Asylum adjourned – the situation of applicants for international protection in 2020

The Asylum Information Database (AIDA) is a database managed by the European Council on Refugees and Exiles (ECRE) containing detailed information on asylum procedures, reception conditions, detention and the content of international protection in 23 European countries. These country reports are written by national experts in collaboration with a variety of stakeholders, ranging from civil society organisations and lawyers to national authorities. The reports are edited by ECRE.

This briefing aims to provide an overview of key trends in asylum in Europe in 2020 as documented in AIDA. It demonstrates that the rights of persons in need of international protection are routinely violated, and that national asylum systems continue to be marred by serious gaps in efficiency and quality. In many cases, changes in policies and targeting of resources could address these challenges. In addition, this year's AIDA reports shed light on the treatment and reception of applicants for international protection during COVID-19, raising questions as regards compliance with European and international law.

Low number of applications for international protection

The outbreak of COVID-19 had a significant impact on national asylum systems across Europe and resulted in an important **drop in applications for international protection**, mainly due to travel restrictions and the closure of borders.[1] Eurostat statistics indicate that a total of 471,300 individuals applied for international protection in the European Union (EU) Member States, down by 32.6 % compared with 2019.[2] The number of asylum seekers in 2020 thus represents roughly 0.1% of the total EU population and amounts to less than half the number of applications registered in the EU in 2015 and 2016.[3]

Nevertheless, an increase in asylum applications and in arrivals of people was noted in certain AIDA countries compared to 2019. In Romania, the number of applicants for international protection increased by +138% from 2019 to 2020. In other AIDA countries, an increase in arrivals was reported, in particular in Bulgaria, Spain and Italy, however the number of applications for international protection decreased in the latter two countries. In Greece, the number of arrivals significantly decreased by nearly 80% from 74,649 arrivals in 2019 to 15,696 in 2020.

Borders as ultimate threat to the right to asylum

The low number of applicants for international protection is also linked to the increased difficulty in accessing territories and asylum procedures due to **unlawful border practices**. These practices are widespread and occur at land, air and sea borders, both at the internal and external borders of the EU. Unlawful border practices were reported in more than half the countries covered by the AIDA, namely Austria, Bulgaria, Croatia, Cyprus, France, Greece, Hungary, Italy, Malta, Poland, Romania, Slovenia, Spain, Serbia and Turkey. The array of measures used by national authorities to carry out said practices include direct pushbacks at land or sea borders; informal readmission agreements; denial of access to the territory and/or to the asylum procedure; and the temporary reintroduction of border controls. The

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[1]   European Commission, *Member States' notifications of the temporary reintroduction of border control at internal borders pursuant to Article 25 and 28 et seq. of the Schengen Borders Code*, available at: https://bit.ly/3vbWiWv.

[2]   Eurostat, *Asylum Statistics*, 2020, available at: https://bit.ly/3ivaEyJ.

[3]   Eurostat, *World Refugee Day: key statistics on asylum in the EU*, 18 June 2021, available at: https://bit.ly/3iLngls.

extent of impunity which prevailed in European countries in 2020, as well as **increased violence and the use of excessive force** in the context of border controls, call for the immediate implementation of effective and independent border monitoring mechanisms.

While it is difficult to quantify the number of persons being subject to push-backs due to the lack of transparency and the lack of monitoring at borders, available evidence suggests that pushbacks and unlawful returns have become 'a routine element of border governance' and affect several thousand people every year.[4] By way of illustration, AIDA reports indicate that approximately 25,600 persons were pushed back from Hungary, 18,400 from Croatia, 15,000 from Bulgaria, and 13,400 from Romania. Then, 10,000 persons were returned from Slovenia to neighbouring countries on the basis of readmission agreements. Evidence of boats being pushed back at sea in 2020 were also documented in Greece, Italy, Malta and Cyprus, while the access at the Ceuta and Melilla border points in Spain is marked by increased border controls and violent police practices (in particular on the Moroccan side).

