

# Country Report: Portugal



2021  
Update



**CPR**  
**CONSELHO PORTUGUÊS**  
**PARA OS REFUGIADOS**



## Acknowledgements & Methodology

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

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

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

The information in this report is up to date as of 31 December 2021, unless otherwise stated.

## The Asylum Information Database (AIDA)

The Asylum Information Database (AIDA) is coordinated by the European Council on Refugees and Exiles (ECRE). It aims to provide up-to date information on asylum practice in 23 countries. This includes 19 EU Member States (AT, BE, BG, CY, DE, ES, FR, GR, HR, HU, IE, IT, MT, NL, PL, PT, RO, SE, SI) and 4 non-EU countries (Serbia, Switzerland, Turkey, United Kingdom) which is easily accessible to the media, researchers, advocates, legal practitioners and the general public through the dedicated website [www.asylumineurope.org](http://www.asylumineurope.org). The database also seeks to promote the implementation and transposition of EU asylum legislation reflecting the highest possible standards of protection in line with international refugee and human rights law and based on best practice.



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## Glossary & List of Abbreviations

<b>ACM</b>	High Commission for Migration   Alto Comissariado para as Migrações
<b>ACSS</b>	Central Administration of the Health System   Administração Central do Sistema de Saúde
<b>ANMP</b>	National Association of Portuguese Municipalities   Associação Nacional de Municípios Portugueses
<b>ANQEP</b>	National Agency for Qualification and Vocational Education and Training   Agência Nacional para a Qualificação e o Ensino Profissional, I.P.
<b>APD</b>	Asylum Procedures Directive
<b>APF</b>	Family Planning Association   Associação para o Planeamento da Família
<b>CACR</b>	Refugee Children Reception Centre   Casa de Acolhimento para Crianças Refugiadas
<b>CAP</b>	Anti-Trafficking Reception and Protection Centre   Centro de Acolhimento e Proteção para Vítimas de Tráfico
<b>CAR</b>	Refugee Reception Centre   Centro de Acolhimento para Refugiados
<b>CATR</b>	Temporary Reception Centre for Refugees   Centro de Acolhimento Temporário para Refugiados
<b>CAVITOP</b>	Centre for the Support of Torture Victims in Portugal   Centro de Apoio às Vítimas de Tortura em Portugal
<b>CHPL</b>	Psychiatric Hospital Centre of Lisbon   Centro Hospitalar Psiquiátrico de Lisboa
<b>CIT</b>	Temporary Installation Centre   Centro de Instalação Temporária
<b>CJEU</b>	Court of Justice of the European Union
<b>CNAIM/CLAIM</b>	National and Local Support Centres for Migrant Integration   Centros Nacionais e Locais de Apoio à Integração de Migrantes
<b>CPR</b>	Portuguese Refugee Council   Conselho Português para os Refugiados
<b>CRegC</b>	Central Registrations Service   Conservatória dos Registos Centrais
<b>CSTAF</b>	High Council of Administrative and Fiscal Courts   Conselho Superior dos Tribunais Administrativos e Fiscais
<b>CVP</b>	Portuguese Red Cross   Cruz Vermelha Portuguesa
<b>DGAL</b>	Directorate General of Local Municipalities   Direcção-Geral das Autarquias Locais
<b>DGE</b>	Directorate General for Education   Direcção-Geral da Educação
<b>DGES</b>	Directorate General for Higher Education   Direcção-Geral do Ensino Superior

<b>DGEstE</b>	Directorate General for Schools and School Clusters   Direcção-Geral dos Estabelecimentos Escolares
<b>DGS</b>	Directorate General for Health   Direcção-Geral da Saúde
<b>EASO</b>	European Asylum Support Office
<b>ECHR</b>	European Convention on Human Rights
<b>ECRI</b>	European Commission Against Racism and Intolerance
<b>ECtHR</b>	European Court of Human Rights
<b>EDAL</b>	European Database of Asylum Law
<b>EECIT</b>	Detention facilities qualified as Temporary Installation Centres   Espaço Equiparado a Centro de Instalação Temporária
<b>EPVA</b>	Teams for the Prevention of Violence between Adults   Equipas para a Prevenção da Violência entre Adultos
<b>EUAA</b>	European Union Agency for Asylum
<b>GAR</b>	Asylum and Refugees Department   Gabinete de Asilo e Refugiados
<b>GIP</b>	Professional Insertion Office   Gabinete de Inserção Profissional
<b>GRETA</b>	Group of Experts on Action Against Trafficking in Human Beings
<b>GTO</b>	Technical Operative Group   Grupo Técnico Operativo
<b>ICRC</b>	International Committee of the Red Cross
<b>IEFP</b>	Employment and Vocational Training Institute   Instituto do Emprego e Formação Profissional
<b>IGAI</b>	General Inspectorate of Internal Administration   Inspeção Geral da Administração Interna
<b>IHRU</b>	Institute for Housing and Urban Rehabilitation   Instituto da Habitação e da Reabilitação Urbana
<b>INE</b>	National Institute for Statistics   Instituto Nacional de Estatística
<b>INMLCF</b>	National Institute of Legal Medicine and Forensic Science   Instituto Nacional de Medicina Legal e Ciências Forenses
<b>IOM</b>	International Organisation for Migration
<b>IPDJ</b>	Portuguese Institute of Sports and Youth   Instituto Português do Desporto e da Juventude
<b>ISS</b>	Institute of Social Security   Instituto da Segurança Social
<b>JRS</b>	Jesuit Refugee Service

<b>MAI</b>	Ministry of Home Affairs   Ministério da Administração Interna
<b>MdM</b>	Doctors of the World   Médicos do Mundo
<b>MoU</b>	Memorandum of Understanding
<b>NISS</b>	Social Security Identification Number   Número de Identificação da Segurança Social
<b>OA</b>	Bar Association   Ordem dos Advogados
<b>OM</b>	Observatory for Migration   Observatório das Migrações
<b>OTSH</b>	Observatory on Trafficking in Human Beings   Observatório do Tráfico de Seres Humanos
<b>RSI</b>	Social Insertion Revenue   Rendimento Social de Inserção
<b>SCML</b>	Santa Casa da Misericórdia de Lisboa
<b>SEF</b>	Immigration and Borders Service   Serviço de Estrangeiros e Fronteiras
<b>SGMAI</b>	General Secretariat of the Ministry of Home Affairs   Secretaria Geral do Ministério da Administração Interna
<b>SEIM</b>	Secretary of State for Integration and Migration
<b>SOG</b>	Single Operative Group   Grupo Operativo Único
<b>STA</b>	Supreme Administrative Court   Supremo Tribunal Administrativo
<b>SNS</b>	National Health Service   Serviço Nacional de Saúde
<b>TAC</b>	Administrative Circle Court   Tribunal Administrativo de Círculo
<b>TAF</b>	Administrative and Fiscal Court   Tribunal Administrativo e Fiscal
<b>TCA</b>	Central Administrative Court   Tribunal Central Administrativo
<b>UHSA</b>	Unidade Habitacional de Santo António
<b>UNHCR</b>	United Nations High Commissioner for Refugees
<b>UNICEF</b>	United Nations Children's Fund



## Statistics

### Overview of statistical practice

The Immigration and Borders Service (SEF) publishes a yearly statistical report providing information on asylum applications: number, nationalities, place of application, gender, unaccompanied children, positive first instance decisions, relocation.<sup>1</sup> In June 2021, the Observatory for Migration (OM) published “Applicants and Beneficiaries of International Protection - Statistical Report of Asylum 2021”.<sup>2</sup> This report followed a 2020 statistical report and will become a yearly publication. The publication of such reports follows the adoption of Parliament resolution no. 292/2018 that recommended the publication of a yearly report on national asylum policy.

### Applications and granting of protection status at first instance: 2021

	Applicants in 2021	Pending at end 2021	Refugee status	Subsidiary protection	Rejection	Refugee rate	Sub. Prot. rate	Rejection rate
<b>Total</b>	1,537	N.A.	226	78	418	31.3%	10.8%	57.9%

Breakdown by countries of origin of the total numbers

Afghanistan	664	N.A.	65	33	0	66.3%	33.7%	0
Morocco	118	N.A.	0	0	44	0	0	100%
India	82	N.A.	0	0	17	0	0	100%
Gambia	68	N.A.	-	0	:	11.5%	0	88.5%
Guinea	58	N.A.	-	0	:	25%	0	75%
Guinea Bissau	49	N.A.	0	0	33	0	0	100%
Angola	47	N.A.	0	0	47	0	0	100%
Senegal	44	N.A.	0	0	13	0	0	100%
Pakistan	37	N.A.	-	0	-	50%	0	50%
Sierra Leone	27	N.A.	0	0	-	0	0	100%

<sup>1</sup> SEF, *Yearly Statistical Reports*, available at: <https://bit.ly/3vHdYbz>. These reports are usually published in June (with information on the previous year).

<sup>2</sup> Observatório das Migrações (OM), *Requerentes e Beneficiários de Proteção Internacional – Relatório Estatístico do Asilo 2021*, June 2021, available in Portuguese at: <https://bit.ly/3F5I9iw>.

Source: SEF. Rates are calculated by AIDA on the basis of the data provided. Figures lower than 5 are not displayed. Figures higher than 5 not displayed for privacy reasons are marked with “.”.

The above figures and rates only include in-merit decisions at first instance (both in the regular and in accelerated procedures). As such, inadmissibility decisions (240), including Dublin, are not included in the rejection figures. As further explained in the corresponding section of the report, in the national system, an application is examined on the merits in a regular procedure if it is deemed admissible (and not processed under an accelerated procedure) or if the determining authority does not comply with the corresponding time limit. Decisions deeming an application admissible to the regular procedure are not included in the table above as they do not grant/refuse protection to the applicant concerned. According to information provided by SEF, in 2021, 889 admissibility decisions were issued (for the top ten countries of origin: Afghanistan – 614; Morocco – 6; India – 5; Gambia – 19; Republic of Guinea – 12; Guinea Bissau – 15; Angola – 21; Senegal – 6; Pakistan – 31; Sierra Leone – 5).

The *Statistical Report of Asylum 2021* recognises the increase in the number of rejections of applications for international protection in recent years.<sup>3</sup> It is argued that such an increase “[...] does not reflect an eventual increased restriction to international protection in the country, instead mirrors the increase of the number of applications for international protection [by applicants] of nationalities whose recognition rate [...] has been lower in the general context of EU 27 as well”.<sup>4</sup> As in the 2020 edition, this analysis seems to be exclusively grounded on the assumption that most applications are linked to personal/economic reasons (an explanation offered by SEF to the authors) and to the low recognition rates of the most representative nationalities in corresponding years. The report does not conduct an analysis of the quality of the asylum procedure and decisions adopted therein.

#### Gender/age breakdown of the total number of applicants: 2021

	Number	Percentage
<b>Total number of applicants</b>	1,537	100%
Men, incl. children	1,051	68.4%
Women, incl. children	486	31.6%
Children	415	27%
Unaccompanied children	97	6.3%

Source: SEF (data). Rates are calculated by AIDA on the basis of the data provided.

<sup>3</sup> The report covers 2020.

<sup>4</sup> Observatório das Migrações (OM), *Requerentes e Beneficiários de Proteção Internacional – Relatório Estatístico do Asilo 2021*, June 2021, available in Portuguese at: <https://bit.ly/3F5I9iw>.

## Information on appeals: 2021

According to information provided by the High Council of Administrative and Fiscal Courts (*Conselho Superior dos Tribunais Administrativos e Fiscais*, CSTAF), in 2021, the Administrative Circle Court (*Tribunal Administrativo de Círculo*, TAC) of Lisbon was the only Court with a specific registration string pertaining to asylum-related appeals covering the whole year. While the remaining first instance administrative courts did not have such a registration string, CSTAF was able to provide data on appeals based on information available on the corresponding IT system and in cooperation with each Court. Higher Courts do not collect autonomous data on asylum-related processes.

A total of 294 appeals against negative decisions were filed in national first instance courts. This represents a decrease of 44% compared to 2020, when 525 appeals were registered in total.

TAC **Lisbon** continued to be (by far) the first instance court adjudicating the majority of asylum-related cases in Portugal. Out of the 294 appeals against negative asylum decisions, 250 were registered in this Court (i.e., 85% of all appeals). In 2021, appeals were further lodged in TAF **Almada**, TAF **Braga**, TAF **Coimbra**, TAF **Leiria**, TAF **Loulé**, TAF **Porto** and TAF **Sintra**.

Appeals concerned applicants of 40 nationalities, as well as stateless persons. The most represented nationalities among appellants included Gambia (52), Guinea (35), Guinea Bissau (32), Senegal (23), and Angola (20). According to CSTAF, out of the total of 294 appeals, 256 concerned male applicants and 38 concerned female applicants.

In 2021, first instance courts issued a total of 283 asylum-related appeal decisions, of which 139 concerned Dublin cases. The data available does not include a breakdown of the remaining procedures concerned. Out of the total of 283 decisions, 240 were issued by TAC Lisbon. Out of the total of 283 asylum-related appeal decisions (first instance courts), 44 were in favour of the applicant (19 granting subsidiary protection, 13 determining that the procedure should be resumed/reanalysed by the administrative authority, 12 determining Dublin procedures should be resumed/reanalysed by the administrative authority).<sup>5</sup> Additionally, there were 239 decisions ruling against the appellants. By the end of the year, 11 cases were pending in first instance courts.

Out of the total of 250 appeals filed in TAC **Lisbon**, 29 were decided in favour of the appellant, 211 against the appellant, and 10 were pending by the end of the year.

As such, the overall success rate of appeals at the TAC **Lisbon** (all countries of origin and procedures included) stood at roughly 12%. The overall success rate of appeals in courts outside Lisbon stood roughly at 34.9%. The overall success rate of appeals at national level stood at 15.5%. In the case of Gambia, the most represented nationality at appeal stage, the overall success rate of appeals was around 2%. With a few exceptions, success rates for other nationalities were equally low. For the other most represented countries of origin at appeals stage, the success rates were as follows: Guinea (11.4%); Guinea-Bissau (9.4%); Senegal (8.7%); Angola (25%).

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<sup>5</sup> According to CPR's observation of national jurisprudence, instances where national courts decide to grant protection directly are traditionally extremely rare.

The available information does not allow for clear-cut statistics on decision rates per type of procedure. Nevertheless, according to information available to CPR, the main type of asylum procedures used in 2021 to reject asylum applications at first instance consisted of (for the most represented countries of origin at appeal stage) accelerated procedures in the case of Angola and Guinea-Bissau, and Dublin procedures in the case of Gambia, Guinea, and Senegal.

According to information provided by CSTAF, a total of 46 appeals were filed in second instance courts (TCA South and TCA North) in 2021. Out of these, 6 were filled by the asylum authority (1 was decided favourably, and 5 were rejected). The remaining 40 were filed by the applicants (6 were decided favourably).

## Overview of the legal framework

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

Title (EN)	Original Title (PT)	Abbreviation	Web Link
<p>Act n. 27/2008 of 30 June 2008 establishing the conditions for granting asylum or subsidiary protection, transposing Directives 2004/83/EC and 2005/85/EC</p> <p><i>Amended by:</i> Act n. 26/2014 of 5 May 2014 amending Act n. 27/2008, transposing Directives 2011/95, 2013/32/EU and 2013/33/EU</p>	<p>Lei n.º 27/2008, de 30 de Junho, que estabelece as condições e procedimentos de concessão de asilo ou protecção subsidiária e os estatutos de requerente de asilo, de refugiado e de protecção subsidiária, transpondo para a ordem jurídica interna as Directivas n.ºs 2004/83/CE, do Conselho, de 29 de Abril, e 2005/85/CE, do Conselho, de 1 de Dezembro</p> <p>Lei n.º 26/2014, de 5 de maio, que procede à primeira alteração à Lei n.º 27/2008, de 30 de junho, que estabelece as condições e procedimentos de concessão de asilo ou proteção subsidiária e os estatutos de requerente de asilo, de refugiado e de proteção subsidiária, transpondo as Diretivas n.ºs 2011/95/UE, do Parlamento Europeu e do Conselho, de 13 de dezembro, 2013/32/UE, do Parlamento Europeu e do Conselho, de 26 de junho, e 2013/33/UE, do Parlamento Europeu e do Conselho, de 26 de junho</p>	Asylum Act	<p><a href="http://bit.ly/2npMI5T">http://bit.ly/2npMI5T</a> (PT)</p> <p><a href="http://bit.ly/1jd3hcG">http://bit.ly/1jd3hcG</a> (PT)</p> <p><a href="https://bit.ly/3pHbedv">https://bit.ly/3pHbedv</a> (EN)</p>
<p>Act n. 23/2007 of 4 July 2007 on the legal status of entry, residence, departure and removal of foreigners from the national territory</p> <p><i>Amended by:</i> Decree-Law n.14/2021 of 12 February 2021</p>	<p>Lei n.º 23/2007, de 4 de Julho, que aprova o regime jurídico de entrada, permanência, saída e afastamento de estrangeiros do território nacional</p> <p><i>Última alteração:</i> Decreto-Lei n.º 14/2021, de 12 de fevereiro</p>	Immigration Act	<p><a href="https://bit.ly/3iXOKIO">https://bit.ly/3iXOKIO</a> (PT)</p>

Decree-Law n. 4/2015 of 7 January 2015 - Code of Administrative Procedure <i>Amended by:</i> Act n. 72/2020 of 16 November 2020	Decreto-Lei n.º 4/2015, de 7 de janeiro, que aprova o novo Código do Procedimento Administrativo (alterado pela Lei n.º 72/2020, de 16 de novembro)	Administrative Procedure Code	<a href="http://bit.ly/2mmF8Hw">http://bit.ly/2mmF8Hw</a> (PT)
Act n. 15/2002 of 22 February 2002 approving the Code of Procedure before the Administrative Tribunals <i>Amended by:</i> Act n. 56/2021 of 16 August 2021	Lei n.º 15/2002, de 22 de Fevereiro, que aprova o Código de Processo nos Tribunais Administrativos  <i>Última alteração:</i> Lei n.º 56/2021, de 16 de agosto	Administrative Courts Procedure Code	<a href="http://bit.ly/2yekj3x">http://bit.ly/2yekj3x</a> (PT)
Act n. 73/2021 of 12 November 2021 approving the restructure of the Portuguese system of border control, reshaping the regime of the forces and services responsible for internal security and establishing other rules for the redistribution of competences and resources of the Immigration and Borders Service  <i>Amended by:</i> Act n. 89/2021 of 16 December 2021	Lei n.º 73/2021, de 12 de novembro, que aprova a reestruturação do sistema português de controlo de fronteiras, procedendo à reformulação do regime das forças e serviços que exercem a atividade de segurança interna e fixando outras regras de reafetação de competências e recursos do Serviço de Estrangeiros e Fronteiras, alterando as Leis n.os 53/2008, de 29 de agosto, 53/2007, de 31 de agosto, 63/2007, de 6 de novembro, e 49/2008, de 27 de agosto, e revogando o Decreto-Lei n.º 252/2000, de 16 de outubro  Alterada pela Lei n.º 89/2021, de 16 de dezembro		<a href="https://bit.ly/3OitRkJ">https://bit.ly/3OitRkJ</a> (PT)
Act n. 13/2003 of 21 May 2003 establishing the Social Insertion Revenue <i>Amended by:</i> Act n. 100/2019 of 6 September 2019	Lei n.º 13/2003, de 21 de Maio, que cria o rendimento social de inserção  <i>Última alteração:</i> Lei n.º 100/2019, de 6 de Setembro de 2019	RSI Act	<a href="http://bit.ly/2zyQuOc">http://bit.ly/2zyQuOc</a> (PT)
Act n. 220/2006 of 3 November 2006 establishing the legal framework for the social protection in case of unemployment of persons working for an employer <i>Amended by:</i> Decree-Law n. 119/2021 of 16 December 2021	Lei n.º 220/2006, de 3 de Novembro - Regime jurídico de protecção social da eventualidade de desemprego dos trabalhadores por conta de outrem  <i>Última alteração:</i> Decreto-Lei n.º 119/2021, de 16 de dezembro		<a href="https://bit.ly/2sppYFA">https://bit.ly/2sppYFA</a> (PT)

<p>Decree-Law 176/2003 of 2 August 2003 establishing the family allowance to children and youth and defining protection in case of family expenses in the context of the family protection subsystem</p> <p><i>Amended by:</i> Act n. 71/2018 of 31 December</p>	<p>Decreto-Lei n.º 176/2003, de 2 de Agosto, que Institui o abono de família para crianças e jovens e define a protecção na eventualidade de encargos familiares no âmbito do subsistema de protecção familiar</p> <p><i>Última alteração:</i> Lei n.º 71/2018, de 31 de dezembro</p>		<p><a href="https://bit.ly/2IDrmGX">https://bit.ly/2IDrmGX</a> (PT)</p>
<p>Act n. 35/2014 of 20 June 2014 governing employment in public functions</p> <p><i>Amended by:</i> Act n. 2/2020 of 31 March 2020</p>	<p>Lei n.º 35/2014, de 20 de junho, que aprova a Lei Geral do Trabalho em Funções Públicas</p> <p><i>Última alteração:</i> Lei n.º 2/2020, de 31 de março</p>		<p><a href="https://bit.ly/3IIPqgu">https://bit.ly/3IIPqgu</a> (PT)</p>
<p>Act n. 7/2009 of 12 February 2009 approving the Labour Code</p> <p><i>Amended by:</i> Act n. 1/2022 of 3 January 2022</p>	<p>Lei n.º 7/2009, de 12 de Fevereiro, que aprova a revisão do Código do Trabalho</p> <p><i>Última alteração:</i> Lei n.º 1/2022, de 3 de janeiro</p>	Labour Code	<p><a href="https://bit.ly/2rJtbzm">https://bit.ly/2rJtbzm</a> (PT)</p>
<p>Act n. 37/81 of 3 October 1981 approving the Act on Nationality</p> <p><i>Amended by:</i> Organic Law n. 2/2020 of 10 November 2020</p>	<p>Lei n.º 37/81, de 3 de Outubro, que aprova a Lei da Nacionalidade</p> <p><i>Última alteração:</i> Lei Orgânica n.º 2/2020, de 10 de Novembro</p>	Nationality Act	<p><a href="http://bit.ly/2jukiBm">http://bit.ly/2jukiBm</a> (PT)</p> <p><a href="https://bit.ly/2u63cD5">https://bit.ly/2u63cD5</a> (EN – this version does not include the 2020 amendment)</p>
<p>Act n. 81/2014 of 19 December 2014</p> <p><i>Amended by:</i> Act n. 32/2016 of 24 August 2016</p>	<p>Lei n.º 81/2014, de 19 de dezembro, alterada pela Lei n.º 32/2016, de 24 de agosto, que estabelece o novo regime do arrendamento apoiado para habitação</p> <p><i>Alteração:</i> Lei n.º 32/2016, de 24 de agosto</p>	Public Leasing Act	<p><a href="https://bit.ly/3iXQThm">https://bit.ly/3iXQThm</a> (PT)</p>

Decree-Law n. 26/2021 of 31 March 2021 creating the National Pool of Urgent and Temporary Accommodation	Decreto-Lei n.º 26/2021, de 31 de março que procede à criação da Bolsa Nacional de Alojamento Urgente e Temporário		<a href="https://bit.ly/3L3aXfq">https://bit.ly/3L3aXfq</a> (PT)
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**Main implementing decrees, guidelines and regulations on asylum procedures, reception conditions, detention, and content of international protection**

Title (EN)	Original Title (PT)	Abbreviation	Web Link
<p>Decree-Law n. 252/2000 of 16 October 2000 Organisational structure of the Immigration and Borders Service</p> <p><i>Amended by:</i> Act n.73/2021 of 12 November 2021 (restructures the portuguese border control system)</p>	<p>Decreto-Lei n.º 252/2000, de 16 de Outubro, que aprova a estrutura orgânica e define as atribuições do Serviço de Estrangeiros e Fronteiras</p> <p><i>Última alteração:</i> Lei n.º 73/2021, de 12 de novembro (aprova a reestruturação do sistema português de controlo de fronteiras)</p>	<p>SEF Structure Decree-Law</p>	<p><a href="https://bit.ly/3agkrmq">https://bit.ly/3agkrmq</a> (PT)</p>
<p>Act n. 147/99 of 1 September 1999 - Children and Youths at Risk Protection Act</p> <p><i>Amended by:</i> Act n. 26/2018 of 5 July 2018</p>	<p>Lei n.º 147/99, de 01 de Setembro – Lei de Protecção de Crianças e Jovens em Perigo</p> <p><i>Última alteração:</i> Lei n.º 26/2018, de 5 de julho</p>		<p><a href="https://goo.gl/7G71tX">https://goo.gl/7G71tX</a> (PT)</p>
<p>Act n. 141/2015 of 8 September 2015 - General Regime of Civil Guardianship Process</p> <p><i>Amended by:</i> Act n. 24/2017 of 24 May 2017</p>	<p>Lei n.º 141/2015, de 08 de Setembro – Regime Geral do Processo Tutelar Cível</p> <p><i>Alteração:</i> Lei n.º 24/2017, de 24 de maio</p>		<p><a href="https://goo.gl/agJ1yJ">https://goo.gl/agJ1yJ</a> (PT)</p>
<p>Resolution of the Council of Ministers no. 103/2020 of 23 November 2020, establishing a single system of reception and integration of applicants for and beneficiaries of international protection</p>	<p>Resolução do Conselho de Ministros n.º103/2020, de 23 de novembro, que estabelece um sistema único de acolhimento e integração de requerentes e beneficiários de protecção internacional</p>	<p>Single Reception and Integration System Resolution</p>	<p><a href="https://bit.ly/3oBLXQm">https://bit.ly/3oBLXQm</a> (PT)</p>

Decree-Law n. 464/80 of 13 October 1980 establishing new conditions of access and entitlement to social pension  <i>Amended by:</i> Decree-Law n.136/2019 of 6 September 2019	Decreto-Lei n.º 464/80, de 13 de Outubro, que estabelece em novos moldes as condições de acesso e de atribuição da pensão social  <i>Última alteração:</i> Decreto-Lei n.º 136/2019, de 6 de setembro		<a href="https://bit.ly/2MVXE4L">https://bit.ly/2MVXE4L</a> (PT)
Ministerial Order n. 18/2020 of 31 January 2020 approving the annual revaluation of pensions and other social allowances for 2020	Portaria n.º 28/2020, de 31 de janeiro, que procede à atualização anual das pensões e de outras prestações sociais, para o ano de 2020		<a href="https://bit.ly/3t4xj7L">https://bit.ly/3t4xj7L</a> (PT)
Ministerial Order n. 27/2020 of 31 January 2020 approving the annual revaluation of the social assistance index value	Portaria n.º 27/2020, de 31 de janeiro, que procede à atualização anual do valor do indexante dos apoios sociais (IAS)		<a href="https://bit.ly/2KZB1OZ">https://bit.ly/2KZB1OZ</a> (PT)
Ministerial Order n. 120/2021 of 8 June 2021 establishing the functioning and management of the National Pool of Urgent and Temporary Accommodation	Portaria n.º 120/2021, de 8 de junho que define o modelo de funcionamento e gestão da Bolsa Nacional de Alojamento Urgente e Temporário		<a href="https://bit.ly/3jTh0qX">https://bit.ly/3jTh0qX</a> (PT)
Ministerial Order n. 257/2012 of 27 August 2012 implementing Law 13/2013 on the Social Insertion Revenue (RSI) and determining the value of the RSI  <i>Amended by:</i> Ministerial Order n. 65/2021 of 17 March 2021	Portaria n.º 257/2012, de 27 de agosto, que estabelece as normas de execução da Lei n.º 13/2003, de 21 de Maio, que institui o rendimento social de inserção, e procede à fixação do valor do rendimento social de inserção.  <i>Última alteração:</i> Portaria n.º 65/2021, de 17 de março		<a href="https://bit.ly/2u6W6hL">https://bit.ly/2u6W6hL</a> (PT)
Ministerial Order n. 22/2019 of 17 January 2019 amending the value of the Social Insertion Revenue	Portaria n.º 22/2019, de 17 de janeiro, que atualiza o valor do Rendimento Social de Inserção		<a href="https://bit.ly/366echM">https://bit.ly/366echM</a> (PT)

<p>Decree Law n. 113/2011 of 29 November 2011 regulating access to National Health Service in respect to co-payments and special benefits</p> <p><i>Amended by:</i> Decree-Law n.96/2020 of 4 November</p>	<p>Decreto-Lei n.º 113/2011, de 29 de novembro, que regula o acesso às prestações do Serviço Nacional de Saúde por parte dos utentes no que respeita ao regime das taxas moderadoras e à aplicação de regimes especiais de benefícios</p> <p><i>Última alteração:</i> Decreto-Lei n.º 96/2020, de 4 de novembro</p>		<p><a href="http://bit.ly/2iaqtl7">http://bit.ly/2iaqtl7</a> (PT)</p>
<p>Ministerial Order n. 30/2001 of 17 January 2001 establishing the specific modalities of health care in different stages of the asylum procedure</p>	<p>Portaria n.º 30/2001, de 17 de Janeiro, que estabelece as modalidades específicas de assistência médica e medicamentosa a prestar nas diferentes fases do procedimento de concessão do direito de asilo, desde a apresentação do respectivo pedido à decisão final que recair sobre o mesmo</p>		<p><a href="https://bit.ly/2F8gRMe">https://bit.ly/2F8gRMe</a> (PT)</p>
<p>Ministerial Order n. 1042/2008 of 15 September 2008 establishing the terms of access of asylum seekers and their family members to the National Health Service</p>	<p>Portaria n.º 1042/2008, de 15 de Setembro, que estabelece os termos e as garantias do acesso dos requerentes de asilo e respectivos membros da família ao Serviço Nacional de Saúde</p>		<p><a href="https://bit.ly/2u6dyTt">https://bit.ly/2u6dyTt</a> (PT)</p>
<p>Decree-Law n. 227/2005 of 28 December 2005 defining the framework of of granting the recognition of foreign qualifications</p>	<p>Decreto-Lei n.º 227/2005, de 28 de Dezembro, que define o novo regime de concessão de equivalência de habilitações de sistemas educativos estrangeiros a habilitações do sistema educativo português ao nível dos ensinos básico e secundário</p>		<p><a href="https://bit.ly/39ssv26">https://bit.ly/39ssv26</a> (PT)</p>
<p>Ministerial Order n. 224/2006 of 8 March 2006 approving comparative tables between the Portuguese education system and other education systems</p>	<p>Portaria n.º 224/2006, de 8 de Março, que aprova as tabelas comparativas entre o sistema de ensino português e outros sistemas de ensino, bem como as tabelas de conversão dos sistemas de classificação correspondentes</p>		<p><a href="https://bit.ly/2FUHTYE">https://bit.ly/2FUHTYE</a> (PT)</p>

Ministerial Order n. 699/2006 of 12 July 2006 approving comparative tables between the Portuguese education system and other education systems	Portaria n.º 699/2006, de 12 de Julho 2006, que aprova as tabelas comparativas entre o sistema de ensino português e outros sistemas de ensino, bem como as tabelas de conversão dos sistemas de classificação correspondentes		<a href="https://bit.ly/2HUjgxx">https://bit.ly/2HUjgxx</a> (PT)
Decree-Law n. 83/2000 of 11 May 2000 on the new regime for the issuance of passports  <i>Amended by:</i> Act n. 49/2018 of 14 August 2018	Decreto-Lei n.º 83/2000, de 11 de Maio, que aprova o novo regime legal da concessão e emissão dos passaportes  <i>Última alteração:</i> Lei n.º 49/2018, de 14 de agosto	Travel Documents Order	<a href="https://bit.ly/2AjwA7G">https://bit.ly/2AjwA7G</a> (PT)
Governmental Decree n. 84/2007 of 5 November 2007 regulating Act n. 23/2007 of 4 July 2007 on the legal status of entry, residence, departure and removal of foreigners from the national territory  <i>Amended by:</i> Act n. 71/2018 of 31 December 2018	Decreto Regulamentar n.º 84/2007, de 5 de Novembro, que regulamenta a Lei n.º 23/2007, de 4 de Julho, que aprova o regime jurídico de entrada, permanência, saída e afastamento de cidadãos estrangeiros de território nacional  <i>Última alteração:</i> Lei n.º 71/2018, de 31 de Dezembro		<a href="https://bit.ly/2Pj0N2U">https://bit.ly/2Pj0N2U</a> . (PT)
Ministerial Order n. 1334-E/2010 of 31 December  <i>Amended by:</i> Ministerial Order n. 204/2020 of 24 August 2020	Portaria n.º 1334 -E/2010, de 31 de Dezembro, que fixa as taxas e demais encargos a cobrar pelos procedimentos administrativos previstos na Lei n.º 23/2007, de 4 de Julho, com as alterações introduzidas pela Lei n.º 29/2012, de 9 de agosto  <i>Última alteração:</i> Portaria n.º 204/2020, de 24 de agosto		<a href="https://bit.ly/3iXuSzb">https://bit.ly/3iXuSzb</a> (PT)
Decree-Law n. 131/95 of 6 June 1995 approving the Civil Registration Code  <i>Amended by:</i> Act n. 49/2018 of 14 August 2018	Decreto-Lei n.º 131/95, de 6 de Junho, que aprova o Código do Registo Civil  <i>Última alteração:</i> Lei n.º 49/2018, de 14 de Agosto	Civil Registration Code	<a href="https://bit.ly/3gxLDIA">https://bit.ly/3gxLDIA</a> . (PT)

Decree-Law n. 237-A/2006 of 14 December 2006 approving the regulation of the Portuguese nationality  <i>Amended by:</i> Decree-Law n. 71/2017 of 21 June 2017	Decreto-Lei n.º 237-A/2006, de 14 de Dezembro, que aprova o Regulamento da Nacionalidade Portuguesa  <i>Última alteração:</i> Decreto-Lei n.º 71/2017, de 21 de Junho	Nationality Regulation	<a href="http://bit.ly/2nelr5o">http://bit.ly/2nelr5o</a> (PT)
Ministerial Order n. 176/2014 of 11 September 2014	Portaria n.º 176/2014, de 11 de setembro, que regulamenta a realização da prova do conhecimento da língua portuguesa, prevista na alínea b) do n.º 2 do artigo 25.º do Regulamento da Nacionalidade Portuguesa, aprovado pelo Decreto-Lei n.º 237-A/2006, de 14 de Dezembro, na sua atual redação.	Nationality Language Assessment Test Order	<a href="https://bit.ly/2Mht3aS">https://bit.ly/2Mht3aS</a> (PT)
Decree-Law n. 322-A/2001 of 14 December 2001 approving the Regulation of Administrative Fees of Registries and Notary  <i>Amended by:</i> Decree-Law n.109-D/2021 of 9 December 2021	Decreto-Lei n.º 322-A/2001, de 14 de Dezembro de 2001, que aprova o Regulamento Emolumentar dos Registos e Notariado  <i>Última alteração:</i> Decreto-Lei n.º 109-D/2021, de 9 de Dezembro		<a href="https://bit.ly/3592YrB">https://bit.ly/3592YrB</a> (PT)
Ministerial Order n. 302/2015 of 22 September 2015, Template refugee travel document  <i>Amended by:</i> Ministerial Order n. 412/2015 of 27 November 2015	Portaria n.º 302/2015, de 22 de setembro, Modelo do título de viagem para os cidadãos estrangeiros residentes em Portugal na qualidade de refugiados  <i>Alteração:</i> Portaria n.º 412/2015 de 27 de novembro	Refugee Travel Document Order	<a href="https://bit.ly/36cs22b">https://bit.ly/36cs22b</a> (PT)
Ministerial Order n. 183/2020 of 5 August 2020, approving the creation of Portuguese host language courses and the rules pertaining to its organisation, functioning and certification.	Portaria n.º 183/2020, de 5 de agosto que cria os cursos de Português Língua de Acolhimento, assim como as regras a que obedecem a sua organização, funcionamento e certificação		<a href="https://bit.ly/3r6zPZB">https://bit.ly/3r6zPZB</a> (PT)

Regulation n. 84/2018 of 2 February 2018 governing the public leasing of housing from IHRU, IP	Regulamento n.º 84/2018, de 2 de fevereiro, de Acesso e Atribuição de Habitações do IHRU, I.P., em Regime de Arrendamento Apoiado		<a href="https://bit.ly/2SD3PhF">https://bit.ly/2SD3PhF</a> (PT)
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## Overview of the main changes since the previous report update

The report was previously updated in **May 2021**.

### Background information

As previously reported, in 2020, the Government announced its intention to conduct a **structural reform of SEF**. The main piece of legislation governing this reform was approved in November 2021.<sup>6</sup> It provides for the reallocation of SEF's competencies to existing or new entities:

- The National Republican Guard (*Guarda Nacional Republicana*, GNR) will be in charge of the surveillance and control of maritime and land borders, and will be responsible for executing expulsion decisions within its jurisdiction;<sup>7</sup>
- The Public Security Police (*Polícia de Segurança Pública*, PSP) will be in charge of the surveillance and control of air borders, and will be responsible for executing expulsion decisions within its jurisdiction;<sup>8</sup>
- The Criminal Police (*Polícia Judiciária*, PJ) will investigate crimes related to illegal migration and trafficking in human beings;<sup>9</sup>
- The administrative competencies of SEF will be allocated to the Institute of Registries and Notary (*Instituto dos Registos e Notariado*, IRN) and to a new entity to be created, the Portuguese Agency for Migration and Asylum (*Agência Portuguesa para as Migrações e Asilo*, APMA). The IRN will be responsible for foreigners with a residence permit and for the issuance of travel documents. APMA will be the entity in charge of the implementation of public policies related to migration and asylum and to issue opinions on requests for visas, applications for asylum and resettlement.<sup>10</sup>
- Regular training on human rights, migration law and asylum law is to be provided to the officers of PSP, GNR, PJ and IRN.<sup>11</sup>

While the law was initially expected to entry into force in January 2022, it was amended in December 2021 and, at the time of writing, was due to enter into force in May 2022.<sup>12</sup> At the time of writing, APMA had not been created yet.

In July 2021, the Portuguese Government adopted the **National Plan to Combat Racism and Discrimination 2021-2025**.<sup>13</sup> According to media reports, the UN Working Group of Experts on People of African Descent, held a press conference following its visit to Portugal in December 2021, where, *inter alia*, it showed concern with racial discrimination and with the respect for the human rights of people of African descent in the country.<sup>14</sup>

According to the yearly report of the Ombudsperson to the Parliament published in 2021, the number of complaints received by the entity regarding the rights of foreign citizens registered a sharp increase in 2020.<sup>15</sup>

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<sup>6</sup> Act n. 73/2021 of 12 November 2021 approving the restructure of the Portuguese system of border control, reshaping the regime of the forces and services responsible for internal security and establishing other rules for the redistribution of competences and resources of the Immigration and Borders Service, amended by Act n. 89/2021 of 16 December 2021, available at: <https://bit.ly/3OitRkJ>.

<sup>7</sup> Article 2 Act n. 73/2021 of 12 November 2021.

<sup>8</sup> Article 2 Act n. 73/2021 of 12 November 2021.

<sup>9</sup> Article 2 Act n. 73/2021 of 12 November 2021.

<sup>10</sup> Article 3 Act n. 73/2021 of 12 November 2021.

<sup>11</sup> Article 12 Act n. 73/2021 of 12 November 2021.

<sup>12</sup> Article 15 Act n. 73/2021 of 12 November 2021.

<sup>13</sup> Resolution of the Council of Ministers no.101/2021, available at: <https://bit.ly/3yIJB1p>. The National Plan is available in English at: <https://bit.ly/3Pmzpey>.

<sup>14</sup> See, for instance, Público, *Peritos da ONU surpreendidos com relatos de brutalidade policial sobre pessoas africanas em Portugal*, 6 December 2021, available at: <https://bit.ly/3ysNRf1>.

<sup>15</sup> Ombudsman, *Relatório à Assembleia da República 2020*, June 2021, p.134, available at: <https://bit.ly/3tMTmmc>.

According to the information provided by UNHCR, a total of 299 refugees were **resettled** to Portugal in the course of 2021. Out of these, 116 were resettled from Egypt, and 183 from Turkey. The majority of those resettled were Syrians, but nationals from Sudan, Somalia, Ethiopia and Iraq were also resettled to Portugal.

In 2021, Portugal participated in the **evacuation of Afghan citizens**. In August, the Government announced the country's availability to host Afghans who have collaborated with Portuguese military forces deployed to Afghanistan, persons who have collaborated with EU, NATO and UN missions in the country.<sup>16</sup> Specific references to vulnerable cases (e.g., women and girls) were also made by Government officials. A total of 768 applications for international protection have been made during the year within this context.

According to the newspaper Público, an inquiry conducted by the **Inspectorate General of Home Affairs** (*Inspecção-Geral da Administração Interna*, IGAI) concluded that the events that led to the death of a Ukrainian citizen at the EECIT Lisbon in March 2020 were not a sign of a systemic problem within SEF. Nevertheless, the Inspectorate General recommended that further inquiries and disciplinary procedures should be conducted following its investigation. According to the same source, the recommendation was accepted by the then Minister of Home Affairs.<sup>17</sup>

With regards to the situation of **persons fleeing the war in Ukraine**, on 1 March 2022, the Council of Ministers adopted a Resolution establishing the criteria for granting of temporary protection for displaced people from Ukraine.<sup>18</sup> The approval of such a Resolution triggered the application of the temporary protection regime.<sup>19</sup> The Resolution was subsequently amended in order to widen the personal scope of application (and to bring it in line with the Council decision on the same issue).

As such, the following persons are entitled to temporary protection in Portugal:

- (i) Ukrainian nationals and beneficiaries of international protection in Ukraine, coming from Ukraine, and that cannot return due to the war;
- (ii) Other third country nationals or stateless persons who are in the same conditions as those above and that can prove either that they are related to the persons referred to above, or that they were permanent residents in Ukraine/had a temporary residence permit in the country/had a long-term visa in order to obtain such a permit and whose durable return to their country of origin is not possible.

Registration for temporary protection can be performed in person or online.<sup>20</sup>

According to the Resolution of the Council of Ministers, the application for temporary protection is immediately communicated to the relevant authorities for the issuance of national healthcare system number, tax number and social security number. Employment registration with the relevant national entity is also automatic. The Resolution further establishes that accommodation and subsistence allowances should be granted to beneficiaries that do not have sufficient financial resources of their own, and that access to social security is processed under the rules applicable to refugees.<sup>21</sup> An assessment of the functioning of the implementation of this regime is not yet available.

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<sup>16</sup> See, for instance: Expresso, *Afeganistão: Portugal participa na mobilização internacional de apoio a refugiados*, 15 August 2021, available at <https://bit.ly/36EvmBY>.

<sup>17</sup> Público, *Caso Ihor: IGAI conclui que agressões não são um 'problema transversal' no SEF*, 21 January 2022, available at [full access limited to subscribers]: <https://bit.ly/3FEYX1V>.

<sup>18</sup> Resolution of the Council of Ministers no.29-A/2022 of 1st March 2022, available at: <https://bit.ly/3vRYoie>

<sup>19</sup> Act no. 67/2003 of 23 August 2003 (Temporary Protection Act, available at <https://bit.ly/3sOxKVV>).

<sup>20</sup> The online registration platform is available at: <https://sefforukraine.sef.pt/>.

<sup>21</sup> For further and up to date information, see [www.portugalforukraine.org.pt](http://www.portugalforukraine.org.pt). The government also created a platform focusing on the situation unaccompanied children (available at <https://bit.ly/3FBSAwu>).



## Asylum procedure

- ❖ **Applicants for international protection:** A total of 1,537 applications for international protection were registered in Portugal in 2021 SEF (including 270 made by persons relocated to Portugal). While this reflected a return to pre-pandemic figures (in 2019 there were 1,849 applications registered), a significant part of the total refers to persons evacuated from Afghanistan and admitted to Portugal (768) and persons relocated to the country (279). As such, the number of spontaneous applications remained comparatively low, which is likely still connected to the restrictions upon international travel linked to the coronavirus pandemic.
- ❖ **General:** A number of decisions from the Central Administrative Court South (*Tribunal Central Administrativo Sul*, TCA South) issued in 2021 focused on the right of the applicant to request legal aid in order to have a lawyer present during the interview. According to the analysed decisions, the Court overall considers that: (i) applicants for international protection may request legal aid in order to have a lawyer present in the asylum interview;<sup>22</sup> (ii) the performance of an asylum interview without a lawyer present *per se* does not violate the Portuguese Constitution;<sup>23</sup> (iii) to effectively guarantee the applicant's rights, the authority (SEF) must fully and correctly inform the applicant of the possibility of being accompanied by a lawyer in the interview and of applying to legal aid for that purpose. If that does not happen, the decision on the asylum application may be annulled.<sup>24</sup>

According to the available information, at the time of writing, the appeal of one such case was pending in the Supreme Administrative Court (STA).<sup>25</sup>

According to the information provided by High Council of Administrative and Fiscal Courts (*Conselho Superior dos Tribunais Administrativos e Fiscais*, CSTAF), in early 2022, the Working Group for Administrative and Fiscal Justice, created by the Ministry of Justice, proposed an amendment to the Statute of the Administrative and Fiscal Courts that would allow CSTAF to create specialised sections in the Administrative Courts, namely in the field of asylum. In order for this to be implemented, the Statute would have to be amended and the CSTAF would then have to deliberate on the creation of the relevant section.
- ❖ **Border procedure:** While applications for international protection at the border have taken place in 2021, according to CPR's experience, and despite some unclear instances, such applicants have been granted entry into national territory, referred to the provision of reception conditions if needed, and their cases were not subject to the rules applicable to the border procedure. SEF affirmed that the border procedure has not been applied in 2021. At the time of writing, it remained unclear whether this is temporary or will become permanent practice and whether it will apply to all national border posts.
- ❖ **Vulnerable applicants:** In addition to the existing general national referral mechanism for victims of trafficking in human beings, in 2021 the national "*Protocol for the definition of procedures aimed at the Prevention, Detection and Protection of (presumed) children victims of Trafficking in Human Beings – National Referral Mechanism*" was launched.<sup>26</sup> The new referral mechanism, comprising nine practical tools, aims to establish specific procedures, to reinforce cooperation and communication among professionals and to ensure respect for the best interests of the child.<sup>27</sup>

<sup>22</sup> TCA South, Decision 2285/20.7BELSB, 21 April 2021, available at: <https://bit.ly/3tQAjHc>.

<sup>23</sup> Ibid.

<sup>24</sup> TCA South, Decision 806/21.7BELSB, 23 September 2021, available at: <https://bit.ly/3iQyNs9>; TCA South, Decision 2144/20.3BELSB, 7 October 2021, available at: <https://bit.ly/3IR83IZ>.

<sup>25</sup> STA, Decision 02144/20.3BELSB, 25 November 2021, available at: <https://bit.ly/3xJcWC6>.

<sup>26</sup> OTSH (coord.), *Protocolo para a definição de procedimentos de atuação destinado à prevenção, deteção e proteção de crianças (presumíveis) vítimas de tráfico de seres humanos - Sistema de Referência Nacional*, May 2021, available at: <https://bit.ly/3k3BXQh>.

<sup>27</sup> The tools focus on: 1. Guiding principles of children's protective intervention; 2. Overall indicators and types of exploitation by indicators. 3. Detection in National Territory. 4. Detection at External Borders. 5. Procedures

One of the practical tools focus on identification at the border, explaining the referral and identification procedures together with relevant indicators.

#### *Reception conditions*

- ❖ **Responsibility for reception:** Within the framework of the Single Operative Group (SOG), three subgroups have been created so far to handle operational matters: the social monitoring subgroup, the unaccompanied children subgroup, and the programmed arrivals subgroup. The social monitoring subgroup replaced the previous structure for referral and follow up on the provision of reception conditions to spontaneous asylum seekers. The group is composed by ACM, CPR, ISS, SCML and SEF, and meets twice a month. The extended line-up of the SOG meets once a month.
- ❖ **Vulnerable applicants:** A study focusing on the situation of asylum-seeking unaccompanied children and ageing out in Portugal published in 2021 states, inter alia, that the analysis conducted reveals the lack of a national strategy for unaccompanied asylum-seeking children.<sup>28</sup>

#### *Content of international protection*

- ❖ **Cessation of international protection:** In 2021, a total of 36 cessation of subsidiary protection decisions were adopted by the national authorities, mostly concerning Ukrainian citizens (13). According to the information provided by SEF, in 2021, cessation of refugee status also occurred (while extremely rare). CPR was not aware of prior cessation decisions concerning refugee status. CPR continued to observe significant shortcomings in cessation procedures.
- ❖ **Integration:** A study published in 2021 focusing on the role and practices of reception entities in the integration of refugees concluded, inter alia, that Portugal has not developed a structured plan for reception and integration of refugees, identified a number of coordination issues, and challenges faced by frontline service providers, and recommended that such a policy should be created.<sup>29</sup>

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for assessing the child's age. 6. Appointment of Tutor or Legal Representative. 7. Assistance, Sheltering, (Re) Integration and Return. 8. Rights of children victims of Trafficking in Human Beings. 9. Training Module.

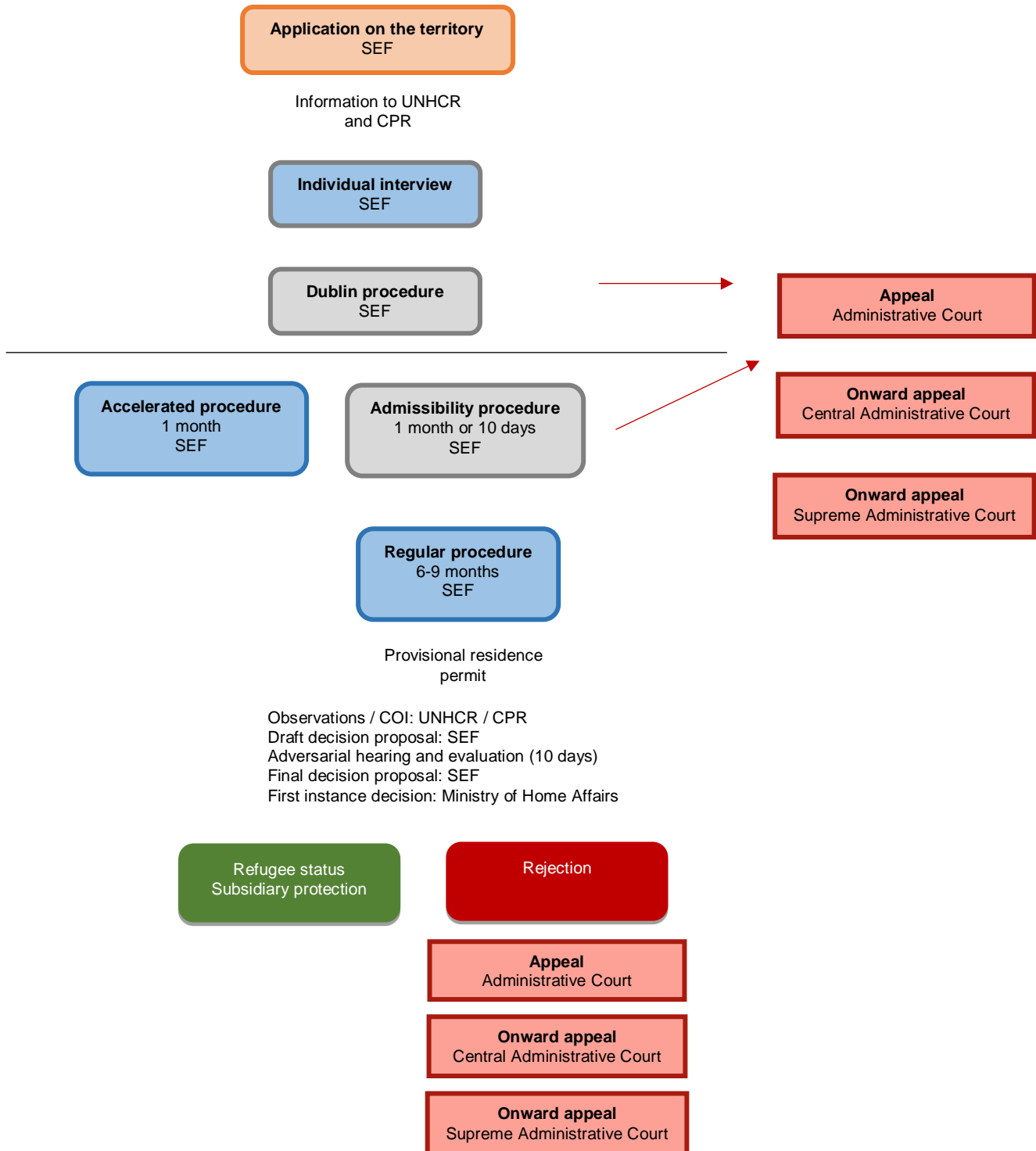
<sup>28</sup> Sandra Roberto, Carla Moleiro, ed. Observatório das Migrações, *De menor a maior: acolhimento e autonomia de vida em menores não acompanhados*, April 2021, p.60, available at: <https://bit.ly/3fqMKBK>.

<sup>29</sup> Lúcio Sousa, Paulo M. Costa, Rosana Albuquerque, Olga Magano, Bárbara Backstrom, ed. Observatório das Migrações, *Integração de Refugiados em Portugal: o papel e práticas das instituições de acolhimento*, March 2021, pp.97 et seq, available at: <https://bit.ly/3qqrgv8>.

# 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:	<b>Yes</b>	No
▪ Prioritised examination: <sup>30</sup>	<b>Yes</b>	No
▪ Fast-track processing: <sup>31</sup>	<b>Yes</b>	No
❖ Dublin procedure:	<b>Yes</b>	No
❖ Admissibility procedure:	<b>Yes</b>	No
❖ Border procedure:	<b>Yes</b>	No
❖ Accelerated procedure: <sup>32</sup>	<b>Yes</b>	No
❖ Other: specific admissibility rules apply to subsequent applications and to applications following a removal order.		

Are any of the procedures that are foreseen in the law, not being applied in practice? Yes

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

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

## 4. Determining authority

Name in English	Number of staff	Ministry responsible	Is there any political interference possible by the responsible Minister with the decision making in individual cases by the first instance authority?
Immigration and Borders Service (SEF), Asylum and Refugees Department (GAR)	20	Ministry of Home Affairs	Yes <b>No</b>

Source: SEF.

<sup>30</sup> For applications likely to be well-founded or made by vulnerable applicants.

<sup>31</sup> Accelerating the processing of specific caseloads as part of the regular procedure.

<sup>32</sup> Labelled as “accelerated procedure” in national law.

In accordance with the Asylum Act and the internal regulation of the Immigration and Borders Service (SEF), the responsibility for examining applications for international protection and drafting first instance decisions lies with the Asylum and Refugees Department of SEF (SEF-GAR), while decisions granting, refusing (except in accelerated and admissibility procedures), ceasing, and withdrawing international protection are formally adopted by the Ministry of Home Affairs.<sup>33</sup> In practice, the latter adopts such decisions based on the assessment and recommendations of the determining authority, which thus remains the main entity responsible for the examination of asylum claims.

SEF-GAR is the specialised determining authority in the field of asylum whose competences are restricted to the following asylum-related tasks:<sup>34</sup>

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

In 2021, SEF-GAR was composed of 20 officials, of which (i) 12 caseworkers are responsible for the examination of applications for international protection under all the applicable procedures (except the Dublin procedure), including 2 officials responsible for revising files and proposals and one official responsible for the final decision, (ii) 2 caseworkers for Dublin procedures; and (iii) 6 administrative support officers.

According to SEF, caseworkers conduct interviews, COI research, case analysis, and draft decision proposals. Such decisions are revised by supervisors who also investigate suspicions of fraud (cancellation procedures) and draft and supervise the implementation of procedural and eligibility guidelines. Administrative officers ensure the registration of applications and the screening/referral of cases.

### Quality assurance

According to the information provided by SEF, quality is ensured through the following mechanisms: (i) the supervisors review each report drafted by the caseworkers; (ii) case law is constantly taken into account; (iii) caseworkers receive regular training within the European training curriculum of the European Union Asylum Agency (EUAA).

As previously reported, in 2020, the Government announced its intention to conduct a structural reform of SEF. The main piece of legislation governing this reform was approved in November 2021.<sup>35</sup> It provides for the reallocation of SEF's competencies to existing/new entities:

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<sup>33</sup> Article 29(1) Asylum Act; Article 17 Decree-Law 252/2000.

<sup>34</sup> Article 17(1) Decree-Law 252/2000.

<sup>35</sup> Act n. 73/2021 of 12 November 2021 approving the restructure of the Portuguese system of border control, reshaping the regime of the forces and services responsible for internal security and establishing other rules for the redistribution of competences and resources of the Immigration and Borders Service, amended by Act n. 89/2021 of 16 December 2021, available at: <https://bit.ly/3OitRkJ>.

- The National Republican Guard (*Guarda Nacional Republicana*, GNR) will be in charge of the surveillance and control of maritime and land borders, and will be responsible for executing expulsion decisions within its jurisdiction;<sup>36</sup>
- The Public Security Police (*Polícia de Segurança Pública*, PSP) will be in charge of the surveillance and control of air borders, and will be responsible for executing expulsion decisions within its jurisdiction;<sup>37</sup>
- The Criminal Police (*Polícia Judiciária*, PJ) will investigate crimes related to illegal migration and trafficking in human beings;<sup>38</sup>
- The administrative competencies of SEF will be allocated to the Institute of Registries and Notary (*Instituto dos Registos e Notariado*, IRN) and to a new entity to be created, the Portuguese Agency for Migration and Asylum (*Agência Portuguesa para as Migrações e Asilo*, APMA). The IRN will be responsible for foreigners with a residence permit and for the issuance of travel documents. APMA will be the entity in charge of the implementation of public policies related to migration and asylum and to issue opinions on requests for visas, applications for asylum and resettlement.<sup>39</sup>
- Regular training on human rights, migration law and asylum law is to be provided to the officers of PSP, GNR, PJ and IRN.<sup>40</sup>

While the law was initially expected to enter into force in January 2022, it was amended in December and, at the time of writing, was due to enter into force in May 2022.<sup>41</sup> At the time of writing, APMA had not been created yet.

## 5. Short overview of the asylum procedure

The Portuguese asylum procedure is a single procedure for both refugee status and subsidiary protection.<sup>42</sup> Different types of procedure are applicable depending on whether the asylum application:

- (i) is submitted to the regular procedure;
- (ii) is deemed unfounded (including in the case of applications following a removal procedure) and therefore submitted to an accelerated procedure;
- (iii) Is deemed inadmissible, or
- (iv) is presented at a national border and processed under the border procedure.

Anyone who irregularly enters or remains on Portuguese territory must present his/her application for international protection to SEF or to any other police authority as soon as possible, orally, or in writing.<sup>43</sup> In the latter case, the police authority has 48 hours to inform SEF of the application.<sup>44</sup>

SEF is required to register the asylum application within 3 working days of presentation and to issue the applicant a certificate of the asylum application within 3 days after registration.<sup>45</sup> The applicant must be informed of his/her rights and duties in a language he/she understands or is expected to understand.<sup>46</sup> Moreover, SEF must immediately inform the United Nations High Commissioner for Refugees (UNHCR) and the Portuguese Refugee Council (CPR), as an organisation working on its behalf, of all asylum applications.<sup>47</sup>

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<sup>36</sup> Article 2 Act n. 73/2021 of 12 November 2021.  
<sup>37</sup> Article 2 Act n. 73/2021 of 12 November 2021.  
<sup>38</sup> Article 2 Act n. 73/2021 of 12 November 2021.  
<sup>39</sup> Article 3 Act n. 73/2021 of 12 November 2021.  
<sup>40</sup> Article 12 Act n. 73/2021 of 12 November 2021.  
<sup>41</sup> Article 15 Act n. 73/2021 of 12 November 2021.  
<sup>42</sup> Article 10(2) Asylum Act.  
<sup>43</sup> Articles 13(1) and 19(1)(d) Asylum Act.  
<sup>44</sup> Article 13(2) Asylum Act.  
<sup>45</sup> Articles 13(7) and 14(1) Asylum Act.  
<sup>46</sup> Article 14(2) Asylum Act.  
<sup>47</sup> Articles 13(3), 24(1), 33(3), 33-A(3) Asylum Act.

UNHCR and CPR are further entitled to be informed of the most relevant procedural acts (e.g. interview transcripts and decisions) upon consent of the applicant,<sup>48</sup> and to provide their observations to SEF at any time during the procedure.<sup>49</sup> The Asylum Act also determines that UNHCR and CPR are to be informed of decisions determining the loss of international protection, regardless of the consent of the applicant.<sup>50</sup>

Except for special cases, such as applicants lacking legal capacity,<sup>51</sup> all asylum applicants must undergo either a Dublin interview or an interview that addresses the remaining inadmissibility grounds and the merits of the application. This is provided both on the territory<sup>52</sup> and at the border.<sup>53</sup>

According to the law, following the interview on the territory, SEF produces a document narrating the essential facts of the application and in the case of applications on the territory (with the exception of subsequent applications and applications following a removal decision) the applicant has 5 days to seek revision of the narrative.<sup>54</sup> National jurisprudence provides that the applicant must be granted an opportunity to reply to the prospective outcome of the application (admission to the regular procedure, accelerated refusal on the merits or inadmissibility) and not only to the facts adduced during the personal interview, leading to changes in the practice in this regard.

The admissibility of subsequent applications<sup>55</sup> and applications following a removal order<sup>56</sup> is subject to specific rules.

### **Admissibility procedure**

With the exception of Dublin decisions, the National Director of SEF has 30 days to make a decision on the admissibility of applications on the territory<sup>57</sup> (10 days for subsequent applications and applications following a removal order),<sup>58</sup> as opposed to 7 days for applications processed under a border procedure.<sup>59</sup>

If an application on the territory is rejected as inadmissible, the asylum seeker has 8 days to appeal the decision before the Administrative Court, with automatic suspensive effect,<sup>60</sup> with the exception of inadmissible subsequent applications and applications following a removal order (4 days to appeal, with automatic suspensive effect).<sup>61</sup> Failing an appeal, the applicant has 20 days to leave the country.<sup>62</sup> In the case of border procedures, the time limit to appeal is reduced to 4 days.<sup>63</sup>

In the case of Dublin procedures, the deadline for the admissibility decision is suspended pending a reply from the requested Member State.<sup>64</sup> Upon notification of a “take charge”/“take back” decision, the applicant has 5 days to appeal before the Administrative Court with suspensive effect.<sup>65</sup>

### **Regular procedure**

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<sup>48</sup> E.g. Articles 17(3), 20, 24(5), 29(6) Asylum Act.

<sup>49</sup> Article 28(5) Asylum Act.

<sup>50</sup> Article 43(3) Asylum Act.

<sup>51</sup> Article 16(5) Asylum Act.

<sup>52</sup> Articles 16 Asylum Act and 33-A(4) (for applications following a removal decision).

<sup>53</sup> Article 24(2) and (3) Asylum Act.

<sup>54</sup> Article 17 Asylum Act.

<sup>55</sup> Article 33 Asylum Act.

<sup>56</sup> Article 33-A Asylum Act.

<sup>57</sup> Article 20(1) Asylum Act.

<sup>58</sup> Articles 33(4) and 33-A(5) Asylum Act.

<sup>59</sup> Article 24(4) Asylum Act.

<sup>60</sup> Articles 22(1) Asylum Act.

<sup>61</sup> Articles 33(6) and 33-A(6) Asylum Act.

<sup>62</sup> Articles 21(2) and (3) and 33(9) Asylum Act.

<sup>63</sup> Article 25(1) Asylum Act.

<sup>64</sup> Article 39 Asylum Act. This article refers to applications on the territory and border applications with the exception of subsequent applications and applications following a removal decision.

<sup>65</sup> Article 37(4) Asylum Act.

As soon as an asylum application is deemed admissible,<sup>66</sup> it proceeds to an eligibility evaluation.<sup>67</sup> In accordance with the law, this stage lasts up to 6 months but can be extended to 9 months in cases of particular complexity.<sup>68</sup> The asylum seeker receives a provisional residence permit valid for 6 months (renewable) that, inter alia, grants access to education and employment.<sup>69</sup>

During this stage, SEF – acting with due diligence – must evaluate all relevant facts to prepare a reasoned decision.<sup>70</sup> This is generally done on the basis of the personal interview conducted during the admissibility stage of the procedure, given that it also encompasses the merits of the application. As mentioned above, UNHCR and CPR are entitled to present their observations to SEF at any time during the procedure in accordance with Article 35 of the 1951 Refugee Convention.<sup>71</sup>

Upon notification of the proposal for a final decision, the applicant has 10 days to evaluate SEF's reasoning and to respond to the proposal.<sup>72</sup> SEF then sends the recommendation to its Director, who has 10 days to present it to the Ministry of Home Affairs. In turn, the Ministry of Home Affairs has 8 days to adopt a final decision.<sup>73</sup>

In the event of a negative decision, the applicant may lodge an appeal with automatic suspensive effect before the Administrative Court within 15 days,<sup>74</sup> or voluntarily depart from national territory within 30 days, (after this period, the applicant will be subject to the removal regime).<sup>75</sup>

### **Accelerated procedure**

The law contains a list of grounds that, upon verification, determine that an application is subjected to an accelerated procedure and deemed unfounded. These grounds include, among others, subsequent applications that are not deemed inadmissible and applications following a removal procedure.<sup>76</sup>

While the rules governing accelerated procedures provide for the basic principles and guarantees of the regular procedure,<sup>77</sup> they lay down time limits for the adoption of a first instance decision on the merits of the application that are significantly shorter than those of the regular procedure.<sup>78</sup> In addition, these rules entail reduced procedural guarantees, such as exclusion from the right of the applicant to seek a revision of the narrative of his or her personal interview,<sup>79</sup> or to be notified of and respond to SEF's reasoning of the proposal for a final decision,<sup>80</sup> as well as shorter appeal deadlines.<sup>81</sup>

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<sup>66</sup> Article 20(4) Asylum Act. In the absence of a decision within 30 days the application is automatically admitted to the procedure.

<sup>67</sup> Article 21(1) Asylum Act.

<sup>68</sup> Article 28(2) Asylum Act.

<sup>69</sup> Article 27(1) Asylum Act. Ministerial Order 597/2015 provides for the model and technical features of the provisional residence permit.

<sup>70</sup> Article 28(1) Asylum Act.

<sup>71</sup> Article 28(5) Asylum Act.

<sup>72</sup> Article 29(2) Asylum Act.

<sup>73</sup> Article 29(4) and (5) Asylum Act.

<sup>74</sup> Article 30(1) Asylum Act.

<sup>75</sup> Article 31 Asylum Act.

<sup>76</sup> Article 19 Asylum Act.

<sup>77</sup> This includes access to the procedure, the right to remain in national territory pending examination, the right to information, personal interviews, the right to legal information and assistance throughout the procedure, the right to free legal aid, special procedural guarantees, among others.

