



# aida

Asylum Information  
Database

Asylum Information Database

# Country Report

# *France*



## ACKNOWLEDGMENTS

This report was written and first updated by Claire Salignat, Project Officer at Forum réfugiés-Cosi and edited by ECRE. A second update was written by Véronique Planès-Boissac, legal consultant for Forum réfugiés-Cosi, with the support of several Forum réfugiés-Cosi staff members.

The findings presented in this report stem from background desk research, interviews with field practitioners and lawyers, as well as feedback from French NGOs and the Paris-based UNHCR office and finally statistics shared by the French authorities. These initial results were gathered and compiled between February and April 2013. A first update of the report was carried out between March and April 2014 and a second update from May 2014 to January 2015.

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Forum réfugiés- Cosi would also like to thank the European asylum, migration and integration Fund for co-financing its awareness-raising missions which allowed us to provide additional time to research and draft this report.

### **Caveat**

In France, asylum policies – including reception procedures - are largely under prefectural execution. This review of practice is mostly based on observations in the *départements* of Rhône, Allier and Alpes-Maritimes. However, the conclusions presented in this report on the concrete implementation of asylum policies have been cross-checked and triangulated with observations of these practices in other regions (in Paris for instance) and are supported by findings presented in other reports – be they official or drafted by civil society organisations.

In addition, since the particularly worrisome situation in Mayotte could not be covered in the previous report, in this update, we attempt to give an overview of the current legislative framework which applies to this French *département* in a separate note.

### **Important information**

At the time of writing, French parliamentarians were discussing a draft law on asylum with a view to reform the French asylum procedure and reception conditions for asylum applicants and transpose the final recast directives. This reform will undoubtedly have a far-reaching impact on the current law and practice described in this report. The current state of play of the asylum reform is therefore presented in a separate note (together with the table on the transposition of the CEAS directives).

**The information in this report is up-to-date as of 26 January 2015.<sup>2</sup>**

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<sup>1</sup> ANAFE stands for National Association of Border Assistance to Foreigners (Association Nationale d'Assistance aux Frontières pour les Etrangers)

<sup>2</sup> However, since most of the statistics included in this document are based on the OFPRA- Office Français pour la Protection des Réfugiés et des Apatrides (French Office for the Protection of Refugees and Stateless Persons)-annual report and the next report containing 2014 detailed statistics is due to be published in April 2015, most of the statistics still refer to the year 2013.

## The AIDA project

The AIDA project is jointly coordinated by the European Council on Refugees and Exiles (ECRE), Forum Réfugiés-Cosi, Irish Refugee Council and the Hungarian Helsinki Committee. It aims to provide up-to date information on asylum practice in 14 EU Member States (AT, BE, BG, DE, FR, GR, HU, IE, IT, MT, NL, PL, SE, UK) 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). Furthermore the project 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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## Statistics

	Total applicants in 2013 <sup>3</sup>	Refugee status (both instances)	Subsidiary protection (both instances)	Humanitarian Protection	Rejections (in-merit and admissibility)	Refugee rate	Subsidiary protection rate	Humanitarian rate	Rejection rate
	A	B	C	D	E	B/(B+C+D+E) %	C/(B+C+D+E) %	D/(B+C+D+E) %	E/(B+C+D+E) %
<b>Total numbers</b>	51488	9044	2282	0	40598	17.42%	4.39%	0%	78.19%
<b>Breakdown by countries of origin of the total numbers</b>									
<b>DR Congo</b>	4284	895	90	0	2820	24%	2%	0%	74%
<b>Kosovo</b>	3862	136	85	0	2819	4%	3%	0%	93%
<b>Albania</b>	3338	53	126	0	2045	2%	6%	0%	92%
<b>Bangladesh</b>	4355	544	46	0	3386	14%	1%	0%	85%
<b>Russia</b>	3064	1001	120	0	2208	30%	4%	0%	66%
<b>China</b>	2294	292	5	0	1838	14%	0.2%	0%	86%
<b>Guinea</b>	2041	509	74	0	1407	26%	4%	0%	70%
<b>Sri Lanka</b>	2395	931	48	0	2163	30%	1%	0%	69%
<b>Georgia</b>	1994	145	54	0	1519	9%	3%	0%	88%
<b>Pakistan</b>	1683	144	28	0	1711	8%	1%	0%	91%
<b>Others<sup>4</sup></b>									
<b>Syria</b>	878	497	364	0	46	55%	40%	0%	5%
<b>Afghanistan</b>	466	230	421	0	250	25%	47%	0%	28%
<b>Serbia</b>	379	72	14	0	399	15%	3%	0%	82%

Source: OFPRA Activity Report 2013 (Annex 3)

<sup>3</sup> Including subsequent applications but excluding accompanying children.

<sup>4</sup> Other main countries of origin of asylum seekers in the EU in 2013. Detailed statistics for 2014 were not available at the time of writing and are expected by end of April 2015. The statistics for France will be updated as soon as they become available.



**Table 2: Gender/age breakdown of the total numbers of applicants in 2013**

	Number	Percentage
<b>Total number of applicants</b>	<b>51488</b>	
<b>Men</b>	33643	65.34%
<b>Women</b>	17845	34.66%
<b>Unaccompanied children</b>	367	0.71%

Source: OFPRA Activity Report 2013 (Annex 3 and 4)

**Table 3: Comparison between first instance and appeal decision rates in 2013**

	First instance		Appeal	
	Number	Percentage	Number	Percentage
<b>Total number of decisions</b>	46 531		38540	
<b>Positive decisions</b>				
<b>Total</b>	5933	12.75%	5450	14%
<i>Refugee Status</i>	4827	10.37%	4271	11%
<i>Subsidiary protection</i>	1106	2.37%	1179	3%
<i>Hum/comp protection</i>	0	0%	0	0%
<b>Negative decisions</b>	40598	87.24%	32843	85%

Source: OFPRA Activity Report 2013 (Annex 3); National Court of Asylum (CNDA), Activity Report 2013

**Table 4: Applications processed under an accelerated procedure in 2013**

	Number	Percentage
<b>Total number of applicants</b>	51488	
<b>Number of applications treated under an accelerated procedure at first instance</b>	13254	25.74%

Source: OFPRA Activity Report 2013 (Annex 13)

**Table 5: Subsequent applications submitted in 2013**

	Number of subsequent applications submitted
<b>Total number</b>	5790
<b>Top 5 countries of origin</b>	
<b>Bangladesh</b>	24.8%
<b>Sri Lanka</b>	10.8%
<b>Russia</b>	7.9%
<b>Kosovo</b>	6%
<b>Armenia</b>	5.8%

Source: OFPRA Activity Report 2013 (p12)

## Overview of the legal framework and practice

### **Main legislative acts relevant to asylum procedures, reception conditions and detention**

<b>Title in English</b>	<b>Original title</b>	<b>Abbreviation</b>	<b>Weblink</b>
Code of Entry and Residence of Foreigners and of the Right to Asylum	Code de l'entrée et du séjour des étrangers et du droit d'asile	Ceseda	<a href="http://www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT00006070158&amp;dateTexte=20130416">http://www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT00006070158&amp;dateTexte=20130416</a>
Code of Administrative Justice	Code de justice administrative	CJA	<a href="http://www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT00006070933">http://www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT00006070933</a>
Code of Social Action and Families	Code de l'action sociale et des familles	CASF	<a href="http://www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT00006074069">http://www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT00006074069</a>
Labour Code	Code du travail		<a href="http://www.legifrance.gouv.fr/affichCode.do;jsessionid=A9C9008E3F2EA44EB63EDD149819D40B.tpdjo14v_1?idSectionTA=LEGISCTA000006195895&amp;cidTexte=LEGITEXT000006072050&amp;dateTexte=20150108">http://www.legifrance.gouv.fr/affichCode.do;jsessionid=A9C9008E3F2EA44EB63EDD149819D40B.tpdjo14v_1?idSectionTA=LEGISCTA000006195895&amp;cidTexte=LEGITEXT000006072050&amp;dateTexte=20150108</a>

### **Main implementing decrees and administrative guidelines and regulations relevant to asylum procedures, reception conditions and detention.**

<b>Title in English</b>	<b>Original title</b>	<b>Weblink</b>
Circular on the implementation of Dublin and accelerated procedures	Circulaire IOCL1107084C du 1er avril 2011 relative au droit d'asile (Règlement Dublin et procédures prioritaires)	<a href="http://www.interieur.gouv.fr/fr/Media/Immigration/Files/Circulaire-IOCL1107084C-du-1er-avril-2011-relative-au-droit-d-asile.-Application-du-reglement-CE-n-343-2003-du-Conseil-du-18-fevrier-2003-dit-Reglement-Dublin-Mise-en-oeuvre-des-procedures-d-examen-prioritaire-de-certaines-demandes-d-asile-ment">http://www.interieur.gouv.fr/fr/Media/Immigration/Files/Circulaire-IOCL1107084C-du-1er-avril-2011-relative-au-droit-d-asile.-Application-du-reglement-CE-n-343-2003-du-Conseil-du-18-fevrier-2003-dit-Reglement-Dublin-Mise-en-oeuvre-des-procedures-d-examen-prioritaire-de-certaines-demandes-d-asile-ment</a>
Circular on the management of the emergency scheme for asylum seekers	Circulaire n° IOCL1113932C du 24 Mai 2011 sur le pilotage du dispositif d'hébergement d'urgence	<a href="http://circulaire.legifrance.gouv.fr/pdf/2011/05/cir_33217.pdf">http://circulaire.legifrance.gouv.fr/pdf/2011/05/cir_33217.pdf</a>
Circular on the mission of asylum seekers' reception centres	Circulaire IOC/L/11/14301/C du 19 août 2011 relative aux missions des centres d'accueil pour demandeurs d'asile	<a href="http://www.interieur.gouv.fr/content/download/.../40_IOCL1114301C.pdf">www.interieur.gouv.fr/content/download/.../40_IOCL1114301C.pdf</a> <a href="http://circulaire.legifrance.gouv.fr/pdf/2011/08/cir_33657.pdf">http://circulaire.legifrance.gouv.fr/pdf/2011/08/cir_33657.pdf</a>
Circular on the implementation of alternatives to administrative detention of families	Circulaire INTK1207283C du 6 juillet 2012 sur la mise en œuvre de l'assignation à résidence prévue à l'article en alternative au placement des familles en rétention administrative	<a href="http://circulaire.legifrance.gouv.fr/pdf/2012/09/cir_35851.pdf">http://circulaire.legifrance.gouv.fr/pdf/2012/09/cir_35851.pdf</a>

Decision on the list of associations entitled to send representatives to access administrative detention facilities	Décision INTV1305938S du 1er mars 2013 fixant la liste des associations humanitaires habilitées à proposer des représentants en vue d'accéder aux lieux de rétention	<a href="http://www.interieur.gouv.fr/Pu_blications/Textes-officiels/BOMI/Decision-du-1er-mars-2013-fixant-la-liste-des-associations-humanitaires-habilitees-a-proposer-des-representants-en-vue-d-acceder-aux-lieux-de-retention">http://www.interieur.gouv.fr/Pu_blications/Textes-officiels/BOMI/Decision-du-1er-mars-2013-fixant-la-liste-des-associations-humanitaires-habilitees-a-proposer-des-representants-en-vue-d-acceder-aux-lieux-de-retention</a>
Decree on the access of associations to administrative detention facilities	Décret INTV1406903D n° 2014-676 du 24 juin 2014 relatif à l'accès des associations humanitaires aux lieux de rétention	<a href="http://www.legifrance.gouv.fr/af_fichTexte.do?cidTexte=JORFT EXT000029136361&amp;dateTexte=20150101">http://www.legifrance.gouv.fr/af_fichTexte.do?cidTexte=JORFT EXT000029136361&amp;dateTexte=20150101</a>
Circular on third country nationals who voluntarily obstruct their identification with unusable fingerprints	Circulaire IMI/A /1000106/C du 2 avril 2010 relative à la jurisprudence du Conseil d'État en matière de refus d'admission au séjour au titre de l'asile - sur les étrangers qui rendent volontairement impossible l'identification de leurs empreintes digitales	<a href="http://circulaire.legifrance.gouv.fr/pdf/2010/05/cir_31071.pdf">http://circulaire.legifrance.gouv.fr/pdf/2010/05/cir_31071.pdf</a>
Decision on the list of associations entitled to propose representatives for access to waiting areas	Arrêté INTV1222472A du 5 juin 2012 fixant la liste des associations humanitaires habilitées à proposer des représentants en vue d'accéder en zone d'attente	<a href="http://www.legifrance.gouv.fr/af_fichTexte.do?cidTexte=JORFT EXT000025984047&amp;dateTexte=&amp;categorieLien=id">http://www.legifrance.gouv.fr/af_fichTexte.do?cidTexte=JORFT EXT000025984047&amp;dateTexte=&amp;categorieLien=id</a>
Circular on the organisation of education for migrants children	Circulaire REDE1236614C n° 2012-143 du 2 octobre 2012 sur l'organisation des Centres Académiques pour la scolarisation des nouveaux arrivants et des enfants du voyage (Casnav)	<a href="http://www.education.gouv.fr/pid25535/bulletin_officiel.html?cid_bo=61527">http://www.education.gouv.fr/pid25535/bulletin_officiel.html?cid_bo=61527</a>
Circular on the missions of asylum seekers reception centres	Circulaire N° DPM/CI3/2007 du 3 mai 2007 relative aux missions des centres d'accueil pour demandeurs d'asile, aux modalités d'admission dans ces centres et de sortie de ces centres et au pilotage du dispositif	<a href="http://www.gisti.org/IMG/pdf/norsann073317c.pdf">http://www.gisti.org/IMG/pdf/norsann073317c.pdf</a>
Circular on the temporary waiting allowance (partly cancelled by the Council of State decision of 17 april 2013)	Circulaire N° IMIM0900085C du 3 novembre 2009 relative à l'allocation temporaire d'attente (partiellement censurée par l'arrêt du 17 avril 2013 du Conseil d'Etat)	<a href="http://circulaire.legifrance.gouv.fr/pdf/2009/11/cir_29821.pdf">http://circulaire.legifrance.gouv.fr/pdf/2009/11/cir_29821.pdf</a>
Decree setting the technical characteristics of the communication means to be used at the CNDA	Arrêté NOR: JUSE1314361A du 12 juin 2013 pris pour l'application de l'article R. 733-20-3 du code de l'entrée et du séjour des étrangers et du droit d'asile et fixant les caractéristiques techniques des moyens de communication audiovisuelle susceptibles d'être utilisés par la Cour nationale du droit d'asile	<a href="http://www.legifrance.gouv.fr/af_fichTexte.do?jsessionid=?cidTexte=JORFTEXT000027563257&amp;dateTexte=&amp;oldAction=rechJO&amp;categorieLien=id">http://www.legifrance.gouv.fr/af_fichTexte.do?jsessionid=?cidTexte=JORFTEXT000027563257&amp;dateTexte=&amp;oldAction=rechJO&amp;categorieLien=id</a>
Decree on the compensation for the missions of Legal aid carried out by lawyers at the CNDA	Décret n° 2013-525 du 20 juin 2013 relatif aux rétributions des missions d'aide juridictionnelle accomplies par les avocats devant la Cour nationale du droit d'asile et les juridictions administratives en matière de contentieux des étrangers	<a href="http://www.legifrance.gouv.fr/af_fichTexte.do?jsessionid=?cidTexte=JORFTEXT000027591918&amp;dateTexte=&amp;oldAction=rechJO&amp;categorieLien=id">http://www.legifrance.gouv.fr/af_fichTexte.do?jsessionid=?cidTexte=JORFTEXT000027591918&amp;dateTexte=&amp;oldAction=rechJO&amp;categorieLien=id</a>

Circular on the modalities for the assistance provided to foreign unaccompanied minors: national scheme for shielding , evaluating and orientating	Circulaire du 31 mai 2013 relative aux modalités de prise en charge des jeunes isolés étrangers: dispositif national de mise à l'abri, d'évaluation et d'orientation NOR: JUSF1314192C	<a href="http://www.textes.justice.gouv.fr/art_pix/JUSF1314192C.pdf">http://www.textes.justice.gouv.fr/art_pix/JUSF1314192C.pdf</a>
Decree of 16 August 2013 on the procedure related to the CNDA	Décret n°2013-751 du 16 août 2013 relatif à la procédure applicable devant la Cour nationale du droit d'asile	<a href="http://legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000027845620&amp;categorieLien=id">http://legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000027845620&amp;categorieLien=id</a>

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

### ***The previous update of the report was published in May 2014.***

Two draft laws on asylum reform and the stay and removal of foreign nationals were introduced in July 2014.<sup>5</sup>

### **Procedure**

- Statistics: according to the data published on 15 January 2015 by the Ministry of Interior, 59 025 first asylum applications were lodged in France in 2014 (a slight decrease compared to 2013). In total, 14 564 decisions granting international protection (including 3 502 subsidiary protections) were taken by both OFPRA and CNDA <sup>6</sup>(a 27,4 % increase compared to the number of protection statutes granted in 2013, most notably subsidiary protections).
- Modification to the list of safe countries of origin: in a decision of 16 December 2013, the Management Board of OFPRA added Albania, Georgia and Kosovo to the list of safe countries of origin.<sup>7</sup> In a decision of 10 October 2014,<sup>8</sup> the Council of State removed Kosovo from this list but maintained Albania and Georgia.
- Quality control initiative: in the framework of an agreement signed between OFPRA and UNHCR, a first joint evaluation was undertaken between January and May 2014, focusing on a representative sample of asylum decisions (201 case files) taken during the first semester 2013. The results of this first quality control initiative were published by OFPRA in October 2014.<sup>9</sup> Even though no major difference was noticed in the treatment, by OFPRA of the asylum applications under the accelerated procedure and under the regular procedure, important shortcomings were highlighted concerning one fifth of the case files under review. In particular the way interviews were conducted in these cases showed that no complementary questions were asked by OFPRA protection officers when the arguments of the asylum seeker were considered to be insufficiently consistent or credible. Also the legal analysis of the asylum application by OFPRA protection officers was not always sufficiently thorough. Proofs (such as certificates, judgments issued by foreign courts...) were insufficiently taken into account. In addition, decisions were often too short and not sufficiently reasoned. Finally, the reasoning appeared to focus on the establishment of past facts of persecution rather than on the well-founded fear in case of return to the country of origin.

### **Reception**

Temporary financial allowance (ATA): Article 31 of the rectified Finance Law for 2014<sup>10</sup> amends the provisions of the Labour Code regarding asylum seekers entitled to benefit from the ATA. The adoption of these legal provisions puts an end to the litigation brought before the Council of State and the Court of Justice of the European Union regarding the entitlement of asylum seekers channelled under the

<sup>5</sup> See separate note on the asylum reform.

<sup>6</sup> Cour Nationale du Droit d'Asile (National Court for Asylum Right)

<sup>7</sup> Decision of 16 December 2013 modifying the list of safe countries of origin (*Décision du 16 décembre 2013 modifiant la liste des pays d'origine sûrs*), [JORF n°0301](#) of 28 december 2013 (page 21652).

<sup>8</sup> Council of State, 10 October 2014 (Conseil d'Etat, [Forum réfugiés-Cosi et autres c. OFPRA, nos 375474, 375920](#)).

<sup>9</sup> OFPRA, Quality Control, First evaluation carried out between January and May 2014 on the basis of decisions notified during the first semester 2013 ([Contrôle qualité. Premier exercice d'évaluation \(réalisé entre janvier et mai 2014 sur des décisions notifiées au cours du premier semestre 2013\)](#)), 17 September 2014.

<sup>10</sup> Rectified Finance Law of 8 August 2014 (Loi de finance rectificative pour 2014, n°2014-891).

accelerated procedure and under the Dublin procedure to benefit from such reception conditions. In practice, the report<sup>11</sup> from the Human Rights Commissioner of the Council of Europe states that asylum seekers channelled under the accelerated procedure and under the Dublin procedure still do not systematically benefit from such reception conditions.

### **Detention**

- In a decision from 30 July 2014,<sup>12</sup> the Council of State considered that, in certain cases, an asylum seeker held in administrative detention could lodge an asylum application after the 5 day delay: if he or she could not lodge his or her asylum application because he or she could not benefit from an effective legal and linguistic assistance; or if, in order to substantiate his or her case, he or she alleges facts which happened after this deadline.
- In a recent information note,<sup>13</sup> the Minister of Interior calls for an individual assessment of each case by the prefects in order to decide precisely whether the asylum seeker in administrative detention should be delivered a temporary residence permit or not (and therefore released from detention in case of issuance). Even in the case where a temporary residence permit is refused to the asylum seeker (and as a consequence he or she is channelled into the accelerated procedure), the continued placement in administrative detention should not be automatic and a proportionality and necessity test should be applied with due consideration given to alternatives to detention such as house arrest.

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<sup>11</sup> Report of Human Rights Commissioner of the Council of Europe after his country visit in France from 22 to 26 September 2014, released on 17 February 2015.

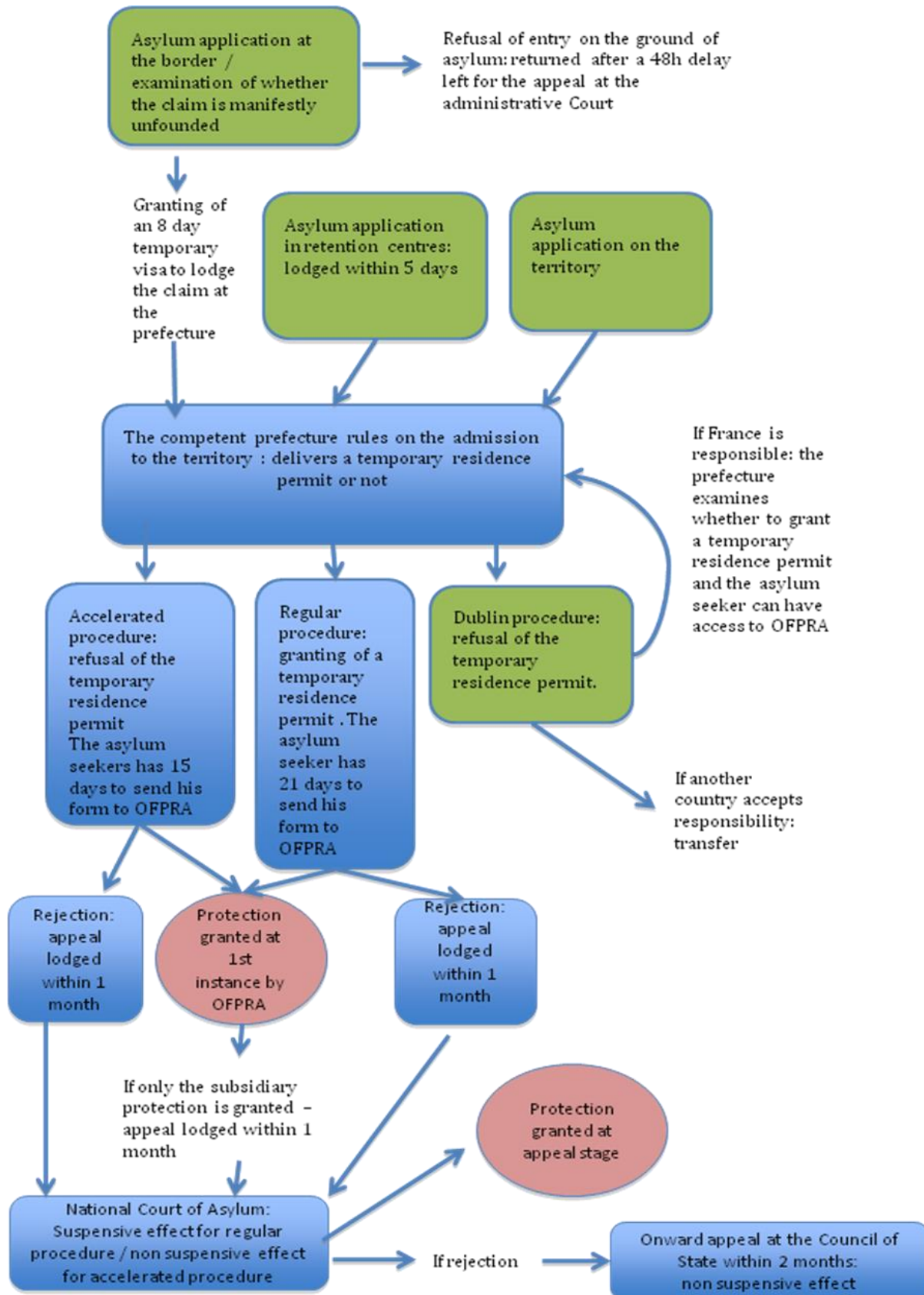
<sup>12</sup> Council of State decision, n°375430 30 July 2014 ([Conseil d'Etat, 30 juillet 2014, n°375430](#)).

<sup>13</sup> Information Note of 23 December 2014 following the Council of State decision n°375430 of 30 July 2014 ("[Note d'information du 23 décembre 2014 relative aux demandes d'asile présentées par des étrangers placés en rétention administrative en vue de leur éloignement. Suites à donner à la décision n°375430 du Conseil d'Etat du 30 juillet 2014, NOR : INTV1430936N](#) »).

# Asylum Procedure

## A. General

### 1. Flow Chart







#### 4. Short overview of the asylum procedure

An asylum application in France may be lodged either on the territory (obtaining the application form from the prefecture) or at the border (in case the asylum seeker does not possess valid travel documents to enter the territory, at any time while in the waiting zone) or from an administrative detention centre (in case the person is already being detained for the purpose of removal).

The examination of an asylum application lodged on the territory in France involves three main stages:

- (1) The Prefectures examine whether France is responsible for the examination of the claim by applying the criteria of the Dublin Regulation and also decide whether to channel an application into the regular or the accelerated procedure
- (2) The French Office for the Protection of Refugees and Stateless People (OFPRA) undertakes an examination on the merits of the asylum application
- (3) The National Court of Asylum (CNDA) examines a potential appeal against a negative decision of OFPRA or against a decision of OFPRA granting subsidiary protection if the asylum seeker wishes to obtain refugee status.

In order to lodge an asylum application in France, asylum seekers must present themselves to the local prefecture and request a temporary residence permit on asylum grounds. If such a permit is granted, the person enters into the regular asylum procedure and has to complete their application form (in French) and send it to OFPRA within a 21 calendar day-period.

The Prefecture may refuse to grant a temporary residence permit for three reasons leading to the decision to channel the application into an accelerated procedure: a) the foreign national seeking asylum is a national of a country considered to be a safe country of origin (this is currently the case for 16 countries<sup>14</sup>); b) or the presence of the foreign national in France constitutes a serious threat to public order, public safety or state security; c) or the asylum request is based on a deliberate fraud or constitutes an abuse of the asylum procedure, or has only been made to prevent a notified or imminent removal order. In these cases, an accelerated procedure means that the person has 15 calendar days to lodge their application with OFPRA and that OFPRA has, in theory, 15 days to review and decide on the case. The delays are even more limited for both the asylum seeker and OFPRA if the person is held in administrative detention. The accelerated procedure also entails fewer social rights and fewer procedural guarantees than under the regular procedure.

Asylum seekers under a Dublin procedure do not receive a temporary residence permit either. They will not get access to OFPRA if another State accepts responsibility for their asylum claim.

The Prefectures as well as the first instance determination authority (OFPRA) are under the administrative supervision of the Ministry of Interior.

OFPRA is an administrative authority<sup>15</sup> specialised in asylum and responsible for examining and granting, refusing, or withdrawing refugee status or subsidiary protection. It is independent in taking individual decisions on asylum applications and does not take instruction from the Ministry of Interior. A single procedure applies and includes a possibility for a person granted subsidiary protection to lodge an appeal to the CNDA in order to obtain refugee status. The French legislation provides for quasi-systematic personal interviews of applicants at first instance (four limitative grounds are set in the law for omitting a personal interview). All personal interviews are conducted by OFPRA. At the end of the

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<sup>14</sup> Albania, Armenia, Benin, Bosnia-Herzegovina, Cape Verde, Georgia, Ghana, India, FYROM, Mauritius, Moldova, Mongolia, Montenegro, Senegal, Serbia and Tanzania (as of January 2015).

<sup>15</sup> Strictly speaking, OFPRA is not a 'first instance' but an administrative authority which takes the first decision on the asylum application.

interview, the protection officer writes an account and a draft decision, which is then submitted for validation to their section manager.

The National Court of Asylum (CNDA) is the Administrative Court handling appeals against first instance negative decisions of the Director General of OFPRA. This appeal must be lodged within 30 calendar days after the notification of the OFPRA decision to the applicant. The appeal has an automatic suspensive effect for applicants under the regular procedure. However, it does not carry a suspensive effect for asylum seekers under an accelerated procedure and this appeal does not prevent the implementation of a removal order in those cases. The National Court of Asylum examines the appeal on facts and points of law. It can annul (therefore granting subsidiary protection status or refugee status) or confirm the negative decision of OFPRA.

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

A specific border procedure to request an admission into the country on asylum grounds is provided by French legislation for persons arriving on French territory through airports or harbours. The Border division of OFPRA interviews the asylum seekers and formulates an opinion. This opinion is communicated to the Ministry of Interior, which takes the final decision to authorise entry into France or not. In theory, this interview is conducted to check whether the given facts are manifestly irrelevant or not.

If the asylum application is not considered to be manifestly unfounded, the foreign national is authorised to enter French territory and is given an 8-day temporary visa (safe passage). Within this time frame, upon the request of the asylum seeker, the competent prefectures will examine whether to grant the person a temporary residence permit or whether to channel the application into the accelerated procedure. OFPRA then processes the asylum application as any other asylum application lodged directly on the territory.

If the asylum application is considered manifestly unfounded, the Ministry of Interior refuses to grant entry to the foreigner with a reasoned decision. The person can lodge an appeal against this decision before the Administrative Court within a 48-hour deadline. If this appeal fails, the foreigner can be expelled from the country.

## B. Procedures

### 1. Registration of the Asylum Application

#### Indicators :

- Are specific time limits laid down in law for asylum seekers to lodge their application?  
 Yes       No
- If so, and if available specify:
  - o the time limit at the border:                      none (at any time while in the waiting zone)
  - o the time limit on the territory:                      none but lateness can result in the claim being considered as abusive
  - o the time limit in detention:                      5 days (with exceptions)
- 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

An asylum application in France may be lodged either on the territory (obtaining the application form from the prefecture) or at the border (in case the asylum seeker does not possess valid travel documents to enter the territory, at any time while in the waiting zone) or from an administrative detention centre (in case the person is already being detained for the purpose of removal).

In order to lodge an asylum application in France, asylum seekers must present themselves to the local prefecture<sup>16</sup> and request a temporary residence permit (*autorisation provisoire de séjour*) on asylum grounds during an appointment which has to take place within a maximum of 15 days, in theory.<sup>17</sup> Asylum seekers must provide an address (*domiciliation*).<sup>18</sup> It is only once the temporary residence permit has been granted that a form to formally lodge their asylum application is handed over. The asylum seeker has 21 calendar days to fill in the application form and send it by registered mail to OFPRA (Office Français de Protection des Réfugiés et Apatrides /French Office for the Protection of Refugees and Stateless Persons), a state institution under the administrative supervision of the Ministry of Interior that is responsible for the registration and examination of the asylum applications.

The prefecture may refuse to grant a temporary residence permit on three grounds: a) the asylum seeker is a national of a country considered to be a safe country of origin (see the Section on safe country concepts); b) the asylum seeker constitutes a serious threat to public order, public safety or state security; c) the asylum application is based on a deliberate fraud or constitutes an abuse of the asylum procedure, or has only been made to prevent a notified or imminent removal order. Asylum seekers who do not obtain a temporary residence permit are channelled into an accelerated procedure, where they only have 15 working days to file their application to the prefecture which will in turn transmit the form to OFPRA. The delays are even more limited for both the asylum seeker and OFPRA if the person is held in administrative detention (see details in the chapter "Detention of Asylum Seekers", in particular the section "Procedural safeguards and judicial review").

The first instance determination authority in France is OFPRA. When OFPRA receives a complete application within the required deadlines, it registers it and sends a confirmation letter to the applicant. If not, OFPRA refuses to register the application. Such a refusal can be challenged before the Administrative Court of Melun. This remedy can be useful if a "valid" excuse can be argued (e.g. health problems during the period).

French law does not lay down strict time limits for asylum seekers to lodge an application for asylum after entering the country. In practice, the late submission of an asylum application can be considered as an abuse of asylum procedures and can result in the treatment of the application under the accelerated procedure. Jurisprudence from several appeal courts emphasises, however, that late submission of an asylum application does not constitute in itself an element proving an abuse of asylum procedures.<sup>19</sup> It should also be noted that in administrative detention centres, it is indicated to the persons held that their asylum application will not be admissible if it is lodged more than five calendar days after the notification of their rights read upon arrival.<sup>20</sup>

A specific border procedure to request an admission into the country on asylum grounds is provided by French legislation<sup>21</sup> for persons arriving on French territory through airports or harbours. The request

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<sup>16</sup> Since 2009, the authority in charge of taking fingerprints and of granting (or refusing) the temporary residence permit for asylum seekers is the prefecture head of the region. This rule has several exceptions for the following regions which have several prefectures responsible for this step in the procedure: Ile-de-France, Alsace, Corsica, Pays de la Loire, Provence Alpes Cote d'Azur, Rhone Alpes and Bourgogne. See additional information on the Ministry of Interior [website](#).)

<sup>17</sup> As set out in Article R. 742-1 of Ceseda (Code of Entry and Residence of Foreigners and of the Right to Asylum).

<sup>18</sup> The address provided can be a personal address or a postal address through a registered NGO.

<sup>19</sup> See for instance the Administrative Court of Appeal of Bordeaux decision n°08BX025815, 26 March 2009.

<sup>20</sup> Article L. 551-3 of Ceseda (Code of Entry and Residence of Foreigners and of the Right to Asylum).

<sup>21</sup> Paragraphs of Article L. 221 of Ceseda.

must be taken into account and the Border Police has to take a statement of the request for an admission on asylum grounds. The person is held in a waiting zone for an initial duration of 4 days.<sup>22</sup> The authorities check whether the asylum application is manifestly unfounded or not. There is no strict deadline to apply for asylum when applicants are waiting for their admission at the border, the person may apply for asylum at any time during the time they are held in the waiting zone.

Even though this is exceptional, there are occasional reports of people simply being refused entry at the border. For example, in January 2014, the press reported that two young Guineans were denied entry to French territory upon their arrival (in Marseille) on a cargo ship from Dakar. ANAFE reported that the border police had refused to register their asylum application and refused their admission to the territory. These young Guineans were then taken back to the ship, without having been placed in the waiting zone and without benefiting from the “clear day” notice period (24 hours during which the person cannot be returned). This *refoulement* ended dramatically as these two boys jumped into the sea to escape this forced return and one of them drowned.<sup>23</sup>

More generally, several difficulties can be highlighted in practice for asylum seekers with regards to the registration of their claim on the territory. For instance, the requirement to obtain a temporary residence permit from the prefecture before they can lodge their asylum application with OFPRA in fact imposes an additional delay for asylum seekers as some prefectures do not respect the prescribed time limit of 15 days<sup>24</sup> between the filing of the required documents and the appointment at the prefecture to deliver the temporary permit. Indeed, due to staff shortages, some prefectures can take several weeks to several months before granting an appointment to applicants.<sup>25</sup> An official report from the General Controllers has described that asylum seeking families in Paris can only lodge their asylum claim after a waiting period of 7 and a half months. In 2013, 4 months were necessary to get an appointment to obtain a ‘domiciliation’ address; an additional 3 months to get an appointment at the prefecture to request the temporary residence permit and another 3 weeks to receive the permit and to eventually be handed the asylum application form.<sup>26</sup>

Similarly, the two members of Parliament in charge of the report on the reform of the asylum procedure have highlighted that in 2013, the waiting period to obtain an appointment at the prefecture of Essone was 2 days, while it was 16 days in Moselle, 20 days in Seine-Saint-Denis and 99 days in Lille.<sup>27</sup>

In July 2012, UNHCR noted that “it is necessary that competent authorities solve the problem of “domiciliation” in some departments, the postal address required by the prefectures for filing an asylum application and to be able to contact the applicant until he or she is admitted to a reception centre. This process is sometimes so long and complicated that asylum seekers are not able to access OFPRA and do not get any material support for many months, in contradiction with the European Directive on Reception Conditions of 27 January 2003”.<sup>28</sup> Even though these delays do not pertain to the registration of the asylum application per se, they can have a dramatic impact on the time spent before access to the asylum procedure is really effective.

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<sup>22</sup> Article L. 221-3 of Ceseda.