The body of case-law relating to access to the asylum procedures at borders has also significantly increased. Domestic courts in Austria, Slovenia, France, Croatia and Italy condemned national authorities in 2020 and 2021 for restricting access to the asylum procedure at borders; while European Courts delivered important decisions in the cases of *N.D. and N.T. v Spain* in February 2020; *Moustahi v France* in June 2020; *M.K. and Others v Poland* in July 2020; in case C-808/18 *Commission v Hungary* in December 2020; and more recently in the cases of *Shahzad v. Hungary* and *D.A. and others v. Poland* of July 2021.[5]

Deterrence policies

Restricting access to asylum was also a **deliberate policy choice** aimed at deterrence in several Member States in 2020. In Hungary, asylum applications can only be lodged at the Hungarian embassies in Kyiv (Ukraine) or Belgrade (Serbia) since the closure of transit zones in March 2020, as a result of which only four individuals were able to lodge their applications for international protection within a whole year. In Greece, the asylum procedure was abruptly suspended during the month of March 2020 as part of a response to the announcements that Turkey would no longer be preventing refugees and migrants from crossing its borders with Greece. In Cyprus, no official decision on the suspension of asylum from March to May 2020 was issued and it is thus unclear to date if this measure was introduced as a response to COVID-19 or to the increase in arrivals of applicants for international protection. In Belgium, the Immigration Office introduced a new, complex and dysfunctional online registration system during COVID-19, which was accessible only in Dutch or French and substantially delayed access to the procedure. It was eventually suspended following a Court decision.

Asylum procedures during COVID-19

As a result of COVID-19, different stages of the **asylum procedure were suspended or postponed** for several weeks between March and summer 2020. In some countries this included closing registration offices, meaning that applicants were not able to lodge their application for international protection for several days or weeks and had limited access to services. In other countries, registration remained accessible but the examination of asylum claims and personal interviews was postponed for several weeks. While these measures were mainly implemented during the months following the outbreak of COVID-19, further restrictions were re-introduced at a later stage during the year in certain countries. In Ireland, for example, interviews were suspended again from October to December 2020.

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[4]   United Nations Special Rapporteur on the human rights of migrants, Report on means to address the human rights impact of pushbacks of migrants on land and at sea, A/HRC/47/30, 12 May 2021, available at: https://undocs.org/en/A/HRC/47/30.

[5]   For case summaries, consult the European Database of Asylum Law (EDAL) at: https://www.asylumlawdatabase.eu/en.

Overall, applicants for international protection have been regularly updated about COVID-19 measures and sanitary measures.

An important change of practice resulting from COVID-19 relates to the **digitalisation of asylum procedures** through the increased use of technology, including video-conferencing, online registration systems and document submission via electronic means. These tools were already used in certain countries but COVID-19 has accelerated the trend and is likely to have long-lasting effects on future asylum systems. Important concerns were reported in this regard, in particular concerning data protection and privacy rights of applicants, lack of confidentiality, technological illiteracy, lack of equipment and IT infrastructure, and the impersonality of the process.

Inconsistent decision-making at first and second instance

Decision-making remains inconsistent across Member States and **calls into question the efficiency of the Common European Asylum System (CEAS)**. According to Eurostat, EU Member States granted protection status to 280,000 asylum seekers at first and second instance in 2020, down by 5% compared to 2019 (295,600). While refugee status remains the main form of protection (45% of all positive decisions), grants of humanitarian protection status (29%) exceeded grants of subsidiary protection (26%).[6] This is particularly visible in Spain, where more than 45,000 Venezuelan applicants were granted humanitarian protection at first instance, but only five people received refugee status and none received subsidiary protection status. Granting different statuses entails important consequences for the length of residence permits, access to services, and integration.

At national level, the recognition rate of applicants for international protection at first instance **greatly varies from one country to another**. The first instance recognition rate for Afghans, who were the third main citizenship granted protection status in the EU in 2020, varied from 1% in Bulgaria to 100% in Poland. In between lies a broad spectrum of recognition rates: Hungary (17%), Belgium (35%), France (53%) or Greece (66%). This demonstrates that a person's chances of obtaining protection vary dramatically depending on the country examining their claim.

At second instance, 69,200 persons received a protection status resulting from appeal or review according to Eurostat. This means that nearly 1/4 of all beneficiaries of international protection in 2020 were granted a status at second instance.