<sup>78</sup> These consist of 30 days (Article 20(1) Asylum Act) except for applications following a removal procedure which are subject to a time limit of 10 days (Article 33-A(5) Asylum Act). The time limit is reduced to 7 days in the case of accelerated procedures at the border (Article 24(4) Asylum Act).

<sup>79</sup> This is limited to accelerated procedures at the border and in the case of applications following a removal procedure.

<sup>80</sup> See infra the section on Accelerated Procedures for details on the current practice in this regard.

<sup>81</sup> These consist of 8 days for accelerated procedures on the territory (Article 22(1) Asylum Act) except for the case of subsequent applications and applications following a removal procedure, where the deadline is 4 days (Articles 33(6) and 33-A(6) Asylum Act). The time limit is reduced to 4 days in the case of accelerated procedures at the border (Article 25(1) Asylum Act).



As in the regular procedure, the appeal has an automatic suspensive effect.<sup>82</sup> However, the onward appeal in the case of an application following a removal order does not.<sup>83</sup>

## Border procedure

The law provides for a special procedure regarding applications made at a national border.<sup>84</sup> While this procedure provides for the basic principles and guarantees of the regular procedure,<sup>85</sup> it lays down a significantly shorter time limit for the adoption of a decision regarding admissibility or merits (if the application is furthermore subject to an accelerated procedure).<sup>86</sup>

Additionally, the border procedure is characterised by reduced procedural guarantees such as the removal of the applicant's right to seek revision of the narrative of his or her personal interview,<sup>87</sup> and a shorter appeal deadline before the Administrative Court (4 days).<sup>88</sup> Furthermore, asylum seekers are detained during the border procedure.<sup>89</sup>

The border procedure was applied in practice to applications made at border points (in particular airports) until March 2020. Since then, and after the reinstatement of air traffic, asylum seekers that apply for international protection at the border have generally been granted entry into national territory, not subject to detention, and their applications have been processed according to the rules applicable to applications made in the territory.

## 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?   |     | N/A |
| ❖ If so, how often is border monitoring carried out?   |     | N/A |

The Portuguese authorities are bound by the duty to protect asylum seekers and beneficiaries of international protection from *refoulement*.<sup>90</sup> National case law reaffirmed the protection against *refoulement* both on national territory and at the border, regardless of the migrant's status,<sup>91</sup> and in

<sup>82</sup> Articles 22(1) and 33-A(6) Asylum Act.

<sup>83</sup> Article 33-A(8) Asylum Act.

<sup>84</sup> Article 23(1) Asylum Act.

<sup>85</sup> This includes access to the procedure, the right to remain in national territory pending examination, the right to information, personal interviews, the right to legal information and assistance throughout the procedure, the right to free legal aid, special procedural guarantees, among others.

<sup>86</sup> These consist of 7 days for both admissibility decisions and accelerated procedures at the border (Article 24(4) Asylum Act) as opposed to 30 days for admissibility decisions on the territory and between 10 and 30 days for accelerated procedures on the territory.

<sup>87</sup> Article 24 Asylum Act.

<sup>88</sup> Article 25(1) Asylum Act.

<sup>89</sup> Articles 26(1) and 35-A(3)(a) Asylum Act.

<sup>90</sup> Articles 2(aa), 47 and 65 Asylum Act; Articles 31(6), 40(4) and 143 Immigration Act.

<sup>91</sup> Nevertheless, the recent replies of Portugal to the list of issues of the Committee on the Elimination of Discrimination against Women (CEDAW) seem to indicate an understanding of the principle of non-refoulement as being almost exclusively linked to refugee status determination: “[t]he principle of “non-refoulement” is established in Law 27/2008 and guarantees the applicant's right to not be returned to a country (of origin, residence or otherwise), where his/her life or freedom would be threatened if specific conditions are met and referred in the Geneva Convention and in the Portuguese Asylum Law - provided

cases of either direct or indirect exposure to *refoulement*.<sup>92</sup> CPR is unaware of national case law that addresses the extraterritorial dimension of *non-refoulement*.

There are no published reports by NGOs about cases of actual *refoulement* at the border of persons wanting to apply for asylum.

CPR does not conduct border monitoring and only has access to applicants after the registration of their asylum claim and, within the context of border procedures, once SEF has conducted the individual interview, which constitutes an additional risk factor.<sup>93</sup> However, it receives at times third party contacts reporting the presence of individuals in need of international protection at the border. With rare exceptions, and even where CPR does not immediately intervene, the registration of the corresponding applications in these cases is normally communicated by SEF to CPR in the following days (see [Registration of the asylum application](#)).

In 2014, CPR carried out research on access to protection and the principle of *non-refoulement* at the borders and in particular at **Lisbon Airport**.<sup>94</sup> While no cases of actual push backs at the border were identified, the research allowed for the identification of certain shortcomings such as extraterritorial *refoulement* in the framework of extraterritorial border controls by air carrier personnel in conjunction with SEF in Guinea Bissau.

Regarding persons refused entry at border points, shortcomings with the potential to increase the risk of *refoulement* identified in 2014 included: (a) challenges in accessing free legal assistance and an effective remedy, compounded by the absence of a clear legal/policy framework for the systematic assessment of the risk of *refoulement*; and (b) poor information provision to persons and lack of training to immigration staff on *non-refoulement* obligations. These risk factors were aggravated by the absence of border monitoring by independent organisations. To CPR's knowledge, no further research on the topic has been conducted on this issue since then.

With regard to access to free legal assistance, in November 2020, the Ministry of Home Affairs, the Ministry of Justice and the Bar Association signed a protocol to ensure the provision of legal counselling and assistance to foreigners to whom entry into national territory was refused (Lisbon, Porto, Faro, Funchal and Ponta Delgada airports).<sup>95</sup> According to available information this protocol was made within the framework of Article 40(2) of the Immigration Act and is not intended to cover asylum procedures.<sup>96</sup>

While available information does not substantiate any ongoing instances of extraterritorial *refoulement*, to the extent of CPR's knowledge, there are no other significant changes regarding shortcomings for

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that this risk occurs "(... ) because of their race, religion , nationality , membership of a particular social group, or opinions policies ( ... )" and should be a clear and intrinsic relation of cause and effect between the return of the applicant and the specific threat that can be targeted. The observance of the principle of non-refoulement is intrinsically linked to the determination of refugee status, thus when it is established that an asylum application is unfounded, for not meeting any of the criteria defined by the Geneva Convention and New York Protocol in recognition of refugee status, the principle mentioned above is fully observed to that extent." (available at: <https://bit.ly/3cnDTjy>.)

<sup>92</sup> See e.g., TAC Lisbon, Decisions 1480/12.7BELSB and no. 2141/10.7BELSB (unpublished). More recently, TCA South noted that Portugal is also bound to protect applicants against indirect refoulement within the context of Dublin procedures (TCA South, Decision 775/19.3BELSB, 10 September 2020, available at: <https://bit.ly/3mzaaYx>).

<sup>93</sup> Please note that border procedures have not been systematically applied since March 2020.

<sup>94</sup> CPR, *Access to Protection: A Human Right, country report, Portugal*, 2014, available at: <https://bit.ly/3sWjYNx>.

<sup>95</sup> Ministry of Home Affairs, *Estrangeiros impedidos de entrar em Portugal vão ter direito a advogado*, 4 November 2020, available in Portuguese at: <https://bit.ly/3oCd8L3>.

<sup>96</sup> The information publicly available regarding the implementation of this Protocol was still limited at the time of writing. See Ombudsman, *Mecanismo Nacional de Prevenção, Relatório à Assembleia da República*, 24 June 2021, pp.96 et seq, available at: <https://bit.ly/3lCCedl>.

persons refused entry at the border. As such, the situation in relation to refusals of entry and related possible risks of *refoulement* remains unclear.

The UN Committee Against Torture noted in 2019 that Portugal should “[e]nsure that, in practice, no one may be expelled, returned or extradited to another State where there are substantial grounds for believing that he or she would run a personal and foreseeable risk of being subjected to torture and ill-treatment” and that procedural safeguards and effective remedies regarding the prohibition of *refoulement* are available.<sup>97</sup>

Since 2018, Portugal has systematically participated in *ad hoc* relocation mechanisms following rescue operations in the Mediterranean and disembarkation in Malta and Italy.<sup>98</sup>

In 2020, Portugal committed to receiving 500 unaccompanied children from Greece.<sup>99</sup> According to ISS, up to the end of 2021, a total of 199 children and young adults were transferred to Portugal within this programme, of which 127 transfers were in the course of 2021. This followed a 2019 agreement with the Greek authorities to implement a pilot relocation process for 100 applicants/beneficiaries of international protection (See [Dublin: Procedure](#)). According to the information provided by SEF, the pilot stage of implementation of the bilateral agreement was concluded in 2021. A total of 84 beneficiaries of and 13 applicants for international protection were relocated to Portugal within this context. SEF also stated that the selection process was conducted by the NGO Focus with the support of EASO and IOM.

According to information provided by SEF, 270 applicants were relocated to Portugal in 2021.

While sea arrivals are not common in Portugal, since December 2019, multiple groups of people from Morocco arrived by sea in small boats in the region of **Algarve**. In November 2021, 37 persons were rescued by the Portuguese authorities in international waters.<sup>100</sup> According to the information provided by SEF, in 2021, 48 persons arrived in the country by sea, the majority of whom applied for international protection.

## 2. Registration of the asylum application

Indicators: Registration		
1. Are specific time limits laid down in law for making an application? ❖ If so, what is the time limit for lodging an application?	Yes	<b>No</b>
2. Are specific time limits laid down in law for lodging an application? ❖ If so, what is the time limit for lodging an application?	Yes	<b>No</b>
3. Are registration and lodging distinct stages in the law or in practice?	Yes	<b>No</b>
4. Is the authority with which the application is lodged also the authority responsible for its examination?	<b>Yes</b>	No
5. Can an application be lodged at embassies, consulates or other external representations?	Yes	<b>No</b>

While the asylum application can be presented (“made”) either to SEF or to any other police authority, the responsibility to register asylum claims lies solely with SEF.<sup>101</sup> If an asylum application is presented

<sup>97</sup> Committee Against Torture, *Concluding Observations on the seventh periodic report of Portugal*, CAR/C/PRT/CO/7, 18 December 2019, available at <https://bit.ly/2G1F07z>, par.38(a) and (b).  
<sup>98</sup> SEF, *Relatório de Imigração, Fronteiras e Asilo 2019*, June 2020, available at <https://bit.ly/3cstNyf>.  
<sup>99</sup> Reuters, ‘Portugal to take in 500 unaccompanied migrant children from Greek camps’, 12 May 2020, available at: <https://reut.rs/3ICCB0C>.  
<sup>100</sup> Público, *Marinha resgata 37 pessoas que vinham num barco de madeira ao largo do Algarve*, 11 November 2021, available at: <https://bit.ly/32n1GxU>.  
<sup>101</sup> Article 13(1) and (7) Asylum Act.

to a different police authority, it must be referred to SEF within 48 hours.<sup>102</sup> In accordance with SEF's internal organisation,<sup>103</sup> the responsibility for organising asylum files (including registration) lies with its Asylum and Refugees Department (SEF-GAR). SEF-GAR is required to inform CPR, as an organisation working on UNHCR's behalf, of the registration of individual asylum applications.

In 2021, out of a total of 1,537 applications registered by SEF (including 270 made by persons relocated to Portugal), 1,433 (including 22 made by persons relocated to Portugal) were communicated to CPR.<sup>104</sup> While this reflected a return to pre-pandemic figures (in 2019 there were 1,849 applications registered/1,714 applications communicated to CPR), a significant part of the total refers to persons evacuated from Afghanistan and admitted to Portugal (768) and persons relocated to the country (279). As such, the number of spontaneous applications remained comparatively low which is likely still connected to the restrictions upon international travel linked to the coronavirus pandemic.

In accordance with the law, anyone who irregularly enters Portuguese national territory or is refused entry at the border must present their asylum application to SEF or to any other police authority as soon as possible.<sup>105</sup>

While there are no specific time limits for asylum seekers to lodge their application, the law provides for use of the [Accelerated Procedure](#) in case the asylum applicant enters or remains irregularly on national territory and fails to apply for asylum as soon as possible without a valid reason.<sup>106</sup> This provision has rarely been applied in practice and, according to the experience of CPR, when applied, it is usually combined with other grounds for the application of accelerated procedures.

Failure to apply for asylum at the earliest possible time, unless the applicant can demonstrate good reason for not having done so, also constitutes a ground for not granting the benefit of the doubt.<sup>107</sup> According to CPR's observation, this provision has been applied by SEF in practice.

Additionally, it should be noted that persons refused entry at the border are liable to immediate removal to the point of departure,<sup>108</sup> meaning that, in practice, they are required to present their asylum application immediately.

Upon presentation of the application, the asylum seeker is required to fill out a preliminary form, which includes information on identification, itinerary, grounds of the asylum application, supporting evidence, and witnesses. This preliminary form is available in Portuguese, English, French, Spanish, Arabic, Lingala, Russian and Pashtu. According to CPR's experience, asylum seekers are not systematically provided with quality interpretation services at this stage of the procedure, which may result in the collection of insufficient and poor quality information.

Since December 2019, following an agreement between SEF and CPR, two CPR liaison officers have been deployed to the premises of SEF-GAR, where the majority of applications are made, to facilitate registration, provision of initial information, and necessary referrals (e.g. for housing). According to CPR's observation, this measure has facilitated communication between the relevant entities and the provision of support to asylum seekers.

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<sup>102</sup> Article 13(2) Asylum Act.

<sup>103</sup> Article 17 Decree-Law 252/2000.

<sup>104</sup> While slight discrepancies between the number of registered applications and applications communicated to CPR were common, since 2019, a significant difference between the two figures has been observed. Please note that statistics included in this report from CPR only refer to applications communicated to the organisation in accordance with the communication duties established in the Asylum Act.

<sup>105</sup> Article 13(1) Asylum Act.

<sup>106</sup> Article 19(1)(d) Asylum Act.

<sup>107</sup> Article 18(4)(d) Asylum Act.

<sup>108</sup> Article 41(1) Immigration Act.

SEF is required to register the asylum application within 3 working days of presentation and to issue the applicant with a certificate of asylum application within 3 days of registration.<sup>109</sup> Despite isolated delays (e.g. related to the registration of asylum applications presented in SEF's regional representations), CPR has not encountered systemic or serious problems regarding the registration of applications as opposed to occasional instances of delayed issuance and renewal of the certificates of the asylum application. According to CPR's observation, delays in the renewal of documents have usually been linked to difficulties in making appointments with SEF.<sup>110</sup>

A decision from the Central Administrative Court South (TCA South) issued in 2021, considered that applications for international protection presented remotely may not be altogether disregarded by SEF. In the case analysed, the application had been initially filed by a lawyer representing the applicant via fax, and was not taken into account by SEF, which demanded that it should be made in person in order for the necessary checks to be performed (namely because it was not possible to confirm whether the applicant was indeed in Portugal at the time of application).<sup>111</sup>

The report of the National Preventive Mechanism covering 2019 notes that, during a visit to the detention centre at **Lisbon** airport, the Mechanism spoke to two women who alleged that they have previously asked SEF to register their applications for international protection, but to no avail. The report further details that SEF denied that such requests have been made before and promptly registered the applications afterwards.<sup>112</sup> The most recent report available at the time of writing (covering 2020) does not contain similar references.<sup>113</sup>

In 2020, the UN Human Rights Committee highlighted that Portugal should “[e]nsure that all applications for international protection at the border and in reception and detention facilities are promptly received, registered and referred to the asylum authorities” and “[c]ontinue its efforts to maintain and strengthen the quality of its refugee status determination procedures, in order to fairly and efficiently identify and recognize those in need of international protection and to afford sufficient guarantees of respect for the principle of non-refoulement under the Covenant”.<sup>114</sup> The Committee further recommended that Portugal strengthens “[...] training for the staff of migration institutions and border personnel on the rights of asylum seekers and refugees under the Covenant and other international standards”.<sup>115</sup>

A study focusing on the situation of asylum-seeking unaccompanied children and ageing out in Portugal published in 2021 revealed that the majority of those questioned stated that they were not aware of the possibility of applying for international protection upon arrival in the country, and that they have been informed of it by the national authorities in light of their situation.<sup>116</sup>

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<sup>109</sup> Articles 13(7) and 14(1) Asylum Act.

<sup>110</sup> Appointments are generally made through a phone line.

<sup>111</sup> TCA South, Decision 107/21.0BELLE, 18 August 2021, available at: <https://bit.ly/3qJ1fqp>.

<sup>112</sup> Ombudsman, *Mecanismo Nacional de Prevenção, Relatório à Assembleia da República 2019*, June 2020, p.65, available at: <https://bit.ly/3aeTWxO>.

<sup>113</sup> Ombudsman, *'Mecanismo Nacional de Prevenção, Relatório à Assembleia da República'*, 24 June 2021, available at: <https://bit.ly/329nbSK>.

<sup>114</sup> Human Rights Committee, *Concluding Observations on the fifth periodic report of Portugal*, CCPR/C/PRT/CO/5. 28 April 2020, par.35(a) and (b), available at: <https://bit.ly/2Q1ftn8>.

<sup>115</sup> *Ibid*, par.35(f).

<sup>116</sup> Sandra Roberto, Carla Moleiro, ed. Observatório das Migrações, *De menor a maior: acolhimento e autonomia de vida em menores não acompanhados*, April 2021, p.50, available at: <https://bit.ly/3fqMKBK>.

## C. Procedures

### 1. Regular procedure

#### 1.1. General (scope, time limits)

##### Indicators: Regular Procedure: General

- |  |               |
|--|---------------|
| 1. Time limit set in law for the determining authority to make a decision on the asylum application at first instance:     | 6 months      |
| 2. Are detailed reasons for the rejection at first instance of an asylum application shared with the applicant in writing? | Yes No        |
| 3. Backlog of pending cases at first instance as of 31 December 2021:  | Not available |

The first instance determining authority is required to take a decision on the asylum application within 6 months. This time limit is additional to the duration of the admissibility procedure and can be extended to 9 months in cases of particular complexity.<sup>117</sup> The Asylum Act does not provide for specific consequences in case of failure to meet the time limit and, in practice, asylum seekers are reluctant to act on the delay on the basis of general administrative guarantees, e.g., by requesting Administrative Courts to order SEF to issue a decision on the application within a given time limit.<sup>118</sup>

The significant increase in the number of spontaneously arriving asylum seekers and relocated asylum seekers has led SEF-GAR to recruit additional staff in the recent years (the number of staff slightly decreased in 2021). In 2019, there were 1,849 spontaneous asylum applicants in Portugal, up from 1,270 in 2018.<sup>119</sup> In 2020, there were 1,002 asylum applications in Portugal,<sup>120</sup> a decrease likely linked to the travel restrictions enacted in response to the coronavirus pandemic. In 2021, a total of 1,537 applications were registered (including relocated applicants and persons evacuated from Afghanistan – see: [Registration of the asylum application](#)).

SEF was not able to share an estimation of the average duration of the procedure at first instance for 2021. The 2021 Statistical Report of Asylum also does not indicate the average duration of the asylum procedure.<sup>121</sup>

The UN Human Rights Committee, in its Concluding Observations published in 2020, expressed concern with “[r]eported delays in the processing of regular asylum applications and in the issuance and renewal of residence permits.” The Committee recommended that Portugal “continue its efforts to maintain and strengthen the quality of its refugee status determination procedures, in order to fairly and efficiently identify and recognize those in need of international protection and to afford sufficient guarantees of respect for the principle of non-refoulement under the Covenant.”<sup>122</sup>

CPR was able to gather information on 82 regular procedure decisions issued in the course of 2021, including decisions communicated by SEF in accordance with the law, and decisions that reached

<sup>117</sup> Article 28(2) Asylum Act.

<sup>118</sup> Article 129 Administrative Procedure Code; Article 66(1) Administrative Courts Procedure Code.

<sup>119</sup> As a comparison, there were 1,750 in 2017 (both spontaneous and relocated asylum seekers); 1,469 in 2016 (spontaneous and relocated); 896 (spontaneous and relocated) in 2015 and 447 (spontaneous) in 2014.

<sup>120</sup> This figure probably includes applicants relocated from Greece under the relevant bilateral agreements.

<sup>121</sup> Observatório das Migrações (OM), *Requerentes e Beneficiários de Proteção Internacional – Relatório Estatístico do Asilo 2021*, June 2021, available in Portuguese at: <https://bit.ly/3F5I9iw>. The previous edition of the report seemed to indicate that an increase in duration occurred over the years. See: Observatory for Migration, *Entrada, Acolhimento e Integração de Requerentes e Beneficiários de Proteção Internacional em Portugal – Relatório Estatístico do Asilo 2020*, May 2020, pp.103-104, available in Portuguese at: <https://bit.ly/2MGYtB9>.

<sup>122</sup> Human Rights Committee, *Concluding Observations on the fifth periodic report of Portugal*, CCPR/C/PRT/CO/5. 28 April 2020, par.35(a) and (b), available at: <https://bit.ly/2Q1ftn8>.

CPR’s knowledge by other avenues, i.e., through direct contacts with applicants. In these cases,<sup>123</sup> the overall duration of the procedure<sup>124</sup> ranged from 46 to 2,216 days, with an average duration of 1,053 days. CPR is uncertain whether the low number of notifications of asylum decisions is related to gaps in communication or indicates further delays in the decision-making process (or a combination of both).

A study focusing on the situation of asylum-seeking unaccompanied children and ageing out in Portugal published in 2021 revealed that among those questioned, the majority waited for more than 12 months for a decision on their application for international protection.<sup>125</sup>

In the context of the provision of legal assistance to asylum seekers, CPR has also at times observed significant delays in the execution of judicial decisions by SEF (up to one year or more in some cases). According to CPR’s observation, this mostly concerned the execution of judicial decisions that annulled first instance decisions rejecting applications in accelerated procedures and consequently condemned the Administration to channelling them into the regular procedure, or Dublin cases that should be reprocessed. CPR also observed that, apparently, the authorities consider that the 30 days mandatory deadline for decisions regarding the inadmissibility/accelerated analysis of applications does not apply in these circumstances, and, as such, do not deem the applications admitted to the regular procedure when the deadline is elapsed.

**1.2. Prioritised examination and fast-track processing**

While no statistics are available,<sup>126</sup> according to SEF, cases of pregnant women, of applicants accompanied by young children, of elderly persons, and of applicants in need of medical care are fast-tracked. SEF did not share information on the impact of fast-tracking in the average duration of the procedure.

As at the time of writing, CPR’s observation does not indicate a clear trend in this regard.

**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?	<b>Yes</b> <b>No</b>
❖ If so, are interpreters available in practice, for interviews?	<b>Yes</b> <b>No</b>
2. In the regular procedure, is the interview conducted by the authority responsible for taking the decision?	<b>Yes</b> <b>No</b>
3. Are interviews conducted through video conferencing?	Frequently Rarely <b>Never</b>
4. Can the asylum seeker request the interviewer and the interpreter to be of a specific gender? <sup>127</sup>	Yes <b>No</b>
❖ If so, is this applied in practice, for interviews?	Yes <b>No</b>

<sup>123</sup> 25 refusals, 27 decisions granting a form of international protection (18 refugee status and 9 subsidiary protection).  
<sup>124</sup> Time comprised between the date of the application and the date of issuance of the first instance decision on the (regular) asylum procedure.  
<sup>125</sup> Sandra Roberto, Carla Moleiro, ed. Observatório das Migrações, *De menor a maior: acolhimento e autonomia de vida em menores não acompanhados*, April 2021, p.43, available at: <https://bit.ly/3fqMKBK>.  
<sup>126</sup> Regarding neither the number of cases to which prioritised analysis was applied, nor the impact of the adoption of fast-track procedures in the duration of the analysis.  
<sup>127</sup> As detailed further below in the text, the law does not specifically provide this possibility. However, according to the information provided by SEF, asylum seekers can make such a request in practice. Further information on the practical implementation of such possibility is not available.

The Asylum Act provides for the systematic personal interview of all asylum seekers in the regular procedure prior to the issuance of a first instance decision.<sup>128</sup> The personal interview can only be waived where:

1. The evidence already available allows for a positive decision; or
2. The applicant lacks legal capacity due to long-lasting reasons beyond his or her control.<sup>129</sup>

If the interview is waived, SEF is required to offer the applicant or his/her dependant(s) the opportunity to communicate relevant information by other means.<sup>130</sup>

The asylum seeker is entitled to give his/her statement in his/her preferred language or in any other language that he/she understands and in which he/she is able to communicate clearly.<sup>131</sup> To that end, the asylum seeker is entitled to the assistance of an interpreter when applying for asylum and throughout the asylum procedure, if needed.<sup>132</sup> The asylum seeker can also be assisted by a lawyer but the absence thereof does not preclude SEF from conducting the interview.<sup>133</sup>

The transposition of the provisions of the recast Asylum Procedures Directive (APD) regarding the personal interview into national legislation presents some incompatibilities, most notably:

- **Cases of applicants deemed unfit/unable to be interviewed due to enduring circumstances beyond their control** - the final part of Article 14(2)(b) of the recast APD was not transposed (“[w]hen in doubt, the determining authority shall consult a medical professional to establish whether the condition that makes the applicant unfit or unable to be interviewed is of a temporary or enduring nature”). The safeguard contained in Article 14(4) of the recast APD, determining that the absence of a personal interview in such situations “shall not adversely affect the decision of the determining authority”, was also not explicitly transposed to the Asylum Act.
- **Conditions of the personal interview** - the requirements set out in Article 15 of the recast APD, particularly those regarding to the characteristics of the interviewer and the use of interpreters (Article 15(3) recast APD), are not fully transposed. Furthermore, and without prejudice to Article 84 of the Asylum Act which refers to the adequate training of all staff working with applicants and beneficiaries of international protection, the specific training requirement for interviewers provided for in Article 4(3) of the recast Asylum Procedures Directive was not transposed to the domestic order (“[p]ersons interviewing applicants pursuant to this Directive shall also have acquired general knowledge of problems which could adversely affect the applicants’ ability to be interviewed, such as indications that the applicant may have been tortured in the past.”).
- **Content of the personal interview** - the final part of Article 16 of the recast APD, establishing that the personal interview “shall include the opportunity to give an explanation regarding elements which may be missing and/or any inconsistencies or contradictions in the applicant’s statements” was not transposed to the Asylum Act.

The Asylum Act does not provide a right for the applicant to request the interviewer and/or the interpreter to be of a specific gender (Article 15(3)(b) and (c) of the recast APD). According to the information provided by SEF, this can happen in practice when the applicant so requests and if it is possible, but it is unclear to CPR whether applicants are systematically made aware of that possibility. Information on the criteria used to analyse such requests or the arrangements in place to ensure effectiveness is not available.

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<sup>128</sup> Article 16(1) (2) and (3) Asylum Act.

<sup>129</sup> Article 16(5) Asylum Act.

<sup>130</sup> Article 16(6) Asylum Act.

<sup>131</sup> Article 16(1) Asylum Act.

<sup>132</sup> Article 49(1)(d) Asylum Act.

<sup>133</sup> Article 49(7) Asylum Act.



SEF affirmed that applicants are guaranteed the right to an interview before any decision regarding their application is adopted, emphasising that interviews can only be waived in the cases listed in the Asylum Act. SEF also noted that interviews are conducted in all types of procedure, including Dublin. According to CPR's observation in 2021, personal interviews were generally conducted in practice. Nevertheless, CPR has also identified at least one instance of a relocated applicant where the interview conducted in the Member State of arrival was apparently used to analyse the case in Portugal without the applicant being offered a full interview in accordance with the applicable Portuguese legislation. CPR could not ascertain whether this is, or has been, a systematic practice within the context of relocation of applicants for international protection.

According to SEF, interviews were not conducted by remote communication means.

The interview is generally conducted by SEF-GAR, although some interviews may be conducted by SEF's regional delegations in cases of asylum applications made in more remote locations. Such interviews are conducted on the basis of a questionnaire prepared by SEF-GAR. According to CPR's observations, the interviews conducted by the SEF's regional delegations tend to have further accuracy issues and sometimes fail to adequately clarify material facts of the claim.

In the course of 2021, CPR was informed by SEF of the adoption of decisions not to proceed with the analysis of the application due to the impossibility of performing the personal interview (e.g., because the applicant absconded), on the basis of general administrative procedure rules.<sup>134</sup> Procedures were also suspended in cases where age assessment procedures were triggered by the Family Courts and while results were pending.<sup>135</sup> Within the context of the coronavirus pandemic, decisions suspending the procedure were also adopted when it was not possible to conduct an interview due to quarantine/isolation of the applicant.<sup>136</sup>

Throughout the year, CPR was also informed of decisions extinguishing the asylum procedure according to Article 32 of the Asylum Act, either due to explicit or implicit withdrawal of the application. According to the law, an application is deemed as implicitly withdrawn if the procedure is inactive for more than 90 days, namely if the applicant: (i) does not provide essential information for his/her application when requested to do so; (ii) does not attend the personal interview; (iii) absconds without contacting SEF; (iv) does not comply with the obligation to appear or to communicate with the authorities.<sup>137</sup> The competence to determine the extinction of an application belongs to the National Director of SEF.<sup>138</sup> Notwithstanding, the applicant is entitled to reopen his/her asylum case by presenting him/herself to SEF at a later stage. In this case, the file is to be resumed at the exact stage where it was discontinued.<sup>139</sup> According to CPR's observation, these decisions usually follow the above-mentioned decisions not to proceed with the analysis of an application.

A number of decisions from TCA South issued in 2021 focused on the right of the applicant to request legal aid in order to have a lawyer present during the interview. According to the analysed decisions, the Court overall considers that:

- (i) Applicants for international protection may request legal aid in order to have a lawyer present in the asylum interview;<sup>140</sup>
- (ii) The performance of an asylum interview without a lawyer present *per se* does not violate the Portuguese Constitution;<sup>141</sup>

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<sup>134</sup> Article 119(3) Administrative Procedure Code.

<sup>135</sup> Article 38(1) Administrative Procedure Code.

<sup>136</sup> Based on the principle of good faith and the principle of collaboration – articles 10 and 11 Administrative Procedure Code.

<sup>137</sup> Article 32(1) Asylum Act.

<sup>138</sup> Article 31(2) Asylum Act.

<sup>139</sup> Article 31(3) Asylum Act.

<sup>140</sup> TCA South, Decision 2285/20.7BELSB, 21 April 2021, available at: <https://bit.ly/3tQAjHc>.

<sup>141</sup> *Ibid.*

- (iii) To effectively guarantee the applicant's rights, the authority (SEF) must fully and correctly inform the applicant of the possibility of being accompanied by a lawyer in the interview and of applying to legal aid for that purpose. If that does not happen, the decision on the asylum application may be annulled.<sup>142</sup>

According to the available information, at the time of writing, the appeal of one such case was pending in the Supreme Administrative Court (STA).<sup>143</sup>

### 1.3.1. Interpretation

The quality of interpretation services used for interviews remains a serious challenge, as in many cases service providers are not trained interpreters but rather individuals with sufficient command of source languages. Interpreters are bound by a legal duty of confidentiality. It is unclear whether SEF has a code of conduct/guidance applicable to interpreters.

According to CPR's experience, securing interpreters with an adequate command of certain target languages remains challenging (e.g., Tigrinya, Pashto, Bambara, Lingala, Tamil, Kurdish, Mandinka, Nepalese, Sinhalese, Bengali, and Gujarati).

### 1.3.2. Recording and report

The Asylum Act does not provide for the audio and/or video recording of the interview or for conducting interviews and/or interpretation through videoconferencing, and CPR is not aware of its use.

SEF produces a written report summarising the most important elements raised during the interview. Until 2020, the interview report was immediately provided to the applicant who had 5 days to submit comments.<sup>144</sup> Since the second half of 2020, CPR observed a shift in the practice of SEF in this regard.

Currently, while the interview report is provided to the applicant upon completion of the personal interview, he/she is not given the 5-day deadline to comment/correct/add information to the document. Instead, SEF notifies the asylum seeker of another document, that summarises the key information that will underlie the decision to deem the application admissible/not unfounded and, as such, submit it to the regular procedure, or to reject it as inadmissible/unfounded (accelerated procedure). The applicant then has 5 days to submit comments to the summary report.

This summary report broadly contains information on: (i) identification of the applicant; (ii) family members; (iii) time and place of the application for international protection; (iv) prior information; (v) itinerary; (vi) summary of the facts that will underlie the decision;<sup>145</sup> (vii) the prospective decision to be taken (brief reference to the relevant legal basis).

This change in practice was likely linked to the jurisprudential understanding that applicants have a right to be heard about the prospective decision to be taken on their files in any decision within the procedure.<sup>146</sup>

According to law, upon consent of the applicant, the report must also be communicated to UNHCR and to CPR, and the organisations may submit observations within the same deadline.<sup>147</sup> In the past, interview reports were usually communicated to CPR accordingly. Within the context of the above-mentioned shift in practice, SEF-GAR ceased the systematic communication of interview reports and

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<sup>142</sup> TCA South, Decision 806/21.7BELSB, 23 September 2021, available at: <https://bit.ly/3iQyns9>; TCA South, Decision 2144/20.3BELSB, 7 October 2021, available at: <https://bit.ly/3lR83lZ>.

<sup>143</sup> STA, Decision 02144/20.3BELSB, 25 November 2021, available at: <https://bit.ly/3xJcWC6>.

<sup>144</sup> Article 17 (1) and (2) Asylum Act.

<sup>145</sup> Presentation of the application, motives, relevant elements.

<sup>146</sup> E.g., TCA South, Decision 1560/19.8BELSB, 16 January 2020, available at <https://bit.ly/39i4xZ0>. See also the jurisprudence on the right to be heard described *infra* in the Dublin section.

<sup>147</sup> Article 17(3) Asylum Act.

currently communicates the summary reports (although it does not communicate reports for Dublin cases). As such, access to interview transcripts by CPR depends on the applicant. The systematic non-communication of interview transcripts is an obstacle to the full monitoring of the national asylum procedure.

CPR provides systematic legal assistance to asylum seekers at this stage, with the support of interpreters, for the purpose of reviewing and submitting comments/corrections to the summary report and to the interview transcript. According to CPR’s observation, the summary reports sometimes oversimplify the statements provided by the applicant to the authorities, and the merits analysis conducted tends to be simplistic. Furthermore, applicants usually find it difficult to understand the meaning of the document and to comment meaningfully on its content. Given its content and context, this new practice did not seem to improve the quality of the asylum procedure.

CPR has observed inconsistent practices with regard to cases that are to be admitted to the regular procedure.

Depending on the assigned caseworker, the applicant may be notified of a report and given the corresponding deadline to provide written comments, or may be only notified of a decision deeming the application admissible. The latter may prove problematic given that, usually, no further interviews are conducted during the procedure. Consequently, in practice, such applicants are not given the possibility to offer comments on the facts adduced during the interview before being notified of a decision at the final stage of the procedure.

CPR has made efforts to mitigate the negative impacts of this practice by adding the applicant's comments to the file in accordance with article 28(5) of the Asylum Act, that allows the organisation to add observations on individual cases at any stage of the procedure.

CPR has also been made aware that when the interview is conducted following admission to the regular procedure, the applicants are not, at least in some instances, given the written report of the interview. Moreover, such reports are also not communicated to CPR on a systematic basis.<sup>148</sup>

This practice is problematic as it curtails the applicant’s right to submit comments and corrections to the interview report and may also impact the applicant’s ability to fully exercise other procedural rights at later stages of the procedure (e.g., replying to a proposal of decision on the grant of international protection). Moreover, it seems to be in contradiction both with the domestic legal framework and the recast Asylum Procedures Directive as the relevant requirements apply to the personal interview, regardless of the moment in which it is conducted.<sup>149</sup>

**1.4. Appeal**

**Indicators: Regular Procedure: Appeal**

1. Does the law provide for an appeal against the first instance decision in the regular procedure?	<b>Yes</b>	<b>No</b>
❖ If yes, is it	<b>Judicial</b>	Administrative
❖ If yes, is it automatically suspensive	<b>Yes</b>	Some grounds No
2. Average processing time for the appeal body to make a decision:	<b>2 to 3 months (first instance courts)</b>	

<sup>148</sup> According to article 17(3) Asylum Act, upon consent of the applicant, the report is to be communicated to UNHCR and to CPR as organisation working on its behalf. Such entities may submit observations.

<sup>149</sup> Article 17(3) Asylum Procedures Directive. Articles 16 and 17 of the Asylum Act do not make a distinction between interviews conducted prior to admission and interviews conducted following admission to the regular procedure.

### 1.4.1. First appeal before the Administrative Court

The Asylum Act provides for an appeal against the first instance decision in the regular procedure consisting of judicial review of relevant facts and points of law by the Administrative Court.<sup>150</sup> The asylum seeker has 15 days to lodge the appeal, which has automatic suspensive effect.<sup>151</sup>

A ruling of the Supreme Administrative Court has clarified that appeals against decisions regarding the grant of asylum are free of charge.<sup>152</sup> This is also established by the Asylum Act that provides for the free and urgent nature of procedures regarding the grant or loss of international protection both in the administrative and judicial stages.<sup>153</sup>

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

- (1) confirm the negative decision of the first instance decision body;
- (2) annul the decision and refer the case back to the first instance decision body with guidance on applicable standards;<sup>154</sup> or
- (3) overturn it by granting refugee or subsidiary protection status.<sup>155</sup>

The Asylum Act qualifies the judicial review as urgent,<sup>156</sup> and provides for a simplified judicial process with reduced formalities and time limits with the objective of shortening the duration of the judicial review.<sup>157</sup>

A decision issued by TCA South in 2021 confirmed that, when legal aid is requested by the appellant, the appeal is deemed as having been filed on the date of submission of the request for legal aid.<sup>158</sup>

The information provided by the High Council of Administrative and Fiscal Courts (*Conselho Superior dos Tribunais Administrativos e Fiscais* – CSTAF) for 2021 regarding the duration of judicial reviews of first instance decisions does not make a distinction between the type of asylum procedure. According to these statistics, the average duration of appeals at first instance courts in 2021 was of 2 to 3 months.

While the Asylum Act does not specifically provide for a hearing of the asylum seeker during the appeal procedure, such a guarantee is enshrined in the general procedure that provides for the hearing of the parties.<sup>159</sup> This is rarely used in practice by lawyers and accepted by the Court when requested, as procedures before the Administrative Court tend to be formalistic and essentially written.<sup>160</sup> As a general rule, the hearing of the appeal body is public but the judge may rule for a private audience based on the need to protect the dignity of the individual or the smooth operation of the procedure.<sup>161</sup> CSTAF confirmed that no such hearings have occurred in 2021.

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<sup>150</sup> Article 30(1) Asylum Act; Article 95(3) Administrative Court Procedure Code.

<sup>151</sup> Article 30(1) Asylum Act.

<sup>152</sup> Supreme Administrative Court, Decision 408/16, 17 November 2016, available in Portuguese at: <https://bit.ly/2W9NY9L>.

<sup>153</sup> Article 84 Asylum Act.

<sup>154</sup> Article 71(2) Administrative Court Procedure Code. In practice this is normally the case when the courts find that there are relevant gaps in the assessment of the material facts of the claim, thus requiring the first instance decision body to conduct further investigations.

<sup>155</sup> Article 71(1) Administrative Court Procedure Code.

<sup>156</sup> Article 84 Asylum Act.

<sup>157</sup> Article 30(2) Asylum Act; Article 110 Administrative Court Procedure Code.

<sup>158</sup> TCA South, Decision 1441/20.2BELSB, 18 March 2021, available at: <https://bit.ly/3Lo2bbP>.

<sup>159</sup> Article 90(2) Administrative Court Procedure Code; Article 466 Act 41/2013.

<sup>160</sup> Quite strangely, despite having the possibility of hearing the applicant directly, TAC South determined in a 2019 decision that the opinion of the officer that conducted the applicant's interview on his/her credibility is relevant as only direct contact with the applicant will allow to ascertain the credibility of his/her statement, as well as his/her general credibility "as a person". Therefore, in the absence of a gross error of the determining authority, the court cannot query its assessment of the credibility of the statements. TCA South, Decision 713/18.0BELSB, 10 January 2019, unpublished.

<sup>161</sup> Article 91(2) Administrative Court Procedure Code; Article 606 Act 41/2013.

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

It should be noted that while CPR may be requested to intervene in the judicial procedure, namely by providing country of origin information or guidance on legal standards, it is not a party thereto and is therefore not systematically notified of judicial decisions by the courts.

According to the CSTAF, a total of 294 appeals were lodged against negative asylum decisions in 2021, marking a decrease of around 44% compared to 2020. Out of these, 250 were filled in TAC **Lisbon**. TAC Lisbon rendered decisions on 240 of the appeals filled in 2021 while 10 were pending at the end of the year.

The information provided by the CSTAF for 2021 regarding the outcome of judicial reviews of first instance decisions indicates a poor success rate at appeal stage (12% at TAC **Lisbon** and 15.5% at national level). As mentioned in [Statistics](#), these figures do not make a distinction between the type of asylum procedure. In the experience of CPR, the majority of the appeals filed usually follow decisions adopted in the accelerated and Dublin procedures. In this regard, it must also be acknowledged that the quality of many appeals submitted is often poor, given that very few lawyers have relevant expertise in the field.

According to the information provided by CSTAF, in early 2022, the Working Group for Administrative and Fiscal Justice, created by the Ministry of Justice, proposed an amendment to the Statute of the Administrative and Fiscal Courts that would allow CSTAF to create specialised sections in the Administrative Courts, namely in the field of asylum. In order for this to be implemented, the Statute would have to be amended and the CSTAF would then have to deliberate on the creation of the relevant section.

### 1.4.2. Onward appeal

In case of rejection of the appeal, onward appeals are possible before the Central Administrative Court (*Tribunal Central Administrativo* – TCA), consisting of a full judicial review of relevant facts and points of law,<sup>162</sup> with automatic suspensive effect.<sup>163</sup> Furthermore, the law provides for an additional appeal with automatic suspensive effect before the Supreme Administrative Court (*Supremo Tribunal Administrativo*, STA) on points of law but only in exceptional cases of fundamental importance of the appeal for legal and social reasons or to improve the quality of legal reasoning in decision-making more broadly.<sup>164</sup> The STA makes its own assessment and decision on the facts of the case.<sup>165</sup> In both cases the asylum seeker has 15 days to lodge the appeal.<sup>166</sup>

The rulings of second instance Administrative Courts (TCA) and the STA are systematically published.<sup>167</sup>

According to information provided by CSTAF, Higher Courts do not collect autonomous data on asylum-related processes. Nevertheless, CSTAF reported that, in 2021, a total of 46 appeals were filed in second instance courts (TCA South and TCA North). Out of these, 6 were filed by the asylum authority (was decided favourably, and 5 were rejected). The remaining 40 were filed by the applicants (of which 6 were decided favourably).

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<sup>162</sup> Article 149(1) Administrative Court Procedure Code; Article 31(3) Act 13/2002.

<sup>163</sup> Article 143(1) Administrative Court Procedure Code.

<sup>164</sup> Articles 143(1) and 150(1) Administrative Court Procedure Code.

<sup>165</sup> Article 150(3) Administrative Court Procedure Code.

<sup>166</sup> Article 147 Administrative Court Procedure Code.

<sup>167</sup> Decisions are available at: <https://bit.ly/3abzUaZ>.

## 1.5. Legal assistance

### Indicators: Regular Procedure: Legal Assistance

- |    |   |  |                 |    |
|----|---|--|-----------------|----|
| 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<br><b>Legal advice</b>     |                 |    |
| 2. | Do asylum seekers have access to free legal assistance on appeal against a negative decision in practice? | Yes  | With difficulty | No |
|    | ❖ Does free legal assistance cover  | <b>Representation in courts</b><br><b>Legal advice</b> |                 |    |

The Portuguese Constitution enshrines the right of every individual to legal information and judicial remedies regardless of their financial condition.<sup>168</sup>

### 1.5.1. Legal assistance at first instance

The Asylum Act provides for the right of asylum seekers to free legal assistance at all stages of the asylum procedure, which is to be understood as including the first instance of the regular procedure.<sup>169</sup> Such legal assistance is to be provided without restrictions by a public entity or by a non-governmental organisation in line with a Memorandum of Understanding (MoU).<sup>170</sup>

Furthermore, under the Asylum Act, UNHCR and CPR as an organisation working on its behalf must be informed of all asylum applications and are entitled to personally contact all asylum seekers irrespective of the place of application to provide information regarding the asylum procedure, as well as regarding their intervention in the procedure (dependent on the consent of the applicant).<sup>171</sup> These organisations are also entitled to be informed of key developments in the asylum procedure upon consent of the applicant,<sup>172</sup> and to present their observations at any time during the procedure pursuant to Article 35 of the 1951 Refugee Convention.<sup>173</sup>

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

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

<sup>168</sup> Article 20(1) Constitution.

<sup>169</sup> Article 49(1)(e) Asylum Act.

<sup>170</sup> Ibid.

<sup>171</sup> Article 13(3) Asylum Act. See also Article 24(1) concerning applications at the border; Article 33(3) concerning subsequent applications; Article 33-A(3) concerning applications following a removal procedure.

<sup>172</sup> Article 17(3) Asylum Act: document narrating the essential facts of the request; Article 20(1): decision on admissibility and accelerated procedures in national territory; Article 24(5): decision on admissibility and accelerated procedures at the border; Article 29(6) first instance decision in the regular procedure; Article 37(5): Dublin take charge decision.

<sup>173</sup> Article 28(5) Asylum Act.

- Assisting lawyers appointed under the free legal aid system in preparing appeals with relevant legal standards and COI.

Regarding particularly vulnerable asylum seekers, CPR provides specific legal assistance to unaccompanied asylum-seeking children. This includes the presence of a legal officer during the personal interview with SEF (see [Legal Representation of Unaccompanied Children](#)) as well as the provision of information and assistance in the framework of procedures before the Family and Juvenile Court.<sup>174</sup>

CPR also provides legal information and assistance to beneficiaries of international protection, including persons within the context of resettlement. This includes, for instance, providing information on the legal status, providing information and assistance in family reunification procedures, nationality acquisition and other integration-related matters, and submitting observations on applicable legal standards when relevant.

In 2021, CPR provided legal support to 817 spontaneously arrived asylum seekers in all types of asylum procedures lodged throughout the year, which represents around 58% of the total number of applications communicated to CPR according to the law (1,433) and 53% of the total number of applicants registered by SEF (1,537). This percentage represents a significant decrease from usual figures (around 90%). The decrease is explained by the fact that a significant number of the applications registered in 2021 concern applicants who were evacuated from Afghanistan, whose reception did not follow the general rules applicable to spontaneous asylum seekers. Furthermore, CPR has observed that, given the circumstances surrounding their individual situation and arrival in Portugal, such applicants tend to assume that legal assistance is not necessary within the context of the asylum procedure.<sup>175</sup>

All the applicants whose cases were communicated to CPR were sent a letter setting out details of the legal assistance provided by CPR and relevant contacts. Bilateral contacts were also established with organizations responsible for the reception of evacuated and relocated applicants. In early 2022, CPR conducted a legal information session for applicants evacuated from Afghanistan, who are provided reception conditions by the Portuguese Red Cross (CVP).

As in previous years, CPR also continued to provide remote assistance (e.g., by telephone and/or e-mail communication).

Throughout 2021, the coronavirus pandemic continued to present challenges to the provision of services by CPR and to require adjustments. Nevertheless, legal assistance was continuously ensured throughout the year.

There are other organisations that provide legal information and assistance to asylum seekers during the first instance of the regular procedure such as the Jesuit Refugee Service (JRS) Portugal, and the High Commissioner for Migration (ACM) through its National Centres for Migrants' Integration (CNAIM) and Local Support Centres for Migrants Integration (*Centro Local de Apoio à Integração de Migrantes*, CLAIM) spread throughout the country, and Crescer. According to the available information, these services remain residual and mostly focused on integration.

A number of decisions from TCA South issued in 2021 focused on the right of the applicant to request legal aid in order to have a lawyer present during the interview. According to the analysed decisions, the Court overall considers that:

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<sup>174</sup> These procedures are provided in the General Regime of Civil Guardianship Process, 141/2015, and the Children and Youths at Risk Protection Act, 147/99.

<sup>175</sup> As happened in the past within the context of EU relocation, it is expected that a number of such citizens may contact CPR later in order to obtain support in integration-related procedures such as family reunification and naturalisation, or if their applications are rejected.

- (i) Applicants for international protection may request legal aid in order to have a lawyer present in the asylum interview;<sup>176</sup>
- (ii) The performance of the asylum interview without a lawyer present *per se* does not violate the Portuguese Constitution;<sup>177</sup>
- (iii) To effectively guarantee the applicant’s rights, the authority (SEF) must fully and correctly inform the applicant of the possibility to be accompanied by a lawyer in the interview and of the possibility to apply to legal aid to that purpose. If that does not happen, the decision on the asylum application may be annulled.<sup>178</sup>

According to the available information, at the time of writing, the appeal of one such case was pending in the Supreme Administrative Court (STA).<sup>179</sup>

### 1.5.2. Legal assistance in appeals

Regarding legal assistance at appeal stage, the Asylum Act provides for the right of asylum seekers to free legal aid in accordance with the law.<sup>180</sup>

The legal framework of free legal aid provides for a “means assessment” on the basis of the household income,<sup>181</sup> as only applicants who do not hold sufficient income are entitled to free or more favourable conditions to access legal aid.<sup>182</sup> The application is submitted to the Institute of Social Security (*Instituto da Segurança Social*, ISS) that conducts the means assessment and refers successful applications to the Portuguese Bar Association (*Ordem dos Advogados*).<sup>183</sup>

The Bar appoints a lawyer,<sup>184</sup> on the basis of a random/automatic selection procedure.<sup>185</sup> The sole responsibility for organising the selection lies with the Portuguese Bar Association but such procedure should ensure the quality of the legal aid provided.<sup>186</sup> While the average duration of this procedure in 2021 was around 1 to 2 weeks, the law provides for the suspension of the time limit for the appeal upon presentation of the free legal aid application and until the appointed lawyer submits the judicial appeal.<sup>187</sup>

It should be noted that the national legislation provides for a “merits test” to be conducted by the appointed lawyer according to which free legal assistance can be refused on the basis that the appeal is likely to be unsuccessful. In that case, the free legal aid lawyer can excuse him/herself from the case and the Portuguese Bar Association can choose not to appoint a replacement.<sup>188</sup>

CPR supported the submission of 292 applications for legal aid in the course of 2021. While a breakdown by type of procedure is not available, the overwhelming majority of such requests followed refusals in accelerated and Dublin procedures.

In general, asylum seekers enjoy unhindered access to free legal aid at appeal stage. Nevertheless, the practical implementation of the “means test” conducted by ISS and the “merits test” conducted by appointed lawyers have been recently raising some concerns:

<sup>176</sup> TCA South, Decision 2285/20.7BELSB, 21 April 2021, available at: <https://bit.ly/3tQAJHc>.

<sup>177</sup> Ibid.

<sup>178</sup> TCA South, Decision 806/21.7BELSB, 23 September 2021, available at: <https://bit.ly/3iQyns9>; TCA South, Decision 2144/20.3BELSB, 7 October 2021, available at: <https://bit.ly/3IR83IZ>.

<sup>179</sup> STA, Decision 02144/20.3BELSB, 25 November 2021, available at: <https://bit.ly/3xJcWC6>.

<sup>180</sup> Article 49(1)(f) Asylum Act.

<sup>181</sup> Act 34/2004; Ministerial Order 10/2008.

<sup>182</sup> Article 8-A and Annex Act 34/2004.

<sup>183</sup> Article 22 Act 34/2004.

<sup>184</sup> Article 30 Act 34/2004.

<sup>185</sup> Article 2(1) Ministerial Order 10/2008.

<sup>186</sup> Article 10(2) and (3) Ministerial Order 10/2008.

<sup>187</sup> Article 33(4) Act 34/2004. See e.g., TCA South, Decision 10733/13, 2 April 2014, available in Portuguese at: <http://bit.ly/2gyVQOJ>.

<sup>188</sup> Article 34(5) Act 34/2004.



- In the case of the “means test” conducted by the ISS, the fact that asylum seekers admitted to the regular procedure are issued a provisional residence permit and are therefore entitled to access the labour market (see [Access to the Labour Market](#)) has at times resulted in asylum applicants having a level of income that excludes them from the free legal aid regime. In this case, given the usually limited levels of income, applicants can still be offered more favourable conditions to access legal aid such as instalments. While this is not problematic, occasionally, CPR has been informed of sporadic cases where legal aid requests by applicants within the regular procedure have been refused due to the residency documents presented and to the lack of proof of income (notably where such applicants were benefiting from social support provided by the ISS due to the lack of income).
- In the case of the “merits test”, as reported in previous years, the practice of the Portuguese Bar Association remained inconsistent. Since 2019, CPR witnessed an increasing number of cases where, following a refusal by the appointed lawyer to provide free legal aid on the grounds that the chances of success were limited, the Bar Association chose not to appoint a replacement. In some instances, this happened following the assessment of only one lawyer. The objective criteria for such decisions remained unclear. While CPR has provided support in the submission of revision requests, reversals have not been significant.<sup>189</sup> Up until now, this practice has mostly impacted applicants within Dublin/Admissibility/Accelerated procedures. This remains a concerning practice that may have an impact on the effective access to legal aid by asylum seekers.

Another concern relates to the overall quality of free legal aid at appeal stage, as the current selection system is based on a random/automatic selection procedure managed by the Portuguese Bar Association. This is done on the basis of preferred areas of legal assistance chosen beforehand by the appointed lawyers.<sup>190</sup> Such areas are general in nature and not specifically related to Asylum Law. In general, appointed lawyers are not trained in Asylum Law and have limited experience in this specific field. Throughout 2021, CPR continued to deliver trainings on asylum-related matters to diverse audiences, including legal professionals.

Additional persisting challenges in this regard include the absence of an easily accessible interpretation service, which hinders the communication between the lawyer and the client during the preparation of the appeal. Although ACM’s translation hotline can constitute a useful tool in this regard, according to CPR’s experience, it is insufficiently used by lawyers.<sup>191</sup> Moreover, the expenses for the preparation of the appeal, including for interpretation and translation of documents, need to be paid in advance by the appointed lawyer who can then ask the court for reimbursement.<sup>192</sup>

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<sup>189</sup> In such cases, the solution suggested by the Bar Association is to file a new application for legal aid, which raises questions with regard to respect for the applicable deadlines and the efficiency of the solution.

<sup>190</sup> Article 3(3)(c) Regulation of the Bar Association 330-A/2008 of 24 June 2008.

<sup>191</sup> ACM’s interpretation hotline relies on a database of 60 interpreters/translators to enable communication with non-Portuguese speaking citizens. Access is free of charge (cost of a local call) and can be used on working days, between 9:00 and 19:00. It is possible to request the interpretation immediately (upon availability of interpreter) or to schedule a call. Additional information, including the list of languages covered, is available at <http://bit.ly/2A4Ekga>.

<sup>192</sup> Article 8(3) Ministerial Order 10/2008.

## 2. Dublin

### 2.1. General

#### Dublin statistics: 2021

Outgoing procedure					Incoming procedure				
	Requests			Transfers		Requests			Transfers
	Take charge	Take back	Total			Take charge	Take back	Total	
<b>Total</b>	<b>28</b>	<b>313</b>	<b>341</b>	<b>43</b>	<b>Total</b>	<b>141</b>	<b>198</b>	<b>339</b>	<b>72</b>
Italy	3	105	108	9	France	35	80	115	30
Germany	2	84	86	18	Germany	31	52	83	14
France	4	39	43	4	Greece	51	-	51	13
Spain	15	11	26	5	Belgium	3	26	29	1
Switzerland	-	17	17	1	Switzerland	7	11	18	9
Austria	-	13	13	1	Netherlands	2	16	18	-
Sweden	-	8	8	2	Austria	7	4	11	2
Netherlands	-	7	7	-	Sweden	4	1	5	-
Hungary	-	6	6	-	Ireland	-	4	4	-
Belgium	-	5	5	-	Luxembourg	1	2	3	1
Czechia	-	5	5	-	Czechia	-	2	2	-
Malta	2	2	4	1	Norway	-	-	-	2
Slovenia	-	4	4	-					
Luxembourg	-	3	3	1					
Bulgaria	-	2	2	-					
Poland	2	-	2	-					
Denmark	-	1	1	1					
Romania	-	1	1	-					

Source: SEF.

Outgoing Dublin requests by criterion: 2021	
Dublin III Regulation criterion	Requests sent
<b>“Take charge”:</b>	<b>28</b>
Article 8 (minors)	-
Article 9 (family members granted protection)	-
Article 10 (family members pending determination)	-
Article 11 (family procedure)	-
Article 12 (visas and residence permits)	5
Article 13 (entry and/or remain)	21
Article 14 (visa free entry)	-
“Take charge”: Article 16	-
“Take charge” humanitarian clause: Article 17(2)	2
<b>“Take back”: Article 18</b>	<b>313</b>
Article 18 (1) (b)	164
Article 18 (1) (c)	2
Article 18 (1) (d)	147
Article 20(5)	-
<b>Rejected outgoing requests: 2021</b>	
<b>Total</b>	<b>165</b>

Source: SEF.

Incoming Dublin requests by criterion: 2020	
Dublin III Regulation criterion	Requests received
<b>“Take charge”:</b>	<b>141</b>
Article 8 (minors)	42
Article 9 (family members granted protection)	3
Article 10 (family members pending determination)	-
Article 11 (family procedure)	3
Article 12 (visas and residence permits)	77
Article 13 (entry and/or remain)	7
Article 14 (visa free entry)	-
“Take charge”: Article 16	-
“Take charge” humanitarian clause: Article 17(2)	9
<b>“Take back”: Articles 18 and 20(5)</b>	<b>192</b>
Article 18 (1) (a)	6
Article 18 (1) (b)	174
Article 18 (1) (c)	-
Article 18 (1) (d)	14
Article 20(5)	4

Source: SEF

### 2.1.1. Application of the Dublin criteria

The Asylum Act makes a formal reference to the criteria enshrined in the Dublin III Regulation for determining the responsible Member State.<sup>193</sup> According to the information available, no additional formal guidelines regarding the practical implementation of those criteria are in place.

Empirical evidence of the implementation of the Dublin criteria pertaining to **family unity** is scarce given the usually highly limited number of incoming or outgoing requests pursuant to responsibility criteria

<sup>193</sup> Article 37(1) Asylum Act.

provided in Articles 8-11 of the Regulation. According to the information provided by SEF, in 2021, there were no outgoing requests and 48 incoming “take charge” requests under Articles 8-11.

In the very few instances where CPR has contacted SEF regarding the potential application of family unity criteria, in particular regarding Article 8 on minors, evidence, and information required from SEF for applying those provisions included identification documents, address and contacts of relatives residing in other EU Member States. In general, such contacts did not result in the outgoing transfer of the unaccompanied children as they generally absconded prior to any relevant development in the procedure.

According to the information provided by SEF on the practical application of Article 8, the best interest of the child is the only relevant criterion. When family reunification through this avenue is a possibility, the capacity of the family members to receive the child are analysed.

In 2018, SEF issued multiple transfer decisions regarding unaccompanied asylum seekers claiming to be under 18 years of age, who had been previously registered as adults in other Member States. These decisions made no reference to the applicant’s claim of minority in Portugal. In 2018, there was one case where the applicant eventually disclosed that he was in fact over 18 years old, but this did not happen in all cases. Moreover, in one case in 2018, SEF overturned a transfer decision *motu proprio* following an appeal on the basis that the applicant was indeed an unaccompanied child. CPR is aware of similar cases in 2019 where a transfer request was issued based on the previous registration in other Member States and no reference was made to the age assessment conducted by the Portuguese authorities, as the applicant claimed to be under 18 years old (see below). CPR is not aware of similar decisions in 2020 and 2021. Instead, in some cases, SEF suspended the deadlines applicable to the asylum procedure on the grounds that such a decision required the adjudication of the age assessment requested by the competent Family Court). In at least some instances, however, SEF eventually admitted the cases to the regular procedure before the age assessment was finalised (which could be linked to significant delays in the age assessment).

In 2017, the TAC **Lisbon** offered clear guidance regarding the interpretation of Article 6 of the Dublin Regulation in a judgment that overturned a transfer decision to Germany of an unaccompanied child under the care of CPR, for failing to give due consideration to the best interests of the child in its reasoning, notably regarding the child’s well-being, social development, and views.<sup>194</sup>

Two similar situations were analysed by the TAC **Lisbon** in 2019. In both cases, an unaccompanied child applied for asylum in Portugal and it was determined that there were Eurodac hits in Italy. Following information requests by SEF, the Italian authorities informed SEF that the applicants were registered as (young) adults. SEF decided to issue transfer decisions for both applicants despite the fact that they were claiming to be under 18 years old and that no age assessment had been conducted. The transfer decisions made no reference to the alleged minority.

In one case, the TAC Lisbon upheld the transfer decision as it relied on the information provided by the Italian authorities, according to which the applicant was not a child.<sup>195</sup> The decision was later confirmed by the TCA South which considered that there was no evidence that the applicant was not an adult and it was clear that the information provided to the Portuguese and Italian authorities was inconsistent. The Court also considered that it was not justified to request expert examinations for age assessment.<sup>196</sup> Notably, an age assessment conducted in the meantime within the Family Court procedures confirmed that the applicant was indeed under 18 years old at the time of the application in Portugal and SEF subsequently reversed the transfer decision and admitted the case to the regular procedure.

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<sup>194</sup> TAC Lisbon, Decision 2334/17.5BELSB, 24 November 2017, unpublished.

<sup>195</sup> TAC Lisbon, Decision 1216/19.1BELSB, 22 October 2019, unpublished. It is interesting to note that the same course of action was followed by the Family Court responsible for the application of the protective measure.

<sup>196</sup> TCA South, Decision 1216/19.1BELSB, 13 February 2020, available at <https://bit.ly/3rj1gPf>.

In the other 2019 case, however, the TAC Lisbon considered that, in the absence of evidence regarding the age of the applicant, he/she must be treated as a child and, as such, Article 8(4) of the Dublin Regulation is applicable. The transfer decision was annulled by the Court on the grounds that the best interests of the child had not been taken into account by the national asylum authority.<sup>197</sup>

CPR is not aware of relevant recent indications regarding the application of the remaining family unit criteria.

In at least two decisions issued in 2021, the TCA South reiterated that the Ministerial Order no. 3963-B/2020 that established specific rules concerning foreign citizens, including applicants for international protection within the COVID-19 pandemic,<sup>198</sup> did not impact the application of the Dublin criteria. As such, nothing in the Order could be deemed as a takeover of responsibility for the analysis of applications for international protection by the Portuguese authorities.<sup>199</sup>

### 2.1.2. The discretionary clauses

The “sovereignty clause” enshrined in Article 17(1) of the Dublin Regulation and the “humanitarian clause” enshrined in its Article 17(2) are at times applied in practice, but the criteria for their application remain unclear and no specific statistics are usually available on their use, except for the number of outgoing and incoming take charge requests under these clauses.<sup>200</sup>

While according to the data provided by SEF to AIDA, there were 3 incoming requests based on the “humanitarian clause” in 2019, SEF’s 2019 statistical report<sup>201</sup> indicates that the provision was applied to 100 persons relocated to Portugal following rescue operations in the Mediterranean Sea.<sup>202</sup>

According to the data shared by SEF for 2021, there were 9 incoming and 2 outgoing requests based on the “humanitarian clause”. Nevertheless, SEF has also stated that a total of 127 unaccompanied children were transferred from Greece to Portugal within the context of a bilateral agreement pursuant to the humanitarian clause.

According to SEF, the “sovereignty clause” was not applied in 2018, 2019, 2020 or 2021.

According to information provided by SEF, both article 17(1) and (2) may be applied by the national authorities for the purposes of family reunion, humanitarian reasons, other family or cultural reasons depending on the interest of the parties involved. In CPR’s experience, the underlying criteria in the application of the clause remain unclear.

A decision from TCA South recently stated that Article 17 of the Dublin Regulation is only applicable in exceptional situations in order “not to subject the applicant for international protection to inhuman or degrading treatment”,<sup>203</sup> apparently following a very narrow understanding of the logic and purpose of the clause.

No transfer decisions to Greece have been adopted since the *M.S.S. v. Belgium and Greece* judgment of the European Court of Human Rights (ECtHR) with the sovereignty clause being applied in potential transfer cases to Greece assisted by CPR during this period. Since 2018, no transfer decisions to

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<sup>197</sup> TAC Lisbon, Decision 1516/19.0BELSB, 16 October 2019, unpublished.

<sup>198</sup> For more see the [AIDA 2020 Update](#).

<sup>199</sup> TCA South, Decision 1001/20.8BELSB, 4 February 2021, available at: <https://bit.ly/3IT0cuu>; TCA South, Decision 1648/20.2BELSB, 21 January 2021, available at: <https://bit.ly/3xNhx62>.

<sup>200</sup> According to the SEF, there were 4 outgoing and 3 incoming take charge requests pursuant to Article 17(2) of the Regulation in 2019, and 0 outgoing and 2 incoming such requests in 2020.

<sup>201</sup> The latest available at the time of writing.

<sup>202</sup> SEF, Relatório de Imigração, *Fronteiras e Asilo 2019*, June 2020, available at <https://bit.ly/3rUSIUJ>.

<sup>203</sup> TCA South, Decision 137/21.2BELSB, 31 August 2021, <https://bit.ly/3iM3NQv>.

Bulgaria or Hungary were communicated to CPR, unlike those communicated in 2016 and 2017.<sup>204</sup> According to the data provided by SEF, in 2021, 5 take back requests were submitted to the Hungarian authorities and 2 to the Bulgarian authorities but no transfer was carried out.

In 2020, Portugal committed to receiving 500 unaccompanied children from Greece.<sup>205</sup> According to ISS, up to the end of 2021, a total of 199 children and young adults were transferred to Portugal within this programme, of which 127 transfers were during 2021 (a figure also confirmed by SEF). This commitment followed a 2019 agreement with the Greek authorities to implement a pilot relocation process for 100 applicants/beneficiaries of international protection.

According to the information provided by SEF, the pilot stage of implementation was concluded in 2021. Overall, a total of 84 beneficiaries of international protection, and 13 applicants for international protection, were relocated to Portugal within this context. SEF also stated that the selection process was conducted by the NGO Focus, with the support of EASO and IOM.

According to the information provided by SEF, 270 people were relocated to Portugal in 2021.<sup>206</sup>

**2.2. Procedure**

**Indicators: Dublin: Procedure**

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

According to the Asylum Act a procedure for determining the Member State responsible for examining an application for international protection under the Dublin Regulation shall be conducted whenever there are reasons to believe that such responsibility lies with another Member State. In such cases, SEF shall make a “take charge” or “take back” request to the competent authorities of the relevant Member State.<sup>207</sup> The Dublin procedure is preliminary to the assessment of the application and, once initiated, suspends the applicable time limits for the issuance of a decision on the (other) inadmissibility grounds or the merits of the application (accelerated procedures).<sup>208</sup>

While the law allows for the detention of asylum seekers submitted to a procedure for determining the responsible Member State pursuant to Article 28 of the Dublin III Regulation,<sup>209</sup> the consequences of an asylum seeker's refusal to comply with the obligation to be fingerprinted<sup>210</sup> are limited to the application of an **Accelerated Procedure**.<sup>211</sup> There are no legal provisions on the use of force to take fingerprints and CPR is not aware of any operational guidelines to that end. According to the information available to CPR, asylum seekers are systematically fingerprinted and checked in Eurodac in practice. According to CPR's observation, accelerated procedures triggered by a refusal to be fingerprinted are a very rare occurrence.

