

# Country Report: France



2020  
Update

## Acknowledgements & Methodology

The 2020 update of this report was written by Laurent Delbos and Claire Tripier at Forum réfugiés – Cosi and edited by ECRE.

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The findings presented in this report stem from background desk research, interviews with field practitioners and lawyers, as well as feedback from French NGOs and the Paris-based UNHCR office and finally statistics shared by the French authorities.

**Caveat:** *In France, asylum policies – including reception procedures – are largely under prefectural execution. This review of practice is mostly based on observations in the departments of Ile de France, Rhône, Puy-de-Dôme, Haute-Garonne and Alpes-Maritimes. However, the conclusions presented in this report on the concrete implementation of asylum policies have been cross-checked and triangulated with observations of these practices in other regions and are supported by findings presented in other reports – be they official or drafted by civil society organisations.*

The information in this report is up-to-date as of 31 December 2020, unless otherwise stated.

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## Glossary & List of Abbreviations

<b>Administrateur <i>ad hoc</i></b>	<i>Ad hoc</i> administrator i.e. legal representative appointed for unaccompanied children
<b>Déclaration de domiciliation</b>	Document thanks to which asylum seekers declare the address where they can be contacted throughout the asylum procedure
<b>Domiciliation Guichet unique</b>	Legal address where the asylum seeker is registered Single desk i.e. system set up to gather the Prefecture and OFII desks to register asylum claims and provide orientation to reception centres following a vulnerability assessment
<b>Jour franc</b>	Full day i.e. 24-hour period during which a person may not be removed
<b>Non-lieu</b>	No case to decide on
<b>Pôle emploi</b>	Employment Office
<b>Ordonnance</b>	Order, decision taken by a single judge without a hearing
<b>Recours gracieux</b>	Discretionary administrative appeal before the Prefect
<b>ADA</b>	Allowance for asylum seekers   Allocation pour demandeurs d'asile
<b>ADDE</b>	Lawyers for the Protection of Rights of Foreigners   Avocats pour la défense des droits des étrangers
<b>AFP</b>	Agence-France Presse
<b>AME</b>	State Medical Assistance   Aide médicale d'Etat
<b>Anafé</b>	National Association of Border Assistance to Foreigners   Association nationale d'assistance aux frontières pour les étrangers
<b>ASSFAM</b>	Association service social familial migrants
<b>CADA</b>	Reception Centre for Asylum Seekers   Centre d'accueil pour demandeurs d'asile
<b>CAES</b>	Reception and Administrative Situation Examination Centre   Centre d'accueil et d'examen de situation administrative
<b>CAO</b>	Reception and Orientation Centre   Centre d'accueil et d'orientation
<b>CASNAV</b>	Academic Centres for Schooling of Foreign-Speaking Children   Centre académique pour la scolarisation des enfants allophones nouvellement arrivés et des enfants issus de familles itinérantes et de voyageurs
<b>CDG</b>	Charles de Gaulle Roissy Airport
<b>Ceseda</b>	Code on Entry and Residence of Foreigners and on Asylum   Code de l'entrée et du séjour des étrangers et du droit d'asile
<b>CFDA</b>	French Coordination on Asylum   Coordination française du droit d'asile
<b>CGLPL</b>	General Controller of Places of Detention   Contrôleur Général des lieux de privations de libertés
<b>CIO</b>	Information and Orientation Centre   Centre d'information et d'orientation
<b>CJA</b>	Code of Administrative Justice   Code de justice administrative
<b>CMU</b>	Universal medical coverage   Couverture maladie universelle
<b>CNCDH</b>	National Consultative Human Rights Commission   Commission nationale consultative des droits de l'homme

<b>CNDA</b>	National Court of Asylum   Cour nationale du droit d'asile
<b>Comede</b>	Medical Committee for Exiles   Comité médical pour les exilés
<b>CPAM</b>	Caisse primaire d'assurance maladie
<b>CPH</b>	Temporary shelter   Centre provisoire d'hébergement
<b>CRA</b>	Administrative Detention Centre   Centre de rétention administrative
<b>Ctrav</b>	Labour Code   Code du travail
<b>DIRECCTE</b>	Regional Directorates of Business, Competition, Consumers, Labour and Employment   Directions régionales des entreprises, de la concurrence, de la consommation, du travail et de l'emploi
<b>DNA</b>	National Reception Scheme   Dispositif national d'accueil
<b>DRC</b>	Democratic Republic of Congo
<b>ECHR</b>	European Convention on Human Rights
<b>ECtHR</b>	European Court of Human Rights
<b>FLE</b>	French as a foreign language   Français langue étrangère
<b>FNARS</b>	Federation of Solidarity Actors   Fédération des Acteurs de la Solidarité
<b>GAS</b>	Reception and Solidarity Group   Groupe accueil et solidarité
<b>GISTI</b>	Groupe d'information et de soutien des immigrés
<b>GUDA</b>	Single desk for asylum seekers   Guichet unique pour demandeur d'asile
<b>HCSP</b>	High Council of Public Health   Haut Conseil de la santé publique
<b>HUDA</b>	Emergency accommodation for asylum seekers   Hébergement d'urgence dédié aux demandeurs d'asile
<b>IOM</b>	International Organisation for Migration
<b>JLD</b>	Judge of Freedom and Detention   Juge des libertés et de la détention
<b>LRA</b>	Place of Administrative Detention   Local de rétention administrative
<b>MRAP</b>	Mouvement contre le racisme et pour l'amitié entre les peuples
<b>MSF</b>	Médecins Sans Frontières
<b>ODSE</b>	Foreigners' Health Rights Observatory   Observatoire du droit à la santé des étrangers
<b>OEE</b>	Observatory on the Detention of Foreigners   Observatoire de l'enfermement des étrangers
<b>OFII</b>	French Office for Immigration and Integration   Office français de l'immigration et de l'intégration
<b>OFPRA</b>	French Office for the Protection of Refugees and Stateless Persons   Office français de protection des réfugiés et des apatrides
<b>OQTF</b>	Order to leave the French territory   Ordre de quitter le territoire français
<b>PASS</b>	Permanent Access to Health Care   Permanence d'accès aux soins de santé
<b>PRAHDA</b>	Programme for Reception and Accommodation of Asylum Seekers   d'accueil et d'hébergement des demandeurs d'asile
<b>PUMA</b>	Permanent Access to Health Care   Permanence d'accès aux soins de santé
<b>UMCRA</b>	Medical Units of Administrative Detention Centres   Unités médicales des centres de rétention administrative
<b>UNHCR</b>	United Nations High Commissioner for Refugees
<b>VTA</b>	Transit Airport Visa   Visa de transit aéroportuaire

**ZAPI**

Waiting zone | Zone d'attente pour personnes en instance

## Overview of statistical practice

In France, detailed statistics on asylum applications and first instance decisions are published annually by the Office of Protection of Refugees and Stateless Persons (OFPRA) in its activity reports. The next OFPRA Activity Report will be published in spring 2021, several months after the end of the reporting year.<sup>1</sup> Statistics on the second instance procedure are to be found in the National Court of Asylum (CNDA) annual reports, which are also published several months after the end of their reporting period.<sup>2</sup>

However, thanks to “SI Asile”, an information system established by the Ministry of Interior in 2016, some provisional data are made available by the Ministry each year, in January.<sup>3</sup>

## Discrepancies in statistics

The various sources of statistics provide different figures on the number of persons seeking asylum in France:<sup>4</sup>

- ❖ OFPRA statistics only cover persons who have lodged an asylum application with OFPRA. As discussed in [Registration](#), those falling under a Dublin procedure are not allowed to lodge their claim. The Ministry of Interior admits that the statistics France provides to Eurostat are incomplete insofar as these are based on OFPRA figures;<sup>5</sup>
- ❖ Ministry of Interior statistics refer to persons registered at a “single desk” (*guichet unique de demande d’asile*, GUDA).
- ❖ Persons re-channelled from a Dublin procedure to a regular or accelerated procedure (*requalifiés*) do not appear in Ministry of Interior statistics if their application has been registered at the GUDA in previous years. They do, however, appear in OFPRA statistics.
- ❖ Persons arrived in resettlement programs and persons applying for asylum in detention are not registered at the GUDA but appear in OFPRA statistics.

Applications registered by the GUDA in France are higher than the reported number of applications lodged with OFPRA. In 2020, 93,426 persons have been registered as asylum seekers by the Ministry of Interior (compared to 151,283 in 2020), of which 81,669 as first applicants (138,420 in 2019) and 11,757 subsequent applicants (12,863 in 2019). For its part, OFPRA reported a total of 95,584 asylum seekers (compared to 132,826 in 2018). The latter include 7,519 *requalifiés* after being placed under Dublin procedure in 2020 (and *requalifies* from previous year – number unknown).

According to the Ministry of Interior, the nationality breakdown of people registered in GUDA for the first 10 countries of origin in 2020 was as follows: Afghanistan, Bangladesh, Pakistan, Guinea, Turkey, Ivory Coast, Haiti, DRC, Ukraine, Somalia.

<sup>1</sup> OFPRA, *Rapports d’activité*, available in French at: <https://goo.gl/zA8i7X>.

<sup>2</sup> CNDA, *Rapports annuels*, available in French at: <http://www.cnda.fr/La-CNDA/Donnees-chiffrees-et-bilans>.

<sup>3</sup> Ministry of Interior, *Chiffres clés – Les demandes d’asile*, available in French at: <https://bit.ly/397TDpi>.

<sup>4</sup> For a discussion, see La Cimade, ‘Premier bilan de la demande d’asile en France en 2018’, 16 February 2019, available in French at: <https://goo.gl/9oAYkV>.

<sup>5</sup> Ministry of Interior, *Chiffres clés – Les demandes d’asile*, available in French at: <https://bit.ly/2TRCMzB>.

### Applications and granting of protection status at first instance: 2020

	First time adults applicants in 2020	Pending at end 2020	Refugee status	Subsidiary protection	Rejection	Refugee rate	Subs. Prot. rate	Rejection rate
<b>Total</b>	62,067	-	7,886	5,978	56,172	11.3%	8.5%	80.2%
Afghanistan	8,886	-	-	-	-	-	-	-
Bangladesh	4,345	-	-	-	-	-	-	-
Pakistan	3,426	-	-	-	-	-	-	-
Guinea	2,781	-	-	-	-	-	-	-
Turkey	2,771	-	-	-	-	-	-	-
Ivory-Coast	2,732	-	-	-	-	-	-	-
Haiti	2,448	-	-	-	-	-	-	-
DRC	2,087	-	-	-	-	-	-	-
Ukraine	1,981	-	-	-	-	-	-	-
Somalia	1,950	-	-	-	-	-	-	-

Source: Ministry of Interior for “first time adults applicants in 2020” and OFPRA for the decisions (here: number of decisions, not persons)

Detailed statistics on decision-making, i.e. with a breakdown by nationality, were not made available by national authorities by the time of publication of this report.

### Gender/age breakdown of the total number of applicants: 2020

	Number	Percentage
<b>Total number of applicants</b>	-	-
Men	-	-
Women	-	-
Children	-	-
Unaccompanied children	-	-

A gender/age breakdown of the total number of applicants was not available at the time of writing of this report.

### Comparison between first instance and appeal decision rates: 2020

	First instance		Appeal	
	Number	Percentage	Number	Percentage
<b>Total number of decisions</b>	70,036	100%	42,025	100%
Positive decisions	24,118	19.8%	10,254	24.4%
<i>Refugee status</i>	7,886	11.3%	6,116	14.6%
<i>Subsidiary protection</i>	5,978	8.5%	4,138	9.8%
Negative decisions	56,172	80.2%	31,771	75.6%

Source: Ministry of Interior

## Overview of the legal framework

### Main legislative acts relevant to asylum procedures, reception conditions, detention and content of protection

Title in English	Original Title (FR)	Abbreviation	Web Link
Code of Entry and Residence of Foreigners and of the Right to Asylum  <i>Amended by:</i> Law n. 2018-187 March 2019 allowing for sound application of the European asylum system  <i>Amended by:</i> Law n. 2018-778 of 10 September 2018 for managed migration, effective asylum law and successful integration	Code de l'entrée et du séjour des étrangers et du droit d'asile  <i>Modifié par :</i> Loi n° 2018-187 du 20 mars 2018 permettant une bonne application du régime d'asile européen  <i>Modifié par :</i> Loi n° 2018-778 du 10 septembre 2018 pour une immigration maîtrisée, un droit d'asile effectif et une intégration réussie	Ceseda	<a href="http://bit.ly/1GQm3uQ">http://bit.ly/1GQm3uQ</a> (FR)  <a href="https://bit.ly/2GyHHzw">https://bit.ly/2GyHHzw</a> (FR)  <a href="https://bit.ly/2QfUSat">https://bit.ly/2QfUSat</a> (FR)
Civil code	Code civil		<a href="https://bit.ly/2ggr7W4">https://bit.ly/2ggr7W4</a> (FR)
Code of Administrative Justice	Code de justice administrative	CJA	<a href="http://bit.ly/1F1WC9k">http://bit.ly/1F1WC9k</a> (FR)
Code of Social Action and Families	Code de l'action sociale et des familles	CASF	<a href="http://bit.ly/1RTu2xE">http://bit.ly/1RTu2xE</a> (FR)
Labour Code	Code du travail	Ctrav	<a href="http://bit.ly/1FUos6Z">http://bit.ly/1FUos6Z</a> (FR)

### Main implementing administrative guidelines and regulations relevant to asylum procedures, reception conditions, detention and content of protection

Title in English	Original Title (FR)	Abbreviation	Web Link
Decision of 2 July 2020 fixing for the year 2020 the objectives of proportionate distribution of the reception of the minors deprived temporarily or definitively of the protection of their family	Décision du 2 juillet 2020 fixant pour l'année 2020 les objectifs de répartition proportionnée des accueils des mineurs privés temporairement ou définitivement de la protection de leur famille		<a href="https://bit.ly/3t1xcK4">https://bit.ly/3t1xcK4</a> (FR)
Information of 15 January 2021 about the management of accommodation centers for asylum seekers and refugees (NOR : INTV2100948J)	Information du 15 janvier 2021 relative à la gestion du parc d'hébergement des demandeurs d'asile et des bénéficiaires d'une protection internationale (NOR : INTV2100948J)		<a href="https://bit.ly/3a5uWZH">https://bit.ly/3a5uWZH</a> (FR)

Order of 7 January 2021 taken pursuant to Article L. 744-2 of the Code on the Entry and Residence of Foreigners and the Right of Asylum (NOR: INTV2035764A)	Arrêté du 7 janvier 2021 pris en application de l'article L. 744-2 du code de l'entrée et du séjour des étrangers et du droit d'asile (NOR : INTV2035764A)		<a href="https://bit.ly/3ogt99r">https://bit.ly/3ogt99r</a> (FR)
OFPPA Decision of 30 July 2015 on organisational modalities for the interview, implementing Article L.723-6 Ceseda	Décision OFPPA du 30 juillet 2015 fixant les modalités d'organisation de l'entretien en application de l'article L.723-6 du Ceseda		<a href="http://bit.ly/1M0s3J1">http://bit.ly/1M0s3J1</a> (FR)
Information on the implementation of the Law of 20 March 2018 on the proper application of European asylum system (NOR : INTV1808045N)	Information relative à l'application de la loi n° 2018-187 du 20 mars 2018 permettant une bonne application du régime d'asile européen (NOR : INTV1808045N)		<a href="https://bit.ly/2OI1iEN">https://bit.ly/2OI1iEN</a> (FR)
OFPPA Decision of 8 février 2019 setting the list of approved premises intended to receive asylum seekers, applicants for stateless persons, refugees or beneficiaries of subsidiary protection heard in a professional interview conducted by OFPPA by an audiovisual communication procedure (NOR : INTV1904007S)	Décision OFPPA du 8 février 2019 fixant la liste des locaux agréés destinés à recevoir des demandeurs d'asile, demandeurs du statut d'apatride, réfugiés ou bénéficiaires de la protection subsidiaire entendus dans le cadre d'un entretien professionnel mené par l'OFPPA par un moyen de communication audiovisuelle (NOR : INTV1904007S)		<a href="https://bit.ly/2TM3ZVF">https://bit.ly/2TM3ZVF</a> (FR)
Bylaw of 23 October 2015 on the questionnaire for assessing vulnerabilities of asylum seekers (NOR: INTV1523959A)	Arrêté du 23 octobre 2015 relatif au questionnaire de détection des vulnérabilités des demandeurs d'asile (NOR : INTV1523959A)		<a href="http://bit.ly/1RaHNen">http://bit.ly/1RaHNen</a> (FR)
Bylaw of 2 May 2017 establishing the ceiling for deductions in case of undue payment of the asylum seeker allowance (NOR: INTV1709507A)	Arrêté du 2 mai 2017 fixant le plafond des retenues en cas de versement indu de l'allocation pour demandeur d'asile (NOR : INTV1709507A )		<a href="http://bit.ly/2En0Qj6">http://bit.ly/2En0Qj6</a> (FR)
Bylaw of 20 October 2015 on the form to declare the asylum seeker's address (NOR: INTV1524994A)	Arrêté NOR : INTV1524994A du 20 octobre 2015 fixant le modèle du formulaire de déclaration de domiciliation de demandeur d'asile		<a href="http://bit.ly/1MVoi49">http://bit.ly/1MVoi49</a> (FR)
Bylaw of 9 October 2015 on the validity of the asylum claim certification (NOR: INTV1524094A)	Arrêté du 9 octobre 2015 fixant la durée de validité de l'attestation de demande d'asile (NOR : INTV1524094A)		<a href="http://bit.ly/1jnCZEL">http://bit.ly/1jnCZEL</a> (FR)
Circular of 6 July 2012 on the implementation of alternatives to administrative detention of families (NOR : INTK1207283C)	Circulaire du 6 juillet 2012 sur la mise en œuvre de l'assignation à résidence prévue à l'article en alternative au placement des familles en rétention administrative (NOR : INTK1207283C)		<a href="http://bit.ly/1RTunjM">http://bit.ly/1RTunjM</a> (FR)

Bylaw of 30 december 2016 on the list of associations entitled to send representatives to access administrative detention facilities (NOR: INTV1638569A)	Arrêté du 30 décembre 2016 fixant la liste des associations humanitaires habilitées à proposer des représentants en vue d'accéder aux lieux de rétention (NOR: INTV1638569A)		<a href="https://bit.ly/2ugzVIX">https://bit.ly/2ugzVIX</a> (FR)
Bylaw of 29 May 2018 on the list of associations entitled to propose representatives for access to waiting areas (NOR: INTV1813160A )	Arrêté du 29 mai 2018 fixant la liste des associations humanitaires habilitées à proposer des représentants en vue d'accéder en zone d'attente (NOR: INTV1813160A )		<a href="https://bit.ly/2Fm1HUu">https://bit.ly/2Fm1HUu</a> (FR)
Circular on the organisation of education for migrant children	Circulaire REDE1236614C n° 2012-143 du 2 octobre 2012 sur l'organisation des Centres Académiques pour la scolarisation des nouveaux arrivants et des enfants du voyage (Casnav)		<a href="http://bit.ly/1KuFVuE">http://bit.ly/1KuFVuE</a> (FR)
Bylaw setting the technical characteristics of the communication means to be used at the CNDA (NOR : JUSE1314361A)	Arrêté du 12 juin 2013 pris pour l'application de l'article R. 733-20-3 du code de l'entrée et du séjour des étrangers et du droit d'asile et fixant les caractéristiques techniques des moyens de communication audiovisuelle susceptibles d'être utilisés par la Cour nationale du droit d'asile (NOR : JUSE1314361A)		<a href="http://bit.ly/1dA3rba">http://bit.ly/1dA3rba</a> (FR)
Instruction of 19 July 2016 relating to the application of the Dublin III Regulation – Resort to house arrest and administrative detention in the context of execution of transfer decisions (NOR: INTV1618837J)	Instruction du 19 juillet 2016 relative à l'application du règlement (UE) n°604/2013 dit Dublin III – Recours à l'assignation à résidence et à la rétention administrative dans le cadre de l'exécution des décisions de transfert (NOR : INTV1618837J)		<a href="http://bit.ly/2k3SdQ8">http://bit.ly/2k3SdQ8</a> (FR)
Circular of 25 January 2016 relating to State resources mobilisation for minors temporarily or definitely deprived from their family protection (NOR : JUSF1602101C)	Circulaire interministérielle du 25 janvier 2016 relative à la mobilisation des services de l'Etat auprès des conseils départementaux concernant les mineurs privés temporairement ou définitivement de la protection de leur famille et les personnes se présentant comme tels NOR : JUSF1602101C		<a href="http://bit.ly/2jghM16">http://bit.ly/2jghM16</a> (FR)
Decision of 10 December 2018 establishing the list of organisations competent for proposing representatives to accompany asylum seekers or refugees or beneficiaries of subsidiary protection to	Décision du 10 décembre 2018 fixant la liste des associations habilitées à proposer des représentants en vue d'accompagner le demandeur d'asile ou le réfugié ou		<a href="https://bit.ly/2CsZfJR">https://bit.ly/2CsZfJR</a> (FR)

a personal interview held by OFPRA (NOR : INTV1833858S)	le bénéficiaire de la protection subsidiaire à un entretien personnel mené par l'OFPRA (NOR : INTV1833858S)		
Decision of 28 December 2018 establishing the list of languages in which asylum seekers, applicants for stateless status, refugees and beneficiaries of subsidiary protection can be heard in the context of a personal interview (NOR: INTV1836064S)	Décision de l'OFPRA du 28 décembre 2018 fixant la liste des langues dans lesquelles les demandeurs d'asile peuvent être entendus dans le cadre d'un entretien personnel mené par l'OFPRA (NOR : INTV1836064S)		<a href="https://goo.gl/S8bgaX">https://goo.gl/S8bgaX</a> (FR)
Decree n. 2016-253 of 2 March 2016 relating to temporary accommodation centres for refugees and beneficiaries of subsidiary protection	Décret n° 2016-253 du 2 mars 2016 relatif aux centres provisoires d'hébergement des réfugiés et des bénéficiaires de la protection subsidiaire		<a href="http://bit.ly/2jNt1xD">http://bit.ly/2jNt1xD</a> (FR)
Decree n. 2015-316 of 19 March 2015 relating to instruction modalities of naturalisation claims, reintegration into French citizenship and citizenship declarations made in case of marriage	Décret n° 2015-316 du 19 mars 2015 modifiant les modalités d'instruction des demandes de naturalisation et de réintégration dans la nationalité française ainsi que des déclarations de nationalité souscrites à raison du mariage		<a href="http://bit.ly/2kKeuGq">http://bit.ly/2kKeuGq</a> (FR)
CNDA Decision of 17 December 2018 on audience by videoconferencing	Décision de la Cour nationale du droit d'asile du 17 décembre 2018 sur la vidéo-audience		<a href="https://bit.ly/2Jml8za">https://bit.ly/2Jml8za</a> (FR)
Circular of 5 November 2018 on provisions of the Law of 10 September 2018 related to criminal law immediatly applicable	Circulaire du 5 novembre 2018 présentant les dispositions de droit pénal immédiatement applicables de la loi n°2018-778 du 10 septembre 2018 pour une immigration maîtrisée, un droit d'asile effectif et une intégration réussie		<a href="https://bit.ly/2Y3VXpE">https://bit.ly/2Y3VXpE</a> (FR)
Instruction of 31 december 2018 on Law of 10 september 2018 – provisions applicable from 1 January 2019	Instruction du 31 décembre 2018 relative à l'application de la loi pour une immigration maîtrisée, un droit d'asile effectif et une intégration réussie – dispositions entrant en vigueur le 1 <sup>er</sup> janvier 2019		<a href="https://bit.ly/2CnZaak">https://bit.ly/2CnZaak</a> (FR)
Decree of 19 June 2019 on missions of emergency centres for asylum seekers	Arrêté du 19 juin relatif au cahier des charges des lieux d'hébergement d'urgence pour demandeurs d'asile		<a href="https://bit.ly/2QQ1dLX">https://bit.ly/2QQ1dLX</a> (FR)
Decree of 19 June 2019 on missions of accomodation centers for asylum seekers	Arrêté du 19 juin 2019 relatif au cahier des charges des centres d'accueil pour demandeurs d'asile		<a href="https://bit.ly/35PnWMj">https://bit.ly/35PnWMj</a> (FR)

Decree of 13 January 2021 on mission of centers for accommodation and evaluation of administrative situations	Décret du 13 janvier 2021 relatif au cahier des charges des centres d'accueil et d'évaluation des situations		<a href="https://bit.ly/3cFRV0p">https://bit.ly/3cFRV0p</a> (FR)
Instruction of 28 February 2019 on Law of 10 september 2018 – provisions applicable from 1 March 2019	Instruction du 28 février 2018 relative à l'application de la loi pour une immigration maîtrisée, un droit d'asile effectif et une intégration réussie - dispositions relatives au séjour et à l'intégration entrant en vigueur le 1er mars 2019		<a href="https://bit.ly/2TJRAS9">https://bit.ly/2TJRAS9</a> (FR)

## Overview of the main changes since the previous report update

The previous update of the report was published in **March 2020**.

### *Asylum procedure*

- ❖ **Consequences of COVID-19 on the asylum procedure:** Following the outbreak of COVID-19, registration and asylum related activities have been temporarily suspended from 23 March to 11 May 2020. Subsequently, access to the asylum procedure and to reception conditions was suspended with no alternative solutions. This measure had no legal basis and mainly resulted from the lack of available civil servants within State agencies. On 30 April 2020, the Council of State urged the authorities to reopen access to registration in Paris.
- ❖ **Access to the territory:** Reports of people being refused entry without their protection needs being taken into account at the Italian border persisted in 2020, as confirmed by the Council of State in a decision of 8 July 2020 in which it concluded that by refusing the entry to the territory the authorities had manifestly infringed the right to asylum. Intensified border controls and mass arrests have resulted in shifting migratory routes, forcing individuals to resort to more dangerous routes through the mountains. Cases of refusals of entry of unaccompanied children have also been reported in 2020, both at the Italian and Spanish borders, thereby violating the rights of the children. Thus, despite strong condemnation by monitoring bodies, civil society organisations, as well as court rulings condemning Prefectures for failing to register the asylum applications of people entering through Italy, access to the territory remains a serious matter of concern in 2020.
- ❖ **Key figures at first instance:** In 2020, a total of 93,426 persons applied for international protection, out of which 81,669 were first time applicants. The determining authority, the OFPRA, issued a 70,036 first instance decisions and the recognition rate stood at 19.8% at first instance, while the backlog of pending cases reached a total of 84,000 cases, up from 74,385 in 2019. The average length of the procedure was 262 days, up from 161 days in 2019.
- ❖ **Use of videoconferencing:** In the context of COVID-19, the use of videoconferencing has increased, in particular at appeal stage in front of the National Court of Asylum (CNDA). The use of videoconferencing was already foreseen prior to the pandemic by a law of 2018 but rarely applied in practice because of protests from lawyers. In November 2020, Courts and lawyers' organisations reached an agreement which foresees that the express consent of the applicant as a prerequisite for the use of videoconferencing.
- ❖ **Afghan nationals:** On 19 November 2020, the CNDA put an end to its previous 'Kabul jurisprudence' which allowed Afghan nationals to be largely protected in France. It concluded that the level of violence in Kabul is not high enough to justify a protection for all people arriving at airports. This means that individual circumstances need to be assessed again and puts Afghan nationals at risk of return. It is also likely to have important consequences in practice given that Afghans have been the first nationality of applicants in France since 2018 and recent Eurostat statistics indicate that a total of 17,520 applications for international protection of Afghan nationals were pending as of the end of December 2020. The new CNDA ruling is thus likely to impact their situation in the future.

### *Reception conditions*

- ❖ **Lack of reception capacity:** At the end of 2020, only about 51% of asylum seekers eligible for material reception conditions were accommodated, compared to 48% in 2019 and 44% in 2018. The number of places dedicated to asylum seekers (98,564 at the end of the year) has not increased in 2020 and remains insufficient, resulting in serious issues of homelessness and destitution.

- ❖ **Inhumane living conditions:** Many asylum seekers are left without accommodation and camps are regularly dismantled in big cities or in the North of France (e.g. Calais, Grande Synthe) where more than 1,000 migrants were living in early 2021 despite police repression. The brutality of these evictions, including reports of abuse, excessive force and violence, are regularly reported as a serious matter of concern. Human rights bodies, such as the French Public Defender or the National Consultative Commission on Human Rights (CNCDH), have urged the authorities to swiftly adopt solutions to respect the dignity of the individuals concerned and further raised concerns in particular regarding vulnerable applicants as well as the inadequate conditions in COVID-19 times.
- ❖ **New national plan 2021-2023:** On 18 December 2020, a "national plan for the reception of asylum seekers and the integration of refugees for 2021-2023" was published. It foresees the possibility to adapt the reception policy to the migration context and to the specific characteristics of the regions, *inter alia* through a better distribution of asylum seekers across national territory.
- ❖ **Vulnerable applicants in reception:** The national plan mentioned above includes measures aimed at identifying vulnerabilities at an early stage and strengthening the management of these vulnerabilities. It refers to the publication of an "action plan for the care of the most vulnerable asylum seekers and beneficiaries of protection" in January 2021 in order to guide the actions carried out jointly by State services and operators for the coming years", but the latter was still not published at the time of writing of this report. It remains to be seen to which extent it will actually improve the identification of specific vulnerabilities of asylum seekers. Moreover, 300 places women victims of violence and/or trafficking and 200 places for LGBTQI+ have been opened in 2020 as part of the reception system for asylum seekers.

#### *Detention of asylum seekers*

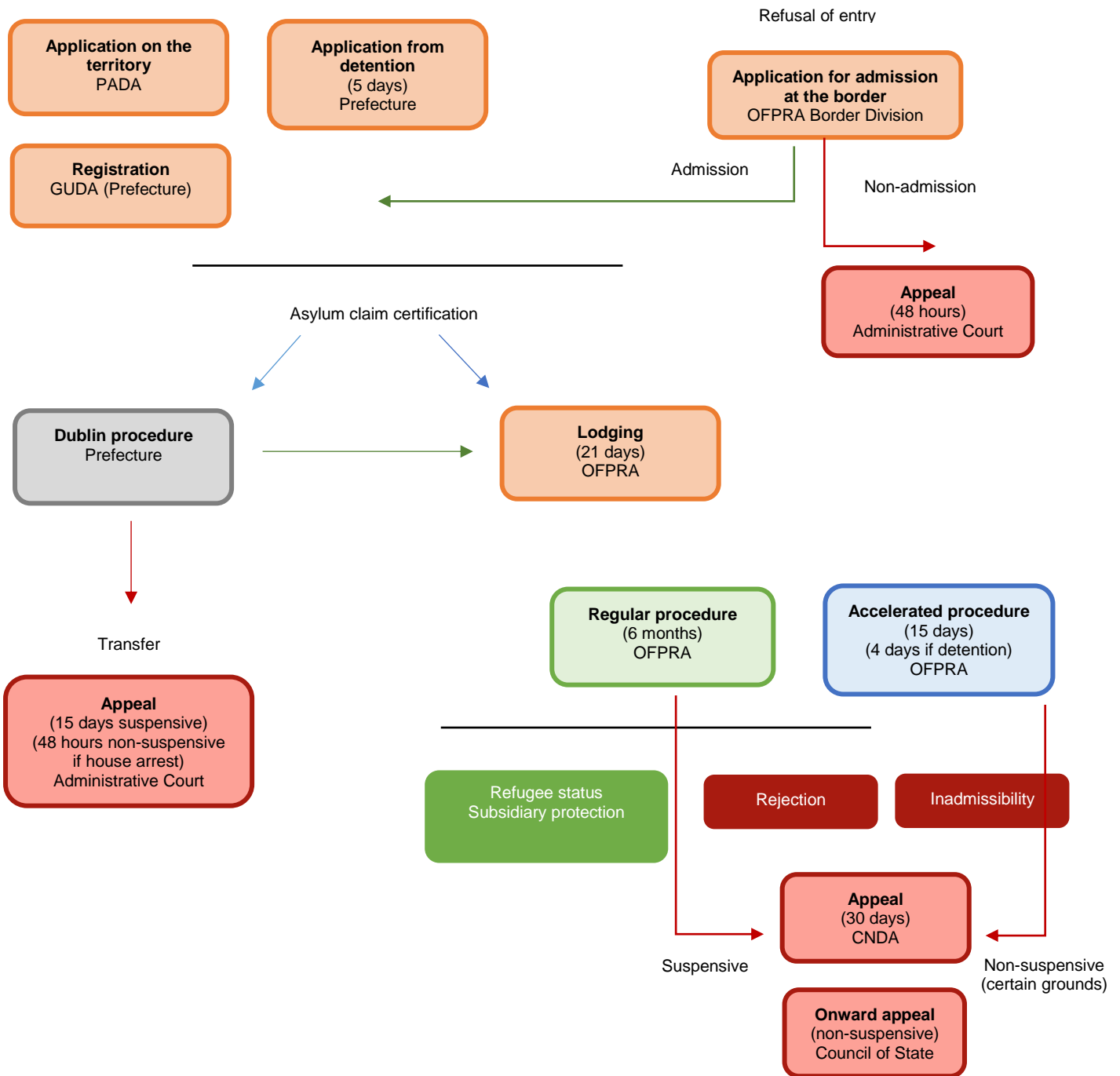
- ❖ **Detention in the context of COVID-19:** In July 2020, the Controller General of Places of Deprivation of Liberty voiced concerns about the situation in pre-removal detention facilities, including waiting zones at the border, in conditions that put the detainees' health at risk. By the end of 2020, the detention framework was adapted to the crisis in certain respects but other points remained problematic.
- ❖ **De facto detention at borders:** Intensified border controls in recent years have led to new forms of detention, including *de facto* detention in police stations at the Italian border which cannot be accessed by civil society organisations. In December 2020, the Administrative Court of Marseille suspended the decision of the *Prefect* prohibiting access of NGOs to the place where migrants are kept at the border in Hautes-Alpes. A similar decision has been issued by the Administrative Court of Nice regarding access to the police station in Menton, but a new decision issued by the Prefect continues to deny such access to NGOs. The Administrative Court of Nice ruled again in March 2021 that this decision was illegal under European law and French Constitution.
- ❖ **Detention conditions:** In its 2020 report, the European committee for the prevention of torture (CPT) flagged several other concerns on detention conditions in the context of immigration in France, which can be listed as follows: a lack of specialised training for staff, no systematic health examination before admission, almost total absence of activities and little contact with staff, a prison-like environment, almost no activities in most of the places visited, information notices on rights which often only exist in French, no consultation with a psychologist, but also good practice of wide access to outdoor courtyards. As regards *de facto* detention at borders, the CPT reported that the material conditions in the premises in Menton were extremely poor and could undermine the dignity of the people placed there. The Committee expressed serious doubts on whether people who are refused entry to the territory are able to know, understand and exercise their rights.

- ❖ **Family reunification:** Due to COVID-19, family reunification was suspended for months in 2020. The health crisis resulting from the pandemic is a situation that was not foreseen in the decision listing exceptions allowing entry into France. Thus, the decision to suspend family reunification procedures was challenged and the Council of State concluded in January 2021 that family reunification should not be limited in the context of health crisis.
- ❖ **Residence permits:** As a result of COVID-19 and the temporary closure of Prefectures, the duration of residence permits expiring between 20 March and 15 June 2020 have been automatically extended by 180 days.
- ❖ **Housing:** Despite several measures taken throughout the years to enable beneficiaries to secure housing, a high numbers of status holders continue to leave reception centres with nowhere to go. Access to housing was more difficult in 2020 in the context of COVID-19. In the first semester of 2020, only 1,755 people exited the reception system with a housing solution. As a result, many beneficiaries of protection are homeless or live in informal settlements.

# 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: <sup>6</sup> | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| ▪ Fast-track processing: <sup>7</sup>   | <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: <sup>8</sup>   | <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 the authorities intervening in each stage of the procedure

Stage of the procedure	Competent authority (EN)	Competent authority (FR)
Application at the border	Border Unit, Office for the Protection of Refugees and Stateless Persons (OFPRA)	Division de l'asile à la frontière, Office Français de Protection des Réfugiés et Apatrides (OFPRA)
Application on the territory	Prefecture / French Office for Immigration and Integration (OFII)	Préfecture / Office Français de l'Immigration et l'Intégration (OFII)
Dublin procedure	Prefecture	Préfecture
Accelerated procedure	Office for the Protection of Refugees and Stateless Persons (OFPRA)	Office Français de Protection des Réfugiés et Apatrides (OFPRA)
Refugee status determination	Office for the Protection of Refugees and Stateless Persons (OFPRA)	Office Français de Protection des Réfugiés et Apatrides (OFPRA)
Appeal	National Court of Asylum (CNDA)	Cour nationale du droit d'asile (CNDA)
Onward appeal	Council of State	Conseil d'Etat
Subsequent application (admissibility)	Office for the Protection of Refugees and Stateless Persons (OFPRA)	Office Français de Protection des Réfugiés et Apatrides (OFPRA)

## 4. Number of staff and nature of the 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 determining authority?
French Office for the Protection of Refugees and Stateless Persons (OFPRA)	1,005	Ministry of Interior	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

Source: OFPRA.

<sup>6</sup> For applications likely to be well-founded or made by vulnerable applicants. See Article 31(7) recast Asylum Procedures Directive. This is now included in Article L.723-3 Ceseda.

<sup>7</sup> Accelerating the processing of specific caseloads as part of the regular procedure.

<sup>8</sup> Labelled as "accelerated procedure" in national law. See Article 31(8) recast Asylum Procedures Directive.

The OFPRA is responsible for examining applications for international protection and competent to take decisions at first instance. It is an administrative body falling under the responsibility of the Ministry of Interior and its institutional independence is explicitly laid down in law, which means that it does not take instructions from the Ministry of Interior.<sup>9</sup> In 2020, the budget of the OFPRA amounted to € 91,7 million and it was composed of 1,005 staff members at the end of the year.

As regards its internal structure, the OFPRA has different units dealing with different procedures as well as different asylum applicants. This includes a unit entitled “asylum at the border”, which is responsible exclusively for claims lodged in waiting zones and detention centres. The OFPRA has also set up five thematic groups (“*groupes de référents thématiques*”) of about 20-30 staff each dealing with vulnerable applicants, as will be explained further below. Another administrative arrangement visible in the OFPRA relates to the units which are organised according to geographical criteria.

### Quality control and assurance

An action plan for the reform of OFPRA, adopted on 22 May 2013, has been implemented since September 2013. It includes a monitoring mechanism of the quality of the decisions taken through an assessment of several sample cases. In addition, a “harmonisation committee”, chaired by the Executive Director, was created to harmonise the *doctrine*, including monitoring the jurisprudence of the CNDA.<sup>10</sup>

An agreement was signed in 2013 between the OFPRA’s Director General and the UNHCR Representative in France establishing quality controls and an evaluation grid with criteria on three main stages of the examination of asylum cases: interview, investigation and decision. The objective is to envisage useful measures for the improvement of the quality of the decisions.

In this context, three evaluations were carried out by OFPRA and UNHCR in 2013, 2015 and 2017, based on representative samples of asylum decisions taken in 2013 and 2014 and the first half of 2016 respectively. The results of the monitoring are available online.<sup>11</sup> At the time of writing (March 2020), there was no information on whether another evaluation would be conducted in 2020.

The latest report published in November 2018 contained mostly positive conclusions concerning interviews and decision-making at OFPRA. It confirmed diminishing disparities between OFPRA and UNHCR examiners’ positions. As mentioned in the previous quality control reports, no major difference was noticed in OFPRA’s treatment of asylum applications under the accelerated procedure and under the regular procedure.

However, important shortcomings were highlighted. In 12% of the case files under review, it was deemed that the interview report was difficult to read. Moreover, it was found that for as high as 13% of the cases, the way interviews were conducted showed that no complementary questions were asked by OFPRA when the statements of the asylum seeker were considered to be insufficiently consistent or credible. Also, in more than 30% of the cases, no question is mentioned in the interview report about the circumstances under which the asylum seeker had written his or her asylum narrative. In 12% of the cases reviewed, no mention was found in the interview report ensuring that the correct understanding of the interpreter by the asylum seeker had been checked. In about 10% of the cases reviewed, the examiners expressed a disagreement as to the relevance of the decision taken. In more than 20% of the cases

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<sup>9</sup> Article L.721-2 CESEDA.

<sup>10</sup> See a description of the action plan for the reform of OFPRA, *2014 Activity report*, 10 April 2015, 54-55.

<sup>11</sup> OFPRA, *Contrôle qualité: premier exercice d’évaluation*, September 2014, available in French at: <https://bit.ly/2KhfZZ6>; *Contrôle qualité: deuxième exercice d’évaluation*, May 2016, available in French at: <https://bit.ly/2kgUqvO>; *Contrôle qualité: troisième exercice d’évaluation*, November 2018, available in French at: <https://bit.ly/2GJPZmD>.

reviewed, the legal reasoning applied was found to be insufficiently thorough. A lack of assessment of the probative value of the relevant documents of the case was also highlighted.

Taking into account the results of these quality controls, regular trainings are being provided to caseworkers, in particular regarding the interview, the assessment of proof and supportive documents and the reasoning of decisions taken. Trainings are provided in-house by OFPRA as well as by EASO.<sup>12</sup>

## 5. Short overview of the asylum procedure

An asylum application in France may be made:

- On the territory;
- At the border, in case the asylum seeker does not possess valid travel documents to enter the territory, including when he or she is placed in a waiting zone. In this case the person makes an application for admission to the territory on asylum grounds;
- From an administrative detention centre, in case the person is already being detained for the purpose of removal.

**Registration:** In order to lodge an asylum application on the territory, asylum seekers must first present themselves to the local competent orientation platform (*plateforme d'accueil de demandeurs d'asile*, PADA) whose task is to centralise the collection of intentions to lodge asylum claims and to give appointments to asylum seekers to the "single desk" (*guichet unique de demande d'asile*, GUDA) of the Prefecture. At the single desk their asylum claim is first registered and they are granted an asylum claim certification.<sup>13</sup> The certification is equivalent to the temporary residence permit.

If it is granted, the person enters into the asylum procedure and has to complete his or her application form in French and send it to OFPRA within a 21 calendar day period, under both regular and accelerated procedures.

Asylum seekers under a Dublin procedure also receive an asylum claim certification but this specifies that they are under a Dublin transfer procedure. Asylum seekers are not allowed to lodge their application with OFPRA if another state accepts responsibility for their asylum claim. The certification does not allow travel to other Member States.

The certification is not delivered to asylum seekers having introduced a claim at the border or from a detention centre. In addition, the Prefecture may refuse to grant an asylum claim certification for two reasons, thus banning the foreign national from remaining on the French territory:

- (a) The foreign national introduces a subsequent application after the final rejection of his or her first subsequent application; or
- (b) The foreign national is subject to a final decision of extradition towards another country than his or her country of origin, or if he or she is subject to a European Arrest Warrant or an arrest warrant issued by the International Criminal Court.

**Accelerated / regular procedure:** The placement under an accelerated procedure does not imply a refusal to grant an asylum claim certification. There are different grounds for channelling a claim into an accelerated procedure. In particular, OFPRA has to process asylum claim under accelerated procedures where the applicant: (a) originates from a safe country of origin; or (b) lodges a subsequent application which is not inadmissible.

The Prefecture channels an asylum claim under accelerated procedures in the following cases:

- (a) The asylum seeker refuses to be fingerprinted;

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<sup>12</sup> OFPRA, *2019 Activity report*, June 2020, available in French at: <https://bit.ly/3cgATWj>, 84.

<sup>13</sup> Conditions for the certification to be delivered and renewed are described in the Decree n. 2015-1166 of 21 September 2015 of the Ministry of Interior.

- (b) When registering his or her claim, the asylum seeker has presented falsified identity or travel documents, or provided wrong information on his or her nationality or on his or her conditions of entry on the French territory or has introduced several asylum claims under different identities;
- (c) The claim has not been made within 90 days after the foreign national has entered the French territory or he or she has remained unlawfully on French territory after his or her arrival for 90 days before registering the claim;
- (d) The claim has only been made to prevent a notified or imminent removal order; or
- (e) The presence of the foreign national in France constitutes a serious threat to public order, public safety or state security.

In addition, OFPRA can decide by itself to process a claim under an accelerated procedure under three other grounds (see section on [Accelerated Procedure](#)).

In these cases, an accelerated procedure means that the person has 21 calendar days to lodge his or her application with OFPRA and that the latter has, in theory, 15 days to examine and decide on the case. The deadlines are even more limited both for the asylum seeker and OFPRA if the person is held in administrative detention. The accelerated procedure does not entail lower social rights than under the regular procedure. Yet, following the 2018 reform, the law provides for the termination of reception conditions for certain categories of asylum seekers whose claims are rejected in the accelerated procedure.

The Prefectures as well as OFPRA are under the administrative supervision of the Ministry of Interior. A single procedure applies. French legislation provides for systematic personal interviews of applicants at first instance; except if OFPRA is about to take a positive decision or if the asylum seeker's medical situation prevents him/her from attending the interview. All personal interviews are conducted by OFPRA. Asylum seekers can be accompanied to their interview by a third person (e.g. a lawyer or member of an accredited NGO). This third person cannot intervene during the interview but may formulate remarks at the end of the interview. This provision also applies to claims introduced at the border and from detention. After the asylum seeker and potential third person have been heard, the caseworker writes an account and a draft decision. The caseworker's decision must be signed and validated by the Head of section, but in practice around one-third of caseworkers, who have significant professional experience, are allowed to sign their own decisions.

**Appeal:** The CNDA is the specialised Administrative Court handling appeals against all administrative decisions of the Director General of OFPRA related to an asylum application. This appeal must be lodged within 1 month after the notification of OFPRA's decision to the applicant. The appeal has automatic suspensive effect for all applicants in the regular procedure, and for those in the accelerated procedure who do not fall under the safe country of origin concept, subsequent application, or threat to public order. Appeals have no suspensive effect if they concern an inadmissibility decision or asylum claims introduced from detention (see [Registration](#)). The CNDA examines the appeal on facts and points of law. It can annul the first instance decision, and therefore grant subsidiary protection status or refugee status, or confirm the negative decision of OFPRA. In some special cases, if the procedural guarantees of the personal interview have not been respected by OFPRA, it can also send the case back to OFPRA for re-examination.

An onward appeal before the Council of State can be lodged within 2 months after the notification of the CNDA decision. The Council of State does not review all the facts of the case, but only points of law such as compliance with rules of procedure and the correct application of the law by the CNDA. If the Council of State annuls the decision, it refers it to the CNDA to decide again on the merits of the case, but it may also decide to rule itself for good on the granting or refusal of protection. The appeal before the Council of State has no suspensive effect on a removal order issued by the Prefecture following a negative decision of the CNDA.

**Border procedure:** A specific border procedure to request an admission to the territory on asylum grounds is provided by French legislation for persons arriving on French territory through airports or harbours. The Border Unit of OFPRA interviews the asylum seekers and formulates a binding opinion that is communicated to the Ministry of Interior. If OFPRA issues a positive opinion, the Ministry has no choice but to authorise the entry on the French territory, except on grounds of threat to national security. This interview is conducted to check whether the applicant's claim is not manifestly unfounded. The concept of "manifestly unfounded" claims is described in the law and concerns claims that are "irrelevant" or "lacking any credibility".

If the asylum application is not considered to be manifestly unfounded, the foreign national is authorised to enter French territory and is given an 8-day temporary visa. Within this time frame, the asylum seeker has to report to a PADA with a view to obtaining an appointment at the single desk. The Prefecture will examine whether to grant the person an asylum claim certification and, if so, will channel the application into the appropriate procedure. OFPRA then processes the asylum application as any other asylum application lodged on the territory. If the asylum application is considered manifestly unfounded or inadmissible or is the responsibility of another Member State, the Ministry of Interior refuses to grant entry to the foreigner with a reasoned decision. The person can lodge an appeal against this decision before the Administrative Court within a 48-hour deadline. If this appeal fails, the foreigner can be expelled from the country.

## 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
  - ❖ If so, who is responsible for border monitoring? ☐ National authorities ☐ NGOs ☐ Other
  - ❖ How often is border monitoring carried out? ☐ Frequently ☐ Rarely ☐ Never

Persons refused entry into the territory after arriving at the border have the possibility to ask for a "full day" (*jour franc*) that allows them to be protected from removal for 24 hours.<sup>14</sup> 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. The *jour franc* does not apply to refusals of entry issued at land borders or in **Mayotte** since September 2018, in accordance with the modifications adopted by the 2018 reform.<sup>15</sup>

In 2018, the French police recorded 71,274 refusals of entry at the border, compared to 85,408 in 2017.<sup>16</sup> No data was made available at national level for the 2019 and 2020. As regards external borders, Eurostat statistics indicate that a total of 56,650 third country nationals were refused entry at the external borders in 2019, while 2020 figures were not available at the time of writing of this report.<sup>17</sup>

<sup>14</sup> Article L.213-2 Ceseda.

<sup>15</sup> Article L.213-2 Ceseda, as amended by Article 18 Law n. 2018-778 of 10 September 2018. Note that in response to a report by the General Controller of Places of Detention (CGLPL), the Ministry of Interior stated in June 2018 that the *jour franc* does not apply in the context of reintroduction of Schengen border controls: Ministry of Interior, Response to the CGLPL, 18-019754-A/BDC-CARAC/JT, 7 June 2018, available in French at: <https://bit.ly/2SEfU7k>, 5.

<sup>16</sup> Projet de loi de règlement 2018 – *Rapport annuel de performance de la mission Immigration, asile, intégration*, 13 May 2019, available in French at : <https://bit.ly/37asL4F>, 27.

<sup>17</sup> Eurostat, [migr\_eirfs], available at: <https://bit.ly/3cUzchP>.

In December 2019, several NGOs have requested a parliamentary commission with the aim to investigate violations of the law at the border.<sup>18</sup> The issues reported by these NGOs include violent practices, pushbacks, the absence of medical and social care as well as a lack of support to vulnerable applicants including unaccompanied minors. The establishment of a parliamentary commission had already been requested by several French Deputies in November 2019.<sup>19</sup> Nevertheless, none of these proposals have been implemented so far.

Since 2015, the French police has intensified border controls which aim to prevent asylum seekers from accessing France. As a result, the closure of the border has been maintained and several police operations have been reinforced in recent years. Despite the fact that the reintroduction of border control at the internal borders must be applied as a last resort measure, in exceptional situations, and must respect the principle of proportionality, France has regularly re-introduced border controls at its internal borders in recent years. The current temporary border control is valid since 1 November 2020 and up until 30 April 2021.<sup>20</sup> Moreover, it should be noted that the Council of State validated in October 2019 a temporary border control decision that had been taken in 2018.<sup>21</sup> The Council of State has considered that this measure, which is based on “current events and the high level of the terrorist threat prevailing in France”, leads to a limitation of the freedom of movement that is proportionate to the aim pursued.

In a decision issued in November 2020, the Council of State indicated that European law does not allow to issue a refusal of entry to a foreigner arrested while crossing an internal border or close to it, nor does it automatically deprive an asylum seeker from reception conditions i.e. accommodation. The rules from Return directive must apply.<sup>22</sup>

### 1.1. Access at the Italian land border

Reports of people being refused entry without their protection needs being taken into account at the Italian border persisted in 2020, as confirmed by the High administrative court (Council of State) in a decision of 8 July 2020 in which it reminded the State of its legal obligations in matters of asylum at the border.<sup>23</sup> The Council of State concluded that by refusing the entry to the territory the authorities had manifestly infringed the right to asylum. In a joint statement, six NGOs welcomed the ruling, condemning the fact that these illegal practices are systematically being carried out by the police. The NGOs also urged the Ministry of the Interior to issue public instructions to the border police so that people wishing to seek international protection in France can do so at the French-Italian border as well.<sup>24</sup>

A network of researchers focusing on the Italian land border has also been established in 2018 to raise awareness on the issue and to establish a dialogue with civil society.<sup>25</sup> Illegal police operations at the border have been extended from the **Menton** and **Nice** areas to the **Hautes-Alpes** since 2016. Such

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<sup>18</sup> Amnesty International France, La Cimade, Médecins du Monde, Médecins sans Frontières, Secours Catholique-Caritas France, Anafé, MRAP, Syndicat des avocats de France, ‘Nous demandons une commission d’enquête parlementaire pour le respect des droits des personnes exilées à nos frontières’, 3 December 2019, available in French at : <https://bit.ly/2FS8Vix>.

<sup>19</sup> Assemblée nationale, ‘Proposition de résolution n° 2394 tendant à la création d’une commission d’enquête sur la violation des droits humains aux frontières françaises’, available in French at : <https://bit.ly/3cj0fD4>.

<sup>20</sup> European Commission, ‘Member States’ notifications of the temporary reintroduction of border control at internal borders pursuant to Article 25 et seq. of the Schengen Borders Code’, available at : <https://bit.ly/3pnjCid>.

<sup>21</sup> Council of State, 16 October 2019, available in French at: <https://bit.ly/2wHgW8p>.

<sup>22</sup> Council of State, Decision n° 428178, 27 November 2020, available in French at : <https://bit.ly/3ac7REC>.

<sup>23</sup> Council of State, Decision n°440756, 8 July 2020, available in French at : <https://bit.ly/3acd5QQ>.

<sup>24</sup> Amnesty International and others, ‘La France viole le droit d’asile à la frontière italienne’, 10 July 2020, available in French at : <https://bit.ly/2JWslIM>.

<sup>25</sup> See official website available in French at: <https://obsmigration.hypotheses.org/>.

practices of mass arrest have had an effect on shifting migratory routes, leading migrants to take increasingly dangerous routes through the mountains. By way of illustration, the Italian organisation Doctors for Human Rights (MEDU) denounced at the beginning of 2021 the critical situation of migrants who attempt to reach France from Italy through the Alpine border, highlighting *inter alia* that snow and freezing winter temperatures make the journey through the mountains particularly dangerous.<sup>26</sup>

Figures on the number of apprehended persons and refusals of entry at the Italian border were not made available in 2020 at the time of writing of this report. Nevertheless, they remained significant in recent years, reaching 30,000 refusals of entry in 2019 according to NGOs.<sup>27</sup> The authorities in the district of **Hautes-Alpes** (Modane) stated, however, that 1,254 entry bans have been notified in the first nine months of 2019, compared to 3,587 in 2018.<sup>28</sup> In 2018, the Prefect of Alpes-Maritimes reported that 29,000 migrants were apprehended at the Italian border,<sup>29</sup> down from more than 50,000 migrants arrested at the border in 2017,<sup>30</sup> of whom a striking 98% had been pushed back to Italy.<sup>31</sup>

Racial profiling by the Border Police and other police forces deployed in the region of **Hautes-Alpes** have also been reported, whereby passengers who appear to be of African origin are being controlled in board trains arriving from Italy.<sup>32</sup> Moreover, persons who explicitly express the intention to seek asylum have been refused entry by the French authorities on the basis that Italy is responsible for their claim, without being placed under the formal procedure foreseen by the Dublin Regulation.