<sup>23</sup> ANAFE “[Zone d’attente de Marseille / Mort d’un jeune Guinéen dans le Port de Marseille : l’Anafé demande une enquête](#)”. (Marseille waiting area/ death of a young Guinean in the port of Marseille: ANAFE requests an inquiry), 13 January 2014.

<sup>24</sup> As set for in Article R. 742-1 of Ceseda.

<sup>25</sup> [Information report n°130](#), prepared by MM. Jean-Yves Leconte et Christophe-André Frassa, Sénat, 14 November 2012.

<sup>26</sup> [Report](#) from the General controllers of social matters, the General controller of finance and the General controller of the administration, “Housing and the financial assistance to asylum seekers”, Published on 12 September 2013.

<sup>27</sup> [Report](#) on the reform of the asylum procedure, Valérie Létard and Jean-Louis Touraine, 28 November 2013.

<sup>28</sup> Soumission du Haut Commissariat des Nations Unies pour les réfugiés pour la compilation établie par le Haut-Commissariat aux droits de l’Homme, Examen périodique universel, [Rapport sur la France](#), (Submission of UNHCR for the Compilation established by the OHCHR, Universal Periodic Review, French Report), July 2012

Finally, the requirement to write the asylum application in French is a serious constraint. For asylum seekers who do not benefit from any support through the procedures and who may face daily survival concerns, the imposed period of 21 days (or 15 days for the accelerated procedure) is very short.

#### Note / Asylum application lodged from administrative detention centres

For people seeking asylum in administrative detention, it is difficult to prepare such an application in a place of confinement: there is very limited time to develop the reasons for the claim, no free access to an interpreter to write the application in French, dysfunctions during the transmission from the centre to OFPRA which jeopardise the confidentiality, stressful conditions prior to the interview with OFPRA, difficulties to locate and gather the necessary evidence, etc. The administration requires that the person held lodges their application for asylum within 5 days after placement in administrative detention (the deadline is set at midnight on the 5<sup>th</sup> day). In a decision from 30 July 2014,<sup>29</sup> the Council of State considered that, in certain cases, the asylum seeker held in administrative detention could lodge an asylum application after the 5 day delay: if he or she could not lodge his or her asylum application because he or she could not benefit from an effective legal and linguistic assistance; if, in order to substantiate his or her case, he or she alleges facts which happened after this deadline.

OFPRA has then 96 hours<sup>30</sup> to examine the application. This extremely brief period of time drastically reduces the chances of benefiting from an in-depth examination of the claim. If most of the foreigners who apply for asylum while in administrative detention are channelled into the accelerated procedure, the practice might change following the above mentioned Council of State decision. Indeed, in a recent information note,<sup>31</sup> the Minister of Interior calls for an individual assessment of each case by the prefects in order to decide precisely whether the asylum seeker in administrative detention should be delivered a temporary residence permit (and therefore released from detention and channelled into the regular procedure) or not (and therefore channelled into the accelerated procedure which does not provide for a suspensive remedy before the CNDA (National Court of Asylum)). If France is yet to change its legislation in order to draw lessons from the European Court of Human Rights' decision in the *IM vs. France* case,<sup>32</sup> practice might improve in this regard.

## 2. Regular procedure

### General (scope, time limits)

#### Indicators:

- Time limit set in law for the determining authority to make a decision on the asylum application at first instance (in months): 6 months but not binding
- Are detailed reasons for the rejection at first instance of an asylum application shared with the applicant in writing?  Yes  No
- As of 31 December 2013, the number of cases for which no final decision (including at first instance) had been taken one year after the asylum application was registered: 17 000 at 1<sup>st</sup> instance and 21 837 at the CNDA stage

<sup>29</sup> Council of State, 30 July 2014 ([Conseil d'Etat, 30 juillet 2014, n°375430](#)).

<sup>30</sup> Article R 723-3 of Ceseda. In 2013, the median period for a decision under the accelerated procedure in administrative detention was of 5 days (OFPRA, [2013 Activity report](#), 28 April 2014).

<sup>31</sup> Information Note of 23 December 2014 following the Council of State decision n°375430 of 30 July 2014 (*Note d'information du 23 décembre 2014 relative aux demandes d'asile présentées par des étrangers placés en rétention administrative en vue de leur éloignement. Suites à donner à la décision n°375430 du Conseil d'Etat du 30 juillet 2014, NOR : INTV1430936N*).

<sup>32</sup> European Court of Human Rights, [I.M. v. France](#) (application no. 9152/09), 2 February 2012.

The first instance authority in France, OFPRA (French Office for the Protection of Refugees and Stateless People) is a specialised institution<sup>33</sup> in the field of asylum, under the administrative supervision of the Ministry of Interior since November 2007. The law does not set any strict time limit for OFPRA to make a decision under the regular procedure. When a decision cannot be taken within six months, OFPRA has to inform the applicant within fifteen calendar days prior to the expiration of that period.<sup>34</sup> However, under accelerated procedures, the Office is supposed to decide within fifteen calendar days after the asylum application is submitted. This period is reduced to 96 hours if the asylum seeker is held in administrative detention.<sup>35</sup> There is no specific consequence if the Office does not comply with these time limits. In practice, some asylum seekers under the accelerated procedure wait for months before receiving the decision from OFPRA. The (total) average length for OFPRA to make a decision was 195 days in 2014<sup>36</sup> (average for all types of procedures).<sup>37</sup> The average length of the appeal procedure at the Court of Asylum (CNDA) was 8 months and 26 days at the end of December 2013.<sup>38</sup>

At OFPRA level, there was a backlog of 17 000 cases on 31 December 2013. These files were on average 156 days old (including a 3 months period that cannot be shortened<sup>39</sup>). At the appeal stage, there was a stock of 21 837 pending cases on 31 December 2013. Most of the files dated from 2013 (19 025), some dated from 2012 (2352) but a few were pending since 2010 (76) and even 2008 (7).<sup>40</sup> In 2013, the productivity of OFPRA's case workers increased by 4%: each fulltime case worker examined 390 cases during the year (compared to 375 in 2012).<sup>41</sup> 400 cases per case worker are expected in 2014.<sup>42</sup> The global recognition rate for 2014 is 28% (16.8% of the OFPRA decisions and 14.9% of the CNDA decisions have resulted in the granting of a protection).<sup>43</sup> The global protection rate for unaccompanied minors was 56.7% for 2013.<sup>44</sup>

No system in France is currently provided for giving priority<sup>45</sup> to some applications (e.g. vulnerable persons). There is an informal possibility to ask for a quick summon to a hearing before the CNDA but this is granted on a case-by-case basis in exceptional circumstances. As a general rule, NGOs often lack resources to provide the yet very crucial specific support for these vulnerable persons. Resettled refugees (under a UNHCR mandate) must also lodge an asylum application, like other categories of asylum seekers. This procedure is, however, usually much faster than for regular asylum seekers.

There is no official accelerated examination procedure or a prioritised examination procedure as part of the regular procedure in France. It is, however, important to note that in practice, OFPRA has already decided to accelerate the examination of claims from a specific nationality. For instance, from 22 July 2013 to 2 August 2013, OFPRA carried out a decentralised mission to Lyon where 14 protection officers interviewed more than 300 asylum seekers, mostly from Albania or Kosovo.<sup>46</sup> These interviews took place at the prefecture in Lyon (therefore not at OFPRA headquarters) with the aim to reduce the length

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<sup>33</sup> Strictly speaking, OFPRA is not a 'first instance' but an administrative authority which takes the first decision on the asylum application.

<sup>34</sup> Article R 723-2 of Ceseda.

<sup>35</sup> Article R 723-3 of Ceseda.

<sup>36</sup> 2015 Finance draft law – Appendix « Immigration, Asylum, Integration » p.10.

<sup>37</sup> OFPRA, [2013 Activity report](#), 28 April 2014.

<sup>38</sup> Cour nationale du droit d'asile, [2013 Activity report](#), 24 April 2014.

<sup>39</sup> It includes some time for the registration of the application (around 2 weeks), time for the preparation and sending of the summon for the interview (around 1 month), time for the interview, the desk research, the verifications and the legal analysis (around 1 month).

<sup>40</sup> Cour nationale du droit d'asile, [2013 Activity report](#), 24 April 2014.

<sup>41</sup> National Assembly, [Rapport d'information sur l'évaluation de la politique d'accueil des demandeurs d'asile \(Information report on the evaluation of the reception conditions offered to asylum seekers\)](#), Jeanine Dubié and Arnaud Richard, 10 April 2014.

<sup>42</sup> 2015 Finance draft law – Appendix « Immigration, Asylum, Integration » p.10

<sup>43</sup> Ministry of Interior, [statistics](#), 15 January 2015

<sup>44</sup> OFPRA, [2013 Activity report](#), 28 April 2014.

<sup>45</sup> The accelerated procedure is currently called "*procédure prioritaire*" in French which may lead to some misunderstanding. This is not a procedure granting priority to these applications.

<sup>46</sup> OFPRA, [2013 Activity report](#), 28 April 2014.

of the first instance procedure to 2 months.<sup>47</sup> Another decentralised mission was organized by OFPRA in October 2014 where more than 200 asylum seekers, mostly from Albania, the Democratic Republic of Congo and the Russian Federation were interviewed by OFPRA protection officers in the prefecture premises in Lyon.

An action plan for the reform of OFPRA, adopted on 22 May 2013, has been implemented since September 2013. It includes a monitoring mechanism of the quality of the decisions taken through an assessment of several sample cases. In addition, a “harmonisation committee”, chaired by the Executive Director, was created to harmonise the doctrine (including monitoring the jurisprudence of the National Court of Asylum (CNDA)).<sup>48</sup>

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

In this context, a first evaluation was undertaken by the two stakeholders (OFPRA and UNHCR) between January and May 2014, focusing on a representative sample of asylum decisions (201 case files) taken during the first semester 2013. OFPRA published the results of this first quality control initiative in October 2014.<sup>49</sup> Even though no major difference was noticed in the treatment, by OFPRA, of the asylum applications under the accelerated procedure and under the regular procedure, important shortcomings were highlighted concerning one fifth of the case files under review. In particular the way interviews were conducted in these cases showed that no complementary questions were asked by OFPRA when the arguments of the asylum seeker were considered to be insufficiently consistent or credible. Also the legal analysis of the asylum application by OFPRA was not always sufficiently thorough. Proofs (such as certificates, judgments issued by foreign courts...) were insufficiently taken into account. In addition, decisions were often too short and not sufficiently reasoned. Finally, the reasoning appeared to focus on the establishment of past facts of persecution rather than on the well-founded fears in case of return to the country of origin.

## Appeal

### Indicators:

- Does the law provide for an appeal against the first instance decision in the regular procedure:
  - Yes       No
  - o if yes, is the appeal  judicial       administrative
  - o If yes, is it suspensive  Yes       No
- Average processing time for the appeal body to make a decision: 8months and 26 days as of the end of December 2013

Following the rejection of their asylum application by the Director General of OFPRA (French Office for the Protection of Refugees and Stateless People), the applicant may challenge the decision to the National Court of Asylum (CNDA). The CNDA is an administrative court specialized in asylum. The

<sup>47</sup> See [Le Parisien](#), *Hausse des demandes d'asile: mission spéciale de l'Ofpra à Lyon (Increase of asylum applications: special mission of OFPRA to Lyon)*, 31 July 2013.

<sup>48</sup> See a description of the action plan for the reform of OFPRA, OFPRA, [2013 Activity report](#), 28 April 2014, pp54-55.

<sup>49</sup> OFPRA, Quality Control, First evaluation carried out between January and May 2014 on the basis of decisions notified during the first semester 2013 ([Contrôle qualité, Premier exercice d'évaluation \(réalisé entre janvier et mai 2014 sur des décisions notifiées au cours du premier semestre 2013\)](#), 17 September 2014.

CNDA is divided into sections, each of them made up of three members<sup>50</sup>: a President<sup>51</sup> (member of the Council of State, of an administrative court or appellate court, the Revenue Court or magistrate from the judiciary, in activity or honorary) and two designated assessors including one appointed by UNHCR. This presence of a judge appointed by UNHCR at the CNDA is a unique feature of the French asylum system.

The CNDA hears appeals against decisions granting or refusing refugee status or subsidiary protection, against decisions withdrawing refugee status or subsidiary protection and against decisions refusing subsequent applications. The CNDA may also hear appeals from applicants who have been granted subsidiary protection by OFPRA but who want to be recognized as refugees. In this case, the CNDA can grant refugee status. If not, the benefit of subsidiary protection remains.

The appeal must be filed by registered mail within one month from the notification of the negative decision by the OFPRA. A new decree on the procedure related to the CNDA of 16 August 2013<sup>52</sup> has introduced a longer period for asylum applications lodged in French overseas departments;<sup>53</sup> these asylum seekers have 2 months to appeal the OFPRA decision. There is no specific form to submit this appeal but it has to be written in French. This appeal has a suspensive effect for asylum seekers under the regular procedure but not for asylum seekers under the accelerated procedure. The appeal is assessed on points of law and facts (documents and evidence supporting the claim have to be translated into French to be considered by the CNDA). The clerk informs OFPRA of the existence of an appeal against its decision and asks for the case file to be transferred within 15 calendar days.

The CNDA sends a receipt of registration to the applicant which notifies the applicant of their right to consult their file, the right to be assisted by a lawyer, the fact that the information concerning their application is subject to automated processing, of the possibility that their appeal will be processed by order (“*ordonnance*”, namely by a single judge without a hearing), of their right to apply for legal aid and the relevant terms and conditions. The same receipt requests the applicant to indicate the language in which they wish to speak at the hearing in order to select the interpreter. In case the appeal has been lodged after the deadline, and in case of dismissal (*non-lieu*) or withdrawal of the applicant, the president of the CNDA or the president of one of the sections can dismiss the appeal “by order” (“*ordonnance*”). If the appeal does not contain any serious elements enabling a questioning of the OFPRA decision, it can also be dismissed “by order” (“*ordonnance*”).<sup>54</sup>

There is no time limit set in law for the CNDA to make a decision. The CNDA ruled on 37 345 appeals in 2014. The average processing time for the CNDA to make a decision was 8 months and 26 days as of the end of December 2013<sup>55</sup> (against 9 months and 29 days in 2012).

The new decree on the procedure related to the CNDA of 16 August 2013<sup>56</sup> has modified some of the procedural steps pertaining to the appeal stage. The decree provides that the deadline for closing the inquiry is 5 days minimum before the date set for the hearing (instead of 3 days as was the case until

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<sup>50</sup> A plenary session (called “*Grande formation*”) is organised to adjudicate important cases. Under these circumstances, there are nine judges: the three judges from the section which heard the case initially and two other sections, each of them made up of three judges.

<sup>51</sup> Ten judges acting as presidents are now working full time at the CNDA, in addition to part time judges on temporary contracts.

<sup>52</sup> Decree n°2013-751 of 16 August 2013 on the procedure related to the CNDA, official journal n°0191 – A useful [explanatory note](#) was published on the CNDA website in September 2013.

<sup>53</sup> Guadeloupe, Guyana, Martinique, Réunion, Saint-Barthélemy, Saint-Martin, Mayotte, Saint Pierre and Miquelon, French Polynesia, the Wallis and Futuna Islands, New Caledonia and the French Antarctic Lands  
<sup>54</sup> In a decision from 9 July 2014 ([Conseil d’Etat, 9 juillet 2014, n°366578](#)), the Council of State considered that when the CNDA takes an order (“*ordonnance*”, i.e. a decision taken by a single judge), the absence of UNHCR does not contravene the 1951 Geneva Convention (in particular Article 35) nor EU law (in particular Article 21 of the Asylum Procedure Directive).

<sup>55</sup> 2013 Activity report, Cour nationale du droit d’asile (National Asylum Court).

<sup>56</sup> Decree n°2013-751 of 16 August 2013 on the procedure related to the CNDA, official journal n°0191, completed by two orders (*arrêtés*) from 22 April 2014, published in the official journal of 30 April 2014.



now). This means that it is only possible to add further information to the appeal case until 5 days before the hearing.<sup>57</sup>

Unless the appeal is rejected by order (“*ordonnance*”), the law provides for a hearing of the asylum seeker. The decree of 16 August 2013 established that a summons for a hearing has to be communicated to the applicant at least 30 days before the hearing day.<sup>58</sup> These hearings are public unless the President of the section decides that it will be held *in camera* (this decision is taken most of the time following a specific request from the applicant) and take place at the CNDA headquarters near Paris.<sup>59</sup> Asylum seekers who are not accommodated in reception centres have to organise and pay for their journey themselves, even if they live in distant regions. Only asylum seekers who do not receive the temporary allowance (ATA) may receive “emergency support” to cover these transport costs.<sup>60</sup> The hearing begins by the presentation of the report by the *rapporteur*. If the applicant is assisted by a lawyer, they are invited to make oral submissions, the administrative procedure before the CNDA being mainly written. The judges can also interview the applicant. Following the hearing, the case is placed under deliberation. Decisions of the CNDA are read in public and then published (posted on the walls of the court building) during a period of 2 to 3 weeks.<sup>61</sup> Negative decisions are transmitted to the Ministry of Interior.

A decree from 12 June 2013<sup>62</sup>, allows the use of video conferencing for the CNDA hearings. The applicant will be informed by registered mail and will have 15 days to refuse it; however, the possibility to refuse only applies to those living in mainland France.

Finally, the new decree on the procedure related to the CNDA of 16 August 2013<sup>63</sup> foresees that in cases where the CNDA plans to reject the appeal by order (*ordonnance*) due to the absence of serious elements enabling a questioning of the OFPRA decision, the CNDA has the obligation to inform the applicant about their rights to access their file.<sup>64</sup> Moreover, the same decree provides that if the CNDA fails to provide an interpreter in the language indicated by the applicant, the CNDA has to inform the latter that they will be heard in another language one can reasonably think they understand.<sup>65</sup>

Asylum seekers face several obstacles to challenge a negative OFPRA decision. Indeed, despite the translation of time limits and appeal modalities at the back of the refusal notification, some asylum seekers sometimes do not understand, in particular those who are not accommodated in reception centres. Since 2012, these are no longer eligible for support for the preparation of their appeal within the orientation platforms. They can only rely on volunteer assistance from NGOs, whose resources are already overstretched. Moreover, since the section on the opinion of the protection officer is not included in the negative decision notification to the asylum seeker, it is more difficult to prepare the appeal (even if asylum applicants are entitled to legal assistance as explained in the relevant section below). Indeed, no details on the case officer’s argumentation can be used to refute the decision. Even if it is possible to request to receive this section as soon as the rejection is notified, it is rare to obtain it within the one month deadline to lodge the appeal.

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<sup>57</sup> New article R.733-13 of Ceseda.

<sup>58</sup> R. 733-19 of Ceseda; In case of “emergency” however, the period between the summon and the hearing can be reduced to 7 days.

<sup>59</sup> Except for overseas departments where missions from the CNDA are regularly organized to hear the applicants.

<sup>60</sup> See Objective 5.6 of the [reference framework](#) for first reception services for asylum seekers (in orientation platforms).

<sup>61</sup> CNDA decisions are however not accessible on the Internet. Only a selection of them are published by the CNDA on its website.

<sup>62</sup> Decree of 12 June 2013 setting the technical characteristics of the communication means to be used at the CNDA, Official journal 18 June 2013, NOR: JUSE1314361A.

<sup>63</sup> Decree n°2013-751 of 16 August 2013 on the procedure related to the CNDA, official journal n°0191.

<sup>64</sup> New article R. 733-4 5.

<sup>65</sup> New article R. 733-8.

An appeal before the Council of State (*Conseil d'Etat*) is provided by law<sup>66</sup> in case of a negative decision at CNDA level or in case OFPRA decides to appeal against a CNDA decision granting a protection status. This appeal must be lodged within two months of notification of the CNDA decision<sup>67</sup>. The Council of State does not review all the facts of the case, but only some legal issues such as the respect of rules of procedure and the proper application of the law by the CNDA. If the Council of State annuls the decision, it refers to the CNDA to decide again on the merits of the case, but it may also decide to rule itself on the granting or refusal of protection.

This appeal before the Council of State must be presented by a lawyer registered with the Council of State. If the asylum seeker's income is too low to initiate this action, they may request legal aid to the Office of legal aid of the Council of State. This appeal is not suspensive and the applicant may be returned to their country of origin during this period.

### Personal Interview

#### Indicators:

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

French legislation provides for systematic personal interviews of applicants.<sup>68</sup> Four limitative grounds are set in the law for omitting a personal interview: a) OFPRA (French Office for the Protection of Refugees and Stateless People) is about to take a positive decision on the basis of the evidence at its disposal; b) The applicant is a national of a country for which the provision in article 1.C(5) of the Geneva Convention has been implemented (cessation clause); c) the evidence submitted in support of the application is manifestly unfounded; d) medical reasons prohibit the conducting of the interview. In practice, OFPRA rarely omits interviews (for first applications at least). In 2013, 94% of all asylum seekers were summoned for an interview (the rate for interviews actually taking place is 79%).<sup>69</sup>

All personal interviews are conducted by protection officers from OFPRA, the authority responsible for taking decisions on asylum applications. At the end of the interview, the protection officer writes a report and a draft decision which is then submitted for the validation of their section manager. This report is not a verbatim of the interview as the protection officer takes notes him/herself at the same time as he or she conducts the interview. The report is a summary of the questions asked by the protection officer and the answers provided by the asylum seeker. It also mentions the duration of the interview, the presence (or not) of the interpreter and the conditions in which the asylum seeker wrote his or her application. The report is sent to the asylum seeker together with any notification of a negative decision. Therefore, the applicant does not have the opportunity to make further comments before the decision is taken. The section on the opinion of the protection officer is not included in the document received by the asylum seeker; but it can be obtained upon special request. The report is written in French and is not translated for the applicant. In practice, the quality of the interview report can be very variable. This aspect was also mentioned in the recent above-mentioned quality control initiative whose results were

<sup>66</sup> Article L 511-1 of the Code of administrative justice.

<sup>67</sup> See CNDA [website](#).

<sup>68</sup> Article L. 723-3 Ceseda.

<sup>69</sup> OFPRA, [2013 Activity report](#), 28 April 2014.

published in October 2014.<sup>70</sup> Audio or video recording of the personal interview is not required under national legislation.

The presence of an interpreter during the personal interview is provided if the request had been made in the application form. They are usually available<sup>71</sup> but some difficulties are frequently observed (for instance translation in Russian is often imposed even though the language requested was Chechen and Serbo-Croatian can be imposed even if the Romani language has been requested). Rare languages (such as Susu or Edo) are often not well represented. The legislation does not provide for a choice of interpreter according to gender considerations but it is possible to ask to be heard by a protection officer of the same sex when filling in the OFPRA application form. According to some stakeholders, the quality of the translations provided can vary widely. Some asylum seekers have reported issues with translations that are too simplified (approximate translations or not in line with their answers) or with inappropriate behaviour (inattentive interpreters or interpreters taking the liberty to make personal reflections or laughing with the protection officer). Finally, sometimes the protection officers themselves act as interpreters and this can have a diverse impact. Some asylum seekers report difficulties to open up to a person who speaks the language of the country involved in the invoked persecutions. Nevertheless, some advantages have also been reported, such as demonstrating a particular interest for the region of origin.

Interviews can be conducted through video conferencing. The number of interviews conducted via videoconferencing has increased from 1 000 in 2010 to 1 800 in 2013 (i.e. 5% of the total). In 2013, more than 1 000 videoconference interviews were conducted from the unit in Basse-Terre (921 with Guyane, 102 with Martinique and 16 with Saint Martin).

In mainland France, a new video connection was set up between OFPRA and the administrative detention centre in Toulouse. This connection also covers administrative detention centres of Perpignan, Sète and Hendaye (150 interviews in 2012).

### Legal assistance

#### Indicators:

- Do asylum seekers have access to free legal assistance at first instance in the regular procedure in practice?  
 Yes       not always/with difficulty       No
- Do asylum seekers have access to free legal assistance in the appeal procedure against a negative decision?  
 Yes       not always/with difficulty       No
- In the first instance procedure, does free legal assistance cover:  
 representation during the personal interview       legal advice       both
- In the appeal against a negative decision, does free legal assistance cover  
 representation in courts       legal advice       both

The modalities and the degree of legal assistance provided to asylum seekers in the first instance (OFPRA level) depend on the type of reception conditions they enjoy.

- If the applicant is accommodated in a reception centre for asylum seekers (CADA), they can be supported in the writing of their application form by staff from the reception centres. According

<sup>70</sup> OFPRA, Quality Control, First evaluation carried out between January and May 2014 on the basis of decisions notified during the first semester 2013 ([Contrôle qualité, Premier exercice d'évaluation](#) (réalisé entre janvier et mai 2014 sur des décisions notifiées au cours du premier semestre 2013), 17 september 2014.

<sup>71</sup> The 2013 OFRPA activity report states that 83% of interviews were carried out with an interpreter in 2013.

to the mission set out in their framework agreement,<sup>72</sup> CADA teams (legal advisers) should also assist the applicant in the preparation of their interview at OFPRA (French Office for the Protection of Refugees and Stateless People) or their hearing at the CNDA (National Court of Asylum). The team can provide advice and support to find a lawyer, either under the legal aid scheme or outside of it.

- If the applicant cannot be accommodated in a reception centre, then the “reference framework” for asylum seekers’ orientation platforms<sup>73</sup> (December 2011<sup>74</sup>) applies (with the exception of those benefiting from support provided in some emergency reception structures who can benefit from the assistance provided in those centres). In this case asylum seekers are assisted in their paperwork, such as their application for legal aid and their residence permit renewal process (for asylum seekers in the regular procedure). Asylum seekers may also be assisted in the constitution of their asylum application but the preparation for the interview is theoretically excluded. These downgraded conditions are applied in practice by the platforms thus asylum seekers have to largely rely on legal support provided by NGO volunteers.

Depending on where these legal assistance services take place (CADA or orientation platforms), they are funded by the French Office of Immigration and Integration (OFII), by the Ministry of Interior and/or by EU funding (Asylum, Migration and Integration Fund). Some local authorities sometimes contribute to this funding.

Access to legal assistance is therefore uneven depending on the type of reception conditions provided. Asylum seekers in the most precarious situations, those without reception conditions, are offered fewer services than those accommodated in CADAs. This situation leads to unequal treatment between asylum seekers accommodated in CADAs, who receive support and in-depth assistance, and asylum seekers housed in emergency facilities, who are without direct support and are sometimes located far away from the regional orientation platforms. Furthermore, these platforms do not have the same capacity as CADAs, and greatly limits the services provided to these persons.<sup>75</sup>

At the appeal stage before the CNDA (National Court of Asylum), asylum seekers under the regular procedure continue to receive legal assistance from staff supporting them in reception centres. Access to this support is much more difficult for asylum seekers who are not accommodated in CADAs or transit centres as legal support for the preparation of appeals to the CNDA are no longer funded within the “reference framework” of the orientation platforms.

Since 1 December 2008, the law<sup>76</sup> foresees the granting of legal aid (*aide juridictionnelle*) for lawyers to file an appeal to the CNDA in case of an OFPRA negative decision<sup>77</sup> (thus removing the entry and residence conditions imposed since 1991). Legal costs can therefore, upon certain conditions, be borne by the State. Legal aid can be granted if: the appellant’s resources do not exceed a certain threshold (936 Euros per month for full legal aid and 1,404 Euros per month for partial legal aid for a single person in 2014);<sup>78</sup> if the appeal does not appear to be manifestly inadmissible or unfounded; and if the legal allowance application is submitted no later than one month after receiving the confirmation of receipt of their appeal by the CNDA. This allowance must be requested in writing by the applicants themselves or by their lawyer. If the request is filed during the appeal period, this one month delay to appeal is suspended until a decision on legal aid is made. A new period starts after the receipt of the decision of

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<sup>72</sup> See page 5 of Annex 1, [Circular NOR IOCL1114301C](#)

<sup>73</sup> In France, these orientation platforms (*plateformes d'accueil*) can have several aims: they can receive asylum seekers to provide administrative, legal and social support and can also handle requests for housing and postal address (*domiciliation*). 23 of these platforms are managed by NGOs.

<sup>74</sup> [Reference framework](#) for first reception services for asylum seekers, Page 10.

<sup>75</sup> [Report](#) on the reform of the asylum procedure, Valérie Létard and Jean-Louis Touraine, 28 November 2013.

<sup>76</sup> Article 93 of law n° 2006-911 of 24 July 2006 on immigration and integration.

<sup>77</sup> Legal aid is not available in the first instance procedures (lawyers are not involved at the OFPRA stage). Lawyers or other legal assistance providers cannot currently be present during the OFPRA personal interview. See note on the current asylum reform.

<sup>78</sup> See Ministry of Justice [website](#) for more information.

the legal aid office of the CNDA.<sup>79</sup> The recipients of legal aid have the right to choose their lawyer freely or to have one appointed for them by the Legal Aid Office.<sup>80</sup> The refusal to grant legal aid may be challenged before the President of the CNDA within eight days. This legal aid for asylum seekers is funded through the State budget for the general legal aid system.

In practice, legal aid is quite widely granted. In 2013, the CNDA's legal aid office registered 22,665 requests (6.9% more than in 2012) and took 22,149 decisions. Requests were accepted in 80% of cases.<sup>81</sup> To our knowledge, there has been no denial of legal aid on the ground that the appeal was deemed to be unfounded (in regular procedures). In 2013, 90.3% of the claimants were assisted by a lawyer at the CNDA hearing.

Until 2013, lawyers working in the field of asylum were granted lower financial compensation (8 credits, or 182 Euros per file) than the fee allocated for common law cases before administrative courts. A decree from 20 June 2013 doubles the unit value (16 credits, or 380 euros) for appeals with a hearing and 4 credits (or 95 euros) for appeals without a hearing before the CNDA.<sup>82</sup>

However, this compensation is still deemed insufficient<sup>83</sup> by many asylum actors in France and this prevents lawyers from doing serious and argued work for each case. In particular, it is not enough to cover the cost of an interpreter during the preparation of the case.<sup>84</sup> This is so off-putting that lawyers specialised in asylum law refuse most of the time to work under the legal aid scheme. Lawyers are often court-appointed by the CNDA.<sup>85</sup> The difficulty is that court-appointed lawyers are informed of the name of their client very shortly before the hearing (about 3 weeks) and do not meet them until the last moment (as these lawyers are often based in Paris whereas asylum seekers can be living elsewhere in France). These lawyers sometimes refuse to assist asylum seekers write their appeal and only represent them in court. This makes it difficult for asylum seekers to prepare properly the hearing. Asylum seekers who are not accommodated in reception centres are therefore on their own to write their appeal and face a high risk of seeing their appeal rejected by order (*ordonnance*) due to insufficient arguments.

### 3. Dublin

#### Indicators:

- Number of outgoing requests in the previous year: 5 903 in 2013
- Number of incoming requests in the previous year: 3 426 in 2013
- Number of outgoing transfers carried out effectively in the previous year: 645 persons (out of 3,919 agreements from other Member States) in 2013
- Number of incoming transfers carried out effectively in the previous year: 834 persons in 2013

<sup>79</sup> See the CNDA [website](#) for more information.

<sup>80</sup> See the CNDA [website](#) for more information.

<sup>81</sup> Cour nationale du droit d'asile, [2013 Activity report](#), 24 April 2014.

<sup>82</sup> Decree n° 2013-525 of 20 June 2013 on the compensation for the missions of Legal aid carried out by lawyers at the CNDA.

<sup>83</sup> The CNDA is based in Paris and a return train ticket from other cities (such as Lyon) already takes a large part of the fee received.

<sup>84</sup> MM Jean-Yves Leconte and Christophe-André Frassa, *Information report n°130*, Sénat, 14 November 2012.

<sup>85</sup> The decree n° 2013-525 of 20 June 2013 on the compensation for the missions of Legal aid carried out by lawyers at the CNDA also extends the possibility to designate court-appointed lawyers to all lawyers registered in any Bar in France (it was previously restricted to the Bars of Paris and Versailles).

### Indicator:

- If another EU Member State accepts responsibility for the asylum applicant, how long does it take in practice (on average) before the applicant is transferred to the responsible Member State?  
not available

The Dublin procedure is applied to all asylum seekers above 14 years old without exception (as per the Regulation). The official policy of the French Dublin unit is that it does not transfer unaccompanied children under the Dublin Regulation. Unaccompanied children can however be placed under a Dublin procedure by prefectures.

When they go to the prefecture to apply for asylum,<sup>86</sup> all applicants are given an information leaflet on the Dublin procedure at the desks (leaflet A,<sup>87</sup> produced by the EU and translated into several languages) together with the general guide for asylum seekers (also translated into several languages) and a form to submit a temporary residence permit request as asylum seekers ("*demande d'admission au séjour au titre de l'asile*").

A date for a future appointment is set in order to complete the request for a temporary residence permit. At this meeting (which can take place several weeks later), fingerprints are taken<sup>88</sup> and the above-mentioned form is completed. It contains a part entitled "personal interview" which contains information enabling the prefecture to determine the responsible State. The prefecture then decides either to deliver a temporary residence permit (therefore to channel the applicant into the regular procedure), or to channel the applicant into the accelerated procedure, or to channel the applicant into the Dublin procedure. In this case, the applicant receives a second information leaflet on the Dublin procedure (leaflet B,<sup>89</sup> produced by the EU and translated into several languages) and a Dublin notice document "*convocation Dublin*" issued by the prefecture. The applicant does not always get a copy of the interview form. Since November 2014, the prefecture has asked the applicant to sign a letter written in French and listing all the information given (as requested under Article 4 of the Dublin II Regulation) and in which language.

The presence of an interpreter at that stage is not guaranteed and practice varies widely depending on the prefectures (e.g. in Nice or in Clermont-Ferrand, an interpreter is called to translate the written information when the applicant does not speak French). The applicant must go to the prefecture every month with his or her Dublin notice document.

In practice, the elements taken into account to determine the State responsible can vary from one prefecture to another but it has been observed that the taking of fingerprints (and therefore the identification of another responsible State) always takes precedence over the application of the other

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<sup>86</sup> The Dublin procedure can vary greatly from one prefecture to the other over France and, even in the same prefecture, practice can vary over time and depending on the cases. The procedure which is described in this section is the current practice in the Rhône *département*.

<sup>87</sup> Leaflet A entitled "[I have asked for asylum in the EU – Which country will handle my claim?](#)" © EU 2014.

<sup>88</sup> During the application process, the officers in prefectures are requested to take fingerprints for each and every asylum seeker above 14 years old and they have a duty to check these fingerprints in the EURODAC system. An exception is made for asylum seekers whose fingerprints are unfit for identification (i.e. unreadable). In this case, asylum seekers will be summoned again within a month and then they will be channelled into the accelerated procedure if their fingerprints are still unfit for identification (as foreseen in the circular IMIA1000106C of 2 April 2010 and confirmed by Council of State jurisprudence n°347187 of the 8 March 2011).

<sup>89</sup> Leaflet B entitled "[I am in the Dublin procedure – What does this mean?](#)" © EU 2014.

criteria. According to s circular of 1 April 2011,<sup>90</sup> the taking of fingerprints will be decisive in the search for the most likely responsible State.

In the Rhône department, the applicant is informed that a take back or a taking charge procedure has been initiated through the information written at the back of his Dublin notice document (information translated in the applicant's language). However, there is not necessarily information either about the country which was contacted or on the criteria leading to this referral.

The asylum seeker is not necessarily informed about the date when the country determined to be responsible for his or her application is contacted and sometimes does not know the date of the requested Member State's reply either. Asylum seekers under the Dublin procedure are formally informed about these dates through the notification of readmission order letter delivered to them once the decision to "take charge" or "take back" has been made. In Lyon, this decision is generally explained and indicates the deadline before which the transfer must take place.

It is difficult to know how the sovereignty clause is applied because prefectures sometimes simply deliver a temporary residence permit (which enables the asylum seeker to lodge a regular application for asylum) after having channelled the asylum seeker under the Dublin procedure, without explaining why and without mentioning whether it is under one clause or the other.<sup>91</sup> In Paris, the humanitarian clause seemed to be used for asylum seekers who were deemed not fit for travel and for whom no transfer could be carried out. These clauses are not widely used in any case in France. For example, in the prefecture of Nice, an asylum seeker who was ill was transferred to Poland whilst his wife had applied for asylum in France.

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

- Voluntary transfer initiated by the applicant themselves. A *laissez-passer* is provided as well as a meeting point in the host country
- Controlled transfer : the applicant is accompanied by police forces up until the boarding of the plane
- Transfer under escort: the applicant is accompanied by police forces up until the transfer to the authorities of the responsible State.

The modalities put in place to arrange transfers can vary from one prefecture to another. In the Rhône department, a refusal of voluntary transfer (refusal to accept the transfer upon notification) does not necessarily result in immediate administrative detention.