<sup>204</sup> Transfer decisions to such countries adopted in 2016 and 2017 did mention possible risks of *refoulement*, indicating that detention and reception conditions, guarantees in the asylum procedure and access to an effective remedy in the responsible Member State are not consistently taken into consideration when deciding whether or not to apply the “sovereignty clause”.

<sup>205</sup> Reuters, ‘Portugal to take in 500 unaccompanied migrant children from Greek camps’, 12 May 2020, available at: <https://reut.rs/3r5Hirl>.

<sup>206</sup> Likely in application of Article 17(2) Dublin Regulation.

<sup>207</sup> Articles 36 and 37(1) Asylum Act.

<sup>208</sup> Article 39 Asylum Act. A recent decision from TCA South clarified that the suspension of the 30-day deadline provided for in article 20 is operated by the internal order determining that a case will be processed under the Dublin procedure following the identification of a Eurodac hit. TCA South, Decision 1167/20.7BELSB, 17 December 2020, available at: <https://bit.ly/3tMrfAn>.

<sup>209</sup> Article 35-A(3)(c) Asylum Act.

<sup>210</sup> Article 15(1)(e) Asylum Act.

<sup>211</sup> Article 19(1)(j) Asylum Act.

In practice, SEF systematically determines which country is responsible for examining the asylum application in accordance with the criteria set out in the Dublin Regulation. This is done, among others, on the basis of the information collected through a preliminary form that must be filled by the asylum seeker upon registration and/or the individual interview. The preliminary form includes information on identification, itinerary, grounds for the asylum application, prior stays in Europe and supporting evidence.

During the interview with SEF, the asylum seeker is also asked to clarify relevant Dublin-related issues such as his/her identity and nationality, travel documents, visas and travel arrangements, itinerary and transportation to Portugal, and prior asylum applications.

Even when the personal interview focuses on the grounds of the application for international protection, the document narrating the individual interview that is signed and handed out to the applicant includes a reference to the Dublin Regulation, as well as a waiver for sharing information under Article 34 of the Regulation.

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

The Asylum Act provides for the right of the asylum seeker to be informed of the purpose of fingerprinting as well as of other rights provided in the Eurodac Regulation.<sup>212</sup> CPR has no indication on whether this obligation is systematically implemented in practice as, to the extent of its knowledge, the leaflets distributed contain limited information on fingerprinting and on the Eurodac Regulation. Moreover, CPR has no indication on whether the common information leaflet set out in Article 4(3) of the Dublin III Regulation is systematically distributed. According to observations of CPR, the information contained in the documents that are systematically distributed to asylum seekers by SEF<sup>213</sup> do not include all the relevant information included on the Annex X (Parts A and B) of the corresponding Implementing Regulation.<sup>214</sup> Notwithstanding this, SEF reported that such information is provided to the applicants.

As per the available information, while Dublin procedures were not formally interrupted due to the coronavirus pandemic, restrictions to freedom of movement led to a halt of Dublin transfers.<sup>215</sup> Furthermore, SEF reported that the reduced number of flights and testing requirements by the responsible Member States, along with instances of absconding, further restricted the execution of Dublin transfers in 2020. While, according to SEF, Dublin transfers were not interrupted in 2021, factors such as COVID-19 testing requirements and refusals to perform such tests prevented the execution of some transfers in practice.

### 2.2.1. Individualised guarantees

According to information available to CPR, SEF does not seek individualised guarantees ensuring that the asylum seeker will have adequate reception conditions upon transfer in practice, either systematically or for specific categories of applicants or specific Member States.<sup>216</sup>

In the case of transfer decisions to Italy issued in 2018 and 2019, the reasoning bore no reference to possible risks of ill-treatment in the responsible Member State, with most of the decisions being issued on the basis of the absence of a timely response from the Italian authorities. CPR is aware that, at least in some instances in 2020 and 2021, transfer decisions to Italy included information on the situation in

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<sup>212</sup> Article 49(1)(b) Asylum Act.

<sup>213</sup> While the version distributed to applicants, according to CPR's knowledge, is an handout in Portuguese, English and French, another version of the document (containing similar information) is available online in Portuguese at: <https://bit.ly/2Hq5aEy>.

<sup>214</sup> Commission Implementing Regulation (EU) no.118/2014 of 30 January 2014, available at: <https://bit.ly/3emtXFT>.

<sup>215</sup> Ibid.

<sup>216</sup> ECtHR, *Tarakhel v. Switzerland*, Application No 29217/12, 4 November 2014.

the Member State, and references to relevant national jurisprudence (see [Suspension of Transfers](#)), concluding that there was no risk of “extreme material poverty” constituting a risk of inhuman or degrading treatment in case of transfer.<sup>217</sup> In 2021, an annex with information regarding reception conditions in Italy was attached to some decisions. During the year, CPR also observed that in some instances (e.g. when the applicant referred to health issues during the interview), decisions contained a general analysis of the specific allegation but fell short from an analysis of the potential need for individualised guarantees.

CPR has no indication that individualised guarantees are sought following the notification of the transfer decision/prior to the transfer of the asylum applicant to the responsible Member State as well.

While certain Dublin-related judicial decisions refer to the individual circumstances of the applicant as a relevant element to assess the legality of a transfer decision (for instance in order to determine if there is a risk of inhuman or degrading treatment),<sup>218</sup> CPR is not aware of judicial decisions focusing specifically on individualised guarantees.

### 2.2.2. Transfers

While the law provides for the detention of asylum seekers subject to the Dublin procedure,<sup>219</sup> this provision is not implemented in practice and CPR is unaware of detention cases on this ground.

In accordance with the law, asylum seekers are entitled to a standard *laissez-passer* upon notification in writing of the transfer decision.<sup>220</sup> However, given the high rate of appeals, such a document is usually not issued at this point. According to the information available to CPR, all transfers are voluntary, and the applicant is informed of the exact date, time, and place he/ she should present him/ herself to SEF for travel purposes.

According to SEF, in the absence of a judicial appeal or abscondment, the average duration of the Dublin procedure from the moment an outgoing request is issued until the effective transfer takes place was 35 days (“take back”) or 80 days (“take charge”). The average duration from the moment another Member State accepts responsibility until the effective transfer takes place, if the applicant does not abscond or appeal, was 15 to 20 days.

Practical experience in this regard remained limited as, only 43 transfers were implemented out of the total of 341 outgoing requests. The transfer rate was thus of 12.6% in 2021.

According to the available information, while Dublin procedures were not formally interrupted due to the coronavirus pandemic, restrictions on freedom of movement led to a halt in Dublin transfers.<sup>221</sup> Furthermore, SEF reported that the reduced number of flights and testing requirements by the responsible Member States, along with instances of absconding, further restricted the execution of Dublin transfers in 2020. While, according to SEF, Dublin transfers were not interrupted in 2021, factors such as COVID-19 testing requirements and refusals to perform such tests prevented the execution of some transfers in practice.

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<sup>217</sup> CJEU, *Jawo*, Case C-163/17, 19 March 2019.

<sup>218</sup> For example: TCA South, Decision 1982/18.1BELSB, 22 August 2019, available in Portuguese at: <https://bit.ly/36vzJAV>, confirming a judgement of TAF Sintra (unpublished) that annulled the decision to transfer an applicant with hepatitis B to Italy; TAC Lisbon, Decision 2364/18.0BELSB, 22 March 2019 (unpublished), annulling a transfer decision to Italy, *inter alia*, because the adjudicating authority did not properly assess the nature and severity of health issues referred by the applicant in the personal interview; TAC Lisbon, Decision 2048/19.2BELSB, 13 December 2019 (unpublished), confirming a transfer decision to Italy as it was not proved that there are systemic flaws in the receiving Member State and, even so, the applicant would have to demonstrate that, given his/her specific circumstances, the situation would amount to a risk of inhuman or degrading treatment.

<sup>219</sup> Article 35-A(3)(c) Asylum Act.

<sup>220</sup> Article 37(3) Asylum Act.

<sup>221</sup> *Ibid.*



CPR is aware of decisions issued in 2020 by TAC **Lisbon** determining that the coronavirus pandemic did not impact the legality of Dublin transfers (to Italy and Spain) but only the moment of its execution. At least in two cases adjudicated in 2020, while confirming transfer decisions to Italy, TCA **South** referred that the transfer should be executed upon cessation of the measures implemented to respond to the coronavirus pandemic and provided that mobility and living conditions in Italy are ensured.<sup>222</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?	<b>Yes</b>	<b>No</b>
	❖ If so, are interpreters available in practice, for interviews?	<b>Yes</b>	<b>No</b>
2.	Are interviews conducted through video conferencing? Frequently Rarely	<b>Never</b>	

The Asylum Act provides for the systematic personal interview of all asylum seekers, including of those in a Dublin procedure.<sup>223</sup> The personal interview can only be waived where: (i) the evidence already available allows for a positive decision; or (ii) the applicant lacks legal capacity due to long lasting reasons that are not under his or her control.<sup>224</sup>

As mentioned above (see: [Regular Procedure: Personal interview](#)), SEF affirmed that applicants are guaranteed the right to an interview before any decision regarding their application is adopted, emphasising that interviews can only be waived in the cases listed in the Asylum Act. SEF also noted that interviews are conducted in all types of procedure, including Dublin.

While in recent years it was not clear to CPR whether asylum seekers in a Dublin procedure were systematically offered a personal interview, according to CPR’s observation in 2021, applicants in a Dublin procedure seem to be systematically interviewed. Nevertheless, CPR is aware of cases where a transfer decision was adopted in the absence of an interview when the applicant absconded.<sup>225</sup>

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

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

In 2018, the TAC **Lisbon** annulled transfer decisions on the basis that, according to its interpretation of either Article 17 of the Asylum Act or Article 5 of the Dublin Regulation, SEF has to inform the applicant and give him/her the opportunity to reply not only to the statements provided during the Dublin interview, but also to a report containing the information that underlies the transfer decision.<sup>226</sup> This jurisprudence followed a decision from the Supreme Administrative Court from 2017 which considered that failing to give the applicant the possibility to be heard regarding the “essential information” of the application in similar circumstances amounted to an omission of an essential procedural requirement.<sup>227</sup>

<sup>222</sup> TCA South, Decision 61/20.6BELSB, 2 July 2020, available at <https://bit.ly/3f9Od0a>; TCA South, 357/20.7BELSB, 29 October 2020, available at: <https://bit.ly/3setb4t>.  
<sup>223</sup> Article 16(1)-(3) Asylum Act.  
<sup>224</sup> Article 16(5) Asylum Act.  
<sup>225</sup> Pursuant to article 5(2)(a) of the Dublin Regulation.  
<sup>226</sup> TAC Lisbon, Decision 275/18.9BELSB, 12 April 2018.  
<sup>227</sup> Supreme Administrative Court, Decision 0306/17, 18 April 2017, available in Portuguese at: <https://bit.ly/2RYEoXW>.

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

In 2018, SEF changed the format of Dublin interviews and corresponding transcripts. Since then, the transcripts/interviews include an explanation of the aims and criteria of the Dublin Regulation and questions focusing on identification and contacts of family members, travel documents/visas, Eurodac registrations, information on entry/stay, and previous applications for international protection. The form also contains a section on vulnerability but apparently follows a limited understanding of the concept, as it only includes questions on the health condition of the applicant and family members. Furthermore, it includes a section where the relevant Dublin Regulation criteria for the case are signalled and a question allowing the applicant to reply to such information.

Since late 2019 applicants interviewed within the context of Dublin Procedures are further notified of a document stating that the application will likely be subject to an inadmissibility decision and corresponding transfer to a concrete Member State according to the Dublin Regulation. This document also notifies the applicant of the possibility to provide written comments pursuant to the general administrative rules.<sup>228</sup> However, despite the general rule determining that the deadline for response cannot be of less than 10 days,<sup>229</sup> the deadline prescribed by the above-mentioned notifications is of only 5 days. It is also worth noting that such documents are not communicated to CPR by the authorities on a systematic basis.<sup>230</sup>

This change in practice is likely connected to the judicial developments regarding the right to be heard in Dublin procedures registered in 2019. While it was undisputed that applicants are entitled to the right to be heard in such procedures, three major interpretations were followed by TCA South and the Supreme Administrative Court (STA) in 2019:

- Article 17 of the Asylum Act is applicable to Dublin procedures. As such, it is required that, following the personal interview, the applicant is notified of the statements provided and of a report containing all information underlying the decision and the likely outcome of the procedure. Following the general regime established in Article 17 of the Asylum Act, the applicant has 5 days to submit comments to the report.<sup>231</sup>
- The right to be heard may be fully exercised during the interview referred to by Article 5 of the Dublin Regulation as long as the applicant is informed of the decision that will likely be adopted by the adjudicating entity (i.e., the transfer to a specific Member State) and is furthermore given the opportunity to specifically respond to that possibility.<sup>232</sup>

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<sup>228</sup> Article 121 Administrative Procedure Code.

<sup>229</sup> Article 122 Administrative Procedure Code.

<sup>230</sup> A practice observed at least since the third trimester of 2019.

<sup>231</sup> This interpretation, which was already adopted in previous jurisprudence, was reaffirmed by the Supreme Administrative Court in at least two rulings in 2019: Supreme Administrative Court, Decision 2095/18.1BELSB, 3 October 2019, available in Portuguese at: <https://bit.ly/39Felpp>; Supreme Administrative Court, Decision 1770/18.5BELSB, 17 December 2019, available in Portuguese at: <https://bit.ly/2wcyLws>.

<sup>232</sup> Supreme Administrative Court, Decision 970/18.2BELSB, 30 May 2019, available in Portuguese at: <https://bit.ly/2ZKaCHV>. The judgement argues for a combined reading of the relevant provisions (e.g., Article 16 of Asylum Act, Article 5 of the Dublin Regulation, and Article 121 of the Administrative Procedure Code), emphasising that the applicant must be given the opportunity to provide his/her comments on the possible transfer during the personal interview or in a subsequent moment, allowing the competent authority to duly consider all elements in its decision. TCA South, Decision 557/19.2BELSB, 26 September 2019, available in Portuguese at: <https://bit.ly/2ZMhIkM>; TCA South, Decision 751/19.6BELSB, 26 September 2019, available in Portuguese at: <https://bit.ly/2QlOGS8>; TCA South, Decision 780/19.0BELSB, 26 September 2019, available in Portuguese at: <https://bit.ly/39Ca5fG>; TCA South, Decision 689/19.7BELSB, 24 October 2019, available in Portuguese at: <https://bit.ly/35gByQx>. Following this interpretation, a decision from TAC Lisbon (Decision 1680/19.9BELSB, 12 November 2019, unpublished), interestingly underlined that the authority must inform the applicant of the relevant responsibility criteria as well as of the safeguard

- While Article 17 of the Asylum Act is not applicable to Dublin procedures, Article 5 of the Dublin Regulation must be combined with the general administrative rules on the right to be heard about the possible decision before its adoption.<sup>233</sup> As such, the adjudicating entity has to inform the applicant of the probable decision and of all the elements underlying such a decision and provide a reasonable timeframe for the applicant to respond to all elements relevant to the decision, to request complementary action, and/or to present documentation.<sup>234</sup>

Different interpretations of the right to be heard continued to be registered in the national upper courts throughout 2020, along the main lines described above. In a number of decisions, STA and TCA South considered that the applicant must be informed of the likely outcome of the procedure (inadmissibility and Member State likely responsible for the application) and provided a report with all the relevant elements of the case and a five-day deadline to respond as provided in Article 17 Asylum Act.<sup>235</sup> In 2021, this apparently continued to be the predominant understanding within the STA.<sup>236</sup>

Nevertheless, in at least one case in 2020, TCA South confirmed the practice followed by SEF according to which the applicant is provided with a report containing the likely outcome of the Dublin procedure, and is given a 5-day deadline to respond in writing according to Article 121 of the Administrative Procedure Code.<sup>237</sup> SEF's practice has not been annulled by the Courts to the extent of CPR's knowledge.

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clause, creating the conditions for the applicant to respond to the possible transfer/application of the clause. It also noted that, if the right to be heard is to be implemented exclusively through an interview, the authorities must adjust the questions to the concrete situation at stake.

<sup>233</sup> Articles 121 *et seq* Administrative Procedure Code.

<sup>234</sup> TCA South, Decision 90/19.2BELSB, 6 June 2019, available in Portuguese at: <https://bit.ly/2FiKOcg>; TCA South, Decision 2379/18.9BELSB, 4 July 2019, available in Portuguese at: <https://bit.ly/36IFzEM>; TCA South, Decision 1026/19.6BELSB, 10 December 2019, available in Portuguese at: <https://bit.ly/37B1aZR>.

<sup>235</sup> STA, Decision 0688/19.9BESNT, 2 April 2020, available at: <https://bit.ly/3rmUg3Z>; STA, Decision 0780/19.0BELSB, 20 February 2020, available at: DGSI: <https://bit.ly/31gSNSr>; TCA South, Decision 2221/19.3BELSB, 18 June 2020, available at: <https://bit.ly/3fbGONR>. The latter summarises a number of decisions from the Supreme Court. The judges explain that, while they formerly followed the understanding that Article 5 of the Dublin Regulation was the relevant legal framework, their position changed given that STA predominantly considers that Articles 16 and 17 of the Asylum Act apply to Dublin procedures and that provides additional guarantees to the applicant.

<sup>236</sup> STA, Decision 02317/19.1BELSB, 14 January 2021, available at: <https://bit.ly/3vBAKVA>; STA, Decision 02295/19.7BELSB, 11 March 2021, available at: <https://bit.ly/3vzz0MD>; STA, Decision 0224/21.7BELSB, 18 November 2021, available at: <https://bit.ly/3rCJLg3>. Nevertheless, the interpretation that Article 5 of the Dublin Regulation is the relevant framework within this context was still applied in 2020. In one decision, STA noted that the right of the applicant to participate in the procedure is respected if the report identifies the responsible Member State and the interviewer asks the applicant if he/she has statements to make regarding that information linking the right to participation of article 5 Dublin Regulation to article 267 of the Constitution and article 121 of the Administrative Procedure Code. STA, Decision 0645/19.5BELSB, 21 May 2020, available at: <https://bit.ly/3vToAqB>. This understanding was also adopted by TCA South in 2021 (TCA South, Decision 1932/19.8BELSB, 16 April 2020, available at: <https://bit.ly/2Ptuy7h>; TCA South, Decision 670/19.6BELSB, 14 May 2020, available at: <https://bit.ly/3lKifc5>; TCA South, Decision 2364/18.0BELSB, 14 May 2020, available at: <https://bit.ly/3d3LrqC>; TCA South, Decision 1301/19.0BELSB, 14 May 2020, available at: <https://bit.ly/3177qYm>; TCA South, Decision 2317/19.1BELSB, 14 May 2020, available at: <https://bit.ly/3cdcctC>). In some cases, the Court further detailed that the right to be heard can be fully exercised within the context of the interview as long as the applicant receives the information mentioned in Article 4 of the Dublin Regulation and is provided with the opportunity to fully present the arguments and facts regarding the possible transfer. Interestingly, in such cases, TCA South also emphasised that the lower formal requirements for the exercise of the right to be heard, entail a need for reinforced control of its substance. As such, the interviewer must give the applicant a meaningful opportunity to provide the relevant information and cannot remain passive in light of the statements provided by him/her (TCA South, Decision 670/19.6BELSB, 14 May 2020, available at: <https://bit.ly/3lKifc5>; TCA South, Decision 2364/18.0BELSB, 14 May 2020, available at: <https://bit.ly/3d3LrqC>; TCA South, Decision 1301/19.0BELSB, 14 May 2020, available at: <https://bit.ly/3177qYm>; TCA South, Decision 2317/19.1BELSB, 14 May 2020, available at: <https://bit.ly/3cdcctC>).

<sup>237</sup> TCA South, Decision 613/20.4BELSB, 15 October 2020, unpublished.

## 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?

	Yes	No
❖ If yes, is it	Judicial	Administrative
❖ If yes, is it suspensive	Yes	No

The Asylum Act provides for an appeal against the decision in the Dublin procedure consisting of a judicial review of relevant facts and points of law by the Administrative Court.<sup>238</sup> The asylum seeker has 5 days to lodge the appeal.<sup>239</sup> As in the regular procedure, the initial and onward appeals are automatically suspensive,<sup>240</sup> and the law provides for a simplified judicial process with reduced formalities and time limits with the objective of shortening the duration of the judicial review.<sup>241</sup>

The available case law indicates that the asylum seeker can challenge the correct application of the Dublin criteria,<sup>242</sup> as per the ruling of the Court of Justice of the European Union (CJEU) in *Ghezelbash*.<sup>243</sup> The court also verifies if all formalities have been respected by the SEF, including applicable deadlines set forth in the Dublin Regulation.<sup>244</sup>

It should be noted that while CPR may be requested to intervene in the judicial procedure, namely by providing country of origin information or guidance on legal standards, it is not a party thereto and is therefore not systematically notified of judicial decisions by the courts.

The information provided by the CSTAF for 2021 regarding the number, nationalities of appellants, average duration and results of judicial reviews does not make a distinction between the type of asylum procedures (see [Statistics](#)). Nevertheless, the data shared shows that, out of a total of 283 decisions rendered by first instance courts in 2021, 139 concerned Dublin procedures. According to the same source, first instance Courts determined that a Dublin procedure should be resumed/reanalysed by the administrative authority in 12 occasions.

According to the information available to CPR, Dublin procedures were the main type of asylum procedure used in 2021 to reject asylum applications at first instance in the case of nationals of Senegal, Gambia, and Guinea (three of the five most represented nationalities at appeals stage).

<sup>238</sup> Article 37(4) Asylum Act; Article 95(3) Administrative Court Procedure Code.

<sup>239</sup> *Ibid.*

<sup>240</sup> Article 37(4) and (6) Asylum Act.

<sup>241</sup> Article 37(5) Asylum Act.

<sup>242</sup> TAC Lisbon, Decision 2183/15.6BESLB, 25 November 2015, unpublished, which states that a Dublin transfer decision can be challenged in case of incorrect application of the criteria enshrined in the Dublin Regulation and then moves on to assess the content of the criteria enshrined in Articles 8 to 10 and 17(1) in light of the particular circumstances of the applicant.

<sup>243</sup> CJEU, Case C-63/15 *Ghezelbash*, Judgment of 7 June 2016.

<sup>244</sup> TAC Lisbon, Decision 1235/16.0BESLB, 14 September 2016, unpublished.

## 2.5. Legal assistance

### Indicators: Dublin: Legal Assistance Same as regular procedure

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

<b>Yes</b>	With difficulty	No
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  - ❖ Does free legal assistance cover: Representation in interview  
**Legal advice**
  
2. Do asylum seekers have access to free legal assistance on appeal against a Dublin decision in practice?
 

<b>Yes</b>	With difficulty	No
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  - ❖ Does free legal assistance cover: Representation in courts  
**Legal advice**

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

With regard to access to legal aid for appeals, see [Regular Procedure: Legal Assistance](#). Notably, as mentioned, applicants within the Dublin procedure were among the most affected by the practice of the Portuguese Bar Association according to which, following a refusal by the appointed lawyer to provide free legal aid on the grounds that the chances of success were limited, a replacement was not appointed.

## 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?
 

<b>Yes</b>	No
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  - ❖ If yes, to which country or countries? Greece

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

**Hungary:** In February 2018, the Administrative and Fiscal Court of Sintra (*Tribunal Administrativo e Fiscal de Sintra*, TAF Sintra) annulled a transfer decision to Hungary on the basis that the available information regarding the functioning of the Hungarian asylum system revealed the existence of valid reasons to believe that there were systemic flaws in the asylum procedure and reception conditions amounting to the threshold of inhuman or degrading treatment (namely due to the systematic detention and acts of violence towards asylum seekers in the country).<sup>245</sup>

According to the information shared by SEF, there were 5 outgoing requests to Hungary during in 2021, but no transfer was carried out.

**France, Spain, and Germany:** In 2018, TAC Lisbon upheld transfer decisions to **France** and **Spain**, ruling that it was not demonstrated that there were valid reasons to believe that asylum procedures and reception systems of the Member States do not comply with the applicable standards.<sup>246</sup>

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

<sup>245</sup> TAF Sintra, Decision 555/17.0BESNT, 15 February 2018, unpublished.

<sup>246</sup> TAC Lisbon, Decision 461/18.1BELSB, 10 April 2018, unpublished; TAC Lisbon, Decision 741/18.6BELSB, 8 August 2018, unpublished.

the rules on responsibility established by the Dublin Regulation.<sup>247</sup> In another case, TCA South considered that the fact that the applicant affirmed, during the personal interview, that he would like to stay in Portugal because the population was friendly and not racist, without referring to racist acts suffered in Spain was not enough to trigger an obligation for SEF to analyse the existence of systemic flaws in the Spanish asylum system given that it is not publicly known that such system has clear systemic deficiencies.<sup>248</sup>

In a 2020 judgement, concerning a transfer decision to Spain, TCA South considered, *inter alia*, that the strong migratory pressure and poor reception conditions,<sup>249</sup> were not sufficient to consider that there would be a serious risk of inhuman or degrading treatment.<sup>250</sup>

Within the context of the appeal of a judgement of TAC Lisbon that confirmed a transfer decision to Germany, TCA South stated that the applicant did not provide elements showing a risk of inhuman or degrading treatment in the relevant Member State, nor health-related information requiring his/her presence in Portugal. Moreover, the Court noted that there is no indication of systematic flaws in the asylum procedure and reception conditions in Germany.<sup>251</sup>

**Denmark:** In 2020, TCA South analysed the case of an Iraqi national (from Mosul) whose application for international protection in Denmark was previously rejected and who was subject to a transfer decision from Portugal to Denmark.

While considering that the reception conditions in Denmark (including vis-à-vis detention) are not of such severity to fulfil the threshold of *Jawo*, the Court considered that it must also analyse if the return decision may imply a risk of indirect refoulement due to the likely removal from Denmark to Iraq, therefore violating Article 33 of the Geneva Convention and Articles 4 and 19(2) of the Charter of Fundamental Rights of the European Union. Within that context, the Court concluded, *inter alia*, that, in light of the available information on the human rights, humanitarian and security situation in the applicant's region of origin and relevant recommendations of international organisations, return may imply a serious risk of torture, inhuman or degrading treatment or a threat to his life and physical integrity.

Given that the information available on the individual case did not allow for an assessment of such risks, TCA South determined that the administrative authority must complete the analysis of the case namely by obtaining all the relevant information on the applicant's profile and individual situation and on the current situation in Iraq.<sup>252</sup>

**Sweden:** In a case adjudicated in 2021, TCA South concluded that the information gathered did not reveal systemic flaws in the asylum system. It further noted that the applicant did not make statements that led to the conclusion that he/she would likely be deported to Afghanistan in case of return to Sweden. The Court emphasised that, in order to rule on a potential violation of the prohibition of refoulement in such circumstances, it has to be shown that the applicant is at a serious risk of deportation or that the deportation is very likely to occur. According to the Court's understanding, it is insufficient to merely refer to such a fear.<sup>253</sup>

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<sup>247</sup> TCA South, Decision 235/19.2BELSB, 26 September 2019, available in Portuguese at: <https://bit.ly/2QI4SdC>.

<sup>248</sup> TCA South, Decision 409/19.6BELSB, 7 November 2019, available in Portuguese at: <https://bit.ly/2tu6U8Y>.

<sup>249</sup> The applicant described having been accommodated in containers shared with other people (increasing the risk of coronavirus infection) and unable to find a job in Spain.

<sup>250</sup> The Court further noted that SEF is only exceptionally required to analyse the existence of systemic flaws per the jurisprudence of the STA regarding Italy (see *infra*). TCA South, Decision 938/20.9BELSB, 15 October 2020, available at: <https://bit.ly/3vUViYC>.

<sup>251</sup> TCA South, Decision 1383/19.4BELSB, 10 December 2019, available in Portuguese at: <https://bit.ly/36L06E>.

<sup>252</sup> TCA South, Decision 775/19.3BELSB, 10 September 2020, available at: <https://bit.ly/34FHMY0>. One of the three judges dissented on the grounds that a transfer to Denmark would not violate the principle of non-refoulement as the country is also bound to the relevant rules of EU and International Law and is therefore obliged to take them into account in any return procedure. The dissent also notes that the applicant may appeal of any such decision.

<sup>253</sup> TCA South, Decision 1323/19.0BELSB, 4 March 2021, available at: <https://bit.ly/3tP8y1G>.

**Italy:** Dublin transfers to Italy have been by far one of the most frequent asylum-related topics addressed by superior administrative courts in Portugal in recent years, allowing for conclusions not only regarding transfers to Italy themselves, but also regarding the applicant's burden of allegation and the Administration's duties of assessment within this context.

The 2019 jurisprudence revealed divergence as to the extent of the applicant's burden of allegation/substantiation of systemic flaws, and the extent of SEF's duty to assess the situation in the receiving Member State.

Two main trends were observed in the interpretation of TCA South:

- The determining authority must assess whether there are systemic flaws in the asylum procedure and reception conditions of the Member State deemed responsible before issuing a transfer decision. This duty is particularly relevant in situations where, such as in Italy, it is widely known that the asylum system faces disfunctions which may amount to systemic flaws. As such, SEF must include reliable and up to date information in the process in order to verify if the safeguard clause should be applied. According to this interpretation, the duty to investigate does not depend on the allegation by the applicant of the existence of systemic flaws/risk of inhuman or degrading treatment as the relevant facts are not necessarily personal issues and the determining authority must act in accordance with the inquisitorial principle.<sup>254</sup>
- The burden of allegation regarding the conditions in the responsible Member State lies with the applicant. As such, the determining authority only has to assess the existence of systemic flaws/risk of inhuman or degrading treatment when such question is raised by the asylum seeker in the procedure (namely in the personal interview). There are apparently different interpretations on the exact terms in which this burden of allegation must be discharged.<sup>255</sup>

In one case in 2019, TCA South upheld a judgement from TAF Sintra which annulled a transfer of an applicant with hepatitis B to **Italy** and determined that, in the absence of other legal obstacles, the national authorities must examine the application for international protection. The Court decided that, in light of available information on the situation in Italy and the applicant's health condition, the transfer would amount to a serious risk of inhuman or degrading treatment.<sup>256</sup>

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<sup>254</sup> Article 58 Administrative Procedure Code; TCA South, Decision 557/19.2BELSB, 26 September 2019, available in Portuguese at: <https://bit.ly/2ZMhIkM>; TCA South, Decision 751/19.6BELSB, 26 September 2019, available in Portuguese at: <https://bit.ly/2QI0GS8>; TCA South, Decision 1059/19.2BELSB, 21 November 2019, available in Portuguese at: <https://bit.ly/2MS8Z5z>; TCA South, Decision 1157/19.2BELSB, 21 November 2019, available in Portuguese at: <https://bit.ly/2sl56tc>.

<sup>255</sup> In one case, the Court decided that in the absence of any reference from the applicant to the treatment and conditions in Italy, SEF did not have to assess the risk of inhuman or degrading treatment despite recognising that the reception conditions in Italy were deficient and worsening (TCA South, Decision 559/19.9BELSB, 26 September 2019, available in Portuguese at: <https://bit.ly/35kGVOK>). Ruling that invoking a lack of security and a lack of care in the place of accommodation is sufficient to discharge the (mitigated) burden of allegation and proof, see: TCA South 2240/18.7BELSB, 6 June 2019, available in Portuguese at: <https://bit.ly/2Fhewyp>. Deciding that referring to a lack of living conditions is not enough to trigger SEF's duty to assess the existence of systemic flaws, see: TCA South 1013/19.4BELSB, 7 November 2019, available in Portuguese at: <https://bit.ly/2QhJfBI>. See also: TCA South, Decision 817/19.2BELSB, 26 September 2019, available in Portuguese at: <https://bit.ly/2QkAkEr>; TCA South, Decision 743/19.5BELSB, 26 September 2019, available in Portuguese at: <https://bit.ly/36nqna7>; TCA South, 1258/19.7BELSB, 21 November 2019, available in Portuguese at: <https://bit.ly/35kaccn>.

<sup>256</sup> The decisions also emphasised the duty of the authorities to duly consider information about the asylum procedure and reception conditions in the receiving Member State. Information revealing the existence of gaps in medical treatment provided to persons in similar situations was also taken into account. TAF Sintra, Decision 1982/18.1BELSB, 3 April 2019, unpublished; TCA South, Decision 1982/18.1BELSB, 22 August 2019, available in Portuguese at: <https://bit.ly/36vzJAV>.

In September 2019, STA decided that it would examine an appeal concerning the issue of systemic flaws in Italy and the duties of national authorities within this context.<sup>257</sup>

According to the judgment on the merits from January 2020, the Court considered that the statements provided by the applicant within the administrative procedure and the information collected by lower instance courts on the situation in Italy were not detailed/severe enough to create a duty on the requesting Member State to further investigate the situation in the requested Member State. The STA affirmed that the requesting Member State is only obliged to collect up-to-date information on the risk of inhuman or degrading treatment in the receiving Member State where there are valid reasons to consider that there are systemic flaws in the asylum procedure/reception conditions of such Member State and where such flaws amount to a risk of inhuman or degrading treatment. The Court further noted that the information collected/considered by lower instance courts regarding Italy revealed an anomalous situation but that such situation is one of an abnormal influx of “*illegal migration*”. According to the Court, such situation (that includes “potential refugees” but also other persons) does not create a risk of torture, inhuman or degrading treatment in Italy.<sup>258</sup>

The STA broadly reaffirmed this understanding in a number of judgements issued throughout 2020.<sup>259</sup> Overall, an analysis of the 2020 jurisprudence of STA in this regard, seems to indicate that the Court considers that:

- The determining authority is not bound to a general duty to inquire the situation in the responsible Member State. It remains unclear if there are situations where the Court would consider that such an obligation exists regardless of the applicant’s allegations (e.g., notorious deficiencies that cannot be ignored by the determining authority).
- The applicant bears a burden of allegation and demonstration of the risk in case of return (see *infra*).
- The flaws in the asylum system of the responsible Member State must be extremely severe. The situation in Italy does not amount to one of generalised risk of torture, inhuman or degrading treatment.<sup>260</sup>

With regard to the burden imposed on the applicant, in particular, the following main features can be inferred from the decisions of STA:<sup>261</sup>

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<sup>257</sup> Supreme Administrative Court, Decision 2240/18.7BELSB, 27 September 2019, available in Portuguese at: <https://bit.ly/2FfdSu>.

<sup>258</sup> Supreme Administrative Court, Decision 2240/18.7BELSB, 16 January 2020, available in Portuguese at: <https://bit.ly/3cq4BFd>.

<sup>259</sup> STA, Decision 01108/19.4BELSB, 11 May 2020, available at: <https://bit.ly/3IXMxZ9>; STA, Decision 01322/19.2BELSB, 4 June 2020, available at: <https://bit.ly/3feFnOY>; STA, Decision 01088/19.6BELSB, 2 July 2020, available at: <https://bit.ly/3riiCN1>; STA, Decision 01786/19.4BELSB, 2 July 2020, available at: <https://bit.ly/3rlpk4h>; STA, Decision 01419/19BELSB, 9 July 2020, available at: <https://bit.ly/3fdz51X>; STA, Decision 03421/19.1BEPRT, 10 September 2020, available at: <https://bit.ly/3d3nmjT>; STA, Decision 01705/19.8BELSB, 10 September 2020, available at: <https://bit.ly/39dVSXH>; STA, Decision 02364/18.0BELSB, 5 November 2020, available at: <https://bit.ly/3tUOI2i>; STA, Decision 01932/19.8BELSB, 5 November 2020, available at: <https://bit.ly/3w1B67x>; STA, Decision 01301/19.0BELSB, 19 November 2020, available at: <https://bit.ly/39fas0S>; STA, Decision 02212/19.4BELSB, 10 December 2020, available at: <https://bit.ly/3d5ncbB>.

<sup>260</sup> With regards to the situation in Italy in particular, in a number of cases adjudicated in 2021, TCA South valued the fact that a number of the restrictive measures implemented by Matteo Salvini as Ministry of Home Affairs has been reverted in the meantime. See TCA South, Decision 998/20.2BELSB, 18 February 2021, available at: <https://bit.ly/3Nywsqo>; TCA South, Decision 1113/20.8BELSB, 4 February 2021, available at: <https://bit.ly/3IT2nyf>; TCA South, Decision 88/21BELSB, 17 June 2021, available at: <https://bit.ly/36E5SLK>. Furthermore, it has also been considered that the “overall situation in the country” does not lead to the conclusion that all Dublin transfers to Italy would violate article 3 ECHR and article 4 CFREU. See: TCA South, Decision 998/20.2BELSB, 18 February 2021, available at: <https://bit.ly/3Nywsqo>; TCA South, Decision 88/21BELSB, 17 June 2021, available at: <https://bit.ly/36E5SLK>. In one case, TCA South used as an indicator of the absence of systemic flaws in the Italian reception system the fact that there are also foreigners sleeping on the streets and without food in Portugal. TCA South, Decision 1696/20.2BELSB, 18 February 2021, available at: <https://bit.ly/3K90lpL>.

<sup>261</sup> Unofficial translations.



- It is insufficient for the applicant to invoke “generic and abstract deficiencies”;<sup>262</sup>
- The allegation of systemic flaws by itself is not sufficient neither to invalidate a transfer decision, nor to require SEF to examine the conditions in Italy;<sup>263</sup>
- The applicant must invoke “concrete facts allowing to conclude that there is an effective risk that he/she could be subject to inhuman treatment in Italy”;<sup>264</sup>
- The applicant must invoke and demonstrate “exceptional personal circumstances and not only a common and generalised knowledge of the reception difficulties in Italy”;<sup>265</sup>
- The personal circumstances of the applicant must not be described “in an overly generic manner and with lack of detail”;<sup>266</sup>
- The absence of references in the applicant’s statements/allegations to prior inhuman or degrading treatment in Italy is detrimental to his/her claim (especially if he/she was present in the relevant Member State for a long period of time);<sup>267</sup>
- The applicant’s statements must allow the conclusion that “there is a concrete situation in which the applicant was affected in a manner beyond acceptable by the deficient reception conditions”;<sup>268</sup>
- Among the allegations deemed to be insufficient are claims regarding the excessive length of procedures, lack of access to employment, security concerns and challenges in accessing medical assistance.

These features seem to indicate that there is a significant focus on the applicant’s statements as well as in past treatment and events directly experienced in the responsible Member State.<sup>269</sup> Furthermore, apparently, the applicant is required to do so *proprio motu*, as the authorities are not specifically required to ask follow-up questions regarding potential risks in the responsible Member State.

While according to CPR’s analysis, some diverging decisions were identified (particularly in 2020)<sup>270</sup> the jurisprudence of TCA South has predominantly adopted similar positions since then.<sup>271</sup> This has also

<sup>262</sup> STA, Decision 01322/19.2BELSB, 4 June 2020, available at: <https://bit.ly/3feFnOY>.

<sup>263</sup> STA, Decision 01108/19.4BELSB, 11 May 2020, available at: <https://bit.ly/3IXMxZ9>.

<sup>264</sup> STA, Decision 01322/19.2BELSB, 4 June 2020, available at: <https://bit.ly/3feFnOY>.

<sup>265</sup> STA, Decision 01322/19.2BELSB, 4 June 2020, available at: <https://bit.ly/3feFnOY>; STA, Decision 01786/19.4BELSB, 2 July 2020, available at: <https://bit.ly/3rlpk4h>.

<sup>266</sup> Decision 01786/19.4BELSB, 2 July 2020, available at: <https://bit.ly/3rlpk4h>.

<sup>267</sup> STA, Decision 03421/19.1BEPRT, 10 September 2020, available at: <https://bit.ly/3d3nmjT>.

<sup>268</sup> STA, Decision 02364/18.0BELSB, 5 November 2020, available at: <https://bit.ly/3tUOI2i>.

<sup>269</sup> It is thus unclear how the assessment would be conducted in cases of take-charge procedure where the applicant was not physically present in the relevant Member State before but claims that there are systemic deficiencies or that he/she would be subject to a risk of torture, inhuman or degrading treatment in such Member State.

<sup>270</sup> In three cases, the TCA South considered, *inter alia*, that there were “clear, obvious and proven indications of the existence of systemic flaws” in the Italian system and that its malfunctioning was “endemic and deliberate” and reached the severity threshold required by the relevant European jurisprudence. Such conclusions were based on information from specialised NGOs and international organisations. The Court further considered that the applicant is not bound to a duty of allegation of systemic flaws. According to this understanding, the applicant is only required to provide information on his/her personal circumstances that can be relevant for the application of the safeguard clause. At least two of these judgements were later overturned by the STA. See: TCA South, Decision 2364/18.0BELSB, 14 May 2020, available at: <https://bit.ly/3d3LrqC> (an English EDAL case summary is available at <https://bit.ly/3t1EJZ5>). This decision was later reversed by the STA. TCA South, Decision 1301/19.0BELSB, 14 May 2020, available at: <https://bit.ly/3177qYm>). This decision was later reversed by the STA. TCA South, Decision 2317/19.1BELSB, 14 May 2020, available at: <https://bit.ly/3cdcctC>. In another case, the Court stated that Article 3(2) of the Dublin Regulation contains “a legal duty for the Member States to consider the possible existence of systemic flaws in the asylum procedure and reception conditions” (TCA South, Decision 2221/19.3BELSB, 18 June 2020, available at: <https://bit.ly/3fbGONR>). While the applicant was not vulnerable, the existence of such deficiencies has been reported and was raised by the applicant during the interview (the applicant stated that he lived on the street for nine months before coming to Portugal and that he would have to do so again in case of return). The Court concluded that SEF should have added reliable and up-to-date information on the situation in Italy to the process.

<sup>271</sup> E.g. TCA South, Decision 2329/19.5BELSB, 30 April 2020, available at: <https://bit.ly/3rfQ0TO> (referring to the relevance of mutual trust); TCA South, Decision 2323/19.6BELSB, 02 July 2020, available at:

been the case in 2021. Furthermore, the STA reiterated its position in all cases whose review by the Court was accepted.<sup>272</sup>

A more detailed analysis of related jurisprudence of the TCA South issued in 2021 shows that this understanding of the applicant's burden of allegation/substantiation has also been applied in cases concerning transfers to other Member States. According to the analysis conducted, the most relevant consequences seem to be:

- A significant focus on the need to describe concrete situations that have impacted the applicant directly;<sup>273</sup>
- The reference to the absence of individual vulnerabilities/risk factors as an element to determine the (in)existence of a duty on the authorities to inquire the situation in the relevant Member State.<sup>274</sup>

CPR is aware that, at least in some instances in 2020 and 2021, transfer decisions to Italy issued by SEF included information on the situation in the Member State, and references to relevant national jurisprudence (see [Suspension of Transfers](#)), concluding that there was no risk of "extreme material poverty" constituting a risk of inhuman or degrading treatment in the case of transfer.<sup>275</sup> In 2021, an annex with information regarding reception conditions in Italy was attached to some decisions. During the year, CPR has also observed that in some instances (e.g., when the applicant referred to health issues during the interview), the decisions contained a general analysis of the specific allegation.

In a more protective approach, the TCA South affirmed that national courts are obliged to conduct an exhaustive and *ex nunc* analysis of facts and points of law of the case which includes the risk of inhuman or degrading treatment of Dublin transfers. According to the Court in this decision, this comprises an analysis of all the information necessary, regardless of whether it is provided by the parties or gathered by the Court itself.<sup>276</sup>

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<https://bit.ly/3vQVo3m> (referring to the relevance of mutual trust and the need to prevent asylum shopping); TCA South, Decision 695/20.9BELSB, 24 September 2020, available at: <https://bit.ly/3vUzs7q> (highlighting the inexistence a general *ex officio* duty of analysis of the situation in the relevant Member State that the applicant's statements did not point towards the applicability of article 3(2) Dublin Regulation and the notorious facts do not require an *ex officio* evaluation); TCA South, Decision 1052/20.2BELSB, 15 October 2020, available at: <https://bit.ly/3sfK6Uc>; TCA South, Decision 357/20.7BELSB, 29 October 2020, available at: <https://bit.ly/3setb4t>; TCA South, Decision 1117/20.0BELSB, 12 November 2020, available at: <https://bit.ly/318BJxV>; TCA South, Decision 1122/20.7BELSB, 26 November 2020, available at: <https://bit.ly/3tMPXAO>.

<sup>272</sup> TCA South, Decision 936/20.2BELSB, 7 January 2021, available at: <https://bit.ly/3K8Zafr>; TCA South, Decision 1143/20.0BELSB, 7 January 2021, available at: <https://bit.ly/3JXQd8s>; TCA South, 1001/20.8BELSB, 4 February 2021, available at: <https://bit.ly/3ITOccu>; TCA South, Decision 1648/20.2BELSB, 21 January 2021, available at: <https://bit.ly/3xNhx62>; STA, Decision 02317/19.1BELSB, 14 January 2021, available at: <https://bit.ly/36CdTAW>; STA, Decision 0115/20.9BELSB, 4 February 2021, available at: <https://bit.ly/3xKkfJl>; STA, Decision 01542/19.0BELSB, 18 February 2021 (with a slightly different reasoning), available at: <https://bit.ly/3k0VbGc>; STA, Decision 093/20.4BELSB, 11 March 2021, available at: <https://bit.ly/3EzyZfG>; STA, Decision 01282/20.7BELSB, 11 March 2021, available at: <https://bit.ly/3v1USRC>; STA, Decision 02295/19.7BELSB, 11 March 2021, available at: <https://bit.ly/3xONPhf>; STA, Decision 01658/19.2BELSB, 11 March 2021, available at: <https://bit.ly/3K58JuR>; STA, Decision 02253/19.1BELSB, 8 April 2021, available at: <https://bit.ly/3Ow3qrF>; STA, Decision 01039/19.8BELSB, 22 April 2021, available at: <https://bit.ly/3rIBRSa>; STA, Decision 01357/19.5BELSB, 27 May 2021, available at: <https://bit.ly/3K4GZGP>. Appeals concerning decisions in line with STA's jurisprudence have not been accepted for review by the STA in a number of occasions (e.g. STA, Decision 02214/20.8BELSB, 23 September 2021, available at: <https://bit.ly/3Exml0V>; STA, Decision 0543/21.2BELSB, available at: <https://bit.ly/3vFYeZY>).

<sup>273</sup> TCA South, Decision 1112/20.8BELSB, 18 February 2021, available at: <https://bit.ly/3iMS3wT>; TCA South Decision 1908/20.2BELSB (Germany), 21 April 2021, available at: <https://bit.ly/3uyiVWQ>.

<sup>274</sup> TCA South, Decision 998/20.2BELSB, 18 February 2021, available at: <https://bit.ly/3Nywsqo>; TCA South, Decision 2300/20.4BELSB, 17 June 2021, available at: <https://bit.ly/3wPHGAW>; TCA South, Decision 88/21.0BELSB, 17 June 2021, available at: <https://bit.ly/36E5SLK>.

<sup>275</sup> CJEU, *Jawo*, Case C-163/17, 19 March 2019.

<sup>276</sup> The Court also refers to some of the requirements that the sources used should comply with. TCA South, Decision 1323/19.0BELSB (Sweden), 4 March 2021, available at: <https://bit.ly/3tP8y1G>.

In two cases adjudicated in 2021, the TCA South also concluded that the applicant's health condition is a vulnerability factor that may lead to the existence of special needs. According to these decisions, in such cases the lack of analysis of the reception conditions and its impact on the health of the applicant is a violation of the duties of the Administration.<sup>277</sup>

The 2019 report of the Ombudsperson noted that the institution received complaints due to the lack of examination of the existence of systemic flaws in the asylum procedure and reception conditions of another Member State. The follow-up to the case by the Ombudsperson involved contacts with a counterpart in the relevant Member State. The Portuguese Ombudsperson further requested the cooperation of the European Ombudsman for the European Commission to be heard regarding this matter.<sup>278</sup> According to the report covering 2020, in its reply, the European Commission reinforced the applicability of the principle of mutual trust, arguing that there is no duty to systematically review judicial decisions of other Member States. Nevertheless, the Commission also argued that, in line with the jurisprudence of the European Court of Justice, such a duty may apply when a risk of *refoulement* is argued by the applicant or when, due to the circumstances, the authorities are required to assess the risk *motu proprio*.<sup>279</sup>

There are also multiple judgements from TCA South determining that the safeguard clause of Article 3(2) of the Dublin Regulation is not applicable to take back procedures under Article 18(1)(d) of the Dublin Regulation. The Court considered that, in such cases, compliance with the principle of non-refoulement should be verified.<sup>280</sup> While this does not seem to be the predominant interpretation of the scope of application of Article 3(2) of the Dublin Regulation in national courts, it was adopted in at least one decision of the TCA South in 2021.<sup>281</sup>

## 2.7. The situation of Dublin returnees

The National Director of SEF is the competent authority to accept the responsibility of the Portuguese State for “assessing an application for international protection” presented in other Member States of the European Union.<sup>282</sup> In practice, asylum seekers do not face relevant or systematic obstacles in accessing the asylum procedure and reception conditions following a transfer to Portugal.

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

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<sup>277</sup> Concerning the transfer to France of an applicant with cardiac-related issues that had not yet been evaluated in Portugal - TCA South, Decision 1960/20.0BELSB, 24 August 2021, available at: <https://bit.ly/3uxtSrQ>. Concerning the transfer to Spain of an applicant with gastric complaints that had not yet been evaluated in Portugal - TCA South, Decision 1673/20.3BELSB, 24 August 2021, available at: <https://bit.ly/3Nuj1aS>. Nevertheless, in another case, the TCA South considered that an allegation of chest pain was not enough to require further inquiries or to preclude a transfer to France. TCA South, Decision 739/21.7BELSB, 15 September 2021, unpublished at the time of writing.

<sup>278</sup> Ombudsman, *Relatório à Assembleia da República 2019*, June 2020, available at: <https://bit.ly/3wxFrzn>.

<sup>279</sup> Ombudsman, *Relatório à Assembleia da República 2020*, June 2021, available at: <https://bit.ly/3tMTmmc>.

<sup>280</sup> TCA South, Decision 1889/19.5BELSB, 14 May 2020, available at: <https://bit.ly/3rfSscW>; (referring both to the risk of direct and indirect refoulement); TCA South, Decision 61/20.6BELSB, 2 July 2020, available at: <https://bit.ly/3f9Od0a> (referring only to the absence of risks in the relevant Member State, one of the judges dissented on the grounds that the transfer to Italy would amount to a violation of the principle of non-refoulement and that risk of refoulement in case of return to the country of origin should have also been assessed; an English EDAL case summary is available at <https://bit.ly/3cVM0E8>); TCA South, Decision 65/20.9BELSB, 24 September 2020, available at: <https://bit.ly/3cV2lIK> (referring only to the absence of risks in the relevant Member State); TCA South, Decision 988/20.5BELSB, 1 October 2020, available at: <https://bit.ly/3tMexSj>; TCA South, Decision 1050/20.6BELSB, 29 October 2020, available at: <https://bit.ly/3sb5dXE>.

<sup>281</sup> TCA South, Decision 1065/20.4BELSB, 21 January 2021, available at: <https://bit.ly/3DnVjIA>.

<sup>282</sup> Article 40(1) Asylum Act.

In accordance with the Asylum Act, where the asylum seeker withdraws his/her application implicitly by disappearing or absconding for at least 90 days without informing SEF, the file can be deemed closed by the National Director of SEF.<sup>283</sup> Notwithstanding, the applicant is entitled to reopen his/her asylum case by presenting him/herself to SEF at a later stage. In this case, the file is to be resumed at the exact stage where it was discontinued by the National Director of SEF.<sup>284</sup>

According to the information available to CPR, asylum seekers who had previously abandoned their application and left the country have not faced relevant or systematic problems in reopening their asylum cases and have not been treated as subsequent applicants following incoming transfers.

On 10 September 2018, Portugal and **Germany** signed an administrative arrangement pursuant to Article 36 of the Dublin Regulation. The agreement aims to facilitate returns by introducing non-binding shorter timeframes – one month instead of three months for a “take charge” request – and providing for group instead of individual transfers. The European Commission has notified the two countries that the arrangement is generally in line with the Dublin Regulation.<sup>285</sup>

According to the observation of CPR, applicants have been returned similarly to other Dublin cases. This arrangement facilitates the actual implementation of transfers at the most. It does not impact the treatment of Dublin returnees.

### 3. Admissibility procedure

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

The law provides for an admissibility procedure that is characterised by: (i) specific grounds for considering an asylum application inadmissible;<sup>286</sup> (ii) specific time limits for the first instance decision on admissibility;<sup>287</sup> (iii) legal implications in case the deciding authority does not comply with those time limits;<sup>288</sup> (iv) the right to an appeal against the inadmissibility decision;<sup>289</sup> and (v) specific rights attached to the admission to the procedure which represent a distinctive feature of the Portuguese asylum procedure.<sup>290</sup>

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

1. Falls under the Dublin procedure;<sup>291</sup>
2. Has been granted international protection in another EU Member State;<sup>292</sup>
3. Comes from a **First Country of Asylum**, i.e., has obtained refugee status or otherwise sufficient protection in a third country and will be readmitted to that country;<sup>293</sup>
4. Comes from a **Safe Third Country**, i.e., due to a sufficient connection to a third country, can reasonably be expected to seek protection in that third country, and there are grounds for considering that he or she will be admitted or readmitted to that country;<sup>294</sup>

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<sup>283</sup> Article 32(1)(c) and (2) Asylum Act.

<sup>284</sup> Article 32(3) of the Asylum Act.

<sup>285</sup> European Commission, Ares (2018) 4489201, 31 August 2018.

<sup>286</sup> Article 19-A Asylum Act.

<sup>287</sup> Articles 20(1),24(4), 33(4) and 33-A(5) Asylum Act.

<sup>288</sup> Articles 20(2) and 26(4) Asylum Act.

<sup>289</sup> Articles 22(1) and 25(1) Asylum Act.

<sup>290</sup> Article 27(1)-(3) Asylum Act pertaining to the issuance of a provisional residence permit and Article 54(1) pertaining to the right to access the labour market.

<sup>291</sup> Article 19-A(1)(a) Asylum Act.

<sup>292</sup> Article 19-A(1)(b) Asylum Act.

<sup>293</sup> Article 19-A(1)(c) and Article 2(1)(z) Asylum Act.

<sup>294</sup> Article 19-A(1)(d) and Article 2(1)(r) Asylum Act.

5. Has made a subsequent application without new elements or findings pertaining to the conditions for qualifying for international protection;<sup>295</sup> and
6. Is a dependant who had lodged an application after consenting to have his/her case be part of an application lodged on his/ her behalf, in the absence of valid grounds for presenting a separate application.<sup>296</sup>

The National Director of SEF has 30 days to take a decision on the admissibility of the application,<sup>297</sup> which is reduced to 10 days in the case of subsequent applications,<sup>298</sup> and applications following a removal decision,<sup>299</sup> and to 7 days in the case of the **Border Procedure**.<sup>300</sup> In case SEF does not comply with these time limits, the claim is automatically admitted to the procedure.<sup>301</sup>

According to a decision from TCA South, the suspension of the asylum procedure enacted by Order no. 3863-B/20 of 27 March 2020, did not suspend the deadline for automatic admission to the regular procedure in case a decision on admissibility/merits (accelerated procedures) is not issued within the corresponding 30 days deadline.<sup>302</sup>

In practice, all asylum applicants undergo an interview that assesses the above-mentioned inadmissibility clauses along with the merits of the application,<sup>303</sup> including those at the border.

According to the information available to CPR, except for Dublin-related decisions, the number of asylum applications deemed inadmissible in 2021 was very low. Statistics shared by SEF for 2021 indicate that among 240 inadmissibility decisions, there were only 6 non-Dublin inadmissibility decisions, either on the grounds of protection in another Member State,<sup>304</sup> or subsequent applications deemed not to have new elements.<sup>305</sup>

While SEF generally admits asylum seekers to the regular procedure in case of non-compliance with applicable time limits, the automatic admission and issuance of a provisional residence permit has at times required a proactive intervention of the asylum seeker or of his or her legal counsel.

## 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?
 

<b>Yes</b>	<b>No</b>
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  - ❖ If so, are questions limited to nationality, identity, travel route?
 

<b>Yes</b>	<b>No</b>
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  - ❖ If so, are interpreters available in practice, for interviews?
 

<b>Yes</b>	<b>No</b>
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2. Are interviews conducted through video conferencing? Frequently Rarely **Never**

<sup>295</sup> Article 19-A(1)(e) Asylum Act.

<sup>296</sup> Article 19-A(1)(f) Asylum Act.

<sup>297</sup> Article 20(1) Asylum Act.

<sup>298</sup> Article 33(4) Asylum Act.

<sup>299</sup> Article 33-A(5) Asylum Act.

<sup>300</sup> Article 24(4) Asylum Act.

<sup>301</sup> Articles 20(2) and 26(4) Asylum Act. However, according to information gathered by CPR in the course of 2021, SEF seems to consider that the deadline prescribed in article 33-A(5) Asylum Act is not mandatory and that elapsing of such a deadline without a decision being issued with regards to the admissibility/merits (accelerated procedure) does not entail admission to the regular procedure. Such an understanding seems to be at odds with an adequate interpretation of the provision and is not in line with the generalised practice in this regard.

<sup>302</sup> TCA South, Decision 1512/20.5BELB, 21 January 2021, available at: <https://bit.ly/3w9WNo5>.

<sup>303</sup> Article 16 Asylum Act.

<sup>304</sup> Article 19-A(1)(b) Asylum Act.

<sup>305</sup> Article 19-A(1)(4).

The Asylum Act provides for the systematic personal interview of all asylum seekers, including for assessing admissibility,<sup>306</sup> except for cases where: (i) the evidence already available allows for a positive decision; or (ii) the applicant lacks legal capacity due to long lasting reasons that are not under his or her control.<sup>307</sup>

As mentioned above, SEF confirmed that applicants are guaranteed the right to an interview before any decision regarding their application is adopted, emphasising that interviews can only be waived in the cases listed in the Asylum Act. SEF also noted that interviews are conducted in all types of procedure, including Dublin (see [Regular procedure: Personal interview](#) and [Dublin procedure: Personal interview](#)).

A decision from TCA South issued in 2021 considered that, despite the absence of an explicit reference in the relevant norm,<sup>308</sup> the authorities are duly bound to articles 16 and 17 of the Asylum Act (personal interview and report) within the examination of applications made following a removal order.<sup>309</sup>

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

CPR is not aware of the use of videoconferencing for interviews, even within the context of the coronavirus pandemic. This has been confirmed by SEF.

### 3. Appeal

**Indicators: Admissibility Procedure: Appeal**  
Same as regular procedure

1. Does the law provide for an appeal against an inadmissibility decision?	<b>Yes</b> <b>No</b>
❖ If yes, is it	<b>Judicial</b> Administrative
❖ If yes, is it automatically suspensive	<b>Yes</b> Some grounds <b>No</b>

The Asylum Act provides for an appeal against an inadmissibility decision consisting of a judicial review of relevant facts and points of law by the Administrative Court.<sup>310</sup> The time limit for lodging the appeal varies according to the inadmissibility ground and depending on whether border procedures apply.

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<sup>306</sup> Article 16(1)-(3) Asylum Act.  
<sup>307</sup> Article 16(5) Asylum Act.  
<sup>308</sup> Article 33-A Asylum Act.  
<sup>309</sup> TCA South, Decision 139/21.9 BELSB, 23 September 2021, available at: <https://bit.ly/3N7cHov>. Note that, while the decision systematically refers to subsequent applications, it is indeed analysing the rules applicable to asylum applications made following a removal order (article 33-A Asylum Act).  
<sup>310</sup> Articles 22(1), 25(1), 33(6) and 37(4) Asylum Act and Article 95(3) Administrative Court Procedure Code.

Time limits vary as follows:

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

As in the regular procedure, the first and onward appeals are automatically suspensive,<sup>311</sup> with the exception of onward appeals concerning inadmissible subsequent applications and applications following a removal order.<sup>312</sup>

The law provides for a simplified judicial process with reduced formalities and time limits with the objective of shortening the duration of the judicial review.<sup>313</sup>

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

It should be noted that, while CPR may be requested to intervene in the judicial procedure, namely by providing country of origin information or guidance on legal standards, it is not a party thereto and is therefore not systematically notified of judicial decisions by the courts.

The information provided by the CSTAF for 2021 regarding the number, nationalities of appellants, and average duration and results of judicial reviews of first instance decisions does not make a distinction between the type of asylum procedures (see [Statistics](#)).

<sup>311</sup> Articles 22(1), 25(3) and 37(6) Asylum Act.

<sup>312</sup> Articles 33(8) and 33-A(8) Asylum Act, respectively.

<sup>313</sup> Articles 22(2), 25(2), 33(7) and 37(5) Asylum Act.

## 4. Legal assistance

### Indicators: Admissibility Procedure: Legal Assistance Same as regular procedure

1. Do asylum seekers have access to free legal assistance during admissibility procedures in practice?  

<b>Yes</b>	With difficulty	No
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  - ❖ Does free legal assistance cover:  

Representation in interview
<b>Legal advice</b>
2. Do asylum seekers have access to free legal assistance on appeal against an inadmissibility decision in practice?  

<b>Yes</b>	With difficulty	No
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  - ❖ Does free legal assistance cover  

<b>Representation in courts</b>
<b>Legal advice</b>

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

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

### 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?  

<b>Yes</b>	No
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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?  

<b>Yes</b>	No
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4. Is there a maximum time limit for a first instance decision laid down in the law?  

<b>Yes</b>	No
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  - ❖ If yes, what is the maximum time limit?  
7 days
5. Is the asylum seeker considered to have entered the national territory during the border procedure?  

Yes	<b>No</b>
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While applications for international protection at the border have taken place in 2021, according to CPR's experience, and despite some unclear instances, such applicants have been granted entry into national territory, referred to the provision of reception conditions if needed, and their cases were not subject to the rules applicable to the border procedure. SEF affirmed that the border procedure has not been applied in 2021.

At the time of writing, it is not clear whether this is temporary or will become permanent practice and whether it will apply to all national border posts.

Nevertheless, the law continues to provide for a specific procedure regarding applications made at a national border.<sup>314</sup> A distinctive feature of the legal framework of border procedures consists in the provision for the detention of asylum seekers for the duration of the admissibility stage/accelerated procedure (see [Detention of Asylum Seekers](#)).<sup>315</sup> This subsection therefore describes the legal framework and refers to data up until 2020.

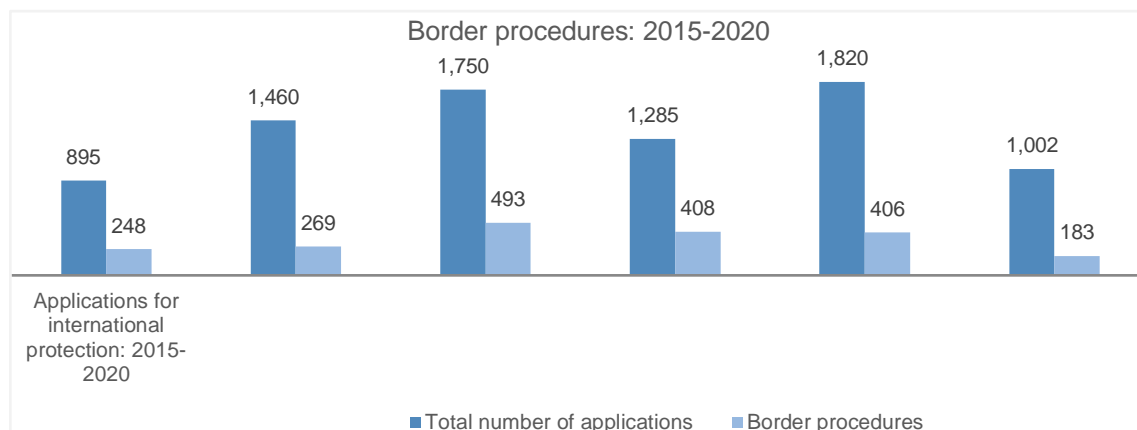
<sup>314</sup> Article 23(1) Asylum Act.

<sup>315</sup> Articles 26(1) and 35-A(3)(a) Asylum Act.



## Location and number of border procedures

Portugal has 36 external border posts, of which 8 are air border posts and 28 are maritime border posts.<sup>316</sup> SEF is responsible for border controls, including for refusing entry and exit from the territory.<sup>317</sup> The overwhelming majority of border procedures used to be conducted at **Lisbon Airport**.



Source: SEF

In Portugal, the number of applications for international protection has varied year by year, while the number of border procedures has remained relatively stable at around 400-500 cases per year. In 2020, a sharp decrease was observed, likely related to the restrictions to air traffic related to the coronavirus pandemic and with the above-mentioned change in practice that led to the non-application of the border procedure since March 2020.

While according to the information provided by SEF a total of 331 applications for international protection were made at the border in 2021, they were not subject to the border procedure.

Figures on the number of persons in need of special procedural guarantees that were subject to border procedures have not been available in the past, except for unaccompanied children (see also [Detention of Vulnerable Applicants](#)).

## Grounds for activating the border procedure and main characteristics

In practice, a person who: (i) does not meet the entry requirements set in the law; (ii) is subject to a national or an EU entry ban; or (iii) represents a risk or a serious threat to public order, national security or public health is refused entry in national territory<sup>318</sup> and is notified in writing by SEF of the corresponding decision.<sup>319</sup> The notification bears a reference to the right of individuals refused entry at the border to seek asylum as enshrined in the law.<sup>320</sup>

SEF informs the carrier company (i.e., the air company in most cases) for the purposes of return of the individual in the shortest possible time either to: the point where the individual initiated travel with the company; the country that issued the travel document; or any country where entrance is guaranteed.<sup>321</sup> This is done in accordance to the Convention on International Civil Aviation,<sup>322</sup> as, according to SEF,

<sup>316</sup> Annex II Decree-Law 252/2000.

<sup>317</sup> Article 2 Decree-Law 252/2000.

<sup>318</sup> Article 32 Immigration Act.

<sup>319</sup> Article 38(2) Immigration Act.

<sup>320</sup> Article 40(4) Immigration Act.

<sup>321</sup> Articles 38(3) and 41(1) Immigration Act.

<sup>322</sup> Chicago Convention on International Civil Aviation, 7 December 1944, Annex IX, Chapter V, points 5.9 - 5.11.1.

the individual remains in the international area of the airport and is therefore not subject to the rules applicable to removal procedures from national territory.<sup>323</sup> When the individual refused entry into national territory applies for asylum, the air company is immediately informed by SEF of the suspension of return.