Border controls have also led to new forms of **Detention**, including *de facto* detention in areas such as the police station of **Menton**, which cannot be accessed by civil society organisations.<sup>33</sup> This has been upheld by the Council of State as lawful during the period necessary for the examination of the situation of persons crossing the border, subject to judicial control.<sup>34</sup> In October 2019, a French Member of European Parliament was refused access to the police station in **Menton** as it is not considered formally as a place of detention.<sup>35</sup> In a report on detention conditions in the context of immigration in France, published in March 2020, the European committee for the prevention of torture (CPT) reported that the material conditions in the premises in **Menton** were extremely poor and could undermine the dignity of the people placed there. The Committee has expressed serious doubts on whether people who are refused entry to the territory are able to know, understand and exercise their rights.<sup>36</sup>

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<sup>26</sup> InfoMigrants, 'Critical situation for migrants at Italian-French border', 9 February 2021, available at: <https://bit.ly/3aMpBHq>; See also: ECRE, 'France: Evictions Continue amid Winter Emergency while Council of State Allows Preventing Media Access', 12 February 2020, available at: <https://bit.ly/3jRTbip>.

<sup>27</sup> Le Monde, 'Frontière franco-italienne : l'interdiction faite aux ONG d'assister les migrants suspendue par la justice', 17 December 2020, available in French at : <https://bit.ly/39okCgi>.

<sup>28</sup> La Provence, 'Hautes-Alpes : moins de migrants à la frontière franco-italienne depuis plusieurs mois', 7 October 2019, available in French at : <https://bit.ly/35XZ45j>.

<sup>29</sup> Europe 1, 'Le préfet des Alpes-maritimes annonce que le nombre de migrants est en baisse dans le département', 23 January 2019, available in French at: <https://bit.ly/2CD51le>.

<sup>30</sup> 20 minutes, 'Cote d'Azur : à la frontière italienne, un nombre record de passeurs interpellé', 4 December 2017, available in French at: <http://bit.ly/2qMHySh>.

<sup>31</sup> *Ibid.*

<sup>32</sup> Politis, 'Visite surprise d'élus à la police aux frontières de Menton', 1 April 2018, available in French at: <http://bit.ly/2jdMOaV>.

<sup>33</sup> ECRE, *Access to asylum and detention at France's borders*, June 2018, available at: <https://bit.ly/2JaRrSu>, 18-19.

<sup>34</sup> Council of State, Order No 411575, 5 July 2017.

<sup>35</sup> Francetvinfo, 'Migrants : Manon Aubry interdite d'accès au centre d'accueil de la police aux frontières de Menton', 31 October 2019, available in French at : <https://bit.ly/2RjtmKq>.

<sup>36</sup> Council of Europe, CPT, *Rapport au Gouvernement de la République française relatif à la visite effectuée en France par le Comité européen pour la prévention de la torture et des peines ou traitements inhumains ou dégradants (CPT) du 23 au 30 novembre 2018*, 24 March 2020, available in French at : <https://bit.ly/39rfnJw>.

In December 2020, the administrative court of Marseille suspended the decision of the Prefect prohibiting access of NGOs to the place where migrants are kept at the border in **Hautes-Alpes**.<sup>37</sup> A similar decision has been issued by the administrative court of Nice regarding access to the police station in **Menton**, but a new decision issued by the Prefect continues to deny the access to NGOs.<sup>38</sup>

Media reports have documented incidents of unaccompanied children refused entry by police authorities and directed towards the Italian border.<sup>39</sup> The Italian Minister of Interior also accused France of such practices back in October 2018. In 2020, French Administrative courts have regularly condemned the Prefecture for its illegal practices at the border violating the rights of the children.<sup>40</sup> Several NGOs further published a report in October 2020 on the illegal practices of the French authorities in this regard, which seem to be applied at several borders.<sup>41</sup>

Despite strong condemnation by monitoring bodies,<sup>42</sup> civil society organisations,<sup>43</sup> as well as court rulings condemning Prefectures for failing to register the asylum applications of people entering through Italy,<sup>44</sup> practice remains unchanged. In response to a report by the General Controller of Places of Detention (CGLPL), the Ministry of Interior stated in June 2018 that refusals of entry are not in contravention of the law, invoking Article 20(4) of the Dublin Regulation according to which “[w]here an application for international protection is lodged with the competent authorities of a Member State by an applicant who is on the territory of another Member State, the determination of the Member State responsible shall be made by the Member State in whose territory the applicant is present.” Through this statement, the Ministry implies that asylum applications are made before French officials on Italian soil.

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<sup>37</sup> Le Monde, ‘Frontière franco-italienne : l’interdiction faite aux ONG d’assister les migrants suspendue par la justice’, 17 December 2020, available in French at: <https://bit.ly/39okCgi>.

<sup>38</sup> France télévision, ‘Frontière italienne : les associations d’aide aux migrants ne pourront pas visiter le local de mise à l’abri à Menton’, available in French at: <https://bit.ly/39ndmBr>.

<sup>39</sup> Repubblica, ‘Migranti prigionieri per ore’, nuovo caso al confine francese’, 17 July 2019, available in Italian at : <https://bit.ly/2Urx8Vh>; News Deeply, ‘Dodging death along the Alpine passage’, 25 January 2018, available at: <https://bit.ly/2H99SDP>; France Culture, ‘Quand les mineurs africains sont abandonnés dans la montagne’, 17 November 2017, available in French at: <https://bit.ly/3bar89f>.

<sup>40</sup> See e.g. Administrative Court of Nice, Orders n° 2000856, 2000858, 24 February 2020 ; Administrative Court of Nice, Orders n° 2000570, 2000571 2000572, 7 February 2020.

<sup>41</sup> Amnesty International and others, ‘Les manquements des autorités françaises aux devoirs élémentaires de respecter, protéger et mettre en œuvre les droits des mineur.e.s isolé.e.s étranger.e.s en danger aux frontières intérieures terrestres de la France (frontières franco-italienne, franco-espagnole et franco-britannique)’, October 2020, available in French at : <https://bit.ly/3acF5Um>.

<sup>42</sup> General Controller of Places of Detention (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>; National Consultative Commission for Human Rights (CNCDH), *Avis sur la situation des migrants à la frontière franco-italienne*, 18 June 2018, available in French at: <https://bit.ly/2sKHZdJ>.

<sup>43</sup> See e.g. Anafé, *Persona non grata : Conséquences des politiques sécuritaires et migratoires à la frontière franco-italienne*, January 2019, available in French at: <https://bit.ly/2E2EJQ6>; ECRE, *Access to asylum and detention at France’s borders*, June 2018, available at: <https://bit.ly/2JaRrSu>; La Cimade, *Dedans, dehors: Une Europe qui s’enferme*, June 2018, available in French at: <https://bit.ly/2MrISQj>; Forum réfugiés-Cosi, *Pour une pleine application du droit d’asile à la frontière franco-italienne*, 24 April 2017, available in French at: <http://bit.ly/2mQY26t>.

<sup>44</sup> See e.g. Council of State, Decision n°440756, 8 July 2020, *Op. cit.* ; 20 Minutes ‘Nice : La préfecture à nouveau épinglée pour des violations du droit d’asile à la frontière franco-italienne’ 3 March 2020, available in French at: <https://bit.ly/39p6CTI>; Administrative Court of Marseille, Order N° 1901068, 18 March 2019; Administrative Court of Nice, Order No 1701211, 31 March 2017; Order No 1800195, 22 January 2018; Order No 1801843, 2 May 2018.

A preliminary inquiry into unlawful police practices in **Menton** was launched in February 2019,<sup>45</sup> but was still pending at the beginning of 2021. In July 2019, several NGOs have sent documented requests to the Prosecutor in Nice and to the Special rapporteur on the human rights of the migrants in order to cease violations of fundamental rights at the French-Italian border.<sup>46</sup>

Local habitants have supported asylum seekers at the border *inter alia* by rescuing them on the mountain, but the increased restrictions on access to the territory have been coupled with criminalisation of humanitarian assistance. Several persons helping migrants have been prosecuted and ultimately convicted by French courts. For example, on 8 August 2017, Cedric Herroux received a four-month suspended sentence by the Court of Appeal of Aix-en Provence for helping migrants.<sup>47</sup> The Constitutional Court held in July 2018 that this sentence was unconstitutional as it violated the fraternity principle,<sup>48</sup> and the Court of Cassation quashed the conviction.<sup>49</sup> Convictions continue to be delivered in other cases.<sup>50</sup> On 26 February 2020, the Court of Cassation further held that the protection of acts of solidarity is not limited to individual and personal actions but also extends to a militant action carried out within an association.<sup>51</sup> Consequently, another conviction of Cedric Herroux was quashed by the Court of appeal of Lyon in May 2020.<sup>52</sup> As reported by a Member of the European Parliament, Damien Carême, actions of volunteers trying to help migrants at the border are still complicated by the police in the beginning of 2021.<sup>53</sup>

## 1.2. Access at the Spanish land border

Due to the increasing number of migrants arriving in Spain, the French-Spanish land border has become one of the main entry points to France since 2018. Spanish media have reported that migrants are pushed back from France to Spain without appropriate guarantees, in procedures lasting less than 20 minutes.<sup>54</sup> Reports have shown Border Police officials controlling groups of migrants in **Hendaye**, placing them on board a van and leaving them at the border instead of handing them over to their Spanish counterparts.<sup>55</sup> In February 2021, the border police illegally returned a 16-years old unaccompanied child from **Bayonne** (France) to **Irun** (Spain). The NGOs which reported the incident indicated that these illegal practices are recurrent and recalled that the authorities must take into account the best interest of the child, in accordance with the United Nations Convention on the Rights of the Child.<sup>56</sup>

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<sup>45</sup> Ligue des Droits de l'Homme, 'Violences policières et administratives contre des migrants : une enquête préliminaire à Menton', 5 February 2019, available in French at: <https://goo.gl/Ggknbg>.

<sup>46</sup> Medecins du Monde, 'Atteintes aux droits à la frontière franco-italienne', 16 July 2019, available in French at : <https://bit.ly/2Nycezz>.

<sup>47</sup> Le Monde, 'Coupable d'avoir aidé des migrants, Cédric Herrou « continuera à se battre »', 8 August 2017, available in French at: <http://lemde.fr/2vhq7rs>.

<sup>48</sup> Constitutional Court, Decision 717-718, 6 July 2018.

<sup>49</sup> Court of Cassation, Decision 17-85.736, 12 December 2018.

<sup>50</sup> See e.g. La Croix, 'Le délit de solidarité est toujours sanctionné', 15 January 2020, available in French at <https://bit.ly/35UplBq> ; Anafé et al, 'Les 7 de Briançon lourdement condamné·e·s par le tribunal de Gap', 13 December 2018, available in French at: <https://goo.gl/GxyvYy>.

<sup>51</sup> Court of Cassation, Decision 19-81.561, 26 February 2020, available in French at: <https://bit.ly/2TzksdZ>.

<sup>52</sup> Le Monde, 'Symbole de l'aide aux migrants, Cédric Herrou relaxé par la cour d'appel de Lyon', 13 May 2020, available in French at : <https://bit.ly/3ohlBmM>.

<sup>53</sup> Damien Carême, 'Le harcèlement, lors des maraudes, à la frontière avec l'Italie doit cesser!' 19 January 2021, available in French at : <https://bit.ly/36gPKfS>.

<sup>54</sup> El País, 'Francia usa una medida antiterrorista para devolver migrantes a España', 1 September 2018, available in Spanish at: <https://bit.ly/2Cxr85Q>.

<sup>55</sup> *Ibid.*

<sup>56</sup> ANAFE, L'Etat français renvoie illégalement un enfant à la frontière franco-espagnole, 10 February 2021, available in French at : <https://bit.ly/3aXP1I0>.

Civil society organisations have denounced what appears to be a practice mirroring the methods of the Border Police on the Italian border.<sup>57</sup> Médecins Sans Frontières (MSF) alerted in February 2019 that “[p]eople are denied the opportunity to apply for asylum in France, and minors are not considered as such; they are routinely turned away and sent back to Spain, instead of being protected by the French authorities as the law requires.”<sup>58</sup> Local authorities in **Bayonne** have also criticised current practice vis-à-vis migrants arriving from Spain.<sup>59</sup>

According to the media, 11,000 refusals of entry decisions have been issued at the Spanish land border in the area of **Pyrenees Orientales** during the first 10 month of 2020, i.e. twice as many as in 2019.<sup>60</sup> In 2018, 10,500 refusals of entry had been issued during that same period of 10 months at the French-Spanish border.<sup>61</sup> Figures on the full year 2020 were not made available.

### 1.3. Access at borders in overseas territories

In November 2017, a human rights monitoring institution (*Commission nationale consultative des droits de l'homme - CNCDH*) has published a report on the situation of asylum in French **Guyana** and **Mayotte**.<sup>62</sup> Many situations of impossibility to apply for asylum at the border have been reported as a result of which the CNCDH urged the authorities to « allow effective access to asylum applications at the border ».

In **Mayotte**, thousands of people are arriving each year from Comoros and sometimes from African or Asian countries, especially Sri Lanka. According to the media, ten migrants from the Comoros, including a 7-year-old child, died in September 2020 when attempting to reach the French Overseas Department of Mayotte on board of a craft which sank.<sup>63</sup> In French **Guyana**, 2,500 refusals of entry have been reported in the first semester of 2020.<sup>64</sup> On the **Reunion Island**, NGO reported the expulsion of asylum seekers from Sri Lanka in 2018 with possible violation of fundamental rights.<sup>65</sup>

### 1.4. Access at airports

ANAFE (the National Association of Border Assistance to Foreigners – *Association nationale d'assistance aux frontières pour les étrangers*) is, an organisation that provides assistance to foreigners in airports. In its Annual report published in September 2020, the organisation highlighted several difficulties in accessing the right of asylum at airports.<sup>66</sup> According to the latter, there is a general lack of information on the right to seek asylum and difficulties occur in the registration of asylum claims at the border. It further

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<sup>57</sup> MSF, 'Migrants trapped in relentless cycle of rejection on French-Spanish border', 6 February 2019, available at: <https://goo.gl/CdT9gC>. See also Accem et al., 'Augmentation des arrivées en Espagne : l'Europe doit sortir la réforme de Dublin de sa paralysie', 4 December 2018, available in French at: <https://goo.gl/8ZCpAg>.

<sup>58</sup> MSF, 'Migrants trapped in relentless cycle of rejection on French-Spanish border', 6 February 2019, available at: <https://goo.gl/CdT9gC>.

<sup>59</sup> New York Times, 'French Mayor Offers Shelter to Migrants, Despite the Government's Objections', 12 February 2019, available at: <https://goo.gl/VeSv1C>.

<sup>60</sup> L'Indépendant, 'Pyrénées-Orientales : 11 000 refus d'entrées sur le territoire depuis le 1er janvier 2020', 5 November 2020, available in French at : <https://bit.ly/2NBnHB7>.

<sup>61</sup> Le Monde, 'Paris et Madrid défendent leur coopération sur la question migratoire', 13 November 2018, available in French at: <https://goo.gl/5gafGT>.

<sup>62</sup> Commission nationale consultative des droits de l'homme, 'Avis droit des étrangers et droit d'asile dans les outre-mer. Cas particulier de la Guyane et Mayotte', 26 September 2017, available in French at : <https://bit.ly/2M1MYnU>.

<sup>63</sup> Le Monde, 'Un nouveau drame de l'immigration clandestine à Mayotte fait plusieurs morts, dont un enfant', 25 September 2020, available in French at : <https://bit.ly/2Mx8Ff6>.

<sup>64</sup> Fance Info, 'Guyane : 2 500 refus d'entrée sur le territoire au premier semestre', 12 November 2020, available in French at : <https://bit.ly/3oop7Mf>.

<sup>65</sup> La Cimade, 'La Réunion : expulsion de 8 demandeurs d'asile Sri Lankais en toute opacité', 10 October 2018, Available in French at : <https://bit.ly/36gZGpA>.

<sup>66</sup> ANAFE, *Annual report 2019*, available in French at: <https://bit.ly/3a5GM6k>, 66.

highlights the important role of the Police in practice and the obstacles it may create regarding the asylum application. Similar issues are further described below under the [Border procedure \(border and transit zones\)](#).

## 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? 21 days
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
5. Can an application be lodged at embassies, consulates or other external representations? ☐ Yes ☒ No

Once an individual has entered the French territory in order to seek asylum in France, he or she must be registered as asylum seeker by the French authority responsible for the right of residence, namely the Prefecture. Then, he or she can lodge an asylum application with OFPRA, the only administration competent to examine asylum applications. However, there is a specific procedure for people who seek asylum from an administrative detention centre, in case they are already detained for the purpose of removal.

### 2.1. Making and registering an application

French law does not lay down strict time limits for asylum seekers to make an application after entering the country.

However, the law specifies that one reason why OFPRA shall process an asylum claim in [Accelerated Procedure](#) is that “without legitimate reason, the applicant who irregularly entered the French territory or remained there irregularly did not introduce his or her asylum claim in a period of 90 days as from the date he or she has entered the French territory.”<sup>67</sup> Prior to the 2018 reform, this time limit was 120 days. In Guiana, the time limit is 60 days.<sup>68</sup>

The registration of asylum claims in France is conducted by “single desks” (*guichet uniques de demande d’asile*, GUDA) introduced in order to register both the asylum claim and the need for material reception conditions. There are 34 GUDA across France.<sup>69</sup>

In order to obtain an appointment at the GUDA, asylum seekers must present themselves to orientation platforms (*Plateformes d’accueil de demandeurs d’asile*, PADA). Local organisations are responsible for this pre-registration phase and make appointments at the Prefecture for the asylum seekers. According to the law, the appointment has to take place within 3 working days after asylum seekers have expressed their intention to lodge an asylum claim.<sup>70</sup> This deadline can be extended to 10 working days when a large number of foreign nationals wishing to introduce an asylum claim arrive at the same time.<sup>71</sup>

<sup>67</sup> Article L.723-2(III)(3) Ceseda, as amended by Article 6 Law n. 2018-778 of 10 September 2018.

<sup>68</sup> Art. L.767-1 Ceseda.

<sup>69</sup> The list of GUDA is available at: <http://bit.ly/2Eq0pV6>.

<sup>70</sup> Article L.741-1 Ceseda.

<sup>71</sup> *Ibid.*

While the introduction of the “single desk” system in 2015 aimed at reducing delays relating to registration and avoid long lines of people presenting themselves in front of Prefectures, this additional step has led to more complexity and delays in accessing the procedure in practice. To restore the 3-day time limit, the Minister of Interior published a Circular on 12 January 2018 which increased the staff in Prefectures and in the French Office for Immigration and Integration (OFII) to reorganise services. This plan ensures fully operational GUDA every day of the week, as well as overbooking to compensate for ‘no show’ appointments.<sup>72</sup>

The average waiting time for appointments at the GUDA from the PADA has decreased since 2018. In 2019, the average time at national level was 5,8 working days.<sup>73</sup> In July 2019, the Council of State has recognised that the waiting time for appointment remained a current issue and urged the authorities to take appropriate measures to comply with the legal time foreseen before January 2020.<sup>74</sup> In February 2020, the average time was around 3,5 working days but exceeded 10 days in Lyon.<sup>75</sup>

In a report published in May 2020, the Court of Auditors (*Cour des comptes*) recalled however the existence of “hidden delays” preceding the access to the SPADAs and stressed that “*making people wait several weeks or even several months before the deposit of their request and the assessment of their vulnerability is unsatisfactory not only with regard to their rights but also for the effectiveness of the asylum system*”.<sup>76</sup>

Indeed, asylum seekers have faced difficulties in accessing the PADA, especially in the **Ile-de-France** region (Paris and surroundings). Since May 2018, the French Office of Immigration and Integration (OFII) operates a telephone appointment system in this region, whereby applicants obtain an SMS appointment to appear before a PADA, which in turn books them an appointment with the GUDA to register their application.<sup>77</sup> The telephone appointment system therefore constitutes an additional administrative layer in the registration process. In 2018 (from the launch on 2 May 2018 until 31 December 2018), the telephone platform answered 61,957 calls and granted 46,139 appointments for registration. In 2019, the platform answered 82,339 calls and granted 64,328 appointments.<sup>78</sup> OFII described this system as “very positive”.<sup>79</sup> In December 2020, OFII reported that 200,682 calls were answered and 151,478 appointments were granted during the first 600 days operation.<sup>80</sup> However, figures (“*chiffres noirs*”) made available by the Prefecture of Ile-de-France reveal much higher numbers of calls made to the platform. According to the NGO La Cimade, these figures indicate that nearly 90% of calls made to the OFII telephone service until the end of 2018 were unsuccessful.<sup>81</sup> The NGO also reported that the number of appointments available throughout 2019 was reduced from 300 to 255 per day at the end of October 2019. A further decrease of appointments was observed in 2020, *inter alia* due to COVID-19, reaching only 198 appointments per day in September, 200 in October and 235 since November 2020.<sup>82</sup>

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<sup>72</sup> Circulaire NOR INTV1800126N du 12 janvier 2018 Réduction des délais d’enregistrement des demandes d’asile aux guichets uniques, available in French at: <http://bit.ly/2EePKJQ>.

<sup>73</sup> Figure disseminated by OFII during a meeting with NGOs in January 2020.

<sup>74</sup> Council of State, 31 July 2019, Decision 410347, available in French at : <https://bit.ly/38jVdRH>.

<sup>75</sup> Data collected from NGOs managing platforms

<sup>76</sup> Cour des Comptes, ‘L’entrée, le séjour et le premier accueil des personnes étrangères’, 5 May 2020, available in French at : <https://bit.ly/36m6eTK>.

<sup>77</sup> OFII, ‘Une plateforme téléphonique pour les demandeurs d’asile en Île-de-France’, 2 May 2018, available in French at: <https://goo.gl/LqUc7R>.

<sup>78</sup> OFII, ‘Rapport d’activité 2019’, October 2020, available in French at : <https://bit.ly/2MrpKaP>, 24.

<sup>79</sup> *Op. cit.* P.23

<sup>80</sup> OFII on Twitter, 14 December 2020, available in French at : <https://bit.ly/2YleJnT>

<sup>81</sup> AIDA, ‘France: nearly 90% of calls to Paris phone registration platform missed’, 19 April 2019, available at: <https://bit.ly/3bd9JwL>; La Cimade, ‘La loterie de l’accès à la procédure d’asile en Ile-de-France’, 12 April 2019, available in French at : <https://bit.ly/2LDUjcU>.

<sup>82</sup> La Cimade, Asile en Ile de France : comment contourner (légalement) la plateforme de l’OFII ?, 9 February 2021, available in French at : <https://bit.ly/3pexgTD>.

NGOs have criticised the telephone platform as inefficient, referring to people unsuccessfully attempting to call several times, or waiting for over half an hour on the phone before speaking to OFII. According to La Cimade, the telephone platform is only operative a couple of hours per day and after 12:00 pm, individuals are asked to call again on the next day as all the appointments have already been booked.<sup>83</sup> As a result, the access to the asylum procedure reaches 1 month on average. In addition, despite initial announcements of free-of-charge access, calls to the telephone platform are charged 0,15 to 0,19 € per minute by phone operators. The cost can be exorbitant for asylum seekers given that they have no access to reception conditions before their claim is registered and are often destitute.<sup>84</sup>

In February 2019, following an urgent action (*référé-liberté*) brought by several civil society organisations, the Administrative Court of Paris ordered OFII to deploy at least two more full-time staff members until the end of February 2019 so as to reinforce the capacity of its telephone platform.<sup>85</sup> For the asylum seekers directly concerned by the action, the Court ordered OFII to grant appointments within 48 hours. The Court acknowledged the efforts of OFII to overcome delays and avoid physical queues before the different PADA in Paris. However, it held that the technical and practical obstacles to access to the telephone platform have resulted in “virtual queues” of asylum seekers who do not manage to receive a response despite repeated attempts during several days.

In November 2019, another legal action was filed by several NGOs. The Administrative Court of Paris ordered the Prefecture to increase the number of daily appointments up to 100 for the Ile de France region and urged the OFII to take the necessary steps to set up a free phone number.<sup>86</sup> However, the Court did not order to provide another way to obtain appointment in this region.

In December 2020, 16 migrants supported by 12 NGOs have again asked the court to note that the telephone platform is, for many, inaccessible and constitutes an obstacle to access to asylum applications.<sup>87</sup> The court's response was still pending by the time of publication of this report.

At the GUDA, it is not mandatory to provide an address (*domiciliation*) to register asylum seekers' claims. However, as long as administrative notifications are still sent by mail, asylum seekers have to provide an address for the procedure to be smoothly conducted. An address certificate (*déclaration de domiciliation*) is also necessary to benefit from certain social benefits, in particular the Universal Medical Protection (PUMA). A specific form to declare asylum seekers' address is available since 20 October 2015.

In order for their claim to be registered by the Prefecture, asylum seekers have to provide the following:<sup>88</sup>

- Information relating to civil status;
- Travel documents, entry visa or any documentation giving information on the conditions of entry on the French territory and travel routes from the country of origin;
- 4 ID photos; and
- In case the asylum seeker is housed on his or her own means, his or her address.

### **Special measures in the context of Covid-19**

Registration activities have been temporarily suspended following the closure of the single desks for asylum seekers (*Guichet unique pour demandeur d'asile* – GUDA) from mid-March to the beginning of

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<sup>83</sup> Ibid.

<sup>84</sup> Ligue des Droits de l'Homme et al., 'Campements, loterie, service payant : le système d'asile ne répond plus', 7 February 2019, available in French at: <https://goo.gl/U1yPaG>.

<sup>85</sup> Administrative Court of Paris, Order 1902037, 13 February 2019, available in French at: <https://goo.gl/Fv4vG4>.

<sup>86</sup> Administrative Court of Paris, Order 1924867/9, 25 November 2019, available in French at: <https://bit.ly/3ajddxq>.

<sup>87</sup> ACAT and others, 'Exilés en errance en Ile-de-France, l'impossible enregistrement des demandes d'asile', Press release. 10 December 2020, available in French at : <https://bit.ly/2LbFpdP>

<sup>88</sup> Article R.741-3 Cesda.

May 2020. Subsequently, access to the asylum procedure and to reception conditions were suspended with no alternative solutions. This measure had no legal basis and mainly resulted from the lack of available civil servants within State agencies. On April 2020, 7 NGOs and 7 asylum seekers asked to the Administrative court to reopen access to asylum application in **Paris** and its region.<sup>89</sup> The court ruled in favor of the applicants, but the Ministry of Interior and OFII lodged an appeal. On 30 April 2020, the Council of State confirmed the first decision and urged the authorities to reopen access to GUDA in this region.<sup>90</sup>

### The asylum claim certification

It is only once the asylum claim certification (*attestation de demande d'asile*) has been granted that a form to formally lodge the asylum application is handed to the applicant. Specific documentation is also handed to the asylum seeker in order to provide him or her information on:

- The asylum procedure;
- His or her rights and obligations throughout the procedure;
- The consequences that violations of these obligations might have;
- His or her rights and obligations in relation to reception conditions; and
- Organisations supporting asylum seekers.

The asylum claim certification is delivered for a specific period of time, renewable until the end of the procedure. Depending on the procedure, the period of validity varies:<sup>91</sup>

- Under the regular procedure, the asylum claim certification is valid for an initial period of time of 1 month, renewable for 9 months and 6 months afterwards (as many times as necessary);
- Under the accelerated procedure, the asylum claim certification is valid for an initial period of time of 1 month, renewable for 6 months and 3 months (as many times as necessary);
- Under the Dublin procedure, the asylum claim certification is valid for an initial period of time of 1 month, renewable for 4 months (as many times as necessary). However, persons under a Dublin procedure are not given a form to lodge their application with OFPRA.

The Prefecture may refuse to grant an asylum claim certification for 2 reasons:<sup>92</sup>

- (a) The foreign national introduced a subsequent application after the final rejection of his or her first subsequent application; or
- (b) The foreign national is subject to a final decision of extradition towards another country than his country of origin, or if he is subject to a European Arrest Warrant or an arrest warrant issued by the International Criminal Court.

If foreign nationals are refused an asylum claim certification, they are refused the right to stay on the French territory and to introduce an asylum claim. They might be placed in an administrative detention centre in view of their removal.

In addition, the renewal of an asylum claim certification can be refused, or the asylum claim certification can be refused or removed when:<sup>93</sup>

- (a) OFPRA has taken an inadmissibility decision because the asylum seeker has already been granted asylum in another EU Member State or third country, where the protection provided is effective; or the subsequent application is inadmissible;
- (b) The asylum seeker has withdrawn his or her asylum claim;

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<sup>89</sup> ACAT and others, 'L'accès à la demande d'asile mis à l'arrêt en Ile-de-France' - Press release, 15 April 2020, available in French at : <https://bit.ly/3j7MHMe>.

<sup>90</sup> Council of State, Decisions n° 440250 and 440253, 30 April 2020, available in French at: <https://bit.ly/3am2Kly>.

<sup>91</sup> Ministerial ruling on application of Article L.741-1 Ceseda, published on 9 October 2015.

<sup>92</sup> Article L.741-1 Ceseda.

<sup>93</sup> Article L.743-2 Ceseda, as amended by Article 12 Law n. 2018-778 of 10 September 2018.

- (c) OFPRA has closed the asylum claim. OFPRA is entitled to close an asylum claim if it has not been lodged within 21 days; or if the asylum seeker did not present him or herself to the interview; or if the asylum seeker has consciously refused to provide fundamental information; or if the asylum seeker has not provided any address and cannot be contacted;<sup>94</sup>
- (d) A first subsequent application has been introduced by the asylum seeker only to prevent a notified or imminent order of removal;
- (e) The foreign national introduced a subsequent application after the final rejection of his or her first subsequent application; or
- (f) The foreign national is subject to a final decision of extradition towards another country than his country of origin, or if he is subject to a European arrest warrant or an arrest warrant issued by the International Criminal Court. In case of a refusal, or refusal of a renewal, or removal of the asylum claim certification, the asylum seeker is not allowed to remain on the French territory and this decision can be accompanied by an order to leave the French territory (OQTF);
- (g) OFPRA has taken a negative decision on an application lodged by an asylum seeker subject to an expulsion order or entry ban.

In parallel to the registration of the claim at the Prefecture, the file of the asylum seeker is transferred to OFII that is responsible for the management of the national reception scheme.

## 2.2. Lodging an application

Following registration, if the Dublin Regulation does not apply, the asylum seeker has 21 calendar days to fill in the application form in French and send it by registered mail to OFPRA, the determining authority in France.<sup>95</sup> In order for the claim to be processed by OFPRA, the filled and signed application form as to be accompanied by a copy of the asylum claim certification, 2 ID photos and, if applicable, a travel document and the copy of the residence permit. The file must contain a short explanation of the grounds of the claim in French.

A specific procedure applies in **Guiana, Martinique and Guadeloupe**: when there is an important increase of applications for international protection during three months in a row, the authorities have the possibility to take special measures during a period of 18 months maximum. This includes the possibility to require that the application for international protection is being lodged with OFPRA in person and within 7 days following registration.<sup>96</sup>

Upon receipt of the claim, OFPRA shall inform the asylum seeker as well as the competent Prefect and the OFII that the claim is complete and ready to be processed. In case the claim is incomplete the asylum seeker has to be asked to provide the necessary missing elements or information within 8 additional days; 3 days in **Guiana, Martinique and Guadeloupe** in special circumstances.<sup>97</sup> When OFPRA receives a complete application within the required deadlines, it registers it and sends a confirmation letter to the applicant. If the information is not sent or filed in after the deadline, OFPRA refuses to lodge the application and takes a decision discontinuing the processing of the claim. If the case is not reopened within 9 months, a new claim is considered as a [Subsequent Application](#).

Finally, the requirement to write the asylum application in French remains a serious constraint. For asylum seekers who do not benefit from any support through the procedures and who may face daily survival concerns, not least due to lack of accommodation, the imposed period of 21 days is very short.

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<sup>94</sup> Article L.723-13 Céseda.

<sup>95</sup> Article R.723-1 Céseda.

<sup>96</sup> Decree 2019-1329 of 9 December 2019 on procedures for processing asylum requests in the Antilles and Guyana and modifying the rules for appealing against OFPRA decisions, available in French at: <https://bit.ly/3ajeKDz>.

<sup>97</sup> Article R.768-1 Céseda.

## 2.3. Applications lodged in detention

In administrative detention centres, the notification of the individual's rights, read out upon arrival, indicates that he or she has 5 calendar days to claim asylum. This 5-day time limit is strictly applied in practice. That said, the CNDA has shown some flexibility in the specific cases of persons transferred between detention centres. In one case decided in April 2018, the individual had been notified of the right to seek asylum within 5 days upon his arrival in a detention centre. Four days later – before the expiry of the deadline – he was transferred to another facility and was informed again of the right to make an asylum application within 5 days. The Court found that, since the former deadline had not expired upon the second notification of the right to claim asylum, the applicant could rely on the latter notification in good faith.<sup>98</sup>

The 5-day deadline is not applicable if the person calls upon new facts occurring after the 5-day deadline has expired,<sup>99</sup> although this last condition does not apply to asylum seekers coming from a [Safe Country of Origin](#).<sup>100</sup>

Asylum seekers in detention can benefit from legal and linguistic assistance.<sup>101</sup> According to the CNDA, which examines appeals against inadmissible asylum applications in detention centres, the 5-day deadline may not be contested on the ground that the asylum seeker did not benefit from effective legal and linguistic assistance in detention, or on the basis of facts occurring prior to the deadline which the person was not aware of at the time.<sup>102</sup>

## 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: <sup>103</sup> | 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 2020:   | 84,000  |

The determining authority in France, OFPRA, is a specialised institution in the field of asylum, under the administrative supervision of the Ministry of Interior since November 2007 (see [Number of staff and nature of the determining authority](#)). A time limit of 6 months is set for OFPRA to take a decision under the regular procedure.<sup>104</sup> When a decision cannot be taken within 6 months, OFPRA has to inform the applicant thereof within 15 calendar days prior to the expiration of that period.<sup>105</sup> An additional 9-month period for OFPRA to take a decision starts and, under exceptional circumstances, it can even be extended for 3 more months.<sup>106</sup> Nevertheless, the law provides no consequences to non-compliance with these time limits.

<sup>98</sup> CNDA, *M. D.*, Decision No 17024302, 6 April 2018, available in French at: <https://bit.ly/2BP0geZ>.

<sup>99</sup> Article L.551-3 *Ceseda*.

<sup>100</sup> *Ibid.* If the claim by a national of such a country is made within the 5-day period, however, it cannot be deemed inadmissible: Administrative Court of Versailles, Order No 1800897, 9 February 2018.

<sup>101</sup> Article L.551-3 *Ceseda*.

<sup>102</sup> CNDA, Decision No 16037938, 25 July 2017.

<sup>103</sup> Article R.723-2 *Ceseda*.

<sup>104</sup> Article R.723-2 *Ceseda*.

<sup>105</sup> Article R.723-3 *Ceseda*.

<sup>106</sup> Article R.723-2 *Ceseda*.

In 2017, the Government set a target processing time of 2 months for asylum applications examined by OFPRA.<sup>107</sup> However, the average first-instance processing time for all procedures was 262 days in 2020, due to the impact of COVID-19 on OFPRA's activity,<sup>108</sup> up from 161 days in 2019 and 150 days in 2018.<sup>109</sup> During COVID-19, the OFPRA officially suspended all its interviews of asylum claims, from 16 March up until 11 May 2020. As a result, the backlog of pending cases reached 84,000 as of the end of 2020.<sup>110</sup>

## 1.2. Prioritised examination and fast-track processing

The law provides for the possibility for OFPRA to give priority to applications introduced by vulnerable persons having identified "specific needs in terms of reception conditions" or "specific procedural needs".<sup>111</sup> No information is available on the use of this provision in recent years.

Since 2013, OFPRA also conducts decentralised and external missions in order to accelerate the examination of claims from seekers with specific nationalities or having specific needs. This means that interviews are being held in certain cities, instead of being held on the premises of OFPRA in the Paris region. This has resulted in 42 decentralised missions in 2019 (compared to 23 in 2018) which were conducted in **Metz, Lyon, Rennes, Toulouse, Montpellier, Strasbourg** and **Nantes** and **overseas departments** (12).<sup>112</sup> In 2020, OFPRA held 23 decentralised missions in **Toulouse, Périgueux, Lyon, Metz, Aix-en-Provence, Annecy, Lille** and overseas (**Mayotte, Martinique, Guadeloupe** and **French Guiana**)<sup>113</sup>

OFPRA also continued its missions abroad. In 2020, this included 8 missions in cooperation with UNHCR to resettle refugees from **Turkey, Lebanon, Jordan, Chad, Egypt** and **Rwanda** as well as 19 missions in Europe following search and rescue operations in **Italy** and **Malta** as well as missions to support the asylum system in **Greece** (where, for the first time, it involved cases of unaccompanied minors).<sup>114</sup>

The 2018 reform has introduced the possibility for OFPRA to carry out resettlement missions in the law.<sup>115</sup>

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<sup>107</sup> Le Monde, 'Le gouvernement fait de la réduction du délai de demande d'asile une des clés du plan migrants', 12 July 2017, available in French at: <https://goo.gl/rz18KD>.

<sup>108</sup> OFPRA, 'Premières données de l'asile 2020', 21 January 2021, available in French at: <https://bit.ly/3cAaIKy>.

<sup>109</sup> Ibid.

<sup>110</sup> OFPRA, 'Premières données de l'asile 2020', 21 January 2021, available in French at: <https://bit.ly/3cAaIKy>.

<sup>111</sup> Article L.723-3 Ceseda.

<sup>112</sup> OFPRA, 'Les premières données de l'asile 2019 à l'OFPRA', 21 January 2020, available in French at: <https://bit.ly/38zItHM>.

<sup>113</sup> OFPRA, 'Premières données de l'asile 2020', 21 January 2021, available in French at: <https://bit.ly/3cAaIKy>.

<sup>114</sup> Ibid.

<sup>115</sup> Article L.714-1 Ceseda, inserted by Article 7 Law n. 2018-778 of 10 September 2018.

### 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?  
❖ If so, are interpreters available in practice, for interviews?  
☒ Yes ☐ No  
☒ 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  
❖ If so, under what circumstances? Physical inability of attending e.g. health; held in administrative detention; overseas
4. Can the asylum seeker request the interviewer and the interpreter to be of a specific gender?  
❖ If so, is this applied in practice, for interviews?  
☒ Yes ☐ No  
☒ Yes ☐ No

The Ceseda provides for systematic personal interviews of applicants. There are two legal grounds for omitting a personal interview:<sup>116</sup>

- (a) OFPRA is about to take a positive decision on the basis of the evidence at its disposal; or
- (b) Medical reasons prohibit the conduct of the interview.

In practice, OFPRA rarely omits interviews. In 2019, 96.5% of asylum seekers were summoned for an interview,<sup>117</sup> compared to 90.1% in 2018, 97.1% in 2017, 94.1% in 2016 and 95.4% in 2015. The rate of interviews actually taking place was 74.4% in 2019<sup>118</sup>, stable compared to 74% in 2018 (77.6% in 2017, 72.4% in 2016 and 76% in 2015).<sup>119</sup> Statistics on the number of interviews in 2020 were not available at the time of writing of this report.

All personal interviews are conducted by protection officers from OFPRA. Asylum seekers are interviewed individually without their family members. A minor child can also be interviewed alone if OFPRA has serious reasons to believe that he or she might have endured persecutions unknown to other family members.<sup>120</sup> After a primary interview, OFPRA can nevertheless conduct a complementary one and hear several members of a family at the same time if it is necessary for assessing the risks of persecution.<sup>121</sup>

The law provides that the asylum seekers can further ask the protection officer and the interpreter to be of a particular gender.<sup>122</sup> This guarantee is applied in practice, yet not systematically, as the law provides that this request has to be deemed justified by OFPRA due to the difficulties of the asylum seeker to expose comprehensively the grounds of her/his claim, in particular if she/he has been subjected to sexual violence. Moreover, the law stipulates the request is granted “as far as possible”.

#### Videoconferencing

As a rule, interviews are conducted in the premises of OFPRA in **Fontenay-sous-Bois**, east of Paris. Interviews can be conducted through video conferencing in 3 cases:<sup>123</sup>

- (a) The asylum seeker cannot physically come to OFPRA for medical or family reasons;
- (b) The asylum seeker is held in an administrative detention centre; or

<sup>116</sup> Article L.723-6 Ceseda.

<sup>117</sup> OFPRA, *2019 Activity report*, June 2020, available in French at <https://bit.ly/3jFo0aa>, 56

<sup>118</sup> *ibid*

<sup>119</sup> OFPRA, *2017 Activity report*, April 2018, available in French at: <https://goo.gl/ih5jkG>, 50.

<sup>120</sup> Article L.723-6 Ceseda.

<sup>121</sup> *Ibid.*

<sup>122</sup> Article L.723-6 Ceseda

<sup>123</sup> Article R.723-9 Ceseda.

(c) The asylum seeker is overseas.

An OFPRA Decision of 23 December 2020 has established the updated list of approved premises intended to receive asylum seekers, applicants for stateless status, refugees or beneficiaries of subsidiary protection heard in a professional interview conducted by OFPRA by an audio-visual communication procedure.<sup>124</sup> This includes several administrative detention centres, as well as waiting zones (see [Border Procedure](#)). La Cimade noted in a 2018 report that videoconferencing has negative effects on the quality of interview in detention. This was mainly due to material problems, communication difficulties as well as interpretation issues.<sup>125</sup>

In 2019, 2.3% of all interviews were conducted through video conferencing, compared to 2.2% in 2018, 3.1% in 2017 and 4.2% in 2016. Statistics on the number of interviews conducted through video conferencing in 2020 were not available at the time of writing of this report. However, the OFPRA did not use videoconferencing during the first lockdown in the context of COVID-19 as a way of maintaining its activity. Instead, all personal interviews on the metropolitan territory were cancelled between 16 March and 11 May 2020.

### **Accompaniment by a third party**

Asylum seekers have the possibility to be accompanied by a third person, either a lawyer or a representative of an accredited NGO.<sup>126</sup> In a Decision of 2 July 2019,<sup>127</sup> OFPRA's Director-General has updated and further detailed the conditions for the organisation and the proceedings of the interview in a presence of a third party.

The third party has to give prior notice of her/his presence at the interview. The 4 to 7 days time limit previously applied is no longer in place according to the decision. However, since COVID-19, OFPRA requires a 48 hours prior notice. Asylum seekers with disabilities may also ask OFPRA to be accompanied by their health worker or by a representative of an association providing assistance to people with disabilities. The absence of a third person does not prevent OFPRA from conducting the interview. The third person is not allowed to intervene or to exchange information with the asylum seeker or the interpreter during the interview, but he or she can formulate remarks and observations at the end of the interview. These observations are translated if necessary and written down in the interview report. The interview is also fully recorded. Neither the third party nor the asylum seeker have the right to record the interview. The content of the interview and any notes taken are confidential and must not be disclosed by the third party, without prejudice to the necessities of a subsequent appeal.

The asylum seeker or the third person can ask to read the interview report before a decision is taken on the case. At the end of the interview, the asylum seeker and the third person who accompanies him or her are informed of their right to have access to the copy of the interview. The latter is either immediately given to the asylum seeker or it is sent before a decision is taken.<sup>128</sup> The OFPRA Decision of 2 July 2019 allows for the possibility of providing further comments or documents after the interview, within a reasonable time-limit not hampering the taking of the decision.

According to an OFPRA Decisions of 10 December 2018 and 30 July 2020, 38 organisations are authorised to accompany asylum seekers in interviews.<sup>129</sup> These organisations are frequently requested

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<sup>124</sup> OFPRA, Decision of 23 December 2020, available in French at: <https://bit.ly/2OtwKVp>.

<sup>125</sup> La Cimade, *Le droit d'asile en rétention – Analyse d'une chimère*, June 2018, available in French at: <https://bit.ly/2EWkvls>, 29.

<sup>126</sup> Article L.723-6 *Ceseda*.

<sup>127</sup> OFPRA, Decision of 2 July 2019 establishing organisational modalities for the interview according to the implementation of Article L.723-6 of the *Ceseda*, available in French at <https://bit.ly/3aP2rzW>.

<sup>128</sup> Article R.723-7 *Ceseda*.

<sup>129</sup> OFPRA, *Decision NOR: INTV1833858S of 10 December 2018 establishing the list of organisations competent for proposing representatives to accompany asylum seekers or refugees or beneficiaries of subsidiary protection to a personal interview held by OFPRA*, available at

to accompany asylum seekers, most of the time from applicants not accommodated in the centres they run. However, the lack of specific funding dedicated to this mission renders such assistance difficult in practice. Only 1.7 % of asylum seekers interviewed in 2019 were accompanied by a third party, compared to 1.9% in 2018 and 1,8% in 2017.<sup>130</sup> Figures for the year 2020 were not available at the time of writing.

## Interpretation

The presence of an interpreter during the personal interview is provided if the request has been made in the application form. Following the 2018 asylum reform, the language declared by the asylum seeker upon registration at the GUDA is binding for the entire procedure and can only be challenged at the appeal stage.<sup>131</sup>

Failure by OFPRA to provide interpretation may affect the validity of the first instance decision. The Council of State ruled in 2018 that where the asylum seeker has been unable to communicate and to be understood during the interview, due to the absence of an interpreter for his or her language or a language he or she sufficiently comprehends, and the deficiency is imputable to OFPRA, the asylum decision shall be annulled by CNDA.<sup>132</sup>

OFPRA interviews can be conducted in 117 languages.<sup>133</sup> Interpreters are not OFPRA staff but are recruited as service providers through public procurement contracts.

The law provides for a choice of interpreter according to gender considerations, in particular if the asylum seeker has been subjected to sexual violence.<sup>134</sup> This provision also applies to protection officers.

In 2018, 92% of interviews were held in the presence of an interpreter<sup>135</sup>, compared to 93% in 2017.<sup>136</sup> In 2019, 86.9% of the scheduled interviews included an interpreter.<sup>137</sup> No data was available regarding 2020 at the time of writing.

In 2020, interpretation was still conducted in-person and not by phone or videoconference despite the health crisis. OFPRA set up a health protocol, including temperature reading, mandatory masks for the asylum seeker, the interpreter and the protection officer, and protective plexiglass.

According to some stakeholders, the quality of interpretation can vary significantly. Some asylum seekers have reported that translations are too simplified (e.g. approximate translations or not in line with their answers) or carried out with inappropriate behaviour (e.g. inattentive interpreters or interpreters taking the liberty to make personal reflections or laughing with the protection officer). Moreover, OFPRA's protection officers may sometimes act as interpreters themselves, which can have a diverse impact. Some asylum seekers report difficulties to open up to a person who speaks the language of the country involved in the alleged persecution. Nevertheless, some advantages have also been reported, such as demonstrating a particular interest for the region of origin.

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<https://bit.ly/3oE2D9V>; OFPRA, *Decision of 30 July 2020 establishing the list of organisations competent for proposing representatives to accompany asylum seekers or refugees or beneficiaries of subsidiary protection to a personal interview held by OFPRA*, available in French at <https://bit.ly/3jajKiA>.

<sup>130</sup> OFPRA, *2017 Activity report*, 51.

<sup>131</sup> Article L741-2-1 Ceseda, inserted by Article 10 Law n. 2018-778 of 10 September 2018.

<sup>132</sup> Council of State, Decision No 412514, 11 April 2018, EDAL, available at: <https://bit.ly/2NiyFrb>.

<sup>133</sup> OFPRA, Decision NOR: INTV1836064S of 28 December 2018 establishing the list of languages in which asylum seekers, applicants for stateless status, refugees and beneficiaries of subsidiary protection can be heard in the context of a personal interview, available in French at: <https://goo.gl/S8bgaX>.

<sup>134</sup> Article L.723-6 Ceseda.

<sup>135</sup> OFPRA, *2018 Activity report*, available in French at <https://bit.ly/3jbYYzm>.

<sup>136</sup> OFPRA, *2017 Activity report*, 80.

<sup>137</sup> OFPRA, *Activity report 2019*, 90

OFPPA published a Code of Conduct for interpreters in November 2018.<sup>138</sup> It has also conducted trainings for interpreters, specifically concerning certain vulnerabilities of asylum seekers. There is no information yet on whether the Code of conduct is being well applied in practice, however.

## Recording and report

An audio recording of the interview is also made. It cannot be listened to before a negative decision has been issued by OFPPA, in view of an appeal of the decision.<sup>139</sup> In case a technical issue prevents the audio recording from being put in place, additional comments can be added to the registration of the interview. If the asylum seeker refuses to confirm that the content of the interview registered is in compliance with what has effectively been said during the interview, the grounds for his or her refusal are written down. However, it cannot prevent OFPPA to issue a decision on his or her claim.<sup>140</sup> The absence of an audio recording due to technical reasons does not in itself affect the validity of OFPPA's decision, as it does not constitute an essential procedural guarantee according to the CNDA.<sup>141</sup>

Getting access to the audio recording after a negative decision has been issued by OFPPA is quite challenging for asylum seekers. During the time-frame between the notification of the negative decision and the lodging of the appeal, the recording can only be listened to in OFPPA offices, in **Fontenay-sous-Bois**. This makes it impossible for asylum seekers accommodated outside Paris and its surroundings to get access to recordings. In addition to travel difficulties, it would require them to be able to understand both French and the translation and to take notes of the details of the interview while listening to the recording. As a result, only 11 asylum seekers went to OFPPA to listen to the recording of their interview in 2019.<sup>142</sup>

Once an appeal is lodged in CNDA, the audio recording can be obtained by asylum seekers' lawyers (although this is not mandatory). Even if most of lawyers pleading to the Court are based in **Paris** and its surroundings, it is much easier for asylum seekers to get access to the audio recording through them. The audio recording can be relied upon to substantiate the appeal.

A transcription of the interview is made by the protection officer in charge. The report is not a verbatim transcript of the interview as in practice the protection officer takes notes him or herself at the same time as he or she conducts the interview. The report is a summary of the questions asked by the protection officer, the answers provided by the asylum seeker and, since the adoption of the reform of the law on asylum, the observations formulated by the third person, if applicable. It also mentions the duration of the interview, the presence (or not) of the interpreter and the conditions in which the asylum seeker wrote his or her application. It also includes, if applicable, the grounds for protection regarding the minor children of the asylum seeker, the observations of the protection officer and the publicly available sources which may have been consulted by the protection officer for the examination of the case. The report is sent to the asylum seeker together with any notification of a negative decision; in the regular procedure it can be sent before the notification, if the applicant so requests. The report is written in French and is not translated for the applicant. In practice, the quality of the interview report can vary, as highlighted in the OFPPA and UNHCR quality control reports (see [Regular Procedure: General](#)).

The interview report and the draft decision written by the protection officer are then submitted for the validation of the section manager. Since September 2013, a procedure of transfer of signature has been set up in order to accelerate the processing delays.

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<sup>138</sup> OFPPA, *Charte de l'interprétariat*, November 2018, available in French at: <https://goo.gl/vSEYFT>.

<sup>139</sup> Article L.723-7 Ceseda.

<sup>140</sup> Article R.723-8 Ceseda.

<sup>141</sup> CNDA, *Mme N.*, Decision No 16040286, 29 October 2018, available in French at: <https://bit.ly/2GVpl5O>.

<sup>142</sup> OFPPA, 2019 Activity report, 56.

## 1.4. Appeal

### Indicators: Regular Procedure: Appeal

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

<ul style="list-style-type: none"><li>❖ If yes, is it</li><li>❖ If yes, is it suspensive</li></ul>	<table border="0"><tr><td><input checked="" type="checkbox"/> Yes</td><td><input type="checkbox"/> No</td></tr><tr><td><input checked="" type="checkbox"/> Judicial</td><td><input type="checkbox"/> Administrative</td></tr><tr><td><input checked="" type="checkbox"/> Yes</td><td><input type="checkbox"/> Some grounds <input type="checkbox"/> No</td></tr></table>	<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"/> Some grounds <input type="checkbox"/> No
<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"/> Some grounds <input type="checkbox"/> No						
2. Average processing time for the appeal body to make a decision: 248 days in 2020

### 1.4.1. Appeal before the National Court of Asylum (CNDA)

Following the rejection of their asylum application by the Director General of OFPRA, the applicant may challenge the decision to the National Court of Asylum (CNDA). The CNDA is an administrative court specialised in asylum. The CNDA is divided into 22 chambers. These chambers are divided into formations of courts each of them made up of 3 members:<sup>143</sup> a President (member of the Council of State, of an administrative court or appellate court, the Revenue Court or magistrate from the judiciary, in activity or honorary)<sup>144</sup> and 2 designated assessors, including one appointed by UNHCR. The presence of a judge appointed by UNHCR at the CNDA is a unique feature of the French asylum system.

The CNDA is competent for appeals against decisions granting or refusing refugee status or subsidiary protection, against decisions withdrawing refugee status or subsidiary protection and against inadmissibility decisions pertaining to subsequent applications and to asylum seekers benefiting from an effective asylum protection in another country. The CNDA may also hear “upgrade appeals” from applicants who have been granted subsidiary protection by OFPRA but who want to be recognised as refugees. In this case, the CNDA can grant the refugee status. If not, the benefit of subsidiary protection remains valid.

The appeal must be filed by registered mail or fax within 1 month from the notification of the negative decision by OFPRA. For asylum applications lodged in French overseas departments,<sup>145</sup> asylum seekers have 2 months to appeal the OFPRA decision.<sup>146</sup> However, the calculation of this time-limit has been made more difficult by the 2018 Asylum and Immigration Law, which provides that the number of days used to present the legal aid application from the notification of the OFPRA decision, is deducted from the 1 month (or 2 months) time-limit for lodging the appeal (see [Legal assistance](#)).

There is a specific form to submit this appeal:<sup>147</sup>

1. It has to be written in French;
2. It must contain the name, last name, nationality, date of birth and administrative address of the claimant;
3. It must be founded in law and facts;
4. The certification of asylum claim and the OFPRA decision must be attached;
5. It has to be signed by the claimant or his or her attorney;
6. It has to specify in which language the claimant wishes to be heard; and
7. In case the claim has been channelled to an accelerated procedure, the notice of information delivered by the Prefecture stating the reason for this must be attached.

<sup>143</sup> A plenary session (*Grande formation*) is organised to adjudicate important cases. Under these circumstances, there are 9 judges: the 3 judges from the section which heard the case initially and 2 professional judges, 2 representatives of the Council of State and 2 assessors from UNHCR.

<sup>144</sup> 10 judges acting as presidents are now working full time at the CNDA, in addition to part time judges on temporary contracts.

<sup>145</sup> Guadeloupe, Guiana, Martinique, Réunion, Saint-Barthélemy, Saint-Martin, Mayotte, Saint Pierre and Miquelon, French Polynesia, the Wallis and Futuna Islands, New Caledonia and the French Antarctic Lands.

<sup>146</sup> Article L.733-7 Ceseda.

<sup>147</sup> Article R.733-5 Ceseda.

