



# Asylum Challenges, Debates and Reforms

How Germany, Poland, Portugal and Sweden  
have developed their asylum systems since 2015

Dr. Cláudia de Freitas, Agnieszka Kulesa, Dr. Bernd Parusel, Prof. Dietrich Thränhardt



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# Introduction

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2021 marks the tenth year of the dreadful war in Syria. A war that has forcibly displaced millions of Syrians from their homes, destabilised the entire region and impacted world politics. Almost seven million people fled the country to seek refuge elsewhere. Most Syrian refugees have found shelter in neighbouring states, especially in Turkey, Lebanon and Jordan.

In 2015, the severe consequences of the wars and violent conflicts in Syria and the MENA region started to directly affect the European Union as well when almost a million asylum seekers sought refuge in Europe. The sudden increase in arrivals at the EU's external borders painfully exposed the structural deficiencies in the already flawed Common European Asylum System (CEAS). The CEAS was not prepared for a strong and sudden rise of asylum requests. Crucially, this resulted from the faulty construction of the Dublin regulation, which stipulates that – in most cases – the Member States of first entry are responsible for processing asylum applications. The Dublin regulation's inadequate design has caused disproportionate pressures on EU Member states with external borders in the south, namely Greece, Italy, Spain, Malta and Cyprus. In addition, the sudden rise of asylum applications also revealed that asylum conditions were very different among EU Member States. This was especially true for the quality of reception conditions and asylum procedures, as well as the adjudication of asylum applications.

Since the deficiencies of the CEAS became undeniably clear in 2015 and 2016, the EU sought to

address these challenges in various ways. The EU-Turkey statement, coming into effect in 2016, sought to better support refugees in Turkey while reducing irregular arrivals to Europe. The cooperation included up to six billion Euro funding for the reception and integration of refugees in Turkey. The agreement significantly reduced the number of spontaneous arrivals of asylum seekers to the EU and effectively helped to support refugees in Turkey. It also prioritised the resettlement of refugees from Turkey to Europe – though the number of resettled refugees has been relatively low.

In addition to the increased cooperation with Turkey, the EU has supported Greece with up to three billion Euro to help with the reception and integration of asylum seekers and refugees. It has to be noted though, that the reception conditions in some of the refugee hotspots, most notably on the Greek islands of Lesbos and Samos have remained unbearable and are in desperate need of improvement.

Despite the efforts to strengthen the EU's ability to act, key challenges to the CEAS remain. A comprehensive agreement on the reform of the Dublin regulation is still missing, as finding a solution on solidarity and responsibility sharing between EU Member States continues to be the most difficult task. The European Commission has sought to overcome this stalemate with the long-awaited EU Pact for Migration and Asylum at the end of September 2020. The Commission has tried to accommodate the various interests

among Member States and offer pragmatic ways forward, i.e. by promoting the use of flexible solidarity mechanisms. At the time of publishing this report, negotiations on the Commission proposals continue, but have not seen clear results thus far.

In the absence of a comprehensive agreement on the EU level, much has happened in Member States since 2015. The four country studies, published here, offer a fresh and in-depth look into the asylum systems in Germany, Poland, Portugal and Sweden. The studies, authored by Prof. Dietrich Thränhardt, Agnieszka Kulesa, Dr. Cláudia de Freitas, and Dr. Bernd Parusel, analyse in great detail the asylum challenges, debates and reforms that have taken place in the four EU Member States. The studies allow for an analytically compelling look into the specific situation of each asylum system's evolution since 2015. How have Germany, Poland, Portugal, and Sweden experienced the sudden rise of asylum applications in the EU, especially between 2015 and 2016? How have they sought to reform their asylum systems since then? Which hurdles have they faced in the process and which challenges remain? These and many more questions are addressed by the authors of the four studies.

With kind regards,

This publication is part of the initiative **Making Asylum Systems Work in Europe**, which the Bertelsmann Stiftung and the Migration Policy Institute Europe started in cooperation with the Calouste Gulbenkian Foundation in Portugal, the Swedish Migration Studies Delegation (Delmi), the Institute for Public Affairs (IPA) in Poland and the International Centre for Migration Policy Development (ICMPD). The initiative aims to contribute to the capacity building of national asylum systems so they can function more effectively. Through a series of expert workshops, a pair of overarching reports and the special country studies, the initiative identifies challenges to the CEAS and the asylum systems of Member States and offers a thorough analysis of the policies introduced to address these challenges. The initiative also seeks to promote exchange and cooperation in Member States to facilitate the harmonization of asylum policies and practices across Europe.

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# Germany's Asylum System

Hurdles and reforms  
in a welcoming country

Prof. Dietrich Thränhardt

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# I. Introduction

Germany opened its doors for 890,000 asylum seekers in 2015 alone, and made more than half of all positive asylum decisions in the EU in 2016 and 2017.<sup>1</sup> Chancellor Angela Merkel, criticised as “cold hearted” in summer 2015, became an icon of hospitality a few weeks later, and Time magazine’s “person of the year”. While her embracing welcome for the refugees resonated with an engaging majority of the German population and the media, the large inflow was a challenge for the asylum system and the country as a whole. In particular, the Federal Office for Migration and Refugees (BAMF), the central migration authority in Germany, was faced with problems.<sup>2</sup> The asylum discourse became extremely controversial and politicised and many laws and regulations were introduced or changed during the crisis.

This study describes the responsibilities of the federal, state and local level in the German asylum system and the changes that have been implemented during the crisis. It explores the different phases of the asylum process and discusses the functioning of the German asylum system. At the time, the government had several objectives: the asylum system should become more efficient and the recognition process faster; the numbers of incoming asylum seekers should be reduced, but humanitarian standards upheld; citizens’ trust in

the ability of the governments to stem the influx of asylum seekers should be kept, and arrangements with the European neighbours should be made with the aim of burden-sharing and strengthening EU coherence. These objectives were not easy to accomplish since to a certain extent they contradicted each other. Consequently, the “reform packages” in the crisis years contained a mix of measures to ease the pressure on administrative services such as BAMF, make processes more effective, speed up integration for people with protection, discourage irregular arrivals, create alternative pathways for economic immigration, and bolster the security in Germany. Parallel to the asylum discourse, there was a growing consensus on the need for more economically beneficial immigration, as the German population was aging and shrinking. Terrorist attacks in neighbouring countries and in the end also in Germany created fear and caused a build-up of security arrangements. These aims had to be met in a tense atmosphere and with conflicting coalition partners in government, particularly the “sister parties” CDU and CSU which followed opposing policy strategies in 2015–2018. Whereas Chancellor Merkel was considered the champion of hospitality, the CSU invited the Hungarian prime minister Victor Orbán, the European champion of xenophobia, into their party conferences. When

1 The number of positive decisions across all EU Member States in 2016 was 710,395, with 445,210 made by Germany. In 2017, there were 444,000 positive decisions throughout the EU, with 261,642 made by Germany. Eurostat 2017: First instance decisions on applications by citizenship, age and sex. Quarterly data.

2 BAMF was reorganized in 2005, as the federal agency for migration, with broad responsibilities for asylum recognition, the integration of migrants, including language courses, the EU migration contact point, Aussiedler and Jewish migration to Germany, and other aspects which were attached by the ministry of the interior. Moreover, BAMF has a research division.

Merkel wanted to keep European borders open, the CSU pleaded for a limit to immigration, and for closing the borders. Moreover, in the German system with its strong judicial controls, every government move was legally constrained, with the European regulations sitting on top of the German constitutional and administrative checks and balances.

Whereas decisions about asylum applications are typically taken in a juridical context, discussed by legal experts and the courts, they became a public issue during the crisis. Several scandals and pseudo-scandals linked to BAMF endangered the reputation of the institution in the public eye.<sup>3</sup> BAMF president Schmidt resigned in 2015 when the agency could not cope with the mounting asylum applications. President Jutta Cordt was dismissed in 2018 over her conduct at the Bremen affair. In 2015/16, the agency was directed by the president of the adjacent Federal Labour Agency, who was considered a competent crisis manager, in addition to his normal job. Stern magazine pitied BAMF staff as “the usual scapegoat.”<sup>4</sup>

Consequently, asylum matters were discussed in parliament, and the federal government was challenged to disclose much more information about the asylum process than they had made previously public. Hundreds of thousands of asylum

cases went to the courts, as about 75 per cent of negative decision are challenged (see below). Thus, decision making is no longer taking place in an arcane setting of specialists, but it is open to public controversy, with NGOs, politicians, church representatives and many others taking part. Bishops, clergyman and –women, activists, sponsors, industrialists, and many others spoke out, as asylum was the main political topic over years. This presents alternative sources and information to study the asylum process, apart from the data that BAMF has traditionally published.

This case study describes the developments throughout the crisis, the institutional changes and learnings that took place, as well as the problems that still remain, despite a decrease in the number of arrivals and BAMF being able to operate with numbers of refugees that are easily manageable, after the crisis year with nearly a million people arriving. It is not easy to explain why the length of the asylum process is still not receding.

In spite of the consensus to speed up the process, often repeated through the years, the asylum procedure did not become faster. In 2020, it still stood at more than six months, the duration that had been considered too long at the height of the asylum crisis (tab. 1).

TABLE 1 Duration of asylum procedures in months, 2014-2020

2014	2015	2016	2017	2018	2019	2020
7,3	5,2	7,1	10,7	7,5	6,2	8,3

Source: BT-Dr. 18/3850, 18/4980, 18/8450, 18/11262, 19/1631, 19/3851, 19/13366, BT-Plenarprotokoll, 149. Sitzung, Frage 49; BAMF, Aktuelle Zahlen, December 2020

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3 One was about a German army officer who was able to pose as a Syrian refugee and get a refugee status. When his fraudulent activities were discovered, it became clear that the recognition process in his case was more flawed than people could imagine (Neff 2019). The other scandal was about the leader of the BAMF Bremen branch. She was accused of illegally awarding asylum to hundreds of people, and dismissed from her post. The scandal was unfolded in the German media for months. The ministry of the interior came out harshly, and state secretary Stephan Mayer said that the leader of the Bremen branch had acted “highly criminal, collusive and gang-like (hochkriminell, kollusiv und bandenmäßig) – a statement that he was later forbidden to repeat by a court (Staatssekretär darf umstrittene Behauptung nicht wiederholen, in: Der Spiegel, 1 August 2018) The minister then dismissed BAMF president Jutta Cordt. At the end, however, it became evident that only a very few decisions had to be corrected, less than the average percentage of errors (Jan Bielicki, Nur wenige Flüchtlinge haben Bleiberecht erschlichen, in: Süddeutsche Zeitung, 20. 9. 2018). Judicial proceedings still continue, but many of the original claims have been put down by the court (BAMF-Affäre. Gericht stützt Anklage zurecht, in: Tagesschau, 17.12.2020).

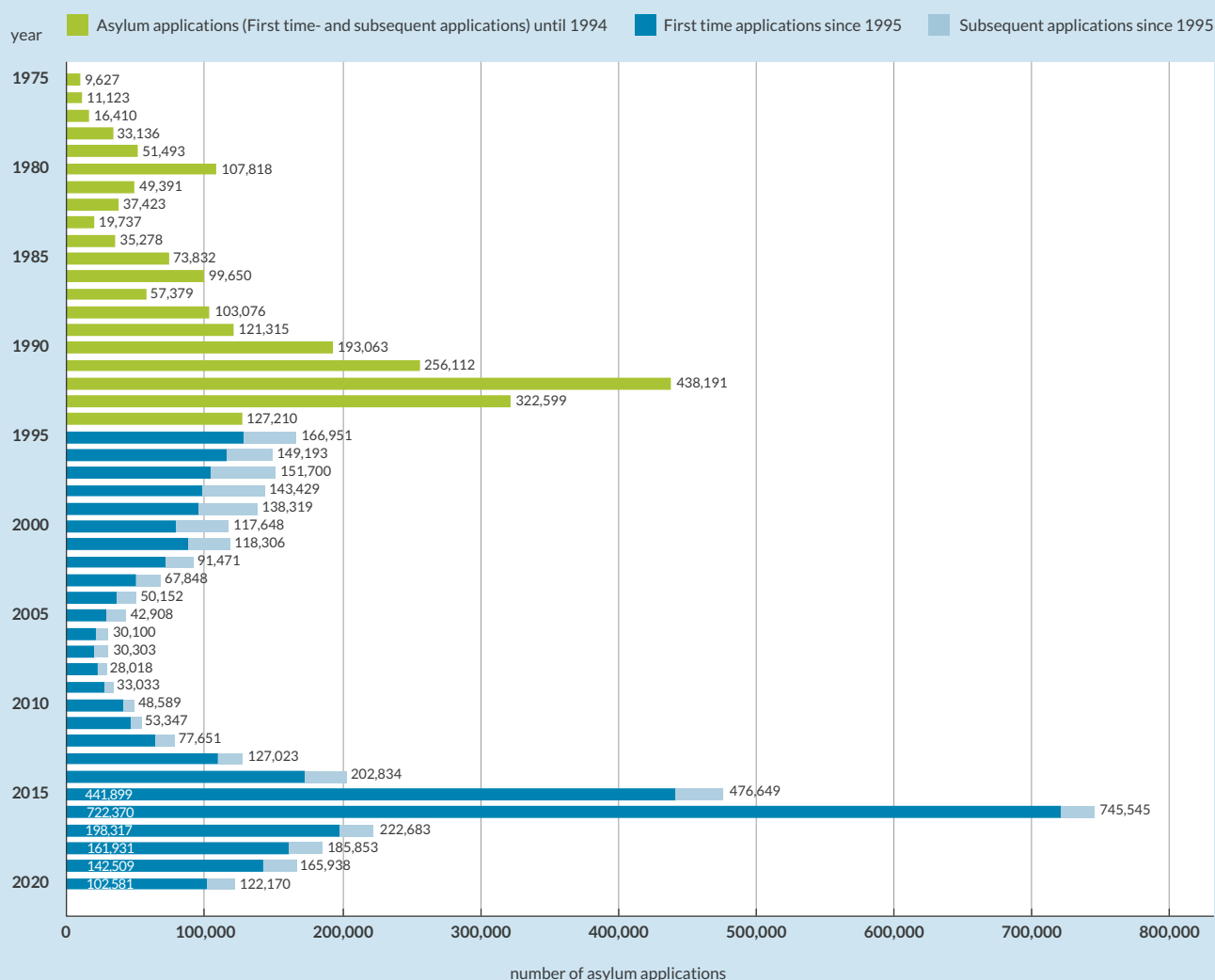
4 Wigbert Loer, Sündenböcke vom Dienst. Das Bundesamt für Migration und Flüchtlinge ist überfordert. Gerichte kassieren Entscheidungen. Union und SPD fordern Qualität. Recherchen in einer Behörde, die sich politisch benutzt fühlt, in: Stern, 18.1.2018.

This information comes from the parliamentary inquiries over years, initiated on by an opposition member in detailed questions.<sup>5</sup> These data, together with press reports and NGO reports, provide additional information, and are helpful in getting a balanced oversight.

In all the years, we find an ambivalence between the quest to limit the number of arrivals and the principles of granting asylum as guaranteed in the constitution and proclaimed as an obligation.

We will watch technological innovations, efficient data management, external assistance by private companies, and a pilot project towards an opening to civil society, all within this tension between the fear of more immigration and the upholding of the legal instruments given in EU and German law. At the core of the whole process is the quality of the decision making on asylum with the hearing of the asylum claimant and the analysis and the analysis by the decider on the case.

FIGURE 1 Number of asylum applications per year since 1975



Source: BAMF, 2020.

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5 Opposition member Ulla Jelpke (The Left) and her staff were particularly persistent in their inquiries, and they challenged the government to produce hundreds of pages of information every year, including differentiated statistical data which had to be collected. Cf. Deutscher Bundestag, Drucksache 19/18498 and the documents quoted in Table 1. Many data quoted below are based on these parliamentary papers. Moreover, Bundestag staff member Hohlfeld edits an informative newsletter with the data and interpretations. See also BT-Dr. 19/18809 for a question of opposition member Christian Dürr (FDP).

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## II. Refugee and Migration Debates: Policies, Politics, and Civil Society (2010-2020)

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Asylum is enshrined in Germany's constitution. Art. 16a says that "Persons persecuted on political grounds shall have the right of asylum". The article was formulated in a "generous" way, as Carlo Schmid, a father of the constitution, had formulated<sup>6</sup>. It became a part of the German political culture, in memory of German democrats persecuted by the Nazis who were looking for refuge in other countries. Asylum was granted generously to refugees from Communist countries during Cold War times. It became controversial when larger numbers of Turks and non-Europeans began to apply for asylum. How to deal with "mixed flows"<sup>7</sup> of economic migrants and refugees, how to define asylum, and how to administer asylum applications became a conflicting issue, evoking contradictory emotions. Whereas supporters identified with the plight of the refugees, and reminded the public that all kinds of action had been considered legitimate when people fled from the Nazis or the Communists, opponents warned of a misuse of asylum, of burdens for the welfare state and the labour market, using derogatory terms like of 'phony asylees' (Scheinasylanten). Like in other countries, the issue was politicised and used in emotional election campaigns.<sup>8</sup> The issue came up when a crisis and military coup in Turkey led

to a first peak of 107,818 asylum seekers arriving to Germany in 1980. The second crisis followed after the fall of the Berlin wall and with the wars in former Yugoslavia, with 438,191 asylum seekers arriving to Germany in 1992. The third high point was the crisis of 2015, with about 890,000 people seeking asylum in Germany in one year alone.

In each crisis, government and parliament reacted with legal changes intended to reduce the number of asylum seekers, while upholding the right for asylum in principle. Since Germany has traditionally been governed by coalitions, and the party complexion of the Bundesrat (federal council) often differed from the Bundestag (federal parliament), laws often constituted complex compromises. When new laws did not help to reduce the flows, additional new laws followed. As early as 1988, an author characterised the legal activities as "lots of measures and loss of quality" (Maßnahmenfülle und Qualitätsverlust).<sup>9</sup> Since restrictions like the prohibition to work for asylum seekers led to integration problems with those who stayed in the country, "Hardship (Härtefall) commissions"<sup>10</sup> were introduced to solve individual problems, and people who had arrived before a given date were given the right to work.

6 "The asylum right is always a matter of generosity, and if one wants to be generous, one must risk to err in the person eventually", 4 December. 1948, Parliamentary Council. For an analysis of the origins of the wording of the asylum article in the Basic Law see Kreuzberg/Wahrendorf 1992, 44.

7 Steffen Angenendt and Anne Koch 2019: Global Migration Governance and Mixed Flows, Berlin: SWP.

8 Dietrich Thränhardt, The Political Uses of Xenophobia in England, France, and Germany, in: Party Politics, Vol 1, 1995, p. 321-343.

9 Simone Wolken, Das Grundrecht auf Asyl als Gegenstand der Innen- und Rechtspolitik in der Bundesrepublik Deutschland, Frankfurt: Lang 1988.

10 An overview at: <https://de.wikipedia.org/wiki/Härtefallkommission>

In the crises of 1980 and 1992, Germany's large parties were in hard open conflicts, ending in the change of the asylum article of the constitution in 1993, enforced on the Social Democrats. The integration atmosphere changed with the advent of the grand coalition in 2005, which has continued since (except for the period of 2009–2013). This new consensus was prepared by the "Süssmuth commission", set in by Otto Schily, SPD minister of the interior 1998–2005, and headed by former CDU Bundestag President Rita Süssmuth, with members from all Bundestag parties, trade unions, entrepreneurs' associations, church leaders and the president of the Jewish central committee. A consensus about the need for integration grew, including an active role of the state. Step by step, the public accepted that Germany needed immigration, and legislation and government policies became more open for economic immigration, particularly for qualified labour migrants. Whereas immigration had long been largely discussed with respect to its limitation, the discourse now became more open, and this was influential for the asylum debate, too. It added perspectives of integration and a need for immigration, and thus put asylum in a new general context.

A special German feature is the strong role of churches and welfare organisations. They are preferential providers of care and welfare services of various kinds, often speak out for their clients, and traditionally have close ties with the political parties. Church activists as well as secular actors have formed NGOs which are active in the asylum discourse. They are also interacting with lawyers, and are able to bring controversial cases to the courts. Courts at all levels and the Constitutional Court

often have intervened to protect legal and constitutional rights. Through the decades, court rulings and particularly rulings of the constitutional court have corrected government decisions. This then prompted the conservative coalitions from 1982 to 1998 to tighten the laws several times, and in 1993 even to change the constitution, to limit asylum, even when it was upheld in principle.

In the years before the asylum crisis, and in the midst of the 2008 financial crisis, controversial debates took place about Germany's alleged cultural, social and economic decline as a result of increased Muslim and Turkish immigration.<sup>11</sup> Chancellor Merkel, many prominent politicians, and concerned academics opposed such racist views publicly.<sup>12</sup> However, the public's openness for polemical and pessimistic best sellers showed that there existed a uneasiness aside of Merkel's grand coalition tranquillity. There were also fears of a rising out-migration of the highly skilled and of a general demographic decline, as the Federal Statistical Office (Statistisches Bundesamt) reported that Germany had more emigration than immigration in 2008 and 2009 (the figures were based on statistical corrections).<sup>13</sup> These fears resulted in changes in the immigration laws. The EU "blue card" for highly qualified workers was transposed into German law in an extensive way.<sup>14</sup> "Welcome centres" opened in Hamburg and other cities, to help qualified immigrants through the "bureaucratic jungle". "One stop agencies" were set up, to enable immigrants to deal with all work and settlement problems at a combined agency. Simultaneously, there were calls for a "welcome culture", first for economic elite immigrants, later for all.<sup>15</sup> Administrative agencies introduced

11 Thilo Sarrazin's best seller "Deutschland schafft sich ab" ("Germany Does Away with Itself") warned that Muslim and Turkish immigration would supposedly endanger Germany's cultural identity and economic competitiveness. The country's dominant newspapers *Bild* and *Spiegel* pushed the book with preprints.

12 E. g. Bade 2014; Bahners 2011; Deutschlandstiftung Integration 2010; Weiß 2011.

13 The government implemented a new system of tax numbers in 2008. As the authorities went through the registers, hundreds of thousands of non-existing identities were omitted, particularly foreigners. The rectified statistics came into effect in 2009 and 2010, leading to the impression that there was an outmigration surplus. An interesting example is an article in "Der Spiegel" (<https://www.spiegel.de/politik/deutschland/statistik-auswanderung-laeisst-deutsche-bevoelkerung-schrumpfen-a-696863.html>). It quotes statisticians who pointed to the special statistical effect. Nevertheless the magazine's message was that Germany was shrinking and no longer attractive. In that context, migration researcher Klaus Bade commented in 2011 that "We are bleeding out" and "Germany is the talent shop of others" (Bade, Klaus 2017: Migration, Flucht, Integration. Kritische Politikbegleitung von der 'Gastarbeiterfrage' bis zur 'Flüchtlingskrise', Karlsruhe: von Loeper. P. 417, 424).

14 Isabel Kane 2019: Deutschland und Frankreich im globalen Wettbewerb um Talente: Zwischen europäischer Harmonisierung und nationaler Kompetenzzuweisung, Münster. Every immigrant got the right for a check of his or her qualifications, to make it easier to find an adequate job.

15 Kösemen, Orkan 2017: Willkommenskultur in Deutschland: Mehr als nur ein Modewort? [http://www.bertelsmannstiftung.de/fileadmin/files/Projekte/Migration\\_fair\\_gestalten/IB\\_PolicyBrief\\_2017\\_12\\_Willkommenskultur.pdf](http://www.bertelsmannstiftung.de/fileadmin/files/Projekte/Migration_fair_gestalten/IB_PolicyBrief_2017_12_Willkommenskultur.pdf)



inter-cultural trainings and companies promoted staff diversity.<sup>16</sup>

When the economic and financial crisis eased, the increasing immigration from the new EU Member States and optimism about Germany's competitiveness were the basis for a new positive outlook. In contrast to many other European countries, a large majority of Germans trusted their government's integration policy.<sup>17</sup> Federal President Köhler in 2006 and Chancellor Merkel in 2010, among many others, articulated the wide-spread idea that Germany had neglected integration in the past, but now could do better with a deliberate and consequent integration policy, and that the state was actively delivering.

In this optimistic and open atmosphere, and under the shocking images of the Syrian war, Germany volunteered to resettle 5000 Syrian refugees in March 2013. When hundreds of refugees drowned near Lampedusa in October 2013, the public was deeply moved. Demands grew to save refugees in the future and the government was criticized for not assisting the Italian navy in their "Mare Nostrum" rescue operation. Asylum numbers began to rise, and 8,000 Syrians applied for asylum in Germany in 2012. In December 2013, the Grand Coalition Agreement pledged to speed up asylum decisions. They should take no longer than three months. The states, or *Länder*, which are responsible for providing accommodation and meals to asylum seekers while their cases are processed, insisted on fast decisions since they recognized rising numbers of asylum applications and a bottleneck at the federal asylum agency (BAMF).

Despite public calls to assist refugees, public awareness at that time was concentrated on the financial and economic crisis, particularly with respect to Greece, and the problems of the Euro

zone. In 2014, the Euro-sceptic party "Alternative für Deutschland" (AfD) succeeded in the elections for the European Parliament and in several *Länder* elections. Besides Euro scepticism, their campaigns included more and more xenophobic and anti-asylum elements. The AfD radicalized, changed its leadership twice, and anti-immigration polemics became their main issue, resulting in electoral successes in all *Länder* elections since 2016 and in the federal elections in 2017. Beginning in October 2014, demonstrations in Dresden by "PEGIDA" or "Patriotic Europeans against the Islamisation of the West (Abendland)" – a grass-roots movement mobilized via social media—made headlines, and led to public confrontations. Chancellor Merkel spoke out against "hatred in the hearts" in her new year's address for 2015.

For a long time, however, the chancellor avoided refugee issues, and was criticized for never visiting a refugee centre. In June 2015, talking to a young girl of Palestinian origin at a televised event in a school, she said that Germany could not take in all refugees, and some had to be sent back. She was criticized as being cold-hearted. Thus, it came as a surprise that she took the decision to accept the refugees stuck in Hungary in a frightening atmosphere, organized by a hostile government. In this confrontation, Merkel suddenly became an icon of humanitarian openness. She cultivated this image, had "selfies" with refugees that made it around the world, and said that it was impossible to close the borders. Her embracing stance was backed by most German media (particularly the leading tabloid "BILD") and all established parties except for her "sister party", the Bavarian CSU.<sup>18</sup> The CSU proclaimed an "Obergrenze" (upper limit) for asylum immigration and took a radical stance, even disputing the constitutionality of Merkel's policies, creating doubts in the public.<sup>19</sup> All over Germany, people volunteered to assist the refugees, and only

16 Siemens CEO Kaeser remarked publicly that company boards were "too white, too German, and too male" Corinna Visser, „Zu weiß, zu deutsch, zu männlich“, <https://www.tagesspiegel.de/meinung/portraet-zu-weiss-zu-deutsch-zu-maennlich/1288434.html>

17 GMF 2013, GMF 2014, 33, SVR 2014, 25 ff.

18 Thränhardt, Dietrich 2019: Welcoming Citizens, Wavering Government, Simplifying Media. Germany's Refugee Crisis 2015-2017, in: Refugee News, Refugee Politics. Journalism, Public Opinion and Policymaking in Europe, ed. by Giovanna Dell'Orto and Irmgard Wetzstein. New York and London: Routledge, p. 15-25; Robin Alexander, Die Getriebenen. Merkel und die Flüchtlingspolitik, München: Siedler 2017, p. 77-88.

19 In February 2016, Seehofer had said that Germany was under the rule of injustice (Herrschaft des Unrechts), and since that time a "myth of illegality" with respect to Merkel's refugee decisions in 2015 was in the air (Stephan Detjen/ Maximilian Steinbeis, Die Zauberlehrlinge. Der Streit um die Flüchtlingspolitik und der Mythos vom Rechtsbruch, Stuttgart: Klett-Cotta 2019).

eighteen per cent of the population said that they would not like to contribute anything.<sup>20</sup>

The arrival of the refugees overshadowed all other issues from August 2015 on. The general public is still in favour of helping refugees fleeing from war and oppression but doubts about security and particularly young men are worrying the public. The media have been repeatedly talking about a “change of the public climate” since the Cologne events on New Year’s Eve 2015/16. The Christmas market attack in Berlin in December 2016 and other murderous events as well as right-wing arson attacks created fears. The public discourse has become more polarized, particularly since the AfD sits in the federal parliament and in all regional diets. Long open conflicts between the Chancellor and former CSU president and Bavarian prime minister Seehofer, who is the federal minister of the interior since 2018, about limits for the number of refugees, border controls and the rule of law affected the government’s reputation. Since fewer asylum seekers are arriving in Germany, the public discussion focusses more on integration, finding work and education. In 2019 public attention shifted from asylum to other issues, particularly climate change. In 2020, the Corona crisis overshadowed all other issues.

In March 2020, BAMF suspended large parts of its interactive activities. After sufficient arrangements had been introduced, contacts with asylum seekers including hearings were taken up again. “If necessary”, it is possible to send asylum applications in writing. News about asylum and public awareness focus on the desperate situation on the Greek islands and the Mediterranean. Over the whole year 2020, activists and opposition politicians urged the government to invite refugees from the Greek islands, particular children and 120 cities declared that they were prepared to take them in.<sup>21</sup>

20 Ahrend, Petra-Angela 2017: Wie blickt Deutschland auf Flüchtlinge? Erwartungen der Bevölkerung zur Aufnahme von Flüchtlingen zwischen November 2015 und April 2017, Hannover: Sozialwissenschaftliches Institut der Evangelischen Kirche in Deutschland, [https://www.siekd.de/wp-content/uploads/2018/06/Skepsis\\_und\\_Zuversicht.pdf](https://www.siekd.de/wp-content/uploads/2018/06/Skepsis_und_Zuversicht.pdf); [https://www.bertelsmann-stiftung.de/fileadmin/files/Projekte/Migration\\_fair\\_gestalten/IB\\_Studie\\_Willkommenskultur\\_2019.pdf](https://www.bertelsmann-stiftung.de/fileadmin/files/Projekte/Migration_fair_gestalten/IB_Studie_Willkommenskultur_2019.pdf)

21 Kristina Hofmann, 120 Städte wollen mehr Flüchtlinge aufnehmen, ZDF heute, 13 January 2020.

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## III. Organization of the German asylum system

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The asylum process and the standards of reception are regulated by federal law and under EU directives. The Federal Agency for Migration and Refugees (BAMF) grants or denies asylum. It operates under the responsibility of the Federal Ministry of the Interior. However, the *Länder* (states) are responsible for accommodating the asylum seekers. Under the federal Asylbewerberleistungsgesetz (asylum applicant benefits law), they organize accommodation, provide food, and all medical and other services. Autonomous *Länder* implementation of federal laws is the standard practice in Germany's cooperative federalism, laid down in the constitution. The Courts have an important role in Germany, since every administrative decision can be challenged. In 2012, the Constitutional Court has ruled that benefits for asylum seekers have to respect human dignity, and follow German welfare standards.<sup>22</sup> Thus the level of benefits is the same in the whole country, but the *Länder* decide upon the implementation. They house asylum seekers in reception centres or in individual accommodations, or commission charities or private companies. They can delegate responsibilities towards local governments. Each of the 294 counties and 107 cities in Germany has an Ausländeramt (foreigners' office) where refugees as well as all other foreigners have to register, and the legal and residence status is decided and controlled, under federal law and *Länder* supervision.

BAMF coordinates with the *Länder* and local governments, receives informations from local and state authorities, and informs them about asylum decisions which then implicate the legal status of the refugee and further decisions of the local Ausländeramt, be it integration, toleration or expulsion. Local Ausländeramt decisions are subject to decrees and the overview of *Länder* governments, under federal and EU laws and regulations. Local offices report back to BAMF for statistical purposes. BAMF decisions have direct financial implications for *Länder* and local governments. After a positive asylum decision, the financial responsibility for the refugee shifts from the *Land* to the federal government and the federal labour agency. If BAMF's decision-making is slow or deficient, the *Länder* have to carry the financial burden. In the crisis of 2015, the federal government refunded the *Länder* in the end, after they complained about the backlogs at BAMF and the resulting huge costs.

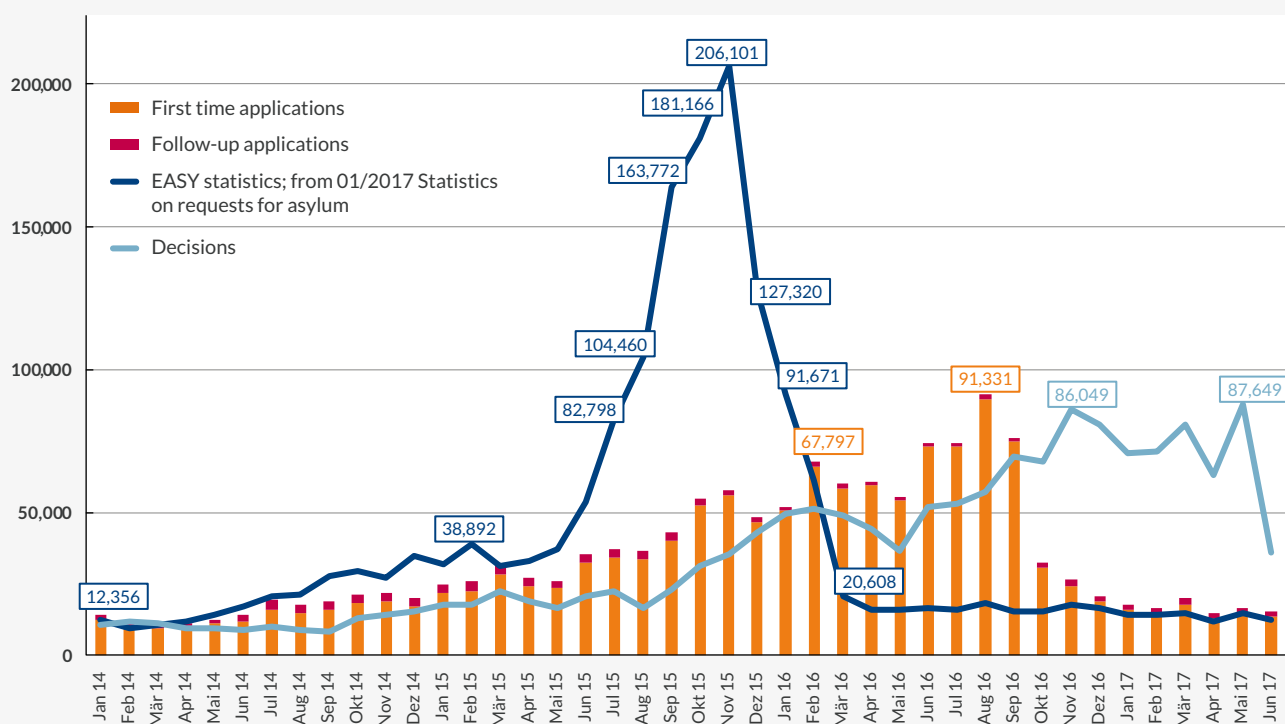
Federal police are responsible for border protection, trains and airports, and thus asylum seekers crossing the border often have their first official contact with the federal police. Others get around border police and apply for asylum inside the country where they then face *Länder* police or local officials. After telling an official about a request for asylum, the asylum seeker is referred to BAMF. They then have to file an application and go through the decision process.

<sup>22</sup> The core sentence of the ruling is: „Die Menschenwürde ist migrationspolitisch nicht zu relativieren“ (human dignity cannot be qualified by migration policies), <https://www.bundesverfassungsgericht.de/SharedDocs/Pressemitteilungen/DE/2012/bvg12-056.html>

People asking for asylum are registered in the Erstaufnahme Asyl (EASY) system, the basis for their proportionate assignment to the *Länder* and then to cities and counties. Formal asylum applicants with BAMF are counted in the asylum application statistic. In normal times both these statistics are largely identical. In 2014–2017, however, BAMF registered and processed asylum applications only with long delays. The discrepancy between the two statistics became known as the “EASY gap”. Figure 1 shows how the gap began to open in summer 2014, and widened in 2015 with the large inflows of refugees arriving in Germany. The gap was closed in 2017, when most pending asylum cases had been decided. As we shall explain later, the gap had an after-life in a backlog in pending court decisions, lasting until today.

Allowing a backlog to grow is often thought to be an easy way to discourage asylum seekers, and we find backlogs in many countries, such as the United States, Britain, Greece, South Africa and the Netherlands.<sup>23</sup> In the German case, however, the opposite effect set in. One attracting factor in this respect may have been the German Constitution Court’s decision on substance allowances. In the last months of 2014 and the first months of 2015, 160,000 “West Balkan” asylum applicants came to Germany,<sup>24</sup> many activated by rumours that Germany provided houses for asylum seekers. Thus, the reception facilities were crowded even before the “Balkan route” opened, and Syrian, Iraqi, Iranian, and Afghan refugees arrived in Germany in large numbers in 2015/16.

FIGURE 2 Requests for asylum, asylum applications and decisions (01/2014 to 06/2017)



Source: Grote 2018, adapted.

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23 This has been documented for the Austrian government: “The experts in the house are of the opinion that fast asylum proceedings would have attractive effects on further refugees. Even if they would not say this publicly.” (Ultsch/ Prior/ Nowak 2017, 118). For Britain, see Hill 2017.

24 BAMF 2016, 19.

In the crisis, there was a widespread consensus that the asylum procedure should become faster. Thus, the federal government concluded, in the draft explanatory statement for the data exchange improvement law: “Asylum procedures are too long, taking six months on average. Therefore, the persons affected live in insecurity about their further fate. Those who get asylum after all and are allowed to stay in Germany, then get access to integration programmes relatively late, and need fairly long time until they can participate in the

job market. And for those who have to wait long for a negative ruling, the length of the procedures complicates the return to their countries of origin. Particularly children, who mostly integrate faster as they participate in school teaching, can then be dragged out of an environment that they just have been accustomed to. Lastly, with the length of stay the toleration after being rejected becomes more probable, according to experience. This then claims resources that are required for accepted people who need protection.”<sup>25</sup>

#### BOX 1 The asylum application in Germany in administrative steps in 2020

People seeking asylum in Germany can report to the federal border police. Inside the country, they can contact state or local officials, such as the police, a local immigration authority, or a reception facility. They are registered at “PIK” (Personalisation Infrastructure Component) stations by police or BAMF or at reception facilities, immigration authorities or arrival centres. Personal data are recorded, applicants photographed, people over 14 fingerprinted. The data are crosschecked with the Ausländerzentralregister (Central Register of Foreigners), the Bundeskriminalamt (Federal Criminal Police Office), and EURODAC.

Asylum seekers receive an *Ankunftsnachweis* (proof of arrival) at the responsible reception facility or arrival centre. This document entitles the applicant to stay in Germany, and to receive benefits, such as accommodation, medical treatment and food. The machine-readable *Ankunftsnachweis* replaced the *Bescheinigung über die Meldung als Asylsuchender* (BÜMA) since February 2016.

Asylum seekers are relocated on the basis of the *Königsteiner Schlüssel* (key) to a *Land* and to a reception facility. The reception facility accommodates the asylum seekers and informs the BAMF branch office. In most reception facilities, all relevant *Land* and federal agencies are present.

A personal application is filed with the BAMF branch office. Applicants must prove their identity if they are able to do so (passport, birth certificates,

driving licences). BAMF uses physical and technical document examination. When the application has been submitted, a personal interview takes place, to determine the responsible EU member state and to examine impediments to deportation in the Dublin procedure. The applicant is asked to state any reasons why he or she should not be transferred to that state. If another state might be responsible, the file is forwarded to the BAMF Dublin Centre which then initiates a “transfer request” to that state. If the state approves the transfer request, BAMF orders deportation. The asylum seeker may apply to the administrative court for a suspension. The actual enforcement of the transfer is the responsibility of the local immigration authorities and the Federal Police. If the transfer is not carried out within the transfer period, responsibility for the asylum application rests with Germany.

BAMF “*Entscheider*” (deciders) then invite the asylum seeker for the asylum interview, an interpreter is at hand. The interviews may be attended by an attorney or by a representative of the UNHCR, and by a guardian in the case of unaccompanied minors. Another person enjoying the applicant’s trust can attend. Minutes are taken, and then translated back for the applicant. They can add to what they have said, or to make corrections. They are then presented with the minutes to approve them by signing.

BAMF later decides on the asylum application, on the basis of the personal interview and an examination of documents, other items of evidence and the

25 Deutscher Bundestag, Drucksache 18/7203, p. 18, January 6, 2016.

BAMF database. Enquiries to the Federal Foreign Office, language and text analyses, physical and technical document examination, or medical or other reports may be taken. The decision is sent to the applicant or the legal representative, and to the competent local immigration authorities.

A positive decision can be given as asylum, refugee protection, subsidiary protection or an Abschiebeverbot (deportation ban). A rejection can be given as an outright rejection or as “manifestly unfounded”. Asylum proceedings can be discontinued if the application is withdrawn or not pursued. Once the asylum proceedings have been completed, a renewed asylum application may be filed, if the asylum seeker claims that there has been a change to the factual or legal situation. If the rejection is outright, a deadline of 30 days is set to leave the country. In case of a “manifestly unfounded” rejection, the period is only one week. In each case, court action can be taken against the BAMF decision.

The written notice points out the appeals available and the deadlines (Rechtsbehelfsbelehrung, appeal instruction). Legal action can also be taken to get a better status. If the court concludes that protection should be granted, it obliges BAMF to provide protection. If the rejection is confirmed, the foreigner is obliged to leave the country. If s/he does not voluntarily leave the country, the immigration authority can deport the person. If a return is not possible, the immigration authority can issue a Duldung (toleration). In special “hardship” cases, a residence permit can be issued (mostly after many years). Each *Land* has a “Härtefall-Kommission” to advise the respective minister.

The first instance of the judiciary is the *Verwaltungsgericht* (Administrative Court). A second instance appeal can only be lodged if it has been admitted by the Higher Administrative Court, contingent on a general significance of the case or on serious procedural errors. An appeal to the Federal Administrative Court is possible if the case is of fundamental significance, or a procedural error has been committed and it is possible that the judgment is based on this procedural error. When the legal channels are exhausted, it is possible to lodge a constitutional complaint to the Federal Constitutional Court or an appeal to the European Court of Human Rights. A lower court can call on the EU Court of Justice to hand down a “preliminary ruling”, to interpret EU law.

Refugees with an asylum or refugee status receive a residence permit from their local immigration authority for three years, and this period is subsequently extended. An indefinite settlement permit can be issued after three years at the earliest, with the duration of the asylum procedure counted. Those with subsidiary protection and with a deportation ban receive a residence permit valid for one year. It can be extended for two more years consecutively. For all categories, an open-ended settlement permit can be issued after five years at the earliest (asylum procedure time included).

BAMF revokes the asylum recognition if the preconditions do no longer apply, or if it was granted on the basis of incorrect information, or failure to reveal essential facts. Withdrawal is furthermore examined if there are reasons for not qualifying, like war crimes or felony. A “standard assessment” is made five years after the granting of asylum. The result of the assessment is sent to the competent immigration authority. Again, the refugee may sue against the decision.

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## IV. Challenges and Adaptations

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The German asylum system has four central components: registration, reception, procedure, and adjudication. Each of these elements requires effective coordination between federal, *Länder* and local government agencies. This complexity poses challenges at every stage and means that any individual problem or setback can reverberate throughout the system, significantly impeding the process as a whole. Similarly, robust processes and effective mechanisms, such as the EASY distribution system, can have far reaching benefits. This study looks at each of the four components and examines the evolution of the policies that govern them, describes the challenges encountered, and evaluates the attempts made to meet those challenges.

### A. Registration

Asylum seekers can apply for asylum by making their intent known to any border officer, foreigners' office, the police or at an asylum centre. They are then registered either at the border or inside the country. Registration procedures are intended to establish an asylum applicant's identity and to check for security threats, in addition to initiating the asylum process, and to clarify the applicant's status in the Dublin system. Once they have been registered at the responsible reception centre, asylum seekers are entitled to accommodation, pocket money, and a legal status. There is therefore a strong incentive to register soon after they arrive in Germany. Since 2018, more and more people who are already in the country, have

arrived as family members or been born to asylum seekers and refugees apply for asylum or are being included officially. In 2020, they have become the majority of applicants (see below). There are also people who have immigrated on other purposes, like students, and do not want to go back to a country now in war or turmoil.

The enormous stresses placed on Germany's asylum system by the 2015–2016 refugee crisis revealed several weaknesses in its registration procedures. A lack of cross-agency coordination impeded the collection of personal identification and country of origin information, and the public lost confidence in the asylum system. The establishment of a unified machine-readable information system helped to alleviate many of these issues, but problems still remain. This section examines each of these challenges in turn.

#### 1. Primary challenges

While registration procedures aim to establish the identity of an asylum seeker, this proved to be difficult in Germany during the 2015–2016 migration crisis. There were several reasons for this.

First, verifying the identity, path of entry, and nationality of asylum seekers is difficult as many asylum seekers do not bring passports or other documents, some because they lost them, never possessed documents, or had no chance to get their documents when they fled from oppressive governments, others because they have been told to destroy documents by traffickers or other

refugees. Answering to parliamentary inquiries, the government produced country-specific data for the year 2019. The government commented that the percentages are connected to the diverging documentary standards in the countries of origin and the likelihood of being accepted as refugees.<sup>26</sup> Without valid passports or identity documents, registration authorities must rely on other forms of identification, such as biometrics like fingerprints. Asylum applicants' fingerprints are thus typically checked against existing biometric systems in an effort to determine their identity and check for any security risks.

Yet authorities' ability to use biometrics or biographical data to check refugees' identities was severely hampered by the incompatibility of the federal police and the BAMF identification systems until 2016. Thus, asylum seekers had to be

fingerprinted twice, for BAMF purposes and for police or local government purposes. The data could not be exchanged, and the agencies had limited information about criminals or people registering several times. BAMF and police used separate fingerprinting systems, even though both institutions were under the supervision of the Ministry of the Interior, and their systems were connected with other EU country systems. Security agencies were prohibited from keeping finger print data because of data protection laws. Moreover, deficiencies in security checks for third country nationals upon arrival at Europe's external borders (e.g. Greece and Italy) caused further concern as the integrity of the refugee stream could not be verified.<sup>27</sup> Some asylum seekers were registered in the Dublin system and applied for asylum again in Germany. Some had avoided applying in Southern Europe, in Hungary or in Austria, or had not been

TABLE 2 Asylum seekers over 18 years in 2019 without identity papers  
(in absolute and relative numbers)

COUNTRY OF ORIGIN	NUMBER OF ASYLUM APPLICANTS	% WITHOUT IDENTITY PAPERS
Moldova	1,018	17.7 %
Syria	12,381	19.7 %
Turkey	7,532	20.5 %
Iraq	5,979	34.0 %
Albania	1,012	38.5 %
Georgia	2,405	39.9 %
Iran	6,162	47.2 %
Russia	1,434	53.3 %
Eritrea	822	63.4 %
Afghanistan	4,221	77.5 %
Pakistan	1,485	80.8 %
Nigeria	5,021	94.5 %
Somalia	1,433	95.1 %
Guinea	1,527	97.8 %
Average all countries	71,088	49.10 %

First time asylum applications only.

Source: BT-Dr.19/18498, p. 31 f.

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<sup>26</sup> BT-Dr. 19/18498, p. 33.

<sup>27</sup> One spectacular case that demonstrated the problems was the rape and murder of a young woman in Freiburg in 2016 by an Afghan asylum seeker who had previously assailed a young woman in Greece in 2013 and had been sentenced to ten years prison there. However, he had been set free under conditions in 2015 and then moved to Germany where he applied for asylum. The Greek authorities had not put him into the international tracing system when he breached the conditions. Chancellor Merkel contacted prime minister Tzzipras and urged better cooperation (See a detailed analysis in: Josef Keinberger/ Roland Preuß/ Christiane Schlötzer, Mord in Freiburg. Tod einer Freiburger Studentin: Prozess gegen Hussein K. beginnt, in: Süddeutsche Zeitung, 5 September 2017).



registered by the authorities there, and thus made their first application in Germany.

These challenges were amplified during 2015 and 2016, when arrivals of asylum applicants rose. With the large numbers of asylum seekers, the control systems broke down, some migrants were able to register in several places, and, as a result, receive pocket money several times. Some asylum seekers were able to acquire multiple identities.<sup>28</sup>

Because of deficient personnel at BAMF and the lack of coordination between BAMF, the federal and *Länder* police as well as local agencies, about 500,000 incoming people were accommodated by the *Länder* and local governments but could not apply for asylum with BAMF, and thus were not included in the asylum seeker statistics. Yet these statistics were officially published, without reference to the capacity problems.<sup>29</sup> From January to July 2015, Schleswig-Holstein protested to BAMF and the Federal Ministry of the Interior that the low BAMF numbers were not correct. After downplaying the numbers for months, in August 2015 the Minister suddenly announced that he expected as many as 800,000 asylum applications. This apparent chaos and loss of control unsettled the population.<sup>30</sup>

## 2. Remedies: Improved data systems and Integrated Refugee Management

To assist BAMF and clear the backlog, 170 mobile teams registered asylum seekers, and established passport photographs and fingerprints in 2015/16. Volunteer specialists from the army, the customs service and other agencies assisted BAMF. The data was then communicated to the central criminal office. Asylum applicants are also notified to the central foreigners' registry (Ausländerzentralregister) where all foreigners are documented

in a core data system (Kerndatensystem). In 2016, the Datenaustauschverbesserungsgesetz (data exchange improvement law) simplified the data cooperation between the various agencies, removing data protection obstacles.<sup>31</sup> All federal, *Länder* and local government agencies can use these data, to avoid registering asylum seekers several times. Arguing for the bill, the government stressed the need for control and avoiding identity deception. Incoming people were to be registered and identified at the first contact with authorities, and all other agencies would be able to use these data. In 2019, the government introduced a second data exchange improvement law, to enable even more authorities to use the data, to ease the data flows, create more controls not only near the borders but countrywide and introduce data checks in Dublin and repeal cases.<sup>32</sup>

Since 2016, incoming asylum seekers are registered in PIK (Personalization Infrastructure Components or *Personalisierungsinfrastrukturkomponente*) stations by federal or *Länder* police, BAMF, or local government staff. They are machine-readable, and ensure an easy identification of asylum seekers. The authorities secure their personal data, and photograph and fingerprint them. In the past, asylum seekers received a simple confirmation paper upon registration which could not be verified. Since April 2016, a machine-readable proof certificate is handed out (Ankunftsnaheis), to identify people from the beginning. It includes fingerprints. With the machine readable Ankunftsnaheis, it has become possible to prevent multiple registrations, facilitate inter-agency cooperation, assemble relevant statistical data, and give the asylum seekers a document that legitimized their provisional status in the country.

However, the challenge of establishing asylum seekers' identities without passports or

28 Such was the case with Anis Amri, who had been imprisoned in Italy, obtained 14 different identities, and after arriving in Germany, bombed a Berlin Christmas Market in December 2016, killing eleven people.

29 This is still continuing, e.g. in the BAMF report for 2019 which shows the peak of asylum applications not in 2015 but in August 2016 when they were taken at BAMF (BAMF, Das Bundesamt in Zahlen, Nürnberg 2020, p. 12).

30 Alexander 2017; Ultsch/ Prior/ Nowak 2017.

31 Gesetz zur Verbesserung der Registrierung und des Datenaustausches zu aufenthalts- und asylrechtlichen und Zwecken (Datenaustauschverbesserungsgesetz) vom 2. Februar 2016 [https://www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger\\_BGBI&jumpTo=bgbl116s0130.pdf#\\_bgbl\\_%2F%2F%5B%40attr\\_id%3D%27bgbl116s0130.pdf%27%5D\\_1566323069601](https://www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger_BGBI&jumpTo=bgbl116s0130.pdf#_bgbl_%2F%2F%5B%40attr_id%3D%27bgbl116s0130.pdf%27%5D_1566323069601https://www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger_BGBI&jumpTo=bgbl116s0130.pdf#_bgbl_%2F%2F%5B%40attr_id%3D%27bgbl116s0130.pdf%27%5D_1566323069601)

32 Deutscher Bundestag, Drucksache 19/8752, 27.3.2019.

identification documents has proven more difficult to address. One approach is to analyse cell phones, and search for information there. This was made possible by a law in 2017, but each case has to be sanctioned by a judge. Critics point to privacy problems, whereas supporters see chances to get correct information, particularly in difficult cases.<sup>33</sup> After two years practice, BAMF read out about 1200 cell phones per month or 3,502 in the first three months of 2019. In 44 % of the cases, BAMF was able to confirm the applicants' information. In only one per cent, they were able to discover a fake identity.<sup>34</sup> Moreover, BAMF now uses an Arab language identification programme, to assess the dialect of the country from which an asylum seeker is coming. However, the quality of these instruments is limited<sup>35</sup> Moreover, such technical solutions do not appear to have addressed the broader structural issues that encourage asylum applicants to obfuscate their identity. Asylum seekers often depend on rumours or information from facilitators of all sorts who have their own agenda. Intense personal counselling might be a remedy (see chapter C4)

## B. Reception

The German reception system has several and often conflicting aims. It must provide sufficient capacity to accommodate incoming asylum seekers and other refugees, yet it should not waste capacities when only a few deserving people are arriving. Since refugee crises and people's movements are not easy to predict, this is a challenge. Refugees should be integrated into society as soon as possible, to help them overcome their traumas, to follow the humanitarian principles under the German constitution and the Geneva refugee convention, to help people escape welfare dependency and begin a new independent life. On the other hand, there are fears that good reception could have attraction effects that would make asylum

a side door for economic immigration. Refugees should be distributed over the whole country, to organize accommodation systematically and avoid overcrowding. Quotas for states, cities and counties simplify planning, so that local governments can provide housing, schools and other services. Yet people often want to live with their friends and relatives, and find help to integrate. Moreover, mobility over the whole country can lead to more job chances in an open market, as economists have pointed out.<sup>36</sup> Germany's decision makers struggled with these contradictory goals, with local governments, NGOs, churches, employers, unions, security agencies and political parties taking different views, and the wave of humanitarian sympathies in 2015 as well as fears of terrorist acts and xenophobic outbreaks influencing the political climate. Laws and regulations reflected these tensions and were often complex compromises between political actors. We shall discuss the equitable distribution of asylum seekers throughout the country, the quagmire of deterrence and hospitable integration and the problems of capacity building in times of varying inflows of refugees.

### 1. Equitable geographic distribution within the reception system

Since the forced resettlement of twelve million people from the lost territories in the East in 1945/46, the distribution of refugees around the country became a tradition in Germany. This continued with the Aussiedler and the resettled Jews from the former Soviet Union from 1990 onward, and was also taken up with asylum seekers. A wide-ranging consensus developed about the merits of an equitable distribution, to use capacities across the country and to ease facilitate integration. Since the 1970s, this was often backed by the argument that otherwise American-style "ghettos" might emerge.

33 German authorities use seven providers to analyse cell phones (Deutsche Behörden nutzen sieben Anbieter zum Handyauslesen, <https://www.golem.de/news/digitale-forensik-deutsche-behoerden-nutzen-sieben-anbieter-zum-handy-auslesen-1808-136030.html>)

34 Deutscher Bundestag, Drucksache 19/11001, p.18.

35 Answering a parliamentary inquiry, the government spoke of an error rate of 20 % in the dialect identification. It included Egyptian, Gulf Arabic, Levant and Iraqi Arabic. They refused to give further details about the software, and hoped that the programme could be broadened and improved in 2018 (Biselli 2017). Another question was about mobile carriers. At the end of January 2018, 8,907 mobile carriers were read out, and 918 results were classified as relevant for the asylum proceedings (BT-Dr. 19/1663. p. 22).

36 Compare Brücker/ Hauptmann/ Jaschke 2020.

Asylum seekers are distributed between the *Länder* under the “Königsteiner Schlüssel” (Königstein key)<sup>37</sup> proportional to the economic capacity (two thirds) and the population size (one third) of each *Land*. Thus, all *Länder* are included, but economically strong *Länder*, with more and better jobs to offer, receive more asylum seekers. This is the “Erstverteilung von Asylbegehrenden” (EASY). *Länder* and local governments are responsible for the reception and accommodation of asylum seekers, including housing, feeding, schooling, medication, and security. The level of benefits, however, is set by a federal law, the Asylbewerberleistungsgesetz (asylum seeker benefit law).

The distribution system has functioned smoothly and without controversy through the evolution of Germany’s migration policy, even in times of high inflows. During the 2015 crisis, most refugees arrived through the “Balkan Route,” and thus entered from Austria into Bavaria, and were then sent to the other parts of Germany. *Länder* cooperation built on the EASY principle functioned efficiently, and Bavaria transferred the incoming refugees to the other *Länder*. In the crisis situation, the *Länder* cooperated directly. The federal government, on the other hand, assisted them with Technisches Hilfswerk (THW), the federal agency for emergency assistance, and military facilities, like barracks, for reception purposes, as well as transport and medical centres.

As the *Länder* in the German system have most administrative staff, they were able to mobilize personnel and resources from other departments, and had information about empty buildings or other facilities that could be used as temporary accommodations. Moreover, they worked with volunteers and spontaneously formed groups, as well as traditional welfare organizations like Caritas, the Red Cross, and local parishes. The

TABLE 3 How asylum seekers are distributed:  
The Königstein Key division in 2019

LAND	%
Baden-Württemberg	13.01280 %
Bayern	15.56491 %
Berlin	5.13754 %
Brandenburg	3.01802 %
Bremen	0.96284 %
Hamburg	2.55790 %
Hessen	7.44344 %
Mecklenburg-Vorpommern	1.98419 %
Niedersachsen	9.40993 %
Nordrhein-Westfalen	21.08676 %
Rheinland-Pfalz	4.82459 %
Saarland	1.20197 %
Sachsen	4.99085 %
Sachsen-Anhalt	2.75164 %
Schleswig-Holstein	3.40526 %
Thüringen	2.64736 %

Source: <http://www.bamf.de/DE/Fluechtlingsschutz/AblaufAsylv/Erstverteilung/erstverteilung-node.html>

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responsibilities were clear, and if a city could not cope with the challenge, local politicians would be responsible for the failure, as was the case in Berlin in 2015.<sup>38</sup>

Questions of how to distribute asylum seekers are made more complicated by the fact that comparative evaluations have shown that there are enormous differences between local governments in accommodating incoming refugees, with respect to quality of services and cost-effectiveness.<sup>39</sup> Since growth areas and big cities have been suffering from a housing crisis in the past years, and in some rural areas houses are vacant, some

37 The Königsteiner Schlüssel goes back to an agreement in 1949 for the share of each *Land* in the financing of national research institutions. Since that time, it has been used for more and more policy instruments. It is adapted each year according to the population and the tax base of each *Land*. It is rather uncontroversial.

38 Berlin was exceptional under the *Länder* and local governments since it could not master the inflows, and was a laggard with respect to housing and integrating the refugees. Inefficiencies in the city’s administration are many, and mockery about it has become a running joke in Germany. Since Berlin is the capital, and most foreign correspondents are working there, Berlin plays an important role in reporting. Compare Sebastian Muschter’s book about the crisis in Berlin and his role in dealing with the problems as a manager brought in from outside to help with problems that did not arise in most other cities and counties (Muschter, Sebastian: *Gestalten statt Verwalten. Lernen aus der LaGeSo-Krise*, Eltville 2018). The inefficiency of the city administration led to conflicts with citizen’s initiatives. Some of them organized services themselves. See for instance the homepage of Moabit hilft: <https://www.moabit-hilft.com/>.

39 Thränhardt, Dietrich/ Weiss, Karin 2016: *Flüchtlingspolitik im deutschen Föderalismus*, Bonn: Friedrich-Ebert-Stiftung. A case study demonstrates an example of cooperation and efficiency in the university town of Erlangen: Petra Bendel ed. 2016: *Was Flüchtlinge brauchen – ein Win-Win-Projekt. Ergebnisse aus einer Befragung in Erlangen*, Erlangen: FAU University Press.

politicians wanted to bring more refugees to the country side and in particular to the Eastern parts of Germany.<sup>40</sup> However, this idea went against long-term integration, which depends on finding work, which is easier achieved in economically strong areas.<sup>41</sup> Since the proposals and needs were contradictory and would have been controversial, they were not taken up, and the system persisted.

While the EASY system has worked well to assign asylum seekers to their initial reception places, the reception system has continued to struggle with the question of managing secondary movements. *Residenzpflicht* (or “residence mandate”), introduced in 1982, obliged asylum seekers to stay in the county or city where they had been assigned. Asylum seekers needed permission to travel or to meet relatives or friends in other places, or to look for work elsewhere. Critics argued that this impeded integration efforts, and was not in accordance with the Geneva refugee convention.

The *Residenzpflicht* was relaxed step by step in the 2010s, and finally limited to the first three months after arrival of the asylum seekers, from January 1, 2015 on, as integration was prioritized over other concerns. But as arrivals of asylum seekers rose at the end of 2015, residence requirements have been reintroduced, and since August 2016, the Integrationsgesetz obliges accepted refugees to live in the *Land* they were assigned to for three years or as long as they do not work at least 15 hours per week (*Wohnsitzauflage*).<sup>42</sup> Seven *Länder* used the law’s clause to restrict internal movements between cities and counties, to prevent secondary migration.<sup>43</sup> They argue that this will avoid segregation, and

facilitates integration planning, e. g. for schools and kindergartens.<sup>44</sup> Other *Länder* refrained from general restrictions but limited the number of asylum seekers assigned to individual cities only if they complained about capacity problems in schools or kindergartens. The 2016 law was limited to three years, but was extended indefinitely in 2019.<sup>45</sup>

Opinions are divided about the effects of such restrictions. Local politicians argue that they can plan easier, and take care of schools, kindergartens and other facilities. Economists criticize that such state planning impedes the optimal allocation of work and economic chances, which are the core of a free economy.<sup>46</sup> In 2020, they finally were able to demonstrate that the restrictions hinder economic integration.<sup>47</sup>

## 2. Services provided during reception: resolving the tension between deterrence and integration

The German reception system has long struggled to reconcile a tension between providing resources that will help refugees to begin integrating as soon as possible, and a fear that providing integration assistance to asylum seekers who do not yet have status will create an incentive for individuals without protection needs. As a result, the services provided during the reception period have shifted substantially over the decades from very limited to much more comprehensive, depending on the political climate towards asylum seekers at the time and the policy of the respective *Land* government.

40 See the broad discussion in: izR, *Flüchtlinge zwischen Ankommen und Zusammenleben*, Bonn 2017.

41 Weiss 2018, 249-255.

42 Gesetz über den Aufenthalt, die Erwerbstätigkeit und die Integration von Ausländern im Bundesgebiet (Aufenthaltsgesetz) § 12a Wohnsitzregelung, [https://www.gesetze-im-internet.de/aufenthg\\_2004/\\_12a.html](https://www.gesetze-im-internet.de/aufenthg_2004/_12a.html)

43 A similar measure had been enacted for the Aussiedler (ethnic Germans) from the former Soviet Union in the 1990s, under similar fears of over-concentration, at that time in some counties were many Aussiedler lived, and their relatives and friends wanted to join.

44 Marcel Leubecher, *Dort wohnen, wo der Staat es will*, <https://www.welt.de/politik/deutschland/article189592587/Wohnsitzauflagen-fuer-Fluechtlinge-Dort-wohnen-wo-der-Staat-es-will.html>

45 Zweites Gesetz zur besseren Durchsetzung der Ausreisepflicht, 15. August 2019, [https://www.bgbl.de/xaver/bgbl/start.xav#\\_bgbl\\_151s0350.pdf%27%5D\\_1566114237693](https://www.bgbl.de/xaver/bgbl/start.xav#_bgbl_151s0350.pdf%27%5D_1566114237693)

46 SVR 2014: Sachverständigenrat deutscher Stiftungen für Integration und Migration, *Deutschlands Wandel zum modernen Einwanderungsland. Jahresgutachten 2014 mit Integrationsbarometer*, Berlin: SVR 2016: *Ankommen und Bleiben – Wohnsitzauflagen als integrationsfördernde Maßnahmen?* Berlin: Sachverständigenrat deutscher Stiftungen für Integration und Migration.

47 Brücker/ Hautmann/ Jaschke 2020. Post-war Germany had instituted a special system of bringing people to industrial regions in the 1950s, after the Allied powers had put them in the countryside in 1945/46 where housing was not as scarce as in the cities. See Gesetz zur Umsiedlung von Heimatvertriebenen aus den Ländern Bayern, Niedersachsen und Schleswig-Holstein, Gesetz vom 23. Mai 1951, [https://www.bgbl.de/xaver/bgbl/start.xav?start=/151s0350.pdf%27%5D\\_1566114237693](https://www.bgbl.de/xaver/bgbl/start.xav?start=/151s0350.pdf%27%5D_1566114237693)

The restrictive migration policies of the 1980s and 1990s included various strategies to deter people from seeking asylum and to encourage those in reception centres to return to their country of origin. Asylum seekers were often housed collectively and provided communal meals. Although this was a practical solution for newcomers in accommodation centres in the first days or weeks of their arrival, in some *Länder*, it was also used to discourage asylum seekers, to motivate them to leave or to move to other countries.<sup>48</sup> Similarly, in its guidelines (effective until 2013), the Bavarian government instructed asylum centres that counselling should not include “any measures that would further the social, linguistic or occupational integration into German society”. Rather, they should support the ability of asylum seekers to “re-integrate” into the country of origin. Counsellors were directed to inform asylum seekers that they had little chances of being recognized, that they would be obliged to leave Germany, and that Bavaria would support them if they would return to their country of origin.<sup>49</sup> Since the services were implemented by welfare organization, the social workers would not always follow these rules but stick to their own religious or humanistic ethos.<sup>50</sup> Countrywide, language courses were abolished for asylum seekers before recognition, and in 1993 social benefits were cut so that asylum seekers received less than citizens.<sup>51</sup>

The Bavarian guidelines were reversed in 2013, after long internal discussions and a growing emphasis on integration among policymakers. This followed a ruling by the Constitutional Court in 2012 that the limited social benefits were “evidently inadequate”, and that asylum seekers had a right to social assistance on the level that had been established as necessary for the general population. In 2020, the amount is 351 Euros for a single

person plus accommodation. “Human dignity cannot be modified by migration policy arguments”, was the core sentence of the ruling, taken up from a statement of the Catholic Caritas.<sup>52</sup> With regard to accommodation, specialists had argued that collective accommodation over long periods of time reduced the refugees’ ability to care for themselves, to live a self-determined life, and to become a contributing member of society.<sup>53</sup> As many asylum seekers stayed anyway, integration was obstructed, and the unwanted result was long dependence on social security. Moreover, collective accommodation costs more than individual accommodation, because of high expenses for personnel. The *Länder* followed quite different policies with respect to collective or private accommodation. Deliberate integration or deterrence policies considerations met practical considerations like the availability of facilities. A study of the Pro Asyl lobby group demonstrated the differences in 2013 (see table 4 on the next page).