While the border procedure provides for the basic principles and guarantees of the regular procedure,<sup>324</sup> it lays down time limits for a decision on admissibility or for accelerated procedures regarding applications deemed unfounded on certain grounds (see [Accelerated Procedure](#) grounds) that are significantly shorter than those in national territory. Additionally, border procedures are characterised by shorter appeal deadlines, as well as reduced procedural guarantees such as the exclusion from the right of the applicant to seek revision of the narrative of his/her personal interview,<sup>325</sup> or the possibility to consult with CPR prior to the individual interview conducted by SEF. This is in addition to the provision for the detention of asylum seekers for the duration of the admissibility stage/accelerated procedure (see [Detention of Asylum Seekers](#)).<sup>326</sup>

The National Director of SEF has 7 days to issue a decision either on admissibility or on the merits of the application in an accelerated procedure.<sup>327</sup> In the absence of inadmissibility grounds or grounds for deeming the application unfounded in an accelerated procedure, SEF must admit the application to the regular procedure and authorise entry of the asylum seeker into national territory/release from border detention.<sup>328</sup> Non-compliance with the time limit results in the automatic admission of the applicant to the regular procedure and release from the border.<sup>329</sup>

The asylum seeker remains in detention in the international area of the airport or port until the National Director of SEF issues a decision on the admissibility/merits of the claim,<sup>330</sup> or for up to 60 days in the case of appeal (see [Duration of Detention](#)).<sup>331</sup>

### Exempted categories

The law identifies a sub-category of individuals whose special procedural needs result from torture, rape or other serious forms of psychological, physical or sexual violence who may be exempted from the border procedure under certain conditions (see [Special Procedural Guarantees](#)).<sup>332</sup> Furthermore, the "temporary installation" of unaccompanied and separated children in temporary installations at the border (detention) – and hence application of border procedures – must comply with applicable international standards such as those recommended by UNHCR, UNICEF, and ICRC.<sup>333</sup>

Since 2016, a significant percentage of vulnerable applicants – including unaccompanied children, families with children and pregnant women – have been detained and subject to the border procedure (see [Detention of Vulnerable Applicants](#)). Following media coverage and stark criticism by the Ombudsman and NGOs, the Ministry of Home Affairs issued an instruction in July 2018 focusing *inter alia* on the detention of children at the border (see [Detention of vulnerable applicants](#)). CPR subsequently noted shorter detention periods of families with children and of unaccompanied children.

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<sup>323</sup> CPR, 'Access to Protection: A Human Right, country report, Portugal', 2014, para 2.1, available in Portuguese at: <https://bit.ly/3sWjYNx>.

<sup>324</sup> This includes access to the procedure, the right to remain in national territory pending examination, the right to information, to a personal interview, the right to legal information and assistance throughout the procedure, the right to free legal aid, special procedural guarantees, among others.

<sup>325</sup> Article 25 Asylum Act.

<sup>326</sup> Articles 26(1) and 35-A(3)(a) Asylum Act.

<sup>327</sup> Article 24(4) Asylum Act. On the territory, decisions on admissibility must be taken within 30 days and decisions in the accelerated procedure within 10 to 30 days.

<sup>328</sup> Article 26(4) Asylum Act.

<sup>329</sup> Ibid.

<sup>330</sup> Article 26(1) Asylum Act.

<sup>331</sup> Article 35-B(1) Asylum Act.

<sup>332</sup> Article 17-A(4) Asylum Act. Exemption from border procedures is dependent on the impossibility to offer "support and conditions to asylum seekers identified as being in need of special procedural guarantees."

<sup>333</sup> Article 26(2) Asylum Act.

However, with the exception of unaccompanied children, this had not resulted in significant changes with regard to the exemption from border procedures as these continued to be routinely applied to vulnerable applicants.

According to the available information, no standard operational procedures and tools allowing for the early and effective identification of survivors of torture and/or serious violence and their special procedural needs are in place. As such, asylum seekers who claim to be survivors of torture, rape, or other serious forms of psychological, physical, or sexual violence were not exempt from border procedures in practice on such grounds, despite the lack of provision of special procedural guarantees at the border.<sup>334</sup>

The identification of survivors of torture was addressed by the UN Committee Against Torture in its Concluding Observations on the seventh periodic report of Portugal. The Committee observed that “[...] the State party has not provided complete information on the procedures in place for the timely identification of victims of torture among asylum seekers [...]”,<sup>335</sup> and recommended “[...] the establishment of effective mechanisms to promptly identify victims of torture among asylum seekers”.<sup>336</sup>

The UN Human Rights Committee expressed a similar concern in 2020 and recommended the establishment of “an effective mechanism for the identification of vulnerable applicants, in particular stateless persons”.<sup>337</sup>

Until March 2020, the border procedure continued to be applied systematically in practice. Since then, the border procedure has not been applied. It is not clear whether this is a permanent or a temporary change due to the coronavirus pandemic, and to the revised rules governing the functioning of the detention facility at **Lisbon airport**. It is also unclear whether this change in practice applies to all border posts.

**Decisions on applications in the border procedure**

Past practice indicates that only a minority of applicants subject to the border procedure in recent years were usually admitted to the regular procedure.<sup>338</sup> Nevertheless, according to the data provided by SEF, out of the 183 applications subject to the border procedure in 2020, 76 were rejected on the merits (accelerated procedure) and 107 were admitted to the regular procedure.

**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?	<b>Yes</b> <b>No</b>
❖ If so, are questions limited to nationality, identity, travel route?	Yes <b>No</b>
❖ If so, are interpreters available in practice, for interviews?	Yes <b>No</b>
2. Are interviews conducted through video conferencing? Frequently Rarely <b>Never</b>	

<sup>334</sup> Italian Council for Refugees *et al.*, ‘Time for Needs: Listening, Healing, Protecting’, October 2017, available at: <https://bit.ly/3gEoe1T>.  
<sup>335</sup> Committee Against Torture, *Concluding Observations on the seventh periodic report of Portugal*, CAR/C/PRT/CO/7, 18 December 2019, available at <https://bit.ly/2G1F07z>, para 37.  
<sup>336</sup> *Ibid.* para 38(d).  
<sup>337</sup> Human Rights Committee, *Concluding Observations on the fifth periodic report of Portugal*, CCPR/C/PRT/CO/5. 28 April 2020, para 34(c) and 35(c), available at: <https://bit.ly/2Q1ftn8>.  
<sup>338</sup> According to the data provided by SEF to AIDA regarding 2019, for instance, out of 406 applicants subjected to the border procedure, only 45 were admitted to the regular procedure.

The rules and modalities of the interview applicable to the border procedure are the same as those of the regular procedure and interviews were generally conducted by SEF-GAR. However, given the short time limits applicable to the border procedure, the interview was conducted a few days after arrival, while the applicant was detained. This meant that there was little time to prepare and substantiate the asylum application, and a reduction in guarantees such as the exclusion from the right of the applicant to seek revision of the narrative of the interview applied.<sup>339</sup> An additional concern regarding interviews conducted at the **Lisbon Airport** were the space and privacy constraints of the interview offices, notably due to inadequate sound isolation (see [Conditions in Detention Facilities](#)). While the facility has been subject to extensive renovation work in 2020, CPR confirmed that the problems of the offices persisted during visits in early 2022.

Many asylum seekers arrive at the border without valid identification documents or supporting evidence to substantiate their asylum application and contacts with the outside from within the EECIT are limited and rarely effective for the purposes of securing supporting evidence, given the short period of time between the arrival, the personal interview and the first instance decision.

Regarding certain categories of vulnerable asylum seekers such as survivors of torture, rape or other serious forms of psychological, physical or sexual violence, the absence of identification and vulnerability assessments means that potential special needs may not be known to the asylum authorities and may not have been taken into account at the time of interview. CPR is unaware of the implementation of special procedural guarantees at the border, such as the postponement of the interview, additional time for submitting supporting evidence, or the presence of supporting personnel in the interview while the border procedure was applied in 2020.<sup>340</sup>

### 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?

	<b>Yes</b>	<b>No</b>
❖ If yes, is it	<b>Judicial</b>	<b>Administrative</b>
❖ If yes, is it automatically suspensive	<b>Yes</b>	Some grounds <b>No</b>

The Asylum Act provides for an appeal against a rejection decision at the border, either on admissibility grounds or on the merits in an accelerated procedure. The appeal consists of a judicial review of relevant facts and points of law by the Administrative Court.<sup>341</sup> The time limit for lodging the appeal is of 4 days for all grounds.<sup>342</sup>

Similarly to the regular procedure, the first and onward appeals have an automatic suspensive effect.<sup>343</sup> The law provides for a simplified judicial process with reduced formalities and time limits with the objective of shortening the duration of the judicial review.<sup>344</sup> However, the Administrative Courts rarely reach a decision on the appeal within the maximum detention time limit of 60 days, meaning that asylum applicants subjected to the border procedure were granted access to the territory, albeit liable to a removal procedure in case his or her application is rejected by final decision.<sup>345</sup>

<sup>339</sup> Article 25 Asylum Act. TCA South, Decision 1539/19.0BELSB, 11 September 2020, available at: <https://bit.ly/31gElnN>.

<sup>340</sup> Article 17-A(3) Asylum Act. See also Italian Council for Refugees *et al.*, 'Time for Needs: Listening, Healing, Protecting', October 2017, available at: <https://bit.ly/3gEoe1T>.

<sup>341</sup> Article 25(1) Asylum Act; Article 95(3) Administrative Court Procedure Code.

<sup>342</sup> Article 25(1) Asylum Act.

<sup>343</sup> Article 25 Asylum Act.

<sup>344</sup> Article 25(2) Asylum Act.

<sup>345</sup> Article 21(2) and (3) Immigration Act.

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

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

**4. Legal assistance**

**Indicators: Border Procedure: Legal Assistance**  
Same as regular procedure

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

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

As regards free legal assistance at first instance, the law expressly provides the possibility for UNHCR and CPR to interview the asylum seeker at the border<sup>346</sup> and to provide assistance.<sup>347</sup> However, in practice, following the registration of the asylum claim, CPR only had access to applicants once SEF has conducted its individual interview covering admissibility and eligibility.

The Asylum Act also provides for an accelerated free legal aid procedure at the border for the purposes of appeal on the basis of a MoU between the Ministry of Interior and the Portuguese Bar Association.<sup>348</sup> However, such a procedure has not been implemented, meaning that securing access to free legal aid at appeal stage remained an integral part of the legal assistance provided by CPR at the border. To that end, CPR resorted to the same (bureaucratic and lengthy) procedure used in the territory albeit faced with specific constraints (e.g., shorter deadlines for application, communication problems, timely access to interpreters, etc.).

In November 2020, the Ministry of Home Affairs, the Ministry of Justice and the Bar Association signed a protocol to ensure the provision of legal counselling and assistance to foreigners to whom entry into national territory was refused (Lisbon, Porto, Faro, Funchal and Ponta Delgada airports. This protocol was made within the framework of Article 40(2) of the Immigration Act and is not intended to cover asylum procedures.

The provision of information and assistance to asylum seekers placed in detention at the border by CPR was traditionally challenging and aggravated by the shorter deadlines, communication challenges, bureaucratic clearance procedures for accessing the restricted area of the airport where the EECIT is located (in particular regarding interpreters), and the lack of timely provision of information by SEF on the dates of interviews and language skills of the asylum seekers.

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<sup>346</sup> Article 24(1) Asylum Act.  
<sup>347</sup> Article 49(6) Asylum Act.  
<sup>348</sup> Article 25(4) Asylum Act.

In practice, free legal assistance provided by CPR in first instance procedures at the border included: (a) providing legal information on the asylum procedure and the legal aid system; (b) enabling access to free legal aid for the purpose of appeals; (c) assisting lawyers appointed under the free legal aid system in preparing appeals with relevant legal standards and COI; and (d) advocating with SEF for the release of particularly vulnerable asylum seekers such as unaccompanied children, families with children, pregnant women and the severely ill.

Similarly, to the regular procedure, the overall quality of free legal aid at appeal stage was a relevant concern.

The unscrupulous activity of a limited number of private lawyers at the **Lisbon Airport's** EECIT, providing poor quality services in exchange for excessively high fees was an issue systematically flagged. This concern had been raised by CPR with SEF and the Portuguese Bar Association but persisted through the years despite past criminal investigations conducted by SEF that have resulted in criminal charges related to smuggling and trafficking in human beings. In September 2018, SEF reported that an investigation involving a lawyer in the Lisbon area was ongoing. According to the press note,<sup>349</sup> the authorities conducted house and office searches and the lawyer was formally put under investigation ("*constituída arguida*"). The topic was covered by multiple media outlets that emphasised that the lawyer incited "abusive asylum applications".<sup>350</sup> According to publicly available information, the lawyer was convicted to a 5-year prison sentence for 50 crimes of aiding illegal migration in December 2021.<sup>351</sup>

## 5. Accelerated procedure

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

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

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

- a. Misleading the authorities by presenting false information or documents or by withholding relevant information or documents with respect to identity and/or nationality that could have had a negative impact on the decision;<sup>352</sup>
- b. In bad faith, destroying or disposing of an identity or travel document that would have helped establish identity or nationality;<sup>353</sup>
- c. Making clearly inconsistent and contradictory, clearly false or obviously improbable statements which contradict sufficiently verified COI, thus making the claim clearly unconvincing in relation to qualification for international protection;<sup>354</sup>
- d. Entering the territory of the country unlawfully or prolonging the stay unlawfully and, without good reason, failing to make an application for international protection as soon as possible;<sup>355</sup>

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<sup>349</sup> SEF, 'SEF faz buscas em casa de advogada suspeita de envolvimento numa célula em Dakar', 28 September 2018, available in Portuguese at: <https://bit.ly/2uQ4D5L>.

<sup>350</sup> See e.g. Sic Noticias, 'SEF constitui arguida advogada suspeita de pedidos de asilo abusivos', 28 September 2018, available in Portuguese at: <https://bit.ly/2llvyOv>; Expresso, 'SEF. Advogada suspeita de se dedicar à apresentação abusiva de pedidos de asilo', 28 September 2018, available in Portuguese at: <https://bit.ly/2Kl8LVQ>.

<sup>351</sup> See, for instance, TSF/Lusa, *Advogada condenada a cinco anos de prisão por auxílio à imigração ilegal*, 29 December 2021, available at: <https://bit.ly/3vy1BBW>.

<sup>352</sup> Article 19(1)(a) Asylum Act.

<sup>353</sup> Article 19(1)(b) Asylum Act.

<sup>354</sup> Article 19(1)(c) Asylum Act.

<sup>355</sup> Article 19(1)(d) Asylum Act.

- e. In submitting the application and presenting the facts, only raising issues that are either not relevant or of minimal relevance to the examination of whether the applicant qualifies for international protection;<sup>356</sup>
- f. Coming from a **Safe Country of Origin**;<sup>357</sup>
- g. Introducing an admissible subsequent application;<sup>358</sup>
- h. Making an application merely to delay or frustrate the enforcement of an earlier or imminent decision which would result in removal;<sup>359</sup>
- i. Representing a danger to the national security or public order;<sup>360</sup> and
- j. Refusing to comply with an obligation to have fingerprints taken.<sup>361</sup>

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

A first instance decision on the territory must be taken within 30 days for all grounds, except for cases concerning an application following a removal order which must be decided within 10 days.<sup>362</sup> In contrast to the regular procedure,<sup>363</sup> the National Director of SEF is the responsible authority for issuing a first instance decision on the merits of the application in the accelerated procedure,<sup>364</sup> while non-compliance with the applicable time limits grants automatic access to the regular procedure.<sup>365</sup>

SEF generally admits asylum seekers to the regular procedure in case of non-compliance with applicable time limits. Nevertheless, issuance of the corresponding provisional residence permit has at times required a proactive intervention of the asylum seeker or of his or her legal counsel.

According to a decision from TCA South, the suspension of the asylum procedure enacted by Order no. 3863-B/20 of 27 March 2020, did not suspend the deadline for automatic admission to the regular procedure if a decision on admissibility/merits (accelerated procedures) is not issued within the corresponding 30 days deadline.<sup>366</sup>

In the context of the provision of legal assistance to asylum seekers, CPR has also at times observed significant delays in the execution of judicial decisions by SEF (up to one year or more in some cases). According to CPR's observations, this mostly concerned the execution of judicial decisions that annulled first instance decisions rejecting applications in accelerated procedures and consequently directed the Administration to channel them into the regular procedure, or to reprocess Dublin. CPR also observed that, apparently, the authorities do not consider that the 30 days' mandatory deadline for decisions regarding the inadmissibility/accelerated analysis of applications applies in these circumstances, and,

<sup>356</sup> Article 19(1)(e) Asylum Act.

<sup>357</sup> Article 19(1)(f) Asylum Act.

<sup>358</sup> Article 19(1)(g) Asylum Act. In the case of subsequent applications admitted to the procedure under Article 19(1)(g) Asylum Act, there seems to be incoherence in the law as Article 33(5) provides for the application of the regular procedure where, following a preliminary assessment within 10 days, the application is deemed admissible because it includes new elements or findings pertaining to the conditions for qualifying as a beneficiary of international protection.

<sup>359</sup> Article 19(1)(h) Asylum Act.

<sup>360</sup> Article 19(1)(i) Asylum Act.

<sup>361</sup> Article 19(1)(j) Asylum Act.

<sup>362</sup> Articles 20(1) and 33-A(5) Asylum Act.

<sup>363</sup> Article 29(5) Asylum Act.

<sup>364</sup> Articles 20(1) and 24(4) Asylum Act.

<sup>365</sup> Articles 20(2) and 26(4) Asylum Act. However, according to information gathered by CPR in the course of 2021, SEF seems to consider that the deadline prescribed in article 33-A(5) Asylum Act is not mandatory and that elapsing of such a deadline without a decision being issued with regards to the admissibility/merits (accelerated procedure) does not entail admission to the regular procedure. Such an understanding seems to be at odds with an adequate interpretation of the provision and is not in line with the generalised practice in this regard.

<sup>366</sup> TCA South, Decision 1512/20.5BELB, 21 January 2021, available at: <https://bit.ly/3w9WNo5>.

as such, do not deem the applications admitted to the regular procedure when the deadline is elapsed without a decision being issued.

In practice all applications are channelled through the accelerated procedure where the specific grounds provided in the law apply.<sup>367</sup> Data shared by SEF regarding 2021 indicates that 209 asylum applications were processed under an accelerated procedure. A breakdown by grounds applied was not available.

Nevertheless, according to the experience of CPR, most of rejections in accelerated procedures continued to be based on inconsistency and/or irrelevance.

While judicial decisions focusing on the interpretation of the grounds for the application of the accelerated procedure tends to be limited, two particular decisions from the TCA South issued in 2021 focused on the threshold that should be used to ascertain whether a case should be rejected in such procedures.

According to the Court, the application should not be rejected at this stage if the applicant's statements are not contradictory and unlikely in light of the country of origin information and an objective evaluation of the situation.<sup>368</sup>

In a different case, the Court noted that the interpretation of concept of "unfounded application" referred to in article 19 of the Asylum Act must be guided by "criteria of obviousness", and that only applications that clearly do not fulfil the minimum requisites should be rejected under an accelerated procedure.<sup>369</sup>

A concerning practice observed in 2019 relates to the adoption of some decisions excluding an applicant from international protection within accelerated procedures, including at the border.<sup>370</sup> The short time limits for analysis and reduced procedural guarantees applicable in accelerated procedures are likely to exacerbate the risks inherent to the application of exclusion clauses. CPR is not aware of similar decisions in 2020 and 2021.

In its recent Concluding Observations on Portugal, the UN Human Rights Committee expressed concern with the "[e]xcessive use of accelerated procedures, which might compromise the quality of the assessment of applications and increase the risk of refoulement." Notably, the Committee recommended Portugal to "[c]ontinue its efforts to maintain and strengthen the quality of its refugee status determination procedures, in order to fairly and efficiently identify and recognize those in need of international protection and to afford sufficient guarantees of respect for the principle of non-refoulement under the Covenant".<sup>371</sup>

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<sup>367</sup> There is a distinction to be made between border procedures from which certain categories of vulnerable asylum seekers may be exempted and accelerated procedures. While the vulnerable asylum seeker may be exempted from the border procedure and be released from detention, he or she will remain liable to an accelerated procedure in national territory.

<sup>368</sup> TCA South, Decision 1645/20.8BELSB, 4 March 2021, available at: <https://bit.ly/3qDacBN>. The decision reiterates prior jurisprudence by the Court determining that an application should only be rejected in an accelerated procedure where there is not "some support and plausibility" in the applicant's statements in light of the country of origin information and an objective assessment of the fear of persecution.

<sup>369</sup> TCA South, Decision 1001/21.0BELSB, 7 October 2021, available at: <https://bit.ly/3NADUkw>.

<sup>370</sup> Exclusion from international protection is regulated in article 9 of the Asylum Act.

<sup>371</sup> Human Rights Committee, *Concluding Observations on the fifth periodic report of Portugal*, CCPR/C/PRT/CO/5. 28 April 2020, par 34(b) and 35(b), available at: <https://bit.ly/2Q1ftn8>.



## 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**

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

However, the law foresees reduced guarantees in the accelerated procedure, namely by excluding asylum seekers' right to seek revision of the statements made during the personal interview in cases concerning applications following a removal decision,<sup>372</sup> or the right to be notified of and to respond to SEF's reasoning of the proposal for a final decision.<sup>373</sup> Nevertheless, the right of the applicant to submit comments to the written report the interview within 5 days is fully applicable in accelerated procedures.<sup>374</sup>

SEF produces a written report summarising the most important elements raised during the interview. Until 2020, the interview report was immediately provided to the applicant who had 5 days to submit comments.<sup>375</sup> Since the second half of 2020, CPR observed a shift in the practice of SEF in this regard with particular impact in accelerated procedures.

Currently, while the interview report is provided to the applicant upon completion of the personal interview, he/she is not given the 5-day deadline to comment/correct/add information to the document. Instead, SEF notifies the asylum seeker of another document that summarises the information that will underlie the decision to deem the application admissible/not unfounded and, as such submit it to the regular procedure, or to reject it as inadmissible/unfounded (accelerated procedure). The applicant then has 5 days to submit comments to the summary report.

The summary report broadly contains information on: (i) identification of the applicant; (ii) family members; (iii) time and place of the application for international protection; (iv) prior information; (v) itinerary; (vi) summary of the facts that will underlie the decision;<sup>376</sup> (vii) prospective decision to be taken (reference to the relevant legal basis). According to CPR's observation, in some instances, the summary report has been notified to the applicant right after the personal interview, raising concerns about the proper consideration of the relevant facts adduced during the interview as well as other relevant available information and elements.

This change in practice was likely due to the jurisprudential understanding that applicants have a right to be heard about the prospective decision to be taken on their files in any decision within the procedure.<sup>377</sup>

<sup>372</sup> Article 33-A(4) and (5) Asylum Act.

<sup>373</sup> Article 29(2) Asylum Act. See *infra* the current practice in this regard as well as its link to the national jurisprudence.

<sup>374</sup> Article 17(1) and (2) Asylum Act.

<sup>375</sup> Article 17 (1) and (2) Asylum Act.

<sup>376</sup> Presentation of the application, motives, relevant elements.

<sup>377</sup> E.g., TCA South, Decision 1560/19.8BELSB, 16 January 2020, available at <https://bit.ly/39i4xZ>. See also the jurisprudence on the right to be heard described *infra* in the Dublin section.

According to the law, upon consent of the applicant, the report must also be communicated to UNHCR and to CPR, and the organisations may submit observations within the same deadline.<sup>378</sup> Interview reports were usually communicated to CPR accordingly. Within the context of the above-mentioned shift in practice, SEF-GAR ceased the systematic communication of interview reports and currently communicates the summary reports (although it does not communicate reports for Dublin). As such, access to interview transcripts by CPR depends on the applicants. The systematic non-communication of interview transcripts is an obstacle to the full monitoring of the national asylum procedure.

CPR provides systematic legal assistance to asylum seekers at this stage, with the assistance of interpreters, for the purpose of reviewing and submitting comments/corrections to the summary report and to the interview transcript. According to CPR's observation, the summary reports sometimes oversimplify the statements provided by the applicant to the authorities and the merits analysis conducted tends to be simplistic. Furthermore, applicants usually find it difficult to understand the meaning of the document and to comment meaningfully on its content. Given its content and context, this new practice did not seem to improve the quality of the asylum procedure.

CPR has observed inconsistent practices with regard to cases that are to be admitted to the regular procedure. Depending on the assigned caseworker, the applicant may be notified of a report and given the corresponding deadline to provide written comments, or may be only notified of a decision deeming the application admissible. The latter may prove problematic given that, usually, no further interviews are conducted during the procedure. Consequently, in practice, such applicants are not given the chance to offer comments on the facts adduced during the interview before being notified of a decision proposal at the final stage of the procedure in practice. CPR has made efforts to mitigate the negative impact of this practice by adding the applicant's comments to the file in accordance to article 28(5) of the Asylum Act that allows the organisation to add observations on individual cases at any stage of the procedure.

A decision from TCA South issued in 2021 considered that, despite the absence of an explicit reference in the relevant norm,<sup>379</sup> the authorities are duly bound to articles 16 and 17 of the Asylum Act (personal interview and report) within the examination of applications made following a removal order.<sup>380</sup>

### 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?	<b>Yes</b>	No
❖ If yes, is it	<b>Judicial</b>	Administrative
❖ If yes, is it suspensive	<b>Yes</b>	Some grounds No

The Asylum Act provides for judicial review of facts and points of law by the Administrative Court against a rejection decision in an accelerated procedure.<sup>381</sup>

The time limit for lodging the appeal on the territory varies according to the specific ground of the accelerated procedure: it ranges from 4 days for applications following a removal decision,<sup>382</sup> to 8 days for the remaining grounds.<sup>383</sup> Similarly to the regular procedure, the appeal has an automatic suspensive

<sup>378</sup> Article 17(3) Asylum Act.  
<sup>379</sup> Article 33-A Asylum Act.  
<sup>380</sup> TCA South, Decision 139/21.9 BELSB, 23 September 2021, available at: <https://bit.ly/3N7cHov>. Note that, while the decision systematically refers to subsequent applications, it is indeed analysing the rules applicable to asylum applications made following a removal order (article 33-A Asylum Act).  
<sup>381</sup> Articles 22(1), 33-A(6) and 25(1) Asylum Act and Article 95(3) Administrative Court Procedure Code.  
<sup>382</sup> Article 33-A(6) Asylum Act.  
<sup>383</sup> Articles 22(1) Asylum Act.

effect.<sup>384</sup> However, the onward appeal in the case of an application following a removal decision does not.<sup>385</sup> The law also provides for a simplified judicial process with reduced formalities and time limits with the objective of shortening the duration of the judicial review.<sup>386</sup>

It should be noted that, while CPR may be requested to intervene in the judicial procedure, namely by providing country of origin information or guidance on legal standards, it is not a party thereto and is therefore not systematically notified of judicial decisions by the courts.

The information provided by CSTAF in 2021 regarding the number and nationalities of appellants, as well as the average duration and results of judicial reviews does not make a distinction between the type of asylum procedures (see [Statistics](#)). However, according to the information available to CPR the main type of asylum procedures used in 2021 to reject asylum applications consisted of accelerated procedures in the case of Angola and Guinea-Bissau, two of the five most representative nationalities at appeal stage.

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

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

**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?	<b>Yes</b>	With difficulty	No
❖	Does free legal assistance cover:	Representation in interview <b>Legal advice</b>		
2.	Do asylum seekers have access to free legal assistance on appeal against a decision in practice?	<b>Yes</b>	With difficulty	No
❖	Does free legal assistance cover	<b>Representation in courts</b> <b>Legal advice</b>		

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

<sup>384</sup> Articles 22(1) and 33-A(6) Asylum Act.

<sup>385</sup> Article 33-A(8) Asylum Act.

<sup>386</sup> Article 22(2) and 33-A(7) Asylum Act.

## D. Guarantees for vulnerable groups

### 1. Identification

#### Indicators: Special Procedural Guarantees

1. Is there a specific identification mechanism in place to systematically identify vulnerable asylum seekers?  
Yes **For certain categories** No  
  - ❖ If for certain categories, specify which: Unaccompanied children, victims of trafficking
2. Does the law provide for an identification mechanism for unaccompanied children?  
Yes **No**

The Asylum Act defines an “applicant in need of special procedural guarantees” in terms of reduced ability to benefit from the rights and comply with the obligations stemming from the Asylum Act due to individual circumstances.<sup>387</sup> Even though it does not include an exhaustive list of asylum seekers presumed to be in need of special procedural guarantees, it refers to age, gender, gender identity, sexual orientation, disability, serious illness, mental disorders, torture, rape or other serious forms of psychological, physical or sexual violence as possible factors underlying individual circumstances that could lead to the need of special procedural guarantees.<sup>388</sup>

The Asylum Act provides for the need to identify persons with special needs and the nature of such needs upon registration of the asylum application or at any stage of the asylum procedure.<sup>389</sup> The nature of special procedural needs should be assessed before a decision on the admissibility of the application is taken.<sup>390</sup>

#### 1.1. Screening of vulnerability

Despite these legal obligations, there are no (specific) mechanisms, standard operating procedures, or units in place to systematically identify asylum seekers who need special procedural guarantees. In 2018, SEF-GAR has introduced two general questions in the questionnaire used in first instance asylum interviews that address the applicant’s self-assessed health condition and capacity to undergo the interview,<sup>391</sup> as well as a couple of questions in Dublin interviews on health-related vulnerabilities.<sup>392</sup> According to CPR’s observation, there is no clear link between the answer provided by the applicant and the adoption of special procedural guarantees in practice.

In 2020, the UN Human Rights Committee expressed concern with the lack of such a mechanism and recommended the establishment of “an effective mechanism for the identification of vulnerable applicants, in particular stateless persons”.<sup>393</sup>

Throughout 2021, UNHCR, SEF, CPR and other relevant stakeholders such as the ISS and SCML held conversations regarding the identification of vulnerabilities within the asylum system. UNHCR has also reported that it held 6 training sessions for SEF officers on the identification of special needs.

According to SEF, its caseworkers received training on the identification of vulnerable persons, and specific interviewing techniques under the EASO training curriculum. SEF also highlights that special

<sup>387</sup> Article 17-A(1) Asylum Act.

<sup>388</sup> *Ibid.*

<sup>389</sup> Article 77(2) Asylum Act.

<sup>390</sup> Article 17-A(1) Asylum Act.

<sup>391</sup> The questions read (1) “Do you feel alright, are you comfortable? Do you have any health problems?”, and (2) “Do you feel capable of talking to me at the moment?”.

<sup>392</sup> The questions read (1) “Are you in good health – Y/N? Do you have health problems - Y/N? Which problems?” and (2) “Are you accompanied by a relative with health problems?”.

<sup>393</sup> Human Rights Committee, *Concluding Observations on the fifth periodic report of Portugal*, CCPR/C/PRT/CO/5. 28 April 2020, para 34(c) and 35(c) available at: <https://bit.ly/2Q1ftn8>.

attention is provided to potential cases of trafficking in human beings within the asylum system.

Publicly available statistics regarding vulnerable asylum seekers are scarce and relate mostly to unaccompanied children and families with children.<sup>394</sup> According to the information provided by SEF, a total of 415 children applied for international protection in Portugal in the course of 2021, of which 97 were unaccompanied.<sup>395</sup>

CPR collects statistical information on asylum seekers who self-identify or are identified as vulnerable on the basis of information received from SEF in accordance with the law, collected directly from the applicants or shared by other service providers. In 2021, of the 1,433 asylum applicants (including 22 relocated applicants) whose cases were communicated by SEF, 438 were identified as vulnerable:

Asylum seekers communicated to CPR and identified as vulnerable: 2017-2021 <sup>396</sup>					
Category of vulnerable group	2017	2018	2019	2020	2021
Unaccompanied children	41	67	77	38	65
Accompanied children	194	219	236	88	304
Single-parent families	67	53	61	23	19
Pregnant women	17	9	13	6	10
Elderly persons	-	-	5	-	7
Disabled persons	-	-	-	-	-
Survivors of torture	12	14	19	6	8
Survivors of physical, psychological or sexual violence	74	91	49	18	8
Persons with chronic or serious illnesses	13	12	40	21	19
Persons with addictions	-	-	-	-	-
<b>Total</b>	<b>422</b>	<b>468</b>	<b>503</b>	<b>204</b>	<b>438</b>
% of applicants identified as vulnerable (out of the total spontaneous applications communicated to CPR)	42%	39%	29%	23%	31%

Source: CPR.

<sup>394</sup> While according to information provided by SEF all caseworkers have specific training in issues such as identification and interview of vulnerable persons under the EASO training curriculum and special needs of applicants are taken into account at all stages, no official data is available regarding the number of applicants identified as vulnerable.

<sup>395</sup> These figures likely include children relocated to Portugal whose applications had not been communicated to CPR at the time of writing. Discrepancies between the number of unaccompanied children registered by SEF and by CPR (the former usually lower than the later) have been common and may be explained by factors such as the use of different identification criteria and age assessment procedures and registration practices.

<sup>396</sup> Figures below five are not included.

According to the information available to CPR, a significant number of age assessment procedures were pending at the time of writing. In previous years, some applicants were later determined to be adults including on the basis of their own statements, second-stage age assessment procedures requested by the Family and Juvenile Court, assessments made by SEF, or based on information received from other EU Member States. The number of such cases regarding unaccompanied children who applied for asylum in 2021 remained minimal at the time of writing.

The Asylum Act provides that the staff handling asylum applications of **unaccompanied children** must be specifically trained to that end.<sup>397</sup>

In 2019, the Committee on the Rights of the Child expressed concern with “[...] weaknesses in policy and practice relating to unaccompanied and separated children, particularly in respect of legal representation and guardianship during refugee determination processes”.<sup>398</sup> The Committee recommended Portugal to “strengthen policies and practices to improve the identification and registration of unaccompanied and separated children, including through ensuring that they are provided with effective legal representation and an independent guardian immediately after they have been identified”.<sup>399</sup> The necessity and consistency of the assessment of the best interests of the child in asylum procedures were also highlighted by the Committee.<sup>400</sup>

### Victims of torture and serious violence

In the case of survivors of torture and/or serious violence, research has demonstrated that identification is conducted on an *ad hoc* basis and mostly on the basis of self-identification during refugee status determination, social interviews, or initial medical screenings.<sup>401</sup> Staff working with asylum seekers lacks specific training on the identification of survivors of torture and/or serious violence and their special needs.

According to the information provided by the Portuguese authorities to the UN Committee Against Torture in June 2018,<sup>402</sup> “[...] the number of asylum applicants that claimed to have been victims of torture or identified as victims of torture is residual.” The report also states that “[i]n general, the applicant is assessed as credible when the claims are reliable or visible signs of the act exist. This leads to a positive decision and to the granting of international protection status without the need for medical examinations. Applicants are then subject to evaluation as well as to medical and psychological monitoring in the reception centres in order to address potential traumas. There are no statistical data on these cases”.<sup>403</sup>

Following this report, the identification of survivors of torture was one of the issues addressed by the UN Committee Against Torture in its Concluding Observations on Portugal. The Committee observed that “[...] the State party has not provided complete information on the procedures in place for the timely

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<sup>397</sup> Article 79(12) Asylum Act. The provision of mandatory training on the rights of the child to all relevant professionals, including immigration and asylum officers was also recently recommended by the Committee on the Rights of the Child. See Committee on the Rights of the Child, *Concluding observations on the combined fifth and sixth periodic reports of Portugal*, CRC/C/PRT/CO/5-6, 9 December 2019, par.13 (c), available at: <https://bit.ly/2G1F07z>.

<sup>398</sup> Committee on the Rights of the Child, *Concluding observations on the combined fifth and sixth periodic reports of Portugal*, CRC/C/PRT/CO/5-6, 9 December 2019, par.41(c), available at: <https://bit.ly/2G1F07z>.

<sup>399</sup> *Ibid.*, para. 42(c).

<sup>400</sup> *Ibid.*, paras 41(b) and 42(b).

<sup>401</sup> Italian Council for Refugees *et al.*, *Time for Needs: Listening, Healing, Protecting*, October 2017, available at: <https://bit.ly/3gEoe1T>.

<sup>402</sup> Committee Against Torture, *Seventh periodic report submitted by Portugal under article 19 of the Convention pursuant to the optional reporting procedure, due in 2017*, CAT/C/PRT/7, 18 December 2018, available at: <https://bit.ly/3cwgaec>.

<sup>403</sup> Committee Against Torture, *Seventh periodic report submitted by Portugal under article 19 of the Convention pursuant to the optional reporting procedure, due in 2017*, CAT/C/PRT/7, 18 December 2018, available at: <https://bit.ly/3cwgaec>, paras.133-134.

identification of victims of torture among asylum seekers [...]” and recommended “[...] the establishment of effective mechanisms to promptly identify victims of torture among asylum seekers”.<sup>404</sup>

## Victims of human trafficking

According to SEF, staff with specific training in trafficking indicators operate in cases involving victims of trafficking at the **Lisbon Airport**.<sup>405</sup> The Observatory on Trafficking in Human Beings (*Observatório do Tráfico de Seres Humanos*, OTSH) previously reported that, in addition to the internal training provided by SEF, the Anti-Trafficking Unit of the entity developed a flowchart on procedures to address situations involving unaccompanied children at border points. According to the information provided by SEF-GAR with regard to 2021, specific attention is given to possible instances of trafficking in human beings within the asylum context.

In addition to the existing general national referral mechanism for victims of trafficking in human beings, in 2021 the national “*Protocol for the definition of procedures aimed at the Prevention, Detection and Protection of (presumed) children victims of Trafficking in Human Beings – National Referral Mechanism*” was launched.<sup>406</sup> The new referral mechanism, comprising nine practical tools, aims to establish specific procedures, to reinforce cooperation and communication among professionals and to ensure respect for the best interests of the child.<sup>407</sup> One of the practical tools focus on identification at the border, explaining the referral and identification procedures together with relevant indicators.

According to the information provided by OTSH, the implementation of the new referral mechanism is ongoing, namely through the identification of training needs and provision of training.

In 2018, AKTO, a Portuguese NGO, opened the first CAP in Portugal exclusively dedicated to child victims of trafficking,<sup>408</sup> and conducted bilateral meetings with relevant stakeholders, including with CPR, to provide information on service provision and referral procedures.

CPR systematically flags presumed unaccompanied child victims of trafficking under its care to OTSH (on the basis of an anonymous form with indicators), to SEF’s asylum and criminal investigation departments for the purposes of criminal investigation and protection, and to the competent Family Court. Where CPR caseworkers are able to obtain the unaccompanied child’s consent for adequate protection, the cases are further referred to the multidisciplinary team of the Family Planning Association (APF) that conducts an initial assessment that can lead to the placement of the presumed victim in an Anti-Trafficking Reception and Protection Centre (CAP).

OTSH reported having conducted 20 training sessions in 2021 (either alone or in cooperation with other entities). The training targeted professionals likely to be in contact with victims, including police officers,

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<sup>404</sup> Committee Against Torture, *Concluding Observations on the seventh periodic report of Portugal*, CAR/C/PRT/CO/7, 18 December 2019, par.38(d), available at <https://bit.ly/2G1F07z>.

<sup>405</sup> See Expresso, ‘SEF cria equipas especializadas para proteção das vítimas de tráfico de seres humanos’, 18 October 2018, available in Portuguese at: <https://bit.ly/2TIN8OU>; Público, ‘SEF vai ter três equipas especializadas em tráfico de seres humanos’, 29 May 2018, available in Portuguese at: <https://bit.ly/2ANfFfj>. According to these sources, in 2018 the SEF expanded its capacity for the identification and protection of victims of trafficking at the border and on national territory following the concerns raised by the Council of Europe Group of Experts on Action Against Trafficking in Human Beings (GRETA) report published in 2017, available at: <https://bit.ly/2RLfYRy>, which also raised specific concerns regarding the disappearance of unaccompanied asylum-seeking children.

<sup>406</sup> OTSH (coord.), *Protocolo para a definição de procedimentos de atuação destinado à prevenção, deteção e proteção de crianças (presumíveis) vítimas de tráfico de seres humanos - Sistema de Referência Nacional*, May 2021, available at: <https://bit.ly/3k3BXQh>.

<sup>407</sup> The tools focus on: 1. Guiding principles of children’s protective intervention; 2. Overall indicators and types of exploitation by indicators. 3. Detection in National Territory. 4. Detection at External Borders. 5. Procedures for assessing the child’s age. 6. Appointment of Tutor or Legal Representative. 7. Assistance, Sheltering, (Re) Integration and Return. 8. Rights of children victims of Trafficking in Human Beings. 9. Training Module.

<sup>408</sup> AKTO, ‘Centro de Acolhimento e Proteção para Crianças Vítimas de Tráfico de Seres Humanos’, available in Portuguese at: <https://bit.ly/2wYsrck>.

staff of international organisations, staff of NGOs and public officials. Around 1940 professionals were trained by the OTSH in 2021.

Trafficking in persons was addressed by the UN Committee Against Torture in its Concluding Observations published in 2019. The Committee expressed concern with reports of lack of training of law enforcement officers and with delays in the process of issuance of residence permits to victims.<sup>409</sup> As such, the Committee recommended Portugal to: “(a) Intensify its efforts to prevent and combat trafficking in persons, including by putting in place effective procedures for the identification and referral of victims among vulnerable groups, such as asylum seekers and irregular migrants; (b) Improve the training of law enforcement officers and other first responders by including statutory training on the identification of potential victims of trafficking in persons; (c) Ensure access to adequate protection and support, including temporary residence permits, irrespective of their ability to cooperate in legal proceedings against traffickers”.<sup>410</sup>

According to the information provided by the national authorities to the UN Human Rights Committee on the occasion of the consideration of the relevant report, “[s]pecial emphasis had been placed on identifying trafficking victims among the children who arrived at the border accompanied by adults who might not be their parents or legal guardians. Strict procedural rules governed how those cases were handled; the minors in question were placed into care while investigations were conducted to clarify the circumstances surrounding their journey and the nature of their relationship with the adult or adults accompanying them”.<sup>411</sup>

In its assessment, with regard to trafficking in human beings and asylum, the UN Human Rights Committee flagged, inter alia, the absence “of an adequate identification mechanism for victims of trafficking in persons in the asylum procedures, including with respect to children”. Importantly, the Committee recommended Portugal to “[p]rovide adequate training to judges, prosecutors, law enforcement officials, immigration officers and staff working in all reception facilities, including on procedures for identifying victims of trafficking in persons” and to “[e]nsure that victims of trafficking in persons have access to asylum procedures in which their potential needs can be determined”.<sup>412</sup>

OTSH reported that the project “*Improved prevention, assistance, protection and (re)integration system for victims of sexual exploitation*” (to be implemented with national and Norwegian partners) was launched in March 2022.

A page with information on trafficking in human beings among migrants has been added to the Portuguese Government website in 2021.<sup>413</sup>

In July 2021, a Ministerial Order reviewing the documents issued to persons with victim status and particularly vulnerable victim status has been published.<sup>414</sup> Importantly, the documents to be handed to victims of trafficking in human beings and assistance to illegal migration clearly refer to their right to apply for international protection in Portugal.

According to OTSH, the competent authorities did not confirm cases of victims of trafficking among applicants for or beneficiaries of international protection. CPR is unaware of instances where asylum applicants were granted international protection on the basis of a well-founded fear of persecution for reasons of trafficking in human beings.

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<sup>409</sup> Committee Against Torture, *Concluding Observations on the seventh periodic report of Portugal*, CAR/C/PRT/CO/7, 18 December 2019, para 43, available at <https://bit.ly/2G1F07z>.

<sup>410</sup> Committee Against Torture, *Concluding Observations on the seventh periodic report of Portugal*, CAR/C/PRT/CO/7, 18 December 2019, para 44, available at <https://bit.ly/2G1F07z>.

<sup>411</sup> Human Rights Committee, *Consideration of reports submitted by States parties under article 40 of the Covenant (continued)*, CCPR/C/SR.3697, 13 March 2020, para 33, available at: <https://bit.ly/2R7z2e0>.

<sup>412</sup> Human Rights Committee, *Concluding Observations on the fifth periodic report of Portugal*, CCPR/C/PRT/CO/5, 28 April 2020, par 32 and 33(b) and (c), available at: <https://bit.ly/2Q1ftn8>.

<sup>413</sup> Available (in English) at: <https://bit.ly/38eUbvz>.

<sup>414</sup> Ministerial Order n. 138-E/2021 of 1 July, available at: <https://bit.ly/3vD6kCk>.



## 1.2. Age assessment of unaccompanied children

Despite the obligation to refer unaccompanied children to Family and Juvenile Courts for the purposes of legal representation,<sup>415</sup> the Asylum Act does not provide for a specific identification mechanism for unaccompanied children or objective criteria to establish which asylum seekers must undergo an age assessment.

According to the Asylum Act, SEF may resort to medical expertise using a non-invasive examination to determine the age of the unaccompanied child who must be given the benefit of the doubt in case well founded doubts persist regarding his or her age after the examination.<sup>416</sup>

The unaccompanied child must be informed that his/her age will be determined by means of such expertise and his/her representative must give prior consent.<sup>417</sup> In early 2020, following the results of workshops with children on age assessment funded by the Council of Europe, the National Commission for the Promotion of Rights and the Protection of Children and Young People, published a leaflet with information on age assessment procedures to children. The leaflet is available in Portuguese, English, and French.<sup>418</sup>

Refusal to allow an expert's examination does not prevent the issuance of a decision on the application for international protection but shall not determine its rejection.<sup>419</sup>

The age assessment procedure may also be triggered by the Family and Juvenile Court in the framework of judicial procedures aimed at ensuring legal representation for the child and the adoption of protective measures (see [Legal Representation of Unaccompanied Children](#))<sup>420</sup> or by the unaccompanied child's legal representative.

In practice, age assessment procedures can be triggered either by SEF when there are significant doubts regarding the age of the applicant on the basis of physical appearance and/or demeanour, or by Family and Juvenile Courts in the framework of legal representation and child protection procedures (see [Legal Representation of Unaccompanied Children](#)). While SEF did not provide statistics in this regard, in recent years CPR observed that age assessment procedures were triggered by Family and Juvenile Courts to almost all unaccompanied children by default.

The absence of objective criteria to establish what constitutes reasonable doubt, who must undergo an age assessment, and the nature of the initial age assessments is particularly problematic:

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

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<sup>415</sup> Article 79(2) Asylum Act.

<sup>416</sup> Article 79(6) Asylum Act.

<sup>417</sup> Article 79(7) Asylum Act.

<sup>418</sup> National Commission for the Promotion of Rights and the Protection of Children and Young People, *Une évaluation de l'âge qui respecte les droits des enfants/An age assessment procedure that respects children's rights*, 19 February 2020, available at: <https://bit.ly/3boC2YX>.

<sup>419</sup> Article 79(8) Asylum Act.

<sup>420</sup> In this case, it is mandatory.

- d) due to the increased use of second stage age assessment by Family and Juvenile Courts without adequate justification of their necessity and proportionality.

An initial age assessment is conducted by SEF and does not involve child protection staff. Second stage assessments fail to meet the holistic and multidisciplinary standards recommended by UNHCR.<sup>421</sup> The assessment is conducted by the National Institute of Legal Medicine and Forensic Science (INMLCF) and relevant methods used include wrist and dental X-rays.

While an examination of genitals was not used in age assessment in the past, the INMLCF published a procedural note in 2019 on the estimation of age in living and undocumented persons that includes the evaluation of sexual development as part of the age assessment procedure.<sup>422</sup> The grounds for this (regrettable) change of practice are not known but, according to the information gathered by CPR, these methods have been applied in practice since 2019. According to the information available to CPR, where the applicant refused to be subjected to such tests, they were not performed and the age assessment examinations proceed.<sup>423</sup>

Despite the established technical limitations of such methods, their results have been used by SEF and Family and Juvenile Courts as evidence of the adulthood of the applicant, and as grounds for refusing the benefit of the doubt despite their inability to establish an exact age. This practice has been overturned by Administrative Courts in at least one instance regarding the asylum procedure,<sup>424</sup> and was criticised by the Council of Europe.<sup>425</sup>

The referral by SEF to the CACR of applicants whose appearance and demeanour raised serious doubts regarding their age has led CPR to refer those applicants to the CAR (also managed by CPR) so as to achieve a balance between their protection and the preservation of the security and integrity of the CACR, informing the Public Prosecutor's Office accordingly.

In various instances in 2021, SEF suspended the asylum procedure on the basis of general administrative rules in order to wait for the results of age assessment procedures ordered by the Family and Juvenile Courts.<sup>426</sup> According to the information available to CPR, if upon registration of the asylum application SEF identifies Eurodac hits with different personal information, the Family and Juvenile Court is informed accordingly within the context of the necessary referral of the case.

In 2018, age assessments from other EU Member States have been used by SEF as negative credibility indicators, notably for those coming from Malta.<sup>427</sup> This concerned asylum seekers who were transferred to Portugal in the framework of *ad hoc* relocation schemes and who claimed to be children upon arrival in Portugal.

The initial and second-stage of age assessment procedures are made for different purposes including: (i) the provision of special procedural guarantees i.e., referral to the Family and Juvenile Courts for the purposes of legal representation in the asylum procedure; (ii) the provision and the cessation of special reception conditions, i.e., immediate referral to the CACR and referral to the Family and Juvenile Courts

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<sup>421</sup> UNHCR, *The Way Forward to Strengthened Policies and Practices for Unaccompanied and Separated Children in Europe*, July 2017, available at: <http://bit.ly/2ngwmYT>.

<sup>422</sup> INMLCF, *Norma procedimental – Estimativa da idade em indivíduos vivos indocumentados*, NP-INMLCF-018, 14 October 2019, available in Portuguese at: <https://bit.ly/3jqFiaV>.

<sup>423</sup> According to CPR's observation, the refusal is usually referred in the relevant report together with an estimation of sexual development.

<sup>424</sup> See e.g., TAC Leiria, Decision 784/14.9 BELRA, 19 July 2014, unpublished.

<sup>425</sup> GRETA, *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Portugal*, GRETA (2017)4, 17 March 2017, available at: <https://bit.ly/2RLfYRy>.

<sup>426</sup> Article 38(1) Administrative Procedure Code.

<sup>427</sup> According to the information provided by SEF, these assessments were conducted on the basis of physical appearance, demeanour, demography and other types of relevant country of origin information, and X-Rays (FAV Test).

for purposes of confirming the provision of special reception conditions there; and (iii) for the purposes of refugee status determination as a material fact of the asylum application.

The law does not provide for a specific legal remedy against the initial age assessment procedure conducted by SEF for purposes other than the refugee status determination. However, these procedures remain administrative decisions that can be challenged before the Administrative Courts in accordance with the law.<sup>428</sup> Additionally, the Family and Juvenile Courts also conduct their own second stage age assessment for purposes of legal representation and application of protective measures (following SEF’s referral) that can be appealed pursuant to general rules. In practice, however this is rarely – if ever – the case given the individual circumstances, and the lack of available legal expertise.

According to information available to CPR, in some cases, upon reception of the results of the medical report and before the issuance of a decision on the age assessment procedure, the competent Family and Juvenile Court gave the applicant and the appointed guardian the opportunity to reply to the analysis. According to the experience of CPR’s CACR, in some instances, where the protective measure is deemed to have a positive effect in the individual case by the Family and Juvenile Court, it can be maintained. Nevertheless, this is not a standard or systematic practice within the context of age assessment procedures. At least in some instances, cases were immediately referred by the Family and Juvenile Court for criminal investigation for the provision of false statements to the authorities.

In 2019, the UN Committee on the Rights of the Child raised concerns about age assessment procedures and recommended that Portugal “continue to enforce multidisciplinary and transparent procedures that are in line with international standards and adequately train staff to ensure that the psychological aspects and personal circumstances of the person under assessment are taken into account”.<sup>429</sup>

**2. Special procedural guarantees**

**Indicators: Special Procedural Guarantees**

1.	Are there special procedural arrangements/guarantees for vulnerable people?	Yes	<b>For certain categories</b>	No
	❖ If for certain categories, specify which:	Unaccompanied children, pregnant women		

While the implementation of certain special procedural guarantees will necessarily require a decision from SEF, according to the law, the responsibility for implementing these measures lies with the Institute of Social Security (ISS).<sup>430</sup>

**2.1. Adequate support during the interview**

Applicants identified as needing special procedural guarantees can benefit from the postponement of refugee status determination interviews, extended deadlines for presenting evidence or carrying out interviews with the assistance of experts.<sup>431</sup>

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

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<sup>428</sup> Article 51(1) and (2) Administrative Court Procedure Code.  
<sup>429</sup> Committee on the Rights of the Child, *Concluding observations on the combined fifth and sixth periodic reports of Portugal*, CRC/C/PRT/CO/5-6, 9 December 2019, pars.41(e) and 42(e), available at: <https://bit.ly/2G1F07z>.  
<sup>430</sup> Article 17-A(5) Asylum Act.  
<sup>431</sup> Article 17-A(3) Asylum Act.

Case law regarding the provision of special procedural guarantees in the asylum procedure has consolidated the approach of not implementing such guarantees.<sup>432</sup> In one isolated case in 2018, SEF invited CPR to attend a first instance interview in order to provide support to a particularly vulnerable applicant suffering from a mental condition.<sup>433</sup> In one instance in 2019, SEF suspended the asylum procedure of an applicant suffering from a serious mental health condition before issuing a decision on admissibility/accelerated procedure. However, the decision to suspend the procedure was adopted only after the personal interview was conducted and was not framed as a special guarantee for the applicant. Instances of the application of special guarantees to the applicant, for instance due to the inability to be interviewed due to health (including mental health) conditions, remain rare to non-existent, according to CPR's experience.

In 2020 and 2021, according to CPR's observation, when applicants were unable to be interviewed because they were quarantining/subject to prophylactic isolation due to the coronavirus, SEF usually suspended the asylum procedure. In some cases supported by CPR, where applicants were not able to exercise procedural rights (e.g., provide comments to the interview report/summary report or to decision proposals) due to such constraints, extensions of the relevant deadlines were granted upon request. In the case of an applicant that had given birth, an extension of only 2 weeks has been granted.

Inversely, requests for the extensions of deadlines due to the impossibility to secure interpreters to carry out the relevant diligences in due time were usually not accepted by SEF.

In the particular case of survivors of torture and/or serious violence, research conducted in the framework of the project “[Time for Needs: Listening, Healing, Protecting](#)” found that the practical implementation of special procedural guarantees such as the possibility to postpone the refugee status determination interview is hampered by the lack of a specific identification tool or mechanism.<sup>434</sup> Even where a medical report concerning the vulnerability of the applicant for mental health reasons is presented, SEF may refuse to postpone the interview unless the medical report clearly states the reduced capacity of the applicant, the need for medical assistance, as well as a prediction of when the applicant is expected to be able attend the interview, if need be accompanied by a mental health professional, in order to avoid excessive delays in the procedure. CPR is not aware of additional research on this topic.

In accordance with the law,<sup>435</sup> CPR provides specific legal assistance to unaccompanied asylum-seeking children under its care, *inter alia*, through the presence of a legal officer during the personal interview with SEF (see [Legal Representation of Unaccompanied Children](#)).

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<sup>432</sup> TAC Lisbon, Decision 1502/18.8BELSB, 24 October 2018, unpublished. The case relates to an asylum seeker suffering from documented epilepsies and depression who was not identified as a vulnerable before the interview and was therefore not provided special procedural guarantees during the first instance procedure. The applicant was unable to review the report of his interview due to his condition and later (but before the issuance of a first instance decision) managed to submit SEF medical reports to SEF. According to TAC Lisbon, such issues were not material to the asylum application and were not relevant to assess the need for special procedural guarantees in accordance to the law “as the serious condition of the appellant was not due to him being a victim of torture, rape or other form of psychological, physical or sexual violence in his country of origin [...]”.

<sup>433</sup> Notwithstanding, following a suggestion from CPR on the need to equate a structured approach to the provision of special procedural guarantees in general, and the provision of adequate special procedural guarantees in the particular case, such as a medical evaluation/report and the presence of support staff from the institution that was providing medical and social support to the applicant at the time, SEF decided to conduct the interview in the absence of any support.

<sup>434</sup> Italian Council for Refugees *et al.*, *Time for Needs: Listening, Healing, Protecting*, October 2017, available at: <https://bit.ly/3gEoe1T>.

<sup>435</sup> Article 79(3) Asylum Act.

## 2.2. Exemption from special procedures

### Exemption from the border procedure

According to the Asylum Act, applicants victims of torture and/or serious violence in need of special procedural guarantees shall be exempted from the border procedure and from detention in the context of border procedures when the necessary support and conditions cannot be ensured within that context.<sup>436</sup> However, no standard operational procedures and tools allowing for the early and effective identification of survivors of torture and/or serious violence and their special procedural needs are in place. As such, asylum seekers who claim to be survivors of torture, rape, or other serious forms of psychological, physical or sexual violence have not been exempted from border procedures in practice, despite the lack of provision of special procedural guarantees at the border.<sup>437</sup>

Until 2016, certain categories of vulnerable asylum applicants such as unaccompanied children, pregnant women and seriously ill persons were systematically released from detention at the border and channelled to an admissibility procedure and/or regular or accelerated procedure in national territory. However, since then, including in the beginning of 2020, pregnant women, families with children, severely ill persons and victims of torture and/or serious violence were not always exempted from border procedures in practice. Although new guidance from the Ministry of Interior was issued in July 2018 regarding the duration of detention of certain categories of vulnerable asylum seekers, with the exception of unaccompanied children, this had not resulted in significant changes with regard to exemption from border procedures as the latter continued to be regularly applied to vulnerable applicants (see [Detention of Vulnerable Applicants](#)).<sup>438</sup>

As mentioned in [Border Procedure](#), since March 2020, the border procedure is not being applied in Portugal.

### Exemption from the accelerated procedure

According to the Asylum Act, unaccompanied children are exempt from accelerated procedures, with the exception of subsequent applications that have not been deemed inadmissible, as well as from the application of certain grounds for inadmissibility, such as Dublin, first country of asylum, and third safe country grounds.<sup>439</sup>

According to information available to CPR, SEF resorted to accelerated procedures once regarding an unaccompanied asylum-seeking child in 2018 and that decision was later overturned at appeal stage for being in breach of the Asylum Act and the recast Asylum Procedures Directive.<sup>440</sup>

Statistical data from SEF for 2021 indicates that accelerated procedures were not used in such cases.<sup>441</sup>

CPR requested clarification on this practice in the past and was informed by SEF that all procedural guarantees for unaccompanied children were provided in such procedures.

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<sup>436</sup> Article 17-A(4) Asylum Act.

<sup>437</sup> Italian Council for Refugees *et al.*, *Time for Needs: Listening, Healing, Protecting*, October 2017, available at: <https://bit.ly/3gEoe1T>.

<sup>438</sup> Nevertheless, according to SEF, a total of 14 asylum applications lodged by unaccompanied minors were processed under a border procedure, in 2019.

<sup>439</sup> Article 79(9) Asylum Act.

<sup>440</sup> TAC Lisbon, Decision 869/18.2BELSB, 24 June 2018, unpublished.

<sup>441</sup> While according to SEF such procedures have not been used in 2019 and 2020, according to the information available to CPR, accelerated procedures were indeed applied to unaccompanied children in four cases in 2019 and in one case in 2020.

This understanding is clearly at odds with the applicable legal provisions as well as with the national jurisprudence. In the beginning of 2020, TAC **Lisbon** confirmed this assessment by overturning another decision and reaffirming the reasoning adopted in 2018.<sup>442</sup>

While jurisprudence focusing on the impact of vulnerabilities in the asylum procedure and particularly on the use of accelerated procedures remains extremely rare, TCA South issued a decision deeming that an application should not have been subject to an accelerated procedure as the health condition of the applicant's daughter amounted to a special vulnerability on health grounds. The Court noted that this element was taken into account by the examining authority and considered that, in light of article 31(7)(b) of the APD and article 17-A of the Asylum Act, the application should not have been analysed in an accelerated procedure, but instead fast-tracked.<sup>443</sup>

### 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? | <b>Yes</b> | In some cases | No |
| 2. Are medical reports taken into account when assessing the credibility of the applicant's statements?  | <b>Yes</b> |               | No |

The Asylum Act contains a general provision on the right of asylum seekers to submit supporting evidence in the asylum procedure.<sup>444</sup> It further foresees the possibility for SEF to request reports on specific issues from experts (e.g. cultural or medical) during the regular procedure.<sup>445</sup> Nevertheless, there are no specific standards in law or administrative guidance relating to medical reports for those claiming to have been subjected to torture or other serious acts of physical, psychological and sexual violence.

The lack of standard operational procedures regarding the issuance, content and relevance of medical reports in the asylum procedure has been highlighted in the particular case of survivors of torture and/or serious violence.<sup>446</sup> According to the available information, medical reports are currently not issued based on the methodology laid down in the Istanbul Protocol.

According to CPR's observations in the course of 2021, the procedures to be followed by the authorities in order to request medical evaluations (including concerning mental health) are also unclear.

### 4. Legal representation of unaccompanied children

#### Indicators: Unaccompanied Children

- |  |            |    |
|--|------------|----|
| 1. Does the law provide for the appointment of a representative to all unaccompanied children? | <b>Yes</b> | No |
|--|------------|----|

Under the Asylum Act, all unaccompanied child asylum seekers and beneficiaries of international protection are entitled to legal representation.<sup>447</sup> Legal representation can be provided by an organisation and can take the form and modalities laid down in law,<sup>448</sup> such as those provided by the General Legal Regime of Civil Guardianship Act.<sup>449</sup> In this regard, SEF is required to immediately flag

<sup>442</sup> TAC Lisbon, Decision 2154/19.3BELSB, 17 January 2020, unpublished.

<sup>443</sup> TCA South, Decision 637/21.4BELSB, 18 November 2021, available at: <https://bit.ly/381jeBZ>.

<sup>444</sup> Article 15(2) Asylum Act.

<sup>445</sup> Article 28(3) Asylum Act.

<sup>446</sup> Italian Council for Refugees *et al.*, *Time for Needs: Listening, Healing, Protecting*, October 2017, available at: <https://bit.ly/3gEoe1T>.

<sup>447</sup> Article 79(1) and (2) Asylum Act.

<sup>448</sup> *Ibid.* See also Article 2(1)(ad) Asylum Act.

<sup>449</sup> Act 141/2015 of 8 September 2015.

the need for legal representation to the Family and Juvenile Court while informing the child of the procedure.<sup>450</sup>

As regards the scope of legal representation of unaccompanied children, the legal representative must be informed in advance and in a timely manner by SEF of the interview and is entitled to attend and to make oral representations.<sup>451</sup> The presence of the legal representative does not exempt the unaccompanied child from the personal interview.<sup>452</sup> Additionally, SEF must ensure that the legal representative is given the opportunity to inform the child of the meaning and implications of the personal interview as well as to explain how to prepare for it.<sup>453</sup> The legal representative must also give his/her consent to SEF for the purpose of age assessment procedures.<sup>454</sup>

In practice, the legal representation of unaccompanied children has taken varying legal modalities in accordance with the General Legal Regime of Civil Guardianship Act and the Children and Youths at Risk Protection Act.<sup>455</sup> Its scope usually covers the representation of the child for all legal purposes, including the asylum procedure and reception conditions.<sup>456</sup> In the case of spontaneous applicants for international protection, the Family and Juvenile Court usually appoints CPR's Director to act as legal representative. The material protection of the child is provided in accordance with the protective measures set out in the Children and Youths at Risk Protection Act, which includes referring him/her to the CACR managed by the CPR.

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

In recent years, the provision of protective measures (namely reception) has been more frequently ensured by other entities according to relevant judicial decisions. Where representation and/or accommodation of unaccompanied children are ensured by other organisations, CPR provides legal assistance to their staff and to the children concerned on a need's basis, and with due consideration for the relevant legal framework. Cooperation regarding social and integration issues is also frequent.

Following referral to adequate accommodation,<sup>457</sup> SEF usually flags the need to provide the child with legal representation and refers him/her to the Family and Juvenile Court within a few days following the registration of the asylum application,<sup>458</sup> including in the case of border procedures. Upon admission to one of its reception centres, CPR immediately informs the competent entities as well.

An additional challenge in this regard concerns children accompanied by adult siblings in the framework of the Dublin Regulation. According to the information provided to CPR by SEF in 2018, in these cases the understanding is that there is a presumption of legal representation by the adult sibling, thus exempting SEF from the obligation to refer the child to the Family and Juvenile Court.<sup>459</sup>

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<sup>450</sup> Article 79(1) and (2) Asylum Act.

<sup>451</sup> Article 79(3) Asylum Act.

<sup>452</sup> Article 79(5) Asylum Act.

<sup>453</sup> Article 79(4) Asylum Act.

<sup>454</sup> Article 79(7) Asylum Act.

<sup>455</sup> Act 147/99 of 1 September 1999.

<sup>456</sup> Article 25(1)(a) recast Asylum Procedures Directive; Article 24(1) recast Reception Conditions Directive.

<sup>457</sup> Article 91 General Legal Regime of Civil Guardianship Act and the Children and Youths at Risk Protection Act.

<sup>458</sup> In addition to the relevant rules of the General Legal Regime of Civil Guardianship Act and the Children and Youths at Risk Protection Act, this is provided for in article 79(2) Asylum Act.

<sup>459</sup> The current definition of unaccompanied children in the Asylum Act contributes to this problematic understanding from SEF which, in CPR's view, is not in line with the protective duties entrusted to all public authorities regarding children at risk in accordance to relevant provisions in the General Legal Regime of Civil Guardianship Act and the Children and Youths at Risk Protection Act. Indeed, the current Asylum Act

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

It should be noted that even if SEF does not conduct individual interviews prior to the appointment of a legal representative, there is no best interests' assessment or intervention of a legal representative prior to the registration of the asylum claim.<sup>460</sup> The law provides for the possibility of a child lodging his/her own asylum application.<sup>461</sup>

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

While the law does not provide for specific requirements for acting as legal representative of an unaccompanied child, the Children and Youths at Risk Protection Act contains rules governing the composition of the technical staff of reception centres for children. Accordingly, the teams must be multidisciplinary and include personnel which holds at least a BA in the field of Psychology and Social Work. The technical director of the centre must further be appointed among staff members with such a background.<sup>462</sup>

In 2019, the UN Committee on the Rights of the Child expressed concern with “[...] weaknesses in policy and practice relating to unaccompanied and separated children, particularly in respect of legal representation and guardianship during refugee determination processes”.<sup>463</sup> The Committee recommended Portugal to “strengthen policies and practices to improve the identification and registration of unaccompanied and separated children, including through ensuring that they are provided with effective legal representation and an independent guardian immediately after they have been identified”.<sup>464</sup>

A study focusing on the situation of asylum-seeking unaccompanied children and ageing out in Portugal published in 2021 states that the analysis conducted reveals the lack of a national strategy for unaccompanied asylum-seeking children.<sup>465</sup>

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has failed to transpose into national law the definition of “unaccompanied minor” enshrined in Article 2(l) recast Qualification Directive and still refers to “third-country nationals (...) unaccompanied by an adult responsible for them *whether by law or custom*” as per the definition contained in Article 2(i) Directive 2004/83/EC.