The **ineffectiveness of the judicial system** was reported as an important matter of concern in several countries in 2020. This is due *inter alia* to a lack of expertise of certain Courts in the field of international protection, inconsistences in decision-making amongst national Courts, the limited scope of appeals, the reduction of appeal deadlines, and the lack of suspensive effect in certain countries.

As a result of the fall in the number of applications for international protection, asylum authorities were able to focus on the **backlog of pending cases**. According to EASO, approximately 773,600 asylum applications were awaiting a decision at the end of 2020, representing an 18% decrease compared to 2019.[7] However, pending cases were still higher than the pre-crisis level of 2014 and continued to increase in some AIDA countries including Bulgaria, Cyprus, Greece, France, Poland and the United Kingdom. In the Netherlands, the Immigration and Naturalisation Service (IND) established a task force dedicated to addressing the backlog of pending cases, but many applications were still pending at the end of the year.

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[6]   Eurostat, *Asylum Statistics*, 2020, available at: https://bit.ly/3ivaEyJ. The collection of asylum statistics at European level remains flawed by inconsistencies and Eurostat statistics must be read with caution. See ECRE, *Asylum statistics in Europe: Factsheet*, 2020 available at: https://bit.ly/3qiSVfX.

[7]   EASO, *Asylum Report 2021*, available at: https://bit.ly/3z7t1Ps, 132.

The **increased length of asylum procedures** also continues to be a serious matter of concern. This includes significant delays at registration stage as well as longer processing times of applications for international protection, which were both exacerbated during COVID-19. In Greece, more than 50% of applications pending at first instance at the end of 2020 had been pending for over 12 months, while in Cyprus processing times may reach 2 or 3 years. Ireland also recorded a significant increase in processing times reaching 14 months (for prioritised cases) and 18 months (for non-prioritised cases). In the United Kingdom recent statistics revealed that processing times at first instance are likely to be between 1 and 3 years, and that more than 250 people had been waiting for 5 years or more for an initial decision on their case, of whom 55 were children. By way of exception, the length of the asylum procedure significantly decreased in Switzerland following the asylum reform of March 2019. Other countries such as Austria or Bulgaria have introduced legislative changes in 2020 aimed at accelerating and improving the asylum procedure.

Shrinking procedural guarantees

The procedural guarantees of applicants for international protection remain restricted in practice. In particular, the were obstacles to the right to information and legal assistance were, at the border, in detention centres and in reception facilities, due in part to COVID-19 restrictions. State-funded legal assistance at first instance is still lacking in most AIDA countries – although proposals to limit free legal assistance in the Netherlands were repealed - while legal aid at second instance remains largely insufficient due to a lack of resources and quality gaps. In Austria, a new state-run legal assistance system carried out by a Federal Agency was established, raising concerns about independence and impartiality. In countries including Croatia, Greece, Hungary Slovenia, and Poland, civil society organisations faced increased pressure due to a lack of funding and new restrictive governmental measures targeting their activities.

Insufficient and inadequate reception

Accessing adequate accommodation was problematic for considerable numbers of people in need of protection in 2020. A **lack of reception capacity** was reported in AIDA countries including Belgium, Cyprus, France, Greece, Ireland, Malta, the Netherlands, Spain, Serbia and the United Kingdom. In France, only around 51% of asylum seekers eligible for material reception conditions were accommodated, while in Belgium access to the reception system was restricted between March and October 2020 due to the defective online registration system. In Ireland, capacity in Direct Provision continued to be a significant issue, with more than 1,000 asylum seekers housed in emergency accommodation; and in the United Kingdom there was an increase in the use of hotels, bed and breakfasts, and military barracks during 2020. In Spain, the European Asylum Support Office (EASO) announced in December 2020 that it was launching a new operation aiming to support the authorities to develop and implement a new model for the reception of asylum seekers, given the major shortcomings in the Spanish reception system.