This appeal has automatic suspensive effect for all asylum seekers in the regular procedure. The appeal is assessed on points of law and facts. Documents and evidence supporting the claim have to be translated into French to be considered by the CNDA. Identity papers, judicial and police documents must be translated by an officially certified translator. The clerk informs OFPRA of the existence of an appeal against its decision and asks for the case file to be transferred within 15 calendar days.

The CNDA sends a receipt of registration to the applicant which notifies the applicant of his or her right to consult his or her file, the right to be assisted by a lawyer, the fact that the information concerning his or her application is subject to automated processing, of the possibility that his or her appeal will be processed “by order” (*ordonnance*) namely by a single judge without a hearing. In case the appeal has been lodged after the deadline, and in case of dismissal (*non-lieu*) or withdrawal of the applicant, the president of the CNDA or the president of one of the sections can dismiss the appeal by order. If the appeal does not contain any serious elements enabling a questioning of the OFPRA decision, it can also be dismissed “by order” (“*ordonnance*”) but after a preliminary assessment of the case.<sup>148</sup>

In 2020, the CNDA registered 46,043 appeals and took 42,025 decisions, compared to 59,091 appeals and 66,466 decisions in 2019.<sup>149</sup> The important decrease of appeals and decisions is due to the impact of COVID-19. During the first lockdown in March-April 2020, the CNDA was closed during 8 weeks.

The appeal is processed by a Court panel in the regular procedure, while in the [Admissibility Procedure](#) and [Accelerated Procedure](#) only one single judge – either the President of the CNDA or the President of the section – rules on the appeal. In 2020, the CNDA took 23,149 decisions in collegial function, down from 31,102 collegial decisions in 2019. During that year, it further took 18,876 single-judge decisions following a hearing or by order, compared to 35,362 in 2019.<sup>150</sup>

## Processing times

The law sets a time limit for the CNDA to take a decision. The CNDA has to rule within 5 months under the regular procedure.

The average processing time for the CNDA to take a decision increased to 8 months and 8 days in 2020 compared to 7 months and 5 days in 2018, due to the suspension of activities during 8 weeks in the context of COVID-19. During 2020, the average processing time 10 months and 19 days for the regular procedure; and 3 months and 21 days for the accelerated procedure.<sup>151</sup>

The deadline for closing the inquiry is 5 days minimum before the date set for the hearing in the regular procedure. This means that it is only possible to add further information to the appeal case until 5 days before the hearing.<sup>152</sup> After the hearing, it is nevertheless possible to produce further elements to the Court by submitting a “*note en délibéré*”. In the regular procedure, 21 days are taken by the Court before delivering its decision. This delay is named “*délibéré*”, during which the claimant can inform the Court of new elements or claim for further study of the case should an incident have taken place during the hearing.

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<sup>148</sup> The Council of State has ruled that when the CNDA takes an order, the absence of UNHCR does not contravene the 1951 Geneva Convention (in particular Article 35) or the Asylum Procedures Directive: Council of State, Decision 366578, 9 July 2014, available in French at: <http://bit.ly/1CfPye8>.

<sup>149</sup> Ministry of Interior, *Chiffres clés – Les demandes d’asile*, available in French at: <https://bit.ly/2TRCMzB>.

<sup>150</sup> CNDA, *2020 Activity report*, available in French at: <https://bit.ly/3aGSg04>.

<sup>151</sup> Ibid.

<sup>152</sup> Article R.733-13 Ceseda.

In case of an emergency hearing, taking place no less than 7 days after summons, the inquiry may be closed at the hearing.<sup>153</sup>

## Hearing and decision

Unless the appeal is rejected by order (*ordonnance*), the law provides for a hearing of the asylum seeker. The fact that the CNDA may reject cases without hearing them has an effect on the duration of the procedure. If the court makes a decision “by order”, the duration of the procedure will be up to three months faster.

A summons for a hearing has to be communicated to the applicant at least 30 days before the hearing in the regular procedure,<sup>154</sup> at the address indicated to the CNDA.<sup>155</sup> These hearings are public, unless the President of the section decides that it will be held *in camera*. In most cases, hearings were held in camera following a specific request from the applicant. The hearing in *camera* is *ipso jure (de plein droit)* meaning that it is applied upon request of the applicant. The CNDA must specify in its decision whether the hearing is public or held *in camera*.<sup>156</sup>

Asylum seekers who are not accommodated in reception centres have to organise and pay for their journey themselves, even if they live in distant regions.

The hearing begins by the presentation of the report by the *rapporteur*. The judges can then interview the applicant. If the applicant is assisted by a lawyer, he or she is invited to make oral submissions, the administrative procedure before the CNDA being mainly written. Following the hearing, the case is placed under deliberation.

Out of the total of 42,025 decisions taken by the CNDA in 2020, 28,178 of them were issued following a hearing, of which 23,149 hearings were held in collegial function and 5,029 in single-judge format. The remaining 13,847 decisions were taken *by order (ordonnance)*.

The hearing takes place at the CNDA headquarters in Montreuil, near **Paris**, but the use of videoconferencing for CNDA hearings is allowed. Since 1 January 2019, the CNDA may use videoconferencing even without the consent of the applicant, to ensure “a proper administration of justice”. The interpreter sits in a room together with the asylum seeker; if this is not possible, he or she is present from the side of the Court.<sup>157</sup> Where videoconferencing is used, the CNDA shall prepare two transcripts, one in the seat of the Court and one in the hearing room where the applicant is present.<sup>158</sup>

The CNDA held 104 video hearings in 2020, down from 223 in 2019.<sup>159</sup> In practice, videoconferencing has only been applied to appeals lodged overseas, where it replaced mobile court hearings. It has not been applied to mainland France in 2020, although a recent CNDA decision provides that videoconferencing will be established in the premises of the Administrative Court of Appeal of **Lyon** and **Nancy** for all appeals lodged after 1 January 2019.<sup>160</sup>

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<sup>153</sup> Article R.733-19 Ceseda, as amended by Article 14 Decree n. 2018-1159 of 14 December 2018.

<sup>154</sup> Article R.733-19 Ceseda. In case of “emergency” however, the period between the summons and the hearing can be reduced to 7 days.

<sup>155</sup> Council of State, Decision No 414389, 7 June 2018, available in French at: <https://bit.ly/2GABhQx>.

<sup>156</sup> Council of State, Decision No 418631, 7 December 2018, available in French at: <https://bit.ly/2VeC4Kt>.

<sup>157</sup> Article L.733-1 Ceseda, as amended by Article 8 Law n. 2018-778 of 10 September 2018. This was also confirmed in CNDA, *M. N.*, Decision No 14024686, 12 September 2018, available in French at: <https://bit.ly/2BVTxjF>.

<sup>158</sup> Council of State, Decision No 408353, 7 March 2018, available in French at: <https://bit.ly/2NgixpW>.

<sup>159</sup> CNDA, *2019 Activity report*, 35.

<sup>160</sup> CNDA, Decision 2018.12.DK.01 of 17 December 2018, available in French at: <https://goo.gl/CksrSR>.

The 2018 reform has been severely criticised in this regard, with practitioners referring to technical deficiencies in the videoconferencing system in **Lyon**. This negatively affects the quality of hearings and raises important fundamental rights concerns, which are exacerbated in cases involving vulnerable applicants.<sup>161</sup> This measure has been suspended, and a mediator was appointed to find a solution that would suit both the Court and the lawyers. As a result, the Court and the lawyers organisations reached an agreement in November 2020, providing for the express consent of the applicant as a prerequisite for the videoconferencing and for the holding of decentralised mobile hearings in **Lyon** and **Nancy**.<sup>162</sup> The implementation of this agreement will be monitored by a mixed steering committee of Court, lawyers, interpreters, doctors representatives and of audio-visual technics experts.<sup>163</sup>

Decisions of the CNDA are published (posted on the walls of the court building) after a period of 21 days following the hearing under regular procedure and after one week under accelerated procedure.<sup>164</sup> Negative decisions are transmitted to the Ministry of Interior, i.e. OFPRA and Prefectures. Since the COVID-19 crisis and considering the restrictions to access Courts, the Court also publishes the anonymised list of its decisions on its website, thus enabling all applicants to be informed of decisions, including those who do not live in Paris.

In cases where it plans to reject the appeal by order due to the absence of serious elements enabling a questioning of the OFPRA decision, the CNDA has the obligation to inform the applicants about their rights to access their file.<sup>165</sup> In practice, however, the applicant is not informed that his or her appeal will be rejected by order. Courts consider that the general information provided upon registration of the appeal, which includes explaining that the applicant has the right to access the file, discharges them from their duty to inform.<sup>166</sup>

Applicants are heard in the language declared upon registration of the asylum application at the GUDA. If an asylum seeker cannot be heard in the language he or she has indicated, he or she is heard in a language he or she can reasonably be expected to understand.<sup>167</sup>

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

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<sup>161</sup> See e.g. Forum réfugiés – Cosi, 'Vidéo-audience à la CNDA : une mise en œuvre qui suscite l'inquiétude', 1 February 2019, available in French at: <https://goo.gl/n78xcp>.

<sup>162</sup> Forum réfugiés-Cosi, 'Cour nationale du droit d'asile : un accord sur la vidéo-audience qui préserve la qualité de l'instruction' - Press release, available in French at : <https://bit.ly/3aQnkuu>.

<sup>163</sup> CNDA, *Vademecum on videoconferencing hearings before the National Court of Asylum*, 12 November 2020, available in French at: <https://bit.ly/3a4nU92>.

<sup>164</sup> CNDA decisions are however not accessible on the internet. Only a selection is published by the CNDA on its website: <http://bit.ly/2ki5O6G>. The CNDA also publishes a compilation of case law every year, available at: <https://goo.gl/GCQy4o>.

<sup>165</sup> Article R.733-4(5) Ceseda.

<sup>166</sup> Article R.733-8 Ceseda.

<sup>167</sup> Article R.733-5 Ceseda, as amended by Article 14 Decree n. 2018-1159 of 14 December 2018.

### 1.4.2. Onward appeal before the Council of State

An onward appeal before the Council of State (*Conseil d'Etat*) is provided by law in case of a negative decision at CNDA level or in case OFPRA decides to appeal against a CNDA decision granting a protection status.<sup>168</sup> This appeal must be lodged within 2 months of notification of the CNDA decision.<sup>169</sup> The Council of State does not review the facts of the case, but only allegations supported by the applicant on points of law such as compliance with rules of procedure and the correct application of the law by the CNDA. If the Council of State annuls the decision, it refers to the CNDA to decide again on the merits of the case, but it may also decide to rule itself on the granting or refusal of protection.

This appeal before the Council of State must be presented by a lawyer registered with the Council of State. If the asylum seeker's income is too low to initiate this action, he or she may request legal aid to the Office of legal aid of the Council of State. In practice, it is very difficult to obtain it.

The Council of State received the following appeals in 2020:

Appeals before the Council of State : 2016-2020					
	2016	2017	2018	2019	2020
<b>Total number of appeals</b>	<b>847</b>	<b>1,052</b>	<b>836</b>	<b>905</b>	<b>614</b>
<b>Total number of decisions</b>	<b>788</b>	<b>1,069</b>	<b>845</b>	<b>866</b>	<b>644</b>
Admissible	26	24	34	49	42
Not admissible	762	1,045	811	817	602
Decisions on admissible appeals	21	26	28	38	49
Positive decision for asylum seeker	16	21	24	26	30

Source: CNDA, *Activity report*, 2020, 10. Note that there is an admissibility procedure carried out before a case is examined by the Council of State, as a result of which only a few appeals are admissible and decided upon in practice as indicated in the table above.

This appeal is not suspensive, the average processing time is around two years and the applicant may be returned to his or her country of origin during this period.

### 1.5. Legal assistance

#### Indicators: Regular Procedure: Legal Assistance

- 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
- 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

<sup>168</sup> Article L.511-1 CJA.

<sup>169</sup> See CNDA, *Appeals before the Council of State*, available in French at: <http://bit.ly/1dBgbhO>.

### 1.5.1. Legal assistance at first instance

The modalities and the degree of assistance provided to asylum seekers at first instance depend on the type of reception conditions they enjoy:

- If the applicant is accommodated in a reception centre (see [Types of Accommodation](#)), he or she can be supported in the writing of his or her application form by staff from the reception centres, in accordance with the mission set out in their framework agreement.<sup>170</sup> As regards Reception Centre for Asylum Seekers (*Centre d'accueil de demandeurs d'asile*, CADA) teams, most of the time, social workers, should also assist the applicant in the preparation of the interview at OFPRA. This consists of administrative rather than legal assistance.
- If the applicant cannot be accommodated in a reception centre, then the “reference framework” for asylum seekers’ “orientation platforms” (PADA)<sup>171</sup> applies,<sup>172</sup> and he or she can obtain some basic information and assistance on the procedure.

These assistance services are funded by OFII, by the Ministry of Interior and/or by EU funding under the Asylum, Migration and Integration Fund (AMIF). Some local authorities sometimes contribute to this funding.

Access to legal assistance is therefore uneven depending on the type of reception conditions provided. Asylum seekers in the most precarious situations, those without reception conditions are offered much fewer services than those accommodated in CADA. This situation leads to unequal treatment between asylum seekers accommodated in reception centres (*a fortiori* CADA), who receive support and in-depth assistance, and asylum seekers housed in emergency facilities or dependant on unofficial sheltering solutions, who are without direct support and are sometimes located far away from the regional PADA. Furthermore, the limited resources allocated to these platforms greatly limit the services provided.

### 1.5.2. Legal assistance at the appeal stage

Legal support for the preparation of appeals to the CNDA is not funded within the “reference framework” of the PADA. Therefore, asylum seekers have to rely on legal support from lawyers.

The law foresees the granting of legal aid (“*aide juridictionnelle*”) for lawyers to file an appeal to the CNDA in case of a negative decision from OFPRA.<sup>173</sup> Legal costs can therefore, upon certain conditions, be borne by the State.

The right to legal aid is considered as *ipso jure* (*de plein droit*). Legal aid before the CNDA is an automatic entitlement and is granted upon request if: (a) the appeal does not appear to be manifestly inadmissible; and (b) the legal aid application is submitted within 15 days after receiving the notification of the negative decision from OFPRA. The 2018 asylum reform has removed the possibility for the asylum seeker to apply for legal aid at any point before the expiry of the one-month deadline to appeal.<sup>174</sup>

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<sup>170</sup> Annex 1 Circular on CADA Mission, 19 August 2011, available at: <http://bit.ly/1Kv5fiG>. This is expected to be amended soon.

<sup>171</sup> In France, these orientation platforms (*plateformes d'accueil*) can have several aims: they can receive asylum seekers to provide administrative, legal and social support and can also handle requests for housing and postal address (*domiciliation*). 23 of these platforms are managed by NGOs.

<sup>172</sup> Ministry of Interior, *Reference framework for first reception services for asylum seekers*, December 2011, available at: <http://bit.ly/1C5aQLg>, 10.

<sup>173</sup> Article 3 Law n. 91-647 of 10 July 1991 on legal aid

<sup>174</sup> Article 9-4 Law n. 91-647 of 10 July 1991 on legal aid, as amended by Article 8 Law n. 2018-778 of 10 September 2018.

Following the reform, the law provides that the legal aid application suspends the deadline to appeal before the CNDA. Time continues to run from the point the applicant or his or her legal representative receives the notification of legal aid from the Legal Aid Office.<sup>175</sup> As a result, the time available to lodge an appeal will vary depending on how early a legal aid application is submitted e.g. if the legal aid application is submitted 2 days after receiving the negative OFPRA decision, the deadline to appeal will be 28 days after the decision of the Legal Aid Office.

The recipients of legal aid have the right to choose their lawyer freely or to have one appointed for them by the Legal Aid Office.<sup>176</sup> The refusal to grant legal aid may be challenged before the President of the CNDA within 8 days. This legal aid for asylum seekers is funded through the State budget for the general legal aid system. In practice, legal aid is widely granted:

Applications for legal aid before the CNDA: 2015-2020						
	2015	2016	2017	2018	2019	2020
Total applications	29,181	30,193	42,749	48,620	51,891	39,788
Total decisions on applications	28,627	29,324	44,989	46,639	51,888	42,261
<i>Granted</i>	25,933	28,217	43,466	44,985	48,789	40,105
<i>Refused</i>	2,694	1,107	1,523	1,384	3,099	2,156
Acceptance rate	90.6%	96.2%	96.6%	96.4%	94%	94.9%

Source: CNDA, 2020 *Activity report*, 31

Until 2013, lawyers working in the field of asylum were granted lower financial compensation (8 credits, or 256 € per file – excluding taxes) than the fee allocated for ordinary cases before administrative courts. A Decree of 20 June 2013 doubles the unit value (16 credits, or 512 € - excluding taxes) for appeals with a hearing and 4 credits (or 106 €) for appeals without a hearing before the CNDA.<sup>177</sup> Since 2017, the amount of the unit value is 32 € (excluding taxes).<sup>178</sup>

In any event, the current level of compensation is still deemed insufficient by many asylum stakeholders in France and this prevents lawyers from doing serious and quality work for each case.<sup>179</sup> In particular, it is not enough to cover the cost of an interpreter during the preparation of the case.<sup>180</sup> Lawyers are often court-appointed by the CNDA,<sup>181</sup> and only have the address of their clients and no phone numbers for the parties to effectively get in touch. Moreover, most of these lawyers are based in **Paris** whereas asylum seekers can be living elsewhere in France. Therefore, they often do not meet their clients until the last moment. These lawyers sometimes refuse to assist asylum seekers in writing their appeal and only represent them in court. This makes it difficult for asylum seekers to properly prepare for the hearing.

<sup>175</sup> *Ibid.*

<sup>176</sup> CNDA, *Legal Aid*, available in French at: <http://bit.ly/1FXqvaw>.

<sup>177</sup> Decree n. 2013-525 of 20 June 2013 on the compensation for the missions of Legal aid carried out by lawyers at the CNDA.

<sup>178</sup> Circulaire du 19 janvier 2017 présentant certaines dispositions de l'article 135 de la loi n° 2016-1917 du 29 décembre 2016 de finances pour 2017 et du décret n° 2016-1876 du 27 décembre 2016 portant diverses dispositions relatives à l'aide juridique NOR: JUST1701743C, available in French at : <https://bit.ly/2OL2RwV>.

<sup>179</sup> The CNDA is based in Paris and a return train ticket from other cities (such as Lyon) already takes a large part of the fee received.

<sup>180</sup> Senate, *Information Report n°130*, prepared by Senators Jean-Yves Leconte and Christophe-André Frassa, 14 November 2012.

<sup>181</sup> Decree n. 2013-525 of 20 June 2013 on the compensation for the missions of Legal aid carried out by lawyers at the CNDA also extends the possibility to designate court-appointed lawyers to all lawyers registered in any Bar in France (it was previously restricted to the Bar Associations of Paris and Versailles).

Asylum seekers who are not accommodated in reception centres are therefore on their own to write their appeal and face a high risk of seeing their appeal rejected by order due to insufficient arguments. They can only rely on legal assistance from NGOs, which is nevertheless very uncertain given the uneven availability of such assistance, as it is dependent on the location of the asylum seeker, the availability of interpreters as well as the capacity and resources of the NGO.

## 2. Dublin

### 2.1. General

#### Dublin statistics: 2020

Statistics on the application of the Dublin Regulation are not made available by the authorities prior to their publication on the Eurostat database. However, some data has been shared NGOs at the beginning of 2021. In 2020, 24,970 outgoing Dublin requests have been made by French authorities, compared to 47,633 in 2019 (it differs from Eurostat data which indicates 45,907 outgoing requests). At the end of 2020, 17,451 of them were still in a Dublin procedure and 7,519 persons were re-channelled from a Dublin procedure to a regular or accelerated procedure (*requalifiés*).

As regards the actual implementation of transfers in 2020, no detailed statistics were available at the time of writing of this report. Nevertheless, the Ministry of Interior indicated that 3,500 transfers have been carried out in 2020, equalling to a 14%% transfer rate (compared to 5,670 transfers in 2019).<sup>182</sup> Out of the 3,500 transfers that have been implemented, the majority were carried out to Germany (1,662), Italy (1,573) and Spain (949).<sup>183</sup> More detailed data and a breakdown by country/nationality on transfers was not available at the time of publication of this report.

During COVID-19, no specific measures have been taken by the authorities with regard to the Dublin procedure and Dublin transfers were only suspended to countries which did not accept Dublin returnees. Thus, the authorities continued to process applications for international protection under the Dublin III Regulation and to issue requests accordingly during the pandemic. Persons who were falling under the Dublin procedure prior to the closure of the GUDAs continued to check in regularly if they were not under house arrest, or continued to be detained pending their Dublin transfer.

#### Application of the Dublin criteria

The Dublin procedure is applied to all asylum seekers without exception, as per the Regulation. The Ministry of Interior issued an instruction on 19 July 2016, recalling to all Prefectures that “in the current migration context, no asylum application should be registered as France’s responsibility without prior verification whether France is in fact the responsible country.”<sup>184</sup> The need to strictly apply the Dublin Regulation in response to important secondary movements was recalled by the Ministry in a circular of 23 March 2018.<sup>185</sup>

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<sup>182</sup> Ministry of Interior, *Figures on immigration, asylum, nationality for 2019*, Press release, 21 January 2020, available in French at : <https://bit.ly/3aya5Of>.

<sup>183</sup> Eurostat. For more data, see : Forum réfugiés-Cosi, ‘Règlement Dublin : une efficacité limitée malgré des transferts en hausse’, July 2020, available in french at : <https://bit.ly/3aodO1G>.

<sup>184</sup> Ministry of Interior, Instruction NOR: INTV1618837J of 19 July 2016 relating to the application of the Dublin III Regulation – Resort to house arrest and administrative detention in the context of execution of transfer decisions, available in French at: <http://bit.ly/2jl7dEd>, 2. Unofficial translation by the author.

<sup>185</sup> Ministry of Interior, Information of 23 March 2018 on the application of Law n. 2018-187 of 20 March 2018 allowing for sound implementation of the European Asylum System, available in French at: <https://goo.gl/m8wNjB>.

The official policy of the French Dublin Unit is that it does not transfer unaccompanied children under the Dublin Regulation.<sup>186</sup> Unaccompanied children can however be placed under a Dublin procedure by Prefectures if their claim is not processed before they reach the age of 18 or if they are deemed as adults after age assessment.

In practice, the elements taken into account to determine the Member State responsible can vary from one Prefecture to another but it has been observed that the taking of fingerprints (and therefore the identification of another responsible State) always takes precedence over the application of the other criteria.<sup>187</sup> Practice was expected to evolve with the implementation of the 2015 reform of the law on asylum as the Circular of 2 November 2015 stated that “in case another Member State would be responsible for processing the asylum claim, the Prefecture conduct the interview with the asylum seeker in order to establish his or her conditions of entry, his or her itinerary and potential family ties in another Member State.”<sup>188</sup> The instruction of 19 July 2016 also reiterates that the presence of family members must always be inquired, even in the case of a Eurodac ‘hit’.<sup>189</sup> In practice, the taking of fingerprints still remains decisive in the determination of the State responsible for processing the asylum claim and family ties are not really examined during the Dublin interview.

### The dependent persons and discretionary clauses

It is difficult to know how the discretionary clauses are applied, as recent information and data is missing on the matter. Nevertheless, a 2017 order of the Council of State illustrates the use of the sovereignty clause in cases where a child with health conditions may encounter risks upon transfer to another country.<sup>190</sup> The use of the clause was also encouraged in the context of the **Calais** camp dismantlement in 2016. In practice, it is possible to ask the Prefecture to be channelled from a Dublin procedure to a regular or accelerated procedure (“*requalification*”) especially for vulnerable people, and the discretionary clause seems to be often applied for these situations in some districts. However, there is not data available on this issue.

## 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?  
 Not available

While there is no official data available on how long a transfer takes place after the responsible Member State has accepted responsibility, civil society organisations have reported that it can vary from 1 to 153 days.<sup>191</sup>

<sup>186</sup> Position expressed by the Minister of the Interior in 2009, and not reviewed since. Ministry of Interior, *Visite d'un centre d'accueil de mineurs étrangers isolés interpellés à Calais : Eric BESSON salue le succès du dispositif mis en place*, 1 October 2009, available in French at: <https://bit.ly/32Nwa88>.

<sup>187</sup> Circular of 1 April 2011 on the application of Council Regulation 343/2003, the so-called ‘Dublin Regulation’. Implementation of accelerated procedures of some asylum claims mentioned in art L741-4 Céseda, available in French at: <http://bit.ly/1dBnfeg>.

<sup>188</sup> Circular of 2 November 2015 on the implementation of the Law of 29 July 2015 on the reform of the asylum law, available in French at: <http://bit.ly/1RaHGpq>.

<sup>189</sup> Ministry of Interior, Instruction NOR: INTV1618837J of 19 July 2016 relating to the application of the Dublin III Regulation – Resort to house arrest and administrative detention in the context of execution of transfer decisions, 3.

<sup>190</sup> Council of State, Order 416192, 5 December 2017, available at: <http://bit.ly/2rpCZNM>.

<sup>191</sup> This is based on information gathered through Court decisions issued in 2019. See also : La Cimade, *Guide pratique et théorique du règlement Dublin*, available in French at: <https://bit.ly/2uneV0d>.

The Dublin procedure is not carried out by the OFPRA but by a separate entity – the Prefectures - in accordance with the recast Asylum Procedures Directive.<sup>192</sup> The deadline of 3 months for Prefectures to issue an outgoing Dublin request starts running from the moment the applicant makes an application at the orientation platform (PADA) rather than the date of registration of the application at the “single desk”, as confirmed by the Administrative Court of Appeal of Bordeaux in application of the Court of the Justice of the European Union (CJEU) ruling in *Mengesteab*.<sup>193</sup>

In practice, according to a sample analysed by La Cimade in 2018, a Dublin request is sent by the Prefectures to other countries within 21 days on average. This can range from requests sent on the day of registration of the claim at the GUDA, to requests sent after 91 days.<sup>194</sup> No data was made available for 2019 and 2020, however.

When they go to the Prefecture to register as asylum seekers at the GUDA, all applicants are given an information leaflet explaining, among others, the Dublin procedure; Leaflet A, produced by the EU and translated into several languages.<sup>195</sup> They also receive the general guide for asylum seekers, also translated into several languages,<sup>196</sup> and a form to notify their intention to introduce an asylum claim (see section on [Registration](#)). In practice, many asylum seekers do not seem to be really informed of the details of the procedure after their interview.

During the application process, the officers in Prefectures are requested to take fingerprints for each and every asylum seeker above 14 years old and they have a duty to check these fingerprints in the Eurodac database. An exception is made for asylum seekers whose fingerprints are unfit for identification i.e. unreadable. In this case, asylum seekers will be summoned again and their claim will be channelled into the accelerated procedure if their fingerprints are still unfit for identification,<sup>197</sup> with the exception of certain cases such as asylum seekers who are seriously ill. The asylum claim cannot be fully registered without the fingerprints have been taken and checked in Eurodac. Therefore, the asylum claim certification is only delivered once all information, including fingerprints, has been registered.<sup>198</sup>

Asylum seekers receive an asylum claim certification specifying the procedure under which they have been placed, for instance the Dublin procedure.<sup>199</sup> This asylum claim certification allows asylum seekers placed under Dublin to remain legally on the French territory during the entire procedure for the determination of the responsible State.

Once a claim is channelled under the Dublin procedure, the applicant receives a second information leaflet on the Dublin procedure (Leaflet B, produced by the EU and translated into several languages)<sup>200</sup> and a Dublin notice document (*convocation Dublin*) issued by the Prefecture.

The presence of an interpreter at that stage is not guaranteed and practice varies widely depending on the Prefecture. The applicant must go to the Prefecture every month with his or her Dublin notice document.

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<sup>192</sup> Article 4(2) recast Asylum Procedures Directive.

<sup>193</sup> Administrative Court of Appeal of Bordeaux, Decision 17BX03212, 22 December 2017, available at: <http://bit.ly/2DttGBh>. See CJEU, Case C-670/16 *Mengesteab*, Judgment of 26 July 2017.

<sup>194</sup> La Cimade, ‘Dublin: Le Conseil d’Etat révisé sa jurisprudence sur le report du délai de transfert en cas de recours’, 26 September 2018, available in French at: <https://bit.ly/2GQNRub>.

<sup>195</sup> European Commission and Migrationsverket, *Leaflet A: “I have asked for asylum in the EU – Which country will handle my claim?”* 2014, available at: <http://bit.ly/1PSuhgz>.

<sup>196</sup> Ministry of Interior, ‘Guide du demandeur d’asile’, available in 30 languages at: <https://bit.ly/3c1FdHf>.

<sup>197</sup> Article L.723-2 *Ceseda*.

<sup>198</sup> Circular of 2 November 2015 on the implementation of the Law of 29 July 2015.

<sup>199</sup> Articles L.741-1 and L.742-1 *Ceseda*.

<sup>200</sup> European Commission and Migrationsverket, *Leaflet B: “I am in the Dublin procedure – What does this mean?”*, 2014, available at: <http://bit.ly/1dBoCd2>.

Usually, the applicant is informed that a take back or a take charge procedure has been initiated through the information written at the back of his Dublin notice document. However, there is not necessarily information either about the country which was contacted or on the criteria leading to this referral. Moreover, the asylum seeker is not necessarily informed about the date when the country determined to be responsible for his or her application is contacted and sometimes does not know the date of the requested Member State's reply either. Asylum seekers under the Dublin procedure are formally informed about these dates through the notification of readmission order letter delivered to them once the decision to "take charge" or "take back" has been made.

## Regionalisation

In 2018, the Ministry on Interior has implemented a regionalisation plan for the Dublin procedure whereby the Dublin procedure is carried out by one Prefecture (*pôle régional*) per region, with a view to ensuring higher convergence across the French territory.<sup>201</sup> This plan was consolidated in 2019.<sup>202</sup> According to this plan, only one Prefecture per region is now responsible for the implementation of the Dublin procedure for the applications registered in its respective region. Following a pilot phase tested in the regions of **Hauts de France** and **Provences-Alpes-Côte d'Azur**, the following Prefectures have been designated as regional focal points (*pôles régionaux*):

Regional focal points for the Dublin procedure: 2020	
Region	Competent Prefecture
Auvergne-Rhône-Alpes	Lyon
Bourgogne-Franche-Comté	Besançon
Bretagne	Rennes
Centre-Val de Loire	Orleans
Corse	-
Grand Est	Strasbourg
Hauts-de-France	Lille
Ile-de-France – Essonne	Evry
Ile-de-France – Hauts-de-Seine	Nanterre
Île-de-France – Paris	Paris
Ile-de-France – Seine et Marne	Melun
Ile-de-France – Seine Saint Denis	Bobigny
Ile-de-France – Val de Marne	Créteil
Ile-de-France – Val d'Oise	Cergy-Pontoise
Ile-de-France – Yvelines	Versailles
Normandie	Rouen
Nouvelle-Aquitaine	Bordeaux
Occitanie	Toulouse
Pays de la Loire	Angers
Provence-Alpes-Côte d'Azur	Marseille

<sup>201</sup> Ministry of Interior, Note sur l'application du règlement Dublin III – régionalisation de la procédure Dublin, 30 July 2018, available in French at: <https://goo.gl/m3712j>.

<sup>202</sup> Arrêté du 10 mai 2019 désignant les préfets compétents pour enregistrer les demandes d'asile et déterminer l'Etat responsable de leur traitement (métropole). NOR: INTV1909588A, available in French at: <https://bit.ly/3axKAww>.

Whereas the registration of applications is still carried out by all GUDA, all administrative formalities related to the Dublin procedure are conducted by only one Prefecture in each region.

As a result of the regionalisation plan, the Ministry of Interior has advised that reception accommodation should be provided close to the competent Prefecture: asylum seekers should be accommodated in places located close to that Prefecture or, if not yet accommodated, they should register with a PADA near the Prefecture. In some regions, a regional scheme regarding accommodation has been established. In **Auvergne-Rhône Alpes** for example, this scheme (which is not published) nominates certain PADA and accommodation centres near Lyon, to which all asylum seekers of the region falling under the Dublin procedure must be oriented.

The regionalisation plan creates difficulties for asylum seekers who have no means of travelling to the competent Prefecture after receiving a Dublin notice document, as missing an appointment led to reception being withdrawn and applicants becoming exposed to destitution.<sup>203</sup> The Council of State clarified, however, that where the applicant is required to travel from his or her place of residence to appear before the *pôle régional*, the transport costs have to be borne by the Prefecture.<sup>204</sup> However, problems persisted throughout 2020 as transport vouchers were sometimes delivered too late. As a result, asylum seekers were not always able to attend their appointment.

### **Detention and house arrest during the procedure**

The law provides the possibility of notifying a house arrest (*assignation à résidence*) to asylum seekers during the procedure of determination of the responsible Member State (see [Alternatives to Detention](#)). Since 20 March 2018, detention can also be ordered at that point (see [Grounds for Detention](#)).<sup>205</sup>

In practice, the use of this possibility varies a lot depending on the Prefecture. The possibility to detain asylum seekers from the beginning of the Dublin procedure seems to have been used a few hundred times in 2019. Forum réfugiés-Cosi is aware of 74 cases in 2020 as it provided legal assistance to that end in six different centres located in **Lyon, Nice, Marseille, Perpignan, Sète and Nîmes**.

### **Individualised guarantees**

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

In 2020, the Administrative Court of **Lyon** suspended a Dublin transfer to Greece considering that the Prefecture had failed to take into consideration the observations made by the asylum seeker regarding his individual situation in the destination country.<sup>206</sup>

### **Transfers**

Any transfer decision must be motivated and notified in writing to the applicant.<sup>207</sup> It shall mention deadlines to appeal and explain the appeal procedure. When the person is not assisted by a lawyer or an

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<sup>203</sup> ECRE, *Access to asylum and detention at France's borders*, June 2018, 20.

<sup>204</sup> Council of State, Order 422159, 26 July 2018.

<sup>205</sup> Articles L.551-1 and L.561-2 Ceseda, as amended by Law n 2018-187 of 20 March 2018.

<sup>206</sup> Administrative Court of Lyon, Decision N°20065, 8 September 2020.

<sup>207</sup> Article L.742-3 Ceseda.

NGO, the main elements of the decision have to be communicated in a language he or she understands or is likely to understand.

The period between the response of the requested country and the notification of a transfer decision varies considerably among Prefectures. According to La Cimade, it took an average of 73 days in 2018 for a decision to be notified, with some Prefectures issuing a decision in one day and others (**Haute Garonne, Meurthe-et-Moselle, Val-d'Oise**) taking 4-5 months.<sup>208</sup> More recent information on the average times for the year 2020 was not available at the time of writing of this report.

With regard to the time limit for carrying out the transfer, the Council of State clarified in 2018 that the 6-month deadline under Article 29 of the Dublin Regulation is suspended if the asylum seeker appeals the transfer decision, and continues to run from the delivery of the Administrative Court judgment, regardless of its outcome and only once. This means that even if the Administrative Court annuls the transfer and the Prefect lodges an onward appeal, the 6-month deadline is not renewed.<sup>209</sup>

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

- (a) Voluntary transfer initiated by the applicant him or herself: a *laissez-passer* is provided as well as a meeting point in the host country;
- (b) Enforced transfer: the applicant is accompanied by police forces up until the boarding of the plane; or
- (c) Transfer under escort: the applicant is accompanied by police forces up until the transfer to the authorities of the responsible State.

The modalities put in place to arrange transfers can vary from one Prefecture to another.

Asylum seekers under the Dublin procedure who do not benefit from stable housing receive a first letter from the Prefecture, informing them of the transfer. If they don't come to the Prefecture, they receive a second letter from the Prefecture informing them that the transfer deadline may be extended to 18 months. It is therefore only after 2 refusals to come to the Prefecture that the asylum seeker is considered as absconding. In practice, refusing to come once to an OFII appointment and then once to the Prefecture implies the same consequences.

The law enables the Prefect to place under house arrest, systematically, any asylum seeker subject to a transfer decision (see [Alternatives to Detention](#)).<sup>210</sup> According to this measure, the asylum seeker has to respect the limitations defined by the house arrest order. In case the asylum seeker has not complied with the house arrest, he or she may be placed in administrative detention.<sup>211</sup> The Prefect can also request the Judge of Freedoms and Detention (JLD) to make an order to require the assistance of the police to ensure of the presence of the asylum seekers at the place he or she is supposed to remain or to operate his or her transfer.<sup>212</sup> Since an instruction of the Ministry of Interior of 20 November 2017, the use of these provisions increased in every Prefecture.<sup>213</sup>

In practice, the notification of a house arrest is not made under the same conditions if the asylum seekers are accommodated or not. When the asylum seekers placed under Dublin procedure are not accommodated, house arrest is notified in person at the Prefecture. Asylum seekers accommodated are notified by the Border Police at the place they are housed.

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<sup>208</sup> La Cimade, 'Dublin: Le Conseil d'Etat révisé sa jurisprudence sur le report du délai de transfert en cas de recours', 26 September 2018, available in French at: <https://bit.ly/2GQNRub>.

<sup>209</sup> Council of State, Decision 420708, 24 September 2018.

<sup>210</sup> Article L.561-2 Ceseda.

<sup>211</sup> *Ibid.*

<sup>212</sup> *Ibid.*

<sup>213</sup> Ministry of Interior, Instruction NOR: INT/V/17/30666/J of 20 November 2017 on the objectives and priorities in the fight against irregular immigration.

Finally, it should be noted that the rate of actual implementation of transfers continues to increase. In 2019, France had implemented 47,630 outgoing requests and 5,670 transfers, thereby marking a 11.9% transfer rate.<sup>214</sup> In 2020, the Ministry of Interior indicated that 3,500 transfers carried out for 24,970 outgoing requests, equalling to a 14% transfer rate.

In 2020, a total of 27,901 asylum seekers were allowed to lodge applications with OFPRA after their Dublin procedure in France came to an end (*requalifiés*). Of those, 7,519 had been placed in a Dublin procedure in 2020 and 20,382 in previous years.<sup>215</sup>

### 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

Asylum seekers placed under the Dublin procedure do not benefit from an examination of their application for asylum by OFPRA and therefore they do not have a personal interview on the substance of their application for asylum in France in the framework of this procedure. The merit of their asylum claim will be examined if France is designated as the responsible State at the end of the process.

There is a specific interview in the Dublin procedure in France. Difficulties arise from the fact this interview is not always conducted in practice.<sup>216</sup> The instruction of the Ministry of Interior of 19 July 2016 also recalls that interviews must be systematically conducted, not only limited to cases of a Eurodac ‘hit’.

Whether they are interviewed or not, all asylum seekers fill in a form during an appointment at the Prefecture to apply for the asylum claim certification.<sup>217</sup> The form includes a part entitled “personal interview” which contains information enabling the Prefecture to determine the Member State responsible for protection, in conformity with Annex I of the Commission Implementing Regulation No 118/2014.<sup>218</sup> During this appointment, which takes place at the GUDA in Prefectures (therefore not in offices guaranteeing confidentiality), questions are asked about civil status, relatives of the applicant, modes of entry into French territory, countries through which the applicant possibly travelled prior to his or her asylum application, etc. Applicants have the possibility to mention the presence of family members residing in another Member State. Some stakeholders have reported that no questions were asked about family members during the interview.

This part of the form is written in French and in English. It must be filled in by the applicant in French, during the appointment. Those appointments are not recorded. Most of the time, the asylum applicant receives a copy of the interview form.

<sup>214</sup> Ministry of Interior. Data sent to NGOs, January 2021. For 2019, it differs from Eurostat.

<sup>215</sup> *Idem*.

<sup>216</sup> See e.g. Administrative court of Marseille, Decision n° 2001268, 28 September 2020.

<sup>217</sup> Scheduled in theory within 3 calendar days after the asylum seekers have expressed their request to be admitted on the territory on the ground of an asylum claim.

<sup>218</sup> Commission Implementing Regulation (EU) No 118/2014 of 30 January 2014 amending Regulation (EC) No 1560/2003 laying down detailed rules for the application of Council Regulation (EC) No 343/2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national, OJ 2014 L 39/1.

## 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

Asylum seekers placed under the Dublin procedure can introduce an appeal before the Administrative Court to challenge the decision of transfer. The appeal has to be introduced within 15 days after the asylum seeker has been notified the decision of transfer. The appeal has suspensive effect. The designated judge has to rule within 15 days after the appeal has been lodged.<sup>219</sup>

These time limits are shorter in case of detention or house arrest. In such cases, the appeal has to be introduced within 48 hours after the decision of transfer has been notified.<sup>220</sup> The judge has to rule within 72 hours after the appeal has been lodged.<sup>221</sup>

In practice, the shorter time limit for introducing an appeal might prevent asylum seekers who are not accompanied or who are accompanied in orientation platforms from introducing their appeal on time. There is a practice in several Prefectures tending to notify the transfer with a house arrest measure on a Friday, to avoid the possibility for the asylum seeker to find legal assistance during the weekend, and transfer him or her 48 hours later.<sup>222</sup> In these frequent cases, there is *de facto* no effective appeal for those people.

This method was also used by Prefectures to circumvent the prohibition by the Court of Cassation on placing asylum seekers in detention for the purposes of performing a Dublin transfer due to the lack of a definition of the “significant risk of absconding” in national legislation (see [Grounds for Detention](#)), until this was introduced in March 2018.<sup>223</sup>

## 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?

- |                                     |  |  |  |
|-------------------------------------|--|--|--|
|                                     | <input type="checkbox"/> Yes                         | <input type="checkbox"/> With difficulty | <input checked="" type="checkbox"/> No |
| ❖ Does free legal assistance cover: | <input type="checkbox"/> Representation in interview |  |  |
|                                     | <input type="checkbox"/> Legal advice                |  |  |

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

- |                                    |  |   |                             |
|------------------------------------|--|---|-----------------------------|
|                                    | <input type="checkbox"/> Yes                                 | <input checked="" 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             |   |                             |

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

<sup>219</sup> Article L.742-4 Cesda.

<sup>220</sup> *Ibid.*

<sup>221</sup> Article L.512-1(3) Cesda.

<sup>222</sup> See for example : InfoMigrants, ‘Y-a-t-il des recours possibles à une procédure Dublin?’, 6 December 2019, available in French at : <https://bit.ly/2RlvUlw>.

<sup>223</sup> Court of Cassation, Decision No 17-15.160, 27 September 2017.

Access to legal aid can be obtained upon conditions of low income. Applicants must request this allowance at the Legal Aid Office of the relevant Administrative Court. This office can ask for further information and a short account of the legal and *de facto* reasons why the asylum seeker thinks the contested decision is unlawful or unfounded and may, for instance, lead to a violation of his or her fundamental rights. Access to legal aid can be refused if the arguments are deemed unfounded.

## 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?

There is no current general policy of suspension of transfers. The official position of the Ministry of Interior consists of systematically applying the Dublin Regulation. In addition, the test applied by Administrative Courts and Administrative Courts of Appeal (erroneously) remains based on the notion of “systemic deficiencies”.

**Hungary:** On several occasions in 2016 and 2017, Administrative Courts have suspended the transfer of asylum seekers under the Dublin Regulation to Hungary.<sup>224</sup> Case law remains inconsistent as of 2018, however, with some courts arguing that the asylum procedure and reception conditions present no systemic deficiencies in Hungary.<sup>225</sup> As France maintains a policy of applying the Dublin Regulation systematically when there are indications of previous stay or application in Hungary, it continued to be the main Member State sending requests in 2019, although actual transfers have not been carried out at the time of writing.

**Italy:** Some Administrative Courts have suspended transfers to Italy on account of systemic deficiencies due to pressure on the reception system and the absence of vulnerability identification.<sup>226</sup> Since 2018, several judgments of Administrative Courts have annulled transfer decisions based *inter alia* on the government’s decisions to forbid search and rescue boats from disembarking in Italian ports, its plans to cut funding for asylum seekers, its hostile discourse on migrants, and the increase in incidents of racist violence.<sup>227</sup> Higher courts have expressed similar views in some cases.<sup>228</sup> Nevertheless, these rulings have had no effect on policy vis-à-vis Italy until now.

**Bulgaria:** There have been decisions suspending transfers in 2018, taking into account allegations of police violence against asylum seekers in Bulgaria among other factors.<sup>229</sup> In one case in July 2018, after

<sup>224</sup> Administrative Court of Appeal of Nancy, Decision No 15NC00961, 31 March 2016; Administrative Court of Appeal of Lyon, Decision No 15LY03569, 31 May 2016; Administrative Court of Lyon, Decision No 1605495, 29 July 2016; Administrative Court of Appeal of Bordeaux, Decision No 16BX00997, 27 September 2016. Contrast a decision considering that there are no systemic deficiencies in Hungary: Administrative Court of Versailles, Decision No 16VE02239, 28 June 2017.

<sup>225</sup> See e.g. Administrative Court of Appeal of Versailles, Decision No 16VE02850, 20 February 2018.

<sup>226</sup> Administrative Court of Lyon, Decision 19011982, 13 May 2019. Administrative Court of Rennes, Decision 1705747, 5 January 2018, EDAL, available at: <https://bit.ly/2NgRH0w>; Administrative Court of Nantes, Decision No 1601004, 12 February 2016. See also Administrative Court of Pau, Decision of 26 January 2018.

<sup>227</sup> Administrative Court of Paris, Decision No 1807362/8, 25 June 2018; No 1810819/8, 3 August 2018; Administrative Court of Bordeaux, Decision No 1803602, 29 August 2018; Administrative Court of Melun, Decisions No 1807266 and No 1807354, 18 September 2018; Administrative Court of Versailles, Decision No 1807048, 11 October 2018; Administrative Court of Pau, Decision No 1802323, 15 October 2018; Administrative Court of Toulouse, Decision No 1805185, 9 November 2018, EDAL, available at: <https://bit.ly/2V9Eg5W>.

<sup>228</sup> Administrative Court of Appeal of Lyon, Decision No 18LY00381, 2 October 2018; Administrative Court of Appeal of Nantes, Decision No 18NT00965, 5 October 2018.

<sup>229</sup> See e.g. Administrative Court of Paris, Order No 1811611/9, 6 July 2018, EDAL, available at: <https://bit.ly/2GCceN5>.

the European Court of Human Rights granted interim measures under Rule 39 of the Rules of the Court to prevent a transfer to Bulgaria, the Administrative Court of Paris ruled against the transfer,<sup>230</sup> the Council of State found on appeal that the conditions in Bulgaria did not warrant a suspension of the transfer.<sup>231</sup> The Administrative Court of Appeal of Marseille has taken a similar line, arguing that there are no indications that Bulgaria would not offer treatment in compliance with asylum standards.<sup>232</sup>

In some individual cases, Administrative Courts have prevented transfers on the basis of risks of chain *refoulement* after asylum seekers' return to another Dublin State. This has notably been the case for Afghan nationals in particular, where courts have suspended Dublin transfers to different countries (**Austria, Belgium, Germany, Norway, Sweden and Finland**) on the ground that asylum seekers would face a risk of indirect *refoulement* on account of these countries' tendency to return such persons to their countries of origin.<sup>233</sup> In relation to **Italy** as well, the Administrative Court of Melun suspended the transfer of a Sudanese national in 2017 on the ground that he would face chain *refoulement* to Sudan if returned to Italy.<sup>234</sup>

## 2.7. The situation of Dublin returnees

Concerning access to the asylum procedure upon return to France under the Dublin III Regulation, these applications are treated in the same way as any other asylum applications. If the asylum seeker comes from a safe country of origin, his or her application is examined under the accelerated procedure. If the asylum application has already received a final negative decision from the CNDA, the asylum seeker may apply to OFPRA for a re-examination only if he or she possesses new evidence (see section on [Subsequent Applications](#)).

The conditions of support and assistance of Dublin returnees are complicated. The humanitarian emergency reception centre (*Permanence d'accueil d'urgence humanitaire*, PAUH) run by the Red Cross based next to **Roissy – Charles de Gaulle** airport aims to provide people released from the transit zone, after a court decision, with legal and social support. For many years, without any funding to implement this activity, the centre has received Dublin returnees at their arrival at the airport. The returnees are directed towards the centre by the police or the airport services.

Upon their arrival at the airport, the Border Police issues a "safe passage (*sauf-conduit*)" which mentions the Prefecture where the asylum seekers have to submit their claim. This Prefecture may be located far from Paris, in Bretagne for example. The returnees have to reach the Prefecture on their own as no organisation or official service meets them. The centre cannot afford their travel within the French territory due to funding shortages.

When the relevant Prefectures are in the **Paris** surroundings, two situations may occur:

- (1) On the one hand, some Prefectures do not register the asylum claims of Dublin returnees and channel them to the PADA. As it has already been mentioned in the [Registration](#) section, access to these platforms is really complicated and some returnees have to wait several weeks before getting an appointment with the organisations running them.

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<sup>230</sup> Administrative Court of Paris, Order No 1813788/9, 31 July 2018.

<sup>231</sup> Council of State, Order No 423124, 27 August 2018.

<sup>232</sup> Administrative Court of Appeal of Marseille, Decision No 18MA01883, 19 September 2018.

<sup>233</sup> Administrative Court of Lyon, Decision No 1702564, 3 April 2017 (Norway); Administrative Court of Lyon, Decision No 1705209, 28 July 2017 (Finland); Administrative Court of Toulouse, Decision of 27 November 2017 (Sweden); Administrative Court of Appeal of Lyon, Decision No 17LY02181, 13 March 2018 (Finland), EDAL, available at: <https://bit.ly/2SSwxMS>; Administrative Court of Rouen, Decision No 1801386, 31 May 2018 (Austria); Administrative Court of Appeal of Nantes, Decision No 17NT03167, 8 June 2018 (Belgium); Administrative Court of Bordeaux, Decision No 180412, 15 June 2018 (Germany). Administrative Court of Appeal of Lyon, Decision N°20LY01035, 20 April 2020 (Sweden).

<sup>234</sup> Administrative Court of Melun, Decision No 1708232, 6 November 2017.

- (2) On the other hand, some Prefectures do immediately register the asylum claims of returnees and channel them to OFII in order to find them an accommodation place. The PAUH is the only entity receiving and supporting Dublin returnees upon their arrival in France by Charles de Gaulle airport. Considering the systemic difficulties encountered by the orientation platforms in Paris and its surroundings, several Dublin returnees, after registering their claim, are apt to turn to it in order to complete their asylum claim form or to find an accommodation.

In **Lyon**, the situation is similar upon arrival of returnees at **Saint-Exupéry** airport. The returnees are not received at their arrival and not supported. They are deemed to present themselves at the PADA run by Forum réfugiés – Cosi to be registered before submitting their claim. They encounter the same difficulties in terms of accommodation to the conditions in **Paris**.

Dublin returnees further face important obstacles in accessing reception centres; i.e. they face the same difficulties as all asylum seekers in France in securing housing. This is due to the fact that there is approximately a 50% gap of available places, as further explained in [Conditions in reception facilities](#).

### 3. Admissibility procedure

#### 3.1. General (scope, criteria, time limits)

The law provides OFPRA, as opposed to the Prefectures in [Dublin](#) cases, with the possibility to decide on the admissibility of asylum applications lodged before it.<sup>235</sup>

Claims are deemed inadmissible in the following cases:

- (a) The asylum seeker already benefits from an effective international protection status (refugee status or subsidiary protection) in another EU Member State;
- (b) The asylum seeker has already been granted refugee status and benefits from an effective protection in another third country and he or she can effectively be readmitted there; or
- (c) New facts and elements presented to introduce a subsequent application are deemed inadequate by OFPRA.

The applicability of these grounds may be discovered by OFPRA upon registration or later, during the interview or during investigations post-interview. However, there is a specific time limit in the case of [Subsequent Applications](#): a preliminary examination of their admissibility has to be conducted within 8 days of registration.<sup>236</sup>

The possibility to determine a claim inadmissible also applies to claims introduced at the border or in detention centres.

OFPRA never takes decisions confirming admissibility; only inadmissibility decisions. Decisions have to be motivated and notified in writing to the asylum seeker within 1 month after the claim has been introduced or, if grounded on elements revealed during the interview, within 1 month after the interview. However, the law sets no consequence in case those time-limits are not complied with by OFPRA. As a matter of fact, they are very unevenly implemented in practice.

The notification of the decision includes procedural aspects and delays to introduce an appeal to the CNDA to challenge the inadmissibility decision.

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<sup>235</sup> Article L.723-11 Ceseda.

<sup>236</sup> Article R.723-16 Ceseda.

In 2019, OFPRA took 9,800 inadmissibility decisions, out of which 7,750 concerned subsequent applications.<sup>237</sup> The other 2,050 inadmissibility decisions concerned asylum seekers who already enjoyed international protection in an EU Member State or refugee status in a third country, thus marking a significant increase of inadmissibility decisions in such cases. By way of comparison, in 2017 only 214 inadmissibility decisions were issued concerning asylum seekers who already enjoyed international protection in an EU Member State or refugee status in a third country.<sup>238</sup> More recent figures on the number of inadmissibility decisions are not available.

### 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 type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
❖ If so, are questions limited to identity, nationality, 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

Asylum seekers whose claim is deemed inadmissible on ground of the existence of an international protection in an EU Member State or refugee status in a third country, are invited to a personal interview.

The interview in the case of [Subsequent Applications](#), which represent the largest part of inadmissibility cases, is not required by law. In 2019, 13% of inadmissibility decisions regarding subsequent applications were taken following an interview with the asylum seeker.<sup>239</sup>

### 3.3. Appeal

#### Indicators: Admissibility Procedure: Appeal

☐ Same as regular procedure

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

<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
❖ If yes, is it	<input checked="" type="checkbox"/> Judicial <input type="checkbox"/> Administrative
❖ If yes, is it automatically suspensive	<input type="checkbox"/> Yes <input type="checkbox"/> Some grounds <input checked="" type="checkbox"/> No

There is a 1-month time limit for introducing an appeal before the CNDA.

The appeal is not suspensive in inadmissibility cases based on the existence of an international protection in an EU Member State or refugee status in a third country.<sup>240</sup> However, the appeal is not automatically suspensive in inadmissibility cases concerning subsequent applications.<sup>241</sup> Similarly to the [Accelerated Procedure: Appeal](#), it is examined by a single judge at the CNDA within 5 weeks.

In cases of a negative decision in detention or at the border, specific procedures are applicable.

<sup>237</sup> OFPRA, *Activity report 2019*, 58.

<sup>238</sup> OFPRA, *2017 Activity report*, 52.

<sup>239</sup> OFPRA, *Activity report 2019*, page 58

<sup>240</sup> Article L.743-2 Ceseda.

<sup>241</sup> Articles L 743-2 et L 743-3 Ceseda

### 3.4. Legal assistance

#### Indicators: Admissibility 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 an inadmissibility decision in practice?  
☒ Yes ☐ With difficulty ☐ No  
❖ Does free legal assistance cover ☒ Representation in courts ☒ Legal advice

The automatic right to legal aid at second instance (see [Regular Procedure: Legal Assistance](#)) is also applicable to inadmissible claims.