<sup>460</sup> A prior assessment of the best interest of the child would bring the procedure more in line with UNHCR's recommendations in this regard. See UNHCR, *The Way Forward to Strengthened Policies and Practices for Unaccompanied and Separated Children in Europe*, July 2017.

<sup>461</sup> Article 13(6) Asylum Act.

<sup>462</sup> Article 54 Children and Youth at Risk Protection Act.

<sup>463</sup> Committee on the Rights of the Child, *Concluding observations on the combined fifth and sixth periodic reports of Portugal*, CRC/C/PRT/CO/5-6, 9 December 2019, available at: <https://bit.ly/2G1F07z>, par.41 (c).

<sup>464</sup> Committee on the Rights of the Child, *Concluding observations on the combined fifth and sixth periodic reports of Portugal*, CRC/C/PRT/CO/5-6, 9 December 2019, available at: <https://bit.ly/2G1F07z>, par. 42(c).

<sup>465</sup> Sandra Roberto, Carla Moleiro, ed. Observatório das Migrações, *De menor a maior: acolhimento e autonomia de vida em menores não acompanhados*, April 2021, p.60, available at: <https://bit.ly/3fqMKBK>.



## E. Subsequent applications

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

The law provides for specific features in the [Admissibility Procedure](#) regarding subsequent applications, including:

- (i) a time limit of 10 days for the adoption of an admissibility decision at first instance i.e., preliminary assessment;<sup>466</sup>
- (ii) the absence of automatic consequences in case of non-compliance with the time limit for deciding on admissibility;
- (iii) reduced guarantees regarding the right to a personal interview and to seek revision of the narrative of the personal interview;<sup>467</sup>
- (iv) specific criteria for assessing the admissibility of the claim;<sup>468</sup> and
- (v) partially different time limits and effects of (onward) appeals.<sup>469</sup>

The Asylum Act does not provide, however, for specific rules regarding the right to remain on the territory pending the examination of the application,<sup>470</sup> or the suspension of a removal decision,<sup>471</sup> nor does it provide specific time limits or limitations on the number of subsequent applications a person can lodge.<sup>472</sup> Nevertheless, an “unjustified” subsequent application can lead to the [Reduction or Withdrawal of Reception Conditions](#).<sup>473</sup>

The National Director of SEF remains the competent authority to take a decision on the admissibility of subsequent applications.<sup>474</sup>

The criteria for assessing the admissibility of the subsequent claim are enshrined in the Asylum Act and consist in whether new elements of proof have been submitted or if the reasons that led to the rejection of the application have ceased to exist.<sup>475</sup> The law does not provide further clarifications on what is to be considered as a new element of proof or the cessation of the rejection motives but clarifies that the preliminary admissibility assessment also encompasses cases where the applicant has explicitly withdrawn his or her application and cases where SEF has rejected an application following its implicit withdrawal.<sup>476</sup>

<sup>466</sup> Article 33(4) Asylum Act.

<sup>467</sup> Article 33(2), (4) and (6) Asylum Act.

<sup>468</sup> Article 33(1) and (6) Asylum Act.

<sup>469</sup> Article 33(6) Asylum Act.

<sup>470</sup> Articles 13(1) and 33(9) Asylum Act.

<sup>471</sup> In this case it should be understood that the general rule providing for the suspension of a removal order until a final decision is reached in the asylum application applies: Article 12(1) Asylum Act.

<sup>472</sup> Article 33(1) Asylum Act, according to which the asylum seeker is entitled to present a new application whenever there are new elements in light of the first asylum procedure.

<sup>473</sup> Article 60(3)(f) Asylum Act.

<sup>474</sup> Article 33(6) Asylum Act.

<sup>475</sup> Article 33(1) Asylum Act.

<sup>476</sup> Article 2(1)(t) Asylum Act.

Given the usually low number of subsequent applications, it is challenging to ascertain relevant practical guidance. A first instance decision on the admissibility of a subsequent application from 2016 refers to a “substantial and fundamental” difference as criteria for assessing the admissibility of the subsequent application, whereas several first instance decisions from 2018 refer to “any event occurred since prior decisions at first instance and appeal stages [were adopted]”, “new elements of proof regarding the alleged facts”, and that the “absence of new facts is also enhanced by the fact that according to his statement the applicant did not return to his country of origin or left European soil since his last application”. According to the available information, more recent decisions do not offer further guidance with regard to the interpretation of the relevant concepts.

Recent case law has failed to provide guidance in this regard.<sup>477</sup> However, it has ruled that facts that were not presented during the initial application without reason cannot be considered as new facts. At the same time, the Court also conducted an assessment – echoing SEF’s first instance assessment – of whether the new facts stated by the applicant constitute relevant grounds for a well-founded risk of persecution, which seems to be at odds with the admissibility assessment at hand.<sup>478</sup>

The limited number of subsequent applications registered – 6 in 2021<sup>479</sup> (compared to less than 5 lodged in 2020, 8 in 2019, 13 in 2018, and 9 in 2017) – does not allow for a general assessment of existing obstacles in lodging a subsequent application.

According to information collected by CPR, in recent years, subsequent applicants are generally provided a personal interview to assess whether new elements were submitted.<sup>480</sup> The interview to assess the admissibility of the application tends to differ from a personal interview conducted in the admissibility/accelerated/regular procedure insofar as it mainly seeks to ascertain new facts, evidence or changes in circumstances related to persecution since the presentation of the initial asylum application. The reasoning of inadmissibility decisions generally includes an assessment of the existence, credibility and relevance of new facts and changes in circumstances since the presentation of the initial asylum application. The evidentiary value of documents and other elements of proof submitted, as well as the inconsistencies between the information provided and the facts described in the context of the original application, are usually analysed.

The information available to CPR indicates a typically low success rate of subsequent applications.

The Asylum Act provides for an appeal against the decision to reject a subsequent application (see [Admissibility Procedure: Appeal](#)). The time limit for lodging the appeal is 4 days.<sup>481</sup> The initial appeal before the Administrative Court has automatic suspensive effect,<sup>482</sup> as opposed to onward appeals that have no automatic suspensive effect.<sup>483</sup>

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

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<sup>477</sup> TAC Lisbon, Decision 1748/18.9BELSB, 26 November 2018, unpublished.

<sup>478</sup> A similar approach was followed in a 2019 judgement of TAF Porto that noted that a subsequent application should only go beyond the preliminary evaluation if there are new facts, circumstances or evidence that by themselves show that it is likely that the applicant is eligible for international protection. TAF Porto, Decision 649/18.5BELSB, 17 January 2019, unpublished.

<sup>479</sup> While according to the data provided by SEF to AIDA, 6 subsequent applications were made in 2021, according to CPR’s data there were at least 8 such applications during the year.

<sup>480</sup> Article 33 Asylum Act states that subsequent applications are submitted to the SEF with all available supporting evidence and that the SEF may, following the application, provide the applicant with a reasonable time limit to present new facts, information or evidence.

<sup>481</sup> Article 33(6) Asylum Act.

<sup>482</sup> Ibid.

<sup>483</sup> Article 33(8) Asylum Act.

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

## F. The safe country concepts

Indicators: Safe Country Concepts		
1. Does national legislation allow for the use of “safe country of origin” concept?	<b>Yes</b>	No
❖ Is there a national list of safe countries of origin?	Yes	<b>No</b>
❖ Is the safe country of origin concept used in practice?	Yes	<b>No</b>
2. Does national legislation allow for the use of “safe third country” concept?	<b>Yes</b>	No
❖ Is the safe third country concept used in practice?	<b>Yes</b>	No
3. Does national legislation allow for the use of “first country of asylum” concept?	<b>Yes</b>	No

### 1. Safe country of origin

The Asylum Act provides for a definition of “safe country of origin” that is in line with Article 36 of the recast Asylum Procedures Directive.<sup>484</sup> However, the law does not further regulate its application. The only exception is that the “safe country of origin” concept is listed as one of the grounds for the application of the **Accelerated Procedure**.<sup>485</sup>

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

According to the information available to CPR, SEF does not have a list of safe countries of origin as a matter of administrative guidance and the concept is not used in practice as a ground for channelling asylum applications into an accelerated procedure.

### 2. Safe third country

The Asylum Act provides for a definition of “safe third country” that presents some inconsistencies with Article 38 of the recast Asylum Procedures Directive.<sup>486</sup> These inconsistencies were raised in 2014 by CPR during the legislative process that transposed the second-generation *acquis* into national law,<sup>487</sup> and include the following:

- a. The wording of the provision seems to indicate that it applies *ratione personae* to asylum seekers alone, as opposed to applicants for international protection.<sup>488</sup>
- b. The provision does not include the absence of a risk of serious harm as a condition for the application of the concept;
- c. The provision does not include the possibility for the applicant to challenge the existence of a connection between him or her and the third country;
- d. A standard of possibility rather than reasonableness is set in the provision concerning the return on the basis of a connection between the applicant and the third country concerned.<sup>489</sup>

<sup>484</sup> Article 2(1)(q) Asylum Act.

<sup>485</sup> Article 19(1)(f) Asylum Act.

<sup>486</sup> Article 2(1)(r) Asylum Act.

<sup>487</sup> CPR, *Proposta de Lei 187 - XII que altera a Lei n.º 27/2008, de 30 de Junho – Comentários*, January 2014, available in Portuguese at: <http://bit.ly/2zT1oef>.

<sup>488</sup> Article 2(1)(r) Asylum Act.

<sup>489</sup> Article 2(1)(r)(i) Asylum Act.

While excluding EU Member States from the concept of safe third country,<sup>490</sup> the Asylum Act does not provide for specific rules regarding EU and non-EU European safe third countries.

Although the concept is a ground for inadmissibility (see [Admissibility Procedure](#)),<sup>491</sup> the authorities have not introduced further rules in national legislation to date (e.g., relevant connection indicators or rules regarding the application of the concept to a particular country or to a particular applicant).

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

According to SEF, in 2021 there were no negative decisions based on the concept of “safe third country” (see [Admissibility Procedure](#)).

### Connection criteria

To date, the establishment of a connection rendering the applicant's transfer to a safe third country reasonable by SEF has been based on indicators such as transit (sometimes as short as a few weeks), the registration of an asylum application or residence rights, and the remaining legal requirements of the clause have usually not been (adequately) analysed.

A 2018 judgment of TCA South, determined that mere transit (for 28 days) and the submission of an asylum application were not sufficient to establish a meaningful connection for purposes of rendering the applicant's transfer to the safe third country reasonable.<sup>492</sup>

A decision from TCA South issued in 2021 focused on the application of the safe third country concept to the United States of America.<sup>493</sup> The applicant, a transgender woman from Honduras, left her country at the age of 16 fearing persecution on the basis of her gender identity. Since then, she lived in the United States irregularly for a number of years. She eventually left because, inter alia, she was not able to apply for asylum or to otherwise regularise her stay in the country, was exposed to extreme poverty as a consequence, and feared discrimination and violence on the grounds of her gender identity, particularly in light of the risk of being subject to migration detention. The United States were deemed as a safe third country both by SEF and the first instance court.

Closely following the reasoning adopted by the lower court, in its analysis, the TCA South considered, inter alia, that:

- It is “unequivocal” that the United States is a safe country, and, as such, the Portuguese authorities do not have to anticipate the actions of the American authorities as it must be assumed that fundamental rights are respected in the country (arguing that a similar reasoning as that applied to EU Member States should be adopted);
- There was an effective link in this case because the applicant lived in the third country for a number of years, studied and worked there and has personal, cultural and language connections to it;
- It was not deemed relevant that the applicant was irregularly present in the country and the risk of deportation to the country of origin was disregarded, based on the fact that, as a State Party to the 1951 Convention, the United States are bound to the prohibition of refoulement.

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<sup>490</sup> Article 19-A(1)(d) Asylum Act that excludes EU Member States from the concept of third safe country.

<sup>491</sup> Article 19-A(1)(d) Asylum Act.

<sup>492</sup> TCA South, Decision 2163/17.7BESLB, 15 March 2018, available in Portuguese at: <https://bit.ly/2DpS327>. A previous decision from TAC Lisbon had already excluded the mere transit and the presentation of an asylum application as sufficient to establish a meaningful connection: TAC Lisbon, Decision 1792/17.3BESLB, 30 September 2017, unpublished.

<sup>493</sup> TCA South, Decision 2238/20.5BELSB, 7 October 2021, available at: <https://bit.ly/3Omfs6W>.

While the applicant also alleged that in order to have a chance to regularly stay in the United States she would necessarily have to return to Honduras, where she fears persecution, TCA South has disregarded the concern, deeming it only relevant that there is a chance for the applicant to regularise her stay in the United States and pointing to the change of President as an indicator of improvements in the country's migratory system.

This is a highly flawed decision for a number of reasons, in particular:

- It is unclear why the Court considers that a presumption of respect for fundamental rights should be applied to the United States and whether it should also be applied to other countries (and which criteria should be used to assess that).
- While the applicant indeed lived in the United States for a number of years and has clear links to the country, the Court never fully considered the impacts of the irregular nature of her stay and the risks that it implied. Furthermore, the Court did not consider how the applicant could return to a country where she did not legally reside.
- While referring to the prohibition of *refoulement* applicable to the United States, the Court seemed to disregard that the same prohibition applies to Portugal and failed to assess the likelihood and potential impact of a return to Honduras that it assumes that may be a possibility, in order to regularise the applicant's stay in the United States.
- The Court seems to assume that a change in the Presidency automatically entails a change in a specific policy area without fully substantiating such an assumption.

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

### 3. First country of asylum

The Asylum Act provides for a definition of "first country of asylum" that is in line with Article 35 of the recast Asylum Procedures Directive,<sup>494</sup> and that attempts to merge the criteria listed in Article 38(1) of the Directive.<sup>495</sup> Without prejudice to challenges in clarity resulting from the merger, the current definition seems to exclude formal recognition of refugee status or sufficient protection in accordance to the Refugee Convention as stand-alone criteria to apply the concept as it also requires that:

- (i) life and liberty are not threatened,
- (ii) the principle of *non-refoulement* in accordance with the Refugee Convention is respected, and that
- (iii) the prohibition of the right to freedom from torture and cruel, inhuman or degrading treatment is respected. The "first country of asylum" concept is included among the inadmissibility grounds enshrined in the Asylum Act.<sup>496</sup>

The number of inadmissibility decisions on first country of asylum grounds is generally limited. According to SEF, there were no such decisions in 2021.

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

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<sup>494</sup> Article 2(1)(z) Asylum Act.

<sup>495</sup> Indeed, certain elements of the definition of the "safe third country" such as that contained in Article 38(1)(b) of the recast Asylum Procedures are not included.

<sup>496</sup> Article 19-A(1)(c) Asylum Act.

According to the information available to CPR, case law regarding the interpretation of the concept is highly limited but includes a ruling from a second-instance Administrative Court focusing on the definition of “sufficient protection”. According to the court’s interpretation of the provision enshrined in the Asylum Act, such protection should be interpreted to encompass the principle of *non-refoulement* in accordance with the Refugee Convention but also *refoulement* where a civilian’s life or person is at risk by reason of indiscriminate violence in situations of armed conflict.<sup>497</sup>

However, as stressed by TAC Lisbon in a ruling from November 2017, the formal recognition of refugee status is not *per se* sufficient to qualify a third country as a first country of asylum in the absence of a meaningful assessment of possible risks to the security of the applicant in that country.<sup>498</sup>

**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	<b>No</b>
❖	Is tailored information provided to unaccompanied children?	<b>Yes</b>		<b>No</b>

The Asylum Act provides for the right to:

- A broad set of information on the asylum procedure and reception conditions in general;<sup>499</sup>
- Information on key developments and decisions relating to the individual asylum file;<sup>500</sup>

<sup>497</sup> TAC Lisbon, Decision 1791/15.0BESLB, 29 September 2015, unpublished; TCA South, Decision 12873/16, 11 February 2016, available at: <http://bit.ly/2zUrEVt> on Brazil as a first country of asylum for a Syrian asylum seeker.

<sup>498</sup> TAC Lisbon, Decision 2163/17.7BESLB, 30 November 2017, unpublished. Another judgement from 2019, considered that episodes of robbery in the country of asylum were “*personal circumstances*” that did not amount to “*a situation of indiscriminate violence*”. TAC Lisbon, Decision 271/19.9BELSB, 13 September 2019, unpublished.

<sup>499</sup> This includes information on assistance and the asylum procedure by the UNHCR and CPR (Article 13(3)); information on the right to an individual application regarding dependent relatives (Article 13(5)); general information on the rights and duties in the asylum procedure (Article 14(2)); information in writing on the rights and duties in border procedures (Article 24(2)); information on the extension of the time limit for the examination and, upon demand, of the grounds for the extension and expected time limit for the decision in the regular procedure (Article 28(2)); oral information or an information brochure on the rights and duties of asylum seekers and in particular regarding the asylum procedure; applicable time limits; the duty to substantiate the claim; available service providers of specialised legal assistance; available reception and health care service providers; legal consequences of failing to cooperate with the SEF in substantiating the asylum claim; the purpose of fingerprinting and of all rights of data subjects in accordance to the EUODAC Regulation; information on the admissibility decision (Article 49(1)(a), (b), (c) and (2)); information on the rights and duties of beneficiaries of international protection (Article 66).

<sup>500</sup> This includes the individual notification of first instance decisions in admissibility and accelerated procedures on national territory (Article 20(3)); the individual notification of first instance decisions in admissibility and accelerated procedures and the right to appeal at the border (Article 24(5)); individual notification of the SEF’s proposal for a first instance decision in the regular procedure (Article 29(2)); individual notification of the first instance decision and the right to appeal in the regular procedure (Article 29(6)); individual notification of the first instance decision, the right to appeal and the obligation to abandon national territory within 20 days regarding subsequent applications (Article 33(6) and (9)); individual notification of the first instance decision and the right to appeal regarding applications following a removal procedure (Article 33-A(6)); individual notification of outgoing Dublin take charge or take back decisions (Article 37(2)); individual notification of the SEF’s proposal for the cessation, revocation, ending or refusal to renew the international protection status (Article 41(6)); individual notification of the cessation, revocation, ending or refusal to renew the international protection status (Article 43(2)).

- Information on detention;<sup>501</sup> and
- Specific information rights of unaccompanied children.<sup>502</sup>

Furthermore, the law provides for a general right to interpretation “whenever necessary” during registration of the application and throughout the asylum procedure.<sup>503</sup> This refers to the right to interpretation into a language that the asylum seeker understands or is reasonably expected to understand.<sup>504</sup>

In practice, while SEF generally complies with the obligation to inform asylum seekers of key developments, decisions and associated rights during asylum procedures, interpretation for that purpose is not systematically available and rarely includes an explanation of the grounds of the decision. The absence of translation has also been problematic in cases where SEF informs asylum seekers of developments in their applications by postal mail and email in Portuguese<sup>505</sup>. This problem mainly concerns asylum seekers residing in private accommodation.

### Information at the registration stage

Upon registration, asylum seekers receive an information leaflet from SEF, informing them of their rights and duties. In CPR’s experience, the leaflet is only available in a limited number of foreign languages (e.g., Portuguese, French, English, Russian, Arabic and Lingala). While some specific information leaflets, including one on reception and another for unaccompanied children are available online,<sup>506</sup> CPR is not aware of their systematic distribution to asylum seekers, including to unaccompanied children, despite having been appointed as legal representative on numerous occasions. The information contained in the leaflets is nevertheless brief and not considered user-friendly particularly in the case of unaccompanied children.

CPR’s liaison officers present at SEF-GAR develop efforts to explain the content of the documents handled to applicants, especially when they are not able to read.

### Information on the Dublin procedure

CPR has no indication that the common information leaflet provided for in Article 4(3) of the Dublin III Regulation is being systematically distributed. Nevertheless, SEF confirmed that such information is provided.

In CPR’s experience, the only information provided on the functioning of the Dublin system seems to be contained in the general information leaflet on the Dublin III and Eurodac Regulations, which is very limited. Asylum seekers are systematically informed in writing of the likely responsibility of another Member State, and the corresponding supporting evidence during the personal interview. In case the take back/take charge request is refused by the Member State and another Member State is deemed responsible by the Portuguese authorities, the asylum seekers is usually notified of the likelihood of

<sup>501</sup> This includes immediate information in writing on the grounds of detention as well as the right to appeal and to free legal aid (Article 35-B(2)); information on the internal rules of the detention facility and the detainee’s rights and duties (Article 35-B(5)).

<sup>502</sup> This includes information on mandatory legal representation (Article 79(1)); information on the purpose, potential consequences and preparation of the personal interview by the legal representative (Article 79(4)); information on the submission to an age assessment expertise (Article 79(7)).

<sup>503</sup> Article 49(1)(d) Asylum Act.

<sup>504</sup> Articles 14(2), 24(2) and (5), 29(6), 33(6), 35-B(2) and (5), 37(2), 43(2), 49(1)(a), (b) and (2) and 66 Asylum Act.

<sup>505</sup> Attaching documents such as accelerated procedures decisions, Dublin transfer decisions or proposals for a final decision in the regular procedure, also in Portuguese.

<sup>506</sup> SEF, *Informação para Menores Não-Acompanhados Requerentes de Proteção Internacional em Portugal*, available in Portuguese at: <https://bit.ly/2FFVjc3>; SEF, *Acolhimento em Portugal*, available in Portuguese at: <https://bit.ly/2MkBrnC>; SEF, *Informação para Requerentes de Proteção Internacional em Portugal*, available in Portuguese at: <https://bit.ly/2MoTRz>; SEF, *Regulamento Dublin III*, available in Portuguese at: <https://bit.ly/2Hq5aEy>.

being transferred to that Member State. In such cases, according to CPR's experience, the asylum seeker is not informed of details regarding the refusal (see [Dublin: Procedure](#)).

### **Information on the border procedure**

In the case of asylum seekers detained at the border, the certificate of the asylum application used to contain a brief reference to Article 26 of the Asylum Act that provides for the systematic detention of asylum seekers in the border procedure. Asylum seekers were not systematically informed or aware of their rights and obligations in detention despite the existence of information leaflets available in a limited number of foreign languages.<sup>507</sup> Gaps in the provision of information have been flagged by the National Preventive Mechanism,<sup>508</sup> both with regard to the applicable legal frameworks and the individual situation of the applicants.

The border procedure was not applied in 2021.

### **Child-friendly information**

Despite having been designated as legal representative of a significant number of unaccompanied children who applied for asylum in 2021, CPR is unaware of the provision of child-friendly information by SEF, including the specific information leaflet for unaccompanied children and the information leaflet provided for by Article 4(3) of the Dublin Regulation.

### **Information on procedural developments**

Despite written requests to that end, asylum seekers are very rarely informed of the extension of the time limit for the examination of their application, the grounds for the extension and the expected time limit for the decision in the regular procedure as required by law.<sup>509</sup>

### **Information by NGOs**

CPR provides free legal information to asylum seekers throughout the asylum procedure that broadly covers the information requirements provided in the law, including tailored information to unaccompanied children and to relocated asylum seekers, on the basis of individual interviews and legal counselling. Challenges in capacity have at times restricted the provision of legal information during the first instance asylum procedure, particularly regarding asylum seekers placed in detention or private accommodation in more remote locations (see [Regular Procedure: Legal Assistance](#)).

There are other organisations that provide legal information and assistance to asylum seekers during the first instance of the regular procedure such as the Jesuit Refugee Service ([JRS Portugal](#)), the High Commissioner for Migration ([ACM](#)) through its National Centres for Migrants' Integration (CNAIM) and Local Support Centres for Migrants Integration (*Centro Local de Apoio à Integração de Migrantes*, CLAIM) spread throughout the country and Crescer. According to the available information, these services remain residual and mostly focused on integration.

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<sup>507</sup> Portuguese Ombudsman, *Tratamento de Cidadãos Estrangeiros em situação irregular ou requerentes de asilo nos centros de instalação temporária ou espaços equiparados*, September 2017, available in Portuguese at: <http://bit.ly/2z15JPu>, Chapter II, Section 9.

<sup>508</sup> Portuguese Ombudsman, *Mecanismo Nacional de Prevenção – Relatório à Assembleia da República 2018*, 30 May 2019, available in Portuguese at: <https://bit.ly/2XTmicn>.

<sup>509</sup> Article 28(2) Asylum Act.



## 2. Access to NGOs and UNHCR

### Indicators: Access to NGOs and UNHCR

1. Do asylum seekers located at the border have effective access to NGOs and UNHCR if they wish so in practice? **Yes** With difficulty No
2. Do asylum seekers in detention centres have effective access to NGOs and UNHCR if they wish so in practice? **Yes** With difficulty No
3. Do asylum seekers accommodated in remote locations on the territory (excluding borders) have effective access to NGOs and UNHCR if they wish so in practice? **Yes** With difficulty No

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

## H. Differential treatment of specific nationalities in the procedure

### Indicators: Treatment of Specific Nationalities

1. Are applications from specific nationalities considered manifestly well-founded? **Yes** No  
❖ If yes, specify which: Syria, Eritrea (within the context of relocation)
2. Are applications from specific nationalities considered manifestly unfounded?<sup>510</sup> **Yes** **No**  
❖ If yes, specify which:

Within the context of the EU emergency relocation programme (2015-2018), it was observed that SEF generally granted subsidiary protection to **Syrians** and refugee status to **Eritreans**.

In the course of 2019, CPR observed that, SEF deemed a significant number of applications lodged by **Venezuelans** as unfounded within accelerated procedures (notably on grounds of irrelevance),<sup>511</sup> and referred the cases to regularisation procedures through the humanitarian clause of the exceptional regularisation regime of the Immigration Act.<sup>512</sup>

According to the decisions, such a referral was done due to the political, social, and humanitarian crisis in the country and its impacts in the regular functioning of institutions and public services. While further information on the conduct of such procedures was not available to CPR at the time of writing, this is an uncommon practice from the authorities that was only systematically applied to Venezuelans.<sup>513</sup> The practice was confirmed in the Statistical Report of Asylum (2020).<sup>514</sup> While official data in this regard is not available, according to CPR's observation, this practice persisted in 2020 and 2021.

TCA South analysed one such decision in 2020. In the case concerned, the applicant referred to the overall conditions in Venezuela (insecurity, lack of living conditions, lack of access to essential goods) and, particularly, to the lack of access to necessary medication. The Court considered that the first instance decision was contradictory. It was also concluded, *inter alia*, that given the publicly available information regarding the situation in Venezuela, it is notorious that the socio-economic situation is harsh, with shortages of food and medicines, and growing violence. The Court concluded that, given

<sup>510</sup> Whether under the "safe country of origin" concept or otherwise.

<sup>511</sup> Article 19(1)(e) Asylum Act.

<sup>512</sup> Article 123 Immigration Act.

<sup>513</sup> The decisions analysed do not clarify whether such procedures are triggered automatically by SEF and if residence permits on humanitarian grounds are effectively granted.

<sup>514</sup> Observatory for Migration, *Entrada, Acolhimento e Integração de Requerentes e Beneficiários de Protecção Internacional em Portugal – Relatório Estatístico do Asilo 2020*, May 2020, p.62, available in Portuguese at: <https://bit.ly/2MGYtB9>.

the applicant's statements and the available information, the allegations were *pertinent* and *relevant*, and the application should be analysed within the regular procedure.<sup>515</sup>

Furthermore, the practice seems to contradict the position assumed by Portugal externally regarding persons fleeing Venezuela, notably the pledges made in the 2019 Global Refugee Forum where Portugal committed "to ensure financial contributions for [...] joint operations of the UNHCR/IOM operation in Colombia (to address the urgent needs of Venezuelan refugees) [...]" and also referred to supporting the higher education of Venezuelan refugees.<sup>516</sup>

While statistical data is not available, CPR has observed that persons relocated to Portugal following rescue operations in the Mediterranean Sea whose applications for international protection were rejected were also (at least at times) referred to regularisation procedures through the humanitarian clause of the exceptional regularisation regime of the Immigration Act.<sup>517</sup> This was, according with at least some decisions analysed, done on the basis of the commitment made by Portugal following the disembarkation.

In 2021, Portugal also participated in the evacuation of Afghan citizens. In August, the Government announced the country's availability to host Afghans who have collaborated with Portuguese military forces deployed to Afghanistan, persons who have collaborated with EU, NATO and UN missions in the country.<sup>518</sup> Specific references to vulnerable cases (e.g. women and girls) were also made by Government officials.

A specific scheme has been adopted to ensure the reception of those evacuated to Portugal (see [Differential treatment in reception](#)). The asylum applications followed the regular procedure. According to the information available to CPR, admission to the regular procedure and issuance of the corresponding temporary residence permits were overall quick, and the analysis of the applications was ongoing at the time of writing.

A total of 768 applications for international protection have been made during the year within this context.

While official information on the selection criteria and procedures has not been shared by the authorities, according to the information available to CPR, those evacuated mostly fall in one of the following categories: persons who worked with the Portuguese Military Forces in Afghanistan, in the EU mission or with links to the UN; journalists, persons identified by the Directorate General for Consular Affairs and Communities (*Direcção-Geral dos Assuntos Consulares e das Comunidades*) and relatives of national citizens. A group of the Afghanistan Women's Soccer Team,<sup>519</sup> and another of the Afghanistan National Institute of Music,<sup>520</sup> and respective family members have also been hosted in the country.

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<sup>515</sup> TCA South, Decision 1574/19.8BELSB, 17 March 2020, unpublished.

<sup>516</sup> *Statement from Portugal at the Global Refugee Forum*, 17 December 2019, available at: <https://bit.ly/38OHMdM>.

<sup>517</sup> Article 123 Immigration Act.

<sup>518</sup> See, for instance: Expresso, *Afeganistão: Portugal participa na mobilização internacional de apoio a refugiados*, 15 August 2021, available at <https://bit.ly/36EymbY>.

<sup>519</sup> Diário de Notícias, *Portugal recebeu grupo de 80 afegãos, a maioria jogadoras de futebol*, 20 September 2021, available at: <https://bit.ly/3LbtYfS>.

<sup>520</sup> Euronews, *Jovens músicos afegãos encontram esperança em Portugal*, 14 December 2021, available at: <https://bit.ly/3xMZKvQ>.

### Short overview of the reception system

The primary responsibility for the provision of material reception conditions lies with the Ministry of Home Affairs.<sup>521</sup> However, the responsibility for reception lies with the Ministry of Employment, Solidarity, and Social Security for asylum seekers who pass the admissibility procedure and are in the regular procedure.<sup>522</sup> The competent authorities can cooperate with other public entities and/or private non-profit organisations in the framework of a MoU to ensure the provision of such services.<sup>523</sup>

The practical framework for the reception of asylum seekers in Portugal currently stems from bilateral MoUs,<sup>524</sup> the resolution of the Council of Ministers no. 103/2020 of 23 November 2020, establishing a **single system of reception and integration** of applicants for and beneficiaries of international protection, and the internal regulations of the Single Operative Group (SOG) it created.<sup>525</sup>

In practice, the following entities provide reception conditions to spontaneous applicants depending on the type and stage of the procedure and/or the profile of the applicant:

- The **Institute for Social Security (ISS)** offers material reception conditions to asylum seekers in the regular procedure;
- **Santa Casa da Misericórdia de Lisboa (SCML)** assists asylum seekers who have submitted an appeal against a Dublin decision or a first instance decision (with the exception of a first instance decision in the regular procedure) as well as certain categories of asylum seekers in the regular procedure;
- The **Portuguese Refugee Council (CPR)** provides reception services to asylum seekers in the admissibility (including Dublin) and accelerated procedures on the national territory. As regards unaccompanied children, CPR also provides for material reception conditions in the regular procedure and at appeal stage in accordance with the relevant protective measures.
- The **Immigration and Borders Service (SEF)** retains responsibility for material reception conditions in border procedures and procedures in detention following a removal order.<sup>526</sup>

Asylum seekers who lack resources<sup>527</sup> are entitled to support from the moment they apply for asylum,<sup>528</sup> and until a final decision is reached on their asylum application,<sup>529</sup> without prejudice to the suspensive effect of appeals<sup>530</sup> and the provision of material reception conditions beyond the final rejection in case of ongoing need for support on the basis of an individual assessment of the applicant's social and financial circumstances.<sup>531</sup>

In practice, the majority of spontaneous asylum applicants are systematically referred by SEF and benefit from the provision of material reception conditions by CPR in the framework of admissibility and accelerated procedures on the territory.

In the current reception system, adults, and families with children are mostly accommodated at CPR's Refugee Reception Centre (CAR) or in private accommodation provided by CPR (apartments and rooms

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<sup>521</sup> This includes admissibility procedures (including Dublin procedures); accelerated procedures, border procedures, subsequent applications and applications following a removal decision: Article 61(1) Asylum Act.

<sup>522</sup> Article 61(2) Asylum Act.

<sup>523</sup> Article 61(1) and (2) *in fine* Asylum Act.

<sup>524</sup> Notably MoUs between the Ministry of Home Affairs / SEF and CPR, between ISS and CPR, and between the ISS and Santa Casa da Misericórdia de Lisboa (SCML).

<sup>525</sup> Resolution of the Council of Ministers no. 103/2020 of 23 November 2020, available at: <https://bit.ly/3oBLXQm>.

<sup>526</sup> Article 61(1) Asylum Act.

<sup>527</sup> Articles 51(1) and 56(1) Asylum Act.

<sup>528</sup> Articles 51(1), 56(1) and 2(1)(ae) Asylum Act.

<sup>529</sup> Article 60(1) Asylum Act.

<sup>530</sup> Articles 60(1) *in fine* and 30(1) Asylum Act.

<sup>531</sup> Article 60(2) Asylum Act.

in the private market or hostels) during admissibility (including Dublin) and accelerated procedures on the territory. In the case of unaccompanied children, CPR's Refugee Children Reception Centre (CACR) offers appropriate housing and reception conditions during the regular procedure and at appeal stage.

Asylum seekers supported by ISS are mostly provided with private housing (rented flats/houses and rooms) without prejudice to accommodation provided by relatives in Portugal and collective accommodation such as hotels or non-dedicated reception centres e.g., emergency shelters, nursing homes, etc. While the majority of applicants for international protection supported by SCML are accommodated in private housing, since 2020, SCML also resorts to hostels to accommodate asylum seekers in order to guarantee accommodation while other solution is not available.

CPR ensures accommodation until ISS or SCML take over and asylum seekers only leave its facilities when alternative accommodation is secured.

**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 available to asylum seekers in the following stages of the asylum procedure?			
❖ Regular procedure	Yes	Reduced material conditions	No
❖ Dublin procedure	Yes	Reduced material conditions	No
❖ Admissibility procedure	Yes	Reduced material conditions	No
❖ Border procedure	Yes	Reduced material conditions	No
❖ Accelerated procedure	Yes	Reduced material conditions	No
❖ First appeal	Yes	Reduced material conditions	No
❖ Onward appeal	Yes	Reduced material conditions	No
❖ Subsequent application	Yes	<b>Reduced material conditions</b>	<b>No</b>
2. Is there a requirement in the law that only asylum seekers who lack resources are entitled to material reception conditions?	Yes		No

**1.1. Responsibility for reception**

The primary responsibility for the provision of material reception conditions lies with the Ministry of Home Affairs.<sup>532</sup> However, the responsibility for reception lies with the Ministry of Employment, Solidarity and Social Security for asylum seekers who pass the admissibility procedure and are in the regular procedure.<sup>533</sup> Moreover, the authorities can cooperate with other public entities and/or private non-profit organisations in the framework of a MoU to ensure the provision of such services.<sup>534</sup>

The practical framework for the reception of asylum seekers in Portugal currently stems from bilateral MoUs,<sup>535</sup> the resolution of the Council of Ministers no. 103/2020 of 23 November 2020, establishing a **single system of reception and integration** of applicants for and beneficiaries of international protection, and the internal regulations of the Single Operative Group (SOG) it created.<sup>536</sup>

<sup>532</sup> This includes admissibility procedures (including Dublin procedures); accelerated procedures, border procedures, subsequent applications and applications following a removal decision: Article 61(1) Asylum Act.  
<sup>533</sup> Article 61(2) Asylum Act.  
<sup>534</sup> Article 61(1) and (2) *in fine* Asylum Act.  
<sup>535</sup> Notably MoUs between the Ministry of Home Affairs / SEF and CPR, between ISS and CPR, and between the ISS and Santa Casa da Misericórdia de Lisboa (SCML).  
<sup>536</sup> Resolution of the Council of Ministers no. 103/2020 of 23 November 2020, available at: <https://bit.ly/3oBLXQm>.

According to the Resolution, the main features of the single system of reception and integration are as follows:

- The system covers all applicants and beneficiaries of international protection, including unaccompanied children, resettled refugees, and relocated asylum seekers;
- A Single Operative Group (SOG) is established. The SOG has a restricted and an extended line-up;
- The restricted line-up ensures the coordination and is composed by ACM, SEF and ISS;
- The extended line up develops technical and operational tasks and, in addition to ACM, SEF and ISS also includes: the Directorate General for Higher Education (DGES), DGEstE, Portuguese Institute of Sports and Youth (IPDJ), IEFEP, ANQEP, SCML, ACSS, DGS, and IHRU. The resolution further establishes that other entities with competences in the fields of reception and integration, namely CPR, are also part of this line up.
- ACM is responsible for organising periodic meetings (at least one every month), providing logistical and administrative support, and preparing the regulation of the SOG;
- The resolution further details the responsibilities of ACM, SEF and ISS within the context of the SOG;
- The SOG is established for 5 years with possibility of extension. Instruments concerning reception and integration of applicants for and beneficiaries of international protection in force must be adjusted to the provisions of the resolution.

Within the framework of the SOG, three subgroups have been created so far to handle operational matters: the social monitoring subgroup, the unaccompanied children subgroup, and the programmed arrivals subgroup.

In practice, the following entities remain competent to provide reception conditions to spontaneous applicants depending on the type and stage of the procedure and/or the profile of the applicant:

1. The **Institute for Social Security (ISS)** offers material reception conditions to asylum seekers in the regular procedure;
2. **Santa Casa da Misericórdia de Lisboa (SCML)** assists asylum seekers who have submitted an appeal against a Dublin decision or a first instance decision (with the exception of a first instance decision in the regular procedure) as well as certain categories of asylum seekers in the regular procedure (e.g., vulnerable cases such as unaccompanied children initially accommodated at CACR that move into assisted apartments and former unaccompanied children initially accommodated at CACR; or individuals and families with strong social networks in the Lisbon area);
3. The **Portuguese Refugee Council (CPR)** provides reception services to asylum seekers in the admissibility (including Dublin) and accelerated procedures on the national territory. As regards unaccompanied children, CPR also provides for material reception conditions in the regular procedure and at appeal stage in accordance with protective measures adopted by Family and Juvenile Courts in the framework of the Children and Youths at Risk Protection Act (see [Legal Representation of Unaccompanied Children](#)).
4. The **Immigration and Borders Service (SEF)** retains responsibility for material reception conditions in border procedures and procedures in detention following a removal order (see [Conditions in Detention Facilities](#)).<sup>537</sup>

The social monitoring subgroup replaced the previous structure for referral and follow up on the provision of reception conditions to spontaneous asylum seekers. The group is composed by ACM, CPR, ISS, SCML and SEF, and meets twice a month. The extended line-up of the SOG meets once a month.

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<sup>537</sup> Article 61(1) Asylum Act.

## 1.2. The right to reception and sufficient resources

The law provides for the right of asylum seekers to material reception conditions regardless of the procedure they are in,<sup>538</sup> with the exception of a possible withdrawal or reduction of those conditions in the case of “unjustified” subsequent applications.<sup>539</sup>

Asylum seekers are entitled to support from the moment they apply for asylum,<sup>540</sup> and until a final decision is reached on their asylum application,<sup>541</sup> without prejudice to the suspensive effect of appeals,<sup>542</sup> and the provision of material reception conditions beyond the final rejection in case of ongoing need for support on the basis of an individual assessment of the applicant’s social and financial circumstances.<sup>543</sup>

Furthermore, there is a requirement in the law according to which only asylum seekers who lack resources are entitled to material reception conditions.<sup>544</sup> The law provides for criteria to assess the sufficiency of resources that consist in either the lack thereof or a level of financial resources which is inferior to the “social support allowance” provided in the law.<sup>545</sup> To date, ISS has interpreted this provision as referring to the social pension (*pensão social*) that, in 2021, stood at € 211.79 per month.<sup>546</sup> According to the information provided by ISS, internal procedures determine that cases are reassessed every three months and the provision of material reception conditions is maintained where indicators of a lack of resources subsist.

Asylum seekers can be called to contribute,<sup>547</sup> or reimburse,<sup>548</sup> partly or in full, the cost of material reception conditions and health care depending on the level and the point in time when the authorities become aware of their financial resources. However, neither the law nor administrative guidelines specify at what point the asylum seeker is required to declare any financial resources he or she might have.

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

Access to CPR’s Refugee Reception Centre (*Centro de Acolhimento para Refugiados*, CAR) that accommodates isolated adults and families, is dependent on written referral from SEF-GAR. The

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<sup>538</sup> Articles 51(1) and 56(1)-(2) Asylum Act.

<sup>539</sup> Article 60(3)(f) Asylum Act. The meaning of “unjustified subsequent application” seems to indicate that the potential withdrawal or reduction would only intervene at the end of the 10-day admissibility/preliminary assessment as per Article 33(4). According to the information available to CPR, such possibility was not enforced in 2018 and 2019, as SEF referred subsequent applicants in need of housing to the relevant entities.

<sup>540</sup> Articles 51(1), 56(1) and 2(1)(ae) Asylum Act that entitle third-country nationals or stateless persons who have “presented” an asylum application to material reception conditions. The presentation of the asylum application is to be understood as preceding the registration of the asylum claim under Article 13(1) and (7) Asylum Act.

<sup>541</sup> Article 60(1) Asylum Act.

<sup>542</sup> Articles 60(1) *in fine* and 30(1) Asylum Act.

<sup>543</sup> Article 60(2) Asylum Act.

<sup>544</sup> Articles 51(1) and 56(1) Asylum Act.

<sup>545</sup> Article 56(3) Asylum Act.

<sup>546</sup> Decree-Law 464/80 and Ministerial Order 28/2020.

<sup>547</sup> Article 56(4) Asylum Act.

<sup>548</sup> Article 56(5) Asylum Act.

transition from border facilities to reception centres within the territory is carried out smoothly in general. As for unaccompanied children, referral by SEF to CPR's CACR is made by the most expedient means available such as telephone or email, and children released from the border, are escorted by SEF to the premises. Finally, for those asylum seekers who have opted for private housing with relatives, the provision of material reception conditions such as financial assistance by CPR is dependent on the presentation of an individual certificate of the asylum application. CPR does not proactively engage in means assessments for the duration of the provision of material reception conditions given that asylum seekers are not entitled to access paid employment at this stage of the procedure.

Following admission to the regular procedure, or if the application is deemed inadmissible or is rejected in an accelerated procedure,<sup>549</sup> the asylum seeker is generally referred by frontline service providers such as CPR to the Single Operative Group (SOG) through its social monitoring subgroup. The SOG decides on the provision of material reception conditions in the regular procedure (by ISS), or at appeal stage (by SCML), based on an individual monitoring report that includes information on the socio-economic circumstances of the individual. Given that asylum seekers admitted to the regular procedure are often unemployed, despite being granted access to the labour market, it is not common to cease the provision of material reception conditions at this point.

While spontaneous asylum applicants do not face systematic obstacles in gaining access to available material reception conditions (e.g., due to delays in the issuance of the individual certificate of the asylum application or a strict assessment of resources), some concerns remain regarding access to support. These include the provision of support by CPR to asylum seekers accommodated in private accommodation in remote locations (e.g., due to the lack of information from SEF's regional representations regarding available assistance and costs associated with travel and communications for initial and follow-up interviews with social workers at CPR). Another concern stems from the potential exclusion of asylum seekers from material reception conditions in the regular procedure in case of refusal to accept the dispersal policy in place managed by the GTO (see [Freedom of Movement](#)).

## 2. Forms and levels of material reception conditions

### Indicators: Forms and Levels of Material Reception Conditions

1. Amount of the monthly financial allowance/vouchers granted to adult asylum seekers as of 31 December 2021 (in original currency and in €): € 211.79 - € 273.42

The Asylum Act provides for a general definition of material reception conditions,<sup>550</sup> as well as a closed list of forms of provision of material reception conditions in Article 57(1) that includes:

- a. Housing,<sup>551</sup>
- b. Food;
- c. Monthly social support allowance for food, clothing, transport, and hygiene items;
- d. Monthly complementary allowance for housing; and
- e. Monthly complementary allowance for personal expenses and transport.

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

- a. Housing and food in kind with a [monthly] complementary allowance for personal expenses and transportation; and

<sup>549</sup> This includes rejected asylum seekers released from the border after the expiry of the 60-day time limit (see [Duration of Detention](#)).

<sup>550</sup> Article 2(1)(e) Asylum Act: housing, food, clothing and transportation offered in kind, through financial allowances, vouchers or daily allowances.

<sup>551</sup> Under Article 57(2), housing and food in kind can consist of: (a) housing declared as equivalent to reception centres for asylum seekers in the case of border applications; (b) installation centres for asylum seekers or other types of housing declared equivalent to installation centres for asylum seekers that offer adequate living conditions; and (c) private houses, apartments, hotels, or other forms of housing adapted to accommodate asylum seekers.

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

However, asylum seekers may exceptionally be offered forms and combinations of material reception conditions other than those provided in the law for a limited period of time where:

- i. there is a need for an initial assessment of the special needs of the applicant;
- ii. the housing in kind as per the law is not available in the area where the asylum seeker is located; and/or
- iii. available reception capacity is temporarily exhausted and/or the international protection applicants are detained at a border that is not equipped housing declared as equivalent to reception centres.<sup>552</sup>

While the Asylum Act enshrines the right of asylum seekers to the satisfaction of their basic needs to a level that guarantees their human dignity,<sup>553</sup> it does not provide for specific criteria to determine what is an adequate standard of living which guarantees their subsistence and protects their physical and mental health as per Article 17(2) of the recast Reception Conditions Directive.

The specific criteria for establishing the value of the financial allowances consists of a percentage of the “social support allowance”,<sup>554</sup> which, to date, has been interpreted by the ISS as referring to the social pension (*pensão social*).<sup>555</sup> These percentages represent the upper limit of the allowances.

In 2021, the following amounts applied:<sup>556</sup>

Level of financial allowances per expense: 2021			
Type of monthly allowance	Percentage	Amount	
		ISS	SCML
Social support allowance for food, clothing, transport and hygiene items	70%	€ 148.25	€ 147.22
Complementary allowance for housing	30%	€ 63.54	€ 63.10
Complementary allowance for personal expenses and transport	30%	€ 63.54	€ 63.10

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

CPR’s Social Department provides asylum seekers with second-hand clothes as well as food items as needed and/or weekly with the support of the charities/projects that support social institutions by providing food items to be distributed to final beneficiaries, such as the Food Bank (*Banco Alimentar*), Refood and *Missão Continente*, as well as sporadic private donations.

<sup>552</sup> Article 57(4) Asylum Act.

<sup>553</sup> Article 56(1) Asylum Act.

<sup>554</sup> Article 58 Asylum Act.

<sup>555</sup> In 2021, the value of the social pension stood at € 211.79/ month – Decree-Law 464/80 and Ministerial Order 28/2020.

<sup>556</sup> The amounts for 2021 remained the same as in 2020. While the ISS updated the amounts in 2020, SCML confirmed that they have not done so. Hence, the amounts for each entity are slightly different.



Depending on the individual circumstances, CPR also pays for: (i) medication due to problems related to access to State funded medication through the National Health Service (*Serviço Nacional de Saúde*, SNS) or non-funded medication; (ii) school supplies for children; (iii) differentiated health care, e.g., dentists; and (iv) taxi transportation, e.g., in case of a medical emergency or for particularly vulnerable individuals.

In the case of unaccompanied children in the regular procedure and at appeal stage, CPR provides material reception conditions in kind such as housing, food, clothing, transportation, school supplies, sports, social and cultural activities, capacity-building and personal development activities, haircuts, as well as a monthly allowance for personal needs that varies according to age: € 10 for children up to the age of 10; € 12 for children between the age of 11 and 14; and €16 for children aged 15 and over. Unaccompanied young people in pre-autonomy stage are responsible for managing their own monthly allowance of €150.

In the regular procedure or pending an appeal against a rejection decision during the admissibility stage or in an accelerated procedure, the financial allowance provided by ISS and by SCML is expected to cover all expenses. SCML provides an additional monthly support in cases of severe economic vulnerability (which are often linked to the extremely high costs of accommodation). In 2021, 37 applicants were covered by this measure.<sup>557</sup> ISS has also confirmed that in 2021 it has continued to provide further support for housing expenses (first two months of rent upon presentation of a lease proposal) and that, when deemed justified following assessment, additional support for housing and other expenses can be granted.

The monthly allowance for all expenses is calculated in accordance with the percentages of the social pension set out in the Asylum Act,<sup>558</sup> as mentioned above, albeit with a regressive percentage per additional member of the household.

While in previous years, the amount of the allowances granted by ISS and SCML was the same, according to the information provided by the organisations, this has not been the case since 2020. According to ISS, an audit carried out in 2020 concluded that the “social support allowance for food, clothing, transport and hygiene items” could not, according to Article 57(3) of the Asylum Act, be combined with the “complementary allowance for personal expenses and transport”. According to the information provided by SCML, the organisation continued to follow the previous model to determine the amount of the financial allowances it granted. Consequently, in 2021, the amounts applied were as follows:

Level of ISS / SCML financial allowance for all expenses: 2021		
Category of applicant	Amount	
	ISS	SCML
Head of household	€ 211.79	€ 273.42
Other adult(s) in household	€ 148.25	€ 191.39
Child	€ 105.90	€ 136.71

Financial allowances for asylum seekers and beneficiaries of international protection in the regular procedure and in appeal saw a sharp decrease in 2012 during the financial crisis and the reasoning of

<sup>557</sup> Moreover, according to information provided by SCML, the organisation also allows asylum seekers under its care to access its healthcare units in accordance with medical needs.  
<sup>558</sup> Article 58 Asylum Act.

ISS since has been to bring them strictly in line to those provided in the law to destitute nationals. According to the law, the social pension constitutes a measure of solidarity to offer social protection to the most vulnerable populations.<sup>559</sup>

Even though no qualitative research has been conducted to date on destitution of asylum seekers in the asylum procedure, the current level of financial allowances is manifestly low, particularly in light of the current living costs in the country CPR's Social Department receives regular complaints from asylum seekers at all stages of the asylum procedure regarding financial difficulties to meet basic needs and anxiety regarding low levels of income, although short of outright destitution.

Furthermore, a study focusing on unaccompanied asylum-seeking children and ageing out in Portugal published in 2021 revealed that, while the children and young people involved generally rated the response of relevant entities in a positive manner, the vast majority stated that the financial allowances received are insufficient to cover their expenses.<sup>560</sup>

Such difficulties might constitute a contributing factor to the level of absconding and cessation of support (see [Reduction or Withdrawal of Reception Conditions](#)).

Parliament resolution no. 292/2018 recommended the publication of a yearly report on the national asylum policy. In May 2020, in response to this recommendation, the Observatory for Migration (OM)<sup>561</sup> published its first Statistical Report of Asylum (2020).<sup>562</sup> The report covering 2020 was published in June 2021.<sup>563</sup> The report covers spontaneous asylum seekers, relocated asylum seekers (within the different programmes), and resettled refugees. It does not assess the amount of the financial allowance granted or their potential impact on the integration of applicants for and beneficiaries of international protection.

### 3. Reduction or withdrawal of reception conditions

#### Indicators: Reduction or Withdrawal of Reception Conditions

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

The Asylum Act provides for a closed list of grounds that may warrant the reduction or withdrawal of material reception conditions.<sup>564</sup> These consist of **unjustifiably**:

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

<sup>559</sup> Preamble to Decree-Law 464/80 regarding the social pension that refers to “improving social protection for the most destitute”. The social pension is provided among others to nationals, who are not entitled to a pension from the contributory social security system who lack any revenue or whose revenue is below the value of the social pension (Article 1).

<sup>560</sup> Sandra Roberto, Carla Moleiro, ed. Observatório das Migrações, *De menor a maior: acolhimento e autonomia de vida em menores não acompanhados*, April 2021, p.44, available at: <https://bit.ly/3fqMKBK>.

<sup>561</sup> The OM is a team of ACM focusing on the study of migrations. For more, see <https://bit.ly/3j8E97W>.

<sup>562</sup> Observatory for Migration, *Entrada, Acolhimento e Integração de Requerentes e Beneficiários de Protecção Internacional em Portugal – Relatório Estatístico do Asilo 2020*, May 2020, available in Portuguese at: <https://bit.ly/2MGYtB9>.

<sup>563</sup> Observatório das Migrações, *Requerentes e Beneficiários de Protecção Internacional – Relatório Estatístico do Asilo 2021*, June 2021, available in Portuguese at: <https://bit.ly/3F5I9iw>.

<sup>564</sup> Article 60(3) Asylum Act.

For the reduction or withdrawal to be enacted, the behaviour of the applicant needs to be unjustified,<sup>565</sup> implying the need for an individualised assessment of the legality of the decision, which is however not clearly stated in the law. Such decisions must be individual, objective, impartial, and reasoned.<sup>566</sup> The asylum seeker is entitled to appeal the decision under these grounds before an Administrative Court,<sup>567</sup> with suspensive effect,<sup>568</sup> and may benefit from free legal aid to that end.<sup>569</sup> Reception conditions reduced or withdrawn pursuant to grounds (a) to (c) above can be reinstated if the asylum seeker is found or presents him/herself to the authorities.<sup>570</sup>

SEF affirmed that it does not official data on reduction or withdrawal of reception conditions. Nevertheless, CPR is aware of multiple instances where the withdrawal of reception conditions was determined by the entity as per article 60 of the Asylum Act. CPR is however not aware of the issuance of formal decisions in such cases and the criteria and procedures used in this regard remain unclear. According to the experience of the organisation, where support was suspended because an applicant repeatedly failed to present him/herself as required by SEF, it was reinstated upon appearance.

According to the data provided by ISS, out of the 1,860 persons supported by the entity in 2021, support ended for 186 persons (the grounds are unclear). SCML reported that, from a total of 1,640 persons supported throughout 2021 (including cases from previous years), 388 abandoned the support *proprio motu*. It cannot be excluded that, in certain instances, such abandonments may be linked to poor living standards offered by material reception conditions.<sup>571</sup>

According to the available information, other instances of cessation of support were connected to situations where the applicant no longer lacked financial resources according to the relevant criteria (see above).<sup>572</sup>

The law does not provide for specific sanctions for seriously violent behaviour or serious breaches of the rules of accommodation centres and other housing provided in the framework of material reception conditions. Nevertheless, service providers are required to adopt adequate measures to prevent violence, and notably sexual and gender-based violence.<sup>573</sup> In the case of **CAR**, both the Regulation of the centre and the individual contract signed between CPR and the asylum seeker include specific prohibitions of abusive and violent behaviour that can ultimately result in withdrawal of support following an assessment of the individual circumstances and taking into consideration the vulnerability of the applicant.<sup>574</sup> In the case of **CACR**, while the Regulation contains similar prohibitions and age appropriate remedial action,<sup>575</sup> the accommodation of unaccompanied children stems from and can only be reviewed by the competent Family and Juvenile Court in the framework of the Children and Youths at Risk Protection Act (see [Legal Representation of Unaccompanied Children](#)).

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<sup>565</sup> Article 60(3) Asylum Act.

<sup>566</sup> Article 60(5) Asylum Act.

<sup>567</sup> Article 60(8) Asylum Act.

<sup>568</sup> Articles 63(1) and 30(1) Asylum Act.

<sup>569</sup> Article 63(2) Asylum Act.

<sup>570</sup> Article 60(4) Asylum Act.

<sup>571</sup> The rate of absconding in the relocation programme from 2015 to 2017 was also quite significant. See, for instance: Público, 'Quase metade dos 1500 refugiados que chegaram já deixou Portugal', 16 October 2017, available in Portuguese at: <http://bit.ly/2j8gF7J>; News Deeply, 'Portugal Offers Refugees a Warm Welcome, but Can't Get Them to Stay', 1 September 2017, available at: <http://bit.ly/2gMuHdW>. According to the evaluation report of the relocation programme, on 28 November 2017 the overall rate of absconding stood at 45%: ACM, *Relatório de Avaliação da Política Portuguesa de Acolhimento de Pessoas Refugiadas, Programa de Recolocação*, December 2017.

<sup>572</sup> Articles 51(1) and 56(1) Asylum Act.

<sup>573</sup> Article 59(1)(e) Asylum Act.

<sup>574</sup> The contract is currently available *inter alia* in Portuguese, English, French and is otherwise interpreted to the client if not available in a language that he understands.

<sup>575</sup> These include, by order of increasing severity, an oral warning; a reprimand; to execute a repairing task; reduction of pocket money; limitation of authorisations to leave the CACR; restriction of ludic and pedagogical activities, notably with fellow children; and transfer to another institution.

In practice, without prejudice to criminal proceedings where relevant, instances of withdrawal of support from CPR following abusive and/or violent behaviour in breach of internal rules remain rare events. For most cases, the consequences consist of transfer into alternative accommodation to ensure the security and well-being of the remaining residents. In the case of unaccompanied children, Family and Juvenile Courts generally prioritise the stability of the living environment,<sup>576</sup> and are extremely reluctant to uproot the child by transfer into another institution.

SCML also reported that it ensures 24/7 surveillance of hostels where applicants are accommodated.

**4. Freedom of movement**

Indicators: Freedom of Movement		
1. Is there a mechanism for the dispersal of applicants across the territory of the country?	<b>Yes</b>	<b>No</b>
2. Does the law provide for restrictions on freedom of movement?	<b>Yes</b>	<b>No</b>

The Asylum Act does not contain specific restrictions on the freedom of movement or grounds for residence assignment but provides for the duty of asylum seekers to keep SEF informed of their place of residence.<sup>577</sup> Furthermore, the authorities may decide to transfer the asylum seekers from housing facilities when needed for an adequate decision-making process regarding the asylum application or to improve housing conditions.<sup>578</sup>

Since 2012, the operational framework for the reception of asylum seekers in Portugal provides for a dispersal mechanism (see [Criteria and Restrictions to Access Reception Conditions](#)).

Following the admissibility procedure and admission to the regular procedure, or if the application is deemed inadmissible or rejected in an accelerated procedure, the asylum seeker is generally referred by frontline service providers such as CPR to the social monitoring sub-group of the SOG. The social monitoring sub-group meets at least twice a month to discuss individual cases and decides on the provision of material reception conditions in the regular procedure (generally by ISS) or at appeal stage (by SCML) on the basis of an individual monitoring report and in accordance with existing reception capacity countrywide. This can either result in a dispersal decision implemented by local Social Security services for those admitted to the regular procedure or their placement in private housing/hostels in the **Lisbon** area under the responsibility of SCML for those who have appealed the rejection of their application.

When an asylum seeker needs to move to a different part of the country within this context, the trip (public transportation) is organised, and the cost covered, by ISS. CPR usually provides logistical support to the applicant. Within the context of the COVID-19 pandemic, this also included the performance of a COVID-19 test required by the ISS. Applicants are informed about the travel arrangements in a language they understand, and it is standard practice for a member of ISS staff to be present on arrival.

In practice, according to the statistics shared by the ISS, as of December 2021, a total of 1,860 applicants and beneficiaries of international protection benefited from ISS material support (with some individuals being supported in more than one district during the year, hence the total of 1,915 indicated in the table below). The beneficiaries resided in the following areas:

<sup>576</sup> Article 78(2)(e) Asylum Act provides for stability of housing as a contributing factor to upholding the best interests of the child.  
<sup>577</sup> Article 15(1)(f) Asylum Act.  
<sup>578</sup> Article 59(2) Asylum Act.

Dispersal of applicants and beneficiaries of international protection receiving ISS support: 2021	
Area	Number
Lisbon	855
Porto	203
Coimbra	153
Castelo Branco	144
Setúbal	121
Braga	107
Santarém	74
Aveiro	44
Viseu	33
Guarda	27
Portalegre	27
Viana do Castelo	25
Vila Real	25
Leiria	24
Beja	16
Évora	15
Bragança	14
Faro	8
<b>Total</b>	<b>1,915</b>

Source: ISS.

Most asylum seekers and beneficiaries of international protection receiving material reception conditions from ISS in 2021 resided in **Lisbon**. Additionally, SCML supported a total of 1,640 individuals (of which 1,528 spontaneous asylum seekers, including cases from previous years), all of whom resided in Lisbon or in nearby districts due to difficulties in accessing the housing market in Lisbon (see [Types of Accommodation](#)).

There is some flexibility in the implementation of the dispersal policy. According to ISS, asylum seekers admitted to the regular procedure may request a review of their dispersal decision and their accommodation in a particular area where accommodation, education, employment and/or health related grounds justify an exception (e.g., regarding unaccompanied children enrolled in schools, asylum seekers who are employed at the time of the decision or particularly vulnerable asylum seekers who benefit from specialised medical care in Lisbon, see [Responsibility for Reception](#)). Otherwise, the refusal to accept the dispersal decision by failing to report to the local Social Security service or abandoning its support following the dispersal decision will generally result in the withdrawal of material

reception conditions. ISS noted, however, that if the reinstatement of support is subsequently requested, the services do evaluate the individual situation.

According to the information available to CPR, once the dispersal decision is made by the SOG, asylum seekers are not subjected to onward dispersal decisions resulting in their move from the initial District of assignment.<sup>579</sup> Nevertheless, CPR is aware of cases where there is a subsequent move as deemed adequate for the integration process.

Even though no research has been conducted to date to assess the impact of the dispersal policy, according to the information collected by CPR, the main concerns raised by asylum seekers include isolation, lack of interpreters and specialised mental health care, difficulties in accessing specialised legal assistance (including that provided by CPR due to the geographical distance), lack of tailor-made integration services such as language training and vocational training, and the absence of culturally relevant facilities/services in certain parts of the country.

According to the Statistical Report of Asylum 2020, the dispersal mechanism is considered good practice despite the implementation challenges. Among the challenges identified by the Report are: (i) the reluctance of applicants in moving from the **Lisbon** area to other parts of the country; (ii) the need to finetune the distribution criteria; and (iii) discrepancies in the response capacity of local Social Security services.<sup>580</sup>

**B. Housing**

**1. Types of accommodation**

Indicators: Types of Accommodation	
1. Number of reception centres:	2 (spontaneous asylum seekers)
2. Total number of places in the reception system:	74
3. Total number of places in private accommodation:	Variable
4. Type of accommodation most frequently used in a regular procedure:	Reception centre Hotel or hostel Emergency shelter <b>Private housing</b> Other
5. Type of accommodation most frequently used in an accelerated procedure:	<b>Reception centre Hotel or hostel</b> Emergency shelter Private housing Detention

As mentioned in **Freedom of Movement**, asylum seekers are generally referred by frontline service providers to the SOG following admission to the regular procedure, or in the case of appeals against negative decisions. At this point the provision of housing is relayed by either local Social Security services for the duration of the regular procedure or by SCML in the Lisbon area at appeal stage.

According to information provided by ISS, asylum seekers are mostly provided with private housing (rented flats/houses and rooms) without prejudice to accommodation provided by relatives in Portugal and collective accommodation such as hotels or non-dedicated reception centres, e.g., emergency shelters, nursing homes, etc. While ISS manages temporary reception centres, social emergency reception centres and social inclusion communities where applicants for and beneficiaries of international protection may be accommodated in certain circumstances,<sup>581</sup> none of them has places specifically assigned to such persons.

<sup>579</sup> It should be noted that in accordance with Article 59(2) Asylum Act, decisions ordering the transfer of asylum seekers from housing facilities can only occur when needed for an adequate decision-making process regarding the asylum application or to improve housing conditions.

<sup>580</sup> Observatory for Migration, *Entrada, Acolhimento e Integração de Requerentes e Beneficiários de Protecção Internacional em Portugal – Relatório Estatístico do Asilo 2020*, May 2020, p 141-142, available in Portuguese at: <https://bit.ly/2MGYtB9>.

<sup>581</sup> 90 persons in 2021.

In previous years, the provision of housing by SCML consisted mostly of accommodation in private rooms in the Lisbon area. While the majority of applicants for international protection supported by SCML are accommodated in private housing, since 2020, SCML also resorts to hostels to accommodate asylum seekers in order to guarantee accommodation while another solution is not available.<sup>582</sup> A very limited number of asylum seekers are sometimes referred to homeless shelters managed by the organisation on a temporary basis to address specific vulnerabilities.

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

Capacity and occupancy of the asylum reception system in 2021		
Centre	Capacity	Occupancy at 31 December 2021
CAR	60	47
CACR	14	16
<b>Total</b>	<b>74</b>	<b>63</b>

Source: CPR.

**CAR** is an open reception centre located in **Bobadela**, Municipality of Loures, and operates in the framework of MoUs with the Ministry of Home Affairs and the Ministry of Labour, Solidarity and Social Security. The official capacity of the CAR stands at 52 places but, in practice, the centre can accommodate up to 80 persons due to renovation work. Nevertheless, since the beginning of the COVID-19 pandemic, the actual capacity has been drastically reduced in order to fully comply with the instructions of health authorities. Currently, the centre may accommodate a maximum of 60 persons.

In 2021, CPR provided reception assistance to a total of 905 asylum seekers,<sup>583</sup> of which 28.5% were accommodated at CAR/CAR 2, 66.9% in alternative private accommodation (including rooms in private apartments and hostels), 4.2% with friends/family, and the remaining 0.4% in other places of accommodation (e.g., accommodation for COVID-19 isolation).<sup>584</sup>

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

Factors such as the number of referrals for accommodation, the need to keep the occupation of facilities under prior limits due to COVID-19, occasional delays in the transition into accommodation provided by other stakeholders, as well as the need to preserve family units, continued to determine the need to resort to external accommodation solutions such as hostels.

<sup>582</sup> In 2021, a total of 120 places were available within this context.

<sup>583</sup> Including applicants for international protection whose applications were made before 2021.

<sup>584</sup> Accommodation by the end of the provision of support or by 31/12/2021. In total, and according to the reception model currently implemented by CPR, a total of 57% of the supported asylum seekers was accommodated in CAR during a period of time.

The Statistical Report of Asylum 2020 acknowledged the capacity challenges faced by frontline reception entities and noted that a number of entities consulted recommended the expansion of protocols to increase reception capacity for spontaneous asylum seekers.<sup>585</sup>

The average accommodation period with the assistance of CPR in 2021 was 2 and a half months, and overcrowding in relevant facilities has been largely addressed.