Additionally, the onset of the COVID-19 pandemic resulted in the opening of a number of new emergency centres at very short notice, which were also used to facilitate self-isolation. This resulted in precarious living conditions and significant restrictions on the right to freedom of movement of applicants for international protection in certain countries. In Cyprus, Greece, Romania and Serbia, for example, asylum seekers were subject to **prolonged and disproportionate measures amounting to *de facto* detention** preventing them from leaving reception centres for several months, which severely affected their mental health and limited their access to the outside world. In Slovenia, individuals were also *de facto* detained in containers in the premises of the asylum residence while waiting to lodge their applications for international protection. In Malta, over 400 people rescued at sea were held on private vessels outside territorial waters for several weeks for quarantine purposes. Similarly, in Italy, a decree authorised the use of ships for the quarantine and isolation of migrants rescued at sea. Hotspots were

also used as places for quarantine. In Spain, transfers to the mainland from Ceuta and Melilla as well as from the Canary Islands have been restricted in practice, but the Supreme Court delivered two landmark rulings in July 2020 in which it concluded that neither domestic nor EU law contain any provisions that justify limiting asylum seekers' right to move freely across Spanish territory.

The COVID-19 pandemic shed further light on the **inadequacy of reception facilities** and difficulties in implementing physical distancing and other sanitary requirements. Overcrowding was reported in ten AIDA countries, namely Cyprus, France, Greece, Ireland, Italy, Malta, Romania, Slovenia, Spain and the United Kingdom. The lack of sufficient access to basic services, including medical care and sanitary facilities, coupled with issues of violence and a lack of security and privacy, continued to pose significant protection risks in 2020. Many applicants for international protection were left homeless and unregistered, thereby being subject to additional human rights violations. This was documented in Greece in particular, where the Moria fire left 12,000 people homeless, on the Canary Islands in Spain, as well as in northern France (e.g. Calais and Grande Synthe) where violent police evictions are regularly reported.

Detention: the new norm?

Despite strict EU requirements that detention should be a measure of last resort in line with the principles of necessity and proportionality, many applicants for international protection continue to be subject to outright detention and alternatives to detention are rarely applied in practice. In Malta for example, all applicants rescued at sea and disembarked were automatically detained without any form of individualised assessment, including vulnerable applicants such as minors. Several countries including Greece, Italy, Germany and the Netherlands introduced legislative changes expanding detention grounds. *De facto* detention also continued to be widely reported, in particular at borders and in the context of COVID-19. Nevertheless, the Court of Justice of the European Union (CJEU) provided important guidance in this regard by highlighting in *FMS and others* that Hungary's practice of automatically placing asylum-seekers in closed land-border transit zones during the entire asylum procedure constituted unlawful detention.[8]

Detention capacity fluctuated in different ways across Europe. In Sweden and Poland for example detention capacity was reduced, whereas it increased in Belgium, Bulgaria and Greece. In terms of occupancy, 2020 was marked by an overall decrease in the number of asylum seekers being detained, mainly due to COVID-19 and the impossibility of carrying out removal procedures. In Sweden for example, the number of persons being detained decreased by half in 2020 and the Migration Court of Appeal delivered several rulings restricting the detention of asylum seekers. In Spain, Detention Centres for Foreigners (CIEs) were closed for a period of six months from March to September 2020. In Portugal, persons applying for international protection at the Lisbon airport have been granted access to the territory since March 2020 instead of being detained in the airport facility. Asylum seekers have been released in several other countries on an *ad hoc* basis but the call on governments not to resort to detention during COVID-19 did not lead to substantive policy changes.

Detention conditions continued to deteriorate according to reports by civil society organisations and monitoring bodies in nearly all AIDA countries. The importance of establishing suitable and designated detention places for asylum seekers was reiterated by the European Committee for the Prevention of Torture (CPT) in Ireland and by the Supreme Court in Switzerland. The CPT also described the detention conditions in Malta as "institutional neglect" and flagged various concerns about detention conditions in France, while its report on the conditions of detention and pre-removal procedures in

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8   CJEU, Joined Cases C-924/19 PPU and C-925/19 PPU, *FMS and Others v Országos Idegenrendészeti Főigazgatóság Dél-alföldi Regionális Igazgatóság and Országos Idegenrendészeti Főigazgatóság*, 14 May 2020, see EDAL summary at: https://bit.ly/2U98smI.