## 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. Where is the border procedure mostly carried out? ☒ Air border ☐ Land border ☐ Sea border
3. Can an application made at the border be examined in substance during a border procedure? ☐ Yes ☒ No
4. 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?<sup>242</sup> 2 working days
5. Is the asylum seeker considered to have entered the national territory during the border procedure? ☐ Yes ☒ No

A specific border procedure to request an admission into the country on asylum grounds is provided by French legislation,<sup>243</sup> for persons arriving on French territory through airports, harbours or international train stations. This procedure is separate from the asylum procedure on French territory, insofar as it examines entry into the territory to seek asylum rather than the asylum application itself.<sup>244</sup>

#### Legal framework

The border procedure is governed by Article R.213-2 Ceseda:

“When a foreign national who has arrived at the border applies for asylum, they are immediately informed, in a language they can reasonably be considered to understand, of the asylum application procedure, their rights and obligations over the course of this procedure, the potential consequences of any failure to meet these obligations or any refusal to cooperate with the authorities, and the measures available to help them present their request.”

<sup>242</sup> Deadline for OFPRA to send an opinion to the Ministry of Interior.

<sup>243</sup> Article L.213-8 Ceseda.

<sup>244</sup> OFPRA, ‘Demander l’asile à la frontière’, 20 April 2016, available in French at: <http://bit.ly/2D1RcPL>.

As soon as asylum seekers apply for asylum after being refused entry into the territory, they are directed to a waiting zone. Article L.221-4 Ceseda provides that:

“[F]oreign nationals held in waiting zones are informed, as soon as possible, that they may request the assistance of an interpreter and/or a doctor, talk to a counsel or any other person of their choice, and leave the waiting zone at any point for any destination outside of France. They are also informed of their rights pertaining to their asylum claim. This information is communicated in a language the person understands.”

### Grounds for applying the border procedure

French law 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.<sup>245</sup>

The law defines “manifestly unfounded” claims as follows: “A claim is manifestly unfounded when considering the foreign national's statements and documentation it is manifestly irrelevant (*manifestement dénuée de pertinence*) as far as asylum criterion or manifestly lacking credibility (*manifestement dépourvu de toute crédibilité*) regarding the risk of persecutions or severe violations.”<sup>246</sup>

In theory, the asylum grounds and the merit of the application should thus not be examined by the OFPRA, as these must be assessed only once the applicant is granted access to the territory and is channelled into the regular procedure. However, in practice, the assessment usually covers the verification of the credibility of the account; interview reports contain comments on stereotypical, imprecise or incoherent accounts on matters such as the sexual orientation of the applicant, with a lack of written proof. This practice of *de facto* examining the request on the merits is extremely problematic.

It should be noted that the asylum applicant is not considered as being on French territory as long as the airport procedure is pending, i.e. there is a ‘fiction of non-entry’ that applies as long as entry to the territory has not been explicitly granted.

### Dublin III in the border procedure

The 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.<sup>247</sup> 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.<sup>248</sup>

The Ministry of Interior reported that the Dublin procedure had been applied in 11 cases in 2019, in two cases in 2019, and in one case in 2020 as of the end of September 2020. However, none of the persons were actually transferred to the responsible Member State. This is due to various reasons such as the

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<sup>245</sup> Article L.213-8-1 Ceseda.

<sup>246</sup> Article L.213-8-1 Ceseda.

<sup>247</sup> Information provided by OFPRA, Fontenay-sous-Bois, 24 April 2018.

<sup>248</sup> Information provided by OFPRA, 24 April 2018.

suspension of the decision of transfer by the administrative court; the person was released from detention by the liberty judge prior to the transfer; the applicable time limits for the transfer were not met; or cases where the person refused to embark.<sup>249</sup>

### Authorities involved in the border procedure

The first authority involved in the border procedure is the Border Police (*'Police aux frontières'*), which is responsible for border management and apprehending individuals at the border. Thus, it is usually the first authority with whom applicants are in contact. The Border Police conducts a first interview upon arrival to collect basic identification information, based on which the OFRPA will prepare its interview. The asylum application must be taken into account and the Border Police has to make a statement detailing the request for admission on the basis of an asylum claim. As mentioned in [Access to the Territory](#), however, cases documented in waiting zones such as **Beauvais** suggest that the Border Police does not always comply with this obligation.

The examination and decision on asylum claims made at the border lie with the OFPRA. Initially falling under the responsibility of the Ministry of Europe and Foreign Affairs, the border procedure has been transferred to the OFPRA in July 2004. As mentioned under [Number of staff and nature of the determining authority](#), OPFRA is one of the few asylum authorities in Europe which has established a Unit dedicated to the border procedure. It is entitled the "asylum at the border" Unit and is thus responsible for claims made in waiting zones.<sup>250</sup> In 2018, the Border Unit of OFPRA was comprised of three Protection Officers, one Secretary and one Head of Division.<sup>251</sup> The Border Unit is responsible for determining whether a person should be granted access to the territory for the purpose of the asylum procedure. To that end, it issues a binding opinion to the Ministry of Interior allowing or refusing entry. The Ministry latter is the authority officially issuing the decision, and it can only refuse entry to the territory despite a positive opinion from the OFPRA in case there is a threat to public order.<sup>252</sup> Whereas the assessment of admissibility and manifest unfoundedness of an application made at the border are within the remit of the Border Unit of OFPRA, the application of the Dublin Regulation is examined by the Ministry of Interior.

The Ministry of Interior is also the authority responsible for the placement of foreign nationals in the waiting zone, under the supervision of the liberties and detention judge (*juge des libertés et de la détention* - JLD).<sup>253</sup>

Administrative Tribunals (*Tribunal administratif*) are responsible for the appeals lodged against decisions rejecting the access to the territory as well as the placement into waiting zones.<sup>254</sup> An onward appeal against the decision of the *Tribunal administratif* can further be lodged in front of Administrative Courts (*Cour administrative d'appel*).<sup>255</sup>

The competent administrative authority for delimiting waiting zones is the Prefect of the *département* and in **Paris**, the Chief of Police (*Préfet de Police*). The decision to hold a foreign national in the waiting zone, which must be justified in writing, is taken by the Head of the National Police service or the Customs and Border Police, or by a civil servant designated by them.

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<sup>249</sup> Information provided by the Ministry of Interior, 21 October 2020.

<sup>250</sup> ECRE/AIDA, *Asylum authorities: an overview of internal structures and available resources*, November 2019, available at: <https://bit.ly/3peHrYq>, 10.

<sup>251</sup> ECRE/AIDA, *Access to asylum and detention at France's borders*, June 2018, available at: <https://bit.ly/3jEbV53>, 20.

<sup>252</sup> Article L. 213-8- 1 CESEDA

<sup>253</sup> Article L.222-1 and L.222-4 CESEDA.

<sup>254</sup> L.213-9 CESEDA.

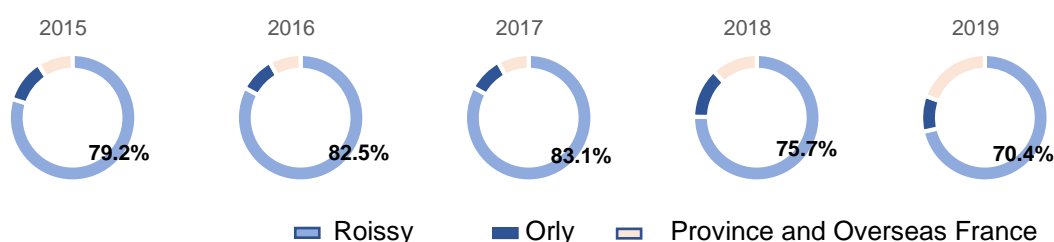
<sup>255</sup> L.213-9(9) CESEDA.

## Location of the border procedure

There are 32 waiting zones in mainland France. Most of the activities take place at the **Roissy Charles de Gaulle** (CDG) airport. Moreover, waiting zones can be extended to within 10km from a border crossing point, when it is found that a group of at least 10 foreigners just crossed the border. The group of 10 can have been identified at the same location or various locations within the 10km area. This exceptional extended waiting zone can be maintained for a maximum of 26 days.<sup>256</sup>

Waiting zones are located between the arrival and departure points and passport control. The law provides that they may include, within or close to the station, port or airport, or next to an arrival area, one or several places for accommodation, offering hotel-type facilities to the foreign nationals concerned. In some areas such as **Roissy** or **Marseille**, the waiting zone is a facility separate from the airport, meaning that the asylum seeker is transported there to follow the procedure (see section on [Place of Detention](#)).

While there are several waiting zones in France, the one in Roissy – Charles de Gaulle Airport of Paris, is by far the main point of activity in the country, followed by the Orly airport, also located in Paris.



Source: OFPRA, *Annual reports*, available at: <https://bit.ly/2Nfwvx9>.

Since 2015, around 70% to 80% of all applications made at the border were made at the **Roissy airport**. **Orly airport** received around 10% to 12% of all applicants during that same period. A slight increase in the number of applications made at the border in Overseas France has been noted in 2018 and 2019, mainly due to arrival of several ships from Sri Lanka and Indonesia to the Réunion Island.<sup>257</sup> More recent statistics were not available at the time of writing of this report.

## Time limits in the border procedure

There is no strict deadline to apply for asylum when applicants are waiting for their admission at the border and are placed in waiting zones. From the time in which the application for international protection has been made, the OPFRA has two working days to issue its opinion to the Ministry of the Interior.<sup>258</sup>

Average processing times of the OFPRA (in days)					
	2015	2016	2017	2018	2019
Average processing times	1.58 days	2.43 days	3.39 days	2.74 days	3.5 days

Source: OFPRA, Information provided on 21 September 2020.

With the exception of 2015, the average processing time for the OFPRA to issue its decisions at the border has consistently exceeded the time limit of two days laid down in national law, reaching up to 3.5 days in 2019. Available figures further indicate that a relatively important amount of cases are not being

<sup>256</sup> Article L.221-2 Céseda.

<sup>257</sup> OFPRA, *Annual reports*, available at: <https://bit.ly/2Nfwvx9>.

<sup>258</sup> Article R.213-5 CESEDA.

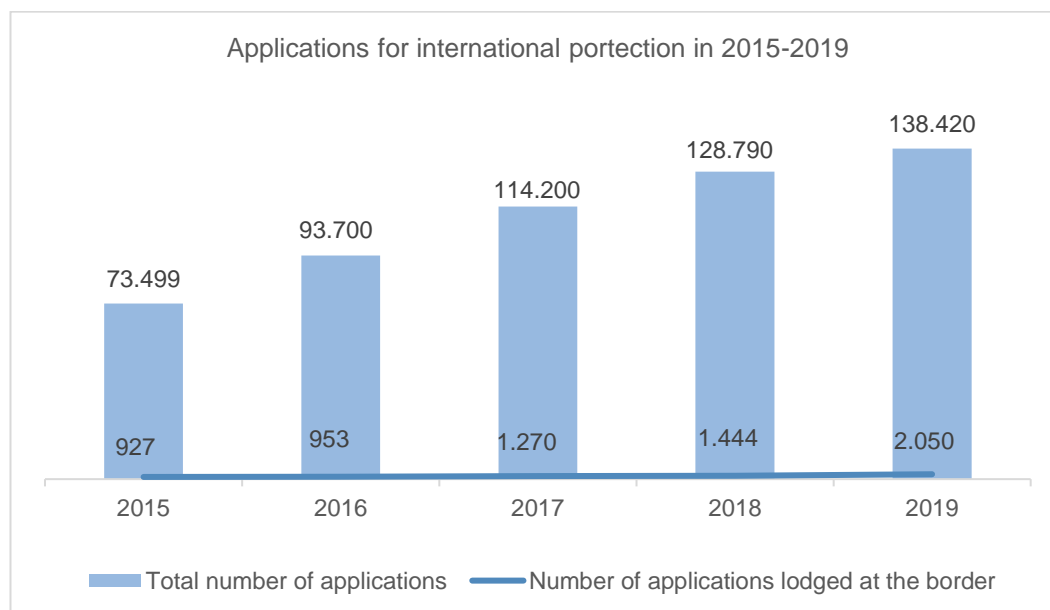
examined by the OFPRA within four days, thus largely exceeding the two days time limit laid down in law. In 2019, this represented 28.5% of the cases, a large increase compared to 2018 (17%) and a figure that is comparable to the year 2017 (28% of the cases).<sup>259</sup> More recent statistics were not available at the time of writing of this report.

Nevertheless, national law does not foresee any time limit for the Ministry of Interior to issue its decision based on the binding opinion of the OFPRA. This means that applicant can theoretically be held in waiting zones for several days, up until a formal decision of the Ministry of Interior has been issued. Practice suggests, however, that the Ministry of Interior issues its decision within the same day. Moreover, there have been no cases in which the decision took longer than the 4 weeks timeframe foreseen by Article 43(2) of the recast Asylum Procedures Directive.<sup>260</sup> For the applicable time limits regarding the placement in waiting zones.

The person may apply for asylum at any time during the time he or she is held in the waiting zone, meaning during an initial period of 4 days which can reach a maximum of 20 days.<sup>261</sup> Exceptionally, 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.<sup>262</sup> Therefore detention in the waiting zone can reach 26 days if the person applies for asylum on the 20<sup>th</sup> day of detention.

### Number of border procedures

The number of asylum claims made at the border has increased in recent years as follows.



Source: Ministry of Interior, *Statistics on asylum*, available in French at: <https://bit.ly/327L8pk>; OFPRA, Information shared on 21 September 2020.

The number of applications made at the border has doubled from around 900 applications in 2015 to more than 2,000 applications in 2019. This is still far below the record number of 5,100 applications registered at the border in 2008,<sup>263</sup> after which numbers dropped significantly. When comparing these figures with

<sup>259</sup> OFPRA, *Annual reports*, available at: <https://bit.ly/2Nfwx9>.

<sup>260</sup> OFPRA, Information provided on 21 September 2020.

<sup>261</sup> Articles L.221-3 and L.222-2 Ceseda.

<sup>262</sup> Article L.222-2 Ceseda.

<sup>263</sup> OFRA, *Annual Report 2008, 2009*, available in French at: <https://bit.ly/3tMGEBY>, 26.

the total number of applications, they represent a very small fraction of the caseload before the OFPRA. In 2019, the number of applications lodged at the border represented only 1.4% of the total caseload. This means that the vast majority of applications for international protection are lodged on French territory. Statistics on the year 2020 were not available at the time of writing of this report.

The main nationalities applying at the border from 2017 to 2019 were as follows:

Asylum applicants at the border by nationality					
1 Jan – 31 Dec 2017		1 Jan – 31 Dec 2018		1 Jan – 31 Dec 2019	
Sri Lanka	120	Morocco	140	Sri-Lanka	289
Algeria	103	Turkey	131	Turkey	246
Turkey	99	DRC	120	Morocco	180
DRC	70	Sri Lanka	107	DRC	123
Albania	63	Cuba	90	Iran	76
Others	725	Others	856	Others	1,136
<b>Total</b>	<b>1,180</b>	<b>Total</b>	<b>1,444</b>	<b>Total</b>	<b>2,050</b>

Source: OFPRA.

### Decisions issued in border procedures

A person's access to the territory in the context of the border procedure can thus be either accepted or refused.

- If the Border Unit of the OFPRA considers that the application for international protection is *not* manifestly unfounded nor inadmissible, and if France is deemed responsible for the asylum claim under the Dublin III Regulation, the Ministry of Interior is bound to grant entry to French territory. One exception applies in case where there is a threat to national security.<sup>264</sup> While the Ministry of Interior regularly assesses this risk, no cases of refusal of entry on this ground have been reported so far. The asylum applicant will be given an 8-day temporary visa. Within this time frame, upon request from the asylum seeker, the competent Prefectures provides an asylum application certification which allow for the lodging of the application. The OFPRA then processes the asylum claim as any other application for international protection that is lodged on the territory.
- If OFPRA considers that the application for international protection *is* manifestly unfounded or inadmissible, or if another country is deemed responsible under the Dublin III Regulation, the Ministry of Interior refuses to grant entry to the foreigner based on a motivated decision. The person can lodge an appeal against this decision before the Administrative Court within a 48-hour deadline. If this appeal fails, the foreigner can be returned to his or her country of origin. However, individuals refused entry benefit from a so-called "full day" (*jour franc*), which protects them from 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.<sup>265</sup> The *jour franc* is no longer guaranteed in Mayotte and at land borders since September 2018, however.<sup>266</sup>

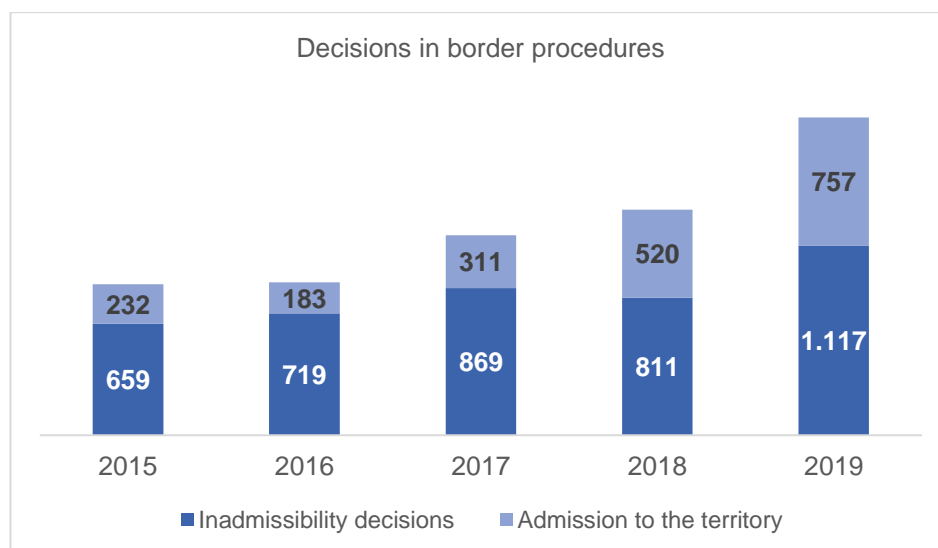
In France, only a minority of applicants are effectively granted access to the territory. This concerned 20.4% of applicants in 2016, 26.6% of applicants in 2017, 39.5% of applicants in 2018, and 40.5% of applicants in 2019.<sup>267</sup>

<sup>264</sup> Article L. 213-8-1 CESEDA.

<sup>265</sup> Article L.213-2 CESEDA.

<sup>266</sup> Article L.213-2 CESEDA, as amended by Article 18 Law n. 2018-778 of 10 September 2018

<sup>267</sup> OFPRA, *Annual reports*, available at: <https://bit.ly/2Nfwvx9>.



This means that, since 2015, most applicants were refused access to French territory. These figures seem to point to the significant difficulties facing persons applying for protection at the border. So far, OFPRA has not issued opinions opposing admission to the territory on grounds of inadmissibility. The number of refusals of admission based on the Dublin Regulation are very limited. More recent information or statistics was not available at the time of writing of this report.

#### 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
<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No

  - ❖ If so, are questions limited to nationality, identity, travel route?
  - ❖ If so, are interpreters available in practice, for interviews?
2. Are interviews conducted through video conferencing? ☐ Frequently ☐ Rarely ☒ Never

Individuals apprehended at airports are first interviewed by the Border Police, which drafts a report (*procès-verbal*) collecting basic information relating to the identity of the applicant. In practice, there have been cases where the Border Police has asked questions relating to the merits of the application for international protection or cases where it indicated to the applicant that his/her asylum claim had low chances of success.<sup>268</sup> This is not documented in the reports of the Border Police, however, as it would be ruled against by Administrative Courts as a ground for annulment of the decision. oral questions going beyond the collection basic information, i.e. questions relating to the merits of the asylum claim.<sup>269</sup>

As regards interviews with the OFPRA, the border procedure is very different from the asylum procedure on the territory. All asylum seekers subject to a border procedure are interviewed by a dedicated "Border Unit" of OFPRA which provides the Ministry of Interior with a binding opinion on whether their application is well-founded or not. The interview should take place within the next half-a day (*'au cours de la demi-journée'*) following the notification, although a minimum time limit of four hours must pass between the notification and the interview. This minimum waiting time of four hours can be waived if a third-party is available earlier or if the applicant so requests. OFPRA delivers its opinion to the Ministry within 2 working

<sup>268</sup> Information provided by Anafé, 17 September 2019.

<sup>269</sup> Information provided by Anafé, 17 September 2020.

days after the intention to apply for asylum has been recorded. In order to substantiate its decision, OFPRA conducts an interview with the person.

The law provides the same provisions on interviews in the border procedure as in the regular procedure:<sup>270</sup>

- If the interview of the asylum seeker requires the assistance of an interpreter, it is paid for by the State;
- An asylum seeker introducing a claim at the border can be accompanied by a third person during his or her interview with OFPRA;
- At the end of the interview, the asylum seeker and the third person, if applicable, are informed of their right to have access to a copy of the interview;
- An audio recording of the interview is also conducted; and
- There is a possibility for the interview to be conducted by video conferencing.

### Remote interviews

Videoconferencing and phones are often used in interviews during the border procedure as opposed to the regular procedure. **Roissy CDG airport**, where the majority of border procedures take place, is the only waiting zone where the OFPRA Border Unit interviews the asylum seeker in person.<sup>271</sup> The interviews in **Orly, Marseille** and **Lyon** are conducted by videoconference and interviews of all other border procedures are done by phone.<sup>272</sup> When videoconferencing is used, it almost always runs into technical problems, as a result of which the interview is then carried out by phone.<sup>273</sup> This has led the Administrative Court of Marseille to invoke procedural irregularities and annul 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.<sup>274</sup>

The use of phones is also reported as very problematic in practice. This includes technical problems and difficulties to follow the interview; important quality gaps resulting from simultaneous telephone interpretation; as well as the fact that, where a third party is present, the phone has to be shared between the applicant and the NGO and/or legal representative.<sup>275</sup>

Another important concern raised in practice relates to issues of confidentiality. Remote interviews are sometimes carried out in inadequate rooms where other persons may be present or where there is a disturbing background noise.<sup>276</sup> In **Orly** for example, the interview is held in a common room where other people are held and where other police staff maybe present. Moreover, the interview room is not soundproof and is placed next to an office of the border police, as a result of which background noise from police officers may disrupt the interview.<sup>277</sup>

Remote interviews further create difficulties to share and submit documentary evidence. There have been cases where asylum applicants were not able to share evidence they had in their possession, or only partially on video when videoconference is used. There are no other tools such as fax or scanners available to submit these documents.<sup>278</sup>

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<sup>270</sup> Article R.213-4 Ceseda.

<sup>271</sup> Information provided by Anafé, 17 September 2020.

<sup>272</sup> Information provided by OFPRA, 21 September 2020.

<sup>273</sup> Information provided by OFPRA, 24 April 2018 ; Information provided by Anafé, 17 September 2020.

<sup>274</sup> 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

<sup>275</sup> Information provided by Anafé, 17 September 2020.

<sup>276</sup> Information provided by Anafé, 17 September 2020.

<sup>277</sup> Information provided by Anafé, 17 September 2020.

<sup>278</sup> Information provided by Anafé, 17 September 2020.

## Interpretation

Issues with regard to interpretation have been reported in the context of the initial interview, which is carried out with the Border Police at the very start of the procedure. In **Beauvais**, for example, in the absence of professional interpretation services, the Border Police has resorted to interpretation by fellow police officers, air carrier personnel or even passengers in some cases.<sup>279</sup>

As for the interviews with the OFPRA, they must be carried out in the presence of an interpreter, unless the interview can be carried out in French. In practice, interpretation in interviews is available for 40 languages and is readily available through the Inter Service Migrants (ISM) by phone or videoconference. In the last years, interpretation was used in the majority of cases, reaching up to 89% of all cases in 2019, compared to 82.3% in 2018, 77.8% in 2017 and 72.3% in 2016.<sup>280</sup>

Nevertheless, when carried out remotely, the quality of the interpretation services seems to raise concerns. 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.<sup>281</sup> (UNHCR guidance also recommend in person)

Another issue relates to confidentiality. There have been cases where the background noise indicated that the interpreter was in a train station while the interview was ongoing; or in a parc surrounded by children.<sup>282</sup>

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.<sup>283</sup>

## Accompaniment by a third party

Since 2015, the law foresees the possibility for asylum applicants to be assisted during the interview by a third-party, namely a member of an accredited civil society organisation or a legal representative.<sup>284</sup> The list of NGOs accredited to send representatives to access the waiting zones, established by order of the Ministry of the Interior was last revised in May 2018 and is valid until June 2021. It includes 10 organisations.<sup>285</sup> As regards specifically the waiting zone at Roissy CDG, the Red Cross has permanent presence and Anafé is present certain hours every week. In other waiting zones, Anafé and certain other NGOs may be reached at certain hours via phone (*'permanences téléphoniques'*).<sup>286</sup>

This possibility is rarely used in practice, however. Only 7.5% of all applicants were accompanied by a third party in 2019, compared to 6.9% in 2018 and 4.1% in 2017.<sup>287</sup> In 2019, only 7 interviews were attended by an NGO representative.<sup>288</sup> This means that over 90% of interviews were carried out without

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<sup>279</sup> ECRE/AIDA, *Access to asylum and detention at France's borders*, June 2018, available at: <https://bit.ly/3jEbV53>, 20.

<sup>280</sup> OFPRA, *Annual reports*, available at: <https://bit.ly/2Nfwnx9>.

<sup>281</sup> Information provided by La Cimade, 26 April 2018.

<sup>282</sup> Information provided by Anafé, 17 September 2020

<sup>283</sup> ECRE, *Access to asylum and detention at France's borders*, June 2018, 21.

<sup>284</sup> Article L. 213-8-1 du CESEDA.

<sup>285</sup> Ministry of Interior, *Arrêté du 29 mai 2018 fixant la liste des associations humanitaires habilitées à proposer des représentants en vue d'accéder en zone d'attente*, 2018, available in French at : <https://bit.ly/3aZIO9q>.

<sup>286</sup> Information provided by OFPRA, 21 September 2020.

<sup>287</sup> OFPRA, *Annual reports*, available at: <https://bit.ly/2Nfwnx9>.

<sup>288</sup> Information provided by OFPRA, 21 September 2020.

a third party being present from 2017 to 2019. More recent statistics on the year 2020 were not available at the time of writing of this report.

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.<sup>289</sup> The interview may further take place only a couple of hours after the application has been made, thus rendering the availability of NGOs within that short time frame extremely difficult. Available figures indicate that, when a third-party is present, it is usually a legal representative rather than an NGO.<sup>290</sup>

### 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            | <input checked="" type="checkbox"/> Yes      | <input type="checkbox"/> No                                       |
| ❖ If yes, is it suspensive | <input checked="" type="checkbox"/> Judicial | <input type="checkbox"/> Administrative                           |
|                            | <input checked="" type="checkbox"/> Yes      | <input type="checkbox"/> Some grounds <input type="checkbox"/> No |

When the request for entry for reasons of asylum made at the border is rejected, the person is refused admission into French territory. The asylum seeker can introduce an appeal to challenge this decision before the Administrative Court.

Before the Administrative Court, the applicant can contest the refusal of admission into the French territory within 48 hours. The appeal has suspensive effect. The Administrative Court must decide within 72 hours.<sup>291</sup>

The decision of this Administrative Court can be challenged within 15 days before the President of the competent Administrative Court of Appeal, but this appeal does not have suspensive effect.

Based on “considerations of the proper application of justice”, the Council of State assigns the case to the Administrative Court that is closest to the concerned waiting zone,<sup>292</sup> and no longer to the Administrative Court of **Paris** only, as was previously the case.

Anafé has denounced the illusory nature of the effectiveness of this suspensive appeal.<sup>293</sup> In practice following obstacles occur in this regard: the asylum seeker has very few resources to write such an appeal on his own; the request must be lodged with the competent court within 48 hours of notification of the decision of the Minister of the Interior, without possible extension on weekends; the appeal must be written in French and sufficiently motivated in fact and in law (otherwise, the appeal can be rejected without a hearing). These difficulties persisted in 2020.

In France, the success rate of appeals in border procedures was 33% in 2019.<sup>294</sup> This is a slight increase on previous years (18% in 2018; 24% in 2017; 15% in 2016; and 11% in 2015), but the majority of appeals are rejected.

<sup>289</sup> *Ibid*, 22.

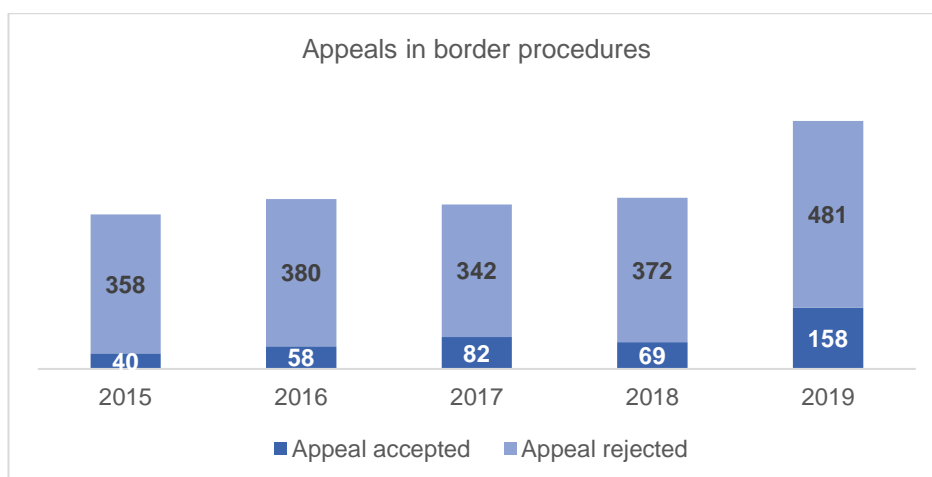
<sup>290</sup> In 2018 for example, out of the 93 interviews conducted in the presence of a third-party, 90 interviews were carried out with a legal representative and only 3 of them in the presence of an NGO. OFPRA, *Annual Report 2018, 2019*, available at : <https://bit.ly/374HC2q>, 25.

<sup>291</sup> Article L.213-9 Céseda.

<sup>292</sup> Article R.351-8 CJA.

<sup>293</sup> ANAFE, *Privation de liberté en zone d'attente, les détenus face à la justice*, 2017, available in French at : <https://bit.ly/30RbYkt>.

<sup>294</sup> Information provided by the French Ministry of Interior, 21 October 2020.



Source: OFPRA.

#### 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?
 

❖ Does free legal assistance cover:

☐ Yes  
☒ Representation in interview  
☒ Legal advice

☒ With difficulty

☐ No
  
2. Do asylum seekers have access to free legal assistance on appeal against a negative decision in practice?
 

❖ Does free legal assistance cover:

☐ Yes  
☒ Representation in interview  
☒ Legal advice

☒ With difficulty

☐ No

There is no permanent legal adviser or NGO presence in the waiting zones; only Anafé is occasionally present in **Roissy CDG Airport**. Asylum seekers must therefore try to get hold of an adviser by phone from the waiting zone. Many concerns have been raised about effective access to a telephone, as well as outdated lists of lawyers available in different waiting zones.

A third person (lawyer or representative of an accredited NGO) can be present during the OFPRA interview;<sup>295</sup> and legal representatives shall be present for unaccompanied children. As stated in [Border Procedure: Personal Interview](#), however, this possibility is rarely used in the border procedure.

Contrary to appeal procedures before the CNDA (see [Regular Procedure: Legal Assistance](#)) where the asylum seeker can request *ipso jure* legal aid, before the Administrative Court, asylum seekers can be assisted by an appointed lawyer on the basis of “genuine right to legal aid”. They can ask for this support at any stage of the procedure including on the day of the hearing before the Administrative Court.

Asylum seekers can request to be assisted by a court appointed lawyer during their hearing before the JLD who is competent to rule on the extension of their stay in the waiting zone (see [Judicial Review of the Detention Order](#)). In theory, the asylum seeker should have hired one previously at his or her own expense, or prepared a sufficiently well-argued request in French by him or herself, in terms of facts and

<sup>295</sup> Article L.213-8-1 Ceseda.

points of law. This is another illusory measure that does not guarantee the asylum seeker access to an effective remedy, even though they have access to court-appointed lawyers if necessary.<sup>296</sup>

Anafé denounces the fact that these cases are handled in haste by the court-appointed lawyers. Indeed, due to the urgency of the appeal and to the functioning of the administrative courts, the court-appointed lawyers in reality only have access to all the elements of the case once they meet the asylum seeker at the court, meaning in the best case scenario one hour before the start of the hearing. Under these conditions, it is difficult for the lawyer to know the story of the person held in the waiting zone and to provide a good appeal.<sup>297</sup>

## 5. Accelerated procedure

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

The reasons for channelling an asylum seeker into an accelerated procedure are outlined in Article L.723-2 Ceseda which lists 10 grounds.

The accelerated procedure is automatically applied where:

- a. The applicant originates from a [Safe Country of Origin](#); or
- b. The applicant's [Subsequent Application](#) is not inadmissible.

The asylum claim will be channelled under the accelerated procedure, where the Prefecture has reported that:

- c. The asylum seeker refuses to be fingerprinted;
- d. When registering his or her claim, the asylum seeker has presented falsified identity or travel documents, or provided with wrong information on his or her nationality or on his or her conditions of entry on the French territory or has introduced several asylum claims under different identities;
- e. The claim has not been registered within 90 days after the foreign national has entered the French territory;<sup>298</sup>
- f. The claim has only been made to prevent a notified or imminent removal order; or
- g. The presence of the foreign national in France constitutes a serious threat to public order, public safety or national security.

In the abovementioned cases, it is the Prefecture that decides to channel related claims under the accelerated procedure. In that case, the asylum claim certification specifically mentions that the asylum seeker is placed under accelerated procedure. The ground for applying the accelerated procedure is specified in an additional document given to the applicant together with the certification. Asylum seekers under accelerated procedure have to send the asylum claim form to OFPRA within 21 days to lodge their applications, as is the case with asylum seekers under the regular procedure.

While processing an asylum claim, OFPRA also has the competence to channel a claim under an accelerated procedure where:

- a. The asylum seeker has provided falsified identity or travel documents, or wrong information on his or her nationality or on his or her conditions of entry on the French territory or has introduced several asylum claims under different identities;
- b. The asylum seeker has supported his or her claim only with irrelevant questions regarding his or her claim; or
- c. The asylum seeker has given manifestly contradictory and incoherent or manifestly wrong or less likely statements that are contradictory to country of origin information.

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<sup>296</sup> See also OEE, *Rapport d'observation « Une procédure en trompe l'oeil » Les entraves à l'accès au recours effectif pour les étrangers privés de liberté en France*, May 2014.

<sup>297</sup> Anafé, *Voyage au centre des zones d'attente*, November 2016, 53.

<sup>298</sup> Prior to the 2018 reform, this time limit was 120 days.

In any of the abovementioned cases, OFPRA can decide not to process a claim under accelerated procedure when this is deemed necessary, in particular when an asylum seeker originating from a country listed on the safe country of origin list calls upon serious grounds to believe that his or her country of origin might not be safe considering his or her particular situation.<sup>299</sup> In addition, OFPRA may decide not to process under the accelerated procedure claims of vulnerable applicants. In 2019, OFPRA rechannelled 206 cases into the regular procedure out of a total of 40,677 cases processed in the accelerated procedure, compared to 24 cases out of 37,759 in 2018 and 63 cases in 2017. On the other hand, OFPRA rechannelled 1,384 cases from the regular to the accelerated procedure in 2019,<sup>300</sup> compared to 1,110 in 2018.<sup>301</sup> Statistics on the year 2020 were not available at the time of writing.

Similarly to the regular procedure, OFPRA is the determining authority competent for accelerated procedures. Its decisions should in theory be made within 15 calendar days.<sup>302</sup> This period is reduced to 96 hours if the asylum seeker is held in administrative detention.<sup>303</sup> There is no specific consequence if the Office does not comply with these time limits. In practice, some stakeholders assisting asylum seekers have reported that some of them under the accelerated procedure have waited more than 15 days before receiving the decision from OFPRA.<sup>304</sup>

The average time for the examination of first asylum requests in the accelerated procedure was 98 days in 2016, 84 in 2018 and 72 in 2019 (no data for 2017).<sup>305</sup>

According to Ministry of Interior statistics, 50,750 asylum applications were filed in accelerated procedures at the end of 2019, representing 33% of all caseloads.<sup>306</sup> Statistics on the year 2020 in this regard was not available at the time of writing of this report.

## 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

Interviews of asylum seekers channelled into an accelerated procedure take place under the same conditions as interviews in a regular procedure (see [Regular Procedure: Personal Interview](#)). All personal interviews are conducted by OFPRA.

The same grounds for omission apply, except for asylum seekers channelled into an accelerated procedure for reasons of a [Subsequent Application](#). No specific statistics are available for the rate of interviews conducted in the accelerated procedure.

<sup>299</sup> Article L.723-2(5) Ceseda.

<sup>300</sup> OFPRA, *Activity report 2019*, 22

<sup>301</sup> OFPRA, *2018 Activity report*, 21.

<sup>302</sup> Article R.723-3 Ceseda. Delays are even shorter (96 hours) for persons held in administrative detention centres and in waiting zone.

<sup>303</sup> Article R.723-4 Ceseda.

<sup>304</sup> This information has been collected by Forum réfugiés – Cosi social workers in **Lyon**, **Clermont-Ferrand** and **Marseille** but also by other NGOs in **Paris** and its surroundings, **Bretagne**, **Charentes-Maritimes**, **Somme** or **Lorraine**.

<sup>305</sup> OFPRA, *Activity reports 2016, 2018, 2019*, available at: <https://bit.ly/2Nfwnx9>.

<sup>306</sup> Ministry of Interior, *Chiffres clés – les demandes d’asile*, 21 January 2020.

### 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?

- |                            |  |  |
|----------------------------|--|--|
| ❖ If yes, is it            | <input checked="" type="checkbox"/> Yes      | <input type="checkbox"/> No  |
| ❖ If yes, is it suspensive | <input checked="" type="checkbox"/> Judicial | <input type="checkbox"/> Administrative                                      |
|                            | <input type="checkbox"/> Yes                 | <input checked="" type="checkbox"/> Some grounds <input type="checkbox"/> No |

Persons channelled into an accelerated procedure must appeal within the same time period: 1 month after the negative decision. The main difference is that in accelerated procedure the decision has to be given by a single judge within 5 weeks.

As the preparation of these appeals is hardly supported by NGOs and given that assistance to draft the appeal is no longer in the mandate of the orientation platforms, asylum seekers may not be aware of these deadlines and face serious difficulties in drafting a well-argued appeal. They can nonetheless lodge a request to benefit from legal aid (*aide juridictionnelle*).

Appeals in the accelerated procedure have automatic suspensive effect, except for those based on: (a) safe country of origin; (b) subsequent application; and (c) threat to public order.<sup>307</sup> These exceptions were added by the 2018 asylum reform and entail a loss of the right to remain on the territory upon notification of the negative decision. Asylum seekers can, however, appeal before the Administrative Court within 15 days – or 48 hours in case of detention – to request that the CNDA appeal be given suspensive effect. The request to the Administrative Court has suspensive effect.<sup>308</sup>

The decision of OFPRA or of the Prefectures to channel an application under the accelerated procedure cannot be challenged separately from the final negative decision on the asylum claim but it is possible for the applicant to request so to in the appeal against the negative decision.<sup>309</sup>

In any case of placement under the accelerated procedure, including safe country of origin cases or subsequent applications, it is always possible for the CNDA to channel an asylum seeker into the regular procedure.<sup>310</sup> In 2017, 207 cases under single-judge procedure were thus rechannelled into collegial hearing by the CNDA.<sup>311</sup> Figures were not made available since then.

### 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?

- |                                     |  |  |  |
|-------------------------------------|--|--|--|
| ❖ Does free legal assistance cover: | <input type="checkbox"/> Yes                         | <input type="checkbox"/> With difficulty | <input checked="" type="checkbox"/> No |
|                                     | <input type="checkbox"/> Representation in interview |  |  |
|                                     | <input type="checkbox"/> Legal advice                |  |  |

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

- |                                    |  |  |                             |
|------------------------------------|--|--|-----------------------------|
| ❖ Does free legal assistance cover | <input checked="" type="checkbox"/> Yes                      | <input type="checkbox"/> With difficulty | <input type="checkbox"/> No |
|                                    | <input checked="" type="checkbox"/> Representation in courts |  |                             |
|                                    | <input checked="" type="checkbox"/> Legal advice             |  |                             |

<sup>307</sup> Article L.743-2 Ceseda.

<sup>308</sup> Article L.743-3 Ceseda.

<sup>309</sup> Article L.723-2(6) Ceseda.

<sup>310</sup> Article L.731-2 Ceseda.

<sup>311</sup> CNDA, 2017 Activity report, 20.

Asylum seekers channelled into an accelerated procedure have the same rights with regard to access to assistance as those in a regular procedure. As they are entitled to the same reception conditions as asylum seekers under the regular procedure, the assistance they can hope for depends of their conditions of reception.

However, asylum seekers whose claims are refused on the basis of safe country of origin, subsequent application or threat to public order grounds may lose their right to reception conditions, and thus the possibility of assistance, if suspensive effect is not granted for their appeal before the CNDA.<sup>312</sup>

The right to legal assistance at the appeal stage before the CNDA is the same for asylum seekers under regular procedure and under accelerated procedure. However, the CNDA has to process appeals of negative decisions of claims under accelerated procedures within 5 weeks. This short timeframe might prevent asylum seekers under accelerated procedure to prepare the case with the lawyers.

## D. Guarantees for vulnerable groups

### 1. Identification

#### Indicators: Identification

1. Is there a specific identification mechanism in place to systematically identify vulnerable asylum seekers?  
❖ If for certain categories, specify which: ☐ Yes ☒ For certain categories ☐ No  
Objective vulnerabilities e.g. age, pregnancy, Disability
2. Does the law provide for an identification mechanism for unaccompanied children?  
☒ Yes ☐ No

Article L.744-6 Ceseda refers to the identification of vulnerability, in particular, of children, unaccompanied children, disabled persons, the elderly, pregnant women, single parents with minor children, victims of trafficking, persons with serious illness, persons with mental disorders, and victims of torture, rape and other forms of psychological, physical or sexual violence, such as victims of female genital mutilation.

The law does not refer to vulnerability on account of sexual orientation or gender identity, therefore this is not taken into account by OFII either.

#### 1.1. Screening of vulnerability

OFII is responsible for identifying vulnerabilities and special needs of asylum seekers.<sup>313</sup> In order to do so, OFII has to proceed, within a “reasonable” timeframe, to an evaluation of vulnerability. This evaluation, that concerns all asylum seekers, takes the form of an interview based on a questionnaire.<sup>314</sup> The interview follows the registration of their claim in the Prefectures. The objective is thus to determine whether the person has special reception and procedural needs. Any needs emerging or being revealed later on during the asylum procedure are to be taken into account.

The assessment of vulnerability particularly concerns the categories listed in Article L. 744-6 Ceseda.

The assessment is carried out by OFII officers specifically trained on vulnerability assessments and in the identification of special needs. However, the publication of the questionnaire designed for the vulnerability

<sup>312</sup> Article L.744-9-1(2) Ceseda, as amended by Article 13 Law n. 2018-778 of 10 September 2018.

<sup>313</sup> Article L.744-6 Ceseda.

<sup>314</sup> A copy of the questionnaire may be found at: <http://goo.gl/o2CiuS>.

assessment reveals that only objective vulnerability will be assessed during the interview with OFII upon registration of the application at the GUDA.<sup>315</sup> At that stage, no vulnerability linked to the asylum claim shall be discussed. Therefore, the vulnerability assessment has had a limited impact on the early identification of less visible vulnerabilities; e.g. in the case of victims of torture and of physical, mental or sexual violence as well as victims of human trafficking.

On 18 December 2020, a “national plan for the reception of asylum seekers and the integration of refugees for 2021-2023” was published. It includes measures aimed at identifying vulnerabilities at an early stage and strengthening the management of these vulnerabilities.<sup>316</sup> This national plan mentions the publication of an “action plan for the care of the most vulnerable asylum seekers and beneficiaries of protection” in January 2021 in order to guide the actions carried out jointly by State services and operators for the coming years”, but the latter was still not published at the time of writing of this report. It remains to be seen to which extent it will actually improve the identification of specific vulnerabilities of asylum seekers.

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During the interview with OFII, the asylum seeker is informed that he or she can benefit from a free medical examination. Any information collected by OFII on the vulnerability of an applicant is sent to OFPRA, if the applicant so agrees.

In practice, it has been reported on several occasions that such interviews are not always conducted by OFII. It may happen that OFII indeed receives asylum seekers but does not interview them properly, or conducts short interviews lasting 10-15 minutes, thus not allowing for an in-depth assessment of special needs.<sup>318</sup> The assessment of their vulnerability is, in most cases, based on a vulnerability assessment form used by OFII officers. This situation has been widely reported by stakeholders regardless of the region where they are present. Many of them have also reported the fact that the interview is not conducted with an interpreter. Indeed, the Prefectures do not have a pool of interpreters *in situ*. Many local NGOs ask volunteering interpreters or fellow nationals for being present at the interview with the asylum seekers.

This lack of interview or of a proper interview is a persisting matter of concern. This interview is meant to propose reception conditions adapted to asylum seekers’ vulnerability. It may lead some asylum seekers to be accommodated into centres that do not correspond to their specific needs. For example, it has been reported that some female asylum seekers, victims of human trafficking or sexual violence, have been housed in centres mainly occupied by single men.

In addition, it is possible to notify OFII of any vulnerability element identified after the “interview” whether it has been conducted or not. When the asylum seekers benefit from legal and social assistance, from orientation platforms for example, it is possible for them to address OFII with a medical certificate. However, for asylum seekers living in camps or on the streets, it is particularly difficult for them to have their vulnerability taken into account.

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<sup>315</sup> Decree of 23 October 2015 on the questionnaire for vulnerability assessment of asylum seekers; Decree of 17 November 2016 implementing Decree n. 2016-840 of 24 June 2016 on the evaluation of minors temporarily or permanently deprived of family care, available in French at: <http://bit.ly/2msmNXw>.

<sup>316</sup> Ministry of Interior, *Schéma national d'accueil des demandeurs d'asile et d'intégration des réfugiés 2021-2023*, 18 December 2020, available in French at : <https://bit.ly/376rJsl>. See also Forum Réfugiés, *Schéma national d'accueil : quelles conséquences pour les demandeurs d'asile ?*, 12 January 2021, available in French at : <https://bit.ly/2Z4TEV9>.

<sup>317</sup> See also Forum Réfugiés, ‘Accueil des demandeurs d'asile : les vulnérabilités encore insuffisamment prises en compte’, 10 February 2020, available in French at : <https://bit.ly/3d2pNVr>.

<sup>318</sup> Haut-Conseil à l'Egalité, *Situation des femmes demandeuses d'asile en France après l'adoption de la loi portant réforme du droit d'asile*, 18 December 2017, available in French at: <http://bit.ly/2mWvoBM>, 18.

For asylum applications made at the border or in detention, OFPRA has developed a system for the signalling of vulnerabilities in places of detention (see [Prioritisation and exemption from special procedures](#)).

## 1.2. Age assessment of unaccompanied children

Age assessment is not conducted in the framework of the asylum procedure in France but as a prerequisite to benefitting from the Childcare Protection system. The age assessment procedure and criteria are detailed in a legal framework of 2016,<sup>319</sup> which establishes the elements to be taken into account to determine the applicant's minority:

- The minor has to be informed of the objectives of the evaluation and its potential effects;
- This assessment has to be conducted in a multidisciplinary approach;
- The assessor must have strong knowledge of migratory routes, the situation in the country of origin, childhood psychology and children rights;
- Particular attention must be paid to potential cases of human trafficking;
- The interview must be conducted in a language spoken by the interviewee; and
- The outcome of the interview must be held in a written decision notified to the interviewee, and mention the legal remedies against it.

### Methods for assessing age

In practice, bone examinations continue to be implemented even when unaccompanied children possessed civil status documents. According to some stakeholders, some young people, in particular those above 16, are subjected to several medical examinations until it can be established that they are 18. In 2016, the Children's Ombudsman (*Défenseur des enfants*) introduced recommendations in order to avoid bone examinations and recommended that unaccompanied children shall benefit from all procedural safeguards when the authenticity of the documents proving their minority is questioned.<sup>320</sup> The Ombudsman has recalled this position many times in 2016, holding that the social evaluation had to prevail over the bone examination, in particular when the lack of authenticity of the identity documentation has not been proved.<sup>321</sup>

In its 2017 report, the Ombudsman pointed out that the difficulties persisted: bone examinations are maintained, some unaccompanied children are denied care and evaluation without justification, regardless of whether they have identity documents or not, as refusals are often based on racial profiling. At the same time, other children have to wait without accommodation or in really bad emergency housing during the really long examination of their situations.<sup>322</sup>

Moreover, Human Rights Watch published a report in 2019 relating to the treatment of unaccompanied children in the French **Hautes-Alpes** which demonstrated that France continues its practices of flawed age assessment procedures and summary returns of unaccompanied children at the border to Italy.<sup>323</sup> According to the report, the authorities do not comply with international standards and use various

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<sup>319</sup> Law n. 2016-297 of 14 March 2016 relating to child protection, available in French at: <http://bit.ly/2jd6t9b> ; Decree n. 2016-840 relating to reception and minority assessment conditions of minors temporarily or definitely deprived from the protection of their family, 24 June 2016, available in French at: <http://bit.ly/2j01GrO>.

<sup>320</sup> Children's Ombudsman, *Conference France terre d'asile "Unaccompanied minors: third country nationals or children"*, 30 October 2015.

<sup>321</sup> Ombudsman, Decision MDE-2016-052, 26 February 2016, available in French at: <http://bit.ly/2jghszL>; Ombudsman, Decision MDE 2016-113, 20 April 2016, available in French at: <http://bit.ly/2DnKCHb>.

<sup>322</sup> Ombudsman, *Children's rights in 2017*, November 2017, available in French at: <http://bit.ly/2AEpuJA>.

<sup>323</sup> Human Rights Watch, *Subject to Whim - The Treatment of Unaccompanied Migrant Children in the French Hautes-Alpes*, 5 September 2019, available at: <https://bit.ly/395iBTk>.

justifications to deny children protection. Research by HRW indicates that the flawed age assessment practice is common across the country. The research also affirms previous reports of summary returns of unaccompanied migrant children by French border police at the border between Italy and France. In the nine cases examined by HRW French authorities did not comply with the “entry refusal” procedure specific for children. The threat of summary returns pushes children to take ever more dangerous routes across the Alps, increasing the number of injuries and other health risks (see [Access to the territory and push backs](#)).<sup>324</sup>

The priority given to the bone examination, in case of producing identity papers whose authenticity is not properly denied, has been considered as unlawful. If there is no legitimate element to deny the authenticity of such documents, the bone examination must not prevail. The Court of Appeal in Lyon has recalled this principle in 2017 based on a loyal application of the legal instruments adopted in 2016.<sup>325</sup>

On 21 December 2018, the Court of Cassation referred a preliminary question to the Constitutional Court on the constitutionality of bone examinations for age assessment. The hearing took place on 19 March 2019,<sup>326</sup> and on 21 March 2019, the French Constitutional Court ruled that bone tests determining the age of young migrants are not unconstitutional. The case concerned a young Guinean, Adama. S, who declared to be 15 years old upon his arrival in France in 2016. A bone test concluded that his age was between 20 and 30 years. With the support of several civil society organisations, including Gisti, la Cimade, Médecins du monde and the Catholic Relief Service, he brought the case before the Constitutional Court as a preliminary priority question. The applicant claimed that the radiological examination of bones violated the principle of the ‘best interests of the child’. Due to its margin of error it led to unaccompanied minors being excluded from the beneficial provisions designed to protect them. Although the Court confirmed the constitutional character of the principle of the ‘best interest of the child’, it stated that the existence of a margin of error does not make the use of the test unconstitutional.<sup>327</sup>

In 2019, a guide for services in charge of age assessments has been published by the authorities, in order to harmonise current practices.<sup>328</sup> In practice, age assessment is always carried out in a very different way according to the territories.

### **Benefit of the doubt**

Young people are entitled to the benefit of the doubt in the event that an evaluation cannot establish their exact age, not least as recalled by Article 25(5) of the recast Asylum Procedures Directive. Once again, practice is not uniform across the country in this regard. In some *Départements*, assessment services assess very few young individuals as minors while in other *Départements*, the evaluation have led to more positive decisions.<sup>329</sup>

However, young people are rarely given the benefit of the doubt in practice. The State Prosecutor is the authority that decides on an age assessment dispute. In fact, the Prosecutor is responsible for issuing the order to place the child in care (temporarily or not) and may therefore request additional tests if there is a doubt about their age. Sometimes, the Prosecutor also closes the file with “no further action” without considering other investigations which may in certain cases confirm the person’s minority.

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<sup>324</sup> ECRE, ‘France: Report documents continued denial of rights to migrant children’, 5 September 2019, available at: <https://bit.ly/2S3hldx>.

<sup>325</sup> Court of Appeal of Lyon, Decisions Nos 16/0043, 16/00602 and 16/00770, 11 January 2017.

<sup>326</sup> Constitutional Court, 2018-768 QPC, available in French at: <https://bit.ly/2EjEYb8>.

<sup>327</sup> Constitutional Court, Decision No 2018-768, 21 March 2019, available in French at: <https://bit.ly/2ISAfIL>.

<sup>328</sup> Guide de bonnes pratiques en matière d’évaluation de la minorité et de l’isolement, December 2019, available in French at: <https://bit.ly/37WQYeM>.

<sup>329</sup> A 2018 report indicates that the rate varies from 9 to 100%, but data used for the purpose of this study are uncertain. IGAS, IGA, IGJ, ADF, *Rapport de la mission bipartite de réflexion sur les mineurs non accompagnés*, February 2018. Available in French at: <https://bit.ly/31cvCHN>.

Young people who are not assessed as minors by *Départements* have the possibility to seize the juvenile judge in order to be protected as minors, but during this procedure they will not have access to specialised reception centres that provide adequate care to children. Moreover, while they have the possibility to reach out to emergency and homeless shelters for adults, they cannot be accommodated if they claim to be minors. In summer 2020, 72 children who were considered as adults were evicted from an informal camp in the centre of **Paris** and referred to services for adults, multiple NGOs and support groups reported.<sup>330</sup> The same civil society organisations challenged these young people's age assessment before a court, arguing that they were children and deprived of child-protection services pending appeal.

In any case, having been determined to be above 18 as a result of an age assessment procedure has a significant impact on the young asylum seeker's ability to benefit from fundamental guarantees. The age assessment procedure does not entail the granting of new documentation. This means that the person might be considered alternatively as an adult or a child by various institutions. If Childcare Protection considers the asylum seeker is above 18, it will not provide for any legal representative for the person, whereas such representation is required for the registration of an asylum application. This may hinder the young person from submitting an asylum claim; in case a minor without legal representative presents him or herself in Prefecture to register an asylum claim, the Prefecture has to refer the case to the Prosecutor in order that for an *ad hoc* administrator to be appointed (see [Legal Representation of Unaccompanied Children](#)). Yet such a legal representative is sometimes not appointed, if the Prosecutor relies on the result of the age assessment procedure. In such cases, the person cannot lodge his or her claim before turning 18 or OFPRA suspends the processing of the asylum claim until he or she turns 18.