CACR is an open reception house for unaccompanied asylum-seeking children located in **Lisbon** that has operated since 2012 in the framework of MoUs with the Ministry of Home Affairs, the Municipality of Lisbon and the Ministry of Labour, Solidarity and Social Security. Its official capacity stands at 14 places. In order to address overcrowding in the facility, CPR revisited its accommodation policy for unaccompanied children in 2020. While some may be provisionally accommodated at CAR due to shortage of places at CACR or to the need to wait for COVID-19 test results, young applicants at more advanced stages of the integration process may be transferred from CACR to CAR 2 in a process of progressive autonomy. Furthermore, changing arrangements in rooms allowed to expand the capacity of the facility while preserving adequate accommodation standards. In 2021, CPR accommodated a total of 59 unaccompanied children.

Throughout 2021, CPR continued its operations in the **CAR 2**, located in S. João da Talha, Municipality of Loures, specifically devoted to the reception of resettled refugees. CAR 2 has a maximum capacity of 90 places. However, within the context of the coronavirus pandemic, such capacity was reduced to 66 places (two thirds of the original). In 2021, CAR 2 accommodated a total of 177 resettled refugees. The facility is also part of CPR's response to the accommodation of unaccompanied children (spontaneous applicants), and to evacuated Afghan citizens that applied for international protection in Portugal.

In February 2016, the Lisbon Municipality inaugurated a Temporary Reception Centre for Refugees (*Centro de Acolhimento Temporário para Refugiados*, CATR) that provided transitory reception to relocated asylum seekers. According to the available information, this facility is currently used to accommodate resettled refugees. The Jesuit Refugee Service (JRS) also manages a temporary centre for resettled refugees in Évora.<sup>586</sup>

It has been announced that AMIF funding has been granted to JRS for the creation of a reception centre in Vendas Novas. According to the available information, it is expected to start its operations in 2023.<sup>587</sup>

Reception of unaccompanied children relocated from Greece is subject to a different practical framework. According to the available information, it includes an initial period of 3 to 6 months during which the psychological, educational, and social support are ensured. Support is then guaranteed through the general network of the ISS, 'independent living',<sup>588</sup> or foster families.<sup>589</sup> According to the information provided by the Secretary of State for Integration and Migration (SEIM) to the Parliament in December 2020, foster families<sup>590</sup> are a solution meant to younger children and have been applied in practice.<sup>591</sup> The SEIM also noted that reception entities involved in the programme receive training, and that a manual is being prepared. Furthermore, weekly visits are performed by ISS (and, in Lisbon, the

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<sup>585</sup> Observatory for Migration, *Entrada, Acolhimento e Integração de Requerentes e Beneficiários de Protecção Internacional em Portugal – Relatório Estatístico do Asilo 2020*, May 2020, p 226, available in Portuguese at: <https://bit.ly/2MGYtB9>.

<sup>586</sup> See <https://bit.ly/3x9NoO9>.

<sup>587</sup> For more, see: <https://bit.ly/37tAPCe>; <https://bit.ly/3v0AGyA>; <https://bit.ly/3JnAVsr>.

<sup>588</sup> Unofficial translation ("autonomia de vida").

<sup>589</sup> See, for instance: *State Party report on Follow-up to Concluding Observations* [Human Rights Committee], CCPR/PRT/FCO/5, 27 July 2021, pp.11-13 available at: <https://bit.ly/3E42KoA>.

<sup>590</sup> The legal framework for foster families is established by Decree-Law 164/2019 of 25 October 2019, available at: <https://bit.ly/3ejB02M>.

<sup>591</sup> Reception through foster families has not been used in the case of asylum seeking/refugee children in other occasions/contexts.



SCML).<sup>592</sup> According to ISS, 5 specialised reception centres with a total of 67 places were specifically created for this program. Relocated unaccompanied asylum seekers were also accommodated in previously existing reception centres. According to ISS, up to the end of 2021, a total of 199 children and young adults were transferred to Portugal within this programme, of which 127 transfers were during 2021.

Decree-Law 26/2021 of 31 March 2021<sup>593</sup> created, inter alia, a National Pool of Urgent and Temporary Accommodation and a National Plan of Urgent and Temporary Accommodation. Recognising the lack of solutions in this regard, the National Plan aims to create structured responses to people in need of emergency or transitional accommodation.<sup>594</sup>

According to the Decree-Law, the National Plan covers persons under the mandate of the entities that form the restricted line-up of the SOG (SEF, ACM and ISS).<sup>595</sup> Referrals of applicants for/beneficiaries of international protection to accommodation within this context should be made by ACM.<sup>596</sup> Such referrals must be communicated to the SOG.<sup>597</sup> Additionally, entities responsible for the reception of applicants and beneficiaries of international protection may access support to promote urgent and temporary accommodation solutions for the National Pool.<sup>598</sup>

At the time of writing, the implementation and impact of this legislation remained unclear.

**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	<b>No</b>
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2. What is the average length of stay of asylum seekers in the reception centres?

❖ Adults	78 days
❖ Unaccompanied children	320 days
  
3. Are unaccompanied children ever accommodated with adults in practice? **Yes No**

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

ISS is among the competent authorities for licensing, monitoring and providing technical support to the operation of reception centres for asylum seekers.<sup>599</sup> The applicable rules to collective accommodation facilities have been laid down by ISS regarding temporary reception centres for children at risk (such as CACR).<sup>600</sup> Furthermore, the law provides for specific standards regarding housing in kind for asylum

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<sup>592</sup> Video recording of the parliamentary hearing of the Ministry of the Presidency and the Secretary of State for Integration and Migration (21 December 2020) available at: <https://bit.ly/3ouCeeM>.

<sup>593</sup> Available at: <https://bit.ly/3Oc68Ct>. The functioning of the National Pool of Urgent and Temporary Accommodation is governed by Ministerial Order 120/2021, 8 June, available at: <https://bit.ly/3uEmOLm>.

<sup>594</sup> Article 11 Ministerial Order 120/2021, 8 June defines the maximum periods of emergency/transition accommodation – 15 days or 6 months, respectively, that may be renewed for an equal period. A specific regime applies to victims of domestic violence.

<sup>595</sup> Article 5(1)(b)(iii) Decree-Law 26/2021 of 31 March.

<sup>596</sup> Article 12(1) and (2) Ministerial Order 120/2021, 8 June.

<sup>597</sup> Article 12(3) Ministerial Order 120/2021, 8 June.

<sup>598</sup> Article 12 Decree-Law 26/2021 of 31 March; article 26(c) Decree-Law 37/2018 of 4 June; article 7(c) Ministerial Order 120/2021, 8 June.

<sup>599</sup> Decree-Law No 64/2007.

<sup>600</sup> These rules are contained among others in technical guidelines that provide for quality standards on issues such as capacity, duration of stay, composition and technical skills of staff, hygiene and security standards,

seekers,<sup>601</sup> and children at risk such as unaccompanied children.<sup>602</sup> The specific material reception standards relevant to CAR and CACR are foreseen in the underlying bilateral MOUs (see [Types of Accommodation](#)) and their internal regulations.

**CAR** is composed of shared rooms with dedicated bathrooms/toilets and is equipped to accommodate asylum seekers with mobility constraints, e.g., it includes a lift and adapted bathrooms/toilets. The residents are expected to cook their own meals in a communal kitchen and have access to common fridges and cupboards. The centre also has a laundry service, a playground, a day-care/kindergarten for resident and local community children, as well as a library connected to the municipal library system and a theatre/event space that can be rented out.

The centre provides psychosocial and legal assistance, Portuguese language training, socio-cultural activities, as well as job search support (see [Access to the Labour Market](#)). Logistical support staff is present 24 hours a day and the overall cleaning of the centre is carried out by a private company, though the residents are expected to contribute to the cleaning of their room and the common kitchen.

According to the current reception strategy, in general, spontaneous asylum seekers are initially accommodated at CAR (after testing negative for COVID-19) for an initial period of 2 to 3 weeks during which social and health needs are identified and information on the host country is provided. Afterwards, the applicant generally moves to another accommodation with the support of CPR (either a hostel, apartment, or room in the private market). Vulnerable applicants remain in CAR if deemed appropriate. Support continues to be ensured by CPR's team.

While overcrowding has been a recurrent problem in previous years, measures adopted within the context of the COVID-19 pandemic allowed to reduce the average accommodation period with the assistance of CPR from 7 months to 2 and a half months (from April 2020 onwards). Overcrowding of facilities has been largely addressed as well.

**CACR** is equally composed of shared rooms with dedicated bathrooms/toilets and is equipped to accommodate asylum seekers with mobility constraints. Two resident cooks are responsible for the provision of meals in line with the nutritional needs of children, although children can be allowed to cook their own meals under supervision. The centre also has a laundry service, a playground and a small library, and provides psychosocial and legal assistance, Portuguese language training and socio-cultural activities. Children accommodated at CACR are systematically enrolled in local schools or in vocational training programmes. In 2021, the staff of CACR included three social workers and support staff (present 24 hours a day to ensure the overall functioning of the centre), who were further assisted by legal officers and a language trainer.

**CACR** offers unaccompanied children appropriate housing and reception conditions regardless of the stage of the asylum procedure. Given the specific needs and contexts involved, the average stay in 2021 stood at 320 days. The official capacity stands at 14 places but the existing gap in specialised reception capacity has also resulted in overcrowding that has been partially averted by: changing arrangements in rooms to expand capacity while preserving adequate accommodation standards; resorting to separate accommodation of unaccompanied children above the age of 16 at the **CAR and CAR 2**, supervised by the Family and Juvenile Court; and, depending on the individual circumstances, promoting the placement of children above the age of 16 in supervised private housing by decision of

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location and connectivity, access to the building, construction materials, composition and size of the building, internal regulation, personal integration plans, activities planning, reporting and evaluation etc. An earlier version from 1996 is available at: <http://bit.ly/2meygMC>. According to the information available at: <http://bit.ly/2mIjDHo>, the ISS has also adopted quality standards for other temporary reception centres (such as the CAR and the CATR) contained in technical guidelines dated 29 November 1996 (unpublished).

<sup>601</sup> Article 59 Asylum Act: protection of family life, including the unity of children and parents/legal representatives; right to contact relatives and representatives of UNHCR and CPR; adoption of adequate measures by the management of the facility to prevent violence, and notably sexual and gender-based violence.

<sup>602</sup> Articles 52-54 Children and Youth at Risk Protection Act.

the Family and Juvenile Court in line with the protective measures enshrined in the Youths at Risk Protection Act.<sup>603</sup>

Furthermore, CPR revisited its accommodation policy for unaccompanied children in 2019. While some may be provisionally accommodated at CAR due to shortage of places at CACR or to the need to wait for COVID-19 test results, young applicants at more advanced stages of the integration process may be transferred to CAR 2 in a process of progressive autonomy.

Absconding and the subsequent risk of human trafficking remain relevant concerns. A total of 9 out of 59 (15.3%) unaccompanied children accommodated by CPR absconded in 2021<sup>604</sup> (see [Special Reception Needs](#)). CACR's team reports cases where unaccompanied children were suspected to be victims of human trafficking to the competent authorities (see [Guarantees for Vulnerable Groups: Identification](#)).

Throughout 2021, the coronavirus pandemic continued to create reception challenges. While the continuity of services was ensured throughout the year, a number of adjustments were implemented in relevant facilities to mitigate risks and ensure protection, namely:

- Admission to reception centres managed by CPR/transition to accommodation provided by other entities was preceded by a negative COVID-19 test result;
- Personal protection equipment such as masks, and information on contingency measures continued to be provided to applicants;
- Suitable solutions to persons particularly vulnerable to COVID-19 (such as newborn babies or persons with medical conditions) was provided;
- The number of participants in group activities was reduced.

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

A study focusing on the situation of asylum-seeking unaccompanied children and ageing out in Portugal published in 2021 revealed, inter alia, that the children and young people involved reported challenges related to the cultural and religious diversity of those living in reception centres, as well as difficulties in adjusting to different alimentary practices. Some of those questioned also highlighted difficulties in transitioning to autonomous living due to financial hurdles and, when dispersed to locations outside the Lisbon area, social isolation.<sup>605</sup>

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<sup>603</sup> Act 147/99.

<sup>604</sup> These figures include unaccompanied children who applied for asylum before 2020.

<sup>605</sup> Sandra Roberto, Carla Moleiro, ed. Observatório das Migrações, *De menor a maior: acolhimento e autonomia de vida em menores não acompanhados*, April 2021, pp.53 et seq, available at: <https://bit.ly/3fqMKBK>

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

The Asylum Act provides for the right of asylum seekers to access the labour market following admission to the regular procedure and the issuance of a provisional residence permit.<sup>606</sup> In case of admission to the regular procedure, access to the labour market can therefore be granted after 7 days in the context of the border procedure or after 10 to 30 days in procedures on the territory.<sup>607</sup> Furthermore, asylum seekers entitled to access the labour market can also benefit from support measures and programmes in the area of employment and vocational training under specific conditions to be determined by the competent Ministries.<sup>608</sup>

There are no limitations attached to the right of asylum seekers to employment such as labour market tests or prioritisation of nationals and legally resident third country nationals. The issuance and renewal of provisional residence permits by SEF, which clearly state the right to employment,<sup>609</sup> are free of charge.<sup>610</sup> The only restriction on employment enshrined in the law consists in limiting access to certain categories of the public sector for all third-country nationals.<sup>611</sup>

Asylum seekers benefit from the same conditions of employment as nationals, including regarding salaries and working hours.<sup>612</sup> The law provides, however, for specific formalities in the case of employment contracts of third-country nationals such as the need for a written contract and its (online) registration with the Authority for Labour Conditions (*Autoridade para as Condições do Trabalho, ACT*).<sup>613</sup>

With the exception of the submission of beneficiaries of international protection to the same conditions applicable to Portuguese nationals,<sup>614</sup> there are no specific rules regarding the recognition of diplomas and academic qualifications in the Asylum Act. The general rules for the recognition of foreign qualifications at primary, lower, and upper secondary levels include conditions that are particularly challenging for asylum seekers and beneficiaries of international protection (see [Access to Education](#)).

There are no statistics available on the number of asylum seekers in employment at the end of 2021. The Employment and Vocational Training Institute (Instituto do Emprego e Formação Profissional,

<sup>606</sup> Articles 54(1) and 27(1) Asylum Act.

<sup>607</sup> The 10 days correspond to the time limit of admissibility decisions in subsequent applications and applications following a removal order (on the territory) and the 30 days to the remaining admissibility procedures in the territory: Articles 33(4)-(5), 33-A (5) and 20(1) Asylum Act.

<sup>608</sup> Article 55 Asylum Act.

<sup>609</sup> Ministerial Order 597/2015.

<sup>610</sup> Article 84 Asylum Act.

<sup>611</sup> Article 15(2) Constitution and Article 17(1)(a) and (2) Act 35/2014.

<sup>612</sup> Article 4 Labour Code.

<sup>613</sup> Article 5 Labour Code.

<sup>614</sup> Article 70(3) Asylum Act.

IEFP),<sup>615</sup> did not provide data on applicants and beneficiaries of international protection registered in their services for 2021.

A study focusing on the situation of asylum-seeking unaccompanied children and ageing out in Portugal published in 2021 revealed that, out of those consulted, 34.3% were working, mostly in civil construction. Only 65.2% of those questioned deemed the salaries as fair compensation for the work performed.<sup>616</sup> The analysis conducted concluded that the participants are mostly engaged in unspecialised and likely precarious jobs.<sup>617</sup>

In CPR's experience, asylum seekers and beneficiaries of international protection face many challenges in securing employment that are both general and specific in nature.

In December 2021, the unemployment rate stood at around 5.9% for the general working population.<sup>618</sup> The general context is also marked by specific fragilities that include poor language skills and consequent communication difficulties, and professional skills that are misaligned with the needs of employers.

Challenges of a more bureaucratic nature include: difficulties in obtaining recognition of diplomas (particularly relevant for regulated professions); lack of or difficulties in obtaining a social security identification number (*Número de Identificação da Segurança Social*, NISS) or fiscal identification; or the provisional residence permit stating not to be an identification document.<sup>619</sup> As a result, employers are sometimes reluctant to hire asylum seekers. Additional challenges include the lack of support network, limited knowledge about the labour market and cultural norms, difficulties in accessing certified training due to lack of proof of prior qualifications, and competition in the labour market. In the particular case of victims of torture and/or serious violence, specific vulnerabilities related to health, mental health and high levels of anxiety related to the uncertainty of the asylum procedure, separation from relatives, and financial instability that hinder the ability to focus on a medium-long term individual integration process have also been identified as relevant factors (see [Special Reception Needs](#)).

Some practical obstacles in obtaining a fiscal or social security number previously identified by CPR (particularly within the COVID-19 pandemic) were overcome throughout the year through cooperation with the ISS and fiscal services.

CPR provides literacy and Portuguese language training free of charge to asylum seekers who are accommodated at **CAR**, **CACR**, in private housing provided by the institution, and to asylum seekers and beneficiaries of international protection assisted by other institutions that live nearby CPR's facilities or that can easily reach them. This training includes a sociocultural component, with activities inside and outside the classrooms, aiming to promote integration in the hosting society.

According to available information asylum seekers are also able to register with IEFP to access to Portuguese language training.

Among the challenges traditionally encountered in this area are the lack of training tailored to persons with low levels of education/illiteracy/poor knowledge of the Latin alphabet, the limited availability of alphabetic training for foreigners, as well as limited availability of training at B1 and B2 levels due to group size requirements. This was particularly challenging in certain parts of the country with lower numbers of eligible learners.

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<sup>615</sup> The Employment and Vocational Training Institute (IEFP) is the public service responsible for employment at national level. For more information, see the official website available in Portuguese at: <https://bit.ly/3LFhSeq>.

<sup>616</sup> Sandra Roberto, Carla Moleiro, ed. Observatório das Migrações, *De menor a maior: acolhimento e autonomia de vida em menores não acompanhados*, April 2021, p.46, available at: <https://bit.ly/3fqMKBK>.

<sup>617</sup> Ibid, p.64.

<sup>618</sup> Eurostat, 'Euro area unemployment at 7.0%', 1 February 2022, available at: <https://bit.ly/3Jowbmz>.

<sup>619</sup> Ministerial Order 597/2015.

In August 2020, the framework for Portuguese language training (*Português Língua de Acolhimento*) was revised by Ministerial Order 183/2020 of 5 August.<sup>620</sup>

The new legal framework for public Portuguese language training created the “Portuguese as a host language” courses, aiming to respond to the challenges identified, inter alia:

- Reducing the size of training groups and the minimum number of trainees required, while maintaining the possibility to exceptionally create groups that are smaller/larger than required;
- Extending the entities that may organise relevant courses;
- Introducing a learning unit aimed at trainees that are unfamiliar with the Latin alphabet.

Nevertheless, according to the experience of CPR’s Integration Department, access to such training remained limited and challenging throughout 2021.

ACM also funds informal language trainings, that are delivered by municipalities and civil society organisations, including CPR.<sup>621</sup> In 2021, Loures Municipality (where CAR and CAR 2 are located) also developed a Portuguese language training initiative for foreigners.<sup>622</sup>

The pandemic continued to pose significant challenges to the implementation of Portuguese language courses by CPR throughout the year. These were mostly due to periods of isolation/quarantining, and to the reduced capacity of classrooms in order to ensure social distancing. Nevertheless, in 2021, 1,096 hours of training and 15 sociocultural activities were provided by CPR.

A partnership between CPR and the Faculty of Social and Human Sciences of NOVA University continued to enable the referral of applicants for and beneficiaries of international protection to Portuguese language classes throughout the year.

In March 2016, ACM launched an [Online Platform for Portuguese](#) to promote informal learning of Portuguese. The modules are currently available Portuguese, English, Spanish and Arabic. Information on the functioning and impact of the initiative was not available to CPR at the time of writing.

CPR’s Professional Insertion Cabinet (GIP), which operates at CAR since 2001 in the framework of a MoU with IEF, offers individual assistance and training sessions on job search techniques, recognition procedures, search and referrals to vocational training and volunteering opportunities.

Despite the adjustments imposed to service provision within the context of the coronavirus pandemic (e.g., whenever possible, information and assistance were provided by remote means), the continuity of integration-related support provided by CPR was ensured throughout the whole year.

Other organisations that provide employment assistance to asylum seekers, include JRS that also offers a robust employability programme in partnership with private sponsors as well as personal skills training and vocational training in areas such as food retail, domestic services, geriatric care, food and beverage, hostels or childcare.<sup>623</sup>

Upon admission to the regular procedure, asylum seekers can also register as “job applicants” with the IEF, being able to search for jobs, and benefit from vocational training and assistance.

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<sup>620</sup> Available at: <https://bit.ly/39Z9WF0>. A guide by IEF on the organisation of trainings under the new framework is available at: <https://bit.ly/2Qd2Jdc>.

<sup>621</sup> For more information on these programmes see ACM, *Learning of the Portuguese Language*, available at: <http://bit.ly/2iqmXQg>.

<sup>622</sup> See <https://bit.ly/3FJ31g0>.

<sup>623</sup> For 2018, see JRS, *Projecto Integra +*, available in Portuguese at: <https://bit.ly/2MXK6EE>, which provided support to 22 trainees, of whom 19 were able to secure employment by the end of the 5-month programme.

While there are no specific programmes targeting applicants for and beneficiaries for international protection, asylum seekers admitted to the regular procedure and beneficiaries of international protection are included among the target population of some of IEFP's employability support measures.

Governmental programmes Estágios ATIVAR.PT (which provides for 9 month paid internships) and Incentivo ATIVAR.PT (which provides financial incentives to employers who recruit employees for 12 months or longer under the obligation to provide them with vocational training)<sup>624</sup> include refugees in its priority groups.<sup>625</sup> As such, applicants are exempt of the need to be registered with IEFP for a certain period to be eligible and the financial support provided to the employer is increased by 10%.

According to CPR's experience, the main challenge faced by applicants/beneficiaries of international protection within this context is that the amount paid to interns by the programme depends on their level of qualifications. As many applicants/beneficiaries of international protection cannot prove their qualifications, most of them are only eligible to the lowest tier of grant (in 2021, € 438.81).<sup>626</sup>

Regarding vocational training, the low level of language skills associated with the lack of diplomas and/or potentially challenging recognition procedures described above, render access to vocational training offered by IEFP and its partners within the public system challenging to most asylum seekers and beneficiaries of international protection while vocational training in the private sector is generally unaffordable. In this regard, as of 2018 asylum seekers admitted to the regular procedure and beneficiaries of international protection that are unable to present the relevant diplomas/certificates or whose documents and academic qualifications have not been recognised in the Portuguese educational system are registered by IEFP as "literate users" in the SIGO platform.<sup>627</sup> Other than Portuguese language training courses, such registration only provides access to: (a) modular training<sup>628</sup> at basic education level; (b) training in basic skills (reading, writing, calculation and information and communication technologies) in preparation for EFA Courses; and (c) Education and Training Courses for Adults (*Cursos de Educação e Formação para Adultos*, EFA) with equivalence to the 4<sup>th</sup> or 6<sup>th</sup> year of basic education or a professional certificate.<sup>629</sup> Neither modular training nor training in basic skills entail an academic certification.

In the context of relocation, ACM has created a Refugee Support Unit as well as tailored services within the National and Local Support Centres for the Support of Migrants (*Centros Nacionais e Locais de Apoio à Integração de Migrantes*, CNAIM/CLAIM) to support asylum seekers (e.g., hiring a permanent Arabic-speaking intercultural mediator, promoting entrepreneurship training for refugees). A number of services, such as free legal support and information on employment, training and recognition of qualifications, provided by multiple institutions, are available at CNAIM, a space also known as one-stop-shop. ACM has also launched the [Refujobs](#) online platform, that aims to match potential employers and asylum seekers and beneficiaries of international protection looking for employment as well as to build their capacity for self-employment. Between 2018 and 2020, ACM and the Institute of Tourism

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<sup>624</sup> Additional information is available at: <https://bit.ly/3uFUhIC>.

<sup>625</sup> It was not possible to confirm whether applicants for international protection admitted to the regular procedure are also included as was the case with previous similar programmes.

<sup>626</sup> See <https://bit.ly/3KDntSG> and <https://bit.ly/3jCG2KN>.

<sup>627</sup> Integrated Information and Management System for Education and Training Courses (*Sistema Integrado de Informação e Gestão da Oferta Educativa e Formativa*, SIGO) which contains a national catalogue of education and training courses offered by training institutions at national level and the certification of individual trainees: DGEEC, 'Sobre o Sistema Integrado de Informação e Gestão da Oferta Educativa e Formativa', 3 July 2017, available in Portuguese at: <https://bit.ly/2uok84C>.

<sup>628</sup> Modular training aims to refresh and improve the practical and theoretical knowledge of adults and improve their educational and vocational training levels. For more information see IEFP, *Fomação Modular*, available in Portuguese at: <https://goo.gl/aCPTXi>.

<sup>629</sup> IEFP, *Cursos de Educação e Formação para Adultos (Cursos EFA)*, available in Portuguese at: <https://bit.ly/2HCey7a>.

(*Instituto do Turismo*) had a partnership for the provision of certified vocational training for applicants for and beneficiaries of international protection.<sup>630</sup> CPR is not aware of similar programs in 2021.

In the course of 2021, CPR implemented the “Ready, Set, Go” project aiming to support the integration of unaccompanied children over 15 years old in the job market, internships and training opportunities.<sup>631</sup>

## 2. Access to education

Indicators: Access to Education		
1.	Does the law provide for access to education for asylum-seeking children?	Yes No
2.	Are children able to access education in practice?	Yes No

The Asylum Act provides for the right of asylum-seeking children to public education under the same conditions as nationals and third-country nationals whose mother tongue is not Portuguese.<sup>632</sup> This right cannot be curtailed if the asylum seeker reaches adulthood while already attending school to complete secondary education.<sup>633</sup> The Ministry in charge of education retains sole responsibility to ensure the right of children to education.<sup>634</sup>

Enrolment in schools (primary, lower and upper secondary education levels) requires a procedure for the recognition of foreign academic qualifications, but children must be granted immediate access to schools and classes while that procedure is pending.<sup>635</sup>

The general rules for the recognition of foreign qualifications at primary, lower, and upper secondary levels include conditions that are particularly challenging for asylum seekers and beneficiaries of international protection,<sup>636</sup> such as:

- The presentation of documents certifying academic qualifications,<sup>637</sup> and, eventually, of additional supporting documents;<sup>638</sup>
- The presentation of duly translated and legalised documents;<sup>639</sup>
- In the absence of such documents, a sworn statement issued by the applicant or his/her parents or legal guardian accompanied by a statement from an Embassy or a reception organisation related to the country of origin confirming exceptional individual circumstances;<sup>640</sup> and the completion of a competency tests.<sup>641</sup>

Given that asylum seekers are rarely in possession of duly legalised diplomas and other supporting documents, the procedure generally entailed a placement test conducted by the school taking into consideration the age and school year of the applicant.<sup>642</sup> In accordance with the law, schools should offer children in these conditions appropriate pedagogical support to overcome their difficulties on the basis of an individual diagnosis, notably regarding their Portuguese language skills.<sup>643</sup>

<sup>630</sup> Observatory for Migration, *Entrada, Acolhimento e Integração de Requerentes e Beneficiários de Protecção Internacional em Portugal – Relatório Estatístico do Asilo 2020*, May 2020, p 211, available in Portuguese at: <https://bit.ly/2MGYtB9>.

<sup>631</sup> For more information see <https://bit.ly/37eCZWD>.

<sup>632</sup> Article 53(1) Asylum Act.

<sup>633</sup> Article 53(2) Asylum Act.

<sup>634</sup> Article 61(4) Asylum Act.

<sup>635</sup> Article 8(5) Decree-Law 227/2005.

<sup>636</sup> Decree-Law 227/2005.

<sup>637</sup> Article 7(2) Decree-Law 227/2005.

<sup>638</sup> Article 7(4) Decree-Law 227/2005.

<sup>639</sup> Article 7(2) Decree-Law 227/2005.

<sup>640</sup> Article 10(1) and (2) Decree-Law 227/2005.

<sup>641</sup> The content of the test varies according to the level of education and the curriculum, but always includes a Portuguese as a Second Language. See Article 10(5) and (6) Decree-Law 227/2005.

<sup>642</sup> Article 10(3) Decree-Law 227/2005.

<sup>643</sup> Article 11(2), (3) and (4) Decree-Law 227/2005.



In line with similar measures adopted in 2016,<sup>644</sup> in 2020, the Directorate-General for Education (DGE) and the National Agency for Qualification and Vocational Education and Training (ANQEP) issued a circular letter<sup>645</sup> regarding extraordinary educational measures applicable to children applicants for/beneficiaries of international protection. It focuses on clarifying procedures for the recognition of academic qualifications/school placement, the progressive integration in the Portuguese education system, and on the reinforcement of Portuguese language training, and school social support. These guidelines are only applicable to children within the compulsory school age (6 to 18 years old).

Accordingly, with regard to the recognition of qualifications/school placement:

- **In the absence of documents proving the academic/professional qualifications** (e.g. certificates, diplomas), applicants must present the following elements: (i) a sworn statement issued by the applicant, his/her parents or legal guardian, specifying the number of school years completed; a statement by a competent authority (such as SEF, CPR or ACM) confirming exceptional individual circumstances.<sup>646</sup> If any document concerning previous qualifications is available to the applicant, it should be added to the process. In this case, no equivalence/recognition is granted, the applicant is integrated in the education system. Placement must consider the age of the applicant and the corresponding school level. School attendance must be ensured during the first month following enrolment and may be progressive. While the analysis is pending, the applicant must be conditionally enrolled in school enabling him/her to attend the corresponding activities.
- **If documents proving the academic/professional qualifications are available**, in order to obtain an equivalence, the relevant norms<sup>647</sup> apply but applicants are exempt from translating<sup>648</sup> and legalising the certificates/diplomas. Processes are analysed by DGE (primary, lower, and upper secondary levels) or by ANQEP (other qualifications, excluding higher education). School attendance must be ensured during the first month following enrolment and may be progressive. While the analysis is pending, the applicant must be conditionally enrolled in school enabling him/her to attend the corresponding activities.

As such, currently, in practice, school placement of children does not require the performance of tests.

The 2020 circular letter further reaffirmed the increased autonomy of schools in adjusting pedagogical activities to the specific needs of asylum seekers and beneficiaries of international protection. Such adaptations include a progressive convergence with the regular curriculum by temporarily exempting students from certain subjects and providing additional Portuguese language classes. The guidelines also clarify the entitlement of asylum seekers and beneficiaries of international protection to the various modalities of social assistance available to students enrolled in the public education sector for the purposes of food, accommodation, financial assistance and school supplies.<sup>649</sup> Furthermore, the circular letter recommends the creation of multidisciplinary teams in hosting schools to support response to specific needs. Such teams must be created with existing resources.

In the course of 2020, several reference documents were created to support schools and teachers. The relevant instruments are available online.<sup>650</sup>

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<sup>644</sup> DGE, *Agenda Europeia para as Migrações - medidas a implementar no sistema educativo*, 1 March 2016, available in Portuguese at: <http://bit.ly/2jqFkok>; and DGE, *Crianças e jovens refugiados - medidas a implementar no sistema educativo*, 21 October 2016, available in Portuguese at: <http://bit.ly/2z0dgzf>.

<sup>645</sup> Circular letter - DGE and ANQEP, *Medidas educativas de integração de crianças e jovens no sistema educativo*, August 2020, available at: <https://bit.ly/3mwfSKq>.

<sup>646</sup> Applicants previously identified by governmental entities are exempt of presenting this statement.

<sup>647</sup> Decree-Law 227/2005 of 28 December (primary, lower and upper secondary levels) and Order 13584/2014 of 10 November.

<sup>648</sup> Only if the documents are written in German, Spanish, French or English.

<sup>649</sup> Ministry of Education Legislative Order 8452-A/2015 of 31 July 2015, as amended by Legislative Order 7255/2018 of 31 July 2018.

<sup>650</sup> Available at <https://bit.ly/32dkFY9>.

DGEstE supports coordination between reception entities and public schools to ensure integration in the education system. According to the information provided by the entity, in 2021, its staff provided follow up in schools and liaised with staff of relevant reception facilities.

In practice, accompanied and unaccompanied children are systematically referred to public schools upon accommodation at **CAR** and **CACR** or contact with CPR's social workers. According to the experience of the organisation, enrolment in local public schools is generally guaranteed within a reasonable period (on average, two weeks). Unaccompanied children enrolling in upper secondary education are usually enrolled in an area of their interest with subsequent adjustments introduced afterwards considering the individual progress. According to the experience of CPR, this has been positive, allowing a smoother integration in the education system and faster language learning.

Nevertheless, CPR has highlighted the need to consider other frequent challenges, such as the lack of adequate solutions to children over 15 years old with little or very low education. In the absence of dedicated solutions, these children are included in existing pathways (such as adult training) that are not necessarily adjusted to their needs.

According to DGEstE, efforts have been made to increase the response to older children and young adults with low qualifications (namely by increasing flexibility in the creation of training groups of adult learning programmes).

The review of the Portuguese educational system conducted in 2018 by the OECD did not specifically address the situation of asylum seekers and beneficiaries of international protection. While acknowledging the impressive accomplishments of Portugal in previous years, it nonetheless raised concerns regarding persisting differences in the outcomes of students from under-privileged backgrounds, including immigrant students,<sup>651</sup> with immigrant, language and ethnic backgrounds remaining highly predictive of their performance in school.<sup>652</sup>

The Asylum Act limits vocational training to asylum seekers who are entitled to access the labour market, i.e., admitted to the regular procedure and in possession of a provisional residence permit.<sup>653</sup>

Access to vocational training by adults remains particularly limited as opportunities generally require a good command of the Portuguese language and diplomas that asylum seekers and beneficiaries of international protection rarely have or are unable to legalise due to the legal requirements of recognition procedures (see [Access to the Labour Market](#)).

A study focusing on the situation of asylum-seeking unaccompanied children and ageing out in Portugal published in 2021 revealed that, out of those consulted 55.2% felt safe in school and only 4.5% disagreed. The report also observed that there is an overall positive image of teachers and of the overall school context.<sup>654</sup> With regards to integration, however, language barriers have been mentioned as a significant challenge.<sup>655</sup>

Regarding higher education, the Government introduced the “student in an emergency situation for

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<sup>651</sup> OECD, *OECD Reviews of School Resources: Portugal 2018*, December 2018, p. 13, 19 and 64, available at: <https://bit.ly/3M0fxLw>. It should be noted that according to the report “differences in results are mostly driven by first-generation immigrants... There are no significant performance differences between second-generation immigrants and the native-born population after students’ socio-economic status and home language have been taken into account. In fact, most of these differences in performance are associated with the language spoken at home...”

<sup>652</sup> Ibid, 22.

<sup>653</sup> Article 55(1) Asylum Act.

<sup>654</sup> Sandra Roberto, Carla Moleiro, ed. Observatório das Migrações, *De menor a maior: acolhimento e autonomia de vida em menores não acompanhados*, April 2021, p.44, available at: <https://bit.ly/3fqMKBK>.

<sup>655</sup> Ibid, p.54.

humanitarian reasons” status in 2018,<sup>656</sup> following a review of the Portuguese educational system by the Organisation for Economic Co-operation and Development (OECD).<sup>657</sup>

The status can be claimed by any non-Portuguese or EU student who originates from a region affected by armed conflict, natural disaster, generalised violence or human rights violations requiring a humanitarian response.<sup>658</sup> According to the law, beneficiaries of international protection as well as asylum seekers admitted to the regular procedure under the Asylum Act are entitled to the status by operation of law.<sup>659</sup> Students with “emergency situation for humanitarian reasons” status are entitled to alternative procedures for assessing entry conditions in the absence of documentation such as diplomas,<sup>660</sup> equal treatment to Portuguese students regarding university fees and other levies,<sup>661</sup> and full access to social assistance available to higher education students.<sup>662</sup> It should be noted that the rules do not address the issue of access to entry visas for eligible students living abroad.<sup>663</sup>

With regard to the recognition of higher education degrees and diplomas, the law provides for the possibility of the exemption of documentary evidence in processes concerning applicants in an emergency situation for humanitarian reasons where the qualifications cannot be proved due to that situation.<sup>664</sup> Such exemptions are analysed on a case-by-case basis. In 2020, this possibility was extended to situations where the applicant cannot prove his/her qualifications due to circumstances affecting the regular functioning of the institutions of the State concerned.<sup>665</sup>

According to CPR’s experience, remote learning during the COVID-19 pandemic posed several challenges to child applicants for and beneficiaries of international protection that were both general and specific in nature (e.g., challenges in obtaining computers and other necessary IT materials through schools, lack of familiarity with technology and challenges regarding the language of children and their parents). As far as CPR is aware, ACM has developed efforts to overcome challenges in accessing IT equipment through schools for applicants for and beneficiaries of international protection as well as other migrant children.

#### D. Health care

##### Indicators: Health Care

1.	Is access to emergency healthcare for asylum seekers guaranteed in national legislation?	<b>Yes</b>	No
2.	Do asylum seekers have adequate access to health care in practice?	<b>Yes</b>	Limited No
3.	Is specialised treatment for victims of torture or traumatised asylum seekers available in practice?	Yes	<b>Limited</b> No
4.	If material conditions are reduced or withdrawn, are asylum seekers still given access to health care?	<b>Yes</b>	Limited No

The Asylum Act enshrines the right of asylum seekers and their family members to health care provided by the National Health System (*Serviço Nacional de Saúde*, SNS),<sup>666</sup> and includes a specific provision

<sup>656</sup> Article 8A Decree-Law 36/2014, inserted by Decree-Law 62/2018.

<sup>657</sup> OECD, *OECD Reviews of School Resources: Portugal 2018*, December 2018, available at: <https://bit.ly/2BlpEbS>.

<sup>658</sup> Article 8A(1) Decree-Law 36/2014.

<sup>659</sup> Article 8A(2) (a) and (b) and 3(a) Decree-Law 36/2014.

<sup>660</sup> Article 14(1)(c) Decree-Law 36/2014.

<sup>661</sup> Article 8A(5) Decree-Law 36/2014.

<sup>662</sup> Article 10(1) Decree-Law 36/2014.

<sup>663</sup> For a critical assessment of Decree-Law 36/2014, see JRS, *Estudante em Situação de Emergência por Razões Humanitárias: Mais um direito sem visto?*, November 2018, available in Portuguese at: <https://bit.ly/2qIpGF3>.

<sup>664</sup> Article 13 Ministerial Order 33/2019 of 25 January, available at: <https://bit.ly/2Q7GjtT>.

<sup>665</sup> Article 14 Ministerial Order 33/2019 of 25 January, available at: <https://bit.ly/2Q7GjtT>.

<sup>666</sup> Articles 52(1) and 56(1) Asylum Act.

on the right to adequate health care at the border.<sup>667</sup> The primary responsibility for the provision of health care lies with the Ministry of Health,<sup>668</sup> except for asylum seekers detained at the border that fall under the responsibility of the Ministry of Home Affairs.<sup>669</sup> The latter can however cooperate with public entities and/or private non-profit organisations in the framework of a MoU to ensure the provision of such services.<sup>670</sup>

In accordance with the Asylum Act,<sup>671</sup> the specific rules governing access of asylum seekers and their family members to health care<sup>672</sup> are provided by Ministerial Order No 30/2001 and Ministerial Order No. 1042/2008,<sup>673</sup> according to which:

1. Access to health care encompasses medical care and medication, and is available from the moment the asylum seeker applies for asylum;<sup>674</sup>
2. Medical assistance and access to medicines for basic health needs and for emergency and primary health care are to be provided under the same conditions as for Portuguese citizens;<sup>675</sup>
3. Asylum seekers have access to the SNS free of charge<sup>676</sup> for emergency health care, including diagnosis and treatment, and for primary health care,<sup>677</sup> as well as assistance with medicines, to be provided by the health services of their residence area.<sup>678</sup>

Asylum seekers are entitled to health care until a final decision rejecting the asylum application unless required otherwise by the medical condition of the applicant.<sup>679</sup> Additionally, the reduction or withdrawal of reception conditions cannot restrict the access of asylum seekers to emergency health care, basic treatment of illnesses and serious mental disturbances or, in the case of applicants with special reception needs, to medical care or other types of necessary assistance, including adequate psychological care where appropriate.<sup>680</sup> This provision remains to be tested in practice due to the limited number of such decisions to date (see [Reduction or Withdrawal of Reception Conditions](#)).

The special needs of particularly vulnerable persons must be taken into consideration in the provision of health care,<sup>681</sup> through adequate medical care,<sup>682</sup> and specialised mental health care including for

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<sup>667</sup> Article 56(2) Asylum Act. This provision should be read in conjunction with Article 146-A(3) Immigration Act that provides for the right of pre-removal detainees in CIT to emergency and basic health care.

<sup>668</sup> Article 61(3) Asylum Act.

<sup>669</sup> Article 61(1) Asylum Act. While not included in this provision, SEF should also be considered responsible for providing access to health care to asylum seekers in pre-removal detention given its managing responsibilities of CIT: Article 146-A(3)-(4) Immigration Act.

<sup>670</sup> *Ibid.*

<sup>671</sup> Article 52(1) *in fine* Asylum Act.

<sup>672</sup> The legal and operational background pertaining to the access of asylum seekers to health care was revisited by the ACSS and the DGS in an internal guidance note issued on 12 May 2016 in the framework of the European Agenda for Migration, available at: <http://bit.ly/2jdBIFW>.

<sup>673</sup> Ministerial Order No 1042/2008 extends Ministerial Order No 30/2001 *ratione personae* to applicants for subsidiary protection and their family members.

<sup>674</sup> Ministerial Order No 30/2001, para 2. Under Article 52(2) Asylum Act, the asylum seeker is required to present the certificate of the asylum application to be granted access to health care under these provisions. The internal guidance note issued on 12 May 2016 by the ACSS and the DGS provides for possible documents entitling the asylum seeker to access health care and includes a complete list of documents issued to the asylum seeker by the SEF during the asylum procedure (e.g., renewal receipts of the certificate of the asylum application, provisional residence permit, etc.)

<sup>675</sup> *Ibid.*

<sup>676</sup> Article 4(1)(n) Decree-Law 113/2011.

<sup>677</sup> For the purposes of free access to the SNS, primary health care is to be understood as including among others: (i) Health prevention activities such as out-patient medical care, including general care, maternal care, family planning, medical care in schools and geriatric care (ii) specialist care, including mental care (iii) in-patient care that does not require specialised medical care, (iv) complementary diagnostic tests and therapies, including rehabilitation and (v) nursing assistance, including home care: Ministerial Order No 30/2001, par.6.

<sup>678</sup> Ministerial Order No 30/2001, par.5.

<sup>679</sup> Ministerial Order No 30/2001, par.8.

<sup>680</sup> Article 60(7) Asylum Act.

<sup>681</sup> Article 77(1) Asylum Act.

<sup>682</sup> Articles 52(5) and 56(2) Asylum Act.

survivors of torture and serious violence,<sup>683</sup> and in detention.<sup>684</sup> The responsibility for special treatment required by survivors of torture and serious violence lies with ISS.<sup>685</sup>

In practice, asylum seekers have effective access to free health care in the SNS in line with applicable legal provisions. However, persisting challenges have an impact on the quality of health care. According to previous research,<sup>686</sup> and information available to CPR, these include language and cultural barriers (e.g., the lack of interpreters for certain languages and the reluctance of health care services to use interpretation services such as ACM's translation hotline); difficult access to diagnosis procedures and medication paid by the SNS due to bureaucratic constraints; or very limited access to mental health care and other categories of specialised medical care (e.g. dentists)<sup>687</sup> in the SNS. The difficulties in accessing specialised care in the SNS, including dentists, also came out as the main concerns in consultations conducted by CPR in October 2017 in the framework of the relocation programme.

In August 2020, the National Association of Pharmacies informed its associates of new procedures regarding prescriptions of applicants for international protection.<sup>688</sup> According to the experience of CPR's CAR, since then, access to medication paid by the SNS has been adequately ensured. In practice, applicants only have to pay for medication that is not (fully or partially) co-paid by the SNS. Nevertheless, the experience of CPR's CACR reveals that there are still discrepancies in the procedures adopted by different health units for the issuance of prescriptions. This led to the need to pay for the medication of unaccompanied asylum-seeking children under the care of this facility on most occasions.

CPR and the local health centres of Loures-Odivelas cooperate closely. The long-term care unit conducts medical appointments at CAR once a week and ensures the implementation of the national vaccination plan as well as COVID-19 vaccination among applicants. Additionally, the unit provides routine support to assisted medication, pregnant women, new-borns, as well as persons with other health-related vulnerabilities. Within the context of the coronavirus pandemic, the team also supported testing whenever necessary.

CPR provides financial support to unaccompanied asylum-seeking children and asylum seekers in admissibility and accelerated procedures to cover the costs of diagnosis procedures and medication depending on the individual circumstances and available resources. Unaccompanied children residing at CPR's CACR have also been able to access dental care in SOL, a clinic managed by SCML that provides specialised care in the field for children living or studying in Lisbon.<sup>689</sup>

Within the context of the pandemic, CACR faced challenges in liaising with the geographically responsible healthcare unit, including for registration (a necessary requirement for subsequent medical follow-up, vaccination, Covid testing...). Access has been ensured with the support of other healthcare units.

The National Vaccination Plan (COVID-19) was approved by Ministerial Decree no.298-B/2020, of 23 December 2020.<sup>690</sup> The Ministerial Order determines that the national vaccination plan is grounded on the principles of universality, acceptability, and feasibility and is free of charge.

Priority groups for the COVID-19 vaccination were defined based on a combination of factors such as age and pre-existing conditions (in addition to essential workers).<sup>691</sup> Asylum seekers and refugees living in communal facilities are considered a group with an increased risk of infection and outbreaks (e.g.,

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<sup>683</sup> Articles 78(3)-(4) and 80 Asylum Act.

<sup>684</sup> Article 35-B(8) Asylum Act.

<sup>685</sup> Article 80 Asylum Act.

<sup>686</sup> Italian Council for Refugees *et al.*, *Time for Needs: Listening, Healing, Protecting*, October 2017.

<sup>687</sup> In this regard, DGS noted in the past that such difficulties are similar to those faced by Portuguese citizens.

<sup>688</sup> Following what was prescribed in the handbook governing the relationship between Pharmacies and the SNS, available at <https://bit.ly/3sapk7K>.

<sup>689</sup> For more information see: <https://bit.ly/2x2l8Ak>.

<sup>690</sup> Ministerial Decree 298-B/2020 of 23 December 2020, available at: <https://bit.ly/3fU70NC>.

<sup>691</sup> Plano de Vacinação COVID-19, 3 December 2020, available at: <https://bit.ly/2PPD5eF>.

similarly to elderly homes) and, as such, are prioritised. Vaccination at CPR's Reception Centres occurred throughout 2021. According to the experience of CPR's Integration Department, while access to COVID-19 vaccination was not problematic, some asylum seekers faced challenges in accessing their vaccination certificate due to the lack of a SNS number. The lack of such a number also posed some challenges in the scheduling of tests and issuance of prophylactic isolation certificates when necessary.

According to a study focusing on the situation of asylum-seeking unaccompanied children and ageing out in Portugal published in 2021, the majority of participants evaluated their health condition and the relationship with doctors positively and did not feel discriminated within the context of healthcare.<sup>692</sup>

In 2021, DGS launched an awareness-raising campaign targeting the general population and healthcare practitioners focusing on the promotion of human rights and prevention of violence and discrimination towards migrants and refugees.<sup>693</sup>

## E. Special reception needs of vulnerable groups

### Indicators: Special Reception Needs

1. Is there an assessment of special reception needs of vulnerable persons in practice?

Yes

No

An “applicant in need of special reception needs” is defined in terms of reduced ability to benefit from the rights and comply with the obligations stemming from the Asylum Act due to his or her vulnerability. The Asylum Act provides for a non-exhaustive list of applicants with an increased vulnerability risk profile that could present a need for special reception conditions: minors, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children, victims of human trafficking, persons with serious illnesses, persons with mental disorders and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence, such as victims of domestic violence and female genital mutilation.<sup>694</sup>

While the Asylum Act also refers to guarantees available to particularly vulnerable persons,<sup>695</sup> the two concepts seem to be used interchangeably, meaning that any person with special reception needs is a *priori* a vulnerable person for the purposes of the Asylum Act.<sup>696</sup>

The identification of persons with special needs and the nature of such needs must take place upon registration of the asylum application or at any stage of the asylum procedure,<sup>697</sup> but within reasonable time following registration.<sup>698</sup> The provision of special reception conditions should take into consideration: (i) the material reception needs of particularly vulnerable persons;<sup>699</sup> (ii) their special health needs, including those particular to survivors of torture and serious violence.<sup>700</sup>

The law further details the modalities of some of these categories of special reception conditions particularly regarding the special needs of children<sup>701</sup> (including unaccompanied children)<sup>702</sup> and housing conditions.

<sup>692</sup> Sandra Roberto, Carla Moleiro, ed. Observatório das Migrações, *De menor a maior: acolhimento e autonomia de vida em menores não acompanhados*, April 2021, pp. 44 et seq, available at: <https://bit.ly/3fqMKBK>.

<sup>693</sup> For more information see: <https://bit.ly/3JuehPe>.

<sup>694</sup> Article 2(1)(ag) Asylum Act.

<sup>695</sup> Article 2(1)(y) Asylum Act.

<sup>696</sup> Article 77(1) and (3) Asylum Act.

<sup>697</sup> Article 77(2) Asylum Act.

<sup>698</sup> Article 77(3) Asylum Act.

<sup>699</sup> Articles 56(2) and 77(1) of Asylum Act.

<sup>700</sup> Articles 35-B(8), 52(5), 56(2), 78(3)-(4) and 80 Asylum Act.

<sup>701</sup> Article 78 Asylum Act.

<sup>702</sup> Article 79 Asylum Act.

There are no specific mechanisms, standard operating procedures, or units in place to systematically identify asylum seekers in need of special reception conditions. The only exceptions consist of age assessment procedures to identify unaccompanied children and the identification and protection of potential unaccompanied children victims of trafficking that present practical and technical implementation challenges (see [Identification](#)).

In the framework of admissibility (including Dublin) and accelerated procedures on the territory, asylum seekers who present apparent vulnerabilities entailing special reception needs such as children, disabled people, elderly people, pregnant women, single parents with minor children, persons with serious illnesses or mental disorders would generally be identified by CPR within a reasonable period of time after registration. This is done based on information received from SEF prior to their referral to CPR's reception centres or during legal assistance, social interviews, or initial medical screenings conducted during the provision of material reception conditions.

According to SCML, asylum seekers referred by the SOG benefit from specific social counselling at the appeal stage and may be referred to homeless shelters managed by the organisation on a temporary basis to address specific vulnerabilities. Rooms with individual bathrooms can also be used to respond to certain special needs. Similarly, according to ISS special needs are assessed and vulnerable asylum seekers are provided differentiated support during the regular procedure, notably in the case of children, disabled and the elderly. However, no further quantitative or qualitative information is available and to date no research has been conducted to assess the impact of the dispersal policy implemented during the regular procedure (see [Conditions in Reception Facilities](#)).

In November 2020,<sup>703</sup> a cabinet to support victims of domestic violence and/or traditional harmful practices was inaugurated in CNAIM Lisbon. Another one was inaugurated in February 2021 in CNAIM Norte.<sup>704</sup>

In 2021, CPR created a Psychological Support Department. The department, which has one psychologist, provides psychological assistance to applicants for international protection supported by CPR, and also facilitates referrals to relevant services provided by partners such as psychiatric follow-up. In the course of 2021, the Psychological Support Department provided 438 individual consultations, mediated multicultural meetings with applicants for international protection, provided training to CPR staff on mental health, and to interpreters on interpretation within the context of psychological support.

Throughout 2021, UNHCR, SEF, CPR and other relevant stakeholders such as the ISS and SCML held discussions regarding the identification of vulnerabilities within the asylum system.

## 1. Reception of families and children

The accommodation of unaccompanied children who are 16 and over in adult reception centres and the initiation of family tracing are dependent of a best interests assessment.<sup>705</sup> Under the Asylum Act, the best interest of the child also requires that children:

- (i) be placed with parents or, in their absence, with adult relatives, foster families, specialised reception centres or tailored accommodation;
- (ii) not be separated from siblings;
- (iii) are offered stability, notably by keeping changes in place of residence to a minimum;
- (iv) are ensured well-being and social development;
- (v) have security and protection challenges addressed, notably where there is a risk of human trafficking; and
- (vi) express their opinion, taking into consideration their age and maturity.<sup>706</sup>

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<sup>703</sup> EASO, *EASO Asylum Report 2021*, 2021, pp. 269-270, available at: <https://bit.ly/3MIIDFs>.

<sup>704</sup> Form more information see: <https://bit.ly/3EAQpJ1> and <https://bit.ly/3OsUBil>.

<sup>705</sup> Article 79(10) and (14) Asylum Act.

<sup>706</sup> Article 78(2)(a)-(h) Asylum Act.

The provision of special reception conditions during the asylum procedure includes a specialised reception centre for unaccompanied children, **CACR**, and the accommodation of unaccompanied children who are 16 or older in **CAR** and **CAR 2** as a measure of last resort, in the absence of appropriate alternatives or in pre-autonomy stages (see [Types of Accommodation](#)). CPR promotes family tracing, in partnership with the Portuguese Red Cross (CVP), if considered to be in the best interest of the child and taking into consideration the child's opinion.

CPR's reception centres offer facilities to accommodate disabled people and playgrounds for children who are systematically enrolled in public education. Despite practical challenges, families are generally given separate accommodation either at CAR or in external accommodation. Asylum seekers are generally referred to the SNS for health assessments and care, including differentiated care, even though referral constraints particularly for mental health care and certain categories of specialised medical care, have been traditionally experienced.

To the extent that it is possible, and with consent of the applicants, family unity should be preserved in the provision of housing,<sup>707</sup> while adult asylum seekers with special reception needs should be accommodated with adult relatives who are legally responsible for them and already present on the territory.<sup>708</sup>

According to the Asylum Act, adequate measures must be adopted to avoid sexual and gender-based violence and harassment in reception centres and other housing provided to asylum seekers.<sup>709</sup> Among the measures adopted by CPR in this regard are the definition of separate room areas, the development awareness raising activities, and monitoring by staff.

## 2. Reception of survivors of torture and violence

While ISS is specifically responsible for ensuring access to rehabilitation services for survivors of torture and serious violence,<sup>710</sup> the provision of material reception conditions and health care adapted to the special needs of vulnerable persons seems to be submitted to the responsibility-sharing rules applicable to asylum seekers in general.

In the specific case of survivors of torture and/or serious violence on the territory, the information collected in 2017 by CPR,<sup>711</sup> in the framework of the project "Time for Needs: Listening, Healing, Protecting",<sup>712</sup> showed that identification and follow-up of their special reception needs also initiates with an individual psychosocial interview at CPR's reception centres conducted by a social worker upon arrival and at regular intervals during the admissibility stage of the asylum procedure. In the case of survivors of torture and/or serious violence, such assessment might result in referrals to the local health centre of the SNS for onward referral to differentiated care such as gynaecology and urology. According to DGS, local health centres are also the gateway to specialised mental health care and have multidisciplinary teams (Teams for the Prevention of Violence between Adults – *Equipas para a Prevenção da Violência entre Adultos*, EPVA) that are responsible for identifying and offering follow-up to vulnerable cases that are victims of violence. However, according to other stakeholders such as CPR and SCML, specialised out-patient mental health care is mainly available through voluntary organisations such as the Centre for the Support of Torture Victims in Portugal (*Centro de Apoio às Vítimas de Tortura em Portugal*, CAVITOP) / Psychiatric Hospital Centre of Lisbon (*Centro Hospitalar Psiquiátrico de Lisboa* – CHPL) whose multidisciplinary team offers free and specialised psychiatric and psychological care upon referral from frontline service providers such as the CPR, SCML and JRS.

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<sup>707</sup> Articles 51(2) and 59(1)(a) and (b) Asylum Act.

<sup>708</sup> Article 59(1)(c) Asylum Act.

<sup>709</sup> Article 59(1)(e) Asylum Act.

<sup>710</sup> Article 80 Asylum Act.

<sup>711</sup> The most recent specific research available at the time of writing.

<sup>712</sup> Italian Council for Refugees *et al.*, *Time for Needs: Listening, Healing, Protecting*, October 2017, available at: <https://bit.ly/3gEoe1T>.



According to CPR's experience, despite some challenges, it has been possible for unaccompanied children to access mental health care support within the SNS<sup>713</sup> or other resources.

In 2018, CPR disseminated a tool and information materials pertaining to the identification and provision of special procedural needs and special reception needs of survivors of torture and/or serious violence developed in the framework of the project.<sup>714</sup>

The provision of reception conditions by ISS in the regular procedure following a dispersal decision by the SOG is done in accordance to agreed standards. In each district there is a responsible officer for reception conditions who reports directly to central services but there is no specialised team dedicated to survivors of torture and/or serious violence. According to ISS, caseworkers can make referrals to specialised services at local level, for instance, for asylum seekers placed in the area of **Coimbra**, ISS has the possibility to make referrals to the **Centre for the Prevention and Treatment of Psychogenic Trauma** that provides differentiated mental health care adapted to the needs of survivors of torture and/or serious violence.

According to the information provided by SCML, the team ensuring support to asylum seekers includes a psychologist. Applicants can also be referred to psychiatric care within the health care units managed by the organisation. SCML also confirms that access to mental healthcare within the SNS is often challenging, particularly due to delays, suitability of available solutions and language barriers.

## F. Information for asylum seekers and access to reception centres

### 1. Provision of information on reception

The Asylum Act provides for the right of asylum seekers to be immediately informed about their rights and duties related to reception conditions.<sup>715</sup> It also foresees that they must be informed about the organisations that can provide assistance and information regarding available reception conditions, including medical assistance.<sup>716</sup> Furthermore, SEF is required to provide asylum seekers with an information leaflet, without prejudice to providing the information contained therein orally.<sup>717</sup> In both cases the information must be provided either in a language that the asylum seeker understands, or is reasonably expected to understand, to ensure the effectiveness of the right to information.

In practice, upon registration, asylum seekers receive an information leaflet from SEF regarding their rights and duties that briefly covers some information regarding reception conditions. According to CPR's experience, the leaflet is only available in a limited number of foreign languages (e.g., Portuguese, French, English, Russian, Arabic and Lingala). While a specific information leaflet on reception and another for unaccompanied children including information on reception conditions are both available online,<sup>718</sup> CPR is not aware of their systematic distribution to asylum seekers, including to unaccompanied children, despite having been appointed as legal representative on numerous occasions. The information contained in the leaflets is brief and not considered user-friendly particularly in the case of unaccompanied children.

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<sup>713</sup> Particularly through programme "Aparece" (information available at: <https://bit.ly/3mzqad1>).

<sup>714</sup> The Questionnaire for the Assessment of the Special Needs of Survivors of Torture and/or Serious Violence Among Asylum Seekers and Beneficiaries of International Protection (QASN) and other information materials are available at: <https://bit.ly/3gEoe1T>.

<sup>715</sup> Article 49(1)(a) Asylum Act.

<sup>716</sup> Article 49(1)(a)(iv) Asylum Act.

<sup>717</sup> Article 49(2) Asylum Act.

<sup>718</sup> SEF, *Informação para Menores Não-Acompanhados Requerentes de Proteção Internacional em Portugal*, available in Portuguese at: <https://bit.ly/2FFVjc3>. SEF, *Acolhimento em Portugal*, available in Portuguese at: <https://bit.ly/2MkBnvC>.

In accordance with existing MoUs with the authorities (see [Responsibility for Reception](#)), CPR provides information to asylum seekers throughout the asylum procedure and particularly during admissibility (including Dublin) and accelerated procedures. This is done through individual interviews as well as through social and legal support. The information provided by CPR broadly covers the information requirements provided in the law as regards the institutional framework of reception, including on the dispersal policy, as well as the types and levels of material reception conditions, access to health care, education, employment, etc. Information leaflets regarding the centre's support developed by CAR are also distributed.

The information provided by CPR further includes the provision of tailor-made information to unaccompanied children upon their admission to CACR orally and using multimedia and written materials such as a leaflet that contains child-friendly information on internal rules, available services, geographical location, general security tips and contacts, etc. (available in Portuguese, English, Russian, Tigrinya and French).

In 2021, the pandemic context continued to pose challenges, requiring constant adjustments of human and material resources and procedures, but continuity of services was ensured throughout the year.

During the regular procedure and at appeal stage, asylum seekers should benefit from an individual follow-up with ISS and SCML. While no research has been conducted to date to assess the impact of the dispersal policy, CPR is not aware of any serious challenges in accessing social services or in the provision of information regarding reception conditions during this stage of the asylum procedure despite some complaints regarding difficulties in securing an appointment or language barriers.

According to the Statistical Report of Asylum 2020, the dispersal mechanism is considered good practice despite the implementation challenges. Among the challenges identified by the Report are: (i) the reluctance of applicants in moving from the Lisbon area to other parts of the country; (ii) the need to finetune the distribution criteria; and (iii) discrepancies in the response capacity of local Social Security services.<sup>719</sup>

Other organisations such as JRS, Crescer, and ACM through its Local Support Centres for Migrants Integration (CLAIM), also provide information and assistance to asylum seekers during the first instance of the regular procedure albeit in a limited number of cases and mostly focused on integration.

Within the context of the coronavirus pandemic, cross-cutting efforts were made by CPR to provide asylum seekers with information on the overall situation in all contacts with its staff (e.g., the need to adopt preventive measures, to stay indoors and to follow the information provided by the competent authorities, and on the closure of many public services).

Dedicated information leaflets were prepared and updated by CPR and translated into English, French and Arabic languages. Some leaflets were also translated into Russian and Italian. Preventive measures, the emergency state, food safety and hygiene, and rights and duties in Portugal were among the topics covered in such brochures. Posters were also used in reception facilities.

Information sessions with the support of healthcare professionals were conducted in reception centres. Furthermore, staff made daily efforts to reiterate the preventive measures as well as their relevance.

ACM prepared/compiled information resources in a number of languages.<sup>720</sup>

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<sup>719</sup> Observatory for Migration, *Entrada, Acolhimento e Integração de Requerentes e Beneficiários de Protecção Internacional em Portugal – Relatório Estatístico do Asilo 2020*, May 2020, available in Portuguese at: <https://bit.ly/2MGYtB9>, p 141-142.

<sup>720</sup> Available at: <https://bit.ly/2PBZpbP>.

## 2. Access to reception centres by third parties

### Indicators: Access to Reception Centres

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

The Asylum Act provides for the right of access to reception centres and other reception facilities for family members, legal advisers, UNHCR, CPR, and other refugee-assisting NGOs recognised by the State for the provision of assistance to asylum seekers.<sup>721</sup>

The internal regulation of **CACR** provides for the right of unaccompanied children to receive visits from family and friends which have been approved by the Family and Juvenile Court. The internal regulation of **CAR** provides for a general right to visits upon authorisation of the Director of the Centre.

In practice, asylum seekers accommodated at CAR and CACR benefit from legal assistance from CPR's staff (see [Regular Procedure: Legal Assistance](#)) as well as from information and facilitation of contacts and meetings with lawyers at appeal stage. Such meetings can either take place at the reception centres or at the lawyers' offices, in the presence of a representative of CPR in the case of unaccompanied children.

Within the context of the coronavirus pandemic, visits were only authorised in a specific designated area providing that the applicable preventive measures were respected.

### G. Differential treatment of specific nationalities in reception

There is no information available regarding discrimination or preferential treatment of asylum seekers pertaining to reception conditions such as accommodation, health care, employment, education or others, on the basis of nationality.

Nevertheless, in 2021, the emergency reception of Afghans evacuated from their country of origin and transferred to Portugal was subject to different procedures. While their applications for international protection followed the regular procedure, the reception of those evacuated was structured in two stages: first, they remained in temporary reception centres in the Lisbon area (managed by different entities), and afterwards, they were transferred to individualised solutions organised by ACM and ISS.

In 2021, CPR provided emergency reception to 131 applicants for international protection in this situation.

<sup>721</sup> Article 59(4) Asylum Act.

## Detention of Asylum Seekers

### Background

In March 2020, applicants for international protection that were detained at the border were released from administrative detention due to the COVID-19 pandemic. The detention centre at **Lisbon** airport was closed (both due to the coronavirus pandemic and for renovation work). In the same month, the Criminal Police arrested three SEF inspectors on suspicion of having killed a man in the detention centre at Lisbon airport.<sup>722</sup>

The facility re-opened on 1 August 2020 with vastly different conditions, and a new internal regulation was approved. According to official statements of the Government and media reports, the new regulation determines that applicants for international protection cannot be held in the detention centre.

While applications for international protection at the border have been made since international air traffic resumed according to CPR's experience, and despite some unclear instances, such applicants have been granted entry into national territory, referred to the provision of reception conditions if needed, and their cases were not subject to the rules applicable to the border procedure. SEF affirmed that the border procedure has not been applied in 2021.

At the time of writing, it is not clear whether this is temporary or will become permanent practice and whether it will apply to all national border posts. The border procedure continues to be provided in national law.

It should be noted that asylum seekers who apply for international protection while in detention due to a removal procedure continued to be subject to detention throughout the year, including in airport detention facilities.

While in early 2022 CPR provided assistance to a number of asylum seekers detained in the Lisbon airport detention centre, this only included access to the entry area and visiting rooms.

### A. General

#### Indicators: General Information on Detention

1. Total number of asylum seekers detained in 2021:	46
2. Number of asylum seekers in detention at the end of 2021:	-
3. Number of detention centres specifically for asylum seekers: <sup>723</sup>	3
4. Total capacity of detention centres specifically for asylum seekers:	Not available

The legal framework of detention centres is enshrined in Act 34/94 which provides for the detention of migrants in Temporary Installation Centres (*Centros de Instalação Temporária*, CIT) that are managed by SEF either for security reasons (e.g., aimed at enforcing a removal from national territory) or for irregular entry at the border. Detention facilities at the border (EECIT),<sup>724</sup> which are not CIT *per se*, have been classified as such by Decree-Law 85/2000 for the purposes of detention following a refusal of entry at the border.<sup>725</sup>

<sup>722</sup> Polícia Judiciária, *Detenção de três presumíveis autores de crime de homicídio*, 30 March 2020, available in Portuguese at: <https://bit.ly/2VKHkqM>. For information on subsequent developments on the judicial procedures related to this case, see, for instance FRA, *Migration: Key Fundamental Rights Concerns, 1.10.2021-31.12.2021*, p.27, available at: <https://bit.ly/3xKdAz0>.

<sup>723</sup> This includes only the detention facilities at international airports, where asylum seekers may be detained. CIT are excluded.

<sup>724</sup> Council of Ministers Resolution 76/97.

<sup>725</sup> Indeed, as recalled by the Ombudsman: "The confinement of foreign citizens, including where it takes place in the international area of an airport, indeed consists in a deprivation of freedom (...) that goes beyond a mere restriction of freedom. On this matter cf. the judgement of the European Court of Human Rights n. °

In practice, detention of asylum seekers in Portugal has been limited to applicants at the border and to applicants for international protection that were previously detained due to a removal procedure. Since March 2020, detention of asylum seekers dropped significantly given that the border procedure is not systematically applied. Since then, according to CPR's observation, instances of detention of asylum seekers predominantly occur when applicants for international protection were previously detained due to a removal procedure,<sup>726</sup> and in cases where precautionary measures/alerts regarding the person concerned are active.