Croatia has still not been made publicly available by the Croatian authorities. In Spain and Slovenia, the poor detention conditions resulted in riots, hunger strikes, self-harm, and related incidents. In Cyprus and Greece, the use of police stations for detention purposes raised concerns as the conditions and prolonged duration of the measures were inadequate. COVID-19 also resulted in increased delays in procedures and time in detention as a result of postponed returns. It also hindered access to legal aid and information in detention, in particular in Bulgaria, Croatia, France, Greece, Malta, Slovenia, Poland, Spain and Switzerland.

Neglecting the rights of beneficiaries of international protection

Beneficiaries of international protection encountered **significant constraints on their rights** in 2020. The provision of services and the access to the labour market and education were rendered more difficult during COVID-19. Significant **integration gaps** continue to be reported, in particular in Hungary, Poland, Serbia, Croatia, as well as Bulgaria which marked its seventh consecutive year of the national "zero integration" policy. However, positive measures aimed at regularising the situation of specific groups of foreigners were adopted in Portugal and Italy and enabled their access to healthcare and other services.

Family reunification procedures were halted due to administrative obstacles, travel restrictions and the closure of embassies in countries including Cyprus, France, Hungary and Switzerland. In Sweden, the possibility to limit the right to family reunification to core family members and to impose requirements on income and housing was proposed as part of Sweden's future migration policy. In Serbia, however, a family reunification process was carried out for the first time in 2020. Moreover, in France, the Council of State concluded in early 2021 that the access to family reunification procedures should not be limited in the context of a health crisis.

Lack of access to private housing for beneficiaries of international protection and prolonged stays in reception centres for asylum seekers during COVID-19 put an additional strain on national reception systems. In Greece, a legislative change forced status holders to leave reception centres within 30 days of the granting of protection, resulting in serious issues of homelessness and destitution. Similar issues are reported in France where beneficiaries of international protection leave the system with no accommodation and join informal camps. High rents in the private housing market, discrimination and landlords' distrust are other key obstacles for beneficiaries of international protection in countries including Malta, Poland, Romania, Spain, Cyprus, Ireland, Belgium, Croatia, or Hungary.

The increased focus of national authorities on cessation and withdrawal procedures was confirmed in 2020. Nationalities affected by these procedures include Ukrainians (e.g. in Portugal), Russians (e.g. in Poland or France), but also Syrians, Afghans and Iraqis (e.g. in Austria, Bulgaria and Germany). In Bulgaria, a new unlawful provision was introduced allowing the cessation or revocation of international protection if status holders fail within 30 days to renew their expired Bulgarian identity documents or to replace them if they have been lost, stolen or destroyed. In Switzerland, 2.4% out of a total of 3,400 Eritrean nationals saw their temporary admission ceased in 2020, but the Swiss Federal Administrative Court delivered a landmark judgment in which it ruled that national authorities must apply the principle of proportionality when deciding on the withdrawal of temporary admission.

What now?

The evidence gathered through AIDA is clear: despite the current EU asylum *acquis*, the rights of persons in need of international protection continue to be regularly violated across Europe, largely with impunity. The New Pact on Asylum and Migration, which was launched in September 2020, must unequivocally guarantee that the right to asylum and the principle of non-refoulement are at the core of the next generation of the Common European Asylum System (CEAS). It must address current

implementation gaps, invest in rights-based procedures, and promote solidarity and responsibility sharing *within* rather than *outside* the EU. This includes investing in particular in the quality of decision-making at first instance through the provision of sufficient resources and respect for procedural guarantees. At the same time, urgent action must be taken to ensure compliance with the current asylum rules, as this is a pre-requisite for the redressing of human rights violations and the establishment of a credible, fair and functioning EU asylum policy.

AIDA Country reports on the year 2020

- Austria, April 2021
- Belgium, April 2021
- Bulgaria, February 201
- Cyprus, April 2021
- *Germany, Forthcoming*
- Spain, March 2021
- France, March 2021
- Greece, June 2021
- Croatia, May 2021
- Hungary, April 2021
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- Romania, April 2021
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