Finally with regards to transfers, it should be noted that the rate of actual implementation of transfers is strikingly low. Whereas the French authorities had received 3,919 agreements from other Member States to take charge or take back asylum seekers under the Dublin procedure in France, only 645 transfers had been carried out in practice (a 16.45% transfer rate) in 2013.<sup>92</sup>

Recent jurisprudence from the Council of State<sup>93</sup> is interesting with regards to the notion of absconding which allows Member States to extend the time limit for the enforcement of the transfer to a maximum of 18 months if the person concerned absconds (article 29.2 of the Dublin III regulation). In that case, the prefecture had sent only one summons to M. and M. had presented himself at the prefecture and had

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<sup>90</sup> Circulaire du 1er avril 2011 n° [NOR IOCL1107084C](#), Application du règlement CE n°343/2003 du Conseil du 18 février 2003 dit "règlement Dublin". Mise en oeuvre des procédures d'examen prioritaire de certaines demandes d'asile mentionnées à l'article L.741-4 du CESEDA (Circular of 1st April 2011 on the application of Council; Regulation 343/2003, the so-called 'Dublin regulation'. Implementation of accelerated procedures of some asylum claims mentioned in art L741-4 CESEDA).

<sup>91</sup> European network for technical cooperation on the application of the Dublin II Regulation, [French report](#), December 2012, p35-37.

<sup>92</sup> Eurostat statistics accessed on 5 May 2014.

<sup>93</sup> Council of State, Ministry of Interior vs. M., n°377738, 24 April 2014.

answered the prefect's letter by explaining that he did not have a stable housing, so the Council of State found that M. could not be considered as having systematically and intentionally escaped from the implementation of his return measure. The extension of the transfer period to 18 months was therefore unjustified, and the Council of State concluded that the Administrative Court of Lyon had lawfully ordered the Prefect to provide M. with a temporary residence permit with a view to lodge his asylum claim in France. This is important as statistics have shown an increase in the trend of resorting to such extensions (cases of transfer deadline extension represented 15% of Dublin cases in 2008 and 41% of the cases in 2013).<sup>94</sup>

Asylum seekers under the Dublin procedure who do not benefit from stable housing receive a first letter from the prefecture. If they come to the prefecture, they are placed under house arrest. If not, they receive a second letter from the prefecture informing them that the transfer delay may be extended to 18 months. It is therefore only after two refusals to come to the prefecture that the asylum seeker is considered as absconding.

Concerning access to the asylum procedure upon return to France under the Dublin Regulation (incoming transfers), these applications are treated in the same way as any other asylum applications. If the asylum seeker comes from a safe country of origin then their application is examined under the accelerated procedure. If the asylum application has already received a final negative decision from the National Asylum Court (CNDA), the asylum seeker may apply to OFPRA for a re-examination only if they possess new evidence (see section on subsequent application).

## Appeal

### Indicators:

- Does the law provide for an appeal against the decision in the Dublin procedure:  
 Yes  No
  - o if yes, is the appeal  judicial  administrative (2 types of appeal)
  - o If yes, is it suspensive  Yes  No
- Average delay for the appeal body to make a decision: not available

The system for appeals against decisions taken during a Dublin procedure is quite different from the possible appeal in the regular procedure.<sup>95</sup>

Two types of appeals are available:

- As for any administrative decision, an informal administrative appeal (*recours gracieux*<sup>96</sup>) can be lodged before the prefect;
- *Court appeal*: the asylum seeker may file an appeal before the administrative court within two months. Several decisions can be challenged by the asylum seeker. 1) The decision by which the prefecture refuses to deliver a temporary residence permit because the responsible State has agreed to take charge of him or her; 2) The decision of transfer. In such cases, legal aid may be granted but the appeal does not currently carry a suspensive effect; 3) The decision to place the asylum seeker under house arrest (the asylum seeker has 48 hours to appeal; the judge has to take a decision within 72 hours; this appeal has suspensive effect).

<sup>94</sup> National Assembly, [Rapport d'information sur l'évaluation de la politique d'accueil des demandeurs d'asile](#) (Information report on the evaluation of the reception conditions offered to asylum seekers), Jeanine Dubié and Arnaud Richard, 10 April 2014.

<sup>95</sup> See additional information in the French report of the European network for technical cooperation on the application of the Dublin II Regulation, December 2012.

<sup>96</sup> This is a discretionary remedy.



In addition, the appeal for interim measures in order to suspend an administrative decision (*référé suspension*<sup>97</sup>) enables the suspension of a transfer order in the event of an emergency and where there is serious doubt about the legality of the decision. According to French jurisprudence, a situation of emergency is generally granted when the claimant is actually detained in an administrative detention centre. Although processed relatively rapidly, appeals for interim measures do not have a suspensive effect during the examination of the claim.

### Personal Interview

#### Indicators:

- Is a personal interview of the asylum seeker conducted in practice in most cases in the Dublin procedure?  Yes  No
- If so, are interpreters available in practice, for interviews?  Yes  No

Asylum seekers under the Dublin procedure are not eligible for a temporary residence permit like other asylum seekers.<sup>98</sup> They do not benefit from an examination of their application for asylum by OFPRA and therefore they do not have a personal interview on the substance of their application for asylum in France in the framework of this procedure. The merit of their asylum claim will be examined if France is designated as the responsible State at the end of the process.

As explained above, there is no specific interview in the Dublin procedure in France. All asylum seekers fill in a form during an appointment at the prefecture to apply for a temporary residence permit.<sup>99</sup> The temporary residence permit form includes a part entitled “personal interview” which contains information enabling the prefecture to determine the State responsible for protection (in conformity with Annex I of the Commission Implementing regulation).<sup>100</sup> During this appointment, which takes place at the desk in prefectures (therefore not in offices guaranteeing confidentiality), questions are asked about civil status, family of the applicant, modalities of entry into French territory, countries through which the applicant possibly travelled prior to their asylum application, etc. Applicants have the possibility to mention the presence of family members residing in another Member State. This part of the form is written in French and in English. It must be filled in by the applicant in French, during the interview. The presence of an interpreter during this appointment can vary; translation into the applicant’s language is often done by a compatriot. Those appointments are not recorded. The asylum applicant does not always receive a copy of the interview form. If the prefecture decides to channel the applicant into the Dublin procedure, he or she receives an information leaflet on the Dublin procedure (leaflet B,<sup>101</sup> produced by the EU and translated into several languages). Since November 2014, the prefecture has asked the applicant to sign a letter written in French and listing all the information given (as requested under Article 4 of the Dublin II Regulation) and in which language.

### Legal assistance

#### Indicators:

- Do asylum seekers have access to free legal assistance at the first instance in the Dublin procedure in practice?  Yes  not always/with difficulty  No
- Do asylum seekers have access to free legal assistance in the appeal procedure against a Dublin decision?  Yes  not always/with difficulty  No

<sup>97</sup> Article L.521-1 of the code of administrative justice.

<sup>98</sup> Article L.741-4 1° and L.723-1 of the Ceseda.

<sup>99</sup> Scheduled in theory within 15 calendar days after the asylum seekers have voiced their request to be admitted on the territory on the ground of an asylum claim, but not currently respected in practice.

<sup>100</sup> Commission Implementing regulation N°118/2014 of 30 January 2014.

<sup>101</sup> Leaflet B entitled “I am under the Dublin procedure – What does it mean?” © EU 2014.

Apart from cases where applicants under a Dublin procedure have access to reception facilities through the emergency scheme, usually they only have access to the legal assistance provided by the orientation platforms.<sup>102</sup>

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

### Suspension of transfers

#### Indicador:

- Are Dublin transfers systematically suspended as a matter of policy or as a matter of jurisprudence to one or more countries?  Yes  No
  - o If yes, to which country/countries? Greece

As a consequence of the European Court on Human Rights ruling of 21 January 2011 in *MSS vs. Belgium and Greece*, the Ministry of Interior has asked the prefects to stop, on a temporary basis and awaiting further instructions, transfers towards Greece in a telegram dated 14 March 2011. Consequently, prefectures must apply the sovereignty clause of the Dublin Regulation and therefore declare France as the responsible State for examining the asylum application.<sup>103</sup> As a general rule, applicants who should have been transferred to Greece according to the Dublin Regulation have direct access to a temporary residence permit with a view to lodge their application for asylum in France. It happens sometimes however that the prefecture looks for another Member State which could be the next one responsible for the applicant (there are cases where Hungary was found to match one of the responsibility criteria for instance).

In addition, several times in 2013, French administrative courts suspended the transfer of asylum seekers under the Dublin regulation to Hungary. The Council of State confirmed on 16 October 2013 an administrative court decision to suspend the transfer of a Mauritanian asylum seeker to Hungary, arguing that “bearing in mind the treatment this person had received during his detention at the Debrecen centre, there was a serious risk that his asylum application would not be examined by the Hungarian authorities in a way complying with the safeguards required by the respect for the right to asylum”.<sup>104</sup> However Dublin transfers to Hungary are far from being systematically suspended.

## 4. Admissibility procedures

In 2014, French legislation did not foresee any specific procedure to decide on the admissibility of the asylum claims (but see the specificity of the asylum procedure at the border). However, an admissibility procedure could be put in place in France following the adoption of the current asylum reform.<sup>105</sup>

<sup>102</sup> For example, in Lyon, the platform managed by Forum réfugiés-Cosi provided legal support to 200 persons under the Dublin procedure in 2014.

<sup>103</sup> Circulaire du 1er avril 2011 n° NOR IOCL1107084C, Application du règlement CE n°343/2003 du Conseil du 18 février 2003 dit “règlement Dublin” (Circular of 1st April 2011 on the application of the Dublin Regulation).

<sup>104</sup> Council of State, [Case n°372677](#), 16 October 2013.

<sup>105</sup> See separate note on the current asylum reform.

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

### General (scope, time-limits)

#### Indicators:

- Do border authorities receive written instructions on the referral of asylum seekers to the competent authorities?  Yes  No
- 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
- Can an application made at the border be examined in substance during a border procedure?  Yes  No

A specific border procedure to request an admission into the country on asylum grounds is provided by French legislation,<sup>106</sup> for persons arriving on French territory through airports or harbours. Nobody is exempt from the application of this procedure. Unaccompanied children are also subject to these provisions.<sup>107</sup> Foreign children do not have access to more favourable provisions than adults. An unaccompanied child may be held in a waiting zone, as confirmed by a decision of the Court of Cassation of 2 May 2001, which ruled that the 1945 Ordinance<sup>108</sup> does not give any indication of the age of the persons that can be held in a waiting zone. As a result, there is nothing to prevent children from being held there.<sup>109</sup> In the smaller waiting zones, unaccompanied children are therefore held together with adults, without any specific guarantees provided for them.

This procedure is framed by Article R 213-2 of Ceseda: “*When a foreign national who has arrived at the border applies for asylum, they are immediately informed, in a language they can reasonably be considered to understand, of the asylum application procedure, their rights and obligations over the course of this procedure, the potential consequences of any failure to meet these obligations or any refusal to cooperate with the authorities, and the measures available to help them present their request*”.

Article L. 221-4 also provides that “*foreign nationals held in waiting zones are informed, as soon as possible, that they may request the assistance of an interpreter and/or a doctor, talk to a counsel or any other person of their choice, and leave the waiting zone at any point for any destination outside of France. This information is communicated in a language the person understands*”.

The competent administrative authority for delimiting waiting zones is the Prefect of the *Département* and in Paris, the *Préfet de Police* (Chief of Police). The decision to hold a foreign national in the waiting zone, which must be justified in writing, is taken by the Head of the National Police service or the Customs and Border Police, or by a civil servant designated by them. In August 2012, there were 51 waiting zones in mainland France and overseas. Most of the activities take place at the Roissy CDG airport.<sup>110</sup>

<sup>106</sup> Article R 213-2 of Ceseda.

<sup>107</sup> See detailed additional information on the risks for children in waiting areas in the Anafé, [La procédure en zone d'attente: Guide théorique et pratique de l'Anafé](#) (Theoretical and practical Guide, Procedure in waiting areas), , January 2013. See also Human Rights Watch updated report, [Lost in Transit](#), published on 8 April 2014.

<sup>108</sup> Ordonnance n° 45-174 du 2 février 1945 relative à l'enfance délinquante (Order of 2 February 1945 on delinquent youth).

<sup>109</sup> Court of Cassation, civil chamber, 2 May 2001, Stella I., appeal no. 99-50008.

<sup>110</sup> ANAFE, [Theoretical and practical Guide, Procedure in waiting zones](#), January 2013.

Waiting zones are located between the arrival and departure points and passport control. The law provides that they may include, within or close to the station, port or airport, or next to an arrival area, one or several places for accommodation, offering hotel-type facilities to the foreign nationals concerned. In these accommodation areas, there should be an area for lawyers to hold confidential meetings with the foreign nationals.<sup>111</sup> Moreover, since the asylum law (Ceseda) of 16 June 2011, waiting zones can be extended to within 10km from a border crossing point, when it is found that a group of at least 10 foreigners just crossed the border. The group of 10 can have been identified at the same location or various locations within the 10km area. This exceptional extended waiting zone can be maintained for a maximum of 26 days.<sup>112</sup> This possibility has not been implemented until now.

According to the law, waiting zones can include “hotel type” accommodation areas. In practice, those are only established in the Roissy CDG airport (ZAPI 3) and can accommodate up to 160 persons. In the other waiting zones, the material conditions for accommodation can vary greatly: foreign nationals are sometimes accommodated in a nearby hotel (like in Orly at night time), or in rooms within police stations. They do not all have access to “hotel-type” services.<sup>113</sup>

It is imperative that the asylum application be taken into account and the Border Police has to make a statement detailing the request for admission on the basis of an asylum claim. The person is held in the waiting zone for an initial duration of 4 calendar days<sup>114</sup> to give the authorities some time to check that the asylum request is not manifestly unfounded. This procedure is separate from the asylum procedure on French territory.<sup>115</sup>

The Judge of Freedoms and Detention (JLD) is competent to rule on the extension of the stay of foreigners in the waiting zone.<sup>116</sup> The JLD must rule “within twenty-four hours of submission of the case, or if necessary, within forty-eight hours of this, after a hearing with the interested party or their lawyer if they have one”.<sup>117</sup> The administrative authority must make a request to the JLD to extend custody in the waiting zone and must explain the reasons for this (impossible to return the foreign national due to lack of identity documents, pending asylum application, etc.).

The duration of the stay in the waiting zone can be up to 20 calendar days (26 days in exceptional cases). According to the official figures of the Ministry of the Interior, in 2011 the average duration of the stay of foreigners in the waiting zones was 3.5 days at Roissy CDG and 1.9 days at Orly. This means that many foreigners are returned before having been able to present their situation before the judge.<sup>118</sup>

There is no delay provided by law between the registration of the asylum application and the interview, although in practice it is often very short (one or two days). The Border Police at Roissy (Charles de Gaulle) airport have indicated to the NGO ANAFE that any person wishing to make an asylum application at the airport, when they are refused entry, must explicitly use the word “asylum” for their application to be registered at this stage. A new “rules of procedure” document is being drafted to harmonise the practices of the border police throughout the country.

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<sup>111</sup> Article L.221-2 of Ceseda.

<sup>112</sup> Art. L. 221-2 of Ceseda.

<sup>113</sup> ANAFE, *Annual Report 2011*, December 2012.

<sup>114</sup> Article L. 221-3 Ceseda.

<sup>115</sup> ANAFE, *Rapport annuel 2011- zones d'ombre à la frontière - observations et interventions de l'Anafé en zone d'attente*, (Annual Report 2011 -, *Shadow zones at the border*), December 2012.

<sup>116</sup> The oversight of waiting zones is covering all third country nationals placed in waiting zones (i.e. not only asylum seekers).

<sup>117</sup> Article L222-3 of CESEDA.

<sup>118</sup> ANAFE, *Annual Report 2011*, December 2012. This situation was also criticized in details in a recent report published by the Observatoire de l'Enfermement des Etrangers (OEE, Observatory of the Detention of Foreigners: “Rapport d'observation « Une procédure en trompe l'oeil » Les entraves à l'accès au recours effectif pour les étrangers privés de liberté en France”, May 2014, based on field research made between September 2013 and May 2014 in several detention places and on interviews with many stakeholders.

In 2013, the number of asylum applications made at the border reached its lowest level over the past 10 years with only 1 346 registrations of requests to enter the French territory on asylum grounds (including 49 requests from unaccompanied minors). The top 5 nationalities of asylum seekers at the border in 2013 were Congolese (DRC) (7.8%), Nigerians (6.4%), Malians (6%), Cameroonians (5.2%) and Guineans (4.7%).<sup>119</sup>

The Border division of OFPRA interviews the asylum seekers and formulates an opinion. This opinion is communicated to the Ministry of Interior, which takes the final decision to authorise entry into France or not. In theory, this interview is conducted to check whether the given facts are manifestly irrelevant or not. This review could look like a kind of admissibility procedure. It should only be a superficial review of the asylum application. In practice, the assessment usually covers the verification of the credibility of the account (interview reports contain comments on stereotypical, imprecise or incoherent accounts, with a lack of written proof). This practice of examining the request on the merits is extremely problematic.

If the asylum application is not considered to be manifestly unfounded, the foreign national is authorised to enter French territory and is given an 8-day temporary visa (safe passage). Within this time frame, upon the request from the asylum seeker, the competent prefectures will examine whether they grant the person a temporary residence permit or whether they channel the application into the accelerated procedure. OFPRA then processes the asylum application as any other asylum application lodged directly on the territory.

If the asylum application is considered as manifestly unfounded, the Ministry of Interior refuses to grant entry to the foreigner with a reasoned decision. The person can lodge an appeal against this decision before the Administrative Court within a 48-hours deadline. If this appeal fails, the foreigner can be expelled to his or her country of origin (in application of Annex 9 of the Chicago Convention).

The deadline for the decision of the Ministry of Interior is not provided for in legislation. In practice, in 2013, 98% of the OFPRA opinions were delivered in less than 96 hours.<sup>120</sup> Between 2007 and 2011, the rate of positive opinions given by OFPRA decreased significantly (only 10.1% of positive opinions in 2011).<sup>121</sup> In 2013, 17% of the requests received a positive opinion and a right to enter the French territory with a view to lodge and asylum application.

Unaccompanied children held in waiting zones are subject to the same procedure. According to Human Rights Watch,<sup>122</sup> this system “leaves children facing the risk that their asylum claims will not receive appropriate consideration or that their deportation will be improperly expedited”.

## Appeal

### Indicators:

- Does the law provide for an appeal against a decision taken in a border procedure?
  - Yes  No
  - o if yes, is the appeal  judicial  administrative
  - o If yes, is it suspensive?  Yes  No

The appeal process for a border procedure differs significantly from appeals in a regular asylum procedure.<sup>123</sup> When the request for asylum made at the border is rejected, the foreign national is considered to be "not admitted" into French territory. They then have 48 hours (during which they

<sup>119</sup> OFPRA, [2013 Activity report](#), 28 April 2014.

<sup>120</sup> OFPRA, [2013 Activity report](#), 28 April 2014.

<sup>121</sup> ANAFE, Theoretical and practical Guide, Procedure in waiting zones, January 2013.

<sup>122</sup> Human Rights Watch, [Lost in transit](#), Updated on 8 April 2014.

<sup>123</sup> There is also a judicial control by the Judge of Freedoms and Detention (Juge des Libertés et de la Détention, JLD) who oversees the conditions and the extension of the stay of all the foreigners (not only asylum seekers) in the waiting zones (see details above under “General” in the section “Border procedure”).

cannot be returned) to make an appeal to the Administrative Court to overturn the decision. This appeal has suspensive effect.<sup>124</sup> The provisions concerning the period available to the administrative judge to decide on the appeal have evolved recently.<sup>125</sup> The decisions must henceforth be delivered at a hearing.<sup>126</sup>

Indeed since January 2012, asylum seekers have been informed on the day of the hearing about the decision of the appeal court. However, sometimes they only receive the reasoned decision of the court on their appeal several days later, provided they have not been returned beforehand. No other appeal can be made against the decision to refuse entry on asylum grounds (except for appeals for the implementation of provisional measures, based on Article 39 of the European Convention on Human Rights). The foreign national may request the services of an interpreter from the President of the Court and can be assisted by a lawyer if they have one. They may ask the President of the Court to designate one. The decision of this Administrative Court can be challenged within fifteen days before the President of the competent Administrative Court of Appeal. This appeal does not have suspensive effect.

Based on "considerations of the proper application of justice", the Council of State assigns the case to the Administrative Court that is closest to the concerned waiting zone<sup>127</sup> and no longer to the administrative court of Paris only, as was previously the case.

There are many practical obstacles for lodging appeals effectively at the border. Modalities for the implementation of appeals are too restrictive for most foreign nationals held in waiting zones, who should in principle have access to an effective appeal procedure. Although it has suspensive effect, this appeal is very difficult to carry out because it has to be made within 48 hours, with a legal justification, in French, otherwise it might be rejected without a hearing by the Administrative Court. Language is an important obstacle to lodge an appeal, as there is no free interpreting service available in the waiting zone. ANAFE and other NGOs such as Forum Réfugiés-Cosi rely on some volunteer interpreters but they are not always available<sup>128</sup>. There is no "on duty" lawyer system in the waiting zone and, in most waiting zones, NGOs try to provide legal advice by telephone. Besides, as the procedure for examining asylum applications at the border is so poorly defined, arguments linked to an infringement of the procedure are difficult to substantiate. The justification for the appeal therefore has to be based on the demonstration that the asylum application is well-founded in order to challenge the ministerial motivation.

The NGO ANAFE has denounced the illusory nature of the effectiveness of this suspensive appeal in a report published in January 2014.<sup>129</sup> According to this report, the modalities of the appeal are far too restrictive and there is an accumulation of serious material difficulties: difficult access to a phone, lack of copy machines, difficulties to obtain the summary of the OFPRA interview. Finally, the 48-hour period starts from the time of notification of the negative decision. Beyond this strict deadline, no other appeal is possible (with the exception of appeals to the European Court on Human Rights). Some notifications of a negative decision are made in the middle of the night, which means that by the time the asylum seekers are able to contact a lawyer or speak with advisers, the time available is drastically reduced.<sup>130</sup>

In December 2013 the NGO ANAFE publicly denounced the case of an Eritrean asylum seeker, whom the Border police tried to board on a plane to Bahrain within the 48 hour period after the rejection of his

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<sup>124</sup> Article L 213-9 of Cseseda.

<sup>125</sup> See Decree No. 2012-89 of 25 January 2012 which amended Article R. 777-1 of the Code of Administrative Justice.

<sup>126</sup> Contrary to what was provided in the article L. 213-9 of cseseda, which stated that the administrative judge had a period of 72 hours to decide – after the hearing.

<sup>127</sup> Article R 351-8 of the administrative code of justice.

<sup>128</sup> ANAFE, *Newsletter no. 10, testimony of support workers*, December 2012.

<sup>129</sup> ANAFE, "[Le dédale de l'asile à la frontière](#)" (The asylum maze at the border), December 2013.

<sup>130</sup> ANAFE, *Annual Report 2011*, December 2012.

asylum application by OFPRA and therefore disregarded his right to lodge an appeal to the administrative court.<sup>131</sup>

Finally, two locations for “off-site” appeal hearings were discussed vividly in France in autumn 2013. Indeed a hearing room opened in September 2013 in the administrative detention centre of *Le Mesnil-Amelot* (near Paris) and another one was planned to be used in the waiting zone of Paris-Charles de Gaulle airport as of January 2014. The authorities had justified the relocation of these appeal hearings by explaining that it would avoid costly transfers, sometimes conducted in conditions which do not respect the dignity of the persons concerned. Many NGOs<sup>132</sup> have raised concerns with regards to this initiative as it gives the impression that foreigners are not appellants like any other. The Council of Europe Commissioner for Human Rights, Nils Muižnieks sent a letter to the Justice Minister, Ms Christiane Taubira, on 2 October 2013, in which he mentioned that “these off-site” proceedings entail holding hearings in the immediate proximity of a place of deprivation of liberty, in which the applicants are being held or detained. This situation, combined with the fact that this place is under the authority of the Ministry of the Interior, which is also a party to the proceedings, could undermine the independence and impartiality of the court concerned, at least in the eyes of the applicants”.<sup>133</sup> On 15 October 2013, the Justice Minister responded to these concerns by setting up an enquiry mission in charge of determining if the off-site hearing room located at Roissy airport is complying with European and national obligations.<sup>134</sup> Two rapporteurs handed over their conclusions to the Justice Minister on 17 December 2013 who immediately announced the freezing of the opening of the site in the waiting zone of Paris-Charles de Gaulle airport. The report does not challenge the necessity to have the judges come to the airport but stresses that several changes have to be made to respect the migrants’ rights: for instance the door between the court and the waiting zone needs to be walled up and the control of the the hearing should not be carried out by the border police.<sup>135</sup> The Justice Minister will start discussions with the Ministry of Interior on these issues. Some NGOs like GISTI have however stressed that the root of the problem lies in the fact that “nobody will go as far as the air freight zone to attend a hearing”, depriving these migrants from the public nature of these judgments.<sup>136</sup>

### Personal Interview

#### Indicators:

- Is a personal interview of the asylum seeker conducted in practice in most cases in a border procedure?  Yes  No
  - o If yes, is the personal interview limited to questions relating to nationality, identity and travel route?  Yes  No
- If so, are interpreters available in practice, for interviews?  Yes  No
- Are personal interviews ever conducted through video conferencing?  Yes  No

The border procedure is very different from the asylum procedure on the territory. All asylum seekers subject to a border procedure are interviewed by the border division of OFPRA (French Office for the Protection of Refugees and Stateless Persons, the French determining authorities) which provides the Ministry of Interior with an opinion on whether their application is well-founded or not (this opinion is not binding for the Ministry).

<sup>131</sup> ANAFE, [Zone d'attente de l'aéroport de Roissy](#) : La France tente de refouler illégalement un demandeur d'asile érythréen (France tries to expel illegally an Erythrean asylum seeker), 3 December 2013.

<sup>132</sup> See the [collective action](#) launched in June 2013, “Défendre et juger sur le tarmac : stop à la délocalisation des audiences”. (*Representing and judging on the tarmac: no to the relocation of hearings*).

<sup>133</sup> [Letter](#) from Nils Muižnieks to Ms Christiane Taubira, 2 October 2013.

<sup>134</sup> See the [Press release](#) from the Ministry announcing the enquiry mission.

<sup>135</sup> [Rapport](#) on the off-site hearing room located in the Roissy airport, Bernard Bacou and Jacqueline de Guillenchmidt, 17 December 2013.

<sup>136</sup> Le Monde, [Christiane Taubira gèle l'ouverture du tribunal des étrangers à Roissy](#) (C. Taubira suspends the opening of the Roissy foreigner's court), 18 December 2013.

In 2013, 1 346 applications were registered in waiting zones and 1 262 opinions were delivered.<sup>137</sup> OFPRA gave a positive decision in only 17% of these 1 262 cases.<sup>138</sup> .

The law provides the following on interviews in the border procedure: *"If the interview of the asylum seeker requires the assistance of an interpreter, it is paid for by the State. This interview is subject to a written report which includes information related to the identity of the foreign national and that of their family, the places and countries they travelled through or stayed in, their nationality(ies), or at least the countries they have lived in and any previous asylum applications, their identity documents and travel documents, as well as the reason why they are seeking international protection."*<sup>139</sup> At Roissy CDG airport, the OFPRA Border division interviews the asylum seeker in the waiting zones (ZAPI3). With the exception of the Roissy CDG airport waiting zone the interviews are done by phone, with translation provided by an interpreter who is included in the phone call. An interpreter was used in 49.3% of the interviews in 2013.<sup>140</sup>

In theory, these interviews should be very different to the interviews in the asylum procedure on the territory, as they are only supposed to look at whether the given facts are manifestly irrelevant to the criteria set out in the Geneva Convention, or the criteria used to grant subsidiary protection. This review should only be a superficial review of the asylum application. In practice, the review often includes the verification of the credibility of the account (some rejection decisions contain reports of stereotypical, imprecise or incoherent accounts, with a lack of written proof).<sup>141</sup> This practice of examining the request on the merits is extremely problematic.

Furthermore, the OFPRA interview notes are only provided at the same time as the negative decision issued by the Ministry of Interior. In the waiting zones of Orly airport and outside Paris, the OFPRA protection officer now asks during the telephone interview whether the asylum seeker would like the interview report to be sent to them personally by e-mail or whether they would prefer it to be sent directly to their lawyer, or as a last resort, to the Border Police fax machine.<sup>142</sup> Sending the report like this does not guarantee the confidentiality of the information and it is contrary to the law,<sup>143</sup> which states that OFPRA should send the asylum applicant a copy of the report in a sealed envelope.

In a decision of 28 November 2011, the Council of State also clarified that the 48-hour deadline to lodge an appeal before the administrative court does not begin until the OFPRA report is received by the asylum seeker in a sealed envelope as provided by the law. However, it found that "failure to transmit this report, if it is an obstacle to the initiation of the appeal deadline, and the automatic execution of the ministerial decision to refuse entry on the basis of asylum, has no influence on the legality of this decision".<sup>144</sup>

As far as unaccompanied minors are concerned, the Border police itself acknowledges that not all unaccompanied children in the Roissy airport waiting zone are assisted by a legal representative (*Administrateur Ad-Hoc*) as the law provides.<sup>145</sup> In 2010 only 370 out of a total of 518 had met a legal representative.<sup>146</sup>

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<sup>137</sup> The difference between the two figures can be explained by the fact that some asylum seekers held in waiting zones can be released by the JLD Judge for other reason than the asylum claim, before OFPRA delivers its opinion.

<sup>138</sup> OFPRA, [2013 Activity report](#), 28 April 2014.

<sup>139</sup> Article R 213-2 of Ceseda.

<sup>140</sup> OFPRA, [2013 Activity report](#), 28 April 2014.

<sup>141</sup> The association ANAFE has been able to attend a few OFPRA interviews at the border in Summer 2013. More information will shortly be available on their [website](#).

<sup>142</sup> ANAFE, *Annual Report 2011*, December 2012.

<sup>143</sup> Article R 213-3 and R 213-2 Ceseda.

<sup>144</sup> Court ruling of the Council of State, 28 November 2011 (Council of State case, 7th and 2nd sub-sections, 28/11/2011, 343248).

<sup>145</sup> Article L221-5 Ceseda.

<sup>146</sup> ANAFE, *Theoretical and practical Guide, Procedure in waiting areas*, January 2013.



According to the 2014 Human Rights Watch report on unaccompanied children detained at the French border (covering all unaccompanied minors, not only asylum seekers), some children are left without assistance during key moments as the system “still lacks sufficient government funding to meet the requirements of guardianship laid out by the Committee on the Rights of the Child. When large numbers of children arrive, or when children arrive on weekends or holidays, there can be delays in assigning guardians.”<sup>147</sup>

### Legal assistance

#### Indicators:

- Do asylum seekers have access to free legal assistance at first instance in the border procedure in practice?  Yes  not always/with difficulty  No
- Do asylum seekers have access to free legal assistance in the appeal procedure against a decision taken under a border procedure?  Yes  not always/with difficulty  No

There is no permanent legal adviser or NGO presence in the French waiting zones.<sup>148</sup> Asylum seekers must therefore try to get hold of an adviser by phone from the waiting zone. Many concerns have been raised about effective access to a telephone.<sup>149</sup> These difficulties have also been highlighted by the Controller General of places of freedom deprivation: "In waiting areas, there are telephones generally in good condition, but without any explanation on how to use them through posters or information within the documents provided to the foreign national. These telephones can only be used by purchasing phone cards, and therefore, by those who have money to buy one."<sup>150</sup> No legal adviser is present during the OFPRA<sup>151</sup> interview (the only exception for the presence of a third party is the presence of legal representatives for unaccompanied children).

Article 213-9 of Ceseda outlines the possibility of receiving assistance from a lawyer or asking the President of the Court to designate an appointed lawyer for appeals to the Administrative Court against a decision to refuse entry to French territory on asylum grounds.

Asylum seekers can request to be assisted by a court appointed lawyer during their hearing before the Judge of Freedoms and Detention (JLD) who is competent to rule on the extension of their stay in the waiting zone. In theory, the asylum seeker should have hired one previously at their own expense, or prepared a sufficiently well-argued request in French by themselves, in terms of facts and points of law. This is another illusory measure that does not guarantee the asylum seeker access to an effective remedy.<sup>152</sup>

The NGO ANAFE denounces the fact that these cases are handled in haste by the court appointed lawyers. Indeed, due to the urgency of the appeal and to the functioning of the administrative courts, the court appointed lawyers have in reality often only have access to all the elements of the case once they meet the asylum seeker at the court, meaning in the best case scenario one hour before the start of the hearing. Under these conditions, it is difficult for the lawyer to know the story of the person held in the waiting zone and to provide a good appeal.<sup>153</sup>

<sup>147</sup> Human Rights Watch, [Lost in transit](#), Updated on 8 April 2014.

<sup>148</sup> Only the ANAFE is occasionally present in the waiting area in Roissy CDG.

<sup>149</sup> In Lyon, there is a phone number indicated above the phone, with the explanation in five languages that an NGO staff can be available for legal advice.

<sup>150</sup> Controller General of prisons and detention centres, 2011 Activity report, April 2012.

<sup>151</sup> This is also the case for cases heard at OFPRA in the procedures on the territory.

<sup>152</sup> See also the recent report published by the Observatoire de l'Enfermement des Etrangers (OEE, Observatory of the Detention of Foreigners: "Rapport d'observation « [Une procédure en trompe l'oeil](#) » [Les entraves à l'accès au recours effectif pour les étrangers privés de liberté en France](#)", May 2014.

<sup>153</sup> ANAFE, "[Le dédale de l'asile à la frontière](#)" (The maze of asylum at the border), December 2013.

The General Controller of places of freedom deprivation has recommended in his 2013 report that the law should be amended to take into account some essential principles. For instance, he argues that it should foresee not a “space” for lawyers but should ensure that the material framework guarantees the confidentiality attached to the mission of counselling for third country nationals held in the waiting zones.<sup>154</sup>

## 6. Accelerated procedures

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

The reasons for channelling an asylum seeker into an accelerated procedure are outlined in Article L 741-4 of CESEDA. This procedure can be applied if:

- the foreign national seeking asylum is a national of a country for which Article 1.C.5 of the Geneva Convention applies, or a country considered to be a safe country of origin (33.6% of the accelerated procedures in 2013 applied to first asylum claims were justified by the fact that the person came from a safe country of origin<sup>155</sup>).
- the presence of the foreign national in France constitutes a serious threat to public order, public safety or state security.
- the asylum application is based on a deliberate fraud or constitutes an abuse of the asylum procedure, or has only been made to prevent a notified or imminent return order. Abuse of the asylum procedure is constituted in particular by the fraudulent presentation of several requests to remain on asylum grounds under different identities. An asylum application based on deliberate fraud is constituted by a request made by a foreign national who provides false information, hides information about their identity, their nationality or their journey into France, in order to deceive the authorities.

There is currently no system in place for exemption from the application of the accelerated procedure - even for vulnerable persons. Elderly or disabled people can also be channelled into an accelerated procedure (and are therefore given less favourable reception conditions).

Legally, the provisions enabling the prefectures to channel an asylum applicant into an accelerated procedure are indicative only. Prefectures have to carry out an individual assessment of the person's situation.<sup>156</sup> For example, very occasionally, in the case of multiple nationalities in a single family, the Rhône department Prefecture delivers a temporary residence permit even though one of the family members originates from a safe country of origin. However, the 2013 OFPRA activity report clearly demonstrates a wide use of accelerated procedures for asylum seekers coming from countries listed as safe countries of origin<sup>157</sup> (91.5% of these requests are treated under the accelerated procedure<sup>158</sup>).

As in the regular procedure, OFPRA (French Office for the Protection of Refugees and Stateless Persons) is the authority responsible for the decision at first instance in accelerated procedures. Its decisions should in theory be made within 15 calendar days.<sup>159</sup> In 2013, the median period for the examination of first asylum requests in accelerated procedure was 55 days.<sup>160</sup>

The accelerated procedure represented 25.6% of the total of asylum cases in 2013. This is a 10% decrease in comparison to 2012. Placement under an accelerated procedure often results from the use

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<sup>154</sup> General controller of places of freedom deprivation, [Activity Report 2013](#), 11 March 2014.

<sup>155</sup> OFPRA, [2013 Activity report](#), 28 April 2014.

<sup>156</sup> Art L 741-4 Ceseda.

<sup>157</sup> See the updated list [here](#). As of January 2015 it concerned: Albania, Armenia, Benin, Bosnia-Herzegovina, Cape Verde, Georgia, Ghana, India, Former Republic of Macedonia (FYROM), Mauritius, Moldova, Mongolia, Montenegro, Senegal, Serbia and Tanzania.