The 3 main detention facilities at the border are located in the international areas of **Lisbon, Porto** and **Faro** airports.<sup>727</sup> The facilities have an overall capacity of 21,<sup>728</sup> 30, and 12 places respectively. **Unidade Habitacional de Santo António** (CIT – UHSA)<sup>729</sup> is the only temporary installation centre *per se* currently functioning in Portugal.

According to the information provided by SEF, only the facility in Faro has places specifically for asylum seekers (6). Out of the three, the facility at the **Lisbon** airport has been the most relevant to the detention of asylum seekers. According to the information previously provided by SEF, it does not have dedicated places for asylum seekers since August 2020.<sup>730</sup> SEF also informed that the facilities in Faro and Porto were not functioning in 2021.

According to the data shared by SEF, out of a total of 827 migrants refused entry into national territory detained at EECIT Lisbon, 117 applied for asylum and were immediately referred to accommodation to be provided by CPR. SEF's data also indicates that they remained in EECIT Lisbon for an average period of 2 days until accommodation within the general rules was ensured. The data provided by SEF further indicates that, in total, 331 persons have applied for asylum at the border.

SEF reported that a total of 305 persons have been detained in 2021 within the context of coercive removal procedures/by court order due to the existence of relevant alerts (180 at CIT-UHSA and 125 at Lisbon EECIT). Out of these, 46 applied for asylum while detained (37 at CIT-UHSA and 9 at EECIT Lisbon).

While the Asylum Act also provides for the possibility of placing other categories of asylum seekers in detention,<sup>731</sup> including those subjected to Dublin procedures, in practice only the aforementioned possibilities have been applied in practice.

The competent authority to place and review the detention of an asylum seeker in a CIT,<sup>732</sup> or in detention facilities at the border,<sup>733</sup> is the Criminal Court, with territorial jurisdiction over the place where detention is imposed. In the case of detention at the border, SEF initially imposes detention, but is required to inform the Criminal Court of said detention measure within 48 hours of arrival at the border for the purpose of maintaining the asylum seeker in detention beyond that period.<sup>734</sup>

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19776/92, 25 June 1992 (*Amuur v France*).” Ombudsman, *Tratamento dos cidadãos estrangeiros em situação irregular ou requerentes de asilo nos centros de instalação temporária ou espaços equiparados*, September 2017, available in Portuguese at: <https://bit.ly/3MKjmFq>. fn. 14 [unofficial translation].

<sup>726</sup> Article 35-A(3)(b) Asylum Act.

<sup>727</sup> While pre-removal facilities also exist in the airports of Ponta Delgada and Madeira, CPR is unaware of its use for detention of applicants for international protection.

<sup>728</sup> According to prior information, since 1 August 2020, the centre had a total capacity of 43 places. SEF confirmed that the capacity in 2021 was of 21 places.

<sup>729</sup> Decree-Law 44/2006 provides for the creation and functioning of CIT – UHSA in Porto.

<sup>730</sup> According to SEF, between 1 January 2020 and 4 April 2020, there were 30 places for asylum seekers in the facility.

<sup>731</sup> Article 35-A(3) Asylum Act.

<sup>732</sup> Article 35-A(5) Asylum Act.

<sup>733</sup> Article 35-A(6) Asylum Act.

<sup>734</sup> *Ibid.*

In addition to the impacts of detention, shorter deadlines and reduced procedural guarantees are applicable in the context of procedures conducted while the applicants are detained. Moreover, asylum seekers who are detained may face practical restrictions contacting others outside of the facility (including by phone). These reduced guarantees may give rise to risks of poorer quality decision-making.

While UNHCR, CPR, legal representatives, and other NGOs have effective access to asylum seekers in detention at the border in accordance with the law,<sup>735</sup> access to legal information as well as assistance in detention has been hindered in practice by a combination of factors, including shorter deadlines, limited capacity of service providers, poor quality of legal assistance provided by lawyers, and lack of interpretation services.

## B. Legal framework of detention

### 1. Grounds for detention

Indicators: Grounds for Detention			
1. In practice, are most asylum seekers detained			
❖ on the territory:	Yes	No	
❖ at the border:	Yes		No
2. Are asylum seekers detained during a regular procedure in practice?			
	Frequently	Rarely	Never
3. Are asylum seekers detained during a Dublin procedure in practice?			
	Frequently	Rarely	Never

Under the Asylum Act, the placement of asylum seekers in detention cannot be based on the application for international protection alone,<sup>736</sup> and can only occur on grounds of:

- National security, public order, public health; or
- Risk of absconding; and

Be based on an individual assessment and only if the effective application of less severe alternative measures is not possible.<sup>737</sup>

The possible grounds for the detention of asylum seekers also include:<sup>738</sup>

- Applying for asylum at the border;
- Applying for asylum following a decision of removal from national territory; or
- The application of the Dublin procedure.

According to the law, detention may only be applied if it is not possible to effectively implement less severe alternative measures.

<sup>735</sup> Article 49(6) Asylum Act.  
<sup>736</sup> Article 35-A(1) Asylum Act.  
<sup>737</sup> Article 35-A(2) Asylum Act.  
<sup>738</sup> Article 35-A(3) Asylum Act.

Moreover, Article 26(1) of the Asylum Act determines that asylum seekers who applied for asylum at the border remain in the international area of the (air)port while waiting for the decision.<sup>739</sup>

As mentioned in [General](#), systematic detention of asylum seekers in Portugal has been applied within the context of border procedures in which asylum seekers were detained until their application was admitted to the procedure (7 days),<sup>740</sup> or for a maximum of 60 days in case of an appeal against the rejection of the application.<sup>741</sup> SEF confirmed that the border procedure has not been applied in 2021, and, consequently detention did not take place within this context. According to CPR’s experience, and despite some unclear instances, persons applying for international protection at the border have been granted entry into national territory, referred to the provision of reception conditions if needed, and their cases were processed accordingly.

At the time of writing, it continued to be unclear whether this was temporary or will become permanent practice.

Asylum seekers who apply for asylum in detention at a CIT due to a removal procedure will also usually remain in detention during the asylum procedure until their application is admitted to the procedure (10 days)<sup>742</sup> or for a maximum of 60 days in case of an appeal against the rejection of the asylum application.<sup>743</sup> While the Asylum Act provides for the suspension of all administrative and/or criminal procedures related to the irregular entry of the asylum applicant on the national territory - and thus requires that the competent authorities are informed of the asylum application within 5 days for that purpose - <sup>744</sup> detention at a CIT due to a removal procedure will rarely, if ever, be suspended *ex officio* by the Criminal Courts on that basis. Detention within this context continued to be systematically applied throughout 2021.

CPR is unaware of case law relating to or judicial interpretations of detention grounds such as the application of a Dublin procedure, threat to national security, public order, public health, or risk of absconding.

**2. Alternatives to detention**

<b>Indicators: Alternatives to Detention</b>	
1. Which alternatives to detention have been laid down in the law?	<p><b>Reporting duties</b> Surrendering documents Financial guarantee</p> <p><b>Residence restrictions</b> Other</p>
2. Are alternatives to detention used in practice?	Yes <b>No</b>

As mentioned in [Grounds for Detention](#), according to the Asylum Act, detention of asylum seekers requires an assessment of the individual circumstances of the applicant and of the possibility to effectively implement less severe alternative measures,<sup>745</sup> thus demanding proof that alternatives to detention cannot be effectively applied. The Asylum Act lays down alternatives to detention consisting

<sup>739</sup> It is our understanding that while this article seems to provide for the general detention of asylum seekers within the context of border procedures, it must be applied with due regard for the rules established in Art.35-A of the Asylum Act.  
<sup>740</sup> Article 26(4) Asylum Act.  
<sup>741</sup> Article 35-B(1) Asylum Act.  
<sup>742</sup> Article 33-A(5) Asylum Act.  
<sup>743</sup> Article 35-B(1) Asylum Act.  
<sup>744</sup> Article 12(1) and (3) Asylum Act.  
<sup>745</sup> Article 35-A(2) and (3) Asylum Act. While the need for an assessment of the individual circumstances of the applicant is only mentioned in the case of detention on the grounds of national security, public order, public health or when there is a flight risk, it is difficult to conceive an assessment of less severe alternative measures for the remaining grounds for detention that is not based on the individual circumstances of the applicant.

either of reporting duties before SEF on a regular basis or residential detention with electronic surveillance (house arrest).<sup>746</sup>

Despite the safeguards enshrined in the law to ensure that detention of asylum seekers, including at the border, is used as a last resort and only where necessary, in practice, criminal courts rarely conducted an individual assessment on whether it is possible to effectively implement alternatives to detention. Even where the Criminal Court of Lisbon invited SEF to consider the release of families with children and to their referral to CAR,<sup>747</sup> the decisions systematically fell short of conducting an individual assessment of necessity and proportionality and of issuing an order to SEF.

Concerns regarding the judicial review of decisions to detain were flagged by the Ombudsperson in a hearing at the Parliament in 2020 (see [Procedural Safeguards: Judicial review of the detention order](#)).<sup>748</sup>

With the exception of the release of asylum seekers without conditions from the border, CPR is unaware of the application of alternatives to detention in practice. This assessment has been corroborated by information provided by SEF for 2021.

The report of the European Commission against Racism and Intolerance (ECRI), published in October 2018, referred to the excessive use of detention in the context of asylum.<sup>749</sup>

In 2019, the practice was also condemned by the UN Committee Against Torture. It expressed concerns on multiple issues, including the excessive use of detention, the absence of individualised assessments as well as little consideration for alternatives to detention, the lack of adequate detention conditions in the relevant facilities, and entry fees charged to external parties at Lisbon airport.<sup>750</sup> Among other detention-related observations, the Committee recommended that detention is used only “as a measure of last resort and for as short a period as possible, by ensuring individualised assessments, and promote the application of non-custodial measures”.<sup>751</sup>

In 2020, the UN Committee on Human Rights, echoed concerns regarding detention at the border (namely regarding its duration and conditions), and recommended Portugal to “[e]nsure that the detention of migrants and asylum seekers is reasonable, necessary and proportionate [...] and that alternatives to detention are found in practice.”<sup>752</sup>

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<sup>746</sup> Article 35-A(4)(a) and (b) Asylum Act.

<sup>747</sup> Judicial Court of the Lisbon District, Local Misdemeanour Court of Lisbon – Judge 2, Applications Nos 3881/17.5T8LSB, 13 February 2017; 19736/17.0T8LSB, 11 September 2017; 22330/17.2T8LSB, 16 October 2017; 22779/17.0T8LSB, 20 October 2017; 23770/17.2T8LSB, 3 November 2017; 25058/17.0T8LSB, 20 November 2017; 25060/17.1T8LSB, 20 November 2017; 8909/19.1T8LSB, 29 April 2019.

<sup>748</sup> Video recording available at: <https://bit.ly/3fZgcAd>.

<sup>749</sup> ECRI, *ECRI Report on Portugal (fifth monitoring cycle)*, CRI (2018)35, 2 October 2018, par.84, available at: <https://bit.ly/2sIFsAQ>.

<sup>750</sup> Committee Against Torture, *Concluding Observations on the seventh periodic report of Portugal*, CAR/C/PRT/CO/7, 18 December 2019, para 39, available at <https://bit.ly/2G1F07z>.

<sup>751</sup> *Ibid.* para 40(a).

<sup>752</sup> Human Rights Committee, *Concluding Observations on the fifth periodic report of Portugal*, CCPR/C/PRT/CO/5. 28 April 2020, par 34(d) and (e), and 35 (d), available at: <https://bit.ly/2Q1ftn8>.



### 3. Detention of vulnerable applicants

#### Indicators: Detention of Vulnerable Applicants

1. Are unaccompanied asylum-seeking children detained in practice?  
Frequently (until March 2020) Rarely **Never**  
  
❖ If frequently or rarely, are they only detained in border/transit zones?  
Yes No
2. Are asylum seeking children in families detained in practice?  
Frequently **Rarely** Never

The Asylum Act defines an “applicant in need of special procedural guarantees” in terms of reduced ability to benefit from the rights and comply with the obligations stemming from the Asylum Act due to his or her individual circumstances.<sup>753</sup> Even though it does not include an exhaustive list of asylum seekers presumed to be in need of special procedural guarantees, it refers to age, gender, gender identity, sexual orientation, disability, serious illness, mental disorders, torture, rape or other serious forms of psychological, physical or sexual violence as possible factors underlying individual circumstances that could lead to the need of special procedural guarantees.<sup>754</sup>

Within these applicants, the Asylum Act identifies a sub-category of individuals whose special procedural needs result from torture, rape, or other serious forms of psychological, physical or sexual violence that may be exempted from border procedures and hence detention.<sup>755</sup> Furthermore, the placement of unaccompanied and separated children in detention facilities at the border must comply with applicable international recommendations such as those by UNHCR, UNICEF, and the International Committee of the Red Cross (ICRC).<sup>756</sup>

In practice, asylum seekers have been systematically detained at the border for periods up to 60 days until March 2020 (see [Duration of detention](#)). While up to 2016, certain categories of particularly vulnerable applicants such as unaccompanied children, families with children, pregnant women, and severely ill persons were generally released without conditions, SEF changed its practice in this regard.

In 2017, the detention of an asylum-seeking family with children at the **Lisbon Airport** detention facility drew criticism from the Ombudsperson, particularly regarding the inadequate detention conditions offered to a child with special health needs (see [Conditions in Detention Facilities](#)).<sup>757</sup>

In July 2018, following media reports on detention of young children at **Lisbon Airport**,<sup>758</sup> and remarks by the Ombudsman and UNICEF,<sup>759</sup> the Ministry of Home Affairs issued an order determining:<sup>760</sup>

- An internal review of the functioning of the CIT at Lisbon Airport;
- The urgent presentation by SEF of a report on the recommendations issued by the Ombudsman in 2017 regarding the above-mentioned centre;

<sup>753</sup> Article 17-A(1) Asylum Act.

<sup>754</sup> *Ibid.*

<sup>755</sup> Article 17-A(4) Asylum Act.

<sup>756</sup> Article 26(2) Asylum Act.

<sup>757</sup> Ombudsman, *Tratamento dos cidadãos estrangeiros em situação irregular ou requerentes de asilo nos centros de instalação temporária ou espaços equiparados*, September 2017, p28, available in Portuguese at: <https://bit.ly/3eLMNX6>.

<sup>758</sup> See e.g. Público, ‘SEF detém crianças requerentes de asilo contra recomendações da ONU’, 22 July 2018, available in Portuguese at: <https://bit.ly/2uLRNP>.

<sup>759</sup> See e.g. Público, ‘Provedora, “Centros de instalação são o no man’s land contemporâneo”’, 22 July 2018, available in Portuguese at: <https://bit.ly/2UI9URU>; Expresso, ‘UNICEF Portugal exige fim de detenção de crianças no aeroporto’, 24 July 2018, available in Portuguese at: <https://bit.ly/2G9xisZ>.

<sup>760</sup> AIDA, ‘Portugal: Persisting detention of children at the airport’, 4 September 2018, available at: <https://bit.ly/2LWn4LZ>.

- That children under 16 years old (whether accompanied or not) cannot be detained in the CIT for more than 7 days;
- That the construction of the Temporary Reception Centre of Almoçageme (CATA), located in the municipality of **Sintra**, is given maximum priority. So far there is no definite public information on whether it will be an open or closed centre.

At the time of writing, no information on the results of the internal reviews conducted within this context was publicly available and the construction of the CATA has been apparently abandoned.<sup>761</sup>

The detention of children in Portugal was criticised in 2019 by the UN Committee on the Rights of the Child, emphasising that detention of children, whether accompanied or not, must be avoided and alternatives ensured.<sup>762</sup> Focusing specifically on the situation of children in Portugal, both accompanied and unaccompanied/separated, the UN Committee Against Torture has also recently emphasised that they should not be detained solely because of their immigration status.<sup>763</sup> SEF did not share data on the number of persons with special reception needs detained throughout 2021 and stated that no victims of trafficking in human beings or torture have been reported within the context of detention of applicants for international protection.

The UN Human Rights Committee also addressed the administrative detention of children in its 2020 Concluding Observations, inter alia, expressing concern “about the lack of clear legislation in this respect” and detention of children in airport facilities, and urging the State to “ensure that children and unaccompanied minors are not detained, except as a measure of last resort and for the shortest appropriate period of time, taking into account their best interests as a primary consideration with regard to the duration and conditions of detention and their special need for care.” The Committee also noted that Portugal “should ensure that the physical conditions in all immigration detention and reception centres are in conformity with international standards. It should also ensure that guarantees are in place to protect child asylum seekers, in particular unaccompanied children, ensuring that they have access to adequate education, health, social and psychological services, and legal aid, and that they are provided with a legal representative and/or guardian without delay”.<sup>764</sup>

The 2020 report of the National Preventive Mechanism highlighted the lack of procedures for the identification of vulnerable persons at the border. The report also underlined that, while the rules provided in the ministerial order have been respected, the detention of children continued to be problematic.<sup>765</sup> The 2021 report (covering 2020) did not address the identification of vulnerabilities in particular.

While the number of cases of detention significantly dropped in 2021 due to the above-mentioned changes, the asylum system continued to lack a systematic mechanism of identification of vulnerabilities (see: [Guarantees for vulnerable groups](#)).

Nevertheless, according to the data provided by SEF for 2021, 7 children accompanied by family members have been detained in EECIT Lisbon with family members due to the existence of court orders determining the detention of the accompanying adults, for periods between 1 and 2 days. According to SEF, unaccompanied children have not been detained in 2021.

<sup>761</sup> Ombudsman, ‘*Mecanismo Nacional de Prevenção, Relatório à Assembleia da República*’, 24 June 2021, p.107, available at: <https://bit.ly/329nbSK>.

<sup>762</sup> Committee on the Rights of the Child, *Concluding observations on the combined fifth and sixth periodic reports of Portugal*, CRC/C/PRT/CO/5-6, 9 December 2019, par.42(a) and (d), available at: <https://bit.ly/2G1F07z>?

<sup>763</sup> Committee Against Torture, *Concluding Observations on the seventh periodic report of Portugal*, CAR/C/PRT/CO/7, 18 December 2019, para.40(b), available at <https://bit.ly/2G1F07z>.

<sup>764</sup> Human Rights Committee, *Concluding Observations on the fifth periodic report of Portugal*, CCPR/C/PRT/CO/5. 28 April 2020, par 36 and 37, available at: <https://bit.ly/2Q1ftn8>.

<sup>765</sup> Ombudsman, ‘*Mecanismo Nacional de Prevenção, Relatório à Assembleia da República*’, June 2020, p 65-66, available at: <https://bit.ly/2Pz1ZiN>.

A study focusing on the situation of asylum-seeking unaccompanied children and ageing out in Portugal published in 2021 revealed that those questioned described detention at the airport (which lasted for some days/weeks) as scary both due to the fear of deportation, and to the tension in the relationship with the authorities.<sup>766</sup>

#### 4. Duration of detention

##### Indicators: Duration of Detention

1. What is the maximum detention period set in the law (incl. extensions): 60 days
2. In practice, how long in average are asylum seekers detained? Less than 60 days

In accordance with the Asylum Act, an asylum seeker, either at the airport or land border, “who does not meet the legal requirements for entering national territory” can be detained for up to 7 days for an admissibility procedure.<sup>767</sup> If SEF takes a positive admissibility decision or if no decision has been taken within 7 working days, the applicant is released. If the claim is deemed inadmissible or unfounded in an accelerated procedure, the asylum seeker can challenge the rejection before the administrative courts with suspensive effect and remains detained for up to 60 days during the appeal proceedings. However, after 60 days, even if no decision has yet been taken on the appeal, SEF must release the individual from detention and provide access to the territory. The maximum detention period of 60 days is equally applicable in instances where the application is made from detention at a CIT due to a removal procedure.<sup>768</sup>

In the 2019 report of the National Preventive Mechanism, the Ombudsperson reported that following consultations with other countries, it was concluded that Portugal was the only one detaining persons in airport detention facilities for more than 48 hours.<sup>769</sup>

According to SEF the average detention period of applicants of international protection at CIT-UHSA in 2021 was 45 days. While an average period was not indicated for EECIT Lisbon, according to the data provided, detention in the facility varied from 1 day to more than 10 days.

SEF has also reported that 7 children accompanied by family members have been detained in EECIT Lisbon with family members due to the existence of court orders determining the detention of the accompanying adults, for periods between 1 and 2 days. According to SEF, unaccompanied children were not detained in 2021.

Even though CPR is not aware of instances where the maximum detention duration was exceeded in the case of asylum seekers, in 2017 the Ombudsman raised concerns regarding isolated instances of detention of third-country nationals beyond the 60-day time limit with respect to **CIT – UHSA**; the legal status of such persons was not specified.<sup>770</sup> More recent information on this aspect is not available.

<sup>766</sup> Sandra Roberto, Carla Moleiro, ed. Observatório das Migrações, *De menor a maior: acolhimento e autonomia de vida em menores não acompanhados*, April 2021, p.50, available at: <https://bit.ly/3fqMKBK>.

<sup>767</sup> Article 26 and 35-A(3)(a) Asylum Act.

<sup>768</sup> Article 35-B(1) Asylum Act.

<sup>769</sup> Ombudsman, *Mecanismo Nacional de Prevenção, Relatório à Assembleia da República*, June 2020, p 52, available at: <https://bit.ly/2Pz1ZiN>.

<sup>770</sup> Ombudsman, *Tratamento dos cidadãos estrangeiros em situação irregular ou requerentes de asilo nos centros de instalação temporária ou espaços equiparados*, September 2017, 23-24, available at: <https://bit.ly/3eLMNX6>.

## C. Detention conditions

### 1. Place of detention

#### Indicators: Place of Detention

- |   |     |    |
|---|-----|----|
| 1. Does the law allow for asylum seekers to be detained in prisons for the purpose of the asylum procedure (i.e., not as a result of criminal charges)? | Yes | No |
| 2. If so, are asylum seekers ever detained in practice in prisons for the purpose of the asylum procedure?  | Yes | No |

As mentioned above, asylum seekers may be detained either in Temporary Installation Centres (CIT),<sup>771</sup> or in detention facilities at the border (EECIT) - which are not CIT *per se* but have been qualified as such by law for the purposes of detention following an entry refusal at the border<sup>772</sup> (see [Detention: General](#)).

The 3 detention facilities at the border<sup>773</sup> are located in the international areas of Lisbon, Porto and Faro airports.

Detention capacity in border detention centres: 2021	
Detention centre	Total capacity
Detention facility – Lisbon airport	21 <sup>774</sup>
Detention facility – Porto airport	30
Detention facility – Faro airport	12
<b>Total</b>	63 (however, only 21 were available at the end of the year)

Source: SEF. This refers to the total capacity of the detention centres and is thus not limited to asylum seekers specifically.

According to the information provided by SEF, neither EECIT Lisbon, nor EECIT Porto had dedicated places for applicants for international protection, and EECIT Faro had 6 such places.

Additionally, according to information previously provided by SEF, **CIT-UHSA** has an overall capacity for 30 persons.

CPR is unaware of the detention of asylum seekers in police stations or in regular prisons for the purposes of the asylum procedure.

According to the 2020 report of the National Preventive Mechanism, the construction of a new CIT in Almoçageme (CATA) was halted by judicial order<sup>775</sup> and the construction of another CIT in Guarda was

<sup>771</sup> Article 35-A(2) and (3) Asylum Act. The legal framework of detention centres is enshrined in Act 34/94 of 14 September 1994, available in Portuguese at: <https://bit.ly/359v9Zf>.

<sup>772</sup> Council of Ministers Resolution 76/97 and Decree-Law 85/2000 of 12 May 2000, available in Portuguese at: <https://bit.ly/2xUj1T> and <https://bit.ly/3cS7Ky7>.

<sup>773</sup> While pre-removal facilities also exist in the airports of Ponta Delgada and Madeira, CPR is unaware of its use for detention of applicants for international protection.

<sup>774</sup> According to prior information, since 1 August 2020, the centre had a total capacity of 43 places. SEF confirmed that the capacity in 2021 was 21 places.

<sup>775</sup> Ombudsman, '*Mecanismo Nacional de Prevenção, Relatório à Assembleia da República*', June 2020, p 50, available at: <https://bit.ly/2Pz1ZiN>. The National Preventive Mechanism conducted a preventive visit to the facility in 2019. The conditions observed are described in the report (p 56-58).

planned.<sup>776</sup> According to the 2021 report, the construction of the CATA has been abandoned.<sup>777</sup> Further information on the construction of a CIT in Guarda is not available. In 2021, the Ministry of Home Affairs referred to the possibility of requalifying an area of the Caxias Prison to be used as a CIT.<sup>778</sup> This project was strongly criticised by civil society organisations,<sup>779</sup> and ended up being abandoned by the Government.<sup>780</sup>

The 2021 report of the National Preventive Mechanism also refers to the detention of a group of migrants in a Military Facility in 2021.<sup>781</sup> Within this context, the Ombudsperson has mentioned the need to create further facilities, namely in the south and centre areas of the country. As per the report, SEF has indicated to the National Preventive Mechanism that a new CIT will be built in Almancil.<sup>782</sup> Furthermore, the report mentions that the possibility of increasing the capacity of CIT-UHSA and creating a specific area for families and vulnerable persons was under analysis.<sup>783</sup>

According to the same source, SEF also signed a protocol providing for the creation of a hotspot in the port of Vila Real de Santo António.<sup>784</sup> This facility would be meant to provide immediate support to persons arriving by sea in the coast of Algarve with the support of the Portuguese Red Cross.

Despite the limited information available in this regard, in light of previous experiences with such facilities within the European Union and particularly given the low number of sea arrivals that has been experienced in the past, this does not seem to be an appropriate solution.

A project of €1,560,000 submitted by SEF to FAMI was approved in July 2020. The project aims to “reinforce the quality of temporary installation centres with adequate spaces, namely for families and vulnerable groups, and services of social, legal, linguistic, and health assistance”.<sup>785</sup>

SEF did not provide AIDA with any information regarding plans for new detention facilities that may be used to detain applicants for international protection.

## 2. Conditions in detention facilities

### Indicators: Conditions in Detention Facilities

1. Do detainees have access to health care in practice?	Yes	No
❖ If yes, is it limited to emergency health care?	Yes	No

### 2.1. Overall conditions

In the absence of legal standards for the operation of CIT, the detention facilities at the border and the CIT – UHSA in Porto are managed by SEF pursuant to internal regulations.<sup>786</sup>

<sup>776</sup> Ibid, p 58.

<sup>777</sup> Ombudsman, ‘Mecanismo Nacional de Prevenção, Relatório à Assembleia da República’, 24 June 2021, p.107, available at: <https://bit.ly/329nbSK>.

<sup>778</sup> See, for instance, TVI, *Exclusivo TVI: centro do SEF vai ser na prisão de Caxias. Cabrita envolvido em nova polémica*, 16 June 2021, available at: <https://bit.ly/3tr8wO>.

<sup>779</sup> See, for instance, *ONG’s exigem a revogação do protocolo de detenção administrativa de migrantes na prisão de Caxias*, 21 June 2021, available at: <https://bit.ly/3GDIYIE>.

<sup>780</sup> See, for instance, TSF/Lusa, *MAI suspende reconversão de ala da prisão de Caxias em centro para imigrantes*, 8 July 2021, available at: <https://bit.ly/3GFHPZC>.

<sup>781</sup> Ombudsman, ‘Mecanismo Nacional de Prevenção, Relatório à Assembleia da República’, 24 June 2021, pp.99 et seq, available at: <https://bit.ly/329nbSK>.

<sup>782</sup> Ibid, pp. 106 et seq.

<sup>783</sup> Ibid.

<sup>784</sup> Ibid, pp. 106 et seq,

<sup>785</sup> Secretaria-Geral do Ministério da Administração Interna, *Autoridade Responsável do FAMI – SGMAI aprova candidatura no âmbito do OE3 -REGRESSO - OE3.ON1–Medidas de Acompanhamento*, 6 July 2020, available at: <https://bit.ly/2OAVGuo>. (Unofficial translation).

<sup>786</sup> Ministerial Decision n. 5863/2015 of 2 June 2015 regulates in detail detention conditions by police forces, including SEF, but is only applicable to the initial 48-hour detention period.

A new general regulation governing the placement of foreign and stateless persons in CIT and EECIT has been approved by the Minister of Home Affairs in July 2020.<sup>787</sup> The regulation explicitly refers that it is applicable to applicants for international protection, and that, in such cases, detention is subject to the rules provided by the Asylum Act.<sup>788</sup> It also establishes, inter alia, that:

- Possible victims of trafficking in human beings and unaccompanied children should be accommodated in adequate facilities;<sup>789</sup>
- SEF must inform detainees, according to the law, of the grounds of detention, status of their file and their rights and duties in a language that they understand or may be reasonably presumed to understand;<sup>790</sup>
- Transfers of persons between facilities may occur in order to ensure adequate reception conditions;<sup>791</sup>
- Each facility must have an internal regulation, to be approved by the National Director of SEF;<sup>792</sup>
- SEF is responsible for the management of the facilities and for the coordination of the fulfilment of the basic needs of detainees. The entity must appoint a person to be in charge of each facility;<sup>793</sup>
- The Ministry of Social Security and the Ministry of Health are responsible for the fulfilment of needs within their scope of action in centres located within the national territory;<sup>794</sup>
- Private companies may be hired to ensure the security of persons and goods;<sup>795</sup>
- Staff working in the facilities must have multidisciplinary training (namely with regard to languages) and the teams must be composed of both men and women;<sup>796</sup>
- SEF may establish cooperation protocols with civil society organisations within this context;<sup>797</sup>
- Upon consent, detainees must be subject to a clinical evaluation performed by a healthcare professional. Access to healthcare (including psychological care) free of charge must be ensured during the detention, specific care is to be provided to particularly vulnerable persons;<sup>798</sup>
- Detainees are entitled to visits from direct family members and lawyers. Specific rules on schedules and duration of visits must be included in the internal regulation of each facility. Visits by entities entitled to access by the law are subject to the rules applicable to lawyers;<sup>799</sup>
- If they wish, detainees can be contacted and visited by the diplomatic/consular authorities of their country of origin;<sup>800</sup>
- Specific rules are established for telephone calls, namely the distribution of calling cards or access to telephones for a reasonable period of time. As a general rule, possession of communication equipment is forbidden unless the internal regulations state otherwise;<sup>801</sup>
- The facilities must ensure the dignity of detainees, provide for their separation by gender and age (except in the case of families), have an outdoor space and available leisure activities. Measures must be adopted to prevent violence, inhuman treatment or abuse by other detainees;<sup>802</sup>

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<sup>787</sup> *Regulamento Regime geral sobre o acolhimento de estrangeiros e apátridas em Centros de Instalação Temporária (CIT) e Espaços Equiparados a Centros de Instalação Temporária (EECIT)*, 31 July 2020, available at: <https://bit.ly/3MmNbvp>.

<sup>788</sup> Articles 1(1) and 3.

<sup>789</sup> Article 1(2).

<sup>790</sup> Article 5(2).

<sup>791</sup> Article 7(1).

<sup>792</sup> Article 8(4).

<sup>793</sup> Article 9(1) and (2).

<sup>794</sup> Article 9(3).

<sup>795</sup> Article 9(4).

<sup>796</sup> Article 9(5).

<sup>797</sup> Article 9(6).

<sup>798</sup> Article 10.

<sup>799</sup> Articles 12, 13 and 15.

<sup>800</sup> Article 14.

<sup>801</sup> Article 16.

<sup>802</sup> Article 19.

- The food provided must be subject to quality control, be sufficient, and respect dietary or philosophical/religious beliefs;<sup>803</sup>
- Detainees are to be provided with a hygiene kit, access to toilets bathrooms with hygiene and security, and the necessary conditions to wash clothes must be ensured. Access to luggage must also be ensured;<sup>804</sup>
- A monitoring commission to evaluate and monitor the functioning of the relevant facilities composed by representatives from SEF, IGAI, Ombudsperson and ACM is to be established. It must meet at least twice a year.<sup>805</sup>

In April 2020, the UN Human Rights Committee expressed concern over the detention conditions of migrants in Portugal, recommending that conditions and treatment in relevant facilities comply with international standards.<sup>806</sup>

### **EECIT Lisbon**

Until March 2020, the detention facility at Lisbon airport was the most relevant detention space of applicants for international protection (mostly within the context of border procedures). As mentioned, it was closed in March 2020 both due to the coronavirus pandemic and to renovation works. The facility reopened in August 2020, but the application of the asylum border procedures has not resumed.

According to the information publicly available, the new regulation of EECIT Lisbon explicitly excludes detention of applicants for international protection in the facility. While there were cases of applicants for international protection detained in the facility in 2021 (mainly cases where the application for asylum is made following a removal decision), the figures are much lower than in previous years (see: [General](#)).

According to the information provided by SEF, in 2021, the EECIT Lisbon had an overall capacity of 21 places, of which 18 are divided in two different wings for men and women. It further has a family room with capacity for two persons and another room for persons with special needs (e.g. reduced mobility) with capacity for one person.

In its latest report, covering 2020, the National Preventive Mechanism noted that the renovation was overall positive and took into account relevant concerns such as security, privacy and contact with the exterior.<sup>807</sup>

In terms of physical conditions, the National Preventive Mechanism further noted that the family and the multipurpose rooms have private bathrooms, and that there is a room that can be used for isolation.<sup>808</sup> While the facility was previously composed by collective dormitories, these were converted in individual rooms (7 per wing) and double rooms (1 per wing). The Ombudsperson deemed the conditions adequate (dimension, natural light, security mechanisms – e.g. access through key card, panic button system).<sup>809</sup>

Each wing continues to have a common area, with furniture that has been renovated and that includes an area for meals.<sup>810</sup> The report also highlights the creation of a prayer room that can be used upon scheduling to avoid conflicting practices.<sup>811</sup> The toilet and bathroom facilities are shared and were deemed as having good conditions by the Ombudsperson, that has also highlighted that washing and dryer machines have been added to the facility.<sup>812</sup> Each wing continues to have a small courtyard.

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<sup>803</sup> Article 23.

<sup>804</sup> Article 25.

<sup>805</sup> Article 28.

<sup>806</sup> Human Rights Committee, *Concluding Observations on the fifth periodic report of Portugal*, CCPR/C/PRT/CO/5. 28 April 2020, par 34(e) and 35(e), available at: <https://bit.ly/2Q1ftn8>.

<sup>807</sup> Ombudsman, '*Mecanismo Nacional de Prevenção, Relatório à Assembleia da República*', 24 June 2021, p.89, available at: <https://bit.ly/329nbSK>.

<sup>808</sup> *Ibid*, pp.92 et seq.

<sup>809</sup> *Ibid*.

<sup>810</sup> *Ibid*.

<sup>811</sup> *Ibid*.

<sup>812</sup> *Ibid*, pp.92 and 94.

The reception area of the facility includes an office for a member of SEF's staff and two offices for visits, including by lawyers and NGOs such as CPR. Due to space and structural constraints, the offices continue to be small and did not ensure adequate privacy, notably due to inadequate sound isolation.<sup>813</sup>

According to the National Preventive Mechanism, following the reopening, the facility's staff increased. Additionally, SEF officers are now in the facility 24h per day.<sup>814</sup> Staff of a private security company continues to be present in the facility and to perform certain logistical tasks such as ensuring that the food provided to detainees is adequate to their diet/religious needs.<sup>815</sup> While the other tasks are not specified in the report, in the past, those included initial registration; collection and access to personal belongings; provision of medication; registration and referral of requests for medical assistance; and distribution of meals.

The preparation of meals is ensured by a catering company and, according to the Ombudsperson, the number of meals and dietary options provided was reinforced.<sup>816</sup>

Information on the current cleaning arrangements is not available. According to CPR's observation, in the past, the facility was regularly cleaned by a cleaning company.

Access to personal belongings has been a recurring issue in the EECIT Lisbon in the past. According to the latest available report of the National Preventive Mechanism, while the new rules allowed detainees to keep some luggage following a security check, in practice, in 2020, access was still dependent on support from the facility's staff.<sup>817</sup>

Detainees may now use their mobile phones in the rooms, a significant change to the prior practice. Nevertheless, according to the Ombudsperson, access to free wi-fi internet should also be ensured.<sup>818</sup>

In the past, the Ombudsperson has raised concerns about the lack of specific training and language skills of supporting staff from security companies to perform their duties and the impact it could have on detainees in terms of isolation and access to services such as health care. Updated information in this regard was not available at the time of writing.

In the past, CPR has received rare, but recurrent, allegations over the years from asylum seekers regarding physical abuse by SEF inspectors mainly at the border support unit (as opposed to the detention facility). In 2017, CPR has requested a formal investigation into specific allegations and SEF conducted internal inquiries. According to the information provided by SEF to CPR, the procedures did not lead to any proof of wrongdoing and were therefore classified. No such reports were received in 2020 and 2021.

As previously reported, in March 2020, the Criminal Police arrested three SEF inspectors on suspicion of having killed a man in the detention centre at Lisbon airport.<sup>819</sup>

### **EECIT Porto**

According to the report of the National Preventive Mechanism, EECIT Porto closed on 13 August 2020 following a riot and escape of a group of detainees from the facility that left it inoperable. It further details

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<sup>813</sup> This has been observed and experienced by CPR during visits to the facility in early 2022.

<sup>814</sup> Ibid.

<sup>815</sup> Ibid.

<sup>816</sup> Ibid, pp.92 and 97.

<sup>817</sup> Ibid, p.94.

<sup>818</sup> Ibid, pp.94 et seq.

<sup>819</sup> Polícia Judiciária, *Detenção de três presumíveis autores de crime de homicídio*, 30 March 2020, available in Portuguese at: <https://bit.ly/2VKHkqM>. For information on subsequent developments on the judicial procedures related to this case, see, for instance FRA, *Migration: Key Fundamental Rights Concerns, 1.10.2021-31.12.2021*, p.27, available at: <https://bit.ly/3xKdAz0>.



that the necessary construction work had not been initiated as of January 2021.<sup>820</sup> The information provided by SEF to AIDA confirms that the facility was closed throughout the year.

As per the referred report, persons refused entry into national territory in Porto airport would either remain in its international area or be transferred to the EECIT Lisbon if re-embarkation took more than 24 hours.<sup>821</sup> It also noted that applicants for international protection would be transferred to CIT-UHSA.<sup>822</sup> This might indicate a possible differential treatment to persons applying for asylum at Lisbon airport. However, at the time of writing, CPR could not confirm if this happened in practice.

The number of applications for international protection made in Porto was already traditionally low before the pandemic. In the past, the Ombudsperson has even expressed concern with instances of excessive isolation of detainees in the facility in Porto.<sup>823</sup>

In 2019, the Ombudsperson had issued a specific recommendation regarding excessive isolation suggesting the authorities to systematically transfer persons detained in such situations to UHSA following 7 days of detention at the border facility.<sup>824</sup> The recommendation was not followed by SEF, that deemed its implementation unfeasible and legally doubtful.<sup>825</sup>

### **EECIT Faro**

According to the report of the National Preventive Mechanism, EECIT Faro has also been significantly damaged following an escape from detainees in July 2020 and was in need of construction work as a consequence.<sup>826</sup>

According to the information provided by SEF, the facility has not functioned in 2021.

With regards to the conditions of the facility in 2020, the National Preventive Mechanism expressed concern with a number of issues such as: limitations to access to personal belongings and lack of information on relevant procedures, absence of washing/drying machines in the facility, lack of access to mental healthcare, limitations to contacts with the exterior (both in terms of visits and phone calls), and lack of interpreters/translation of relevant leaflets.<sup>827</sup>

### **CIT-UHSA**

As in previous reports, the Ombudsperson continued to note that, overall, CIT-UHSA has better conditions than the EECITs, and is suitable for longer stays.<sup>828</sup>

In terms of physical conditions, the facility continued to have separate wings for men and women, as well as a family room. There is a big outdoor space whose use depends on being accompanied by staff of the facility/volunteers.<sup>829</sup> Daily cleaning is ensured and the Ombudsperson deemed the food provided varied and adequate.<sup>830</sup> Access to personal belongings that do not jeopardise physical integrity is allowed.<sup>831</sup>

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<sup>820</sup> Ombudsman, '*Mecanismo Nacional de Prevenção, Relatório à Assembleia da República*', 24 June 2021, pp.88-89, 97, available at: <https://bit.ly/329nbSK>.

<sup>821</sup> Ibid, pp.97 et seq.

<sup>822</sup> Ibid.

<sup>823</sup> Ombudsman, '*Mecanismo Nacional de Prevenção, Relatório à Assembleia da República*', June 2020, p.54, available at: <https://bit.ly/2Pz1ZiN>.

<sup>824</sup> Ombudsman, '*Recomendação n.º 2/2019/MNP*', 2 October 2019, available at: <https://bit.ly/3bwAP1L>.

<sup>825</sup> Ombudsman, '*Mecanismo Nacional de Prevenção, Relatório à Assembleia da República*', June 2020, p.55, available at: <https://bit.ly/2Pz1ZiN>.

<sup>826</sup> Ombudsman, '*Mecanismo Nacional de Prevenção, Relatório à Assembleia da República*', 24 June 2021, p.99, available at: <https://bit.ly/329nbSK>.

<sup>827</sup> Ibid, pp.101 et seq.

<sup>828</sup> Ibid, pp. 102 et seq.

<sup>829</sup> Ibid.

<sup>830</sup> Ibid.

<sup>831</sup> Ibid.

Access to personal mobile phones is allowed in certain periods of the day, and detainees may also have access to a mobile phone provided by the Jesuit Refugee Service (JRS) staff present in the facility.<sup>832</sup>

Overall, the National Preventive Mechanism expressed concern with the lack of access to free wi-fi, and with the lack of adequate regulation of the use and conditions of placement in the cell-room (a measure that may be adopted when the security of the facility is compromised).<sup>833</sup>

According to IOM, the number of SEF officers in the facility increased in 2021.

## 2.2. Activities

Each wing of the detention facility at **EECIT Lisbon** has a courtyard with tables and chairs. The courtyards in the border detention facilities have been criticised by the Ombudsperson in the past for being too small, surrounded by walls and lacking natural light.<sup>834</sup> As far as CPR is aware, the situation remains unchanged.

The lack of activities for detainees in **EECIT Lisbon** has been deemed by the Ombudsperson as a mental health risk factor in the past. According to its 2021 report, there were improvements in terms of availability of leisure activities and specific materials for children have also been added to the facility.<sup>835</sup>

According to the latest available report of the National Preventive Mechanism, while the new rules of EECIT Lisbon allowed detainees to keep some luggage following a security check, in practice, in 2020, access to personal belongings was still dependent on support from the facility's staff.<sup>836</sup>

While in the past mobile phones of detainees were confiscated upon arrival and its use was not allowed, according to the National Preventive Mechanism, detainees may now use their mobile phones in the rooms. Nevertheless, according to the Ombudsperson, access to free wi-fi internet should also be ensured.<sup>837</sup>

The latest report of the National Preventive Mechanism available at the time of writing refers that there is a lack of leisure activities in **EECIT-Faro**.<sup>838</sup>

**CIT-UHSA** has big outdoor space whose use depends on detainees being accompanied by staff of the facility/volunteers.<sup>839</sup> Access to personal mobile phones is allowed in certain periods of the day.<sup>840</sup> Access to personal belongings that do not jeopardise physical integrity is allowed.<sup>841</sup> According to the report National Preventive Mechanism published in 2021, in 2020, more toys were made available in the facility and it had a play room that was well equipped.<sup>842</sup> The National Preventive Mechanism has also highlighted that detainees should be provided access to free wi-fi in the facility.<sup>843</sup>

While the law provides for access to education of children asylum seekers under the same conditions as nationals,<sup>844</sup> and the rules governing CIT provide for the access of detained children to education

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<sup>832</sup> Ibid, pp.103 et seq.

<sup>833</sup> Ibid, 103-105.

<sup>834</sup> Ombudsman, *Tratamento dos cidadãos estrangeiros em situação irregular ou requerentes de asilo nos centros de instalação temporária ou espaços equiparados*, September 2017, p.33, available in Portuguese at: <https://bit.ly/3eLMNX6>.

<sup>835</sup> Ombudsman, '*Mecanismo Nacional de Prevenção, Relatório à Assembleia da República*', 24 June 2021, pp. 91 and 97, available at: <https://bit.ly/329nbSK>.

<sup>836</sup> Ibid, p.94.

<sup>837</sup> Ibid, pp.94 et seq.

<sup>838</sup> Ibid, pp.101 et seq.

<sup>839</sup> Ibid.

<sup>840</sup> Ibid, pp.103 et seq.

<sup>841</sup> Ibid.

<sup>842</sup> Ibid, pp.102 et seq.

<sup>843</sup> Ibid, pp.94 et seq.

<sup>844</sup> Article 53 Asylum Act.

depending on the duration of their detention,<sup>845</sup> children in detention do not have access to education in practice either at the detention facility or by accessing normal schools.

### 2.3. Health care and special needs in detention

The responsibility for providing health care to asylum seekers at the border lies with the Ministry of Home Affairs that can rely on public entities and/or private non-profit organisations in the framework of a MoU to ensure the provision of such services.<sup>846</sup>

The Asylum Act provides for the right of asylum seekers and their relatives to adequate health care at the border (i.e., in detention),<sup>847</sup> and for the right of vulnerable asylum seekers in detention to regular health care that meets their particular needs.<sup>848</sup> The Asylum Act does not, however, specify this particular standard,<sup>849</sup> and/or whether it differs from the general standard of health care provision in the asylum procedure.<sup>850</sup>

In practice, there seems to be varying levels of service provision depending on the location of detention.<sup>851</sup>

Until 2018, detainees at **EECIT Lisbon** only had access to basic medical screenings conducted by nurses of the Portuguese Red Cross following an initial triage conducted by the security staff without any specific training or protocol.<sup>852</sup> Where needed, asylum seekers were referred to emergency care, including emergency mental health care, in hospitals. The triage system generated complaints regarding effective and/or timely access to health care.<sup>853</sup>

In order to address these problems, in June 2018, SEF signed an MoU with the NGO Doctors of the World (*Médicos do Mundo*, MdM) for the provision of enhanced medical care at EECIT Lisbon.<sup>854</sup> According to MdM, the project aims to address the health condition of detainees; prevent the deterioration of chronic conditions; whenever possible, offer out-patient treatments; assist in dealing with infectious diseases within the detention area and in case of release from the detention area in cooperation with the Directorate General for Health (DGS); and train staff to deal with episodes of acute disease and treatment follow-up.<sup>855</sup> For that purpose, MdM was expected to provide medical and nursing care, medication, medical tests, and referrals to the SNS.

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<sup>845</sup> Article 146-A(7) Immigration Act.

<sup>846</sup> Article 61(1) Asylum Act.

<sup>847</sup> Article 56(2) Asylum Act.

<sup>848</sup> Article 35(b)(8) Asylum Act.

<sup>849</sup> However, Article 146-A(3) Immigration Act states that a foreigner detained at a CIT or an equivalent detaining facility (i.e., at the border) is entitled to emergency and basic health care only and that special attention should be provided to vulnerable individuals, particularly to minors, unaccompanied minors, handicapped persons, elderly persons, pregnant women, families with children and survivors of torture, rape and other forms of serious psychological, physical or sexual violence.

<sup>850</sup> In accordance with Article 52(1) Asylum Act and Ministerial Orders (“Portaria”) No 30/2001 and No 1042/2008, asylum seekers and their relatives are entitled to medical assistance and access to medicines for basic needs, and for emergency and primary care in the National Health Service (SNS) under the same conditions as nationals. Primary care is to be understood as including at least access to general practitioners, access to specialists, inpatient care, complementary diagnostic tests and therapies, and nursing assistance. Furthermore, Article 4(1)(n) Decree-Law No 113/2011 (recast) provides for free access to the SNS by asylum seekers.

<sup>851</sup> See Italian Council for Refugees *et al.*, *Time for Needs: Listening, Healing, Protecting*, October 2017, available in Italian at: <https://bit.ly/3gEoe1T>.

<sup>852</sup> Ombudsman, *Tratamento dos cidadãos estrangeiros em situação irregular ou requerentes de asilo nos centros de instalação temporária ou espaços equiparados*, September 2017, p.27, available in Portuguese at: <https://bit.ly/3eLMNX6>.

<sup>853</sup> *Ibid.*

<sup>854</sup> See Público, ‘SEF e Médicos do Mundo juntos na prestação de cuidados de saúde a imigrantes’, 4 June 2018, available in Portuguese at: <https://bit.ly/2JdtGcw>.

<sup>855</sup> MdM, *Embarque na Saúde, Project Information Sheet*, s.d., available in Portuguese at: <https://bit.ly/2RFBnfl>.

According to the Ombudsperson, in 2020, the medical room was improved and doctors from MdM visited the facility 3 times a week.<sup>856</sup> In the past, support was also provided by the Portuguese Red Cross and urgent situations were referred to the hospital but this information has not been confirmed in the latest report. The Ombudsperson has in the past considered that medical visits should be more frequent and expressed concerns regarding the non-provision of psychological assistance.<sup>857</sup>

In the past, the Ombudsperson has also identified gaps in access to healthcare in the detention facilities at **Porto** and **Faro** airports. In its report published in 2021, it stated that there is also a protocol with MdM for EECIT Faro, but expressed concern with the lack of access to mental healthcare.<sup>858</sup>

According to prior information, in the case of asylum seekers detained in **CIT – UHSA** due to removal procedures, medical care is provided by health workers from MdM.<sup>859</sup> Referrals to the National Health Service (SNS) can be made, including to specialised care. The Public Health Unit performs monthly visits to the facility, ensuring vaccination and issuance of the corresponding official documents. Access to a psychologist is also possible. While no specific references to the topic have been included in the latest report, the situation at UHSA has been recurrently described as a good practice by the Ombudsperson in the past.<sup>860</sup>

According to previous research,<sup>861</sup> and the information available to CPR, there are no specific mechanisms or standard operational procedures for the early identification of vulnerable asylum seekers and their special reception needs at the border or in pre-removal detention.

When detained (see [Detention of Vulnerable Applicants](#)), vulnerable applicants are granted access to services and medical treatment under the same standards that are applicable to all detainees and have been described above.

### 3. Access to detention facilities

**Indicators: Access to Detention Facilities**

1. Is access to detention centres allowed to			
❖ Lawyers:	<b>Yes</b>	Limited	No
❖ NGOs:	<b>Yes</b>	Limited	No
❖ UNHCR:	<b>Yes</b>	Limited	No
❖ Family members:	<b>Yes</b>	Limited	No

The Asylum Act and the general regulation governing the placement of foreign and stateless persons in CIT and EECIT<sup>862</sup> provide for the right of detainees to receive visits from legal representatives, embassy representatives, relatives, and national and international human rights organisations.<sup>863</sup>

<sup>856</sup> Ombudsman, *'Mecanismo Nacional de Prevenção, Relatório à Assembleia da República'*, 24 June 2021, pp.92 et seq, available at: <https://bit.ly/329nbSK>.

<sup>857</sup> Ombudsman, *Mecanismo Nacional de Prevenção – Relatório à Assembleia da República 2018*, 30 May 2019, p.47-48, available in Portuguese at: <https://bit.ly/2S7tdcW>.

<sup>858</sup> Ombudsman, *'Mecanismo Nacional de Prevenção, Relatório à Assembleia da República'*, 24 June 2021, pp.101 et seq, available at: <https://bit.ly/329nbSK>.

<sup>859</sup> MdM, *Unidade Habitacional de Santo António, Project Information Sheet*, s.d., available in Portuguese at: <https://bit.ly/2Uc068m>.

<sup>860</sup> Ombudsman, *'Mecanismo Nacional de Prevenção, Relatório à Assembleia da República'*, June 2020, p.63, available at: <https://bit.ly/2Pz1ZiN>.

<sup>861</sup> See Italian Council for Refugees *et al.*, *Time for Needs: Listening, Healing, Protecting*, October 2017, available in Italian at: <https://bit.ly/3gEoe1T>.

<sup>862</sup> *Regulamento Regime geral sobre o acolhimento de estrangeiros e apátridas em Centros de Instalação Temporária (CIT) e Espaços Equiparados a Centros de Instalação Temporária (EECIT)*, 31 July 2020, available at: <https://bit.ly/3MmNbvp>.

<sup>863</sup> Article 35-B(3) Asylum Act.

In the particular case of legal assistance, asylum seekers in detention are entitled to receive visits from lawyers, UNHCR, and CPR.<sup>864</sup> Restrictions in the access to the detention facilities can only be based on grounds of security, public order or operational reasons and only to the extent that they do not restrict access in a significant or absolute manner.<sup>865</sup>

According to the report of the National Preventive Mechanism published in 2021, following the renovation work conducted at **EECIT Lisbon**, access to the detention facility is no longer made by the international area of the airport. This is a significant change as, previously, access by visitors (including lawyers) was dependent on complex and bureaucratic procedures, and involved obtaining (paid) access cards in advance.<sup>866</sup> According to the same source, detainees may receive visits lasting up to one hour between 9h and 19h.

CPR has unrestricted access to asylum seekers detained at the border (in the past depending on accreditation) or in pre-removal detention centres, but only following the status determination interview conducted by SEF, as opposed to lawyers who have unrestricted access to detainees prior to and during the status determination interview.

Regarding other forms of contact with the exterior, detainees at EECIT Lisbon are now allowed to use their mobile phones in their rooms.<sup>867</sup> In the past this was not possible and detainees were only entitled to use public phones that were freely accessible in each wing of the detention facility using coins, prepaid cards or collect calls. Furthermore, each detainee was entitled to 5 minutes of national and international calls using the telephones of the facility. These limits on communication were criticised by the Ombudsperson due to the inadequacy of the 5-minute limit, lack of clarity of the procedures to request additional calls, and difficulties in accessing public phones due to the absence of necessary cards.<sup>868</sup> At times, CPR received complaints from detainees regarding the limited time for calls and having to choose between contacting family or lawyers.

In accordance with the law, UNHCR and CPR have the right to be informed of all asylum claims presented in Portugal and to personally contact asylum seekers irrespective of the place of application in order to provide information on the asylum procedure, as well as regarding their intervention throughout the process.<sup>869</sup>

Until the first quarter of 2020, CPR was regularly present (i.e., generally every week) at **EECIT Lisbon** to provide free legal information and assistance,<sup>870</sup> in particular regarding the asylum procedure; access to free legal aid at appeal stage; and the promotion of the release without conditions of particularly vulnerable asylum seekers either by SEF *ex officio* or by means of review from the Criminal Courts. Since March 2020, asylum seekers have not been detained at the Lisbon airport, which led to a halt on

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<sup>864</sup> Article 49(6) Asylum Act.

<sup>865</sup> Article 35-B(4) Asylum Act.

<sup>866</sup> Throughout recent years, legal aid lawyers have raised concerns regarding this fee which could discourage them from visiting their clients. See: Público, '*Taxa cobrada a advogados para ver detidos no aeroporto é "nonsense", acusa bastonário*', 3 September 2018, available in Portuguese at: <https://bit.ly/2NocWka>. The fee, which was applied to all external visitors that are not accredited, was also repeatedly criticised by the Ombudsman that qualified it as a restriction to Article 35-B(4) of the Asylum Act (Ombudsman, '*Mecanismo Nacional de Prevenção, Relatório à Assembleia da República*', June 2020, p.61, available at: <https://bit.ly/2Pz1ZiN>). The UN Committee Against Torture also expressed concern with the application of this access fee in its 2019 Concluding Observations on Portugal, thereby recommending the State to "guarantee that retained asylum seekers and irregular migrants have unhindered, prompt and adequate access to counsel, including legal services". Committee Against Torture, '*Concluding Observations on the seventh periodic report of Portugal*', CAR/C/PRT/CO/7, 18 December 2019, par.40(d), available at <https://bit.ly/2G1F07z>.

<sup>867</sup> Ombudsman, '*Mecanismo Nacional de Prevenção, Relatório à Assembleia da República*', 24 June 2021, pp.94 et seq, available at: <https://bit.ly/329nbSK>.

<sup>868</sup> Ombudsman, '*Mecanismo Nacional de Prevenção, Relatório à Assembleia da República*', June 2020, p.61, available at: <https://bit.ly/2Pz1ZiN>.

<sup>869</sup> Article 13(3) Asylum Act.

<sup>870</sup> Article 49(1)(e) and (6) Asylum Act.

such visits. Since the beginning of 2022, however, CPR has, on occasion, been in the facility to provide legal assistance to applicants for international protection detained there.

In the past, the National Preventive Mechanism has noted that social assistance, leisure or other occupational activities were not provided by any organisation at **EECIT Lisbon**.<sup>871</sup> The latest available report at the time of writing does not contain information in this regard.

The report of the National Preventive Mechanism published in 2021 highlights the limitations imposed to detainees at **EECIT Faro** in terms of communication with the exterior – physical access to the facility is restricted due to its location in the airport, detainees do not have access to their mobile phones, and the time limit of the call card provided upon entry is limited.<sup>872</sup>

In the case of **CIT– UHSA**, the law provides for an MoU with the International Organisation for Migration (IOM) and the Jesuit Refugee Service (JRS) Portugal,<sup>873</sup> that are responsible for training staff and providing social, psychological, and legal assistance to detainees. According to CPR’s experience regarding asylum seekers who have applied from detention at CIT – UHSA, JRS Portugal has staff in the detention facility that provide in-house assistance. Medical and psychological assistance is provided by volunteer organisations such as MdM. Furthermore, IOM shares information materials at the facility (namely on the rights of detainees, regular migration and risks of irregular migration), organises information sessions and conducts interviews on the circumstances of detention.

The Ombudspeson has also highlighted that, following prior recommendations, in 2019, access to personal mobile phones by detained at UHSA was extended.<sup>874</sup>

Asylum seekers detained in CIT-UHSA also benefit from legal assistance provided by CPR in cooperation with JRS staff present in the facility.

According to the National Preventive Mechanism, visits are also allowed in CIT-UHSA (1 visitor per detainee at each time).<sup>875</sup>

**D. Procedural safeguards**

**1. Judicial review of the detention order**

<b>Indicators: Judicial Review of Detention</b>		
<b>1.</b>	Is there an automatic review of the lawfulness of detention?	<b>Yes</b> <b>No</b>
<b>2.</b>	If yes, at what interval is the detention order reviewed?	<b>7 days</b>

The law provides for the right of asylum seekers to receive information in writing regarding the grounds for their detention, access to free legal aid and legal challenges against detention in a language they either understand or are reasonably expected to understand.<sup>876</sup>

In practice, the declaration that was issued by SEF to asylum seekers at the border for the purposes of certifying the registration of the asylum application contained a brief reference to the norm of the Asylum

<sup>871</sup> Ombudsman, ‘*Mecanismo Nacional de Prevenção, Relatório à Assembleia da República*’, June 2020, p.62-63, available at: <https://bit.ly/2Pz1ZiN>.

<sup>872</sup> Ombudsman, ‘*Mecanismo Nacional de Prevenção, Relatório à Assembleia da República*’, 24 June 2021, pp. 101 et seq, available at: <https://bit.ly/329nbSK>.

<sup>873</sup> Article 3 Decree-Law 44/2006.

<sup>874</sup> Ombudsman, ‘*Mecanismo Nacional de Prevenção, Relatório à Assembleia da República*’, June 2020, p. 58, available at: <https://bit.ly/2Pz1ZiN>.

<sup>875</sup> Ombudsman, ‘*Mecanismo Nacional de Prevenção, Relatório à Assembleia da República*’, 24 June 2021, p.103, available at: <https://bit.ly/329nbSK>.

<sup>876</sup> Article 35-B(2) Asylum Act.

Act that provides for the systematic detention of asylum seekers at the border.<sup>877</sup> CPR was unaware of the provision of information in writing regarding the grounds of detention, the right to access free legal aid and the right to judicial review of the detention order.<sup>878</sup> That being said, asylum seekers benefited from legal information and assistance from CPR at the border, which also included free legal assistance for the purpose of judicial review of the detention order. However, this was limited to vulnerable asylum seekers due to capacity constraints. Since March 2020, systematic detention at the border is not applied.

The competent authority to impose and review the detention of an asylum seeker in a CIT,<sup>879</sup> or in detention facilities at the border,<sup>880</sup> is the Criminal Court which has territorial jurisdiction over the place where detention occurs.

In the case of detention at the border, SEF is required to inform the Criminal Court of the detention within 48 hours upon arrival at the border for purposes of maintaining the asylum seeker in detention beyond that period.<sup>881</sup> The review of detention can be made *ex officio* by the Criminal Court or upon request of the detained asylum seeker at all times on the basis of new circumstances or information that have a bearing on the lawfulness of the detention.<sup>882</sup>

In the case of asylum seekers at the border, the Criminal Court usually required SEF to provide information on developments of the asylum application within 7 days after their initial request for confirmation of the detention. This procedure should allow the Criminal Court to reassess the lawfulness of the detention on the basis of the decision from SEF regarding the admissibility of the asylum application.

To CPR’s understanding, once SEF informed the Criminal Court that the asylum application at the border was rejected, additional *ex officio* reviews prior to release were not performed even in cases where the court invited SEF to consider the release of vulnerable applicants (see [Alternatives to Detention](#)). Where the applicant appeals the rejection of the asylum application and is therefore not removed from the border, release usually takes place at the end of the maximum detention time limit of 60 days (see [Duration of Detention](#)).

While asylum seekers have not been subject to detention within the border procedure since March 2020, this continued to be the practice until that date.

In a hearing at the Parliament in December 2020, the Ombudsperson noted that there is a need for dialogue with judicial bodies to ensure that judicial actors are aware of the need for effective judicial control in these cases.<sup>883</sup>

**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?	<b>Yes</b>	No
2.	Do asylum seekers have effective access to free legal assistance in practice?	<b>Yes</b>	No

<sup>877</sup> Article 26 Asylum Act.  
<sup>878</sup> Even though the declaration issued by the SEF to asylum seekers at the border for the purposes of certifying the registration of the asylum application contains a brief reference to their right to legal aid, it does not specify that such legal aid also encompasses Criminal Court procedures pertaining to their detention at the border.  
<sup>879</sup> Article 35-A(5) Asylum Act.  
<sup>880</sup> Article 35-A(6) Asylum Act.  
<sup>881</sup> Ibid.  
<sup>882</sup> Article 35-A(6) Asylum Act.  
<sup>883</sup> Video recording available at: <https://bit.ly/3fZgcAd>.

The law sets out the right of asylum seekers to free legal aid under the same conditions as nationals,<sup>884</sup> which thus includes proceedings in front of the Criminal Court regarding detention at the border. Access to legal aid is processed under the same conditions as nationals, which include a “means test”.<sup>885</sup> In the context of legal aid for the purposes of appealing the rejection of the asylum application, this test is generally applied in a flexible manner. CPR has no experience with legal aid applications for the purposes of detention review, however.

Up to 2018 legal aid procedures tended to exceed 60 days, rendering assistance inefficient in the context of detention review, as the asylum seekers would usually be released from detention before the free legal aid lawyer was appointed by the Portuguese Bar Association (*Ordem dos Advogados*). While these procedures have been reduced to 1-2 weeks, since then, they were not used in practice for purposes of detention review to the extent of CPR’s knowledge.

While the law provides for an accelerated free legal aid procedure at the border on the basis of a MoU between the Ministry of Home Affairs and the Bar Association,<sup>886</sup> such procedures are only for purposes of the application and remain to be implemented to date. The relevance of broader legal support within the context of detention and the possibility of implementing specific MoUs with the Bar Association for that purpose have also been repeatedly underlined by the Ombudsperson.<sup>887</sup>

In practice, asylum seekers benefit from legal information and assistance from CPR at the border, which also includes free legal assistance for the purposes of detention review, albeit limited to vulnerable asylum seekers due to capacity constraints. Since March 2020, asylum seekers have not been detained within the context of border procedures.

In November 2020, the Ministry of Home Affairs, the Ministry of Justice, and the Bar Association signed a protocol to ensure the provision of legal counselling and assistance to foreigners to whom entry into national territory was refused (Lisbon, Porto, Faro, Funchal and Ponta Delgada airports).<sup>888</sup> According to the information available, this protocol was made within the framework of Article 40(2) of the Immigration Act and is not intended to cover applicants for international protection.

## E. Differential treatment of specific nationalities in detention

CPR is unaware of any increased risk of detention and/or systematic detention and/or longer periods of detention of asylum seekers based on nationality.

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<sup>884</sup> Article 49(1)(f) Asylum Act.

<sup>885</sup> Act 34/2004.

<sup>886</sup> Article 25(4) Asylum Act.

<sup>887</sup> Ombudsman, *‘Mecanismo Nacional de Prevenção, Relatório à Assembleia da República’*, June 2020, p.64, available at: <https://bit.ly/2Pz1ZiN>.

<sup>888</sup> Ministry of Home Affairs, *‘Estrangeiros impedidos de entrar em Portugal vão ter direito a advogado’*, 4 November 2020, available in Portuguese at: <https://bit.ly/3oCd8L3>. According to the National Preventive Mechanism, the practical implementation of the Protocol was only ensured from March 2021. See: Ombudsman, *‘Mecanismo Nacional de Prevenção, Relatório à Assembleia da República’*, 24 June 2021, available at: <https://bit.ly/329nbSK>.



## 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	5 years
❖ Subsidiary protection	3 years

The Portuguese authorities are bound by a duty to issue beneficiaries of international protection a residence permit.<sup>889</sup> The duration of residence varies according to the type of international protection granted: the residence permit for **refugees** is valid for 5 years,<sup>890</sup> while the residence permit for **subsidiary protection** beneficiaries is valid for 3 years.<sup>891</sup>

According to the statistics provided by SEF, in 2021 a total of 226 residence permits were issued to refugees and 77 residence permits were issued to beneficiaries of subsidiary protection.

According to CPR's experience in providing legal information and assistance to asylum seekers and beneficiaries of international protection at all stages of the asylum procedure (see [Regular Procedure: Legal Assistance](#)), the average length of the procedure for issuing a residence permit following a decision granting international protection in previous years was considered reasonable, ranging from a few weeks to a month and a half. Since 2019, CPR noticed significant waiting periods for the issuance of residence permits, in particular due to difficulties in booking appointments for renewals. During such periods, asylum seekers are issued a declaration from SEF certifying their application for the issuance/renewal of a residence permit. It should be noted that asylum seekers admitted to the regular procedure are in possession of a provisional residence permit, valid and renewable for 6 months, at the time they are granted international protection (see [Short Overview of the Asylum Procedure](#)).<sup>892</sup>

The delays in the issuance and renewal of residence permits have been recently flagged by the UN Human Rights Committee.<sup>893</sup> Such delays, with impacts in access to services and assistance, have also been identified by the Statistical Report of Asylum 2020.<sup>894</sup>

In late 2014 and 2015, the launch of a cessation procedure by SEF regarding Guinean nationals, the first ever to target citizens of a specific nationality in a collective manner, has been characterised by significant shortcomings, including a curtailment of the residence rights of those concerned by failing to renew or by delaying the renewal of expired residence permits during the procedures. The same practice was observed since 2019 as a significant number of cessation procedures has been triggered by the authorities (see [Cessation](#)).