Conversely, in other situations, the child manages to register his or her asylum application with an *ad hoc* administrator, with minority being recognised by the Prosecutor at that stage, but is then recognised as adult after the evaluation. In this case, he or she can proceed with the asylum claim as a child but cannot benefit from any specific reception conditions either as an unaccompanied child or as an adult.

No statistics are available on the use of age assessment nationwide. A total of 9,501 young persons reported as unaccompanied minors were integrated in the national mechanism for childcare protection in 2020, a 43% increase compared to 16,670 in 2019.<sup>331</sup>

The 2018 asylum and immigration reform provided for the creation of an automated data processing system for unaccompanied children, aiming at "better guaranteeing child protection and at the prevention of illegal entry and stay of foreigners in France".<sup>332</sup> A Decree of 30 January 2019 has further detailed this database and the evaluation process for unaccompanied children.<sup>333</sup> As a result, all young persons applying for support as unaccompanied children are from now on required to register at Prefectures their personal data, including fingerprints, photograph and documents, while Childcare Protection may ask the Prefecture for help in the evaluation process as regards the identity of a young person. This new system is applied very differently depending on the competent department. In certain circumstances it deteriorated the evaluation system by placing increased attention to control rather than protection needs, thus resulting in confusion for the young migrants and an unfavorable context for an assessment in confidence,<sup>334</sup> despite the guarantees set by the Constitutional court in July 2019; namely that tests must

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<sup>330</sup> Médecins du Monde and others, '*Campement de mineurs non accompagnés à Paris : nous dénonçons l'incompréhensible inaction des responsables politiques*', Press release, 29 July 2020 available in French at: <https://bit.ly/3aNmMtp>.

<sup>331</sup> Ministry of Justice, *Mission mineurs non accompagnés*. Online data, available in French at: <https://bit.ly/2YLoFgw>.

<sup>332</sup> Article L.611-6-1 Céseda, inserted by Article 51 Law n. 2018-778 of 10 September 2018.

<sup>333</sup> Decree n. 2019-57 of 30 January 2019 on methods of evaluation of persons reporting as unaccompanied minors and authorising the creation of a personal information data-file concerning those persons.

<sup>334</sup> Updated information on how this system is implemented are provided, department by department, by the NGO InfoMIE. The website is accessible in French at : <https://bit.ly/37WGXOI>.

be decided by the judicial authority, ordered only in the absence of valid identity documents. If there are doubts on the age, the person concerned, informed in a language he or she understands, must consent to the test (the refusal itself cannot be enough to prove the majority), taking into account the margin of error surrounding the conclusions of the radiological examination.<sup>335</sup>

## 2. Special procedural guarantees

### Indicators: Special Procedural Guarantees

1. Are there special procedural arrangements/guarantees for vulnerable people?
 

❖
If for certain categories, specify which:

☐ Yes

☒ For certain categories

☐ No

Unaccompanied children, victims of torture, Violence or trafficking, LGBTI persons

Throughout the asylum procedure, OFPRA is competent for adopting specific procedural safeguards pertaining to an asylum seeker's specific needs or vulnerability.<sup>336</sup>

### 2.1. Adequate support during the interview

The Ceseda does not define the notion of “adequate support” contained in Article 24(3) of the recast Asylum Procedures Directive. However, specific procedural safeguards relating to the interview include:<sup>337</sup>

- a. The presence of a third person during the interview with the OFPRA protection officer. Even though this provision does not specifically concern vulnerable applicants, it can be particularly relevant and useful for these categories of asylum seekers;
- b. The possibility for an asylum seeker to ask that the interview be conducted by a protection officer and with an interpreter from a specific gender. This request has to be motivated and manifestly founded by the difficulty to express the grounds for his or her claim in presence of people from a certain gender (especially in situations of sexual violence);
- c. The presence of a mental health professional for asylum seekers suffering from severe mental disease or disorder.

The law maintains the possibility for the asylum seeker to request a closed-door audience with the CNDA. This decision can also be taken by the President of the court session if circumstances so require.<sup>338</sup>

OFPRA has set up 5 thematic groups (*groupes de référents thématiques*) of about 20-30 staff each, covering the following elements: sexual orientation and gender identity; unaccompanied children; torture; trafficking in human beings; and violence against women.<sup>339</sup> The thematic groups follow internal guidelines developed by the *référents* and revised every year. OFPRA has also established a position of Head of Mission – Vulnerability as of 2016.

These officials follow specialised training on the specific issues they deal with:

- Officers dealing with claims from unaccompanied children must be specifically trained on this matter. They are trained on the particularities of asylum claims lodged by young individuals and also have to attend a mandatory training on techniques for collecting personal stories, using the EASO training module on Interviewing Children;
- A protection officer may interview an applicant presenting other vulnerabilities. In such cases, officers are trained based on internal training packs which refer to external sources e.g. TRACKS project or GRETA report for victims of trafficking.

<sup>335</sup> Constitutional Court, Decision n°2019-797, 26 July 2019, available in French at: <https://bit.ly/2S9xRYe>.

<sup>336</sup> Article L.723-3 Ceseda.

<sup>337</sup> Article L.723-6 Ceseda.

<sup>338</sup> Article L.733-1-1 Ceseda.

<sup>339</sup> OFPRA, 2016 Activity report, 28.

- From 2013 to 2018, Forum réfugiés – Cosi and the Belgian NGO Ulysse have conducted several 2-day trainings for OFPRA protection officers on victims of torture with two main objectives: helping them to take into account the difficulties asylum seekers may face when they have to share their story after traumatic events and providing tools to protection officers for handling these situations.

It is unknown whether additional trainings were conducted throughout 2020.

In addition, OFPRA staff is trained on issues related to testimonies recounting painful events during the interview process. It is particularly important as the lack of sensitive approaches to vulnerable applicants has had further negative consequences. For instance, it means that no special precautions are taken in the formulation of a negative answer. According to a social worker from Forum réfugiés – Cosi, for instance, some negative decisions mention the fact that the claimant had shown no emotion when recalling the rape she had been subjected to or that the claimant seemed distant from the recollection of the abuses she was describing. Asylum seekers can be extremely hurt when they see such comments in the summary of their interviews.

According to a recent report by the Quality Council, OFPRA has marked notable improvements in terms of sensitivity and professionalism vis-à-vis asylum claims lodged by women.<sup>340</sup> In addition, by the end of 2019, more than 9,000 were under OFPRA protection on grounds of risk of female genital mutilation (FGM).<sup>341</sup>

In 2019, Forum refugees-Cosi further organised trainings for 37 employees of the CNDA, focusing on interviews in which painful stories and experiences are being shared. No further trainings were organised in 2020.

## 2.2. Prioritisation and exemption from special procedures

OFPRA can decide to prioritise the processing of a claim from a vulnerable applicant having special reception or procedural needs.

Similarly, OFPRA can decide not to process the claim under the [Accelerated Procedure](#) on the basis of vulnerability or the specific needs of the applicant. Yet, no more than 24 claims (0.06%) were exempted from the accelerated procedure out of a total of 37,759 claims accelerated in 2018.<sup>342</sup> An improvement was noted in 2019, when OFPRA rechannelled 206 cases into the regular procedure out of a total of 40,677 cases processed in the accelerated procedure.<sup>343</sup> More recent statistics on the year 2020 were not available at the time of writing of this report.

In addition, three grounds for placing an asylum seeker under the accelerated procedure may not applied to unaccompanied children: (a) use of false identity or travel documents or false information; (b) reasons unrelated to international protection; and (c) manifestly contradictory or incoherent information, or statements that are clearly contradicted by country of origin information.<sup>344</sup>

<sup>340</sup> Haut-Conseil à l'Égalité, *Situation des femmes demandeuses d'asile en France après l'adoption de la loi portant réforme du droit d'asile*, 18 December 2017, available in French at: <http://bit.ly/2mVvoBM>, 25.

<sup>341</sup> OFPRA, 'Les premières données de l'asile 2019 à l'OFPRA', 21 January 2020, available in French at : <https://bit.ly/3biDYm4>.

<sup>342</sup> OFPRA, *2018 Activity report*, 21

<sup>343</sup> OFPRA, *2019 Activity report*, 22

<sup>344</sup> Article L.723-2(4) Ceseda.

## Exemption from the border procedure

Similarly in the [Border Procedure](#), OFPRA can consider that an asylum seeker in a waiting zone requires specific procedural safeguards and thus terminate the detention.<sup>345</sup> However, the law does not completely forbid the examination of vulnerable asylum seekers' claims under border procedures.

Unaccompanied children are also subject to the border procedure in waiting zones,<sup>346</sup> albeit in a more restrictive way than adults. According to the law, an unaccompanied child can be held in a waiting zone only under exceptional circumstances listed in the law:<sup>347</sup>

- (1) The unaccompanied child originates from a [Safe Country of Origin](#);
- (2) The unaccompanied child introduces a subsequent application deemed inadmissible;
- (3) The asylum claim is based on falsified identity or travel documents; or
- (4) The presence of the unaccompanied minor in France constitutes a serious threat to public order, public safety or national security.

In practice, since the majority of unaccompanied children arriving at the border hold false documents, the criterion of falsified identity or travel documents is widely applied as ground to conduct a border procedure for this category of asylum seekers. While 71.2% of unaccompanied minors were granted entry in 2019, this number was low as 51.6% in 2018; 24.3% in 2016 and 37% in 2015. This means that in 2018, nearly half of all unaccompanied minors making an asylum claim at the border were refused access to the territory; a situation that applied to 3 in 4 unaccompanied minors in 2016 and to the large majority of them in 2015. This raises important concerns, taking into consideration that the border procedure should in principle only be applied exceptionally to unaccompanied minors.

The OFPRA further developed a system for the signalling of vulnerabilities in waiting zones. Any person authorised to be present in waiting zones, including the NGOs accredited to that effect,<sup>348</sup> can alert OFPRA of the existence of vulnerabilities through a functional email address.<sup>349</sup> When a person is identified as vulnerable during the border procedure, the OFPRA may request his/her release from the waiting zones.<sup>350</sup> This is marginally used in practice, as only a few referrals were made in recent years and because of the limited presence of NGOs (see legal assistance). In 2016, only 5 persons have been released from the waiting zones due to their vulnerability;<sup>351</sup> and none in 2017.<sup>352</sup>

Overall, given the tight deadlines of the border procedure, which require OFPRA to issue an opinion to the Ministry of Interior within two working days, it is unlikely that vulnerable asylum seekers are able to benefit from "sufficient time" to put forward their claim. Moreover, practice suggests that applicants are not released from waiting zones, even in cases where their vulnerability is reported by NGOs. For example, there has been a case where the vulnerability of an 8-months pregnant woman was reported by Anafé to the OFPRA, but she continued to be held in the transit zone. She further had to stand for an hour during the interview, as the latter was conducted through a wall mounted telephone.<sup>353</sup>

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<sup>345</sup> Article L.213-9 Céseda.

<sup>346</sup> For detailed additional information on the risks for children at borders, see Anafé, *Brève 2016 - Mineurs isolés en zone d'attente : droits en péril aux frontières françaises*, 2 May 2017, available in French at: <http://bit.ly/2CZGtLP>; UNICEF, 'Enfants non accompagnés : la protection de l'enfance doit s'exercer aussi à la frontière franco-italienne', 13 December 2017, available in French at: <http://bit.ly/2pXsgoG>.

<sup>347</sup> Article L.221-2 Céseda.

<sup>348</sup> Article L.213-8-1 CESEDA.

<sup>349</sup> ECRE/AIDA, *Access to asylum and detention at France's borders*, June 2018, available at: <https://bit.ly/3jEbV53>, 22.

<sup>350</sup> Article L.221-1 CESEDA.

<sup>351</sup> OFPRA, Annual report - 2016, 2017, available in French at: <https://bit.ly/3aaXulX>, 42.

<sup>352</sup> ECRE/AIDA, *Access to asylum and detention at France's borders*, June 2018, available at: <https://bit.ly/3jEbV53>, 20.

<sup>353</sup> Information provided by Anafé, 17 September 2020.

### 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      ☒ In some cases      ☐ No

The Ceseda mentions that medical reports may be taken into account by OFPRA along with other elements of the asylum claim.<sup>354</sup> In practice, such reports are considered in the light of the applicant's statements. Applicants often present medical certificates from specialised centres. According to some doctors, all too often, their certificates are not taken into account, as OFPRA often dismisses them as evidence, without seeking a second opinion. The medical report is paid for by asylum seekers via the state supported medical insurance: the "*protection universelle maladie*" (PUMA) or "*aide médicale d'Etat*" (AME).

A medical certificate to confirm the absence of female genital mutilation (FGM) is requested during the examination of an asylum request presented by a young woman or girl based on that risk in her country of origin.<sup>355</sup> During the OFPRA interview, the woman applying for asylum in her own name will be asked to demonstrate the reasons why she fears to be subjected to FGM in case of return to her country of origin. If the asylum claim is made on behalf of a child, both parents will have to bring such evidence. Once a protection has been granted, the requirement of a medical certificate remains, as long as the risk exists and as long as the person concerned is under 18. OFPRA requires thus that a medical certificate be sent every three year, proving that the person has still not undergone FGM.<sup>356</sup> OFPRA may though require a medical certificate within that period of time if it has serious reasons to believe that sexual mutilation has been or could be practised. A Decree of 23 August 2017 specifies the terms of this obligation, the list of authorised doctors, and consequences of refusal for parents.<sup>357</sup>

The consideration of medical certificates at the CNDA can vary a lot. A poorly argued dismissal of a medical certificate by the CNDA was criticised by the European Court of Human Rights (ECtHR) in September 2013.<sup>358</sup> The applicant, of Tamil ethnic origin, had provided a medical certificate from the doctor of the waiting zone in the Paris CDG airport describing several burn injuries. The Court found that the CNDA had failed to effectively rebut the strong presumption raised by the medical certificate of treatment contrary to Article 3 ECHR and therefore that the forced return of the applicant to Sri Lanka would place him at risk of torture or inhuman or degrading treatment.

On 10 April 2015, the Council of State applied the position of the ECtHR for the first time ever since its condemnation in September 2013. It cancelled the CNDA decision, considering it should have duly taken into account the medical report presented by the asylum seeker as it was supporting his story and explaining his fears in case he would be deported back to his country of origin. As from this judgment, the CNDA has to take into consideration documents, such as medical reports, presenting elements relating to alleged risks and fears. The Court also has to justify why it would not consider these elements as serious.<sup>359</sup> This significantly strengthens the consideration for psychological and physical wounds of

<sup>354</sup> Article L.723-5 Ceseda.

<sup>355</sup> Articles L.723-5 and L.752-3 of Ceseda.

<sup>356</sup> Article L752-3 Ceseda

<sup>357</sup> Decree NOR: INTV1721843A of 23 August 2017, available in French at: <http://bit.ly/2CTyzAm>.

<sup>358</sup> ECtHR, *RJ v France*, Application No 10466/11, Judgment of 19 September 2013, available at: <http://bit.ly/1HBYxIE>.

<sup>359</sup> Council of State, Decision No 372864, 10 April 2015, available in French at: <http://bit.ly/1hjmyZ2>.

asylum seekers and balances the power of the CNDA compared to the asylum seeker.<sup>360</sup> Through a decision of 17 October 2016, the Council of State reiterated and reinforced this position.<sup>361</sup>

In November 2016, the organisation Primo Levi published a study on the way medical certificates, stating physical or psychological wounds, are taken into account by asylum decision-makers in France. The report of this organisation highlights several elements, mainly that:<sup>362</sup>

- Physical and psychological wounds are not equally considered by the protection officers or by the judges. The first category seems to have more credibility to them;
- Even when such a certificate is produced to the decision makers, they do not seem to draw the conclusions of the impact of the established wound on the capacity of the asylum seekers to tell their story in a convincing way.

There is no more recent study on the matter but these issues continued to be reported in 2020.

#### 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

In 2019, 755 asylum claims from unaccompanied children were registered by OFPRA. This represents an increase of 2 % compared to the 742 asylum claims lodged in 2018.<sup>363</sup> Statistics on the year 2020 were not available at the time of writing. After keeping on decreasing since 2011, the number of claims introduced by unaccompanied children has increased in line with the overall number of asylum seekers in Europe. Yet, it remains very low compared to the overall number of unaccompanied children reported to Childcare Protection.

In 2019 the unaccompanied children seeking asylum in France mainly came from **Afghanistan** (207 asylum claims), **DRC** (97) and **Guinea** (78). The socio-demographic characteristics of these asylum seekers show that 86.4 % are aged between 16 and 17 years old and 72.3% were boys. In 2019, the recognition rate was 67% at OFPRA (81.5% with appeal), i.e. 40% above the recognition rate of adults.<sup>364</sup>

OFPRA has sought to improve the protection of unaccompanied children seeking asylum (see also [Special Procedural Guarantees](#)). According to the Chair of the working group on unaccompanied minors at OFPRA, a number of actions and objectives have been set up:

- ❖ Training protection officers throughout all geographic sections on vulnerabilities, in particular on assessing an asylum claim introduced by an unaccompanied minor and conducting an interview with this category of asylum seekers.
- ❖ Assessing unaccompanied minors' claim in a shortened period of time: the objective is to have their claim processed within 4 months maximum.
- ❖ Raising awareness on the possibility for unaccompanied minors to apply for asylum;
- ❖ Conducting interviews of unaccompanied minors by specially trained protection officers;
- ❖ Interviewing unaccompanied minors three months after registering their claim at OFPRA to give them time to get properly prepared;
- ❖ Proceedings have been harmonised and online thematic folders on this topic have been created for protection officers.<sup>365</sup>

<sup>360</sup> Nicolas Klausser, "Vers un renforcement du « droit » à une procédure équitable des demandeurs d'asile et une meilleure prise en compte de leurs traumatismes ?", La revue des droits de l'homme, May 2015.

<sup>361</sup> Council of State, Decision No 393852, 17 October 2016.

<sup>362</sup> Association Primo Lévi, *Persécutés au pays, déboutés en France : Rapport sur les failles de notre procédure d'asile*, November 2016, available in French at: <http://bit.ly/2iV4Tg0>.

<sup>363</sup> OFPRA, *2019 Activity report*.

<sup>364</sup> *Ibid.*

<sup>365</sup> OFPRA, *2016 Activity report*, 31.

As unaccompanied children do not have any legal capacity as minors, they must be represented for any act under all asylum procedures. When they are deprived of legal representation (i.e. if no guardian has been appointed by the guardianship judge before placement in care), the Public Prosecutor, notified by the Prefecture, should appoint an *ad hoc* administrator (legal representative) who will represent them throughout the asylum procedure.<sup>366</sup> This legal representative is appointed to represent the child only in administrative and judicial procedures related to the asylum claim. This person is not tasked to ensure the child's welfare the way a guardian would be. Every 4 years, within the jurisdiction of each Appeal Court, a list of *ad hoc* administrators is drawn up. They represent children held in waiting zones at the border or children who have applied for asylum. These *ad hoc* administrators receive a flat allowance to cover their expenditure. No specific training or at minimum awareness of asylum procedures is required for their selection.<sup>367</sup>

As soon as possible after the unaccompanied child has introduced his or her asylum claim, the Prefecture shall engage in investigating to find the minor's family members, while protecting his or her best interests.<sup>368</sup>

At the border, an *ad hoc* administrator should be appointed "without delay" for any unaccompanied child held in a waiting zone.<sup>369</sup>

In practice, the appointment of an *ad hoc* administrator can take between 1 to 3 months. However, there are jurisdictions where the lack of *ad hoc* administrators or their insufficient number does not enable the prosecutor to appoint any. These children are therefore forced to wait until they turn 18 to be able to lodge their asylum application at OFPRA.

At OFPRA level, the *ad hoc* administrator is the only person authorised to sign the asylum application form. The CNDA has annulled an OFPRA decision rejecting an asylum claim of an unaccompanied child, after an interview conducted without the presence of the *ad hoc* administrator. In this decision, the Court held the conduct of an interview in such circumstances as a violation of the fundamental guarantees applicable to asylum seekers.<sup>370</sup>

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<sup>366</sup> As provided by Article 17 Law of 4 March 2002 on parental authority and by Article L.741-3 Ceseda.  
<sup>367</sup> Article R.111-14 Ceseda provides that, in order to be included in the list, any individual person must meet the following criteria: 1. Be aged between 30 and 70; 2. Demonstrate an interest on youth related issues for an adequate time and relevant skills; 3. Reside within the jurisdiction of the Appeal Court 4. Never have been subject to criminal convictions, or to administrative or disciplinary sanctions contrary to honour, probity, or good morals; 5. Have not experienced personal bankruptcy or been subject to other sanctions in application of book VI of the commercial code with regard to commercial difficulties.

<sup>368</sup> Article L.741-4 Ceseda.

<sup>369</sup> Article L.221-5 Ceseda.

<sup>370</sup> CNDA, *Mme Y*, Decision No 14012645, 5 October 2016.

## 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<sup>371</sup>
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

An application is deemed as “subsequent” where it is made after:<sup>372</sup>

- The rejection of an asylum application by the CNDA or by OFPRA without appeal;
- The asylum seeker had previously withdrawn his or her asylum claim and did not ask for a reopening within 9 months;
- OFPRA has taken a decision to discontinue the processing of the claim and a 9-month period has elapsed;<sup>373</sup>
- The asylum seeker has left the French territory, including to go back to his or her country of origin.

There are no limits on the number of subsequent applications that can be introduced.

In order for the asylum seeker to introduce a subsequent application he or she must, as all asylum seekers, present him or herself to the Prefecture to register his or her claim and obtain an asylum claim certification.<sup>374</sup> Since March 2017, the person has to go back to the orientation platform (PADA) to obtain an appointment at the GUDA like all asylum seekers.

The Prefecture can refuse to grant the asylum seeker with this certification when a first subsequent application has already been rejected by OFPRA or when a first subsequent application is submitted in order to prevent a compulsory removal order.<sup>375</sup> In case of a subsequent application, the authorised period to send the completed asylum claim is shorter than in case of a first application: instead of 21 days, the asylum seeker has 8 days to introduce his or her subsequent claim before OFPRA.<sup>376</sup> In case the claim is incomplete, the asylum seeker has 4 days, instead of 8 in case of a first application, to send missing elements.

If a removal order has been issued following the rejection of the first asylum application, it will be suspended during the examination of the first subsequent application by OFPRA.<sup>377</sup>

### Assessment of new facts or circumstances

When OFPRA receives the subsequent application it proceeds to a preliminary examination within 8 days in order to determine whether the subsequent application is admissible or not.<sup>378</sup> The assessment of admissibility has been further interpreted by case law. The Council of State has upheld the CNDA position stating that the preliminary assessment of the admissibility of a claim must fulfil two cumulative conditions:

<sup>371</sup> No systematic suspensive effect.

<sup>372</sup> Article L.723-15 Ceseda.

<sup>373</sup> Article L.723-13 Ceseda. Note that this decision is appealed not before the CNDA but before the Administrative Court: Council of State, Decision No 412292, 17 January 2018.

<sup>374</sup> Article R.723-15 Ceseda.

<sup>375</sup> Article L.741-1 Ceseda.

<sup>376</sup> Article R.723-15 Ceseda.

<sup>377</sup> Article L.743-4 Ceseda.

<sup>378</sup> Article R. 723-16 Ceseda.

(a) the alleged facts or circumstances must be “new”; and (b) their probative value must be such as to warrant a modification of the assessment of the well-foundedness of the claim.<sup>379</sup>

With regard to the first limb, the Council of State ruled later in 2018 that a final judgment by the ECtHR finding that a removal measure to the country of origin would constitute a violation of Article 3 ECHR constitutes new evidence, warranting admissibility of the subsequent application.<sup>380</sup>

To support his or her subsequent application, the asylum seeker must provide in writing “new evidence” or facts subsequent to the date of the CNDA decision, or evidence occurring prior to this date if he or she was informed thereof only subsequently.<sup>381</sup> In practice, a previous fact could also be considered as “new”, if the asylum seeker had not referred to it during the first application due to his or her being “under coercion”. This mainly concerns women who have been victims of human trafficking (i.e. prostitution) and who must then prove their escape from prostitution rings.

In practice, it is difficult to provide evidence of new information and to prove its authenticity to substantiate subsequent claims. Asylum seekers often face difficulties in accessing the documents needed to prove new information e.g. difficulty in contacting their country of origin to obtain the evidence.

### **Preliminary admissibility procedure**

During the preliminary examination of the subsequent application, OFPRA is not compelled to interview the asylum seeker.

If, after the preliminary examination OFPRA considers that this “new evidence” or facts do not significantly increase the risk of serious threats or of personal fears of persecution in case of return, it can declare the subsequent application inadmissible. The decision of OFPRA must be notified to the asylum seeker and information relevant to the procedure and deadlines for lodging an appeal must also be shared.<sup>382</sup> On the contrary, if the subsequent application is admissible, OFPRA has to channel it under the accelerated procedure and summon the asylum seeker to an interview. So far, the practice has demonstrated that asylum seekers who lodge a subsequent application often do not get an interview.

An appeal can be lodged before the CNDA within a time period of 1 month. However, following the 2018 reform, this appeal has no suspensive effect.<sup>383</sup> The CNDA will then have 5 weeks to issue a decision on the appeal.<sup>384</sup> Negative decisions “by order” (*ordonnance*) continue to be common practice.

Out of the total of 95,600 applications registered by OFPRA in 2020, 8,830 were subsequent applications, thus representing 9.2% of the total number of applications registered <sup>385</sup> (compared to 9,084 subsequent applications in 2019, representing 6.8% of the total number of applications registered,<sup>386</sup> and 9,421 subsequent applications in 2018).

As from the notification of a negative decision by OFPRA on a first subsequent application, regardless of its admissibility or not, the Prefecture can refuse to deliver or renew the asylum claim certification and can issue an order to leave the French territory (OQTF).<sup>387</sup>

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<sup>379</sup> Council of State, Decision No 3979611, 26 January 2018; CNDA, Decision Nos 15025487 and 1502488, 7 January 2016.

<sup>380</sup> Council of State, Decision No 406222, 3 October 2018.

<sup>381</sup> Article L.723-16 *Ceseda*.

<sup>382</sup> Article L.723-11(3) *Ceseda*.

<sup>383</sup> Article L.743-2 *Ceseda*, as amended by Article 12 Law n. 2018-778 of 10 September 2018.

<sup>384</sup> Article L.731-2 *Ceseda*.

<sup>385</sup> OFPRA, *Premières données de l’asile 2020*, 21 January 2021.

<sup>386</sup> Ministry of Interior, *Chiffres clés – Les demandes d’asile*, 21 January 2020.

<sup>387</sup> Article L 743-2 *Ceseda*

## 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 checked="" type="checkbox"/> Yes <input type="checkbox"/> No |
| ❖ Is the safe country of origin concept used in practice?                            | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |
| 2. Does national legislation allow for the use of “safe third country” concept?      | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |
| ❖ Is the safe third country concept used in practice?                                | <input type="checkbox"/> Yes <input checked="" 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 |

The safe country concepts were heavily debated in the context of the 2018 asylum reform. While the government had announced preliminary plans to codify the concept of “safe third country” in French law, this was later abandoned in the bill.<sup>388</sup>

### 1. First country of asylum

The “first country of asylum” concept, requiring that a person has obtained international protection in a third country, is a ground for inadmissibility.<sup>389</sup> The possibility of enjoying “sufficient protection” is not enough to justify inadmissibility. Inadmissibility is declared when the asylum seeker is entitled to enjoy “effective protection”. Considering the effective protection an EU Member State has to provide, the Council of State has defined this protection as follows:

- The State respects the rule of law;
- The State is not targeted by any mechanism of Article 7 of the founding Treaty; and
- The State does not violate any fundamental right out of those prescribed in Article 15 ECHR.<sup>390</sup>

Regarding the effective protection granted in a non-EU Member State, the Council of State only refers to the effective protection without detailing what it is made of.<sup>391</sup>

In 2017, OFPRA took 214 inadmissibility decisions on this ground.<sup>392</sup> No further statistics have been released since then, but in 2019, OFPRA specified that **Syria, Somalia** and Afghanistan were the main countries of origin of asylum seekers who have been notified inadmissibility decisions on this ground.<sup>393</sup>

### 2. Safe country of origin

#### 2.1. Definition and procedural consequences

The notion of safe countries of origin was introduced in French legislation by the Law of 10 December 2003.<sup>394</sup> The definition is completed by the reference to the definition provided in Annex 1 of the recast Asylum Procedures Directive that provides that:

“A country is considered as a safe country of origin where, on the basis of the legal situation, the application of the law within a democratic system and the general political circumstances, it can be shown that there is generally and consistently no persecution as defined in Article 9 of Directive

<sup>388</sup> Libération, ‘Les candidats à l’asile ne seront finalement pas renvoyés vers des «pays tiers sûrs»’, 20 December 2017, available in French at: <http://bit.ly/2DR597b>.

<sup>389</sup> Article L.723-11 Ceseda.

<sup>390</sup> Council of State, *Cimade et M.O.*, Decisions Nos 349735 and 349736, 13 November 2013.

<sup>391</sup> Council of State, *OFPRA v. M.S.*, Decision No 369021, 17 June 2015.

<sup>392</sup> OFPRA, *2017 Activity report*, 52.

<sup>393</sup> OFPRA, *2019 Activity report*, 58.

<sup>394</sup> Law n. 2003-1176 of 10 December 2003 on the right to asylum.

2011/95/EU, no torture or inhuman or degrading treatment or punishment and no threat by reason of indiscriminate violence in situations of international or internal armed conflict.”

By law, a country is considered safe “if it ensures respect for the principles of freedom, democracy and the rule of law, as well as human rights and fundamental freedoms”. The definition has been complemented with the 2018 reform, and now states that the absence of persecution has to be considered for men and women, regardless of their sexual orientation.<sup>395</sup>

Applications from safe countries of origin are to be systematically processed by OFPRA within an [Accelerated Procedure](#),<sup>396</sup> except under special circumstances relating to vulnerability and specific needs of the asylum seeker or if the asylum seeker calls upon serious reasons to believe that his or her country is not be safe given his or her personal situation and the grounds of his or her claim.<sup>397</sup>

## 2.2. List of safe countries of origin

The first list of safe countries of origin was established in June 2005 by the OFPRA Management Board. Every time a country is removed from or added to the list, the deliberations of the Management Board are published in the Official Journal. This list can be reviewed in OFPRA Board meetings. However, the composition of the Management Board has been modified, partly to strengthen the amending procedure of the list. In addition, qualified personalities (*personnalités qualifiées*) can vote on the constitution of the list of safe countries of origin.

The board is constituted by 16 members:<sup>398</sup>

- 2 personalities (one male, one female) nominated by the Prime Minister;
- 1 representative of the Ministry of Interior;
- 1 representative of the Ministry in charge of Asylum;
- The Secretary General of the Ministry for Foreign Affairs;
- The Director for Civil Affairs and Seal of the Ministry of Justice;
- 1 representative of the Ministry of Social Affairs;
- 1 representative of the Ministry in charge of Women’s Rights;
- 1 representative of the Ministry for overseas territories;
- The Director of the Budget for the Ministry in charge of the Budget;
- 2 Members of Parliament (one male, one female);
- 2 Senators (one male, one female); and
- 2 Members of the European Parliament (one male, one female).

Not only can the Management Board decide on its own initiative to amend the list but also the reform of the law on asylum provides that presidents of the Committee of Foreign Affairs and the Committee of the Laws of both houses (Parliament and Senate) or civil society organisations promoting asylum right, third country nationals’ rights, or women and/or children’s rights can refer to the Management Board that one country should be registered or crossed off the list of safe countries of origin.<sup>399</sup>

The list has to be regularly re-examined by the Management Board in order to make sure that the inscription of a country is still relevant considering the situation in the country. “In case of quick and uncertain developments in one country, it can suspend its registration.”

The sources used by the Management Board of OFPRA to substantiate its decisions are not officially published. OFPRA has an internal resources service working on country of origin information and a

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<sup>395</sup> Article L.722-1(4) Ceseda, as amended by Article 6 Law n. 2018-778 of 10 September 2018.

<sup>396</sup> Article L.723-2(1)(1) Ceseda.

<sup>397</sup> Article L.723-2(5) Ceseda.

<sup>398</sup> Article L.722-1 Ceseda.

<sup>399</sup> Article L.722-1(2) Ceseda.

UNHCR representative sits in the management board meetings, but the process lacks transparency as to the sources of information used to decide on the safety of a country.

The list of countries considered to be safe countries of origin is public. At the end of 2020 it included the following 15 countries:<sup>400</sup>

- Albania;
- Armenia;
- Bosnia-Herzegovina;
- Cape Verde;
- Georgia;
- Ghana;
- India;
- Kosovo;
- North Macedonia;
- Mauritius;
- Moldova;
- Mongolia;
- Montenegro;
- Senegal;
- Serbia.

Several countries have been removed from the list by the Management Board of OFPRA (but can sometimes also be reintroduced in the list at a later stage):

<i>Country</i>	<i>Withdrawal or suspension by OFPRA Management Board</i>
Tanzania	October 2015 - Withdrawn
Croatia	June 2013 – Withdrawn
Georgia	November 2009 (previously withdrawn currently on the list)
Mali	December 2012 – Withdrawn
Ukraine	March 2014 – Withdrawn
Benin	September 2020 – Suspended for a year

Moreover, decisions to add a country to the list can be challenged before the Council of State by third parties. The Council of State has removed several countries from the list:

<i>Country</i>	<i>Removal by Council of State</i>
Albania	February 2008; March 2012 (currently on the list)
Armenia	July 2010
Bangladesh	March 2013
Kosovo	March 2012; October 2014 (currently on the list)
Madagascar	July 2010
Mali	July 2010 (for women only)
Turkey	July 2010

In a decision of 16 December 2013, the Management Board of OFPRA added **Albania**, **Georgia** and **Kosovo**.<sup>401</sup> In a decision of 10 October 2014,<sup>402</sup> the Council of State removed Kosovo from the list of safe countries of origin but maintained Albania and Georgia. The Ministry of Interior sent an instruction to the

<sup>400</sup> OFPRA, *List of Safe Countries of Origin*, 9 October 2015, available at: <http://bit.ly/1YLOFBc>.

<sup>401</sup> Decision of 16 December 2013 modifying the list of safe countries of origin (*Décision du 16 décembre 2013 modifiant la liste des pays d'origine sûrs*), JORF n°0301 of 28 December 2013, available at: <http://bit.ly/1LI8R1H>, 26152.

<sup>402</sup> Council of State, *Forum réfugiés-Cosi and Others v OFPRA*, Decision No 375474 and 375920, 10 October 2014, available at: <http://bit.ly/1JCEIS5>.

Prefects on 17 October 2014 calling them to generally channel the asylum seekers from Kosovo into the regular procedure and to deliver them a temporary residence permit enabling them to be accommodated in reception centres for asylum seekers.<sup>403</sup> However, on 9 October 2015, the Management Board of OFPRA met to update the list of safe countries of origin and has decided to reintroduce Kosovo to the list.

The reintroduction of **Kosovo** has been challenged to the Council of State by several French NGOs, including Forum réfugiés – Cosi, Cimade, Dom’Asile, GISTI, Elena France and JRS France among others. They also wanted the withdrawal from this list of **Senegal, Albania, Armenia and Georgia**. It has to be mentioned these countries are the five main safe countries of origin of asylum seekers in 2015.<sup>404</sup> On 30 December 2016, the Council rejected the applications and upheld the list in its current form.<sup>405</sup> When upholding the legality of the inclusion of Kosovo in the list, the Council of State took into account the fact that the country has been inserted in the European Commission proposal for an EU list of safe countries of origin.<sup>406</sup>

In October 2019, the Management Board of OFPRA decided to maintain the current list of safe countries of origin, but added that the situation in Benin will be reviewed within six months.<sup>407</sup> In September 2020, the Management Board of OFPRA decided to suspend the placement of **Benin** as safe country of origin during 12 months.<sup>408</sup>

In 2019, 22,649 first-time applications (excluding minors) were lodged by persons originating from the 16 “safe countries of origin” (20% of all first asylum applications). In 2020, applicants from **Albania** and **Georgia** were not in the top ten countries of origin of asylum seekers in France, as opposed to previous years.

## 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<sup>409</sup> ☐ No

The provision of information is codified in Article R.751-2 Ceseda:

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

<sup>403</sup> Ministry of Interior, Information Note INTV1424567N of 17 October 2014.

<sup>404</sup> OFPRA, *2016 Activity report*, 39.

<sup>405</sup> Council of State, Decisions Nos 395058, 395075, 395133 and 395383, 30 December 2016.

<sup>406</sup> Forum réfugiés – Cosi, ‘Pays d’origine sûrs : le Conseil d’Etat valide la nouvelle liste’, 30 December 2016, available in French at: <http://bit.ly/2j4JpIS>.

<sup>407</sup> OFPRA, *Press release*, 5 October 2019, available in French at: <https://bit.ly/37MsAwD>.

<sup>408</sup> OFPRA, *Press release*, 29 September 2020, available in French at: <https://bit.ly/3jjcalM>.

<sup>409</sup> This largely depends on the knowledge and expertise of the social worker in charge of the unaccompanied child.

Information is provided in a language that the asylum seeker understands or is likely to understand.<sup>410</sup> This information have been compiled under a general “Guide for asylum seekers in France” (*guide du demandeur d’asile en France*). The guide is supposed to be provided by the Prefecture. The guide has been updated in September 2020 and is available in French and 30 other languages.<sup>411</sup>

Practices used to vary from one Prefecture to another, and many failed to provide the guide. From the point of view of stakeholders supporting asylum seekers, even though this guide is a good initiative, it appears that most of asylum seekers cannot read or do not understand the meaning of the guide.

OFPRA published, however, a guide on procedures which has shown to be very useful both for asylum seekers and for practitioners. This includes information on the regular procedure, inadmissibility and accelerated procedures, appeals, the interview, the content of protection etc. The last version was updated in December 2019.<sup>412</sup>

Moreover, OFPRA published a guide on the right of asylum for unaccompanied minors in France in 2014, which was subsequently updated in 2020.<sup>413</sup> The guide is quite comprehensive, describing the steps of the asylum procedure, the appeals and the procedure at the border. However, it is more used by professionals than by minors themselves because it remains hard to understand. OFPRA has stated its intention to share this guide as widely as possible in Prefectures, in waiting zones at the border and with stakeholders working in children’s care. In practice, this guide is not available in all prefectures, however. In many regions, the prefecture agents recommend asylum seekers to download it on OFPRA’s website.

During COVID, the provision of information on the health situation and the consequent suspension of asylum activities has been shifted on to NGOs. However, the OFPRA’s website was updated regularly with information for asylum seekers on a dedicated page (only available in French, however).

### Information on the Dublin procedure

The information provided about the Dublin procedure varies greatly from one Prefecture to another. When they go to the prefecture to apply for asylum, all applicants are handed, at the desks, an information leaflet on the Dublin procedure (Leaflet A)<sup>414</sup> together with the Asylum Seeker’s Guide. If the Prefecture decides at a later stage to channel the applicant into the Dublin procedure, the applicant receives a second information leaflet on the Dublin procedure (Leaflet B).<sup>415</sup> The Prefecture asks the applicant to sign a letter written in French which lists the information that has been provided as well the language in which this information was provided, as requested under Article 4 of the Dublin III Regulation.

The asylum seeker knows when a take charge or a take back procedure has been initiated, due to information provided on the back of their Dublin notice, which is translated into the language of the asylum seeker. Translation is an obligation recently recalled by the Administrative Court of Appeal of **Bordeaux**. According to the court, the absence of translation is a violation of the fundamental guarantees which much prevail in the framework of the Dublin procedure.<sup>416</sup> There is, however, no information about the country to which a request has been sent, nor on the criteria that have led to this decision.

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<sup>410</sup> Article R.741-4 Cesda.

<sup>411</sup> Ministry of Interior, *Guide du demandeur d’asile*, September 2020, available at: <https://bit.ly/3uTut6A>

<sup>412</sup> OFPRA, *Guide des procédures à l’OFPRA*, December 2019, available in French at: <https://bit.ly/2UdFQ9n>.

<sup>413</sup> OFPRA, *Guide de l’asile pour les mineurs isolés étrangers en France*, January 2020, available in French at: <https://bit.ly/2RHQ14t>.

<sup>414</sup> European Commission and Migrationsverket, *Leaflet A: “I have asked for asylum in the EU – Which country will handle my claim?”* 2014, available at: <http://bit.ly/1PSuhgz>.

<sup>415</sup> European Commission and Migrationsverket, *Leaflet B: “I am in the Dublin procedure – What does this mean?”*, 2014, available at: <http://bit.ly/1dBoCd2>.

<sup>416</sup> Administrative Court of Appeal of Bordeaux, Decision No 16BX01854, 2 November 2016.

## Information at the border

In the waiting zones at the border, Forum réfugiés – Cosi notes a serious lack of information on the possibility of requesting admission to French territory on asylum grounds (see section on [Border Procedure](#)). When a person is arrested at the border, he or she is notified of an entry refusal, in theory with the presence of an interpreter if necessary.<sup>417</sup> However, many stakeholders doubt that the information provided and the rights listed therein are effectively understood. For example, it is very surprising to note that those intercepted nearly always agree to renounce their right to a “full day” notice period (*jour franc*) i.e. 24 hours during which the person cannot be returned, and tick the box confirming their request to leave as soon as possible.

In addition, as the telephone in certain waiting zones is not free of charge, contact with NGOs or even UNHCR is not easy. Several decisions by the Courts of Appeal have highlighted the irregularity of the procedure for administrative detention in a waiting zone, due to the restrictions placed on exercising the right to communicate with a lawyer or any person of one's choice.<sup>418</sup> The fact that asylum seekers may have no financial means of purchasing a phone card is therefore a restriction on this fundamental right.

## 2. Access to NGOs and UNHCR

Access of NGOs to asylum seekers is described in the section on [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:
2. Are applications from specific nationalities considered manifestly unfounded?<sup>419</sup> ☒ Yes ☐ No  
❖ If yes, specify which: Albania, Armenia, Benin, Bosnia-Herzegovina, Cape Verde, Georgia, Ghana, India, North Macedonia, Kosovo, Mauritius, Moldova, Mongolia, Montenegro, Senegal, Serbia

There is no explicit policy of considering specific nationalities as manifestly well-founded. At most, some nationalities obtain higher rates of protection than the average rate e.g. **Syria, Iraq or Afghanistan**. These countries had first instance recognition rates of 95.2%, 84.2% and 83.1% respectively in 2017.<sup>420</sup> In 2018, rates for Afghanistan dropped to 67.4%, for Syria to 85.6% and for Iraq to 73.1% according to Eurostat. Similarly in 2019, rates for Afghanistan dropped to 62.5%, for Syria to 71.5% and 66.8% for Iraq according to Eurostat. The data for 2020 was not available at the time of writing.

Since a CNDA judgment of March 2018, Afghan nationals widely benefitted from protection. The CNDA held that the situation of indiscriminate violence in Kabul is of such degree for Article 15(c) to be triggered by a person's mere presence.<sup>421</sup> However, in a Grand chamber decision of 19 November 2020, the CNDA changed its position, now considering that the level of violence in Kabul is not high enough to justify a

<sup>417</sup> Article L.213-2 Ceseda.

<sup>418</sup> Article L.221-4 Ceseda.

<sup>419</sup> Whether under the “safe country of origin” concept or otherwise.

<sup>420</sup> OFPRA, ‘Les données de l’asile 2017 à l’OFPRA’, 8 January 2018, available at: <http://bit.ly/2EVQB5y>.

<sup>421</sup> CNDA, *M. H.*, Decision No 17045561, 9 March 2018.

protection for all people arriving at airports.<sup>422</sup> This means that individual circumstances need to be assessed again and puts Afghan nationals at risk of return. It is also likely to have important consequences in practice given that Afghans have been the first nationality of applicants in France since 2018 and recent Eurostat statistics indicate that a total of 17,520 applications for international protection of Afghan nationals were pending as of the end of December 2020.<sup>423</sup> The new CNDA ruling is thus likely to impact their situation in the future. Yet, in its recent country of origin report on the Security situation in Afghanistan of 28 September 2020, the European Asylum Support Office (EASO) confirmed that the conflict in the country continued to be described as one of the deadliest in the world for civilians and adds that “several sources reported a spike in violence during the first six months of 2020, with an increase in the number of civilian casualties, particularly in the northern and north-eastern regions”.<sup>424</sup> In addition, several rulings have prevented Dublin transfers of Afghan nationals to countries where their asylum applications have been rejected (see [Dublin: Suspension of Transfers](#)).

Furthermore, differential treatment of specific nationalities seems to be applied in the framework of *ad hoc* relocation schemes implemented since June 2018. Following “boat-by-boat” agreements following disembarkation in Italy, Malta and Spain, over 280 persons have been relocated to France in 2018.<sup>425</sup> In October 2019, a member of the government stated that more than 600 people have been admitted in France through relocation within a year. At the end of 2019 France offered assistance to return rejected asylum seekers, to combat “illegal immigration” and to relocate 400 asylum seekers from **Greece**.<sup>426</sup> In February 2021, 275 asylum seekers and 131 unaccompanied minors have been transferred from Greece to France as part of the ‘voluntary relocation scheme from Greece to other European countries’.<sup>427</sup>

All relocated persons have previously undergone interviews with OFPRA, for the Office to assess their need for protection and potential threats to public order. No official data are available about this mechanism or the nationality of selected persons. However, it appears through communication on arrival in France from OFII and the Ministry of Interior that relocated persons are mainly from **Sudan, Eritrea** and **Somalia**. Following their arrival, these persons have been quickly received by OFII and granted refugee status by OFPRA.

Asylum seekers that are nationals of countries listed as safe are dealt with most of the time under an accelerated procedure (see [Safe Country of Origin](#)). Their access to asylum from detention is also more circumscribed compared to other nationalities (see [Registration](#)). The average protection rate for such nationalities was 10.8% in 2018, at first and second instance combined, but there are important variations from one country to another. For example, in 2019, **Kosovo** had a general rate of 24.7%, **Senegal** had a rate of 22.8%, while **Albania** had 10.7%.

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<sup>422</sup> CNDA, Decision N° 19009476 R, 19 November 2020 available in French at : <https://bit.ly/2KC5YXX>; CNDA, Decision N° 18054661 R, 19 November 2020, available in French at: <https://bit.ly/3d5uJsB>.

<sup>423</sup> Eurostat, [migr\_asypenctzm]

<sup>424</sup> EASO, *Afghanistan Security situation – COI Report*, September 2020, available at: <https://bit.ly/3aixrJL>.

<sup>425</sup> Senate, Reply to written question n. 05842, 24 January 2019, available in French at: <https://bit.ly/2GRdMIl>.

<sup>426</sup> ECRE, ‘France to assist Greece where situation continues to worsen’, 20 December 2019, available at: <https://bit.ly/31u27By>.

<sup>427</sup> IOM, ‘*Voluntary relocation scheme from Greece to other European countries*’, Factsheet, 3 February 2021. <https://bit.ly/2Z2JB2B>.

## Reception Conditions

### Short overview of the reception system

OFII (*Office français de l'immigration et de l'intégration*) is the administration responsible for the reception of asylum seekers. All asylum seekers are referred to OFII after being registered as asylum seekers by *Prefectures*.

OFII interviews asylum seekers to assess whether they are eligible to reception conditions. If so, they will be directed to accommodation. In practice, the orientation of asylum seekers to accommodation takes place in the days or weeks following the OFII interview, but only half of them are accommodated in reception centers for asylum seekers. OFII is also in charge of fixing and granting financial allowances. Payment starts after the registration of the asylum claims at the OFPRA. The asylum claim must be sent to OFPRA in a maximum time of 21 days after registration by the *Prefecture*.

Asylum seekers are only accommodated when there is enough capacity. Yet, places are currently insufficient as a result of which OFII must prioritise cases based on individual circumstances and vulnerability. Persons entitled to reception following a decision from OFII can stay in the centre for 6 months if they are granted international protection or for 1 month if their claim is rejected.

Accommodation centres for asylum seekers provide rooms to sleep and cook (usually common kitchens) as well as assistance from social workers on legal and social issues. Each centre is different, ranging from large buildings with offices and bedrooms or apartments at different locations.

There are different types of accommodation centres :

- CAES (*centres d'accueil et d'évaluation des situations*): these are transit centres which aim to provide a quick access to reception while evaluating ones' personal situation so that he or she can be re-directed accordingly;
- CADA (*centres d'accueil pour demandeurs d'asile*): these are accommodation centres for all asylum seekers, with the exception of those subject to a Dublin procedure;
- HUDA (*lieux d'hébergement d'urgence pour demandeurs d'asile*): these are centres for all applicants, including Dublin applicants.

On 18 December 2020, the Ministry of Interior published its 2021-2023 national reception plan for asylum seekers and the integration of refugees.<sup>428</sup> This plan makes it possible to adapt the reception policy to the migration context and to the specific characteristics of the regions, *inter alia* through a better distribution of asylum seekers across national territory. It is based on two pillars: better accommodation and support.

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<sup>428</sup> Ministry of Interior, *Schema national d'accueil des demandeurs d'asile et d'intégration des réfugiés*, 18 Decembre 2020, available in French at : <https://bit.ly/3piiY10>.

## 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 type="checkbox"/> Yes	<input checked="" type="checkbox"/> Reduced material conditions	<input type="checkbox"/> No
❖ Border procedure	<input type="checkbox"/> Yes	<input type="checkbox"/> Reduced material conditions	<input checked="" type="checkbox"/> No
❖ Accelerated procedure	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Reduced material conditions	<input type="checkbox"/> No
❖ Appeal	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Reduced material conditions	<input type="checkbox"/> No
❖ Subsequent application	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Reduced material conditions	<input 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
---	-----------------------------

The law establishes a national reception scheme, managed by the French Office on Immigration and Integration (OFII).<sup>429</sup> This scheme ensures the distribution of accommodation places for asylum seekers throughout the national territory, and their allocation thereto. In parallel and in compliance with the national reception scheme, regional schemes are defined and implemented by Prefects in each region.

All asylum seekers are offered material reception conditions under Article L.744-1 Ceseda. This provision applies to all asylum seekers even if their claim is channelled under the accelerated or Dublin procedure. The only exception is that asylum seekers under the Dublin procedure do not have access to reception centres for asylum seekers (CADA). Subsequent applicants are entitled to material reception conditions only if their claim has been deemed admissible.

After having registered their claim at the *Prefecture*, asylum seekers receive the asylum claim certification that allows them to remain legally on the French territory until:

- The end of the asylum procedure;
- A negative first instance decision for inadmissible claims and certain categories of claims rejected in an accelerated procedure – safe country of origin, subsequent application, threat to public order or national security;
- Their transfer to another Member State under the Dublin Regulation.

Meanwhile, they are entitled to material reception conditions, adapted if needed to their specific needs. The GUDA has been set up in order to better articulate the registration of asylum claims by the Prefecture and provision of reception conditions by OFII.

During COVID-19, the access to reception conditions was hindered as a result of the suspension of registration activities. Thus, from mid-March to the beginning of May 2020, access to reception centres was limited to asylum seekers registered prior to the lockdown, albeit with the difficulties described above - such as a limited reception capacity - which were further exacerbated by other factors – such as fewer exits from the centers because the authorities requested the managers of centres to hold rejected asylum seekers and refugees in the reception centers. This situation was criticised by NGOs.<sup>430</sup> As regards people without accommodation (i.e. asylum seekers, refugees and homeless persons including nationals), many places in emergency housing were opened during this period to reduce homelessness.

<sup>429</sup> Article L.744-2 Ceseda.

<sup>430</sup> See e.g. Forum réfugiés-Cosi, 'L'impact de la crise sanitaire sur le droit d'asile en France. Constats et recommandations.', Policy note, 4 May 2020, available in French at : <https://bit.ly/3rlky7M>.

## 1.1. Asylum seekers' financial contribution

Accommodation fees for asylum seekers are covered by the State. However, accommodated asylum seekers whose monthly resources are above the monthly rate of the Active Solidarity Income (*Revenu de Solidarité Active*, RSA), €559.74 for a single adult, pay a financial contribution for their accommodation.

In addition, organisations managing reception facilities are entitled to require a deposit for the accommodation provided under certain conditions. The deposit is refunded, totally or partially, to the asylum seeker when he or she leaves the reception facility. A Decree of 15 November 2016 states the deposit will not be paid back if the asylum seekers stay longer than allowed in accommodation centres, that is 1 month if their claim is rejected and 6 months if protection is granted.<sup>431</sup>

## 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 single adults asylum seekers as of 31 December 2020:

❖ Asylum seekers in accommodation	204 €
❖ Asylum seekers without accommodation	426 €

Different forms of material reception conditions exist in the law. They include accommodation in reception centres and a financial allowance. This section will refer to the forms and levels of financial assistance available to asylum seekers.

The law excludes asylum seekers from the granting of all family-related welfare benefits as the asylum claim certification provided to asylum seekers is not listed in the permits that give eligibility to these benefits.<sup>432</sup> Asylum seekers are also not eligible for receiving the social welfare allowance, the so-called Active Solidarity Income (RSA), granted to individuals over 25 years old who do not have resources or have very low incomes.

The allowance for asylum seekers (*allocation pour demandeur d'asile*, ADA)<sup>433</sup> is granted to asylum seekers above 18 years old,<sup>434</sup> who accept material conditions proposed by OFII and remain eligible for reception conditions. Only one allowance per household is allowed.<sup>435</sup> The payment of the allocation ends at the end of the month of the decision ending the right to remain on the territory.<sup>436</sup>

The amount of ADA is calculated on the basis of resources, type of accommodation provided and age criteria. Family composition, in particular the number of children, is taken into account in the calculation of ADA.<sup>437</sup> The total amount of ADA is re-evaluated once a year, if needed, to take into account the inflation rate.

<sup>431</sup> Decree NOR: INTV1630817A of 15 November 2016 on the application of Article L.744-5 Ceseda, available in French at: <http://bit.ly/2jGFPbS>.

<sup>432</sup> Article 512-2 Social Security Code.

<sup>433</sup> Article L.744-9 Ceseda.

<sup>434</sup> Article D.740-18 Ceseda.

<sup>435</sup> Article D.744-25 Ceseda.

<sup>436</sup> Article L.744-9 Ceseda, as amended by Article 13 Law n. 2018-778 of 10 September 2018.

<sup>437</sup> *Ibid.*

The daily amount of ADA is defined upon application of the following scale:<sup>438</sup>

ADA rate by household composition	
Persons	Daily rate
1	6.80 €
2	10.20 €
3	13.60 €
4	17 €
5	20.40 €
6	23.80 €
7	27.20 €
8	30.60 €
9	34 €
10	37.40 €

An additional daily rate is paid to adult asylum seekers who have accepted to be accommodated but who cannot be accommodated through the national reception scheme. Following successive rulings of the Council of State annulling the previous provisions due to the inadequacy of the set amount (4.20 € and 5.40 € respectively),<sup>439</sup> the current amount granted is 7.40 € per day.<sup>440</sup> This amount remains really low and renders the access to accommodation on the private market almost impossible.