<sup>158</sup> OFPRA, [2013 Activity report](#), 28 April 2014.

<sup>159</sup> Article R.723-3 of Ceseda. Delays are even shorter for persons held in administrative retention centres.

<sup>160</sup> OFPRA, [2013 Activity report](#), 28 April 2014.

of the safe country of origin concept, from evaluations carried out by the prefectures that the applications are abusive (suspected falsification of identity) and from the frequent use of the accelerated procedure for asylum requests lodged from administrative detention centres.

With regard to administrative detention, UNHCR declared that "the conditions for exercising the right to asylum cannot be considered to be effective. The deadline of 5 days to formulate a request when detained (UNHCR recommends an extension to 10 days), the fact that the request has to be written in French without the availability of an interpreter, the 96-hour deadline for OFPRA to make a decision (which is often not respected by OFPRA, particularly for complex cases, which shows its unsuitability) are just some examples."<sup>161</sup>

## Appeal

### Indicators:

- Does the law provide for an appeal against a decision taken in an accelerated procedure?
  - Yes       No
  - o if yes, is the appeal:       judicial       administrative
  - o If yes, is it suspensive?       Yes       No

The procedure for appeal before the CNDA (National Court of Asylum) is similar to the one in the regular procedure. Persons channelled into an accelerated procedure must appeal within the same time period - 1 month after the negative decision. As the preparation of these appeals is hardly supported by NGOs (assistance to draft the appeal was removed from the mandate of the orientation platforms by the new reference framework in 2011), asylum seekers may not be aware of these deadlines and face serious difficulties in drafting a well-argued appeal. They can nonetheless lodge a request to benefit from legal aid (*aide juridictionnelle*).

The lack of suspensive effect of the appeal in the accelerated procedure can have serious consequences when a return decision is taken by the prefecture following a negative decision from OFPRA on the asylum application. Some Prefectures systematically order returns with compulsory removal orders from France, after OFPRA has rejected an asylum seeker channelled into an accelerated procedure (even if in practice the removal orders are not always implemented). In any case, the risk and the fear of being arrested and returned restrict the freedom of movement of these asylum seekers, and limit their possibility of receiving assistance with the preparation of their appeal. Together with many other stakeholders, Forum réfugiés-Cosi has called for many years for a suspensive appeal for all asylum seekers, regardless of the procedure applied to them. The draft reform on asylum that should be adopted within the next few months provides for such a suspensive appeal in the accelerated procedure.<sup>162</sup>

In its submission for the Universal Periodic Review of the situation in France by the Human Rights Council in 2013, UNHCR strongly recommended "the introduction of suspensive effect to appeals at a legislative and regulatory level, in order to make the appeals effective for accelerated procedures, and called for a more limited application of the conditions leading to accelerated procedures, particularly on the basis of the safe country of origin concept."<sup>163</sup>

Until the end of 2013, the CNDA considered that both the provisions of Article 1A (2) of the Geneva Convention and the provisions of Article 2 of the EU Qualification Directive implied that asylum seekers

<sup>161</sup> Submission of the High Commissioner of the United Nations for Refugees, based on the summary provided by the High Commissioner for Human Rights, Universal periodic review, France report, July 2012.

<sup>162</sup> See details and developments in the chapter "Detention of Asylum seekers".

<sup>162</sup> In this regards, see the separate note on the asylum reform.

<sup>163</sup> Submission of the High Commissioner of the United Nations for Refugees, *op. cit.*

seeking protection must necessarily be outside their country of origin. Therefore, it used to consider that the involuntary returns of applicants to their countries of origin had the effect of temporarily suspending the examination of their cases as, under these circumstances, their appeals were temporarily groundless. However, the Council of State, in its judgment of 6 December 2013, found that no provision of the Geneva Convention nor of the Ceseda makes conditional on the examination of the appeal at the CNDA to a presence on the French territory during the appeal procedure. Residence outside of French territory is therefore not a reason not to examine the appeal lodged by an asylum seeker.<sup>164</sup>

The actual impact of this jurisprudence may however be limited in practice. If the right to appeal is to be from now on formally respected and asylum seekers who have left the country will henceforth get a decision from the CNDA, their absence at the hearing may compromise the chances of success of the appeal. Indeed, asylum seekers who have been forcibly removed from the territory will most likely find it difficult to come back<sup>165</sup> to France to comply with a Court's obligation to appear at the hearing and will not get a residence permit to do so in any case. These asylum seekers therefore have a high risk of seeing their application rejected.<sup>166</sup>

### Personal Interview

#### Indicators:

- Is a personal interview of the asylum seeker conducted in most cases in practice in an accelerated procedure?  Yes  No
  - o If yes, is the personal interview limited to questions relating to nationality, identity and travel route?  Yes  No
- If so, are interpreters available in practice, for interviews?  Yes  No
- Are personal interviews ever conducted through video conferencing?  Frequently  Rarely  Never

Interviews for asylum seekers channelled into an accelerated procedure take place under the same conditions as interviews in a regular procedure. The same grounds for omission apply. For first asylum applications processed under the accelerated procedure (excluding subsequent applications), 98% of the applicants were called for an interview in 2013.<sup>167</sup>

All personal interviews are conducted by the authority responsible for taking decisions on asylum applications (OFPRA). At the end of the interview, the protection officer writes a draft decision which is then submitted for validation to their section manager. There is no audio recording of the personal interviews. The report produced is not a verbatim report of the interview. The same problems concerning the quality of the reports and of the interpretation arise for both the regular and the accelerated procedures.

Video conferencing is mainly used for asylum applicants in overseas departments and for asylum seekers maintained in administrative detention centres (most of whom were, up to now, channelled into the accelerated procedure).

<sup>164</sup> See [judgment](#) of the Council of State, n°357351, 6 December 2013

<sup>165</sup> In addition, one can imagine that it will be difficult for them to be kept informed about such a summon in any case.

<sup>166</sup> And even if the decision is positive, it is unlikely that they will manage to flee their country once again. See the interpretation of the Council of State decision (n°357351) in "[Une avancée incertaine pour l'effectivité des recours des demandeurs d'asile prioritaires](#)" (An uncertain progress for the effectivity of remedies of prioritised asylum claims), Yehudi Pelosi, Revue des Droits de l'Homme, March 2014.

<sup>167</sup> OFPRA, [2013 Activity report](#), 28 April 2014.

## Legal assistance

### Indicators:

- Do asylum seekers have access to free legal assistance at first instance in accelerated procedures in practice?  Yes  not always/with difficulty  No
- Do asylum seekers have access to free legal assistance in the appeal procedure against a decision taken under an accelerated procedure?  Yes  not always/with difficulty  No

In theory, asylum seekers channelled into an accelerated procedure have the same rights with regard to access to legal assistance as those in a regular procedure. In reality, asylum seekers placed under an accelerated procedure have difficulties accessing reception conditions where legal assistance is available. As they do not have access to the CADAs (asylum seekers' reception centres), these persons are dependent on legal advice provided by the initial orientation platforms which is limited to the preparation of the official form to lodge an asylum application and they must rely on volunteers from charities. Regarding the appeal before the CNDA, the initial orientation platforms are only supposed to explain the procedure for requesting legal aid (*aide juridictionnelle* – available only at the appeal stage). With little support for their request, and often living in extremely precarious conditions, these persons may find it difficult to obtain a positive reply from the Legal Aid Office (some requested documents are not easily accessible for people living in emergency shelters). These appeals can appear to lack substance as they are written without any legal assistance.

## C. Information for asylum seekers and access to NGOs and UNHCR

### Indicators:

- Is sufficient information provided to asylum seekers on the procedures in practice?  Yes  not always/with difficulty  No
- Is sufficient information provided to asylum seekers on their rights and obligations in practice?  Yes  not always/with difficulty  No
- Do asylum seekers located at the border have effective access to NGOs and UNHCR if they wish so in practice?  Yes  not always/with difficulty  No
- Do asylum seekers in detention centres have effective access to NGOs and UNHCR if they wish so in practice?  Yes  not always/with difficulty  No
- 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  not always/with difficulty  No

The provision of information is codified in Article R-751-2 of Ceseda: "The competent service of the Prefecture must inform the foreign national who would like to request refugee or subsidiary protection, of the asylum procedure, their rights and obligations over the course of this procedure, the potential consequences of failure to meet these obligations or any refusal to cooperate with the authorities and the measures available to them to help them present their request. This information should be provided in a language they can reasonably be expected to understand."

A guide is supposed to be provided by the *Prefecture*. The 2013 Asylum Seekers Guide is available in French and in 23 other languages on the Ministry of the Interior website.<sup>168</sup> Practices vary from one *Prefecture* to another, and many still fail to provide the guide. In addition, a leaflet with information about

<sup>168</sup> See the Ministry of Interior [website](#).

the issue of “domiciliation” (legal address) is handed out in some orientation platforms (as in Lyon for instance).

In April OFPRA published a guide on the right of asylum for unaccompanied minors in France.<sup>169</sup> The guide is quite comprehensive, describing the steps of the asylum procedure, the appeals and the procedure at the border. OFPRA has stated its intention to share this guide as widely as possible in prefectures, in waiting zones at the border and with stakeholders working in children’s care.

With regards to the information provided about the Dublin procedure, it varies greatly from one prefecture to another. In the Rhône department, when they go to the prefecture to apply for asylum, all applicants are handed, at the desks, an information leaflet on the Dublin procedure (leaflet A<sup>170</sup> produced by the EU and translated into several languages) together with the Asylum Seekers Guide. If the prefecture decides at a later stage to channel the applicant into the Dublin procedure, the applicant receives a second information leaflet on the Dublin procedure (leaflet B<sup>171</sup> produced by the EU and translated into several languages). Since November 2014, the prefecture has asked the applicant to sign a letter written in French and listing all the information they have been given (as requested under Article 4 of the Dublin II Regulation) and in which language.

The asylum seeker knows when a take charge or a take back procedure has been initiated, due to information provided on the back of their Dublin notice (information translated into the language of the asylum seeker). There is, however, no information about the country to which a request has been sent, nor on the criteria that have led to this decision.

In administrative detention centres (CRAs), French law strictly regulates the access of asylum seekers to NGOs. Some NGOs have a quasi-permanent presence (5-6 days a week) in CRAs as part of their mission to provide information to foreign nationals, and to help them to exercise their rights as outlined in Article R. 553-14 of CESEDA. In 2014, these included La Cimade, l’Ordre de Malte, Forum Réfugiés-Cosi, France Terre d’Asile and ASSFAM. Several other persons can access the CRAS facilities. Some people benefit from free access (the Human Rights Commissioner of the Council of Europe, members of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, Members of the French and European Parliaments, the Controller General of places of freedom deprivation, Prefects, State Prosecutors and the Judges for Liberty and Detention) while others have more limited access (Consular representatives, lawyers, family members of the persons held). Some accredited NGOs<sup>172</sup> can have access to all CRAs. A new decree adopted in June 2014<sup>173</sup> regulates the access of NGOs to CRAs. . UNHCR does not have free access to CRAs.

The Controller General of places of freedom deprivation has also highlighted in 2013 some deficiencies with regards to the information provided to asylum seekers while in administrative detention. His recommendations included: to make compulsory the dissemination of explanatory brochures about the asylum procedure (in several languages) addressing persons in detention and staff working in detention centres; to insist on the mandatory nature of the transmission of the asylum claim to OFPRA, even if it is submitted late; and to ensure that an interpreter is at the disposal of asylum seekers assisting them with the procedure.<sup>174</sup> The absence of explanatory brochures is often compensated by the presence of NGOs, however, which provide information and legal assistance to all foreigners held in administrative detention centres.

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<sup>169</sup> OFPRA, [Guide on the right of asylum for unaccompanied minors in France \(Guide de l’asile pour les mineurs isolés étrangers en France\)](#), 30 april 2014.

<sup>170</sup> Leaflet A entitled “[I have asked for asylum in the EU – Which country will handle my claim?](#)” © EU 2014.

<sup>171</sup> Leaflet B entitled “[I am in the Dublin procedure – What does this mean?](#)” © EU 2014.

<sup>172</sup> Regulated by decree n° 2011-820 of 8 July 2011 for the application of the law of 16 June 2011. These NGOs are Forum réfugiés-Cosi; France Terre d’asile and the French Red Cross.

<sup>173</sup> Decree of 24 June 2014 on the access of association to administrative detention facilities ([Décret du 24 juin 2014 modifiant les articles R.553-14-4 à R.553-14-8 du Ceseda](#)).

<sup>174</sup> General controller of places of freedom deprivation, *Activity Report 2012*, February 2013 (pages 212-213)

It should be noted that in October 2012, the association Reporters without Borders challenged the rejection of their request to access CRAs made to the Ministry of the Interior on 27 February, as part of the Open Access campaign. The association, like all French journalists who have made such a request in France, was denied access to the centres, without any reason being given.<sup>175</sup> In 2013, however, several journalists were able to visit certain administrative detention centres together with French MEPs on the occasion of [the Open Access visits](#).<sup>176</sup> Other visits have taken place later in the year, such as in the administrative detention centre of Nice on 30 October 2013. The Ministry of Interior is currently examining the possibility of a decree allowing journalists to access all places of deprivation of liberty when accompanying members of the Parliament. The decree has not been published at the time of writing.

In the waiting zones at the border, Forum Réfugiés-Cosi notes a serious lack of information on the possibility of requesting admission to French territory on asylum grounds (see section on Border Procedure). When a person is arrested at the border, they are notified of an entry refusal, in theory with the presence of an interpreter if necessary.<sup>177</sup> However, many stakeholders doubt that the information provided and the rights listed therein are effectively understood. For example, it is very surprising to note that those intercepted nearly all agree to renounce their right to a “clear day” notice period (24 hours during which the person cannot be returned) and tick the box confirming their request to leave as soon as possible. The Controller General of places of freedom deprivation stated that his officers “noticed that the decision to renounce this right is often taken by the agents themselves without the person held even being informed of this in any intelligible way.”<sup>178</sup> In reality, according to witness statements collected by the NGO ANAFE, information on rights and their effective application differs from one person to another and depends on the goodwill of the Border Police officer, on the difficulties that may arise with interpretation, and also on the ability of the person concerned to understand the situation.<sup>179</sup>

In 2014, the Controller General of places of freedom deprivation has recommended that the notification of the “clear day” should be recorded in a distinct official report (*procès verbal*), countersigned by the third-country national. Alternatively, the “clear day” period during which no return can be carried out could be implemented automatically (unless the third country national expressly wants to be returned).<sup>180</sup>

In addition, as the telephone in certain waiting zones is not free of charge, contact with NGOs or even UNHCR is not easy. Several decisions by the Courts of Appeal have highlighted the irregularity of the procedure for administrative detention in a waiting zone, due to the restrictions placed on exercising the right to communicate with a lawyer or any person of one's choice.<sup>181</sup> The fact that asylum seekers may have no financial means of purchasing a phone card is therefore a restriction on this fundamental right.

The list of NGOs accredited to send representatives to access the waiting zones was established by order of the Ministry of the Interior on 5 June 2012:<sup>182</sup> it includes Accueil aux médecins et personnels de santé réfugiés en France (APSR- Reception of Refugee Medical and Healthcare Staff in France), Amnesty International France, L'Association nationale d'assistance aux frontières pour les étrangers (ANAFE National Association for the Assistance of Foreigners at the Borders), La Cimade, the French Red Cross, France Terre d'asile, Forum réfugiés-Cosi, Groupe accueil et solidarité (GAS-Reception and

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<sup>175</sup> Reporters sans frontières, [RSF conteste le rejet de sa demande d'accès en centre de rétention](#) (RSF contests the rejection of its request to access detention centres, Press Release), 3 October 2012.

<sup>176</sup> See some press articles: 1) Le Nouvel Observateur, Detention Centres: 2 European officials visit Lyon ([“Centres de rétention: deux députées européennes en visite à Lyon”](#)), 17 July 2013, and 2) Rue 89 Lyon, Journalist, I entered the detention centre in Lyon ([“Journaliste, je suis entré au centre de rétention de Lyon”](#)), 17 July 2013.

<sup>177</sup> Article L.213-2 of Ceseda.

<sup>178</sup> Controller General of prisons and detention centres, *2011 Activity report*, April 2012.

<sup>179</sup> ANAFE, *Annual Report 2011*, December 2012.

<sup>180</sup> General controller of places of freedom deprivation, [Activity Report 2013](#), 11 March 2014.

<sup>181</sup> Article L 221-4 of Ceseda.

<sup>182</sup> Arrêté NOR: INTV1222472A, 5 June 2012.

Solidarity Group), Le Groupe d'information et de soutien des immigrés (GISTI – Immigrants Support and Information Group), the Human Rights League, Le Mouvement contre le racisme et pour l'amitié entre les peuples (MRAP- Movement against Racism and for Friendship between Peoples), Médecins sans frontières (MSF- Doctors without Borders), Médecins du monde (Doctors of the World) and the Order of Malta. This authorisation is valid for a duration of three years from 9 June 2012.

## D. Subsequent applications

### Indicators:

- Does the legislation provide for a specific procedure for subsequent applications?  
 Yes       No
- Is a removal order suspended during the examination of a first subsequent application?
  - o At first instance       Yes       No       Not systematically
  - o At the appeal stage       Yes       No       Not systematically
- Is a removal order suspended during the examination of a second, third, subsequent application?
  - o At first instance       Yes       No       Not systematically
  - o At the appeal stage       Yes       No       Not systematically

After the rejection of an asylum application by the CNDA (National Court of Asylum), it is possible to ask OFPRA (French Office for the Protection of Refugees and Stateless Persons) to re-examine the application. The asylum seeker must have "new evidence", subsequent to the date of the CNDA decision or prior to this date if he or she was informed only subsequently. This new evidence must justify personal fears of persecution or the risk of serious threats in case of return. This new evidence must be proven and relevant, and able to demonstrate that the request is well-founded.<sup>183</sup> OFPRA registered 5790 subsequent applications in 2013 (a 7% decrease in comparison to 2012).

The asylum seeker must again request, at the prefecture, a temporary residence permit. In order to obtain one, the person will have to convince the prefecture that he or she has credible new evidence to present to OFPRA.

- o If the prefecture considers that there are new elements, it grants a temporary residence permit for 15 days, and provides the OFPRA subsequent application form. The asylum seeker then has 8 days to submit all the details of the case to OFPRA, who registers it and decides whether to admit the subsequent application.
- o If the prefecture considers that the applicant has not provided any new elements, it refuses to grant a temporary residence permit and channels the person into an accelerated procedure (this was the case for 88% of the subsequent applications lodged in 2013<sup>184</sup>). It then provides a form to be completed as well as a summons to return to the prefecture headquarters within 15 days, with all the details of the case in a sealed envelope. As soon as the subsequent application form is received, the prefecture sends it to OFPRA, with a message indicating its urgency.

If a removal order has been issued following the rejection of the first asylum application, it will be suspended during the examination of the subsequent application, but only at first instance if the person has been channelled into an accelerated procedure.

However, the circular of 1 April 2011<sup>185</sup> invites the Prefects to reject requests for temporary residence permit almost systematically in the case of subsequent applications.

<sup>183</sup> Jurisprudence of the CNDA, Ms F., application number 09002323, 4 November 2010.

<sup>184</sup> OFPRA, [2013 Activity report](#), 28 April 2014.

<sup>185</sup> Circular IOCL1107084C of 1<sup>st</sup> April 2011 on the right of asylum (Dublin regulation and accelerated procedures).



There is no preliminary examination of the admissibility of the subsequent application as such. However, in practice, the discretion given to the prefectures to decide on the validity of subsequent application is problematic. In practice, the prefectures, by deciding whether the new information is relevant or not and by channelling the asylum seekers into accelerated procedures, are acting as a kind of preliminary filter.

In the first place, OFPRA rules on the admissibility of the subsequent application on the basis of the evidence provided. During this preliminary examination, OFPRA can decide not to proceed with an interview and reject the subsequent application. If it is admitted, the asylum seeker is summoned for an interview.

In the event OFPRA rejects the subsequent application, it is possible to lodge an appeal before the CNDA within a time period of 1 month, on points of law and facts. If the subsequent application is processed under an accelerated procedure at OFPRA, the CNDA appeal does not have suspensive effect on a return decision. According to the law, "legal aid may not be requested for an appeal against an OFPRA decision rejecting a subsequent application when the claimant had, at the time of the previous application, a personal interview with OFPRA, as well as a hearing with the CNDA, assisted by a lawyer designated under the legal aid system."<sup>186</sup> Rejected asylum seekers who make a subsequent application are not or are no longer accommodated in reception centres. They therefore live in extremely precarious conditions<sup>187</sup> that are not conducive to writing a well-constructed subsequent application, and they no longer receive assistance from specialised NGOs working in reception centres or in orientation platforms (they rely on volunteers working for charities). It is also difficult to provide new information and to prove their authenticity. These people often have difficulties in accessing the documents needed to prove new information (difficulty in contacting their country of origin to obtain the evidence). In practice, asylum seekers who lodge a subsequent application often do not get an interview – only 6% of them had been called for an interview at OFPRA in 2013.<sup>188</sup> In addition, negative decisions "by order" ("ordonnance" i.e. by a single judge without a hearing) are made more and more systematically by the CNDA for subsequent applications.. Some nationalities see their subsequent applications directly decided « by order » ("ordonnance").<sup>189</sup>

## E. Guarantees for vulnerable groups of asylum seekers (children, traumatised persons, survivors of torture)

### 1. Special Procedural guarantees

#### Indicators:

- Is there a specific identification mechanism in place to systematically identify vulnerable asylum seekers?  Yes  No  Yes, but only for some categories
- Are there special procedural arrangements/guarantees for vulnerable people?  Yes  No  Yes, but only for some categories (Unaccompanied children)

In France there is no specific mechanism in place for identifying asylum seekers in need of specific procedural guarantees. French law does not presently foresee any special treatment for vulnerable

<sup>186</sup> Article L. 731-2 of Ceseda.

<sup>187</sup> They are nevertheless now legally eligible to the temporary financial allowance (ATA) (see rectified Finance Law of 8 August 2014 (n°2014-891), which however foresees that the ATA may be refused in the case of a second subsequent application).

<sup>188</sup> OFPRA, [2013 Activity report](#), 28 April 2014.

<sup>189</sup> Comments received from UNHCR during the consultation process.

groups of asylum seekers.<sup>190</sup> Unaccompanied children as well as victims of torture, for instance, are not exempted from the examination of their claims under border procedures.

In practice, accelerated procedures and Dublin transfers<sup>191</sup> are not applied to unaccompanied children whilst they are minors.

No additional time is allocated for vulnerable asylum seekers. The only specific guarantee lies in the possibility of requesting a closed-door audience with the National Court of Asylum (CNDA).

Unaccompanied asylum-seeking children are interviewed at OFPRA (the Office for the Protection of Refugees and Stateless Persons) under the same conditions as adults. In practice, interviews are 'child friendly' when they take place with protection officers who have received specific training. Usually, their status as children is not specifically taken into account. The only difference is the presence of an authorised, trusted, third party (the legal representative or *Administrateur ad hoc*, see section "Age assessment and legal representation of unaccompanied children). Moreover, protection officers accept that a social worker who knows the child be present during the interview (if requested by the child). These children often report having been intimidated by the atmosphere of OFPRA. Although children are supported, they are not necessarily fully informed of the purpose of the interview. In fact, there are very few reception centres specialised in the care of unaccompanied asylum-seeking children. Many of them are looked after by traditional child protection facilities, whose staff is rarely trained in asylum requests issues (see section "Addressing special reception needs of vulnerable persons").

The lack of identification mechanism and of special procedural guarantees may have serious consequences. For instance it means that no special precautions are taken in the formulation of a negative answer. According to a social worker from Forum réfugiés-Cosi, for instance, some negative decisions mention the fact that the claimant had shown no emotion when recalling the rape she had been subjected to or that the claimant seemed distant from the recollection of the abuses she was describing. Asylum seekers can be extremely hurt when they see such comments in the summary of their interviews.

However, more specific treatment for vulnerable groups of asylum seekers is gradually been considered by OFPRA. The action plan for the reform of OFPRA (adopted on 22 May 2013) had set the path for the creation, in September 2013, of five thematic groups in order to reinforce the OFPRA's ability to deal with protection needs related to torture, trafficking in human beings, unaccompanied minors, sexual orientation and gender-based violence. These groups have been tasked to work on the identification of specific needs, awareness raising, training and designing specific support tools to examine these claims (in particular during the interviews).<sup>192</sup> These measures are preparing the ground for the new practices which will have to be implemented following the adoption of the current asylum reform. OFPRA has also recently produced a leaflet<sup>193</sup> which explains the asylum procedure (including the border procedure) and the rights of unaccompanied asylum seeking children.

In addition, OFPRA staff is being trained on issues related to dealing with testimonies recounting painful events during the interview process. Since October 2013, Forum réfugiés-Cosi and the Belgium NGO Ulysse have conducted several 2-days trainings for OFPRA protection officers with two main objectives: helping them to take into account the difficulties asylum seekers may face when they have to share their story after traumatic events and providing tools to protection officers for handling these situations. OFPRA has announced its goal to train all 170 protection officers by the end of 2015.<sup>194</sup>

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<sup>190</sup> See specific note on the current asylum reform.

<sup>191</sup> They are registered in Eurodac files but in practice transfer are not implemented if they are recognized as minors.

<sup>192</sup> See information on the action plan for the reform of OFPRA on pages 54-59 of OFPRA, [2013 Activity report](#), 28 April 2014.

<sup>193</sup> OFPRA, [Guide de l'asile pour les mineurs isolés étrangers en France](#), 30 April 2014.

<sup>194</sup> See page 35 of OFPRA, OFPRA, [2013 Activity report](#), 28 April 2014.

## 2. Use of medical reports

### Indicators:

- Does the legislation provide for the possibility of a medical report in support of the applicant's statements regarding past persecution or serious harm?  
 Yes       Yes, but not in all cases       No
- Are medical reports taken into account when assessing the credibility of the applicant's statements?       Yes       No      More or less

The legal framework does not foresee the use of medical reports when examining asylum applications. However, applicants often present medical certificates from specialised centres. According to some doctors, all too often, their certificates are not taken into account (OFPRA often dismisses them as evidence, without seeking a second opinion). The medical report is paid for by asylum seekers via the state supported medical insurance (CMU or AME).

A medical certificate to confirm the absence of female genital mutilation (FGM) is requested during the examination of an asylum request presented by a young woman or girl based on that risk in her country of origin. During the OFPRA interview, she will be asked to demonstrate that she has not been subjected to FGM if this is the reason she fears persecution or serious threats in case of return to her country of origin. Once protection has been granted, the requirement of a medical certificate remains. For the renewal of protection and the right to remain, OFPRA requires that a medical certificate is sent to them each year, proving that the person has still not undergone FGM.<sup>195</sup>

The consideration of the medical certificates at the CNDA can vary a lot. A poorly argued dismissal of a medical certificate by the CNDA was criticised by the European Court of Human Rights in September 2013.<sup>196</sup> The applicant, of Tamil ethnic origin, had provided a medical certificate from the doctor of the waiting zone in the Paris Charles de Gaulle airport describing several burn injuries. The Court found that the CNDA had failed to effectively rebut the strong presumption raised by the medical certificate of treatment contrary to Article 3 of the European Convention on Human Rights and therefore that the forced return of the applicant to Sri Lanka would place him at risk of torture or inhuman or degrading treatments .

## 3. Age assessment and legal representation of unaccompanied children

### Indicators:

- Does the law provide for an identification mechanism for unaccompanied children?  
 Yes       No
- Does the law provide for the appointment of a representative to all unaccompanied children?  
 Yes       No

### *Legal representation*

As unaccompanied children do not have any legal capacity, they must be represented for any act under all asylum procedures (including Dublin). When they are deprived of legal representation (i.e. if no

<sup>195</sup> French coordination for the right to asylum (CFDA), *Note on the non-excision certificate*, October 2012.

<sup>196</sup> ECtHR, [R.J. v. France](#), application no. 10466/11, 19 September 2013

guardian has been appointed by the guardianship judge before placement in care), the Public Prosecutor, notified by the prefecture, should appoint an *ad hoc administrator* (legal representative) who will represent them throughout the asylum procedure.<sup>197</sup> This legal representative is appointed to represent the child only in administrative and judicial procedures related to the asylum claim. This person is not tasked to ensure the child's welfare the way a guardian would be. Every four years, within the jurisdiction of each Appeal Court, a list of ad hoc administrators is drawn up.<sup>198</sup> They represent children held in waiting zones at the border or children who have applied for asylum (there are two lists: one list for asylum and one list for the border procedure).<sup>199</sup> These ad hoc administrators receive a flat allowance to cover their expenditure. No specific training or - at minimum- awareness of asylum procedures is required for their selection.

At the border, an ad hoc administrator should be appointed "without delay" for any unaccompanied child held in a waiting zone.<sup>200</sup> " According to the 2014 HRW report on unaccompanied children detained at the French border<sup>201</sup> (covering all unaccompanied minors, not only asylum seekers), the system "still lacks sufficient government funding to meet the requirements of guardianship laid out by the Committee on the Rights of the Child. When large numbers of children arrive, or when children arrive on weekends or holidays, there can be delays in assigning guardians". In practice, delays in the appointment of the legal representative can lead to unaccompanied children going through the procedure by themselves.<sup>202</sup> It is important to note that at the time of the notification of the possibility offered to them to benefit from a "clear day" (24 hours during which they cannot be returned), unaccompanied children are not yet assisted by a legal representative (*Administrateur ad hoc*). There is a risk that unaccompanied children do not understand the usefulness nor the importance of this possibility and therefore are deprived of this right.

In addition, due to a lack of places in the children's facility at Roissy airport's waiting zone (which consists of three bedrooms, each with two beds), some unaccompanied minors are sometimes held with unrelated adults. [...] In October 2013, 10 children were in the adult zone, in addition to the six in the children's facility".<sup>203</sup>

At OFPRA level, the ad hoc administrator is the only person authorised to sign the asylum application form. In practice, the appointment of an ad hoc administrator can take between 1 to 3 months. However, there are jurisdictions where the lack of ad hoc administrators, their insufficient number does not enable the prosecutor to appoint any. Therefore, administrators are not appointed when the prosecutor does not consider the youngster as a child (see *age assessment*). These children are therefore forced to wait until they turn 18 to be able to lodge their asylum application at OFPRA.<sup>204</sup>

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<sup>197</sup> As provided by the law of 4 March 2002 on parental authority, Article 17.

<sup>198</sup> Article R. 111-14 of Ceseda provides that, in order to be included in the list, any individual person must meet the following criteria: 1. Be aged between 30 and 70; 2. Demonstrate an interest on youth related issues for an adequate time and relevant skills; 3. Reside within the jurisdiction of the Appeal Court 4. Never have been subject to criminal convictions, or to administrative or disciplinary sanctions contrary to honour, probity, or good morals; 5. Have not experienced personal bankruptcy or been subject to other sanctions in application of book VI of the commercial code with regard to commercial difficulties.

<sup>199</sup> In its recent opinion, the National Commission for Human Rights (CNCDH) calls for the generalization of the immediate appointment of an *ad hoc administrator* for the purpose of representing, informing and giving legal advice to all unaccompanied children and not only to those held in waiting zones or applying for asylum. See CNCDH (Commission nationale consultative des droits de l'homme), *Avis sur la situation des mineurs isolés étrangers présents sur le territoire national. Etat des lieux un an après la circulaire du 31 mai 2013 relative aux modalités de prise en charge des jeunes isolés étrangers (dispositif national de mise à l'abri, d'évaluation et d'orientation)*, 26 June 2014.

<sup>200</sup> Article L.221-5 of Ceseda provides that when an unaccompanied minor is not authorised to enter the country, the State Prosecutor is immediately informed by the administrative authority, and appoints an ad hoc administrator without delay. This person assists the minor during their stay in the waiting zone and ensures they are represented in the legal and administrative procedures related to their stay.

<sup>201</sup> Human Rights Watch, *Lost in transit*, Updated on 8 April 2014.

<sup>202</sup> See statistics in Roissy where 370 on a total of 518 unaccompanied had met a legal representative in 2010 (ANAFE, *Theoretical and practical Guide, Procedure in waiting areas*, January 2013).

<sup>203</sup> Human Rights Watch, *Lost in transit*, Updated on 8 April 2014.

<sup>204</sup> L'Observatoire de France terre d'asile, Newsletter n°62, December 2013.

More generally, in its recent opinion, the National Commission on Human Rights considered that the right of the child to be heard and to be assisted by a specially trained lawyer should be implemented. It also regrets that the circular of 31 May 2013,<sup>205</sup> a new regulation addressing the issue of unaccompanied minors on the territory, is totally silent on the right of unaccompanied children to be informed. According to some stakeholders, in certain *départements* or towns, unaccompanied children do not receive any information on their rights or, when they do, documents are short and written in French only.

A recent decision from the Council of State<sup>206</sup> is of great interest in this context. In that case, the appeal of an unaccompanied child before the administrative court (to obtain the implementation of his reception rights) had been considered inadmissible as the child was not represented by a legal representative or a guardian. The Council of State cancelled this decision and recognized the right of a minor to engage directly in a procedure when their "fundamental freedoms" are at stake.

### *Age assessment*

There have been some local initiatives for many years to set up assessment centres for unaccompanied children. For example, in Paris, an Advice and Reception platform for unaccompanied children (*Permanence d'accueil et d'orientation des mineurs isolés étrangers* – PAOMIE) has been carrying out an initial evaluation of the age of the child since 2011.

The above-mentioned circular from 31 May 2013 aimed at imposing a common age assessment procedure. The assessment should be supported by a body of concordant evidence which include social evaluation (interviews based on a common template), verification of the authenticity of civil status documents, and "if doubts prevail after these steps and only in this case", a medical expertise.

Referring to the fact that no method taken alone can scientifically determine precisely and reliably the age of a person, the High Council for Public Health adopted a recommendation on 23 January 2014 stating that "the medical examination must take place only at last resort and after a social evaluation and an examination of civil status documents."<sup>207</sup>

In practice, in its recent opinion adopted in June 2014,<sup>208</sup> the National Commission on Human Rights regrets that bone examinations continue to be implemented even when unaccompanied children possess civil status documents. According to some stakeholders, some young people, in particular those above 16, are subjected to several medical expertises until it can be established that they are 18. It also happens that a person declared as minor (and therefore at risk) in his or her *département* of origin be subjected to another bone examination in the *département* where he or she is finally assigned under the geographical distribution scheme and be declared as major and therefore not assisted.

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<sup>205</sup> [Circulaire du 31 mai 2013 relative aux modalités de prise en charge des jeunes isolés étrangers: dispositif national de mise à l'abri, d'évaluation et d'orientation](#) (Circular of 31 May 2013 on the assistance provided to foreign unaccompanied minors: national shielding, evaluating and referral scheme) NOR: JUSF1314192C. This circular was completed by a Protocol signed by three ministries (Interior, Social affairs and Health, and Justice) and the president of the Association of the French *départements*. This protocol foresees the geographical distribution of the foreign unaccompanied children on the territory according to demographical data.

<sup>206</sup> Council of State, 12 March 2014 (Conseil d'Etat, 12 mars 2014, [n° 375956](#)). According to the CNCDH, the interpretation of this decision does however not enable to be sure whether all foreign unaccompanied children are concerned or only those who are particularly vulnerable and for whom a decision from the juvenile judge has not been enforced.

<sup>207</sup> Haut Conseil de la santé publique (HCSP), [Recommandation, Evaluation de la minorité d'un jeune étranger isolé](#) (*Age assessment of a unaccompanied foreign young person*) 23 January 2014.

<sup>208</sup> CNCDH (Commission nationale consultative des droits de l'homme), *Avis sur la situation des mineurs isolés étrangers présents sur le territoire national. Etat des lieux un an après la circulaire du 31 mai 2013 relative aux modalités de prise en charge des jeunes isolés étrangers (dispositif national de mise à l'abri, d'évaluation et d'orientation*, 26 June 2014; See also a recent decision taken on 29 August 2014 concerning the care provided to unaccompanied children in Paris, the Rights Defender (*Défenseur des droits*), highlighted problems in the evaluation and care provided by the *département* of Paris and a NGO.

Furthermore, other physical examinations (hair system, teeth or genitals) are sometimes undertaken in addition to bone examination.

