	15	0	5
Lyon	4	12	2	3
Toulouse	4	11	0	1
Bâle-Mulhouse	4	10	0	0
Marseille Port	2	5	1	1
Bordeaux	3	3	0	1
Beauvais	0	5	0	3
La Réunion	0	4	0	1
Nantes	1	2	0	0
Nice	1	1	0	0
Strasbourg	0	1	0	0
Total	311	856	62	223

Source: OFPRA, 22 May 2018.

¹⁴⁴ Article L.213-8-1 Ceseda.

¹⁴⁵ Information provided by OFPRA, Fontenay-sous-Bois, 24 April 2018.

¹⁴⁶ Article 32(2) recast Asylum Procedures Directive, referring to “any of the circumstances listed in Article 31(8)”. This includes situations of persons: coming from a safe country of origin; misleading the authorities through the use of false documents or information; failing to apply as soon as possible; or refusing to give fingerprints.

¹⁴⁷ Information provided by OFPRA, Fontenay-sous-Bois, 24 April 2018.

¹⁴⁸ Information provided by OFPRA, Fontenay-sous-Bois, 24 April 2018.

¹⁴⁹ Information provided by Anafé, Paris, 23 April 2018.

As indicated by the table above, the rate of positive opinions by OFPRA on requests to access the territory was around 26.6% in 2017 and 21.7% in the first quarter of 2018. This means that the majority of asylum claims made at the border are rejected in the border procedure. In the case of waiting zones such as **Beauvais** or **La Réunion**, all opinions issued by OFPRA in this period were negative.

Although the grounds on which admission to the territory is refused are not available, these figures seem to point to the significant difficulties facing persons applying for protection at the border.

CONCLUSIONS & RECOMMENDATIONS

The treatment of asylum seekers at the French land and air borders raises critical questions as regards the effectiveness of procedural safeguards to protect those trying to enter the territory from arbitrary detention, as well as access to a fair and qualitative asylum procedure.

Those fleeing persecution and conflict who manage to reach France by air find may find themselves subjected to consecutive forms of deprivation of liberty, and a preliminary examination of their protection claim with reduced procedural safeguards. Asylum seekers arriving at the French-Italian borders face arbitrary detention in temporary facilities and are barred from accessing the asylum procedure in France, in clear violation of safeguards under the Dublin III Regulation and the right to asylum.

As illustrated throughout this report, the procedure established at the border to decide on applicants' access to the territory for protection purposes poses particular challenges from the perspective of procedural fairness and the right to liberty.

The legal regime governing the waiting zones comprises a set of procedural safeguards for persons intercepted at the border and refused entry. However, deficiencies in information provision and the lack of access to legal assistance jeopardise their enforcement in practice. Furthermore, the possibility in the *Ceseda* for Prefectures to temporarily extend waiting zones in response to limited volumes of border crossings leaves considerable discretion to submit persons attempting entering France at its internal Schengen borders to this exceptional legal framework. Yet, the approach taken by the Prefecture of Alpes-Maritimes at the French-Italian land border is an illustrative example of "creative" responses of French local authorities through the establishment of *sui generis* temporary detention zones, thereby circumventing the minimum safeguards laid down in the *Ceseda* and resulting in the unlawful detention of persons apprehended and refused entry within the premises of the PAF of **Menton**.

Whereas waiting zones in France differ considerably in terms of size, occupancy and infrastructure, conditions are invariably prison-like. Although the average duration of detention in the waiting zone is relatively short, the placement in particular of vulnerable applicants, including unaccompanied children and families with children, in such areas remains extremely problematic. These spaces are unsuitable to accommodate their specific needs, even where specific places have been created in zones such as **Roissy**.