With the new emphasis on integration, even Bavaria could not continue with its rigid policies. In particular, the contradiction between the new insistence on learning German, repeated over and over again in political statements, and the ban on language courses for asylum seekers was no longer feasible. The rise in asylum applications at the end of 2015 accelerated this trend. Since nearly 900,000 people were waiting for their asylum decision at the end of 2015 (see below), and Germany considered itself a welcoming society, integration arguments prevailed. In 2016, the “integration law” (*Integrationsgesetz*) opened the integration courses for four nationalities. Integration courses consist of a language course and an orientation element. Under the new system, applicants from countries with more than fifty percent positive decisions (Syria, Iraq, Iran, Eritrea, later also

48 Bayerischer Flüchtlingsrat, Unterbringung von Flüchtlingen, <https://www.fluechtlingsrat-bayern.de/unterbringung-von-fluechtlingen.html>.

49 AsylSozBR 2007/2010: Bekanntmachung des Bayerischen Staatsministeriums für Arbeit und Sozialordnung, Familie und Frauen vom 5. Januar 2007 Az.: V 5/6571/1/06 geändert durch Bekanntmachung vom 7. Januar 2010 (AllMBI: 3)

50 Personal talks with welfare organizations at conferences.

51 In the first asylum crisis, the government introduced a special benefits law for asylum seekers, the Asylbewerberleistungsgesetz, intended to minimize economic attraction effects and to limit the costs of the asylum system. <https://www.buzer.de/s1.htm?g=AsylbLG&f=1> [[]]

52 Die Menschenwürde ist migrationspolitisch nicht zu relativieren.“ (BVerfG 2012, [https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/DE/2012/07/1s20120718\\_1bvl001010.html;jsessionid=FDB1B013C93E672D4519CD5E98FFC9D2.2\\_cid361](https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/DE/2012/07/1s20120718_1bvl001010.html;jsessionid=FDB1B013C93E672D4519CD5E98FFC9D2.2_cid361) [[]]

53 [https://www.institut-fuer-menschenrechte.de/uploads/tx\\_commerce/Hendrik\\_Cremer\\_Stellungnahme\\_Anhoerung\\_Umweltausschuss\\_Bauplanungsrecht\\_BT\\_03.11.2014.pdf](https://www.institut-fuer-menschenrechte.de/uploads/tx_commerce/Hendrik_Cremer_Stellungnahme_Anhoerung_Umweltausschuss_Bauplanungsrecht_BT_03.11.2014.pdf)



TABLE 4 Percentage of private accommodation in 2013 and 2019:  
*Länder compared*

LAND	% PRIVATE ACCOMMODATION	
	2013	2019
Schleswig-Holstein	90.9	81.5
Rheinland-Pfalz	90.6	65.0
Niedersachsen	83.6	67.0
Bremen	71.6	68.0
Hamburg	64.5	20.0
Berlin	57.8	47.5
Nordrhein-Westfalen	50.3	43.0
Thüringen	49.1	49.4
Mecklenburg-Vorpommern	48.6	32.8
Bayern	48.0	31.0
Sachsen-Anhalt	45.8	39.7
Hessen	45.5	32.0
Saarland	42.7	34.0
Sachsen	34.2	35.3
Brandenburg	34.1	31.1
Baden-Württemberg	33.5	49.6
Germany	55.0	44.9

East German *Länder* in italics.

Source: Wendel 2014; Statistisches Bundesamt, Asylbewerberleistungen 2019. Own calculation.

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claim. Those with a “good perspective”, would thus get private accommodation earlier and could not be held in the centres longer than six months.

From August 1, 2019 on, a new mix of integration and discouragement efforts was established. The “Ausländerbeschäftigungsförderungsgesetz” (foreigners’ work assistance law) now allows every foreigner who has legally arrived before that date to participate in an integration course and in work encouragement programmes (except for asylum seekers from “safe third countries”).<sup>56</sup> The idea is to make it easier to work, and to reduce welfare expenditures. This programme is supervised by the Ministry of Labour and Social Affairs. The Ministry of the Interior reacted with reducing the status of “good perspective” to Syrians and Eritreans, excluding Iraqis, Iranians and Somalis. By excluding these groups (and others like Turks and Afghans), the Ministry wants to minimize alleged attraction effects. By introducing a cut-off date, integration effects for those already in the country and exclusion for potential newcomers are combined. Whereas the inclusive parts of the new system were welcomed by welfare organisations, the president of a the Paritätischer Gesamtverband (The Paritätische) marked the exclusions as an “integration policy catastrophe”.<sup>57</sup>

### 3. Ensuring sufficient accommodation capacity

Ensuring sufficient capacity in initial reception accommodations for asylum seekers was also a challenge, particularly when the number of arrivals peaked in late 2015. The primary challenge was finding enough housing to accommodate the rapidly rising number of people in need of shelter. In areas with particularly tight housing markets, it was especially difficult to find private accommodation.<sup>58</sup> Reception officials used several strategies

Somalia) were defined as having “a good perspective to stay” (Gute Bleibeperspektive) and could be admitted to integration courses before the asylum decision.<sup>54</sup> Those with “a less good perspective” (later marked as “bad perspective to stay”) do not get these possibilities.<sup>55</sup> The 2018 coalition agreement (Ein neuer Aufbruch 2018) deepened the discrepancy. People with a bad perspective can be held in the new “AnKER centres” for up to 18 months as they await a decision on their asylum

54 BAMF 2018: FAQ; Integrationskurse für Asylbewerber, <http://www.bamf.de/DE/Infothek/FragenAntworten/IntegrationskurseAsylbewerber/integrationskurse-asylbewerber-node.html>

55 In practice, this selectivity was good for the first category but it brought acceptance problems in the refugee institutions, as people of the second category felt discriminated, particularly those from Afghanistan, who also had a high recognition rate and felt that they too came from a war-torn country. In the camps, they would watch others taking part in integration courses while they were idle (Dahmen, Dagmar et al. 2017: „Gut“, „schlecht“, „unklar“ – die Bleibeperspektive und ihre Folgen für die Integration von Geflüchteten, in: Heinrich-Böll-Stiftung, Einwanderungsland Deutschland. Bericht der Kommission „Perspektiven für eine zukunftsgerichtete und nachhaltige Flüchtlings- und Einwanderungspolitik, Berlin, 131-143).

56 <https://www.bundestag.de/dokumente/textarchiv/2019/kw20-de-auslaenderbeschaeftigungsforderungsgesetz-641612>

57 <https://www.bamf.de/SharedDocs/FAQ/DE/IntegrationskurseAsylbewerber/001-bleibeperspektive.html>; <https://www.fr.de/politik/integration-iraker-iraner-somalier-sprachkursen-ausgegrenzt-12883263.html>

58 Weiss, Karin, Demographischer Wandel in Ostdeutschland. Neuansiedlung von Zugewanderten als Lösung? in: Migration und soziale Arbeit, 3/2018, 249-255.

to deal with the shortage of accommodation. First, every available kind of accommodation was used. Technisches Hilfswerk, a disaster-prevention organization, built large tents and set up beds and infrastructure. Sports centres and town halls were opened for refugees, catering was provided by the Red Cross and other welfare organisations, and medical checks were done by voluntary doctors, the Red Cross and in army clinics. Army specialists laid water lines. Large centres were established by the *Länder* to house and feed the refugees, before they could be transferred to private and more adequate places. Youth hostels and hotels which were empty in the winter were rented, former army barracks renovated and prepared. Cuts in the size of the German army made buildings available, in addition to the barracks of the former British, French, Russian and American troops.

Second, the Federal Government eased the regulations for building refugee accommodations in the fall of 2015, to allow local governments fast constructions of housing facilities. The “Kreditanstalt für Wiederaufbau” (KfW), a federal bank, offered local governments interest-free construction credits which were speedily accepted throughout the country.<sup>59</sup> The loosening of regulations ended in 2019. Berlin built modular houses for refugees, with 24 centres, for 12,000 people.<sup>60</sup>

When the numbers of newcomers receded in early 2016, a different set of practical and political questions arose. With less demand for reception facilities, *Länder* and local governments are considering closing reception facilities that are vacant. There is an awareness that facilities may be needed in the future if more refugees were to come again but it is too costly to keep them open if they are not used. Since these centres had been established, buildings had been put up or restored and personnel had been engaged, the *Länder* felt that the premises should be used. In the “Integrationsgesetz” 2016, the *Länder* were enabled to keep asylum seekers and people whose application had been rejected in accommodation centres for longer periods. Some

local governments felt overwhelmed by the inflows in 2015 and were happy about delays in sending asylum seekers across towns and counties. With the Corona crisis, a new challenge is the need to distance people from each other. Outbreaks of the disease in several centres led to critical evaluations of the sanitary conditions and the quest to bring people into private accommodation if possible. Several centres have been quarantined. Judges have obliged several *Länder* to transfer pregnant women and other vulnerable persons into private accommodation.<sup>61</sup>

Policymakers have also struggled with the question of how to pay for accommodation facilities, particularly when needs (and expenses) escalate quickly. *Länder* and local governments carried the costs of accommodation until 2014. However, with the large inflows in 2015, they asked the federal government to refund the costs. After lengthy discussions, the Federal Government paid 670 Euros per asylum seeker and month as an advance payment. All in all, the costs were estimated as 21 billion Euros in 2016.<sup>62</sup> In 2018, the coalition agreement foresaw eight billion Euros per year as a contribution from the Bund to the *Länder*.<sup>63</sup> After refugees are recognized, they become members of the general social insurance systems, like all other residents.

59 <https://www.bundesregierung.de/Content/DE/Artikel/2016/01/2016-01-20-wohnraum-fuer-fluechtlinge.html>

60 <https://www.berlin.de/laf/wohnen/allgemeine-informationen/muf-2-0/>

61 An overview at Kompetenznetzwerk Public Health 2020.

62 Thränhardt/ Weiss 2016.

63 Ein neuer Aufbruch 2018.

**BOX 2 Sticks and Carrots: “Safe Countries of Origin” and alternative immigration pathways.  
Tax payers instead of asylum claimants**

Asylum seekers from the “West Balkan” states have often been described as “poverty refugees” (Armutsflüchtlinge) in public discourse. People from these countries were visa-free since 2009/10 but did not have a right to work. Since the economic situation in South Eastern Europe was difficult, applying for asylum was a possibility to stay in Germany, at least for some months or years, or over the winter, and to receive food and accommodation. Only very few get refugee status, mostly people with ethnic minority backgrounds. In 2014/15, rumours spread in Kosovo and in Albania about a generous hospitality in Germany and more migrants arrived.

The German government reacted with a policy mix of ‘sticks and carrots’. Bosnia-Herzegovina, Macedonia and Serbia were declared “safe countries of origin” in 2014, and Montenegro, Albania and Kosovo in 2015. Asylum applications were prioritized, to speed up decisions<sup>64</sup>. Newly arriving asylum seekers were kept in large collective accommodation centres, without integration offers. In 2018, a Bavarian court decided that children in these centres have a right for schooling, like every child.<sup>65</sup> However, the humanitarian situation in these camps is difficult, if people have to stay there for years.<sup>66</sup>

As an alternative, Germany opened a new pathway for people from these six countries at the end of 2015. Those who find a German employer offering a job can apply for a work visa at a German embassy. The programme is popular, and 127,000 people applied in the first two years alone.<sup>67</sup> The German government’s evaluation praised the programme in every aspect. It says a high percentage were

qualified workers, they got a sufficient income, comparable to Croatians, and there was no misuse or social security dependence.<sup>68</sup> Most were working in the construction industry.<sup>69</sup> However, staff shortage at the embassies delays the placements. In 2018, 66,370 people from the six countries were working in Germany with work visas, whereas 107,735 asylum seekers were still in the country, many with a toleration status.

The programme’s impact is constrained because it is over-complicated. The original idea of a “Spurwechsel” (lane change) from asylum seeker to worker, as practised in Sweden, was rejected by the Ministry of the Interior because they feared that this could constitute a ‘pull factor’ for more irregular migration. Since applicants have to wait for more than one year in five of the six embassies in March 2020<sup>70</sup>, and thus their work contract often expires before it begins, some still apply for asylum: 18,490 asylum applications from the six countries in 2018 against 21,000 works visas, making the lane change a success, however limited.

An asylum application offers immediate accommodation and some pocket money, a work contract gives gainful employment and a long-term perspective. Many poor people traditionally apply for asylum at the end of the year, to get over the winter, instead of freezing in their homeland. The programme is limited to 25,000 applications per year from 2021 on, as some politicians<sup>71</sup> feared rising unemployment in the Corona crisis<sup>72</sup>, whereas the construction industry lobbied for continuation.<sup>73</sup>

64 BAMF was successful with respect to this group (and Syrians), whereas other groups consequently had to wait longer.

65 Glas, Andreas/ Günther, Anna, Recht auf Schule, in: Süddeutsche Zeitung 21, 26.1.2018

66 Compare Jenny Baron/ Lea Flory/ Daniela Krebs Living in a box. Psychosoziale Folgen des Lebens in Sammelunterkünften für geflüchtete Kinder, Berlin 2020.

67 Brücker, Herbert, Carola Burkert, Westbalkanregelung: Arbeit statt Asyl? IAB-Forum, 15 December 2017; Dolderer, Helena, Früher kamen Asylbewerber, jetzt kommen Bauarbeiter, in: Die Welt, 17 April 2019.

68 Herbert Brücker, Mariella Falkenhain, Tanja Fendel, Markus Promberger, Miriam Raab, Parvati Trübswetter, Evaluierung der Westbalkanregelung: Registerdatenanalyse und Betriebsfallstudien, Nürnberg 2020

69 Bau fordert Verlängerung der Westbalkan-Regelung, in: Handwerksblatt, 24.5.2020.

70 BT-Dr. 19/18809.

71 Bau 2020.

72 Florian Reiter, Westbalkanregelung ist großer Zuwanderungs-Erfolg – doch ihr droht das Aus, in: Focus, 11.4.2020

73 Bau 2020.



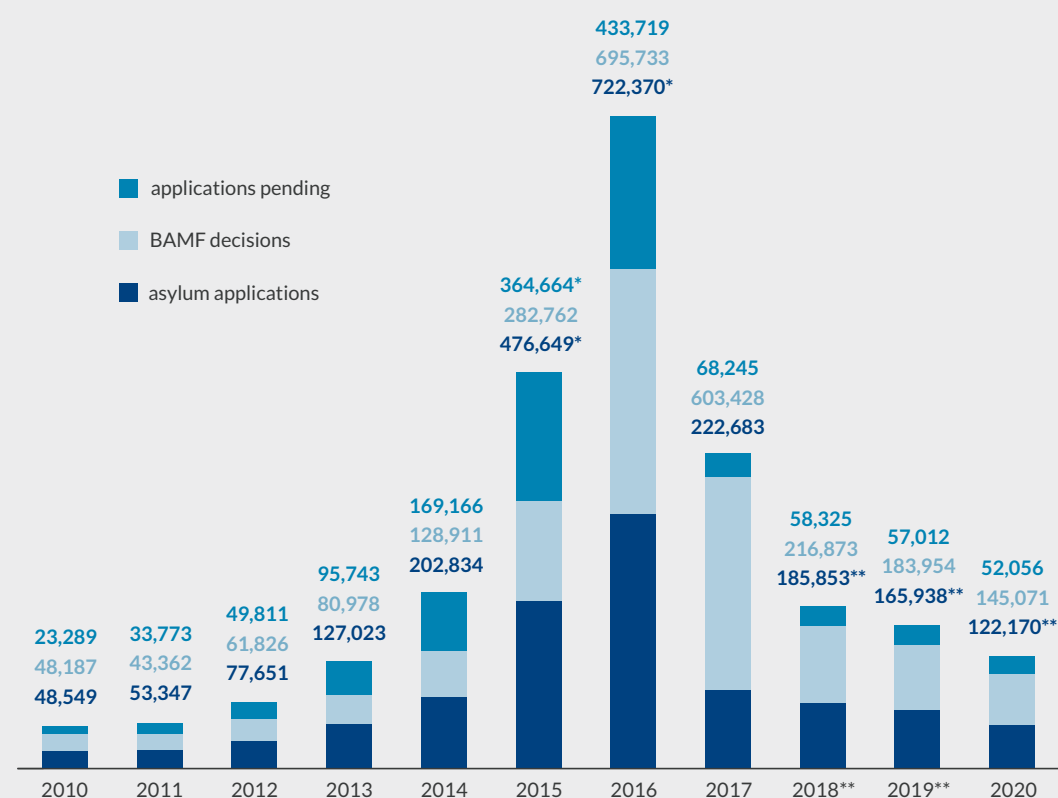
## C. Asylum Procedure

### 1. Capacity problems

In the asylum crisis, the asylum procedure at BAMF ran into quantitative and qualitative problems. After the high point of 438,000 asylum applications in 1992, the numbers had gone down to 28,000 in 2008. Consequently, BAMF had reduced its personnel. From 2009 on, however, more people applied for asylum every year. BAMF asked for more personnel but the Ministry of the Interior did not address its demands. Consequently, the numbers of pending cases rose year after year (see Figure 3).

In 2013, several *Länder* who had to accommodate the asylum seekers waiting for a decision, took up the problem, and succeeded in including a clause in the Coalition Agreement for the incoming Federal Government. It stated that first asylum decisions should not take longer than three months. The Ministry of the Interior, however, did not increase the BAMF staff, despite urgent warning of the BAMF president, and thus Germany had a severe processing problem even before the large inflows in 2015.<sup>74</sup>

FIGURE 3 Asylum applications, decisions, pending cases, 2010–2020



\* In 2015, about 500,000 applicants had not been registered, they were registered in 2016.

\*\*In 2020, 26,520 of first time asylum applicants (25,9%) were children who were born in Germany. In 2019, 31,415 (22,0%) of first time asylum applications were made for children born in Germany.

Source: BAMF, Aktuelle Zahlen, December 2020; BT-Dr. 19/18498.

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74 Thränhardt, Dietrich 2014: Europäische Abschottung und deutscher Asylstau: Gibt es Wege aus dem Dilemma? In: Zeitschrift für Ausländerrecht und Ausländerpolitik, Vol. 34, 177-181. In a special session of the Bundestag Innenausschuss at 8 June 2018, former BAMF President Schmidt remembered that he had had a "hefty e-mail exchange" with the Ministry of the Interior as he had asked for more personnel. He said that he had been told by the minister's bureau chief that the minister did not want any more warnings in this matter (unpublished protocol of the Innenausschuss, session of 8 June 2018).

## 2. Reform approaches 2015-18

In 2015/16, refugees in the tens of thousands from Syria, Iraq and Eritrea were accepted via questionnaire, without a personal hearing, following art. 14 (2) EU asylum procedures directive, in an effort to speed up the process. Their chances to be accepted lay between 99 and 100 percent, and they got full asylum status. Later on, there were grave doubts about insufficient screening in this procedure but in the end repeal procedures demonstrated the integrity of the questionnaire process. BAMF had sufficiently checked the nationality of the claimants.<sup>75</sup>

This practice was discontinued in spring 2016, by an order of the Minister for the Interior. In the following hearings, most Syrians then got only subsidiary protection instead of a full refugee status, as war refugees. At the same time, family reunification was suspended for those with a subsidiary status (It had been granted just one year before in a political compromise). In the short run, this reduced the number of families arriving in Germany. However, it caused more illegal crossings and a wave of legal suits at the administrative courts that continues until today (see Box 3). In a memorandum, McKinsey had promoted the idea that a “temporary status would be effective in quickly integrating new arrivals into jobs and housing”.<sup>76</sup> The firm had gotten a consulting contract over 29.3 million euros, from October 2015 on.

Their advice, together with two other consulting companies, was instrumental to change the administrative processes, under the new leadership of BA president Weise (since 18 September 2015). To shrink the backlog and make the decision system faster and more effective, they used several

approaches. Asylum applications were grouped in four “clusters” in January 2016<sup>77</sup>:

- A (Acceptance):** Syrian, Eritreans, and Christian and Yazidi Iraqis who had a high likelihood of being accepted
- B (Balkan):** Balkan applicants with a high likelihood of being rejected,
- C (Complex):** Complex cases which would take more time to decide,
- D (Dublin):** “Dublin cases” which should be referred to another country.

A and B cases were to be “prioritized”, mostly positive for A, and negative for B, whereas C cases would be dealt with later, and D cases referred to other countries if possible.

The system worked well quantitatively, and contributed to the clearing of the backlog in 2016/17. Almost all A cases were decided positive, and B cases negative. In qualitative terms, however, there were grave doubts from the beginning, put forward by BAMF’s employee committee, particularly with respect to the irregular recruitment of new personnel, and insufficient training. Employees complained about pressuring them into fast and problematic decisions.<sup>78</sup> The directive, based on McKinsey advice, foresaw 90 minutes for simple cases and 180 minutes for complex cases.<sup>79</sup> The shocking scandal about a German right-wing army officer who managed to be accepted as a Syrian refugee at BAMF, without speaking Arabic and with an implausible story, brought the quality problems into public limelight.<sup>80</sup> As a consequence, the Ministry of the Interior ordered a revision of 148,000 positive decisions.<sup>81</sup> The triage system was abandoned when the backlog had been reduced.

75 Entwurf eines Dritten Gesetzes zur Änderung des Asylgesetzes, BT-Dr. 19/4456, 24.09.2018, p. 1; BT-Dr. 19/15743, question 3.

76 Stanley-Becker 2017. The Ministry denied any influence of McKinsey and the firm did not want to comment. The ideas about “flexibility” may have coincided with the Ministry’s long-standing tendency to limit asylum numbers.

77 The economic weekly Wirtschaftswoche reported that this directive was based on a McKinsey advice. (Dummer 4 May 2018).

78 Der Spiegel 2017: BA-Chef will auch geduldete Flüchtlinge fördern, <http://www.spiegel.de/wirtschaft/soziales/fluechtlinge-ba-chef-detlef-scheele-fordert-mehr-integration-fuer-gefluechtete-a-1185032.htm>

79 Dummer, 4 May 2018. Interestingly, Der Spiegel reported in 2020 that the management of the hotspot asylum system at the Greek islands in the context of the EU-Turkey deal had also relied on McKinsey advice, and failed (Fotiadis/ Sarovic/ Stavinoha, 202). See also the New York Times report on “How McKinsey helped the Trump Administration Carry Out Its Immigration Policies” (MacDougall 2019).

80 Diehl/ Gebauer 2017.

81 Kastner, Bernd 2018a: Wackliger Status. 148.000 positive Asylbescheide werden noch einmal überprüft, in: Süddeutsche Zeitung 3, 4.1.2018.

A third approach was the unbundling of the asylum process into distinct steps and the separation between asylum interview and decision making, also on McKinsey advice.<sup>82</sup> In a Fordist-style implementation chain, the steps of the decision-making process were isolated from each other and conducted by separate staff members or teams in order to accelerate the process, and optimise the output. The decider then did not need to meet the asylum seekers but could arrive at the decision of the case in a detached office. Workloads could be moved between BAMF offices, and personnel used in a flexible way. The system was speedy, but decision quality was diminished since a decider would not get a personal impression about the credibility of the asylum seeker, and could not ask further questions to clarify specific points or contradictions. Since September 2017, the unbundling was phased out step by step. BAMF returned in principle (grundsätzlich) to the unity (Einheit) of interviewer and decider (Dienstabweisung Asyl). In March 2018, the ministry of the interior explained to parliament that this unity prevailed and was extended successively.<sup>83</sup> Surprisingly, one year later, 7.8 per cent of the decisions were still taken in decision centres, and the ministry of the interior informed again: “The decision centres successively take on tasks in the realm of repeal decisions.”<sup>84</sup> In 2019, the rate was down to 4.0 percent.<sup>85</sup>

Reacting to the obvious quality problems, and to public awareness because of scandals connected to BAMF decisions, the Ministry of the Interior informed parliament in 2018 that the decision system was now organized in four steps: acceptance of the asylum plea (Antragsannahme), hearing (Anhörung), verdict (Bescheid), and closing operations (Abschlussarbeiten). At every step a quality securing system would be in place, and all decisions were to be controlled by at least two persons

(“Vier-Augen-Prinzip”) on the basis of check lists by “quality insurers” (“Qualitätssicherer”). Ten per cent of all decision steps were to be examined, and a sample of all verdicts checked by the central quality management department at BAMF headquarters.<sup>86</sup> They also provide guidelines and trainings.<sup>87</sup> However, a press report revealed that internal checks made clear that 46 per cent of all decisions about Afghan refugees did not meet the standards that BAMF had set.<sup>88</sup> The Ministry decided that they would not try to improve the quality of the hearings with a counselling approach (see below) but with a quality system that would be situated after the hearing. This may be an important reason for the long duration of the asylum process (still more than six months in 2020) which we shall discuss later.

### 3. Integrated asylum management and Anker Centres

A third approach, which is important until today, is the integrated asylum management in large processing institutions, or reception, decision and repatriation centres. The first integrated centre was set up in a former American army quarter in Heidelberg in 2016.<sup>89</sup> The idea was to make the system more effective, with close cooperation between BAMF and the *Land* institutions responsible for accommodation and dealing with the refugees after the asylum decision, all at one place.

The Federal Coalition Agreement of February 2018 called for a nationwide establishment of institutions for reception, decision and repatriation (Aufnahme-, Entscheidungs- und Rückführungseinrichtungen, AnKER) as an “Integrated Refugee Management” strategy. The comprehensive centres were to include all services, like registration, health checks, asylum decisions, labour agency and all other procedures, to speed up processing

82 Dummer, 4 May 2018.

83 BT-Dr 19/1371, 61.

84 BT-Dr. 19/11001, 51.

85 BT-Dr. 19/18498, p.67.

86 BT-Dr 19/1371, 60.

87 BT-Dr 19/357, p. 19.

88 This was reported in a detailed press report, not disputed by BAMF. There is no information about the standards (Loer, Wigbert 2018: Sündenböcke vom Dienst. Das Bundesamt für Migration und Flüchtlinge ist überfordert. Gerichte kassieren Entscheidungen. Union und SPD fordern Qualität. Recherchen in einer Behörde, die sich politisch benutzt fühlt, in: Stern 18.1.2018, 92-95).

89 Moll, J(ohannes). 2016: Das verkürzte Asylverfahren im Ankunftscenter Heidelberg, in: Asylmagazin 12/2016.

and make it more efficient. Asylum seekers “with good chances for recognition as refugees”<sup>90</sup> would be transferred to local accommodation throughout the country, whereas “all others should be repatriated from these institutions to their home countries, if possible, in appropriate time”. Rejected asylum seekers would normally be held in the centres for up to eighteen months, families up to six months. Those who do not cooperate with the authorities or continuously deceive about their identity could be held indefinitely (except families with children). The centres were to be set up by an agreement between the federal government and the *Länder*. The coalition agreement was a compromise between the CDU/CSU and the SPD, it included a provision for independent counselling.

Anker centres were set up Bavaria, in Saxony and in the Saarland. Bavaria established seven centres, with no more than 1500 people each, and 18 dependencies.<sup>91</sup> Saxony and Saarland had one centre each. The other *Länder* did not establish Anker centres, and argued that they already operated functioning centres where all relevant *Land* and federal agencies were cooperating.<sup>92</sup> NGOs and churches criticized that mixing new arrivals and rejected asylum seekers in large camps was prone for conflicts. The police union warned that federal police could not manage the camps, since they did not have sufficient staffing and it was not part of their duties.<sup>93</sup> In the end, federal and *Länder*

interior ministers agreed that arrangements in the various *Länder* would continue to be different.<sup>94</sup> The Federal Ministry of Interior speaks of “Anker and functionally equivalent” centres.

One year after the establishment of the first Anker centres, the Ministry of the Interior reported that asylum decisions in Anker centres took only 1.9 months, a “record” in Germany.<sup>95</sup> However, the number of repatriations was lower by half in the first six months 2019, compared to 2018. It had been relatively easy to repatriate many asylum seekers from the Balkans in 2016–2018, but it was much more difficult with non-Europeans. The Anker Centre concept did not solve these problems. Since more and more rejected asylum seekers were waiting for court decisions in each camp, and many others could not be deported or did not leave voluntarily, problems in the camps grew, as the following example shows.

Bavaria decided to close the Anker centre in Donauwörth at the end of 2019, and to return to decentral accommodation in the Swabia region. Conflicts between Kurds and Turks had become a problem.<sup>96</sup> The mayor of Augsburg, deputy president of the governing CSU, concluded that the Anker centre “did not function as planned.” “The concept of fast decisions and subsequent integration or removal did not come true. And there were too many rejected asylum seekers at one big place.

90 The categories were introduced in 2016, Asylum seekers with “good chances” were those with more than fifty percent positive decision: Syrians, Iraqis, Iranians, Eritreans, and later also Somalis. All other were categorized as “less good chances”, later also called “bad chances”. As of August 1, 2019, the status “good chances” was taken away from Iraqis, Iranians and Somalis (see above).

91 ECRE, The Anker centres. Implications for asylum, reception and return, p.6, [http://www.asylumineurope.org/sites/default/files/anker\\_centres\\_report.pdf](http://www.asylumineurope.org/sites/default/files/anker_centres_report.pdf)

92 Bundesländer verweigern Seehofer die Unterstützung, <https://www.zeit.de/politik/deutschland/2018-05/ankerzentren-bundeslaender-unterstuetzung-verweigerung-horst-seehofer>

93 Einwände gegen geplante Ankerzentren mehren sich, <https://www.dw.com/de/einwaende-gegen-geplante-ankerzentren-mehren-sich/a-43657735>.

94 Bund und Ländern wollen bei großen Asylzentren kooperieren, <https://www.welt.de/politik/deutschland/article184709458/Innenministerkonferenz-Bund-und-Laender-wollen-bei-grossen-Asylzentren-kooperieren.html>

95 Wolfgang Wittl, Bayern-BAMF bleibt umstritten, in: *Süddeutsche Zeitung* 274, 30 July 2019; Ankerzentren in der Kritik, in: *Süddeutsche Zeitung* 174, 30 July 2019.

96 The centre in Donauwörth accommodated asylum seekers from Turkey, along with Nigerians and Gambians. In summer 2019, the Turkish nationals were split between two groups: 414 Kurds who had fled to Germany since the new outbreak of Turkish-Kurdish conflicts in 2015, and 557 Gülen supporters. Problems arose because the Kurds identified the Gülen activists as their suppressors before the attempted coup in 2016 when the Gülen activists themselves had become victims. Mistrust grew on the Kurdish side, as most of their applications were denied, whereas most of the Gülen followers got asylum. The applicants were waiting for court decisions in the Anker centre over years, and tensions grew. Established Gülen activists from outside the camp helped their supporters, and the police were called in to clear clashes. The camp authorities as well as the Catholic counselling agency were not aware of the tensions before they erupted. Holding opposed groups of Turkish nationals in the camp over months created an “explosive situation” (Stefanie Schöne, *Wie der Konflikt zwischen Kurden und Gülen-Anhängern nach Donauwörth kam*, <https://www.sueddeutsche.de/bayern/donauwoerth-ankerzentrum-guelen-kurden-1.4485036-2>).

This is not good”<sup>97</sup>.

Most *Länder* had foreseen such difficulties, and did not establish Anker centres. On the other hand, the federal government did not implement the coalition agreement to set up an “independent and comprehensive asylum process counselling” (Asylverfahrensberatung). Instead, BAMF now itself provides counselling, along with charities.

#### 4. Counselling in the asylum decision process

Several *Länder* had offered free independent counselling for asylum seekers early on, and Rhineland-Palatinate reported that the numbers of voluntary return were the highest there, particularly because many applicants from the Balkans understood early that they would not get asylum, and accepted support grants to return. In 2016, the discussion about independent counselling intensified, it was controversial in the Bund-Länder working group on asylum.<sup>98</sup> The Bertelsmann Stiftung published reports about the asylum systems in Sweden, Switzerland and the Netherlands, all with special emphasis on legal aid during the asylum procedure and its positive effects on the quality of decisions.<sup>99</sup> In 2017, BAMF conducted a three-month pilot project with independent counselling by welfare organizations to explain the asylum process to the clients, and prepare and accompany them through the decision-making process. Jutta Cordt, BAMF president at that time, announced the project in an interview.<sup>100</sup> The pilot

project was evaluated internally, with extremely positive results. The report says that the quality of decisions improved, applicants contributed better, e.g. presenting more documents. Facts became clearer. Five people had withdrawn their applications when they understood that they did not have a chance. Deciders were satisfied as the process could be conducted easier, and applicants said that they understood much better what was happening. Despite these surprisingly positive results, BAMF did not publish the report but kept it confidential. It was made public by a NGO.<sup>101</sup> At the end of 2017, the Ministry of the Interior in a “political decision” decided to take counselling in their own hands.<sup>102</sup> Moreover, the Ministry declined to discuss the results of the Dutch and Swiss experiences in parliament.<sup>103</sup> Still, the coalition treaty of 2018 envisaged independent counselling for all asylum seekers, as part of a compromise which included the Anker centres.<sup>104</sup>

Instead, BAMF itself began to provide information in two steps in Anker centres. BAMF communicated that all asylum applicants would receive a general information about the asylum process in groups, by special BAMF personnel, which is “not connected to the asylum sector” (Asylbereich) and does not decide cases. “If needed”, BAMF offers “additional asylum process counselling (Asylverfahrensberatung) individually during the whole asylum process..., subsidiary and parallel to other institutions”.<sup>105</sup> This does not include legal advice.<sup>106</sup> The European church NGO ECRE

97 Kurt Gribl: Ankerzentrum Donauwörth hat nicht funktioniert, <https://www.br.de/nachrichten/bayern/kurt-gribl-ankerzentrum-donauwoerth-hat-nicht-funktioniert>, RUBaiAkThe author asked the federal and the Bavarian ministry of the interior for a comment about this statement of a prominent CSU politician. The federal Ministry answered on 12 August 2019 that the ministry did not comment the statement, and “only Land Bavaria is responsible for conducting the centre”. The Bavarian ministry wrote on 8 August 2019: “Contrary to the reports that you quote, the goals (of the Anker centres) have been successfully accomplished.” And: “Anker Schwaben consists of an administration centre in Augsburg and several dependencies in region of Schwaben.”

98 Personal information.

99 Bernd Parusel, Sweden’s Asylum Procedures, Gütersloh 2016; Dietrich Thränhardt, Speed and Quality – What Germany Can Learn from Switzerland’s Asylum Procedure, Gütersloh 2016; Dietrich Thränhardt, Asylum Procedures in the Netherlands, Gütersloh 2016.

100 Kastner, Bernd 2017a: „Ich wusste, auf was ich mich einlasse“. Das Asyl-Bundesamt galt über Jahre als zu langsam, heute wehrt sich Präsidentin Jutta Cordt gegen den Vorwurf, die Verfahren gingen zu schnell – und auf Kosten der Flüchtlinge, in: Süddeutsche Zeitung 273, 28.11.2017.

101 BAMF 2017: Evaluation des Pilotprojektes «Asylverfahrensberatung». In Zusammenarbeit mit UNHCR Deutschland Unveröffentlichter Forschungsbericht. NUR FÜR DEN INTERNEN GEBRAUCH. Entwurf vom 25.09.2017. [https://www.nds-fluerat.org/wp-content/uploads/2018/05/FB\\_Asylverfahrensberatung\\_Entwurf170925.pdf](https://www.nds-fluerat.org/wp-content/uploads/2018/05/FB_Asylverfahrensberatung_Entwurf170925.pdf)

102 That the decision had been taken at the end of 2017 became known to the public only in 2020, when the government answered the parliamentary Inquiry Die Linke, BT-Dr. 1919535, 20.5.2020, p.12.

103 See Inquiry Die Linke, BT-Dr. 19/7552, p. 29, Evaluation-des-Pilotprojekts-Asylverfahrensberatung.

104 „Eine unabhängige und flächendeckende Asylverfahrensberatung ist zu gewährleisten.“ (Independent and country-wide asylum process counselling is to be guaranteed, Ein neuer Aufbruch 2018, p. 107).

105 BAMF, Ankunftscentren und Anker-Einrichtungen. Asylverfahrensberatung, <http://www.bamf.de/DE/Fluechtlingsschutz/Ankunftscentren/ankunftscentren-node.html>. Asylgesetz § 12a Asylverfahrensberatung, [https://www.gesetze-im-internet.de/asylvfg\\_1992/](https://www.gesetze-im-internet.de/asylvfg_1992/)

106 Ina Krauss 2019.



criticized the situation, noting that many asylum seekers did not have access to counselling and to legal assistance, because of organizational hurdles and insufficient service provisions.<sup>107</sup> Independent counsellors have been forbidden to enter in asylum centres in Upper Bavaria.<sup>108</sup> In one Bavarian Anker centre, lawyers provided it in a church nearby.<sup>109</sup>

In June 2019, the new system was put into law. It says: “BAMF provides the asylum seekers with voluntary, independent state asylum counselling. This is conducted in two steps. In the first step all asylum seekers are provided with information in group discussions, before they put their applications, how the asylum process is organized, and about possibilities of return. In the second step all asylum seekers in individual talks receive an individual asylum process counselling, conducted by BAMF or by welfare organizations.”<sup>110</sup> The parliament committee for interior affairs, in the statement of grounds, adds: “Individual asylum process counselling can be conducted by BAMF or by welfare organizations, counselling standards being exchanged and further developed between BAMF and welfare organizations. The exchange of standards shall ensure the equal quality of counselling.” Answering detailed questions by Die Linke in parliament, the Ministry of the Interior conceded that BAMF personnel would rotate between decision making and counselling after 6–12 months, that they would not be able to advise asylum seekers about the chances of their case, nor could give them legal advice, tell them how to contact specialized lawyers, or inform them about alternatives to asylum.<sup>111</sup> Thus, the BAMF counselling concept turned out to be rather dysfunctional. Looking back to the pilot project in 2017,

it is particularly puzzling to see that counsellors there were able to reorient asylum applicants early and at little cost for all sides, and that this is not possible now.

BAMF counselling is funded by the federal government, whereas funding of charity counselling is left to the *Länder*. The implementation differs between the *Länder*. BAMF has introduced counselling in all AnKER and in “functionally equivalent” centres. Charities protested, and new legislation excludes charities who obstruct deportations. The EU funding process (AMIF programme) has been delayed, due to “extensive consultations” between BAMF, the Ministry of the Interior and the EU Commission, putting charities in limbo.<sup>112</sup>

The German Red Cross has assembled informations about *Länder* funding for asylum counselling (table 6). Some *Länder* have suspended their programmes, a majority continues to fund the charity counselling, Bavaria excludes procedure counselling, and four *Länder* have coalition agreements to fund counselling but have not or not yet implemented it. The federal government told parliament that they had no information about *Länder* programmes. In the Corona crisis, counselling is partially done via internet but personal contacts are still essential, and continue with precautionary measures.

When we compare the counselling systems between the German speaking countries, Germany operates between the approach in Switzerland where charities are a regular integrated partner in the asylum decision process, and the all-state solution in Austria where the state has created a separate agency for “assistance, support,

107 ECRE 2019, p. 10–12. They recommend: “The institutional independence of actors providing counselling to applicants is indispensable to fair asylum procedures. In addition, counselling should be understood as an individual, tailored consultation with the asylum seeker that cannot be discharged through group information sessions. It is important to highlight in this regard that the valuable contribution of civil society continues to be acknowledged by authorities at the operational level. ECRE therefore recommends the incorporation of free of charge counselling by specialised civil society organisations into the procedure, building on positive experience from the 2017 pilot project run in Gießen, Bonn and Lebach.”

108 The authorities gave the following reasons: The premises were a protected living area, the asylum seekers should calm down (“zur Ruhe kommen”). The independent counsellors protested that they did not enter the asylum seekers’ rooms unannounced, but the authorities, and that these reasons given were not the real ones. They announced a lawsuit against the exclusion. (Kastner, Bernd/ Rahmsdorf, Inga 2018: Ausgesperrt. Rechtsberater dürfen oberbayerischen Asylheime nicht mehr betreten Kritiker befürchten: Das könnte bald überall gelten, in: Süddeutsche Zeitung 33, 9.2.2018).

109 Ina Krauss, Kein Rechtsanwalt.

110 Entwurf eines Zweiten Gesetzes zur besseren Durchsetzung der Ausreisepflicht (Second law for the better enforcement of the obligation to depart). Deutscher Bundestag, Drucksache 19/10706, p. 8.

111 Inquiry Die Linke, BT-Dr. 19/19535, p. 17.

112 Inquiry Die Linke, BT-Dr. 19/19535, p. 9.

TABLE 5 Counselling by BAMF, November 2020

BAMF COUNSELLING	LAND/CITY
steps 1 + 2	Bavaria: Augsburg, Bamberg, Deggendorf, Manching, München, Regensburg, Schweinfurt, Zirndorf
	Baden-Württemberg: Heidelberg
	Berlin: Berlin
	Brandenburg: Eisenhüttenstadt
	Bremen: Bremen
	Hamburg: Hamburg
	Hessen: Gießen, Neustadt
	Mecklenburg-Vorpommern: Nostorf-Horst, Schwerin
	Niedersachsen: Bad Fallingb., Bramsche
	NRW: Bielefeld, Bochum, Bonn, Dortmund, Düsseldorf, Essen, Mönchengladbach
	Rheinland-Pfalz: Speyer, Trier
	Saarland: Lebach
	Sachsen: Chemnitz, Dresden, Leipzig
	Sachsen-Anhalt: Halberstadt
	Thüringen: Jena, Suhl
step 2 only	Baden-Württemberg: Ellwangen, Freiburg, Sigmaringen, Karlsruhe
	Hessen: Büdingen
	Niedersachsen: Braunschweig, Friedland, Oldenburg
	Schleswig-Holstein: Neumünster

Source: BT-Drs. 19/25337, p. 3.

accommodation, legal advice, return counselling, translation services and human rights observation".<sup>113</sup> Thus Austria has two state agencies with separate personnel, while Germany has given BAMF a double role, including decisions and counselling. Compared to the Swiss system, which works like an integrated clockwork and produces 85 per cent of the decisions in fifty days<sup>114</sup>, the interaction between the asylum decision making, counselling and legal advice is rather disorganized, even when the costs are high.

## 5. Staffing and internal cohesion at BAMF

BAMF had gotten more personnel in the asylum crisis of 1992/93. However, when the numbers of asylum seekers decreased successively in the following years, staff numbers were cut. Since 2003, application numbers rose again, and a backlog was built up year by year. BAMF president Schmidt asked for more staff in 2013–2015 but the Minister of the Interior did not answer his requests. Nor did it help that the *Länder* called for faster asylum procedures and were successful in putting a pledge for a faster asylum process (no longer than three months) into the federal coalition agreement of 2013.

113 In German: "Bundesagentur für Betreuungs- und Unterstützungsleistungen (BBU) mit den Tätigkeitsfeldern Grundversorgung, Rechtsberatung, Rückkehrberatung, Dolmetschleistungen, Menschenrechtsbeobachtung" (Die neue Volkspartei. Die Grünen – Die Grünen, die Grüne Alternative, Aus Verantwortung für Österreich. Regierungsprogramm 2020 – 2024., p.197).

114 Thränhardt, Dietrich 2019: Ein funktionierendes Asylverfahrenssystem schafft Vertrauen. Was Deutschland von der Schweiz für die Lösung der Qualitätsprobleme beim Asyl lernen kann, Berlin: Böll Foundation.

TABLE 6 Counselling by welfare organizations: *Länder* regulations (November 2020)

REGULATION	LAND
Counselling programme, including procedure preparation	Baden-Württemberg
	Berlin
	Bremen
	Mecklenburg-Vorpommern
	Lower Saxony
	North Rhine Westphalia: 20 % cut in 2021
	Rhineland-Palatinate
	Saxony-Anhalt
	Thüringen
Counselling, limited	Bavaria: no procedure preparation
No counselling programme	Hamburg
	Saarland
Coalition agreement for counselling programme, not (yet) implemented	Brandenburg: counselling agreed, 4 November 2020
	Hessen: coalition treaty, 23 December 2018
	Saxony: coalition treaty, 2019
	Schleswig-Holstein, coalition treaty, 2017

Source: German Red Cross 2021.

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It was only in May 2015, at a meeting of the Chancellor with the *Länder* Minister Presidents, that a decision was taken to recruit more personnel. A few months later, BAMF President Schmidt resigned, and Frank-Jürgen Weise, the President of the Federal Employment Agency (Bundesagentur für Arbeit) was commissioned to reorganize BAMF. Backed by the chancellor, he was able to triple staff numbers from 3,000 to 9,000, some of them delegated from other agencies for some months. Relying on experts from the labour agency and McKinsey, he reformed and digitalized the procedures, introduced Fordist work arrangements, to enable BAMF to produce as many asylum decisions as possible. However, the new staff were poorly trained, 15 per cent did not receive

relevant training at all.<sup>115</sup> Since asylum hearings and decisions require complex informations about countries of origin, asylum law and humanitarian standards, deficiencies could not easily be avoided. Employees at BAMF complained about an immense pressure in their workloads. After interviews with many BAMF officers, an experienced economist commented that they “work for statistics”, meaning that there was a high pressure to finish asylum cases, regardless of the quality of the decisions.<sup>116</sup> On the other hand, *Süddeutsche Zeitung* reported about BAMF offices without activity, preparing for newcomers at the Austrian border.<sup>117</sup> The BAMF personnel council won court cases against the BAMF leadership, arguing about quality problems and participation rights.<sup>118</sup>

115 Loer, Wigbert 2018: Sündenböcke vom Dienst. Das Bundesamt für Migration und Flüchtlinge ist überfordert. Gerichte kassieren Entscheidungen. Union und SPD fordern Qualität. Recherchen in einer Behörde, die sich politisch benutzt fühlt, in: *Stern* 18.1.2018, 92-95; Alexander, 122.

116 Dummer, Niklas 2018: Eine Behörde arbeitet für die Statistik, in: *Wirtschaftswoche*, 4.2.2018,; See also <https://www.rtl.de/cms/bayern-bamf-will-dreijährige-abschieben-ohne-ihre-familie-4194152.html> [https://www.focus.de/politik/deutschland/migration-spd-verlangt-in-bamf-affaere-aufklaerung-von-merkel\\_id\\_8993166.html](https://www.focus.de/politik/deutschland/migration-spd-verlangt-in-bamf-affaere-aufklaerung-von-merkel_id_8993166.html)

117 Neumaier, Rudolf 2018: Ja, wo bleiben sie denn? Pjöngjang? Freilassung? Unter strengster Bewachung hat sich das Bundesamt für Migration und Flüchtlinge an der österreichischen Grenze in einer ehemaligen Möbelfabrik eingerichtet. Nur: Was passiert dort gerade? Ein Recherche-Erlebnis, in *Süddeutsche Zeitung* 30, 6.2.2018, p. 9

118 The president of the central BAMF personnel council, Scheinhorst, argued that BAMF interim leader Weise had pressured BAMF deciders to put “speediness over carefulness and quality” (Schnelligkeit über Sorgfalt und Qualität). “The effort needed now to correct the cases shows that the pressure in these times was not effective (Der jetzt für Überprüfungen erforderliche Aufwand zeige, dass der damalige Druck nichts gebracht habe). Weise countered that the personnel council wanted to “return to old structures” and that his crisis management had given BAMF a chance to cope with the challenges (Focus-Online 2018, Bamf-Mitarbeiter: Druck erhöhte Fehlerrate bei Asylverfahren, [https://www.focus.de/politik/deutschland/migration-spd-verlangt-in-bamf-affaere-aufklaerung-von-merkel\\_id\\_8993166.html](https://www.focus.de/politik/deutschland/migration-spd-verlangt-in-bamf-affaere-aufklaerung-von-merkel_id_8993166.html)).



Weise left at the end of 2016. Under his successor Jutta Cordt, who also came from the Labour agency, the internal problems continued. They developed into public scandals when a German army officer was accepted as refugee in 2017, the leader of the BAMF Bremen office was accused of producing thousands of incorrect decisions, and the BAMF leadership was criticized for deficient oversight. Despite the personnel shortages encountered just two years prior, the number of people working at BAMF was reduced from 9000 to 7000 during the year 2017,<sup>119</sup> as officers delegated from other agencies returned to their regular posts. BAMF did not renew contracts with experienced personnel and recruited new unexperienced people.<sup>120</sup> Clearly, this would not improve the quality of the employees' work. Three hundred BAMF employees filed a suit because their contracts were not continued.<sup>121</sup> BAMF worked with fixed-term contracts (*Zeitverträge*) and did not put more personnel into long-term contracts. In a tense and competitive labour market, this was not the way to get the best and the brightest people into the agency. Frank-Jürgen Weise offered the idea of a kind of reserve system between BAMF and other agencies, to provide more personnel in tense situations and let them go back to the other agencies when there was less to do (personal information). The idea reminds of the reserve system in armies. However, it was not taken up by the Ministry of the Interior.

Hans-Eckhard Sommer, BAMF president from June 2018 on, settled the quarrels with the personnel council and opted for more permanent positions. He pleaded for more training and better decisions. The evidence, however, shows ongoing

problems with the quality of the decisions (see below). Whereas the "welcome culture" of 2015 motivated many officials to help out at BAMF, the government stated recruitment problems in 2019.<sup>122</sup> The multitude of reports about problems and scandals at BAMF in 2016–18 were certainly not helpful for recruitment efforts. At May 1. 2019, BAMF had 8,000 full positions (*Dauerstellen*), of which 6,647.3 full positions ("*Vollzeitäquivalente*") were staffed. 800 more positions were tendered for the year 2019.<sup>123</sup> In February 2020, BAMF had 6980 full positions manned, of which 1998 were working at asylum applications, 1174 at Dublin cases, 223,5 in quality management, 830,3 at repeal cases and 370,6 on law suits.<sup>124</sup> The government told parliament that they could not foresee further staff developments.

Comparing the Weise/Cordt and the Sommer leaderships, it is evident that their approaches differed strongly. Weise and Cordt followed a management style, wanted fast solutions, and tried to use personnel cost-effectively, relied on advisers like McKinsey, and were not shy of activating and shaking-up the agency. Sommer returned to a government official style, working with his staff in the tradition of German bureaucracy (*Behörde*), but with a clear agenda of closing the gates and putting legal routine above efficiency. Both approaches, however, did not succeed in organizing the asylum decision process faster and better. Both did not reach the declared goal of achieving decisions in three months on average, and both suffered astounding percentages of negative verdicts at the courts (see below).

119 Reimann, Anna 2017: Asyl-Bilanz 2017. Im ganz normalen Krisenmodus, <http://www.spiegel.de/politik/deutschland/fluechtlinge-so-war-2017-und-so-wird-2018-a-1184058.html>

120 Loer, Wigbert 2018: Sündenböcke vom Dienst. Das Bundesamt für Migration und Flüchtlinge ist überfordert. Gerichte kassieren Entscheidungen. Union und SPD fordern Qualität. Recherchen in einer Behörde, die sich politisch benutzt fühlt, in: *Stern* 18.1.2018, 92-95

121 Like in a burning glass, a court case between BAMF and a dismissed officer detailed the systemic problems at the institution in 2016/17, the reasons for the low quality of the asylum processes, and the demotivation of the staff. The officer was recruited in February 2016. In autumn 2016, he should have gotten a three weeks training course. This was cancelled, as well as another training course in February 2017. In autumn 2017, a further course was delayed. Nevertheless, the officer was highly praised by his supervisor as very engaged and service-oriented. His "exemplary performance" was lauded in autumn 2016, he got a special award of 1800 Euros. However, after two years working as a decider, his contract was not renewed. The reason given was that he had not completed the basic modules for material law, decision formulation, and interview techniques. He would be replaced by a fresh and untrained officer. *Süddeutsche Zeitung* commented that the case demonstrated the gap between the political promises and the authority's human resources management (Kastner 2018b).

122 Entwurf eines zweiten Gesetzes zur besseren Durchsetzung der Ausreisepflicht (draft of the second law for a better implementation of departure obligation, BT-Dr. 19/10706 19. Wahlperiode 05.06.2019, p. 2, <http://dip21.bundestag.de/dip21/btd/19/107/1910706.pdf>

123 Inquiry Die Linke, BT-Dr. 19/11001, p. 50. <http://www.eabernlin.de/nachlese/chronologisch-nach-jahren/2019/rueckblick-fluechtlings-schutzsymposium/sommeraktuelle-entwicklungen-im-bamf.pdf>

124 Inquiry Die Linke, BT-Dr. 19/18498, p. 66. The figures are for "full time equivalents". The figures do not add up as BAMF has responsibilities outside the asylum.

## 6. Asylum decision making in 2019 and 2020

### 1. Hearings and decisions

Today, the situation can be summarised as follows: Once asylum seekers are registered and received in the appropriate reception centre, they must file their application for protection with the BAMF branch office responsible for that centre. If it is found that another country has the responsibility for processing the application according to the Dublin system, the asylum seeker has one week to dispute the decision. If Germany is responsible, the applicant is interviewed by BAMF personnel, and interpretation is provided, if necessary. Applicants are entitled to review a transcript of the interview and add to it if they wish. BAMF then proceeds and either rejects the application or recognizes the applicant's right to asylum or grant some other form of protection, like subsidiary protection or national deportation prohibition. For BAMF, the legal definition of asylum grounds is binding, including state and non-state persecution, gender and sexual orientation related reasons. BAMF provides background information about the country of origin, and the jurisdiction of the courts.

Each asylum case is determined by a decider ("Entscheider") on an individual basis. Asylum seekers are invited to a hearing ("Anhörung"), to inform about their individual case, their life in their home country, their plight and fears and their reasons for applying for asylum, and the details of their journey to Germany. The hearing is private but an attorney and a representative of the UNHR are permitted. The BAMF officer shall ask questions, to clarify unclear points, to acquire sufficient information and to verify it. The asylum seekers are invited to provide evidence, including documents, photos, reports, or medical certificates. A record of the hearing is retranslated into the language of the asylum seeker, to enable them

to add further information or clarifications. At the end, the protocol is signed by the asylum seeker.<sup>125</sup>

Beyond the hearing, the officers can further try to get information through the BAMF information centre for asylum and migration and the data system MILO (Migrations-InfoLogistik) where data on world refugee and migration trends is on offer. Moreover, they can inquire the foreign office for individual problems, start language and text analyses or medical or other expertise. BAMF gives them guiding principles (Leitsätze) for the most important countries of origin.<sup>126</sup>

On 22 March 2018, the Federal Government, answering a parliament inquiry, announced that BAMF was progressively returning to the unity of hearing and deciding, with the same officer responsible.<sup>127</sup> They said that 11.1 % of the decisions were taken in a decision centre in the last quarter of 2017, by officers who did not know the client. In 2019, 4.0 % of the cases were still decided in "decision centres", separated from the hearing.<sup>128</sup> They added that that decision centres were successively given other tasks, in the context of Widerrufsprüfverfahren (repeal procedure investigations).<sup>129</sup> In May 2019, the expert council for migration and integration wrote in its yearly report that there were numerous reports about hearings where doubts and contradictions had not been cleared, the officers had not checked, and rejections had been based on unsettled facts. They added that high quality translations were a necessary condition for a fair asylum process.<sup>130</sup> BAMF did not react to this and other criticisms.

In 2019, BAMF president Sommer proudly declared that new asylum applications are dealt within 3.1 months, and are even faster in Anker centres. However, the average asylum procedure time rose to 8.3 in 2020.<sup>131</sup> We have no systematic information about the rest of the cases but only individual

125 BAMF 2019: <http://www.bamf.de/DE/Fluechtlingsschutz/AblaufAsylv/PersoennlicheAnhoerung/persoennliche-anhoerung-node.html>. The basis is the asylum law, § 24 (1).

126 BAMF 2019: <http://www.bamf.de/DE/Fluechtlingsschutz/AblaufAsylv/Entscheidung/entscheidung-node.html>

127 BT-D. 19/1371, p. 70.

128 BT-Dr. 19/18498, p. 67.

129 BT-Dr. 19/11001, p. 51, <http://dip21.bundestag.de/dip21/btd/19/110/1911001.pdf>

130 SVR 2019, p. 65.

131 BAMF, Aktuelle Zahlen May 2020, p. 13.

insights, like the case of an Ethiopian women who is waiting for her asylum decision since 2014.<sup>132</sup> In effect, cases like this mean that a *de facto* immigration takes place, even when the status remains fragile. The number of unresolved cases was 52,056 on 31 December 2020, most of them Syrians (35.0 %), Afghans (31.7 %), and Iraqis (10.5 %).<sup>133</sup> Since the German government argued that six months was “too long” in the crisis situation in 2016<sup>134</sup> and changed laws and regulations to fasten asylum decisions, the situation in 2020 must be seen as a failure. It can no longer be attributed to the asylum crisis of 2015 but to organizational priorities that are set, particularly with respect to revisions and Dublin cases. If we consider that twenty per cent of the decisions deal with babies born to refugees, easily to decide, the duration of 8.3 months in 2020 is even more problematic. Today, BAMF has sufficient personnel, at about the same level as the Swiss institution SEM, the size of the countries taken into account.

## 2. Family members and children born in Germany

In the first three months of 2019, BAMF held 32,957 hearings, but decided 59,233 asylum applications.<sup>135</sup> The gap can be explained by the rule about family members of people who have applied for asylum, and particularly children born to asylum seekers. They are automatically notified to BAMF, and an asylum application is made for them *ex officio*, under the terms of the relative who had already applied for asylum.<sup>136</sup> In 2018, 32,300 children were born to refugees and asylum seekers, and 31,417 in 2019. For these children, *ex officio* applications for asylum were started at BAMF, and they were included into the asylum application statistics. Almost half of all registered

asylum seekers are minors. In the whole year 2019, 35,544 of 42,861 recognized refugees (full recognition, Geneva convention) were family members, of which 18,000 were children born to refugees in Germany. These figures show that family asylum is more and more important. The percentage of family members at all positive asylum decisions (Geneva convention) was only 2.2 % in 2015 and 4.7 % in 2016, but 24.5 % in 2017, 67.1 % in 2018, and 80.6 % in 2019.<sup>137</sup> Thus, BAMF deals more and more with people who have been admitted to the country by German authorities before.

## 3. The “asylum lottery” in Germany

For years, there was criticism about the “asylum lottery”, not only in the EU but also inside Germany.<sup>138</sup> BAMF provided statistics on the *Länder* level. The percentage of recognitions for the same nationalities differed starkly between the *Länder*, even when *Länder* governments had no influence on BAMF decisions. Several scandals intensified the discussion.<sup>139</sup> Many authors were critical of the credibility of the decision system because of these unexplainable divergencies.<sup>140</sup>

How grave the divergencies were, came up only through a parliamentary inquiry in 2018, with detailed figures for 2017. Afghan asylum seekers’ protection rates differed between 32,4 and 65,2 %, Iraqis between 50,7 and 96,0 %, Iranians between 34,7 and 85,7 %, Somalis between 68,7 and 92,5 %, Turks between 11,9 and 57,3 %, and Ethiopians between 11,8 and 73,9 %.<sup>141</sup> The Ministry of the Interior explained that BAMF issued central instructions and informations about the countries of origin which allow a uniform juridical assessment of cases. Moreover, they argued that they

132 <https://www.migazin.de/2020/06/18/lage-gefluechteten-corona-krise/>

133 BAMF, Aktuelle Zahlen, May 2020, p. 13.

134 Explanatory statement for the data exchange improvement law, Deutscher Bundestag, Drucksache 18/7203, 6. 1.2016.

135 Deutscher Bundestag, Drucksache 19/11001, p. 47; BAMF, Zahlen zu Asyl, 15 April 2019, p. 11.

136 Asylbeschleunigungsgesetz vom 20. Oktober 2015, [https://enev-online.com/enev\\_2014\\_volltext/asylverfahrensbeschleunigungsgesetz\\_2015\\_verkuendung\\_bundesgesetzblatt\\_23.10.2015\\_leseversion.pdf](https://enev-online.com/enev_2014_volltext/asylverfahrensbeschleunigungsgesetz_2015_verkuendung_bundesgesetzblatt_23.10.2015_leseversion.pdf)

137 Calculated by Thomas Hohlfeld, parliamentary consultant for migration at Die Linke, based on BT-Dr. 18/7625, 18/11262, 19/1371, 19/8701, 19/17266.

138 Riedel/Schneider 2017.

139 SVR 2019, p. 64.

140 Mantel, Johanna 2017: Asylverfahren in Deutschland – ein Glücksspiel? In: Caritas-Jahrbuch, Freiburg, 116-125; Memorandum 2016: Amnesty international/ AWO/ AG Ausländer- und Asylrecht DAV/ Caritas/ Der Paritätische/Diakonie/ NRV/ Pro Asyl/ RAV/ RBK eds., Memorandum zur derzeitigen Situation des Asylverfahrens, 30.11.2016.

141 BT-Dr. 19/1371, p. 13-16.

TABLE 7 Asylum decisions of BAMF organisation units in 2018:  
Highest and lowest protection quotas for selected nationalities

ORGANISATION UNIT	PROTECTION QUOTA	ORGANISATION UNIT	PROTECTION QUOTA
<b>Afghanistan</b>			
Ingelheim/Bingen	85.1 %	Mannheim	34.7 %
Jena/Hermsdorf	81.3 %	Zirndorf	32.9 %
<b>Iraq</b>			
Augsburg	75.0 %	Schweinfurt	11.8 %
Bremen	75.3 %	Eisenhüttenstadt	4.7 %
<b>Iran</b>			
Ingelheim/Bingen	82.6 %	Eisenhüttenstadt	11.6 %
Nostorf-Horst	59.1 %	Bamberg	6.7 %
<b>Turkey</b>			
Essen	78.0 %	Berlin	10.8 %
Suhl	67.2 %	Bremen	8.7 %

Source: Deutscher Bundestag, Drucksache 19/7338, p. 15-22. Important countries of origin. Data without formal rejections (e.g. Dublin cases), Organisation units with more than 80 cases. Own aggregation of data.

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offer professional training and legal guidance, and invite the personnel for “leadership dialogues”.<sup>142</sup>

A year later, the opposition asked for the recognition rates in the BAMF working units, and the public came to know that they were even more divergent than had been assumed (table 7). Syrians had extremely high approval rates, and thus had no relevant discrepancies. On the other hand, Albanians and other Balkan nationals had very low rates, and thus again not much discrepancy. With other groups, the success rates differed strongly, and sometimes extremely.

With low numbers of new arrivals in 2019 and 2020, much more staff and an organizational consolidation, BAMF told parliament that they were working with their local units, particularly looking at the outliers at the high end and low end.<sup>143</sup> Still, however, they had to report enormous discrepancies in the figures for 2019 in the next Bundestag inquiry (table 8).

The BAMF research branch explained the divergences with different “microclimates” in the organization units, institutional factors at the place, impact of diverging jurisdiction, different complexions of personnel and local coverage of information and interpretation of guiding principles. The government, in their answer to the parliamentary inquiry, dismissed these explanations as “hypothetical” and added that they had no new insights.<sup>144</sup> Reinhard Marx, an experienced asylum lawyer practicing since 1983, explained the situation from his perspective in a hearing of the parliament committee for home affairs in 2019, arguing that the deciders were not sufficiently trained, many had little knowledge of the country of origin of the refugee because they got cases over many countries, some complained to him that they did not have sufficient time to prepare, and some showed a low level of interest in the cases. His statement was not disputed in the hearing.<sup>145</sup>

<sup>142</sup> BT-Dr. 19/1371 2018, p. 17 f.

<sup>143</sup> See the discussion in BT-Dr. 19/18498.

<sup>144</sup> BT-Dr. 19/ 6786, p. 24.

<sup>145</sup> Wortprotokoll der 51. Sitzung, Ausschuss für Inneres und Heimat Berlin, 6. Mai 2019, p. 10-19.

TABLE 8 Asylum decisions of BAMF organisation units in 2019:  
Highest and lowest protection quotas for selected nationalities

ORGANISATION UNIT	PROTECTION QUOTA	ORGANISATION UNIT	PROTECTION QUOTA
<b>Afghanistan</b>			
München	84.6 %	Manching	42.3 %
Bonn-West	82.2 %	Berlin	32.5 %
<b>Iraq</b>			
Augsburg	91.9 %	Heidelberg	13.9 %
München	82.2 %	Trier	7.6 %
<b>Iran</b>			
Ingelheim/Bingen	67.4 %	Bielefeld	12.9 %
Nostorf-Horst	56.1 %	Berlin AZ	8.0 %
<b>Turkey</b>			
Mönchengladbach	78.0 %	Berlin AZ	25.2 %
Dortmund	67.2 %	Chemnitz	25.1 %

Source: Deutscher Bundestag, Drucksache 19/18498, p. 12-17. Important countries of origin.  
Data without formal rejections (e.g. Dublin cases), Organisation units with more than 80 cases. Own aggregation of data.

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#### 4. Repeal procedures

Reacting to the scandal about a German army officer successfully posing as a Syrian asylum seeker and the pseudo-scandal about the Bremen BAMF office accused of illegitimately granting asylum in thousands of cases, the Ministry of the Interior ordered BAMF to intensify repeal procedures. Regular revisions take place after

three years (Art. 73 AsylG). In 2018, 192,664 revision proceedings were opened, but only in 980 cases (one per cent), asylum was withdrawn.<sup>146</sup> In 2018, the asylum law was changed to intensify the repeal procedures, and oblige refugees to cooperate actively in the process (Mitwirkungspflicht).<sup>147</sup> Revisions are getting more and more important at BAMF, and President Sommer referred to his BAMF in a speech as

TABLE 9 Build-up of revision cases 2017-2020

YEAR	REVISION CASES OPENED	CASES DECIDED	QUOTA OF REVISIONS	PENDING
2017	72,106	2,527	16.7 %	76,625
2018	192,664	85,052	1.26 %	182,332
2019	205,285	170,406	3.3 %	215,618
2020	187,565	252,940	3.4 %	148,873

Source: BAMF. Aktuelle Zahlen, December 2020, p. 14.

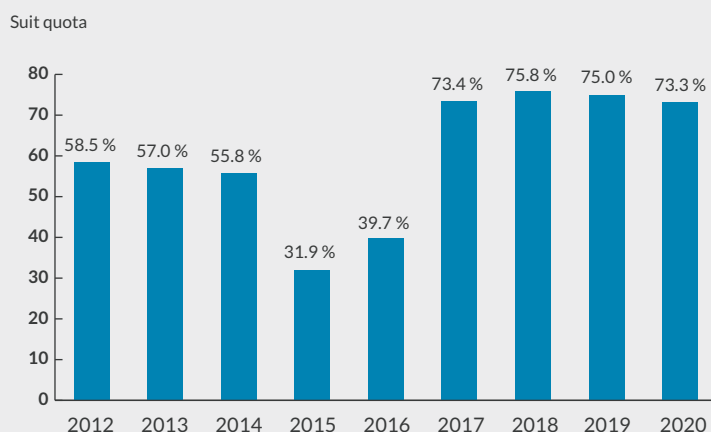
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<sup>146</sup> Deutscher Bundestag, Drucksache 19/7818, p.3.

<sup>147</sup> Entwurf eines Dritten Gesetzes zur Änderung des Asylgesetzes, BT-Dr.19/4456.

a „Widerrufsbehörde“<sup>148</sup> (revision agency). Until 2021, he foresees 700,000 revision proceedings.<sup>149</sup> In May 2019, 785 BAMF officers were working on revision examinations.<sup>150</sup> Nevertheless, BAMF is building a new mountain of pending revision cases (table 10). 8.7. percent of repeal decisions were taken at decision centres.<sup>151</sup>

FIGURE 4 Lawsuits against negative BAMF decisions, percentages



Source: BAMF, Gerichtsstatistik 2020.