Notwithstanding the circular from 31 May 2013, the use of age assessment procedures still varies between *départements*. Some *départements* place the emphasis on civil status documentation, others conduct first a social evaluation and some also proceed to a bone examination. Procedures for bone examination are highly controversial, even more so when existing civil status documentation is disregarded without a thorough examination of the documents. According to UNHCR,<sup>209</sup> these young people should get the benefit of the doubt in the event that an evaluation cannot establish their exact age. Once again, practice is not uniform across the country. Young people are rarely given the benefit of the doubt in practice, and this happens less and less frequently. The State Prosecutor is the authority that decides on an age assessment procedure. In fact, the Prosecutor is responsible for issuing the order to place the child in care (temporarily or not) and may therefore request additional tests if there is a doubt about their age.

In any case, having been determined to be above 18 as a result of an age assessment procedure has a dramatic impact on the young asylum seeker's ability to benefit from fundamental rights. The age assessment procedure does not entail the granting of new documentation. This means that the person might be considered alternatively as an adult or a child by various institutions. The *Préfecture*, for instance, may refuse to grant a residence permit with a view to lodge the asylum application, arguing that the young asylum seeker needs to have a legal representative (the prefecture refers to the declaration of the person in the asylum procedure). However, such legal representative will most likely not be appointed, as the Prosecutor relies on the result of the age assessment procedure.<sup>210</sup>

## F. The safe country concepts

### Indicators:

- Does national legislation allow for the use of safe country of origin concept in the asylum procedure?  Yes  No
- Does national legislation allow for the use of safe third country concept in the asylum procedure?  Yes  No
- Does national legislation allow for the use of first country of asylum concept in the asylum procedure?  Yes  No
- Is there a list of safe countries of origin?  Yes  No
- Is the safe country of origin concept used in practice?  Yes  No
- Is the safe third country concept used in practice?  Yes  No

The notion of safe countries of origin was introduced in French Legislation by the Law of 10 December 2003.<sup>211</sup> By law, a country is considered safe "if it ensures respect for the principles of freedom, democracy and the rule of law, as well as human rights and fundamental freedoms".<sup>212</sup> The first list of safe countries of origin was established in June 2005 by the OFPRA (Office for the Protection of Refugees and Stateless Persons) Management Board. Every time a country is removed from or added to the list, the deliberations of the management board are published in the Official Journal. This list can be reviewed in OFPRA Board meetings (no system of regular re-examination). The list of countries considered to be safe countries of origin is public. At the end of 2014, it included the following 16 countries: Albania, Armenia, Benin, Bosnia-Herzegovina, Cape Verde, Georgia, Ghana, India, Former

<sup>209</sup> UNHCR, [Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum](#), Geneva, 1997.

<sup>210</sup> L'observatoire de France terre d'asile, Newsletter n°61, November 2013.

<sup>211</sup> Law on the right to asylum n° 2003-1176 of 10 December 2003.

<sup>212</sup> Article R. 111-14 of Céseda.

Republic of Macedonia (FYROM), Mauritius, Moldova, Mongolia, Montenegro, Senegal, Serbia and Tanzania.<sup>213</sup>

The consequences of this provision affect the procedure in a fundamental way. Asylum seekers from countries included in this list cannot obtain a temporary residence permit on asylum grounds. Their application is therefore processed by OFPRA within an accelerated procedure and their potential appeal before the National Court of Asylum (CNDA) does not have any suspensive effect. When they are channelled into an accelerated procedure, these asylum seekers are usually not accommodated in reception centres and are subject to more precarious reception conditions than asylum seekers in a regular procedure, as they are excluded from the regular reception scheme.<sup>214</sup>

The safe country of origin concept is frequently used in practice. 91.5% of the asylum seekers coming from countries deemed as safe countries of origin have been channelled into an accelerated procedure. The average recognition rate for these asylum seekers stood at only 6.2% in 2013.<sup>215</sup>

The sources used by the management board of OFPRA to substantiate its decisions are not officially published. OFPRA has an internal resources service working on country of origin information and a UNHCR representative sits in the management board meetings, but the process lacks transparency as to the sources of information used to decide on the safeness of a country.

An information report of Senators Leconte and Frassa from November 2012 highlighted that "the inclusion of a country on the list of safe countries of origin is rather motivated by the desire to reduce the influx of asylum requests, than by the objectively safe nature of the political and social situation of any given country."<sup>216</sup> In 2013, the share of asylum claims coming from countries deemed as safe countries of origin represented 7% of all asylum claims (14% in 2012, back to same percentage as 2011 where the share was 7% of the total number of asylum claims as well.<sup>217</sup>

Several countries have been removed from the list by the Management Board of OFPRA (but can sometimes also be reintroduced in the list at a later stage) since 2005.<sup>218</sup> For example, the Management Board of OFPRA decided on 26 March 2014 to remove Ukraine from the list of safe countries of origin. On 5 March 2014, UNHCR had called states to remove Ukraine from their safe countries of origin (SCO) list. Shortly after and prior to the official withdrawal of Ukraine from the French SCO list, the French Ministry of Interior had asked prefects to treat Ukrainian asylum applications through the regular procedure, and no longer through the accelerated one.<sup>219</sup>

Decisions to add a country to the list can be challenged before the Council of State by third parties. The Council of State has removed several countries from the list.<sup>220</sup> In a decision of 16 December 2013, the Management Board of OFPRA added Albania, Georgia and Kosovo.<sup>221</sup> Considering that the conditions of respect for the principles of freedom, democracy and the rule of law, as well as human rights and fundamental freedoms were not met in these three countries, several French NGOs decided to

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<sup>213</sup> See an updated list [here](#).

<sup>214</sup> They are nevertheless now legally eligible to the temporary financial allowance (ATA) (see rectified Finance Law of 8 August 2014, (n°2014-891).

<sup>215</sup> OFPRA, [2013 Activity report](#), 28 April 2014.

<sup>216</sup> Information report n°130 prepared by MM Jean-Yves Leconte and Christophe-André Frassa, Sénat, 14 november 2012.

<sup>217</sup> OFPRA, [2013 Activity report](#), 28 April 2014.

<sup>218</sup> The Management Board of OFPRA decided to withdraw Georgia in November 2009; Mali (men and women) in December 2012; Croatia in June 2013 and Ukraine in March 2014.

<sup>219</sup> Forum réfugiés-Cosi, Press release, [Liste des « pays d'origine sûrs » : Forum Réfugiés – Così prend acte avec satisfaction du retrait de l'Ukraine](#) (List of « safe countries of origin » : Forum Réfugiés – Così expresses satisfaction at the removal of Ukraine), 28 March 2014.

<sup>220</sup> The Council of State annulled the inclusion of Albania and Niger on the list of safe countries of origin in February 2008; Armenia, Madagascar, Turkey and Mali (for women only) in July 2010; Albania and Kosovo in March 2012; Bangladesh in March 2013; Kosovo in October 2014.

<sup>221</sup> Decision of 16 December 2013 modifying the list of safe countries of origin (*Décision du 16 décembre 2013 modifiant la liste des pays d'origine sûrs*), [JORF n°0301](#) of 28 december 2013 (page 21652).

challenge this decision before the Council of State.<sup>222</sup> In a decision of 10 October 2014,<sup>223</sup> the Council of State removed Kosovo from the list of safe countries of origin but maintained Albania and Georgia. The Ministry of Interior sent an instruction to the Prefects on 17 October 2014<sup>224</sup> calling them to generally channel the asylum seekers from Kosovo into the regular procedure and to deliver them a temporary residence permit enabling them to be accommodated in reception centres for asylum seekers.

## G. Treatment of specific nationalities

Asylum seekers that are nationals of countries considered to be safe are dealt with most of the time under an accelerated procedure (in 91.5% of the cases) (see Safe country concepts section). Moreover, according to OFPRA, following the withdrawal of Bangladesh from the list of safe countries of origin, these asylum applications have been treated under the “last arrived, first examined” principle which meant that the average period for their examination was of 91 days after May 2013.

Furthermore, according to the practical observations of many actors in the field of asylum in France, the processing of asylum claims for people of Rwandan nationality can take a particularly long time.

Syrian asylum seekers do not get any specific treatment in France (except under a limited resettlement programme, as explained below). The only remarkable difference lies in the very high recognition rate at the moment. Protection was granted by OFPRA to asylum seekers from Syria in 835 instances in 2013, which amounts to a recognition rate of 94.8%. This rate is to be compared to the average recognition rate of 12.8% for all OFPRA decisions. Syrian citizens have by far the highest recognition rate among all nationalities (Iraqis rank second with a 67.4% rate).<sup>225</sup> According to OFPRA’s annual report for 2013,<sup>226</sup> 56.8% of Syrian nationals who were granted protection benefitted from refugee status under the Geneva Convention while 43.2% of them obtained subsidiary protection. The average time for the examination of claims from Syrian nationals was 138 days at the end of 2013 (against an average of 204 days for all nationalities).

It is worth noting that France did not see a very high level of arrivals of Syrian asylum seekers<sup>227</sup> in 2013 in comparison to other European countries. From 1 January to 31 July 2013, Syrian nationals submitted 688 asylum applications (among which 485 applications were submitted by adults and 203 by dependent children). This is nevertheless a striking increase as only 637 and 119 asylum claims had been lodged by Syrian nationals in 2012 and 2011 respectively. In any case, OFPRA does not seem to be resorting to any policy of “freezing applications” or postponing decisions. The French authorities have not designed any special status for Syrian applicants whose asylum applications are rejected. There is no official position with regards to returns to Syria (no moratorium) but there have been no return of Syrian nationals to Syria from France in recent years.<sup>228</sup>

<sup>222</sup> See Forum réfugiés-Cosi, Press release, “Safe countries of origin: Forum Réfugiés-Cosi will challenge before the Council of State the addition to the list of Albania, Georgia and Kosovo” (“[Pays d'origine sûrs: Forum Réfugiés-Cosi va contester devant le Conseil d'Etat l'ajout sur la liste de l'Albanie, de la Géorgie et du Kosovo](#)”), on 5 February 2014.

<sup>223</sup> Council of State, 10 October 2014, [Forum réfugiés-Cosi et autres c. OFPRA, nos 375474, 375920](#).

<sup>224</sup> Information note of 17 October 2014 from the Ministry of Interior (INTV1424567N).

<sup>225</sup> OFPRA, [2013 Activity report](#), 28 April 2014.

<sup>226</sup> OFPRA, [2013 Activity report](#), 28 April 2014.

<sup>227</sup> In this regard, it should be noted that a requirement for a specific transit airport visa (*visa de transit aéroportuaire* or VTA) is applied to Syrians. In a decision of 18 June 2014 ([CE, 18 juin 2014, n° 366307](#)), the Council of State (*Conseil d'Etat*), seized by two French NGOs (Gisti and Anafé), confirmed the obligation, for Syrians, to possess a VTA in order to transit through French airports. The Council of State recalled that this obligation, which applies to certain third country nationals, was « linked to public order requirements aimed at avoiding, at a stop over or at a connecting flight, the abuse of transit for the sole purpose of entering France”. The Council of State considered that this obligation applied to Syrians “did not constitute in itself a breach of the right of asylum nor a breach of the right to life or of the protection against inhuman or degrading treatment”.

<sup>228</sup> However, there have been returns to Italy for instance under readmission procedures or Dublin II procedures.



In addition, at its first 2015 ministerial meeting, the government declared that, in 2014, 500 Syrian refugees in a situation of extreme vulnerability coming from neighbouring countries of Syria had benefitted from a special resettlement programme, and that this effort will continue in 2015.<sup>229</sup>

According to the Minister of Interior,<sup>230</sup> in 2014, OFPRA is likely to protect 2 500 to 3 000 additional Syrians, including in the framework of the special resettlement programme for 500 Syrians that should be renewed in 2015.

As far as Iraqi nationals are concerned, on 14 August 2014, the Ministry of the Interior sent an Information Note<sup>231</sup> to the Prefects regarding a specific reception scheme for Iraqis belonging to religious minorities. The selection criteria are that those persons should be personally persecuted or threatened for religious reasons, be in a situation of extreme vulnerability and have strong links with France. According to this Note, two types of long term visas can be granted by the French consular and diplomatic services in Bagdad and Erbil, including long term visas enabling the persons concerned to apply to asylum in France if they wish so. Once on French territory, their asylum application is examined with a short delay and they are allowed to work and receive social benefits . At its first 2015 ministerial meeting, the government declared<sup>232</sup> that, since 1 August 2014, French authorities had admitted 1 277 such persons under this programme, among which 800 had reached French territory by the end of January 2015.

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<sup>229</sup> Article in La Croix, "L'an dernier, la France a donné refuge à plus de 1 200 Irakiens", 6 January 2015.

<sup>230</sup> Speech from the Minister of Interior on 24 June 2014 at a colloquium.

<sup>231</sup> [Note d'information, 14 août 2014, NOR : INTV1419824N](#)

<sup>232</sup> Article in La Croix, "[L'an dernier, la France a donné refuge à plus de 1 200 Irakiens](#)", 6 January 2015.

### A. Access and forms of reception conditions

#### 1. Criteria and restrictions to access reception conditions

*Indicators:*

- Are asylum seekers entitled to material reception conditions according to national legislation :
  - o During the accelerated procedure?
 

<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Yes, but limited to reduced material conditions	<input type="checkbox"/> No
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  - o During border procedures:
 

<input type="checkbox"/> Yes	<input type="checkbox"/> Yes, but limited to reduced material conditions	<input checked="" type="checkbox"/> No
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  - o During the regular procedure:
 

<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Yes, but limited to reduced material conditions	<input type="checkbox"/> No
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  - o During the Dublin procedure:
 

<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Yes, but limited to reduced material conditions	<input type="checkbox"/> No
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  - o During the appeal procedure (first appeal and onward appeal):
 

<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Yes, but limited to reduced material conditions	<input type="checkbox"/> No
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  - o In case of a subsequent application:
 

<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Yes, but limited to reduced material conditions	<input type="checkbox"/> No
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- Is there a requirement in the law that only asylum seekers who lack resources are entitled to material reception conditions?
 

<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
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Asylum seekers going through the regular procedure are entitled to housing and an allowance. They can receive the temporary waiting allowance (ATA) if they are not accommodated in a reception centre, or the monthly subsistence allowance (AMS) if they are housed in reception or transit centres. They are entitled to healthcare through a system of universal healthcare (couverture maladie universelle- CMU). The payment of the temporary financial allowance stops one month after the notification of a negative decision by the CNDA.

Asylum seekers channelled into an accelerated procedure are eligible for emergency reception scheme. They do not have a residence permit and therefore have no access to the universal healthcare scheme (CMU) but they are entitled to state medical assistance (AME – with a three month waiting period). Those under an accelerated procedure because they are from a safe country of origin can receive the temporary waiting allowance (ATA). The allocation of the ATA allowance stops as soon as they receive a negative decision by OFPRA (French Office for the Protection of Refugees and Stateless persons) at first instance. Asylum seekers who lodged a subsequent application were not eligible to the ATA until the rectified Financial Law of 8 August 2014, they can now benefit from this temporary allowance, which may nevertheless be refused in the case of a second subsequent application.<sup>233</sup> Asylum seekers who fall under the Dublin procedure in France can in theory benefit from emergency accommodation up until the notification of the decision of readmission (in practice, many live in the street, in squats etc.), while Dublin returnees are treated as regular asylum seekers and therefore benefit from the same reception conditions granted to asylum seekers under the regular or the accelerated procedure. In April 2013, the French government took steps to comply with the Reception Conditions Directive and with the decision of the Court of Justice of the European Union.<sup>234</sup> The Ministry of Interior gave instructions on 23 April 2013 to provide an allowance to asylum seekers under the

<sup>233</sup> Article L.5423-11 of the Code of Labour amended by Article 31 of the rectified Financial law of 8 August 2014.

<sup>234</sup> [Case C-179/11](#), *Cimade and GISTI v Ministre de L'Intérieur, de l'Outre-mer, des Collectivités territoriales et de l'immigration*, 27 september 2013.

Dublin procedure who request it at *Pôle emploi*, the unemployment agency.<sup>235</sup> Asylum seekers under the Dublin procedure who had requested the allowance after 27 September 2012 and who had received a negative reply could in theory request a retroactive payment. This instruction was confirmed by a Council of State decision of 30 December 2013,<sup>236</sup> which reiterated that the reception conditions (i.e. ATA allowance) had to be granted until the effective transfer of the asylum seeker to another Member State. Point 3.2.1 of Annex I of the 2011 circular<sup>237</sup> has therefore been cancelled.

Moreover, a Council of State decision of 12 February 2014<sup>238</sup> recalled that, short of the transposition of article 16 of the Reception Conditions Directive (allowing the withdrawal of reception conditions in case of the asylum seeker absconding) into French law, the instruction to Prefects of 23 April 2013 to transmit to *Pôle emploi* (French employment agency) the list of asylum seekers considered to be absconding “does not have the aim and cannot have the effect of resulting in the suspension of the granting of the temporary waiting allowance”.

The right of asylum seekers under the Dublin Convention to benefit from the ATA until their effective transfer is now provided for by law.<sup>239</sup> In addition to several administrative difficulties linked to the delays in processing the requests (mostly for the healthcare scheme, see section C “Healthcare”), the biggest impediment to access material reception conditions is the structural lack of places in regular reception centres. Indeed, at the end of 2014, 25 689 places were expected to be available<sup>240</sup> (some of these places open early 2015) in regular reception centres (CADA), while France had registered 64 536 asylum requests (adults and children, only 38% of the people entitled to accommodation in a regular reception centre had been able to access such a centre in 2014.<sup>241</sup> In 2013, 19 008 asylum seekers were housed in a CADA centre out of 59 327 asylum seekers entitled to the reception scheme.<sup>242</sup>

The number of reception centres is therefore clearly not sufficient for the French scheme to provide access to housing to all the asylum seekers who should benefit from it in accordance with the Reception Conditions Directive. As of 31 December 2013, 15.000 asylum seekers were on a priority waiting list to obtain a place in a CADA reception centre, amounting to an average waiting period of 12 months.<sup>243</sup>

Despite significant efforts by public authorities who decided to create 4,000 additional CADA places by December 2014 and 5000 additional places by 2017, the facilities of the National Asylum Scheme (DNA) remain inadequate, in comparison to the number of asylum applications registered by OFPRA.<sup>244</sup>

Upon entrance into the reception centres for asylum seekers, asylum seekers are asked to declare that they have no resources but this lack of resources is not verified in practice. With regards to the ATA, the asylum seeker has to declare his or her level of resources and justify that he or she has a monthly income lower than 514 Euros for a single person, or 771 Euros for a couple without children.<sup>245</sup>

In all cases, material reception conditions are subject to the issuance of the letter of registration sent by OFPRA once the asylum application has been received and registered. Article L. 348-1 of the Code of

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<sup>235</sup> Instruction of the Ministry of Interior, 23 April 2013 following the Council of State judgment of 17 April 2013, n°335924.

<sup>236</sup> Council of State decision, [n°350193](#), 30 December 2013, Cimade.

<sup>237</sup> Circular on the implementation of Dublin and accelerated procedures, IOCL1107084C, 1st April 2011

<sup>238</sup> Council of State decision, [n° 368741](#), 12 February 2014, Cimade-Gisti.

<sup>239</sup> It is now explicitly mentioned in Articles L.5423-8 1° and L.5423-11 al.2 of the Code of Labour amended by Article 31 of the rectified Financial law of 8 August 2014..

<sup>240</sup> 2015 Finance draft law – Appendix « Immigration, Asylum, Integration » p.15

<sup>241</sup> 2015 Finance draft law – Appendix « Immigration, Asylum, Integration » p.17

<sup>242</sup> Quoted in National Assembly, [Rapport d'information sur l'évaluation de la politique d'accueil des demandeurs d'asile](#) (Information report on the evaluation of the reception conditions offered to asylum seekers), Jeanine Dubié and Arnaud Richard, 10 April 2014.

<sup>243</sup> National Assembly, [Rapport d'information sur l'évaluation de la politique d'accueil des demandeurs d'asile](#) (Information report on the evaluation of the reception conditions offered to asylum seekers), Jeanine Dubié and Arnaud Richard, 10 April 2014.

<sup>244</sup> See the specific note on the current asylum reform.

<sup>245</sup> On 1 January 2015. Those [amounts](#) are those used to calculate a social welfare allowance granted to people with low wages, the Active Solidarity Income (RSA- Revenu de Solidarité Active ).

social action and family<sup>246</sup> also foresees that access to reception centres for asylum seekers is subjected to the presentation of the temporary residence permit (APS) or the 6 month “*récépissé*” stating the date on which the asylum application has been lodged.<sup>247</sup> In order to benefit from the ATA, asylum seekers falling under the Dublin Convention have to present their Dublin notification « *convocation Dublin* ».

## 2. Forms and levels of material reception conditions

### Indicators:

- Amount of the financial allowance/vouchers granted to asylum seekers on 01/01/2015 (per month, in original currency and in euros): 11.45 euros/day or 343.50 euros per month (ATA); 6,64 euros/day/person (AMS)

Different forms of material reception conditions exist in the legislation. They include: accommodation in reception centres, accommodation in emergency schemes, and financial benefits.

### Reception centres for asylum seekers:

Only those who have a temporary residence permit and who have a pending asylum claim are eligible to stay in reception centres.<sup>248</sup> Asylum seekers under a Dublin procedure are excluded for now from accessing these centres. A place in the centres for asylum seekers is offered by the prefecture where the application has been made. The average length of stay in CADA reception centres in 2013 was 562 days – that is to say one year and six months.<sup>249</sup> If the asylum seeker does not accept this offer, they will be excluded as a consequence from the benefit of the temporary waiting allowance (ATA). If there is no place in a reception centre, the asylum seeker is placed on a waiting list, in the meantime, they will be directed to other provisional accommodation solutions.<sup>250</sup> However, if the asylum seeker has not succeeded in getting access to a reception centre before lodging his appeal, their chances to benefit from one at the appeal stage are very slim.<sup>251</sup> In case of a shortage of places, asylum seekers may have no other solutions than relying on night shelters or living on the street.

In France, there are also two ‘transit’ centres which house asylum seekers temporarily and refer them to the national reception scheme (220 places in Villeurbanne and 80 in Créteil). Under special circumstances, some asylum seekers under Dublin or accelerated procedures can also be accommodated there for a while.

### Monthly subsistence allowance (AMS):

This allowance is allocated by the reception centre to each person (not only each adult) and replaces the ATA allowance once the asylum seeker enters the centre, if they do not have a sufficient level of resources.<sup>252</sup> The amount of AMS varies depending on the “services” provided by the reception centre

<sup>246</sup> Article L.348-1 of the CASF states that “Third country nationals who possess one of the residence documents mentioned in article L.742-1 of the Ceseda can, upon their request, benefit from the social assistance to be housed in reception centres for asylum seekers”.

<sup>247</sup> See conditions for the granting of the ATA allowance [here](#).

<sup>248</sup> Circulaire N° DPM/CI3/2007 du 3 mai 2007 relative aux missions des centres d’accueil pour demandeurs d’asile, aux modalités d’admission dans ces centres et de sortie de ces centres et au pilotage du dispositif national d’accueil (Circular relating to the missions of reception centre for asylum seekers, to the entry and exit criteria of those centres and to the piloting of the national reception arrangement).

<sup>249</sup> National Assembly, [Rapport d’information sur l’évaluation de la politique d’accueil des demandeurs d’asile](#) (Information report on the evaluation of the reception conditions offered to asylum seekers), Jeanine Dubié and Arnaud Richard, 10 April 2014.

<sup>250</sup> See this [webpage](#) of the Ministry of Interior for more information.

<sup>251</sup> European migration network – French contact point, The organisation of reception structures for asylum seekers in France, September 2013.

<sup>252</sup> Article R. 348-4 of the Code of Social Action and Families.

and the family situation of the asylum seeker.<sup>253</sup> These allowances are set by law and are published in the official journal.<sup>254</sup> Asylum seekers who earn some income during the process of their asylum application (benefiting from a right to work thanks to another residence permit for instance) may be asked to contribute for their stay in CADAs (if their income exceeds a certain amount<sup>255</sup>). The amount of this contribution is set by the Prefect on the basis of a scale which takes into account the resources of the asylum seekers and the expenses they have to bear during the reception phase. This contribution has to be paid directly to the reception facility.<sup>256</sup>

#### Emergency reception scheme:

Because of shortages of places in regular reception centres for asylum seekers, the State has developed emergency schemes in every department (20 637 places were funded in 2012 and almost 22 000 places were financed in 2014<sup>257</sup> with approximately the same capacity in 2013). They can either be hotel rooms (56 %), flats (23%) or collective emergency facilities (20%).<sup>258</sup> These facilities can house asylum seekers prior to their entry into a reception centre as well as asylum seekers who are not eligible to accommodation in a reception centre (for instance asylum seekers subject to the Dublin procedure).<sup>259</sup>

#### Temporary waiting allowance (ATA):

This allowance<sup>260</sup> is provided to asylum seekers older than 18 years old for the whole duration of the examination of their application. It is granted to asylum seekers who cannot be accommodated in reception centres even though they have accepted the offer from the prefecture – because of a shortage of places available. The ATA allowance is renewed every month until a final decision on the claim is taken, provided that the conditions of resources are still fulfilled. Since two Council of State decisions in 2008 and 2011, asylum seekers under an accelerated procedure should also benefit from the ATA allowance (but only during the first instance stage). This right is now enshrined in the law.<sup>261</sup> *Pôle emploi* (the French employment agency) has the overall responsibility for the distribution of the allowance (including decisions regarding its application or rejection). The amount of the ATA is defined in law and has been set at 11.45 Euros a day/per adult,<sup>262</sup> or 343.50 Euros per month of 30 days as of 1 January 2015.

The fact that the allowance is provided only to adults causes inequalities between households of asylum seekers as the same amount will be granted to a single man and to a single parent with three under-aged children.<sup>263</sup>

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<sup>253</sup> See this [webpage](#) of the Ministry of Interior for more information.

<sup>254</sup> See decree n° 2012-196 of 9 February 2012 for the 2012 amount.

<sup>255</sup> Those [amounts](#) are those used to calculate a social welfare allowance granted to people with low wages, the Active Solidarity Income (RSA- Revenu de Solidarité Active ).

<sup>256</sup> Article R348-4 of the social action and family code.

<sup>257</sup> 2015 Finance draft law – Appendix « Immigration, Asylum, Integration » p.31 In the 2015 Finance Law, the gouvernement planned to finance 500 supplementary places in the emergency reception scheme for asylum seekers in the region of Calais (northern France).

<sup>258</sup> European migration network – French contact point, The organisation of reception structures for asylum seekers in France, September 2013.

<sup>259</sup> Circular n° IOCL1113932C of 24 May 2011 on the management of the emergency scheme for asylum seekers .

<sup>260</sup> Created by the law n° 2005-1719 of 30 December 2005 for the 2006 budget (articles L. 5423-8 and L. 5423-9 of Labour Code).

<sup>261</sup> Articles L.5423-8, Article 5423-9 and L.5423-11 of the Labour Code as amended by [Article 31 of the rectified Financial law of 8 August 2014](#).

<sup>262</sup> A Decree on 27 December 2013 has set the daily amount of the allowance at 11.35 euros from 1st January 2014 ([Décret](#) n° 2013-1274 du 27 décembre 2013 revalorisant l'allocation temporaire d'attente, l'allocation de solidarité spécifique, l'allocation équivalent retraite et l'allocation transitoire de solidarité)

<sup>263</sup> A reform of this method of calculation has been discussed in the framework of the consultations for the reform of the French asylum procedure.

Refugees and beneficiaries of subsidiary protection can, upon request, stay in asylum seekers' reception centres until an offer of accommodation is available, within a strict timeframe of three months from the final decision (renewable once in special cases). Upon request, those whose claims have been rejected are able to stay in a centre for up to one month from the notification of the negative decision. Afterwards, they might access emergency accommodation through emergency aid (if a place is available).

Since the implementation of the circular of 24 May 2011, asylum seekers under the accelerated procedure are only able to benefit from a place in the emergency reception scheme until the OFPRA decision is taken.<sup>264</sup> Under specific exemptions, they can stay for a maximum of one month after the OFPRA decision, even if an appeal is pending. Asylum seekers who fall under the Dublin procedure are only able to benefit from emergency housing until the notification of the decision of transfer.

In practice, reception centres in France have a varied application of these deadlines. In case of asylum seekers over-staying in these reception centres, managers expose themselves to budget reductions or withdrawal of accreditations (even if these occur rarely in practice).<sup>265</sup> When these deadlines are complied with, asylum seekers have to rely on "regular" emergency shelters (night shelters for homeless persons) or live on the streets.

Finally, French legislation excludes asylum seekers from the granting of all family related welfare benefits as the residence permits provided to asylum seekers are not listed in the permits that give eligibility to these benefits.<sup>266</sup> Asylum seekers are also not eligible to receive the social welfare allowance, the so-called Active Solidarity Income (RSA- Revenu de Solidarité Active), an allowance granted to individuals over 25 years old who do not have resources or have very low incomes.

### 3. Types of accommodation

#### Indicators:

- Number of places in all the reception centres (both permanent and for first arrivals): 24.689 on 30 June 2014 (25 689 places early 2015),
- Type of accommodation most frequently used in a regular procedure :  
 Reception centre     Hotel/hostel     Emergency shelter     private housing
- Type of accommodation most frequently used in an accelerated procedure :  
 Reception centre     Hotel/hostel     Emergency shelter     private housing
- Number of places in private accommodation:    not available
- Number of reception centres:    271
- Are there any problems of overcrowding in the reception centres?     Yes     No
- Are there instances of asylum seekers not having access to reception accommodation because of a shortage of places?     Yes     No
- What is, if available, the average length of stay of asylum seekers in the reception centres?  
562 days in 2013
- Are unaccompanied children ever accommodated with adults in practice?     Yes     No

In France, the *Office Français de l'Immigration et de l'Intégration* (OFII) carries responsibility for the orientation platforms that provide initial guidance to applicants. Local authorities at the *Département* level (prefecture and decentralised administrations) are responsible for the organisation of the

<sup>264</sup> Circular n° IOCL1113932C of 24 May 2011 on the management of the emergency scheme for asylum seekers.

<sup>265</sup> Circular NOR IOCL1114301C of 19 August 2011 on the missions of asylum seekers reception centres

<sup>266</sup> Article 512-2 of the social security code

accommodation in regular reception centres, as well as for the management of the emergency accommodation scheme. The management of these asylum reception centres is then subcontracted to the semi-public company *Adoma* or to NGOs that have been selected through a public call for tenders. These centres fall under the French social initiatives (*action sociale*) and are funded by the State. Their financial management is entrusted to the Prefect of the *Département*.

The national reception scheme includes 258 regular reception centres for asylum seekers (CADA)<sup>267</sup>, 1 centre especially suited to unaccompanied children asylum seekers<sup>268</sup> and 2 ‘transit’ centres (in Villeurbanne and in Créteil). In addition, there are several thousands of emergency scheme places.<sup>269</sup> The distribution of the reception centres on the territory is sometimes at odd with the asylum seekers flows. For instance, only 16.5% of the CADA centre places are available in the Paris region where 36% of the asylum claims were made in 2013<sup>270</sup>.

#### *Insufficient capacity in regular reception centres*

As of 30 June 2014, there were 24 689 places in regular reception centres (CADA) while France had registered 66 251 asylum applications (adults and children<sup>271</sup>)<sup>272</sup>. The number of reception centres is therefore clearly not sufficient to provide access to housing to all the asylum seekers who should benefit from it in accordance with the Reception Conditions Directive. No phenomenon of overcrowding in each of the centres is observed but the overall reception capacities are stretched. On 31 December 2013, there were 15,000 asylum seekers on a priority waiting list to obtain a place in a CADA reception centre, amounting to an average waiting period of 12 months.<sup>273</sup> Until they obtain a place, they are housed in emergency facilities (centres or hotels) or have to live on the streets.

According to the circular of 3 May 2007 on the missions assigned to CADA centres,<sup>274</sup> the persons who should benefit from priority admission to these centres are: newly arrived asylum seekers (at the first stages of the procedure); families with children, single women, persons joining asylum seekers already accommodated in a reception centre (spouse, dependent parents, grandparents and children), single young adults, young applicants who have been declared adults following an age assessment; asylum seekers with health problems with a medical notice and finally those who have been flagged by the Ministry of Foreign Affairs. In France, families, single women or traumatised asylum seekers are not necessarily accommodated in separated facilities or separate wings (but this can happen in some centres).

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<sup>267</sup> 2015 Finance draft law – Appendix « Immigration, Asylum, Integration » p.30

<sup>268</sup> See section “Addressing special reception needs of vulnerable persons” for details on the reception modalities of unaccompanied children.

<sup>269</sup> See this [webpage](#) of the Ministry of Interior for more information.

<sup>270</sup> National Assembly, [Rapport d'information sur l'évaluation de la politique d'accueil des demandeurs d'asile](#) (*Information report on the evaluation of the reception conditions offered to asylum seekers*), Jeanine Dubié and Arnaud Richard, 10 April 2014.

<sup>271</sup> Including subsequent applications.

<sup>272</sup> Source OFII, quoted in: National Assembly, [Rapport d'information sur l'évaluation de la politique d'accueil des demandeurs d'asile](#) (*Information report on the evaluation of the reception conditions offered to asylum seekers*), Jeanine Dubié and Arnaud Richard, 10 April 2014.

<sup>273</sup> National Assembly, [Rapport d'information sur l'évaluation de la politique d'accueil des demandeurs d'asile](#) (*Information report on the evaluation of the reception conditions offered to asylum seekers*), Jeanine Dubié and Arnaud Richard, 10 April 2014.

<sup>274</sup> Circulaire N° DPM/CI3/2007 of 3 May 2007 on the missions of reception centre for asylum seekers – This circular has been revoked afterwards but these criteria are still used unofficially.

### *Difficult access to emergency facilities*

Given the lack of places in CADA centres, the State authorities have developed emergency schemes in all departments. At the end of June 2013, 21898 asylum seekers were housed in emergency facilities.<sup>275</sup>

They can take the form of places in special hotels, of collective emergency centres or flats. This system is managed by the prefects.<sup>276</sup> Thus, in addition to the common use of hotels, in some areas there is a trend to open emergency centres dedicated to asylum seekers, open temporarily for the winter period or more permanently, but with less social workers available than in CADAs. These centres, unlike the housing of asylum seekers in hotels, offer at least some sort of administrative and social support. In theory, only accommodation is provided in the context of these emergency reception centres. Food or clothing services may be provided by charities. However, in the Rhône department for instance, these emergency schemes are also saturated. At the end of 2014 in Lyon, 196 people were accommodated in hostel rooms. At the end of December 2014, 41 vulnerable persons whose case should have been prioritised (families with minor children, pregnant women for instance) had no housing in the Rhône Département.

These emergency places do not benefit from a national monitoring mechanism. A pilot project to extend the national scheme monitoring tool to these emergency places was launched in 2013 in Bretagne, Franche-Comté, Poitou-Charentes and Nord Regions.

In September 2013, the emergency scheme attracted a lot of media attention through the situation in Clermont-Ferrand. The NGO handling the emergency housing for asylum seekers had to stop paying for the nights in hotels due to budget constraints and 200 to 300 asylum seekers, including many children, were forced to sleep on the streets for several nights. The NGO explained that the funding they received from the State authority could cover 30 hotel rooms per night for a year when in reality they have to house 362 persons.<sup>277</sup>

As another example, on 18 November 2013, prior to the imminent evacuation of a camp under a bridge in Lyon, Forum réfugiés-Cosi organised, in consultation with the prefecture, the temporary housing of 315 asylum seekers in eight municipalities of the departments of Rhône, Ardèche and Isère, in partnership with Adoma which organised the housing of 105 people. These asylum seekers benefited from these emergency housing facilities until 31 March 2014.<sup>278</sup>

In any case, according to the ministry of interior data, 31% of the asylum seekers in 2013 (meaning 18 421 asylum seekers) had not benefited<sup>279</sup> from a housing funded by the State.

### *Distribution of asylum seekers among the different housing solutions (on 30 June 2013)*<sup>280</sup>

Number of asylum seekers in the procedure	59,327
Number of asylum seekers housed in a CADA reception centre <sup>281</sup>	19,008

<sup>275</sup> National Assembly, [Rapport d'information sur l'évaluation de la politique d'accueil des demandeurs d'asile](#) (Information report on the evaluation of the reception conditions offered to asylum seekers), Jeanine Dubié and Arnaud Richard, 10 April 2014.

<sup>276</sup> Circular n° IOCL1113932C of 24 May 2011 on the management of the emergency scheme for asylum seekers.

<sup>277</sup> Article in Le Monde, [La crise du 115, à Clermont, illustre la difficulté de l'Etat à financer l'hébergement d'urgence](#) (The crisis of the 115 in Clermont demonstrates the difficulty of the State to finance emergency housing), 4 September 2013.

<sup>278</sup> See Le Monde, [Lyon: : expulsion d'un campement de 300 demandeurs d'asile albanais](#) (Lyon: eviction from a camp of 300 Albanian asylum seekers), 23 October 2013.