While noting the existence of difficulties in determining the number of beneficiaries of international protection in the country each year, the Statistical Report of Asylum 2021 indicates that by the end of 2020, 2,461 beneficiaries of international protection were in the country (1,230 refugees and 1,231

<sup>889</sup> Article 67 Asylum Act. This provision is generally in line with Article 24 recast Qualification Directive.

<sup>890</sup> Article 67(1) Asylum Act.

<sup>891</sup> Article 67(2) Asylum Act.

<sup>892</sup> Article 27(1) Asylum Act.

<sup>893</sup> Human Rights Committee, *Concluding Observations on the fifth periodic report of Portugal*, CCPR/C/PRT/CO/5. 28 April 2020, par 34(a), available at: <https://bit.ly/2Q1ftn8>.

<sup>894</sup> Observatory for Migration, *Entrada, Acolhimento e Integração de Requerentes e Beneficiários de Protecção Internacional em Portugal – Relatório Estatístico do Asilo 2020*, May 2020, p.227, available in Portuguese at: <https://bit.ly/2MGYtB9>.

beneficiaries of subsidiary protection).<sup>895</sup> According to the same source, the majority of refugees were from Syria, Eritrea and Iraq, and the majority of subsidiary protection beneficiaries were from Syria, Iraq and Ukraine.<sup>896</sup>

On 13 March 2020, the government enacted Decree-Law no. 10-A/2020, establishing temporary and exceptional measures in response to the new coronavirus.<sup>897</sup> It was determined, *inter alia*, that documents expired after the entry into force of the Decree-Law, or within the 15 days prior, were valid until 30 June 2020. Said Decree-Law was subsequently amended, further extending the validity of such documents. The last amendment concerning the validity of documents was introduced by Decree-Law no. 22-A/2021<sup>898</sup>, determining *inter alia* that:

- Documents expired since the entry into force of the Decree-Law, or within the 15 days prior to its entry into force, are accepted as valid until 31 December 2021.
- After 31 December 2021, such documents continue to be accepted providing the holder has an appointment for its renewal.

This extension of validity is applicable to visas and documents related to the residency of foreign nationals.

## 2. Civil registration

### 2.1. Registration of childbirth

Civil registration acts of foreign authorities, such as childbirth certificates regarding foreigners, can only be transcribed into the Portuguese civil registry if the applicant demonstrates a legitimate interest in the transcription,<sup>899</sup> and if the act is: duly translated,<sup>900</sup> legal, and does not raise well-founded doubts as to its authenticity.<sup>901</sup>

In practice, the need of beneficiaries of international protection to transcribe foreign birth certificates normally arises in the framework of naturalisation procedures that require the registration of birth by the Central Registrations Service (*Conservatória dos Registos Centrais*, CRC) based on a duly legalised birth certificate prior to the registration of the acquisition of Portuguese nationality.<sup>902</sup> Furthermore, it may arise in the case of marriage (transcription of foreign marriages and registration of marriages contracted in Portugal) and the regulation of parental authority as both are added to the birth registry of the parties involved.<sup>903</sup> However, in the case of **Naturalisation** procedures and registration of marriages, the law provides for alternative avenues in case the applicant is unable to produce a duly legalised birth certificate.

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<sup>895</sup> Observatory for Migration, *Requerentes e Beneficiários de Protecção Internacional – Relatório Estatístico do Asilo 2021*, June 2021, p.161-162, available in Portuguese at: <https://bit.ly/3F5I9iw>.

<sup>896</sup> *Ibid*, pp.163-164.

<sup>897</sup> Decree-Law 10-A/2020 of 13 March 2020, available in Portuguese at: <https://bit.ly/2K2dNnb>. An English translation of the amended Decree-Law is available at: <https://bit.ly/3kUSqG0> [last updated on 15 January 2021].

<sup>898</sup> Available at <https://bit.ly/3xmu6VR>.

<sup>899</sup> Article 6(4) Civil Registration Code.

<sup>900</sup> Article 49(8) Civil Registration Code.

<sup>901</sup> Article 49(1) Civil Registration Code. In case the civil registry officer is not satisfied with the credibility of the foreign registration act, it may suspend the procedure and contact *ex officio* the issuing authority for clarifications at the expense of the applicant, an option that is ill adapted to beneficiaries of international protection (Article 49(2) and (3) Civil Registration Code). The applicant may also lodge a judicial appeal against the decision of the civil registration officer to refuse partially or in total the authenticity of the document (Article 49(4)-(6) and 292(2) Civil Registration Code) in which case he or she will be allowed to present statements and alternative evidence (Article 49(7) Civil Registration Code).

<sup>902</sup> Article 50(1) Portuguese Nationality Regulation.

<sup>903</sup> Article 69(1)(a) and (e) Civil Registration Code.

According to the experience of CPR, there are no other recurring instances where the need for the registration of childbirth arises as SEF does not require such registration for identification and issuance of international protection residence permits. Furthermore, according to the law, residence permits issued by the authorities replace identification documents for all legal purposes.<sup>904</sup>

Registering the birth of a child on Portuguese territory is mandatory, regardless of nationality.<sup>905</sup> The birth must be declared to the civil registry authorities of the Ministry of Justice either by: (1) the parents, another legal representative of the child, or a person assigned that responsibility in writing by the parents; (2) the next closest relative of the child, or; (3) an official of the institution where the birth took place or to which the birth was orally reported.<sup>906</sup> The time limit and the place for reporting the birth varies depending on where it occurs.<sup>907</sup>

According to the law, if the child is born in a medical facility where it is possible to declare the birth, that should be done before medical discharge of the mother. When that is not the case, the birth must be declared in a civil registry office within 20 days.<sup>908</sup>

The actual registration of birth that follows the declaration can either take place at the maternity ward or at a civil registry office.<sup>909</sup>

The law does not contain limitations on birth registration according to the legal status of parents.

Following the registration of birth, the information is automatically transferred to the Ministry of Health, ISS and, upon request, to the Ministry of Finance for purposes of registration of the child with its services.<sup>910</sup>

The registration of birth requires that identification documents of the parents are presented “whenever possible”.<sup>911</sup> According to the Immigration Act, the residence permit replaces the identification document for all legal purposes.<sup>912</sup> Furthermore, according to the Civil Registration Code, if the parents cannot provide an identification document, this requirement may be replaced by the presentation of two witnesses.<sup>913</sup> An interpreter must be appointed in case the parents are unable to communicate with the civil registry officer in Portuguese and the civil registry officer is not familiar with the language spoken by the parents.<sup>914</sup>

If the child or his/her parent(s) are foreign citizens, were born abroad or have an additional nationality, the law allows for their registration under a foreign first name.<sup>915</sup>

According to CPR’s experience, applicants for and beneficiaries of international protection whose children are born in Portugal do not face significant or systematic challenges in registering their birth. However, some problems may arise with the registration of paternity where the father cannot personally declare his willingness to be registered as such before a Portuguese civil registry office and the marriage contracted abroad is not previously registered in Portugal, as is generally the case. In these cases, a paternity investigation is usually conducted by the Family Court with uncertain results given the potential

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<sup>904</sup> Article 84 Immigration Act.

<sup>905</sup> Article 1(1) and (2) Civil Registration Code.

<sup>906</sup> Article 97(1) Civil Registration Code.

<sup>907</sup> Articles 96 and 96-A Civil Registration Code. This can either be at the maternity ward up to the moment the mother leaves the premises; or at any civil registry office (*Conservatória de Registo Civil*) within 20 days from the date of birth.

<sup>908</sup> Article 96 Civil Registration Code.

<sup>909</sup> Articles 101, 101-A and 101-B Civil Registration Code.

<sup>910</sup> Article 102-A Civil Registration Code.

<sup>911</sup> Article 102 Civil Registration Code.

<sup>912</sup> Article 84 Immigration Act.

<sup>913</sup> Article 45 Civil Registration Code.

<sup>914</sup> Article 42 Civil Registration Code.

<sup>915</sup> Article 103 Civil Registration Code.

difficulties of beneficiaries of international protection to meet evidentiary requirements.<sup>916</sup> The requirement of presenting two witnesses in the absence of an identification document may also be challenging in some cases.

Within the context of the coronavirus pandemic, registration desks at maternity wards have been (temporarily) closed since 23 March 2020. Birth registrations continued to be performed in civil registry offices in urgent cases upon appointment. Since 13 April 2020, birth registration can be performed online in certain cases.<sup>917</sup> Media reports from 2021 affirmed that the closure of registration desks at maternity wards led to significant gaps in birth registration, particularly of children born to foreign parents.<sup>918</sup>

Children born in Portugal to foreigners who are not at the service of their State of nationality are Portuguese by **birth** if:

- (i) one of the parents legally resides in the country at the time of the birth; or
- (ii) one of the parents resides in Portugal for at least one year at the time of birth (regardless of status), and if they do not declare that they do not want to be Portuguese.<sup>919</sup>

According to official information obtained by CPR within the context of provision of legal assistance to applicants for and beneficiaries of international protection, this provision, that was amended in 2020, is applicable retroactively.<sup>920</sup> Furthermore, for this purpose, applicants for international protection are reportedly deemed to be legally residing in Portugal from the moment the application for international protection is made.

Nevertheless, in the course of 2021, CPR observed discrepancies in the practice of different registration services whereby some did not consider the certificate of the asylum application as proof of regular residence. Additional problems observed in this regard relate to the (non)issuance of citizen cards to such children due to the lack of an identification document from the mother.

## 2.2. Registration of marriage

In practice, according to CPR's experience, the need of beneficiaries of international protection to transcribe foreign marriage registries is not a recurring issue given that SEF does not require such registration for the purposes of derivative international protection (i.e., when protection is extended to someone else) or family reunification of procedures (see [Family Criteria](#)).

Marriage between foreigners in Portugal, on the other hand, requires the presentation of the spouses' residence permits,<sup>921</sup> birth certificates,<sup>922</sup> and certificates of no impediment,<sup>923</sup> that must be either duly legalised or not raise well-founded doubts regarding their authenticity.<sup>924</sup> Where the spouses are unable to produce a legal birth certificate or a certificate of no impediment for the purposes of marriage, the law provides for alternative legal avenues to either replace the birth certificate,<sup>925</sup> or justify the absence of the certificate of no impediment,<sup>926</sup> where there are adequate reasons. To that end, the civil registry

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<sup>916</sup> Article 120 Civil Registration Code and Articles 1847, 1853(a), 1864 and 1865 Civil Code.

<sup>917</sup> Ministry of Justice, *Nota à comunicação social - Registo de nascimento pela internet a partir de hoje*, 13 April 2020, available at: <https://bit.ly/3a42QyM>.

<sup>918</sup> TSF, *Pandemia deixa dezenas de bebés por registar em Portugal: "É perigoso, mesmo a nível de tráfico"*, 18 June 2021, available at: <https://bit.ly/3Km1S1i>.

<sup>919</sup> Article 1(1)(f) Nationality Act. Until the 2020 recast, a minimum of 2 years of legal residence of one of the parents at the time of birth was required.

<sup>920</sup> The provision's retroactive application has also been confirmed by an opinion of the Advisory Board of the Institute of Registration and Notary Affairs (IRN). See Conselho Consultivo do Instituto de Registos e Notariado, *Parecer n.º 1/CC/2021*, 21 February 2021, available at: <https://bit.ly/33jFXH3>.

<sup>921</sup> Article 137(1) Civil Registration Code.

<sup>922</sup> Article 137(2) Civil Registration Code.

<sup>923</sup> Article 166(1) Civil Registration Code.

<sup>924</sup> Article 49(1) Civil Registration Code.

<sup>925</sup> Articles 135(5), 137(5) and 266 to 269 Civil Registration Code.

<sup>926</sup> Article 166(2) Civil Registration Code.

officer may choose to conduct the investigations deemed appropriate,<sup>927</sup> and consider alternative evidence such as witness statements.<sup>928</sup>

According to CPR's experience, beneficiaries of international protection do not face significant or systematic challenges in contracting marriage in Portugal as civil registry offices generally accept alternative legal avenues to either replace the birth certificate or to justify the absence of the certificate of no impediment where relevant reasons pertaining the international protection needs of the applicants were ascertained.

### 3. Long-term residence

#### Indicators: Long-Term Residence

1. Number of long-term residence permits issued to beneficiaries in 2021: 0

Competence for issuing a long-term residence permit lies with the National Director of SEF,<sup>929</sup> that must issue a decision within 6 months of application.<sup>930</sup> The residence permit is valid for 5 years and is automatically renewed at the request of the beneficiary of protection.<sup>931</sup>

The following criteria must be met to obtain a long-term resident status regardless of the type of international protection held by the beneficiary:<sup>932</sup>

- Legal and continuous residence in the national territory for 5 years following the date of the application for international protection (no difference being drawn between refugee status and subsidiary protection);
- Stable and regular resources to ensure his/her survival and that of his/her family members, without having to resort to the social assistance system;
- Health insurance;
- Accommodation;
- Fluency in basic Portuguese.

A former beneficiary of international protection whose refugee status has ceased because he or she has voluntarily accepted protection of the country of nationality or, has voluntarily re-acquired the nationality of his/her country of origin, can be refused long term residence status (see [Cessation](#)).<sup>933</sup>

According to SEF, no such permits were issued to beneficiaries of international protection in 2021.

As the main provider of legal information and assistance to asylum seekers and beneficiaries of international protection, CPR is not aware of the issuance of long-term residence status to beneficiaries of international protection in recent years and has provided legal assistance in a limited number of cases for that purpose. According to its experience, access to such status by beneficiaries of international protection is rare for reasons mostly related to a lack of information and awareness, adequate financial resources, insufficient language skills, and the priority given to applications for [Naturalisation](#).

<sup>927</sup> Article 268(1) Civil Registration Code.

<sup>928</sup> Articles 143(1) and 166(3) Civil Registration Code.

<sup>929</sup> Article 128 Immigration Act.

<sup>930</sup> Article 129(4) Immigration Act. The time limit can be extended by 3 months in particularly complex cases but the applicant must be informed of the extension of the time limit (Article 129(5) Immigration Act) and the application is automatically accepted in the absence of a decision at the end of the 3-month time limit extension (Article 129(6) Immigration Act).

<sup>931</sup> Article 130(2) Immigration Act.

<sup>932</sup> Article 126 Immigration Act.

<sup>933</sup> Article 127(3) Immigration Act.

## 4. Naturalisation

### Indicators: Naturalisation

1. What is the minimum residence period for obtaining citizenship?	
❖ Refugee status	5 years
❖ Subsidiary protection	5 years
2. Number of citizenship grants to beneficiaries in 2021:	126 (naturalisation procedures)

Competence for conferring Portuguese nationality lies either with the Minister of Justice regarding naturalisation,<sup>934</sup> or with the Central Registry Office (*Conservatória dos Registos Centrais*, CRegC) of the Ministry of Justice regarding other modalities for obtaining Portuguese nationality.<sup>935</sup> According to the law, and in the absence of any deficiencies or irregularities in the procedure attributable to the applicant the time limit for taking a final decision on the file is at least 3.5 months in naturalisation cases,<sup>936</sup> and 3 months in the remaining cases.<sup>937</sup> Data on actual timeframes is not available.

The Portuguese Nationality regime is relatively flexible, and the amendments introduced in recent years, including in 2020, have generally broadened the scope for nationality acquisition.

Some of the modalities of acquisition of Portuguese nationality are of particular relevance to beneficiaries of international protection.

Foreign citizens, including refugees and beneficiaries of subsidiary protection, are eligible for **naturalisation** under the following conditions:<sup>938</sup>

- 18 years of age or emancipation in accordance with Portuguese law;
- Minimum legal residence of 5 years in Portugal;<sup>939</sup>
- Proof of proficiency in Portuguese (A2);
- Absence of conviction to a prison sentence of at least 3 years for a crime punishable by Portuguese law;
- Not being a danger or a threat to national security or defence due to their involvement in activities related to the practice of terrorism, in accordance with the law that governs terrorism.

According to the information available to CPR, in the case of beneficiaries of international protection, the regular residence period runs from the date of the application for international protection.

Furthermore, the Nationality Act contains a number of **special naturalisation regimes** exempting certain applicants of some of the above-mentioned requirements.<sup>940</sup> Notably, children of foreign nationals born on national territory are eligible for naturalisation under the following conditions:<sup>941</sup>

- Absence of conviction to a prison sentence of at least 3 years for a crime punishable by Portuguese law;
- Not being a danger or a threat to national security or defence due to their involvement in activities related to the practice of terrorism, in accordance to the law that governs terrorism;

<sup>934</sup> Article 27 Portuguese Nationality Regulation.

<sup>935</sup> Article 41 Portuguese Nationality Regulation.

<sup>936</sup> Article 27 Portuguese Nationality Regulation.

<sup>937</sup> Article 41(1) and (2) Portuguese Nationality Regulation.

<sup>938</sup> Article 6(1) Nationality Act; Article 19 Portuguese Nationality Regulation.

<sup>939</sup> The Nationality Act was recast in July 2018. The recast reduced the residence requirement established in the above-mentioned article from 6 to 5 years.

<sup>940</sup> Article 6(2) – (9) Nationality Act.

<sup>941</sup> Article 6(2) Nationality Act; Article 20 Portuguese Nationality Regulation. This provision was amended in 2020, increasing the flexibility of this route for naturalisation.

- At least one parent resided in the country (regularly or not) at least for the 5 years prior to the application; or one of the parents regularly resides in the country; or the child completed at least one level of pre-school, basic education, or the secondary education (including vocational training) in Portugal.

Naturalisation under this provision is free of charge.<sup>942</sup>

It should be noted that, on the basis of a reasoned request, the Ministry of Justice may decide to exempt naturalisation applicants from presenting supporting evidence in special and justified cases where it is shown that the facts for which supporting evidence is required are true beyond doubt.<sup>943</sup> The law also provides in detail for the specific modalities regarding supporting evidence of proficiency in Portuguese,<sup>944</sup> notably regarding assessment tests that are of particular relevance to beneficiaries of international protection.<sup>945</sup>

Children born in Portugal to foreigners who are not at the service of their State of nationality are Portuguese by **birth** if:

- (i) one of the parents legally resides in the country at the time of the birth; or
- (ii) one of the parents has resided in Portugal for at least one year at the time of birth (regardless of status), and if they do not declare that they do not want to be Portuguese.<sup>946</sup>

According to official information obtained by CPR within the context of provision of legal assistance to applicants for and beneficiaries of international protection, this provision, that was amended in 2020, is applicable retroactively.<sup>947</sup> Furthermore, for this purpose, applicants for international protection are reportedly deemed to be legally residing in Portugal from the moment the application for international protection is made.<sup>948</sup>

Nevertheless, in the course of 2021, CPR observed discrepancies in the practice of different registration services whereby some did not consider the certificate of the asylum application as proof of regular residence. Additional problems observed in this regard relate to the (non)issuance of citizen cards to such children due to the lack of an identification document by the mother.

Foreign citizens, including refugees and beneficiaries of subsidiary protection, can acquire Portuguese citizenship if they have been **married** or have been in a **civil union** with a Portuguese citizen for at least 3 years.<sup>949</sup>

The Nationality Act was last recast in November 2020. It had been previously recast in 2018, in an amendment that has also introduced provisions that may have a positive impact for applicants and beneficiaries of international protection (in particular unaccompanied children). The corresponding Nationality Regulation was only adopted in March 2022, entering into force on 15 April 2022. A full analysis of the amended Nationality Regulation is therefore not included in this report.

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<sup>942</sup> Article 6(12) Asylum Act. The provision, added in 2020, determines that naturalisation under some of the special regimes is free of charge. Naturalisation under other provisions (including the general regime) has a cost of €250.

<sup>943</sup> Article 26 Portuguese Nationality Regulation.

<sup>944</sup> Article 25(2)-(9) Portuguese Nationality Regulation.

<sup>945</sup> Ministerial Order 176/2014.

<sup>946</sup> Article 1(1)(f) Nationality Act. Until the 2020 recast, a minimum of 2 years of legal residence of one of the parents at the time of birth was required.

<sup>947</sup> The provision's retroactive application has also been confirmed by an opinion of the Advisory Board of the Institute of Registration and Notary Affairs (IRN). See Conselho Consultivo do Instituto de Registos e Notariado, *Parecer n.º 1/CC/2021*, 21 February 2021, available at: <https://bit.ly/33jFXH3>.

<sup>948</sup> Practice in this regard has not been consistent, and developments registered in early 2022 may indicate that this will not be the interpretation applied by the authorities in the future.

<sup>949</sup> Article 3 Nationality Act; Article 14 Portuguese Nationality Regulation.

CPR’s experience indicates that the main challenges in acquiring nationality through naturalisation are related to poor language skills and obtaining supporting evidence. Supporting evidence required in naturalisation applications generally consists of legalised and translated birth certificates as well as criminal records from the country of nationality and former countries of residence, including EU Member states in the case of Dublin returnees. In accordance with applicable provisions, the authorities are generally flexible regarding supporting evidence in naturalisation procedures involving refugees and beneficiaries of subsidiary protection who present reasoned justifications. CPR further provides support to that end, e.g., by clarifying the international legal standards that apply to administrative assistance.

Another issue identified in the course of 2021 is related to the content of the declarations issued by SEF to certify the period of legal residence. According to CPR’s observation, when the renewal of the residence permit is pending, that period of time is not referred to as legal residence by SEF. This is the case despite the beneficiary of international protection holding a certificate that replaces the actual residence permit for all legal purposes (including to attest regular residency in the country). It was not possible to clarify the grounds for this practice.

Within the context of the coronavirus pandemic, due to delays in in-person appointments, it became common to submit applications for naturalisation by post.

According to SEF, 126 beneficiaries of international protection were granted Portuguese nationality in 2021, of which 46 refugees and 80 beneficiaries of international protection.

**5. Cessation and review of protection status**

Indicators: Cessation			
1.	Is a personal interview of the beneficiary in most cases conducted in practice in the cessation procedure?	Yes	No
2.	Does the law provide for an appeal against the first instance decision in the cessation procedure?	Yes	No
3.	Do beneficiaries have access to free legal assistance at first instance in practice?	Yes	With difficulty No

Competence for taking decisions on the cessation of international protection lies with the Ministry of Home Affairs on the basis of a proposal put forward by the national director of SEF.<sup>950</sup> The representative of UNHCR or CPR shall be informed of the declaration of the loss of the right to international protection.<sup>951</sup>

The Asylum Act establishes the grounds for cessation of international protection.<sup>952</sup>

Regarding **refugee status**, the right to asylum ceases when the foreign national or stateless person:<sup>953</sup>

- a. Decides to voluntarily accept protection of the country of his/her nationality;<sup>954</sup>
- b. Voluntarily reacquires his/her nationality after having lost it;<sup>955</sup>
- c. Acquires a new nationality and enjoys the protection of the country of the newly acquired nationality;<sup>956</sup>

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<sup>950</sup> Article 43(1) Asylum Act.  
<sup>951</sup> Article 43(3) Asylum Act.  
<sup>952</sup> Article 41 (1)-(4) Asylum Act.  
<sup>953</sup> Article 41(1) Asylum Act.  
<sup>954</sup> Article 41(1) (a) Asylum Act.  
<sup>955</sup> Article 41(1) (b) Asylum Act.  
<sup>956</sup> Article 41(1) (c) Asylum Act.



- d. Returns voluntarily to the country he/she left or outside which he/she had remained for fear of persecution;<sup>957</sup>
- e. Cannot continue to refuse the protection of the country of nationality or habitual residence, since the circumstances due to which he/she was recognised as a refugee no longer exist;<sup>958</sup> or
- f. Expressly renounces to the right to asylum.<sup>959</sup>

Regarding **subsidiary protection**, the right ceases when the circumstances resulting in said protection no longer exist or have changed to such an extent that the protection is no longer necessary.<sup>960</sup>

The grounds relating to a change in circumstances justifying the cessation of refugee status or subsidiary protection can only be applied if SEF concludes that the change in circumstances in the country of origin or habitual residence is significant and durable to exclude a well-founded fear of persecution or a risk of serious harm.<sup>961</sup> Furthermore, this cessation ground is without prejudice to the principle of *non-refoulement*,<sup>962</sup> and is not applicable to refugees who are able to invoke imperative reasons related to prior persecution to refuse to avail themselves of the protection of the country of their nationality or habitual residence.<sup>963</sup> The latter safeguard is only explicitly provided in the Asylum Act for refugees, failing to adequately transpose Article 16(3) of the Qualification Directive.

SEF is required to notify the beneficiary of protection of the intended cessation in order to allow him/her to exercise the right to an adversarial hearing in writing within 8 days.<sup>964</sup> A decision on cessation is subject to a judicial appeal with suspensive effect.<sup>965</sup> In the absence of specific provisions, it should be understood that beneficiaries of international protection are entitled to apply for free legal aid at appeal stage under the same conditions as nationals as legal aid is an integral part of the social security system (see [Regular Procedure: Legal Assistance](#)).<sup>966</sup>

Finally, the cessation of international protection results in the applicability of the Immigration Act to former beneficiaries,<sup>967</sup> according to which an individual whose refugee status has ceased is entitled to a temporary residence permit without the need to present a residence visa,<sup>968</sup> even though other requirements such as a travel document, accommodation, and income still apply.

Cessation of subsidiary protection has become increasingly relevant in recent years. According to the information provided by SEF, in 2021, cessation of refugee status also occurred (while extremely rare). CPR was not aware of prior cessation decisions concerning refugee status.

According to statistics provided by SEF, in 2016 there were 14 cessations of the subsidiary protection status of beneficiaries from Guinea. No cessation decisions were adopted in 2017 and 2018. In 2019, a total of 98 decisions ceasing subsidiary protection were adopted, of which 75 concerned beneficiaries from Ukraine. In 2020, 262 decisions ceasing subsidiary protection were adopted (of which 176 concerned beneficiaries from Ukraine, 25 beneficiaries from Guinea, and 20 beneficiaries from Pakistan). In 2021, a total of 36 cessation of subsidiary protection decisions were adopted by the national authorities, mostly concerning Ukrainian citizens (13).

In the framework of the legal assistance provided to some of those concerned in 2016, CPR identified several shortcomings in the cessation proceedings including the lack of renewal of the residence

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<sup>957</sup> Article 41(1) (d) Asylum Act.

<sup>958</sup> Article 41(1) (e) and (f) Asylum Act.

<sup>959</sup> Article 41(1) (g) Asylum Act.

<sup>960</sup> Article 41(2) Asylum Act.

<sup>961</sup> Article 41(3) Asylum Act.

<sup>962</sup> Article 47 Asylum Act.

<sup>963</sup> Article 41(4) Asylum Act.

<sup>964</sup> Article 41(6) Asylum Act.

<sup>965</sup> Article 44 Asylum Act.

<sup>966</sup> Article 72 Asylum Act.

<sup>967</sup> Article 42(2) Asylum Act.

<sup>968</sup> Article 122(1)(f) Immigration Act.

permits while the cessation process was pending and the poor quality of the assessment conducted into the change in circumstances in the country of nationality. Indeed, the assessments conducted did not take into consideration the specific/individual circumstances of each person concerned as the same information was used for all persons meaning that it lacked an actual assessment of whether there was a significant and durable change in circumstances for each individual. Similar shortcomings were observed in 2019, in particular regarding Ukrainian subsidiary protection status holders, and overall, in 2020 and 2021.

The Statistical Report of Asylum 2021 (covering 2020) bears no reference to cessation procedures despite the relevance of the issue.<sup>969</sup>

While CPR is aware that some cessation decisions have been appealed, jurisprudence on cessation was not available at the time of writing.

## 6. Withdrawal of protection status

### Indicators: Withdrawal

- |  |     |                 |    |
|--|-----|-----------------|----|
| 1. Is a personal interview of the beneficiary in most cases conducted in practice in the withdrawal procedure? | Yes | No              |    |
| 2. Does the law provide for an appeal against the withdrawal decision?   | Yes | No              |    |
| 3. Do beneficiaries have access to free legal assistance at first instance in practice?                        | Yes | With difficulty | No |

The Asylum Act establishes specific grounds for revocation, ending or refusal to renew international protection that are assessed pursuant to the same procedural rules applicable to [Cessation](#).

These include the cases where the beneficiary of international protection:<sup>970</sup>

- (a) Should have been or can be excluded from the right to asylum or subsidiary protection, pursuant to the exclusion clauses;<sup>971</sup>
- (b) Has distorted or omitted facts, including through the use of false documents, that proved decisive for benefitting from the right to asylum or subsidiary protection;<sup>972</sup>
- (c) Represents a danger for national security;<sup>973</sup>
- (d) Having been sentenced by a final judgment for an intentional common law crime punishable with a prison term of more than three years, represents a danger for national security or for public order.<sup>974</sup>

Practice in this regard remains limited. According to the information provided by SEF, no such decision was adopted in 2021.

<sup>969</sup> Observatory for Migration, *Entrada, Acolhimento e Integração de Requerentes e Beneficiários de Protecção Internacional em Portugal – Relatório Estatístico do Asilo 2020*, May 2020, available in Portuguese at: <https://bit.ly/2MGYtB9>.

<sup>970</sup> Article 41(5) Asylum Act.

<sup>971</sup> Article 41(5)(a) Asylum Act.

<sup>972</sup> Article 41(5)(b) Asylum Act.

<sup>973</sup> Article 41(5)(c) Asylum Act.

<sup>974</sup> Article 41(5)(d) Asylum Act.

## B. Family reunification

### 1. Criteria and conditions

#### Indicators: Family Reunification

1. Is there a waiting period before a beneficiary can apply for family reunification?  
Yes **No**
  - ❖ If yes, what is the waiting period?
2. Does the law set a maximum time limit for submitting a family reunification application?  
Yes **No**
  - ❖ If yes, what is the time limit?
3. Does the law set a minimum income requirement? Yes **No**

Refugees and beneficiaries of subsidiary protection have the same right to family reunification under the law.<sup>975</sup> While the right to family reunification encompasses the family members listed in the Asylum Act, its exercise is mostly governed by the provisions of the Immigration Act.<sup>976</sup>

#### 1.1. Eligible family members

A person granted international protection in Portugal can reunite with the following family members:<sup>977</sup>

- A spouse or unmarried partner,<sup>978</sup> including same-sex partners, if the relationship is regarded as a sustainable relationship i.e., at least 2 years of living together in conditions analogous to marriage;<sup>979</sup>
- Children under 18 years old if they are dependent on the sponsor and/or on his/her spouse or unmarried partner and regardless of their marital status. The right to family reunification also includes adopted children under 18 years old of the sponsor or of his/her spouse or unmarried partner. Adult children who lack legal capacity (e.g., for reasons of mental health) and are dependent on the sponsor and/or on his/her spouse or unmarried partner are also included; and
- Parents, if the sponsor is under 18 years old.

Unaccompanied children can apply for family reunification with their parent(s). In the absence of biological parents, they can apply for family reunification with an adult responsible for the child (e.g., grandparents, legal guardians, or other family members).

It is not required that family formation pre-dates entry into Portugal.

The list of eligible family members in the case of beneficiaries of international protection is more restrictive than that enshrined in the Immigration Act for migrants. The latter also includes: (i) dependent children over 18 years old who are unmarried and studying in Portugal; (ii) dependent first-degree ascendants in the direct line; (iii) siblings under 18 years old, as long as the resident is their guardian, according to a decision issued by the competent authority of the country of origin, duly recognised in Portugal.<sup>980</sup>

<sup>975</sup> Article 68(1) Asylum Act.

<sup>976</sup> Ibid. Articles 98 *et seq* Immigration Act.

<sup>977</sup> Articles 68 and 2(1)(k) Asylum Act.

<sup>978</sup> Both the sponsor and the spouse/unmarried partner must be at least 18 years old.

<sup>979</sup> Unmarried partner unions may be attested by any means of proof provided in the law (testimony, documentary proof, affidavit, common children, etc.) In accordance with the law, when a refugee is unable to present official documents to prove his or her family relations, other means of proof will be taken into consideration.

<sup>980</sup> Article 99 Immigration Act.

While in the past it was common for SEF to extend the more favourable regime to beneficiaries of international protection, information gathered by CPR indicates that this is no longer the case as the authorities now tend to restrict family reunification to the list of relatives included in the Asylum Act.

## 1.2. Family reunification procedure

The request for family reunification can be made immediately following the granting of international protection and there is no time limit for applying for family reunification upon arrival in Portugal.

The sponsor in Portugal must apply for family reunification at SEF's regional office in his/her residence area if the family member is living abroad at the time of application. If the family member is in Portugal at the time of application, the sponsor must apply for family reunification at SEF-GAR, in Lisbon. Applications are *not* accepted at Portuguese embassies.

The following official documents need to be presented with the application:<sup>981</sup>

- a. Copy of the travel document of the family member;
- b. Criminal record of the family member, including country of nationality and any country of residence where the family member has lived for over 1 year;
- c. Where applicable, statement of parental authorisation from the other parent (if not travelling with the child);
- d. Death certificate of the child's other parent or evidence of sole legal guardianship if original death certificate is not obtainable, where applicable.

The following official documents are required to prove family relations:

1. Spouses: marriage certificate;
2. Children: birth certificate, decision of adoption duly recognised by a national authority (if applicable); proof of legal incapacity of adult child (if applicable);
3. Other adults in charge of an unaccompanied minor: decision of guardianship duly recognised by a national authority.

In accordance with the law, all official documents need to be translated and duly legalised by the Portuguese embassy with territorial competence prior to their submission to the SEF.

Regarding refugees, the law explicitly lays down that in the absence of official documents to demonstrate family relations, other types of proof should be taken into consideration. The application for family reunification cannot be refused on the sole basis of lack of documentary evidence.<sup>982</sup> Other types of proof can consist of interviews of the sponsor and family members; copies of original documents; witness testimonies; or common children in the case of unmarried partnerships. Portuguese authorities do not conduct DNA tests in the framework of family reunification applications. Even though not formally required, the law does not exclude DNA testing as means of proof of family relations.

In practice, this more favourable regime is generally extended to beneficiaries of subsidiary protection.

Furthermore, refugees are exempted from the general obligation to present proof of accommodation and income in family reunification procedures.<sup>983</sup> This legal provision has also been applied to beneficiaries of subsidiary protection.

The application may be refused on the following grounds:

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<sup>981</sup> Article 103 Immigration Act; Article 67 Governmental Decree n. 84/2007 of 5 November 2007.  
<sup>982</sup> Article 106(4) Immigration Act.  
<sup>983</sup> Article 101(2) Immigration Act.

- misrepresentation or omission of facts;
- non-fulfilment of legal requirements;
- where the potential beneficiary family member would be excluded from refugee status or subsidiary protection;<sup>984</sup>
- where the potential beneficiary is barred from entrance into Portugal; and/or
- where the potential beneficiary poses a risk to public order, public security or public health.

Non-fulfilment of legal requirements may involve: (a) lack of adequate travel documents; (b) lack of criminal records of the potential beneficiary family member; (c) situations where a parent other than the sponsor has not authorised the family reunification of his/her child with the sponsor; or (d) non-eligibility of the family member.<sup>985</sup>

The application should be decided within 3 months, with a possible extension for an additional 3 months if the delay is duly justified by the complexity of the case. In case of extension, the applicant should be informed of the reasons thereof.<sup>986</sup>

In the absence of a decision within 6 months from the date of the application and unless the applicant bears responsibility for the delay (e.g., unanswered request for additional information and/or documents), the application is deemed automatically accepted.

In recent years, a significant waiting time for an appointment at SEF for the purposes of family reunification has been registered by CPR. Difficulties in this regard continued to be observed in 2021.

Within the context of resettlement, CPR has observed that ACM has been making efforts to identifying family members of resettled refugees present in Turkey and Egypt in order to assess the possibility of including such persons in resettlement quota.

Official information on the impacts of the coronavirus pandemic in family reunification procedures is not available. According to the observation of CPR, the pandemic impacted family reunification procedures in several manners:

- Difficulties in filling applications due to the suspension of non-urgent in-person appointments at SEF;
- Difficulties with regard to authentication of documents and issuance of visas due to restrictions to the activity of Portuguese diplomatic premises;
- Restrictions to international air traffic.

Portuguese Embassies and Consulates resumed the issuance of urgent visas (including those for the purpose of family reunification) in June 2020.<sup>987</sup>

In 2021, SEF received 22 applications for family reunification from beneficiaries of international protection. According to SEF, 24 decisions were adopted during the year, most of all concerning refugee status holders. According to SEF, no applications were rejected in 2021.

## 2. Status and rights of family members

In accordance with the law, family members receive the same legal status and are entitled to the same rights as the sponsor.<sup>988</sup> This is generally the case in practice. Nevertheless, CPR is aware of sporadic cases of issuance of Immigration Act residence permits (with inherent costs and subject to a different

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<sup>984</sup> Article 68(3) Asylum Act.

<sup>985</sup> Article 106 Immigration Act.

<sup>986</sup> Article 105 Immigration Act.

<sup>987</sup> See, for instance, <https://bit.ly/3dZvJgL>.

<sup>988</sup> Article 68(2) Asylum Act.

legal regime for renovation) to family members regarding whom family reunification was accepted and carried out, but who are not included in the restricted list of eligible members of the Asylum Act.

According to CPR's observation, when cessation procedures are triggered with regard to the sponsor, family members are also subject to similar procedures.

## C. Movement and mobility

### 1. Freedom of movement

Beneficiaries of international protection are guaranteed freedom of movement throughout the national territory under the same conditions provided for foreign nationals legally residing in Portugal.<sup>989</sup> CPR is not aware of any limitations in this regard in practice, with the exception of those possibly arising from the dispersal policy implemented by the SOG that may result in limitations for reasons of access to material support (see [Reception Conditions: Freedom of Movement](#)).

### 2. Travel documents

The Portuguese authorities are bound by a duty to issue travel documents to refugees and beneficiaries of subsidiary protection.<sup>990</sup>

The **refugee** travel document consists of an electronic travel document,<sup>991</sup> following the Refugee Convention format,<sup>992</sup> which is valid for an initial one-year period and is renewable for identical periods.<sup>993</sup> The document is to be issued unless imperative national security/public order require otherwise.<sup>994</sup> The authorities competent for granting refugee travel documents consist of the National Director of SEF for applications made on the national territory, and consulates for applications made abroad.<sup>995</sup>

A 2020 Ministerial Order determined that refugee travel documents were to be issued electronically and updated the corresponding cost. As such, since September 2020, according to the law, the issuance of refugee travel documents has a cost of €21.66.<sup>996</sup> Until then, it was free of charge. According to the information provided by SEF, refugee travel documents issued since September 2020 are indeed electronic.

While not amending the general provision on the validity of the refugee travel documents, according to the 2020 State Budget Act, such documents were valid for 5 years.<sup>997</sup> It is unclear how this provision has been implemented.

In the case of beneficiaries of **subsidiary protection**, the issuance of travel documents is left to the discretion of national authorities, at odds with Article 25(2) of the recast Qualification Directive. The Asylum Act states that a Portuguese passport for foreigners *may* be issued to beneficiaries of subsidiary protection who cannot demonstrably obtain a national passport unless imperative national security/public orders requires otherwise.<sup>998</sup>

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<sup>989</sup> Article 75 Asylum Act.

<sup>990</sup> Article 69 Asylum Act; Article 19 Immigration Act.

<sup>991</sup> Ministerial Order 302/2015 of 22 September 2015 and Ministerial Order 412/2015 of 27 November 2015.

<sup>992</sup> Article 69(1) Asylum Act.

<sup>993</sup> Article 19 Immigration Act.

<sup>994</sup> Article 69(1) Asylum Act.

<sup>995</sup> Article 20 Immigration Act.

<sup>996</sup> Ministerial Order n. 1334-E/2010 of 31 December 2010 last amended by Ministerial Order 204/2020 of 28 August, available at <https://bit.ly/3mEANLq>.

<sup>997</sup> Article 184 Act 2/2020 of 31 March.

<sup>998</sup> Article 69(2) Asylum Act.

Beneficiaries of subsidiary protection are thus required to present a valid residence permit and to demonstrate their inability to obtain a national passport, notably on the basis of relevant proof or credible statements showing a potential risk to their own safety or the refusal of their country's consular representation to issue such a passport.<sup>999</sup> The standard for this analysis is not further specified by law and guidance in this regard is not publicly available. The Portuguese passport for foreigners is valid for a period of up to two years,<sup>1000</sup> and, in 2021, had a cost of €111.<sup>1001</sup>

According to SEF, in 2021 a total of 419 travel documents were issued to beneficiaries of international protection, of which 390 to refugee status holders and 29 to beneficiaries of subsidiary protection.

According to the experience of CPR, the length of the procedure for issuing a travel document can be considered reasonable overall and does not exceed a couple of months.

In 2017, CPR recorded multiple instances of refusal of requests of a Portuguese passport for foreigners by beneficiaries of subsidiary protection from Ukraine. Despite the beneficiaries' claims, SEF considered that they could contact the Ukrainian authorities for the issuance of travel documents or use passports previously issued by them and that were still valid. CPR has not recently received similar reports. According to the statistics provided by SEF, no request was refused in 2021.

## D. Housing

### Indicators: Housing

- |  |               |
|--|---------------|
| 1. For how long are beneficiaries entitled to stay in reception centres?       | Not available |
| 2. Number of beneficiaries staying in reception centres as of 31 December 2021 | Not available |

The law provides for the right of refugees and beneficiaries of subsidiary protection to housing under the same conditions of foreign nationals legally residing in Portugal,<sup>1002</sup> therefore encompassing public housing.<sup>1003</sup>

In practice, the financial assistance provided to asylum seekers admitted to the regular procedure in the framework of the dispersal policy managed by the SOG for renting private housing (see [Forms and Levels of Material Reception Conditions](#)) will usually be maintained beyond a final decision in the asylum procedure. This typically means that beneficiaries of international protection will generally retain the private housing they have rented throughout the regular procedure.

While CPR is not aware of systematic instances of homelessness among beneficiaries of international protection, housing continues to be an enormous challenge to the integration of both applicants and beneficiaries of international protection, namely due to high housing prices in the private market (in particular in cities such as Lisbon).

Given the impact of the matter, in 2022, the SOG decided to include it in the agenda of all its extended line-up meetings.

Access of beneficiaries of international protection to public housing remains extremely limited for reasons that according to CPR's experience have traditionally been linked to legal constraints under previous rules, limited stock of available public housing, lack of prioritisation of beneficiaries of international protection in public housing policy and heavy bureaucratic requirements.

<sup>999</sup> Decree-Law 83/2000 of 11 May 2000, as amended by Decree-Law 138/2006 of 26 July 2006.

<sup>1000</sup> Article 38 Decree-Law 83/2000 of 11 May 2000.

<sup>1001</sup> Ministerial Order n. 1334-E/2010 of 31 December 2010 last amended by Ministerial Order 204/2020 of 28 August, available at <https://bit.ly/3mEANLq>.

<sup>1002</sup> Article 74 Asylum Act.

<sup>1003</sup> Article 5 Public Leasing Act; Article 5 Regulation 84/2018.

Within the context of resettlement, hosting entities are responsible for the provision of accommodation. In the case of resettled refugees supported by CPR, the reception program includes an initial period of accommodation in a reception centre – CAR 2 (3 to 6 months). Before the coronavirus pandemic, the average duration of permanence in CAR 2 was of 4,5 months. In 2020, constraints linked to access to housing in the private market and restrictions to internal travel have led to a growth of the average period of accommodation in CAR 2 to 6 months. In 2021, the average period of accommodation in the facility was of approximately 5 months. Housing continues to be a significant challenge to integration within the context of resettlement as well.

Decree-Law 26/2021 of 31 March<sup>1004</sup> created, inter alia, a National Pool of Urgent and Temporary Accommodation and a National Plan of Urgent and Temporary Accommodation. Recognising the lack of solutions in this regard, the National Plan aims to create structured responses to people in need of emergency or transition accommodation.<sup>1005</sup>

According to the Decree-Law, the National Plan covers persons under the mandate of the entities that form the restricted line-up of the SOG (SEF, ACM and ISS).<sup>1006</sup> Referrals of applicants for/beneficiaries of international protection to accommodation within this context should be made by ACM.<sup>1007</sup> Such referrals must be communicated to the SOG.<sup>1008</sup> Additionally, entities responsible for the reception of applicants and beneficiaries of international protection may access support to promote urgent and temporary accommodation solutions for the National Pool.<sup>1009</sup>

At the time of writing, the implementation and impact of this legislation was still unclear.

## E. Employment and education

### 1. Access to the labour market

The law provides for the right of refugees and beneficiaries of subsidiary protection to access the labour market pursuant to general rules.<sup>1010</sup>

Similarly to asylum seekers (see [Reception Conditions: Access to the Labour Market](#)), there are no limitations attached to the right of beneficiaries of international protection to employment such as labour market tests or prioritisation of nationals and third-country nationals. The issuance and renewal of residence permits by SEF is free of charge.<sup>1011</sup> The only restriction on employment enshrined in the law consists in limited access for all third-country nationals to certain categories of employment in the public sector.<sup>1012</sup>

Beneficiaries of international protection benefit from the same conditions of employment as nationals, i.e. in terms of salaries and working hours.<sup>1013</sup> The law provides, however, for specific formalities in the case of employment contracts of third-country nationals such as the need for a written contract and its

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<sup>1004</sup> Available at: <https://bit.ly/3Oc68Ct>. The functioning of the National Pool of Urgent and Temporary Accommodation is governed by Ministerial Order 120/2021, 8 June, available at: <https://bit.ly/3uEmOLm>.

<sup>1005</sup> Article 11 Ministerial Order 120/2021, 8 June defines the maximum periods of emergency/transition accommodation – 15 days or 6 months, respectively, that may be renewed for an equal period. A specific regime applies to victims of domestic violence.

<sup>1006</sup> Article 5(1)(b)(iii) Decree-Law 26/2021 of 31 March.

<sup>1007</sup> Article 12(1) and (2) Ministerial Order 120/2021, 8 June.

<sup>1008</sup> Article 12(3) Ministerial Order 120/2021, 8 June.

<sup>1009</sup> Article 12 Decree-Law 26/2021 of 31 March; article 26(c) Decree-Law 37/2018 of 4 June; article 7(c) Ministerial Order 120/2021, 8 June.

<sup>1010</sup> Article 71(1) Asylum Act.

<sup>1011</sup> Article 67(4) Asylum Act.

<sup>1012</sup> Article 15(2) Constitution; Article 17(1)(a) and (2) Act 35/2014.

<sup>1013</sup> Article 71(3) Asylum Act; Article 4 Labour Code.



(online) registration with the Authority for Labour Conditions (*Autoridade para as Condições do Trabalho*, ACT).<sup>1014</sup>

Beneficiaries of international protection are equally entitled to access work-related training opportunities for adults, vocational training and practical experiences under the same conditions as nationals.<sup>1015</sup>

With the exception of the submission of beneficiaries of international protection to the conditions applicable to nationals of the same country,<sup>1016</sup> there are no specific rules regarding the recognition of diplomas and academic qualifications in the Asylum Act and the general rules and practical challenges facing asylum seekers apply (see [Reception Conditions: Access to the Labour Market](#)).

There are no statistics available on the number of beneficiaries of international protection in employment at the end of 2021. According to CPR's experience, despite existing support mechanisms pertaining to language training and employment assistance, asylum seekers and beneficiaries of international protection face many challenges in securing employment that are both general and specific in nature (see [Reception Conditions: Access to the Labour Market](#)).

## 2. Access to education

The Asylum Act provides for the right of children who are refugees or beneficiaries of subsidiary protection to education under the same conditions as national citizens.<sup>1017</sup> The right to education under the same conditions as nationals is extended to adult beneficiaries of international protection.<sup>1018</sup> The access of children who are beneficiaries of international protection to public education and recognition procedures bears no relevant distinction to asylum seeking children and has already been described in detail. The same holds true for access of adult beneficiaries of international protection to vocational training (see [Reception Conditions: Access to Education](#)).

## F. Social welfare

According to the Asylum Act, the general rules governing the social welfare system are applicable to refugees and beneficiaries of subsidiary protection.<sup>1019</sup> Refugees and beneficiaries of subsidiary protection are entitled to the same rights and to access social welfare under the same conditions as nationals.

The Social Insertion Revenue (*Rendimento Social de Inserção*, RSI) is a social protection measure that aims to support individuals in serious economic need and who are at risk of social exclusion. This is thus the most relevant social allowance available to beneficiaries of international protection.<sup>1020</sup>

In addition to the financial allowance, RSI comprises an inclusion programme, based on a contract established with the concerned household. Access by beneficiaries of international protection is subject to the fulfilment of the general conditions prescribed by law, namely:

- If the applicant lives alone – his/her monthly income cannot exceed the amount of the allowance;

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<sup>1014</sup> Article 5 Labour Code.

<sup>1015</sup> Article 71(2) Asylum Act. Even though related to the right to education, Article 70(2) Asylum Act seems to enshrine a similar right to training.

<sup>1016</sup> Article 70(3) Asylum Act.

<sup>1017</sup> Article 70(1) Asylum Act.

<sup>1018</sup> Ibid.

<sup>1019</sup> Article 72 Asylum Act.

<sup>1020</sup> Act 13/2003.

- if the applicant lives with family members – the combined monthly income cannot exceed the total amount of the allowance;
- The applicant must be 18 years of age or older (although there are situations in which younger persons are also eligible);
- The applicant must be registered with IEFP.

The financial allowance of the RSI is as follows:<sup>1021</sup>

Rendimento Social de Inserção: 2021	
Category of applicant	Amount
Head of household	€ 189.66
Other adult in household	€ 132.76
Child	€ 94.83

A legislative amendment introduced in 2017<sup>1022</sup> removed the prerequisite of one year of regular residence in the country to access the RSI. Therefore, beneficiaries of international protection are immediately directed to this allowance upon recognition of the refugee status or conferral of subsidiary protection, while the assistance described in [Reception Conditions](#) ceases.

According to the law, refugees and beneficiaries of subsidiary protection are also entitled to other social allowances such as child benefits and family allowances,<sup>1023</sup> unemployment benefits,<sup>1024</sup> and other benefits, under the same conditions as nationals and as long as they meet the applicable requirements.

In practice, the follow up of social welfare matters is provided by ISS and SCML,<sup>1025</sup> following the assistance provided throughout the asylum procedure.

In general, refugees and beneficiaries of subsidiary protection are required to present their residence permit in order to have access to such support measures. While CPR is unaware of systemic problems in accessing support, refugees and beneficiaries of subsidiary protection often report difficulties in meeting their basic needs with the low income provided by the social welfare system.

The Statistical Report of Asylum 2021 estimates that 53.4% of the beneficiaries of international protection in Portugal were autonomous from social (financial) support by the end of 2020.<sup>1026</sup>

## G. Health care

The Asylum Act enshrines the right of refugees and beneficiaries of subsidiary protection, as well as their family members, to health care provided by the SNS under the same conditions as nationals.<sup>1027</sup>

<sup>1021</sup> Amended version of Ministerial Order 257/12 of 27 August, available at: <https://bit.ly/3s5DczW>.

<sup>1022</sup> Ministerial Order 253/17 of 8 August.

<sup>1023</sup> Decree-Law 176/2003.

<sup>1024</sup> Act 220/2006.

<sup>1025</sup> SCML also supports refugees and beneficiaries of international protection in specific situations, e.g., vulnerable cases such as unaccompanied children that move into assisted apartments and former unaccompanied children previously accommodated at CACR; individuals and families with strong social networks in the Lisbon area.

<sup>1026</sup> Observatório das Migrações, *Requerentes e Beneficiários de Proteção Internacional – Relatório Estatístico do Asilo 2021*, June 2021, pp.161-162, available in Portuguese at: <https://bit.ly/3F5I9iw>.

<sup>1027</sup> Article 73(1) Asylum Act.

Furthermore, it provides for the right to tailored health care, including the treatment of mental conditions, for vulnerable refugees under the same conditions as national citizens.<sup>1028</sup>

The special needs of particularly vulnerable persons including beneficiaries of international protection must be taken into consideration in the provision of health care,<sup>1029</sup> notably through rehabilitation and psychological support to children who have been subjected to various forms of violence,<sup>1030</sup> and adequate treatment to survivors of torture and serious violence.<sup>1031</sup> Responsibility for special treatment required by survivors of torture and serious violence lies with ISS.<sup>1032</sup>

Asylum seekers and refugees are exempt from any fees to access the National Health System.<sup>1033</sup> Additionally, all children are exempt from such fees.<sup>1034</sup>

In practice, beneficiaries of international protection have effective access to free health care in the SNS in line with applicable legal provisions. However, as with asylum seekers (see [Reception Conditions: Health Care](#)) persisting challenges have a significant impact on the quality of the care available. According to research and information available to CPR, these include language and cultural barriers due to the reluctance of health care services to use available interpretation services such as ACM's translation hotline; restricted access to diagnosis procedures and medication paid by the SNS due to bureaucratic constraints; or very limited access to mental health care and other categories of specialised medical care (e.g., dentists) in the SNS.<sup>1035</sup>

According to CPR's experience within the provision of support to resettled refugees, access to healthcare by beneficiaries of international protection worsened within the context of the pandemic given the overburdening of healthcare services. According to the publicly available information, such difficulties are common to the whole population and not particular to refugees.

The National Vaccination Plan (COVID-19) was approved by Ministerial Decree no.298-B/2020, of 23 December 2020.<sup>1036</sup> The Ministerial Order determines that the national vaccination plan is grounded on the principles of universality, acceptability, and feasibility and is free of charge.

Priority groups for COVID-19 vaccination were defined based on a combination of factors such as age and pre-existing conditions (in addition to essential workers).<sup>1037</sup> Asylum seekers and refugees living in living in communitarian facilities are considered a group with increased risk of infection and outbreaks (e.g., elderly homes) and, as such, prioritised. Vaccination at CPR's Reception Centres occurred throughout 2021.

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<sup>1028</sup> Article 73(2) Asylum Act.

<sup>1029</sup> Article 77(1) Asylum Act.

<sup>1030</sup> Article 78 (3)-(4) Asylum Act.

<sup>1031</sup> Article 80 Asylum Act.

<sup>1032</sup> *Ibid.*

<sup>1033</sup> Article 4(1)(n) Decree-Law 113/2011 of 29 November 2011.

<sup>1034</sup> Article 4(1)(b) Decree-Law 113/2011 of 29 November 2011.

<sup>1035</sup> Italian Council for Refugees *et al.*, *Time for Needs: Listening, Healing, Protecting*, October 2017, available at: <https://bit.ly/3gEoe1T>.

<sup>1036</sup> Ministerial Decree 298-B/2020 of 23 December 2020, available at: <https://bit.ly/3fU70NC>.

<sup>1037</sup> *Plano de Vacinação COVID-19*, 3 December 2020, available at: <https://bit.ly/2PPD5eF>.

## ANNEX I – Transposition of the CEAS in national legislation

### Directives and other CEAS measures transposed into national legislation

Directive / Regulation	Deadline for transposition	Date of transposition	Official title of corresponding act	Web Link
<b>Directive 2011/95/EU</b> Recast Qualification Directive	21 December 2013	5 May 2014	Act n. 26/2014 of 5 May 2014 amending Act n. 27/2008, transposing Directives 2011/95, 2013/32/EU and 2013/33/EU	<a href="http://bit.ly/1jd3hcG">http://bit.ly/1jd3hcG</a> (PT) <a href="http://bit.ly/2AfJ7sS">http://bit.ly/2AfJ7sS</a> (EN)
<b>Directive 2013/32/EU</b> Recast Asylum Procedures Directive	20 July 2015 [Article 31(3)-(5) - 20 July 2018]			
<b>Directive 2013/33/EU</b> Recast Reception Conditions Directive	20 July 2015			
<b>Regulation (EU) No 604/2013</b> Dublin III Regulation	Directly applicable 20 July 2013			

The following section contains an overview of some of the most significant incompatibilities in transposition of the CEAS in national legislation:

Directive	Provision	Domestic law provision	Non-transposition or incorrect transposition
<p><b>Directive 2011/95/EU</b> Recast Qualification Directive</p>	<p>Article 12 recast QD</p>	<p>Article 9 Asylum Act (exclusion clauses)</p>	<p>Article 9(1)(c)(ii) transposes Article 12(2)(b) of the recast Qualification Directive to the national legal order. While the directive refers to the commission of a serious non-political crime, the Asylum Act refers to the commission of an intentional non-political crime punishable with prison sentence of over three years. By operation of Article 9(2)(a) of the Asylum Act, this exclusion clause is also applicable to exclusion from subsidiary protection. While CPR is not aware of the practical application of this clause, defining the gravity threshold as a prison sentence of over three years may open the door to the exclusion of cases not envisaged by the relevant provision of the recast Qualification Directive.</p> <p>Furthermore, Article 9(1)(d) allows for the exclusion from refugee status where there are serious reasons for considering that the person constitutes a danger or substantiated threat to internal or external security or to the public order</p>
	<p>Article 8 recast Qualification Directive</p>	<p>Article 18 Asylum Act (analysis of the application – internal protection alternative)</p>	<p>Article 18(2)(e) of the Asylum Act establishes that an internal protection alternative may be considered in the adjudication of the application for international protection. There is some ambiguity in the transposition as a literal interpretation of the provision of the Asylum Act would determine that the criteria established in Article 8(1) <i>in fine</i> of the recast Qualification Directive (“and he or she can safely and legally travel to and gain admittance to that part of the country and can reasonably be expected to settle there.”) would only apply to situations where the applicant “has access to protection against persecution or serious harm”.</p> <p>Furthermore, while the definition mirrors Article 8(1) of the recast Qualification Directive, the procedural requirements established in Article 8(2) of the Directive were not transposed by the Asylum Act.</p>
	<p>Article 16(3) recast QD</p>	<p>Article 41 Asylum Act (cessation of protection)</p>	<p>The Asylum Act does not contain the safeguard clause determining that subsidiary protection should not cease in situations where the beneficiary can reasonably invoke reasons connected to past serious offense not to return to the country of origin.</p>

	Article 25(2) recast QD	Article 69(1) Asylum Act (issuance of travel documents to beneficiaries of international protection)	According to the Asylum Act, issuance of travel documents to beneficiaries of subsidiary protection is left to the discretion of national authorities.
	Article 12 recast QD	Article 41 Asylum Act (revocation of, ending or refusal to renew international protection)	See <i>supra</i> the analysis of exclusion clauses, relevant to revocation of, ending or refusal to renew international protection per Article 41(5)(a) of the Asylum Act.
<b>Directive 2013/32/EU</b> Recast Asylum Procedures Directive	Article 37 recast APD	Article 2(1)(q) Asylum Act (safe country of origin)	The Asylum Act provides for a definition of “safe country of origin” that is in line with Article 36 of the recast Asylum Procedures Directive. However, the law does not further regulate its application. Notably, the Asylum Act does not refer to the need to adopt complementary legislation for the designation of safe countries of origin and the substantive and procedural criteria for such designation as provided in Article 37 and Annex I of the recast Asylum Procedures Directive. The safe country of origin concept is not applied in practice.

	<p>Article 38 recast APD</p>	<p>Article 2(1)(r) Asylum Act (definition of safe third country)</p>	<p>The Asylum Act provides for a definition of “safe third country” that presents some inconsistencies with Article 38 of the recast Asylum Procedures Directive. Most notably:</p> <ul style="list-style-type: none"> <li>- The provision applies <i>ratione personae</i> to asylum seekers alone, as opposed to applicants for international protection;</li> <li>- The provision does not include the absence of a risk of serious harm as a condition for the application of the concept;</li> <li>- The provision does not include the possibility for the applicant to challenge the existence of a connection between him or her and the third country;</li> <li>- A standard of possibility rather than reasonableness is set in the provision concerning the return on the basis of a connection between the applicant and the third country concerned.</li> </ul> <p>In this regard, it is worth noting that there is a difference between the English and Portuguese versions of the Directive. While Article 38(2)(a) of the English version refers to the reasonableness of the person returning to the third country, the Portuguese version does not include such reference, simply indicating that the connection between the applicant and the country allows return “in principle”.</p>
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	Article 14(2)(b) and (4) recast APD	Article 16 Asylum Act (personal interview)	<p>The circumstances in which the determining authority may omit the personal interview are exhaustively listed in Article 16(5) of the Asylum Act and mirror the corresponding provision of the recast Asylum Procedures Directive (Article 14(2)). However, with regards to cases where the applicant is deemed unfit/unable due to enduring circumstances beyond his/her control, the final part of Article 14(2)(b) of the Directive was not transposed (“When in doubt, the determining authority shall consult a medical professional to establish whether the condition that makes the applicant unfit or unable to be interviewed is of a temporary or enduring nature.”). The safeguard contained in Article 14(4) of the recast Asylum Procedures Directive that determines that the absence of personal interview in such situations “shall not adversely affect the decision of the determining authority”, was also not explicitly transposed to the Asylum Act.</p>
	Article 15 recast APD (also article 4(3) in fine recast APD)	Article 16 Asylum Act (personal interview)	<p>With regards to the conditions of the personal interview, the Asylum Act does not fully transpose the requirements set out in the recast Asylum Procedures Directive (Article 15), particularly those regarding to the characteristics of the interviewer and on the use of interpreters (Article 15(3) recast Asylum Procedures Directive). Furthermore, and without prejudice to Article 84 of the Asylum Act that refers to the adequate training of all staff working with applicants and beneficiaries of international protection, the specific training requirement for interviews provided for in Article 4(3) <i>in fine</i> of the recast Asylum Procedures Directive was not transposed to the domestic order (“Persons interviewing applicants pursuant to this Directive shall also have acquired general knowledge of problems which could adversely affect the applicants’ ability to be interviewed, such as indications that the applicant may have been tortured in the past.”).</p>



	Article 16 recast APD	Article 16 Asylum Act (personal interview)	With regards to the content of the personal interview, the national legislator did not transpose the final part of Article 16 of the recast Asylum Procedures Directive, establishing that the personal interview “shall include the opportunity to give an explanation regarding elements which may be missing and/or any inconsistencies or contradictions in the applicant’s statements.”
	Article 10 recast APD	Article 18 Asylum Act (analysis of the application – country of origin information)	While Article 18(2)(a) orders the national authorities to duly consider country of origin information in the analysis of applications, the domestic law does not fully transpose the requirements set out in Article 10(3)(b) of the recast Asylum Procedures Directive. Namely, it fails to state that the information must be precise and up-to-date. Even though the norm refers to different sources for such information (EASO, UNHCR and relevant human rights organisations) it does not clearly state that different sources must be consulted in each analysis. Furthermore, Article 18(2)(a) of the Asylum Act refers exclusively to the country of origin, as opposed to Article 10(3)(b) of the recast Directive that also refers to the use of information regarding transit countries whenever necessary.
	Articles 31(8) and 32 recast APD	Article 19 Asylum Act (accelerated procedures)	The wording of the Asylum Act does not seem to be fully in line with the recast Asylum Procedures Directive and with the applicable international standards as its literal application may lead not only to the accelerated processing but also to the automatic rejection of applications based on the listed grounds (e.g., a delay in making the application).
	Article 35 recast APD	Articles 2(1)(z) and 19-A(1)(c) Asylum Act (first country of asylum)	Neither Article 2(1)(z) of the Asylum Act, that defines the “first country of asylum” concept, nor Article 19-A(1)(c) of the Asylum Act that provides for the corresponding inadmissibility clause, explicitly contain the safeguard of Article 35 of the recast Asylum Procedures Directive, entitling the applicant to challenge the application of the concept to his/her particular circumstances.

	<p>Article 46(4) recast APD</p>	<p>Article 25(1) Asylum Act (time limits for appeal – border procedure)</p>	<p>Article 25(1) of the Asylum Act establishes a 4-day time limit for the appeal of a refusal (inadmissibility or merits) adopted within the context of a border procedure. While current practical implementation mitigates some of the negative consequences of such a reduced timeframe, this time limit is hardly compatible with the requirement for “reasonable time limits” that do “not render such exercise impossible or excessively difficult” provided for in Article 46(4) of the recast Asylum Procedures Directive.</p>
	<p>Article 24 recast APD (also article 22 recast RCD)</p>	<p>Articles 17-A and 77 Asylum Act (mechanisms for assessing vulnerability and special needs – procedural and reception)</p>	<p>The Asylum Act provides for the need to identify persons with special needs and the nature of such needs but no procedure or mechanism for such identification and assessment has been established so far at domestic level.</p>
	<p>Article 25(5) recast APD</p>	<p>Article 79 (6) and (7) Asylum Act (age assessment)</p>	<p>The Asylum Act does not contain the limitation on the use of medical examination for age assessment enshrined in the first part of Article 25(5) recast Asylum Procedures Directive: “Member States may use medical examinations to determine the age of unaccompanied minors within the framework of the examination of an application for international protection where, following general statements or other relevant indications, Member States have doubts concerning the applicant’s age”.</p> <p>Furthermore, the right to information of the unaccompanied children regarding the age assessment procedure established in Article 79(7) of the Asylum Act does not fully transpose all the requirements of Article 25(5)(a), in particular with regards to the methods used and to the consequences of results.</p>

<b>Directive 2013/33/EU</b> Recast Reception Conditions Directive	Articles 8 and 9 recast RCD (also article 26 recast APD)	Article 26(1) Asylum Act (detention at the border)	Article 26(1) of the Asylum Act determines that asylum seekers that applied for asylum at the border remain in the international area of the (air)port while waiting for the decision without establishing further requirements (e.g., necessity and proportionality, individual assessment, alternatives to detention), in contravention with Articles 8 and 9 of the recast Reception Conditions Directive and with Article 26 of the recast Asylum Procedures Directive. It should be noted that further requirements to detention of asylum seekers are established in Article 35-A of the Asylum Act. It is our understanding that a correct application of Article 26(1) of the Asylum Act requires due regard for such requirements. Notwithstanding, in practice, asylum seekers that file their applications at the border are indeed systematically detained.
	Article 9(5) recast RCD	Article 35-B(1) Asylum Act (revision of detention)	Article 35-B(1) of the Asylum Act establishes that detention may be reviewed <i>ex officio</i> or upon request of the applicant if relevant circumstances or new information which may affect its lawfulness arise. This seems to fall short from the guarantees provided for in Article 9(5) of the recast Asylum Procedures Directive that establishes that revision should be conducted by a judicial authority and does not limit such revision to situations where new circumstances or information becomes available (“Detention shall be reviewed by a judicial authority at reasonable intervals of time, ex officio and/or at the request of the applicant concerned, in particular whenever it is of a prolonged duration, relevant circumstances arise or new information becomes available which may affect the lawfulness of detention”).
	Article 14(2) recast APD	Article 53 Asylum Act (access to education)	The Asylum Act does not contain any reference to a maximum time limit with regards of access to education by children.
	Article 22 recast RCD (also article 24 recast APD)	Articles 17-A and 77 Asylum Act (mechanisms for assessing vulnerability and special needs – procedural and reception)	The Asylum Act provides for the need to identify persons with special needs and the nature of such needs but no procedure or mechanism for such identification and assessment has been established so far at domestic level.