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## D. Adjudication

### 1. First instance decisions

If an application is rejected by BAMF, asylum seekers have the right to appeal the decision at the administrative court (Verwaltungsgericht) in the respective district within two weeks.<sup>152</sup> The BAMF decision is suspended until the court ruling. A single judge decides, except when a case has special legal or factual difficulties or fundamental importance. The expert council reports that as a result of the “insecurities” in the BAMF asylum decisions, more and more asylum seekers go to court.<sup>153</sup> Indeed, this can be demonstrated statistically. Three of four negative decisions went to court in 2018 and 2019, much more than in previous years. There are no court fees at asylum cases but the clients have to pay the lawyers. If the case is won, BAMF has to carry the costs. Legal aid assistance can be awarded but eighty per cent of applicants pay the lawyer’s fees themselves.<sup>154</sup>

Many lawsuits are successful, and this creates an incentive to sue (tables 10 and 11).

TABLE 10 Abrogated BAMF asylum negative decisions in 2018

CITIZENSHIP	ALL REPEALS	COURT DECISIONS	BAMF REPEAL DECISION
Syria	12,381	11,055	1,336
Afghanistan	11,904	10,507	1,397
Iraq	1,575	1,397	178
Iran	1,478	1,302	176
Pakistan	862	692	170
All	34,008	29,215	4,786

Source: BT-Dr. 19/7338, p. 57.

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148 Hans-Eckhard Sommer, Aktuelle Entwicklungen im Bundesamt für Migration und Flüchtlinge, <http://www.eaberlin.de/nachlese/chronologisch-nach-jahren/2019/rueckblick-fluechtlingsschutzsymposium/sommeraktuelle-entwicklungen-im-bamf.pdf>

149 [www.eaberlin.de/nachlese/chronologisch-nach-jahren/2019/rueckblick-fluechtlingsschutzsymposium/sommeraktuelle-entwicklungen-im-bamf.pdf](http://www.eaberlin.de/nachlese/chronologisch-nach-jahren/2019/rueckblick-fluechtlingsschutzsymposium/sommeraktuelle-entwicklungen-im-bamf.pdf)

150 Deutscher Bundestag, Drucksache 19/11001.

151 BT-Dr. 19/18498, p. 67.

152 Asylgesetz, § 74. Missing the time limit prohibits a lawsuit. Evidence can be attached with four weeks. New evidence can be brought in any time.

153 SVR 2019, p. 65.

154 Regional statistic for Baden-Württemberg (Wein, Asylverfahren. Ausgaben für Prozesskostenhilfe steigen, in: Stuttgarter Nachrichten, 15. Feb. 2019.

TABLE 11 Abrogated BAMF asylum negative decisions in 2019

CITIZENSHIP	ALL REPEALS	COURT DECISIONS	BAMF REPEAL DECISION
Afghanistan	9,761	8,875	886
Syria	5,689	4,600	1,089
Iraq	2,277	2,032	246
Iran	1,763	1,557	206
Pakistan	923	794	129
All	26,012	22,181	3,831

Source: BT-Dr. 19/18498, p. 57.

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## 2. Appeals at higher administrative, Constitutional and European Courts

Appeals against decisions of the administrative courts are only possible if the case is of fundamental legal importance, the judgement deviates from judgements of the higher courts, or a procedural fault is addressed.<sup>155</sup> Complaints against court decisions are not possible.<sup>156</sup> Since revisions to the higher administrative courts are limited, the Constitutional Court has got special importance. It can be approached by lower courts and by individuals. However, the Constitutional Court selects the law suits it wishes to accept. In 2018, the Court has

decided 272 asylum law suits, and 13 urgent cases.<sup>157</sup> Compared to the case load of the lower courts that is not much, but the decisions are very influential since they are followed by the lower courts.

In some cases, the Constitutional Court has prevented deportations at the last minute. It can go in every detail of administrative or court proceedings, and is effective and has a high reputation, not only among the law community but also in the public opinion.<sup>160</sup> Moreover, asylum seekers can appeal to the European Court of Human Rights. Both courts have been invoked by German courts, to interpret European and Human Rights

### BOX 3 Family reunification for subsidiary protection holders

A special case is the right to family reunification for refugees with subsidiary protection. It was introduced in 2015. One year later, in March 2016, it was suspended for two years. At the end of the suspension time it was limited to one thousand cases per year. Since expectations had been raised, and families had planned flight strategies, this led to diverging decisions at the administrative courts, revisions to the higher administrative courts, and is unsolved up to now. Decisions for subsidiary

protection have been taken to court in 75,000 cases in 2017 alone.<sup>158</sup>

The success of legal action in these cases varies a lot between the *Länder* (table 12 and 13) because appeals to the federal administrative court had been abandoned in former years, to limit the levels of appeals in asylum cases.<sup>159</sup> The decision of the European Court of Justice on 19 November 2020 will be a basis for more lawsuits and revisions.

155 Within four weeks after the judgement has been delivered. § 78 Asylgesetz, [https://www.gesetze-im-internet.de/asylvfg\\_1992/\\_78.html](https://www.gesetze-im-internet.de/asylvfg_1992/_78.html).

156 Asylgesetz § 80. [https://www.gesetze-im-internet.de/asylvfg\\_1992/\\_80.html](https://www.gesetze-im-internet.de/asylvfg_1992/_80.html)

157 <https://www.lto.de/recht/justiz/j/bverfg-verfahren-belastung-2018-vorschau-faelle-2019-begrueundung/>

158 Magazin 2018a: Rund 365.000 Asylklagen an deutschen Gerichten anhängig, in: Migazin, 16.1.2018.

159 The Federal Ministry of the Interior announced in January 2019 that they would propose a law to solve the problem (BT-Dr. 19/7338, 66). In 2018, they had blocked a draft from four Länder (Der Spiegel 22, 26.5.2018).

160 E.g. in February 2019, it ruled that the administrative court in Potsdam had not gone deeply enough into the Case of a Sudanese refugee, and had dismissed the asylum application because the person had used a visa based on false informations ([https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/DE/2019/02/rk20190225\\_2bvr1199318.html](https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/DE/2019/02/rk20190225_2bvr1199318.html)).

TABLE 12 Syrians suing for full asylum: success rate in selected *Länder* in 2018

LAND	DECISION	SUCCESSFUL SUITS	SUCCESS QUOTA
Baden-Württemberg	4,418	2,327	65.2 %
Bavaria	2,158	693	39.4 %
NRW	10,351	1,751	20.5 %
Rhineland-Palatinate	2,614	225	11.3 %
Brandenburg	358	5	2.2 %
Hamburg	875	1	0.1 %
Germany	34,854	9,964	28.6 %

Source: BT-Dr. 19/7338, p. 65; own calculations.

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TABLE 13 Syrians suing for full asylum: success rate in selected *Länder* in 2019

LAND	DECISION	SUCCESSFUL SUITS	SUCCESS QUOTA
Baden-Württemberg	2,244	501	22.3 %
Bavaria	1,190	261	21.9 %
NRW	4,977	728	14.5 %
Rhineland-Palatinate	241	15	6.2 %
Brandenburg	257	9	3.2 %
Hamburg	602	22	3.5 %
Germany	18,433	3,145	17.1 %

Source: BT-Dr. 19/18498, p. 52; own calculations.

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laws. Particularly, the European Court of Justice (ECJ) has protected refugees against deportation to EU countries like Greece when European human rights standards were not upheld.<sup>161</sup>

### 3. The courts as repair institutions

Asylum and migration law have developed into an important branch of jurisprudence, and engaged lawyers and NGOs are active and effective in securing the rights of refugees at the courts.<sup>162</sup> In recent years, judges have more and more included

European and international law into their decisions. In December 2017, the administrative court in Berlin took the UN Children's Rights Convention into account in deciding that the family of a young Syrian could join him in Germany.<sup>163</sup>

361,059 lawsuits were undecided at the end of 2017,<sup>164</sup> and the administrative courts were overwhelmed, even when the *Länder* recruited more judges. Two years later, at the end of 2019, 254,044 cases were still pending. At the end of 2020, the number was 192,987<sup>165</sup>. Courts complain about

161 For an overview, compare Daniel Thym, EuGH-Judikatur zum Migrationsrecht aus der Vogelperspektive, in: Zeitschrift für Ausländerrecht und Ausländerpolitik, 29 (2019), p. 1-7 and 66-70.

162 The Constitutional Court's sentence about human dignity for everybody and equal subsistence payments, quoted earlier, came from the plea by Catholic Caritas.

163 Kastner, Bernd 2017: Wo der Härtefall wohnt, in: Süddeutsche Zeitung 295, 23.12.2017

164 Deutscher Bundestag 2018, 38.

165 BT-Drs. 19/28109, p. 47.



incomprehensible BAMF rulings<sup>166</sup>, incomplete information and the absence of BAMF representatives at trials.<sup>167</sup> „BAMF does not perform its role in the asylum trials“, commented Nicola Haderlein, vice president of the administrative court in Düsseldorf.<sup>168</sup> In 2017, BAMF employees stated that fifty per cent of the lawsuits were left unchallenged by BAMF (“klaglos gestellt”) <sup>169</sup> and thus won before a court decision. This has changed, due to the staff build-up at BAMF.

The *Länder* have dealt with the large workload upon their courts in diverse ways. It has led to long waiting periods in all *Länder* – a situation that invites even more lawsuits since the petitioner can stay in the country legally while the appeal is in process. Moreover, the *Länder* complained about BAMF’s non-cooperation in the trials, missing or badly prepared files, and lagging payment of legal expenses.<sup>170</sup>

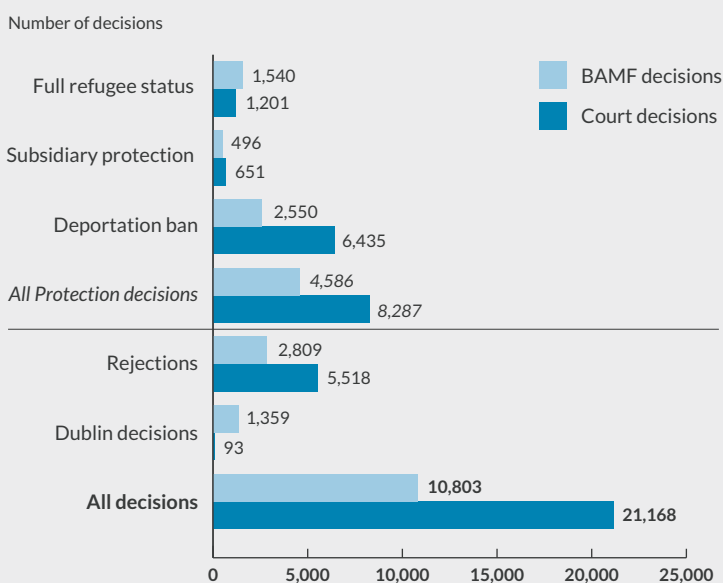
Some good practices have been identified, however, such as those in Rhineland-Palatinate, where, in 2016, an asylum court decision (*Hauptsacheverfahren*) took only 2.2 months (as opposed to the national average of 6.6 months) and a decision about provisional legal protection (*Vorläufiger Rechtsschutz*) took only 0.4 months (versus 1.1 months on average in the whole of Germany). All asylum cases in Rhineland-Palatinate are dealt at one administrative court and chambers are organized along the origin of the applicants, so that the judges get specific knowledge about the countries’ peculiarities.<sup>171</sup>

In January 2018, the Federal Government, answering a parliament query, admitted that 44 % of all lawsuits that had been decided on substance ended successfully for the suing refugee.<sup>172</sup> The success rate was 26.4 % in 2019 and 31.2 % in 2020<sup>173</sup>. In effect, the courts have become a kind of regular

revision instance, an expensive substitute for high-quality decision-making at BAMF, instead of a last resort for special legal cases. On the one hand, this demonstrates the independent functioning of the legal system in Germany, and the effectiveness of legal controls. On the other hand, it is an impressive demonstration of the ineffectiveness of the present process of asylum decision making.

A recent comparative government statistic about Afghan asylum seekers demonstrates the ongoing correcting power of the courts. In 2020, they decided about 8,287 additional protections, much more than the 4,586 persons that had got protection through BAMF decision (figure 5).

FIGURE 5 BAMF and court decisions for Afghan asylum seekers in 2020



Source: Ministry of the interior, Attachment to Question 43 by MP Ulla Jelpke, 3 March 2021, MF-43-Schutzquote-Afghanistan.pdf (ulla-jelpke.de)

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166 In the Manching case (Kraus 2019), the BAMF decision was built up by text modules that did not fit the case, and formal informations about the applicant. The lawyer could distinguish between both text types as they were written in different colours.

167 Dummer, Niklas 2018: Eine Behörde arbeitet für die Statistik, in: Wirtschaftswoche, 4.2.2018, I

168 Wernicke 2019; Dummer, Niklas 2018: Eine Behörde arbeitet für die Statistik, in: Wirtschaftswoche, 4.2.2018.

169 Dummer, Niklas 2017: Schlaperei des Bamf verursacht Kostenexplosion, In Wirtschaftswoche, 8.8.2017, <http://www.wiwo.de/politik/deutschland/bundesamt-fuer-migration-und-fluechtlinge-schlaperei-des-bamf-verursacht-kostenexplosion/20155256.html>

170 Dummer, Niklas 2017: Schlaperei des Bamf verursacht Kostenexplosion, In Wirtschaftswoche, 8.8.2017, <http://www.wiwo.de/politik/deutschland/bundesamt-fuer-migration-und-fluechtlinge-schlaperei-des-bamf-verursacht-kostenexplosion/20155256.html>

171 Schulze, Max 2017: Schaut nach Trier. Best Practice im asylgerichtlichen Verfahren, <https://www.freiheit.org/schaut-nach-trier>.

172 Kastner, Bernd 2018: Gerichte kassieren viele abgelehnte Asylanträge in: Süddeutsche Zeitung 11, 15.1.

173 BT-Drs. 19/28109, p. 1 and 38, own calculation.

## V. Conclusions

Some elements of the German asylum system have worked surprisingly well, even under the pressure of the exceptional high numbers of refugees in 2015–2016. This applies particularly to the first reception and accommodation of the refugees, where *Länder* and local government did an excellent job and were able to cooperate effectively with volunteers and welfare organizations. Except for problems in Berlin, nobody had to live on the streets. No slums or informal settlements came into being. A welcoming spirit and cooperation helped to solve problems even when many refugees arrived in a very short timeframe.

Contrary to public expectations and earlier academic advice, the centralized and specialized Federal Agency for Migration and Refugees (BAMF) turned out to be the bottleneck during the crisis. It was hampered by a lack of resources and a deficient organization, and additionally by frequent interventions of the Federal Ministry of the Interior, which set new priorities and unsettled administrative routines. The failures of the asylum decision making apparatus affected all other integration and welcome activities, and caused long months or years of waiting for a decision. “All day waiting”<sup>174</sup> frustrated the agency of refugees and volunteers, led to conflicts in refugee centres and delayed integration. Prioritisation of cases, the relaxation of some restrictions, like work permissions and language courses for certain categories of asylum seekers before the asylum

decision, were helpful for some nationalities but let the others wait even longer. In effect, the malfunctioning of BAMF overshadowed all integration efforts. The various initiatives of the interim BAMF leadership between September 2015 and December 2016 were successful in solving the backlog problem in quantitative terms but they could not avoid severe qualitative problems in the decision making that resulted in revisions and in effect led to new bottlenecks at the courts. Despite much lower caseloads and more personnel, the quality problems have not been solved until now.

In 2017, BAMF began a pilot project with asylum counselling, and an internal report showed that this was a productive way to clear many cases early and improve the quality of decision making. However, the report was not made public, and the ministry decided that asylum counselling should not be left with independent welfare organizations but become the turf of BAMF itself. Parliament was informed about this decision only in 2020.

Under its new leader, BAMF then tried to improve the quality of decision by quality management, looking at the cases again in the regional offices and at BAMF headquarters. However, the high percentage of court verdicts lost by BAMF, the stark decision disparities between the regional offices and the critical statements of ranking judges and experienced lawyers demonstrate that the quality problems continue to bother the

<sup>174</sup> Christ, Simone/ Meininghaus, Esther/ Röing, Tim 2017: “All Day Waiting”. Konflikte in Unterkünften für Geflüchtete in NRW, Bicc Working Paper 3, Bonn

institution. Deficits in fact finding and inquiries in the interview cannot be balanced or settled by later corrections, even if they continue over many months. The quality of the interview, well prepared and conducted by an experienced specialist is central for the decision process. When the applicant is assisted by a representative whom (s)he can trust, insights can be further improved, and the objectivity of the process increased. This can be compared to the functioning of judicial processes with its different roles.

Instead, the Ministry and BAMF leadership tried to limit the chances of the applicants to get information about their rights. They are in a permanent conflict with NGOs, churches and advocacy groups. Secretive information policies destroy any trust that has been built. In an open society, and with an active parliament, however, information can be brought to light, even if it takes long. Detailed information about the asylum system come from parliament inquiries, mostly from one concerned and specialised member. These inquiries (Kleine Anfragen) have developed into a kind of quarterly review of the functioning of BAMF. They demonstrate the efficiency of parliamentary controls over the government and produce information that the government would be expected to offer to the public, to give a realistic and problem-solving perspective. An open and cooperative style of public communication would help to identify problems early on and to find proper solutions, even in times of crisis. It would also help the *Länder* and local governments, which have often been surprised by sudden decisions at the federal level. This should include the relations with voluntary activists.

BAMF itself needs to live up to its promises about qualifying its officers. It is evident that every decider must be trained before beginning his or her challenging task, which is so fateful for the asylum seekers. Recurrent trainings and regularly organized exchanges between the deciders are also necessary. Reports on the countries of origin of asylum seekers should be written by independent specialists, possibly in cooperation with other European countries, and opened up for critical discussion, depoliticising them, and thus

relieving the government of judgements about the countries of origin. Independent legal counselling as a regular part of the asylum decision process would help to improve the quality of decisions, and relieve the authority of a number of lawsuits. Very positive is the new approach of the new BAMF president Sommer to restore relations with BAMF's employee committee and try to develop a positive climate in the institution. Discontinuing the practice of fixed-term contracts has already helped officers to acquire experience and stabilized the institution.

When Chancellor Merkel said in March 2018, that all in all ("im Großen und Ganzen") the exceptional humanitarian situation of 2015–2016 had been mastered well ("gut gemeistert")<sup>175</sup>, she was right with respect to reception and the work of local governments, *Länder* and the great engagement of many volunteers. The Archimedean point to make the system work successfully is under the responsibility of the Federal government, to improve BAMF's internal functioning.

The government and BAMF should try to establish positive cooperation with civil society. Antagonism between civil society, such as welfare organizations, private initiatives, churches, unions and NGOs hampers the functioning of the asylum system and leads to more futile lawsuits. Cooperation between government institutions and civil society, acknowledging both parties having different roles, will bring better results. This would result in a better public reputation and help to solve the recruitment problems at BAMF.

175 Merkel Quote: <https://www.tagesspiegel.de/politik/regierungserklaerung-merkel-fluechtlingsdebatte-hat-deutschland-gespalten/21098946.html>

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# The Polish Asylum System since 2015

A hostage to domestic politics?

Agnieszka Kulesa

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# I. Introduction

In its post-1989 history, Poland has never been a major country of destination for asylum seekers. This situation did not change with the so-called 2015 refugee crisis. Yet, the mass influx of asylum seekers from Africa and Middle East that Europe had to confront in 2015 had an important impact on the public debate on migration, integration and asylum. For the first time after 1989 – which marked the end of communism in Poland and the start of the country's march towards the Euro-Atlantic structures – these issues were publicly debated, polarising the society and drawing lines of divisions according to some discussed divergent values. The crisis and the related debate provoked substantial changes to the Polish asylum system.

From 1989, the Polish legislation relating to foreigners – be it migrants, asylum seekers or refugees – has been changing as a result of processes of institutional learning and policy transfer fuelled by the Europeanisation<sup>1</sup>. The acquisition of rules governing migration and asylum policies in Poland was thus a top-down process, in which the elites were making decisions on migrant- and refugee-related issues while the society was not concerned by these issues<sup>2</sup>. As a result, there was no deep internalization of migration and asylum policies in Poland, but rather shallow introduction

of an EU-influenced set of laws. It might be argued that until the 2015 crisis and the following changes to the Polish asylum system, the lack of internalization of the asylum policy in Poland was reflected in the shape of the asylum system which largely reflected EU protection standards.

This case study presents and analyses the Polish asylum system and its main components. It starts with an overview of numerical trends in 2007–2019/2020 and a description of public debate on refugees since 2015. The study then elaborates on four essential components of the Polish refugee system: the registration of asylum seekers; reception conditions including accommodation; asylum procedure; and decision-making on asylum claims (adjudication). The section on components of the Polish refugee system is preceded by a short description of the core state institutions composing the system and the legal conditions under which it operates. The study focuses on identifying problems, weaknesses and bottlenecks in the Polish asylum system, tries to propose remedies and map remaining challenges.

In general, the Polish asylum system encompasses six forms of protection:

- 1 After: A. Weiner, *Europeizacja polskiej polityki wobec cudzoziemców 1999–2003*, Wydawnictwo Scholar, Warszawa 2006; B. Kowalczyk, *Polski system azylowy*, E-Wydawnictwo. Prawnicza i Ekonomiczna Biblioteka Cyfrowa, Wydział Prawa, Administracji i Ekonomii Uniwersytetu Wrocławskiego, Wrocław 2014, [http://www.bibliotekacyfrowa.pl/Content/62933/Polski\\_system\\_azylowy.pdf](http://www.bibliotekacyfrowa.pl/Content/62933/Polski_system_azylowy.pdf) (last accessed on 3.11.2019).
- 2 A. Weiner, *op. cit.*

- asylum<sup>3</sup>;
- refugee status;
- subsidiary protection;
- humanitarian stay<sup>4</sup>;
- tolerated stay;
- temporary protection<sup>5</sup>.

In 2013–2020 there has been a considerable change in the number of asylum claims in Poland – year 2020 was the fifth consecutive period in which Poland noted a decrease in the inflow of foreign nationals applying for international protection. Applications were filed by just 2,803 people (against over 15,000 in 2013), which is the lowest number since 2000. The highest number of applications for international protection has been accepted by the Border Guard Office in Terespol (land crossing point on the border with Belarus). Numerous cases of unsuccessful attempts to lodge asylum applications at this crossing point have been documented since 2016. In fact, asylum seekers' access to the Polish territory is now one of the weakest points of the Polish asylum system.

One of the most important processes which has resulted in some substantial changes to the Polish asylum system is the securitization of migrant and refugee issues, strengthened with the right-wing Law and Justice (PiS) party win in parliamentary elections in 2015. Its most visible manifestations are preventing asylum seekers from accessing the

Polish territory, the intention to introduce the so-called border procedure to the Polish law and investing in detention infrastructure.

Poland has not relocated any single person as part of the EU relocation scheme. Since 2015 the government has not been involving NGOs, and other social actors in the development of solutions relating to asylum policy. As asylum seekers do not have access to quality and free of charge legal assistance during the asylum procedure, a fair and efficient asylum process is not properly supported.

This case study is based on the information gathered from multiple sources. First, (scarce) scientific literature related to the structural weaknesses of the asylum system in Poland, complemented with relevant policy reports produced by think-tanks, non-governmental organisations (NGOs), and other relevant actors, such as UNHCR, was analysed. Opinions issued by the Polish Ombudsman and reports by NGOs were especially helpful while discussing the issue of preventing asylum seekers from accessing the Polish territory on the eastern border of Poland. The second important source was information prepared by the Office for Foreigners solely for the purpose of this study. Relevant legal acts related to asylum as well as official statistics issued by the Border Guard and the Office for Foreigners were also analysed. The author would also like to thank Katarzyna Michalska for providing useful insights to the second part of the report. It must be underlined too that some information gaps relating to relevant stages of the asylum procedure exist – they have been indicated in the text of this study.

3 Asylum is specific to the Polish legal system and is guaranteed by the Constitution and the Act on granting protection to aliens within the territory of the Republic of Poland (Ustawa z dnia 13 czerwca 2003 r. o udzielaniu cudzoziemcom ochrony na terytorium Rzeczypospolitej Polskiej, Dz. U. 2003 Nr 128 poz. 1176 z późn. zm., <http://prawo.sejm.gov.pl/isap.nsf/download.xsp/WDU20031281176/U/D20031176Lj.pdf> (last accessed on 3.11.2019)).

4 Humanitarian stay and tolerated stay are forms of national protection (Article 348 of the Act on aliens (Ustawa z dnia 12 grudnia 2013 r. o cudzoziemcach, Dz. U. 2013 poz. 1650 z późn. zm., <http://prawo.sejm.gov.pl/isap.nsf/download.xsp/WDU20130001650/U/D20131650Lj.pdf> (last accessed on 3.11.2019)). Grounds for granting of one of these forms of protection are examined in the return procedure by the Border Guard; one of national forms of protection is granted if returning a person to the country of origin may not be executed due to humanitarian causes or if the return cannot take place because of technical reasons.

5 Temporary protection can be applied on the basis of a decision of the EU Council. It has not been used in Poland so far. According to law, "foreigners arriving in large numbers in the Republic of Poland, who have left their country of origin or a specific geographical area due to a foreign invasion, war, civil war, ethnic conflicts or gross violations of human rights, may be granted temporary protection on the territory of the Republic of Poland regardless of whether their arrival was spontaneous or resulted from assistance provided to them by the Republic of Poland or the international community". It is issued for the period of up to one year. Temporary protection is granted on the basis and within the limits laid down in a decision of the Council of the European Union, for a period specified in each decision. Source: Ustawa z dnia 13 czerwca 2003 r. o udzielaniu cudzoziemcom ochrony na terytorium Rzeczypospolitej Polskiej, Dz. U. 2003 Nr 128 poz. 1176 z p.zn. zm., <http://prawo.sejm.gov.pl/isap.nsf/download.xsp/WDU20031281176/U/D20031176Lj.pdf> (last accessed on 15.12.2020).

## II. Asylum Trends and Public Debate

To provide context for the analysis of the main components of the Polish asylum system, this section presents recent numerical trends regarding asylum seekers in Poland, their main profiles and countries of origin. It also describes the public discourse on immigration and asylum since 2015.

### A. Asylum Trends

#### a. Registration numbers

Over the last years there has been a considerable change in the number of asylum claims in Poland (see: Figure 1). In 2010 6,534 foreigners issued asylum claims. In 2013, this number more than doubled, reaching 15,253. In 2014, after the war in the East of Ukraine started and the Russian Federation annexed Crimea, the number of applications made by Ukrainian asylum seekers peaked at 2,318. The majority of decisions on these claims were negative and, as a result, the number of applications made by Ukrainians the following year dropped to 1,042.

A total of 46,151 applications were received between 2014 and 2019, with the highest numbers arriving in 2015 and 2016 (around 12,300 each year)<sup>6</sup>.

Year 2020 was the fifth consecutive period in which Poland noted a decrease in the inflow of foreigners applying for international protection. Applications were filed by 2,803 people, which is almost 2 thousand less than in 2019, and the lowest number since 2000.

#### b. Main points of entry

Poland can be reached through the land border, sea border and through the airport crossing points. Asylum seekers coming from or through neighbouring countries usually enter Poland through the eastern land border<sup>7</sup>.

The highest number of applications for international protection has been accepted by the Border Guard Office in Terespol<sup>8</sup> (land crossing point on the border with Belarus). Table 1 shows the numbers of applications registered at the Terespol crossing point since 2015 along with the numbers of persons covered by them.

The second highest number of applications has been registered in Warszawa and at Warszawa–Okęcie airport border unit; 39% of all applications registered in 2020 was registered in Warsaw.<sup>9</sup>

6 More specifically: 8,195 in 2014; 12,325 in 2015; 12,322 in 2016; 5,078 in 2017; 4,135 in 2018; 4,096 in 2019. Information presented in this and the following paragraphs is based on reports issued by the Office for Foreigners: "Napływ cudzoziemców do Polski w latach 2014-2018", January 2019, and "Informacja o działalności Urzędu do Spraw Cudzoziemców w okresie 1.01.2020-31.12.2020 r.", January 2021.

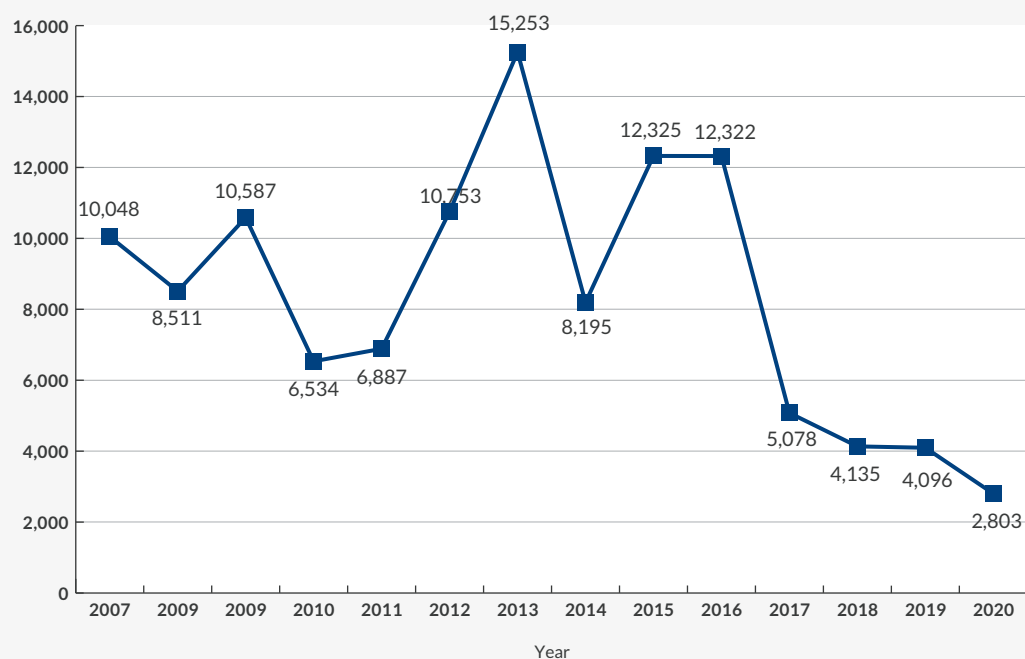
7 J. Biały, M. Górczyńska, D. Witko, Access to asylum procedure at Poland's external borders. Current situation and challenges for the future, Helsinki Foundation for Human Rights, Warsaw, April 2019, <http://www.hfhr.pl/wp-content/uploads/2019/04/Dostęp-do-procedury-azy-lowej-v2.pdf> (last accessed on 15.08.2019).

8 More specifically: 53% of total number of applications for international protection in 2014; 71% in 2015; 68% in 2016; 38% in 2017; 35% in 2018; 40% in 2019; 18% in 2020.

9 Polish Border Guard statistical information for 2019, Warsaw, <https://www.strazgraniczna.pl/pl/granica/statystyki-sg/2206,Statystyki-SG.html> (in Polish, last accessed on 31.01.2021).

FIGURE 1 Number of people applying for international protection in Poland, annual data, 2007–2020.

Number of people applying for international protection



Source: Office for Foreigners, official statistics.

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TABLE 1 Number of asylum applications issued at the Terespol, Warszawa and Warszawa-Okęcie crossing points and number persons covered by these applications 2015–2020, annual data.

BORDER CROSSING POINT		2015	2016	2017	2018	2019	2020 (Warszawa only)	TOTAL
Terespol	number of applications	2,953	2,827	627	486	540	167	7,569
	number of persons	8,250	8,305	1,903	1,454	1,628	448	21,944
Warszawa / Warszawa-Okęcie	number of applications	NA	141	165	736	795	637	2,075
	number of persons	NA	186	242	1,208	1,273	1,020	3,300

Due to inconsistency of data provided, it is difficult to relate cited numbers with corresponding data from previous years.

Source: Border Guard, official statistics, <https://www.strazgraniczna.pl/pl/granica/statystyki-sg/2206,Statystyki-SG.html> (last accessed on 31.01.2021).

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### c. Countries of origin

Historically, Chechens from the Russian Federation have been the most numerous applicants<sup>10</sup>, but, as already stated, since 2014 also Ukrainian citizens are among the most numerous asylum seekers in Poland (see: Table 2.).

<sup>10</sup> In the years 2014–2018 they submitted 65% of all applications that covered 27,366 people.



TABLE 1 Asylum applicants in 2007–2019 (most numerous nationalities over this given period), annual data.

NATIONALITY	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
Russian	9,239	7,754	5,726	4,795	4,305	6,084	12,849	4,112	7,989	8,994	3,550	2,721	2,614
Georgian	31	71	4,214	1,082	1,735	3,234	1,245	726	394	124	70	52	86
Ukrainian	55	40	36	45	67	74	46	2,318	2,305	1,306	671	466	434
Armenian	43	50	147	107	216	413	206	135	195	344	85	71	46
Tajik	1	0	2	0	0	9	5	107	541	882	154	144	113
Others	679	596	462	505	564	939	902	797	901	672	548	681	803
Total	10,048	8,511	10,587	6,534	6,887	10,753	15,253	8,195	12,325	12,322	5,078	4,135	4,096

Source: Office for Foreigners, official statistics.

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In 2020 72% of the applications were received from citizens of three countries neighbouring Poland: Russia (46%), Belarus (15%) and Ukraine (11%).

## B. Political Debates and Social Discourses on Asylum Seekers and Refugees

Until the so-called 2015 migration (also: refugee) crisis, the issues of migration, integration and asylum were not widely present in discussions in Poland, be it either political debates or social discourse. In 2015, the issue of asylum seekers and refugees eventually began to “step out of the shadows”<sup>11</sup>, at first due to the enhanced coverage of the crisis by the media and resulting in greater visibility of the issue. More importantly, the crisis coincided with the autumn parliamentary elections campaign in Poland and the question of the state’s response to it was highly politicized during that period. It eventually polarized both the Polish political scene as well as the society.

In 2015 around 1,8 million migrants, mostly from Africa and Middle East, crossed the EU border in unregulated manner (this number was equal to 283,500 in 2014<sup>12</sup>); 2,2 million migrants were found to be illegally present in the EU<sup>13</sup> illegally. In response to what was labelled as the migrant crisis, on 13 May 2015 the European Commission (EC) adopted the European Agenda on Migration<sup>14</sup> to address the immediate challenges related to this unprecedented situation.

The second implementation package of the Agenda adopted on 9 September 2015 envisaged, among other actions, the relocation of 120,000 persons in need of international protection from Greece (50,400 persons), Hungary (54,000) and Italy (15,600) to other EU member states<sup>15</sup>. The Extraordinary Justice and Home Affairs Council held on 22 September 2015 agreed on the relocation of 120,000 asylum seekers from Italy and Greece (Hungary refused to take part)<sup>16</sup>. Poland eventually supported the idea, although it meant standing against the will of the Visegrad Group partners (Czechia, Slovakia, Hungary) which were

11 P. Kubicki, M. Pawlak, A. Mica, A. Horolets, Wyjście z cienia: polityka uchodźcza w sytuacji kryzysu, “Polityka Społeczna”, 9(522), p. 22–28.

12 Frontex, Greece and Italy continued to face unprecedented number of migrants in December, <https://frontex.europa.eu/media-centre/news-release/greece-and-italy-continued-to-face-unprecedented-number-of-migrants-in-december-OBbBRd> (last accessed on 15.10.2019).

13 European Parliament, Asylum and migration in the EU: facts and figures, <https://www.europarl.europa.eu/news/en/headlines/society/20170629STO78630/asylum-and-migration-in-the-eu-facts-and-figures> (last accessed on 15.10.2019).

14 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: a European Agenda on Migration, Brussels, 13.5.2015, COM(2015) 240 final, [https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/background-information/docs/communication\\_on\\_the\\_european\\_agenda\\_on\\_migration\\_en.pdf](https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/background-information/docs/communication_on_the_european_agenda_on_migration_en.pdf) (last accessed on 15.10.2019).

15 European Commission, Refugee Crisis: European Commission takes decisive action, 9 September 2015, [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_15\\_5596](https://ec.europa.eu/commission/presscorner/detail/en/IP_15_5596) (last accessed on 15.10.2019).

16 See: European Commission Statement following the decision at the Extraordinary Justice and Home Affairs Council to relocate 120,000 refugees, [https://ec.europa.eu/commission/presscorner/detail/en/STATEMENT\\_15\\_5697](https://ec.europa.eu/commission/presscorner/detail/en/STATEMENT_15_5697) (last accessed on 15.10.2019).

its strong opponents<sup>17</sup>. This decision of the Polish government was facilitated by the Luxembourg Presidency which was responsible for conducting negotiations on relocations with the UE MS.

At the 22 September Council meeting a temporary scheme for relocating refugees across the EU member states<sup>18</sup> was finally adopted – it obliged Poland to accept 5,082 persons (1,201 persons relocated from Italy and 2,881 persons relocated Greece, mostly Syrian and Eritrean citizens). Previously, already in July 2015, Poland declared to accept 2,000 asylum seekers (1,100 as part of relocations and 900 as part of resettlements) and thus, as a result, the ruling coalition of Civil Platform (PO, Platforma Obywatelska) and Polish People's Party (PSL, Polskie Stronnictwo Ludowe) agreed to accept a total number of 7,082 asylum seekers over a two-year time period.

During that period the then Prime Minister Ewa Kopacz (PO) was assuring the general public that Poland would accept only “genuine refugees”, not “economic migrants”<sup>19</sup>. In fact, the meaning of such core notions referenced to in the public debate – such as *asylum seekers*, *refugees* or even *migrants* – was blurred, as they had never been explained to the public. The migrant crisis revealed the urgent need to inform the society about migrant and refugee related issues. In response to this need, an alliance of media, following the idea of a daily newspaper “Gazeta Wyborcza”, realised in September 2015 an information campaign

called “Uchodźcy w Polsce. Więcej wiedzy, mniej strachu” (“Refugees in Poland. More knowledge, less fear”); the Office for Foreigners offered its patronage<sup>20</sup>.

The 2015 parliamentary elections in Poland were scheduled to take place on 25 October. During the campaign, the main right-wing party, Law and Justice (PiS, Prawo i Sprawiedliwość), skilfully presented itself as anti-immigration and strongly opposed the EC's proposals regarding relocation. During the campaign, the party adroitly played on the electorate's fears by claiming, among other things, that asylum seekers and refugees were bringing to Europe not just terrorism, but also such diseases as cholera and dysentery<sup>21</sup>, and thus were sources of an extraordinary threat to the internal security of Poland<sup>22</sup>.

With the so-called migrant crisis, the notion of *migration* in Poland became linked with the notion of *crisis*, until 2015 associated in the national social discourse mostly with “economic, political or socio-economic variations of crisis”<sup>23</sup>. As researchers argue, “the bulk of the discursive representation focused less on the usual understanding of the crisis [...] than on the alleged implications that this movement of people would potentially pose to Poland and Polish society”<sup>24</sup>. The media which openly supported PiS – such as “Do Rzeczy” or “W Sieci” – were reinforcing this link by publishing racist images on their covers and disseminating articles presenting immigrants as

17 Romania was also against while Finland abstained from voting.

18 European Commission, European Solidarity: A Refugee Relocation System, [https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/background-information/docs/2\\_eu\\_solidarity\\_a\\_refugee\\_relocation\\_system\\_en.pdf](https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/background-information/docs/2_eu_solidarity_a_refugee_relocation_system_en.pdf) (last accessed on 15.10.2019); see also: [https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/background-information/docs/communication\\_on\\_the\\_european\\_agenda\\_on\\_migration\\_annex\\_en.pdf](https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/background-information/docs/communication_on_the_european_agenda_on_migration_annex_en.pdf) (last accessed on 15.10.2019).

19 See for example: L. Rudziński, Ewa Kopacz: Polska przyjmie uchodźców, ale nie imigrantów ekonomicznych, Polska The Times, 21 September 2015, <https://polskatimes.pl/ewa-kopacz-polska-przyjmie-uchodzcow-ale-nie-imigrantow-ekonomicznych/ar/8168870> (last accessed on 13.12.2019).

20 The informant is still available of the website of the Office for Foreigners: <https://udsc.gov.pl/wiecej-wiedzy-mniej-strachu-uchodzcy-w-polsce/> (last accessed on 13.12.2019).

21 G. Gigitashvili, K. Sidlo, Merchants of Fear. Discursive Securitization of the Refugee Crisis in the Visegrad Group Countries, EuroMesco Policy Brief, 7 January 2019, p. 6, [https://www.euromesco.net/wp-content/uploads/2018/12/Brief89\\_Merchants-of-fear.pdf?fbclid=I-wAR3TaaJhHwnfD1moB2F90Eplm8mpnDlqULZgneZXnXnlCrOyJVPtDNE\\_A](https://www.euromesco.net/wp-content/uploads/2018/12/Brief89_Merchants-of-fear.pdf?fbclid=I-wAR3TaaJhHwnfD1moB2F90Eplm8mpnDlqULZgneZXnXnlCrOyJVPtDNE_A) (accessed 23.02.2019); see also for example (in Polish): Kaczyński: Pasożyty i pierwotniaki w organizmach uchodźców groźne dla Polaków, 13 October 2015, <http://www.newsweek.pl/polska/jaroslaw-kaczynski-o-uchodzcach,artykuly,372175,1.html> (accessed 23.02.2019).

22 See for example: R. Grochal, A. Kondzińska, Polscy politycy grają uchodźcami w kampanii. Szydło: Niemcy chcą szantażować Europę, wyborcza.pl, 10 September 2015, <https://wyborcza.pl/1,75398,18746167,polscy-politycy-graja-uchodzcamy-w-kampanii-szydlo-niemcy.html> (last accessed on 13.12.2019); a transcription of Jarosław Kaczyński's (PiS leader) fear mongering speech at the parliament delivered on 16 September 2019 can be accessed on <http://sejm.gov.pl/Sejm7.nsf/wypowiedz.xsp?posiedzenie=100&dzien=1&wyp=7&view=1> (last accessed on 13.12.2019).

23 N. Krzyżanowska, M. Krzyżanowski, 'Crisis' and Migration in Poland: Discursive Shifts, Anti-Pluralism and the Politicisation of Exclusion, Sociology 2018, Vol. 53(3), p. 613.

24 Ibidem, p. 615.

merciless invaders. The radicalization of language and views was striking: both right-wing politicians and the media were informing the general public about the “Islamization of Europe” and “Muslim invasion”<sup>25</sup>. On the other hand, such media as TVN (TV channel) or “Newsweek Polska” and “Polityka” weeklies presented refugees as people fleeing war, torture survivors, and underlined the responsibility of providing protection to these people<sup>26</sup>. In fact, two different narratives on refugees were fighting for domination in the social discourse.

It might be argued that the right-wing narration eventually gained its primacy: PiS won the 2015 elections, gaining 235 of 460 (51,09%) seats in the Sejm<sup>27</sup> and 61 of 100 (61%) seats in the Senate<sup>28</sup>. PiS voters were most often justifying their choice by believing that PiS would rule the country well (or better than their predecessors) and by a generalised hope of ‘improvement’. Worldview, religious views, faith and the fact that in the opinion of the voters PiS was a Catholic party supporting the Church had also played a significant role<sup>29</sup>.

In her exposé the newly appointed Prime Minister Beata Szydło (PiS) dedicated just one paragraph to the refugee issue: she referred to solidarity and Poland’s readiness to provide help in case of extraordinary and dangerous events such as natural disasters, terrorist threats or war<sup>30</sup>. Right after her assumption to the office, she also confirmed that Poland would accept asylum seekers but highlighted again the importance of ensuring security to Poland’s own citizens.

Yet, in order to support its credibility and realize campaign vows regarding ensuring internal security of Poland and its citizens, PiS eventually withdrew from its predecessors’ pledges on relocation<sup>31</sup>. The terrorist attacks in Paris in November 2015 and in Brussels in March 2016, as well the 2015 New Year’s Eve sexual assaults in Germany provided the government a handy ‘evidence’ justifying such a move. Prime Minister Beata Szydło stated in a TV programme: “As things stand, I do not see any possibility of any immigrants being accepted in Poland”<sup>32</sup>. PiS ministers implied that asylum seekers and refugees, especially those from Muslim countries, pose a real threat because they would not integrate and supposedly unwilling or even unable to respect Polish values<sup>33</sup>. PiS politicians have also started to present an alternative story regarding accepting refugees – in her speech at the European Parliament on 19 January 2016 Prime Minister Beata Szydło stated that Poland ‘had accepted around 1 million refugees from Ukraine’<sup>34</sup>, while then Minister of Development Mateusz Morawiecki informed the journalists at the Davos forum on 22 January 2016 that Poland had accepted 350,000 refugees from Ukraine in 2014–2015<sup>35</sup>. Such statements by chief Polish politicians indicated the intention of showing that Poland had already done enough in dealing with migration crisis.

The anti-refugee rhetoric during the campaign and afterwards strongly influenced the public opinion. In May 2015 the percentage of Poles opposing accepting asylum-seekers from conflict

25 M. Buchowski, Making Anthropology Matter in the Heyday of Islamophobia and the “Refugee Crisis”: The Case of Poland, *Cesky lid / The Czech Ethnological Journal*, pp. 60–61, DOI: 10.21104/CL.2016.1.03.

26 J. Idzik, R. Klepka, Media Coverage of Refugee Crisis: Some Evidence from Poland, *International Relations Review* 2018 (1409-6466), p. 63.

27 The lower house of the Polish parliament.

28 The upper house of the Polish parliament.

29 Motywy głosowania na poszczególne partie i komitety wyborcze, Komunikat z Badań nr 179/2015, CBEOS, [https://cbos.pl/SPISKOM.POL/2015/K\\_179\\_15.PDF](https://cbos.pl/SPISKOM.POL/2015/K_179_15.PDF) (last accessed on 20.09.2020).

30 The full text of the speech is available here: <https://www.premier.gov.pl/expose-premier-beaty-szydlo-stenogram.html> (last accessed on 13.12.2019).

31 Premier Ewa Kopacz: „Polska przyjmie 2000 uchodźców. To wyraz solidarności europejskiej”, <https://www.premier.gov.pl/wydarzenia/aktualnosci/premier-ewa-kopacz-polska-pryjmie-2000-uchodzcow-to-wyraz-solidarnosci.html> (last accessed on 20.09.2020).

32 A. Kaźmierczuk, Szydło: Nie widzę możliwości przyjęcia imigrantów, *Rzeczpospolita*, 23 March 2016, <https://www.rp.pl/Rzad-PiS/160329752-Szydlo-Nie-widze-mozliwosci-przyjecia-imigrantow.html> (last accessed on 13.12.2019).

33 See for example this interview (in Polish): <http://www.biuletynmigracyjny.uw.edu.pl/55-grudzien-2016/pragmatycznie-a-nie-ideologicznie-o-polityce-migracyjnej-polski> (last accessed on: 23.02.2019).

34 Beata Szydło na zakończenie: To ważna debata dla Polski i dla Parlamentu Europejskiego. Serdecznie dziękuję, TVN24, <https://www.tvn24.pl/wiadomosci-ze-swiata/2/parlament-europejski-o-polsce-debata-w-strasburgu.612043.html> (last accessed on 13.12.2019).

35 Najpierw Szydło, a teraz Morawiecki: “350 tys. uchodźców z Ukrainy”. Wpadka czy świadoma narracja rządu?, *gazeta.pl*, <http://wiadomosci.gazeta.pl/wiadomosci/1,114871,19515665,najpierw-szydlo-a-teraz-morawiecki-350-tys-uchodzcow-z-ukrainy.html?lokalne=poznan#-BoxNewsImg> (last accessed on 13.12.2019).

zones was 21<sup>36</sup>; in October 2015 this percentage reached 40<sup>37</sup>. In January 2016, this number was even higher – 53% of Poles thought that Poland should not accept any refugees against modest 4% of those thinking that Poland should accept them and allow them to settle in the country<sup>38</sup>. The significant increase in the percentage of respondents in favour of closing borders for refugees was observed after the November 2015 terrorist attacks in Paris, while the reports of the 2015 New Year's Eve incidents in Cologne and the attack in Brussels in March 2016 did not cause such a big change in the attitudes of Poles towards refugees.

Regarding government's posture on the European level, the consecutive PiS Prime Ministers and the Ministers of the Interior and Administration continued the course set by the party during the 2015 parliamentary elections campaign by opposing relocations and the mechanism of the automatic distribution of asylum-seekers proposed by the EC<sup>39</sup>. Poland concentrated its efforts on building a coalition of states opposing relocations<sup>40</sup>, mainly through its greater activity in the Visegrad Group, and promoting the concept of "flexible solidarity" which was put forward at the Bratislava Summit in September 2016 by the Slovak Presidency in the EU. As stated in the Joint Statement of the Heads of Governments of the V4 Countries, the concept of "flexible solidarity" should "enable Member States to decide on specific forms of contribution taking into account their experience and potential"; any distribution mechanism should be voluntary<sup>41</sup>. In

addition to these activities, in January 2018 Prime Minister Mateusz Morawiecki established a new department within the structures of his cabinet to deal with "helping refugees on the ground" and in the countries they come to. From this time on, "Helping refugees on the ground" became a motto of the PiS government's attitude towards the general concept of providing assistance to asylum seekers and refugees. As a result, Poland had not relocated any single person during the envisaged two-year period.

As a result, European leaders and institutions accused Poland and the Polish government of a lack of solidarity with other EU member states under a direct migratory pressure and of selfishness<sup>42</sup>. Already on 7 December 2017, the EU Commission sued Czechia, Hungary and Poland in the European Court of Justice (CJEU) for not complying with the 2015 decision to relocate asylum seekers, based on a quota, from Greece and Italy. In late October 2019, in a non-binding opinion Advocate General Eleanor Sharpston said that the three states "failed to fulfil their obligations under EU law" by not complying with the "provisional and time-limited mechanism for the mandatory relocation"<sup>43</sup> of asylum seekers. On 2 April 2020 the CJEU published its judgement<sup>44</sup> stating that Poland, Hungary and the Czech Republic had failed to fulfil their obligations under the relocations scheme.

Researchers argue that in 2015–2017 it was the opposition of the V4 states that was one of

36 See: Stosunek Polaków i Czechów do przyjmowania uchodźców, Komunikat z badań, nr 87/2018, CBOS, [https://www.cbos.pl/SPISKOM.POL/2018/K\\_087\\_18.PDF](https://www.cbos.pl/SPISKOM.POL/2018/K_087_18.PDF) (accessed 23.02.2019).

37 O uchodźcach w przededniu unijnego szczytu poświęconego kryzysowi migracyjnemu, Komunikat z badań, nr 133/2015, CBOS [https://www.cbos.pl/SPISKOM.POL/2015/K\\_133\\_15.PDF](https://www.cbos.pl/SPISKOM.POL/2015/K_133_15.PDF) (last accessed on 13.12.2019).

38 Stosunek Polaków do przyjmowania uchodźców, Komunikat z badań, nr 12/2016, CBOS, [https://www.cbos.pl/SPISKOM.POL/2016/K\\_012\\_16.PDF](https://www.cbos.pl/SPISKOM.POL/2016/K_012_16.PDF) (last accessed on 13.12.2019).

39 Piotr Sadowski, Kinga Szczawińska, Poland's response to the EU Migration Policy, in: Melani Barlai, Birte Fährnich, Christina Griessler, Markus Rhomberg (Hg.), *The Migrant Crisis: European Perspectives and National Discourses*, LIT Verlag Münster, 2017, p. 225.

40 A. Adamczyk, Kryzys migracyjny w Europie a polska polityka migracyjna, *Studia Migracyjne – Przegląd Polonijny*, 2017, Vol. 43, Issue 1, p. 313.

41 Joint Statement of the Heads of Governments of the V4 Countries, Bratislava, 16 September 2016, <https://euractiv.com/wp-content/uploads/sites/2/2016/09/Bratislava-V4-Joint-Statement-final.docx.pdf> (last accessed on 13.12.2019).

42 See for example: Report from the Commission to the European Parliament, the European Council and the Council. Twelfth report on relocation and resettlement, Strasbourg, 16.5.2017, COM(2017) 260 final, [https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/20170516\\_twelfth\\_report\\_on\\_relocation\\_and\\_resettlement\\_en.pdf](https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/20170516_twelfth_report_on_relocation_and_resettlement_en.pdf) (last accessed on 13.12.2019), and further reports on relocation.

43 See: Court of Justice of the European Union, Press Release No 133/19, Luxembourg, 31 October 2019, Advocate General Sharpston: the Court should rule that, by refusing to comply with the provisional and time-limited mechanism for the mandatory relocation of applicants for international protection, Poland, Hungary and the Czech Republic have failed to fulfil their obligations under EU law, <https://curia.europa.eu/jcms/upload/docs/application/pdf/2019-10/cp190133en.pdf> (last accessed on 13.12.2019); for more about the case C-715/17 please go to <http://curia.europa.eu/>.

44 For the full text of the judgement please go to: <http://curia.europa.eu/juris/document/document.jsf?docid=224882&mode=req&pageIndex=1&dir=&occ=first&part=1&text=&doclang=EN&cid=4558391> (last accessed on 20.09.2020).

the most important factors, which led to the final abandonment of relocation as an EU-wide instrument in dealing with asylum seekers and commencement of search for alternative solutions<sup>45</sup>. The 2020 works on a new Pact on Asylum and Migration – announced by the President of the European Commission Ursula von der Leyen on 23 September – has shown that Poland would again strongly oppose to the possibility of the EU again putting in place a system to relocate asylum seekers between its Member States. In reaction to the proposed Pact, requesting ‘mandatory solidarity’ from the Member States (they would have to either accept asylum seekers, take charge of sending back those who are refused asylum, or offer financial assistance on the ground to front line EU states)<sup>46</sup>, the Polish prime minister Mateusz Morawiecki and his counterparts from the Czech Republic and Hungary, Andrej Babiš and Viktor Orbán, informed Ursula von der Leyen that they were open to the EU plan, but their main aim has been to introduce more rigorous and effective policies on border controls and provide assistance in places from which potential migrants can migrate to Europe<sup>47</sup>. In practice it would mean stopping migration, not managing it.

Regarding internal migration policy, the PiS government members firmly distanced themselves from the migration policy solutions proposed by their predecessors, as evidenced by the cancellation by the Council of Ministers of the 2012 migration strategy of Poland in October 2016. The strategy covered also the issues relating to granting protection on the territory of Poland. In an interview for a periodical published in December 2016 by the Centre of Migration Research at the Warsaw University<sup>48</sup>, Jakub Skiba, then

Secretary of State at the Ministry of the Interior and Administration responsible for migration issues, stated: “[The former migration policy] was established in 2012, and since then the migration situation in Poland and in the world has changed radically, mainly due to the refugee crisis lasting since 2015, i.e. a mass influx of immigrants from the Middle East, North Africa and Central Asia. There are centres of conflicts there, but currently immigration from this area is mostly related to the economic aspect. There is also an increased influx from Ukraine to Poland. All this has changed the way we look at migration and was the reason why the government has invalidated this document”. According to Minister Skiba, accepting immigrants from the Arab countries would generate problems because of expected difficulties in acculturation and integration processes. As a result, new migration policy was to be focused on repatriation of people of Polish origin (especially from the East), not on accepting refugees<sup>49</sup>.

Until now, the government has been affirming the public about ongoing works on the new migration strategy. The project of such document<sup>50</sup>, dated 10 June 2019, was introduced on 25 June 2019 to the representatives of public administration, academia and NGO during a conference in the Sejm organized by The Government Population Council (Rządowa Rada Ludnościowa). The document was shared with general public and media few days after by one of non-governmental organisations present at the conference<sup>51</sup>. In a 70-pages long text the word “Islam” was repeated 47 times, almost every time in the context of threat; assimilation was presented as the target behaviour expected from all foreigners wanting to stay in Poland. After the critics by the academia and NGOs, who voiced

45 M. Duszczek, K. Podgórska, D. Pszczółkowska, From mandatory to voluntary. Impact of V4 on the EU relocation scheme, *European Politics and Society*, DOI: 10.1080/23745118.2019.1672367.

46 For more information on the new Pact on Asylum and Migration please go to: [https://ec.europa.eu/commission/presscorner/detail/en/qanda\\_20\\_1707](https://ec.europa.eu/commission/presscorner/detail/en/qanda_20_1707) (last accessed on 27.09.2020)..

47 Spotkanie premierów państw Grupy Wyszehradzkiej z przewodniczącą Komisji Europejskiej Ursulą von der Leyen, <https://www.gov.pl/web/ue/spotkanie-premierow-panstw-grupy-wyszehradzkiej-z-przewodniczaca-komisji-europejskiej-ursula-von-der-leyen> (last accessed on 27.09.2020).

48 „Pragmatycznie, a nie ideologicznie” – o polityce migracyjnej Polski, *Biuletyn Migracyjny* nr 55, grudzień 2016, <http://biuletynmigracyjny.uw.edu.pl/55-grudzien-2016/%E2%80%9EPragmatycznie-a-nie-ideologicznie%E2%80%9D-o-polityce-migracyjnej-polski> (last accessed on 13.12.2019).

49 A. Adamczyk, Kryzys migracyjny w Europie a polska polityka imigracyjna, *Studia Migracyjne – Przegląd Polonijny*, 2017, Vol. 43, Issue 1 (163), p. 322.

50 For the full text of the document please go to: <https://interwencjaprawna.pl/polska-polityka-migracyjna-projekt-mswia/> (last accessed on 20.09.2020).

51 Full text is available on the website of the Association for Legal Intervention, <https://interwencjaprawna.pl/wp-content/uploads/2019/06/Polityka-migracyjna-Polski-wersja-ostateczna.pdf> (last accessed on 13.12.2019).

their concerns about its quality, the government surprisingly distanced itself from the text.

In January 2021 the government published a document called "Migration policy of Poland – baseline diagnosis" and announced the work on an executive document defining the most important tasks of the state administration in relation to international migration.<sup>52</sup>

Emergent migrant and refugee policy has been largely framed as a security issue, while humanitarian concerns, such as providing shelter and board to those in need, have been backgrounded. The latter has been partially addressed by non-governmental organisations (excluding those sympathising with the government) and, to some extent by the Catholic Church in Poland, both advocating for a more open and charitable approach. However, their efforts to inform society (including politicians) and influence public attitudes about the root causes of exile as well as to help asylum seekers and refugees have not brought about the desired change, partially also because of the fact that the government has cut them off from the EU funding (Asylum, Migration and Integration Fund)<sup>53</sup>.

Migration and asylum were used again in the 2018 local elections campaign when PiS tried again to capitalize on the negative image of migrants, asylum seekers and refugees by promoting, among other things, the anti-refugee TV spot #Bezpieczny Samorząd. Surprisingly, the discussed issues were not debated during the following 2019 parliamentary campaign and the 2020 presidential campaign. In the 2019 parliamentary elections, which took place on 13 October 2019, PiS again gained 235 of 460 (51,09%) seats in the Sejm but lost majority

in the Senat by gaining 48 of 100 (48%) seats. The 2020 presidential run was won by the incumbent Andrzej Duda, informally supported by PiS.

It can be argued that asylum related issues have been gaining less and less importance in the internal political debate and social discourse since 2018. In the external policy dimension, PiS continues the course set in 2015 by strongly opposing any obligatory forms of joint EU action such as quotas; in 2018 Poland also refused to join both UN's Global Compact for Safe, Orderly and Regular Migration and the Global Compact on Refugees. Attitudes of the public also seem to be stable. According to the latest report issued by the Public Opinion Research Centre in July 2018, 60% of Poles were against accepting asylum-seekers from conflict zones<sup>54</sup>. At the same time, according to the latest available statistics, Poland is among the EU states with the lowest proportion of immigrants per 1,000 inhabitants (5.5)<sup>55</sup>. Most Polish citizens do not have any contacts with foreigners, not to mention refugees or asylum-seekers.

The securitization of migrant and refugee issues has resulted in some substantial changes to the Polish asylum system. The most important are preventing asylum seekers from accessing the Polish territory, the intention to introduce the so-called border procedure to the Polish law and investing in detention infrastructure. As some scholars argue, together with the PiS win in 2015, an anti-European phase in Polish asylum policy has started<sup>56</sup>. Poland has not relocated any single person as part of the relocation scheme. The government continues its practice of not involving NGOs and other social actors in the development of solutions relating to asylum policy.

52 Polityka migracyjna Polski - diagnoza stanu wyjściowego", 8 January 2021, <https://www.gov.pl/web/mswia/polityka-migracyjna-polski--diagnoza-stanu-wyjsciowego?fbclid=IwAR0PWcrJp2FtLld9Pb6pFgld3Hc-8EMPRON9FpcU1nFh93HIOIZ3kbl7HgE> (last accessed on 31.01.2021).

53 Poland: NGOs providing integration support to immigrants face serious financial problems, European Website on Integration, 11 September 2017, <https://ec.europa.eu/migrant-integration/news/poland-ngos-providing-integration-support-to-immigrants-face-serious-financial-problems> (last accessed on 12.13.2019); W. Klaus, E. Ostaszewska-Żuk, M. Szczepanik, The role of European Funds in supporting the integration of migrants in Poland, Helsinki Foundation for Human Rights, [http://www.hfhr.pl/wp-content/uploads/2017/11/Po-FAMI-raport\\_EN.pdf](http://www.hfhr.pl/wp-content/uploads/2017/11/Po-FAMI-raport_EN.pdf) (last accessed 13.12.2019).

54 See: Stosunek Polaków i Czechów do przyjmowania uchodźców, Komunikat z badań, nr 87/2018, CBOS, [https://www.cbos.pl/SPISKOM.POL/2018/K\\_087\\_18.PDF](https://www.cbos.pl/SPISKOM.POL/2018/K_087_18.PDF) (last accessed on 23.02.2019).

55 See: [https://ec.europa.eu/eurostat/statistics-explained/index.php/Migration\\_and\\_migrant\\_population\\_statistics#Migrant\\_population:\\_almost\\_22\\_million\\_non-EU\\_citizens\\_living\\_in\\_the\\_EU](https://ec.europa.eu/eurostat/statistics-explained/index.php/Migration_and_migrant_population_statistics#Migrant_population:_almost_22_million_non-EU_citizens_living_in_the_EU) (accessed 13.12.2019).

56 A. Florczak, Ewolucja polityki azylowej Polski. Od internacjonalizacji do przeciweuropeizacji, *Studia Politicae Universitatis Silesiensis* 2019, T. 27, p. 31–60.

### III. Structural Weaknesses in the National Asylum System: Diagnosis and Redress

This section discusses essential components of the Polish asylum system: the registration of asylum seekers; reception conditions including accommodation; asylum procedure; and decision-making on asylum claims (adjudication). It starts with the description of the overarching institutional structure and legal backgrounds of the asylum system, with the focus on changes introduced since 2015.

#### A. Institutional and Legal Structures of the Asylum System

##### a. Development of legal and institutional structures 1989–2015

The refugee policy was the first one that developed as a subfield of the post-1989 migration policy of Poland<sup>57</sup>. In the beginning of 1990s Poland adopted the Geneva Convention and the New York Protocol. Thereafter, the new Act on Aliens of 1997 introduced such concepts as ‘safe third country’, ‘safe country of origin’, ‘manifestly unfolded

application’ and ‘accelerated procedure’ to the Polish legal system<sup>58</sup>. The Constitution, adopted also in 1997, guaranteed the right to asylum and to apply for refugee status<sup>59</sup>. The 2001 amendment to the Act on Aliens<sup>60</sup> institutionalised temporary protection in the Polish law. The Act on Granting Protection to Aliens within the Territory of the Republic of Poland<sup>61</sup> was adopted in 2003. It introduced the permit for tolerated stay as a new form of humanitarian protection, which, in turn, was to a great extent replaced by subsidiary protection in 2008. Through the direct adoption of the legal solutions introduced by other EU states, refugee law became the most Europeanised subfield of Polish migration policy (very often legislative changes which were introduced in Poland in 1998–mid-2015 were ‘copies’ of solutions functioning in Western European states)<sup>62</sup>.

The 1997 Act on Aliens<sup>63</sup> was amended several times due to the necessity to adjust Polish law to the EU requirements, and was finally replaced by the new Act on Aliens in 2013<sup>64</sup> (already amended

57 A. Kicingier, I. Koryś, The case of Poland, in: *Migration Policymaking in Europe. The Dynamics of Actors and Contexts in Past and Present*, G. Zincone, R. Penninx, M. Borkert (eds.), Amsterdam University Press, Amsterdam 2011, p. 351.

58 Ibidem.

59 For definitions of various statuses please consult footnotes 3–5.

60 Ustawa z dnia 11 kwietnia 2001 r. o zmianie ustawy o cudzoziemcach oraz o zmianie niektórych ustaw, Dz.U. 2001 nr 42 poz. 475., <http://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20010420475/U/D20010475Lj.pdf> (last accessed on 20.09.2020).

61 Ustawa z dnia 13 czerwca 2003 r. o udzielaniu cudzoziemcom ochrony na terytorium Rzeczypospolitej Polskiej, Dz.U. 2003 nr 128 poz. 1176, <https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20031281176/U/D20031176Lj.pdf> (last accessed on 20.09.2020).

62 A. Kicingier, I. Koryś, op.cit., p. 352.

63 Ustawa z dnia 25 czerwca 1997 r. o cudzoziemcach, Dz.U. 1997 nr 114 poz. 739, <http://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU19971140739/O/D19970739.pdf>.

64 Ustawa z dnia 12 grudnia 2013 r. o cudzoziemcach, Dz.U. 2013, poz. 1650; for the full text please go to: <https://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU20130001650> (last accessed on 20.09.2020).



several times). It introduced the concept of 'humanitarian stay' to the Polish legal system and, among other things, systematized issues related to various form of residency permits in Poland. At the moment, the most important acts related to asylum system are:

- Act on Aliens of 2013;
- Act on Granting Protection to Aliens within the Territory of the Republic of Poland of 2003;
- Constitution of 1997.

The institutional framework of the asylum system in Poland has been stable since 2000s and is now comprised of the following most important institutions involved in asylum-related policymaking and implementation:

Health and Social Assistance playing the key role in catering refugees' needs and the Polish Red Cross being responsible for implementation. In 1991–1992 the government started cooperation with UNHCR, the Inter-Ministerial Commission for Refugees was established, and the Ministry of Interior Plenipotentiary in Refugee Affairs was appointed as its head. As a result, refugee affairs eventually passed to the Ministry of the Interior. In 1993 the Office for Migration and Refugee Affairs was established within the Ministry; this department was responsible, among other things, for receiving applications and making decisions in refugee procedures. The Ministry of the Interior also begun to supervise the Border Guard, established in 1991. As some researchers argue, "the institutional concentration of migration matters under the Ministry of Interior undoubtedly had consequences on policy content and fostered the

TABLE 3 Main institutions of the asylum system in Poland, 2020.