ADA is paid to asylum seekers on a monthly basis directly by OFII on a card, similar to a debit card that can be used by asylum seekers. It is not necessary for asylum seekers to open a bank account to benefit from ADA (except in some cases where asylum seekers are overseas) and use the card.<sup>441</sup> Many problems which persisted in 2020 have been raised by local stakeholders regarding ADA. On many occasions, the allowance has been paid late. In addition, some asylum seekers are not familiar with using a bank card or a cash machine. In some accommodation centres, asylum seekers do not receive the same amount even if they are in similar situation (e.g. same date of arrival and registration, same family composition or same duration of accommodation in the centre). These issues can create tensions between asylum seekers and may expose social workers to a lot of pressure and complicate their work. Moreover, it is really difficult to interact with OFII, according to local NGOs, to resolve such problems. Despite the presence of local representations of OFII in regions, they usually do not intervene at the level of the allowance distribution (although it should be noted that there are some exceptions, where OFII's offices are accessible to asylum seekers in certain cities such as **Lyon, Clermont-Ferrand or Toulouse**).

The starting point of the calculation of the allowance is the date of signature of acceptance of material conditions offered by OFII, which may occur normally when applicants go to the GUDA for registration. The effective payment usually starts when the asylum seeker produces the proof of his or her asylum claim being lodged with OFPRA. The payment is supposed to retroactively take into account the time spent between the registration at Prefecture and the sending of the asylum claim to OFPRA. In practice, many issues have been reported in this regard as well. The amounts do not correspond to the aforementioned period or the first payments are provided at a very late stage. In addition, OFII sometimes requests late repayment of undue payments, and consequently puts asylum seekers in important financial difficulties.

<sup>438</sup> Annex 7-1 Ceseda.

<sup>439</sup> Council of State, Decision No 394819, 23 December 2016; Decision No 410280, 17 January 2018.

<sup>440</sup> Decree n. 2018-426 of 31 May 2018 bringing various provisions relating to the asylum seeker allowance.

<sup>441</sup> Article D.744-33 Ceseda.

Moreover, the credit card on which the financial allowance is being provided can no longer be used for the withdrawal of cash since November 2019. The card can only be used for payments, both online and in shops. This development limits the possibility for asylum seekers to use their money and has been strongly criticized by NGOs. As a result, asylum seekers cannot buy food in local markets or small shops nor clothing in second hands shops, or pay for public transportation when there are no electronic means available, or pay a deposit in cash for a rent. Moreover, in summer 2020, all asylum seekers had to change their card due to a technical issue.

In case of a subsequent application or if the asylum claim has not been introduced within 90 days, ADA can be refused.<sup>442</sup>

As of the end of December 2020, a total of 145,253 asylum seekers benefitted from ADA (compared to 151,386 at the end of 2019).<sup>443</sup>

### 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 legislation provide for the possibility to withdraw material reception conditions?  
☒ Yes ☐ No

The law describes the procedure to be followed by the management of reception centres and by the Prefect once a decision on the asylum claim which ends the right to remain has been adopted.<sup>444</sup> OFII informs the management of the reception centre where the asylum seeker is accommodated that the right to reception conditions has ended and that the provision of accommodation will be terminated upon a specific date, rejected asylum seeker can formulate a demand to remain 1 month in order to have time to plan the exit of the centre.

Apart from the withdrawal of reception conditions by the end of the right to remain, specific conditions are defined allowing for the reduction or withdrawal of material reception conditions, concerning both accommodation and ADA.

According to Articles L.744-7 and L.744-8 Ceseda, as amended in 2018, material reception conditions can be refused or withdrawn where the applicant:

1. Without legitimate reason, has not presented him or herself to relevant authorities when required, has not responded to an information request or has not attended interviews related to the asylum application;<sup>445</sup>
2. Has provided false statements concerning his identity or personal situation, in particular his or her financial situation;<sup>446</sup>
3. Has made a subsequent application or, without legitimate reason, has not made an application within 90 days of entry into the French territory;<sup>447</sup>
4. Exhibits violent behaviour or serious disrespect of the house rules of the centre.<sup>448</sup>

OFII is competent to decide on the suspension, withdrawal or refusal of material reception conditions. According to the law, only the decision of refusal of reception conditions must be written and motivated

<sup>442</sup> Article D.744-37 Ceseda.

<sup>443</sup> OFII, *Indicators December 2020*, published on OFII's official Twitter account.

<sup>444</sup> Article R.744-12 Ceseda.

<sup>445</sup> Article L.744-7 Ceseda, as amended by Article 13 Law n. 2018-778 of 10 September 2018.

<sup>446</sup> Article L.744-8(1) Ceseda, as amended by Article 13 Law n. 2018-778 of 10 September 2018.

<sup>447</sup> Article L.744-8(2) Ceseda, as amended by Article 13 Law n. 2018-778 of 10 September 2018.

<sup>448</sup> Article L.744-8(1) Ceseda, as amended by Article 13 Law n. 2018-778 of 10 September 2018.

but the Council of State ruled in 2019 that this guarantee also applies to withdrawal decisions in accordance with European law.<sup>449</sup> A letter stating the intention to suspend material reception conditions is sent to the asylum seeker, who then has 15 days to challenge this decision through an informal appeal (i.e. written observations). All decisions relating to the refusal or withdrawal of reception conditions can be appealed before the Administrative Court under the common rules of administrative law.

In cases of subsequent applications, some *Prefectures* systematically reduce reception conditions to the asylum seekers. In **Lyon, Marseille, Paris** and its surroundings, no subsequent claimants can benefit from reception conditions. In a few cases, subsequent claimants can benefit from these conditions after demonstrating their particular vulnerability and their specific needs in terms of accommodation.<sup>450</sup> It is also possible after these 15 days to lodge an appeal before the administrative court.

The management of reception centres has to inform OFII and the Prefect of the *Département* in case of a prolonged and not motivated absence from the reception centre of an asylum seeker, as well as any violent behaviour or serious disrespect of the community life rules.<sup>451</sup>

In French law, there is no official possibility to limit the reception conditions on the basis of a large number of arrivals.

#### 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

Asylum seekers benefit from freedom of movement in France; except for persons who introduce an asylum application in an administrative detention centre or who are under house arrest, for instance asylum seekers under Dublin procedure (see Chapter on [Detention of Asylum Seekers](#)).

However, reception conditions are offered by OFII in a specific region where the asylum seeker is required to reside. Following the 2018 reform, allocation to a specific region can be conducted even if the applicant is not offered an accommodation place.<sup>452</sup> Non-compliance with the requirement to reside in the assigned region entails a termination of reception conditions. Freedom of movement is therefore restricted to a region defined by OFII. In practice, these new measures are only applicable since January 2021 following the publication of a new national reception scheme.<sup>453</sup> However, the Ministry of Interior ensured that this regional assignment would only be applied as long as accommodation is secured.

The national reception scheme assigns a reception centre or a region to asylum seekers, taking into account as much as possible the vulnerability assessment made by OFII and the general situation of the asylum seeker. The assignment to a reception centre is an informal decision, meaning that no administrative act is issued to asylum seeker. Therefore it cannot be appealed.

In practice, most asylum seekers are concentrated in the regions with the largest numbers of reception centres, namely in **Grand-Est, Auvergne-Rhône Alpes**, and **Ile de France**. The aim of the new scheme proposed in December 2020 is to better distribute asylum seekers across the territory, i.e. starting by the distribution from **Ile de France** to other regions.

<sup>449</sup> Council of State, Decision 428530, 31 July 2019, available in French at: <https://bit.ly/2GFaSiB>.

<sup>450</sup> Article L.744-8 Ceseda.

<sup>451</sup> Article R.744-11 Ceseda.

<sup>452</sup> Article L.744-2 Ceseda, as amended by Article 13 Law n. 2018-778 of 10 September 2018.

<sup>453</sup> Ministry of Interior, '*Schéma national d'accueil des demandeurs d'asile et d'intégration des réfugiés 2021-2023*', 17 December 2020, available in French at : <https://bit.ly/3tOyhFK>.

Persons may have to move from emergency facilities, possibly to a transit centre (CAES) to finally settle in a regular reception centre (gradually progressing to more stable housing).

Restrictions of freedom of movement during health crisis were not different from those applicable to nationals.

## B. Housing

### 1. Types of accommodation

Indicators: Types of Accommodation	
1. Number of reception centres:	Not available
2. Total number of places in the reception centres:	
❖ CADA	43,632
❖ HUDA	51,796
❖ CAES	3,136
3. Total number of places in private accommodation:	Not available
4. Type of accommodation most frequently used in a regular procedure:	
<input checked="" type="checkbox"/> Reception centre <input type="checkbox"/> Hotel or hostel <input checked="" type="checkbox"/> Emergency shelter <input type="checkbox"/> Private housing <input type="checkbox"/> Other	
5. Type of accommodation most frequently used in an accelerated procedure:	
<input checked="" type="checkbox"/> Reception centre <input checked="" type="checkbox"/> Hotel or hostel <input checked="" type="checkbox"/> Emergency shelter <input type="checkbox"/> Private housing <input type="checkbox"/> Other	

Decisions for admission in accommodation places for asylum seekers, as well as for exit from or modification of the place of residence, are taken by OFII after it has consulted with the Director of the place of accommodation. The specific situation of the asylum seeker has to be taken into account.

Accommodation facilities for asylum seekers under the national reception scheme (*dispositif national d'accueil*, DNA) are:

- (a) Accommodation centres for asylum seekers (CADA);
- (b) Emergency accommodation for asylum seekers (HUDA, AT-SA, PRAHDA, CAO);
- (c) Reception and administrative situation examination centres (CAES).

Asylum seekers accommodated in these facilities receive a certification of address (*attestation de domiciliation*).<sup>454</sup> This certification is valid for one year and can be renewed if necessary. It allows the asylum seeker to open a bank account and to receive mail.

According to the national reception scheme principle, an asylum seeker who has registered his or her claim in a specific *Préfecture* might not necessarily be accommodated in the same region. The asylum seeker has to present him or herself to the accommodation place proposed or the region assigned by OFII within 5 days. If not, the offer is considered to be refused and the asylum seeker will not be entitled to any other material reception conditions.

The management of reception centres is subcontracted to the semi-public company Adoma or to NGOs that have been selected through a public call for tenders, such as Forum réfugiés – Cosi, France terre d'asile, l'Ordre de Malte, Coallia, French Red Cross etc. These centres fall under the French social initiatives (*action sociale*) and are funded by the State. Their financial management is entrusted to the Prefect of the *Département*.

<sup>454</sup> Article R.744-1 to R.744-4 Ceseda.

As of the end of 2020 the national reception scheme had the following capacity across the different regions:

Capacity of the national reception scheme: 31 December 2020				
Region	CADA	Emergency	CAES	Total
Auvergne Rhône-Alpes	5,852	6,268	204	12,324
Bourgogne Franche-Comté	3,163	2,468	60	5,691
Bretagne	2,193	1,890	110	4,193
Centre-Val-de-Loire	2,179	1,613	76	3,868
Grand Est	5,280	8,264	370	13,914
Hauts de France	2,751	3,061	420	6,232
Ile de France	5,760	12,676	894	19,330
Normandie	2,392	2,511	200	5,103
Nouvelle Aquitaine	4,515	3,512	202	8,229
Occitanie	4,206	3,147	200	7,553
Pays de la Loire	2,582	2,950	200	5,732
Provence-Alpes-Côte d'Azur	2,759	3,436	200	6,395
<b>Total</b>	<b>43,632</b>	<b>51,796</b>	<b>3,136</b>	<b>98,564</b>

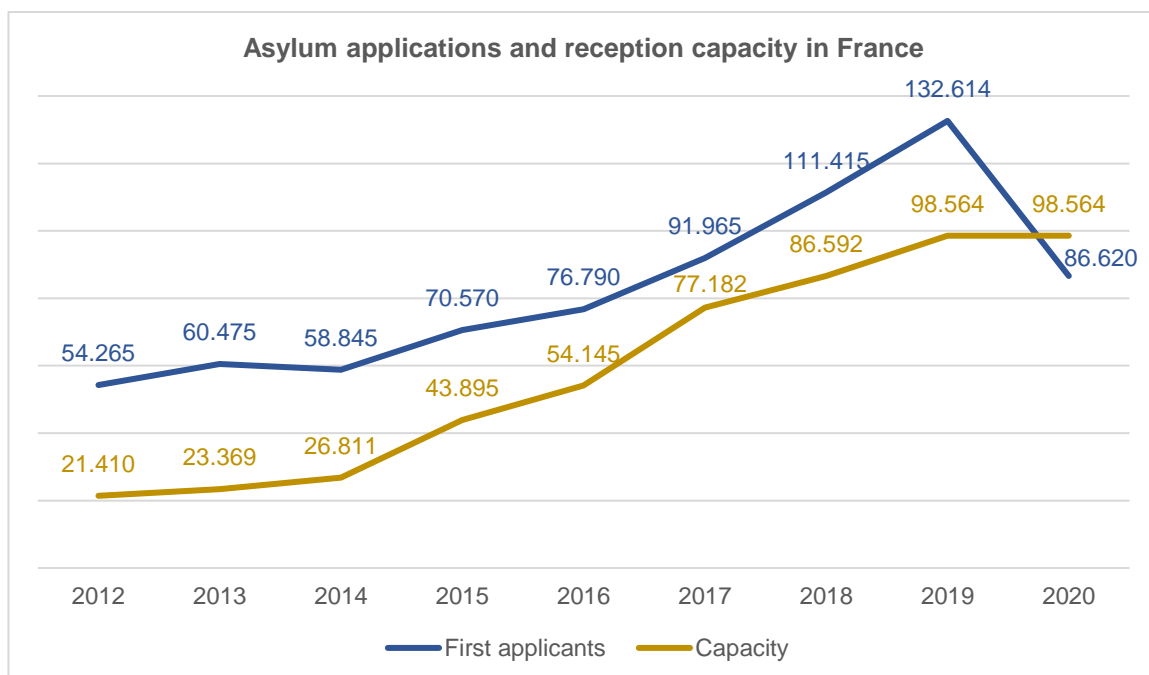
Source: Ministry of Interior, 'Information relating to the management of the accommodation facilities for asylum seekers and refugees', 15 January 2021, available in French at: <https://bit.ly/2ZjKsfP>.

In 2020 the number of asylum seekers accommodated remained far below the number of persons registering an application. At the end of the year, the Ministry of Interior stated that 51% of asylum seekers eligible to material reception conditions – i.e. 145,253 persons in total at the end of December 2020 - were effectively accommodated compared to 48% at the end of 2019.<sup>455</sup> If we add asylum seekers who do not benefit from reception conditions, we can consider that at least 90,000 asylum seekers were not accommodated in France as of the end of 2020.

In 2018, only 44% of asylum seekers registered by Prefectures in 2018 effectively obtaining accommodation. ECRE's report on the reception conditions of refugees and asylum seekers in Europe demonstrates that France has consistently fallen short of its obligations to provide accommodation to all asylum seekers on its territory, despite a considerable expansion of its reception infrastructure and a proliferation of types of accommodation.<sup>456</sup> Following figure provides an overview of the evolution of first-time asylum applicants registered with OFPRA and capacity in France:

<sup>455</sup> French Government, Budget law 2021, Annex. October 2020, available in French at : <https://bit.ly/3d1P4zd>.

<sup>456</sup> ECRE, Housing out of reach? The reception of refugees and asylum seekers in Europe, April 2019, 13, available at: <https://bit.ly/2RK0ivp>, 13.



It shows that a substantial number of applicants were left out of accommodation every year. These persisting issues raise questions of compliance with the Reception Conditions Directive as reception conditions should ensure an adequate standard of living for applicants. As regards the decrease of first-time applicants in 2020, it is largely due to the impact of COVID-19 and does not reflect the fact that reception capacity is still lacking, given that many other asylum seekers were already present on the territory.

In practice, it remains the case that many reception centres have been organised to receive families or couples, thereby making it difficult for single men or women, to be accommodated. Moreover, if the asylum seeker has not succeeded in getting access to a reception centre before lodging his or her appeal, the chances of benefitting from one at the appeal stage are very slim. In case of a shortage of places, asylum seekers may have no other solutions than relying on night shelters or living on the street. The implementation of the national reception scheme intends to avoid as much as possible cases where asylum seekers are homeless or have to resort to emergency accommodation in the long run, yet gaps in capacity persist.

At the end of 2020, 10% of the places in accommodation centers were occupied by individuals who were no longer authorised to occupy these places such as rejected asylum applicants or beneficiaries of international protection after the period of authorized presence, and 4% of the places were vacant.<sup>457</sup> 4,500 new places (3,000 in CADA and 1,500 in CAES) will further be opened for asylum seekers in 2021.<sup>458</sup>

### 1.1. Reception centres for asylum seekers (CADA)

Asylum seekers having registered a claim are eligible to stay in reception centres. Asylum seekers under a Dublin procedure are excluded from accessing these centres. CADA can be either collective or individualised housing, within the same building or scattered in several locations. Reception centres can be either collective or individualised housing, within the same building or scattered in several locations. A place in the centres for asylum seekers is offered by OFII once the application has been made.

<sup>457</sup> French Government, *Budget law 2021, Annex*, October 2020, available in French at: <https://bit.ly/3d1P4zd>, 24

<sup>458</sup> Ministry of Interior, *'Information relating to the management of the accommodation facilities for asylum seekers and refugees'*, 15 January 2021, available in French at: <https://bit.ly/2ZjKsfP>.

At the end of 2019, out of a total 41,342 places in CADA, 16% were beneficiaries of international protection and 7.6% were rejected asylum seekers (in authorised stay or not).<sup>459</sup> More recent statistics are not available.

## 1.2. Emergency reception centres

Given the lack of places in regular reception centres for asylum seekers, the State authorities have developed emergency schemes. Different systems exist:

1. A decentralised emergency reception scheme: emergency accommodation for asylum seekers (*hébergement d'urgence dédié aux demandeurs d'asile*, HUDA), counting 46,445 emergency accommodation places at the end of 2020. Capacities provided by this scheme evolve quickly depending on the number of asylum claims and capacities of regular reception centres. A part of this places are in hotel rooms.
2. Reception and accommodation programme for asylum seekers (*programme régional d'accueil et d'hébergement des demandeurs d'asile*, PRAHDA), managed at national level. It consists of housing, in most cases in former hotels, for 5,351 persons who have applied for asylum or who wish to do so and who have not been registered.

Asylum seekers who fall under the Dublin procedure in France can in theory benefit from emergency accommodation up until the notification of the decision of transfer, while Dublin returnees are treated as regular asylum seekers and therefore benefit from the same reception conditions granted to asylum seekers under the regular or the accelerated procedure. In practice, however, many persons subject to Dublin procedures (applicants or returnees) live on the streets or in squats because of the overall lack of places.

## 1.3. Reception and administrative situation examination centres (CAES)

A new form of accommodation has emerged in 2017 Reception and Administrative Situation Examination Centres (*centres d'accueil et d'examen de situation administrative*, CAES) combine accommodation with an examination of the person's administrative situation, in order to direct the individual to other accommodation depending on whether he or she falls within an asylum procedure, a Dublin procedure or a return procedure. Almost 3,000 places in such shelters have been created in 2018 and 150 new places in 2019. 3,136 places were available at the end of 2020. In some regions, CAES are designed for people coming from camps, while in others they serve vulnerable asylum seekers whose application has been registered, pending referral to CADA or emergency reception. No further data on the activity of CAES are available, as the OFII considers this places as 'unstable' and therefore does not take them into account in the reception system described in its activity report.

## 1.4. Asylum seekers left without accommodation

Despite the increase in reception capacity and creation of new forms of centres, a number of regions continue to face severe difficulties in terms of providing housing to asylum seekers. As stated above, only about 51% of asylum seekers eligible for material reception conditions were accommodated at the end of 2020.

In **Paris**, there are still several informal camps as of early 2021, despite many dismantlement operations by the authorities. In January 2020, authorities lead the 60<sup>th</sup> dismantlement operation since 2015 and 1,436 migrants have thus been accommodated in emergency centers following the operation.<sup>460</sup> On 17

<sup>459</sup> OFII, *2019 Activity report*, available in French at: <https://bit.ly/3aUFHP1>, 28.

<sup>460</sup> Prefecture de Police, *Press release*, 28 January 2020, available in French at: <https://bit.ly/2UcN4uv>.

November 2020, a camp with about 2,800 migrants has been dismantled near Paris but solutions were not offered to everyone.<sup>461</sup> As a result, on 23 November 2020, about 500 migrants (mainly from Afghanistan) supported by NGOs have settled in a large square in Paris (*Place de la République*) to protest and request accommodation solutions. The evacuation of the square was carried out with the use of excessive force including attacks with teargas, shock grenades and truncheons against migrants, journalists and protestors. The French Human Rights Defender (*Défenseur des droits*) ensuring human rights and freedom under the French constitution as well as the General Inspectorate of the National Police (*Inspection générale de la Police nationale* – IGPN) launched investigations. The Council of Europe Commissioner for Human Rights, Dunja Mijatović also confirmed that she is following them closely.<sup>462</sup> The conduct by police has been widely condemned by NGOs and politicians.<sup>463</sup>

In **Calais**, regular dismantlement operations have been carried out since 2015, as described in the previous updates of this report. Yet, hundreds of migrants were still living in makeshift camps in Calais area throughout 2020. In January 2020, NGOs stated that 850 migrants were in Calais and surrounding,<sup>464</sup> and in July 2020, this number increased to 1,200 migrants according to NGOs (700 to 750 according to authorities).<sup>465</sup> Following a visit to the informal camp in Calais in September 2020, carried out upon the request of 13 NGOs, the French Public Defender of Rights noted sub-standard living conditions.<sup>466</sup> An estimated 1,200-1,500 people, including women with young children and unaccompanied children, were sleeping in the woods, including in bad weather conditions. They experienced harassment by police during evacuations. Sanitary facilities were far from living areas, with only one water point; and measures to contain the spread of COVID-19 were insufficient. The Public Defender of Rights expressed particular concerns about the situation of women and children. The lack of specific facilities for women makes them particularly vulnerable to sexual exploitation and gender-based violence. Children, some only 12-14 years old, were at risk of falling prey to illegal networks.<sup>467</sup>

At the end of September 2020, the largest dismantlement operation since 2016 took place in Calais with about 800 migrants directed to accommodation centres.<sup>468</sup> According to figures from Human Rights Observers (HRO), a non-profit that monitors police evictions in northern France, 973 evictions took place in Calais in 2020, with police confiscating and destroying belongings. In December alone, 526 tents were seized, and 41 arrests were made.<sup>469</sup> Reports of abuse, excessive force and violence have described children being teargassed, a person inside a tent being dragged by a tractor, and a man shot in the face with a rubber bullet from 10 metres, hospitalising him for two months.<sup>470</sup> These evictions have contributed

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<sup>461</sup> Le Monde, 'Evacuation d'un campement de plus de 2 800 migrants au pied du Stade de France', 17 November 2020, available in French at : <https://bit.ly/3jM8eug>.

<sup>462</sup> Commissioner for Human Rights on Twitter: <https://bit.ly/3qluuO4>.

<sup>463</sup> Le Monde, 'Le point sur l'évacuation du camp de migrants à Paris : coups de matraque et « chasse à l'homme », indignation politique et enquêtes de l'IGPN', available in French at : <https://bit.ly/3rVwdKr>.

<sup>464</sup> Infomigrants, 'Opération de "mise à l'abri" à Calais après un mois d'évacuations successives', 28 January 2020. Available in French at : <https://bit.ly/38WPzoG>.

<sup>465</sup> La Voix du Nord, 'Migrants de Calais: tensions lors de démantèlements de campements ce vendredi', 10 July 2020, available in French at : <https://bit.ly/3rJXhfu>.

<sup>466</sup> Médecins du Monde, 'Exilés de Calais : Les associations saisissent la Défendeure des Droits et les Nations Unies', 17 August 2020, available in French at : <https://bit.ly/3jNMUEH>.

<sup>467</sup> French Public Defender of Rights, Decision n°2020-179, 18 September 2020, available in French at : <https://bit.ly/3rTYmkP>.

<sup>468</sup> Le Monde, 'A Calais, un campement de migrants démantelé, les associations dénoncent une « opération de communication »', 29 September 2020, available in French at : <https://bit.ly/3aZ9PbU>.

<sup>469</sup> ECRE, 'France: Calais Evictions Continue Despite Winter, Family Reunifications Continue to be Blocked', 15 January 2021, available at : <https://bit.ly/2Zhr7Hc>.

<sup>470</sup> The Guardian, 'Like torture': Calais police accused of continued migrant rights abuses', 13 January 2021, available at : <https://bit.ly/3dcYnML>; ECRE, 'France: Evictions Continue amid Winter Emergency while Council of State Allows Preventing Media Access', 12 February 2021, available at : <https://bit.ly/3sOKQfv>.

to pushing hundreds of migrants into the streets without any shelter, while weather conditions during winter have become very harsh.

In recent years, Courts have also condemned the situation in **Calais**. In July 2017, the Council of State ruled that state deficiencies in Calais exposed migrants to degrading treatment and enjoined the State to set up several arrangements for access to drinking water and sanitary facilities.<sup>471</sup> In a report published in December 2018, the Ombudsman denounced a "degradation" of the health and social situation of migrants living in camps in the north of France, with "unprecedented violations of fundamental rights".<sup>472</sup> On 21 June 2019, the Council of State ordered the northern prefecture of France to adopt important sanitary measures to support around 700 migrants living near a sport hall of the commune of **Grande-Synthe**. The application to proceedings for interim measures had been filed by 9 civil-society organisations and the commune of **Grande-Synthe**. It demonstrated that both the inhumane living conditions of the migrants and the failure to act of the Government were a violation of the migrant's fundamental rights.<sup>473</sup> Following the decision of the Council of State, the French prefect had 8 days to adopt numerous sanitary measures such as installing water points, showers and toilets, but also to provide information to migrants on their rights in a language they understand.

On 10 February 2021, the National Consultative Commission on Human Rights (CNCDH) issued an opinion where it stated that, five years after its previous visit on site, the dignity of the people exiled in **Calais** and **Grande-Synthe** is still being violated. It confirms that in 2020 more than 1,000 evictions were carried out in **Calais**, and 33 evictions in **Grande Synthe**. Access to drinking water, food, showers, toilets as well as basic health services is not guaranteed. It calls for the re-establishment of a dialogue and cooperation between all the stakeholders involved in order to ensure the protection and dignity of the concerned individuals. It also recalls the best interest of the child and the necessity to introduce guarantees for unaccompanied minors as well as vulnerable groups such as women or victims of human trafficking.<sup>474</sup>

In some other cities (**Nantes, Grande Synthe, Metz**) migrants often live in the street. Some of them are asylum seekers eligible for accommodation centers but not housed due to the lack of places. The issue of homelessness in France has also been scrutinised by the European Court of Human Rights (ECtHR). On 2 July 2020, the ECtHR published its judgment in *N.H. and others v France* concerning the living conditions of homeless asylum applicants as a result of the failures of the French authorities. The case concerns 5 single men of Afghan, Iranian, Georgian and Russian nationality who arrived in France on separate occasions. After submitting their asylum applications, they were unable to receive material and financial support and were therefore forced into homelessness. The applicants slept in tents or in other precarious circumstances and lived without material or financial support, in the form of Temporary Allowance, for a substantial period of time. All of the applicants complained, *inter alia*, that their living conditions were incompatible with Article 3 ECHR.<sup>475</sup> However, in the case of *B.G. and others v. France*, the ECtHR unanimously ruled on 10 September 2020 that, *inter alia*, the living conditions in a French tent camp on a carpark did not violate Article 3 ECHR.<sup>476</sup>

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<sup>471</sup> Council of State, Order No 412125, 31 July 2017.

<sup>472</sup> Ombudsman, *Exiles et droits fondamentaux, trois ans après le rapport Calais*, 19 December 2018, available at: <https://bit.ly/2GI7uS>.

<sup>473</sup> France TV Info, 'Nord : la préfecture condamnée à prendre des mesures sanitaires et à organiser des maraudes pour les migrants à Grande-Synthe', 21 June 2019, available in French at : <https://bit.ly/2wOzPTL>.

<sup>474</sup> National Consultative Commission on Human Rights (CNCDH), *Calais et Grande-Synthe Les atteintes à la dignité et aux droits fondamentaux des personnes exilées doivent cesser*, 11 February 2021, available in French at: <https://bit.ly/3jTdTPg>.

<sup>475</sup> European Court of Human Rights published, *N.H. and others v France* (Application No. 28820/13), 2 July 2020, see EDAL summary at: <https://bit.ly/3ppxQhw>.

<sup>476</sup> ECtHR, *B.G. and others v. France* (Application no. 63141/13), 10 September 2020, see EDAL summary at: <https://bit.ly/37eckGi>.

## 1.5. Evolution of the capacity of the different types of accommodation

Although the capacity of CADA – the main form of reception for asylum seekers - has been steadily developed throughout the years, France has exponentially increased the capacity of emergency accommodation through the creation of PRAHDA and the expansion of local HUDA from 11,829 places in mid-2016 to 51,796 places at the end of 2020.<sup>477</sup>

This means that the emergency accommodation network (PRAHDA, HUDA) is more important than the CADA and formally forms part of the national reception system. It appears therefore that “emergency accommodation” in France no longer serves the purpose of temporarily covering shortages in the normal reception system. In fact, as already explained, it is the default form of accommodation for certain categories of asylum seekers such as those under a Dublin procedure, since they are excluded altogether from CADA.<sup>478</sup>

## 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? 524 days<sup>479</sup>
3. Are unaccompanied children ever accommodated with adults in practice? ☐ Yes ☒ No

The activities and tasks entrusted to all reception centres are defined in a decree of December 2018 and include:<sup>480</sup>

- Accommodation;
- Information about rights and obligations in the centre;
- Information on the asylum procedure;
- Information on health;
- Information on reception rights;
- Accompaniment for schooling of children;
- Social, voluntary and recreational activities;
- Preparation and organisation of exit from accommodation.

However, the budget allocated to these centres varies from 15 € to 25 € per person according to the type of accommodation, and activities vary widely in practice.

### 2.1. Conditions in CADA

Although the use of other types of accommodation has consistently increased throughout recent years (see

[Evolution of the capacity of the different types of accommodation](#)), CADA are the main form of accommodation provided to asylum seekers. They include both collective and private accommodations that are located either within the same building or in scattered apartments. In 2020, there were 46,632 places in CADA spread across the French territory, therefore the following description is a general assessment that cannot cover the specific situation to be found in all CADA.

Living conditions in regular reception centres for asylum seekers are deemed adequate, and there are no reports of overcrowding in reception centres. The available surface area per applicant can vary but has

<sup>477</sup> *Ibid.*

<sup>478</sup> *Ibid.*

<sup>479</sup> This refers to CADA in 2019.

<sup>480</sup> Article R.744-6-1 Ceseda, inserted by Article 18 Decree n. 2018-1159 of 14 December 2018.

to respect a minimum of 7.5 m<sup>2</sup> per person.<sup>481</sup> A bedroom is usually shared by a couple. More than 2 children can be accommodated in the same room. Centres are usually clean and have sufficient sanitary facilities. Asylum seekers in these centres are usually able to cook for themselves in shared kitchens.

The staff working in reception centres also has the obligation to organise a medical check-up upon arrival in the reception centre. In the context of the application of the reform of the law on asylum.<sup>482</sup>

The staff ratio is framed by the 2019 Decree; a minimum of 1 fulltime staff for 15 persons is required. Staff working in reception centres is trained.

Awareness-raising sessions are sometimes organised in the reception centres and the “planned parenthood” (*Planning Familial*) teams sometimes conduct trainings on the issue of gender based violence. In some reception centres, there are information leaflets and posters on excision and forced marriages.

The average length of stay in CADA in 2019 was 524 days,<sup>483</sup> (compared to 451 in 2018, 424 days in 2017 and 484 days in 2016). The average length of stay in CADA in 2020 was not available.

## 2.2. Conditions in emergency centres

In asylum seekers’ emergency centres, unlike the housing of asylum seekers in hotels, facilities offer at least some sort of administrative and social support. In theory, only accommodation is provided in the context of these emergency reception centres. Food or clothing services may be provided by charities. However, reception conditions within the emergency facilities are similar to those in regular reception centres.<sup>484</sup>

Where centres are overcrowded, applicants can also be accommodated in hotel rooms. To illustrate, 13% of places in HUDA were in hotel rooms at the end of 2020.<sup>485</sup>

Conditions vary substantially across the different types of facilities. As regards CAO, a 2017 evaluation by UNHCR has reported living conditions in CAO to be satisfactory overall.<sup>486</sup>

In 2019, a new inter-ministerial instruction was issued and obliges emergency accommodation centres for homeless persons (which differs from emergency centers for asylum seekers) to communicate the list of people accommodated there to the OFII.<sup>487</sup> This measure risks calling into question the principle of unconditional reception of migrants, as undocumented migrants may no longer approach the emergency shelters if they know that they will be flagged to the authorities. The National Consultative Commission on Human Rights (CNCDH) also requested the withdrawal of this instruction on the same legal grounds, further contending that it violates the country’s international obligations relating to human rights of migrants.<sup>488</sup> According to the Ministry of Interior, information transmission “*remains insufficient and*

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<sup>481</sup> Arrêté du 15 Juin 2019 sur le cahier des charges CADA, available in French at: <https://bit.ly/2RIU2FW>.

<sup>482</sup> *Ibid.*

<sup>483</sup> OFII, 2019 *Activity report*, 29

<sup>484</sup> Arrêté du 15 février 2019 sur le cahier des charges HUDA, available in French at: <https://bit.ly/2F52kAi>.

<sup>485</sup> Ministry of Interior, ‘*Information relating to the management of the accommodation facilities for asylum seekers and refugees*’, 15 January 2021, available in French at : <https://bit.ly/2ZjKsfP>.

<sup>486</sup> UNHCR, *L’expérience des centres d’accueil en France*, October 2017, 19-20.

<sup>487</sup> Inter-ministerial instruction of 4 July 2019 on the cooperation between Integrated reception and orientation services (SIAO) and the OFFI as regards the reception of asylum seekers and beneficiaries of international protection, available in French at : <https://bit.ly/2TFR8T6>.

<sup>488</sup> CNCDH, ‘*Cooperation between emergency centres and the OFII*’, available in French at: <https://bit.ly/2W0PfC5>.

heterogeneous, especially in Ile-de-France region” as only 2,204 asylum seekers had been identified in emergency accommodation centers from October 2019 to December 2020.<sup>489</sup>

## 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?       | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |
| ❖ If yes, when do asylum seekers have access the labour market?                 | 6 months  |
| 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?          | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |
| ❖ If yes, specify which sectors:  | Defined by Prefectures  |
| 4. Does the law limit asylum seekers' employment to a maximum working time?     | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |
| ❖ If yes, specify the number of days per year                                   |   |
| 5. Are there restrictions to accessing employment in practice?                  | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |

Since March 2019, access to the labour market is allowed only if OFPRA has not ruled on the asylum application within 6 months after the lodging of the application and only if this delay cannot be attributed to the applicant.<sup>490</sup> This means that persons who do not lodge an asylum application, such as asylum seekers under a Dublin procedure, are excluded from access to the labour market. In this case, the asylum seeker is subject to the rules of law applicable to third-country national workers for the issuance of a temporary work permit.<sup>491</sup>

In reality, asylum seekers have very limited access to the labour market, due to a number of constraints. Prior to being able to work, the applicant must have sought and obtained a temporary work permit. To obtain this work permit, the asylum seeker has to provide proof of a job offer or an employment contract. The duration of the work permit cannot exceed the duration of the residence permit linked to the asylum application. It may possibly be renewed.

The competent unit for these matters is the Regional Direction for companies, competition, consumption, work and employment (DIRECCTE) at the Ministry of Labour. In any case, the employment situation also puts constraints on this right. In accordance with Article R.5221-20 of the Labour Code (Ctrav), the Prefect may take into account some elements of assessment such as “the current and future employment situation in the profession required by the foreign worker and the geographical area where he or she intends to exercise this profession”, to grant or deny a work permit. 30 fields of work are experiencing recruitment difficulties which justifies allowing third-country nationals to work in these without imposing restrictions. These professions are listed by region – only 6 professions are common to the whole country.<sup>492</sup> In practice, Prefectures use these lists of sectors facing recruitment difficulties.

Finally, asylum seekers have a lot of difficulties in accessing vocational training schemes as these are also subject to the issuance of a work permit. According to the law,<sup>493</sup> this permit is delivered to

<sup>489</sup> Ministry of Interior, ‘Schéma national d’accueil des demandeurs d’asile et d’intégration des réfugiés 2021-2023’, 17 December 2020, available in French at : <https://bit.ly/3tOyhFK>. 14

<sup>490</sup> Article L.744-11 Ceseda, as amended by Article 49 Law n. 2018-778 of 10 September 2018.

<sup>491</sup> Article R.742-2 Ceseda.

<sup>492</sup> Ministerial Order NOR IMID0800328A of 18 January 2008 on the issuance of work permits to third-country national workers, available in French at: <http://bit.ly/1LWfeQd>.

<sup>493</sup> Article L.5221-5 Ctrav.

unaccompanied children, and the employment situation does not put any constraints if they meet some criteria, except when they are in asylum procedure due to limitations applied to all asylum seekers.<sup>494</sup>

This means that it is more difficult to obtain a permit for a child who is an asylum seeker. That is why some children do not want to ask for asylum. However, a child who has a work permit can request asylum without any effect on the permit.<sup>495</sup>

## 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 |

While no provision of the Education Code covers the particular case of children of asylum seekers, the law provides that they are subject to compulsory education as long as they are between 6 and 16 years old,<sup>496</sup> on the same conditions as any child. Primary school enrolment can be done at the local town hall. Enrolment in a secondary school (high schools) is made directly to the institution closest to the place of residence of the child. If the children seem to have a sufficient command of the French language, the evaluation process will be supervised by a Counselling and Information Centre (*Centres d'information et d'orientation*, CIO). This State structure is dedicated to the educational guidance of all students.

When the children are not French-speaking or do not have a sufficient command of writing the language, their evaluations fall under the competency of the Academic Centre for Education of Newcomers and Travellers Children (CASNAV).<sup>497</sup> The test results will enable teachers to integrate the child within the dedicated schemes e.g. training in French adapted to non-native speakers (*français langue étrangère*, FLE) or initiation classes.

Education for asylum seeking children is usually provided in regular schools but could also be provided directly in reception centres (large emergency reception facilities for instance).

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

Finally, asylum seeking children with special needs are faced with the same difficulties as children with special needs in general. Access to trained and specialised staff (*auxiliaires de vie scolaire*) tasked with supporting these children during their education in regular schools is very limited.

<sup>494</sup> They do not have the right to work except if the length of the procedure is more than 6 months.

<sup>495</sup> Article L.744-11 *Ceseda*, as amended by Article 49 Law n. 2018-778 of 10 September 2018.

<sup>496</sup> Article L.131-1 Education Code.

<sup>497</sup> See Circular NOR: 2012-143 of 2 October 2012.

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

Regarding universities, asylum seekers have the possibility in theory to enrol in a course but several practical obstacles remain such as the need to have a diploma at the end of the school course and/or another university diploma recognized by France. In practice, very few asylum seekers are enrolled in University.

## D. Health care

### Indicators: Health Care

1. Is access to emergency healthcare for asylum seekers guaranteed in national legislation?  
☒ Yes ☐ No
2. Do asylum seekers have adequate access to health care in practice?  
☐ Yes ☒ Limited ☐ No
3. Is specialised treatment for victims of torture or traumatised asylum seekers available in practice?  
☐ Yes ☒ Limited ☐ No
4. If material conditions are reduced or withdrawn, are asylum seekers still given access to health care?  
☒ Yes ☐ Limited ☐ No

Asylum seekers under the regular procedure, like any other third-country nationals below a certain income level, have access to health care thanks to the universal healthcare insurance (PUMA) system.<sup>498</sup> Since January 2020, the 3-month residence requirement that applies to other third-country nationals and which used to apply only to asylum seekers under the Dublin procedure is now applicable to all asylum seekers without exception.<sup>499</sup> After this 3-month period, asylum seekers benefit from the PUMA. The request to benefit from the PUMA is made to the social security services (CPAM) of the place of residence or domiciliation. The asylum seeker must submit documentary evidence of the regularity of his or her stay in France, marital status and the level of his or her resources. As a result, asylum seekers cannot see a doctor for free, except in hospitals in case of emergency, which means a postponement of treatment. Other negative consequences since the introduction of the new 3-month residence requirement include the fact that the compulsory examination at the entrance to the accommodation centers cannot be set up, psychological care is not accessible and vulnerability assessments are rendered more complicated.

In the context of COVID-19, this may have prevented asylum seekers from seeing a doctor for a diagnosis. However, testing and vaccine campaigns do not provide for any distinction according to nationality and legal status and are therefore available for asylum seekers if they meet priority criteria.<sup>500</sup>

Persons who have no right to remain on the territory, including rejected asylum seekers, benefit from the PUMA for six months after the end of validity of the asylum claim certification. After this period, State Medical Aid (AME) enables them to receive free treatments in hospitals as well as in any doctors' offices.<sup>501</sup> It should be noted that, prior to 2020, rejected asylum seekers could benefit from the PUMA one year after the end of validity of the asylum claim certification.

Individuals with low income and who are still awaiting health insurance and needing healthcare quickly can turn to the All-Day Healthcare Centres (PASS) at their nearest public hospital. This is therefore also a possibility for asylum seekers under the accelerated and Dublin procedures. There, they will receive care and, if necessary, the medical letter needed to speed up the processing of their application for public

<sup>498</sup> Article L.380-1 Social Security Code.

<sup>499</sup> Decree n° 2019-1531 of 30 December 2019 relating to the residence requirement applicable to asylum seekers for covering their health expenses, available in French at: <https://bit.ly/2tcEvoe>.

<sup>500</sup> Ministry of solidarity and health, 'La stratégie vaccinale et la liste des publics prioritaires', Available in French at : <https://bit.ly/389TeSg>.

<sup>501</sup> Ministry of Interior, *Social Rights of Asylum Seekers*, available at: <http://bit.ly/1EvEcCF>.

health insurance. According to the law, all public hospitals are required to offer PASS services, but in practice, this does not always occur.

As a general rule, difficulties and delays for effective access to healthcare vary from one city to another in France. Access to the PUMA is functioning well in most of the regions of France, and is effective within one month. Access has been considerably improved since 2016, even if some difficulties remain, in particular for subsequent applicants. However, as explained above, the new policy which introduces a 3-month period before accessing to has rendered the access to healthcare more difficult in 2020.

The duration of access to the healthcare insurance is in theory linked to the duration of validity of the asylum claim certification. In practice, it can be noted that the social security services deliver healthcare insurance for a one-year duration. In fact, at the end of the validity of the asylum claim certification, access to health care is not guaranteed anymore. It may then occur, at the moment of renewing their certification, that some asylum seekers get their healthcare insurance suspended.

Finally, some of the problems with regard to medical care are not specific to asylum seekers. Some doctors are reluctant to receive and treat patients who benefit from the AME or PUMA and tend to refuse booking appointments with them even though these refusals of care can in theory be punished.<sup>502</sup>

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

Victims of torture or traumatised asylum seekers can be counselled in a few NGO structures that specifically take care of these traumas. This adapted counselling is provided, for instance, at the [Primo Levi Centre](#) and [Comede](#) in **Paris** as well as the [Osiris](#) centres in **Marseille**, [Mana](#) in **Bordeaux**, Forum réfugiés – Cosi [Esson Centre](#) in **Lyon**. These specialised centres are however too few in France, unevenly distributed across the country and cannot meet the growing demand for treatment.

The difficulties are in fact even more aggravated by the geographical locations of some reception centres where the possibility to access mental health specialists would mean several hours of travel.

The general health system cannot currently cope with this adapted care for victims of torture and political violence. These regular structures lack time for consultations, funds for interpreters and training for professionals.

## 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

The law foresees a specific procedure for the identification and orientation of asylum seekers with special reception needs. This procedure consists in an interview conducted by OFII officers. These officers shall be specifically trained on identification of vulnerability (see [Identification](#)).<sup>503</sup>

However, the Ceseda does not refer to vulnerability on account of sexual orientation or gender identity, therefore this is not taken into account by OFII either. In practice, LGBTI persons face important difficulties

<sup>502</sup> Circular DSS n. 2001-81, 12 February 2001 on the care refusal for beneficiaries of the CMU.  
<sup>503</sup> Article L.744-6 Ceseda.

when OFII does not provide them with housing, as most of the time they cannot find support in their national communities.

So far, places in CADA are mostly allocated to vulnerable asylum seekers but whose vulnerability is “obvious” and visible (e.g. families with young children, pregnant women and elderly asylum seekers). The questionnaire that is used by OFII officers as part of the vulnerability assessment only focuses on “objective” elements of vulnerability, thereby hindering the identification of less visible needs.

The French system does not yet foresee any specific ongoing monitoring mechanism to address special reception needs that would arise during the asylum procedure. In practice, however, social workers in reception centres have regular exchanges with the asylum seekers and may be able to identify these special vulnerabilities, should they appear during the reception phase. It is possible for the accommodation centres to notify OFII of the personal situation of an asylum seeker presenting a particular vulnerability and to ask for his or her re-orientation to a more suitable centre. In many occasions, social workers have reported the fact that the orientation carried out by OFII did not take into account the vulnerability of some asylum seekers. For example, it has happened that asylum seekers in a wheelchair had been proposed to be accommodated in a centre without any specific access for disabled persons.

The main difficulty for the staff is however the identification of solutions to respond to certain needs (see section on [Health Care](#) on the limited access to mental health care for instance). Therefore, the obligation on OFPRA and OFII to take into account the specific situation of vulnerable persons throughout the asylum procedure, including when these vulnerabilities only appear after the vulnerability assessment, should lead to new practice. The vulnerability assessment’s conclusions as well as all information related to asylum seekers are to be computerised. Consequently, it should be easier to approach vulnerability in a more comprehensive way and to facilitate exchange of information. However, this is far from being effective in practice and many legal and practical measures such as trainings and provisions of tools to social workers are still lacking to allow this system to be implemented.

For the year 2019, the Ministry of Interior had requested Prefectures to develop places for asylum seekers with disabilities, but there is no further information about whether this was implemented in practice. It had further announced the opening of places dedicated to women victims of violence or trafficking.<sup>504</sup> About 300 places dedicated to these vulnerable women have been created in 2019, and were operating as of 2020). They are located in 5 regions - namely Auvergne **Rhône Alpes**, **Ile-de-France**, **Provence-Alpes-Côte d’Azur**, **Nouvelle Aquitaine** and **Occitanie**. Moreover, 200 places dedicated to LGBTI asylum seekers were opened in 2020.

As mentioned above, a governmental plan on vulnerability, including specific actions for asylum seekers, will be published in early 2021 to increase the identification of vulnerable groups and better address their needs.

## 1. Reception of unaccompanied children

### Care system (“*prise en charge*”) for unaccompanied children regardless of status

The term unaccompanied child has no explicit definition in French law.<sup>505</sup> The protection of young persons is therefore based on the notion of children at risk, as outlined in French legal provisions on child protection, which is applicable regardless of nationality or the status of an asylum seeker. Local authorities (*Départements / Conseils généraux*) are in charge of children at risk so they have to protect

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<sup>504</sup> Ministry of Interior, Circular NOR: INTV1900071J, 31 December 2018, available in French at: <https://bit.ly/2Syc2E8>, 7.

<sup>505</sup> Foreign unaccompanied children do not constitute any specific category in the Céseda, except for two articles which mention them in relation to the *ad hoc* administrator (Articles L.221-5 and L.751-1), or in the CASF.

unaccompanied children in France. It is therefore difficult to obtain an overview of the situation for unaccompanied children at national level. The Ministry of Justice has been in charge of the coordination of this issue at national level since 2010, but its role is limited in practice to the distribution of children between local authorities.

Protection measures are usually initiated by children who turn to NGOs or judges for help. There is no specific procedure in place for identifying unaccompanied children. When they go to the Prefecture in order to lodge an asylum application, the authorities verify only whether a legal guardian is present or not. If not, a legal representative to support and represent the child in asylum procedures (*ad hoc* administrator) should be appointed (see [Legal Representation of Unaccompanied Children](#)).

In practice, several workers regularly report that some Prefectures still do not accept to register the asylum claims of unaccompanied children. Asylum-seeking children are sometimes channelled to the common law procedure for unaccompanied minors and they are prevented from registering their asylum claim.

The distribution mechanism is set out in law.<sup>506</sup> The geographical distribution is done according to criteria defined by way of decree:<sup>507</sup>

- The population of the department, compared to the national population;
- The number of unaccompanied minors sheltered and supported at the end of the year;
- The transmission to the Ministry of Justice of the number of unaccompanied minors taken in charge by Childhood Welfare as of 31 December.

If no data are collected and transmitted, it will be considered that no unaccompanied minors have been supported and assisted in the concerned *départements*. These *départements* will therefore have to increase the number of minors assisted during the following year.

In a report sent to the United Nations Committee on the Rights of the Child in July 2020, the French Public Defender of Rights pointed out several shortcomings in the childcare system concerning migrant children with families and unaccompanied children.<sup>508</sup> This includes using former hotels to accommodate children, in substandard living conditions and with limited prospects of integration. It further highlights that the lack of adequate services and the long distance between hotels and these services is likely to lead to children dropping out of school.

### **Specific centres for unaccompanied children**

As a general rule, after identification, unaccompanied children (including those between 16 and 18) are placed in specific children's shelters that fall under the responsibility of the departmental authorities.<sup>509</sup> These are managed by the *conseils départementaux*. They also may be accommodated in foster families. Due to the lack of places, children are often accommodated in hotels in practice.

However, none of these centres are designed for asylum-seeking children specifically. In some *départements*, children are hosted in centres with all children in need of social protection, but another service helps them in their specific procedures. As an example, since 2005, Forum réfugiés-Cosi has carried out missions to provide information, legal support and assist in the referral of hundreds of asylum

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<sup>506</sup> Law n. 2016-297 relating to childhood protection, 14 March 2016, available in French at: <http://bit.ly/2jPyjYW>.

<sup>507</sup> Code de l'action sociale et des familles, article R.221-13

<sup>508</sup> French Public Defender of Rights, '*Rapport au Comité des droits de l'enfant*', 10 July 2020, available in French at : <https://bit.ly/2OkAMPG>.

<sup>509</sup> Information on the various schemes for unaccompanied children is available at: <http://bit.ly/1JP5kiG>.

seeking unaccompanied minors arriving in **Lyon**. The OFPRA leaflet targeted to unaccompanied asylum-seeking children lists a number of specialised NGOs providing support.<sup>510</sup>

When children are not accommodated in specialised centres, legal support depends on available services provided by NGOs in the geographical area.

In June 2017, the Senate published a report on the social care of unaccompanied children, where it noted shortcomings in the reception system, such as housing in hotels, and encouraged community-based accommodation.<sup>511</sup> Through an opinion of 25 September 2017, the Ombudsman requested the creation of a centre in **Calais** where unaccompanied children could rest, receive care and obtain clear information on their rights.<sup>512</sup>

Moreover, on 28 February 2019, the ECtHR ruled in case *Khan v. France* that the failure of the French authorities to provide care for an unaccompanied minor in the Calais refugee camp was in breach of Article 3 of the Convention.<sup>513</sup> In September 2020, French Ombudsman sent a communication to the Committee of Ministers concerning this case, highlighting several difficulties in accessing protection for unaccompanied minors in France.<sup>514</sup> On 2-4 December 2020, the Council of Europe Committee of Ministers invited the French authorities to adopt specific measures to protect unaccompanied minors in transit; in light of the Khan judgement.<sup>515</sup>

## F. Information for asylum seekers and access to reception centres

### 1. Provision of information on reception

The law provides that reception centre operators are responsible for providing information to asylum seekers on: (a) their rights and obligations in the centre; (b) the asylum procedure; (c) health; and (d) social rights.<sup>516</sup>

The provision of information for asylum seekers accommodated in CADA about the modalities of their reception is governed by the Circular of 2019 on the missions of CADA centres<sup>517</sup> and HUDA centres.<sup>518</sup> Upon admission in the centres, the manager has to deliver to the asylum seeker any useful information on the conditions of his or her stay in the centre, in a language that he or she understands and in the form of a welcome booklet. These modalities can vary in practice from one centre to the other. In any case, core information about procedural rights during the asylum procedure is shared with accommodated asylum seekers on a regular basis and upon request if necessary. Each centre also has its own information procedures. Generally, in centres managed by Forum réfugiés – Cosi for instance, the asylum

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<sup>510</sup> OFPRA, *Guide de l'asile pour les mineurs isolés étrangers en France*, December 2019. This list includes: Centre enfants du monde (CEM – Croix Rouge française); Coallia; France terre d'asile; InfoMIE; pôle d'évaluation des mineurs isolés étrangers (PEMIE – Croix Rouge française).

<sup>511</sup> Senate, *Rapport sur la prise en charge sociale des mineurs non accompagnés*, n. 598, 28 June 2017, available in French at: <http://bit.ly/2DcgMZg>.

<sup>512</sup> Ombudsman, Opinion n. 17-09, 25 September 2017, available in French at: <http://bit.ly/2rcqvt2>.

<sup>513</sup> ECtHR, *Khan v. France*, Application no. 12267/16, 28 February 2019.

<sup>514</sup> Committee of Ministers, 'Communication from an NHRI (Défenseur des droits de la République Française) (27/07/2020) concerning the case of Khan v. France (Application No. 12267/16)', available in French at: <https://bit.ly/2OsmAV0>.

<sup>515</sup> Committee of Ministers, '1390th meeting, 1-3 December 2020 (DH) - H46-9 Khan v. France (Application No. 12267/16) - Supervision of the execution of the European Court's judgments', available at: <https://bit.ly/2Z7SDM8>.

<sup>516</sup> Article R.744-6-1 Ceseda, inserted by Article 18 Decree n. 2018-1159 of 14 December 2018.

<sup>517</sup> Arrêté du 19 juin 2019 sur le cahier des charges CADA, available in French at: <https://bit.ly/3aWbLRH>.

<sup>518</sup> Arrêté du 19 juin 2019 sur le cahier des charges HUDA, available in French at: <https://bit.ly/2uNOQHM>.

seeker is informed about these legal reception provisions through the residence contract and operating rules he or she signs upon entry in the reception centre. On this occasion, an information booklet on the right to health is handed over to the asylum seeker. As some asylum seekers do not have easy access to written information, collective information sessions through activities are also organised in some reception centres (e.g. those managed by Forum réfugiés – Cosi).

In the context of COVID-19, some information documents on sanitary and health measures has been translated for migrants at the initiative of the authorities, NGOs or UNHCR through the information site “Refugies.info”. Most of the information was thus available to asylum seekers and refugees during the pandemic.