<sup>279</sup> Whether they did not obtain one or did not ask for one.

<sup>280</sup> National Assembly, [Rapport d'information sur l'évaluation de la politique d'accueil des demandeurs d'asile](#) (Information report on the evaluation of the reception conditions offered to asylum seekers), Jeanine Dubié and Arnaud Richard, 10 April 2014.



% of asylum seekers eligible to a housing in a CADA centre who are effectively housed in a CADA centre	32 %
Number of asylum seekers housed in an emergency facility	Around 21,898
% of asylum seekers in the procedure effectively housed in a State funded facility	69%
% of asylum seekers who did not obtain or did not request housing	31%

According to the National Consultative Commission on Human Rights, this situation is due to the marginalisation of normal reception centres in favour of the emergency scheme options: “in 2010, the funds assigned to emergency measures are well above those devoted to CADA reception centres. Such short-term management results in organising housing through more expensive schemes, that are in addition less suitable and do not include social and legal support”.<sup>282</sup> Also, in its opinion on 15 December 2011,<sup>283</sup> the Commission estimated that “the rationalisation of the national reception scheme undertaken over the last few years has worked to weaken [the asylum seekers’] rights, without generating a significant reduction in associated costs.” UNHCR shared the concern of increasing precariousness, “UNHCR considered that such unequal treatment, which depended in particular on the place of asylum application, undoubtedly posed a problem. In that respect, UNHCR noted that since 2009 only one third of the asylum seekers had been placed in an asylum seeker reception centre (CADA).”<sup>284</sup>

In regions where arrivals are high, asylum seekers desperately wait for housing solutions in a scheme that is in theory designed for them and in the framework of which they have signed a document accepting any offer. Forum réfugiés-Cosi has stressed for many years that the rule for asylum seekers’ housing should be the regular reception centres (CADAs) and that emergency housing solutions should remain an exception.

Recognising that asylum seekers housed in regular reception centres benefit from a better support and - in equal situations - have more chances to obtain protection, the General Controllers report argued in 2013 that housing in dedicated reception centres must become again the norm and cover 2/3 of the asylum seekers, meaning a total of 35,000 places.<sup>285</sup> An appendix to the 2015 Finance law gives a target of 50% of asylum seekers to be housed in regular reception centres by 2015 and 55% by 2017.<sup>286</sup>

Nuclear families can usually stay together during the asylum application process, but in practice it happens that families who have to rely on emergency shelters cannot stay together as rooms for men and women are sometimes separated in these shelters.

Awareness-raising sessions are sometimes organised in the reception centres and the “planned parenthood” (Planning Familial) teams sometimes conduct trainings on the issue of gender based violence. In some reception centres, there are information leaflets and posters on excision and forced marriages.

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<sup>281</sup> These figures do not represent the total number of places available in CADA reception centres in France, as some of the places are also used for rejected asylum seekers or for beneficiaries of international protection.

<sup>282</sup> National Consultative Commission on Human Rights, plenary assembly, [Opinion on the reception granted to asylum seekers in France](#), 15 December 2011.

<sup>283</sup> *Ibidem*.

<sup>284</sup> Compilation prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/2, 9 November 2012.

<sup>285</sup> [Report](#) from the General controllers of social matters, the General controller of finance and the General controller of the administration, “Housing and the financial assistance to asylum seekers”, Published on 12 September 2013.

<sup>286</sup> 2015 Finance draft law – Appendix « Immigration, Asylum, Integration » p.17

Finally, in the context of the border procedure, asylum seekers are held in “waiting zones” while awaiting a decision on their application for an authorisation to enter the territory on asylum grounds.<sup>287</sup> This zone may include accommodation “providing hotel type services” as is currently the case for the waiting zone of the Paris Roissy CDG airport (in the ZAPI 3 - *zone d’attente pour personnes en instance*), which can receive up to 160 people. In other waiting zones, the material accommodation conditions vary: third country nationals are sometimes held in a nearby hotel (like in Orly airport at night) or in rooms within police stations. Not all are equipped with hotel type services.<sup>288</sup>

#### 4. Conditions in reception facilities

Reception centres are the main form of accommodation provided to asylum seekers. There are 258 of them spread across the French territory<sup>289</sup>, therefore the following description is a general assessment that cannot cover the specific situation to be found in all centres.

Living conditions in regular reception centres for asylum seekers are deemed adequate, and there are no official reports of overcrowding in reception centres. The available surface area per applicant can vary but has to respect a minimum of 7 square meters per bedroom. A bedroom is usually shared by a couple. More than two children can be accommodated in the same room. Centres are usually clean and have sufficient sanitary facilities. Asylum seekers in these centres are usually able to cook for themselves in shared kitchens. The 2011 Circular relating to the missions of reception centres for asylum seekers also foresees that the sharing of flats has to be considered to preserve a sufficient amount of individual living space.<sup>290</sup>

None of these centres are closed centres. Asylum seekers can go outside whenever they want. The 2011 Circular encourages staff working in CADA centres to organise cultural activities to mitigate the inactivity of the persons accommodated there. Leisure activities such as sport activities or excursions are sometimes organized.

As per the 19 August 2011 circular, the staff working in reception centres also has the obligation to organize a medical check-up upon arrival in the reception centre (at the latest 8 days after arrival in order to avoid possibilities of contaminations related to tuberculosis).

The staff ratio is framed by the 2011 Circular; a minimum of 1 fulltime staff for 10 to 15 persons is required. Staff working in reception centres is trained.

#### 5. Reduction or withdrawal of reception conditions

##### Indicators:

- Does the legislation provide for the possibility to reduce material reception conditions?  
 Yes       No
- Does the legislation provide for the possibility to withdraw material reception conditions?  
 Yes       No

<sup>287</sup> These are not detention centres, but asylum seekers cannot leave these areas (except to return to their country) until an authorisation to let them enter the French territory or a decision to return them is taken.

<sup>288</sup> ANAFE, *2011 Annual Report*, December 2012.

<sup>289</sup> 2015 Finance draft law – Appendix « Immigration, Asylum, Integration » p.30.

<sup>290</sup> See section I.1.2 of the Circular NOR IOCL1114301C of 19 August 2011 on the missions of reception centres for asylum seekers.

## Reception centres

Article 11 of the Rules of operation<sup>291</sup> which should be common to all CADA centres provides that exclusion from the centre may be imposed by the management in case of false statements concerning the identity or personal situation of the asylum seekers accommodated. Asylum seekers can also be excluded from the centres if they do not respect the rules of community life (seriously violent behaviour for instance). Such decisions of exclusion are pronounced by the CADA manager, on an individual basis and as a last resort, with a preliminary approval by the Prefect.

The payment of the monthly subsistence allowance (AMS) is also reduced or stopped when asylum seekers who are housed in reception centres (CADA) acquire some income during the process of their application for asylum (benefiting from a right to work thanks to another residence permit).<sup>292</sup>

## Temporary allowance

The temporary waiting allowance (ATA) granted to those who are not accommodated in a reception centre can be withdrawn for instance when an asylum seeker has been offered a place in a reception centre, whether he accepts it or not.<sup>293</sup>

The ATA can be refused or suspended when the asylum seeker:

- has not respected the obligation to contact the authorities, or followed up on the information requests or has not come to the personal interviews within the asylum procedure;
- has concealed his or her financial resources;
- has submitted a second subsequent application.

These reasons for withdrawal are implemented in practice, after an individual assessment of the case. The 2009 Circular on the temporary allowance foresees that the names of the asylum seekers who have refused a place in a reception centre are transmitted on a monthly basis to *Pôle emploi* (the French employment agency) which will as a result stop the payment of the allowance. Also, to enable *Pôle emploi* to implement its monitoring, OFPRA sends monthly information about the state of the asylum applications (such as a withdrawal during the procedure) and the names of the applicants for whom a decision has been taken.<sup>294</sup>

When the suspension of the allowance has resulted from the absence of the required documents proving the entitlement to the allowance, *Pôle emploi* can take a decision to re-instate the allowance when the situation has been regularized by the applicant.

Finally, the allowance can be withdrawn in case of fraud. In that case, the unduly received allowance has to be reimbursed. If an initial friendly settlement has failed, *Pôle emploi* can transfer the file to the departmental authority which will start the collection procedure.<sup>295</sup> Asylum seekers can challenge such decisions at the administrative court within a 2 month period.

In the context of the reform of the asylum procedure which is currently debated by the French Parliament,<sup>296</sup> other grounds for withdrawing the benefit of the allowances for asylum seekers are discussed.

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<sup>291</sup> An example is included in the Circular NOR IOCL1114301C of 19 August 2011 on the missions of reception centres for asylum seekers.

<sup>292</sup> Article R348-4 of the social action and family code. For instance, during the course of the asylum procedure, they may obtain a residence permit on health grounds which may allow them to work.

<sup>293</sup> Article L. 5423-9 of the Labour code

<sup>294</sup> Article R-5423-33 of the Labour code

<sup>295</sup> Section II.2 "Récupération de l'indu" of the Circular on the temporary waiting allowance, 3 November 2009

<sup>296</sup> See the note on the current asylum reform.

In French law, there is no official possibility to limit the reception conditions (such as the ATA allowance) because of a large number of arrivals.

## 6. Access to reception centres by third parties

### Indicators:

- Do family members, legal advisers, UNHCR and/or NGOs have access to reception centres?  
 Yes       with limitations       No

In France, reception centres for asylum seekers are not closed centres. They are accessible to visitors of the family accommodated in the centres and to other stakeholders within the limits set by the rules of operation (usually subject to the preliminary notification of the manager).

Many reception centres are managed by NGOs, whose staff is therefore present on a daily basis.

## 7. Addressing special reception needs of vulnerable persons

### Indicators:

- Is there an assessment of special reception needs of vulnerable persons in practice?  Yes  No

There is currently no mechanism in France dedicated to the identification and care of vulnerable groups and persons with special reception needs.<sup>297</sup> Some sort of identification of vulnerable persons is made during the social assessment carried out by the orientation platforms. A detailed request for an exceptional protection with an access to housing can be transmitted to the prefectures by the asylum seekers or the persons supporting them in their asylum application. Even if not regulated by law, some reception centres provide differentiated or separate reception facilities for vulnerable persons.

In practice, places in CADA reception centres are in fact mostly allocated to the most vulnerable asylum seekers (families with young children, pregnant women, and elderly asylum seekers). In 2013, 82.2% of the new arrivals in CADA reception centres were families.<sup>298</sup> This however has the side effect of marginalising isolated asylum seekers as young males are not considered as a priority.<sup>299</sup>

The French system does not currently foresee any specific ongoing monitoring mechanism to address special reception needs that would arise during the asylum procedure. In practice, social workers in reception centres have however regular exchanges with the asylum seekers and may be able to identify these special fragilities should they appear during the reception phase. The main difficulty for the staff will however be the identification of solutions to respond to this need (see section C “Health care” on the limited access to mental health care for instance).

It is interesting to note that out of the 324 third-country nationals who received a residence permit as a victim of trafficking in human beings in 2008-2012, nearly a quarter (76), had made an initial application for asylum which had been rejected.<sup>300</sup>

<sup>297</sup> See the note on the current asylum reform.

<sup>298</sup> National Assembly, *Rapport d'information sur l'évaluation de la politique d'accueil des demandeurs d'asile (Information report on the evaluation of the reception conditions offered to asylum seekers)*, Jeanine Dubié and Arnaud Richard, 10 April 2014.

<sup>299</sup> European migration network – French contact point, *The organisation of reception structures for asylum seekers in France*, September 2013

<sup>300</sup> French National Contact Point for the European Migration Network, *ibidem*.

## Addressing special reception needs of unaccompanied children

The term unaccompanied child has no explicit definition in French law.<sup>301</sup> The protection of these young people is therefore based on the notion of children at risk, as outlined in French legal provisions on child protection, which is applicable regardless of nationality or the status of an asylum seeker. Local authorities (*departments/Conseils généraux*) are in charge of children at risk so they have to protect unaccompanied children in France. It is therefore difficult to obtain an overview of the situation for unaccompanied children at the national level. The ministry of Justice has been in charge of the coordination of this issue at national level since 2010, but its role under the 2013 circular is limited in practice to the distribution of children between local authorities.<sup>302</sup>

Protection measures are usually initiated by children who turn to NGOs or judges for help. There is no specific procedure in place for identifying unaccompanied children. When they go to the Prefecture in order to lodge an asylum application, the authorities verify only whether a legal guardian is present or not. If not, a legal representative to support and represent the child in asylum procedures (*ad hoc administrator*) should be appointed (see above).

The French authorities have attempted to improve and harmonise the functioning of the reception and assistance provided to unaccompanied children (including asylum-seeking children) through a circular adopted on 31 May 2013. The circular is aimed at limiting the disparities between the *départements* in terms of arrivals of unaccompanied children and at harmonising the practices throughout the country.<sup>303</sup> Some funding is provided by the national authorities, thereby acknowledging the involvement of the State in an issue which generally falls under the jurisdiction of the *départements*.<sup>304</sup> State funding covers the emergency reception costs of the children during the first 5 days after arrival while the evaluation the referral is carried out.

If it is established that the young person is a minor within these 5 days, the State prosecutor should contact a national cell of the ministry of Justice dedicated to that which will indicate the *département* where the child could be placed on the basis of demographic criteria<sup>305</sup>. However, in practice, some *départements* refuse to accept these children and the State prosecutors hardly resort to binding measures even though the circular enables them to do so.<sup>306</sup> The National Commission on Human Rights, in a recent opinion adopted in June 2014,<sup>307</sup> regrets that the circular from 31 May 2013 focuses on the management of the geographical distribution of foreign unaccompanied children over the territory without taking sufficiently into account the principle of the best interest of the child.

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<sup>301</sup> Foreign unaccompanied children do not constitute any specific category in the Code of Entry and Residence of Foreigners and of the Right to Asylum (Ceseda, except for two articles which mention them in relation to the ad hoc administrator (articles L. 221-5 and L. 751-1) nor in the Code of Social Action and Families.

<sup>302</sup> In total, 4 042 youngsters were recognized as unaccompanied foreign minors in order to benefit from special care between 1 June 2013 and 31 May 2014. 23 % of them are concentrated in three *départements*, and 72 % are distributed over 25 *départements*. See "Assessment of the scheme for unaccompanied foreign children established under the protocol and the circular of 31 May 2013" ([Evaluation du dispositif relatif aux mineurs isolés étrangers mis en place par le protocole et la circulaire du 31 mai 2013](#), I.G.S.J – I.G.A.S. – I.G.A.), July 2014.

<sup>303</sup> The Circular of 31 May 2013 does not apply to the *département* of Mayotte, which has however faced many challenges in terms of protection of unaccompanied children for many years. See specific note on the situation in Mayotte.

<sup>304</sup> This puts an heavy financial burden on *départements* and some of them, as well as members of the Senate, consider that this issue should be handled and financed by the State.

<sup>305</sup> The decision of the prosecutor has to be confirmed by the juvenile judge. If the minority is not established by the prosecutor, the child has the possibility to refer directly the juvenile judge who will take a new decision about his or her minority.

<sup>306</sup> See the [press release](#) from France terre d'asile, 14 October 2013.

<sup>307</sup> Commission nationale consultative des droits de l'homme (CNCDH), [Avis sur la situation des mineurs isolés étrangers présents sur le territoire national. Etat des lieux un an après la circulaire du 31 mai 2013 relative aux modalités de prise en charge des jeunes isolés étrangers \(dispositif national de mise à l'abri, d'évaluation et d'orientation, 26 June 2014](#).

On the other hand, a recent report from several national inspection bodies<sup>308</sup> considers that the referral scheme and the geographical distribution provided by this circular constitute progress as they foster harmonization of practices at national level and solidarity between *départements*. The same report however also highlights many shortfalls and recommends some adjustments and improvements as well as the reinforcement of State funding and involvement.

As a general rule, after identification, unaccompanied children (including those between 16 and 18) are placed in specific children's shelters that fall under the responsibility of the departmental authorities.<sup>309</sup> They also may be accommodated in foster families. The national reception scheme includes 1 centre especially suited to unaccompanied children asylum seekers. The NGO *France terre d'asile* has opened a specialised reception centre for unaccompanied asylum-seeking children, called Caomida (Reception and Orientation Centre for Asylum-seeking Unaccompanied Children), which has national coverage. The "Caomida" is located in the Val-de-Marne department (near Paris) and can accommodate 38 children and provide them with a wide range of social, educational and legal services adapted to their specific needs. On average, young people stay there until the end of their asylum procedure (usually it is not finished when they turn 18 so they have a temporary contract with the *département* ("Contrat Jeunes Majeurs").

There is also a specialised centre at the department level managed by Coallia in Côtes-d'Armor (Samida).<sup>310</sup> In some *départements*, children are hosted in centres with all children in need of social protection, but another service helps them in their specific procedures. As an example, since 2005, Forum réfugiés-Cosi has carried out missions to provide information, legal support and assist in the referral of hundreds of asylum seeking unaccompanied minors arriving in the Rhône *département*. The OFPRA leaflet targeted to unaccompanied asylum seeking children lists a number of specialized NGOs providing support.<sup>311</sup>

When children are not accommodated in specialised centres, legal support depends on services provided by NGOs in the geographical area.

In its recent opinion, the CNCDH<sup>312</sup> regrets the lack of investment by French authorities in specialized reception facilities for unaccompanied minors. The Circular and Protocol from 31 May 2013 do not provide anything in terms of reception.

According to a recent study published by UNHCR and the Council of Europe,<sup>313</sup> insufficient and inappropriate reception conditions for unaccompanied asylum seeking children in France affects the effective access of these persons to a fair asylum procedure as it hinders the possibility to prepare and lodge an asylum application. While the overall reception system for asylum seekers is currently being revised, these persons, to date, often have to stay in hotel rooms, as the child specific facilities are

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<sup>308</sup> "Assessment of the scheme for unaccompanied foreign children established under the protocol and the circular of 31 May 2013" (*Evaluation du dispositif relatif aux mineurs isolés étrangers mis en place par le protocole et la circulaire du 31 mai 2013*, I.G.S.J – I.G.A.S. – I.G.A.), July 2014.

<sup>309</sup> Information on the various schemes for unaccompanied minors is available [here](#).

<sup>310</sup> Information on the various schemes for unaccompanied minors is available [here](#).

<sup>311</sup> OFPRA, *Guide de l'asile pour les mineurs isolés étrangers en France*, 30 April 2014. This list includes: Centre enfants du monde (Cem – Croix-rouge française); COaLLia - Service d'accompagnement des mineurs isolés étrangers (SAMIE); Ftda (France terre d'asile) permanence d'accueil et d'orientation des mineurs isolés étrangers; association infomie; pôle d'évaluation des mineurs isolés étrangers (pemie – Croix-rouge française).

<sup>312</sup> CNCDH is the National Consultative Commission for Human Rights (Commission Nationale Consultative des Droits de l'Homme)

<sup>313</sup> "Unaccompanied and separated asylum-seeking and refugee children turning eighteen: What to celebrate?", UNHCR/Council of Europe field research on European State practice regarding transition to adulthood of unaccompanied and separated asylum -seeking and refugee children, March 2014, Strasbourg, France.

overcrowded.<sup>314</sup> This situation is aggravated when these children turn 18 since they have to leave their hotel rooms or reception centres.

After his recent visit to France in September 2014,<sup>315</sup> Nils Muižnieks, Council of Europe Commissioner for Human Rights, also expressed his concerns that many asylum seekers and unaccompanied migrant minors do not have access to basic reception facilities and find themselves in emergency accommodation centres which are not suited to their situation, if not on the street, like a number of homeless Afghan asylum seekers.

## **8. Provision of information**

The provision of information for asylum seekers accommodated in reception centres (CADA) about the modalities of their reception is governed by the Circular on the missions of CADA centres of 19 August 2011.<sup>316</sup> Upon admission in the CADAs, the manager has to deliver any useful information on the conditions of his or her stay in the centre to the asylum seeker, in a language that they understand and in the form of a welcome booklet. These modalities can vary in practice from one centre to the other. In any case, core information about procedural rights during the asylum procedure is shared with accommodated asylum seekers on a regular basis and upon request if necessary. Each centre also has its own information procedures. Generally, in a CADA managed by Forum réfugiés-Cosi, for instance, the asylum seeker is informed about these legal reception provisions through the residence contract and operating rules they sign upon entry in the reception centre. On this occasion, an information booklet on the right to health is handed over to the asylum seeker. As some asylum seekers do not have easy access to written information, collective information sessions through activities are also organised in reception centres managed by Forum réfugiés-Cosi.

## **9. Freedom of movement**

Asylum seekers benefit from freedom of movement in France (except for persons who introduced an asylum application in an administrative detention centre or who are under house arrest; see Chapter “Detention of asylum seekers”).

There is currently no country-wide dispersal system as the (freely chosen) place where asylum seekers apply for asylum (Prefectures) determines in most cases the area where reception will be offered.<sup>317</sup>

Applicants cannot however choose which reception centre they will be offered a place (and cannot appeal the decision).

In France, the dispersal of asylum seekers in reception facilities is not linked to the stage in the procedure but rather to the types of procedure they are submitted to: asylum seekers in the regular procedure can normally<sup>318</sup> get access to regular reception centres (CADAs) whereas asylum seekers under the accelerated procedure will most likely be offered a place in the emergency reception scheme.<sup>319</sup> The asylum reform should introduce modifications to that scheme as every asylum seeker should be entitled to benefit from the same reception conditions, whether they are channelled into an

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<sup>314</sup> For example, in Strasbourg, at the time of the visit (November 2013), 132 unaccompanied and separated asylum-seeking children were staying in hotels; some of them had been there for over 18 months.

<sup>315</sup> The report from the visit was not yet published at the time of writing the update.

<sup>316</sup> Circulaire NOR IOCL1114301C du 19 août 2011 relative aux missions des centres d'accueil pour demandeurs d'asile (CADA) et aux modalités de pilotage du dispositif national d'accueil (DNA).

<sup>317</sup> See note on the current asylum reform.

<sup>318</sup> Access can be hampered by the lack of places in regular centres.

<sup>319</sup> See section A.1 on Criteria and restrictions to access reception conditions.

accelerated procedure or not<sup>320</sup>. Once they have been allocated to a reception centre, asylum seekers are rarely asked to move. Persons may have to move from emergency facilities, possibly to a transit centre to finally settle in a regular reception centre (gradually progressing to more stable housing).

The provision of reception conditions is regulated at national level and is coordinated on a day-to-day basis at local level. An exception to this rule is that, according to the 2011 circular<sup>321</sup>, when housing requests cannot be met at the departmental level, they are examined at the regional and national levels. In theory, 30% of the places available in reception centres have to be made available to the central administration in order to implement this national equalisation.<sup>322</sup>

French authorities make use of a national database 'Dispositif national d'accueil' (DNA - national reception scheme), "which records and stores information on new arrivals (inflows), outflows, occupation rates and waiting lists. Every three months, information from the DNA is sent to the competent authorities to inform them of reception availability".<sup>323</sup> In its 2014 report the European Migration Network (EMN) describes a good practice example that can be found in the local departmental network in Aude, which works as an informal coordination mechanism. "The network is managed at departmental level and includes all actors involved in the provision of reception in that region; e.g. the prefecture, the OFII, the managing association running the CADA reception facilities and emergency accommodation, and the departmental directorate for social cohesion and protection of the general public. This network convenes every month to assess capacity in reception facilities; to discuss and refer vulnerable persons to OFII and to exchange good practices and other information."<sup>324</sup>

A similar coordination mechanism at the local level is in place in the Rhône *Département* where they exchange information every week on the available housing solutions. These IAC (*Instance d'Admission Concertée* – concerted admission board) meetings gather all the stakeholders involved in the housing of asylum seekers: decentralised directorates for migration, for social cohesion, OFII and NGOs. The communication between all partners enables them to have an overview of the number of places available in various structures and – in a context of shortage of places - to collectively define the criteria for the prioritization of asylum seekers in the reception scheme.

The current asylum reform plans to introduce a national coordination mechanism.<sup>325</sup>

According to the internal rules of CADAs, in theory any absence of more than 5 days should be authorised beforehand by the manager of the centre. In practice, the unjustified absence of an asylum seeker for a long period can lead the manager of the CADA to suspend the monthly allowance. In very rare cases, when asylum seekers really abscond, the manager of the CADA has to empty the rooms and put an end to the allowance, with the agreement of the prefecture.

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<sup>320</sup> See note on the current asylum reform

<sup>321</sup> Circulaire NOR IOCL1114301C du 19 août 2011 relative aux missions des centres d'accueil pour demandeurs d'asile (CADA) et aux modalités de pilotage du dispositif national d'accueil (DNA).

<sup>322</sup> There is a derogation for two regions (Ile de France and Rhône Alpes) which can use the totality of the places available on their territory (Section II.1).

<sup>323</sup> European Migration Network, The Organisation of Reception Facilities for Asylum Seekers in different Member States, [Synthesis report](#), p. 10, 7 February 2014.

<sup>324</sup> European Migration Network, The Organisation of Reception Facilities for Asylum Seekers in different Member States, [Synthesis report](#), 7 February 2014.

<sup>325</sup> See note on the current asylum reform.



## B. Employment and education

### 1. Access to the labour market

*Indicators:*

- Does the legislation allow for access to the labour market for asylum seekers?  Yes  No
- If applicable, what is the time limit after which asylum seekers can access the labour market:  
1 year
- Are there restrictions to access employment in practice?  Yes  No

Access to the labour market is allowed only if the first instance determination authority (OFPRA – French Office for the Protection of Refugees and Stateless Persons) has not ruled on the asylum application within one year after the registration of the application and only if this delay cannot be attributed to the applicant. In this case, the asylum seeker is subject to the rules of law applicable to third country national workers for the issuance of a temporary work permit.<sup>326</sup> This is also the case where an appeal is brought before the national Court of Asylum (CNDA), without any waiting period, and where the asylum seeker has obtained the renewal of their temporary residence permit.<sup>327</sup>

In reality, asylum seekers have very limited access to the labour market, due to a number of constraints. Prior to being able to work, the applicant must have sought and obtained a temporary work permit. To obtain this work permit, the asylum seeker has to provide proof of a job offer or an employment contract. The duration of the work permit cannot exceed the duration of the residence permit linked to the asylum application (3 months). It may possibly be renewed. The competent unit for these matters is the Regional Direction for companies, competition, consumption, work and employment (DIRECCTE – Ministry of Labour). In any case, the employment situation also puts constraints on this right. In accordance with Article R. 341-4 of the Labour Code, the Prefect may take into account some elements of assessment such as "the current and future employment situation in the profession required by the foreign worker and the geographical area where he or she intends to exercise this profession", to grant or deny a work permit. In France, in early 2013, 30 fields of work were experiencing recruitment difficulties which justified allowing third country nationals to work in these without imposing restrictions. These professions are listed by region - only six professions are common to the whole country.<sup>328</sup>

Finally, asylum seekers have a lot of difficulties in accessing vocational training schemes as these are also subject to the issuance of a work permit. According to the law,<sup>329</sup> this permit is delivered without conditions to all unaccompanied children, except when they are in asylum procedure due to limitations applied to all asylum seekers<sup>330</sup>. It means that it is more difficult to obtain a permit for a child who is asylum seeker: that is why some children do not want to ask for asylum.

### 2. Access to education

*Indicators:*

- Does the legislation provide for access to education for asylum seeking children?  Yes  No
- Are children able to access education in practice?  Yes  No

While no provision of the Education Code covers the particular case of children of asylum seekers, the law provides that they are subject to compulsory education as long as they are between 6 and 16 years

<sup>326</sup> Article R-742-2 of Ceseda.

<sup>327</sup> Article R-742-3 of Ceseda.

<sup>328</sup> [Ministerial Order](#) of 18 January 2008– Official Journal of 20/01/2008.

<sup>329</sup> Article L 5221-5 of the Labour Code -[l'article L 5221-5 du Code du travail](#).

<sup>330</sup> They don't have the right to work except if the length of the procedure is more than 1 year.

old,<sup>331</sup> on the same conditions as any child. Primary school enrolment can be done at the local town hall. Enrolment in a secondary school (high schools) is made directly to the institution closest to the place of residence of the child. If the children seem to have a sufficient command of the French language, the evaluation process will be supervised by a Counselling and Information Centre (*Centres d'information et d'orientation* – CIO). This State structure is dedicated to the educational guidance of all students.

When the children are not French-speaking or do not have a sufficient command of writing the language, their evaluations fall under the competency of the Academic Centre for Education of Newcomers and Travellers Children (CASNAV).<sup>332</sup> The test results will enable teachers to integrate the child within the dedicated schemes (e.g. Training in French adapted to non-native speakers (FLE) or initiation classes).

Education for asylum seeking children is usually provided in regular schools but can also sometimes be provided directly in reception centres (large emergency reception facilities for instance).

Barriers to an effective access to education are varied. Beyond the issue of the level of language, there are also a limited number of specialised language training or initiation classes and limited resources dedicated to these schemes. This is an even more acute difficulty for reception centres in rural areas which simply do not have such classes. Besides, some schools require an address before enrolling children and this can be an issue for asylum seekers who do not have a personal address. Finally, access to education for children aged 16 to 18 is much more complicated as public schools do not have any obligation to accept them. They may be eligible for French courses offered by charities but the situation varies depending on the municipality. Access to apprenticeship is not possible as it would imply an access to a work permit that is usually not granted to asylum seekers. As a general rule, there is no training foreseen for adults. French language courses are organised in some reception centres depending on the availability of volunteers. Young adults and adults are often forced to put aside their career or training, pending the decision on their asylum application. For young people, this represents a considerable loss of time.

Finally, asylum seeking children with special needs are faced with the same difficulties as children with special needs in general. Access to trained and specialised staff<sup>333</sup> tasked with supporting these children during their education in regular schools is very limited. For example, on 10 March 2014, the Committee of Ministers of the Council of Europe adopted a resolution tackling the issue of the difficult schooling of children with autism in France.<sup>334</sup>

According to a recent report from the CNCDH, access to education remains a concern for unaccompanied children, in particular those who are not taken charge by the competent public service and have to care for themselves. In a recent study,<sup>335</sup> the Council of Europe and UNHCR indicated that unaccompanied and separated children arriving after the age of 16 are only given access to education if places are available. Some of them arrive without ever having been to school, so they often cannot read or write. In this case it is extremely difficult to integrate them into the mainstream education system. There is no access to free language classes, as in some other countries, either. Sometimes, social workers in the facilities manage to make appropriate arrangements on an ad hoc basis.

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<sup>331</sup> Article L. 131-1 Education Code.

<sup>332</sup> See Circular n° 2012-143, 2 October 2012.

<sup>333</sup> “Auxiliaires de vie solaire” in French.

<sup>334</sup> Autisme-Europe against France, [Resolution ResChS\(2004\)1, Collective complaint No. 13/2002](#), 10 March 2014.

<sup>335</sup> “Unaccompanied and separated asylum-seeking and refugee children turning eighteen: What to celebrate?”, UNHCR/Council of Europe field research on European State practice regarding transition to adulthood of unaccompanied and separated asylum-seeking and refugee children, March 2014, Strasbourg, France.

In the "Maison du jeune réfugié" in Paris, managed by the NGO France terre d'asile, all unaccompanied children arriving have classes to learn French and maths, as a minimum. Depending on their level of French and literacy, they are placed into one of four different groups. In that way, they immediately start an integration process, with access to basic education, while preparing their future projects.

### C. Health care

#### Indicators:

- Is access to emergency health care for asylum seekers guaranteed in national legislation?  
 Yes       No
- In practice, do asylum seekers have adequate access to health care?  
 Yes       with limitations       No
- Is specialised treatment for victims of torture or traumatised asylum seekers available in practice?       Yes       Yes, to a limited extent       No
- If material reception conditions are reduced/ withdrawn are asylum seekers still given access to health care?       Yes       No

Asylum seekers under the regular procedure, like any other third-country nationals below a certain income level, have access to healthcare thanks to the universal healthcare insurance (CMU) system.<sup>336</sup> Asylum seekers are exempted from the 3 months residence requirement applied to other third country nationals. The request to benefit from the CMU is made to the social security services (CPAM) of the place of residence or domiciliation. The asylum seeker must submit documentary evidence of the regularity of their stay in France, marital status and the level of their resources.

Access to the CMU insurance is provided for free if the annual resources of the claimant do not exceed 9,534 Euros<sup>337</sup> per household. . In the absence of an official document attesting the level of resources, the claimant may make a sworn statement on the level of their resources.

Asylum seekers under an accelerated procedure or Dublin procedure are not eligible to the CMU because they do not have a temporary residence permit. They can benefit from State medical aid (AME).<sup>338</sup> Subsequent applicants will most likely benefit from the AME health coverage, as 88% of them are treated under the accelerated procedure. This medical aid is a social benefit for migrants who are not granted leave to remain on the territory, which enables the beneficiaries to receive free treatments in hospitals as well as in any doctors' offices.<sup>339</sup>

On 1 March 2011, access to the AME had been made conditional upon payment of an annual fee of 30 Euros per beneficiary but the French Parliament abolished this tax on 19 July 2012. It should be noted that access to the AME is possible only after 3 months of residence in France. The AME remains available to asylum seekers even if other reception conditions have been reduced or withdrawn.

Individuals with low income and who are still awaiting health insurance and needing healthcare quickly can turn to the All-Day Healthcare Centres (PASS) at their nearest public hospital. This is therefore also a possibility for asylum seekers under the accelerated and Dublin procedures. There, they will receive care and, if necessary, the medical letter needed to speed up the processing of their application for public health insurance. According to the law, all public hospitals are required to offer PASS services, but in practice, this does not always occur.

<sup>336</sup> Article L-380-1 of the Social security code. This applies also to Dublin returnees if they are treated under the regular procedure.

<sup>337</sup> Upper limit set for the period between 1 October 2013 and 30 September 2014.

<sup>338</sup> Decree of 28 July 2005 on the modalities of admission of requests for state medical aid/ Décret n°2005-860 du 28 juillet 2005 relatif aux modalités d'admission des demandes d'aide médicale de l'Etat .

<sup>339</sup> See this [webpage](#) of the Ministry of Interior for more information.

In 2006 the Comede (Comité médical pour les exilés, a specialised NGO), the Health Ministry and the National Institute for Prevention and Health Education (INPES) published a handbook to help migrants understand the French public health care system. This handbook is available in 22 languages (bi-lingual presentation) and includes a lot of practical information on the access to health care in France.<sup>340</sup>

As a general rule, difficulties and delays for an effective access to healthcare vary from one city to the other in France. Access to the CMU is going well in the Rhone department (effective within a month), while there are long waiting periods to obtain access to the CMU in Nice (3 months in early 2014). The NGO Doctors of the World has reported that among the 2 226 asylum seekers they had received in their health centres (Caso) in 2012, only 11% of them were benefiting from the coverage of health insurance<sup>341</sup>. The main obstacles mentioned were administrative difficulties, a lack of awareness of their rights and the language barrier. 28% of them had declared having renounced to treatment during the past 12 months.

Finally, some of the problems with regards to medical care are not specific to asylum seekers. Some doctors are reluctant to receive and treat patients who benefit from the AME or CMU and tend to refuse booking appointments with them even though these refusals of care can in theory be punished.<sup>342</sup>

The NGO ODSE (*Observatoire du droit à la santé pour les étrangers* - Observatory for the right to health of foreigners) has sent a letter to the Health Minister Marisol Touraine on 21 February 2014 to alert her on a worrying situation in the Seine Saint Denis *Département*. The NGO has obtained an oral confirmation that an internal note of the health insurance services (CPAM) instructed its services not to work on the state medical aid (AME) requests lodged and not yet processed on 6 December 2013. The NGO strongly denounced this destocking technique that constitutes a serious denial of the rights of persons in precarious situations.<sup>343</sup>

National legislation does not guarantee any specific provision for access to care related to mental health issues. Asylum seekers can theoretically benefit from psychiatric or psychological counselling thanks to their health care cover (AME or CMU). However access remains difficult in practice because many professionals refuse to receive non-French speaking patients as they lack the tools to communicate non-verbally and / or funds to work with interpreters.

In 2012, 84 % of asylum seekers followed by the Comede declared having been victims of violence (30% of acts of torture and 17% of gender-related violence).<sup>344</sup>

Victims of torture or traumatised asylum seekers can be counselled in a few NGO structures that specifically take care of these traumas. This adapted counselling is provided, for instance, at the Primo Levi Centre in Paris as well as the Osiris centres in Marseille, Mana in Bordeaux, Forum réfugiés-Cosi Essor Centre in Lyon, Awel in La Rochelle. These specialised centres are however too few in France, unevenly distributed across the country and cannot meet the growing demand for treatment.