NAME OF THE INSTITUTION	RESPONSIBILITIES
Ministry of the Interior and Administration	Providing policy guidance and supervises Border Guard and the Office for Foreigners
Border Guard	Registering asylum applications at the border and running detention centres
Office for Foreigners	Reception of asylum seekers and status determination procedure
Refugee Board	An administrative body consisting of twelve members responsible for appeals to asylum decisions in the second instance (first appeal)
Voivodeship Administrative Court in Warsaw and Supreme Administrative Court of Poland	Judicial control in second appeals
Ministry of Family, Labour and Social Policy, from late 2020 Ministry of Economic Development, Labour and Technology	Since 2001 responsible for integration programmes addressed to beneficiaries of international protection

Source: own elaboration on the basis of the 2013 Act on Foreigners, and B. Kowalczyk, *Polski system azylowy*, E-Wydawnictwo. Prawnicza i Ekonomiczna Biblioteka Cyfrowa, Wydział Prawa, Administracji i Ekonomii Uniwersytetu Wrocławskiego, Wrocław 2014, [http://www.bibliotekacyfrowa.pl/Content/62933/Polski\\_system\\_azylowy.pdf](http://www.bibliotekacyfrowa.pl/Content/62933/Polski_system_azylowy.pdf) (last accessed on 20.09.2020).

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Historically, the Ministry of the Interior has been the primary governmental body responsible for migration and refugee affairs, but the first central body created to deal with growing numbers of refugees was the Inter-Ministerial Group for Aid to Foreign Refugees, with the Ministry of

import of security discourse concerning migration to Poland"<sup>65</sup>.

With the 2001 amendment to the Act on Aliens, the Office for Repatriation and Refugees (then renamed to the Office for Foreigners in 2007) was

65 A. Kicingier, I. Koryś, *op.ci.*, p. 359.

created. It has been the first central institution responsible for refugee matters and issues related to admission and stay of foreigners in Poland. Although the Office was supposed to be apolitical, it has been supervised by the Ministry of the Interior, and its Head is appointed by the Prime Minister on the initiative of the Ministry of the Interior<sup>66</sup>. As a result, the Office's wide range of responsibilities is not reflected in policymaking; the Office for Foreigners implements the policy that is being designed basically within the Ministry.

#### b. Institutional and legal responses to the 2015 migrant crisis

The dominant position of the Ministry of the Interior and Administration in asylum-related policymaking and implementation was sustained during and after the 2015 refugee crisis. In order to ensure effective implementation of resettlement and relocation programs the then Prime Minister Ewa Kopacz appointed in September 2015 the Interdepartmental Working Group for Resettlement and Relocation of Refugees, which was tasked with coordination of activities of public administration and cooperation with non-state actors on the discussed issues<sup>67</sup>. The group was expected to create a plan of accepting asylum seekers, develop related security procedures and prepare a concept of integration activities addressed to refugees. It was led by the Ministry of the Interior, while the Ministry of Labour and Social Policy was a co-leader; apart from public administration, also chosen NGOs were invited to participate in the group.

Right after the change of government to the right-wing PiS in late 2015, declarations to relocate some 7,000 asylum seekers were upheld but as the crisis unfolded, changes in related institutional and legal environment aimed at increasing the security of Poland were introduced. The above-described

group ceased to operate, and the Interdepartmental Working Group for Ensuring Security in the Process of Resettlement and Relocation was created instead in February 2016<sup>68</sup>. The main task of this body was to develop procedures for effective and efficient processing of resettlement and relocation related applications, "with particular emphasis on circumstances that may indicate a threat to the defence, security and public order of the Republic of Poland"<sup>69</sup>. Ministry of the Interior and Administration<sup>70</sup> was again leading the group, but the coordinator of special services was appointed as one of its co-leaders. Additionally, the presence of secret and security services in the group was strengthened, while NGOs were not involved. With this move the government underlined the allegedly existing link between immigration and terrorism, and reaffirmed the need of introducing 'efficient' security mechanisms which would protect Poles from this external danger. Legal and quality safeguards provided to asylum seekers have lost their relevance. Integration was no longer in the scope of the group's activities, effective expulsion of foreigners appeared in its place instead.

In response to the crisis the Act on Granting Protection to Aliens within the Territory of the Republic of Poland was amended so that additional information about asylum seekers such as party affiliation, religious affiliation, union membership and information about sex life could also be collected. Committing crimes of a nature other than political outside Poland before submitting the application was added to the list of prerequisites of refusal of granting the refugee status. The deadline for consultations regarding persons to be relocated or resettled conducted between the Head of the Office for Foreigners with relevant authorities in matters of national security protection and public order was also prolonged (up to even 59 days). Each asylum seeker to be relocated would have to

66 Article 71.1. of the Act on Aliens 2013, <http://prawo.sejm.gov.pl/isap.nsf/download.xsp/WDU20130001650/U/D20131650Lj.pdf> (last accessed on 18.12.2019).

67 Zarządzenie na 88 Prezesa Rady Ministrów z dnia 15 września 2015 roku w sprawie Międzyresortowego Zespołu do Spraw Przesiedleń i Relokacji Uchodźców, <http://prawo.sejm.gov.pl/isap.nsf/download.xsp/WMP20150000819/O/M20150819.pdf> (last accessed on 19.12.2019).

68 Zarządzenie nr 21 Prezesa Rady Ministrów z dnia 25 lutego 2016 roku w sprawie Międzyresortowego Zespołu do Spraw Zapewnienia Bezpieczeństwa w Procesie Przesiedleń i Relokacji Uchodźców, <http://prawo.sejm.gov.pl/isap.nsf/download.xsp/WMP20160000192/O/M20160192.pdf> (last accessed on 17.12.2019).

69 Ibidem.

70 The name of the Ministry was changed after the elections.

be screened by at least three services (the Police, Border Guard, and Internal Security Agency), negative opinion – which is not subject to review and is not accompanied by any justification – of just one authority makes relocation impossible.

The migration crisis was an important trigger which led to the adoption of the Act on Anti-Terrorist Measures of 10 June 2016<sup>71</sup>. According to its Article 9, the Internal Security Agency can undertake secret operational and explanatory activities in relation to a foreigner who is feared to carry out terrorist activity; these activities can last no longer than three months. The head of the Ministry of the Interior and Administration would be able to decide to immediately expel a foreigner from Poland in case of suspicion that this person poses a terrorist threat. As such measures relate also to asylum seekers and refugees, according to some researchers, measures introduced by the Act on Anti-Terrorist Measures are stripping foreigners of basic right to defence and protection<sup>72</sup>.

Already in January 2016 the declared number of asylum seekers who could be admitted in Poland dropped to 400 but the executive regulation to this decision was never adopted. Next, at the beginning of 2017 the government presented a project amending the Act on Granting Protection to Aliens within the Territory of the Republic of Poland that would introduce, among other things, the so-called border procedure in which an applicant for international protection is not granted the right to enter the territory of a given EU Member State for the duration of the examination of an application. Until September 2020, these measures have not been introduced.

## B. Components of the Asylum System

### a. Registration

#### i. Lodging and registration – de jure perspective

The procedure for registering asylum claims is uniform within the country. According to Article 24 of the Act on Granting Protection within the Territory of the Republic of Poland<sup>73</sup>, foreigners lodge applications for international protection to the Head of the Office for Foreigners through the commander of the Border Guard unit or the commandant of the Border Guard post. The applications should be lodged in person when crossing the border (land, sea or air borders), but it is also possible to do it in case a foreigner already remains on the territory of Poland<sup>74</sup>.

In general, during the first contact between the foreigner and the Border Guard, the following steps are to be taken:

1. submission of the application on paper;
2. conducting of the initial registration interview by the Border Guard officer with the asylum seeker in order to collect personal data and obtain information on their country of origin and the circumstances that have led to the decision to apply for the refugee status in Poland, as well as information that may help to establish if a given person is in need of special procedural and/or reception guarantees; the applicant should be assisted by an interpreter;
3. filling in a dedicated questionnaire in order to establish if the Dublin III procedure should be applied;
4. taking the applicant's photo (and, if applicable, the photo of the person(s) on whose behalf the

71 See: <http://prawo.sejm.gov.pl/isap.nsf/download.xsp/WDU20160000904/U/D20160904Lj.pdf> (last accessed on 18.12.2019).

72 W. Klaus, *Security First: New Right-Wing Government in Poland and its Policy Towards Immigrants and Refugees*, Surveillance & Society, 2017, 15 (3/4), p. 525.

73 Ustawa a dnia 13 czerwca 2003 r. o udzielaniu cudzoziemcom ochrony na terytorium Rzeczypospolitej Polskiej (Dz. U. z 2018 r., poz. 1109, 1669).

74 In case of these foreigners who stay in guarded, detention or remand centres or in prison, the application should be lodged through the territorially competent Border Guard commander or commandant; in case of disabled persons, pregnant women, older persons or those staying in detention center or hospital and those who wish to apply for international protection but cannot visit one of the Border Guard units, it is possible to send in writing a declaration of intention of lodging an application on the paper, sign it and send by post.

application is made), taking the fingerprints;

5. doing the medical check;
6. if the applicant possesses it, travel document is taken to the deposit of the Head of the Office for Foreigners and kept there during the entire procedure (unless the foreigner has the right to temporarily or permanently stay in Poland);
7. every applicant is issued a temporary ID document – Temporary Certificate of Foreigner's Identity (the first one for 90 days, the following one for 6 months);
8. providing the applicant with the information on their rights and obligations throughout the procedure and its consecutive steps (especially on the fact that they will be interviewed in detail by a competent Office for Foreigners' caseworker), instructions regarding the Dublin procedure (if relevant), and availability of social assistance and protection of personal data regulations;
9. in case the applicants (or persons included in the application) being disabled, elderly persons, single parents or pregnant women, the Border Guard ensures assistance with the transport to the reception center.

The information gathered during the initial registration interview is entered into and verified against the EURODAC and the relevant national databases (National Collection of Registers and Lists in Foreigners' Affairs – Krajowy Zbiór Rejestrów Ewidencji i Wykazu w Sprawach Cudzoziemców, and POBYT system, which contains information on administrative procedures relating to foreigners in Poland). The applicants' fingerprints are entered into EURODAC database in order to facilitate decisions on possible application of the Dublin III procedure.

Establishing foreigners' identity is mainly the responsibility of the Border Guard who uses

such methods as phone interviews with experts, linguistic analyses and the so-called knowledge tests. During the whole asylum procedure the Border Guard and the Office for Foreigners closely cooperate on that matter<sup>75</sup>.

At the end of the registration the asylum seeker should get from the Border Guard officer the following information:

- the map and the instruction on how to get to and register at the reception centre as well as how to apply for social assistance;
- leaflets in the language spoken by the applicant about the asylum procedure, rights and obligations and procedures linked to the Dublin III regulation;
- a list of NGOs offering assistance during the procedure.

According to information obtained from the Border Guard, data on the degree to which and speed with which new arrivals are registered is not collected.

Once the asylum application is filled in by the asylum seeker, the Border Guard should transfer it to the Office for Foreigners within 48 hours; in case of applications filled in by hand, they are transferred by car.

## ii. Lodging and registration – main challenges

### *Admittance of asylum applications*

Asylum seekers' access to the Polish territory is the main problem relating to lodging and registration of asylum applications<sup>76</sup>. Since 2016, Border Guard officers have been refusing entry to persons wishing to apply for international protection, especially at the Terespol border crossing point with Belarus.

According to the reports by NGOs and the Polish Ombudsman, at this crossing point the majority

75 Establishing Foreigners' Identity for International Protection. Challenges and Practices. Report prepared by the National Contact Point to the European Migration Network in Poland, August 2015.

76 See for example: Migration to the EU: five persistent challenges, FRA, February 2018; Migration: Key Fundamental Rights Concerns, Quarterly Bulletin 1.7.2019–30.9.2019, FRA, [https://fra.europa.eu/sites/default/files/fra\\_uploads/fra-2019-migration-bulletin-4\\_en.pdf](https://fra.europa.eu/sites/default/files/fra_uploads/fra-2019-migration-bulletin-4_en.pdf) (last accessed on 7.01.2020).

of foreigners usually try to lodge asylum applications several times and must reckon with multiple unsuccessful attempts as Border Guard refuse to register them<sup>77</sup>. Faced with such attitude of the Border Guard, most of them decide to temporarily stay in Brest in Belarus and retry until they are successful. The chances of being allowed to file an asylum application are described by Helsinki Foundation for Human Rights as “random and unpredictable”<sup>78</sup>. Even if asylum seekers explicitly declare their intention to apply for protection in Poland, the Border Guard officers often ignore this fact and refuse their entry into the Polish territory, citing to the lack of valid visa or another relevant document<sup>79</sup>.

Because time passes while asylum seekers try to register at the border, it raises suspicion of the Head of the Office for Foreigners as to why they did not seek asylum immediately after leaving the home country. The Office for Foreigners does not acknowledge the irregularities at the border that prevent applicants from seeking asylum without delays and instead perceives them as evidence supporting faulty claims<sup>80</sup>.

#### *Inconsistencies in procedures at different border crossings*

In Poland there are no legal provisions that would regulate the form in which a Border Guard officer conducting check at a border crossing should note the fact that a foreigner has made an intent to

apply for international protection. In other words, there is no law mandating Border Guard officers to record such intentions (as opposed to claims). As a result, in practice there are differences in the proceedings of Border Guard officers that serve at different border crossings<sup>81</sup>.

Moreover, while waiting in a line to register, asylum seekers are informally asked by Border Guards about their situation as a kind of initial selection that is based on unknown criteria (*rozpytanie*) and, as result, some of them are refused the right to lodge the application<sup>82</sup>. Again, this situation concerns mainly the Terespol border crossing.

*Rozpytanie*, which takes place while asylum seekers wait in a line to register, is conducted in front of other people and with no respect for confidentiality. Those who are lucky enough to receive the initial registration interview have to wait for up to 1,5 hours, usually standing because there are not enough seats available. Additionally, some short interviews are conducted in a hurry and in a room where more asylum seekers are waiting (sometimes whole families) and can listen to others' testimonies; according to the FRA review, “facilities for interviewing applicants allegedly did not ensure privacy or confidentiality”<sup>83</sup>.

#### *Lack in human resources and infrastructure*

Monitoring visits by NGOs and the Ombudsman<sup>84</sup> suggests that interpretation services are not

77 M. Górczyńska, M. Szczepanik, *Droga donikąd. Relacja z wizyty monitoringowej na białorusko-polskim przejściu granicznym Brześć-Terespol*, Helsińska Fundacja Praw Człowieka, Warszawa 2016; Rzecznik Praw Obywatelskich, *Komunikat dotyczący wizytacji kolejowego przejścia granicznego w Terespolu*, 21.09.2016, <https://www.rpo.gov.pl/pl/content/komunikat-o-wizytacji-kolejowego-przejscia-granicznego-w-terespolu> (last accessed on 23.02.2019); A. Chrzanowska, P. Mickiewicz, K. Słubik, J. Subko, A. Trylińska, *At the Border. Report on monitoring of access to the procedure for granting international protection at border crossings in Terespol, Medyka, and Warszawa-Okęcie Airport*, Warsaw 2016, <https://interwencjaprawna.pl/en/files/at-the-border.pdf> (last accessed on 23.02.2019); *Asylum Seekers in Poland – current trends*, HNLAC Focus Report, September 2018, <https://www.pomocprawna.org/lib/i5r5fu/Focus-Report---Asylum-Trends-Poland---Sep-2018-jmj2dcq4.pdf> (last accessed on 23.02.2019); J. Białas, M. Górczyńska, D. Witko, *Dostęp do procedury azylowej na zewnętrznych granicach Polski. Stan obecny i wyzwania na przyszłość*, Helsińska Fundacja Praw Człowieka, Warszawa 2019, <https://www.hfhr.pl/wp-content/uploads/2019/04/Dost%C4%99p-do-procedury-azylowej-v2.pdf> (last accessed on 7.01.2020).

78 M. Górczyńska, M. Szczepanik, *op.cit.*, p. 16.

79 Consult, for example, the address by the Ombudsman to the Chief Commander of the Border Guard of 14 January 2016 ([https://www.rpo.gov.pl/sites/default/files/Do\\_KGSG\\_ws\\_trudnosci\\_ze\\_skladaniem\\_przez\\_cudzoziemcow\\_wnioskow\\_o\\_ochrone\\_miedzynarodowa.pdf](https://www.rpo.gov.pl/sites/default/files/Do_KGSG_ws_trudnosci_ze_skladaniem_przez_cudzoziemcow_wnioskow_o_ochrone_miedzynarodowa.pdf), last accessed on 27.09.2020) and the Ombudsman's reports of the Terespol crossing visits available at [www.rpo.gov.pl](http://www.rpo.gov.pl).

80 M. Górczyńska, M. Szczepanik, *op.cit.*, p. 7.

81 The problem has been raised by the Polish Ombudsman, consult for example this correspondence to the Border Guard Headquarters (in Polish, last accessed on 10.02.2019): <https://www.rpo.gov.pl/sites/default/files/Wystapienie%20do%20Komendanta%20Głównego%20Straży%20Granicznej%20w%20sprawie%20praktyk%20stosowanych%20wobec%20cudzoziemców%20na%20przejściach%20granicznych%20w%20Terespolu%20i%20w%20Medyce.pdf> (last accessed on 7.01.2020).

82 Consult, for example, the address by the Ombudsman to the Minister of the Interior and Administration of 24 September 2018 (<https://www.rpo.gov.pl/sites/default/files/Wystapienie%20do%20MSWiA%20w%20sprawie%20procedur%20składania%20wniosków%20o%20status%20uchodźcy%20.pdf>, last accessed on 27.09.2020).

83 Migration to the EU: five persistent challenges, FRA, February 2018, p. 12.

84 See: footnote no. 77.

always provided while conducting initial registration interviews and responsible Border Guard officers do not have the proper knowledge of the Russian language to deal with this task. Moreover, the way in which the initial registration interview is conducted might also affect the asylum process as allegedly the officers are suggesting that it is economic reasons that lay behind the decision of leaving the home country. It can be argued, based on the evidence collected by NGOs and the Ombudsman, that it is a systematic issue in case of the Terespol border crossing.

It was also observed by NGOs that Border Guard officers were filling in the application until space on the form ran out and were reluctant to add additional sheets. Such practice might have a huge impact on the procedure as some important information may be left off the form. What is even more important, the so-called “escalation of testimony” (meaning that testimony becomes more detailed later in the asylum procedure) is frequently given as a reason for questioning the credibility of the asylum seeker by Office for Foreigner, and later in case of lodging the appeal from its decision, in the refugee Council and in the Administrative Court.

In some cases asylum seekers were also allegedly asked to sign before the entire application was completed or read aloud to them in full<sup>85</sup>.

### Redress measures

The European Court of Human Rights (ECtHR) has communicated to Poland four cases regarding refusal of entry for asylum seekers and issued ordinances containing interim measures that asylum seekers should not be refused entry at Terespol crossing point, but they were practically disregarded by the Border Guard<sup>86</sup>. On 23 July 2020 the ECtHR issued a judgment in the case of *M.K. and others v. Poland* (complaints No 40503/17, 42902/17 and 43643/17) concerning the repeated refusal of Polish border authorities to examine applications for international protection<sup>87</sup>. As

stated in the judgement, the Court found that Poland has committed human rights violations due to the fact that it refused foreigners the access to the asylum procedure and exposed them to the risk of inhuman and degrading treatment and torture in the country of origin as well as due to the ill-treatment of complainants by the Polish authorities during border checks. The ECtHR stressed that the Border Guard did not analyse the individual situation of the complainants and, by denying them the right of entry into the Polish territory, took decisions which *de facto* led to the collective expulsion of foreigners. In the Court’s opinion, the actions of the Border Guard were an element of a broader policy of the Polish state consisting in not accepting applications from persons applying for international protection at the border crossing point in Terespol.

In addition to that, on 25 August 2017 the Human Rights Committee communicated to Poland one case on refusal of entry and ordered Polish authorities to accept and process asylum applications. The situation on the eastern border is being monitored by Polish NGOs, the Ombudsman as well as the European Agency for Fundamental Rights.

Regarding initial registration interviews, either adequate time (and infrastructure) should be provided for a full and confidential interview to avoid “escalation of testimony”, or it should be clarified that border procedures are not designed to accommodate the gathering of a complete testimony and it is therefore reasonable that an applicant’s story would include more detail at a later stage.

## b. Reception

### i. Reception infrastructure

#### *Types of accommodation and relevant capacities*

Providing accommodation and other forms of social assistance to asylum seekers falls within the remit of the Office for Foreigners. The reception

85 M. Górczyńska, M. Szczepanik, *op.cit.*, p. 9.

86 See: <http://www.hfhr.pl/en/border-guard-ignores-ecthr-measures-again/> (last accessed on 23.02.2019); <https://www.hrw.org/news/2017/03/01/poland-asylum-seekers-blocked-border> (last accessed on 23.02.2019); M. Szczepanik, Defending the right to seek asylum: a perspective from Poland, <https://legal-dialogue.org/defending-the-right-to-seek-asylum-a-perspective-from-poland> (last accessed on 27.09.2020).

87 For the full text of the judgement please go to: [https://hudoc.echr.coe.int/fre#{„itemid“:\[„001-203840“\]}](https://hudoc.echr.coe.int/fre#{„itemid“:[„001-203840“]) (last accessed on 27.09.2020).



system is centralized in Poland and the Office for Foreigners also manages the pool of available places. As of 2019 there are 10 centers (previously 11); in 2010 a centre for single women and mothers with children was created in Warsaw.

The reception system in Poland is based on the mixed model and consists of:

- 4 centers managed by the Office for Foreigners (2 reception centres<sup>88</sup>: in Biała Podlaska and Podkowa Leśna-Dębak and 2 accommodation centres<sup>89</sup>: in Czerwony Bór and Linin);
- 6 accommodation centres outsourced to contractors through tenders (currently in Bezwoła, Białystok, Grupa, Horbów, Łuków and Warsaw);
- living outside of the centre – applicants receive benefit in cash, which is supposed to cover all costs of living during their stay on the territory of Poland.

In addition to reception and accommodation centers, there are also 6 guarded centres for foreigners in Poland. They are located in Lesznowola, Kętrzyn, Białystok, Krosno Odrzańskie, Przemyśl and Biała Podlaska. Three of them, namely Kętrzyn, Biała Podlaska and Przemyśl, also house children.

After lodging and registering the application, asylum seekers have two days to register at one of the two reception centers. If they fail to do so, the asylum procedure should be discontinued. In reception centers, foreigners undergo medical examinations, may submit application for social assistance for the duration of the asylum proceedings and are waiting for being directed to appropriate accommodation centers. Asylum seekers might also choose to live outside accommodation centers and in such cases are responsible for finding proper accommodation on their own.

Unaccompanied minors are placed in specialized institutions, which primarily are responsible for minors who hold Polish citizenship. They can also be placed in a professional foster family (which is regulated by the Act of 9 June 2011 on family support and foster care system<sup>90</sup>). In such cases, the Office for Foreigners provides financing, while the courts and the Ministry of Economic Development, Labour and Technology are responsible for overseeing the care that minors receive.

Information on the reception capacity is managed through reports (there are no online tools to manage it). According to the information provided by the Office for Foreigners, as of January 2019, the Office was providing social assistance to 2914 individuals; 1291 were staying in the centres and 1623 were receiving a benefit in cash to cover costs of living in Poland (for details see the next sub-section). The latest numbers relating to January 2020 suggest that the number of places in centres has not changed (2,231 since 2018). Also, according to the Office for Foreigners, at the end of 2020 3,176 asylum seekers were benefiting from assistance, 26% of whom were residing in one of the reception centres and the remaining 74% were receiving cash benefits for independent living<sup>91</sup>. Taking into account the decreasing number of asylum seekers and the current number of vacant places in accommodation centres, it might be argued that the reception capacities are not an issue now.

Provided the current situation in Poland, extraordinary initiatives in order to maintain enhanced buffer capacity in reception facilities are not necessary; the number of staff available to run the reception system have also seemed to be sufficient.

88 First centres to which persons who have submitted an application for international protection are (temporarily) directed.

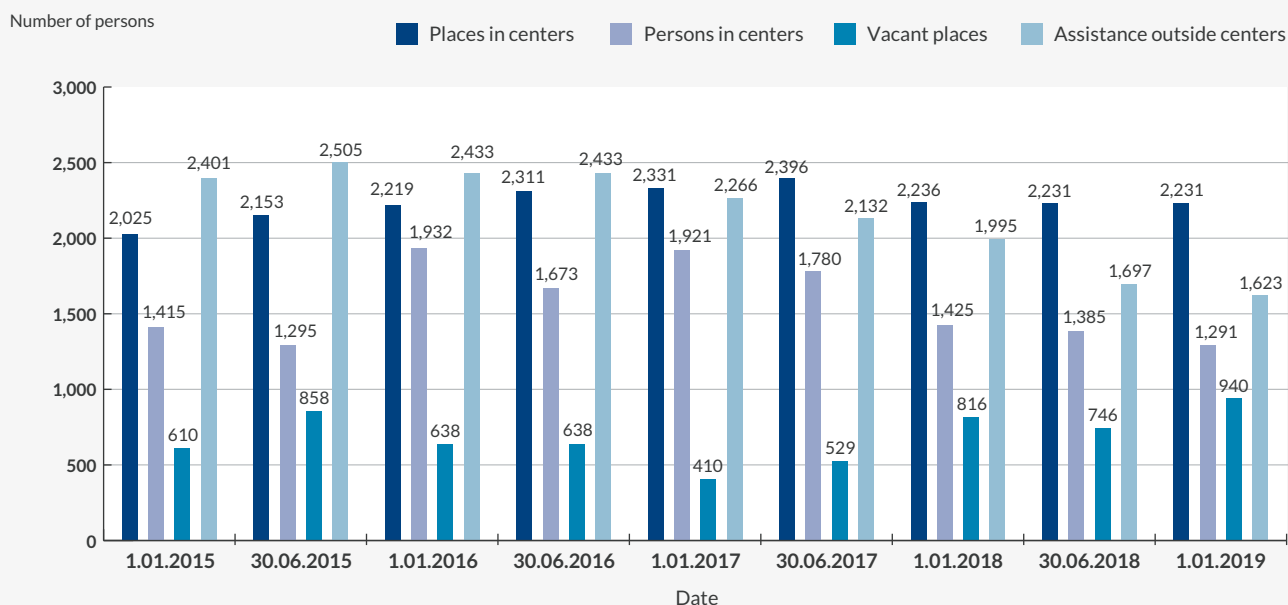
89 Accommodation centers are centers for foreigners undergoing proceedings for granting international protection.

90 Ustawa z dnia 9 czerwca 2011 r. o wspieraniu rodziny i systemie pieczy zastępczej, Dz.U. 2011 nr 149 poz. 887, <http://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=wdu20111490887> (last accessed on 27.09.2020).

91 Information provided by the Office for Foreigners (covering the period of 1 January 2016 – 1 January 2020), 1 July 2020.



FIGURE 2 Social assistance provided to asylum seekers by the Office for Foreigners, 1.01.2015–1.01.2019



Source: Office for Foreigners.

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### Social assistance

Social assistance to asylum seekers is provided in accordance with the provisions of the Act of 13 June 2003 on granting protection to foreigners within the territory of the Republic of Poland and financed by the Head of the Office for Foreigners. Pursuant to the afore-mentioned Act and the Ordinance of the Minister of Internal Affairs and Administration of 19 February 2016<sup>92</sup>, asylum seekers who live in reception centres are provided with accommodation, food, financial aid for the purchase of personal hygiene products (20,00 PLN a month) and the so-called pocket money (50 PLN a month), the provision of non-recurring financial aid for the purchase of clothes and shoes (140,00 PLN), and a cash benefit to buy food for children aged 6 and below and schooled children (9,00 PLN a day).

Those who live outside centers might receive a benefit in cash from which they should cover all costs associated with their stay in Poland. This form of assistance, however, may apply only when it is required for organisational reasons or when it is necessary to provide it due to the need of protecting the foreigner's safety or the public order, protecting and sustaining of family ties, or the need to prepare the foreigner to live outside the center in case of granting asylum or subsidiary protection<sup>93</sup>.

<sup>92</sup> Rozporządzenie Ministra Spraw Wewnętrznych i Administracji z dnia 19 lutego 2016 r. w sprawie wysokości pomocy dla cudzoziemców ubiegających się o udzielenie ochrony międzynarodowej, Dz.U. 2016 poz. 311, <http://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=W-DU20160000311> (last accessed on 27.09.2020).

<sup>93</sup> See: Ustawa z dnia 13 czerwca 2003 r. o udzielaniu cudzoziemcom ochrony na terytorium Rzeczypospolitej Polskiej, Dz.U. 2003 Nr 128 poz. 1176 z późn.zm., Article 72, point 1, <https://udsc.gov.pl/wp-content/uploads/2014/12/Rodz5Art.72Pkt-1.pdf>.

TABLE 3 The amount of social assistance in cash provided to foreigners living outside the centre.

NO. OF FAMILY MEMBERS	AMOUNT PER DAY / PER PERSON	AMOUNT PER DAY / PER MONTH
Single	25,00 PLN (around 6,00 EUR)	750,00 PLN (around 174,50 EUR)
2 persons	20,00 PLN (around 4,50 EUR)	600,00 PLN (around 139,50 EUR)
3 persons	15,00 PLN (around 3,50 EUR)	450,00 PLN (around 104,50 EUR)
4 persons	12,50 PLN (around 3,00 EUR)	375,00 PLN (around 87,00 EUR)

Source: Office for Foreigners.

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Irrespective of the form of assistance, all asylum seekers have legally guaranteed access to public schools and Polish language lessons, and related relevant educational materials<sup>94</sup>. They can also apply for coverage of costs of extra-curricular and recreational or sports activities for children, and the reimbursement of transport costs in specific cases, i.e. of those connected with refugee status proceedings, medical examination and vaccination or other justified cases.

Health care services are coordinated by a company contracted by the Office for Foreigners (under the public procurement scheme) – currently it is Petra Medica Sp. z o.o. based in Warsaw, and asylum seekers are not able to choose a different service provider. The contract envisages running of medical points at reception centres where medical assistance and specialized treatment, including dental care, is to be provided by medical doctors, nurses and also psychologists who can be accessed also by those who live outside the centres.

Moreover, all asylum seekers are entitled to receive assistance in voluntary return (information on the voluntary return should be provided as early as on the registration stage). It may encompass covering the costs of travel, costs of obtaining travel documents and necessary visas and permits, boarding and medical costs during travel as well as costs of organizing voluntary return by entitled authority<sup>95</sup> (the Office for Foreigners or the International Migration Organization, depending on the migrant's preferences).

Access to assistance after the procedure has ended depends on the final ruling. According to law, social assistance and medical care cannot be provided: 1) after 14 days from the date of delivery of a final decision on the discontinuance of asylum proceedings; 2) after the date of obligation to leave Poland if protection was refused; 3) two months from the date of delivery of the final decision in other cases. However, the period of granting social assistance and medical care can be extended until the date when the foreigner should leave the territory of Poland in selected cases, including if the foreigner applies for help in voluntary return or if the foreigner informed the Head of the Office for Foreigners in writing of his or her intention to voluntarily return after being delivered the negative decision.

The POBYT database, managed by the Office for Foreigners, allows the agency to keep track of the reception conditions of each individual applicant (including the forms of social assistance they receive, the dates of granting and ending assistance, their places of residence, and contact information) and other information linked to reception (including the applicant's personal data and the status of their procedure).

According to the latest data obtained from the Office for Foreigners, the average annual cost of supporting one asylum seeker covered from the state budget in 2017 was 19,714.19 PLN (approx. 4,380 EUR). The total cost incurred in 2017 for social assistance for asylum seekers was 70,321,326.06 PLN (approx. 15,627,000 EUR).

<sup>94</sup> See: Article 71, point 4, *Ibidem*.

<sup>95</sup> See: Article 75, *Ibidem*.

## ii. Reception conditions

### *Challenges related to accommodation*

One of the greatest challenges related to centers is their geographic distribution. Some of them are located in bigger cities, while some are in smaller towns far from critical services such as schools and other facilities, including shops. The practice of locating centers in remote areas has been often criticized by NGOs as not facilitating the integration process<sup>96</sup>; it has also been recognized by the Agency for Fundamental Rights in its 2017 report on reception facilities<sup>97</sup>. The location of reception and accommodation centers depends on which companies bid for such facilities and win<sup>98</sup>.

The UNHCR's 2018 and 2019 Age, Gender and Diversity (AGD) reports suggest that over recent years material conditions at the centers have improved considerably; the quality of food, security (in terms of tolerance and cultural relations between the asylum seekers), the quality of organised activities for children under the schooling age and the offer of activities for adults need some further improvements<sup>99</sup>. As suggested in the reports, asylum seekers have been also generally satisfied with relationships and communication with the centers' staff.

For those who decided to live outside the centres, the most important challenge has been the rental of apartments (including high prices, landlords' xenophobia and hostility). "Apart from money issue (prices for renting apartments in Poland are very high in comparison to the earnings of Poles), the main problem is the unwillingness of landlords to let flats to Russian speakers, Chechens and large

families. Social housing is available only for a very limited number of beneficiaries of international protection, depending the area/city they live in", informs the UNHCR's 2019 AGD report<sup>100</sup>.

### *Challenges related to social assistance*

Still in 2014 the Supreme Audit Office of Poland published its report on evaluation of integration policies addressed to asylum seekers and refugees (reference dates for the analysis were 2012–2014). Regarding the assistance provided to asylum seekers, the Supreme Audit Office indicated that its aim is to prepare asylum seekers to be able to live independently in Poland after the refugee status or subsidiary protection has been granted<sup>101</sup>. The Supreme Audit Office assessed that this goal was hardly reached, mainly due to the fact that only small percentage of asylum seekers was attending Polish classes, and the learning intensity was too low (between 2 and 5 hours a week)<sup>102</sup>. Moreover, there was no recognition as regards the needs of the labour market, and thus training and vocational courses addressed to asylum seekers that would enhance their chances to get a job after the procedure has ended were not carried out<sup>103</sup>. Integration actions boiled down mainly to social assistance, which was usually provided correctly.

It can be argued that this situation has not improved since 2014. According to the Office for Foreigners, Polish classes have been available for all willing to participate but the turnout was reported rather poor (asylum seekers tended to miss classes, discontinue learning and then deciding to start over, etc.)<sup>104</sup>. As regards social allowances that asylum seekers receive during the procedure, they are not sufficient to cover their

96 A. Piłat, D. Potkańska, Local responses to the refugee crisis in Poland, Institute of Public Affairs, Warsaw 2017, p. 10.

97 European Union Agency for Fundamental Rights, Current migration situation in the EU: Oversight of reception facilities, September 2017, p. 4, [https://fra.europa.eu/sites/default/files/fra\\_uploads/fra-2017-september-monthly-migration-report-focus-oversight\\_en.pdf](https://fra.europa.eu/sites/default/files/fra_uploads/fra-2017-september-monthly-migration-report-focus-oversight_en.pdf) (last accessed on 9.01.2020).

98 A. Górny, H. Grzymała-Moszczyńska, W. Klaus, S. Łodziński, Uchodźcy w Polsce. Sytuacja prawna, skala napływu i integracja w społeczeństwie polskim oraz rekomendacje, Ekspertyzy Komitetu Badań nad Migracjami PAN, Kraków – Warszawa 2017, [https://instytucja.pan.pl/images/2018/wydzialy/w1/Uchodzy\\_w\\_Polsce\\_ekspertyza\\_KBNM\\_PAN.pdf](https://instytucja.pan.pl/images/2018/wydzialy/w1/Uchodzy_w_Polsce_ekspertyza_KBNM_PAN.pdf) (last accessed on 27.09.2020), p. 22.

99 2018 Participatory Assessment. Summary Report, UNHCR Representation in Warsaw, November 2018; 2019 Participatory Assessment. Summary Report, UNHCR Representation in Warsaw, December 2019.

100 2019 Participatory Assessment..., *op. cit.*, p. 12.

101 Najwyższa Izba Kontroli, Pomoc społeczna dla uchodźców. Informacja o wynikach kontroli, 2014, p. 9.

102 *Ibidem*, p. 9–10.

103 *Ibidem*, p. 10.

104 Information provided in writing by the Office for Foreigners.

basic needs and legal assistance<sup>105</sup>. While the willingness of asylum seekers to engage in professional activity is high, the six months period before the job permission can be issued – introduced as a measure which would stop foreigners from potentially applying for the international protection in order to get immediate access to the Polish labour market – is perceived by them as unnecessarily long and counterproductive<sup>106</sup>.

According to the UNHCR's reports<sup>107</sup>, access to primary health care in the centers was generally good. There have been, however, some problems regarding access to psychologists due to limited number of professionals with experience dealing with asylum-seekers and working in languages spoken by this group (or habilitated interpreters). Asylum seekers were also not satisfied with both the quality of specialized medical assistance (and with long waiting times, specific to the Polish healthcare system in general, too) and dental care. On the positive side, asylum seekers were generally able to communicate with doctors.

It has to be noted that the Department for Social Assistance of the Office for Foreigners also carries out evaluation studies on the quality of social assistance and medical care provided to asylum seekers. According to the latest survey conducted in December 2016 and at the beginning of January 2017, on average 71.3% asylum seekers were satisfied with services and 12.9% were dissatisfied<sup>108</sup>.

### **Redress measures**

Basing on its Age, Gender and Diversity (AGD) reports, UNHCR has formulated a set of recommendations relating to reception conditions, including:

- strengthened cooperation between relevant state agencies and professional associations of psychologists and schools training;
- organising targeting job trainings and orientation courses for asylum seekers;

- collecting data on education level and previous professional experience of asylum seekers in order to facilitate job matching.

These measures have not been addressed by responsible state authorities yet.

### **c. Asylum procedure**

#### **i. Asylum procedure – main steps and authorities involved**

##### *Asylum procedure*

Main steps of the asylum procedure in Poland and authorities involved are presented on Figure 3 (next page).

In case of refusal to grant the refugee status, the need to grant subsidiary protection to the foreigner is ex officio decided.

In 2003, tolerated stay was introduced into the Polish legal system as “another type of protection” granted by the Polish state to foreign nationals. It was transformed as of 1 May 2014 into two separate forms of legalising the foreigner's stay in Poland: a permit to stay for humanitarian reasons and a permit for tolerated stay. A permit to stay for humanitarian reasons and a permit for tolerated stay may be granted only to foreigners who meet the conditions for the obligation to return.

A permit for tolerated stay and a permit for humanitarian reasons might be applied in the event of a threat to: the right to life, personal freedom and safety, the likelihood of being subjected to torture or to inhuman or degrading treatment or punishment, forced labour or the threat of being deprived of the right to a fair trial or punishment without legal basis. With regard to a foreigner who has been granted a residence permit for humanitarian reasons, a contraindication for obliging them to return is also a violation of their right to family or private life. A permit for tolerated stay shall not be granted to a foreigner if there

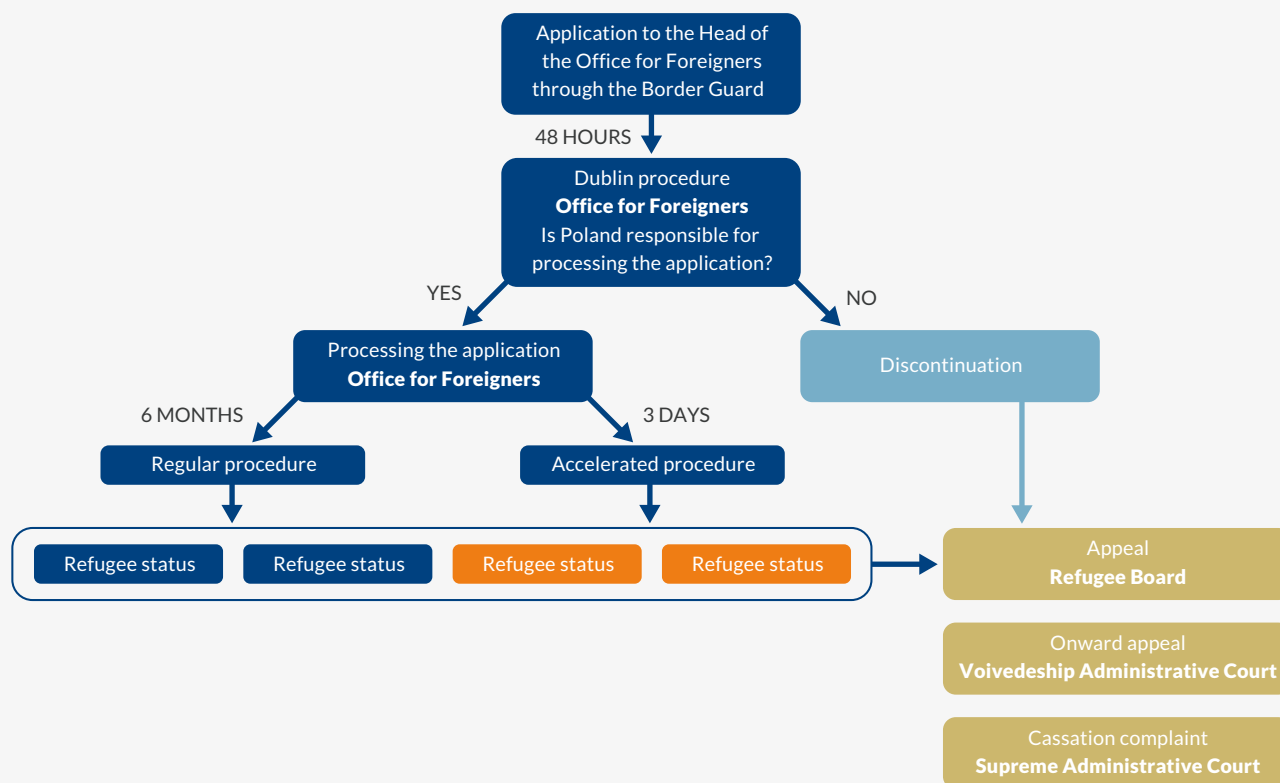
<sup>105</sup> 2019 Participatory Assessment..., *op. cit.*, p. 11.

<sup>106</sup> *Ibidem*.

<sup>107</sup> See: footnote no 100.

<sup>108</sup> Based on the note provided by the Office for Foreigners for the purpose of this report.

FIGURE 3 Flow chart of the asylum procedure in Poland



Source: own elaboration on the basis of <http://www.asylumineurope.org/reports/country/poland/asylum-procedure/general/flow-chart> (last accessed 10.01.2020).

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are serious grounds for believing that they have committed a crime within the meaning of international law that undermines international peace and security. The competent authorities are Border Guard in case of humanitarian stay and Border Guards and the Head of the Office for Foreigners in case of tolerated stay.

Decision-making process in the first instance should last up to 6 months<sup>109</sup> (regular procedure), and up to 30 days if the application is considered manifestly unfounded (accelerated procedure). In case of regular procedure, the envisaged time period can be prolonged to 15 months under certain circumstances, including when the asylum seeker did not fulfil the obligation of presenting all the evidence and documents or attending the interview. If the decision is not issued within 6

months, asylum seekers can apply to the Head of the Office for Foreigners for a document, on the basis of which they can legally work in Poland until the decision on granting protection becomes final.

Decision-making in the asylum procedure in Poland is centralized. The Office for Foreigners holds the main responsibility for conducting first instance administrative proceedings related to the asylum procedure, including conducting the full interview. The responsible Department for Refugee Proceedings is based in two locations: the central one in Warsaw, where most of cases are investigated, and one branch in Białą Podlaska. It counts around 60 employees taking into account both locations and is divided into units according to countries/regions/continents of origin of asylum

109 Art. 34 clause 1 of the Act on granting protection to foreigners within the territory of the Republic of Poland.

seekers<sup>110</sup>. Around 27 caseworkers, who work in the Department, are responsible for informing asylum seekers about interview dates, booking the room, arranging the psychologists, if necessary, for the time of the interview, and arranging the interpreter. Generally, units are divided into first applications organized by regions, and one unit deals with first applications in the accelerated procedure and subsequent applications. As the Office for Foreigners informed, the decision to divide the Department primarily by region is related to the fact that cases are examined by caseworkers who are specialized in the specific region what should increase the quality of decisions. An informal priority status has been attributed to applications made by citizens of countries associated to war, such as Syria, Yemen, Eritrea, and Iraq.

Before the application starts to be examined, the Head of the Office for Foreigners should assess whether the asylum seeker requires special treatment or social assistance during asylum proceedings, based on the information provided by them in the application form<sup>111</sup>. The Head of the Office for Foreigners may order medical or psychological examinations at the state cost. If confirmed, that the asylum seeker is a member of a vulnerable group, they have special rights during the procedure. For example, they can indicate the date and location of the interview, the gender of the interviewer, interpreter and psychologist.

Asylum seekers are informed about the interview by post or – in case of those staying in accommodation centers or detention centers – via fax. The summon letters are in Polish, and asylum seekers have to deal on their own with translation; the brochure, written in the language spoken by the asylum seeker, with information describing how the interview would look like is attached to the invitation. If asylum seekers have representatives or attorneys, the interview invitation is sent to them.

Usually interviews take place in Warsaw. Applications registered at the Terespol border crossing are, however, processed in Biała Podlaska. In Warsaw there are five rooms dedicated for conducting interviews, and four in Biała Podlaska.

The information gathered during the interview is verified with the help of the Country of Origin Information (COI) unit of the Department for Refugee Proceedings. If a caseworker needs to confirm the information gathered during the interview, they send questions via a dedicated online platform to the COI unit. Generally, the waiting time for the answer depends on the complexity of the question, but in most cases it takes between 7 days and 1 month to prepare it. Once the information from the interview and reports from the COI unit are gathered, the caseworker can start writing decision.

In general, administrative proceedings in Poland are highly bureaucratic, involving many levels of governance and pushing each of them to produce sometimes unnecessary documents. In case of the asylum procedure, even positive decisions have to be supported by a several-pages long justification, which has to be shared with the Border Guard, Police and the Internal Security Agency, and approved by these authorities within 30 days. Such practice results in unnecessary delays in issuing decisions as case workers are concentrated also on meeting bureaucratic standards regarding the length of justifications, not just on their merits; in turn, other involved agencies need more time to process them.

## ii. Procedural and infrastructural challenges

### *Challenges relating to processing times*

In practice, processing times in cases of regular applications are often longer than the envisaged 6 months. It depends on many factors, especially

110 Its structure is as follows: 1) Unit I for Refugee Procedures – accelerated procedures (i.e. Armenia, Vietnam), subsequent applications; 2) Unit II for Refugee Procedures – first applications (Russian Federation); 3) Unit III for Refugee Procedures – first applications (Africa, Near East, South Asia, East Asia); 4) Unit IV for Refugee Procedures – first applications (Eastern Europe, Central Asia); 5) Unit for Refugee Procedures in Biała Podlaska – hearings, first applications submitted in Terespol border crossing; 6) Dublin Unit – conducting procedures according to „Dublin III” Regulation; 7) Country of Origin Information Unit; 8) Unit for issuing ID cards for asylum-seekers and beneficiaries of international protection. For more information regarding the structure of the Department for Refugee Proceedings and its responsibilities, please go to the website of the Office for Foreigners: <https://www.bip.udsc.gov.pl/departament-postepowan-uchodzczych> (last accessed on 27.09.2020). The Offices's status and rules of procedures are available at <https://www.bip.udsc.gov.pl/regulacje-prawne-dotyczace-organizacji-urzedu/podstawy-prawne-dzialania/#podstawy-prawne-dzialania> (last accessed on 27.09.2020).

111 According to the art 68 of the act on granting protection in the territory of Poland of 13 June 2003 regarding vulnerable groups.

on the nature of a particular case (e.g. whether the asylum seeker possesses ID or travel documents) and the current workload at the Office for Foreigners, and might vary on average from 3 months to more than a year. Country of origin of applicants has a heavy impact on processing times. For example, in 2016–2018 the average time for processing applications of Syrians, Yemeni and Eritrean nationals was 3 months (down from 4–6 months in 2014–2015), and in the same time period, the average time for processing other applications was around 5,7 months. According to the Office for Foreigners, the longest processing time ever was 1 491 days (49,7 months), and the shortest was 4 days.

Generally, the following causes prolonging processing times might be listed:

- delays in preparing and delivering country of origin information by the COI unit;
- lack of staff during the period of a higher inflow of applications;
- obligations resulting from the Code of Administrative Proceedings;
- poor quality legal support;
- vulnerability of the asylum seeker;
- internal factors at the Office for Foreigners.

According to the Code of Administrative Proceedings, public administration bodies are obliged to ensure active participation of the parties (asylum seeker and lawyer, if appointed) at each stage of the proceedings and, before issuing the decision, to enable them to express their opinions on the evidence and materials collected, and on the demands made (Art. 10 § 1.)<sup>112</sup>. In practice, it means that before the Office for Foreigners can issue and send the decision to the address of the asylum seeker or their legal representative, the information

has to be sent informing the parties about their rights resulting from the Code of Administrative Proceedings. The Office for Foreigners has to wait for the proof of delivery in order to be sure that the asylum seeker does not have the intention to comment on the evidence. In correspondence with asylum seekers and their legal representatives the Office for Foreigners uses the National Post services (or fax, when possible). In approximately 15 cases a year the waiting time for the proof of delivery from the National Post exceeds 35 days. In such cases the Office for Foreigners issues a formal complaint to the National Post which, in turn, has additional 3 months to reply, causing further delays in processing times.

Delays can also result from attorneys' decisions on filing procedural motions with requests having been already the subject of the responsible authority's decision, and addressing correspondence to wrong authorities, who are legally bound to forward it to the competent institution.

It has to be underlined that in Poland free legal assistance to asylum seekers is available only in case of negative decisions, decisions on withdrawal of international protection, decisions on discontinuation of the procedure as well as decisions stating inadmissibility of the application. Asylum seekers may look for attorneys on their own and pay for services from their own resources<sup>113</sup>. In order to facilitate it, the Office for Foreigners has been publishing on its website a list of law companies and NGOs that provide legal assistance (only at certain stages of the procedure)<sup>114</sup>. The Office for Foreigners has also signed contracts with selected advocates, legal counsellors and NGO lawyers to provide free legal assistance to asylum seekers but there are no regular meetings with them and their work is also not monitored by the Office for Foreigners. In general, it might be argued legal assistance is not perceived by government authorities as a factor that might accelerate the procedure and support a fair approach to the asylum seeker.

112 Ustawa z dnia 14 czerwca 1960 r. Kodeks postępowania administracyjnego, Dz.U. 1960 Nr 30 poz. 168, <http://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU19600300168/U/D19600168Lj.pdf> (last accessed on 29.09.2020).

113 More about legal information and legal assistance provided can be found on the website of the Office for Foreigners, <https://udsc.gov.pl/en/urząd/bezplatna-pomoc-prawna/informacja-ogolna/> (last accessed on 23.02.2019).

114 See: <https://udsc.gov.pl/urząd/bezplatna-pomoc-prawna/> (last accessed on 10.01.2020).



The asylum procedure can also last longer in cases when the applicant is considered a vulnerable person and there is the need to wait for treatment/therapy in order to stabilize the psychological and physical situation of the asylum seeker without which the interview is not possible.

As regards vulnerable groups, before 2015 in case of a foreigner who informed the Office for Foreigners that they have been subjected to violence, were disabled, or whose psychophysical condition created a presumption that they have been subjected to violence, the Head of the Office for Foreigners was obliged to ensure that medical or psychological examinations are carried out in order to confirm these circumstances. After the 2015 amendments, the Head of the Office assesses whether this person requires special treatment in the proceedings for granting international protection or in the scope of social assistance – and does not have the obligation to order examinations. If the Head of the Office for Foreigners decides not to examine the asylum seeker, the person seeking asylum is informed that she/he/they can order it at their own expense. The change might considerably affect the situation of vulnerable asylum seekers who are usually not in the position to cover costs of medical checks. On the other hand, many of them who are indeed in need of psychological assistance, state at the beginning of the interview that they do not want to be treated in a special way and feel fine to have a standard interview just to save time because they fear the additional psychological examinations will prolong the procedure. This, in turn, might mean a poorer information on the applicant and their situation collected during the procedure.

Such external factors as the lack of sufficient communication on the side of the applicant, especially in case of change of delivery address and failure to keep the Office informed about this fact can also affect time frames for dealing with asylum applications.

Obstacles prolonging processing time exist also in relation to the accelerated procedure – the main important one being the necessity to conduct the

interview. Coordination of all elements in order to schedule the interview (see the sub-point below), receive information from the COI unit and to prepare decision within 30 days deadline proved to be difficult for caseworkers. Moreover, the procedure of identification of vulnerable persons is currently extensive and unsuitable for cases dealt with in an accelerated procedure.

#### *Staffing, access to professionals and infrastructure*

In December 2019 the number of first instance pending applications including first and subsequent applications (without reopened proceedings) was 993 (991 in December 2018)<sup>115</sup>. No specific emergency measures have been developed to tackle possible further backlog. Ad-hoc actions such as hiring more people to deal with applications or re-positioning staff from other Office for Foreigners' departments might be implemented in case of massive influx of asylum seekers, but related challenges such as the limited number of premises to conduct interviews or the poor quality of applications filled in by Border Guard officers have not been addressed.

Regarding interviews, coordinating involved professionals (psychologists<sup>116</sup>, guardians<sup>117</sup>, interpreters, lawyers and caseworkers) with the availability of interview rooms is yet another challenge. This is a time-consuming task that additionally slows down the whole process.

Insufficient language competences (including reception and administrative workers) and insufficient level of legal knowledge among the Office for Foreigners' workers also influence the quality of asylum procedures. The basic training package for newly employed caseworkers encompasses methods of interrogation, evidence assessment, and internal IT systems; trainings on vulnerable groups are also provided. Meanwhile, the legal environment is changing, sometimes very rapidly, and even if members of staff know about the changes, they have difficulties in applying them in practice. Lack of appropriate training affects daily work and its quality and prolongs the

115 Informacja o działalności Urzędu do Spraw Cudzoziemców w okresie 01.01.2019 – 31.12.2019 r., Warszawa.

116 Needed in case the asylum seeker is considered by the case worker as a vulnerable person.

117 In case of unaccompanied minors.



time of undertaken activities, especially when an employee has to consult other employees or superiors or to acquire knowledge from other sources.

It also happens that case workers are tasked with too many interviews (one interview every day, or even two interviews a day). Their work is made even more demanding when they have to record proceedings while interviewing applicants and – in some cases – act as interpreters. Still, generally, interpretation during interviews is available in most of the languages spoken by the asylum seekers in Poland. There might be problems in case of rare languages, but the Office for Foreigners noted that the applicants usually also know other more common language(s) and agree to be interviewed in the second spoken language. This might, however, result in inability of asylum seekers deprived of the possibility to speak their mother tongue or dialect to communicate information which might be important to the case.

#### *Communication and coordination*

Communication and coordination between and within involved authorities should also be improved. For example, according to law (Art. 30 ust 12) an asylum application should reach the Office for Foreigners within 48 hours of its registration. In practice, this time depends on the geographical proximity between the Office, located in Warsaw, and the place of registration of the application<sup>118</sup>. It might take a couple of days for applications registered in Przemyśl or Gdynia to reach the Office (documents are sent by National Post and via internal IT system, files are handled mostly in hard copy). Further, the main office at the Office for Foreigners needs 2–3 working days to register the correspondence. Afterwards, it is retrieved by the Department for Refugee Procedures, registered, stamped and the main secretariat of the Department initially allocates the case to the relevant unit. The case cannot be officially transferred to the responsible unit if the director does not approve this initial allocation. As a result, it takes between 1 and 2 weeks from the moment of registering the application to the moment it arrives on the case worker's desk.

#### *Redress measures*

In order to improve the quality of the asylum process at the Office for Foreigners, the following steps seem necessary:

- investments in staff (caseworkers and COI specialists) both in terms of its number as well as qualifications;
- increasing the number of available interview rooms;
- considering the division of the Department for Refugee Proceedings into specialised units so that accelerated procedure is realized by a dedicated unit;
- considering establishing a formal fast track in place of the informal one for applications received from citizens of countries experienced by war;
- improve internal coordination and cooperation with external agencies thorough sharing of documents by electronic means, when possible;
- free legal assistance in all stages of the procedure, not just in case of cases that were denied.

Such issues as the freedom of choice of mailing services by the Office for Foreigners that would make the exchange of documents between involved agencies and persons faster or, generally, decentralizing the system, would imply wider legal changes and should be considered by the government, and especially the Ministry of the Interior and Administration as the main agent supervising the Office for Foreigners.

#### **d. Adjudication**

##### **i. Adjudication process**

As already suggested, caseworkers are responsible not only for interviewing asylum seekers, but also for proposing the settling and writing justification

<sup>118</sup> According to information provided by the Office for Foreigners.

to asylum decisions, then (usually) accepted by the Head of the Office for Foreigners.

Every applicant who is not satisfied with the decision issued by the Head of the Office for Foreigners has the right to appeal (see: Figure 3). The second instance administrative institution in the asylum system in Poland is the Refugee Board. It is an administrative body consisting of twelve members. An appeal against the decision of the Head of the Office for Foreigners shall be submitted within 14 days from the date of its delivery or announcement. If the refusal to grant the refugee status took place due to an obvious groundlessness of the application<sup>119</sup>, the deadline is 5 days. An appeal to the Refugee Board shall be submitted through the Office for Foreigners. Both appeals against the decisions of the Head of the Office, as well as other letters and applications submitted to the Refugee Board must be written in Polish.

In case of appeals relating to the regular procedure, decisions are taken by three members of the Refugee Board (accelerated procedure – one member). The procedure includes assessment of facts and there is also a possibility of interviewing applicants. The appeal has a suspensive effect. The Refugee Board may annul the first instance decision, overturn it or uphold the decision of the Head of the Office for Foreigners. In the majority of cases, the decisions of the Head of the Office for Foreigners are upheld (please see tables in the following sub-sections). In accordance with the Code of Administrative Proceedings, the Refugee Board has one month to issue a decision. The above deadline does not include the periods necessary to perform specific activities, periods of suspension of the proceedings and periods of delays on the part of the foreigner or for reasons independent of the Refugee Board. The Refugee Board's decision is final during the administrative procedure.

If an applicant considers the decision of the Refugee Board to be illegal, she/he/they may file a

complaint with the Voivodeship Administrative Court within 30 days from the date of delivery of the decision. The complaint is lodged through the Refugee Board.

In the course of the court proceedings the Voivodeship Administrative Court examines whether the decision was issued in accordance with the law. A notice of the date of the hearing is sent to the address given in the complaint. If the Voivodeship Administrative Court finds that the decision was issued in violation of the applicable law, the court issues a verdict to overrule the decision and refers the case back for reconsideration. On the other hand, if the Court finds no grounds for stating that the decision was issued in violation of law, it dismisses the complaint.

The ruling of the Voivodeship Administrative Court in Warsaw can be then appealed against to the Supreme Administrative Court in Warsaw by lodging a cassation complaint.

## ii. Recognition rates and trends

According to the data of the Office for Foreigners, the total number of decisions issued in 2020 exceeded the number of applications received in that period. The Head of the Office issued 3,491 decisions, of which 399 (11%) were granting one form of protection; a further 2,048 foreign nationals received negative decisions (59%), and 1,044 proceedings were cancelled (30%)<sup>120</sup>. It is worth underlying that year 2019 ended with the lowest number of decisions since 2010 (see table 4 on the next page). This is a consequence of a progressive decrease in the number of applications, which started in 2017.

The proportion of types of decisions remained unchanged over the 2018 and 2019: the percentage of negative decisions fell from 47.87% to 43.25%, while the percentage of cancellations rose from 43.69% to 50.13%. Preliminary data indicates that

119 According to the Article 38.2 of the Act on Granting Protection... the application is inadmissible if: 1) another EU Member State has already granted protection to the applicant; 2) a country which is not an EU Member State is considered to be the first asylum country with regard to the applicant; 3) is a subsequent application for international protection and does not contain new evidence or factual or legal circumstances which significantly increase the likelihood of international protection being granted; 4) the spouse who has previously consented to the submission of the application by the applicant on his/her behalf has submitted a separate application for international protection and there are no facts concerning that spouse that would justify a separate application.

120 Informacja o działalności Urzędu do Spraw Cudzoziemców w okresie 01.01.2020–31.05.2020, Warszawa, 8 czerwca 2020 r.

TABLE 4 Decisions of the Head of the Office for Foreigners, 2010–2019

YEAR	TOTAL NUMBER OF DECISIONS	REFUGEE STATUS		SUBSIDIARY PROTECTION		TOLEATED STAY		NEGATIVE		CANCELLATION	
		Number	% of the total number	Number	% of the total number	Number	% of the total number	Number	% of the total number	Number	% of the total number
2010	10,560	82	0.78	195	1.85	196	1.86	3906	36.99	6181	58.53
2011	9,801	153	1.56	155	1.58	170	1.73	2739	27.95	6584	67.18
2012	11,120	87	0.78	140	1.26	292	2.63	1960	17.63	8641	77.71
2013	19,369	208	1.07	146	0.75	405	2.09	2279	11.77	16331	84.32
2014	8,285	262	3.16	170	2.05	300	3.62	1997	24.10	5556	67.06
2015	12,238	348	2.84	167	1.36	122	1.00	2877	23.51	8724	71.29
2016	11,997	108	0.90	150	1.25	49	0.41	2188	18.24	9502	79.20
2017	5,347	150	2.81	340	6.36	19	0.36	2091	39.11	2747	51.37
2018	4,445	168	3.78	191	4.30	16	0.36	2128	47.87	1942	43.69
2019	4,000	131	3.28	130	3.25	4	0.10	1730	43.25	2005	50.13

Source: Office for Foreigners, official statistics.

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in 2020 compared to 2019, the percentage of cancellations decreased significantly from 30% to 20%, while the percentage of negative decisions increased to 50%. In addition to that, the proportion of decisions on granting protection (all three forms – refugee status, subsidiary protection and tolerated stay) has fallen from 8.44% in 2018 to 6.63% in 2019, but this figure for 2020 will be higher.

In their official statistical documents, the Office for Foreigners presents recognition rates for just two forms of protection (refugee status and subsidiary protection), and the basis of such calculations is the total number of issued decisions minus the number of decisions on cancellation. With this formula recognition rates are higher; they are presented in the table below (data is available from 2014).

In 2020, most of decisions on granting protection were issued for the applicants from: Turkey – 85 persons (21% of the total, recognition 77%), Belarus – 81 persons (20% of the total, recognition 79%), Russia – 74 persons (19% of the total, recognition 5%), Tajikistan – 27 persons (7% of the total, recognition 30%), Ukraine – 24 persons (6% of total, recognition 7%), Afghanistan – 19 persons (5% of total, 100% recognition), Syria – 14 persons

TABLE 5 Annual recognition rates 2014–2020

YEAR	AVERAGE RECOGNITION RATE (ANNUAL)
2014	15%
2015	15%
2016	10%
2017	19%
2018	15%
2019	13%
2020	16%

Source: Office for Foreigners, official statistics.

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(4% of total, recognition 93%), Iran – 10 persons (3% of total, recognition 40%), Turkmenistan – 7 persons (2% of total, recognition 100%), and Yemen – 7 persons (2% of total, recognition 100%).

The still high number of cancellations is related to the fact that Poland has not been the preferred country for asylum seekers who often treat it as a stopover on the way to Western European

TABLE 6 Decisions of the Refugee Board, 2010–2014

YEAR	TOTAL NUMBER OF DECISIONS	REFUGEE STATUS		SUBSIDIARY PROTECTION		TOLEATED STAY		NEGATIVE (sustaining the 1st instance decisions)		CANCELLATION / ABANDONMENT	
		Number	% of the total number	Number	% of the total number	Number	% of the total number	Number	% of the total number	Number	% of the total number
2010	10,560	82	0.78	195	1.85	196	1.86	3906	36.99	6181	58.53
2011	9,801	153	1.56	155	1.58	170	1.73	2739	27.95	6584	67.18
2012	11,120	87	0.78	140	1.26	292	2.63	1960	17.63	8641	77.71
2013	19,369	208	1.07	146	0.75	405	2.09	2279	11.77	16331	84.32
2014	8,285	262	3.16	170	2.05	300	3.62	1997	24.10	5556	67.06

Source: Office for Foreigners, official statistics.

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TABLE 7 Decisions of the Refugee Board, 2015–2019

YEAR	NUMBER OF APPEALS	TOTAL NUMBER OF DECISIONS	REFUGEE STATUS		SUBSIDIARY PROTECTION		TOLEATED STAY		NEGATIVE (sustaining the 1st instance decisions)		TRANSFERRED FOR RECONSIDERATION	
			Number	% of the total number	Number	% of the total number	Number	% of the total number	Number	% of the total number	Number	% of the total number
2015	2,915	1,981	12	0.61	30	1.51	11	0.56	1,783	90.01	145	7.32
2016	2,630	2,235	20	0.89	46	2.06	17	0.76	1,978	88.50	174	7.79
2017	2,785	2,333	1	0.04	29	1.24	19	0.81	2,118	90.78	166	5.96
2018	1,929	1,844	17	0.92	30	1.63	14	0.76	1,697	92.03	86	4.46
2019	1,569	1,420	4	0.28	7	0.49	1	0.07	1,376	96.90	32	2.25

Source: Office for Foreigners, official statistics.

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countries<sup>121</sup>. The social and integration support for beneficiaries of international protection offered in Poland is very limited in scope compared to Western EU countries what further demotivates asylum seekers from staying in the country.

The information about decisions made by the Refugee Board (second instance) is presented in two tables below; since 2015, the Office for Foreigners publishes information on the number of appeals to the Refugee Board and number of applications transferred for reconsideration to the Office for Foreigners.

In great majority of cases the Refugee Board has been sustaining decisions of the Head of the Office for Foreigners; in 2019 this applied to as much as 96.90% of all decisions made by the Board. In 2019 the Board issued 12 decisions on granting protection (4 refugee statuses, 7 subsidiary protection and 1 tolerated stay): 6 for Russian citizens, and 6 for Ukrainian citizens. Cases submitted to the Head of the Office for Foreigners for reconsideration mainly concerned citizens of Russia (15 persons), Nigeria and Turkey (4 persons each). In 2020 the Board issued 17 decisions on granting protection, 10 to citizens of Russia, 4 to citizens of Ukraine and 3 to citizens of Lebanon.

121 A. Górny, H. Grzymała-Moszczyńska, W. Klaus, S. Łodziński, Uchodźcy w Polsce. Sytuacja prawna, skala napływu i integracja w społeczeństwie polskim oraz rekomendacje, Ekspertyzy Komitetu Badań nad Migracjami PAN, Kraków – Warszawa 2017, p. 50, [https://instytucja.pan.pl/images/2018/wydzialy/w1/Uchod%C5%BAcy\\_w\\_Polsce\\_ekspertyza\\_KBNM\\_PAN.pdf](https://instytucja.pan.pl/images/2018/wydzialy/w1/Uchod%C5%BAcy_w_Polsce_ekspertyza_KBNM_PAN.pdf) (last accessed on 1.11.2020).

The analysis of the decisions issued in 2014–2019 by both instances shows that the largest number of decisions to grant refugee status were issued to Syrian citizens, and that subsidiary protection was granted mainly to Russian citizens:

TABLE 8 Top 5 nationalities granted refugee status and international protection in first and second instance in 2014–2019

REFUGEE STATUS	SUBSIDIARY PROTECTION
Syria (395)	Russia (527)
Ukraine (109)	Ukraine (414)
Russia (81)	Iraq (73)
Iraq (81)	Tajikistan (70)
No citizenship (57)	Syria (48)

Source: Office for Foreigners, official statistics.