Also, the procedure conducted at the border to decide on admission to the territory for the purpose of asylum presents important flaws in practice. The right to representation and presence of a third person during the interview with OFPRA in the waiting zone too often remains 'dead letter' due to speedy processing times and limited capacity of NGOs. The organisation of remote interviews by OFPRA through the use of videoconferencing poses particular problems beyond technical difficulties. The suboptimal physical conditions in the interview room in the CRA of **Marseille** further add to the unusual interview situation whereby the OFPRA caseworker, asylum seeker and interpreter have to interact from three different locations, likely impacting on the applicant's trust in the process. Finally, the scope of OFPRA's preliminary assessment of credibility and pertinence of facts invoked by the applicant remains controversial and ill-defined.

Based on the findings of this report, ECRE makes the following recommendations:

Detention of asylum seekers arriving at the border must remain a measure of last resort and not of first response, including at the French land, sea and air borders. Therefore, French authorities must in particular refrain from the consecutive application of different detention regimes to

persons refused entry to the territory as this results in prolonged periods of detention with inevitable harmful effects on individuals' mental and physical health. Vulnerable groups, including unaccompanied children and families with children should never be detained in the waiting zones, nor in any other detention facility. Where they are detained, unaccompanied children should promptly receive the assistance of a qualified *ad hoc* administrator.

Those refused entry upon arrival in airports such as **Roissy** or **Marseille** must be provided with accurate written and oral information on their rights and the procedures applicable to them. They must immediately be provided with contact details of organisations and lawyers providing free legal assistance in the waiting zones. Non-governmental organisations must be given permission and resources to regularly monitor the entire chain of procedures conducted from the moment of disembarkation until the final release or return to the country of origin and transit.

In accordance with the right to an effective remedy, lawyers representing persons before the JLD must be given effective access to phone, fax and internet in the Annex of the TGI of Bobigny located next to the waiting zone of **Roissy**.

Clear instructions must be established on the division of powers between the PAF and the Prefecture as regards the examination and application of the Dublin Regulation at the border. In line with France's obligations under international human rights law and EU asylum law, every person expressing the intention to apply for international protection must be registered as such. The PAF must refrain from examining or applying the Dublin Regulation, which is within the competence of the Prefecture.

The applicable rules relating to the *jour franc* must be rigorously applied, regardless of the profile or point of departure of the applicant. All persons intercepted at the border must be informed proactively of the possibility to apply for international protection and be given interpretation where needed.

ANNEX I - LIST OF INTERLOCUTORS

Name and Organisation	Date	Location
<i>Ministry of Interior, Border Police (PAF)</i>		
Serge Berquier, Commander ZAPI3	23 Apr 2018	Roissy
Deputy Director ZA Canet	25 Apr 2018	Marseille
Nathalie Lefevbre, Chief of Operations, SPAF Port de Marseille	25 Apr 2018	Marseille
<i>French Office for the Protection of Refugees and Stateless Persons (OFPRA)</i>		
Sophie Pegliasco, Director of Cabinet	24 Apr 2018	Fontenay-sous-Bois
Véronique Pechoux, Head of Unit "Asylum at the Border"	24 Apr 2018	Fontenay-sous-Bois
Coralie Capdebosq, Head of Mission "Vulnerability"	24 Apr 2018	Fontenay-sous-Bois
<i>General Controller of Places of Deprivation of Liberty (CGLPL)</i>		
Yanne Pouliquen, Communication Controller	24 Apr 2018	Paris
Anne-Sophie Bonnet, International Affairs Controller	24 Apr 2018	Paris
<i>Civil society organisations and practitioners</i>		
Croix rouge française	23 Apr 2018	Roissy
Laure Palun, Anafé	23 Apr 2018	Paris
Laëtitia N'Diaye, Ordre de Malte	23 Apr 2018	Paris
Nadia Sebtaoui, France terre d'asile	24 Apr 2018	Paris
Maud Beauvillan, Forum réfugiés – Cosi	25 Apr 2018	Marseille
Cédric Herrou, Roya Citoyenne	25 Apr 2018	Breil-sur-Roya
Elisabeth Grimanelli, La Cimade	26 Apr 2018	Nice
Nicole Scheck, Habitat et Citoyenneté	26 Apr 2018	Nice
Daniela Zitarosa, InterSOS	26 Apr 2018	Ventimiglia



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