The difficulties are in fact even more aggravated by the geographical locations of some reception centres where the possibility to access mental health specialists would mean several hours of travel.

The “regular” health system cannot currently cope with this adapted care for victims of torture and political violence. These regular structures lack time for consultations, funds for interpreters and training for professionals. The White Paper published by the association Primo Levi in June 2012 highlights the

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<sup>340</sup> An update of these [handbooks](#) was provided on 27 August 2013 but is available only in French at the moment.

<sup>341</sup> Observatory of access to health care – report 2012, French mission – Doctors of the world, October 2013.

<sup>342</sup> Circular DSS n° 2001-81, 12 February 2001 on the care refusal for beneficiaries of the CMU.

<sup>343</sup> Observatoire du droit à la santé pour les étrangers, [Open Letter to Marisol Touraine](#), 21 February 2014

<sup>344</sup> Observatory of access to health care – report 2012, French mission – Doctors of the world, October 2013.

disparity between care supply and the demand from this population which is off-track for regular health priorities. Centres managed by NGOs are also often over-subscribed. According to the white paper, only 6 000 people are currently receiving appropriate support out of a total of 50 000 persons estimated to have been affected by torture (minimum estimation among the number of refugees living in France: 160 500 in 2010).<sup>345</sup>

To make up for this deficiency, Forum réfugiés-Cosi set up the first mental health centre (called ESSOR) in 2007 in the Rhone area specialising in the treatment of and support to victims of torture and trauma resulting from the conditions of their exile. In 2013, almost 2,700 appointments have been conducted in this centre that provides a multidisciplinary approach where a doctor, psychologists, a physiotherapist and an art-therapist offer a comprehensive and multifaceted care to patients. An important feature of the proposed treatment is to allow the patient to express themselves in their own language, through interpretation.

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<sup>345</sup> Primo Levi Association, [Livre blanc](#) (*White Paper*), June 2012

## Detention of Asylum Seekers

*Warning: French law does not allow detaining asylum seekers for the purpose of the asylum procedure. The asylum seekers covered in this section are mainly the ones who have lodged a request for asylum while in an administrative detention centre (asylum seekers are not present otherwise in detention centres).*

*Most of the description concerns all the foreigners (including a relatively small number of asylum seekers) held in administrative detention centres for the purpose of removal.*

### A. General

#### Indicators:

- Total number of asylum seekers detained in the previous year (including those detained in the course of the asylum procedure and those who applied for asylum from detention): 1 140 persons applied for asylum while in administrative detention centres in 2012<sup>346</sup>
- Number of detention centres: 27
- Total capacity: 1.817

There are 27 administrative detention centres (CRA) on France's territory (including in overseas departments). This amounts to a total 1 817 places.<sup>347</sup> Article R.- 553-3 of Ceseda foresees that each centre's capacity should not exceed 140 places. The maximum capacities for these centres are not reached in mainland France at one point in time but the turnover is very high. However, even if the capacities are not exceeded, when the centres are almost full, this causes a lack of privacy which can create tensions.

However, there is a very serious situation of overcrowding in Mayotte,<sup>348</sup> an overseas island close to Madagascar.<sup>349</sup> Initially planned for 60 people, this centre has been used to detain around 140 persons for several years following orders from the local authorities. Through an order of 19 April 2012, the Prefecture has made this capacity official, thereby legitimising a chronic over-population of the CRA. A new prefectural order dated on 20 December 2012 has set the capacity to 100 persons (1,37m<sup>2</sup> per person<sup>350</sup>).

In France, there is no policy of automatic administrative detention (called '*retention*' in French) of asylum seekers. French law does not allow the authorities to detain asylum seekers for the purpose of the asylum procedure. In 2012, 1.140 third country nationals have lodged an asylum application while in administrative detention.<sup>351</sup> Most asylum seekers present in administrative detention centres are either

<sup>346</sup> This figure was not updated in the annual report drafted by the five NGOs present in the administrative retention centres (CRAs) as the last update of this report (covering 2013) did not contain any specific section or statistics on asylum seekers. On the other hand, the 2014 OFPRA report covering 2013, mentions that "around 1 000 asylum seekers in administrative retention are processed under the accelerated procedure".

<sup>347</sup> See this [webpage](#) of the Ministry of Interior for more information (including a map locating the CRAs).

<sup>348</sup> See note on the specific situation in Mayotte.

<sup>349</sup> See the Note on Mayotte included in this report.

<sup>350</sup> *Arrêté préfectoral du 20 décembre 2012 modifiant l'arrêté du 22 janvier 2004 portant création d'un CRA à Pamandzi* (Prefectoral Order of 20 december 2012 amending the order of 22 January 2004 on the creation of a detention centre in Pamandzi –Mayotte).

<sup>351</sup> See above mentioned footnote on the lack of statistics on this specific category of people held in administrative detention for 2013. A total of 26 441 persons have been placed in administrative detention in France (mainland) in 2013 and 18 936 overseas. See Assfam, Forum réfugiés-Cosi, France Terre d'asile, Cimade and Ordre de Malte, "Centres et locaux de rétention administrative, Rapport 2013" (*Administrative detention centres and facilities, Report 2013*).

third country nationals who lodged a claim while being detained or rejected asylum seekers who ask for a subsequent examination of their asylum claim. However newly arrived asylum seekers can be arrested and placed in administrative detention, in particular in the Paris region and in border regions. This can happen when they have started the registration process of their asylum claim and then have got arrested pending the official confirmation of this registration. Indeed, in the Paris region, these procedures can take several weeks (waiting for a registered address through an association, waiting for the appointment at the prefecture) before a temporary residence permit is issued. These asylum seekers do not always have the necessary documents proving their pending registration with them when they get arrested. As a result, a removal decision can be taken and the person is placed in administrative detention and their claim may be processed from there. In practice, certain administrative courts order the release of such asylum seekers upon presentation of proof of steps taken on the territory to have their claim registered; but this is far from being automatic.<sup>352</sup>

## B. Grounds for detention

### Indicators:

- In practice, are most asylum seekers automatically detained
  - o on the territory:  Yes  No
  - o at the border:  Yes  No
- Are asylum seekers detained in practice during the Dublin procedure?
   
 Frequently (prior to the transfer to the responsible state)  Rarely  Never
- Are asylum seekers detained during a regular procedure in practice?
   
 Frequently  Rarely  Never
- Are unaccompanied asylum-seeking children detained in practice?
   
 Frequently  Rarely  Never
- If frequently or rarely, are they only detained in border/transit zones?
   
 Yes  No
- Are asylum seeking children in families detained in practice?
   
 Frequently  Rarely  Never
- What is the maximum detention period set in the legislation (inc extensions): 45 days
- In practice, how long in average are asylum seekers detained? Not available

In France, there is no policy of automatic administrative detention (called '*retention*' in French) of asylum seekers. French law does not allow the detention of asylum seekers for the purpose of the asylum procedure. Persons are placed in administrative detention centres only for the purpose of removal.<sup>353</sup> However, the persons who claim asylum during their administrative detention are not automatically released as a result of this application. They can remain in administrative detention during the examination of their claim. These cases are mostly examined through an accelerated procedure. However in a recent information note,<sup>354</sup> the Minister of Interior has called for an individual assessment of each case by the prefects in order to decide precisely whether the asylum seeker in administrative detention should be delivered a temporary residence permit or not (and therefore

<sup>352</sup> See more detailed information on page 27-28 of the report: Assfam, Forum réfugiés-Cosi, France Terre d'asile, la Cimade and Ordre de Malte, *Centres et locaux de rétention administrative, Rapport 2012 (Administrative detention centres and facilities, Report 2012)*, 4 december 2013.

<sup>353</sup> Article L. 554-1 of Ceseda

<sup>354</sup> Note d'information du 23 décembre 2014 relative aux demandes d'asile présentées par des étrangers placés en rétention administrative en vue de leur éloignement. Suites à donner à la décision n°375430 du Conseil d'Etat du 30 juillet 2014, NOR : *INTV1430936N*.

released from detention in case of issuance). Even in the case where the asylum seeker is refused a temporary residence permit (and as a consequence he or she is channelled into the accelerated procedure), continued placement in administrative detention should not be automatic and a proportionality and necessity test should be applied with due consideration given to alternatives to detention such as house arrest. The practical effect of this information note remains to be seen.

Furthermore, as the appeal before the CNDA has no suspensive effect for asylum seekers channelled into the accelerated procedure, it is also legally possible to place such asylum seekers in administrative detention from the moment they receive a negative decision from OFPRA (French Office for the Protection of Refugees and Stateless People) and a return decision has been made consequently (even if they lodge an appeal with the CNDA (National Court of Asylum) against the decision).<sup>355</sup> This decision of placement in administrative detention is taken upon an individual assessment by the prefect of the *Département*. In practice, it does happen that asylum seekers are detained pending a decision from the CNDA.

Asylum seekers under the Dublin procedure can also be placed in administrative detention with a view to the enforcement of their transfer once the re-admission decision has been notified. However, in practice, they are placed less and less frequently in administrative detention and prefectures resort more and more frequently to house arrest for asylum seekers under the Dublin procedure. Even though the Council of State has given some interpretation of the notion of the risk of absconding referred to in the Dublin III Regulation, criteria are not yet provided by law. If Dublin asylum seekers are declared as "missing" because they have not been transferred during the 6 month period and they are stopped during a random identity check during the 18 months period, they will most probably be placed in detention directly as the risk of absconding would seem high.

In the law, there is no rule excluding specific categories of asylum seekers from the application of decisions concerning placement in detention. In theory unaccompanied children cannot be returned and therefore cannot be detained as a consequence.<sup>356</sup> Nevertheless, it is important to stress that in 2013, the five NGOs working in administrative detention centres met 122 detained persons who declared themselves to be children. These were young persons whose age had been disputed by the authorities and had been considered as adults, as a result of a medical exam for instance.<sup>357</sup>

A foreign person can remain in administrative detention for a maximum of forty-five days.<sup>358</sup> However, most of the persons are expelled within the first 5 days (see following section "Procedural safeguards and judicial review of the detention order"). In the mainland, 65% of the persons held in administrative detention are expelled within the first 10 days. . Actually only 4% of intended removals take place between the 32<sup>nd</sup> day and the 45<sup>th</sup> day.<sup>359</sup> Therefore, many stakeholders argue that prolonging the detention after 30 days does not significantly increases the chances of return being effectively carried out.<sup>360</sup> The decision of placement in administrative detention taken by the administration is valid for five days. Beyond this period, a request before the Judge of Freedoms and Detention (JLD) has to be lodged by the prefect to prolong the duration of the administrative detention.<sup>361</sup> This judge can order an extension of the administrative detention for an extra twenty days after the initial placement. A second

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<sup>355</sup> Article L 551-1.6 of Ceseda.

<sup>356</sup> Article L. 511-4 of Ceseda (even though they can be transferred under the Dublin procedure)

<sup>357</sup> Assfam, Forum réfugiés-Cosi, France Terre d'asile, la Cimade et Ordre de Malte, *Centres et locaux de rétention administrative, Rapport 2013 (Administrative detention centres and facilities, Report 2013)*.

<sup>358</sup> Originally set at a maximum of 7 days, the length of administrative detention has been extended to 32 days in 2003 and to 45 days in 2011.

<sup>359</sup> Assfam, Forum réfugiés-Cosi, France Terre d'asile, la Cimade 'Ordre de Malte, *Centres et locaux de rétention administrative, Rapport 2013 (Administrative detention centres and facilities, Report 2013)*.

<sup>360</sup> The "Fekl report" recommends to reduce the length of administrative detention to 30 days (page 54). Report to the Prime minister, "*Sécuriser les parcours des ressortissants étrangers en France*", Matthias Fekl, 14 May 2013, page 43.

<sup>361</sup> Article L. 552-1 of Ceseda. The JLD (Judge of Freedoms and Detention) who, prior to the 2011 reform, used to intervene after 48 hours has seen its role greatly reduced since it now intervenes only at the end of the 5th day of retention. This makes possible the return of a person before the judicial court has had time to exert its control.



prolongation for twenty days can only be granted under certain conditions, in particular if the persons deliberately obstruct their return by withholding their identity, the loss or destruction of travel documents<sup>362</sup> or the fact that despite the goodwill of the executing administration, the removal measure has not yet been finalised. Beyond this period of 45 days, any foreigner who has not been removed must be released.<sup>363</sup> The length of stay of asylum seekers (those who have claimed asylum while in administrative detention centres) is difficult to assess but on average, third country nationals remained 11 days in administrative detention centres in 2013).<sup>364</sup> There are no cases of persons detained beyond a period of 45 days.

The General Controller of places of freedom deprivation, together with many French NGOs, has repeatedly called for a return to a maximum length of detention of 32 days.<sup>365</sup>

The law on immigration and asylum (*Ceseda*) foresees three types of alternatives to administrative detention:

**a) House arrest in the case of an absence of reasonable prospects of removal:**<sup>366</sup> The law foresees house arrest for a maximum period of six months (renewable once or several times, up to a total limit of one year) when “the foreigner can justify being unable to leave the French territory or can neither go back to his country of origin, nor travel to any other country” and that as a result, the execution of the removal measure is compromised on the medium or long term.

**b) House arrest as an alternative to administrative detention:**<sup>367</sup> The Prefect can put those people who can produce representation guarantees and whose removal is postponed only for technical reasons (absence of identification, of travel documents, or of means of transport) under house arrest for a period of 45 days, renewable once,. When foreigners subjected to a return decision and who are accompanied by their minor children, do not have a stable address (decent housing within legal conditions), it is possible to envisage house arrest in hotel-like facilities.

**c) House arrest with electronic monitoring for parents of minor children residing in France for 45 days** (this measure is not implemented as far as we know).<sup>368</sup>

The law does not foresee any obligation to prove the impossibility to set up alternative measures before deciding to detain third country nationals. If the person can present guarantees of representation and unless proved to the contrary, house arrest should be given priority but a necessity and proportionality test is not really implemented. This is only a possibility left to the discretion of the administration. According to a recent information report from the Senate,<sup>369</sup> this possibility is rarely used (1 595 house arrests in 2013 against 24 173 placements in administrative detention centres) and there are currently recommendations to enlarge the notion of ‘representation guarantees’, which may restrict its usage more.

While calling for an increased use of alternatives to administrative detention, many NGOs as well as the recent report from the Senate raised some concerns with regards to the (lack of) access to legal and social support for people placed under house arrest. However, it appears that the ‘prefectures’ are more

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<sup>362</sup> The person can also be prosecuted for obstruction to his removal on the grounds of non-communication of the document enabling the return.

<sup>363</sup> See this [webpage](#) of the Ministry of Interior for more information.

<sup>364</sup> Against 1,1 day overseas. The duration varies a lot according to the *Prefectures*. See Assfam, Forum réfugiés-Cosi, France Terre d’asile, la Cimade et l’Ordre de Malte , *Centres et locaux de rétention administrative, Rapport 2013 (Administrative detention centres and facilities, Report 2013)*.

<sup>365</sup> General Controller of places of freedom deprivation, [Activity Report 2013](#), 11 March 2014.

<sup>366</sup> Article L561-1 of *Ceseda*.

<sup>367</sup> Article L561-2 *Ceseda*.

<sup>368</sup> Article L562-2 of *Ceseda*.

<sup>369</sup> [Rapport d’information n°773 du Sénat sur les centres de rétention administrative par Mme Assassi et M. Buffet, 23 juillet 2014.](#)

and more prone to resort to these alternative measures for families, Since the 6 July 2012 circular<sup>370</sup> on the removal of families accompanied by children, Prefects are encouraged to make house arrest the rule, and limit (but not prohibit) the placement of children with their families in administrative detention to a last resort measure (it is important to note that the circular is not applicable to Mayotte).<sup>371</sup> This principle was already foreseen in the Ceseda following the 2011 reform of the law.

An important drop in numbers of placements of families with children in administrative detention has been noticed since 2011. This drop was confirmed in 2013.<sup>372</sup> The five NGOs working in the administrative detention centres recorded a total of 19 families<sup>373</sup> (27 adults and 41 children<sup>374</sup>) detained in these centres in 2013 (for an average length of stay of 2,4 days)<sup>375</sup>. The 6 July 2012 circular has therefore proved to be efficient. Overall in 2013, 11 out of 19 families have been released or put under house arrest and one family was expelled to a third country and 7 asylum seeking families were transferred to another EU country.<sup>376</sup>

The placement of children in administrative detention has however not totally stopped.<sup>377</sup> The NGO *La Cimade* has reported that a couple from Chechnya and their 2 year old child spent 2 days in the administrative detention centre in Nimes between 22 and 24 January 2014. The administrative court released the family, stating that the Prefect should have given priority to a house arrest solution.<sup>378</sup> From January to June 2014, ten families, i.e. around 20 children, were held in administrative detention in mainland France.<sup>379</sup>

Furthermore, a worrying trend of the administration is to opt for the administrative detention of one family member (usually the father) in the hope that this will put pressure on the rest of the family to depart.

Finally, regarding more specifically asylum seekers, in a recent information note mentioned above,<sup>380</sup> the minister of Interior instructs the prefects that even when they refuse to deliver a temporary residence permit to asylum seekers (and therefore channel them into the accelerated procedure), their continued placement in administrative detention should not be automatic and a proportionality and necessity test should be applied with due consideration given to alternatives to detention such as house arrest.

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<sup>370</sup> Circulaire INTK1207283C of 6 July 2012 / sur la mise en œuvre de l'assignation à résidence prévue à l'article en alternative au placement des familles en rétention administrative (Circular on the implementation of house arrest as an alternative to the administrative retention of families).

<sup>371</sup> Circular enacted in response to the ECHR decision *Popov vs. France*, 19 January 2012.

<sup>372</sup> Except for Mayotte where 3 512 children have been held in administrative detention in 2013.

<sup>373</sup> These were not necessarily asylum seeking persons.

<sup>374</sup> In addition to these 41 children accompanying their family, 122 unaccompanied children were held in detention. They declared to be minors but this was questioned by the authorities. In most of these cases, however, they were released by the administrative court.

<sup>375</sup> Assfam, Forum réfugiés-Cosi, France Terre d'asile, la Cimade et l'Ordre de Malte, *Centres et locaux de rétention administrative, Rapport 2013 (Administrative detention centres and facilities, Report 2013)*.

<sup>376</sup> Assfam, Forum réfugiés-Cosi, France Terre d'asile, la Cimade et l'Ordre de Malte, [Centres et locaux de rétention administrative, Rapport 2013 \(Administrative detention centres and facilities, Report 2013\)](#).

<sup>377</sup> Since the status of children held in administrative detention is not regulated by law, they are in a legal vacuum.

<sup>378</sup> La Cimade [Rétention : des enfants toujours enfermés en 2014](#) (Administrative detention: children still held in 2014), 31 January 2014.

<sup>379</sup> Assfam, Forum réfugiés-Cosi, France Terre d'asile, la Cimade et l'Ordre de Malte, [Centres et locaux de rétention administrative, Rapport 2013 \(Administrative detention centres and facilities, Report 2013\)](#).

<sup>380</sup> Note d'information du 23 décembre 2014 relative aux demandes d'asile présentées par des étrangers placés en rétention administrative en vue de leur éloignement. Suites à donner à la décision n°375430 du Conseil d'Etat du 30 juillet 2014, NOR : *INTV1430936N*.

## C. Detention conditions

### Indicators:

- Does the law allow to detain asylum seekers in prisons for the purpose of the asylum procedure (i.e. not as a result of criminal charges)?  Yes  No
- If so, are asylum seekers ever detained in practice in prisons for the purpose of the asylum procedures?  Yes  No
- Do detainees have access to health care in practice?  Yes  No
- If yes, is it limited to emergency health care?  Yes  No
- Is access to detention centres allowed to
  - o Lawyers:  Yes  Yes, but with some limitations  No
  - o NGOs:  Yes  Yes, but with some limitations  No
  - o UNHCR:  Yes  Yes, but with some limitations  No
  - o Family members:  Yes  Yes, but with some limitations  No

Administrative detention centres are controlled and managed by the police (the border police). Under the law, these administrative detention centres are not part of the regular prison administration. Placement in an administrative detention centre results from an administrative decision (not a judicial decision). The persons held in administrative detention, and who have asked for asylum, are generally not released. However, in a recent information note mentioned above,<sup>381</sup> the Minister of Interior instructs the prefects that even when they refuse to deliver a temporary residence permit to an asylum seeker held in an administrative detention centre (and therefore channel him or her into the accelerated procedure), his or her continued placement in administrative detention should not be automatic and a proportionality and necessity test should be applied with due consideration given to alternatives to detention such as house arrest. The practical effect of this information note remains to be seen.

Despite being held together with other third country nationals, asylum seekers are never held with common law criminals or prisoners.

Police staff working in the administrative detention centres does not receive a specific training with regards to foreign and asylum law. This lack of specific training is however compensated by the fact that NGOs are present quasi-permanently in administrative detention centres in order to provide legal information and assistance (see details at the end of this section).

Article R. 553-3 of Ceseda frames the conditions of administrative detention. They must meet the following standards:

- 1° A minimum usable surface of 10m<sup>2</sup> per detainee comprising bedrooms and spaces freely accessible during opening hours;
- 2° Collective bedrooms (separation men/women) for a maximum of six persons;
- 3° Sanitary facilities, including wash-hand basins, showers and toilets, freely accessible and of sufficient number, namely one sanitary block for 10 detainees;
- 4° A telephone for fifty detainees freely accessible;
- 5° Necessary facilities and premises for catering;
- 6° Beyond forty persons detained, a recreational and leisure room distinct from the refectory, which is at least 50m<sup>2</sup>, increased by 10m<sup>2</sup> for fifteen extra detainees;
- 7° One or several rooms medically equipped, reserved for the medical team;
- 8° Premises allowing access for visiting families and the consulate authorities;
- 9° Premises reserved for lawyers;

<sup>381</sup> Note d'information du 23 décembre 2014 relative aux demandes d'asile présentées par des étrangers placés en rétention administrative en vue de leur éloignement. Suites à donner à la décision n°375430 du Conseil d'Etat du 30 juillet 2014, NOR : *INTV1430936N*.

- 10° Premises allocated to the OFII (French Office for Immigration and Integration)<sup>382</sup> ;
- 11° Premises, furnished and equipped with a telephone allocated to the NGOs present in the centre;
- 12° An open-air area;
- 13° A luggage room.

Men and women held in detention centres have separated living spaces (“zones de vie”). The set-up of the rooms varies from one detention centre to the other, ranging from 2 to 6 persons per room. Rooms are in any case never private and in some centres, the ‘General Controller’ of places of freedom deprivation has found that the shared rooms did not have a distinct sanitary facility.<sup>383</sup>

Overall, the administrative detention conditions are deemed adequate in France (on the mainland) but there are quite important variations. The annual report produced by the 5 NGOs working in the administrative detention centres gives a specific description of the detention conditions in each of them.<sup>384</sup>

According to the ‘General Controller’ of places of freedom deprivation, while the capacity of the CRAs does not call for major criticism, “the maintenance of the premises, inevitably subject to severe degradations, leaves a great deal to be desired. [...] A state of disrepair (broken lights, unusable window closures, blocked pipes, odours...) is present in many of the centres visited”.<sup>385</sup> The presence of rats is described in several centres. In an interview to the French Press Agency (AFP) on 20 February 2014, one of the persons held in the detention centre in Marseille stated that the temperatures are so cold at night that it is difficult to sleep and that there are rats and dirt.<sup>386</sup>

The Controller also revealed that the material conditions for preparing meals were often flawed with unsanitary conditions for preparing food (the clean circuits were not distinct from the dirty circuits...) and the quality and even the quantity of meals served were insufficient. In addition, “none of the centres visited served dishes suitable to religious instructions of a great number of persons detained”.<sup>387</sup> The state of the administrative detention centre in Mayotte is dramatically more concerning.<sup>388</sup> On 20 February 2012, the administrative court of Mamoudzou found<sup>389</sup> that the conditions at the CRA in Mayotte were so bad that they represented inhuman and degrading treatment for the detainees. There is no specific mechanism to identify vulnerable persons or persons with special reception needs while in detention.

Sanitary and social support is provided by medical and nursing staff. Their availability varies from one centre to the other (from 2 days to 7 days a week). The care is given by doctors and nurses who belong to an independent hospital staff. They are grouped in medical administrative detention centres (UMCRA).<sup>390</sup> In principle, each person placed in administrative detention is seen by the nurse upon arrival. The person is seen by the doctor upon request or on the request of the nurses, in principle within 2 days of arrival. According to the 2013 report of the five NGOs working in CRA centres, some people suffering from serious psychological problems are held in detention centres.<sup>391</sup> The threshold to determine that a health status is incompatible with the administrative detention seems to vary a lot depending on the doctors and the detention centres. In case of high-risk pregnancy, doctors of the

<sup>382</sup> State agency responsible among others of organising voluntary returns.

<sup>383</sup> General controller of places of freedom deprivation, [Activity Report 2013](#), 11 March 2014.

<sup>384</sup> Assfam, Forum réfugiés-Cosi, France Terre d’asile, la Cimade et l’Ordre de Malte, *Centres et locaux de rétention administrative, Rapport 2013 (Administrative detention centres and facilities, Report 2013)*.

<sup>385</sup> General controller of places of freedom deprivation, *Activity Report 2011*.

<sup>386</sup> AFP, [Comme un air de prison au centre de rétention de Marseille](#) (The Marseille administrative centre looks somewhat like a prison), 20 February 2014,

<sup>387</sup> General controller of places of freedom deprivation, *Activity Report 2011*.

<sup>388</sup> See Note on the situation in Mayotte.

<sup>389</sup> Administrative Court of Mamoudzou, 20 February 2012, n° 1200106, 1200107, 1200108.

<sup>390</sup> See this [webpage](#) of the Ministry of Interior for more information.

<sup>391</sup> Assfam, Forum réfugiés-Cosi, France Terre d’asile, la Cimade et l’Ordre de Malte, *Centres et locaux de rétention administrative, Rapport 2013 (Administrative detention centres and facilities, Report 2013)*.

UMCRA may provide a certificate stating the incompatibility of the health of the person with placement in administrative detention – but this is not automatic and this recommendation is not always followed by the prefect. The same is true of the possibility of the doctors to consider that the health status of the person is incompatible with his or her removal if no appropriate treatment exists in the country of origin.

The practical problems observed regarding access to healthcare relate to a lack of consideration for psychological or psychiatric problems of the detainees. Dozens of suicide attempts are reported each year in these centres. Noting the weakness and the variations in the availability of psychiatric care in the French administrative detention centres, the 'General Controller' of places of freedom deprivation has recommended in 2014 that these centres and the relevant hospitals set up agreements through which mental health care would be accessible. He added that the regular presence of psychiatrists (be they independent or from hospitals) within detention centres should be systematic.<sup>392</sup>

The lack of medical confidentiality is another concern.

Separate places are provided for families in the 10 centres which are duly authorised. Access to education is not foreseen in France in CRA since children are not supposed to stay there. However, the prohibition of administrative detention for children is only applicable to unaccompanied children; children with their families (although it should be exceptional as of July 2012) can be detained for 45 days without access to educational activities.

Access to open-air areas depends on the facilities. Facilities built after 2006 have become prison-like. In the majority of the centres, no activity is provided. Depending on the CRAs, there may be a TV room (sometimes out of order or only broadcasting programs in French language), a few board games, a table football or even several ping pong tables but, in any event, this proves to be insufficient when administrative detention can last up to 45 days.<sup>393</sup> Lack of activity and boredom are the day to day reality for persons held in these centres. The detainees can in principle keep their mobile phones if they do not include camera equipment. Most people are therefore not authorised to keep their phones and the police refuses to authorise them even if the detainees offer to break the camera tool. Detainees may have access to reading material, depending on the centre but computers are never made available. Finally, detainees can have contact with relatives during restricted visit hours.

Five NGOs<sup>394</sup> are present quasi-permanently (5 to 6 days a week) in the centres as a result of their mission of information for foreigners and assistance in exercising their rights (see more information in the section "Legal assistance").

In addition, some people enjoy free access to the CRAs: the Commissioner for Human Rights of the Council of Europe; the members of the European Committee for the Prevention of Torture ; the French and European Members of Parliament; the General Controller of places of freedom deprivation; the 'Prefects' ; public prosecutors and the judges of freedom and administrative detention. Some others have more limited access: Consulate staff; lawyers; families of persons held.<sup>395</sup> Only families (or friends) are subject to restricted hours. An instruction from 1 December 2009 foresees that visits have to be authorised for a minimum duration of 30 minutes. In Marseille, however, the frequent lack of police staff in the detention centre leads the police to decide to focus on surveillance rather than providing the opportunity for the visits to take place. Family visits are therefore sometimes simply cancelled for the morning. UNHCR does not have a specific access to the administrative retention centres in France.

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<sup>392</sup> General controller of places of freedom deprivation, *Activity Report 2013*, 11 March 2014.

<sup>393</sup> Retention centres Report, 2011.

<sup>394</sup> Lot 1 (Bordeaux, Nantes, Rennes, Toulouse et Hendaye) : La Cimade ; Lot 2 (Lille 1 et 2, Metz, Geispolsheim) : Ordre de Malte; Lot 3 (Lyon, Marseille et Nice) : Forum Réfugiés ; Lot 4 : (Nîmes, Perpignan et Sète) : Forum Réfugiés; Lot 5 (Outre mer) : La Cimade; Lot 6 (Le Mesnil-Amelot 1, 2 et 3) : La Cimade ; Lot 7 (Palaiseau, Plaisir, Coquelles et Rouen-Oissel) : France Terre d'Asile ; Lot 8 (Bobigny et Paris) : Assfam.

<sup>395</sup> See this [webpage](#) of the Ministry of Interior for more information.

Some accredited NGOs<sup>396</sup> can have access to all CRAs. A new decree adopted in June 2014<sup>397</sup> regulates the access of NGOs to CRAs. The list of accredited NGOs whose representatives (national and local) are able to access the administrative detention places will be valid for five years. The exhaustive list of accessible rooms and facilities is described (this excludes the police offices, the registry, the video surveillance room, the kitchen, the technical premises). A maximum of five persons can make a visit within 24 hours. The time of the visits should not hinder the proper functioning of the centre, preferably during the day and the week. The head of the centre will be informed of the visit 24 hours in advance and can report the visit by giving reasons and for a limited period.

Finally, in cases where alternatives to detention are implemented (persons under house arrest), the key question of the exercise of rights of these persons is still to be dealt with. In fact, persons put under house arrest have neither access to information and free administrative and legal assistance by a specialised association, nor formalised social support and free health care.

In July 2013, two journalists (from Rue89 and AFP) were able to visit the administrative detention centre in Lyon together with two French MEPs in the framework of a project on access to detention centres ([Open Access Now](#)).<sup>398</sup> Other visits took place later in the year, such as in the administrative detention centre of Nice on 30 October 2013. The Ministry of Interior is currently examining the possibility of a decree enacting access for journalists to all places of deprivation of freedom if accompanying members of parliament. The decree has not been published yet at the time of writing.

A number of recommendations have been made by the Senate in an information report published in July 2014<sup>399</sup> in order to improve detention conditions in administrative detention centers (for example, improving freedom of movement within the center, providing a legal framework for the use of videosurveillance, reinforcing the presence of lawyers and interpreters, improving the confidentiality of the transmission of asylum applications to the OFPRA, providing psychological and psychiatric care and improving general medical care, improving recreational activities including access to the Internet, deploying more experienced police staff...).

#### D. Procedural safeguards and judicial review of the detention order

##### Indicators:

- Is there an automatic review of the lawfulness of detention?  Yes  No

Foreigners held in administrative detention centres are informed about the reasons for their placement in these centres through the notification of the administrative decision to detain them with a view to their removal. This notification must state clearly which removal ground serves as a basis for the detention and why the removal cannot be implemented immediately. This document also mentions the legal remedies available to challenge this decision. Foreigners also receive a notification of all their rights including the right to apply for asylum. According to the law<sup>400</sup>, this notification should be made (orally) to the foreigner in a language they understand. In practice, this is done in most of the cases but not always.

<sup>396</sup> Regulated by decree n° 2011-820 of 8 July 2011 for the application of the law of 16 June 2011.

<sup>397</sup> Décret du 24 juin 2014 modifiant les articles R.553-14-4 à R.553-14-8 du Ceseda complété par une note d'information du 28 octobre 2014 du ministre de l'intérieur relative aux modalités d'accès des associations humanitaires aux lieux de rétention.

<sup>398</sup> See some press articles: 1) Le Nouvel Observateur, Detention Centres: 2 European officials visit Lyon ("[Centres de rétention: deux députées européennes en visite à Lyon](#)"), 17 July 2013, and 2) Rue 89 Lyon, Journalist, I entered the detention centre in Lyon ("[Journaliste, je suis entré au centre de rétention de Lyon](#)"), 17 July 2013.

<sup>399</sup> [Rapport d'information n°773 du Sénat sur les centres de rétention administrative par Mme Assassi et M. Buffet, 23 juillet 2014.](#)

<sup>400</sup> Article L.551-2 and articles L. 111-7 and L.111-8 of Ceseda.

The 'Controller General' of places of freedom deprivation has also highlighted in 2013 some deficiencies with regards to the information provided to asylum seekers while in administrative detention. His recommendations included: to make compulsory the dissemination of explanatory brochures about the asylum procedure (in several languages) addressing persons in detention and staff working in detention centres; to insist on the mandatory nature of the transmission of the asylum claim to OFPRA, even if it is submitted late; and to ensure that an interpreter is available to assist asylum seekers with the procedure.<sup>401</sup> The absence of explanatory brochures is however compensated by the presence of NGOs which provide information and legal assistance to all foreigners held in administrative detention centres.

The impact of detention on the overall quality of the asylum procedure is considerable. Preparing an asylum application in a place of confinement can be very difficult: there is very limited time to develop the reasons for the claim (5 days), no free access to an interpreter to write the application in French, dysfunctions during the transmission from the centre to OFPRA which jeopardise the confidentiality, stressful conditions prior to the interview with OFPRA, difficulties to locate and gather the necessary evidence, etc.

The administration requires that the person detained lodges their application for asylum within 5 days after placement in administrative detention (the deadline is set at midnight on the 5<sup>th</sup> day. In a decision from 30 July 2014,<sup>402</sup> the Council of State considered that, in certain cases, an asylum seeker held in administrative detention could lodge an asylum application after the 5 day delay: if he or she could not lodge his or her asylum application because he or she could not benefit from an effective legal and linguistic assistance; if, in order to substantiate his or her case, he or she alleges facts which happened after this deadline.

OFPRA has then 96 hours<sup>403</sup> to examine the application. The personal interview with the asylum seeker takes place in the premises of OFPRA or by video conference. This extremely brief period of time drastically reduces the chances of benefiting from an in-depth examination of the claim. The remedy before the CNDA (National Court of Asylum) does not have any suspensive effect.

If most of the foreigners who apply for asylum while in administrative detention are channelled into the accelerated procedure, the practice might change following the above mentioned Council of State decision. Indeed, in a recent information note,<sup>404</sup> the minister of Interior calls for an individual assessment of each case by the prefects in order to decide precisely whether the asylum seeker in administrative detention should be delivered a temporary residence permit (and therefore released from detention and channelled into the regular procedure) or not (and therefore channelled into the accelerated procedure). If France is yet to change its legislation in order to draw lessons from the European Court of Human Rights decision in the *IM vs. France* case,<sup>405</sup> practice might improve in this regard.

In an information report published in July 2014,<sup>406</sup> two members of the Senate recommended the suppression of the automatic channelling of asylum applications made in administrative detention under the accelerated procedure and the limitation to cases where the asylum application is clearly dilatory. French law foresees a judicial review of the lawfulness of the administrative detention for all foreigners held in administrative detention. The legality of detention falls under the dual control of the

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<sup>401</sup> General controller of places of freedom deprivation, *Activity Report 2012*, February 2013 (pages 212-213).

<sup>402</sup> [Conseil d'Etat, 30 juillet 2014, n°375430.](#)

<sup>403</sup> Article R 723-3 of Ceseda. In 2013, the median period for a decision under the accelerated procedure in administrative detention was of 5 days (OFPRA, [2013 Activity report](#), 28 April 2014).

<sup>404</sup> Note d'information du 23 décembre 2014 relative aux demandes d'asile présentées par des étrangers placés en rétention administrative en vue de leur éloignement. Suites à donner à la décision n°375430 du Conseil d'Etat du 30 juillet 2014, NOR : *INTV1430936N*.

<sup>405</sup> European Court of Human Rights, *I.M. v. France* (application no. 9152/09), 2 February 2012.