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It is also worth noting that the number of refugee statuses granted by the Head of the Office for Foreigners for Turkish nationals has been rising since 2018 (26 in 2018, 49 in 2019, and 42 until June 1, 2020). The most recent data suggests also that the number of Syrians granted international protection is declining (1 person in 2020, until June 1), and that Russian nationals are taking on the lead again in case of both forms of international protection (12 refugee statuses and 25 subsidiary protection statuses granted in 2020, until June 1).

When it comes to the latter form of protection granted on the territory of Poland – humanitarian stay – the relevant numbers are presented in the table 9.

### iii. Challenges and redress measures

In the previous section of the report, a backlog regarding proceeding cases in the first instance was addressed. In addition to backlog in the first instance, there is also one in the second instance.

TABLE 9 Number of humanitarian stays granted by Border Guard in 2014–2019.

YEAR	NUMBER
2019	1,729
2018	1,454
2017	1,240
2016	1,171
2015	1,008
No citizenship (57)	Syria (48)

Source: Office for Foreigners, official statistics.

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The number of cases pending in the first instance involving first and subsequent applications (without reopened proceedings, of which 111 in 2019 compared to 294 persons) as of 31 December 2019 was 993 (in December 2018 – 991 cases pending); the backlog concerned in 48% Russian citizens, and in 15% – Ukrainian citizens. In the second instance there were 1,426 cases pending. At the end of the first half of 2019, 60% of cases were overdue between 3 and 12 months.

Free legal aid for asylum seekers in case of appeals seems to be insufficient in terms of preparing asylum seekers for their hearings and having trust in the asylum decision. For example, the overall number of appeals in 2017 was 2,785, while just 415 asylum seekers benefited from the aid (in 49 cases the aid was granted by an advocate or legal counsellor, in 366 cases – by an NGO lawyer)<sup>122</sup>. As UNHCR stated in their 2019 AGD report, “[...] foreigners’ knowledge about RSD [refugee status determination] procedure is still very limited. There is a clear need of free-of-charge legal assistance in reference to each case. Asylum-seekers perceive legal provisions as vague and difficult to understand. Taking into consideration limited (due to a sharp decrease in availability of public funds in recent years) capacity of NGOs, asylum-seekers are not able to obtain reliable information about their procedure which in consequence, can have a negative impact on their daily life, including on

<sup>122</sup> See: <https://www.asylumineurope.org/reports/country/poland/asylum-procedure/procedures/regular-procedure> (accessed on 23.02.2019).

their mental wellbeing, as well as for their future integration into Polish society”<sup>123</sup>. State funded free legal aid provided in case of unsuccessful applications should then be enhanced, in addition to broadening the scope of entitled parties to all asylum seekers.

<sup>123</sup> 2019 Participatory Assessment..., p. 7.

## IV. Conclusions

The following main recommendations can be drawn for the subsequent stages of the asylum process:

### LODGING AND REGISTRATION

- The right to submit asylum application and access the territory of Poland for every asylum seeker should be respected.
- Either adequate time (and infrastructure) should be provided for a full and confidential initial registration interview to avoid “escalation of testimony”. Alternatively, it should be clarified that border procedures are not designed to accommodate the gathering of a complete testimony and it is therefore reasonable that an applicant’s story would include more detail at a later stage of the asylum process.

### RECEPTION

- Reception centres should be located in areas ensuring asylum seekers access to basic services.
- Those who decide to live outside the centres should be assisted with the rental of apartments.
- As social allowances for asylum seekers which they receive during the procedure are not sufficient to cover their basic needs and legal assistance, this form of support should be modified so that it meets its aims.

### ASYLUM PROCEDURE

- More investments should be made in staff – caseworkers and COI specialists – both in terms of its number as well as qualifications.
- Infrastructural capacities of the Office for Foreigners (increase of the number of available interview rooms) and well as its operational capacities (considering the division of the Department for Refugee Proceedings into specialised units so that accelerated procedure is realized by a dedicated unit, and considering establishing a formal fast track in place of the informal one for applications received from citizens of countries experienced by war) should be properly addressed.
- Free legal assistance for asylum seekers should be available for asylum seekers in all stages of the procedure.
- Internal coordination and cooperation between the Office for Foreigners and relevant external agencies should be improved thorough sharing of documents by electronic means, when possible.

### ADJUDICATION

- State funded free legal aid should be provided to all asylum seekers, on all stages of the asylum procedure.

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Regarding lodging and registration, for a couple of years now Poland has been dealing with serious issues on the Eastern border. Yet, they have their roots not only in the lack of institutional capacities of relevant state actors, but also in the political views of the government. The situation is not likely to change without a shift in the government's attitude towards asylum seekers. Knowledge-promoting actions targeted at Polish society seem also to be necessary so that the public understands what refugee status and international protection are, and see the difference between forced migration and economic flows.

Regarding reception, existing accommodation conditions for asylum seekers seem to be fair but accommodation centres would need to be located in a decent proximity to bigger cities in order to ensure proper access to relevant services and enhance integration of asylum seekers.

When addressing asylum procedure and adjudication, free access to legal assistance for asylum seekers has to be guaranteed so that every asylum seeker has access to high quality legal advice and legal representation and approached systematically. Responsible state authorities should revise internal regulations and practices in order to ensure the greatest possible cooperation between relevant authorities and thus workability of the entire system (including smooth and timely exchange of accurate information). Day-to-day cooperation between relevant state actors taking part in asylum proceedings should be supported by adequate ICT-enabled communication channels.

The general securitization of migrant and refugee issues in Poland has led to marginalization of various actors dealing with refugee reception and integration, including NGOs (suspension of support to organizations provided through the Asylum, Migration and Integration Program) and the Office for Foreigners. The process relating to asylum proceedings seems to be highly underinvested – starting from state employees (insufficient training and low salaries), related technical equipment and infrastructure, finishing with insufficient legal assistance to asylum seekers. Incomplete information regarding asylum seekers' situation that starts as early as on the registration stage has a significant impact on

all further stages as it jeopardizes the applicant's credibility and prolongs the asylum process.



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# The Portuguese Asylum System

## Policies, challenges and ways forward

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# I. Introduction

Portugal has not been traditionally regarded as a destination country for asylum seekers. Between the fall of dictatorship in 1974 and 2019, Portugal received 455 asylum applications in average per year<sup>1</sup>. The number of asylum applications doubled from 447 in 2014 to 896 in 2015, at the height of the refugee influx into Europe. Nevertheless, they accounted for a mere 0,1 percent of all applications made in EU countries that year<sup>2</sup>. In 2019, a record 1,849 people requested asylum in Portugal, up from 1,272 in 2018<sup>3</sup>. However, this number remains low when compared to countries such as neighbouring Spain and Germany, where asylum applications in 2019 reached 117,800 and 165,938 respectively<sup>4</sup>.

Despite the relatively low asylum application rate, an eleven-fold increase in the volume of new arrivals has been observed between 2010 and 2019<sup>5</sup>. This is partly explained by Portugal's commitment to the European Agenda for Migration's Emergency Relocation Programme<sup>6</sup> and the UNHCR's resettlement program.

In 2015, the European Commission (EC) triggered an emergency response system to introduce a temporary European relocation scheme for asylum seekers in need of international protection. The Emergency Relocation Programme (ERP) was implemented with the intention of easing the burden of two frontline EU Member States – Greece and

- 1 Portugal received a total of 20,930 asylum applications between 1974 and 2019. Asylum applications were calculated based on the following sources: SEF/GEPP (Serviço de Estrangeiros e Fronteiras/Gabinete de Estudos Planeamento e Formação). Relatório de Imigração, Fronteiras e Asilo 2019. Oeiras; 2020. SEF/GEPP (Serviço de Estrangeiros e Fronteiras/Gabinete de Estudos Planeamento e Formação). Relatório de Imigração, Fronteiras e Asilo 2017. Oeiras; 2018; CPR (Conselho Português para os Refugiados). Study for the diagnoses and evaluation of the reception process for asylum seekers in Portugal. Lisboa; 2002.; De Freitas C. Identification study: Report on Portugal. In: Watters C, Ingleby D, Bernal M, De Freitas C, De Ruuk N, Van Leeuwen M, et al., editors. Good practices in mental health and social care for asylum seekers and refugees. Final Report of the project for the European Commission (European Refugee Fund). 2003.
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- 6 OM/ACM (Observatório das Migrações/Alto Comissariado para as Migrações). Newsletter Observatório das Migrações # 29 Refugiados. 2018.

Italy, which received a disproportionate number of asylum seekers in 2015 and 2016 compared to other Member States. Measures to assist Italy and Greece in the screening and initial stages of applications processing and in the implementation of the relocation procedure were also adopted<sup>7</sup>. Portugal responded very favourably to the ERP offering to receive 4,574 relocated asylum seekers and to collaborate on the programme implementation. The EC set the final number at 2,951. By the end of the relocation programme in April 2018, a total of 1,550 asylum seekers were relocated from Greece (1,192) and Italy (358) to Portugal, making it the Member State to relocate the sixth highest share of asylum seekers under the ERP<sup>8</sup>.

In June 2018, Portugal joined the “coalition of the willing” offering to participate in the ad hoc relocation of asylum seekers stranded in humanitarian boats following rescue operations in the Mediterranean Sea. 217 asylum seekers have been relocated to Portugal under this framework until December 2020<sup>9</sup>. Portugal also plans to receive 500 unaccompanied minors from Greece under the European Commission’s Hosting Programme for Unaccompanied Minors, 72 of whom arrived between July and December 2020<sup>10</sup>.

Portugal has taken part in UNHCR’s resettlement programme since 2007<sup>11</sup>, which is an international

solidarity and responsibility-sharing mechanism that includes the selection and transfer of refugees in situations of vulnerability and in need of international protection from a first country of asylum outside the EU into a Member State that has agreed to admit them as refugees<sup>12</sup>. Although Portugal’s annually pledged quota has been relatively low (ranging from 30 refugees yearly between 2007 and 2014 to 200 in 2017), starting in 2018 Portugal pledged to receive 1,010 resettled refugees from Turkey (606) and Egypt (404) under the EU 50,000 resettlement programme<sup>13</sup>. A total of 409 refugees were resettled to Portugal under this programme, completing 40,5% of the original pledge until December 2019<sup>14</sup>. By December 2020, the number of resettled refugees rose to 578<sup>15</sup>. Portugal also pledged to receive 200 refugees under the EU-Turkey 1x1 resettlement agreement, completing 71% of this pledge (7 refugees were resettled in 2016 and 135 in 2017)<sup>16</sup>.

Managing these new inflows and providing for the reception of asylum seekers and refugees coming from a growing number of countries and with increasingly diverse and complex needs required further adjustments to the national asylum system, which has become increasingly complex over the years. This is especially evident in the reception system where, at present, there is a broad set of reception providers, some of whom

7 The implementation of the relocation programme was performed on the basis of two Council decisions in September 2015 and 2016 (2015/1601 and 2016/1754) in the context of Art. 78(3) TFEU, which allows for the adoption of provisional measures in emergency situations to ensure a fair and balanced participation of all EU Member States in the common effort to provide a temporary distribution scheme to persons in need of international protection, as stated in the European Agenda on Migration. EMN (European Migration Network) EU Asylum and Migration. Glossary 6.0. European Commission. 2018.

8 SEF/GEPP (Serviço de Estrangeiros e Fronteiras/Gabinete de Estudos Planeamento e Formação). Relatório de Imigração, Fronteiras e Asilo 2018. Oeiras; 2019.

9 SEF/GEPP (Serviço de Estrangeiros e Fronteiras/Gabinete de Estudos Planeamento e Formação). Relatório de Imigração, Fronteiras e Asilo 2018. Oeiras; 2019. SEF/GEPP (Serviço de Estrangeiros e Fronteiras/Gabinete de Estudos Planeamento e Formação). Relatório de Imigração, Fronteiras e Asilo 2019. Oeiras; 2020. Governo da República Portuguesa (2020) Dia Internacional dos Migrantes. <https://www.portugal.gov.pt/pt/gc22/comunicacao/noticia?i=dia-internacional-dos-migrantes>

10 Governo da República Portuguesa (2020) Dia Internacional dos Migrantes. <https://www.portugal.gov.pt/pt/gc22/comunicacao/noticia?i=dia-internacional-dos-migrantes>. European Commission (2020) Portugal to work with Greek NGO in integrating relocated minors. <https://ec.europa.eu/migrant-integration/news/portugal-to-work-with-greek-ngo-in-integrating-relocated-minors>

11 UNHCR (United Nations High Commissioner for Refugees). UNHCR Resettlement Handbook and Country Chapters: Portugal. 2019.

12 EMN (European Migration Network) EU Asylum and Migration. Glossary 6.0. European Commission. 2018.

13 UNHCR (United Nations High Commissioner for Refugees). UNHCR Resettlement Handbook and Country Chapters: Portugal. 2019; SEF/GEPP (Serviço de Estrangeiros e Fronteiras/Gabinete de Estudos Planeamento e Formação). Relatório de Imigração, Fronteiras e Asilo 2018. Oeiras; 2019.

UNHCR (United Nations High Commissioner for Refugees). UNHCR Resettlement Handbook and Country Chapters: Portugal. 2019.

14 Oliveira, C. R. Entrada, Acolhimento e Integração de Requerentes e Beneficiários de Proteção Internacional em Portugal, Relatório Estatístico do Asilo 2020, Caderno Estatístico Temático # 3, Coleção Imigração em Números do Observatório das Migrações, ACM. Lisboa; 2020.

15 Among the 578 resettled refugees 245 arrived from Egypt and 33 from Turkey. Governo da República Portuguesa (2020) Portugal já recebeu 578 refugiados do Programa Voluntário de Reinstalação do ACNUR. <https://www.portugal.gov.pt/pt/gc22/comunicacao/comunicado?i=portugal-ja-recebeu-578-refugiados-no-ambito-do-programa-voluntario-de-reinstalacao-do-acnur>

16 Oliveira, C. R. Entrada, Acolhimento e Integração de Requerentes e Beneficiários de Proteção Internacional em Portugal, Relatório Estatístico do Asilo 2020, Caderno Estatístico Temático # 3, Coleção Imigração em Números do Observatório das Migrações, ACM. Lisboa; 2020.

are new to asylum service provision (e.g. some local civil society organisations and municipalities). To organise the reception of relocated asylum seekers, Portugal set up a Working Group for the European Agenda for Migration in 2015 (GTAEM). GTAEM was coordinated by the Immigration and Borders Service (SEF) and included a vast set of public and private stakeholders and reception providers. Matching between relocated asylum seekers and reception providers was done by the High Commission for Migration (ACM)<sup>17</sup>. With the strengthening of Portugal's participation in UNHCR's resettlement programme, ACM also became responsible for the reception and integration of resettled refugees and SEF got in charge of the provision and implementation of the resettlement programme<sup>18</sup>.

Although the number of asylum applications more than doubled in the past five years, SEF Refugee and Asylum Cabinet's (GAR) labour force increased only marginally in that period<sup>19</sup>. As a result, capacity to process first instance decisions within reasonable timeframes has been falling short, increasing the length of asylum procedures and causing a backlog on asylum cases, with spill over effects onto the reception system. Accommodation shortages in reception centres have become critical, to which add difficulties in securing affordable private housing in the Lisbon area, where most asylum seekers are hosted while waiting for a decision.

The drawbacks stemming from limited accommodation capacity have been uncovered by the COVID-19 pandemic. In April 2020, 232 out of 736 asylum seekers living in overcrowded hostel rooms tested positive for SARS-CoV-2<sup>20</sup>. Governmental and public health authorities acted in articulation with civil society organisations to facilitate prophylactic isolation and assist those affected by the disease and no other major outbreaks have been identified among asylum seekers or resettled refugees since. The Portuguese government also undertook exceptional measures to extend entitlement to public services to all asylum seekers and migrants with pending processes by SEF. All processes filed between March 18 and October 15, 2020 are considered to be provisionally regularised, which entitles asylum seekers and other migrants awaiting a definitive decision to full access to the National Health Service, social support services, rental and labour market<sup>21</sup>, opening bank accounts and other essential public services<sup>22</sup>. This measure includes 246,000 migrants and it will be enforced until March 31, 2021<sup>23</sup>.

In December 2020, the government announced the restructuring of the reception and integration of asylum seekers and resettled refugees into a unified system and the creation of the Unified Operative Group (GOU). The GOU is coordinated by ACM, SEF and the Institute of Social Security (ISS) and it is currently devising its action plan<sup>24</sup>.

- 17 OM/ACM (Observatório das Migrações/Alto Comissariado para as Migrações). Newsletter Observatório das Migrações # 29 Refugiados. 2018; ACM (Alto Comissariado para as Migrações). Relatório de avaliação da política portuguesa de acolhimento de pessoas refugiadas. Programa de Recolocação. Lisboa; 2017.
- 18 UNHCR (United Nations High Commissioner for Refugees). UNHCR Resettlement Handbook and Country Chapters: Portugal. 2019.
- 19 SEF/GAR has 15 staff members, two more than in 2018. CPR (Conselho Português para os Refugiados). Asylum Information Database country Report: Portugal (2018 update). 2019; CPR (Conselho Português para os Refugiados). Asylum Information Database Country Report: Portugal (2019 update). 2020.
- 20 The hostels were located in the Lisbon region. Renascença (2020) Secretária de Estado das Migrações: "Não sabemos quantos dos mortos por Covid-19 são imigrantes". <https://rr.sapo.pt/2020/09/17/pais/secretaria-de-estado-das-migracoes-nao-sabemos-quantos-dos-mortos-por-covid-19-sao-imigrantes/especial/207312/>
- 21 This includes the possibility to sign an employment contract.
- 22 The measure was passed on 28 March 2020. Governo da República Portuguesa (2020) Governo garante direitos dos imigrantes com processos pendentes <https://www.portugal.gov.pt/pt/gc22/comunicacao/noticia?i=governo-garante-direitos-dos-imigrantes-com-processos-pendentes>
- 23 Governo da República Portuguesa (2020) 246 mil imigrantes ficaram provisoriamente com a situação regularizada em Portugal. <https://www.portugal.gov.pt/pt/gc22/comunicacao/noticia?i=246-mil-imigrantes-ficaram-provisoriamente-com-a-situacao-regularizada-em-portugal>
- 24 Rádio Renascença (2020) Portugal já acolheu 72 refugiados menores não acompanhados. <https://rr.sapo.pt/2020/12/21/politica/portugal-ja-acolheu-72-refugiados-menores-nao-acompanhados/noticia/219523/> In December 2020, the Ministry of Home Affairs (MAI) announced that SEF will be restructured over 2021. The announcement was made in the aftermath of the death of Ihor Homenyuk, an Ukrainian citizen who died in March 2020 while being held at a Space Equivalent to Centres of Temporary Stay (CIIT) in the Lisbon airport. His death led to the detention of three SEF staff members who are under investigation for homicide. It is unknown whether SEF's restructuring will affect the recently created GOU. Rádio Renascença (2020) Ministro anuncia reforma do SEF para Janeiro. <https://rr.sapo.pt/2020/12/15/politica/ministro-anuncia-reforma-do-sef-para-janeiro/noticia/218676/>; Observador (2020) Três inspetores de SEF acusados de homicídio do ucraniano Ihor Homenyuk no aeroporto de Lisboa. <https://observador.pt/2020/09/30/tres-inspetores-do-sef-acusados-do-homicidio-do-ucraniano-ihor-homenyuk-no-aeroporto-de-lisboa/>

Research on Portuguese asylum system policies and implementation is still limited. This country case study aims to identify and analyse the policy measures proposed, tested and/or adopted to address asylum system demands in the past decade. It does so by looking into the various stages of the asylum system – registration, reception, asylum procedure and adjudication, and pointing out strengths, fragilities and ways forward<sup>25</sup>.

25 A qualitative research study was conducted to inform this country case study. Research ethics approval was obtained from the Ethics Committee of the Institute of Public Health of the University of Porto (CE18088). The study drew on four semi-structured interviews with six stakeholders from two governmental and two non-governmental organisations who are experts on asylum. Recruitment of stakeholders was done through purposive sampling using the expert sampling strategy. Interviews were conducted between August and October 2018 in Lisbon and informed consent was obtained following the Declaration of Helsinki and the Oviedo Convention. To guarantee participants full anonymity, no socio-demographic data was collected and the organisations with which they are affiliated are not disclosed.

## II. Political Debates and Social Discourses on Asylum Seekers and Refugees

Political and social discourses on asylum in Portugal have been generally positive in recent years. Both the Portuguese government and civil society have demonstrated solidarity with asylum seekers and refugees. The government has emphasised its commitment to take responsibility in refugee protection and burden-sharing schemes<sup>26</sup>, while civil society mobilised an organised response to the massive influx of asylum seekers arriving in Europe, culminating in the creation of the Refugee Reception Platform (PAR) in 2015 – an umbrella organisation hosting 350 civil society organisations (CSOs), which partnered with several Ministries, the High Commission for Migration (ACM), and several other public and private bodies to strengthen the national reception system for relocated refugees<sup>27</sup>.

Portugal was amongst the Member States most receptive to the European Agenda for Migration's

Emergency Relocation Programme (ERP) and to the UNHCR supported resettlement programmes. Initially offering to receive 4,574 relocated asylum seekers, in early 2016 it expressed willingness to take as many as 10,000 asylum seekers from Greece and Italy<sup>28</sup>. The EC set Portugal's ERP relocation quota at 2,951, with a total of 1,550 asylum seekers being relocated until the end of the programme in April 2018<sup>29</sup>. An additional 217 asylum seekers were relocated ad hoc to Portugal between July 2018 and December 2020, following rescue by NGO boat in the Mediterranean sea<sup>30</sup>. Portugal also received 142 refugees under the EU-Turkey 1x1 agreement between 2016 and 2017 and 578 refugees from Egypt and Turkey under the EU 50,000 resettlement programme until the end of 2020<sup>31</sup>. And it plans to receive 500 relocated unaccompanied minors from Greece under the EC Hosting Programme for Unaccompanied Minors, 72 of whom arrived during 2020<sup>32</sup>.

26 Cordeiro A. Chegada de 64 refugiados é uma forma de Portugal "dizer não ao fecho de fronteiras." Público. 2016. <https://www.publico.pt/2016/03/07/sociedade/noticia/chegada-refugiados-em-dia-de-cimeira-representa-simbolicamente-a-solidariedade-de-portugal-1725416>. Accessed 30 Jul 2018.

27 PAR (Plataforma de Apoio aos Refugiados). A PAR. 2018. <http://www.refugiados.pt/a-par/>. Accessed 5 Jul 2018.

28 The final number of relocated refugees was set at 2,951, with 1,520 entering the country until the end of 2017. ACM (Alto Comissariado para as Migrações). Relatório de avaliação da política portuguesa de acolhimento de pessoas refugiadas. Programa de Recolocação. Lisboa; 2017.

29 SEF/GEPIF (Serviço de Estrangeiros e Fronteiras/Gabinete de Estudos Planeamento e Formação). Relatório de Imigração, Fronteiras e Asilo 2018. Oeiras; 2019.

30 SEF/GEPIF (Serviço de Estrangeiros e Fronteiras/Gabinete de Estudos Planeamento e Formação). Relatório de Imigração, Fronteiras e Asilo 2018. Oeiras; 2019. SEF/GEPIF (Serviço de Estrangeiros e Fronteiras/Gabinete de Estudos Planeamento e Formação). Relatório de Imigração, Fronteiras e Asilo 2019. Oeiras; 2020. Governo da República Portuguesa (2019) Dia Internacional dos Migrantes. <https://www.portugal.gov.pt/pt/gc22/comunicacao/noticia?i=dia-internacional-dos-migrantes>

31 Oliveira, C. R. Entrada, Acolhimento e Integração de Requerentes e Beneficiários de Proteção Internacional em Portugal, Relatório Estatístico do Asilo 2020. Caderno Estatístico Temático # 3, Coleção Imigração em Números do Observatório das Migrações, ACM. Lisboa; 2020. Governo da República Portuguesa (2020) Portugal já recebeu 578 refugiados do Programa Voluntário de Reinstalação do ACNUR. <https://www.portugal.gov.pt/pt/gc22/comunicacao/comunicado?i=portugal-ja-recebeu-578-refugiados-no-ambito-do-programa-voluntario-de-reinstalacao-do-acnur>

32 Governo da República Portuguesa (2020) Dia Internacional dos Migrantes. <https://www.portugal.gov.pt/pt/gc22/comunicacao/noticia?i=dia-internacional-dos-migrantes>. European Commission (2020) Portugal to work with Greek NGO in integrating relocated minors. <https://ec.europa.eu/migrant-integration/news/portugal-to-work-with-greek-ngo-in-integrating-relocated-minors>

Portugal faces a demographic deficit as a result of rising out-migration, declining reproductive rates and population aging. This has been described as a national social, economic and political emergency<sup>33</sup>. Moreover, Portugal was stroked by a financial crisis that caused the country to request a bailout in 2011<sup>34</sup>. Some academics have argued that refugee reception can become part of a needed strategy to reverse population aging, fill in labour shortages and boost the economy<sup>35</sup>. Perhaps owing to these motivations, the government has been openly supportive of relocation and resettlement. This positive attitude put a halt to years of relative disregard of asylum issues on the part of governments from both sides of the political spectrum, as well as by the media.

Before the Arab Spring, refugees rarely made the news<sup>36</sup>. There was limited debate about the issue in Parliament and journalists struggled to publish their stories on the subject<sup>37</sup>. The invisibility of the issue<sup>38</sup> continued until 2015, when media headlines depicted the deaths of thousands of people in the Mediterranean and the long journeys across Europe by those who survived the crossings. The news were met with dismay by the Portuguese public. Increased attention to the issue and Portugal's commitment to receive asylum seekers

under the European Agenda for Migration marked a turning point in public opinion and action. Some voices emerged in the media opposing the reception of asylum seekers and claiming that government should make the local poor a priority instead. These dissenting views were offset, however, by an unprecedented wave of solidarity that swept the country. Many individual citizens offered help to CSOs dedicated to the refugee cause, new CSOs emerged, and municipalities also engaged in the reception of relocated asylum seekers<sup>39</sup>.

Unlike other European countries where populism has taken root, Portuguese politics have not been polarised around migration issues. Until 2019, Portugal had one far-right nationalist party that has never held a seat in Parliament<sup>40</sup>. However, in the 2019 legislative elections, a newly formed nationalist party named Chega elected one Member of Parliament<sup>41</sup>. In 2020, a news outlet claimed the party had in its board former members of extreme-right parties and neo-Nazi movements<sup>42</sup>.

Unfavourable attitudes towards asylum seekers and refugees have taken place in the past but they are generally met with prompt action from public authorities and civil society. In 2015, several online petitions against the reception of refugees were

33 ACM (Alto Comissariado para as Migrações). Plano estratégico para as migrações 2015-2020. [https://www.acm.gov.pt/documentos/10181/222357/PEM\\_net.pdf/3a515909-7e66-41e8-8179-e3aa5e0c7195](https://www.acm.gov.pt/documentos/10181/222357/PEM_net.pdf/3a515909-7e66-41e8-8179-e3aa5e0c7195). Accessed 23 Jul 2018.

34 Legido-Quigley H, Karanikolos M, Hernandez-Plaza S, de Freitas C, Bernardo L, Padilla B, et al. Effects of the financial crisis and Troika austerity measures on health and health care access in Portugal. *Health Policy (New York)*. 2016. Jordão N, De Freitas C, García-Ramírez. Efeitos da crise económica e das políticas de austeridade na saúde e no acesso aos cuidados de saúde da população migrante em países do sul da Europa: revisão scoping. *RHEMU. Revista Interdisciplinar de Mobilidade Humana* 26 (54), 213-230. 2018.

35 Costa P, Sousa L. You are welcome in Portugal: conviction and convenience in framing today's Portuguese politics on European burden sharing of refugees. *Oxford Monit Forced Migr*. 2017;6: 49.

36 De Freitas C. Identification study: Report on Portugal. In: Watters C, Ingleby D, Bernal M, De Freitas C, De Ruuk N, Van Leeuwen M, et al., editors. *Good practices in mental health and social care for asylum seekers and refugees. Final Report of the project for the European Commission (European Refugee Fund)*. 2003; Silvestre F. Um olhar sobre a imprensa: representações sobre os requerentes de asilo e refugiados. Universidade Nova de Lisboa (Master dissertation); 2012. <https://run.unl.pt/handle/10362/7886>; Cereja I. Cobertura da crise de refugiados Sírios na era digital. Universidade Nova de Lisboa (Master dissertation); 2017. <https://run.unl.pt/handle/10362/22159>.

37 Espírito Santo I, Baía J, Pereira S, Santinho C, Matias R, Esteves A, et al. Como são representados os refugiados na comunicação social? *Le Monde Diplomatique - Edição Portuguesa*. 2016. <https://pt.mondediplo.com/spip.php?article1113>. Accessed 24 Jul 2018.

38 Santinho C. Afinal que asilo é este que não nos protege? *Etnográfica Rev do Cent em Rede Investig em Antropol*. 2013;17:5-29.; Santinho MC. Refugiados e requerentes de asilo em Portugal: Contornos políticos no campo da saúde. ACM, I.P. Lisboa; 2016.

39 Paiva Sol C. Portugal nunca recebeu tantos refugiados. Mas está preparado? - *Renascença. Rádio Renascença*. 2018. <http://rr.sapo.pt/multi-media/115032/portugal-nunca-recebeu-tantos-refugiados-mas-esta-preparado>. Accessed 30 Jul 2018.

40 The party named Partido Nacional Renovador lost support from 2015 to 2017, going from 0,50% of the voting in the 2015 legislative elections, to 0,09% of all votes casted in the municipal elections of 2017. MAI (Ministério da Administração Interna). *Legislativas 2015 - Resultados Globais*. 2015. <https://www.eleicoes.mai.gov.pt/legislativas2015/resultados-globais.html#none>. Accessed 27 Jul 2018.; RTP (Rádio e Televisão Portuguesa). *Resultados do ano 2017, Eleições Autárquicas*, RTP Notícias. RTP. 2017. <https://www.rtp.pt/noticias/eleicoes/autarquicas/2017/eleicao-CM/990000>. Accessed 27 Jul 2018.

41 Martins, R. Baptista, SC. Extrema-direita chega ao Parlamento. Quem é e o que defende André Ventura? *Público*. 2019. <https://www.publico.pt/2019/10/07/politica/perfil/andre-ventura-eleito-chega-extrema-direita-parlamento-elei%C3%A7%C3%B5es-1889055>. Accessed 6 Aug 2020.

42 The party leader stated an inquiry would be done and if proven true the allegations would be met with the withdrawal of political confidence given to the members with association to extreme-right parties and neo-Nazi movements. *Público*. Chega vai retirar confiança política aos dirigentes com ligação a movimentos extremistas e controlar admissões. *Público*. 2020. <https://www.publico.pt/2020/01/16/politica/noticia/ventura-vai-retirar-confianca-politica-dirigentes-participado-movimentos-extremistas-1900628>

launched, the most popular of which collected over 15,000 signatures<sup>43</sup>. A demonstration held in connection with the petitions gathered around 150 people<sup>44</sup>. To appease anti-migration sentiments, and inform the population, ACM and PAR joined efforts to develop a document that outlined the myths and fears associated with asylum seekers and refugees and raised awareness about their needs. The document was distributed together with several wide-reaching national magazines and newspapers<sup>45</sup>. In 2016, there was a campaign in schools across the country that sought to inform and prepare children to welcome refugees<sup>46</sup>.

However, despite efforts to increase social awareness on asylum issues, many segments of Portuguese society remain poorly informed about asylum seekers' life circumstances<sup>47</sup> and unmet needs<sup>48</sup>. Strained for years, the national asylum system is likely to experience additional pressure as the number of asylum applications continues to rise, as is expected in the near future. To provide an adequate response to asylum seekers, it is necessary to keep asylum issues on the political and social agendas and to assess the challenges that may be affecting the asylum system as well as the policies framed to tackle them.

- 43 JN (Jornal de Notícias). Dezenas de petições em Portugal contra a vinda de refugiados. *Jornal de Notícias*. 2015. <https://www.jn.pt/nacional/interior/dezenas-de-peticoes-em-portugal-contr-a-vinda-de-refugiados-4774693.html>. Accessed 27 Jul 2018.
- 44 Agência Lusa. Protesto contra o acolhimento de refugiados em Portugal junta 150 pessoas | Refugiados | PÚBLICO. Público. 2015. <https://www.publico.pt/2015/09/20/sociedade/noticia/protesto-contr-a-acolhimento-de-refugiados-em-portugal-junta-150-pessoas-1708449>. Accessed 27 Jul 2018.
- 45 ACM (Alto Comissariado para as Migrações), PAR (Plataforma de Apoio aos Refugiados). Refugiados: Factos e argumentos para desfazer medos e mitos. 2015. [https://www.acm.gov.pt/documents/10181/167771/REFUGIADOS\\_mag.pdf/5b9ae4ed-8cb4-4078-83c4-b90e23677836](https://www.acm.gov.pt/documents/10181/167771/REFUGIADOS_mag.pdf/5b9ae4ed-8cb4-4078-83c4-b90e23677836). Accessed 25 Jul 2018.
- 46 Children were asked to pack rucksacks with the items they would like to take along in the event of having to flee a war. DGE (Direção-Geral da Educação). Iniciativa "E se fosse eu? Fazer a mochila e partir." <http://www.dge.mec.pt/noticias/educacao-para-cidadania/iniciativa-e-se-fosse-eu-fazer-mochila-e-partir>. Accessed 30 Aug 2018.
- 47 De Freitas C. Identification study: Report on Portugal. In: Watters C, Ingleby D, Bernal M, De Freitas C, De Ruuk N, Van Leeuwen M, et al., editors. Good practices in mental health and social care for asylum seekers and refugees. Final Report of the project for the European Commission (European Refugee Fund). 2003; Padilla B, Goldberg A. Real and symbolic dimensions of the "refugee crisis"; in Europe: a critical analysis from Portugal. *REMHU, Rev Interdiscip Mobil Hum*. 2017;25:11–27.
- 48 Vacciano F. On marginal inclusion: refugees at the fringes of citizenship in Portugal. In: Aboim S, Granjo P, Ramos A, (Editors). *Changing societies: legacies and challenges. Ambiguous inclusions: inside out, outside in*. Lisboa: Imprensa de Ciências Sociais; 2018. p. 99–112.



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# III. Structural Weaknesses in the National Asylum System: Diagnosis and Redress

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The asylum system entails four key stages: registration, reception, asylum procedure and adjudication. Registration is the process by which an asylum application is formally added to the asylum system. Upon registration asylum seekers are granted access to reception provisions (i.e. public health care, education and social support for housing and food) while awaiting a decision from SEF on the admissibility of their application. Following that decision, asylum seekers move into the first instance decision stage which may be undertaken under four types of asylum procedures: the admissibility procedure, which applies when the application is deemed inadmissible (e.g. falling under Dublin<sup>49</sup>, coming from a Safe Third Country or when an applicant made a subsequent application without adding new elements); the accelerated procedure, which applies when asylum applications are deemed unfounded if the grounds for seeking asylum are deemed patently weak, unconvincing or invalid; the border procedure, which applies to asylum seekers whose application was made at a border post and who stay in detention for the duration of the procedure<sup>50</sup>; and, the regular procedure, which applies to applications deemed admissible and entails further assessment of the eligibility of the application for internation-

al protection. These procedures may lead to the granting of refugee status or subsidiary protection or to rejection of the asylum application, in which case asylum seekers are entitled to appeal the decision<sup>51</sup>.

## A. Registration

Registering asylum applications is the responsibility of the Immigration and Borders Service (SEF)—a national security service integrated into the Ministry of Home Affairs. SEF's Refugee and Asylum Cabinet (SEF/GAR) is required to register applicants within three days upon presentation of a request for asylum and to inform the Portuguese Council for Refugees (CPR)—as the organisation working on behalf of UNHCR in Portugal, of all the asylum applications made<sup>52</sup>.

Asylum applications can be presented to SEF or to any other police authority. They should be lodged as soon as an asylum seeker arrives in Portugal, orally or in writing. During the application, asylum seekers are photographed and fingerprinted<sup>53</sup>. Two to five days upon presenting the application, asylum seekers are notified to attend an interview

49 According to Dublin criteria, asylum applications are deemed inadmissible because the asylum applicant first entered the EU through another Member State where the asylum application must be handled.

50 Decisions on asylum applications made at the border have to be done within seven days. If asylum seekers are found to have special procedural needs they do not stay detained. Otherwise, asylum seekers await for the decision in detention.

51 CPR (Conselho Português para os Refugiados). Asylum Information Database Country Report: Portugal (2018 update). 2019.

52 CPR (Conselho Português para os Refugiados). Asylum Information Database Country Report: Portugal (2017 update). 2018.

53 Fingerprints are collected from applicants whose age is equal or above 14 years. Police authorities have up to 48h to report asylum applications to SEF.

at SEF/GAR, at which point they are required to fill in a “preliminary form” with identifying information, their itinerary, the grounds for the asylum application, supporting evidence and witnesses. SEF/GAR issues a report based on applicants’ interview statements, who are subsequently notified and given up to five days to seek revision of the narrative and its contents<sup>54</sup>.

SEF is required to register asylum applications within 3 days of presentation and to provide asylum applicants with a statement of proof of the request for international protection within three days of registering their asylum application<sup>55</sup>. This document entitles asylum seekers to remain at a border post<sup>56</sup> or in national territory for the duration of the asylum procedure, as well as to access to public health care, education<sup>57</sup> and social support for housing and food. It does not grant the right to work nor to residence<sup>58</sup>.

Vulnerable asylum seekers are entitled to special procedural guarantees. Asylum seekers are found to be in a position of vulnerability when, by virtue of individual circumstances, their ability to benefit from the rights and comply with the obligations laid out by the Asylum Act is reduced. According to the law, the need for special procedural guarantees may result from individual circumstances associated with a set of factors, namely: age, gender, gender identity, sexual orientation, disability, serious illness, mental disorders, torture

and rape or other serious forms of psychological, physical or sexual violence. Special needs should be identified upon registration, though they can be identified and reported at any stage of the asylum procedure. The nature of special procedural needs should be determined prior to the decision on the admissibility of the asylum application<sup>59</sup>.

Special procedural guarantees include the postponement of the interviews for refugee status determination, the extension of deadlines for presenting evidence and the assistance of experts during interviews. Furthermore, applicants with special needs must be exempted from border procedures held in detention. Unaccompanied minors are further entitled to free legal representation provided by an NGO or by a representative designated by the Family and Juvenile Court. SEF is required to inform legal representatives<sup>60</sup> of the date of refugee status determination interviews with due anticipation and to ensure that they provide children with information about the implications of the interview and prepare them for it. SEF is also required to obtain consent from legal representatives to request age assessments. Unaccompanied children are not exempted from interviews if their legal representatives are absent<sup>61</sup>.

SEF/GAR registered all the asylum applications made between 2015 and 2019 without any reported delays<sup>62</sup>. Nevertheless, some instances of delays in the registering of applications made at SEF’s

54 SEF/GAR (Serviço de Estrangeiros e Fronteiras/Gabinete de Asilo e Refugiados). Informação para requerentes de proteção internacional em Portugal. SEF. Lisboa: n.d. <https://www.sef.pt/pt/Documents/Folheto%20Informa%C3%A7%C3%A3o%20Prote%C3%A7%C3%A3o%20Internacional.pdf>. Accessed 29 Jul 2019.; SEF/GAR (Serviço de Estrangeiros e Fronteiras/Gabinete de Asilo e Refugiados). Guia do Requerente de Asilo. SEF. Lisboa: n.d. [https://www.sef.pt/pt/Documents/Guia\\_Asilo.pdf](https://www.sef.pt/pt/Documents/Guia_Asilo.pdf). Accessed 31 Jul 2019.; SEF/GAR (Serviço de Estrangeiros e Fronteiras/Gabinete de Asilo e Refugiados). A Lei 27/2008 de 30.06 alterada pela Lei 26/2014 de 05.05. SEF. Lisboa: 2015. <http://www.oe.pt/upl/%7B61ceb26c-b52d-4bf9-8734-d8d21a7c70b2%7D.pdf>. Accessed 31 Jul 2019.

55 The statement of proof of the request for international protection includes the applicant’s photograph, name, date and place of birth, nationality, filiation, identity card number and expiration date and residence in Portugal. It is signed by the asylum applicant and by the SEF/GAR coordinator.

56 If the application is admitted to the regular procedure, asylum seekers detained at the border are given permission to enter the territory.

57 Access to education is provided to underage asylum seekers and to asylum seekers’ underage children.

58 SEF/GAR (Serviço de Estrangeiros e Fronteiras/Gabinete de Asilo e Refugiados). Informação para requerentes de proteção internacional em Portugal. SEF. Lisboa: n.d. <https://www.sef.pt/pt/Documents/Folheto%20Informa%C3%A7%C3%A3o%20Prote%C3%A7%C3%A3o%20Internacional.pdf>. Accessed 29 Jul 2019.; SEF/GAR (Serviço de Estrangeiros e Fronteiras/Gabinete de Asilo e Refugiados). Informação para menores não-acompanhados requerentes de proteção internacional em Portugal. SEF. Lisboa: n.d. <https://www.sef.pt/pt/Documents/Folheto%20menores%20Prote%C3%A7%C3%A3o%20Internacional.pdf>. Accessed 29 Jul 2019.

59 CPR (Conselho Português para os Refugiados). Asylum Information Database Country Report: Portugal (2018 update). 2019.

60 The Director of CPR is usually appointed by the Family and Juvenile Court to act as the legal representative of unaccompanied children.

61 CPR (Conselho Português para os Refugiados). Asylum Information Database Country Report: Portugal (2018 update). 2019.; SEF/GAR (Serviço de Estrangeiros e Fronteiras/Gabinete de Asilo e Refugiados). Guia do Requerente de Asilo. SEF. Lisboa: n.d. [https://www.sef.pt/pt/Documents/Guia\\_Asilo.pdf](https://www.sef.pt/pt/Documents/Guia_Asilo.pdf). Accessed 31 Jul 2019.

62 SEF/GEPI (Serviço de Estrangeiros e Fronteiras/Gabinete de Estudos Planeamento e Formação). Relatório de Imigração, Fronteiras e Asilo 2015. Oeiras; 2016.; SEF/GEPI (Serviço de Estrangeiros e Fronteiras/Gabinete de Estudos Planeamento e Formação). Relatório de Imigração, Fronteiras e Asilo 2016. Oeiras; 2017.; SEF/GEPI (Serviço de Estrangeiros e Fronteiras/Gabinete de Estudos Planeamento e Formação). Relatório de Imigração, Fronteiras e Asilo 2018. Oeiras; 2019. SEF/GEPI (Serviço de Estrangeiros e Fronteiras/Gabinete de Estudos Planeamento e Formação). Relatório de Imigração, Fronteiras e Asilo 2019. Oeiras; 2020.

regional delegations and on the issuance and extension of the document serving as a statement of proof of the request for international protection have been observed by CPR in recent years<sup>63</sup>. There is no data available to assess registration rates<sup>64</sup> for the period 2010–2014 as well as the speed with which new arrivals were registered (i.e. registration capacity).

SEF/GAR has a total of 15 staff members<sup>65</sup>: ten case officers who are responsible for conducting interviews, examining asylum applications, and undertaking selection missions abroad; two officers who are responsible for revising the proposals drafted by case officers; two officers responsible for conducting Dublin procedures; and, one officer who is in charge of proposing final decisions. Decisions are formally undertaken by the Secretary of State for Home Affairs of the Ministry of Home Affairs<sup>66</sup>. An eleven-fold increase in the number of asylum applications has been observed from 2010 to 2019, while SEF/GAR's staff has increased only marginally during this period.

Asylum seekers' fingerprints are systematically collected. This study found no complaints associated with the collection of biometric data, and refusals to provide fingerprints are rare<sup>67</sup>. However, asylum seekers' right to be informed about the purposes underlining the collection of biometric

data (Law n.26/2014, art.49 (1b) has not been fully implemented and information on fingerprinting is not systematically provided to asylum seekers<sup>68</sup>. The National Program for the Fund for Asylum, Migration and Integration (FAMI) 2014–2020 has noted the need to acquire and install Eurodac II and a VIS compatible automated system to collect digital fingerprints from asylum seekers at border posts and at SEF's Refugee and Asylum Cabinet<sup>69</sup>.

Portugal has sought to respond positively to requests for Member States cross-border cooperation in registration activities. However, taking part in missions abroad puts a considerable strain on SEF/GAR, which is currently too under-staffed to meet all national and international demand.

In 2015, Portugal collaborated in triage missions at hotspots<sup>70</sup> in Greece and Italy assigning two SEF/GAR officers per mission. It also assigned one SEF/GAR officer to engage on activities led by the European Asylum Support Office (EASO) in Malta<sup>71</sup>. In 2016, four SEF/GAR officers were assigned to collaborate with EASO. They were subsequently sent to a hotspot in Lesbos, Greece, to participate in registration activities, for a period of six weeks each<sup>72</sup>. Two SEF/GAR officers were assigned to missions related with EASO's Operational Plan for Greece in 2017<sup>73</sup>.

63 CPR (Conselho Português para os Refugiados). Asylum Information Database Country Report: Portugal (2017 update). 2018; CPR (Conselho Português para os Refugiados). Asylum Information Database Country Report: Portugal (2018 update). 2019.

64 Registration rate refers to the degree to which new arrivals are registered within a given period of time (for example, percentage of asylum applications registered within the year of application).

65 From 2018 to 2019 two new staff members were added to SEF/GAR.

66 CPR (Conselho Português para os Refugiados). Asylum Information Database Country Report: Portugal (2019 update). 2020

67 In 2013 an unaccompanied minor from Nigeria refused to be fingerprinted and her asylum claim was deemed unfounded. Two subsequent court appeals corroborated SEF's initial decision of claim inadmissibility. Fingerprinting refusal constitutes legal ground for both the inadmissibility of the asylum claim and accelerated procedure (Law n.26/2014, art. 19(1j)), but no legal provisions exist for the use of force to take fingerprints. CPR (Conselho Português para os Refugiados). CPR (Conselho Português para os Refugiados). Asylum Information Database Country Report: Portugal (2017 update). 2018.; TCAS (Tribunal Central Administrativo Sul). Acórdão do Tribunal Central Administrativo 10075/13. 2013. <http://www.dgsi.pt/jtca.nsf/170589492546a7fb802575c3004c6d7d/beb8e2410ef8acbf80257bb800504c95?OpenDocument>. Accessed 11 May 2018.

68 CPR (Conselho Português para os Refugiados). Asylum Information Database Country Report: Portugal (2017 update). 2018.

69 SGMAI (Secretaria Geral do Ministério da Administração Interna). National Programme AMIF. 2014. <https://infoeuropa.eu/ocid.pt/files/database/000066001-000067000/000066870.pdf>. Accessed 27 Jul 2018.; SGMAI (Secretaria Geral do Ministério da Administração Interna). Programa Nacional FAM. 2017. [https://www.acm.gov.pt/documents/10181/222893/Programme\\_2014PT65AMNP001\\_5\\_1\\_pt\\_Decisao5862-1.pdf/5c63252a-9ca8-4d4b-9714-09d4c70ce2e8](https://www.acm.gov.pt/documents/10181/222893/Programme_2014PT65AMNP001_5_1_pt_Decisao5862-1.pdf/5c63252a-9ca8-4d4b-9714-09d4c70ce2e8). Accessed 27 Jul 2018.

70 A hotspot area can be defined as "an area in which the host EU Member State, the European Commission, relevant EU agencies and participating EU Member States cooperate, with the aim of managing an existing or potential disproportionate migratory challenge characterised by a significant increase in the number of migrants arriving at the external EU border". EC (European Commission). European Migration Network glossary. 2019.

71 SEF/GEFP (Serviço de Estrangeiros e Fronteiras/Gabinete de Estudos Planeamento e Formação). Relatório de Imigração, Fronteiras e Asilo 2015. Oeiras; 2016.

72 SEF/GEFP (Serviço de Estrangeiros e Fronteiras/Gabinete de Estudos Planeamento e Formação). Relatório de Imigração, Fronteiras e Asilo 2016. Oeiras; 2017.

73 SEF/GEFP (Serviço de Estrangeiros e Fronteiras/Gabinete de Estudos Planeamento e Formação). Relatório de Imigração, Fronteiras e Asilo 2017. Oeiras; 2018.

## I. Spontaneous arrivals of asylum seekers

Registration of spontaneous asylum applications<sup>74</sup> follows the steps described in the previous section. As mentioned earlier, the law sets no time limits for lodging an asylum application. However, people who are refused entry at a border post are liable to immediate removal to their point of departure prior to entering Portuguese territory. In practice, this means that their application has to be made immediately. Furthermore, failure to request asylum upon irregular entry on national territory at the earliest time possible, and without a valid reason, can be grounds for the use of an accelerated procedure and for not granting the benefit of the doubt. While submission to accelerated procedure is not put into practice, SEF has refused the benefit of the doubt in such cases<sup>75</sup>.

## II. Relocated asylum seekers

Relocation of asylum seekers to Portugal under the European Emergency Relocation Programme (ERP) started in December 2015 and ended in April 2018, totalling 1552 transfers<sup>76</sup>. The registration process of relocated asylum seekers involves several steps, namely: analysis of relocation requests from Italy and Greece, identification and selection of relocation candidates, transfer to Portugal and registration.

SEF/GAR deployed liaising officers to Greece and Italy to participate in the identification and selection of candidates for relocation<sup>77</sup> from countries with average recognition rates above 75%<sup>78</sup>. Portugal accepted the vast majority of relocation requests. Only 14 requests for relocation of Iraqis were refused grounded in exclusion clauses (Articles 12 and 17 of the recast Qualification Directive)<sup>79</sup>.

Evaluation and communication of decisions on relocation requests by SEF were compliant with the time limits set by Relocation Decisions<sup>80</sup>. However, waiting times for the actual transfer to Portugal may have exceeded the time limits established by EU law<sup>81</sup>, with reports of delays adding up to six months<sup>82</sup>. Registration of relocated asylum seekers took place mostly at the Lisbon airport immediately after their arrival. Concerns have been raised, however, about the lack of privacy and forethought in the information-gathering processes, which for the most part were conducted at the airport<sup>83</sup>. Data on the selected candidates was shared by SEF with the High Commission for Migration (ACM) and with the reception consortia to match reception capacity with their profiles<sup>84</sup>.

The ad hoc relocation of asylum seekers rescued by humanitarian vessels and disembarked in Italy or

74 The term spontaneous asylum applications is used in Portugal to refer to applications lodged by asylum seekers themselves. In other words, this category includes the asylum seekers who have not arrived under an European protection mechanism (e.g. relocation or ad hoc relocation through humanitarian boats).

75 CPR (Conselho Português para os Refugiados). Asylum Information Database Country Report: Portugal (2017 update). 2018.

76 SEF/GEPE (Serviço de Estrangeiros e Fronteiras/Gabinete de Estudos Planeamento e Formação). Relatório de Imigração, Fronteiras e Asilo 2018. Oeiras; 2019.

77 CPR (Conselho Português para os Refugiados). Asylum Information Database Country Report: Portugal (2017 update). 2018.

78 Average recognition rates refer to the number of positive decisions for each 100 asylum applications made in a given time period and for a given country. Oliveira, C. R. Entrada, Acolhimento e Integração de Requerentes e Beneficiários de Proteção Internacional em Portugal, Relatório Estatístico do Asilo 2020, Caderno Estatístico Temático # 3, Coleção Imigração em Números do Observatório das Migrações, ACM. Lisboa; 2020.

79 In agreement with the Relocation Decisions, EU Member States have the right "to refuse to relocate an applicant only where there are reasonable grounds for regarding him or her as a danger to their national security or public order or where there are serious reasons for applying the exclusion provisions" of the recast Qualification Directive. In Portugal, security clearance procedures did not involve interviews with relocation candidates but rather queries addressed to the Antiterrorism Coordination Unit (UCAT) within the Working Group of the European Agenda for Migration. ECRE (European Council on Refugees and Exiles). Relocation of asylum seekers in Europe. A view from receiving countries. 2018. [http://www.asylumineurope.org/sites/default/files/aida\\_brief\\_relocation.pdf](http://www.asylumineurope.org/sites/default/files/aida_brief_relocation.pdf); CPR (Conselho Português para os Refugiados). Asylum Information Database Country Report: Portugal (2017 update). 2018. <https://www.asylumineurope.org/reports/country/portugal>.

80 According to Relocation Decisions, the entire process from pledge to transfer should not exceed 3 to 3.5 months. ECRE (European Council on Refugees and Exiles). Relocation of asylum seekers in Europe. A view from receiving countries. 2018. [http://www.asylumineurope.org/sites/default/files/aida\\_brief\\_relocation.pdf](http://www.asylumineurope.org/sites/default/files/aida_brief_relocation.pdf).

81 CPR (Conselho Português para os Refugiados). Asylum Information Database Country Report: Portugal (2017 update). 2018.

82 Matias B. Welcoming the unwelcomed: the role of Portugal in the European Refugee Crisis. Columbia University; 2018. <https://academiccommons.columbia.edu/catalog/ac:p2ngf1vhm7>.

83 One interviewee noted that "the [registration] processes were done without much privacy at the airport. (...) [Relocated asylum seekers] were arriving from not very long trips, but they were tiring, stressful trips. There were women with children, suitcases, all that. The conditions were not ideal to start the process of collecting information. (...) There wasn't foresight to endow SEF with the structures necessary to perform [the registration] process with the dignity it deserves." (Interviewee 5, Non-governmental organisation)

84 CPR (Conselho Português para os Refugiados). Asylum Information Database Country Report: Portugal (2017 update). 2018.

Malta initiated in July 2018 and has resulted in the relocation of 217 asylum seekers until December 2020<sup>85</sup>. It follows a process somewhat different from the one applied under the ERP. There is no a priori compromise regarding the number of refugees that each Member State must relocate. Thus, the process depends on the availability of the host country to receive and evaluate the applications of asylum seekers in this situation, which is done on a per case basis. After selection and transfer of the asylum seekers to Portugal, SEF issues a statement of proof of the request for international protection upon arrival to the airport, which is valid for 60 days<sup>86</sup> and grants them access to the same reception programme developed for asylum seekers relocated under the ERP<sup>87</sup>. Between July and December 2020, Portugal received 72 unaccompanied minors under the EC's Hosting Programmes for Unaccompanied Minors. The Portuguese government agreed to welcome a total of 500 minors as a response to Greece's request to EU Member States to host 1,600 out of the 5,200 minors currently living in the country<sup>88</sup>. Registration procedures will likely follow those used for asylum seekers with special procedural needs relocated under the ERP.

### III. Resettled refugees

Portugal began its refugee resettlement programme in 2007, with an annual quota of 30

refugees. Between 2014 and 2016, the quota rose to 45 refugees per year and again to 200 refugees in 2017. From June 2016 to December 2017, Portugal pledged to reinstall 200 refugees under the EU-Turkey 1x1 agreement<sup>89</sup>. Furthermore, following the EC's call to resettle refugees to EU Member States from third countries, Portugal pledged to receive 1,010 resettled refugees<sup>90</sup>. The registration process of resettled refugees entails several steps, namely: reviewing of submissions presented by UNHCR, selection of refugees, medical screening, transfer to Portugal and granting of refugee status<sup>91</sup>. SEF is responsible for the provision and implementation of the Portuguese resettlement programme, including registration<sup>92</sup>. Resettlement submissions must be shared with the CPR.

Portugal prioritises persons coming from areas under the Regional Protection Programme and refugees who fall under the following categories: women at risk, survivors of violence or torture, experiencing serious legal and physical protection needs. Until 2017, selection of refugees for resettlement was done on a dossier review basis<sup>93</sup>. This meant that selection was based on a review of resettlement cases presented by UNHCR without interviewing taking place at the first country of asylum. No medical screening was done before departure and refugee status was granted upon arrival to Portugal<sup>94</sup>.

85 86 were relocated in 2018, 100 in 2019 and 31 in 2020. SEF/GEPP (Serviço de Estrangeiros e Fronteiras/Gabinete de Estudos Planeamento e Formação). Relatório de Imigração, Fronteiras e Asilo 2018. Oeiras; 2019. SEF/GEPP (Serviço de Estrangeiros e Fronteiras/Gabinete de Estudos Planeamento e Formação). Relatório de Imigração, Fronteiras e Asilo 2019. Oeiras; 2020. Governo da República Portuguesa (2019) Dia Internacional dos Migrantes. <https://www.portugal.gov.pt/pt/gc22/comunicacao/noticia?i=dia-internacional-dos-migrantes>

86 The statement of proof of the request for international protection can be renewed through appointment with SEF regional delegations.

87 Oliveira, C. R. Entrada, Acolhimento e Integração de Requerentes e Beneficiários de Proteção Internacional em Portugal, Relatório Estatístico do Asilo 2020, Caderno Estatístico Temático # 3, Coleção Imigração em Números do Observatório das Migrações, ACM. Lisboa; 2020.

88 Governo da República Portuguesa (2019) Dia Internacional dos Migrantes. <https://www.portugal.gov.pt/pt/gc22/comunicacao/noticia?i=dia-internacional-dos-migrantes>. European Commission (2020) Portugal to work with Greek NGO in integrating relocated minors. <https://ec.europa.eu/migrant-integration/news/portugal-to-work-with-greek-ngo-in-integrating-relocated-minors>

89 Out of the 200, 142 refugees were resettled until the end of 2019. Oliveira, C. R. Entrada, Acolhimento e Integração de Requerentes e Beneficiários de Proteção Internacional em Portugal, Relatório Estatístico do Asilo 2020, Caderno Estatístico Temático # 3, Coleção Imigração em Números do Observatório das Migrações, ACM. Lisboa; 2020.

90 The pledge includes 606 refugees from Turkey and 404 refugees from Egypt. Until December 2019, 409 refugees were resettled to Portugal including 223 from Egypt and 186 from Turkey. By December 2020 the number of resettled refugees reached a total of 578, including 245 from Egypt and 333 from Turkey UNHCR (United Nations High Commissioner for Refugees). UNHCR Resettlement Handbook and Country Chapters: Portugal. 2019. Oliveira, C. R. Entrada, Acolhimento e Integração de Requerentes e Beneficiários de Proteção Internacional em Portugal, Relatório Estatístico do Asilo 2020, Caderno Estatístico Temático # 3, Coleção Imigração em Números do Observatório das Migrações, ACM. Lisboa; 2020. Governo da República Portuguesa (2020) Portugal já recebeu 578 refugiados do Programa Voluntário de Reinstalação do ACNUR. <https://www.portugal.gov.pt/pt/gc22/comunicacao/comunicado?i=portugal-ja-recebeu-578-refugiados-no-ambito-do-programa-voluntario-de-reinstalacao-do-acnur>

91 The refugee status entitles the beneficiary to a residence permit valid for 5 years and renewable for equal periods of time. After 5 years of residence in Portugal with a valid permit, all beneficiaries of international protection, including resettled refugees and beneficiaries of subsidiary protection, can apply for Portuguese nationality.

92 The High Commissioner for Migration (ACM) within the Ministry of Presidency and Administrative Modernization is responsible for the reception and integration of refugees. UNHCR (United Nations High Commissioner for Refugees). UNHCR Resettlement Handbook and Country Chapters: Portugal. 2019.

93 UNHCR (United Nations High Commissioner for Refugees). UNHCR Resettlement Handbook and Country Chapters: Portugal. 2019.

94 ERN (European Resettlement Network). Resettlement programmes. Portugal. 2019. <https://www.resettlement.eu/country/portugal>.



Since 2018, selection is done on the basis of in-country missions<sup>95</sup>. Prior to departing to the first asylum country for interviewing, SEF reviews UNHCR's resettlement submissions<sup>96</sup>. In its first mission, which took place in July 2018, SEF's team included the coordinator and three caseworkers who were supported in the collection of biometric data and the copying of documents by a technical assistant. Interviews are done with the intent of obtaining information to make a decision about the type of international protection that will be granted, assess security issues and understand candidates' motivations and profile<sup>97</sup>. ACM also participates in selection missions. Its staff provides resettlement candidates with a cultural orientation session in which information about Portugal and its 18-month reception programme are shared. Before leaving to Portugal, resettled refugees are required to undertake medical examinations arranged by IOM and to obtain clearance for travel. Upon acceptance of the case, travel documents and (transit) visas are issued by Portuguese diplomatic missions at the first country of asylum. IOM books the flights and provides assistance in transit and upon arrival to Lisbon airport, alongside SEF and ACM<sup>98</sup>. Resettled refugees are granted refugee status by Ministerial Order upon arrival<sup>99</sup>.

Processing time from resettlement submission to transfer is 4 to 5 months. In average, it takes 2 months for SEF to review UNHCR submissions

and the final decision to be approved by MAI and another 2 months for refugees' departure from the moment the decision is made and communicated to UNHCR by SEF's focal point. No emergency and urgent cases are accepted at present.

The COVID-19 pandemic slowed down the resettlement programme, particularly in the early months<sup>100</sup>. However, the programme was not put to a halt and resettled refugees continued to arrive during 2020, totalling 71 arrivals in the months of November and December alone<sup>101</sup>

#### IV. Registration challenges and redress

The exponential growth of asylum applications between 2010 and 2019 has not been matched by an adequate strengthening of SEF's labour force<sup>102</sup>. This, together with an increase in relocation and resettlement activities, has strained the registration system. Challenges have been identified in regard to data collection and interpretation, reporting of asylum applications to CPR, ensuring special procedural safeguards and timely issuance or extension of the statement of proof of the request for international protection.

Asylum applicants are not systematically provided with appropriate interpretation services during the registration stage. This hinders the collection of adequate information and often renders the infor-

95 The first mission to Egypt took part in July 2018, followed by another in November 2018 and a final mission that was planned to take part in May 2019. The first mission to Turkey took place in November 2018. Another two missions to Turkey were planned for March and June 2019. XXI Governo Constitucional da República Portuguesa. Nota à comunicação social 18 de fevereiro de 2019. Comunicado conjunto da Ministra da Presidência e Modernização Administrativa e do Ministro da Administração Interna. 2019. <https://www.portugal.gov.pt/download-ficheiros/ficheiro.aspx?v=483cb539-a997-4cc3-9ff2-3a04fdc50471>; XXI Governo Constitucional da República Portuguesa. Comunicado conjunto da Ministra da Presidência e Modernização Administrativa e do Ministro da Administração Interna. 2019. <https://www.portugal.gov.pt/download-ficheiros/ficheiro.aspx?v=851a947b-ba35-4550-9b29-892f7e899e38>.

96 UNHCR forwards the resettlement submissions by email to a focal point from SEF, who is the competent body to examine and review the submissions.

97 SEF (Serviço de Estrangeiros e Fronteiras). Egipto / Sucesso na primeira missão de contacto e entrevista a refugiados. 2018.

98 Resettled refugees are provided information, namely through the Welcome Kit – an information package available in English, French, Arabic and Tigrinya.

99 Resettled refugees are provided with a renewable residence permit free of charge, valid for five years. Upon request, they can also be provided free of charge with a 1951 Convention Travel Document. UNHCR (United Nations High Commissioner for Refugees). UNHCR Resettlement Handbook and Country Chapters: Portugal. 2019.

100 RTP (2020) Um aprofundar de crises antigas. Migrantes e refugiados em tempos de Covid-19. [https://www.rtp.pt/noticias/mundo/um-aprofundar-de-crises-antigas-migrantes-e-refugiados-em-tempos-de-covid-19\\_es1260248](https://www.rtp.pt/noticias/mundo/um-aprofundar-de-crises-antigas-migrantes-e-refugiados-em-tempos-de-covid-19_es1260248)

101 Governo da República Portuguesa (2020) Portugal já recebeu 530 refugiados no âmbito do Programa Voluntário de Reinstalação do ACNUR. <https://www.portugal.gov.pt/pt/gc22/comunicacao/comunicado?i=portugal-ja-recebeu-530-refugiados-no-ambito-do-programa-voluntario-de-reinstalacao-do-acnur> Governo da República Portuguesa (2020) Portugal já recebeu 578 refugiados do Programa Voluntário de Reinstalação do ACNUR. <https://www.portugal.gov.pt/pt/gc22/comunicacao/comunicado?i=portugal-ja-recebeu-578-refugiados-no-ambito-do-programa-voluntario-de-reinstalacao-do-acnur>

102 SEF/GAR has 15 staff members, two more than in 2018. CPR (Conselho Português para os Refugiados). Asylum Information Database country Report: Portugal (2018 update). 2019; CPR (Conselho Português para os Refugiados). Asylum Information Database Country Report: Portugal (2019 update). 2020.

mation provided in preliminary forms incomplete and imprecise<sup>103</sup>.

Although SEF reports to CPR the majority of registered asylum applications, as required, dozens have gone unreported in the last three years: 75 in 2016, 28 in 2017 and 80 in 2018<sup>104</sup>. This generates inequalities between asylum applicants, depriving those whose applications are not reported to CPR from legal information and assistance. Legal assistance can be crucial when seizing the right to review the narrative outlined in SEF's report.

Some delays were observed in recent years regarding the registration of applications made at SEF's regional delegations, particularly in the issuance and extension of the statement of proof of the request for international protection<sup>105</sup>.

Inability to identify vulnerable cases at the moment of registration was reported by interviewees from governmental and non-governmental organisations. This problem tends to affect spontaneous and relocated asylum seekers the most and it can jeopardize the application of special procedural guarantees, such as postponement of the interview for refugee status determination, the extension of deadlines for presenting evidence and exemption of border procedures held in detention, throughout the asylum process<sup>106</sup>. Vulnerable resettled refugees are usually identified prior to their arrival to Portugal, and their vulnerabilities are reported to reception providers<sup>107</sup>.

Screening of vulnerable asylum seekers is challenged by the lack of mechanisms and standard procedures to identify asylum seekers in need of special procedural guarantees<sup>108</sup>. A partnership was pursued between SEF and the Ministry of

Employment, Solidarity Social Security with the goal of deploying psychologists trained to assess the specific needs of asylum seekers. However, there is a shortage of this type of professionals in the National Health Service (SNS) and the partnership was not formalised. As a result, psychiatric evaluations and medical age assessments are done *ad hoc* when SEF officers have strong reason to believe they are in the presence of vulnerable applicants.

## B. Reception

Portugal follows the European Council Directive 2003/9/CE on the reception of asylum seekers adopted in 2013, which aims to ensure access to housing, food, clothing, health care, education for minors and access to employment for asylum applicants. All asylum applicants who lack resources are entitled to reception material conditions during the following stages of the asylum procedure: admissibility procedure (including Dublin procedure), border procedure, accelerated procedure, regular procedure, first appeal and onward appeal. Resettled refugees benefit from an 18-months support programme<sup>109</sup>.

The reception of asylum seekers is a responsibility shared by the Ministry of Home Affairs (MAI) and the Ministry of Employment, Solidarity and Social Security (MTSSS)<sup>110</sup>. MAI is in charge of the provision of material reception conditions to asylum seekers undergoing the admissibility, accelerated and border procedures (Law n.26/2014, art.61(1), while MTSSS takes responsibility for asylum seekers following the regular process, including those who passed the admissibility procedure (Law n.26/2014, art.61(2).