## 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

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

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

## G. Differential treatment of specific nationalities in reception

There is no differential treatment of specific nationalities in reception.

## Detention of Asylum Seekers

### A. General

#### Indicators: General Information on Detention

1. Asylum seekers lodging a claim in detention in 2020:	Not available
2. Number of asylum seekers in detention at the end of 2020:	Not available
3. Number of detention centres (excl. waiting zones):	
❖ Administrative detention centres (CRA):	25
❖ Administrative detention places (LRA):	20
4. Total capacity of CRA (incl. overseas territory):	1,891 <sup>519</sup>

French law does not allow detention of asylum seekers for the purpose of the asylum procedure. The asylum seekers covered in this section are mainly the ones who have lodged a request for asylum while in an administrative detention centre (*centre de rétention administrative*, CRA) for the purpose of removal, as well as those detained pending a transfer under the Dublin Regulation.

In 2019, about 1,299 third-country nationals lodged a first asylum application while in administrative detention, compared to 1,600 in 2018.<sup>520</sup> Moreover, some rejected asylum seekers asked for a subsequent examination of their asylum claim while being detained (no statistics available on subsequent applications in detention in 2019). Statistics on 2020 were not available at the time of writing.

At the same time, newly arrived asylum seekers can be arrested and placed in administrative detention. This can happen when they have started the registration process of their asylum claim and have then been arrested pending the official confirmation of this registration. Indeed, in the **Ile de France** region, these procedures can take several weeks while waiting for a registered address through an association or for the appointment at the Prefecture, before a temporary residence permit is issued (see section on [Registration](#)). These asylum seekers do not always have the necessary documents proving their pending registration with them when they get arrested. As a result, a removal decision can be taken and the person is placed in administrative detention and his or her claim may be processed from there. In practice, certain Administrative Courts order the release of such asylum seekers upon presentation of proof of steps taken to have their claim registered,<sup>521</sup> but this is far from being automatic.

There are 25 CRA and 20 administrative detention places (LRA)<sup>522</sup> on French territory (including in overseas departments).<sup>523</sup> In 2019, the capacity of CRA amounts to a total of 1,664 in 2019, up from 1,549 in 2018, on top of which 227 places from overseas must be added, i.e. 1,891 in total. The capacity of LRA is 125 places (including 31 places in overseas territory). Article R.553-3 Ceseda foresees that each centre's capacity should not exceed 140 places.<sup>524</sup> The maximum capacities for these centres are not reached in mainland France at one point in time but the turnover is very high. However, even if the capacities are not exceeded, when the centres are almost full, this causes a lack of privacy which can create tensions.

Also, in the context of the border procedure, asylum seekers are held in “waiting zones” while awaiting a decision on their application for an authorisation to enter the territory on asylum grounds. These are

<sup>519</sup> This refers to 1,664 places on mainland territory and 227 places on overseas territory.

<sup>520</sup> OFPRA, *2019 Activity report*,

<sup>521</sup> See e.g. Administrative Court of Lille, Decision No 1804330, 7 June 2018; Administrative Court of Marseille, Decision No 1703152, 18 May 2017.

<sup>522</sup> The total number of LRA is not stable and permanent as these detention facilities can be created upon a decision of the Prefect.

<sup>523</sup> Assemblée nationale, *‘Rapport sur le projet de loi de finances 2021’*, 8 October 2020. Available in French at : <https://bit.ly/3u6oZoy>, 33

<sup>524</sup> Article R.553-3 Ceseda.

distinguished from CRA but also classified as places of deprivation of liberty, as asylum seekers cannot leave these areas (except to return to their country) until an authorisation to let them enter the French territory or a decision to return them is taken. As detailed in the section on [Border Procedure](#), 2,050 requests to enter the French territory on asylum grounds were made at the border in 2019.

However, in the context of border controls in the area of **Alpes-Maritimes** throughout recent years and including in 2020, the Border Police has detained newly arrived asylum seekers without formal order in a “temporary detention zone” (*zone de rétention provisoire*) made up of prefabricated containers in the premises of the Menton Border Police, and established following an informal decision of the Prefect of Alpes-Maritimes.<sup>525</sup> The Administrative Court of Nice held that this form of detention was lawful insofar as it did not exceed 4 hours, after which individuals would have to be directed to a formal “waiting zone”.<sup>526</sup> The Council of State has also upheld this form of detention as lawful during the period necessary for the examination of the situation of persons crossing the border, subject to judicial control.<sup>527</sup> Following a decision of the *Prefect* to forbid access of NGOs (i.e. access to medical care and legal assistance) to the place of detention in **Menton** in September 2020, the Administrative Court of **Nice** ruled in November 2020 this decision was illegal.<sup>528</sup> A new decision was issued the 29 December 2020 upholding the ban on NGOs but with some adjustments for the decision to be considered legal.<sup>529</sup> However, the Administrative Court of Nice ruled again in March 2021 this decision was illegal under European law and French Constitution.<sup>530</sup>

The law provides that a foreign national who applies for asylum from detention in a CRA can only be maintained in detention if the Prefecture states in a written and motivated decision that the asylum claim has only been introduced to prevent a notified or imminent order of removal.<sup>531</sup> The decision to maintain an asylum seeker in administrative detention can be challenged before administrative courts within 48 hours, and has suspensive effect. Foreign nationals who introduced a claim from administrative detention and who are released are given an asylum claim certification and their claim will be normally processed.<sup>532</sup> In a December 2014 information note, the Minister of Interior called for an individual assessment of each case by the Prefects in order to decide precisely whether the asylum seeker in administrative detention should be delivered a temporary residence permit and therefore released from detention and channelled into the regular procedure, or not – and therefore channelled into the accelerated procedure.<sup>533</sup> In practice, this assessment always leads the Prefects to consider that the applications must always be examined under the accelerated detention procedure.

For people seeking asylum in administrative detention, it is difficult to prepare such an application in a place of confinement. There is very limited time to develop the reasons for the claim, stressful conditions prior to the interview with OFPRA, difficulties to locate and gather the necessary evidence etc. In addition, for claims channelled into the accelerated procedure, OFPRA has 96 hours to examine the application.<sup>534</sup> This extremely brief period of time drastically reduces the chances of benefiting from an in-depth examination of the claim. Therefore, only the CNDA could provide an in-depth examination of the claim. However, when the asylum seeker’s detention is confirmed by the administrative court, he or she will not

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<sup>525</sup> Anafé *et al.*, ‘Menton : des personnes exilées détenues en toute illégalité à la frontière’, 7 June 2017, available in French at: <http://bit.ly/2Dnp7pb>.

<sup>526</sup> Administrative Court of Nice, Order No 1702161, 8 June 2017.

<sup>527</sup> Council of State, Order No 411575, 5 July 2017.

<sup>528</sup> Administrative Court of Nice, Order No 2004690, 30 November 2020, available in French at : <https://bit.ly/2NVcNqH>.

<sup>529</sup> Franceinfo, ‘Frontière italienne : les associations d’aide aux migrants ne pourront pas visiter le local de mise à l’abri à Menton’, 7 January 2021, <https://bit.ly/3pB1sZk>.

<sup>530</sup> Administrative Court of Nice, Order No 2101086, 4 March 2021, available in French at : <https://bit.ly/2OnsN4D>

<sup>531</sup> Article L.556-1 Ceseda.

<sup>532</sup> Decree n. 2015-1166 of 21 September 2015.

<sup>533</sup> Ministry of Interior, Information Note of 23 December 2014 following the Council of State Decision 375430 of 30 July 2014.

<sup>534</sup> Article L.556-1 Ceseda.

benefit from a suspensive effect of his or her appeal of a negative decision given by OFPRA before the CNDA. He or she can be removed to his or her country of origin even though the CNDA has not given its final decision on the case. Consequently, the asylum seeker in detention does not benefit from an effective remedy nor from an in-depth examination of his or her claim. France has been condemned by the ECtHR in 2012 for violation of Article 13 on the right to an effective remedy in these particular circumstances.

## Detention in the context of COVID-19

In July 2020, the Controller General of Places of Deprivation of Liberty published a report on the fundamental rights of persons deprived of their liberty in times of the COVID-19 pandemic.<sup>535</sup> The report voiced concerns about the situation in pre-removal detention facilities, including waiting zones at the border, in conditions that put the detainees' health at risk. It noted that, in view of drastically reduced air traffic, immigration detention has become "an unjustified measure in practice [and] highly questionable in law" due to the lack of a reasonable prospect of removal. Clusters have been identified in some centers leading to a suspension of entries but no closure.<sup>536</sup> By the end of 2020, the detention framework was adapted to the crisis in certain respects (e.g. reduction in the capacity of centers, supply of masks and hydro alcoholic gel isolation of patients etc.) but certain points remained problematic (e.g. detention of people who cannot be expelled, insufficient measures and resources in certain centers, etc.). Persons are tested when they have symptoms and before deportation when such test is imposed by the country of return. Persons can be sentenced if they refuse to get tested as this is considered an act of obstruction to deportation.

## 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 in practice during the Dublin procedure?
  - ☐ Frequently ☒ Rarely ☐ Never
3. Are asylum seekers detained during a regular procedure in practice?
  - ☐ Frequently ☒ Rarely ☐ Never

#### 1.1. Pre-removal detention

Asylum seekers are not placed in administrative detention centres for the purpose of the asylum procedure.<sup>537</sup> Persons who claim asylum during their administrative detention can only be maintained in detention (*maintien en rétention*) if, based on a motivated and written decision, the Prefect considers that the claim aims solely to avoid an imminent removal.<sup>538</sup>

On several occasions, Administrative Courts have clarified that, where the person has made references to a risk of persecution or harm upon return to the country of origin, an intention to apply for asylum solely

<sup>535</sup> CGLPL, 'Les droits fondamentaux des personnes privées de liberté à l'épreuve de la crise sanitaire - 17 mars au 10 juin 2020', July 2020, available in French at : <https://bit.ly/3s6DJlr>.

<sup>536</sup> See e.g. Le Parisien, Covid-19 : alerte au centre de rétention du Mesnil-Amelot après plusieurs cas détectés', 13 August 2020, available in French at : <https://bit.ly/3c7wyTE>.

<sup>537</sup> Article L.554-1 Ceseda.

<sup>538</sup> Article L.556-1 Ceseda.

to avoid imminent removal cannot be inferred from the fact that the person failed to register an asylum application prior to being placed in detention.<sup>539</sup>

## 1.2. Detention under the Dublin Regulation

Asylum seekers under the Dublin procedure can be placed in administrative detention with a view to the enforcement of their transfer once the transfer decision has been notified, where there is a “significant risk of absconding”.<sup>540</sup>

In line with the CJEU’s ruling in *Al Chodor*, the Court of Cassation clarified on 27 September 2017 that the absence of a legislative provision setting out the objective criteria for determining the existence of a “significant risk of absconding”, specific to the Dublin system, precluded the applicability of detention for the purpose of carrying out a Dublin transfer.<sup>541</sup>

In response to the Court of Cassation ruling, the *Ceseda* was amended in March 2018 to define the following criteria for the existence of a “significant risk of absconding”, where an applicant:<sup>542</sup>

1. Has previously absconded from the Dublin procedure in another country;
2. Has received a rejection decision in the responsible Member State;
3. Has been found again on French territory following the execution of a transfer;
4. Has evaded the execution of a previous removal measure;
5. Refuses to be fingerprinted or deliberately alters his or her fingerprints;
6. Has falsified a document with the aim of staying on French territory;
7. Has concealed elements of his or her identity, route, family composition or previous asylum applications;
8. Does not benefit from material reception conditions and cannot prove his or her place of actual or permanent residence;
9. Cannot prove his or her place of residence after refusing a proposal for accommodation by OFII, or after abandoning his or her place of accommodation without legitimate reason;
10. Does not respond to requests from authorities without legitimate reason;
11. Has previously evaded a house arrest measure;
12. Has explicitly declared his or her intention not to comply with the Dublin procedure.

The law has gone beyond the limits set by the Court of Cassation insofar as detention may apply before the transfer decision. Asylum seekers under the [Dublin: Procedure](#) can thus be placed in detention during the procedure of determination of the responsible state. This has been applied a few hundred times since the reform.

5,160 asylum seekers were detained in view of their removal to another EU country under the Dublin procedure in 2019, up from 3,456 in 2018, 3,723 in 2017 and 2,208 in 2016.

## 1.3. Detention at the border

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.<sup>543</sup> If a person makes an asylum application at the border, he or she is automatically maintained in the waiting zone for the duration of the border procedure.

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<sup>539</sup> See e.g. Administrative Court of Lille, Decision No 1803225, 11 May 2018 (Côte d’Ivoire); Administrative Court of Nancy, Decision No 1800978, 27 April 2018 (Sudan); Administrative Court of Strasbourg, Decision Nos 1801908 and 1801984, 4 April 2018 (Dominican Republic); Administrative Court of Paris, Decision No 1800364/8, 11 January 2018 (Guinea).

<sup>540</sup> Article 28(2) Dublin III Regulation.

<sup>541</sup> Court of Cassation, Decision No 1130, 27 September 2017. See also Court of Cassation, Decision No 17-14866, 7 February 2018.

<sup>542</sup> Article L.551-1(2) *Ceseda*, inserted by Law n. 2018-187 of 20 March 2018.

<sup>543</sup> Article L.221-1 *Ceseda*.

## 2. Alternatives to detention

### Indicators: Alternatives to Detention

1. Which alternatives to detention have been laid down in the law?  
☐ Reporting duties  
☒ Surrendering documents  
☐ Financial guarantee  
☒ Residence restrictions
2. Are alternatives to detention used in practice?  
☒ Yes ☐ No

The Prefecture is responsible for assessing alternatives to detention, which can be imposed by the courts if they consider that the prefecture's assessment was wrong. The *Ceseda* lays down house arrest (*assignation à résidence*) as an alternative to administrative detention. This measure can take different forms:

- (a) House arrest in the case of an absence of reasonable prospects of removal:<sup>544</sup> The law foresees house arrest for a maximum period of six months (renewable once or several times, up to a total limit of one year) when “the foreigner can justify being unable to leave the French territory or can neither go back to his country of origin, nor travel to any other country” and that as a result, the execution of the removal measure is compromised on the medium or long term.
- (b) House arrest as an alternative to administrative detention:<sup>545</sup> The Prefect can put those people who can produce representation guarantees and whose removal is postponed only for technical reasons (absence of identification, of travel documents, or of means of transport) under house arrest for a period of 45 days, renewable once. When foreigners subjected to a return decision and who are accompanied by their minor children, do not have a stable address (decent housing within legal conditions), it is possible to envisage house arrest in hotel-like facilities.
- (c) House arrest with electronic monitoring for parents of minor children residing in France for 45 days.<sup>546</sup> This measure is not implemented as far as we are aware.

The house arrest decision can last 6 months and can be renewed once for the same period. It has to be motivated. The Prefecture is also allowed to keep the passport or identity document of the asylum seeker.

The law does not foresee any obligation to prove the impossibility to set up alternative measures before deciding to detain third-country nationals. If the person can present guarantees of representation and unless proved to the contrary, house arrest should be given priority but a necessity and proportionality test is not really implemented. This is only a possibility left to the discretion of the administration.

Instructions of the Ministry of Interior of 19 July 2016 and 20 November 2017 recommend Prefectures to largely resort to house arrest from the beginning of Dublin procedures, with a view to overcoming recurring difficulties in the implementation of transfers.<sup>547</sup> The instructions clarify that surveillance measures must accompany a house arrest order. In 2020, many Prefectures systematically continued to impose house arrest as soon as asylum seekers are placed in the Dublin procedure (see [Dublin: Procedure](#)), without conducting an individualised assessment to establish whether an alternative to detention is required.

<sup>544</sup> Article L.561-1 *Ceseda*.

<sup>545</sup> Article L.561-2 *Ceseda*.

<sup>546</sup> Article L.562-2 *Ceseda*.

<sup>547</sup> Ministry of Interior, Instruction NOR: INTV1618837J of 19 July 2016 relating to the application of the Dublin III Regulation – Resort to house arrest and administrative detention in the context of execution of transfer decisions, 4; Instruction NOR: INT/V/17/30666/J of 20 November 2017 on the objectives and priorities in the fight against irregular immigration.

It is further possible to detain third-country nationals accompanied by minor children if they do not respect house arrest prescriptions.<sup>548</sup> It is also possible for the authorities to request the use of police forces to ensure the implementation of the house arrest order and to visit the third-country national in order to place him or her in a detention centre or to remove him or her from the French territory. This use of police forces has to be approved by the Judge of Freedoms and Detention (*juge des libertés et de la détention*). The judge has to make a motivated decision within 24 hours after a request.<sup>549</sup>

### 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

#### 3.1. Detention of unaccompanied children

In theory, unaccompanied children cannot be returned and therefore cannot be detained as a consequence. Nevertheless, it is important to stress that in 2019, the six NGOs working in administrative detention centres met 264 detained persons who declared themselves to be children.<sup>550</sup> These were young persons whose age had been disputed by the authorities and had been considered as adults, as a result of a medical examination for instance. 60% of these young persons were released after a judicial decision and 19% after an administrative decision in 2019.<sup>551</sup> More recent statistics on the year 2020 are not available.

As regards waiting zones, unaccompanied children, generally speaking, are often maintained in waiting zones in inadequate conditions. The Ombudsman urged in 2017 for a better consideration of their interests, in particular by: consolidating training of agents working in waiting zones; informing children about their situation and rights; providing them more space to speak and to be heard; establishing separate spaces for children in the waiting zone; and informing the Prosecutor (*Procureur de la République*) of all unaccompanied children in these locations.<sup>552</sup> For more information on whether children can be held in these locations, see the section [Border procedure \(border and transit zones\)](#).

#### 3.2. Detention of families with children

There has been a steady increase in detained families with children from 2013 to 2019. In 2020, the Public Defender of Rights reported that the widespread use of immigration detention of children with families, and instances of keeping the child in pre-removal detention alone while the parents are not held (particularly in **Mayotte**), remained problematic issues.<sup>553</sup>

In 2019, 6 NGOs reported that the detention of children continued to increase as 3,380 children were detained, of which 279 on mainland (136 families) and 3,101 (92%) in **Mayotte**.<sup>554</sup> In overseas territory,

<sup>548</sup> Article L.551-1 Ceseda.

<sup>549</sup> Article L.561-2(2) Ceseda.

<sup>550</sup> ASSFAM-groupe SOS Solidarités, Forum réfugiés-Cosi, France terre d'asile, La Cimade, July 2020, available in French at: <https://bit.ly/2NKJTco>, 26

<sup>551</sup> *Ibid.*

<sup>552</sup> Ombudsman, Decision No 2017-144, 26 June 2017, available in French at: <http://bit.ly/2Dko1v7>.

<sup>553</sup> Défenseur des droits, 'Rapport au Comité des droits de l'enfant', 10 July 2020, available in French at: <https://bit.ly/2OkAMPG>.

<sup>554</sup> *Ibid.*

the authorities unlawfully “attach” children to unrelated adults. The Public Defender of Rights expressed concerns about persistent practices in the overseas department of **Mayotte**, where migrant children are falsely associated with other persons with whom they have no family ties in order for them to be placed in pre-removal detention and subsequently removed from the country. This mainly affects children from the **Comoros** arriving in **Mayotte** on makeshift crafts.<sup>555</sup> On 25 June 2020, the ECtHR condemned France about a situation that take place in 2013. Two children had been arbitrarily associated with an unrelated adult in respect of their return order, and were also detained in the same location and conditions as other adults. Moreover, it was apparent that no administrative detention order had been issued to the children, but it was made in conjunction with the same adult. As a result, the Court held, *inter alia*, that the children had effectively entered a legal vacuum without the possibility to challenge their removal and without the accompaniment of an adult able to legally act on their behalf.<sup>556</sup>

On 12 July 2016, the ECtHR condemned France on five occasions for detaining children. In these decisions, the Court recalled that the detention of minors must be used as a last resort.<sup>557</sup>

In May 2020, some deputies filled a proposal for a law (not debated to date) aiming to “strictly regulate the administrative detention of families with minors”.<sup>558</sup> The National Consultative Commission on Human Rights criticised in an opinion the “proposed law to strictly regulate the administrative detention of families with children”. The draft does not categorically prohibit immigration detention of children; it merely limits such detention to 48 hours, with a possible extension of three days. Recalling that the ECtHR found France guilty of arbitrary detention on multiple occasions, the opinion calls on the National Assembly to amend the legislative proposal.<sup>559</sup>

### 3.3. Detention of victims of trafficking

Another issue is raised in relation to victims of human trafficking. Detention places are not meant to guarantee protection and the police officers hearing third-country nationals in these centres mainly focus on their administrative status. Potential asylum-seeking victims of trafficking do not feel safe and confident to submit an asylum claim, or to express their fear and their situation. They encounter difficulties to trust police officers unable to protect them against their traffickers.

<sup>555</sup> Défenseur des droits, ‘*Rapport au Comité des droits de l’enfant*’, 10 July 2020. Available in French at : <https://bit.ly/2OkAMPG>.

<sup>556</sup> ECtHR, *Moustahi v France*, Application No. 9347/14. 25 June 2020.

<sup>557</sup> ECtHR, *A.B. v. France*, Application No 11593/12, *R.M. and M.M. v. France*, Application No 33201/11, *A.M. v. France*, Application No 24587/12, *R.K. v. France*, Application No 68264/14 and *R.C. v. France*, Application No 76491/14, Judgments of 12 July 2016.

<sup>558</sup> Assemblée Nationale, Proposal n°2952, 12 May 2020, available in French at : <https://bit.ly/3k4JRrD>.

<sup>559</sup> CNCDH, ‘*Avis sur la proposition de loi visant à encadrer strictement la rétention administrative des familles avec mineurs : une occasion manquée*’, NOR : CDHX2025771V, 4 October 2020, available in French at : <https://bit.ly/2NICTmg>.

## 4. Duration of detention

### Indicators: Duration of Detention

1. What is the maximum detention period set in the law (incl. extensions): 90 days
2. In practice, how long in average are asylum seekers detained? Not available<sup>560</sup>

### 4.1. Duration of detention in CRA

A person can remain in administrative detention for a maximum of 90 days.<sup>561</sup> Prior to the 2018 reform, the maximum time limit was 45 days.

The decision of placement in administrative detention taken by the administration is valid for 2 days. Beyond this period, a request before the Judge of Freedoms and Detention (JLD) has to be lodged by the Prefect to prolong the duration of administrative detention.<sup>562</sup> This judge can order an extension of the administrative detention for an extra 28 days after the initial placement. A second prolongation for 30 days is possible, followed by two further prolongations of 15 days granted under certain conditions, in particular if the persons deliberately obstruct their return by withholding their identity, the loss or destruction of travel documents,<sup>563</sup> or the fact that despite the goodwill of the executing administration, the removal measure has not yet been finalised. Beyond this period of 45 days, any foreigner who has not been removed must be released.

In practice, the length of stay of asylum seekers who have claimed asylum while in CRA is difficult to assess. While there was no updated information for the year 2020 at the time of writing, on average, third-country nationals remained 16.8 days in administrative detention centres in 2019. In many CRA, the average detention duration was largely beyond that average:

Average duration of detention: 2019	
CRA	Average duration of detention (days)
Bordeaux	13.2
Coquelles	13.1
Guadeloupe	5.5
Guyane	5.6
Hendaye	16.8
Lille-Lesquin	13.9
Lyon-Saint-Exupéry	21.8
Marseille	20
Mesnil-Amelot	18.5
Metz-Queuleu	15.4
Nice	19.9
Nîmes	16.2
Palaiseau	17.2

<sup>560</sup> Statistics on the average detention of asylum seekers specifically is not available. However, regarding third-country nationals in general, statistics indicate an average detention of 16.8 days in 2019.

<sup>561</sup> Article L.552-7 Ceseda, as amended by Article 29 Law n. 2018-778 of 10 September 2018. Originally set at a maximum of 7 days, the length of administrative detention was extended to 32 days in 2003, to 45 days in 2011 and to 90 days in 2018. In exceptional situations, not known in practice, foreigners can be detained for 6 months when they are sentenced for terrorism.

<sup>562</sup> Article L.552-1 Ceseda.

<sup>563</sup> Article L.552-7 Ceseda.

Paris-Vincennes	17
Perpignan	22.1
Plaisir	15.2
Rennes	12.9
Rouen-Osseil	13.3
Sète	15.7
Strasbourg-Geispolsheim	17.2
Toulouse- Cornebarrieu	18.7
<b>Total</b>	<b>16.8</b>

Source: ASSFAM-groupe SOS Solidarités, Forum réfugiés-Cosi, France terre d'asile, La Cimade, 2019 Detention report, July 2020, available in French at: <https://bit.ly/2NKJTco>.

## 4.2. Duration of detention in LRA

Detention in LRA can only be ordered for a maximum period of 48 hours, after which the person must be transferred to a CRA.<sup>564</sup> This is respected in practice.

## 4.3. Duration of detention in waiting zones

The placement in waiting zones is ordered for an initial period of 4 days.<sup>565</sup> It can then be extended by the JLD for a period of 8 days,<sup>566</sup> and in exceptional cases or where the person obstructs his or her departure, for 8 additional days.<sup>567</sup> This brings the maximum period of detention in waiting zones to 20 days in total.

If necessary, the Border Police makes full use of the possibility to prolong detention and hold people in waiting zones for 20 days, although the average period of detention is 5 to 6 days in waiting zones such as **Roissy** and **Marseille**.<sup>568</sup>

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 14<sup>th</sup> day, the law foresees the possibility of a further extension of detention for 6 more days following the submission of the asylum application, with a view to allowing the authorities to conduct the asylum procedure.<sup>569</sup> The detention period can thereby extend to 26 days if the person applies for asylum on the 20<sup>th</sup> day of detention.

## C. Detention conditions

### 1. Place of detention

#### Indicators: Place of Detention

- 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
- If so, are asylum seekers ever detained in practice in prisons for the purpose of the asylum procedure? ☐ Yes ☒ No

<sup>564</sup> Article L.551-3 Ceseda.

<sup>565</sup> Article L.221-3 Ceseda.

<sup>566</sup> Article L.222-1 Ceseda.

<sup>567</sup> Article L.222-2 Ceseda.

<sup>568</sup> ECRE, *Access to asylum and detention at France's borders*, June 2018, 8.

<sup>569</sup> Article L.222-2 Ceseda.

### 1.1. Administrative detention centres (CRA)

Administrative detention centres (CRA) are controlled and managed by the border police. Under the law, these administrative detention centres are not part of the regular prison administration. Placement in an administrative detention centre results from an administrative decision (not a judicial decision). Despite being held together with other third-country nationals, asylum seekers are never held with common law criminals or prisoners.

By mid-2020, there were 25 CRA on French territory, including in overseas departments. Following table provides statistics on the occupancy of the CRA in mainland for the years 2017 to 2019, as statistics on the year 2020 were not available at the time of writing:

CRA	Persons detained in 2017	Persons detained in 2018	Persons detained in 2019
Bordeaux	365	412	445
Coquelles	3,786	2,824	2,038
Hendaye	Temporarily closed in 2017	358	355
Lille-Lesquin	2,728	1,952	1,771
Lyon-Saint Exupéry	1,395	1,498	1,450
Marseille	1,289	1,187	1,431
Mesnil-Amelot (2 facilities)	3,476	2,827	3,684
Metz-Queuleu	1,768	1,584	1,563
Nice	1,029	810	623
Nîmes	925	1,190	1,323
Palaiseau	600	462	662
Paris-Palais de Justice	403	158. Closed on 22 April 2019	N/A
Paris-Vincennes (3 facilities)	3,648	4,504	5,575
Perpignan	883	750	571
Plaisir	416	362	509
Rennes	1,072	1,179	958
Rouen-Oissel	1,167	1,276	938
Sète	401	494	355
Strasbourg-Geispolsheim	(temporarily closed in 2017)	528	559
Toulouse-Cornebarrieu	1,069	1,302	1,320
Guadeloupe	263	345	N/A
Guyane	1,486	1,857	N/A
Mayotte	17,934	16,496	N/A

Source: ASSFAM-groupe SOS Solidarités, Forum réfugiés-Cosi, France terre d'asile, La Cimade, 2019 Detention report, July 2020, available in French at: <https://bit.ly/2NKJTco>.

Some CRA have specific places for women and families, including **Hendaye** (6 out of 30 places), **Lyon** (12 out of 104 places), **Mesnil-Amelot** (40 out of 240), **Rennes** (12 out of 70 places), **Rouen-Oissel** (19 out of 72 places) and **Guyane** (12 out of 38 places).

## 1.2. Places of administrative detention (LRA)

There are 20 administrative detention places (LRA) in France, including overseas departments.<sup>570</sup> According to the Ministry of Interior, about 2,426 foreigners have been detained in LRA in 2019, but a detailed breakdown of statistics per LRA is not available.<sup>571</sup>

## 1.3. Waiting zones at the border

In the context of the **Border Procedure**, asylum seekers are held in a waiting zone while awaiting a decision on their application for an authorisation to enter the territory on asylum grounds.<sup>572</sup>

There is no public data on the exact number of waiting zones in France and their capacity. According to the Ministry of Interior, quoted in a report by Anafé published in 2018, there were 67 waiting zones in 2015.<sup>573</sup> More recent information quoted by ECRE referred to asylum applications registered in 12 waiting zones in airports, located in:<sup>574</sup>

- Paris Roissy CDG Airport
- Paris Orly Airport
- Paris Beauvais Airport
- Marseille Airport
- Lyon – Saint Exupéry Airport
- Toulouse Blagnac Airport
- Bâle-Mulhouse Airport
- Bordeaux Airport
- Nantes Airport
- Nice Airport
- Strasbourg Airport
- La Réunion

Some other waiting zones are located in ports (Marseille, Dunkerque etc.) or in train stations with international lines (e.g. Modane, Paris-Gare du Nord), but here is no list detailed list.

Waiting zones may include accommodation “hotel-type services” as is currently the case for the waiting zone of the **Paris Roissy CDG Airport** (in the ZAPI 3 - *zone d’attente pour personnes en instance*), which can receive up to 160 people. In other waiting zones, the material accommodation conditions vary: third country nationals are sometimes held in a nearby hotel (like in **Orly airport** at night) or in rooms within police stations. Not all are equipped with hotel type services. In **Marseille**, the accommodation facility of the waiting zone is located in the premises of the CRA of Marseille, located near the city centre.

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<sup>570</sup> The total number of LRA is not stable and permanent as these detention facilities can be created upon a decision of the Prefet.

<sup>571</sup> Assemblée nationale, ‘Rapport sur le projet de loi de finances 2021’, 8 October 2020, available in French at : <https://bit.ly/3u6oZoy>, 33

<sup>572</sup> These are not formally designated as detention centres, but asylum seekers cannot leave these areas (except to return to their country) until an authorisation to let them enter the French territory or a decision to return them is taken.

<sup>573</sup> Anafé, *Aux frontières des vulnérabilités*, February 2018, available in French at: <https://bit.ly/2T0CtTc>, 72.

<sup>574</sup> ECRE, *Access to asylum and detention at France’s borders*, June 2018, 16.

In these accommodation areas, there should be an area for lawyers to hold confidential meetings with the foreign nationals. In practice, those are only established in the **Roissy CDG airport** (ZAPI 3) and can accommodate up to 160 persons. In the other waiting zones, the material conditions for accommodation can vary greatly: foreign nationals are sometimes accommodated in a nearby hotel (like in **Orly** at night time), or in rooms within police stations. They do not all have access to “hotel-type” services.

Finally, in **Alpes-Maritimes**, an informal “temporary detention zone” has been set up in the premises of the Menton Border Police in 2017 to detain newly arrived migrants from Italy for short periods before their removal from the country.

9,450 persons were detained in a waiting zone in 2017, and 5,371 in the first 7 months of 2018.<sup>575</sup> More recent data was not available, however.

## 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 |

Police staff working in the CRA do not receive a specific training with regard to migration and asylum law. This lack of specific training is, however, compensated by the fact that NGOs are present quasi-permanently in administrative detention centres in order to provide legal information and assistance.

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

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

Centres in which families may be detained must provide specific rooms, including nursery equipment.<sup>576</sup> Men and women held in detention centres have separated living spaces (*zones de vie*). The set-up of the rooms varies from one detention centre to the other, ranging from 2 to 6 persons per room. Specific provisions have been adopted concerning **Mayotte**. The detention centre cannot exceed a 140 places capacity, will integrate unisex rooms, free-access sanitary facilities, an open-air area, one room medically equipped, reserved for the medical team and a free-access telephone for organisations intervening in the centre.<sup>577</sup>

<sup>575</sup> National Assembly, *Avis sur le projet de loi de finances 2019*, 12 October 2018, 95.

<sup>576</sup> Article R.553-3 Ceseda.

<sup>577</sup> *Ibid.*

Overall, the administrative detention conditions are deemed adequate in France but there are quite important differences between centres. Throughout 2016, several riots have broken out, including cases of arson, in a number of CRA such as **Paris-Vincennes** and **Mesnil-Amelot**.<sup>578</sup> In December 2017, a **Paris-Vincennes** unit was burned during a riot.<sup>579</sup> Hunger strikes were led in four CRA in January 2019.<sup>580</sup> Between 2017 and 2019, five migrants died in CRA<sup>581</sup> and several suicides attempts have been reported. In 2020, these situations persisted and were accentuated by the health crisis of COVID 19 during which detention was even more perceived as unfair.<sup>582</sup> In a report on detention conditions in the context of immigration in France, published in March 2020, the European committee for the prevention of torture (CPT) noted several points: lack of specialised training for staff, no systematic health examination before admission, almost total absence of activities and little contact with staff, prison-like environment, almost no activities in most of the places visited, information notices on rights which often only exist in French, no consultation with a psychologist, but also good practice of wide access to outdoor courtyards.<sup>583</sup>

## 2.1. Conditions in CRA

### Overall living conditions

The 2019 Detention report gives a specific description of the detention conditions in each CRA:

CRA	General conditions / specific elements	Sanitation and food	Collective spaces
<i>Mainland France</i>			
<b>Bordeaux</b>	Completely renovated in 2011  Many asylum seekers are detained after being placed under a Dublin procedure.	2 showers and 2 toilets  3 nurses on site every day, 2 doctors part time	Canteen with 2 TVs  One TV room  20m <sup>2</sup> secured outdoor patio with table-soccer game, 2 benches and sport equipment, free access
<b>Coquelles</b>	The detention centre is the closest one to Calais. It has operated for 17 years and is dilapidated.  The detention centre is divided into 3 zones.	3 to 4 showers per zone and 1 toilet per room  4 nurses and 2 doctors (1 or 2 nurses on site every day)	25 rooms (2 to 5 beds per room)  1 TV per zone  1 collective space and a phone box

<sup>578</sup> See Assfam, Forum réfugiés – Cosi, France terre d'asile and La Cimade, *Incendies en rétention : illustrations de la violence de l'enfermement*, 13 July 2016, available in French at: <http://bit.ly/2jU9qPm>.

<sup>579</sup> Le Parisien, 'Bois de Vincennes : une unité du centre de rétention part en fumée après une évasion', 5 December 2017, available in French at: <http://bit.ly/2FGK27V>.

<sup>580</sup> Libération, 'Mouvements de grève de la faim dans quatre centres de rétention administrative', 18 January 2019, available in French at: <https://bit.ly/2ImNNVr>.

<sup>581</sup> La Cimade, *Rétention : mort d'une personne par pendaison*, 30 December 2019, available in French at: <https://bit.ly/3arLPwb>.

<sup>582</sup> See e.g. Infomigrants, 'Centres de rétention en France : la colère d'étrangers sans perspective d'avenir', 13 August 2020, available in French at: <https://bit.ly/2NIFztS>.

<sup>583</sup> Council of Europe, CPT, *Rapport au Gouvernement de la République française relatif à la visite effectuée en France par le Comité européen pour la prévention de la torture et des peines ou traitements inhumains ou dégradants (CPT) du 23 au 30 novembre 2018*, 24 March 2020, available in French at: <https://bit.ly/39rfnJw>.

	Many people are detained without perspective of deportation. In 2018, 148 foreigners have declared being minors but were not considered as such by the authorities.		Courtyard with benches, free day-time access
<b>Hendaye</b>	<p>Temporarily closed in 2017, but re-opened in April 2018.</p> <p>Security concerns arose from the lack of police presence within the detention centre.</p> <p>Vulnerable persons were detained</p>	<p>2 nurses and 2 doctors</p> <p>15 showers and 15 toilets</p>	<p>14 rooms composed of 2 beds each and 1 room for a couple</p> <p>2 TV rooms, board games, a play room for children</p> <p>2 courtyards with a table-soccer, tennis table, basketball hoop, sport equipment, bench, cigarette-lighter</p>
<b>Lille-Lesquin</b>	<p>The detention centre has been open since 2006. Many asylum seekers under Dublin procedures were detained at the end of 2017, despite the decision of the Court of Cassation.</p> <p>Following medical examinations demonstrating serious health issues, several other persons were released and their repatriation was suspended.</p> <p>A handicapped man was also released a few hours after his arrival due to the lack of appropriate support for handicapped persons.</p> <p>Since the end of 2018, 3 rooms are dedicated to host people previously condemned for acts of terrorism.</p> <p>Video conferencing for interviews with OFPRA is available. Several technical dysfunctions have nevertheless been denounced, as well as the stressful and intimidating character of the room.</p>	<p>45 showers and toilets</p> <p>3nurses, 5 doctors</p>	<p>42 rooms with 2 beds, 3 rooms with 4 beds</p> <p>180m<sup>2</sup> hallway with a bench, a fountain and a phone box, giving access to the offices of the association and the OFII.</p> <p>Courtyard with a table tennis and a playground, free access from 5 a.m to 23 p.m</p>

<b>Lyon-Saint Exupéry</b>	<p>The detention centre is located in a former low cost hotel and is opened since 1995.</p> <p>In 2018, 118 asylum seekers placed under Dublin procedure were detained; 20 of them were sent to the state responsible for their application (mainly Italy) the day after their arrival through “special flights”, without having access to legal aid.</p>	<p>1 shower and 1 toilet per room</p> <p>There are 4 nurses (3 full-time and 1 part-time) and 1 doctor but there is no permanent access to the medical unit</p>	<p>26 rooms with 4 beds and 2 confinement rooms</p> <p>4 collective rooms with 4 tables tennis and sport equipment, free day-time access</p> <p>2 outdoor courtyards (1 area for men area, 1 area for women/families) partly with grass, free day-time access</p>
<b>Marseille</b>	<p>Detention conditions are deteriorated by structural problems such as waters leakages (especially in common areas), and breaches in the air circulation system</p> <p>Access to legal aid offered by the association is difficult due to long waiting lists. The number of asylum seekers under Dublin procedure detained increased by 60% in 2018 (106 persons) compared to 2017.</p>	<p>1 shower and 1 toilet per room</p> <p>4 nurses, 3 doctors and 1 medical secretary</p>	<p>69 rooms with 2 beds per room</p> <p>TV room, canteen and walking zone, free access during the day</p> <p>Outdoor courtyard covered by wires, free access during the day</p>
<b>Mesnil-Amelot</b>	<p>The detention centre is divided into two facilities.</p> <p>Many people detained have psychiatric issues.</p> <p>Illegal practices led by the Prefecture have been denounced (e.g. deportation of people during asylum procedures, detention of people with family links in France etc.).</p>	<p>2 showers and 4 toilets per facility (20 people)</p> <p>6 nurses, 5 doctors and 1 psychiatrist twice a week</p>	<p>120 rooms with two beds in each of the 2 buildings and 1 confinement room per facility</p> <p>2 collective spaces of 16.5m<sup>2</sup> per building with 1 TV</p> <p>One 80m<sup>2</sup> courtyard per building, free access</p> <p>Playground for children</p>
<b>Metz-Queuleu</b>	<p>Following a terrorist attack in 2017 in Marseille by a foreigner in irregular situation who should have been detained, the increase in the number of detainees resulted</p>	<p>4 showers and 4 toilets per building</p> <p>3 nurses and 2 doctors consulting on demand</p>	<p>7 buildings of 14 rooms (2 beds par room)</p> <p>Canteen and TV room in each building</p>

	<p>in the deterioration of living conditions in the center; causing tensions among the detainees and with the staff.</p> <p>Several families were detained, in some cases for more than a week.</p> <p>112 children detained in 2018, 65 were less than 6 years old</p> <p>Vulnerable young women, mostly victims of human trafficking, were detained.</p>	<p>Difficult access to medical care, long and complicated procedures to get an appointment with the doctors provided by OFII.</p>	<p>Large outdoor courtyard separated in two zones (men and women/families) with a playground for children and football and basketball fields</p> <p>4 phone boxes</p>
<b>Nice</b>	<p>The capacity of the centre passed from 38 to 40 places in 2018. Renovations to renew the rooms and the showers are foreseen.</p>	<p>8 showers and 9 toilets (no doors are provided so that detainees are obliged to use sheets to preserve their privacy)</p> <p>1 nurse every day and 1 doctor part-time 5 days a week</p> <p>Insufficient quantity of food, no halal food, which causes many tensions between the detainees and the police</p>	<p>5 rooms with 6 beds each; 2 rooms with 5 beds each</p> <p>1 shared room with a TV, free access during the day</p> <p>1 outdoor secured courtyard. Nothing in there. Ongoing works to put wires above.</p>
<b>Nîmes</b>	<p>Although the detention centre is a recent building, regular dysfunctions are being registered: detainees mostly suffer from high temperatures in the summer and cold temperatures in winter due to heating interruptions</p> <p>Interviews with OFPRA are conducted via videoconferencing.</p> <p>Several vulnerable people without real perspectives of repatriation have been detained.</p>	<p>1 shower and 1 toilet per room</p> <p>2 nurses every day and 3 doctors part-time 5 days a week</p> <p>Detainees often complain about the lack of halal food, causing tensions and an important waste of food.</p>	<p>64 rooms with 2 beds each</p> <p>1 room for people with disabilities</p> <p>2 TV rooms and 2 rooms with a table-soccer game</p> <p>1 fenced courtyard built in concrete with a tennis table</p>
<b>Palaiseau</b>	<p>The detention centre is close to the prison of Fleury-Mérogis.</p>	<p>1 shower and 1 toilet per room</p>	<p>20 rooms with 2 beds each and 1 confinement room</p>

	<p>Detainees complain about the lack of activities and about the stressing situation resulting from the lack of information on the duration of the detention.</p> <p>Several cases of personal belongings and identity documents having been lost have been reported.</p>	<p>1 nurse every day, 1 doctor 2 half-days a week</p> <p>To protest against detention conditions, detainees have resorted to self injuries and hunger strikes.</p>	<p>1 TV room and 1 collective room with a TV and a table-soccer game</p> <p>1 outdoor courtyard</p>
<b>Paris-Vincennes</b>	<p>Many detainees in 2018 were seriously ill and under Dublin procedures.</p>	<p>10 showers and 10 toilets per building (3 buildings)</p> <p>3 doctors, 8 nurses everyday</p>	<p>2 to 4 beds per room</p> <p>1 collective room with a TV and 1 console</p> <p>1 fenced courtyard with a tennis table and sporting equipment, free access</p>
<b>Perpignan</b>	<p>CRA only for men.</p>	<p>3 showers and 3 toilets per building (5 buildings)</p> <p>Nurses every day and 1 doctor 3 times a week</p> <p>Tensions caused by the presence of detainees with drug addiction problems and having violent behaviours.</p> <p>Detainees complained about the lack of halal food</p>	<p>22 rooms with 2 beds in each, 1 room with 4 beds</p> <p>1 TV room</p> <p>2 outdoor courtyards with a football field and a tennis table, free access from 7 a.m to 23 p.m.</p>
<b>Plaisir</b>	<p>The detention centre is located within the premises of the police station. Directions to the CRA are nowhere indicated.</p> <p>Video conferencing for interviews with OFPRA is available, but since the hall is not sufficiently isolated, the lack of privacy has been denounced by detainees.</p> <p>Violence committed by the security as well as excessive use of isolation measures</p> <p>Many detainees were seriously ill, i.e. suffering from</p>	<p>1 shower and 1 toilet per room</p> <p>1 nurse every day and 1 doctor 2 half-day in the week</p> <p>Detainees are obliged to stay in their rooms between midnight and 7 a.m.</p> <p>Meals are often not compatible with religious believes</p>	<p>14 rooms with 2 beds per room</p> <p>1 canteen with a TV and a table-soccer game</p> <p>One 108m<sup>2</sup> fenced outdoor courtyard (also covered with wires).</p>

	physical handicap and/or psychiatric problems or drug addictions. Adequate treatment has not been provided to them in the centre.		
<b>Rennes</b>	<p>Number of detainees (1,179) increased by 10% in 2018 compared to 2017</p> <p>Many people suffering from severe mental illnesses have been detained without taking into account their situation</p>	<p>16 showers and 18 toilets</p> <p>1 nurse every day and 1 doctor 3 half-days a week</p> <p>Collective hunger strike to protest against the conditions of expulsion.</p>	<p>26 rooms with 2 beds per room and 1 family room for 4 people.</p> <p>2 confinement rooms (set up in 2014)</p> <p>1 collective room with TV, sporting equipment and a table-soccer game</p> <p>1 collective room per building with TV</p> <p>1 fenced and opaque outdoor courtyard with a basketball field and greenery areas. Only day-time access.</p>
<b>Rouen-Oissel</b>	<p>The detention centre is located in the Londe-Rouvray forest, within the premises of the police station. No direct public transportation leads to the detention centre.</p> <p>The building is old and affected by many dysfunctions, mainly in the men's area where there are regular water leakages (certain rooms are particularly moist), the heating is not functioning well in common areas and the rooms are humid</p> <p>The right to an effective remedy is not respected for people coming from prisons (decision notified on Friday evening).</p> <p>Excessive and unjustified use of isolation measures. Violence committed by the police have been frequently reported in those situations.</p>	<p>1 shower and 1 toilet per room</p> <p>3 nurses and 1 doctor</p>	<p>72 places (53 for men and 19 for women)</p> <p>14 rooms (8 rooms with 6 beds each, 2 rooms with 5 beds each, 3 rooms with 4 beds each and 1 room with 2 beds)</p> <p>In the "men's area" there are 1 table-soccer game, 1 table-tennis game and 2 rooms with TV</p> <p>In the "women and family area" there is a 40 m<sup>2</sup> room for children with toys and a tennis-table game. There is also a TV room</p> <p>In each area there is a small fenced outdoor courtyard</p>

<b>Sète</b>	<p>The detention centre is dilapidated.</p> <p>Machines with coffee, cigarettes and snacks broken; inadequate heating system and air conditioning.</p>	<p>1 shower and 1 toilet per room</p> <p>2 nurses 7/7 days and 1 doctor 2 days a week working part-time</p> <p>Meals are subject to tensions and detainees complain that food is insufficient. No halal food.</p> <p>Many people are detained even if affected by severe mental illnesses.</p> <p>Self injuries and hunger strikes to protest are frequent.</p>	<p>12 rooms with 2 beds and 1 room for 4 people</p> <p>1 collective room of 50 m<sup>2</sup> with TV and a table-soccer game</p> <p>1 fenced, covered and opaque courtyard of 47m<sup>2</sup></p>
<b>Strasbourg-Geispolsheim</b>	<p>CRA only for men.</p> <p>83 detainees were transferred from LRA.</p> <p>Since 2018, the number of detainees placed under Dublin procedure increased.</p>	<p>Good medical assistance provided, including external consultation by specialised doctors.</p> <p>Self injuries and hunger strikes have been registered however.</p>	
<b>Toulouse-Cornebarrieu</b>	<p>The detention centre was built in 2006. The buildings are dilapidated. This includes problems with the heating, isolation and breaks in the walls, as well as dirty facilities and showers with no hot water.</p> <p>The center is almost always full</p>	<p>1 shower and 1 toilet per room</p> <p>1 doctor working part time 7/7 days part-time and 2 nurses present 7/7 days</p> <p>Several cases of important psychological distress have been reported, leading in some cases to suicide attempts</p>	<p>5 areas (3 for men, 1 for women and 1 for families)</p> <p>61 rooms of 12m<sup>2</sup> (up to 20m<sup>2</sup> for family rooms)</p> <p>1 TV room</p> <p>One 200m<sup>2</sup> fenced and covered outdoor courtyard per area, free access 24/24h</p>
<b>Overseas</b>			
<b>Guadeloupe</b>	<p>Poor detention conditions and particularly poor medical follow-up</p> <p>Rooms often infested by insects.</p>	<p>5 showers and 3 toilets</p> <p>Poor medical support as no doctors are present in the centre. 1 nurse working part-time during the week and 1 nurse during the week-end.</p>	<p>8 areas: 6 for men and 3 for women. Rooms of 12m<sup>2</sup> with 4 beds each.</p> <p>Canteen with TV, Outdoor courtyard, completely fenced</p>

<b>Guyane</b>	<p>Poor medical follow-up even though detention conditions have improved.</p> <p>Tensions between detainees and security staff</p>	<p>7 showers and 6 toilets</p> <p>1 nurse 6/7 days in the morning until 3 pm.</p> <p>1 doctor 3/7 days</p> <p>In practice, the doctor intervenes mostly on request and can only be reached by phone when absent.</p> <p>Hunger strikes have been organised in October 2018 to protest against the insufficiency of the food. A suicide attempt was registered in October.</p>	<p>Men's area: 5 rooms with 5 beds each</p> <p>Women's area: 4 rooms with 3 beds each</p> <p>2 completely fenced outdoor courtyards closed during the night</p>
<b>Mayotte</b>	<p>A new detention centre was opened in Mayotte in September 2015, to replace the old centre whose conditions have been criticised on several occasions.</p> <p>The centre has been recently renovated and the detention conditions are significantly improved.</p> <p>Access to the rights very difficult (only 13% of detainees have seen NGO in 2018)</p>	<p>15 toilets plus 2 for disabled people</p> <p>15 showers plus for 2 disabled people</p> <p>1 doctor on site every afternoon 5/7 days and three nurses on site every day from 8 am to 6 pm</p>	<p>26 shared rooms (16 for individuals and 10 for families)</p> <p>1 canteen</p> <p>1 outdoor courtyard for all with a playground for children, free access</p>
<b>Réunion</b>	This centre is closed for renovation.		

Separate places are provided for families in the 10 centres which are duly authorised. Access to education is not foreseen in France in CRA since children are not supposed to stay there. However, the prohibition of administrative detention for children is only applicable to unaccompanied children; children with their families can be detained for 90 days without access to education.

Access to open-air areas depends on the facilities. Facilities built after 2006, such as in **Marseille**, have become prison-like. In the majority of the centres, no activity is provided. As demonstrated in the above table, depending on the CRA, there may be a TV room (sometimes out of order or only broadcasting programmes in French), a few board games, a table football or even several ping pong tables but this is still insufficient, especially taken into consideration the length of detention which can amount to 90 days.<sup>584</sup> Lack of activity and boredom are the day to day reality for persons held in these centres. The detainees can in principle keep their mobile phones if they do not include camera equipment. Most people are

<sup>584</sup> *Ibid.*

therefore not authorised to keep their phones and the police refuses to authorise them even if the detainees offer to break the camera tool. Detainees may have access to reading material, depending on the centre but computers are never made available. Finally, detainees can have contact with relatives during restricted visit hours, however a number of detention centres are located in remote areas or accessible with difficulty (no or limited public transportation).

### Health care and special needs in detention

There is no specific mechanism to identify vulnerable persons or persons with special reception needs while in detention.

Sanitary and social support is provided by medical and nursing staff. Their availability varies from one centre to the other (from 2 days to 7 days a week). The care is given by doctors and nurses who belong to an independent hospital staff. They are grouped in medical administrative detention centres (UMCRA).<sup>585</sup> In principle, each person placed in administrative detention is seen by the nurse upon arrival. The person is seen by the doctor upon request or on the request of the nurses, in principle within 2 days of arrival. The threshold to determine that a health status is incompatible with administrative detention seems to vary a lot depending on the doctors and the detention centres. In case of high-risk pregnancy, doctors of the UMCRA may provide a certificate stating the incompatibility of the health of the person with placement in administrative detention – but this is not automatic and this recommendation is not always followed by the Prefect.

The General Controller of Places of Detention (CGLPL) issued an opinion in December 2018, urging for a revision of the UMCRA framework and an expansion of their capacity.<sup>586</sup> Moreover, in a report published after an unannounced visit to an administrative detention centre in Lyon, the Controller General of places of deprivation of liberty highlighted a number of shortcomings in the detention conditions. These include insufficient information on the house rules, no systematic medical checks upon admission, and limited access to a psychiatrist.<sup>587</sup> In practice, however, nothing has changed in 2019 nor 2020.

The practical problems observed regarding access to healthcare relate to a lack of consideration for psychological or psychiatric problems of the detainees, which was highlighted recently by CGLPL.<sup>588</sup> Dozens of suicide attempts are reported each year in these centres. In some detention centres, the lack of continuing presence of medical units leads police officers to assess the needs of patients, as is the case for example in **Guadeloupe**. In **Bordeaux**, in only one occasion a detainee has been released for medical reasons whereas many of them suffer from physical or psychological pathologies.

More than 20 civil society organisations sent an open letter to the Minister of the Interior, raising concerns about the increasing number of suicides, hunger strikes and self-harm in immigration detention centres; the increase in the occupancy rate of the centres; and the difficulties in accessing care, especially psychiatric care.<sup>589</sup>

The lack of medical confidentiality is another concern. Out of 13 CRA visited by the CGLPL in 2017 and 2018, more than half presented concerns about compliance with the principle of confidentiality.<sup>590</sup> Recent figures are not available but similar issues continue to be reported.

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<sup>585</sup> Ministry of Interior, *The Centres of Administrative Detention*, available in French at: <http://bit.ly/1dM8BkC>.

<sup>586</sup> CGLPL, Avis du 17 décembre 2018 relatif à la prise en charge sanitaire des personnes étrangères au sein des centres de rétention administrative, available in French at: <https://bit.ly/2TiP5Bm>.

<sup>587</sup> Controller General of places of deprivation of liberty, *Rapport de la troisième visite du centre de rétention administrative de Lyon Saint-Exupéry*, available in French at : <https://bit.ly/3cIFbE1>.

<sup>588</sup> *Ibid.*

<sup>589</sup> The open letter is available in French at: <https://bit.ly/2W32Dps>.

<sup>590</sup> *Ibid.*

The six NGOs working in detention centres have also identified an important issue regarding victims of human trafficking. In some cases, these victims have been properly orientated and supported by the medical unit and the police, in **Lille** for example. The aforementioned NGOs have nevertheless pointed out that victims of trafficking were mostly not provided with specific support. Their number in detention centres is increasing, namely in **Coquelles, Metz** or **Sète**.

## 2.2. Conditions in waiting zones

Conditions in waiting zones differ considerably from one area to another.

**Roissy** is the most structured and organised waiting zone in France,<sup>591</sup> 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; OFPRA conducts interviews with asylum seekers; and as of 2017 the JLD, stationed in an Annex of the TGI of **Bobigny** in a building adjacent to the waiting zone. Neither the Red Cross nor OFPRA are physically present in other waiting zones in the country.