<sup>406</sup> [Rapport d'information n°773 du Sénat sur les centres de rétention administrative par Mme Assassi et M. Buffet, 23 juillet 2014.](#)

administrative court and the judicial court. Each court examines specific and complementary aspects of the procedures: the administrative court controls the legality of the administrative decisions of detention and removal and the judicial court examines the conformity of the deprivation of freedom.

- The administrative judge is seized by the foreigner (the asylum seeker if relevant) who challenges the legality of the decisions taken by the Prefect, i.e. the measures of removal and/or administrative detention placement.<sup>407</sup> Measures of placement in administrative detention can be challenged within a period of 48 hours. This period starts from the notification of the measure (and not from the arrival at the administrative detention centre). The administrative judge can, for example, verify that the Prefect has not committed a gross error of appreciation by choosing administrative detention rather than house arrest. The administrative judge must make a decision within 72 hours.
- The Judge of Freedoms and Detention (JLD), i.e. the judicial court – whose competences are set out in article 66 of the Constitution – is seized by the Prefect at the end of the 5 days of administrative detention in order to authorise a prolongation after having examined the lawfulness of the administrative detention. For example, they will check whether the police have respected the procedure and the rights of the person during the arrest, the legality of the police custody and the placement into administrative detention. He will also check whether the custody is compatible with the personal situation of the detainee.<sup>408</sup> This judge can also be seized at any moment by the person detained in administrative detention centres but these requests have to be very solidly argued (serious health problems for instance) and are hardly considered admissible<sup>409</sup>.

Presentation in front of these two judges is not systematic. Appeals lodged solely against the measure of placement in administrative detention do not suspend the execution of the removal. It happens that persons are returned even though a hearing in front of the judge had been set. The law only provides for a suspensive effect for appeals against a removal decision. Challenging decisions of placement in administrative detention and of all other measures linked to a removal decision does not guarantee a possibility to see an administrative judge.

These two remedies are independent from each other and have to be made under extremely short delays. Before 2011, the Judge of Freedoms and Detention (JLD) used to rule before the administrative judge. Since the 2011 reform, there is absolutely no control regarding the legality of administrative detention for persons removed before the hearing with the Judge of Freedoms and Detention (as the administrative judge only looks at the legality of the decisions taken by the Prefect).

In practice it means that the 5 644 persons who have been removed during the first 5 days ( 54 % of the 10 476 removals carried out in 2013) were not able to see the JLD judge and therefore did not benefit from a judicial review.<sup>410</sup> This lack of judicial control can also involve families. For example, in August 2014 a family (including an 8 month child) was arrested and removed to Armenia within 24 hours without any legal control.<sup>411</sup>

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<sup>407</sup> Article L.512-1 of Ceseda.

<sup>408</sup> Article L. 552-1 of Ceseda.

<sup>409</sup> Article R. 552-17 of Ceseda

<sup>410</sup> This is also criticized in details in a recent report from the Observatoire de l'enfermement des étrangers (OEE) ("*Rapport d'observation « Une procédure en trompe l'oeil » Les entraves à l'accès au recours effectif pour les étrangers privés de liberté en France*", May 2014) based on field research made between September 2013 and May 2014 in several detention places and on interviews with many stakeholders. This report makes a concerning overview of the numerous elements that thwart access to effective remedy and a fair trial which often results in the judicially unfair, if not illegal, deportation of detained migrants. The report calls for urgent reforms and makes a set of recommendations to this end.

<sup>411</sup> Press release from La Cimade, 7 August 2014. Other examples are documented in a report from the ADDE (Avocats pour la Défense des Etrangers, "*Le respect des droits de l'homme en matière d'immigration et d'asile en France*", 20 septembre 2014) prepared in advance of the visit of the Commissioner for Human Rights of the Council of Europe in France.



This figure is even more impressive in French overseas departments where 99% of the removals are carried out during these first 5 days.<sup>412</sup>

In the context of the immigration reform currently being discussed by Parliamentarians, many NGOs and other stakeholders have pleaded for an earlier and more effective access to judicial review.

## E. Legal assistance

### Indicators:

- Does the law provide for access to free legal assistance for the review of detention?  
 Yes       No
- Do asylum seekers have effective access to free legal assistance in practice?  
 Yes       No

Legal assistance for persons held in administrative detention (including asylum seekers) is provided by law. Currently, five NGOs which assist foreigners are authorised, by agreement (public procurement) with the Ministry of Interior, to provide “on duty” legal advice in administrative detention centres (CRAs). They inform the foreigners (including asylum seekers) and help them to exercise their rights during the detention procedure (hearings in front of the judge, the filing of an appeal, request for legal aid etc).<sup>413</sup> These NGOs are present in the administrative detention centres quasi-permanently (5 to 6 days a week). Some of these NGOs have set aside a budget to hire interpreters to assist detainees who do not speak French or English, whereas others resort to volunteers.

As for the assistance given by lawyers, the legislation foresees that foreigners held in administrative detention can be assisted by a lawyer for their appeals [during the hearing] in front of the administrative court or for their presentation in front of the Judge of Freedoms and Detention. Therefore, for the prolongation of administrative detention by the Judge of Freedoms and Detention, Article R.552-6 of *Ceseda* foresees that “the foreigner is informed of their right to choose a lawyer. The judge can appoint one automatically if the foreigner so requests”. Within the context of the procedure in front of the Administrative Court, “the foreigner can, at the latest at the start of the hearing, ask for a lawyer to be appointed automatically. They are informed by the Clerk of the Court at the time of the beginning of their request.”<sup>414</sup>

With regards to the confidentiality granted to the discussions between lawyers and their clients when they meet within the detention centres, the situation can vary from one centre to the other. An office with frosted windows is usually provided. It is however very rare that lawyers agree to go to the detention centres (detention centres are usually located quite far from the city centre). Lawyers can easily contact their clients by calling a public phone or by calling the NGO present in the centre that will make sure the call is forwarded to the detainee.

<sup>412</sup> Assfam, Forum réfugiés-Cosi, France Terre d’asile, la Cimade et l’Ordre de Malte , *Centres et locaux de rétention administrative, Rapport 2013 (Administrative detention centres and facilities, Report 2013)*.

<sup>413</sup> See this [webpage](#) of the french public administration for more information .

<sup>414</sup> Article R. 776-22 of the Code of administrative justice.

# ANNEX I Asylum in Mayotte: between French common law and local exemptions

## A. INTRODUCTION

For the last decade, Mayotte has been the focus of several reports from various bodies (NGOs, international and European organisations, Rights Defender), which have all denounced the worrisome situation for foreigners and asylum seekers<sup>415</sup> on this French island<sup>416</sup>.

Until recently, a special legislative regime was applicable to Mayotte in terms of foreigners' and asylum seekers' law, in particular under the Order of 26 April 2000 relative to the conditions of entry and residence of foreigners in Mayotte.<sup>417</sup>

Since Mayotte became the 101<sup>st</sup> French *département* on 31 March 2011, the government has had to bring the relevant legislation on the entry and residence of foreigners closer to the French common law, especially since Mayotte's new status as an "ultra-peripheral region" of the EU since 1 January 2014 has made it necessary to transpose European directives in the field of migration and return.<sup>418</sup> A new order extending and adapting the *Ceseda* (Code of entry and stay of foreigners and asylum seekers) to Mayotte entered into force in May 2014.<sup>419</sup>

The French government however admitted that the special legislative regime applicable to Mayotte in the field of foreigners' law was suppressed "subject to some adaptations which were justified by Mayotte's particular migration context", adding that "differences from the common law mainly stem from the desire to dissuade irregular migration as much as possible, especially by minors, originating from the Comoros and in particular from the Anjouan island situated 70 km away from Mayotte and where the standard of living is much lower than in Mayotte".

Among the current exemptions, some in the area of procedures, reception conditions and detention might affect asylum seekers.

## PROCEDURES

### A. Admission on the territory on asylum grounds (border procedure)

<sup>415</sup> In 2013, 569 persons applied for asylum in Mayotte, among which 75% were from the Comoros Union and 21% from African countries.

<sup>416</sup> Mayotte is a French overseas department off the coast of south east Africa.

<sup>417</sup> *Ordonnance n°2000-373 du 26 avril 2000 relative aux conditions d'entrée et de séjour des étrangers à Mayotte.*

<sup>418</sup> The European Commission clearly stated that no exemption to the application of European asylum and migration law was allowed (cf. answer of 24 April 2013 from the Commissioner Cecilia Malström to a written question submitted by the French MEP Hélène Flautre). In particular, the European Commission refused the request of the French authorities to include an exemption to Article 13.2 of the Return Directive (suspensive effect of the remedy against a removal decision) and to Article 13.5 of the Reception Conditions Directive (granting of the financial allowance).

<sup>419</sup> [Ordonnance n°2014-464 du 7 mai 2014 portant extension et adaptation à Mayotte du code de l'entrée et du séjour des étrangers et du droit d'asile \(partie législative\) NOR : INT/X/14/09906/R.](#) This order (legislative part) entered into force on 26 May 2014 at the same time as the decree of 23 May 2014 on the extension and adaptation of the *Ceseda* (regulatory part).

Until now, no legislation has been provided on the procedure to be applied to foreigners held in waiting zones in Mayotte. The Order of 26 April 2000 did not mention which authority was responsible for the determination of the well-foundedness of a request for admission on the territory on asylum grounds. There was no provision either on the available remedies against a negative decision on admission. This legal vacuum has left an excessive margin of appreciation to the administration. In practice, many waiting zones were created in 2012 but nobody seemed to be held in those zones as the authorities preferred to place foreigners in administrative detention for the purpose of removal.

The new Order of 7 May 2014 contains exemptions to the procedure for admission on the territory on asylum grounds. Article 5 aims to avoid the application of the “clear day” (*jour franc*) rule, which enables foreigners who are not authorized to enter the territory to refuse to be expelled before a 24 hour-delay.<sup>420</sup> Article 6 aims to enable the use of the same facilities for both holding in waiting zones and administrative detention.<sup>421</sup> This exemption should however be limited to five years pending the building of a new facility which, contrary to the current one, should include distinct premises for the waiting zone and for the administrative detention.

## B. Asylum procedure (on the territory)

### 1. Geographical restriction to the temporary residence permit<sup>422</sup>

The temporary residence permit of asylum seekers was limited to the place where they lodged their application, i.e. the *département* of Mayotte. They had to receive the necessary authorization in order attend a personal interview with OFPRA<sup>423</sup>. Since the Order of 7 May 2014, a visa will be automatically issued to any asylum applicant who is summoned to a personal interview at OFPRA.

In addition, asylum applicants who originate from the Comoros are frequently channeled into the accelerated procedure by the prefecture which considers their asylum application to have been lodged for the sole purpose of avoiding a removal measure. The decision refusing to deliver a temporary residence permit (and therefore to channel the applicant into the accelerated procedure) is rarely notified in a proper way.

### 2. Differentiated treatment by OFPRA

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<sup>420</sup> According to the government, this difference with common law is justified by the frequent arrivals of makeshift boats with many passengers who are generally readmitted within 24 hours by the authorities of the Comoros. The goal is clearly to dissuade arrivals.

<sup>421</sup> According to the government, this is due to the current lack of housing facilities in the waiting zone of the harbour of Mamoudzou (Mayotte). This enables the administration to house foreigners who are not authorized to enter the territory in the administrative detention centre. It is nevertheless expressly mentioned that foreigners, even though they are housed in the same facility, fall under different legal regimes according to the administrative measure applied to them (non-admission or removal).

<sup>422</sup> Furthermore, other kinds of residence permits issued to third country nationals in Mayotte do not enable the beneficiaries to reside in other French *départements* than Mayotte. Following the Order of 7 May 2014, those persons still need a visa if they want to travel to other overseas or mainland French *départements*. Some exceptions are, however, provided for. Given that the Qualification Directive does not differentiate between the rights of refugees and of beneficiaries of subsidiary protection as far as freedom of movement is concerned, they should both benefit from the exemption of visa rule (Article L. 313-13 of the CESEDA).

<sup>423</sup> OFPRA stands for Office Français de Protection des Réfugiés et des Apatrides (French Office for the Protection of Refugees and Stateless Persons). It is the institution responsible for registering and processing asylum claims.

Asylum applications lodged by foreigners originating from the Comoros or Madagascar are usually processed through video interviews with OFPRA while persons originating from the Great Lakes region have a face-to-face personal interview when OFPRA comes to Mayotte (which implies longer delays in processing their applications of treatment).

### 3. Procedure before the CNDA

Under the Decree of 16 August 2013 related to the procedure before the CNDA<sup>424</sup>, asylum applicants who lodge their application overseas have a two-month delay (instead of one month in the mainland) to bring their appeal before the CNDA after the notification of the OFPRA negative decision.

Furthermore, the CNDA regularly organizes missions overseas, including to Mayotte, to hear the applicants. In addition, since 2011, video hearings with the CNDA are provided for by law. Applicants in the mainland may refuse this option, which is compulsory for applicants overseas. However, no video hearing has so far been organized.

Delays for the processing of appeals by the CNDA are longer in Mayotte than in the mainland.

## RECEPTION CONDITIONS

### A. Social rights for asylum seekers

Articles L.348-1 (and the following Articles) of the Code of social action and families (CASF) do not apply to Mayotte and the Council of State has considered that this exemption is possible even since Mayotte became a *département*.

There is no reception centre for asylum seekers (CADA) in Mayotte and no housing possibility for them, except for an emergency reception centre with 15 places designed for first arrivals.

Furthermore, the Labour Code applicable to Mayotte is distinct from the code applicable to other *départements*. The provisions on the temporary financial allowance (ATA) have not been transposed into the specific code for Mayotte. Asylum seekers in Mayotte cannot, therefore, benefit from this allowance. Their very precarious situation leads them to work illegally and to face other forms of exploitation.

In addition, asylum seekers lack effective access to health care. In Mayotte, there is no health scheme such as AME (State Medical Aid) or CMU (Universal Health Insurance) like in the mainland.

### B. Unaccompanied minors

No specific scheme for the care of unaccompanied minors is provided in Mayotte.<sup>425</sup> Only 30% of them benefit from care under the general scheme for the protection of children (ASE) managed by the *département*.<sup>426</sup> 70% of unaccompanied asylum-seeking children face the same daily livelihood, and

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<sup>424</sup> CNDA stands for Cour nationale du droit d'asile (National Court for Asylum Right). It is the Court of appeal to OFPRA decisions.

<sup>425</sup> The estimated number of unaccompanied minors in Mayotte is around 3 000. According to a study published in 2012, 87% of them become unaccompanied following the forced removal of one of their parents or both (David Guyot, *Les mineurs isolés à Mayotte - contribution à l'Observatoire des mineurs isolés*, January 2012). In addition, 3 512 children were held in the administrative retention centre of Mayotte in 2013 ("[Centre et locaux de rétention administrative, rapport 2013](#)", Assfam, Forum réfugiés-Cosi, France Terre d'Asile, La Cimade, Ordre de Malte).

<sup>426</sup> According to Rights Defender, public authorities can not only deplore the lack of financial means for the scheme for the protection of children (ASE) (cf. Decision of the Rights Defender n°MDE-2013-87 of 19 April 2013 – General recommendations relative to the alarming situation of unaccompanied minors in the department of Mayotte ("[Décision du Défenseur des droits n°MDE-2013-87 du 19 avril 2013](#)" -

housing problems as adults. In addition, there are not enough schools and no young persons over 16 years of age can go to school.<sup>427</sup>

In its recent report,<sup>428</sup> the National Commission for Human Rights (CNCDH) regrets that the Circular of 31 May 2013 on unaccompanied minors does not apply to Mayotte despite the fact that this *département* has faced structural deficiencies for many years in the field of youth protection.

## ADMINISTRATIVE DETENTION/REMOVAL

There is exceptional legislation applicable to Mayotte that enables the prefecture to enforce a removal order before the administrative court takes a decision on the legality of the order if it has been referred to it.<sup>429</sup> In Mayotte, removals are enforced so quickly that no judicial control can take place. In this context, the administration can commit a lot of violations.<sup>430</sup>

Article 14 of the Order of 7 May 2014 maintains the non-suspensive character of the remedy against removal decisions of foreigners illegally on the territory.<sup>431</sup> Whereas a foreigner in the mainland can challenge, with suspensive effect, a removal decision before the administrative court within 48 hours, in Mayotte any foreigner could be expelled within a few hours.

Many children are expelled from Mayotte every year (5 978 in 2011, 3 837 in 2012). However, even in Mayotte, issuing a removal order against a minor child is illegal. Nevertheless, this prohibition is regularly violated, either by attributing a date of birth to the child that makes him or her an adult, or by making a fictitious link with the removal order of an adult who sometimes has no parental authority over him or her.<sup>432</sup>

The decision *De Souza Ribeiro* of the European Court of Human Rights<sup>433</sup> in which France was found in violation of Article 13 of the ECHR because it did not guarantee a remedy with suspensive effect for a

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*“Recommandations générales relatives à la situation très alarmante des mineurs étrangers isolés dans le Département de Mayotte”*).

<sup>427</sup> Solidarité Mayotte, chapter included in the 2014 annual report of Forum réfugiés–Cosi, « *L’asile en France et en Europe - état des lieux 2014* ».

<sup>428</sup> National Commission for Human Rights (CNCDH), Opinion on the situation of unaccompanied minors in France, 26 June 2014. [Avis sur la situation des mineurs isolés étrangers présents sur le territoire national. Etat des lieux un an après la circulaire du 31 mai 2013 relative aux modalités de prise en charge des jeunes isolés étrangers \(dispositif national de mise à l’abri, d’évaluation et d’orientation\), 26 June 2014.](#)

<sup>429</sup> “[Centre et locaux de rétention administrative, rapport 2013](#)”, Assfam, Forum réfugiés-Cosi, France Terre d’Asile, La Cimade, Ordre de Malte.

<sup>430</sup> Cimade, « *Migrations-Etat des lieux 2014* », mai 2014.

<sup>431</sup> According to the government, 13 000 removals (i.e. half of the removals carried out from the mainland) are carried out every year from Mayotte. According to the government, the exceptional nature of the illegal migration in Mayotte justifies a specific regime which is not contrary to the European requirements.

<sup>432</sup> Extract from *Plein droit* n°100, March 2014, « [Mayotte, une zone de non-droit](#) » by Marie Duflo (Gisti) and Marjane Ghaem (lawyer from the bar of Mayotte).

<sup>433</sup> ECtHR, [De Souza Ribeiro v France](#), 13 December 2012, n° 22689/07 (concerning Guyana). See § 97. [...] while States are afforded some discretion as to the manner in which they conform to their obligations under Article 13 of the Convention, that discretion must not result, as in the present case, in an applicant being denied access in practice to the minimum procedural safeguards needed to protect him against arbitrary expulsion. See also « [Des droits d’exception en outre-mer devant la Cour européenne des droits de l’Homme](#) ».

foreigner held in the administrative detention centre in Guyana (i.e. another French overseas *département*), has still not been enforced. Since the situation remains the same, several identical cases are pending before the ECtHR.

Material conditions in the administrative detention centre of Mayotte<sup>434</sup> are unanimously considered as shameful. In 2013, around 16 000 persons were held in these dire conditions. Some changes were made in 2012 and 2013 (in particular a new room for families and a courtyard) but the general state remains very poor. The area allowed per person is five times less than in the mainland, which means that the administrative detention centre is constantly overcrowded. Thin mattresses are put on the floor and there is no privacy. There is little natural light coming from the outside. Adequate air conditioning is not provided and the temperature can be very hot in this type of tropical climate. Even though 3 512 children were detained in 2013, this centre does not have any special equipment for them.

A new administrative detention centre is under construction and should be completed by 2015 in order to meet more adequate standards.

In addition, the foreigners in the administrative detention centre of Mayotte do not receive any legal support enabling them to exercise their rights effectively because no NGO has been entrusted with this mission, contrary to the administrative detention centres in the mainland. This shortcoming is aggravated by the exceptional legal regime which does not provide for any effective remedy against removal orders.

Given the numerous exceptions to the application of French foreigners' law in Mayotte,<sup>435</sup> future litigation based on the application of EU directives and case-law could hopefully lead to positive changes in the treatment of asylum seekers there.

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<sup>434</sup> “[Centre et locaux de rétention administrative, rapport 2013](#)”, Assfam, Forum réfugiés-Cosi, France Terre d’Asile, La Cimade, Ordre de Malte. Moreover, administrative detention facilities where no legal assistance is provided are regularly created by the prefect for a very short period of time, in particular since 2012. The conditions in these facilities, which are usually used for other purposes, are extremely bad.

<sup>435</sup> Considering that this order still contains many exemptions, the NGO Gisti and others referred it to the Council of State (See Gisti, collective action collective, 23 June 2014). See also MOM (*Migrants Outre Mer*), “Extension and adaptation of the Ceseda to Mayotte- Adaptations provided by the order of 7 May 2014 » (« [Extension et adaptation du Ceseda législatif à Mayotte – Les adaptations prévues par l’ordonnance n°2014-464 du 7 mai 2014](#) »), 2014.

# ANNEX II - TRANSPOSITION OF THE CEAS IN NATIONAL LEGISLATION

## DRAFT REFORM OF THE FRENCH LAW ON ASYLUM

*Adopted at first reading by the Parliament on 16 December 2014*

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## Main changes to be expected

A number of key improvements that may have a significant impact on the position of asylum seekers have been approved by the Members of Parliament in a first reading of the draft law on the reform of the Asylum law. It should be noted that these improvements were still under examination by the French Senate at the time of writing. . The main improvements are:

- All asylum seekers will have the same right of residence regardless of the type of procedure (except asylum seekers placed under the Dublin regulation);
- Lodging an appeal to the National Court of Asylum (CNDA) will have a suspensive effect, including for accelerated procedures;
- Procedural guarantees during the interview with the protection officer will be strengthened;
- A new reception framework will be implemented;
- Control measures with regard to the establishment of the list of “safe countries of origin” will be introduced. The definition of “safe countries of origin” will be in line with the one provided by the recast Asylum Procedures Directive which is more restrictive than the previous French definition;
- Special procedural guarantees for vulnerable persons shall be specified

A key change of the asylum procedure resulting from the reform concerns the total duration of the procedure. The total duration of the procedure will be shortened with both positive and potentially negative consequences, in particular as regards the quality of examination of asylum claims. The general “spirit of the reform is to shorten the total duration of the procedure. Every step of the procedure will be processed in reduced time frames:

- The registration of the asylum claim will take place within 3 working days instead of 15
- The French Office for the Protection of Refugees and Stateless People (OFPRA) will have to issue a decision within 9 months (this is not specified in the draft law itself but has been listed among OFPRA indicators in the framework of the Financial Law for 2015 as part of the global reform of asylum in France.
- The National Court of Asylum (CNDA) will also have to act within 5 months, or 5 weeks in case of an accelerated procedure

Even though the above mentioned revisions of the law are positive signs, further efforts are necessary to ensure that the draft law on asylum fully respects and protects asylum seekers’ rights. In Forum réfugiés-Cosi’s view, the draft law should, amongst others include further amendments to:

- Guarantee effective remedies in detention centers ;
- Preserve the quality of the National court of Asylum’s examination and decision-making process by stipulating a longer time limit to examine appeals in the accelerated procedure;
- Harmonize services offered by reception facilities for asylum seekers and provide accommodation together with legal support to all asylum seekers.

The initial timeframe announced provided for the adoption of the law before the summer Parliamentary break. Therefore, debates in the Senate should occur in the coming weeks in order for the Members of Parliament to be able to study the proposed amendments in a second reading.

**The elements discussed below provide an overview of the main changes that are introduced by the draft law on asylum.**

## Asylum procedure

### A. Access to procedure

#### 1. Registration of the asylum claim



The registration of the asylum claim takes place at the latest 3 working-days after the introduction of the claim to the prefecture, without having to provide an address (domiciliation). Under specific circumstances this period can be extended up to 10 working days (in case of massive and simultaneous influx of asylum seekers).

When the claim has been registered by the prefecture, the asylum seeker (except if placed under the Dublin procedure, see below) should be provided with a certificate proving that he/she has introduced an asylum claim (which replaces the temporary stay permit).

## **2. Asylum at the border**

Upon arrival in the waiting zone, a foreign national is informed about his/her rights to ask for asylum.

An entry-ban on the territory for asylum purposes might be imposed if:

- Another Member State is responsible for examining the asylum application under the Dublin regulation
- The asylum application is not admissible as it constitutes a subsequent application without new fact and circumstances
- The asylum application is manifestly unfounded

The latter concept of “manifestly unfounded application” is further clarified insisting on the “*obvious lack of relevance regarding conditions to grant asylum or obvious lack of credibility when it comes to risk of persecution or serious abuses*”.

## **3. Asylum in detention centers**

A foreign national who applies for asylum in detention can benefit from legal and linguistic assistance.

The asylum claim maybe introduced after the 5-days period if the facts and circumstances invoked occurred after this delay has expired.

A foreign national who makes an asylum claim in detention cannot be maintained in such conditions merely on the basis that the competent administrative authority considers that the asylum claim has been made for the sole purpose of preventing the execution of the removal order. It has to be motivated and notified in writing.

If OFPRA assesses that it cannot process the claim under the accelerated procedure, the person must be released from detention.

If the asylum application made in detention is rejected, the applicant can lodge an appeal against the decision to the CNDA but he/she has to submit first a request to the administrative court (delay of 48 hours) who can allow the applicant to remain on the French territory (and thus be released from the detention center) in order to lodge an appeal to the CNDA. This decision has to be taken within 72 hours. During this delay the removal order cannot be executed.

## **B. Accelerated procedures**

The law provides that an examination procedure be accelerated in all the situations listed in the Procedures directive (Article 31(8) - ten situations in comparison with the actual four situations).

Unaccompanied children are exempt from such procedures.

OFPRA can decide in any case not to adjudicate an application under an accelerated procedure if it seems appropriate to guarantee an appropriate examination of the application.

The accelerated procedure cannot be contested as such (no specific appeal against the decision to examine an application in the accelerated procedure) but it can be contested together with the appeal against the refusal decision of the asylum application.

Unlike the current situation, the adjudication under accelerated procedures does not imply that there will be any distinction between asylum seekers with regard to reception conditions.

### C. Dublin Regulation

The applicant placed under the Dublin regulation is provided with a specific certificate that allows him/her to remain on the territory. He/she loses the right to remain if he/she does not comply with controls and measures in order to oppose the execution of the removal order.

During the procedure that will determine the State responsible for processing the asylum claim the applicant can be subjected to house arrest for a maximum of 6 months on the basis of a reasoned decision if there is a risk of absconding. (renewable for the same period of time)

The transfer decision (that must be written and reasoned) can be challenged for 15 calendar days after it has been notified. The administrative court has 15 calendar days to decide on the appeal. If the applicant is detained, the time limit for appeal is reduced to 48 hours and the court has 72 hours to decide on the appeal. The appeal procedure (until the court has ruled) has a suspensive effect.

Applicants subjected to the Dublin procedure have normal access to reception conditions except that they cannot be hosted in reception centers for asylum seekers (CADA).

### D. Review of an application

France can refuse to grant asylum to an applicant if he/she can access protection in his/her country of origin, meaning that “*authorities in the country of origin dispose of an effective judicial system that can identify, sue and condemn acts that constitute serious attempts or persecution*”. The applicant can invoke facts and circumstances that occurred after he/she left his/her country of origin. These elements already existed in practice through case-law but will be formally written in the law.

As regards subsidiary protection, the concept of “widespread violence” is being replaced by “mindless violence”. Subsidiary protection can be ended if there is a “significant and sustainable” change in the country of origin (instead of “deep enough change”).

All negative decisions issued by OFPRA, including refusal, termination or inadmissibility, have to be reasoned decisions and have to stipulate all means and delays to call for review.

#### 1. Medical examination

OFPRA can ask an asylum applicant to pursue a medical examination but in case the person refuses this does not terminate the procedure nor prevent OFPRA to adjudicate his/her demand.

Specific case of female genital mutilation: when asylum has been granted to a child at risk of experiencing female genital mutilation, OFPRA asks that she is being submitted to medical examination to confirm there is no mutilation. A three year period has to be respected in between two medical examinations. If mutilation is observed this solely cannot conduct to end protection.

#### 2. Interview

The obligation to conduct an interview to assess the personal story of the asylum applicant is strengthened as OFPRA is compelled to summon the person. In practice, interviews were already almost systematically carried on but it will be enshrined in the law thanks to the draft reform. Only two reasons to omit the interview are listed in the law: in case OFPRA is about to issue a positive decision or if an interview is not possible for medical reasons (long lasting and beyond the person’s control. This is not applicable to subsequent applications which can be declared inadmissible in case there is no new fact or circumstance and can thus be decided without an interview. Each applicant is heard individually,

without the other members of the family present. This can also be the case for children under specific circumstances.

During the interview, the applicant can be supported by a lawyer or a representative of a civil society organization defending foreign nationals' or asylum applicants' rights, human rights, women or children's rights, or an organization fighting against gender based violence. These third parties can take notes but can only intervene at the end of the interview and make observations. The absence of such third parties does not prevent OFPRA to conduct the interview.

A transcript of the interview is produced and transmitted to the applicant or his/her lawyer or the representative of the civil society organization before any decision is issued. In case there has been an audio record of the interview it can only be accessed by the applicant to introduce an appeal of a negative decision.

### **3. Subsequent applications**

With regard to subsequent applications, a procedure of admissibility has been introduced in the draft reform.

In case of a subsequent application, OFPRA determines if there are new facts and/or circumstances (this does not necessarily mean an interview is conducted) but it also assesses if "*these new facts or circumstances significantly increase the probability that the applicant is eligible for international protection*".

If not, OFPRA can take a negative decision (inadmissibility). This decision has to be written and reasoned and can be contested before the CNDA.

### **4. Termination of the examination**

The processing of an application can be terminated by OFPRA if:

- The applicant withdraws his/her asylum application
- The applicant refuses to provide essential information for his/her application to be processed
- The applicant did not make the asylum application within the time period foreseen in law (15 or 21 days) or did not attend the interview without valid reason
- The applicant did not inform OFPRA within a reasonable period of his/her residential location or address and cannot be contacted to process the application

This decision of termination cannot be challenged in court but within a period of 9 months a request to re-open the file can be made. When such a request is made, OFPRA starts processing the application where it has stopped before. This can only be done once.

### **5. Safe country of origin**

The composition of the board of OFPRA, responsible for establishing the list of Safe Countries of Origin, is modified in the new law in order to strengthen the process of changing the list. Therefore, other members have been added to the board of OFPRA to ensure better representativeness and complementarity of members:

- 1 representative of the ministry for social affairs
- 1 representative of the ministry for women's rights
- 1 member of Parliament (meaning there will be two, obligation to ensure gender equality)
- 1 senator (meaning there will be two, obligation to ensure gender equality)
- 1 member of the European parliament (meaning there will be two, obligation to ensure gender equality)

Qualified experts who attend the board of OFPRA, including civil society organizations defending asylum seekers' and foreign nationals' rights, are entitled to vote on the list of safe country of origin while they had a consultative status before. The list of Safe Countries of Origin remains determined by

the OFPRA board of members but the draft law directly refers to the recast Asylum Procedures Directive in order to define a Safe Country of Origin. OFPRA is obliged to regularly update the list.

A request can be made to OFPRA in order to add or withdraw a country of the list by:

- Presidents of the committees in charge of foreign affairs and social affairs in the Senate and in the Parliament
- Civil society organizations defending foreign nationals' rights, asylum seekers' rights, human rights and women's and children's rights.

Even though NGOs can ask OFPRA to assess if a country should be added or withdrawn from the list, the board of OFPRA is still deciding.

If an applicant originates from a country registered as a Safe Country of Origin this does not mean that his/her asylum application will be automatically processed under accelerated procedures.

## E. Appeal to the CNDA

Appeals have a suspensive effect in all procedures.

The CNDA must rule within 5 months after the appeal has been lodged. In case OFPRA has issued its decision under accelerated procedures or it is a decision of inadmissibility, the Court must rule within 5 weeks. Under accelerated procedures, the CNDA gives a decision as a single judge while before the reform it was adjudicating as a full panel and thus giving a collective decision.

Legal aid is automatically granted.

## F. Vulnerable persons

### 1. Identification

The French Office for immigration and integration (OFII) has to assess vulnerability within a reasonable period of time in order to assess if specific reception needs are required. These needs are also taken into account if they are revealed at a later stage of the asylum procedure. OFII officers responsible for assessing vulnerability have to be trained for that purpose.

The non-exhaustive list of vulnerable persons **refers to the list of the Reception Directive** and is mentioned in the law.

Information on vulnerability is transferred to OFPRA who is not bound by this assessment and can also proceed to the assessment of vulnerability within the procedure. Indeed, OFPRA is solely responsible for assessing vulnerability when it is linked with the content of the application.

A decree by the State Council (Conseil d'Etat) shall determine the modalities of such assessment as well as the processing of data collected.

### 2. Examination of application

Vulnerability is taken into account during the examination of the application by OFPRA.

OFPRA has the possibility to act in priority on applications made by "vulnerable persons identified as having special reception needs" or "requiring specific reviewing modalities, in particular regarding unaccompanied children".

Applicants who would invoke sexual or gender based persecutions or serious abuses and who would encounter cultural or personal difficulties to express this violence with persons from the opposite sex can ask for the interview to be conducted by same sex officers and translators.

### 3. Unaccompanied children

The nomination procedure of an ad hoc administrator is laid down in law.

Unaccompanied children cannot be placed under accelerated procedures.

Keeping an unaccompanied child in the waiting zone of the airport to examine his/her asylum application is possible only under very specific circumstances as stipulated in the revised Article L.723-2:

- He/she originates from a safe country of origin (I. 1°)
- The review request is considered inadmissible (I 2°)
- He/she has provided false identity or travel documents, dissimulated information or documents related to his/her identity, nationality or ways and means of entry to the French territory, or if he/she has introduced several asylum claims under different identities. Consequently, OFPRA can decide to examine the asylum claim under accelerated procedure. (II 1°)
- He/she represents a serious threat to public policy, public security or national security (III 5°)

As soon as protection is granted to an unaccompanied child “measures have to be taken as soon as possible to ensure that he/she is legally represented” and a host family has to be provided.

## Reception conditions

### A. Housing and reception conditions

#### 1. National reception framework

All asylum seekers have to be proposed material reception facilities.

OFII is responsible for taking decisions related to the place of accommodation and it coordinates the management of accommodation for asylum seekers. It offers accommodation after having assessed the applicant's needs and available capacities. It also takes into account the health and family situation of the applicant.

In the context of the national reception framework, CADA and accommodation benefiting from subsidies from the ministry in charge of asylum is considered accommodation for asylum seekers. They have to host all asylum seekers including in accelerated procedures and thus throughout the duration of the asylum procedure until the final decision, including their removal to another State in the context of the Dublin regulation (not hosted in CADA though).

Asylum seekers hosted in the national reception framework benefit from legal and social support.

The Prefect can oppose an admission decision to a reception facility for public order reasons. Also, if an applicant abandoned the accommodation he/she has been granted or does not respect the obligation to report to the authorities, reception facilities can be suspended or limited. This decision has to be reasoned in every individual case. It also takes into account the vulnerability of the asylum seeker.

#### 2. Allowance

Asylum seekers who have accepted material reception facilities are being offered an allowance for asylum seekers which is provided by OFII. A specific decree shall define the amount of this unique allowance (it replaces the monthly stay allowance and the temporary waiting allowance which were delivered respectively by reception centers for asylum seekers and the employment agency). It will take into account “personal resources of the individual, his/her accommodation facility and, when applicable, services offered by his/her place of accommodation”.

#### 3. Exit of accommodation for rejected asylum seekers

A specific procedure is being designed to proceed to the removal of the rejected asylum seeker from the place of accommodation.

## **B. Integration**

During the asylum procedure, asylum seekers may be authorized to access to employment and vocational training if OFPRA did not take a decision on the application within 9 months, for reasons that cannot be attributed to the applicant.

When the applicant is granted protection he/she can apply for a residence card (refugee, valid 10 years) or a residence permit (subsidiary protection, valid one year renewable for 4 years instead of one year renewable for one year before the reform). Within 8 days after the application they are provided with a receipt which has the equivalent value as a residence authorization. It is valid for 6 months (renewable) and the holder is allowed to work.

Parents of a child who is granted protection are granted the same residence permit: "private and family life" residence permit for subsidiary protection (renewed for a period of time of 4 years after a first one-year permit has been delivered) and a residence card for refugee status (valid for 10 years).

Not only refugees but beneficiaries of subsidiary protection are entitled to support in finding employment and housing (extension of this right which is currently limited to refugees).

## **C. Statelessness**

A new title of the Code of Entry and Residence of Foreigner and the Right of Asylum (CESEDA) is entirely dedicated to stateless persons. Rights applicable to beneficiaries of international protection (residence card, family reunification) are also applicable to stateless persons.