103 Preliminary forms are only available in Portuguese, English and French. CPR (Conselho Português para os Refugiados). Asylum Information Database Country Report: Portugal (2018 update). 2019. <https://www.asylumineurope.org/reports/country/portugal>.

104 CPR (Conselho Português para os Refugiados). Asylum Information Database Country Report: Portugal (2018 update). 2019; CPR (Conselho Português para os Refugiados). Asylum Information Database country Report: Portugal (2017 update). 2018; CPR (Conselho Português para os Refugiados). Asylum Information Database country Report: Portugal. 2017.

105 CPR (Conselho Português para os Refugiados). Asylum Information Database Country Report: Portugal (2017 update). 2018; CPR (Conselho Português para os Refugiados). Asylum Information Database Country Report: Portugal (2018 update). 2019.

106 Interviewee 1, Non-governmental organisation; Interviewee 4, Governmental organisation.

107 UNHCR (United Nations High Commissioner for Refugees). UNHCR Resettlement Handbook and Country Chapters: Portugal. 2019.

108 CPR (Conselho Português para os Refugiados). Asylum Information Database Country Report: Portugal (2018 update). 2019.

109 UNHCR (United Nations High Commissioner for Refugees). UNHCR Resettlement Handbook and Country Chapters: Portugal. 2019.

110 CPR (Conselho Português para os Refugiados). Asylum Information Database country Report: Portugal (2017 update). 2018.

MAI and MTSSS partner with public and private organisations to enable the provision of material reception conditions to asylum seekers. These include various combinations of the following provisions: housing, food, monthly social support allowance for food, clothing and hygiene items, monthly complementary allowance for housing, and monthly complementary allowance for personal expenses and transport. Financial allowances range from 150€ to a maximum of 269.11€ per month<sup>111</sup>. Partnerships are established under bilateral and multilateral Memoranda of Understanding (MoU) with numerous reception providers. The reception providers in charge of delivering services to spontaneous and resettled asylum seekers (see Table 1) are coordinated by a Steering Commission headed by the Institute of Social Security (ISS). This Steering Commission is assisted by a Technical Operative Group (GTO) set up in 2012 that provides operational guidance and coordinates the reception and integration services, namely by making a decision on the material reception conditions awarded<sup>112</sup>. In the case of relocated asylum seekers, reception providers are coordinated by the Working Group for the European Agenda for Migration (GTAEM)<sup>113</sup>.

The government has recently announced it is restructuring the reception system to create a unified system for the reception and integration of asylum seekers and refugees. The new system will be integrated in the Unified Operative Group (GOU), which is coordinated by ACM, SEF and the Institute of Social Security. The GOU met for the first time in December 2020 and it is preparing an action plan<sup>114</sup>. For the purposes of this study, we refer to the reception system in place prior to the creation of the GOU.

Both spontaneous and relocated asylum seekers and resettled refugees are entitled to public education under the same conditions as nationals. Enrolment in basic and secondary education requires a procedure for the recognition of qualifications. In the absence of official diplomas, schools usually undertake a placement test that considers the age and years of schooling reported by applicants to determine their grade level. Children must be granted immediate access to schooling even when the procedures leading to recognition of qualifications are pending. They are also entitled to additional pedagogical support, including access to Portuguese language classes for non-native speakers. Starting in 2016, schools have been granted autonomy by the Director-General of Education (DGE) to rearrange students' curricula to make room for these classes by temporarily exempting them from other subjects. In 2018, the status of "student in an emergency situation for humanitarian reasons" was introduced. The status entitles prospective students who are unable to provide their diplomas to alternative procedures for assessing admission to university, to the same conditions as Portuguese students regarding fees and other levies and to access to social assistance available to higher education students. The Ministry of Education is responsible for enforcing the right to education<sup>115</sup>.

Resettled refugees and other beneficiaries of international protection experience no limitations in regard to employment<sup>116</sup> and benefit from the same conditions as nationals regarding salaries and working hours. Asylum seekers are granted access to the labour market and to professional training provided by the Institute of Employment and Professional Training (IEFP) upon the issuance of a provisional residence permit, following admission to the regular procedure. In spite of

111 The monthly social support allowance for food, clothing, transport and hygiene items amounts to 144.91€, the complementary allowance for housing amounts to 60.72€ and the complementary allowance for personal expenses and transport amounts to 62.10€. Asylum seekers referred by SEF to CPR are housed by CPR and are entitled to monthly allowance to cover for food and transport expenses of 150€ for adults, 50€ for children under 4 years of age and 75€ for children above 4 years for age. CPR (Conselho Português para os Refugiados). Asylum Information Database Country Report: Portugal (2018 update). 2019.

112 CPR (Conselho Português para os Refugiados). Asylum Information Database country Report: Portugal (2017 update). 2018.

113 ACM (Alto Comissariado para as Migrações). Relatório de avaliação da política portuguesa de acolhimento de pessoas refugiadas. Programa de Recolocação. Lisboa; 2017.

114 Restructuration of the asylum reception and integration system was announced on December 21, 2020. No further details were found concerning the UOP action plan at the time of writing, for which reason this study refers to the reception system previously in place. Rádio Renascença (2020) Portugal já acolheu 72 refugiados menores não acompanhados. <https://rr.sapo.pt/2020/12/21/politica/portugal-ja-acolheu-72-refugiados-menores-nao-acompanhados/noticia/219523/>

115 CPR (Conselho Português para os Refugiados). Asylum Information Database country Report: Portugal (2017 update). 2018.

116 One exception concerns specific categories of employment in the public sector, which apply to all third country nationals. CPR (Conselho Português para os Refugiados). Asylum Information Database country Report: Portugal (2017 update). 2018.



this, in 2018, some unaccompanied asylum-seeking children were granted access to Education and Vocational Training Integrated Programmes (PIEF) regardless of the asylum procedure stage in which they were in. These programmes are especially beneficial for the training and integration of asylum-seeking children who have a very low educational level upon arrival<sup>117</sup>.

Registration at IEFP also entitles asylum seekers and beneficiaries of international protection to access to Portuguese language courses. These courses are delivered under the programme “Portuguese for All” created in 2008, which is managed by ACM and funded by the European Social Fund. In 2016, ACM launched the Portuguese Platform Online that offers online access to language training modules in video and text<sup>118</sup>. ACM also funds language courses delivered by CSOs (e.g. CPR) and municipalities. These courses do not require registration with the IEFP and are accessible to asylum seekers who have not yet been admitted to the regular procedure<sup>119</sup>.

Resettled refugees and other beneficiaries of international protection have the same rights to social welfare as country nationals. They are entitled to the Social Insertion Revenue (RSI) – a social allowance granted to people in serious economic need and at risk of social exclusion<sup>120</sup>, as well as to child benefits/family allowances and unemployment benefits. Until 2017, RSI was only granted to people with at least one year of regular residence in Portugal. That requisite was lifted in 2017, allowing beneficiaries of international protection to access RSI immediately after receiving their status<sup>121</sup>.

Asylum seekers and resettled refugees are entitled to health care provided by the National Health System (SNS) under the responsibility of the Ministry of Health. Access to health care within the SNS is free of charge and includes emergency and primary care<sup>122</sup> and medicines. According to Law n° 26/2014 (art.4), asylum seekers are exempted from user charges<sup>123</sup>. However, partial or total reimbursement of expenses may be required from asylum seekers if proven that they have the necessary means to afford care (art.56).

MAI/SEF is responsible for the provision of health care services to detained asylum seekers. This is done in collaboration with public and/or private non-profit organisations under the framework of MoUs. Doctors of the World and the Jesuit Service for Refugees (JRS) provide primary health care and psychosocial support consultations on a weekly basis at the detention centre (Unidade Habitacional de Santo António – UHSA). The Portuguese Red Cross provides initial medical assistance at the Temporary Installation Centre (EECIT) at the Lisbon airport. Detained asylum seekers must be escorted to a primary health care centre or to a hospital when necessary<sup>124</sup>.

Resettled refugees are required to undergo medical screening prior to travelling to Portugal and need to obtain “clearance” before entering the country. Health assessments have been carried out in Ankara and Cairo before their departure to Portugal under the supervision of the International Organisation for Migration<sup>125</sup>. Resettled refugees and vulnerable asylum seekers who experienced torture or other forms of violence are further en-

117 These programmes were developed to prevent child labour and to attend to the needs of children who have reached 15 years of age without completing 4 years of schooling or who are 3 years older than the expected age of students for any given grade. CPR (Conselho Português para os Refugiados). CPR (Conselho Português para os Refugiados). Asylum Information Database Country Report: Portugal (2018 update). 2019.

118 Oliveira, C.R. e Gomes, N. Indicadores de integração de imigrantes: Relatório estatístico anual 2017 (coord. C.R. Oliveira). ACM. Lisboa; 2017.

119 CPR (Conselho Português para os Refugiados). Asylum Information Database Country Report: Portugal (2018 update). 2019.

120 RSI comprises an inclusion programme and a financial allowance. Eligible applicants must be above 18 years of age, have an individual income (if living alone) or a family income that is lower than the amount of the financial allowance provided and be inscribed at IEFP. The head of the household is entitled to a monthly allowance of 187.15€, other adults in the household are entitled to a monthly allowance of 1341€ each, and each child to 93.57€. Ministerial Order 257/12; Ministerial Order 21/2018.

121 CPR (Conselho Português para os Refugiados). Asylum Information Database Country Report: Portugal (2018 update). 2019.

122 Primary care includes: a) disease prevention, health promotion and ambulatory care (general practitioner, maternal and child care, family planning, school and geriatric care); b) specialist care (ophthalmology, oral health, otorhinolaryngology and mental health); c) hospital stays; d) complementary diagnosis, therapy and rehabilitation; and, e) nursing care including home visitations.

123 Oliveira, C. R. e Gomes, N. Migrações e Saúde em números: o caso português, Caderno Estatístico Temático # 2, Coleção Imigração em Números do Observatório das Migrações (coord. C. R. Oliveira), ACM. Lisboa; 2018.

124 IOM (International Organization for Migration). Migrant Integration Policy Index Health Strand. Country Report Portugal. 2016.

125 UNHCR (United Nations High Commissioner for Refugees). UNHCR Resettlement Handbook and Country Chapters: Portugal. 2019.

titled to rehabilitation and psychological support in national territory. The ISS is responsible for ensuring access to these services<sup>126</sup>.

In 2012, Portugal opted for following a dispersal policy and started to disperse newly arriving asylum seekers and resettled refugees through the national territory, as opposed to hosting them exclusively in the Metropolitan Region of Lisbon (RML)<sup>127</sup>. Decisions on dispersal are made by GTO based on the evaluation of an individual monitoring report made by front-line workers and on existing reception capacity at the national level. In 2018, about half of the total number of asylum seekers and beneficiaries of international protection were accommodated in the RML, while the other half were dispersed through the eighteen districts of continental Portugal. Each district has an assigned officer who is responsible for the granting of reception conditions and who reports to ISS central services<sup>128</sup>. Dispersal of new arrivals has continued throughout 2019 and 2020. For example, the 72 unaccompanied minors who arrived from Greece in 2020 were hosted in the districts of Braga, Lisbon, Castelo Branco and Porto<sup>129</sup>.

Refusal to accept a dispersal decision without valid reasons may lead to the removal of material reception conditions. Nevertheless, asylum seekers and resettled refugees may request a re-appreciation of a dispersal decision when they have already been granted with specific conditions of accommodation, education, employment or health care which may not be available at the new hosting district. This may include health care programmes attending to the specific needs of vulnerable asylum seekers, schools which already invested in adapting their programme to unaccompanied asylum seeking children or a more active labour market where asylum seekers have already found a job<sup>130</sup>.

The budget allocated to reception of asylum seekers for the period 2014–2020 is 3.312.400,00€<sup>131</sup>. According to the National Program for FAMI, the reception budget will be used to: a) develop response capacity to asylum seekers influxes; b) create and maintain reception centres for asylum seekers; and c) assess international protection. Currently, there is no monitoring system of reception capacity in place that could allude to whether the budget is sufficient<sup>132</sup>.

### I. Reception provision per arrival type

The assignment of asylum seekers and resettled refugees to specific providers of material reception conditions is dependent on their specific profile, as well as on the type and stage of asylum procedure in which they find themselves (Table 1). Although there are two bodies responsible for coordinating the reception of asylum seekers and resettled refugees—the Steering Commission supported by GTO and GTAEM—governmental and non-governmental reception providers lack a common space where they can come together to discuss difficulties, exchange expertise, establish priorities, plan policy and articulate joint efforts to implement it. This has caused some discoordination between the plethora of organisations involved in the reception of asylum seekers.

#### *Spontaneous arrivals of asylum seekers*

Asylum seekers whose claims are made at the border or following a removal order are detained<sup>133</sup> while awaiting a decision and provided with material reception conditions by SEF. Asylum seekers appealing a first instance decision reached after an accelerated procedure following a removal order receive assistance from Santa Casa da Misericórdia de Lisboa (SCML), a non-profit organisation.

126 CPR (Conselho Português para os Refugiados). Asylum Information Database country Report: Portugal (2017 update). 2018.

127 EAPN Portugal (Rede Europeia Anti-pobreza). Os refugiados em Portugal e o programa de reinstalação. 2013.

128 CPR (Conselho Português para os Refugiados). Asylum Information Database Country Report: Portugal (2018 update). 2019.

129 Rádio Renascença (2020) Portugal já acolheu 72 refugiados menores não acompanhados. <https://rr.sapo.pt/2020/12/21/politica/portugal-ja-acolheu-72-refugiados-menores-nao-acompanhados/noticia/219523/>

130 CPR (Conselho Português para os Refugiados). Asylum Information Database Country Report: Portugal (2018 update). 2019.

131 SGMAI (Secretaria Geral do Ministério da Administração Interna). National Programme AMIF. 2014. <https://infoeuropa.eurocid.pt/files/database/000066001-000067000/000066870.pdf>. Accessed 27 Jul 2018.

132 CPR (Conselho Português para os Refugiados). Asylum Information Database country Report: Portugal (2017 update). 2018.

133 If asylum seekers are found to have special procedural needs they do not stay detained.

TABLE 1 Providers of material reception conditions according to type of arrival and asylum procedure.

ARRIVAL TYPE	PROFILE	TYPE AND STAGE OF ASYLUM PROCEDURE	PROVIDERS OF MATERIAL RECEPTION CONDITIONS
Spontaneous asylum seekers	Single adults and families	Border procedure (including appeal); Accelerated procedure following a removal order	MAI/SEF
		Appeal from accelerated procedure following a removal order	MAI/SCML
		Admissibility procedure in national territory; Accelerated procedure in national territory	MAI/CPR
		Appeal from admissibility procedure in national territory; Appeal from accelerated procedure in national territory	MAI/SCML
		Regular procedure (including appeal)	MESSS/ISS
	Single adults and families with social networks in LMA*	Regular procedure (including appeal)	MESSS/SCML
	Unaccompanied minors	Any type and stage of the asylum procedure	MAI/CPR
Relocated asylum seekers	Unaccompanied minors after reaching 18 years	Any type and stage of the asylum procedure	MAI/SCML
	Single adults and families	Regular procedure (including appeal)	CSO or municipality
Resettled refugees	Unaccompanied minors	Regular procedure (including appeal)	MESSS/CPR
	Single adults and families	N/A	MPMA/CSO or municipality
	Unaccompanied minors	N/A	MPMA/CSO or municipality

\*LMA – Lisbon Metropolitan Area.

Source: Data from CPR<sup>135</sup> compiled by the authors.

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Asylum seekers whose claims are made on national territory under the admissibility (including Dublin) and accelerated procedures receive reception services from CPR. If they appeal against a Dublin or first instance decision, responsibility for their reception is transferred to the SCML. Asylum seekers who are admitted to the regular procedure receive material reception conditions from the ISS (also during appeal), with the exception of those who have strong social networks in Lisbon, who are assisted by SCML.

Unaccompanied minors are provided with reception services by CPR throughout both the initial application and appeals processes. When they move into assisted apartments or reach adult age their support is ensured by SCML<sup>134</sup>.

### Relocated asylum seekers

The reception of relocated asylum seekers is organised by the Working Group for the European Agenda for Migration (GTAEM)<sup>136</sup>, which was created in 2015. GTAEM is coordinated by SEF and composed by a vast set of public and private stakeholders and reception providers<sup>137</sup>. The matching of relocated asylum seekers to reception providers is organised by the High Commission for Migration (ACM). Reception providers include various CSOs and municipalities, namely PAR, CPR, the Municipality of Lisbon, União de Misericórdias, the Portuguese Red Cross (CVP), and several other smaller CSOs and municipalities across the country. The reception programme for relocated asylum seekers

134 CPR (Conselho Português para os Refugiados). Asylum Information Database country Report: Portugal (2017 update). 2018.

135 CPR (Conselho Português para os Refugiados). Asylum Information Database country Report: Portugal (2017 update). 2018. CPR (Conselho Português para os Refugiados). Asylum Information Database Country Report: Portugal (2018 update). 2019.

136 Governo de Portugal. Despacho n.º 10041-A/2015. Diário da República n.º 172/2015, 1.º Suplemento, Série II de 3 de Setembro de 2015. 2015. <https://dre.pt/home/-/dre/70181480/details/maximized?serie=II&drelid=70181478>. Accessed 2 Jul 2018.

137 ACM (Alto Comissariado para as Migrações). Relatório de avaliação da política portuguesa de acolhimento de pessoas refugiadas. Programa de Recolocação. Lisboa; 2017.

has a duration of 18 months. In the specific case of PAR, which only hosts families, the reception programme lasts 24 months. Three months after completion of the reception programme, ISS takes over the responsibility of providing for material reception conditions<sup>138</sup>.

### *Resettled refugees*

The reception of resettled refugees was undertaken by CPR until 2012<sup>139</sup>. CPR delivered reception services during the first 4 to 5 months. After that period, resettled refugees were provided financial support by Social Security for up to 2 years<sup>140</sup>.

In October 2012, a multilateral MoU was signed between SEF, ISS, SMCL, ACM, the Employment and Professional Training Institute (IEFP), and CPR to provide reception services to resettled refugees<sup>141</sup>. The MoU was extended in 2014 to include a set of new providers, namely the Director General for Health (DGS), the Central Administration of Health Systems (ACSS), the Directorate General of Education (DGE), the Directorate General of Education Institutions (DGEE), the National Association of Portuguese Municipalities (ANMP) and the Jesuit Refugee Service (JRS), joined by the National Agency for the Qualification and Vocational Education (ANQEP) in 2018<sup>142</sup>.

Currently, the provision and implementation of the resettlement programme falls under the responsibility of SEF/MAI. In 2018, the High Commission for Migration (ACM) within the Ministry of Presidency and Administrative Modernisation (MPMA) became responsible for the reception and integration of resettled refugees, as well as of other beneficiaries of international protection<sup>143</sup>.

## **II. Reception facilities**

In Portugal, there are two broad types of reception facilities for asylum seekers: open reception facilities and detention facilities. Asylum seekers whose claims are made at border posts or following a removal order are placed in detention facilities where they remain until a first instance decision is made. Other asylum seekers are hosted in open reception facilities<sup>144</sup>, which consist of collective and private accommodation. The latter includes rented houses and apartments, as well as rooms in apartments, hotels and shelters. Collective accommodation mostly refers to reception centres, though it may occasionally entail temporary shelters and nursing homes.

Placement in collective or private accommodation is dependent on the asylum seeker's age, family household and type and stage of asylum procedure (see Table 2). Adult asylum seekers admitted to the regular procedure are usually provided with private housing by the ISS<sup>145</sup>. If they appeal from a negative first instance decision within the Lisbon area, they will be housed by the SCML in private accommodation. Adults and families with children in the admissibility or accelerated procedures in the territory are hosted at CPR's Refugee Reception Centre I (CAR I)<sup>146</sup>. If they appeal from a first instance decision they will be housed in private accommodation provided by SMCL.

Unaccompanied minors are hosted at CPR's Refugee Children Reception Centre (CACR), both during the regular procedure and appeal process. When they reach adulthood, or if they need to be accommodated under a model of assisted living, they are transferred to private accommodation provided

138 CPR (Conselho Português para os Refugiados). Asylum Information Database country Report: Portugal (2017 update). 2018.

139 The first resettled refugees arrived in 2006. The resettlement program was adopted in 2007 and established a quota of 30 resettled refugees per year. CPR ensured the reception of resettled refugees between 2006 and 2012. Governo de Portugal. Resolução do Conselho de Ministros n.º 110/2007 de 21 de Agosto. Diário da República, 1.ª série - N.º 160 - 21 de Agosto de 2007. 2007. <https://dre.pt/application/dir/pdf1sdip/2007/08/16000/0548205483.PDF>. Accessed 1 Aug 2018.; EAPN Portugal (Rede Europeia Anti-pobreza). Os refugiados em Portugal e o programa de reinstalação. 2013.

140 At the end of the two year reception period, resettled refugees in need become entitled to the provisions offered by the Portuguese welfare system.

141 EAPN Portugal (Rede Europeia Anti-pobreza). Os refugiados em Portugal e o programa de reinstalação. 2013.

142 CPR (Conselho Português para os Refugiados). Asylum Information Database country Report: Portugal (2018 update). 2019.

143 UNHCR (United Nations High Commissioner for Refugees). UNHCR Resettlement Handbook and Country Chapters: Portugal. 2019. 2019.

144 CPR (Conselho Português para os Refugiados). Asylum Information Database country Report: Portugal (2017 update). 2018.

145 Before getting private accommodation, they may be placed temporarily in short-term transitional housing upon arrival (e.g. emergency shelters, nursing homes). CPR (Conselho Português para os Refugiados). Asylum Information Database country Report: Portugal (2017 update). 2018.

146 They may be hosted in private accommodation (room in apartments or hostels) if the reception centres are full. CPR (Conselho Português para os Refugiados). Asylum Information Database country Report: Portugal (2017 update). 2018.

TABLE 2 Reception provider and facilities, according to arrival type and stage of asylum procedure

ARRIVAL TYPE	TYPE AND STAGE OF ASYLUM PROCEDURE	RECEPTION PROVIDER AND TYPE OF RECEPTION FACILITIES		
		OPEN COLLECTIVE FACILITIES	OPEN PRIVATE FACILITIES	DETENTION FACILITIES
Spontaneous asylum seekers				
Single adults and families	Border procedure (including appeal); Accelerated procedure following a removal order			SEF: CIT or EECIT
	Appeal from accelerated procedure following a removal order		SCML: house, apartment or room in hostel	
	Admissibility procedure in national territory; Accelerated procedure in national territory	CPR: CAR I		
	Appeal from admissibility procedure in national territory; Appeal from accelerated procedure in national territory		SCML: house, apartment or room in hostel	
	Regular procedure (including appeal)		ISS: house, apartment or room in hostel	
Single adults and families with social networks in LMA*	Regular procedure and appeal stage		SCML provides allowance; relatives and friends may provide accommodation	
Unaccompanied minors	Any type and stage of the asylum procedure	CPR: CACR		
Unaccompanied minors after reaching 18 years	Any type and stage of the asylum procedure		SCML: assisted living in apartment	
Relocated asylum seekers				
Single adults and families	Regular procedure (including appeal) and hosted in the LMA*	CPR: CAR I; Lisbon municipality: CATR	CSOs: house, apartment or room in hostel	
	Regular procedure (including appeal) and hosted in other regions across the country		CSOs and municipalities: house, apartment or room in hostel	
Unaccompanied minors	Regular procedure (including appeal)	CPR: CATR		
Resettled refugees				
Single adults and families	Prior to 2012, hosted in LMA*	CPR: CAR I	ISS: house, apartment or room in hostel	
	After 2012, dispersed through other regions across the country		CSOs and municipalities: house, apartment or room in hostel	
Unaccompanied minors		CPR: CACR		

\*LMA – Lisbon Metropolitan Area

Source: Data from CPR<sup>147</sup> compiled by the authors.

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by SCML. Relocated asylum seekers are hosted in private accommodation rented by reception providers in regions across the country or in collective accommodation provided by CPR (CAR I) or by the Municipality of Lisbon's Temporary Reception

Centre for Refugees (CATR)<sup>148</sup>. Until 2012, resettled refugees were hosted by CPR at CAR I or in private housing. Since 2012, following the approval of the multilateral MoU for the reception of resettled refugees, a dispersal policy has been followed and

147 CPR (Conselho Português para os Refugiados). Asylum Information Database country Report: Portugal (2017 update). 2018. CPR (Conselho Português para os Refugiados). Asylum Information Database Country Report: Portugal (2018 update). 2019.

148 CPR (Conselho Português para os Refugiados). Asylum Information Database country Report: Portugal (2017 update). 2018.

they are hosted in private accommodation across the country<sup>149</sup>. Resettled unaccompanied minors continue to be hosted by CPR at CACR<sup>150</sup>.

### III. Reception challenges

The reception system faces several challenges linked to the variability of providers and the types of services they offer. The challenges include lack of coordination between reception providers, lack of training for new reception providers, limited availability and suitability of reception facilities, unmonitored dispersal policies, bureaucracy and limited accessibility of health and social care services, and insufficient material reception conditions.

The differences between reception providers and the types of service provision offered are often poorly explained to beneficiaries<sup>151</sup>. In addition, the absence of a mechanism to identify asylum seekers with special needs at the registration phase may be putting a strain on new reception providers. While experienced reception providers have built the knowledge and resources needed to screen and address the needs of asylum seekers in those circumstances, new reception providers may lack that capacity and jeopardise their referral to appropriate services.

### Collective accommodation and overcrowding

Collective reception capacity increased by 25 percent in 2012, from 52 to 65 beds, by 13 percent in 2016 to 89 beds, doubled in 2018 to 179 beds, and increased by 7 percent in 2019. At present, there are four collective reception facilities with capacity to host 193 asylum seekers. They are all located in the Lisbon Metropolitan Area.

CAR I and CACR are located in neighbourhoods with a high level of socioeconomic deprivation<sup>152</sup>. Although there are schools within walking distance<sup>153</sup> from both CAR I and CACR, the number of options available is more limited (1 and 2 schools, respectively) than in relatively affluent neighbourhoods such as the one where CATR is located (3 schools). All reception centres have a primary healthcare centre within walking distance, but only CATR has a hospital nearby. Unlike CACR and CATR, CAR I has no green spaces in the neighbourhood and public transportation is scant<sup>154</sup>.

Overcrowding at CPR's CAR I and CACR has been a persistent problem for many years. Between 2010 and 2019, the number of adults and families assigned to CPR for reception provision grew by 836 percent, from 201 to 1881 people<sup>155</sup>.

149 EAPN Portugal (Rede Europeia Anti-pobreza). Os refugiados em Portugal e o programa de reinstalação. 2013.

150 CPR (Conselho Português para os Refugiados). Centro de Acolhimento para Crianças Refugiadas (CACR). 2018.

151 Interviewee 3, Governmental organisation.

152 The level of socioeconomic deprivation was analysed based on the European Deprivation Index for Portugal, which classifies neighbourhoods' degree of socioeconomic deprivation into five quintiles where the 5<sup>th</sup> quintile corresponds to the most deprived and the 1<sup>st</sup> quintile to the least deprived. Our analysis shows that CACR scores in the 5<sup>th</sup> deprivation quintile, CAR I on the 4<sup>th</sup> quintile and CATR in the 1<sup>st</sup> quintile. Information on deprivation domains was obtained from the European Union Statistics on Income and Living Conditions (EU-SILC) survey and results were then joined to ecological data from the Portuguese census to assess the level of socioeconomic deprivation with the greatest detail possible. Ribeiro AI, Mayer A, Miranda A, De Pina M de F. The Portuguese Version of the European Deprivation Index: An Instrument to Study Health Inequalities. Acta Med Port. 2017;30:17–25.; EC (European Commission). European Union statistics on income and living conditions (EU-SILC). Eurostat. 2018. <http://ec.europa.eu/eurostat/web/microdata/european-union-statistics-on-income-and-living-conditions>. Accessed 17 May 2018.; INE (Instituto Nacional de Estatística). Census 2011. Instituto Nacional de Estatística. 2018.

153 Walking distance for the purposes of this study was defined as an 800 meters radius from the reception centre.

154 Data on the public services available in the municipality of Lisbon was obtained from the GeoData Base of Lisbon. The location of public schools was obtained from the DGEstE website. Health care services were located using Google Maps coordinates and crosschecked with information from the Regional Health Administration of Lisbon and Vale do Tejo. Public transportation options were identified using Google Maps. Data on green spaces was also collected from the Corine Land Cover 2012. A circular buffer with an 800 meters radius from a centroid (i.e. the reception centre) was computed to assess the availability of services (i.e. schools, healthcare services and public transportation) within walking distance (800 meters). All geographical data was stored and analysed using the ArcGIS 10.5.1 software. CML (Câmara Municipal de Lisboa). Geodados. 2018. <http://geodados.cm-lisboa.pt/>. Accessed 18 May 2018; DGEstE (Direção Geral dos Estabelecimentos Escolares). Pesquisa de escolas. 2018. <https://www.dgeste.mec.pt/index.php/pesquisa-de-escolas-2/>. Accessed 21 May 2018.; ARSLVT (Administração Regional de Saúde de Lisboa e Vale do Tejo). Cuidados de Saúde Primários. 2018. <http://www.arslvt.min-saude.pt/pages/6>. Accessed 21 May 2018; DGTerritório (Direção Geral do Território). Corine Land Cover 2012. 2017. [http://www.dgterritorio.pt/cartografia\\_e\\_geodesia/projetos\\_em\\_curso/clc\\_2012/](http://www.dgterritorio.pt/cartografia_e_geodesia/projetos_em_curso/clc_2012/). Accessed 22 May 2018.

155 CPR (Conselho Português para os Refugiados). CPR Relatório de Atividades 2017. 2018.; CPR (Conselho Português para os Refugiados). CPR Relatório de Atividades 2010. 2011.



TABLE 3 Collective accommodation facilities

FACILITY NAME	CAPACITY	EST. DATE	LOCATION	ADMINISTERED/ FUNDED BY	SPECIFICS
Refugee Reception Centre (CAR I)	52 places (approx. 225 people per year for an average length of stay of 3 months)	2006	Bobadela, Municipality of Loures	Run by CPR; financed by a joint fund from the Institute of Social Security, I.P. and the European Refugee Fund	In 2017, CAR I hosted 327 people. Between April and June 2017, CAR I was forced to decline all new arrivals, except for asylum seekers in vulnerable situations (i.e. women with young children), due to lack of beds. <sup>156</sup> By December 2017, its occupancy rate doubled its formal reception capacity reaching up to 111 people. <sup>157</sup> In 2018, CAR I hosted 309 people and in 2019 it hosted 414 (22% of the 1881 asylum seekers supported by the CPR in 2019). <sup>158</sup>
Refugee Children Reception Centre (CACR) – for un-accompanied minors	27 places since 2019; 13 places before 2019	2012	Chelas, Municipality of Lisbon	Run by CPR; financed by MAI/SEF, UNHCR and the Municipality of Lisbon <sup>159</sup>	In 2017, CACR hosted 56 unaccompanied minors <sup>160</sup> . At the end of that year, CACR occupancy rate stood beyond formal capacity accommodating 22 minors <sup>161</sup> . In 2018, CACR hosted 65 unaccompanied minors (40 were new admissions and 25 transited from 2017). At the end of 2018, CACR occupancy rate stood beyond formal capacity, accommodating 24 minors. Due to overcrowding, 20 unaccompanied minors were transferred to CAR while waiting for a place in CACR. In 2019, the formal capacity of CACR was increased to 27 unaccompanied minors. CACR hosted 103 minors (14 transited from 2018 and 79 were new admissions). There is no information available on the occupancy rate at the end of the year. <sup>162</sup>
Temporary Reception Centre for Refugees (CATR)	24 places	2016	Lumiar, Municipality of Lisbon	Run jointly by CML and the Jesuit Refugee Service (JSR); financed by the Lisbon City Hall (CML)	It provides transitory reception to relocated asylum seekers <sup>163</sup> , who stay for 2 to 3 months before being housed in private accommodation <sup>164</sup> . The centre has been working to its full capacity <sup>165</sup> . So far, no accounts of overloading have been reported.
Refugee Reception Centre II (CAR II)	90 places	2018	São João da Talha, Municipality of Loures	Run by CPR <sup>166</sup> ; construction financed by the state and the Council of Europe Development Bank (CEB)	It provides transitory accommodation to the 1,010 refugees who are expected to arrive under the resettlement programme. Following a dispersal policy, this group of resettled refugees will stay at CAR II temporarily before transitioning to other accommodation facilities across the Portuguese territory. In 2019, CAR II hosted 166 resettled refugees, 27 asylum seekers relocated ad hoc from rescue boats in the Mediterranean Sea and 10 unaccompanied minors. <sup>167</sup>

\*LMA – Lisbon Metropolitan Area

Source: Data from CPR<sup>154-159</sup> and CML<sup>160</sup> compiled by the authors.

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156 During this period, 159 asylum seekers were accommodated at hostels or rooms paid by CPR due to lack of capacity in the reception centre. Mundo Português. Lisboa vai duplicar a capacidade do centro de acolhimento temporário de refugiados. 2018. <https://www.mundoportugues.pt/lisboa-va-duplicar-a-capacidade-do-centro-de-acolhimento-temporario-de-refugiados/>. Accessed 2 Jul 2017.

157 CPR (Conselho Português para os Refugiados). Asylum Information Database country Report: Portugal (2017 update). 2018.

158 CPR (Conselho Português para os Refugiados). CPR Relatório de Atividades 2018. 2019;

159 CPR (Conselho Português para os Refugiados). Centro de Acolhimento para Crianças Refugiadas (CACR). 2018.

160 CPR (Conselho Português para os Refugiados). CPR Relatório de Atividades 2017. 2018.

161 CPR (Conselho Português para os Refugiados). Asylum Information Database country Report: Portugal (2017 update). 2018.

162 CPR (Conselho Português para os Refugiados). CPR Relatório de Atividades 2018. 2019;

163 CML (Câmara Municipal de Lisboa). Abriu o centro de acolhimento temporário de refugiados em Lisboa. 2016. <http://www.cm-lisboa.pt/noticias/detalhe/articulo/abriu-o-centro-de-acolhimento-temporario-de-refugiados-em-lisboa>. Accessed 19 Apr 2018.

164 Mundo Português. Lisboa vai duplicar a capacidade do centro de acolhimento temporário de refugiados. 2018. <https://www.mundoportugues.pt/lisboa-va-duplicar-a-capacidade-do-centro-de-acolhimento-temporario-de-refugiados/>. Accessed 2 Jul 2018.

165 Coelho BD. Refugiados. Depois da tragédia, recuperar a vida em Lisboa. Jornal i. 2018. <https://ionline.sapo.pt/604913>. Accessed 19 Apr 2018.

166 CPR (Conselho Português para os Refugiados). Novo Centro de Acolhimento para Refugiados (CAR II). 2018. <http://refugiados.net/1cpr/www/inauguraCAR2.php>. Accessed 24 Jan 2019.

167 CPR (Conselho Português para os Refugiados). Asylum Information Database country Report: Portugal (2019 update). 2020.

TABLE 4 Asylum seekers transfers to alternative housing due to overcrowding at CAR I (2010-2019)

YEAR	ASYLUM SEEKERS ASSIGNED TO CAR I	ASYLUM SEEKERS HOSTED AT CAR I	ASYLUM SEEKERS HOSTED IN ALTERNATIVE HOUSING DUE TO OVERCROWDING
2010	201	n/a	n/a
2011	297	223	74
2012	361	n/a	n/a
2013	390	258	132
2014	435	234	201
2015	768	292	476
2016	785	463	322
2017	654	353	301
2018	1,171	309	862
2019	1,881	414	1,467
Total (2013-2019)	6,943	-	-

Source: CPR<sup>168</sup>.

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CAR I's formal reception capacity has remained relatively the same at 225 people per year<sup>169</sup>. To circumvent accommodation shortages, CPR was forced to start housing some of the asylum seekers under its responsibility in private accommodation<sup>170</sup>. In 2012, when this practice was first adopted, a group of asylum seekers held several members of the staff hostage at CAR I after receiving notice to move residence elsewhere<sup>171</sup>. In 2019, 78% of the asylum seekers assigned to CAR I were hosted through alternative private housing due to lack of beds<sup>172</sup> (see Table 4).

CAR I's insufficient capacity to meet demand is further intensified by problems in the outflow of asylum seekers who come under the responsibility of SCML or ISS following appeal. This group of asylum seekers is expected to transition into private accommodation. However, limited affordable private accommodation caused by housing shortages and increasing house market prices is preventing this transition from occurring within a reasonable timeframe. This has been clogging the system by causing delays of up to six months in the outflow of asylum seekers<sup>173</sup>.

168 CPR (Conselho Português para os Refugiados). CPR Relatório de Atividades 2010. 2011; CPR (Conselho Português para os Refugiados). CPR Relatório de Atividades 2011. 2012; CPR (Conselho Português para os Refugiados). CPR Relatório de Atividades 2012. 2013; CPR (Conselho Português para os Refugiados). CPR Relatório de Atividades 2013. 2014; CPR (Conselho Português para os Refugiados). CPR Relatório de Atividades 2014. 2015; CPR (Conselho Português para os Refugiados). CPR Relatório de Atividades 2015. 2016; CPR (Conselho Português para os Refugiados). CPR Relatório de Atividades 2016. 2017; CPR (Conselho Português para os Refugiados). CPR Relatório de Atividades 2017. 2018; CPR (Conselho Português para os Refugiados). CPR Relatório de Atividades 2018. 2019; CPR (Conselho Português para os Refugiados). CPR Relatório de Atividades 2019. 2020

169 A 3 month average length of stay was used to calculate reception capacity. CPR (Conselho Português para os Refugiados). CPR Relatório de Atividades 2017. 2018; CPR (Conselho Português para os Refugiados). CPR Relatório de Atividades 2010. 2011; CPR (Conselho Português para os Refugiados). CPR Relatório de Atividades 2011. 2012; CPR (Conselho Português para os Refugiados). CPR Relatório de Atividades 2012. 2013; CPR (Conselho Português para os Refugiados). CPR Relatório de Atividades 2013. 2014; CPR (Conselho Português para os Refugiados). CPR Relatório de Atividades 2014. 2015; CPR (Conselho Português para os Refugiados). CPR Relatório de Atividades 2015. 2016; CPR (Conselho Português para os Refugiados). CPR Relatório de Atividades 2016. 2017.

170 CPR (Conselho Português para os Refugiados). CPR Relatório de Atividades 2012. 2013.

171 At the time, there were 107 people living at CAR I and 60 asylum seekers were asked to move into hotel rooms. Some asylum seekers refused, arguing that they did not want to live away from friends and acquaintances. The hostage-taking situation lasted two hours and ended without violence. Amaro JB. Refugiados revoltaram-se e sequestraram técnicos do centro de acolhimento. Público. 2012. <https://www.publico.pt/2012/08/28/jornal/refugiados-revoltaram-se-e-sequestraram-tecnicos-do-centro-de-acolhimento-25144299>. Accessed 8 May 2018.

172 CPR (Conselho Português para os Refugiados). CPR Relatório de Atividades 2017. 2018; CPR (Conselho Português para os Refugiados). CPR Relatório de Atividades 2013. 2014; CPR (Conselho Português para os Refugiados). CPR Relatório de Atividades 2014. 2015; CPR (Conselho Português para os Refugiados). CPR Relatório de Atividades 2015. 2016; CPR (Conselho Português para os Refugiados). CPR Relatório de Atividades 2016. 2017.

173 CPR (Conselho Português para os Refugiados). Asylum Information Database country Report: Portugal (2017 update). 2018.



The human resources available at CAR I are insufficient to meet the needs of a growing number of new arrivals. Both CAR I's permanent staff and its medical and psychological health professionals are not sufficient to ensure full access to needed services by all asylum seekers. Limitations in access to general and mental health care, social and legal assistance, and cultural and leisure activities have been reported<sup>174</sup>. Overcrowded premises have also caused tenants to engage in conflicts over shared spaces and in petty theft<sup>175</sup>.

The total number of unaccompanied minors hosted annually at CACR increased from 16 to 103 between 2012 and 2019<sup>176</sup>. CACR has been working beyond its formal capacity. In periods of critical overcrowding, unaccompanied minors are temporarily transferred to CAR I, while they wait for a vacancy. In 2013, 13 minors were in this situation, followed by 11 in 2016, 10 in 2017 and 20 in 2018<sup>177</sup>. CPR has expressed concern that the quality of the support provided to unaccompanied minors may be compromised due to overcrowding. In 2017, eight minors absconded from CACR<sup>178</sup>. It is unknown whether they left out of their own will, or if they were caught up by human trafficking networks.

Some efforts have been made to increase reception capacity and overcome chronic shortages in collective accommodation. In 2015, CPR obtained approval for the construction of a new reception centre – CAR II – with capacity to receive 60 adults and 30 minors. The reception centre was built on a plot of land relinquished to CPR by Loures City

Hall<sup>179</sup> with financial support from the CEB and MAI. It opened in December 2018 and it is destined to accommodate the resettled refugees and asylum seekers relocated ad hoc from humanitarian boats in the Mediterranean<sup>180</sup>. CML has also announced that it will rehabilitate a building contiguous to its temporary reception centre in order to double reception capacity to 48 places. Construction began in 2019<sup>181</sup>. However, current reception centres expansion plans appear to be insufficient to accommodate upcoming flows of asylum seekers. The development of a reception monitoring system is crucial to facilitate reception management, namely through forecasting and prospective planning.

#### *Private accommodation, territorial dispersal and insufficient material conditions*

The number of asylum seekers and beneficiaries of international protection housed in private accommodation under MoUs with ISS and SCML increased from 1,081 in 2016 to 1,293 in 2017 and decreased to 1,043 in 2018.<sup>182</sup> SCML usually hosts asylum seekers in private inns, while ISS tends to accommodate asylum seekers in private housing. Placement of asylum seekers in private housing in the Lisbon area is becoming increasingly difficult due to rising rent prices. This has caused delays in the outflow of asylum seekers from collective facilities where they are hosted until private housing is secured<sup>183</sup>.

From the 1,346 asylum seekers and beneficiaries of international protection hosted in private accommodation in 2019 by the ISS, 504 were placed

174 Italian Council for Refugees. Time for Needs: Listening, Healing, Protecting. 2017.

175 CPR (Conselho Português para os Refugiados). Asylum Information Database country Report: Portugal (2017 update). 2018.

176 CPR (Conselho Português para os Refugiados). CPR Relatório de Atividades 2019. 2020; CPR (Conselho Português para os Refugiados). CPR Relatório de Atividades 2017. 2018.; CPR (Conselho Português para os Refugiados). CPR Relatório de Atividades 2012. 2013.

177 There are no data available for 2019. CPR (Conselho Português para os Refugiados). CPR Relatório de Atividades 2019. 2020; CPR (Conselho Português para os Refugiados). CPR Relatório de Atividades 2018. 2019; CPR (Conselho Português para os Refugiados). CPR Relatório de Atividades 2017. 2018.; CPR (Conselho Português para os Refugiados). CPR Relatório de Atividades 2013. 2014.; CPR (Conselho Português para os Refugiados). CPR Relatório de Atividades 2016. 2017.

178 CPR (Conselho Português para os Refugiados). Asylum Information Database country Report: Portugal (2017 update). 2018.

179 CML (Câmara Municipal de Loures). Câmara de Loures celebra contrato de constituição de direito de superfície a favor do CPR. 2016. <http://www.cm-loures.pt/noticia.aspx?displayid=2145>. Accessed 20 Apr 2018.

180 CPR (Conselho Português para os Refugiados). Asylum Information Database country Report: Portugal (2017 update). 2018.

181 Mundo Português. Lisboa vai duplicar a capacidade do centro de acolhimento temporário de refugiados. 2018. <https://www.mundoportugues.pt/lisboa-vai-duplicar-a-capacidade-do-centro-de-acolhimento-temporario-de-refugiados/>. Accessed 2 Jul 2017.

182 Data was found for 2019. CPR (Conselho Português para os Refugiados). Asylum Information Database country Report: Portugal (2018 update). 2019; CPR (Conselho Português para os Refugiados). Asylum Information Database country Report: Portugal (2017 update). 2018; CPR (Conselho Português para os Refugiados). Asylum Information Database Country Report: Portugal. 2017.

183 CPR (Conselho Português para os Refugiados). Asylum Information Database country Report: Portugal (2017 update). 2018.

in Lisbon, while the other 842 were dispersed through 17 districts across the country<sup>184</sup>. The impact of dispersal reception policies has not been fully assessed. Although in theory it is considered a positive measure that can help to increase the population in low and middle density areas, some downsides have been identified in practice. Small municipalities were insufficiently equipped to provide asylum seekers and resettled refugees with needed amenities, including Portuguese language courses, vocational training and diversity-sensitive health care<sup>185</sup>. In addition, there are also reports of asylum seekers feeling isolated due to language barriers, cultural differences, limited contact with people living under similar circumstances and hosting communities' low openness to newcomers<sup>186</sup>. CPR has also reported difficulties in providing support to asylum seekers housed in remote locations. This group of asylum seekers is not always informed by SEF's regional delegations of their entitlement to support provided by CPR. Moreover, they are unable to afford the costs of transportation and telecommunications involved in obtaining initial and follow-up support from CPR legal advisers and social workers who are based in Lisbon. Monthly financial allowances awarded to asylum seekers amount at the very most to 269€ per adult. Asylum seekers at all stages of the asylum procedure have complained to be unable to meet basic needs on such meagre allowances. Furthermore, 112 spontaneous asylum seekers in the regular procedure rejected ISS support in 2017, 53 rejected ISS support in 2018 and 99 rejected it in 2019. Some of those withdrawals were motivated by poor living standards resulting from the insufficient material reception conditions provided<sup>187</sup>.

In the specific case of relocated asylum seekers whose reception also followed a dispersal policy, some difficulties have been reported in securing access to Portuguese language courses and the labour market, particularly in smaller cities. Delays on the provision of financial support to reception providers by the government bodies have caused some asylum seekers to not receive monthly allowances on time<sup>188</sup>. Furthermore, there is a three month gap for obtaining social welfare after the end of the relocation reception programme, which may cause asylum seekers who were not able to secure enough income in the meantime to lack the necessary means to live with dignity<sup>189</sup>.

From the 1,550 asylum seekers relocated between December 2015 and April 2018, sixty-five percent engaged in secondary movements<sup>190</sup>. According to interviewees, the departure of this first group of relocated asylum seekers to other countries may be explained by various factors. For many relocated asylum seekers, Portugal was not their preferred destination. Having family members and friends in other European countries and lacking social networks in the relocation country may have also worked as push factors. Finally, some asylum seekers may have had their expectations thwarted by inadequate reception conditions or limited employment opportunities<sup>191</sup>.

Reception of relocated asylum seekers was undertaken by a high number of providers with varied levels of experience in and capacity for assisting this particular group of migrants. While some were widely experienced in attending to their needs, others lacked the know-how and motivation to

184 CPR (Conselho Português para os Refugiados). Asylum Information Database country Report: Portugal (2019 update). 2020.

185 Interviewee 2, Governmental organisation; Interviewee 5, Non-governmental organisation.

186 Rodrigues AS. Integração de Pessoas Refugiadas em Portugal, no âmbito do programa de recolocação Europeu. 2017. <https://www.repository.utl.pt/bitstream/10400.5/14316/1/DM-ASR-2017.pdf>; Carvalho S. O acolhimento e inserção de refugiados em Portugal: procedimentos e práticas de intervenção. Universidade de Trás-Os-Montes e Alto Douro; 2017. <http://hdl.handle.net/10348/8261>; Moraes M. Histórias de vida de refugiados. Uma reflexão sobre as políticas de asilo e integração. Universidade Coimbra; 2016. <https://estudogeral.sib.uc.pt/handle/10316/34019>.

187 CPR (Conselho Português para os Refugiados). Asylum Information Database country Report: Portugal (2017 update). 2018. CPR (Conselho Português para os Refugiados). Asylum Information Database country Report: Portugal (2018 update). 2019. CPR (Conselho Português para os Refugiados). Asylum Information Database country Report: Portugal (2019 update). 2020.

188 ACM (Alto Comissariado para as Migrações). Relatório de avaliação da política portuguesa de acolhimento de pessoas refugiadas. Programa de Recolocação. Lisboa; 2017.

189 Oliveira, C. R. Entrada, Acolhimento e Integração de Requerentes e Beneficiários de Proteção Internacional em Portugal, Relatório Estatístico do Asilo 2020, Caderno Estatístico Temático # 3, Coleção Imigração em Números do Observatório das Migrações, ACM. Lisboa; 2020.

190 ACM (Alto Comissariado para as Migrações). Relatório de avaliação da política portuguesa de acolhimento de pessoas refugiadas. Programa de Recolocação. Lisboa; 2017.

191 Interviewee 2, Governmental organisation; Interviewee 5, Non-governmental organisation.

invest in building needed capacity to receive them. Asylum seekers hosted by the latter were provided with less assistance and, in some cases, were left to fend for themselves<sup>192</sup>. This may have limited their access to services and job opportunities and reduced their chances to grow a social network, which are key for integration.

Secondary movements appear to have reduced among more recent arrivals. From the 184 asylum seekers relocated ad hoc from humanitarian boats between July 2018 and December 2019, 21,7% engaged in secondary movements. And from the 409 refugees resettled under the EU 50,000 programme between December 2018 and 2019, only 6,1% left Portugal<sup>193</sup>.

#### *Detention facilities and lack of monitoring*

Detention of asylum seekers is limited to those whose application is made at a border post or following a removal order while in a Temporary Installation Centre (CIT). CIT is the designation given to the centres where irregular migrants are detained. At present, there is one CIT on national territory—the Unidade Habitacional de Santo António (CIT-UHSA) which has 30 places<sup>194</sup> and is located in Porto—and three Spaces Equivalent to Centres of Temporary Stay (EECIT) at border posts. The EECITs are located at the Lisbon (30 places), Porto (14 places) and Faro (14 places) airports. Their combined capacity is 58 places and they are all managed by SEF<sup>195</sup>.

Asylum seekers can be detained for a maximum of 60 days following appeal against the rejection

of the application. If no decision is made before 60 days have passed, asylum seekers have to be released into national territory<sup>196</sup>. The Ombuds-woman has cautioned against the detention of third-country national at CIT-UHSA beyond the time limits established by the law<sup>197</sup>. The number of families and children detained at EECITs has also been reported to have increased in the past years<sup>198</sup>.

Data on the number of asylum seekers detained is scant. According to the Ombudswoman, between 2015 and 2016, the number of asylum seekers detained increased 18 percent, from 2,071 to 2,444<sup>199</sup>. Detainees are under continuous surveillance, have access to only five minutes of free telecommunications, cannot use their phones, and need to ask permission to access their luggage<sup>200</sup>. Following a set of monitoring visits to CIT and EECITs, the Ombudswoman expressed concern that staff is not sufficiently trained to deal with detained asylum seekers and that the space available is too limited to allow for comfortable accommodation and activities. Moreover, detention centres are not suitable for families. The division between men and women in separate wings at EECITs and by dormitories in different floors at CIT-UHSA causes families to be forcefully separated. Children stay with one of the parents in a bedroom shared with several unknown people. Concerns with the quality of the food and lack of hygiene were also shared. There is a lack of a balanced and nutritional diet and the time between dinner and breakfast is too long. At EECITs, there are limitations on personal hygiene items and no access to a laundry room or service. Furthermore, asylum seekers detained

192 Interviewee 2, Governmental organisation.

193 Oliveira, C. R. *Entrada, Acolhimento e Integração de Requerentes e Beneficiários de Proteção Internacional em Portugal*, Relatório Estatístico do Asilo 2020, Caderno Estatístico Temático # 3, Coleção Imigração em Números do Observatório das Migrações, ACM. Lisboa; 2020.

194 Provedor de Justiça. *A instalação temporária de cidadãos estrangeiros não admitidos em Portugal ou em processo de afastamento do território nacional*. 2011. [http://www.provedor-jus.pt/archive/doc/Relatorio\\_CIT\\_Marco2011.pdf](http://www.provedor-jus.pt/archive/doc/Relatorio_CIT_Marco2011.pdf). Accessed 30 Aug 2018.

195 CPR (Conselho Português para os Refugiados). *Asylum Information Database country Report: Portugal* (2017 update). 2018.

196 CPR (Conselho Português para os Refugiados). *Asylum Information Database country Report: Portugal* (2017 update). 2018. <https://www.asylumineurope.org/reports/country/portugal>.

197 MNP (Mecanismo Nacional de Prevenção). *Tratamento dos cidadãos estrangeiros em situação irregular ou requerentes de asilo nos centros de instalação temporária ou espaços equiparados*. 2017. [http://www.provedor-jus.pt/archive/doc/Cidadaos\\_estrangeiros\\_e\\_o\\_direito\\_a\\_um\\_tratamento\\_digno.pdf](http://www.provedor-jus.pt/archive/doc/Cidadaos_estrangeiros_e_o_direito_a_um_tratamento_digno.pdf).

198 Henriques JC. *SEF detém crianças requerentes de asilo contra recomendações da ONU*. Público. 2018. <https://www.publico.pt/2018/07/22/sociedade/noticia/sef-detem-criancas-requerentes-de-asilo-contra-recomendacoes-da-onu-1838478>. Accessed 30 Aug 2018.

199 MNP (Mecanismo Nacional de Prevenção). *Tratamento dos cidadãos estrangeiros em situação irregular ou requerentes de asilo nos centros de instalação temporária ou espaços equiparados*. 2017. [http://www.provedor-jus.pt/archive/doc/Cidadaos\\_estrangeiros\\_e\\_o\\_direito\\_a\\_um\\_tratamento\\_digno.pdf](http://www.provedor-jus.pt/archive/doc/Cidadaos_estrangeiros_e_o_direito_a_um_tratamento_digno.pdf).

200 CPR (Conselho Português para os Refugiados). *Asylum Information Database country Report: Portugal* (2017 update). 2018.; Henriques JC. *SEF continua a deter crianças e grávidas requerentes de asilo no aeroporto*. Público. 2018. <https://www.publico.pt/2018/08/25/sociedade/noticia/sef-continua-a-deter-criancas-e-gravidas-requerentes-de-asilo-no-aeroporto-1842000>. Accessed 30 Aug 2018.

at EECITs have access to minimal care provided by nurses. When in need of urgent medical care, they are transported to hospital or healthcare centres<sup>201</sup>.

#### *Barriers to service access*

The combined entitlements and rights of asylum seekers and refugees would provide them with one of the highest levels of access to services provided in Europe. However, several barriers work to constrain the accessibility of services for asylum seekers and resettled refugees in practice. Difficulties regarding access to Portuguese language courses and vocational training have been reported. The provision of language courses to non-Portuguese speaking asylum-seeking children is not fully ensured. Public schools have limited access to the resources needed to provide additional pedagogical support to foreign students, which undermines their ability to deliver language courses. Furthermore, in smaller cities and villages the Portuguese language courses that are meant to be provided under the programme “Portuguese for All” are often unavailable because the number of people interested in undertaking the courses is not sufficient to meet the minimum participants’ quota required to ensure their delivery<sup>202</sup>. Adult asylum seekers also experience difficulties in accessing vocational training. This is caused, on the one hand, by the absence of proof of educational diplomas or difficulties in meeting the legal requirements to obtain equivalence for existing diplomas and, on the other hand, by poor command of the Portuguese language<sup>203</sup>.

Limited access to language courses and vocational training has a negative spill over effect on asylum seekers and refugees’ employability. Although

there are no official statistics on asylum seekers and refugees’ employment rates, a report on the relocation programme carried out by ACM shows that in 2017 only 50% of the working age relocated asylum seekers were employed or in vocational training<sup>204</sup>. Difficulties in obtaining employment are related to several factors including bureaucratic constraints in getting the social security identification number on the basis of a temporary residence permit, problems in getting diplomas’ recognition, limited social networks and knowledge about the labour market and not having the right skillset required by employers.

Although unemployed beneficiaries of international protection can benefit from the Social Insertion Revenue (RSI) under the same conditions as country nationals, the amount provided by social welfare is reported by many refugees and beneficiaries of subsidiary protection as insufficient to meet basic needs<sup>205</sup>. Reception providers in charge of hosting relocated asylum seekers have also expressed concern that the three-month gap between the end of the sponsored relocation programme and their entitlement to material reception conditions established by the ISS can put them under financial strain when they are still unemployed<sup>206</sup>.

Access to health care services is constrained by several barriers. Administrative discretion has been found to undermine the assignment of asylum seekers to general practitioners (GPs) in health care centres<sup>207</sup>. As a result, many asylum seekers are not registered with a GP. Access to a preferred GP has been shown to deliver particular benefits for people dealing with mental health issues and multiple health conditions<sup>208</sup>, as may be the case of asylum seekers who were exposed

201 MNP (Mecanismo Nacional de Prevenção). Tratamento dos cidadãos estrangeiros em situação irregular ou requerentes de asilo nos centros de instalação temporária ou espaços equiparados. 2017. [http://www.provedor-jus.pt/archive/doc/Cidadaos\\_estrangeiros\\_e\\_o\\_direito\\_a\\_um\\_tratamento\\_digno.pdf](http://www.provedor-jus.pt/archive/doc/Cidadaos_estrangeiros_e_o_direito_a_um_tratamento_digno.pdf).

202 Interviewee 5, Non-government Organisation; CPR (Conselho Português para os Refugiados). Asylum Information Database Country Report: Portugal (2018 update). 2019.

203 CPR (Conselho Português para os Refugiados). Asylum Information Database Country Report: Portugal (2018 update). 2019.

204 ACM (Alto Comissariado para as Migrações). Relatório de avaliação da política portuguesa de acolhimento de pessoas refugiadas. Programa de Recolocação. Lisboa: 2017.

205 CPR (Conselho Português para os Refugiados). Asylum Information Database Country Report: Portugal (2018 update). 2019.

206 CPR (Conselho Português para os Refugiados). Asylum Information Database Country Report: Portugal (2018 update). 2019.

207 IOM (International Organization for Migration). Migrant Integration Policy Index Health Strand. Country Report Portugal. 2016.

208 Jeffers and Baker (2016) Continuity of care: still important on modern-day general practice. *British Journal of General Practice*, 66(649): 396-397.

to violence. Limited access to a GP undermines the continuity of care, which is crucial to providing an adequate response to asylum seekers with complex health needs.

Although formal access to health care services is generally ensured, asylum seekers experience limited access to diversity-sensitive health care. Many health professionals in the National Health Service (SNS) lack training in intercultural competence. Professionals also tend to make low use of interpreting services<sup>209</sup>, which may be explained both by health professionals' limited awareness of and training on the use of those services and their limited availability<sup>210</sup>. This undermines effective communication, reduces access to rightful services and provisions (namely, exemption from user charges and free medicines) and diminishes the overall quality of the care provided<sup>211</sup>. To overcome these challenges, some NGOs have appointed members of their staff to accompany asylum seekers to medical visits. They act as informal intercultural mediators, guiding asylum seekers through the maze of the SNS administrative procedures and facilitating communication during clinical encounters<sup>212</sup>. Albeit laudable, these efforts are not sufficient to fill in the existing intercultural mediator gap in the reception system.

Training of intercultural mediators was carried out by ACM's National Centre for Migrant Integration. Hospitals and health care centres in areas with a

high density of migration-driven diversity were able to integrate these professionals into their labour force. However, austerity measures undertaken in connection to the 2010–2014 financial crisis led to a reorientation of the intercultural mediators programme exclusively towards municipal public services in 2012, and their work within health care services was discontinued<sup>213</sup>. Asylum seekers' difficulties in navigating the SNS highlight to the need to restarting the programme in health care services in areas with high migrant rates.

Asylum seekers also experience limited access to dental and psychological services, which are in short supply within the SNS. In Portugal, the population accesses these services mostly through the private sector. However, most asylum seekers are unable to afford them due to low monthly financial allowances and are often confronted with the need to delay necessary care<sup>214</sup>.

### C. Asylum Procedure

The Portuguese asylum system entails four types of asylum procedures: admissibility, accelerated, border and regular<sup>215</sup>. Asylum applications may be found inadmissible and undergo an admissibility procedure when the person seeking asylum: a) falls under Dublin criteria<sup>216</sup>; b) has been granted international protection in another Member State;

209 Interviewee 6, Non-governmental organisation. Santinho MC. Refugiados e requerentes de asilo em Portugal: Contornos políticos no campo da saúde. ACM, I.P. Lisbon; 2016; CPR (Conselho Português para os Refugiados). Asylum Information Database country Report: Portugal (2017 update). 2018.. IOM (International Organization for Migration). Migrant Integration Policy Index Health Strand. Country Report Portugal. 2016.

210 Although ACM provides a Telephone Translation Service free of charge for 55 languages delivered by 60 interpreters, there is only one interpreter available for some of the languages. This means that translation services need to be booked ahead of time, which may not always be feasible or compatible with the daily needs of health care services across the country. ACM (Alto Comissariado para as Migrações). Relatório de avaliação da política portuguesa de acolhimento de pessoas refugiadas. Programa de Recolocação. Lisboa; 2017.

211 Interviewee 5, Non-governmental organisation.

212 Interviewee 5, Non-governmental organisation.

213 At present, intercultural mediation programmes focus on the promotion of migrant integration and social cohesion at the municipal level. Programa Escolhas. "A mediação cultural é uma ferramenta fundamental". 2019. <https://www.programaescolhas.pt/conteudos/noticias/ver-noticia/5c93a4dcf27c0/%22a-mediacao-intercultural-e-uma-ferramenta-fundamental>. Accessed 19 Jun 2019. IOM (International Organization for Migration). Migrant Integration Policy Index Health Strand. Country Report Portugal. 2016.

214 Unaccompanied asylum-seekers and asylum seekers in admissibility and accelerated procedures whose reception is carried out by CPR receive financial support from CPR to pay for diagnostic exams, medicines and health care services that are not provided within the SNS. CPR (Conselho Português para os Refugiados). Asylum Information Database Country Report: Portugal (2018 update). 2019. Vacchiano F. On marginal inclusion: refugees at the fringes of citizenship in Portugal. In: Aboim S, Granjo P, Ramos A, editors. Changing societies: legacies and challenges. Ambiguous inclusions: inside out, outside in. Lisboa: Imprensa de Ciências Sociais; 2018. p. 99–112.

215 CPR (Conselho Português para os Refugiados). Asylum Information Database Country Report: Portugal (2018 update). 2019; Asylum Act. Act n. 27/2008 of June 2008 amended by Act n. 26/2014 of 5 May 2014, which transposes Directives 2011/95/EU, 2013/32/EU and 2013/33/EU Available at: <http://bit.ly/2npMI5T> and <http://bit.ly/1jd3hcG>.

216 Dublin criteria applies when asylum applicants first enter the EU through a Member State other than the one they are currently presenting their application. In those cases, SEF has to make a "take charge" or "take back" request to the competent authorities of the relevant Member State that will respond by accepting or not the application.

c) comes from a First Country of Asylum (i.e. from a country where the asylum applicant has either been recognised as a refugee and can still benefit from that protection or can enjoy sufficient protection, provided that they will be readmitted to that country); d) comes from a Safe Third Country (i.e. from a country that abides by the principles laid out by the Geneva Convention and the EU Recast Asylum Procedures Directive and seems prepared to admit or readmit the asylum seeker); e) made a subsequent application without adding new elements considered valid for qualifying for international protection; and, f) has lodged an application after having previously consented to have his/her case be part of an application lodged on his/her behalf, without presenting valid grounds that can justify a separate application. SEF's Director is required to make a decision on the admissibility of asylum applications presented in national territory within 30 days. If applications are made at the border, the decision timeframe is reduced to seven days. Decisions on subsequent applications and on applications following a removal order must be done within ten days. Asylum applications are considered automatically admitted to the first instance stage if SEF fails to comply with these time limits. Asylum seekers in these circumstances are generally admitted to regular procedure by SEF. According to CPR, admissions to the regular procedure due to non-compliance with decision-making time limits increased in 2018. The timeframes outlined previously are not in effect for Dublin decisions. In these cases, the deadline for a decision on the admissibility of the application is suspended until SEF obtains a response from the Member State contacted.

Asylum applications may be found unfounded and undergo an accelerated procedure when the person seeking asylum: a) misleads the authorities by proving false information or withholding relevant information and documents concerning identity and/or nationality; b) destroys or disposes in bad faith of identification or travel documents; c) makes clearly inconsistent, false or improbable statements that are clearly at odds with country of origin information, thus making a clearly unconvincing application for international protection; d) enters the country without the necessary visas or permits and remains in a situation of irregularity and, with no valid reason, fails to present an asy-

lum application as soon as possible; e) presents facts and information that are irrelevant or of minimal relevance for the purpose of requesting international protection; f) comes from a safe country of origin; g) introduces an admissible subsequent application; h) makes an application to delay or impede the enforcement of an imminent or previously done decision that would result in a removal order; i) poses a danger to national security or public order; and j) refuses to allow the collection of fingerprints. SEF's Director is required to make a decision on asylum applications presented in national territory that are deemed unfounded, and therefore subject to an accelerated procedure, within 30 days. However, if the applications follow a removal order that time is reduced to ten days. Applications made at the border must be assessed and given a decision within seven days. If SEF fails to comply with these time limits, asylum applications are considered automatically admitted to the regular procedure.

The border procedure applies in the situations in which asylum seekers made their applications at a border post. In these cases, asylum seekers do not have the right to review the narrative deriving from their interview and they remain detained for the duration of the whole procedure, unless they are found to have special procedural needs in which case they should not stay detained. SEF has seven days to make a decision on border procedures.

The regular procedure applies when applications are admitted to the first instance decision stage. During this stage, the eligibility of the application for international protection is assessed. SEF assesses all relevant facts to prepare a first instance decision. This is usually done on the basis of the interview conducted during the admissibility stage, which provides details on the merits of the application. CPR is entitled to provide information (e.g. on the country of origin) to SEF at any time of the regular procedure and a decision is expected to be done within six months. However, this timeframe may be extended to up to nine months when the cases under assessment prove to be particularly complex. Applications from vulnerable asylum seekers should benefit from prioritisation and fast-track processing (less than six months). After drafting a proposal for a final decision SEF



notifies asylum applicants who have ten days to assess SEF's reasoning and provide feedback. The final recommendation is sent to SEF's Director who has ten days to present it to the Ministry of Home Affairs. The latter must undertake the final decision within eight days. The law does not assert specific consequences to failure in complying with these time limits. Asylum applicants may appeal from negative decisions, leave the country voluntarily or face a removal order<sup>217</sup>.

The Immigration and Borders Service (SEF) is the main authority responsible for assessing and processing asylum claims, carried out by the Refugee and Asylum Cabinet (SEF/GAR)<sup>218</sup>. SEF/GAR drafts first-instance decisions, which are presented to the Director of SEF for approval and signing, and subsequently sent to the Ministry of Home Affairs that issues the decision<sup>219</sup>. In 2019, SEF/GAR processed 1,939 asylum applications<sup>220</sup> corresponding to a ratio of 129 asylum applications processed per staff member. Asylum seekers are provided free legal assistance by CPR during the first instance procedure, on the basis of MoUs with MAI and UNHCR. They can also benefit from legal services provided by JRS, ACM's Local Support Centres for Migrants Integration, and the National Confederation of Solidarity Institutions (CNIS) which provides legal assistance to unaccompanied minors who were transferred to Portugal under a humanitarian clause of the Dublin Regulation<sup>221</sup>. All unaccompanied minors are entrusted to the guardianship of CPR by the Family and Juvenile Court for the duration of the asylum procedure, including appeal. The Director of CPR acts as the legal guardian of all unaccompanied minors, benefiting from the support of CPR staff.