Conditions are reported as more problematic in other waiting zones: NGOs have not the capacity to regularly access them and people detained can thus establish contact only by phone in order to obtain legal aid. Waiting zones are also usually very small and the police is not trained accordingly.

## 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 type="checkbox"/> Yes            | <input type="checkbox"/> Limited            | <input checked="" type="checkbox"/> No |
| ❖ Family members: | <input type="checkbox"/> Yes            | <input checked="" type="checkbox"/> Limited | <input type="checkbox"/> No            |

### 3.1. Access to CRA

Six NGOs are present quasi-permanently (5 to 6 days a week) in the centres as a result of their mission of information for foreigners and assistance in exercising their rights (see section on [Legal Assistance](#)). The following NGOs lead this mission in CRA:

- ❖ Lot 1 (Bordeaux, Nantes, Rennes, Toulouse, Hendaye): **La Cimade**;
- ❖ Lot 2 (Lille 1 and 2, Metz, Geispolsheim): **Ordre de Malte**;
- ❖ Lot 3 (Lyon, Marseille and Nice): **Forum réfugiés-Cosi**;
- ❖ Lot 4 (Nîmes, Perpignan and Sète): **Forum réfugiés-Cosi**;
- ❖ Lot 5 (Overseas): **La Cimade**;
- ❖ Lot 6 (Le Mesnil-Amelot 1, 2 and 3): **La Cimade**;
- ❖ Lot 7 (Palaiseau, Plaisir, Coquelles and Rouen-Oissel): **France Terre d'Asile**;
- ❖ Lot 8 (Bobigny and Paris): **Assfam-Groupe SOS**;
- ❖ Mayotte: **Solidarité Mayotte**.

Some accredited NGOs can have access to all CRA. A Decree, adopted in June 2014,<sup>592</sup> regulates the access of NGOs to CRA. The list of accredited NGOs whose representatives (national and local) are able

<sup>591</sup> Anafé, *Aux frontières des vulnérabilités*, February 2018, 35.

<sup>592</sup> Décret du 24 juin 2014 modifiant les articles R.553-14-4 à R.553-14-8 du Ceseda complété par une note d'information du 28 octobre 2014 du ministre de l'intérieur relative aux modalités d'accès des associations humanitaires aux lieux de rétention.

to access the administrative detention places will be valid for 5 years. The exhaustive list of accessible rooms and facilities is described; this excludes the police offices, the registry, the video surveillance room, the kitchen, the technical premises. A maximum of 5 persons can make a visit within 24 hours. The time of the visits should not hinder the proper functioning of the centre, preferably during the day and the week. The head of the centre will be informed of the visit 24 hours in advance and can report the visit by giving reasons and for a limited period.

In addition, some people enjoy free access to the CRA:

- The Council of Europe Commissioner for Human Rights;
- The members of the European Committee for the Prevention of Torture;
- The French and European Members of Parliament;
- The General Controller of places of freedom deprivation;
- The Prefects;
- Public prosecutors; and
- JLD.

Some others have more limited access: consulate staff; lawyers; families of persons held.<sup>593</sup> Only families (or friends) are subject to restricted hours. In **Marseille**, however, the frequent lack of police staff in the detention centre leads the police to decide to focus on surveillance rather than providing the opportunity for the visits to take place. Family visits are therefore sometimes simply cancelled for the morning. Since the reform of the law on asylum, representatives from UNHCR have access to the administrative detention centres in France under the same conditions as for waiting zones, meaning they have to get an individual agreement whose validity is of 3 months renewable. They are authorised to conduct confidential interviews with detainees who have applied for asylum in France.<sup>594</sup>

The law also allows access of journalists to administrative detention centres.<sup>595</sup> This access must be authorised by the Prefect.<sup>596</sup> In case of denial of access, the decision has to be motivated.<sup>597</sup> Their presence must be compatible with detainees' dignity, security measures and the functioning of administrative detention centres.<sup>598</sup> The detainees can refuse to appear on photographs or to be mentioned in articles. The journalists have to preserve the anonymity of the detained children under any circumstances. This condition does not apply to adults giving their authorisation for their identity to be revealed.<sup>599</sup> The reform has also established the rule that journalists following Members of Parliament visiting detention centres cannot be denied access to these centres. The same limitations regarding the anonymity apply in this case.<sup>600</sup>

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

In the context of Covid-19, NGO activity continued in all centers which remained open.

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<sup>593</sup> Ministry of Interior, *Persons having access to centres and locations of administrative detention*, available in French at: <http://bit.ly/1SanmeE>.

<sup>594</sup> Article R.556-11 Ceseda.

<sup>595</sup> Article L.553-7 Ceseda.

<sup>596</sup> Article R.553-19 Ceseda.

<sup>597</sup> Article R.553-20 Ceseda.

<sup>598</sup> Article L.553-7 Ceseda.

<sup>599</sup> *Ibid.*

<sup>600</sup> Articles R.553-15, R.553-16 and R.553-17 Ceseda.

### 3.2. Access to waiting zones

The list of NGOs accredited to send representatives to access the waiting zones, established by order of the Ministry of the Interior was last revised in May 2018 and will be valid until June 2021.<sup>601</sup> It includes 10 organisations:

- ❖ Association nationale d'assistance aux frontières pour les étrangers (Anafé);
- ❖ La Cimade;
- ❖ Croix Rouge française;
- ❖ France terre d'asile;
- ❖ Forum réfugiés-Cosi;
- ❖ Groupe accueil et solidarité (GAS);
- ❖ Groupe d'information et de soutien des immigrés (GISTI);
- ❖ Ligue des Droits de l'Homme;
- ❖ Mouvement contre le racisme et pour l'amitié entre les peuples (MRAP); and
- ❖ Ordre de Malte

Only **Anafé** provides support regularly in the waiting zone of **Roissy** airport, being present in their office there few days each week. In other waiting zones, NGOs conduct visits based on the availability of their volunteers and/or when someone call them from waiting zones. Indeed, when a foreigner is detained in a waiting zone, he/she must be given a list of contacts by the police including NGOs available in the area.

## 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?    |   |                             |
| ❖ First review  | 2 days                                  |                             |
| ❖ Second review (if person not removed)                         | 30 days                                 |                             |

Foreigners held in CRA are informed about the reasons for their placement in these centres through the notification of the administrative decision to detain them with a view to their removal. This notification must state clearly which removal ground serves as a basis for the detention and why the removal cannot be implemented immediately. This document also mentions the legal remedies available to challenge this decision.

Foreigners also receive a notification of all their rights including the right to apply for asylum and their right to linguistic and legal support in submitting their claim.<sup>602</sup> According to the law,<sup>603</sup> this notification should be made (orally) to the foreigner in a language he or she understands. In practice, this is done in most of the cases but not always. Detainees are also notified that their asylum claim will be inadmissible if it is submitted 5 days after their rights have been notified. The claim is deemed to be admissible after 5 days only if it is based on elements or events occurred after these 5 days. This condition is not applicable to foreigners from safe countries of origin; their claim will be deemed inadmissible in any case when it is submitted five days after they have had their rights notified.<sup>604</sup>

<sup>601</sup> Arrêté du 29 mai 2018 fixant la liste des associations humanitaires habilitées à proposer des représentants en vue d'accéder en zone d'attente, available in French at: <https://bit.ly/2NIDtw5>.

<sup>602</sup> Article L.551-3 Ceseda; Article R.553-11 Ceseda.

<sup>603</sup> Articles L.551-2, L.111-7 and L.111-8 Ceseda.

<sup>604</sup> Article L.551-3 Ceseda.

The law foresees a judicial review of the lawfulness of the administrative detention for all foreigners. The legality of detention falls under the dual control of the Administrative Court and the Civil Court. Each court examines specific and complementary aspects of the procedures. It is quite difficult to assert if there is a judicial review of the lawfulness of administrative detention, as the Administrative Court reviews the lawfulness of the removal order and house arrest if this measure has been taken by the Prefect before the placement in detention. The Civil Court i.e. Judge of Freedoms and Detention (JLD) intervenes two days after this placement.

### **1.1. Administrative Court: Legality of administrative decisions of removal and house arrest**

The Administrative Court is seized by a foreigner (asylum seeker if relevant) who challenges the legality of the decisions taken by the Prefect, i.e. the measures of removal and/or house arrest.<sup>605</sup> Removal orders and house arrest can be challenged within a period of 48 hours. This period starts from the notification of the measure, and not from the arrival at the administrative detention centre, if this notification is concomitant to notification of the measure of placement in administrative detention. The administrative judge can, for example, verify that the Prefect has not committed a gross error of appreciation by ordering the removal of the territory when the foreigner is entitled to stay on the French territory. The court basically has to make a decision on the reasons why a foreigner has been placed in detention.

Moreover, the French Constitutional Court ruled on 4 October 2019 that the administrative court is competent to assess the legality of a decision to maintain a person in administrative detention if, based on a motivated and written decision, the Prefect considers that the asylum claim has only been lodged to prevent a notified or imminent order of removal.<sup>606</sup>

The judge can also verify if the Prefect's decision of house arrest does not contravene the best interests of the foreigner and if the measure is proportionate. The administrative court must make a decision within 72 hours.<sup>607</sup>

The Administrative Court can, only in cases of an asylum claim, control the lawfulness of the detention. If an asylum claim is submitted during detention, it is possible to challenge the decision of placement in detention within 48 hours after the notification of the detention. The claimant has to prove his or her claim has not been submitted in order to make the removal measure fail. The court has to make a decision within 72 hours after the claim has been lodged.<sup>608</sup>

In several Prefectures, the asylum seeker is placed in detention on a Friday, to avoid the possibility for him to access legal assistance during the weekend, and to carry out the transfer within 48 hours. In these frequent cases, there is no effective appeal for those people.

### **1.2. Judge of Freedoms and Detention (JLD): Conformity of deprivation of liberty**

The JLD, whose competences are set out in Article 66 of the Constitution, is seized by the Prefect at the end of the 2 days of administrative detention in order to authorise a prolongation after having examined the lawfulness of the administrative detention. As stated by the Constitutional Court in its ruling of 4 October 2019, however, the competence of the administrative court to assess the legality of an order to maintain people who ask for asylum in detention does not violate the French Constitution.

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<sup>605</sup> Article L.512-1 Ceseda.

<sup>606</sup> Constitutional Court, Decision 2019-807, 4 October 2019, available in French at: <https://bit.ly/2UGAELy>.

<sup>607</sup> *Ibid.*

<sup>608</sup> Article L.556-1 Ceseda.

As regards the mandate of the JLD, he or she will check whether the police have respected the procedure and the rights of the person during the arrest, the legality of the police custody and the placement into administrative detention. The judge will also check whether the custody is compatible with the personal situation of the detainee.<sup>609</sup> The JLD intervenes a second time after 28 days of detention if the person is still detained and has not been removed. This judge can also be seized at any moment by the person detained in administrative detention centres but these requests have to be very solidly argued (serious health problems for instance) and are hardly considered admissible.<sup>610</sup> Appeals lodged against the measure of removal or house arrest have suspensive effect over its execution.<sup>611</sup> It is also possible for the foreigner to seize the JLD at any moment upon a motivated request during the first 48 hours.<sup>612</sup>

The law enables then to challenge the removal decision from the moment of its notification. It implies it will be impossible, theoretically, to remove someone before he or she has been in a position to seize the judge, either administrative or civil.

Since the end of 2017, there have been cases of court hearings conducted by videoconference from the CRA of **Toulouse**, whereas this was already the case in other CRA.<sup>613</sup> These have been denounced by NGOs on the ground that individuals are not provided with the minimum guarantees set out in the law, namely the accessibility of the hearing to the public.<sup>614</sup> Some other cases have been reported in 2019, e.g. in **Hendaye**.<sup>615</sup> The use of videoconference has been further developed during the health crisis in the context of COVID-19.<sup>616</sup> Many court hearings have been carried out via videoconferencing since March 2020, thus raising fears that it becomes a standard practice after health crisis. Concerns raised include the fact that it may render communication more difficult, especially in light of technical problems already reported in practice, and a risk of undermining the rights of the defense. In **Mesnil-Amelot** near Paris, on the other hand, the JLD hearings take place in an annex of the Court (TGI) located in the CRA. Annexes of the competent courts are also established in **Coquelles** and **Marseille** for detention hearings.

As regards detention in the context of the **Border Procedure**, the JLD is competent to rule on the extension of the stay of foreigners in the waiting zone beyond the initial 4 days. The stay cannot be extended by more than 8 days,<sup>617</sup> renewable once.<sup>618</sup> The JLD must rule “within twenty-four hours of submission of the case, or if necessary, within forty-eight hours of this, after a hearing with the interested party or their lawyer if they have one.”<sup>619</sup> The administrative authority must make a request to the JLD to extend custody in the waiting zone and must explain the reasons for this (impossible to return the foreign national due to lack of identity documents, pending asylum application, etc.)

In **Roissy**, hearings take place in an annex of the Court (TGI) of Bobigny since the end of 2017. NGOs also noted that this annex undermines the public character of hearings given the obstacles to physically accessing the waiting zone of Roissy, 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.<sup>620</sup>

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<sup>609</sup> Article L.552-1 Ceseda.

<sup>610</sup> Article R.552-17 Ceseda.

<sup>611</sup> Article L.512-3 Ceseda.

<sup>612</sup> Articles R.552-10-1 and R.552-17 Ceseda.

<sup>613</sup> See e.g. Observatoire de l'enfermement des étrangers, ‘*Justice hors la loi ! Une audience illégale au sein du centre de rétention de Toulouse*’, Press Release, 4 February 2019, available in French at : <https://bit.ly/3blaVPD>.

<sup>614</sup> Syndicat des Avocats de France, ‘La justice par visioconférence : des audiences illégales au sein même des centres de rétention’, 18 January 2018, available in French at: <http://bit.ly/2Dyo5di>.

<sup>615</sup> Le Figaro, ‘Polémique après l’audience d’étrangers en visioconférence dans un commissariat’. 10 October 2019, available in French at : <https://bit.ly/37zim4q>.

<sup>616</sup> InfoMigrants, ‘Avec le recours aux visioconférences, une justice expéditive pour des étrangers en rétention’, 20 August 2020, available in French at : <https://bit.ly/3saR5NF>.

<sup>617</sup> Article L.222-1 Ceseda.

<sup>618</sup> Article L.222-2 Ceseda.

<sup>619</sup> Article L.222-3 Ceseda.

<sup>620</sup> ECRE, *Access to asylum and detention at France’s borders*, June 2018, 9.

## 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

Legal assistance for persons held in administrative detention (including asylum seekers) is provided by law. Currently, six NGOs which assist foreigners are authorised, by agreement (public procurement) with the Ministry of Interior, to provide “on duty” legal advice in CRA. As they are being informed of all new people arriving in the centre, they inform the detainees and help them to exercise their rights during the detention procedure (hearings in front of the judge, the filing of an appeal, request for legal aid etc.)<sup>621</sup> These NGOs are present in the administrative detention centres quasi-permanently (5 to 6 days a week). Some of these NGOs have set aside a budget to hire interpreters to assist detainees who do not speak French or English, whereas others resort to volunteers.

Conversely, no legal assistance is provided in LRA.

As for the assistance given by lawyers, the law foresees that foreigners held in administrative detention can be assisted for free by a lawyer for their appeals (during the hearing) in front of the administrative court or for their presentation in front of the JLD. In practice, detainees can benefit from this assistance provided for free. Therefore, for the prolongation of administrative detention by the JLD, Article R.552-6 Ceseda foresees that “the foreigner is informed of their right to choose a lawyer. The judge can appoint one automatically if the foreigner so requests”. Within the context of the procedure in front of the administrative court, “the foreigner can, at the latest at the start of the hearing, ask for a lawyer to be appointed automatically. They are informed by the Clerk of the Court at the time of the beginning of their request.”<sup>622</sup>

With regard to the confidentiality granted to the discussions between lawyers and their clients when they meet within the detention centres, the situation can vary from one centre to the other. An office with frosted windows is usually provided. It is however very rare that lawyers agree to go to the detention centres, as detention centres are usually located quite far from the city centre. Lawyers can easily contact their clients by calling a public phone or by calling the NGO present in the centre that will make sure the call is forwarded to the detainee.

## E. Differential treatment of specific nationalities in detention

With regard to accessing the asylum procedure from detention, the law clarifies that detainees, upon hearing their rights, are notified that their asylum claim will be inadmissible if it is submitted 5 days after their rights have been notified. The claim is deemed to be admissible after 5 days only if it is based on elements or events occurred after these 5 days. However, for persons coming from safe countries of origin (see [Safe Country of Origin](#)), a claim submitted 5 days after they have had their rights notified may be deemed inadmissible.<sup>623</sup>

<sup>621</sup> French Public Administration, *Rights of Foreigners Placed in Detention*, available in French at: <http://bit.ly/1Mh1exu>.

<sup>622</sup> Article R.776-22 CJA.

<sup>623</sup> Article L.551-3 Ceseda.

## Content of International Protection

### 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   | 10 years |
| ❖ Subsidiary protection  | 4 years  |

Residence permits are granted to **refugees** for 10 years (*Carte de resident*).<sup>624</sup> That permit is also granted *ipso jure* to their family, in particular to:

- Spouses, partners (PACS) or their domestic partners if they have been admitted to join them according to the family reunification provisions;
- Spouses, partners (PACS) or their domestic partners in case their union has been sealed after the asylum application and under the condition it has been lasting for already over a year, and if they are genuinely living together;
- Children within the year after turning 18 years old;
- Parents if the refugees are still under 18 years old by the day the asylum is granted.

Some difficulties had been identified in the past regarding this provision. Young girls were regularly granted asylum on the grounds of the Refugee Convention, considering the risk of being exposed to female genital mutilation (FGM). Their mothers or fathers accompanying them often had their asylum application rejected, since it is stated that opposing FGM does not expose them to a risk of persecution. However, since 1 March 2019 they are issued a 10-year residence permit.<sup>625</sup>

Since 1 March 2019, residence permits delivered to **subsidiary protection** beneficiaries are granted for four years (*Carte de séjour pluriannuelle*).<sup>626</sup> The same residence permits are granted to their family on the basis of the same pattern than the one used for refugees.<sup>627</sup>

Refugees may encounter difficulties to get their residence permits issued or renewed.<sup>628</sup> Their residence permits have to be issued the next 3 months following their request for such documentation. The same goes for the subsidiary protection beneficiaries.<sup>629</sup> OFPRA may take longer than expected to deliver the necessary documentation that has to be submitted for the issuance of their permits.

In 2020, due to health crisis resulting in the temporary closing of Prefectures, the duration of residence permits expiring between 20 March and 15 June 2020 have been automatically extended by 180 days.

<sup>624</sup> Article L.314-11(8) Ceseda.

<sup>625</sup> Article L.314-11(8)(d) Ceseda, as amended by Article 64 Law n. 2018-778 of 10 September 2018.

<sup>626</sup> Article L.313-25 Ceseda, inserted by Article 1 Law n. 2018-778 of 10 September 2018.

<sup>627</sup> *Ibid.*

<sup>628</sup> See e.g. La Cimade, 'De longues files d'attentes virtuelles pour accéder aux préfectures', 19 December 2017, available in French at: <http://bit.ly/2BVdrZe>, although these have not been encountered by Forum réfugiés – Cosi in the areas where it operates.

<sup>629</sup> Articles R.743-3 and R.743-4 Ceseda.

According to provisional Ministry of Interior statistics, France granted 18,610 residence permits to refugees and stateless persons and 9,460 to subsidiary protection beneficiaries in 2020.<sup>630</sup> According to OFPRA, more than 33,000 persons (including accompanying minors) have received protection in 2020.<sup>631</sup>

## 2. Civil registration

When protection is granted, a “family reference form” is sent to the beneficiary of international protection by OFPRA, with the notification of the OFPRA protection decision or later, when the protection has been granted by the CNDA.

Upon receipt of the family reference form duly completed, signed by the beneficiary of international protection and sent by post, OFPRA begins the instruction for the establishment civil status documents begin. The time limit for issuing documents is 3 months, insofar as possible. For 2018, OFPRA reported a 4.6 months average time for delivering those documents. However, this is only an average and some beneficiaries of international protection wait much longer for their documentation. OFPRA has prioritised the issuance of civil status documents for some categories of persons, for instance unaccompanied children, girls at risk of FGM and relocated refugees.<sup>632</sup>

OFPRA takes into account the documents provided by the beneficiary of international protection in his or her asylum application file, namely foreign civil status documents, identity or travel documents (national identity card, passport). Statements of the beneficiary at the time of filing of his or her application for asylum, during the interview at OFPRA and on the family reference form, are also taken into account.

The personal status of the beneficiary of international protection will continue to apply according to the law of the country of origin for all rights acquired before the grant of international protection. For instance, a religious marriage will be valid in France if the national law of the person considered it as official, even though French law does not recognise this type of union. By way of exception, French law will apply to acts prior to the recognition of the international protection in two cases: (a) French law will prevail in case of a right contrary to French public order e.g. polygamous marriage; and (b) same sex marriage will automatically be recognised pursuant to French law, even if not recognised under the law of the country of origin.

French law applies to all events subsequent to the grant of international protection. The beneficiary may therefore marry, enter into a civil union (PACS) or divorce according to French law.<sup>633</sup>

## 3. Long-term residence

### Indicators: Long-Term Residence

- |   |        |
|---|--------|
| 1. Number of long-term residence permits issued to beneficiaries in 2020: | 18,610 |
|---|--------|

According to French law, **refugees** obtain a long-term resident status from the moment they are granted asylum. It is possible at the moment of the renewal of this permit to be issued *ipso jure* permanent resident status.<sup>634</sup> This permanent residence permit is only issued if the third-country national can prove his or her proficiency of the French language,<sup>635</sup> and if her or his presence is not a threat to the public order.<sup>636</sup>

<sup>630</sup> Ministry of Interior, *Chiffres clés – titres de séjour*, 21 January 2021 available in French at: <https://bit.ly/3bmSz0H>

<sup>631</sup> OFPRA, ‘Les premières données de l’asile 2020 à l’OFPRA’, 21 January 2021,

<sup>632</sup> OFPRA, *2017 Activity report*, 56.

<sup>633</sup> OFPRA, *Guide of procedures*, 2015, available at: <http://bit.ly/2mI3utk>.

<sup>634</sup> Article L.314-14 Ceseda.

<sup>635</sup> *Ibid.* and Article L.314-10 Ceseda.

<sup>636</sup> Article L.314-14 Ceseda.

The threat to the public order is assessed in practice through the potential criminal sentences pronounced against a third-country national. No systematic discrimination against specific nationalities has been reported in this regard. The difficulty encountered to benefit from this status is more likely to be linked to a lack of information. As mentioned in the law, this status has to be claimed. *Ipsa jure* has to be interpreted as the fact it cannot be denied if a third-country national, complying with the conditions listed by legal provisions, asks for it. Prefectures, at the moment of the renewal of the first residence permit, do not automatically indicate to refugees they can be issued such a document.

#### 4. Naturalisation

##### Indicators: Naturalisation

1. What is the waiting period for obtaining citizenship?	
❖ Refugee status	None
❖ Subsidiary protection	5 years
2. Number of citizenship grants in 2020:	Not available

There are several ways to obtain citizenship according to French law. It is possible to be naturalised by declaration or by decree. Naturalisation by declaration is only possible for refugees and beneficiaries of subsidiary protection's children born in France or arrived in France before turning 13 years-old. Otherwise, their children will either have to lodge an asylum claim of their own or submit a residence permit request. It is also possible to access citizenship by marriage to a French citizen.

Beneficiaries of international protection usually obtain citizenship by decree. The criteria and conditions for naturalisation are listed in the Civil Code and the 1993 Decree on citizenship,<sup>637</sup> as follows:

1. Five years of previous regular residence;<sup>638</sup>
2. Strong knowledge of French: the candidate can produce a diploma or any document certifying his or her linguistic skills, proving he or she is able to have a conversation about any topic of his or her interest;<sup>639</sup>
3. Strong knowledge of History of France and its institutions, culture, and place in the world, as well as strong knowledge of the exercise of the French citizenship;<sup>640</sup>
4. The candidate must not be subjected during his or her stay in France to a sentence of 6 months or more of imprisonment;<sup>641</sup>
5. Entire subscription to the values and symbols of French Republic.<sup>642</sup>

A leaflet is issued to any candidate to citizenship. This document describes the criteria the candidates have to meet to be deemed eligible for citizenship. The law establishes integration in the French society as a compulsory condition. This leaflet is then not distributed in other languages. Along with the leaflet, the candidates are issued the list of documents they have to produce.<sup>643</sup> Beneficiaries of **refugee status** are not bound by the five years of residence requirement. They are legally authorised to candidate for naturalisation from the moment they are granted asylum.<sup>644</sup> The difficulty they encounter is linked to their knowledge of the language.

Beneficiaries of **subsidiary protection** fall under the general rules. They have to wait for 5 years before being authorised to lodge their citizenship claim. This period can be shortened to 2 years if they graduate

<sup>637</sup> Decree n. 93-1962 relating to citizenship declarations, naturalisation, reintegration, loss, forfeit and withdrawal of the French citizenship decisions, 13 December 1993, available in French at: <http://bit.ly/2j89AmO>.

<sup>638</sup> Article 21-17 Civil Code.

<sup>639</sup> Article 37(1) Decree n. 93-1362.

<sup>640</sup> Article 37(2) Decree n. 93-1362.

<sup>641</sup> Article 21-23 Civil Code.

<sup>642</sup> Article 21-24 Civil Code.

<sup>643</sup> Article 37-1 Decree n. 93-1362.

<sup>644</sup> Article 21-19 Civil Code.

after 2 years spent in a French university, if they render an exceptional service to France or if they can demonstrate they are particularly well-integrated.<sup>645</sup>

The citizenship application has to be lodged at the Prefecture. The prefecture has 6 months to process the claim,<sup>646</sup> during which an interview is conducted to assess the level of integration of the candidate, regarding especially his or her knowledge of the language and of the French “culture”.<sup>647</sup> If the Prefecture takes a positive decision, it is transmitted to the Ministry of Interior in charge of adopting a decree relating to the acquisition of citizenship by the candidate.<sup>648</sup> The Ministry has to make its decision within 18 months following the transfer of the notice by the prefecture.<sup>649</sup> These deadlines can be extended once for three months on the basis of a written and motivated decision.<sup>650</sup>

In practice, refugees encounter many difficulties beyond the mere ones linked to their knowledge of the language that does not reach the required level. The interview conducted aims also to determine the level of integration on the French society of the candidates. This assessment is very wide since, according to lawyers supporting refugees in this process, economic and cultural aspects are taken into account, as well as their ties with their original community. The Prefecture will particularly scrutinise the relationship claimants have with French people. In that sense, claimants are used to submitting more documents than those required by law. For example, they will produce testimonies from teachers if they have children, proof of their economic situation or testimonies of French friends.

A total of 41,927 persons were granted French citizenship by decree in 2020 compared to 49,671 in 2019, 55,830 in 2018 and 65,654 in 2017, though this number is not limited to beneficiaries of international protection.<sup>651</sup>

## 5. Cessation and review of protection status

### Indicators: Cessation

1. Is a personal interview of the asylum seeker 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

In 2019, OFPRA ended protection of 263 persons (compared to 414 in 2018), affecting 235 persons with a refugee status and 28 persons with a subsidiary protection. Statistics on the year 2020 were not available at the time of writing of this report.

### 5.1. Grounds for cessation

Regarding **refugees**, the law reflects the cessation grounds set out in Article 1C of the Refugee Convention.<sup>652</sup>

<sup>645</sup> Article 21-18 Civil Code.

<sup>646</sup> Article 41 Decree n. 93-1362.

<sup>647</sup> Article 46 Decree n. 93-1362.

<sup>648</sup> *Ibid.*

<sup>649</sup> Article 21-25-1 Civil Code.

<sup>650</sup> *Ibid.*

<sup>651</sup> Ministry of Interior, *L'accès à la nationalité*, 21 January 2020, available in French at: <https://bit.ly/3k5aGMk>.

<sup>652</sup> Article L.711-4 Ceseda.

Regarding beneficiaries of **subsidiary protection**, the law includes provisions inspired by the Refugee Convention. The benefit of subsidiary protection ceases when the conditions leading to grant the protection no longer exist. It is also the case when there is a significant and durable change of context in the country of origin of the beneficiary.<sup>653</sup>

In 2019, 176 cessations of protection for refugees were due to the application of article 1-C of the Geneva Convention (end of fears of persecutions) mainly for people from **Russia, DRC, Sri Lanka and Turkey**.<sup>654</sup> Information on the number of cessations in 2020 was not available at the time of writing (March 2021).

There is no systematic review of protection status in France. Cessation is not applied to specific groups. There are no systematic difficulties in relation to the application of cessation either. In practice, people who were granted asylum on the grounds of family unity may, following divorce, no longer be considered as refugees. In relation to children, however, the CNDA held in 2018 that, in line with the principle of family unity, a child benefitting from the same refugee status as his mother could not be subject to cessation by the mere fact of reaching the age of 18, as long as the mother maintained refugee status.<sup>655</sup> Family unity is not applied to subsidiary protection beneficiaries.

In practice, cessation is mostly applied when there is a fundamental change of context in the country of origin of beneficiaries. For instance, the CNDA applied cessation in 2016 to a **Vietnamese** who was granted refugee status in 1977 because of the fundamental changes which occurred in the country since that date.<sup>656</sup> In 2018, it refused to apply cessation to refugees from **DRC and Sri Lanka** due to the fact that the change of circumstances was not of a significant and durable nature.<sup>657</sup>

In a case concerning two girls at risk of FGM in **Mali**, the CNDA refused to apply cessation despite statements from the girls' mother that the prevalence of FGM was dropping in the country of origin. The Court relied on the best interests of the child principle enshrined in the Convention on the Rights of the Child, and the protection against FGM set out in Article L.752-3 Ceseda, to conclude that there was no change of circumstances.<sup>658</sup>

As regards cessation grounds due to the individual conduct of the beneficiary pursuant to Article 1C of the Refugee Convention, the CNDA has delivered several relevant judgments in recent years:

- **Re-establishment in the country of origin:** Cessation under Article 1C(4) of the Convention was applicable in the case of a beneficiary who travelled to the country of origin despite warnings that his or her Travel Document does not allow travel to that country, and who obtained authorisation to travel from the country's consular authorities in France.<sup>659</sup>
- **Re-availment of protection of the country of origin:** In the case of a refugee who was issued a driver's licence in the country of origin without physically returning to the country – as the procedure was handled by his wife – the issuance of an official document could not constitute re-availment of the protection of the country of origin pursuant to Article 1C(1) of the Convention.<sup>660</sup>

## 5.2. Cessation procedure

The cessation decision can be made without any interview by OFPRA. OFPRA has however the obligation to address a notice to the refugee or beneficiary of subsidiary protection about the decision to initiate the

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<sup>653</sup> Article L.712-3 Ceseda.

<sup>654</sup> OFPRA, *2019 Activity report*, 63.

<sup>655</sup> CNDA, *M. O.*, Decision No 17013391, 31 December 2018.

<sup>656</sup> CNDA, *M. D.*, Decision No 14018479, 25 February 2016.

<sup>657</sup> CNDA, *M. K.*, Decision No 18001386, 17 October 2018 (DRC); *M. L.*, Decision No 17047809, 25 May 2018 (Sri Lanka).

<sup>658</sup> CNDA, *Mme S and Mme F.*, Decision Nos 17038232 and 17039171, 26 November 2018.

<sup>659</sup> CNDA, *M. Q.*, Decision No 16032301, 6 July 2017.

<sup>660</sup> CNDA, *M. H.*, Decision No 16029914, 14 September 2018.

cessation proceedings and the grounds of this decision. The beneficiary is therefore put in a position to formulate observations against this decision. He or she may be summoned to an interview at OFPRA upon the regular procedure scheme.

The cessation decision made by OFPRA can be challenged before the CNDA under the same conditions as an appeal lodged under the [Regular Procedure: Appeal](#). In such a case, the CNDA shall examine the applicability of all cessation clauses and not limit itself to the specific cessation ground raised by OFPRA, according to a 2017 ruling of the Council of State.<sup>661</sup> This was confirmed by the CNDA in 2018.<sup>662</sup>

## 6. Withdrawal of protection status

### Indicators: Withdrawal

1. Is a personal interview of the asylum seeker 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 withdrawal of the residence permit is only possible in France if protection status is also withdrawn.

The 2018 asylum reform has rendered withdrawal of international protection mandatory, whereas it was previously only optional for OFPRA.

According to the law, as amended in 2018, **refugee status** shall be withdrawn where the refugee:<sup>663</sup>

1. Should have been excluded from refugee status under Articles 1D, E and F of the Convention;
2. Obtained status by fraud;
3. On the basis of circumstances arising after the grant of protection, must be excluded under Articles 1D, E and F of the Convention;
4. Constitutes a serious threat for national security;
5. Has been sentenced in France, another EU Member State or third country whose criminal legislation and jurisdictions are recognised by France for a crime related to terrorism or for an offence by 10 years of imprisonment, and represents a serious threat for society.

The CNDA has interpreted the concept of fraud for the purposes of withdrawal under Article L.711-4 CEseda. It found on two occasions in 2018 that refugee status cannot be withdrawn if the fraudulent elements of the claim were not determinant for the grant of protection.<sup>664</sup>

In 2019, 47 withdrawal decisions affecting refugees have been taken on the ground of article L.711-6 CESEDA, i.e. a public order threat. Statistics on the year 2020 were not available at the time of writing.

**Subsidiary protection** shall no longer be granted in the event where:<sup>665</sup>

<sup>661</sup> Council of State, Decision No 404756, 28 December 2017.

<sup>662</sup> CNDA, *M. M.*, Decision No 15003496, 28 November 2018.

<sup>663</sup> Articles L.711-4 and L.711-6 CEseda, as amended by Article 5 Law n. 2018-778 of 10 September 2018.

<sup>664</sup> CNDA, *M. G.*, Decision No 14020621, 15 February 2018, where the Court found that the refugee's overall credibility was unaffected by the fraudulent representation of certain dates during the asylum procedure; CNDA, *M. B.*, Decision No 13024407, 28 September 2018, where the refugee's fraudulently declared identity (that of one of his brothers) did not affect his well-founded fear of persecution on ethnic and political grounds upon return to Turkey.

<sup>665</sup> Articles L.712-3 and L.712-2 CEseda, as amended by Article 5 Law n. 2018-778 of 10 September 2018.

1. OFPRA or the Prefecture discover, after the protection is granted, that the beneficiary should have been excluded from protection according to the Refugee Convention exclusion clauses, or constitutes a serious threat to public order, public security or national security;
2. Subsidiary protection was obtained by fraud;
3. On the basis of circumstances arising after the grant of protection, the beneficiary must be excluded from protection;
4. There are serious reasons to believe that the beneficiary has committed serious crimes which would be sentenced by imprisonment if committed in France and has left the country of origin solely to evade prosecution.

The procedure is the same as for [Cessation](#).

## 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

The same legal framework is applicable to refugees and beneficiaries of subsidiary protection in terms of family reunification. As soon as refugees and subsidiary protection beneficiaries are granted protection, they are entitled to apply for it. Family reunification is permitted for:<sup>666</sup>

1. Spouses or partners (PACS) with whom they were in a relationship prior to lodging their asylum claim if they are at least 18 years old;
2. Partners who are at least 18 years old in case their union has been sealed prior to the lodging of the asylum claim if they demonstrate they durably and steadily lived together;
3. Children within the year after turning 18 years old;
4. First degree parents if the beneficiaries are still under 18 years old by the day asylum is granted. Following the 2018 reform, unaccompanied children beneficiaries of international protection may be reunited with their first degree parents and their dependant children.

The application for family reunification is not time limited. Family reunification is not subjected to income or health insurance requirements.<sup>667</sup>

Beneficiaries' family members have to request a visa at the French embassy with all the documentation proving their relationship with the refugee or the beneficiary of subsidiary protection they want to join.<sup>668</sup> The embassy communicates to OFPRA the elements collected and asks for certification. If the information collected by the embassy corresponds to the declarations the beneficiary made to OFPRA, his or her family members must be issued a visa without delay.<sup>669</sup>

<sup>666</sup> Article L.752-1(1) Ceseda, as amended by Article 3 Law n. 2018-778 of 10 September 2018.

<sup>667</sup> Article L.752-1(1) Ceseda.

<sup>668</sup> Article L.752-1(2) Ceseda.

<sup>669</sup> Articles R.751-1 to R.751-3 Ceseda.

In practice, beneficiaries and their family members face difficulties in gathering the documentation proving their family ties. In case of traditional or religious unions, they do not have any certificate of the celebration and cannot then prove they are married or partners. The same problems have been identified concerning birth certificates. Such documentation does not even exist in some countries and the delays for being issued a visa in order to come to France, in the framework of family reunification, can be very long. On 23 March 2020, the Administrative court of Nantes issued a decision concerning the refusal of the French consulate in Athens to register a family reunification request of a separated Afghan family.<sup>670</sup>

Due to COVID-19, family reunification was suspended for months in 2020: this situation was not foreseen in the decision listing exceptions allowing entry into France. This decision was challenged, and the *Conseil d'Etat* decided in January 2021 that family reunification should not be limited in the context of health crisis.<sup>671</sup> It ruled, *inter alia*, that this decision disproportionately infringes the right to normal family life and the best interests of the child. Consequently a new decision was issued allowing the entry to territory to persons coming for the purpose of family reunification.

## 2. Status and rights of family members

Family members are not granted the same status as sponsors, even though they are issued the same residence permit. Upon their arrival in France, they have to present themselves at the Prefecture in order to be issued this permit. They have to comply with the same obligations as any third-country national allowed to stay in France. They will have the same rights as their sponsors, especially in terms of integration. Family members are not beneficiaries of international protection even if they have benefited from family reunification with such a beneficiary.

## C. Movement and mobility

### 1. Freedom of movement

Beneficiaries of protection are entirely free to settle in any part of the French territory. They are not restricted to specific areas. During COVID-19, restriction of the freedom of movement was the same for all people in France, including beneficiaries of international protection.

### 2. Travel documents

The law states that the duration of validity of travel documents is defined by Article 953 of the General Tax Code: 5 years for **refugees**, if it is a biometric travel document, and one year for **beneficiaries of subsidiary protection**.<sup>672</sup> French law does not provide for duration of validity of non-biometric travel documents. Official French websites, however, assert that the duration of validity of travel documents for refugees is 2 years.<sup>673</sup> In practice, whereas the law is clear on the 5-year duration, Prefectures issue only 2-year travel documents for refugees.

Geographical limitations are applied to these travel documents. Refugees and beneficiaries of subsidiary protection are not allowed to travel to countries where personal fears have been identified.<sup>674</sup> Failure to

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<sup>670</sup> Administrative Tribunal of Nantes, 23 March 2020, Decision No. 2001918, see EDAL summary: <https://bit.ly/3qxUQfL>.

<sup>671</sup> Council of State, Decisions Nos 447878, 447893, 22 January 2021, Available in French at : <https://bit.ly/37xWWol>.

<sup>672</sup> Article L.753-4 Ceseda.

<sup>673</sup> See Ministry of Interior, *Accueil des Etrangers*, at: <http://bit.ly/2ImCIJR>.

<sup>674</sup> Articles L.753-1 and L.753-2 Ceseda.

respect these limitations may lead to the **Cessation** of the protection grant, as confirmed by a 2017 ruling of the CNDA.<sup>675</sup>

In 2015, the CNDA confirmed a cessation decision adopted by OFPRA, regarding an Afghan refugee who had spent two months in his country in order to celebrate his marriage. However, considering the current situation in Afghanistan, he has been granted subsidiary protection.<sup>676</sup>

Travel documents are issued by Prefecture. In practice, no specific problem has been reported, except the fact that prefectures can be very slow in delivering the document.

## D. Housing

### Indicators: Housing

- |  |                              |
|--|------------------------------|
| 1. For how long are beneficiaries entitled to stay in reception centres?   | 6 months                     |
| 2. Number of beneficiaries staying in reception centres as of 31 Dec. 2020 | approx.12,000 <sup>677</sup> |

Beneficiaries are allowed to stay in reception centres 3 months following their protection grant.<sup>678</sup> This period can be renewed for another 3 months with the express agreement of OFII.<sup>679</sup> During their stay in the centre, beneficiaries are supported to find accommodation according to the mechanisms adopted by the local authorities. At the end of 2019, 12,306 out of a total of 81,866 places listed by OFII (which differs from the total listed by the Ministry of Interior) in reception centres were for beneficiaries of international protection.<sup>680</sup> According to OFII, beneficiaries of international protection stay an average of 8 month in reception centre after having received a protection status.<sup>681</sup>

Beneficiaries can also be channelled to temporary accommodation centres (*Centres provisoires d'hébergement*, CPH) upon an OFII decision. They will be then allowed to stay there for 9 months. This stay can be renewed for a 3-month period.<sup>682</sup> At the end of 2020, there were 8,710 accommodation places in CPH spread across the different regions as follows:

Capacity of CPH per region: 2020	
Region	Maximum capacity
Auvergne Rhône-Alpes	1,075
Bourgogne Franche-Comté	388
Bretagne	462
Centre	331
Grand Est	615

<sup>675</sup> CNDA, M. Q., Decision No 16032301, 6 July 2017.

<sup>676</sup> CNDA, M. Z., Decision No 14033523, 5 October 2015.

<sup>677</sup> OFII's director, Opinion published in Le Monde, 'Accueil des migrants : « Chacun devrait faire un effort dans le débat pour être un peu plus républicain »'. 8 January 2021, available in French at : <https://bit.ly/3dq5xgK>.

<sup>678</sup> Article R.744-12(1)(1) Ceseda.

<sup>679</sup> *Ibid.*

<sup>680</sup> OFII, 2017 Activity report, 24.

<sup>681</sup> Le Monde, 'Après la crise due au coronavirus, l'accès au logement des réfugiés sous tension', 24 June 2020, available in French at: <https://bit.ly/2ZAKk04>.

<sup>682</sup> Article R.349-1 Code of Social Action and Families as amended by Decree n. 2016-253 of 2 March 2016 relating to temporary accommodation centres for refugees and beneficiaries of subsidiary protection, available in French at: <http://bit.ly/2jNt1xD>.

Hauts de France	447
Ile de France	2,758
Normandie	389
Nouvelle Aquitaine	705
Occitanie	543
Provence Alpes Côte d'Azur	469
Pays de la Loire	528
<b>Total</b>	<b>8,710</b>

Source: Ministry of Interior, Circular NOR: INTV2100948J, 15 January 2021

The implementation of integration mechanisms relies on Prefectures and local authorities. They sign in fact an agreement with the stakeholders to support and assist beneficiaries with their integration.<sup>683</sup> Beneficiaries have to sign a republican integration covenant in which they commit to respect French fundamental values and to comply with French legal obligations.<sup>684</sup> The agreement between Prefectures and local stakeholders determines the role of each actor and their obligations towards the beneficiaries.<sup>685</sup> The organisations running these centres have to house the beneficiaries but also support them in their integration process. They have to assist them in getting access to French classes, funded by the French State, and accompany them in determining their professional orientation. At the end of their stay in CPH, beneficiaries fall under the general rules applicable to foreigners and have to integrate in the private market to get housing.

The actions implemented to facilitate beneficiaries' integration vary from an area to another. 12 months, in case the initial duration of stay has been extended, may not be enough for beneficiaries to get integrated. France terre d'asile and Forum réfugiés – Cosi manage systems intending to facilitate this access to integration. These mechanisms are focused on beneficiaries' integration but are based on the French general provisions dedicated to access to housing for insecure populations.

Forum réfugiés – Cosi runs the [Accelair](#) programme. This programme is dedicated to refugees living in **Lyon** area and who have been granted asylum for less than one year. On the basis of this programme, places are saved for refugees within the real estates managed by providers of social housing. Refugees registered in this programme are supported from 6 to 18 months. The duration of the support may depend on the individualised project of each beneficiary. This assistance aims to make refugees autonomous and to ensure their integration.<sup>686</sup> It has been developed in Auvergne and Occitanie since 2016. In 2018, 1,721 families benefit from it. In its National Strategy for Integratoin published in June 2018, the gouvernement has annouced the development of similar programmes throughout the country.<sup>687</sup> Several integration projects have been developed through the country in 2019 such as HOPE, a program run by AFPA (a public institution) which provides professional training and accomodation for refugees in many departements.

Another example of proactive support in France is the national platform for the housing of refugees, introduced as a pilot project by the Inter-Ministerial Delegation for Accommodation and Access to Housing (*Délégation interministérielle à l'hébergement et à l'accès au logement, DIHAL*).<sup>688</sup> The platform maps

<sup>683</sup> Article L.751-1 Ceseda.

<sup>684</sup> Article L.311-9 Ceseda.

<sup>685</sup> This agreement is attached by to Decree n. 2016-253 of 2 March 2016.

<sup>686</sup> Forum réfugiés – Cosi, *Programme d'intégration des réfugiés – Accelair*, available at: <http://bit.ly/1TCowBy>.

<sup>687</sup> Ministry of Interior, *Stratégie nationale pour l'accueil et l'intégration des personnes réfugiées*, 5 June 2018, available in French at: <https://bit.ly/2tY4qfN>.

<sup>688</sup> DIHAL, *Plateforme nationale pour le logement des réfugiés*, May 2018, available in French at: <https://bit.ly/2VLkDRp>.

available accommodation spaces outside large cities and matches beneficiaries of international protection with a place. In 2019, 20,020 refugees have been directed to housing thanks to this program.

However, despite several measures taken to enable beneficiaries to access accommodation, high numbers of status holders leave reception centres with nowhere to go.

Access to housing was more difficult in 2020 in the context of COVID-19. In the first semester of 2020, only 1,755 people exited the reception system with housing solution compared to 7,600 in 2019 (although the latter is a full-year figure).<sup>689</sup>

As a result, many beneficiaries of protection are living in the streets or in camps. In Paris, amongst thousands of migrants living in camps that are regularly dismantled, 15 to 20% are refugees.<sup>690</sup>

## E. Employment and education

### 1. Access to the labour market

Beneficiaries are allowed to access the labour market from the moment they are granted asylum, whether they are refugees or beneficiaries of subsidiary protection. They have the same access as French nationals except for positions specifically restricted to nationals.

However, they encounter the same difficulties regarding the access to this market as those they face in terms of [Housing](#). The same legal framework regulates the mechanisms of integration of beneficiaries regarding employment. The organisations running the CPH are funded to support beneficiaries in determining their professional path and facilitating their integration in the labour market.<sup>691</sup> To do so, these organisations implement partnerships with stakeholders in charge of access to the labour market and the struggle against unemployment. Then, they work in close collaboration with the French national employment agency (*Pôle emploi*) or with local charities and NGOs to facilitate the professional integration of beneficiaries.

In practice, it is more difficult for them to find a job. The first obstacle is obviously linked to the language. Even if the law provides that the French State provides French classes,<sup>692</sup> the current number of 240 hours of classes is rarely sufficient for beneficiaries to adequately command the language in order to get a job.<sup>693</sup> Therefore, they often turn to their native community to be supported in their professional path, which might complicate their integration. The number of hours of French classes has been increased to 400 in 2019.

In the countryside, they also have difficulties regarding remoteness of location. Outside big French cities, it is compulsory to have a car in order to have a chance to find a job. However, these difficulties are not typical to beneficiaries even if they affect them more directly. They indeed cannot afford to buy a vehicle and do not benefit from any family support.

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<sup>689</sup> Le Monde, 'Après la crise due au coronavirus, l'accès au logement des réfugiés sous tension', 24 June 2020, available in French at: <https://bit.ly/2ZAkk04>.

<sup>690</sup> Francetvinfo, *Évacuation de campements de migrants à Paris : "Une partie des personnes se sont évaporées dans Paris", d'après l'adjointe à la mairie chargée de la solidarité*, 7 November 2019, available in French at : <https://bit.ly/2wpLmMy>.

<sup>691</sup> Article 8 Standard Agreement relating to the functioning of CPH, attached to the Decree of 2 March 2016 relating to temporary accommodation centres for refugees and beneficiaries of subsidiary protection, available in French at: <http://bit.ly/2jNt1xD>.

<sup>692</sup> Article L.311-9 Céseda.

<sup>693</sup> Libération, 'Intégration des réfugiés: «sur la langue on perd un temps fou», selon un rapport', 13 January 2018, available in French at: <http://bit.ly/2DS08uT>.

Moreover, refugees and beneficiaries of international protection suffer from a lack of recognition of their national diplomas. This implies therefore that highly skilled beneficiaries face the main obstacles to enter to the labour market. They have to accept unqualified jobs, mostly without any link with their previous job in their country of origin. Social workers refer to protection beneficiaries as a “sacrificed generation”. They have renounced practicing their original trade so that their children can graduate in France and be able to aim for highly skilled positions.

In February 2018, a report from Member of Parliament Aurélien Taché put forward 72 proposals aiming at reinforcing integration policy for migrants in France, among them beneficiaries of international protection.<sup>694</sup> A National Strategy for Integration based on this report was announced in June 2018,<sup>695</sup> while several provisions of the 2018 reform reflect some of the recommendations such as increased French classes, development of integration programs like *Accelair*, mobilisation of housing for refugees etc.

During COVID-19 in 2020, unemployment increased in France, affecting also the access to the labour market for beneficiaries of international protection. In January 2021, the Ministry of Interior launched a national call for projects for the year 2021 on the integration of newcomers, including beneficiaries of international protection.<sup>696</sup>

## 2. Access to education

Access to education is the same for beneficiaries as for asylum seekers (see [Reception Conditions: Access to Education](#)). The main difference is linked to access to vocational training for adults. These trainings fall under the professional integration systems described in the section on [Housing](#).

Beneficiaries’ children are allowed to get access to any school included into the national education system. They do not have to attend preparatory classes. In the event they have special needs, in terms of language or disability for example, they will be orientated accordingly to the general education system.

According to the OFII, 3,482 beneficiaries of international protection received a student scholarship in 2020.<sup>697</sup>

## F. Social welfare

Once they are granted protection, beneficiaries have access to social rights under the same conditions as nationals. This includes health insurance, family and housing allowances, minimum income, and access to social housing.

Several administrations are in charge of providing these services. These include: the health insurance fund (CPAM) for health insurance (CMU), the family allowance fund (CAF) for family allowances, the housing allowance (APL) and the minimum income (RSA), and *Pôle Emploi* for job search support and unemployment compensation.

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<sup>694</sup> Aurélien Taché, *72 propositions pour une politique ambitieuse d’intégration des étrangers arrivant en France*, February 2018, available in French at: <https://bit.ly/2AiyZkG>.

<sup>695</sup> Ministry of Interior, *Stratégie nationale pour l’accueil et l’intégration des personnes réfugiées*, 5 June 2018, available in French at: <https://bit.ly/2tY4qfN>.

<sup>696</sup> Ministry of Interior, *Appel à projets national 2021 relatif à l’intégration des étrangers primo-arrivants, dont les bénéficiaires de la protection internationale*, 25 January 2021, available at: <https://bit.ly/3dBjZm7>.

<sup>697</sup> OFII on Twitter, available at: <https://bit.ly/2NQQ3Y9>.

The Court of Cassation has ruled in a judgment of 13 January 2011 that **refugees** can benefit retroactively from all benefits and other social welfare from the date of their arrival in France.<sup>698</sup> This is linked to the declaratory nature of refugee status, which does not exist for beneficiaries of **subsidiary protection**.

Social welfare administrations are essentially regulated at *département* level. It is therefore necessary to inform them of any change of address and *département* for an effective follow-up of the files. The websites set up by these administrations facilitate such procedures.

In practice, the difficulties encountered by beneficiaries of international protection are the same as those facing nationals and are linked to the inadequacies and shortcomings of the French system, which is sometimes dysfunctional (e.g. access to counter sometimes difficult, delay for payments etc.). On the other hand, certain difficulties may remain due to the lack of proficiency in the French language, combined by the lack of cooperation of certain administrative agents.

## G. Health care

Health care for beneficiaries is the same as provided to asylum seekers, which is the same provided to French citizens. The difficulties encountered by beneficiaries are not specific to their status but are typical of structural dysfunctions identified within the French health care system (see [Reception Conditions: Health Care](#)).

In the context of COVID-19, testing and vaccine campaigns do not provide for any distinction according to nationality and legal status and are therefore available for BIP if they meet priority criteria.<sup>699</sup>

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<sup>698</sup> Cour de Cassation, Decision N° 09-69986, 13 January 2011, available in French at : <https://bit.ly/2waAemF>.

<sup>699</sup> Ministry of solidarity and health, 'La stratégie vaccinale et la liste des publics prioritaires', Available in French at : <https://bit.ly/389TeSg>.

## ANNEX I – Transposition of the CEAS in national legislation

### Directives and other measures transposed into national legislation

Directive	Deadline for transposition	Date of transposition	Official title of corresponding act	Web Link
<b>Directive 2011/95/EU</b> Recast Qualification Directive	21 December 2013	29 July 2015	Law n. 2015-925 of 29 July 2015 on the reform of asylum law	<a href="http://bit.ly/1Vwt38q">http://bit.ly/1Vwt38q</a> (FR)
<b>Directive 2013/32/EU</b> Recast Asylum Procedures Directive	20 July 2015 Article 31(3)-(5) to be transposed by 20 July 2018	29 July 2015	Law n. 2015-925 of 29 July 2015 on the reform of asylum law	<a href="http://bit.ly/1Vwt38q">http://bit.ly/1Vwt38q</a> (FR)
<b>Directive 2013/33/EU</b> Recast Reception Conditions Directive	20 July 2015	29 July 2015	Law n. 2015-925 of 29 July 2015 on the reform of asylum law	<a href="http://bit.ly/1Vwt38q">http://bit.ly/1Vwt38q</a> (FR)
<b>Regulation (EU) No 604/2013</b> Dublin III Regulation	Directly applicable 20 July 2013	29 July 2015	Law n. 2015-925 of 29 July 2015 on the reform of asylum law	<a href="http://bit.ly/1Vwt38q">http://bit.ly/1Vwt38q</a> (FR)

All legal standards of the CEAS have been transposed in French legislation and the transposition has been considered correct in national litigation on this aspect. Doubt remains, however, regarding the conformity of several provisions:

- **Receptions conditions limited to adults** (Article D.744-18 CESEDA): Unaccompanied minors are accommodated in the child protection system when their minority is assessed: if not, they can ask for asylum as minors but they are not eligible to reception conditions.
- **Financial allowance for asylum seekers** (Decree 2018-426 of 31 May 2018): The Council of State requested an increase of the amount of the allowance twice, in order to comply with the case law of the CJEU.<sup>700</sup> The last amount decided by Decree was not challenged before the Council of State, but there are doubts as regards compliance with this case law.
- **Access to health care** (Decree 2019-1531 of 30 December 2019): During the first three months upon arrival in France, access to health care for all asylum seekers (including vulnerable persons) is limited to urgent care. The conformity of this provision with European law will probably be assessed by the Council of State in 2021.

<sup>700</sup> CJEU, C-79/13, *Saciri and Others*, Judgement of 27 February 2014.