### I. Asylum procedure challenges

Access to timely and fair asylum procedures is challenged by shortages of legal and interpreting staff, limited processing capacity resulting in prolonged processing times and difficulties in applying appropriate procedures to asylum seekers with special procedural needs.

#### *Staffing shortages*

Between 2010 and 2019, the number of asylum seekers who received legal assistance from CPR increased eleven times, from 143 to 1,549<sup>222</sup>, while CPR's legal department grew by just one new member totalling six staff members in 2019. In that same period, the number of legal counselling sessions delivered by CPR increased 249 percent, from 2,943 to 10,268. Asylum seekers counselled in 2010 received in average 20 legal counselling sessions each. Between 2017 and 2019, an average of 7 legal counselling sessions were delivered per asylum seeker<sup>223</sup>.

There is also a generalised shortage of trained interpreters to assist in asylum procedures. Furthermore, although interpreters are bound by law to ensure confidentiality, no code of conduct has been formally adopted. Interpreters working on asylum procedures are often untrained individuals who command the languages in use. This compromises the quality of interpretation with potential negative effects at all stages of the asylum processes. Moreover, there are hardly any interpreters available with adequate command of languages such as Tigrinya, Pashto, Bambara and Kurdish<sup>224</sup>.

217 Asylum Act. Act n. 27/2008 of June 2008 amended by Act n. 26/2014 of 5 May 2014, which transposes Directives 2011/95/EU, 2013/32/EU and 2013/33/EU Available at: <http://bit.ly/2npMI5T> and <http://bit.ly/1jd3hcG>.

218 SEF's workforce includes a total of 1334 agents. It is not clear how many of these agents are directly involved on asylum matters outside the SEF/GAR. SEF/GEPP (Serviço de Estrangeiros e Fronteiras/Gabinete de Estudos Planeamento e Formação). Balanço Social 2017. Oeiras; 2018. <https://www.sef.pt/pt/Documents/BS2017.pdf>. Accessed 27 Jul 2018.

219 CPR (Conselho Português para os Refugiados). Asylum Information Database country Report: Portugal (2017 update). 2018.

220 This number was calculated by adding the number of pending cases from 2018 (n=90) to the number of asylum applications made in 2019 (n=1,849). CPR (Conselho Português para os Refugiados). Asylum Information Database country Report: Portugal (2018 update). 2019. CPR (Conselho Português para os Refugiados). Asylum Information Database country Report: Portugal (2019 update). 2020.

221 CPR (Conselho Português para os Refugiados). Asylum Information Database country Report: Portugal (2017 update). 2018.

222 These numbers are drawn from the pool of spontaneous asylum seekers who were referred to CPR by SEF and who agreed to receive legal assistance. In 2010, 90% of the asylum seekers referred by SEF to CPR received assistance. In 2019, that rate reached 90,5%. CPR (Conselho Português para os Refugiados). CPR Relatório de Atividades 2019. 2020.

223 CPR (Conselho Português para os Refugiados). CPR Relatório de Atividades 2019. 2020.; CPR (Conselho Português para os Refugiados). CPR Relatório de Atividades 2010. 2011.

224 CPR (Conselho Português para os Refugiados). Asylum Information Database country Report: Portugal (2017 update). 2018.

### *Prolonged processing times*

The maximum duration of procedures in the admissibility stage are generally respected. First instance decisions under the regular procedure, however, tend to be overdue by several months. Regular procedures have been found to last between 12 and 18 months, instead of the 6 to 9 months proposed by law.<sup>225</sup>

Data on the number of pending cases is only available for the years between 2016 and 2019. At the end of 2016, 858 cases were pending a first instance decision<sup>226</sup>. This amounted to 58,4 percent of all the asylum applications registered that year. In 2017, the number of pending cases dropped to 476<sup>227</sup> (27,2 percent of applications registered in 2017). In 2018, the number of cases dropped to 90<sup>228</sup> (7,0% of application registered in 2018). There were no pending cases in 2019<sup>229</sup>.

As demonstrated by research done in other countries, slow processing of asylum applications and uncertainty about obtaining international protection cause considerable psychological distress to asylum seekers and may hinder their well-being and integration<sup>230</sup>. Lengthy asylum procedures were also seen to cause anxiety for asylum seekers waiting for a first instance decisions in Portugal<sup>231</sup>. The fact that asylum seekers can only request family reunification after receiving a favourable decision poses an additional stressor.

### *Applying appropriate procedures to vulnerable cases*

According to SEF, applications by vulnerable asylum seekers<sup>232</sup> are the focus of prioritised examination. However, in practice, the duration of first instance procedures for vulnerable applicants resembles that of other cases. CPR reports that unaccompanied minors in the regular procedure, for example, tend to wait as much time as other asylum seekers in the same procedure<sup>233</sup>. Fast-track processing is not used in practice.

The fair processing of applications by asylum seekers in need of special procedural guarantees<sup>234</sup> due to situations of vulnerability may be compromised. Individuals in this category are entitled to the deferment of refugee status determination interviews, extended deadlines to present evidence or to conduct the interview with the assistance of experts, and exemption from border procedures that are held in detention. However, at present, there is no mechanism to identify people in need of special procedural guarantees in place<sup>235</sup>. Victims of torture and/or serious violence tend to be identified *ad hoc*, and mostly through self-identification, during refugee status determination, social interviews or initial medical screenings<sup>236</sup>. Yet, several other vulnerable asylum seekers may have had their rights unenforced. In 2017, 422 asylum seekers were identified by or self-identified to CPR as vulnerable, including 12 survivors of torture and 74 survivors of violence<sup>237</sup>. In 2018,

225 Official information on the duration of second phase procedures was not found. The duration of 12 to 18 months for the regular procedure is an estimate made on the basis of information provided in the interviews conducted.

226 CPR (Conselho Português para os Refugiados). Asylum Information Database Country Report: Portugal. 2017.

227 CPR (Conselho Português para os Refugiados). Asylum Information Database country Report: Portugal (2017 update). 2018.

228 CPR (Conselho Português para os Refugiados). Asylum Information Database country Report: Portugal (2019 update). 2019.

229 CPR (Conselho Português para os Refugiados). Asylum Information Database country Report: Portugal (2019 update). 2020.

230 Chase E. Security and subjective wellbeing: The experiences of unaccompanied young people seeking asylum in the UK. *Social Health Illn.* 2013;35: 858-72; Ryan DA, Benson CA, Dooley BA. Psychological distress and the asylum process: A longitudinal study of forced migrants in Ireland. *J Nerv Ment Dis.* 2008;196:37-45.; Mestheneos E, Ioannidi E. Obstacles to Refugee Integration in the European Union Member States. *J Refug Stud.* 2002;15:304-20.; Bakker L, Dagevos J, Engbersen G. The Importance of Resources and Security in the Socio-Economic Integration of Refugees. A Study on the Impact of Length of Stay in Asylum Accommodation and Residence Status on Socio-Economic Integration for the Four Largest Refugee Groups in the Netherlands. *J Int Migr Integr.* 2014;15:431-48.; Ingleby D, Chimienti M, Hatziprokopiou P, Ormond M, De Freitas C. The role of health in integration. In: Fonseca M, Malheiros J, editors. *Social Integration and Mobility: Education, Housing and Health.* Lisboa: Centro de Estudos Geográficos; 2005. p. 49-65.

231 Interviewee 5, Non-governmental organization.

232 These include unaccompanied children, pregnant women, women accompanied by young children, elderly people and people in need of medical care.

233 CPR (Conselho Português para os Refugiados). Asylum Information Database country Report: Portugal (2017 update). 2018.

234 Individuals in this category include unaccompanied children, accompanied children, single-parent families, pregnant women, elderly people, people with disabilities, survivors of torture, survivors of physical, psychological or sexual violence, people with chronic or serious illnesses and people with addictions, among others. CPR (Conselho Português para os Refugiados). Asylum Information Database country Report: Portugal (2017 update). 2018.

235 CPR (Conselho Português para os Refugiados). Asylum Information Database country Report: Portugal (2017 update). 2018.

236 Italian Council for Refugees. *Time for Needs: Listening, Healing, Protecting.* 2017.

237 CPR (Conselho Português para os Refugiados). Asylum Information Database country Report: Portugal (2017 update). 2018.



there were 468 asylum seekers in this situation (including 14 survivors of torture and 91 survivors of violence) and in 2019 there were 503 vulnerable asylum seekers (19 survivors of torture and 49 survivors of violence)<sup>238</sup>.

The number of vulnerable asylum seekers detained and subject to border procedure has increased since 2016<sup>239</sup>. According to CPR, in 2017, 17 children were detained for an average of 14 days (ranging between 4 and 50 days) at EECIT in Lisbon, which does not have separated accommodation for children<sup>240</sup>. In the same period, 40 families were detained for an average of 28 days (ranging between 3 and 60 days) in the same facility<sup>241</sup>. This led the UNHCR to call for an intervention by the Ombudswoman<sup>242</sup> who is in charge of monitoring the application of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. According to the Ombudswoman, monitoring visits to EECITs and CITs should occur at a frequency of at least three times per month. However, this has not been ensured due to lack of sufficient human resources<sup>243</sup>. Reports of children being detained at EECITs have carried through 2018<sup>244</sup>. SEF stated that children may be held at EECITs in cases of suspicion of human trafficking, and that the number of children who may be in these circumstances has increased in recent years<sup>245</sup>.

## II. Improvement efforts

There is a need to reinforce human resources across the board. SEF/GAR has increased its staff from 13 to 15 in 2019<sup>246</sup>. And, since September 2018, the Ombudswoman has one staff member exclusively dedicated to the National Mechanism of Prevention<sup>247</sup> which is in charge of monitoring EECITs and CITs, among other things<sup>248</sup>.

Investment in training has also been made. CPR delivered a training module on European and EU asylum case law to judges, public prosecutors and lawyers in 2017 within the framework of an EU-funded training programme<sup>249</sup>. Partnering with UNHCR, CPR has also addressed the Portuguese OA with the purpose of developing a training programme for legal aid lawyers. There are also ongoing talks about the creation of a legal assistance area specialised on asylum within the legal aid system<sup>250</sup>.

Trainings on the identification of special procedural needs and special reception needs of survivors of torture and/or serious violence were delivered to asylum stakeholders in 2017 by CPR. The trainings were developed under the framework of an EU-funded project<sup>251</sup> that included 7 partners in 6 countries, including Portugal. From the project resulted the development of a tool to identify sur-

238 CPR (Conselho Português para os Refugiados). Asylum Information Database country Report: Portugal (2018 update). 2019. CPR (Conselho Português para os Refugiados). Asylum Information Database country Report: Portugal (2019 update). 2020.

239 CPR (Conselho Português para os Refugiados). Asylum Information Database country Report: Portugal (2017 update). 2018.

240 Henriques JC. SEF detém crianças requerentes de asilo contra recomendações da ONU. Público. 2018. <https://www.publico.pt/2018/07/22/sociedade/noticia/sef-detem-criancas-requerentes-de-asilo-contra-recomendacoes-da-onu-1838478>. Accessed 30 Aug 2018.

241 Henriques JC. SEF detém crianças requerentes de asilo contra recomendações da ONU. Público. 2018. <https://www.publico.pt/2018/07/22/sociedade/noticia/sef-detem-criancas-requerentes-de-asilo-contra-recomendacoes-da-onu-1838478>. Accessed 30 Aug 2018.

242 Henriques JC. SEF detém crianças requerentes de asilo contra recomendações da ONU. Público. 2018. <https://www.publico.pt/2018/07/22/sociedade/noticia/sef-detem-criancas-requerentes-de-asilo-contra-recomendacoes-da-onu-1838478>. Accessed 30 Aug 2018.

243 Henriques JC. Provedora: "Centros de instalação são o "no man's land" contemporâneo". Público. 2018. <https://www.publico.pt/2018/07/22/sociedade/noticia/provedora-centros-de-instalacao-sao-no-mans-land-contemporaneo-1838600>. Accessed 30 Aug 2018.

244 Henriques JC. SEF continua a deter crianças e grávidas requerentes de asilo no aeroporto. Público. 2018. <https://www.publico.pt/2018/08/25/sociedade/noticia/sef-continua-a-deter-criancas-e-gravidas-requerentes-de-asilo-no-aeroporto-1842000>. Accessed 30 Aug 2018.

245 JN (Jornal de Notícias). SEF alerta para "fortes indícios" de tráfico de menores nos aeroportos. <https://www.jn.pt/nacional/interior/sef-alerta-para-fortes-indicios-de-trafico-de-menores-9623414.html>. Accessed 30 Aug 2018.

246 CPR (Conselho Português para os Refugiados). Asylum Information Database country Report: Portugal (2017 update). 2018.

247 The Council of Europe recommends at least three staff members of the Mechanism of National Prevention. Henriques JC. Provedora: "Centros de instalação são o "no man's land" contemporâneo". Público. 2018. <https://www.publico.pt/2018/07/22/sociedade/noticia/provedora-centros-de-instalacao-sao-no-mans-land-contemporaneo-1838600>. Accessed 30 Aug 2018.

248 Henriques JC. Provedora: "Centros de instalação são o "no man's land" contemporâneo". Público. 2018. <https://www.publico.pt/2018/07/22/sociedade/noticia/provedora-centros-de-instalacao-sao-no-mans-land-contemporaneo-1838600>. Accessed 30 Aug 2018.

249 The Charter of Fundamental Rights of the EU "in action".

250 CPR (Conselho Português para os Refugiados). Asylum Information Database country Report: Portugal (2017 update). 2018.

251 The project is entitled "Time for Needs: Listening, Healing, Protecting". Italian Council for Refugees. Time for Needs: Listening, Healing, Protecting. 2017.

vivors of torture and/or serious violence<sup>252</sup>, which was disseminated in the trainings. CPR is preparing to adopt the tool. There is no information on whether SEF is planning to use the tool to identify people in need for special procedural needs<sup>253</sup>.

Trainings for interpreters have also been promoted. CPR formed a partnership with the Portuguese Association of Conference Interpreters (APIC) in 2015 to provide trainings with a special focus on asylum law and technical aspects of interpretation. And ACM organised two trainings in 2017: a two-day training for interpreters who work with reception providers; and, a two-hour training for reception and health service professionals who require interpretation to attend to asylum seekers and beneficiaries of international protection. The training was provided in the framework of the European Resettlement and Integration Technical Assistance (EURITA) joint project of the U.S. Department of State and the International Rescue Committee (IRC) and delivered by IRC experts<sup>254</sup>.

## D. Adjudication

In Portugal, asylum applicants can benefit from the granting of refugee and subsidiary protection status and they may be given authorisation to stay in the country for humanitarian reasons. The adjudication process involves three distinct stages: admissibility, first instance decisions and final decisions taken in appeal. SEF is in charge of decision-making during the admissibility stage (including Dublin criteria evaluation) and of drafting decisions during the first instance stage and in regard to subsequent applications. First instance decisions are formally undertaken by the Ministry of Home Affairs (MAI) and decisions on subsequent applications are formally made by MAI's Secretary of State for Home Affairs. The Administrative Court of Lisbon and the Administrative

and Fiscal Courts are the authorities responsible for decisions on first appeals. Decisions on onward appeals fall under the responsibility of the Central Administrative Courts and the Administrative Supreme Court<sup>255</sup>.

## I. Adjudication stages

### Admissibility

During the admissibility stage, the merits and inadmissibility grounds of asylum applications are assessed based on information collected through interviews<sup>256</sup>. If the application is admissible, it proceeds to the first instance stage. If the application is deemed inadmissible, it proceeds to the admissibility procedure and asylum seekers have the right to appeal from a negative decision. If the application is deemed unfounded, it proceeds to accelerated procedure and asylum seekers can also appeal from a negative decision<sup>257</sup>.

Interviews are conducted by SEF/GAR or by SEF's regional representations and should be done with all asylum seekers. There are two exceptions, however, that can lead to interview dismissal: when the evidence available allows for the making of a positive decision; and, if the applicant lacks legal capacity in which case he/she must be offered the opportunity to provide information by other means. Interviews can focus only on Dublin related questions or on both admissibility issues and the merits of the application.

Statistics on the number of asylum applications deemed inadmissible are frail. No data was found until 2015 and mismatches have been found between the statistics shared by SEF and the cases reported by CPR in 2018 and 2019. Inadmissibility of asylum applications for reasons other than Dublin-related decisions appear to be low. CPR reported one inadmissibility decision in 2016 on

252 Questionnaire for the Assessment of the Special Needs of Survivors of Torture and/or Serious Violence Among Asylum Seekers and Beneficiaries of International Protection (QASN). Available at: <http://bit.ly/2GmiXr1>.

253 CPR (Conselho Português para os Refugiados). Asylum Information Database country Report: Portugal (2017 update). 2018.

254 CPR (Conselho Português para os Refugiados). Asylum Information Database country Report: Portugal (2017 update). 2018.

255 Asylum Act. Act n. 27/2008 of June 2008 amended by Act n. 26/2014 of 5 May 2014, which transposes Directives 2011/95/EU, 2013/32/EU and 2013/33/EU Available at: <http://bit.ly/2npMI5T> and <http://bit.ly/1jd3hcG>.

256 For applications made in national territory, asylum seekers have 5 days to revise the narrative on SEF's report of the interview. Asylum seekers whose application is made at a border post do not have the right to revise the interview report.

257 SEF/GAR (Serviço de Estrangeiros e Fronteiras/Gabinete de Asilo e Refugiados). A Lei 27/2008 de 30.06 alterada pela Lei 26/2014 de 05.05. SEF. Lisboa; 2015. <http://www.oa.pt/upl/%7B61ceb26c-b52d-4bf9-8734-d8d21a7c70b2%7D.pdf>. Accessed 31 Jul 2019.

the grounds of “first country of asylum” and 6 inadmissibility decisions in 2017, three on the grounds of subsequent applications without new elements, two on “safe third country” and one due to the applicant having been granted international protection in another Member State. In 2018, SEF indicated nine inadmissibility decisions (two subsequent applications without new elements, three “safe third country” and four “first country of asylum”), while CPR reported 18 (five subsequent applications without new elements, three “safe third country”, nine “first country of asylum” and one due to the applicant having been granted international protection in another Member State)<sup>258</sup>. In 2019, SEF indicated 5 inadmissibility decisions (one subsequent application without new elements, two “safe third country” and two “under international protection in another Member State”), while CPR reported 12 (two subsequent applications without new elements, three “safe third country”, one “first country of asylum” and six “under international protection in another Member State”)<sup>259</sup>.

In 2019, 572 asylum applications were assessed under the accelerated procedure. Data on the outcome of decisions under the accelerated procedure are not available through SEF. According to partial statistics provided by CPR, 122 applications on the territory were rejected in 2016, 96 in 2017, 111 in 2018 and 330 in 2019. The number of negative decisions for applications made at the border was 145 in 2016, 346 in 2017, 231 in 2018 and 361 in 2019<sup>260</sup>.

### *First instance decisions*

Asylum applications that are deemed admissible proceed into the regular procedure, during which a first instance decision on applicants’ eligibility for international protection is made. According to SEF, applications from vulnerable asylum seekers benefit from prioritisation and fast-track processing (less than six months). However, no official data on the outcomes of this type of processing was found. CPR reported that in 2018, the duration of regular procedures for vulnerable applicants did not differ from other caseloads<sup>261</sup>.

Between 2010 and 2019, 807 persons were granted refugee status and 1,715 were given subsidiary protection or a residence permit for humanitarian reasons<sup>262</sup>. Until 2016, the number of refugee status granted annually never rose above a few dozens. In that year, 104 persons were granted refugee status, representing an increase of 1633 percent compared to 2010. In 2018, grants of refugee status rose to 286 (140 percent more than in 2017 and 4666 percent more than in 2010). In 2019, grants of refugee status decreased to 183 (36 percent less than in 2018 and 2950 percent more than in 2010). The number of grants of refugee status in 2018 is most likely the highest number of refugee statuses granted in a single year in Portugal in the last three decades<sup>263</sup>.

258 CPR (Conselho Português para os Refugiados). Asylum Information Database country Report: Portugal (2017 update). 2018.; CPR (Conselho Português para os Refugiados). Asylum Information Database Country Report: Portugal (2018 update). 2019.

259 CPR (Conselho Português para os Refugiados). Asylum Information Database Country Report: Portugal (2019 update). 2020.

260 CPR (Conselho Português para os Refugiados). Asylum Information Database country Report: Portugal (2017 update). 2018; CPR (Conselho Português para os Refugiados). Asylum Information Database Country Report: Portugal (2018 update). 2019.; CPR (Conselho Português para os Refugiados). Asylum Information Database Country Report: Portugal (2019 update). 2020.

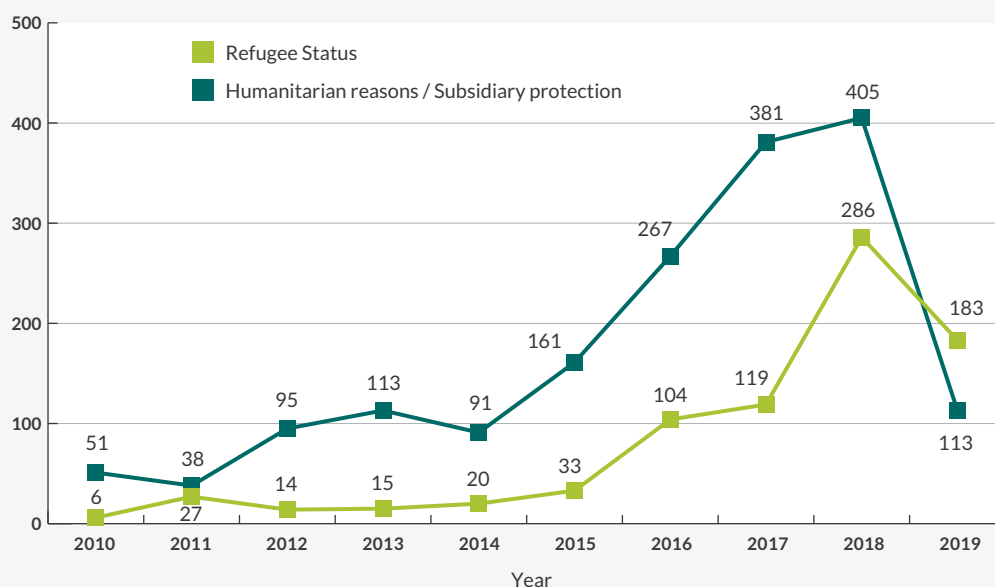
261 CPR (Conselho Português para os Refugiados). Asylum Information Database Country Report: Portugal (2018 update). 2019.

262 The latter two types of protection co-existed until 2014, when an amendment of the Asylum Act had them converge into one, namely subsidiary protection. The figures provided by SEF do not distinguish between them, so they are presented together. OM/ACM (Observatório das Migrações/Alto Comissariado para as Migrações). Newsletter Observatório das Migrações # 42 Asilo e proteção internacional dos migrantes. Observatório das Migrações/ Alto Comissariado para as Migrações. Lisboa. 2019.

263 SEF’s statistical data reports for the years of 2003, 2004 and 2005 do not have data on the number of international protection statuses given in those years. However, judging from the low number of asylum applications in that period (116 in 2003, 113 in 2004 and 113 in 2005) it is unlikely that grants of international protection were higher than 286. Data available for the time period 1993 to 2002 and from 2006 onwards show that that number has never been reached and that in 2007 it was as low as 1 grant of refugee status. De Freitas C. Identification study: Report on Portugal. In: Watters C, Ingleby D, Bernal M, De Freitas C, De Ruuk N, Van Leeuwen M, et al., editors. Good practices in mental health and social care for asylum seekers and refugees. Final Report of the project for the European Commission (European Refugee Fund). 2003; SEF/NP (Serviço de Estrangeiros e Fronteiras/Núcleo de Planeamento). Relatório de Imigração, Fronteiras e Asilo 2003. Oeiras; 2004; SEF/DPF (Serviço de Estrangeiros e Fronteiras/Departamento de Planeamento e Formação). Relatório de Imigração, Fronteiras e Asilo 2004. Oeiras; 2005; SEF/DPF (Serviço de Estrangeiros e Fronteiras/Departamento de Planeamento e Formação). Relatório de Imigração, Fronteiras e Asilo 2005. Oeiras; 2006; SEF/DPF (Serviço de Estrangeiros e Fronteiras/Departamento de Planeamento e Formação). Relatório de Imigração, Fronteiras e Asilo 2006. Oeiras; 2007; Oliveira CR and Gomes N. Indicadores de integração de imigrantes: relatório estatístico anual (Imigração em Números – Relatórios anuais 3). Observatório das Migrações/ Alto Comissariado para as Migrações. Lisboa. 2018.

FIGURE 1 Beneficiaries of international protection in Portugal, 2010-2019

Number of beneficiaries of international protection



Source: SEF (2020) and Oliveira and Gomes (2018).

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The number of residence permits for humanitarian reasons has been rising steadily since 2015 when it reached 161 (76 percent more than in 2014). In 2019, 113 persons were given permission to stay for humanitarian reasons, representing a rise of 122 percent when compared to 2010.

In 2018, the rate of positive decisions in Portugal was 52 per 100 asylum applications. This rate is considerably lower than those observed in Ireland (86), Lithuania (77) and Latvia (74) but higher than the EU average (46), and substantially higher than the lowest rate in Czech Republic (12)<sup>264</sup>.

Recognition rates vary substantially according to the citizenship of asylum applicants<sup>265</sup>. In 2017, the top five citizenships receiving a first instance decision<sup>266</sup> were Syria (225), Democratic Republic of Congo (125), Eritrea (85), Angola (60) and

Ukraine (55). Recognition rates ranged from 100 percent for Syria and Eritrea, to 82 percent for Ukraine, 8 percent for Democratic Republic of Congo and 0 percent for Angola. Refugee status was granted to all Eritrean citizens and to 11 percent of Ukrainians. Syrians and Congolese, as well as 89 percent of Ukrainians, received subsidiary protection<sup>267</sup> (see Table 5). This pattern differs from that observed in 2010, when none of the top five citizenships were granted refugee status. In that year, all positive first instance decisions resulted in subsidiary protection with citizens from Cameroon, Eritrea and Republic Democratic of Congo having a 100 percent recognition rate (see Table 5).

Between 2010 and 2013, the top five citizenships were all from countries in Africa, while from 2014 onwards these also included countries from East-

264 EUROSTAT data systematised by Oliveira CR and Gomes N. Indicadores de integração de imigrantes: relatório estatístico anual (Imigração em Números – Relatórios anuais 3). Observatório das Migrações/ Alto Comissariado para as Migrações. Lisboa. 2017.

265 All data was collected from Eurostat. EC (European Commission). Asylum and first time asylum applicants - annual aggregated data (rounded). Eurostat. 2018. [https://ec.europa.eu/eurostat/data/database?node\\_code=tps00191](https://ec.europa.eu/eurostat/data/database?node_code=tps00191). Accessed 27 Aug 2018.

266 Data on final decision on appeal is not available.

267 EC (European Commission). Asylum and first time asylum applicants - annual aggregated data (rounded). Eurostat. 2018. [https://ec.europa.eu/eurostat/data/database?node\\_code=tps00191](https://ec.europa.eu/eurostat/data/database?node_code=tps00191). Accessed 27 Aug 2018.

TABLE 5 Recognition rates for first instance decisions for top 10 nationalities, 2010-2017

NATION.	2010			2011			2012			2013			2014			2015			2016			2017		
	TD	TPD	GCS	TD	TPD	GCS	TD	TPD	GCS	TD	TPD	GCS	TD	TPD	GCS	TD	TPD	GCS	TD	TPD	GCS	TD	TPD	GCS
Syria	0	0	0	0	0	0	0	0	0	15	15	0	5	0	0	5	0	0	60	60	30	225	225	0
DRC*	5	5	0	10	10	10	5	0	0	15	10	0	10	5	0	10	5	0	30	0	0	125	10	0
Eritrea	5	5	0	0	0	0	0	0	0	0	0	0	5	5	0	0	0	0	30	30	30	85	85	85
Angola	10	0	0	5	0	0	0	0	0	0	0	0	10	0	0	5	0	0	15	0	0	60	0	0
Ukraine	0	0	0	0	0	0	5	5	5	0	0	0	20	15	0	145	115	0	160	150	5	55	45	5
Congo	0	0	0	0	0	0	5	0	0	5	0	0	0	0	0	5	0	0	20	0	0	50	5	0
Iraq	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	15	10	0	45	45	5
Sierra Leone	5	0	0	0	0	0	5	5	0	5	0	0	10	5	0	15	10	10	10	0	0	30	5	0
Cameroon	5	5	0	0	0	0	10	5	0	0	0	0	0	0	0	5	5	5	5	0	0	20	0	0
Guinea	40	15	0	20	0	0	65	25	0	65	25	5	25	15	0	25	5	0	40	5	5	20	10	0
Senegal	5	0	0	0	0	0	5	0	0	30	0	0	5	0	0	5	0	0	20	0	0	20	0	0

TD – Total Decisions; TPD – Total Positive Decisions; GCS – Geneva Convention Status. \*Democratic Republic of Congo

Source: EC – Eurostat (2018).

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ern Europe and Asia. Citizens from Eritrea have the highest recognition rates (100 percent) and Angolans the lowest (0 percent)<sup>268</sup>.

#### *Final decisions taken in appeal*

Asylum applicants' rights to appeal from negative decisions vary according to the type and stage of the asylum procedure they find themselves in. The appeal consists of a judicial review of relevant facts pertaining to the asylum application undertaken by a court. Upon review of a judicial process, Administrative Courts may: a) confirm a negative decision; b) annul a negative decision and send the application back to the first instance decision body with guidance on applicable standards; or c) overturn the negative decision and grant refugee or subsidiary protection status. The Asylum Act provides for the undertaking of a simplified judicial process with reduced formalities and time limits in order to abbreviate its duration as much as possible. In average, appeals last between 2.5 and 6 months<sup>269</sup>.

In the admissibility procedure, the first and onward appeal from an inadmissibility decision have an automatic suspensive effect. Timeframes for lodging the appeal depend on the ground for inadmissibility, as well as on whether the application was made in national territory or at the border, in which case a border procedure applies. For applications made in national territory, the appeal has to be made within a timeframe of eight days when applications were found inadmissible due to previous granting of protection by another EU Member State, coming from first country of asylum, coming from a third safe country or application by a dependent person. If an application was found inadmissible because it falls under the Dublin procedure, applicants have five days to lodge an appeal. In the cases in which applicants presented a subsequent application without new elements or an application following a removal order<sup>270</sup> that timeframe is reduced to four days. For applications made at the border, the timeframe to proceed with an appeal is four days. Although the Administrative Court provides for a simplified

268 Great variability is observed in regard to recognition rates for the Democratic Republic of Congo, which range between 100 percent in 2010 and 8 percent in 2017.

269 CPR (Conselho Português para os Refugiados). Asylum Information Database Country Report: Portugal (2018 update). 2019.

270 A removal order to leave the country is issued by SEF when a person enters or stays in national territory without the necessary permits (visa or resident permit) and is therefore in a situation of irregularity.

judicial process, it rarely reaches a decision within the maximum detention time limit of sixty days. When those time limits are exceeded, asylum applicants are granted access to national territory. If their appeal is rejected by final decision they are liable for a removal order.

In the accelerated procedure, the first appeal has an automatic suspensive effect. The timeframes to lodge an appeal depend on the grounds by which an application may be considered unfounded, as well as on whether the application was made in national territory or at the border, in which case a border procedure applies. For applications made in national territory, appeals have to be made within a timeframe of eight days for all grounds, except if the application follows a removal order in which it is reduced to four days. Onward appeal of a negative decision on an application following a removal order does not have a suspensive effect. For applications made at the border, the timeframe to proceed with an appeal is four days.

In the regular procedure, both the first and onward appeals have automatic suspensive effects. Asylum applicants have fifteen days to appeal from a negative decision.

During appeal, asylum seekers are provided free legal assistance by the Portuguese Bar Association (OA), upon referral from the ISS. The OA appoints a lawyer to each case who is entitled to conduct a “merits test” and decide whether or not to concede free legal assistance depending on their own appreciation of the cases’ chances of success. In Portugal, there are very few lawyers specialised on asylum law. OA lawyers tend to lack needed training to counsel asylum cases, which may put the fair examination of appeal claims at stake.

Quality and up-to-date information on country of origin (COI) may not be entirely available to case workers. CPR provides SEF with country of origin

information (COI) upon request, as well as with observations on applicable legal standards. CPR also assists legal aid lawyers with preparation for appeals by providing them with COI and relevant legal standards. These instances of inter-institutional support are key to promote a consistent application of the law, as one of the main barriers to due process in appeal lies on lawyers’ limited knowledge asylum processes and legislation.

## II. Protection statuses

According to the Asylum Act<sup>271</sup>, people seeking asylum can benefit from two types of international protection statuses: refugee status and subsidiary protection. Refugee status is generally granted to third country nationals and stateless persons for whom there is a well-founded fear or evidence that they are persecuted or seriously threatened for engaging in activities in favour of democracy, national and social rights, peace between peoples, freedom and human rights in the State of their nationality or habitual residence. Third country nationals and stateless persons who are persecuted, or at risk of being so, due to their race, religion, nationality, political opinions or integration into a certain social group and, therefore, cannot or will not return to their State of nationality or habitual residence may also be granted refugee status.

Subsidiary protection is granted to third country nationals and stateless persons who cannot be considered refugees, but in relation to whom there is significant reason to believe that return to their home country or to the country in which they usually reside will pose a real risk of serious harm and, as a result, do not want to request protection to that country<sup>272</sup>. Subsidiary protection is a particular type of humanitarian protection – a form of non-EU harmonised protection, i.e. a form of protection regulated at national level by some Member States. In Portugal, the issuance of residence permits for humanitarian reasons and

271 Act n. 27/2008 of June 2008 amended by Act n. 26/2014 of 5 May 2014, which transposes Directives 2011/95/EU, 2013/32/EU and 2013/33/EU Available at: <http://bit.ly/2npMI5T> and <http://bit.ly/1jd3hcG>.

272 Act n. 27/2008 of June 2008 amended by Act n. 26/2014 of 5 May 2014, which transposes Directives 2011/95/EU, 2013/32/EU and 2013/33/EU Available at: <http://bit.ly/2npMI5T> and <http://bit.ly/1jd3hcG>; Oliveira CR, Peixoto J, Góis P. A nova crise dos refugiados na Europa: o modelo de repulsão-atração revisitado e os desafios para as políticas migratórias. *Rev Bras Estud da Popul.* 2017;34:73–98.

subsidiary protection coexisted until the amendment of the Asylum Act in 2014<sup>273</sup>, which made these two types of protection converge into one: subsidiary protection.

Beneficiaries of international protection are bestowed with a range of rights that constitute the content of their protection. They are entitled to a residence permit issued by SEF that is renewable upon request and free of charge. Refugees' residence permit is valid for five years, whereas the residence permit issued for beneficiaries of subsidiary protection is valid for three years. Between 2017 and 2018, the number of residence permits issued for refugees decreased from 159 to 106 and increased from 321 to 403 for beneficiaries of subsidiary protection<sup>274</sup>. Between 2018 and 2019, the number of residence permits issued for refugees increased from 106 to 195 and decreased from 403 to 113 for beneficiaries of subsidiary protection<sup>275</sup>.

Refugees are also entitled to obtaining travel documents. They can request a 1951 Convention Travel Document valid for one year and renewable for equal periods free of charge. Beneficiaries of subsidiary protection can be issued a "passport for foreigners" that is valid for up to two years at a cost of €109.60. However, to obtain such a passport, they are required to be on the hold of a valid residence permit and to demonstrate inability to obtain a passport from their State of nationality, namely by presenting proof that their safety is potentially at risk or that they have been refused

a passport by their country's embassy or consulate. In 2018, SEF issued 282 travel documents of which 171 were renewals<sup>276</sup>. In 2019, only 32 travel documents were issued by SEF<sup>277</sup>.

According to the recently recast Nationality Act, beneficiaries of international protection are eligible to apply for Portuguese citizenship if they reside in the country for a minimum of five years<sup>278</sup>, are above 18 years of age or emancipated, can prove proficiency in Portuguese, have not been convicted for a crime punishable with a prison sentence of at least three years and are not a danger or a threat to national security due to involvement in activities related to terrorism<sup>279</sup>. Beneficiaries of international protection can also apply for citizenship if they have been married to or lived in a civil union with a Portuguese citizen for at least three years. According to CPR, poor language skills and difficulties getting supporting evidence (e.g. legalised original birth certificates, criminal records from country of nationality or former countries of residence) are amongst the main barriers to obtaining citizenship or "naturalisation", as it is commonly referred to. However, if beneficiaries of international protection provide due justification<sup>280</sup> assistance for the inability to provide certain pieces of evidence, a waiver is usually granted by the Central Registrations Service of the Ministry of Justice, which is responsible for the process of naturalisation. 55 beneficiaries of international protection obtained Portuguese citizenship in 2016 and another 47 in 2017<sup>281</sup>.

273 Act n. 27/2008 of June 2008 amended by Act n. 26/2014 of 5 May 2014, which transposes Directives 2011/95/EU, 2013/32/EU and 2013/33/EU Available at: <http://bit.ly/2npMl5T> and <http://bit.ly/1jd3hcG>; OM/ACM (Observatório das Migrações/Alto Comissariado para as Migrações). Newsletter Observatório das Migrações # 42 Asilo e proteção internacional dos migrantes. Observatório das Migrações/Alto Comissariado para as Migrações. Lisboa. 2019.

274 CPR (Conselho Português para os Refugiados). Asylum Information Database country Report: Portugal (2017 update). 2018; CPR (Conselho Português para os Refugiados). Asylum Information Database Country Report: Portugal (2018 update). 2019.

275 CPR (Conselho Português para os Refugiados). Asylum Information Database Country Report: Portugal (2018 update). 2019. CPR (Conselho Português para os Refugiados). Asylum Information Database Country Report: Portugal (2019 update). 2020.

276 There is no information on how many travel documents were issued per type of international protection beneficiaries. UNHCR (2019) UNHCR Resettlement Handbook and Country Chapters: Portugal; CPR (Conselho Português para os Refugiados). Asylum Information Database Country Report: Portugal (2018 update). 2019.

277 There was no information available concerning renewals for 2019. CPR (Conselho Português para os Refugiados). Asylum Information Database Country Report: Portugal (2019 update). 2020.

278 The Nationality Act was recast in July in 2018 (Organic Act n. 2/2018). It reduced the minimum amount of time of residence in Portugal necessary to request citizenship from 6 to 5 years. Available at: <https://dre.pt/home/-/dre/115643970/details/maximized>.

279 Children of beneficiaries of international protection born in national territory can apply for citizenship if at least one parent is legally residing in the country for a minimum period of five years or if they have completed at least one level of basic education or the secondary education in Portugal, and if can prove proficiency in Portuguese, have not been convicted for a crime punishable with a prison sentence of at least three years and are not a danger or a threat to national security due to involvement in activities related to terrorism.

280 CPR provides assistance in the development of justifications for absence of supporting evidence.

281 There is no data on the amount of beneficiaries of international protection who obtained Portuguese citizenship in 2018. CPR (Conselho Português para os Refugiados). Asylum Information Database country Report: Portugal (2017 update). 2018.; CPR (Conselho Português para os Refugiados). Asylum Information Database Country Report: Portugal (2018 update). 2019.



There is no data available for 2018<sup>282</sup>. In 2019, 115 beneficiaries of international protection obtained Portuguese citizenship<sup>283</sup>.

Beneficiaries of international protection have the right to family reunification. The request for family reunification can be made immediately after granting of the status<sup>284</sup>. There is no time limit for the application following arrival to Portugal nor is it required that family formation predates entry in Portugal. Applications have to be done by SEF and must be supported by documentary evidence proving family ties<sup>285</sup>, but they do not require proof of sufficient and stable means on the part of refugees. The latter provision has also been applied to beneficiaries of subsidiary protection. Decisions on family reunification should be made within three months up to a maximum of six months if duly justified by the complexity of the case<sup>286</sup>. In 2016, SEF received 38 requests for family reunification, though no information on the breakdown per nationality and outcome of the applications is available. In 2018, SEF received 100 applications for family reunification and 35 positive decisions were made (11 for nationals of Pakistan and 8 for Sierra Leone)<sup>287</sup>. Between 2015 and 2018, family reunification applications took 3.5 months in average to be processed. In 2018, however, waiting times for getting an appointment at SEF/GAR for the purpose of requesting family reunification increased to up to five to six months<sup>288</sup>. In 2019, SEF received 68 applications for family reunification<sup>289</sup>.

Beneficiaries of international protection benefit from the same conditions of access to education, social welfare and health care as national citizens. They are also given full access to the labour market, except to certain categories of employment in the public sector as is the case for third-country nationals<sup>290</sup>.

### III. Adjudication challenges and redress

There are significant gaps in the data made publicly available by national authorities. Some mismatches between the data provided by national authorities and the data published by CSOs working on the field of asylum have also been identified. Data concerning the various adjudication stages is often incomplete and not disaggregated by outcome and nationality.

Lack of detailed information on capacity and processing times makes it difficult to identify and to respond to the Portuguese asylum system's current human resources and financial needs. It also impedes the timely management of collective accommodation capacity and the planning of future arrivals.

Uncertainty regarding the length of first instance decisions, and increasing delays in setting up appointments for the purpose of initiating the family reunification process at SEF, thwart asylum applicants' expectations of obtaining a final decision and reuniting with their families within a reasonable timeframe. In addition to other stress-

282 CPR (Conselho Português para os Refugiados). Asylum Information Database Country Report: Portugal (2018 update). 2019.

283 CPR (Conselho Português para os Refugiados). Asylum Information Database Country Report: Portugal (2019 update). 2020.

284 Refugees and beneficiaries of international protection can reunite with: a) spouse or unmarried partner (including same-sex partners) if they have lived together for at least two years in conditions similar to marriage; b) children under 18 years of age who are dependent on the sponsor or his/her spouse/partner and adult children who lack legal capacity; and, c) parents, if the sponsor is under 18 years of age. Unaccompanied minor children can apply to reunite with their parents or, in their absence, for reunification with an adult responsible for the child (e.g. grandparents, legal guardians).

285 Family reunification cannot be denied on the sole basis of lack of documentary evidence. In the case of refugees other types of proof should be considered if documentary evidence is absent, namely interviews with the sponsor and family members, witness testimonies or common children in the case of unmarried couples.

286 If the time needed to make a decision on a family reunification request overcomes 6 months, the application is deemed automatically accepted unless the sponsor bears responsibility for the delay (e.g. not providing additional information requested). CPR (Conselho Português para os Refugiados). Asylum Information Database Country Report: Portugal (2018 update). 2019. <https://www.asylumineurope.org/reports/country/portugal>; UNHCR (United Nations High Commissioner for Refugees). UNHCR Resettlement Handbook and Country Chapters: Portugal. 2019.

287 No data is available on the number of family reunification applications done in 2017.

288 CPR (Conselho Português para os Refugiados). Asylum Information Database country Report: Portugal (2017 update). 2018.; CPR (Conselho Português para os Refugiados). Asylum Information Database Country Report: Portugal (2018 update). 2019.

289 We found no information on positive decisions for 2019. CPR (Conselho Português para os Refugiados). Asylum Information Database Country Report: Portugal (2019 update). 2020.

290 CPR (Conselho Português para os Refugiados). Asylum Information Database Country Report: Portugal (2018 update). 2019.



ors, such as limited availability of tailor-made health and social care services, this is likely to take a toll on beneficiaries of international protection's well-being and social integration.

Improvement of monitoring efforts and data dissemination are crucial to prioritise the aspects of the asylum system in greater need of investment. It is also fundamental to inform the allocation of additional resources to increase SEF's processing capability, enhance existing reception provisions and plan for realistic future budgeting. Better processing capability will help to reduce first and final decision waiting times. This, in turn, will contribute to diminish part of the current pressure experienced by the reception system and to increase the quality of the services provided. Overall improvements such as these are likely to have a positive impact on the quality of life and integration of the persons seeking international protection in Portugal.

## IV. Conclusions

In Portugal, there is manifest political will to continue hosting resettled refugees and asylum seekers, including unaccompanied minors in urgent need for relocation. However, the asylum system is not sufficiently resourced to address the current volume of asylum applications, which is likely to grow in upcoming years. Allocation of additional human, financial and technical resources by government to the asylum system is needed to improve registration procedures, safeguard the rights of asylum seekers with special procedural needs, reduce the length of asylum procedures, increase reception capacity and quality and improve asylum seekers' access to health and social care services, all of which aspects remain insufficiently addressed.

Asylum authorities' human resources capacity needs to be strengthened. Increasing the number of case officers deployed to make first-instance decisions is essential to reduce the length of asylum and family reunification procedures and to unclog the asylum reception system. Although SEF/GAR's labour force has been strengthened recently, the number of its staff members continues to be insufficient to cater for the current demand.

The systematic application of a standard mechanism to identify vulnerable applicants by trained staff during the phase of registration is required to enforce their right to special reception and procedural needs (e.g. referrals to and assistance

with obtaining legal, medical and psychosocial support). SEF and MESSS have attempted without success to establish a partnership with the NHS in order to deploy trained psychologists to assess asylum seekers and resettled refugees in situations of vulnerability during registration. It is crucial for government to formalise a protocol allowing access by asylum seekers and resettled refugees to proper special needs evaluation by trained staff, both during registration and in other procedural phases.

Information concerning the reception system has been scattered through several governmental and non-governmental entities, making its assemblage and interpretation difficult. Efforts to systematise and disseminate information about the entry, reception and integration of asylum seekers and beneficiaries of international protection have been made recently, resulting in the publication of a comprehensive Statistical Asylum Report by the ACM's Observatory for Migration in May 2020<sup>291</sup>. This initiative is an important milestone for the strengthening of the evidence base needed to inform future asylum policy. However, it needs to be complemented with the development and implementation of mechanisms to forecast future asylum in-flows and to monitor reception capacity. These mechanisms are crucial for cost-projection and budgeting, as well as to enable planning and provision of adequate reception conditions to asylum seekers and resettled refugees.

291 Oliveira, C. R. *Entrada, Acolhimento e Integração de Requerentes e Beneficiários de Proteção Internacional em Portugal, Relatório Estatístico do Asilo 2020, Caderno Estatístico Temático # 3, Coleção Imigração em Números do Observatório das Migrações, ACM. Lisboa; 2020.*

Collective accommodation shortages have become chronic in the past five years. Although efforts were made to increase reception capacity through construction of a new reception centre in 2018, it does not suffice to meet current needs. In 2019, almost 80% of the new arrivals assigned to the Refugee Reception Centre I (CAR I) had to be transferred to private housing due to lack of available beds. The COVID-19 outbreak which affected over 200 asylum seekers living in hostel rooms in April 2020 exposed the increased risk endured by those sharing crowded housing facilities. A reception monitoring system is needed to assess accommodation capacity and to match it to rising upcoming flows.

The dispersal of asylum seekers and resettled refugees through continental Portugal can contribute to increase their access to smaller size and more hospitable municipalities with lower living costs. However, it also has downsides that need to be accounted for. Existing disparities in the distribution of resources across the country limit asylum seekers' access to Portuguese language courses, vocational training, employment opportunities and diversity-sensitive health and social care services, particularly in remote and low-populated areas. Furthermore, asylum seekers living outside Lisbon report being unable to obtain initial and follow-up support from CPR legal advisers and social workers, who are based in the capital city, due to lack of money for transportation and telecommunications. Watchful monitoring of reception conditions and access to legal provisions throughout the country is necessary to reduce disadvantage and ensure fairness for all undergoing asylum procedures. Increase of the monthly allowance awarded to asylum seekers will enable them not only to undertake necessary travel but also to be able to afford needed services (e.g. dental and psychological care). The reintroduction of the intercultural mediators programme back into health care services, and its extension to social services, is also key to improve these services' accessibility and response to asylum seekers living and refugees across the country.

Detention conditions at CIT and EECIT cause concern and need to be reassessed. Detained children and their families should be entitled to staying together in the same accommodation. And all

asylum seekers in detention facilities should have access to adequate nutrition, hygiene and space for daily activities. Continuous monitoring of living conditions at CIT and EECIT is required.

Finally, it is necessary to develop a joint governance strategy to promote a whole-of-government and whole-of-society approach to asylum system management. Tackling the national asylum system's fragilities will require a joint and coordinated effort by *government*, from across sectors such as health, education, home and social security and employment, and *society*, including communities, civil society organisations, religious institutions, academia, the media, etc. Portugal is familiar with such form of collaboration in the asylum sector for over a decade. However, asylum system management could benefit from the creation of a high-level commission mandated and resourced to engage public officials from different sectors in devising policies and strategies promptly to address arising asylum demands. The restructuring of the reception and integration of asylum seekers and resettled refugees into a unified system announced by government in December 2020 appears to be a step in this direction. The recently created Unified Operative Group (GOU) is currently defining an action plan. Although the details of the plan are not yet known, devising direct channels for communication and cooperation with non-governmental reception providers will be essential for effective planning and implementation of the action plan on the ground.

# List of Abbreviations

<b>ACM</b>	High Commission for Migration   Alto Comissariado para as Migrações
<b>CAR</b>	Refugee Reception Centre   Centro de Acolhimento para Refugiados
<b>CACR</b>	Refugee Children Reception Centre   Centro de Acolhimento para Crianças Refugiadas
<b>CATR</b>	Temporary Reception Centre for Refugees   Centro de Acolhimento Temporário para Refugiados
<b>CEB</b>	Council of Europe Development Bank   Banco de Desenvolvimento do Conselho da Europa
<b>CML</b>	Lisbon City Hall   Câmara Municipal de Lisboa
<b>CNIS</b>	National Confederation of Solidarity Institutions   Confederação Nacional de Instituições de Solidariedade
<b>CPR</b>	Portuguese Council for Refugees   Conselho Português para os Refugiados
<b>CSO</b>	Civil Society Organisation   Organização da Sociedade Civil
<b>DGE</b>	Director General of Education   Direção Geral da Educação (DGE)
<b>EECIT</b>	Spaces Equivalent to Centres of Temporary Stay   Espaços Equiparados a Centros de Instalação Temporária
<b>FAMI</b>	Fund for Asylum, Migration and Integration   Fundo para o Asilo, a Migração e a Integração
<b>GAR</b>	Asylum and Refugee Cabinet   Gabinete de Asilo e Refugiados
<b>GTO</b>	Technical Operative Group   Grupo Técnico Operacional
<b>GOU</b>	Unified Operative Group   Grupo Operativo Único
<b>IEFP</b>	Instituto do Emprego e Formação Profissional   Institute of Employment and Professional Training
<b>IOM</b>	Organização Internacional para as Migrações   International Organisation for Migration
<b>ISS</b>	Instituto da Segurança Social   Institute of Social Security
<b>JRS</b>	Jesuit Refugee Service   Serviço Jesuíta aos Refugiados
<b>MAI</b>	Ministry of Home Affairs   Ministério da Administração Interna
<b>MESSS</b>	Ministry of Employment, Solidarity and Social Security   Ministério do Emprego, Solidariedade e Segurança Social
<b>MPMA</b>	Ministry of Presidency and Administrative Modernisation   Ministério da Presidência e Modernização Administrativa
<b>AO</b>	Portuguese Bar Association   Ordem dos Advogados
<b>PAR</b>	Refugee Reception Platform   Plataforma de Apoio aos Refugiados
<b>PIEF</b>	Education and Vocational Training Integrated Programmes   Integrados de Educação e Formação
<b>RSI</b>	Social Insertion Revenue   Rendimento Social de Inserção
<b>SEF</b>	Immigration and Borders Service   Serviço de Estrangeiros e Fronteiras
<b>SNS</b>	National Health Service   Serviço Nacional de Saúde
<b>UNHCR</b>	United Nations High Commissioner for Refugees   Alto Comissariado das Nações Unidas para os Refugiados

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# Rebuilding Resilience and Trust?

The evolution of the Swedish asylum system  
since 2015

Dr. Bernd Parusel

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# I. Introduction

Despite its modest population size of now roughly 10.3 million, Sweden has played an important role within the European Union as a destination country for asylum seekers. While other EU Member States, notably Germany, received more asylum seekers than Sweden in absolute numbers in recent years, Sweden was the country that registered most applicants in the EU in relation to its own population in 2014, and when over 1.2 million first-time asylum seekers were counted in the EU in 2015, Sweden was one of the absolute top destinations as well. The arrival of almost 163,000 asylum seekers that year represented a record level in the history of protection-related immigration to the Scandinavian country and triggered many changes and new approaches in terms of legislation, policies and practices.<sup>1</sup> It also had a deep impact on public debate on migration, integration and asylum.

This case study presents and analyses the Swedish asylum system and its evolution during and after the exceptional refugee situation in 2015–2016.<sup>2</sup> The case study starts with an overview of some recent numerical trends, relevant policy changes and a characterisation of public debates on the arrival and reception of asylum seekers in the country. It then elaborates on four essential components of the Swedish protection system: the registration of asylum seekers; reception conditions including accommodation; asylum procedures; and

decision-making on asylum claims (adjudication). The study focuses on identifying problems, weaknesses and bottlenecks and discusses remedies, the impact of recent legal reforms as well as remaining challenges.

Some of the problems identified have existed for a long time in Sweden but became ever more visible, tangible and urgent to address as the number of incoming asylum seekers grew in 2014 and 2015. Among these are the reception and accommodation capacities of the Swedish Migration Agency, shifting and increasing processing times for asylum applications, and challenges regarding the correct adjudication of protection statuses. The study also looks into more long-term difficulties to arrange the settlement and integration of those asylum seekers that are granted protection and then assigned to a municipality for permanent residence. It also addresses processes related to particular groups, such as unaccompanied minors, and problems such as the return of rejected asylum seekers to their countries of origin, which – from the perspective of policymakers in Sweden – does not work as well as it should.

As the Member States of the European Union and EU institutions have worked together to establish a Common European Asylum System (CEAS), and to improve and reform this system in the light of the experiences made during the so-called “migration

1 These changes are analysed and discussed below, mainly in Section II.

2 Most of the underlying research was carried out in 2017 and 2018. Updates were made in 2019 and 2020.



crisis” or “refugee crisis” of 2015–2016, there is a need for European policy-makers to understand systemic problems and challenges that have existed at national level in the various Member States. For national politicians and practitioners, it is relevant to know about, and learn from, the situation in their partner countries within the EU. Sweden is certainly relevant to this aim as it is a country that has received asylum seekers for a long time and at a considerable quantitative level. International observers have often followed developments in Sweden with interest and sometimes admiration, not least because of the considerable resources made available there for admitting, protecting and integrating refugees and other people in need of protection and the often positive, progressive Swedish attitudes on immigration and asylum.<sup>3</sup> However, this generally benevolent perspective should not obscure the fact that also Sweden, and the people seeking protection there, have had to face manifold challenges and problems that deserve attention, scrutiny and perhaps criticism.

The case study is based on a variety of sources, such as academic work and policy documents on the asylum system and related topics in Sweden, with an emphasis on official reports and statistics produced by the Swedish Migration Agency *Migrationsverket*.<sup>4</sup> In addition, the author contacted and interviewed individual experts at the Agency to validate certain information, get additional insights or to obtain experts’ views on issues that are not evident from official documents. In total,

six experts from different units and departments within the Agency provided information.<sup>5</sup> The study ends by highlighting a number of structural problems that policymakers should be aware of and work to resolve.

3 For example, the UNHCR stated in 2016 that “Sweden has a long tradition of providing sanctuary to persons in need of international protection, and is a strong supporter of the international protection regime and the work of UNHCR. (...) Sweden has taken responsibility and shown humanitarian leadership and solidarity with persons in need of international protection, and the countries hosting the majority of the world’s refugees. The way in which the Government, the authorities and the Swedish society at large led by example and responded to the large movements and consequent challenges, set a positive example for the rest of Europe.” UNHCR, *Observations by the United Nations High Commissioner for Refugees Regional Representation for Northern Europe on the draft law proposal on restrictions of the possibility to obtain a residence permit in Sweden* (UNHCR Regional Representation for Northern Europe, 10 March 2016).

4 As other state agencies in Sweden, the Migration Agency publishes an annual report (*Årsredovisning*), which details its performance and spending during the preceding year. It also publishes official statistics on asylum requests, residence permits (for protection and other reasons), reception system registrations, among others. The Agency also produces a large number of internal guidance materials, follow-ups and reports to the Swedish government, which are normally publicly available. Information published by other public bodies have also been used for this case study, such as reports from government-commissioned enquiries, preparatory work for government bills, audit reports or press releases.

5 Apart from the experts interviewed, who remain anonymous, the author would like to thank Ulf Bohman, Marie Bengtsson, Hanne Beirens, Susan Fratzke, Constanza Vera-Larrucea and the Swedish Migration Studies Delegation for their valuable input, suggestions, and/or critical review of this case study.

## II. Asylum Trends, Policy Response, and Public Debate

To provide context for the analysis of the main components of the Swedish asylum system, this Section presents recent numerical trends regarding asylum seekers in Sweden, their main profiles and countries of origin, including unaccompanied minors. It then moves on to provide an overview of the main legal and policy changes in recent years, which were overwhelmingly related to the strong increase in the number of asylum seekers over recent years until the peak in 2015, when Sweden registered a record number of almost 163,000 applicants. The Section also shows how the public discourse on immigration and asylum has shifted as a result of the changing inflows and the political attempts to control and reduce them.

### A. Asylum Trends

The number of asylum seekers registered in Sweden has varied greatly over time. From 2011 to 2014, Sweden experienced a gradual, yet substantial, increase in the number of asylum applicants, with (occasionally large) seasonal peaks during the summer months or in early autumn.<sup>6</sup> The reception system for asylum seekers was often under pressure, as the procurement of additional

accommodation was a challenge for the Swedish Migration Agency due to growing demand and limited supply.<sup>7</sup>

#### i. Registration numbers

As Figure 1 shows, there was a strong increase in the number of asylum applications made in Sweden between 2010 and 2015, when a record peak was reached during what has been called the “European refugee crisis”. In 2016 and 2017, the number of incoming asylum applicants was back at the level of earlier periods, and then decreased further in 2018–2020.

Why these annual variations have occurred is difficult to explain as they can be the result of many different factors, such as the evolution of wars, conflicts and political persecution in the world; the accessibility of Europe and Sweden for asylum seekers; the viability of various migrant smuggling routes; and the Swedish reputation as a safe and wealthy country of refuge.<sup>8</sup> The situation in 2020 was strongly impacted by the Covid-19 pandemic, which made travel to Europe and Sweden more difficult.<sup>9</sup>

6 Utredningen om migrationsmottagandet, Att ta emot människor på flykt – Sverige hösten 2015 (Statens Offentliga Utredningar, Stockholm, SOU 2017:12), [http://www.regeringen.se/493c47/contentassets/e8c195d35dea4c05a1c952f9b0b45f38/hela-sou-2017\\_12\\_webb\\_2.pdf](http://www.regeringen.se/493c47/contentassets/e8c195d35dea4c05a1c952f9b0b45f38/hela-sou-2017_12_webb_2.pdf), 59–61.

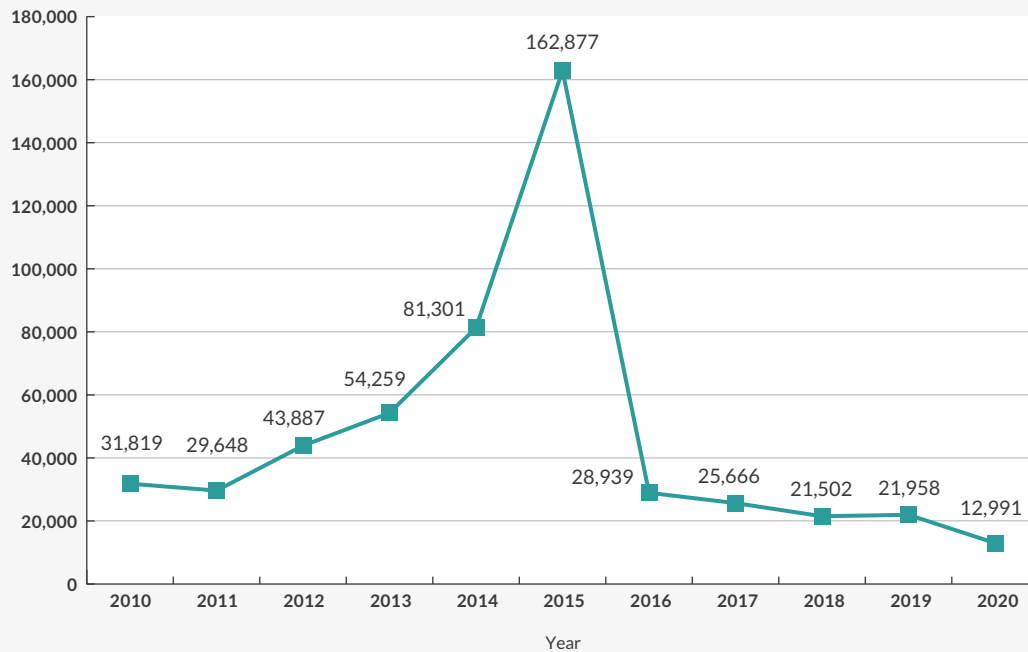
7 Migrationsverket, *The changing influx of asylum seekers in 2014–2016: Member States’ responses - Country Report Sweden* (2018, Report from EMN Sweden 2017:3); Regarding the housing situation for newly arrived migrants, see Boverket, *Nyanländas boendesituation – delrapport* (2015, Rapport 10).

8 Migrationskommittén, *En långsiktigt hållbar migrationspolitik*, Betänkande av Kommittén om den framtida svenska migrationspolitiken (Statens Offentliga Utredningar, Stockholm, SOU 2020:54), 97–138.

9 Migrationskommittén (2020), 134–135.

FIGURE 1 Number of people applying for asylum in Sweden, annual data, 2010-2020<sup>10</sup>

Number of asylum applicants

Source: Swedish Migration Agency, official statistics<sup>11</sup>.

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In autumn 2015, the entry of asylum seekers reached an unprecedented level, with around 100,000 individuals requesting asylum within just three months (September, October and November 2015). In total, 163,000 asylum applicants came to Sweden that year. This extraordinary flow of people occurred when the capacities of the Migration Agency and other authorities, not least many municipalities, were already under stress. A particular concern was a massive increase in the number of unaccompanied minors coming to Sweden. 7,049 unaccompanied minors applied for asylum in 2014, and 35,369 in 2015.<sup>12</sup>

Inflows have not been evenly spread within single years either. Rather, Sweden often experienced seasonal peaks, which typically used to occur during the summer months and the beginning of autumns. 2015 was an exception to this pattern, as the most dramatic increase in the number of registered applicants happened late in the year, i.e., in the late summer and especially during autumn.

Further to seasonal variations, the number of asylum seekers registered can also shift on a week-to-week, and even a day-to-day basis. For example, in January 2018, a total of 2,155 asylum

10 Figures include new (first-time) applications but also asylum applications by people who had already been staying in Sweden with or without a residence permit. This also includes people who applied again after being rejected at least four years ago.

11 Data on asylum applications reported by the Migration Agency have often been higher than the figures Eurostat reports on "new asylum applicants" in Sweden. This is due to the fact that the Swedish Migration Agency's statistics include applications by persons who have already applied for asylum at an earlier time. In many cases, people who are rejected apply again after four years, which is the current period of limitation. Once an asylum decision has gained legal force, a person can only apply again after four years, except if significant new circumstances arise during the period of limitation. More recently, however, Eurostat asylum figures for Sweden were sometimes higher than the figures published by the Swedish Migration Agency, which is because Eurostat also includes persons who have had temporary residence permits in Sweden (e.g., for family reunification purposes) and who, when applying for a permit extension, invoked protection-related reasons.

12 Migrationsverket, *EMN Policy Report 2015 – Sweden* (2016), [https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/networks/european\\_migration\\_network/reports/docs/annual-policy/annual-policy-27a\\_sweden\\_apr\\_2015\\_part2\\_en.pdf](https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/networks/european_migration_network/reports/docs/annual-policy/annual-policy-27a_sweden_apr_2015_part2_en.pdf), 24–29 and 35–36.

seekers were registered. During the first week of January, only 307 individuals were registered, but 656 during the third week. The daily numbers that month shifted between 49 individuals on 5 January and 299 on 16 January.<sup>13</sup> During the refugee reception crisis in 2015, the daily number of asylum applicants had often been far above 1,000. On 20 October 2015, for example, 1,789 individuals were registered, which was more than the entire month of February or March 2018.

While these fluctuations mean that registration capacities have to be kept flexible if there is an ambition to register all new applicants swiftly, it also shows that the situation in 2015 was truly exceptional.

In 2016, the number of incoming asylum seekers dropped dramatically, to roughly 29,000 applications.<sup>14</sup> In 2017, this number was less than 26,000, and in 2018–2019, fewer than 22,000 applications

were registered. The figure for 2017 would have been even lower if Sweden had not accommodated asylum seekers that were relocated from Greece and Italy under the EU emergency relocation schemes that year. The number of unaccompanied minors also decreased – to 2,199 individuals in 2016, 1,336 in 2017, 944 in 2018 and 902 in 2019. However, several institutions and authorities in Sweden were still under considerable pressure even as late as 2017–2019, as some of them were still dealing with the many asylum cases of 2015, or addressing social welfare needs, the integration of those asylum seekers that were granted a residence permit, and the return of those who were rejected.

Figures for January–December 2020 indicate a further reduction in the annual number of new asylum seekers, which to a large degree can be related to the Covid-19 pandemic.

#### BOX 1 The special situation of unaccompanied minors

The number of unaccompanied minors (UAM) seeking asylum in Sweden has increased remarkably over recent years, especially in 2015. This spike was followed by a massive drop in 2016, 2017, 2018 and 2019. While as many as 35,369 UAM applied for asylum in Sweden in 2015, this was only the case for 2,199 in 2016, 1,336 in 2017, 944 in 2018 and 902 in 2019.<sup>15</sup> In European comparison, Sweden has long been one of the main receiving countries in Europe for unaccompanied minors, and in 2015, it was by far the top destination. That year, four in ten unaccompanied minors who applied for asylum in the EU did so in Sweden.<sup>16</sup>

In 2017, UAM accounted for five percent of all asylum seekers that came to Sweden that year. This percentage was eight percent in 2016 and as

much as 22 percent in 2015. The majority of UAM in Sweden are boys, and most of them declared at the time of applying for asylum that they were between 13 and 17 years old. Over recent years, the by far most frequent country of origin was Afghanistan.

Sweden's "popularity" as a destination for protection-seeking unaccompanied minors is due to several factors. The country's traditionally high protection rate is certainly one factor in the equation. UAM are also generally more often granted protection or residence permits on humanitarian grounds than adult asylum seekers, i.e., their protection rate is higher. While the first-instance protection rate for all asylum seekers together was around 41 percent in 2017, it was 73 percent for UAM.<sup>17</sup> Another factor is that the accommodation

13 Source: Official statistics retrieved from the internal statistical database (eLis) of the Swedish Migration Agency, 4 April 2018.

14 As pointed out above, this sharp drop has probably been caused by a variety of different factors, such as border controls and related border measures, changes to asylum legislation in Sweden but also joint EU measures, which reduced the number of incoming asylum seekers.

15 Between January and November 2020, only 470 UAM applied for asylum in Sweden; Source: Swedish Migration Agency, official statistics.

16 Eurostat, "Almost 90 000 unaccompanied minors among asylum seekers registered in the EU in 2015" (News release 87/2016, 2 May 2016), <http://ec.europa.eu/eurostat/documents/2995521/7244677/3-02052016-AP-EN.pdf/>.

17 If cases in which the Swedish Migration Agency did not consider the application materially, for example due to the responsibility of another European country for the examination of the application ("Dublin cases"), are excluded, then the protection rate for UAM was 79 percent.

and assistance provided to UAM in Sweden are also relatively good. They are placed not with adult refugees but in special youth support facilities or with foster families. The procedures used to determine the age of unaccompanied minors traveling without identity papers have been relatively generous, until the related rules and routines were changed in 2016. Until then, the Migration Agency normally assumed that the age stated by an applicant was correct. A person was deemed an adult only when the given (minor) age was obviously wrong. Asylum applications of UAM are dealt with exclusively at selected units within the Swedish Migration Agency, where there are case officers with specialist skills.

As a result of the tense asylum situation in 2015, many young asylum applicants that had initially been registered as UAM, were negatively affected by the long asylum processing times at the Swedish Migration Agency. As they often had to wait far longer than a year for a first-instance decision on their case, many reached adulthood in the meantime and were subsequently – as adults – denied protection and required to leave Sweden. Age assessments were often carried out late in the process and resulted in the originally stated age being changed upwards. Grass roots organisations as well as foster families of unaccompanied minors therefore called for an

end of returns, particularly to Afghanistan, and for an amnesty for UAM.

In June 2018, the Swedish Parliament approved a new law that aimed at making it possible for young unaccompanied asylum seekers, whose asylum applications had been rejected, to apply for a residence permit for studies at upper secondary schools. This temporary law was intended and expected to regularise the legal situation of several thousand young migrants who had come to Sweden as unaccompanied minors before 2016 and had their asylum applications rejected following long wait times. The opportunity to receive a residence permit for upper secondary studies was only available to unaccompanied individuals who had applied for asylum before 24 November 2015, who had been waiting for a decision for at least 15 months, and who were still in Sweden.

Permits issued under the new law of 2018 are temporary but those who manage to find work after their upper secondary school studies may make a “status change” towards a permit for work purposes. By the end of 2018, around 4 900 individuals were granted residence permits for upper secondary school studies.<sup>18</sup>

## ii. Countries of origin and Sweden as a destination

In total over the period from 2010 to 2019, Syria was the predominant country of origin of asylum seekers in Sweden, followed by Afghanistan, Iraq, Eritrea and Somalia. Stateless people, often Palestinians from Palestine or Syria, were the sixth largest nationality group. Until 2012, a still significant number of Serbian nationals applied for asylum, but their number has since declined. The number of Afghan asylum seekers declined strongly after 2015. In 2019, Uzbekistan, Georgia and Ukraine became important countries of origin as well, but since this is a relatively new trend, it is not yet reflected in longer time series such as in the Table below.

18 Bernd Parusel, “Lessons from Sweden: How Not to Solve an Asylum Crisis”, *The Globe Post*, 9 May 2019.

TABLE 1 Asylum applicants, top-10 nationalities, 2010-2019

COUNTRY	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	TOTAL (2010-2019)
Syria	421	640	7 814	16 317	30 583	51 338	5 459	4 718	2 709	2 649	122 648
Afghanistan	2 393	4 122	4 755	3 011	3 104	41 564	2 969	1 681	806	825	65 230
Iraq	1 977	1 633	1 322	1 476	2 666	20 858	2 758	1 887	1 369	1 054	37 000
Eritrea	1 443	1 647	2 356	4 844	11 499	7 233	1 151	1 691	874	766	33 504
Somalia	5 553	3 981	5 644	3 901	4 831	5 465	1 646	780	736	755	33 292
Stateless	1 033	1 109	2 289	6 921	7 863	7 716	1 339	1 201	766	880	31 117
Serbia	6 343	2 705	2 697	1 669	1 513	1 053	451	309	218	239	17 197
Iran	1 182	1 120	1 529	1 172	997	4 560	1 279	1 090	1 257	1 090	15 276
Albania	61	263	1 490	1 156	1 699	2 615	785	760	616	553	9 998
Kosovo	1 567	1 210	942	1 209	1 474	1 779	355	293	181	158	9 168
Other	9 846	11 218	13 049	12 583	15 072	18 696	10 747	11 256	11 970	12 989	127 426
<b>Total</b>	<b>31 819</b>	<b>29 648</b>	<b>43 887</b>	<b>54 259</b>	<b>81 301</b>	<b>162 877</b>	<b>28 939</b>	<b>25 666</b>	<b>21 502</b>	<b>21 958</b>	<b>501 856</b>

Source: Swedish Migration Agency, official statistics.

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### iii. Dublin system cases and intra-EU solidarity measures

Sweden applies the Dublin regulation, which determines which EU Member State is responsible for examining an application for asylum and allows for the return of asylum seekers to the responsible country if they lodge an application elsewhere. For many years, significantly more asylum seekers were transferred from Sweden to other EU Member States than Sweden was required to take back from others. In 2015, for example, Sweden submitted 14,000 asylum cases for transfer to another state deemed responsible under the Dublin Regulation. Approximately 8,000 requests for transferral were accepted, though only 5,800 transferrals actually took place. The number of requests for transfer to Sweden originating in other countries was only 3,300.<sup>19</sup>

Given its geographical location, Sweden is not the first country of entry for most asylum seekers coming to Europe on land or sea routes, which results in a relatively high number of Dublin

cases that should be sent back to other countries. In 2017, around 13 percent of all incoming asylum applicants were considered Dublin cases, which means that the Swedish Migration Agency considered another state responsible.<sup>20</sup> In 2016, the share of Dublin cases among all cases had been even higher, 17 percent. While Sweden thus had fewer “outgoing” Dublin cases recently, there has been an increase regarding cases in which take back or take-charge requests in accordance with the Dublin regulation were addressed to Sweden from other countries.

This significant buck in the trend can be considered a result of Sweden’s tougher approach towards rejected asylum seekers, who can lose their right to accommodation and daily allowance following amendments to the Act on Reception for Asylum Seekers, adopted in 2016. It is likely that rejected applicants have increasingly been leaving Sweden and applying for asylum again elsewhere, which results in more take back requests to Sweden. It has also been reported that Afghan asylum seekers, including unaccompanied minors and youth

19 Bernd Parusel, *Sweden's Asylum Procedures* (Bertelsmann Stiftung, Gütersloh, 2016), 6.

20 Migrationsverket, *Årsredovisning 2017* (2018), 46.



and families, have left Sweden as their chances to receive protection are higher in some other EU countries, such as France, Germany or Italy.<sup>21</sup>

In 2017, the Swedish Migration Agency took roughly 2,700 decisions to transfer an asylum seeker to another Dublin state. This represented a major decrease compared to the year before, where 9,900 such decisions were taken. The drastic decline is due to the fact that the Migration Agency had an unusually huge workload in 2016, when it worked off many cases from 2015.<sup>22</sup> In 2018, roughly 1,900 transfer decisions were taken, and 1,945 were taken in 2019.<sup>23</sup>

In 2019, Sweden accepted roughly 4,400 take back or take-charge requests from other countries under the Dublin regulation. This means that the number of incoming Dublin requests by far outnumbered the number of outgoing requests, and that many people had left Sweden to apply for asylum again in another Member State.<sup>24</sup>

When it comes to intra-EU solidarity measures and the registration of asylum seekers in first countries of arrivals, the Swedish Migration Agency sent experts to assist the emergency relocation of asylum seekers from Italy and Greece to other Member States.<sup>25</sup> In 2016, 13 experts were at various times deployed to hotspots in Greece and to missions to assist the Italian border police with registration-related tasks. In 2017, 12 Swedish experts were involved in such missions.<sup>26</sup> After that, Sweden continued to support other EU countries and the European Asylum Support Office, but it did not participate in voluntary ad-hoc relocations of asylum seekers disembarked in Italy, Malta or

Greece. Likewise, Sweden did not volunteer to relocate asylum seekers or beneficiaries of international protection from Greece after the fire in the Moria refugee camp on the island of Lesbos in September 2020, as a number of other EU Member States did.<sup>27</sup>

## B. Policy Responses

Policy responses to the exceptional asylum situation in late 2015 were manifold, and some of them drastic.<sup>28</sup> At the Government Offices of Sweden, different types of emergency measures were coordinated in autumn 2015 (as further described in the relevant sections below), and the government, as well as the main opposition parties, worked intensely on developing measures to reduce the inflow of asylum seekers to Sweden. In part, this was done by introducing temporary border controls at Sweden's southern intra-Schengen borders as well as identity checks on cross-border travellers (mainly from Denmark but also Germany), and in part by amending several provisions in the Aliens Act to limit the possibility for asylum seekers to receive a residence permit in Sweden, restrict family reunification rights of those granted protection, and ensure a more balanced distribution of recognised beneficiaries of protection across the Swedish municipalities.<sup>29</sup>

### i. Institutional structure and main laws on asylum

In Sweden, the government sets out the general guidelines for migration policy by proposing bills, and it is the responsibility of the *Riksdag* (Swedish Parliament) to pass or reject proposed bills and

21 Amanda Lindholm, "Stor skillnad mellan EU-länder i asylbeviljande till afghaner", *Dagens Nyheter*, 21 November 2017; Alice Petré, "Afghaner lämnar Sverige för Italien", *Sveriges Radio*, 4 March 2018.

22 Migrationsverket, *Årsredovisning 2017* (2018), 46.

23 Migrationsverket, *Årsredovisning 2018* (2019), 63; Migrationsverket, *Årsredovisning 2019* (2020), 47.

24 Migrationsverket, *Årsredovisning 2019* (2020), 48.

25 Council Decision (EU) 2015/1523 of 14 September 2015 establishing provisional measures in the area of international protection for the benefit of Italy and of Greece and Council Decision (EU) 2015/1601 of 22 September 2015 establishing provisional measures in the area of international protection for the benefit of Italy and Greece.

26 Information provided by email by expert at the Migration Agency's International Department/Swedish contact point to EASO (26 March 2018).

27 IOM, *Factsheet Voluntary relocation scheme from Greece to other European Countries* (IOM, Athens / Geneva, update 21 December 2020).

28 Susan Fratzke, *Weathering Crisis, Forging Ahead: Swedish Asylum and Integration Policy* (Washington D.C: Migration Policy Institute, 2017), <https://www.migrationpolicy.org/research/weathering-crisis-forging-ahead-swedish-asylum-and-integration-policy>; Bernd Parusel, "The Swedish U-turn on asylum and its consequences", in: Wolfram Hilz / Daniele Saracino, *Nordic Perspectives on the European Asylum System* (Baden-Baden, Tectum Verlag, 2017), 63–83.

29 Government Offices of Sweden, "Government proposes measures to create respite for Swedish refugee reception", 24 November 2015, <http://www.government.se/articles/2015/11/government-proposes-measures-to-create-respite-for-swedish-refugee-reception/>.



amendments. The government can supplement laws with ordinances. The Ministry of Justice is the government body responsible for migration policy. It is also responsible for certain aspects of integration policies, which are shared between several other ministries but mainly lie within the responsibilities of the Ministry of Employment.

Within the area of migration and asylum, the Swedish Migration Agency is the responsible administrative agency concerning residence permits, work permits, visas, the reception of asylum seekers, return, acquisition of citizenship and repatriation. The Migration Agency and the Swedish Police Authority (which is responsible, for example, for border controls and forced returns) report to the Ministry of Justice and there is cooperation at various levels between the ministry and these authorities. However, the authorities are formally subordinated to the government as a whole and not a single ministry.

The legal system pertaining to migration in Sweden is mainly governed by the Aliens Act,<sup>30</sup> and emanating from that law, the Aliens' Ordinance.<sup>31</sup> The current Aliens Act took effect in March 2006 and has subsequently been amended many times, also as a result of EU legislation on migration and asylum. The Swedish migration system and asylum procedures are further regulated by the Reception of Asylum Seekers and Others Act<sup>32</sup> and the Reception of Asylum Seekers and Others Ordinance.<sup>33</sup>

## ii. Legal and policy changes after 2015

The undoubtedly most relevant piece of legislation that was adopted as a direct response to the refugee crisis in 2015 was a temporary law that entered into force on 20 July 2016. This law was originally foreseen to be in force until July 2019 but has been

prolonged until July 2021. Its overall aim was to make Sweden less attractive as a country of refuge by temporarily lowering several Swedish asylum standards and rules to the minimum level as set out by the EU asylum acquis and international human rights standards.<sup>34</sup> Unlike the Aliens Act, which provides for permanent residence permits for refugees and beneficiaries of subsidiary protection, the temporary law sets out temporary permits. As long as the law is in place, refugees are granted residence permits for three years and beneficiaries of subsidiary protection for 13 months. If a beneficiary of protection still has grounds for protection when their first residence permit expires, they can be granted an extension.<sup>35</sup>

Further to this, the temporary law also limited the possibility of being granted a residence permit for humanitarian reasons<sup>36</sup> and on national subsidiary protection grounds that, under the ordinary Aliens Act, complemented refugee and subsidiary protection provisions emanating from EU law. Residence on such grounds can – as long as the temporary law applies – only be granted to children and families with children who applied for asylum on or before 24 November 2015, provided that the child in question is still under 18 years old when the decision is made, and in a few other, strictly limited cases, such as when a refusal to grant a residence permit would violate international human rights conventions.

Last but not least, the temporary law also restricted the right to family reunification, stating that refugees who are granted temporary residence permits under the temporary law and who are deemed to have well-grounded prospects of obtaining a permanent residence permit will continue to have a right to family reunification with their spouse, cohabitant and/or minor children, and that children who are refugees will still

30 *Utlänningslagen*, statute 2005:716.

31 *Utlänningsförrordningen*, statute 2006:97.

32 *Lag om mottagande av asylsökande m.fl.*, statute 1994:137.

33 *Förordning om mottagande av asylsökande m.fl.*, statute 1994:361.

34 Once the temporary law expires, the corresponding standard provisions in the Swedish Aliens Act will automatically be applicable again, unless the law is prolonged; see Migrationsverket, *EMN Annual Report on Migration and Asylum 2016 - Sweden* (2017), [https://ec.europa.eu/home-affairs/sites/homeaffairs/files/27a\\_sweden\\_apr2016\\_part2\\_final\\_en.pdf](https://ec.europa.eu/home-affairs/sites/homeaffairs/files/27a_sweden_apr2016_part2_final_en.pdf), 29-30.

35 If the person can support him/herself, they can be granted a permanent permit upon extension/renewal.

36 Under the standard rules under the Swedish Aliens Act, foreign nationals could be granted a residence permit based on issues such as their health condition, their integration in Sweden and the situation in their country of origin, in case no other permit could be granted.

have a right to reunification with their parents. By contrast, beneficiaries of subsidiary protection who submitted their asylum application after 24 November 2015 had generally no right to family reunification under the temporary law. When the Swedish Parliament decided, in June 2019, to prolong the temporary law until 2021, it reinstated the earlier right of beneficiaries of subsidiary protection to family reunification. Thus, since July 2019, they have again the same right to be joined by close family members as people with refugee status. The other restrictions that the temporary law introduced, such as temporary residence permits and the restrictions on issuing residence permits on humanitarian grounds, remain in place until 2021.

As Sweden currently has two layers of asylum-related rules, the standard provisions of the Aliens Act and the temporary restrictions of 2016, the government decided in July 2019 to appoint a cross-party commission of inquiry to develop and present proposals that can re-establish a more durable and stable system of asylum rules. Migration policy should reduce the need for temporary solutions and ensure a permanent system that enjoys broad support by Parliament, the government argued.<sup>37</sup> It was expected that the proposals of this commission would provide a basis for abandoning the temporary law of 2016 in 2021 and return to a system with only one central piece of law, i.e., an amended Aliens Act.

The commission of inquiry presented its proposals in September 2020, but a broad overall consensus between the political parties was not reached. Among other proposals, the commission recommended that Sweden should keep the practice of issuing temporary residence permits, as introduced by the temporary law of 2016. The

commission's proposals regarding family reunification were in many ways similar as the rules introduced by the temporary law, which includes, for example, a maintenance requirement for family reunification.<sup>38</sup> As regards residence permits on humanitarian grounds, it suggested somewhat more generous rules than under the temporary law, but not as before 2016.<sup>39</sup>

In addition to the temporary law of 2016, several other policy changes were introduced during the same year, but with a more long-term or even permanent perspective. For example, a notable change is that Sweden has moved towards a considerably tougher approach regarding returns of rejected asylum seekers. An amendment to the Reception of Asylum Seekers and Others Act, which was adopted by Parliament in 2016, deliberately disincentivises irregular stays by eliminating the right to accommodation and material support to those whose asylum applications had been rejected.

Much more attention than before has recently also been devoted to improving the integration of those asylum seekers that are found to be in need of protection and granted a residence permit, and to sharing the responsibilities for the settlement and integration of new arrivals more evenly between the various Swedish municipalities from North to South. Examples are "fast-tracks" into the labour market for newly arrived beneficiaries of protection with qualifications relevant for shortage occupations and state-subsidised jobs for new arrivals in both the private and the public sector.<sup>40</sup> Thus, the refugee situation in 2015 has not only triggered temporary adjustment measures but also prompted longer-term policy shifts.

Law-making in 2015–2016 was accompanied by a number of ad-hoc measures by various actors, not

37 Government Offices of Sweden, "Cross-party commission of inquiry to examine migration policy", 4 July 2019, <https://www.government.se/articles/2019/07/cross-party-commission-of-inquiry-to-examine-migration-policy/>.

38 The Committee proposes that, as a general rule, a maintenance requirement should be imposed as a condition of residence permits on grounds of personal ties. The proposal includes exceptions from the maintenance requirement for sponsors (persons in Sweden) who are children as well as for sponsors who have been granted refugee status or subsidiary protection, if the residence permit application for their family member(s) is submitted within three months after the sponsor was granted a residence permit; family reunification is not possible in a country outside the EU to which the family has special ties; and the alien and the sponsor have cohabited for a long time in another country or it is not clear that the relationship is well-established; see Migrationskommittén, *En långsiktigt hållbar migrationspolitik. Betänkande av Kommittén om den framtida svenska migrationspolitiken* (Statens Offentliga Utredningar, Stockholm, SOU 2020:54), 30–31.

39 Migrationskommittén (2020), 31.

40 Bernd Parusel, "Policies for labour market integration of refugees in Sweden", *Migration Policy Practice* VI/2 (2016), 11–16, [http://publications.iom.int/system/files/pdf/migration\\_policy\\_practice\\_journal\\_26\\_29june2016\\_final.pdf](http://publications.iom.int/system/files/pdf/migration_policy_practice_journal_26_29june2016_final.pdf); Anna Karlsdóttir/Hjördís Rut Sigurjónsdóttir/Ása Ström Hildebrandt/Alex Cuadrado, *Policies and measures for speeding up labour market integration of refugees in the Nordic region - A knowledge Overview* (Nordregio Working Paper 2017:8, Stockholm, 2017), [http://www.nordicwelfare.org/PageFiles/46147/FULLTEXT02\(2\).pdf](http://www.nordicwelfare.org/PageFiles/46147/FULLTEXT02(2).pdf).

least the Swedish Migration Agency, which worked hard to improve its capacity to register incoming applicants and provide them accommodation. Opening hours at asylum application units were extended, new units were opened, and interim solutions for accommodation as well as emergency reception facilities were used.<sup>41</sup> Despite a strong commitment by authorities, as well as many municipalities and private actors, adequate reception could not be ensured at all times. As a consequence of the crisis, the number of employees at the Migration Agency increased drastically, from around 5,300 at the end of 2014, to over 8,400 at the end of 2016. In parallel, the Agency's spending grew massively, from roughly 1.9 billion EUR in 2014 to 2.7 billion EUR in 2015, and approximately 5.3 billion EUR in 2016.<sup>42</sup>

Both the number of employees and the Agency's spending are now being downscaled again. At the end of the year 2019, the Agency had roughly 6,200 employees. Its total spending in 2019 was approximately 2.2 billion EUR.<sup>43</sup> Since 2018, the Agency also closed down some of its minor branch offices again.

### C. Public Debate

Over the past few years, the reception of asylum seekers and the integration of those granted protection have been major issues of public debate in Sweden. These debates have affected many, if not all, institutions of the Swedish state at the central, regional and local level, as well as civil society, the media, and the economy. Both the shifting magnitude of arrivals and the responses of policymakers have instigated controversy. Sweden has had a relatively open-minded and expansive approach to migration for many years, and in the public sphere, migration and asylum have – until

recently – often been discussed in positive terms. Many examples can be given for how Sweden, until 2015/2016, liberalised its migration and asylum policies and sent out positive messages to people who might want to seek a safe future there.

In 2008, for example, Sweden introduced a liberal, market-oriented system for the immigration of foreign workers. Employers may since, in principle, hire anyone from any part of the world, and there are neither any quotas nor requirements as regards labour immigrants' skills or qualifications.<sup>44</sup> Asylum seekers who were granted protection in Sweden normally received a permanent residence permit, but even those who are rejected have sometimes been given a right to stay; since 2008, asylum seekers who have been working while their application was processed may under certain conditions stay on as foreign workers, a rather unique possibility for rejected asylum seekers to change their status and become legal labour immigrants.<sup>45</sup> This "change of tracks" opportunity was further facilitated in 2014. Furthermore, Sweden liberalised previous restrictions to asylum seekers' rights to work in 2010. When they disclose their identities to the authorities, they usually get full access to the Swedish job market from the beginning of their stay in the country.

In July 2014, Sweden facilitated the granting of protection for children and youths entering the country without any parents or legal guardians. Unaccompanied minors could now not only be granted refugee status or subsidiary protection, but if needed also an alternative status for humanitarian reasons due to "particularly distressing circumstances". Children and young people's opportunities to obtain Swedish citizenship were also facilitated through shorter minimum requirements for domicile and permanent residency in Sweden.<sup>46</sup> And as late as in 2015, the practices for

41 Migrationsverket, *The changing influx of asylum seekers in 2014-2016: Member States' responses - Country Report Sweden* (2018, Report from EMN Sweden 2017:3), 4.

42 Ibid.

43 Migrationsverket, *Årsredovisning 2019* (2020), 21. The Agency's total spending includes its own spending (for staff, offices, etc.) but also spending for the accommodation of, and daily allowances for, asylum seekers, as well as spending for asylum seekers' legal counsels and voluntary return measures. The total spending also includes financial transfers from the state budget to the municipalities for settlement and integration arrangements for beneficiaries of protection and their family members.

44 Bernd Parusel / Kristof Tamas, "The most open system for labour immigration – has it worked?" (*Migration Policy Practice* VI/1, 2016)), 11–15.

45 Catharina Calleman, "Byta spår - ett nålsöga mellan asyl och arbete", in Catharina Calleman / Petra Herzfeld Olsson (eds), *Arbetskraft från hela världen - hur blev det med 2008 års reform?* (Delegationen för migrationsstudier, Stockholm, 2015), 290–331.

46 Migrationsverket, *EMN Policy Report 2014 - Sweden* (2015), 26–30.

determining the age of unaccompanied minors without identity documents were relaxed. Normally, the Migration Agency henceforth accepted the age that a young asylum seeker stated when applying for asylum.<sup>47</sup>

Policies highlighting the positive aspects and effects of migration and asylum were also reflected in top politicians' statements in public. Symptomatic for the open attitudes of Swedes towards refugees, former Prime Minister Fredrik Reinfeldt from the conservative Moderate Party in 2014 described his country as a "humanitarian super-power" with a population willing to open their hearts to people in need of protection.<sup>48</sup> Before the refugee crisis in autumn 2015, also other politicians, journalists, academics and other public figures often took pride in emphasising the fact that Sweden had received, in relation to the size of the country's population, more asylum seekers than any other country in the EU, and that there were no refugee crisis if other countries acted like Sweden. Reinfeldt's successor, the Social Democrat Stefan Löfven, declared at a pro-refugee demonstration in Stockholm on 6 September 2015: "My Europe takes in refugees. My Europe doesn't build walls."<sup>49</sup>

However, the rising refugee intake until 2015 triggered a sharp – rhetorical and political – turnaround, and especially since the strained asylum situation in autumn 2015, scepticism and opposition towards asylum seekers and other migrants have been much more visible than before. This change is not only reflected in increased support for the nationalist and anti-immigration *Sweden Democrats* party, but also in policy proposals made by more "mainstream" parties, such as the *Moderate* party, which has argued that the current asylum system should be abolished altogether,

and that Sweden should only receive pre-selected refugees under an expanded resettlement system based on submissions by the UNHCR.<sup>50</sup> In general, several parties including the *Social Democratic Party*, the *Liberal Party* and the *Christian Democrats* have moved from affirmative and "generous" approaches to receiving people in need of protection to more restrictive attitudes and policies that focus on keeping refugee inflows at lower levels than before 2015. The talk has recently been of an "end of Swedish exceptionalism" in the sense that Sweden's relatively open and liberal approach to migration and asylum would be fundamentally reversed and adapted to more restrictive approaches of other EU countries.<sup>51</sup> While Sweden has long received more asylum seekers and refugees than its Nordic partner countries, both in absolute and in relative terms, the often more restrictive stances of Norway and especially Denmark are now increasingly seen as positive examples of how to deal with refugees and international migration.

At the same time, there are also clear signs that the changing views of politicians are reflected in increasingly sceptical attitudes among large parts of the Swedish population on immigration and asylum and a more polarised political discourse. The share of the Swedish population that is of the opinion that Sweden should receive fewer refugees has risen strongly from 40 percent in 2015 to 52 percent in 2016 and 58 percent in 2019.<sup>52</sup> The last time such a high percentage was measured was in the early 1990s.<sup>53</sup> It has also been observed that a general feeling in Sweden since 2016 has been that the country was in a position to say it had done more than its fair share, and that it had a right to say "enough" without being morally wrong.<sup>54</sup>

In this context, a number of particular issues related to asylum have been discussed widely and

47 This was changed again in 2016–2017, as described further below in the Section on asylum procedures.

48 Dagens Nyheter, "En öppenhetlig Reinfeldt", 17 August 2014.

49 Dagens Nyheter, "Löfven: 'Mitt Europa bygger inte murar'", 9 June 2015.

50 Tobias Billström / Johan Forsell, "M värnar asylrätten och människors rätt till skydd", *Dagens Nyheter*, 18 October 2017.

51 Henrik Emilsson, *Continuity or change? The refugee crisis and the end of Swedish exceptionalism* (MIM Working Papers Series 18: 3, Malmö University, 2018).

52 Marie Demker, "Ökat motstånd mot flyktingmottagning och invandrares religionsfrihet", in Ulrika Andersson / Jonas Ohlsson / Henrik Oskarsson / Maria Oskarsson (eds), *Lamar och gör sig till* (SOM-institutet, Göteborg, 2017), 476; SOM-Institutet, *Svenska trender 1986–2019* (Göteborgs Universitet, 2020), 46.

53 SOM-Institutet, *Svenska trender 1986–2019* (Göteborgs Universitet, 2020), 46.

54 Rebecca Stern, *Responses to the "refugee crisis": What is the role of self-image among EU countries?* (Swedish Institute for European Policy Studies, Stockholm, 2016), <http://uu.diva-portal.org/smash/get/diva2:1064226/FULLTEXT01.pdf>, 11.

intensively since 2015, both among policymakers and in the wider public, via the public media or in social media:

- The quantitative level of asylum seeker intake and related capacities at asylum reception centres as well as additional needs for housing for recognised beneficiaries of protection, the allocation of beneficiaries to municipalities, capacity issues at Migration Agency as well as in municipal schools, among health care providers, municipal social services and law enforcement;
- The reception of unaccompanied minors, especially with regard to age assessment procedures and the security situation in Afghanistan, which has been the main country of origin of unaccompanied minors for several years;
- Border controls and ID checks, which have limited border crossings of asylum seekers into Sweden but also slowed down or hindered cross-border travel and commuting in the South of Sweden;
- Integration policies and difficulties for new arrivals to find work; and
- Segregation and violent crime in disadvantaged cities and suburbs.

Finally, the refugee situation in Sweden over the past few years has also made clear that Sweden to a great extent depends on how other EU Member States, and the EU as a whole, act with regard to asylum and borders. Sweden has clearly been a particularly attractive destination for people seeking protection in Europe, and its policies have long been perceived as more welcoming than those in other Member States. The emergency-like reception situation in Sweden in autumn 2015 could probably have been avoided – at least to a certain degree – if the EU Member States had established a system of sharing the responsibility for receiving asylum seekers in a more equitable manner.<sup>55</sup> Instead, Sweden was disproportionately affected by refugee flows to the EU in 2015, but also before, in the sense that it registered the highest or second highest number of asylum applicants in relation to its own population size in 2014 and 2015, respectively. Figures from Eurostat show, for example, that Sweden received 8.4 asylum applicants per thousand inhabitants in 2014, well ahead of Hungary (4.3), Austria (3.3), Malta (3.2), Denmark (2.6) and Germany (2.5). On average in the EU, there were 1.2 asylum applicants per thousand inhabitants that year.<sup>56</sup> This imbalance was much debated in Sweden, and it is against this background that the Swedish government has been advocating closer cooperation within the EU on asylum and refugees, greater harmonisation of standards and policies, and – in particular – a “more equal distribution of asylum seekers between Member States”.<sup>57</sup>

55 During the period 2008-2015, Sweden outperformed almost all other EU Member States with regard to the number of incoming asylum seekers relative to the population and economic power, according to Bernd Parusel and Jan Schneider, *Reforming the Common European Asylum System: Responsibility-sharing and the harmonisation of asylum outcomes* (Swedish Migration Studies Delegation, Stockholm, 2017), <http://www.delmi.se/upl/files/145454.pdf>, 74.

56 Eurostat, “The number of asylum applicants in the EU jumped to more than 625 000 in 2014” (News release 53/2015, 20 March 2015), <https://ec.europa.eu/eurostat/documents/2995521/6751779/3-20032015-BP-EN.pdf/>.

57 Government Offices of Sweden, “Sweden’s migration and asylum policy”, Fact Sheet (Ministry of Justice, Stockholm, June 2019), <https://www.government.se/49f0b2/contentassets/183ca2f36f1c49f3b7d1b5724a5753ce/swedens-migration-and-asylum-policy--fact-sheet-2019.pdf>, 2.

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## III. Structural Weaknesses in the National Asylum System: Diagnosis and Redress

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For an analysis of the Swedish asylum system, the activities and operations of the Swedish Migration Agency (*Migrationsverket*) play a central role. This agency's responsibilities encompass almost the entire administrative chain regarding asylum. Its operations include the registration of asylum applicants, the management of the reception system including the arrangement of accommodation, examination of asylum applicants' grounds for protection in the framework of asylum procedures and first-instance decision-making, and – finally – the transfer of those who are granted protection to a municipality for settlement and integration and the voluntary return of those who are rejected.<sup>58</sup>

The Migration Agency understands the asylum procedure as a process that consists of three sub-processes, the "initial process", the examination process and an implementation process. Altogether, the asylum process starts with the registration of an asylum application and ends with the implementation of a decision on each case. Implementation means that a person is either granted a residence permit and then leaves the asylum reception system in order to settle in a Swedish municipality or is rejected and leaves Sweden voluntarily or is handed over to the Police, for enforced return.

Thus, the central elements and procedures that together constitute the Swedish asylum system and

that also form the four main analytical sections of this article (registration, reception, procedures, and adjudication) are all under the responsibility of one single Agency. There are few exceptions. Appeals against negative asylum decisions are handled by the Swedish Migration Courts (and ultimately the Migration Court of Appeal, which also sets precedents), and the municipalities have certain tasks regarding the reception of asylum applicants. While the municipalities are not responsible for the provision and management of asylum seekers' accommodation, they must ensure that asylum-seeking children can go to school, and organise the care for, and accommodation of, unaccompanied asylum-seeking minors. When a person is granted protection, the municipalities share the settlement process, and they have to offer a "Swedish for immigrants" language course as well as basic societal orientation.

At the regional level, Swedish County Councils have to guarantee health examinations and make sure that asylum seekers can receive emergency health and dental care. In addition, the Police have a number of responsibilities both before and after asylum procedures. They control Sweden's external borders and some of the country's intra-Schengen borders (the latter on a temporary basis since the end of 2015), and they are responsible for the enforced return of rejected asylum applicants who do not leave Sweden voluntarily. Yet another public body is the Swedish Employment Service, which

<sup>58</sup> Forced return measures are the responsibility of the Swedish Police.

has a number of tasks regarding the integration of those asylum seekers who are found to be in need of protection into the labour market.

## A. Registration

A person who wants to apply for asylum in Sweden can do so directly at an application unit of the Swedish Migration Agency. It is also possible to apply for asylum at the border, if that border is controlled by the Police or Coast Guard. As a country that is surrounded by other Schengen states, Sweden only has regular external borders at the non-Schengen sections of its international airports. Since November 2015, however, Sweden has had temporary border checks in place at intra-Schengen borders to neighbouring states, especially at the land border towards Denmark, the Öresund bridge, and at times also at ferry terminals. These land border controls were still carried out when this case study was completed (December 2020). If a person applies for asylum at the border, they are referred to the nearest application centre of the Swedish Migration Agency.

Even within Sweden, public authorities are required to provide asylum seekers with information about where they can lodge an asylum application. The Swedish Police and Security Police have to inform the Migration Agency if they come into contact with a person that is not entitled to stay in Sweden and intends to apply for asylum. Further to this, all Swedish authorities have a general service obligation towards individuals, which means that they are by law required to provide information, advice and other assistance as is suitable with regard to the needs of the individual and the role of the respective authority. If an individual addresses the wrong authority with a request for

asylum, they shall be directed towards the right authority.<sup>59</sup>

### i. Registration Challenges: Large Inflows and Identity Verification

There are several registration units across the country,<sup>60</sup> and foreign nationals who present themselves to these units during ordinary opening hours are normally registered the same day. Thus, the registration of new asylum seekers is normally not an issue of major concern. In 2015, however, the quickly escalating numbers of asylum seekers created considerable pressures on the Migration Agency's registration activities. Although the Agency was used to seasonal variations, the situation in 2015 was both unforeseen and exceptional. While the number of new asylum applicants to be registered was below 2,000 per week until the end of July that year, it then rose quickly to more than 3,000 per week at the end of August, above 6,000 per week in mid-September, and more than 10,000 in mid-November. This meant that the Agency had to shift staff from other assignments, such as asylum adjudication, to the registration process.

Another challenge encountered at the registration stage is the verification of an applicant's identity. To apply for asylum in Sweden, applicants are requested to tell the Migration Agency about their identity, the reasons for applying for asylum and how they have travelled to Sweden. If an applicant has a passport or another identity document, this is to be handed over to the officials of the Agency. The Agency then registers the individual's name and date of birth. A photograph is taken, and fingerprints are scanned. In accordance with the Eurodac<sup>61</sup> and Dublin<sup>62</sup> regulations of the EU, the fingerprints are used to check whether the individual has already been registered in another EU

59 Government Offices of Sweden, *Genomförande av det omarbetade asylprocedurdirektivet* (Government Offices of Sweden, Ministry of Justice, Ds 2015:37, Stockholm, 2015), 59.

60 In 2015, the Migration Agency registered asylum seekers at the following units: Malmö, Mölndal, Norrköping, Flen, Solna, Sigtuna, Arlanda, Gävle and Boden. In response to the refugee situation at the time, new registration units were established in another eleven locations (Borås, Falkenberg, Jönköping, Krsitianstad, Lindesberg, Skellefteå, Umeå, Uppsala, Vänersborg, Västerås and Örebro).

61 Regulation (EU) No 603/2013 of the European Parliament and of the Council of 26 June 2013 on the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of Regulation (EU) No 604/2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes, and amending Regulation (EU) No 1077/2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (recast) [2013] OJ L 180/1.

62 Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast) (Dublin III) [2013] OJ L 180/31.



or Schengen country or has a residence permit or visa issued by another country or is subject to an entry ban.<sup>63</sup>

In the past, asylum seekers sometimes refused to provide their fingerprints or manipulated them, either to avoid transfers to other countries under the Dublin regulation (if they had been registered in another country before but wanted to stay in Sweden), or to hide their real identities.<sup>64</sup>

## ii. Creative solutions: scalable registration capacities and new technologies

To meet fluctuations in demand, the Swedish Migration Agency does not have a fixed minimum or maximum registration capacity. Rather, it allocates staff and resources to different functions and processes, including the registration process, depending on the anticipated number of asylum applicants to be registered. Under normal circumstances, variations in the number of incoming asylum applicants can be accommodated. Four times a year, the Agency publishes an operation and spending forecast, detailing, among many other developments, the number of anticipated asylum requests.<sup>65</sup>

For 2015, the registration capacity was adapted to up to 2,500 asylum seekers per week.<sup>66</sup> As the situation escalated in autumn, the Swedish Migration Agency put simplified operation modes into practice during the months of October, November and December 2015, with the aim of quickly registering all asylum applicants, arranging accommodation and including them into the asylum reception system. These temporary measures were primarily used for Syrian citizens, stateless persons from Syria, and Eritrean citizens. For adults and families belonging to these nationality groups, no initial asylum interviews were held, but fingerprints and photographs were taken. Also, no appointments for regular asylum interviews were

scheduled at the time of registration. Instead, all asylum cases were stored to be scheduled for interviews at a later point in time. While this speeded up registrations, it also had negative effects in the long run, as the processing times for asylum requests stretched longer and longer. Several thousand asylum seekers that lodged their applications in 2015 or earlier received their first decision in early 2018, more than two years after arrival and registration.

To cope with the situation in late 2015, the Migration Agency also quickly recruited more staff, channelled existing staff from other operations to registration units, extended the opening hours of these units, and opened new ones. For several weeks, the registration unit at the Malmö branch office of the Migration Agency was open around the clock. The Agency also used mobile teams who performed registration activities close to reception facilities, and two campers were used as mobile offices.<sup>67</sup> In addition, it temporarily requested staff from other public authorities to assist with certain practical tasks regarding first reception and registration of asylum applicants.<sup>68</sup> Despite these ad-hoc measures, the situation was extremely difficult, and several thousand asylum seekers were unable to register their applications for approximately three to four weeks. In many cases, applicants had to wait at improvised emergency facilities near the Malmö registration unit.

In 2017, in response to the reception crisis of 2015, the Swedish Migration Agency adopted a longer-term contingency plan for situations in which the number of asylum applicants strongly increases. This plan does not include precise numbers indicating what a strong increase is, but it defines – based on indicators – four different contingency levels:

63 Utredningen om migrationsmottagandet (2017), 115.

64 Email conversation with specialist from the ID unit at the Migration Agency in Stockholm (22 March 2018) and asylum process specialist at the Migration Agency's quality department (22 March 2018).

65 E.g., Migrationsverket, *Verksamhets- och utgiftsprognos juli 2019* (2019).

66 Migrationsverket, *Årsredovisning 2015* (2016), <https://www.migrationsverket.se/download/18.2d998ffc151ac3871593f89/1485556210405/%C3%85rsredovisning%202015.pdf>, 14.

67 Utredningen om migrationsmottagandet (2017), 136.

68 Utredningen om migrationsmottagandet (2017), 144.

- (1) In a “normal situation” (*normalt läge*), the Agency’s operations can be carried out in accordance with standard procedures and standard resources.
- (2) In “strained situations” (*ansträngt läge*), the Agency finds certain difficulties in carrying out its operations in accordance with standard procedures and standard resources.
- (3) In “very strained situations” (*mycket ansträngt läge*), the Agency’s need of resources is greater than its existing resources.
- (4) Finally, in an “extraordinary situation” (*extraordinärt läge*), the number of new asylum seekers has a strong impact on the entire Agency and/or to society as a whole.<sup>69</sup>

Meanwhile, the Migration Agency has employed new technologies to tackle the challenges of identity verification. According to specialists at the ID unit at the Migration Agency in Stockholm, the manipulation of fingerprints was drastically reduced with the roll-out of a technical solution based on a fingerprint scanner using multispectral imaging (MSI).<sup>70</sup> Multispectral imaging looks beyond the skin surface to the subsurface foundation of the fingerprint ridges. Different wavelengths of visible light interact with the skin in different ways, enabling significantly enhanced data capture.<sup>71</sup> This technique was piloted in 2011 and 2012 and then rolled-out to all registration units. Applicants who refuse to reveal their identity can be subject to coercive measures such as supervision, and – as a last resort – detention. According to experts, however, such sanctions are seldom used in practice.<sup>72</sup> Supervision and detention is mainly used to ensure that rejected applicants do not abscond and that their return can be carried out.

Overall, complaints regarding the registration and fingerprinting process seem to be rare. Although no exact statistical data on complaints are available, the Swedish Migration Agency has observed that the willingness of applicants to provide their fingerprints has increased, and that most of them seem to be aware of the need to undergo registration including fingerprinting. During the refugee situation in autumn 2015, many applicants were keen on being registered and fingerprinted as quickly as possible as they were afraid of being sent back to countries that they had transited before arriving in Sweden.<sup>73</sup>

## B. Reception

While an asylum application is under consideration in Sweden, the applicant is enrolled in the reception system, which is managed by the Migration Agency. As soon as a person applies for asylum, whichever reception unit of the Agency is closest to the asylum seeker’s accommodation is designated to assist them. Asylum seekers without their own means of support are eligible to receive housing, basic social assistance in the form of a daily allowance, and urgent medical and dental care.

Asylum seekers who are not able to provide for their own needs receive state support in the form of money placed in a bank account, from which they can draw on with a chip card to purchase goods. There are no vouchers or in-kind benefits. Financial allowances for asylum seekers are determined by government regulation, separately from the regular social welfare benefits given to Swedish residents. Allowances for asylum seekers are nearly one-fourth less than regular maintenance support for Swedish residents,<sup>74</sup> and unlike maintenance support, which is calculated on a monthly basis, benefits for asylum seekers are

69 Migrationsverket, *Generaldirektörens instruktion om beredskapsplan vid kraftigt ökat antal asylsökande*, 1-09/2017, 8 September 2017.

70 Email conversation with specialist from the ID unit at the Migration Agency in Stockholm (22 March 2018) and asylum process specialist at the Migration Agency’s quality department (22 March 2018).

71 Migrationsverket, *Challenges and practices for establishing applicants’ identity in the migration process*, Swedish contribution to EMN Focussed Study (2017), 48.

72 Telephone conversation with the Migration Agency’s applicants’ ombudsman (6 April 2018), email exchange with specialist from the ID unit at the Migration Agency in Stockholm (22 March 2018).

73 Telephone conversation with the Migration Agency’s applicants’ ombudsman (6 April 2018).

74 Bernd Parusel, *Sweden’s Asylum Procedures* (Bertelsmann Stiftung, Gütersloh, 2016), [https://www.bertelsmann-stiftung.de/fileadmin/files/Projekte/28\\_Einwanderung\\_und\\_Vielfalt/IB\\_Studie\\_Asylum\\_Procedures\\_Sweden\\_Parusel\\_2016.pdf](https://www.bertelsmann-stiftung.de/fileadmin/files/Projekte/28_Einwanderung_und_Vielfalt/IB_Studie_Asylum_Procedures_Sweden_Parusel_2016.pdf), 12.

calculated on a daily basis. Benefits are intended to cover costs for food, clothing, shoes, toiletries, leisure activities, medicine and other daily needs. Most benefits require a written application, except for housing.

#### i. Reception housing: a central and persistent challenge

The operation of the reception system, and in particular the provision of accommodation, can be considered the weakest link and the greatest challenge in the Swedish asylum chain.

Similar to registration capacities, the Swedish Migration Agency does not have a fixed reception and accommodation capacity. As it uses contracting and public procurement to acquire accommodation, the number of beds can be adjusted to the need. There are three standard types of accommodation:

##### (1) Accommodation acquired and provided by the Migration Agency:

The great bulk of housing for asylum seekers includes apartments situated in densely populated areas, which are rented by the Migration Agency. Landlords are often municipal housing companies. Other forms of housing include larger reception centres acquired either via public procurement procedures or leasing. It is the Agency's goal that families reside together and do not have to share housing with other asylum applicants. These types of housing are called reception facilities (*anläggningsboende*, ABO).

At times of increased pressures on the reception system, ordinary housing in apartments is often not sufficient to meet the demand. In such situations, the Migration Agency recurs to different types of interim and emergency solutions, mainly through procurement procedures. It can rent, for example, youth hostels, hotels, holiday cabins, and other facilities. In

2015–2016, even military facilities, municipal evacuation shelters and tents were used.<sup>75</sup>

(2) Asylum seekers also have the possibility to arrange their own accommodation (*eget boende*, EBO). Many applicants choose to live together with, for instance, friends or relatives. Individuals choosing this type of arrangement can apply to receive a daily allowance, very similar to the allowance for those who stay in accommodation facilities provided by the Migration Agency. However, the Agency does not cover any extra costs, such as rent, that might arise when an applicant arranges his own housing. The decision of an applicant to choose their own accommodation is not irreversible. If an EBO option is no longer viable, the Migration Agency must immediately arrange accommodation in an ABO reception facility.

(3) For unaccompanied children and asylum seekers with special needs that cannot be satisfied within ordinary reception facilities, the Migration Agency uses specialised housing. These types of housing are run by municipalities (for unaccompanied children) or acquired by the Agency through public procurement and run by a contractor.

Those who might need placement in a special safety house include minors, women, people with disabilities, people with physical or psychological illnesses or people that run a risk of being harassed due to their sexual orientation or gender identity, as well as elderly asylum seekers. Victims of torture or rape can also be eligible for special placement.<sup>76</sup> In 2016, special safety houses were established near the largest cities in Sweden.

Particularly in times of high numbers of new incoming asylum seekers, capacity shortages in the reception system were exacerbated by problems relating to the return and settlement processes. When rejected asylum seekers refused to leave the country voluntarily, they often remained in

<sup>75</sup> Tents were only used during a short period of time in December 2015 – January 2016, see Utredningen om migrationsmottagandet (2017), 296–297.

<sup>76</sup> Migrationsverket, *EMN Annual Report on Migration and Asylum 2016 - Sweden* (2017), [https://ec.europa.eu/home-affairs/sites/homeaffairs/files/27a\\_sweden\\_apr2016\\_part2\\_final\\_en.pdf](https://ec.europa.eu/home-affairs/sites/homeaffairs/files/27a_sweden_apr2016_part2_final_en.pdf), 33.

the reception system until their return was carried out by force or until they absconded to avoid deportation. The settlement of those granted protection was often slow as well, which means that people who – after receiving a positive decision on their asylum claim – were entitled to move out of asylum reception facilities and be allocated to a municipality for permanent settlement remained in the asylum accommodation system longer or much longer than foreseen. In 2015, for example, as many as 182,000 individuals were enrolled in the asylum reception system. Among these, more than 11,000 had already received a final negative decision on their asylum claim, and almost 14,000 had already received a residence permit.<sup>77</sup>

The Migration Agency is entitled to procure accommodation from public and private landlords on the free market, which guarantees a certain flexibility in times of shifting needs. While this is a well-known fact, it is at the same time very difficult to tackle. For example, for budgetary reasons, it would be unreasonable to sustain a large amount of excess capacity (in terms of facilities

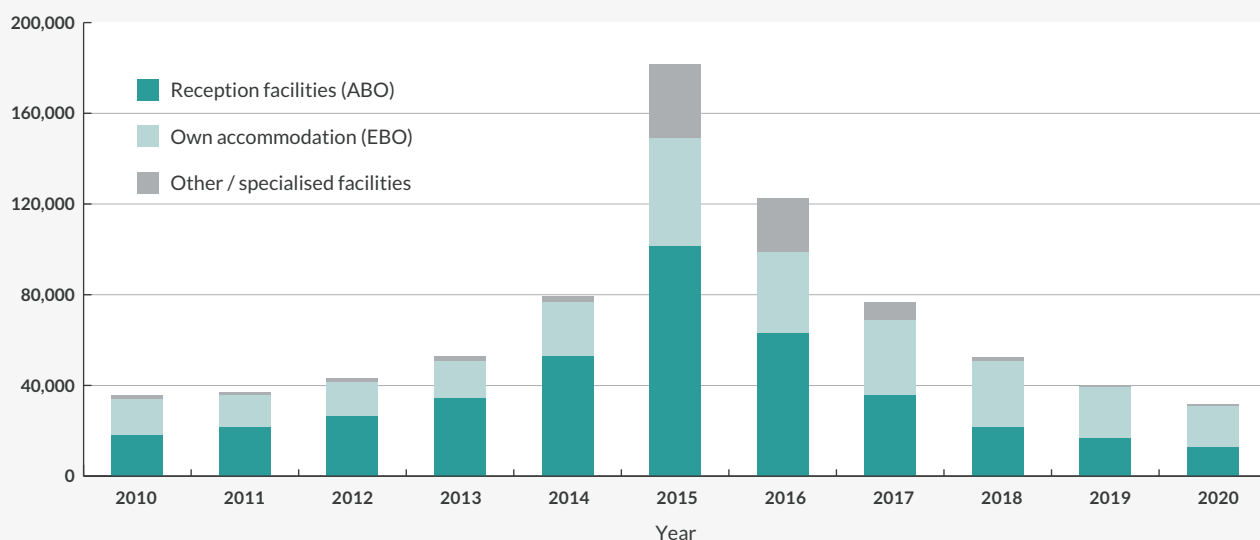
and staff) that might never be used. Moreover, while contracting and procurement provide some flexibility, there is still a limit to available options, as many Swedish municipalities have a structural shortage of housing. In times of high demand for asylum seekers accommodations, the housing options on offer might not be enough, and the rents can increase, requiring higher spending by the Migration Agency. It is therefore considered important to develop reliable early warning and forecasting methods regarding immigration flows to Sweden. Ideally, such forecasts can help the authorities prepare for likely fluctuations.

In 2018, the Migration Agency significantly decreased its accommodation capacity and closed all temporary facilities that it had acquired through public procurement on short notice in 2015 to meet the extraordinary need at the time.<sup>78</sup>

In November 2020, the Swedish reception system was only about one sixth the size of the record year 2015. A total of 31,661 individuals were enrolled (compared to 182,000 in 2015). 18,307 (58 percent)

FIGURE 2 Number of persons enrolled in the Swedish reception system for asylum seekers, 2010-2020

Number of persons



Source: Swedish Migration Agency, official statistics. The figure is based on the number of persons enrolled in the reception system at the end of each year. The figure for 2020 is for November 2020.

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<sup>77</sup> Migrationsverket, Årsredovisning 2015 (2016), 41.

<sup>78</sup> Migrationsverket, Årsredovisning 2018 (2019), 76.

had arranged their own accommodation (EBO) and 12,490 (39 percent) relied on accommodation provided by the Migration Agency (ABO). The remaining 864 (3 percent) resided in specialised facilities (Figure 2).

The Migration Agency's ABO capacity has been reduced and this trend is expected to continue in 2020 and onwards as the number of individuals enrolled in the accommodation system is forecasted to fall.<sup>79</sup>

Detention centres can also be considered part of the reception system. Detention is mainly used for rejected asylum applicants who refuse to leave voluntarily. At the end of 2017, Sweden had five detention centres, which had a total capacity of approximately 350 beds.<sup>80</sup> In April 2019, the Migration Agency opened an additional detention centre with a capacity of 44 beds in the Southern Swedish town of Ljungbyhed. As the previously existing detention facilities were scaled up as well, Sweden's total detention capacity reached around 530 beds at the end of 2019.<sup>81</sup> With this expansion, the Migration Agency followed an instruction by the Swedish government, which had estimated that the number of rejected asylum seekers who would need to be returned against their will would increase.<sup>82</sup>

## ii. Housing for refugees: bottlenecks and distribution challenges

As regards longer-term needs for housing for those asylum seekers that are eventually found to be in need of protection and entitled to stay, and those that are taken in by Sweden via organised resettlement from third countries, Sweden has had severe shortages as well. Especially in the larger cities, bottlenecks have existed for many years, and there are long waiting lists for people asking for affordable, municipality-run apartments.

The increased numbers of asylum seekers in 2014 and 2015, and the subsequent need for additional housing for those who were found to be in need of protection, has aggravated this problem.<sup>83</sup>

The above-mentioned EBO system, which gives asylum seekers the right to move in with relatives and friends, also creates problems as it affects some municipalities more than others and contributes to an unequal distribution of new arrivals within Sweden because many new arrivals prefer to live in bigger cities instead of rural areas. When they choose to arrange their own accommodation already during the asylum procedures, they often stay there even after being granted protection. Others initially rely on accommodation provided by the Migration Agency anywhere in Sweden while their asylum request is under examination and then relocate themselves to bigger cities once their asylum status is settled. On the other hand, the EBO system might have positive effects on integration and self-reliance, as asylum-seekers can more easily connect to people who are already established in Sweden.

In November 2015, the Swedish government commissioned an inquiry to propose measures to create a coherent system for the reception and settlement of asylum seekers and new arrivals in Sweden. It also questioned the EBO system. In 2017, the government issued supplementary terms of reference to this inquiry, extending its mission. Based on the proposals of the inquiry, which were presented in 2018,<sup>84</sup> a reform of the accommodation system was proposed in 2019 and entered into force in January 2020. While the new law did not abolish EBO, it encourages asylum seekers to stay in areas where a socially sustainable reception is possible. Asylum seekers who chose to move to areas that are socio-economically challenged can now lose their right to a daily allowance and other support.<sup>85</sup>

79 Migrationsverket, Årsredovisning 2019 (2020), 65; Migrationsverket, *Verksamhets- och utgiftsprognos 2020-10-23* (2020), 11–12.

80 The five detention centres were in Åstorp, Källered, Flen, Märsta and Gävle.

81 Migrationsverket, Årsredovisning 2019 (2020), 77.

82 Government Offices of Sweden, "Uppdrag att utöka antalet förvarsplatser", 23 May 2016, <https://www.regeringen.se/regeringsuppdrag/2016/05/uppdag-att-utoka-antalet-forvarsplatser/>.

83 Migrationsverket, Årsredovisning 2016 (2017), 38.

84 Mottagandeutredningen, *Ett ordnat mottagande – gemensamt ansvar för snabb etablering eller återvändande*, (Statens Offentliga Utredningar, Stockholm, SOU 2018: 22).

85 *Lag om ändring i lagen (1994:137) om mottagande av asylsökande m.fl.*, statute 2019:1204.



**BOX 2 Sweden's budget and the cost of asylum and reception**

Most costs incurred by the reception and processing of asylum applicants are administered by the Swedish Migration Agency. The Agency's budget is determined once a year by the Swedish Parliament, through a general budget bill from the Government, which distributes expenses through different spending posts. If necessary, changes can be made in the course of a year.

As the extraordinary refugee situation in 2015 required a drastic expansion of the operations of the Swedish Migration Agency, the Swedish Parliament (following Government proposals) increased the Agency's budget by increasing the spending posts "Migration" and "Integration and equality" in the annual budgets for 2015 and 2016. In addition, the annual budgets of the Migration Agency were increased twice by amending budgets, both in 2015 and in 2016. In total, the Agency spent SEK 14,480 million in 2013, SEK 18,610 million in 2014, and SEK 26,787 million in 2015. In 2016, the budget spent increased further, to SEK 52,249 million (roughly 5.3 billion EUR). The budget of the Migration Agency includes the costs of its own operations (e.g., the registration and processing of applications for asylum and other residence permits), but also payments to asylum seekers (e.g., daily allowances) and the reception system, including payments to municipalities, county councils and other actors for their services for asylum seekers.

Reception-related payments (e.g., daily allowances for asylum seekers and costs of accommodation) have represented the largest post within the Agency's budgets over the period 2013-2016, with roughly 46 percent in 2015 and 64 percent in 2016. In absolute amounts, the costs of reception increased from SEK 12,405 million in 2015 to above SEK 33,000 million in 2016. After 2016, the spending decreased again.

One other major line item is the cost of legal representation. According to Swedish law, foreign nationals subject to expulsion are entitled to free legal assistance in order to ensure they receive advice and counselling during their stay or asylum application process and can, if necessary, file to appeal an order to leave. Legal counsel is generally provided by lawyers or legal experts who are paid by the Migration Agency but are not employees of the agency and there is no upper limit to the budget spent on providing applicants this service.

In 2015, the cost of legal counsels totalled SEK 254 million (€ 27 million) exceeding, for example, the amounts spent on the voluntary return of rejected asylum seekers. Due to the a larger number of applicants who were considered likely to be rejected, the money spent on counsels increased to SEK 580 million (€ 61 million) in 2016 and SEK 806 million (€ 84 million) in 2017. As a consequence of the decreasing number of incoming asylum applicants, the spending on counsels then decreased to SEK 570 million (€ 56 million) in 2018 and SEK 293 (€ 28 million) in 2019.

**iii. Crisis responses and policy remedies**

As the experiences of 2015 and beyond showed, it has been extremely difficult for Sweden to arrange sufficient housing on short notice when the number of asylum applicants drastically and quickly

increased, despite the fact that the Migration Agency has no established "maximum capacity" in its reception system. The exceptional arrival of asylum seekers in autumn 2015 created an urgent need to make more accommodation available for asylum seekers at very short notice. On 8 October

86 Migrationsverket, *The changing influx of asylum seekers in 2014-2016: Member States' responses - Country Report Sweden* (2018, Report from EMN Sweden 2017:3).

87 Further relevant budget posts are payments to municipalities for arranging the settlement of asylum seekers who are granted a permit (beneficiaries of protection), payments to asylum seekers' legal counsels, "migration policy measures" (which until 2017 included the costs of the Swedish resettlement system), and costs for returning rejected asylum applicants and other third-country nationals who are not entitled to stay in Sweden. With the exception of migration policy measures, which is a minor budget post, all posts increased substantially in 2016 as compared to 2015 and earlier.

88 Migrationsverket, *Årsredovisning 2016* (2017), 18–21; Migrationsverket, *Årsredovisning 2015* (2016), 144–147.

2015, the Government tasked the Swedish county administrative boards to compile an inventory of buildings that could be used as temporary accommodation.<sup>89</sup> They reported back to the Government two weeks later, indicating 66,000 accommodation places. The Swedish Migration Agency considered that 20,000 of these spots could be used.

The Migration Agency also took several measures itself, such as densifying already existing reception centres, using temporary reception centres and municipal evacuation places (such as sports arenas), and temporary reception places with lower standards (mobility homes, dormitories, etc).<sup>90</sup> At the most, 8,000 persons were accommodated in municipal evacuation shelters in December 2015. The municipalities were reimbursed by the state for the costs associated with the use of these shelters as accommodation for asylum applicants.<sup>91</sup> For a short period of time in December 2015, tents were used in the south of Sweden as all other available accommodation opportunities were exhausted.

The government has also tried to solve longer-term problems. On the one hand, it aimed to improve the flow of people through the asylum reception system by requesting that the Migration Agency shorten its processing times for asylum applications, thus aiming at a quicker “throughput”. On the other hand, measures were taken to make rejected asylum seekers leave the reception system and comply with return orders and to ensure a quicker permanent settlement of those granted protection.

To deal with the problem of rejected asylum seekers remaining in the asylum reception system instead of complying with return orders and leave Sweden, amendments disincentivising irregular stays were made to the Reception of Asylum Seekers Act, which came into force in June 2016.

A person who has applied for asylum and received a refusal of entry or expulsion order is now no longer entitled to accommodation or daily allowances provided by the Swedish Migration Agency as soon as the deadline for voluntary return has expired. If they do not leave the country, they are essentially on their own and dependent on help by relatives, friends, volunteers or charities, and not entitled to any help or support by the state. They can also be detained and removed from Sweden. The amendment does not apply to adults living with their children under the age of 18, however; they still have a right to assistance until they leave, either voluntarily or by force.<sup>92</sup>

The government also reformed the allocation system that distributes those granted protection across the 290 Swedish municipalities for permanent settlement and integration. In March 2016, a new Act for an effective and solidarity-based refugee reception system entered into force. It requires all municipalities within Sweden to receive newly arrived refugees and other beneficiaries of protection, as well as their family members, for settlement. According to the law, the dispersal of such persons to municipalities shall be based on a distribution key, which considers each municipality’s local labour market, population size and the number of newly arrived beneficiaries of protection, unaccompanied minors and asylum seekers already living in the municipality. The government decides how many beneficiaries of protection each Swedish county has to accept, and the 21 County Administrative Boards then decide how to distribute the beneficiaries of protection among the municipalities within their respective jurisdictions.<sup>93</sup> The new law also transferred the task of settling recognised beneficiaries of protection in municipalities from the Swedish Employment Service to the Migration Agency as of January 2017. This new approach prioritises getting people into permanent homes quickly, instead of leaving people to languish in reception centres.

89 Utredningen om migrationsmottagandet (2017), 103–104.

90 Utredningen om migrationsmottagandet (2017), 119–120, 137–138.

91 Utredningen om migrationsmottagandet (2017), 254.

92 Migrationsverket, *EMN Annual Report on Migration and Asylum 2016 - Sweden* (2017), [https://ec.europa.eu/home-affairs/sites/homeaffairs/files/27a\\_sweden\\_apr2016\\_part2\\_final\\_en.pdf](https://ec.europa.eu/home-affairs/sites/homeaffairs/files/27a_sweden_apr2016_part2_final_en.pdf), 45.

93 Migrationsverket, *EMN Annual Report on Migration and Asylum 2016 - Sweden* (2017), [https://ec.europa.eu/home-affairs/sites/homeaffairs/files/27a\\_sweden\\_apr2016\\_part2\\_final\\_en.pdf](https://ec.europa.eu/home-affairs/sites/homeaffairs/files/27a_sweden_apr2016_part2_final_en.pdf), 36.



Despite these reforms, some significant challenges persist. Among municipalities affected by housing shortages and those that were not used to settle refugees, the new mandatory distribution system has met criticism. It is also still possible for beneficiaries of protection to “opt out” of being allocated to a municipality and arrange their own housing solution anywhere in the country. Generally, many new arrivals have preferred to live in metropolitan

areas such as Stockholm, Malmö, Gothenburg or Södertälje, even at the cost of ending up in overcrowded and highly segregated suburbs. Some municipalities have also been unwilling to accept new beneficiaries of protection for political reasons and criticised the state for breaking the principle of local sovereignty, or because they already received large numbers of new arrivals in earlier periods, far before the crisis in 2015.

### BOX 3 Particular reception needs regarding unaccompanied minors (UAM)

The care and accommodation of UAM, including for those who have received a residence permit, has often been a significant challenge in Sweden, in particular for the municipalities. In 2016, a new form of care and accommodation, “supported accommodation”, was established to supplement the existing care arrangements such as residential care homes for children and young persons and foster family care. The new care arrangement is aimed at 16 to 20-years olds that are deemed in need of more limited support as they are transitioning into adulthood. The driving force behind this initiative was to facilitate the placement of UAM and young adults by municipalities and to increase flexibility of the reception system.

A new dispersal mechanism for UAM was established in 2016. According to the mechanism, municipalities are allotted a certain share of the grand total of UAM assigned to each municipality each year. The new mechanism was developed with a view to achieve a more even distribution of UAM between municipalities. The numbers of residents, new arrivals and UAM previously received in the municipality are among the indicators to determine the share to be received in each municipality. The shares of UAM to be received is determined in February each year in connection with the Migration Agency’s migration and asylum forecast.

Source: Migrationsverket, National Approaches to Unaccompanied Minors Following Status Determination – Country Report Sweden (2018, Report from EMN Sweden 2017:4), 14–15.

## C. Asylum Procedures

During 2016, the Swedish Migration Agency developed and adopted a new asylum process, which became fully operational in 2017. After registration and an initial interview by a reception officer, asylum applications are now screened and sorted into different tracks, depending on the characteristics of each case. This new process had been piloted within several asylum examination teams during 2016. The overall aim was to shorten the duration of procedures by making an early assessment as to whether a case can be subject to quick processing. The subdivision of cases into separate tracks also aims to better direct specialist staff at the Agency

to those cases that need it. It shall thus improve the internal planning and allocation of resources. The internal routines and work methods can be adjusted to the various tracks. Overall, the new process is expected to increase both efficiency and quality.<sup>94</sup>

Quick processing can be used, for example, in cases in which an asylum seeker comes from a country whose nationals are normally granted protection. In such cases, there is no need to appoint a legal counsel, and if the identity of the person is documented, there is no need to carry out a language analysis. Similarly, the process can be accelerated when there are clear indications that an applicant

<sup>94</sup> Telephone conversation and email correspondence with asylum process specialist at the Migration Agency’s quality department (25 May 2018).

is not likely to receive protection. Manifestly unfounded applications, Dublin cases, and applications by individuals from countries with a generally high rejection rate are directly routed to specialised units, which shall handle these cases quickly. Asylum seekers from countries considered to be safe and whose applications are “clearly unfounded” are generally accommodated in areas near an airport, which shall make it easier to carry

out return decisions swiftly. Sweden does not yet operate a list of safe countries,<sup>95</sup> however, and all applicants are personally interviewed, irrespective of the track that they have been allocated to.<sup>96</sup> Moreover, the sorting of a case into a track is not an irreversible step and a case can be reassigned to a different track at any stage of the process. Table 2 below describes how the different tracks are defined and operationalised.

TABLE 2 Track system for the categorisation of asylum applications in Sweden

TRACK	CHARACTERISTICS OF CASE	PRESUMED OUTCOME
Track 1	<ul style="list-style-type: none"> <li>Applicant has clarified his/her identity</li> <li>Case appears relatively simple</li> </ul>	Protection status will most likely be granted
Track 2	<ul style="list-style-type: none"> <li>More intensive examination is required than in Track 1 cases               <ul style="list-style-type: none"> <li>The application appears founded but the identity of the applicant is not clear or</li> <li>The application appears unfounded, but the identity of the applicant is clear</li> </ul> </li> </ul>	Protection status may or may not be granted
Track 3	<ul style="list-style-type: none"> <li>Identity of applicant is not clear and/or</li> <li>More in-depth examination or special investigation is necessary, for example if:               <ul style="list-style-type: none"> <li>The case is considered an exclusion case</li> <li>Applicant might pose a security risk</li> <li>There is an indication of false identity</li> <li>Application involves HBTQ issues</li> <li>Applicant is an unaccompanied minor and medical age assessment is deemed necessary</li> <li>Applicant may be a victim of human trafficking</li> <li>Examination may be necessary regarding signs of torture</li> <li>Cases in which a residence permit or granted refugee status is to be revoked</li> <li>Cases in which a DNA-analysis is to be carried out</li> </ul> </li> </ul>	Protection status may or may not be granted
Track 4	<p>Track 4(a)</p> <ul style="list-style-type: none"> <li>Application is probably unfounded because               <ul style="list-style-type: none"> <li>Application is made by an EU national or</li> <li>Another non-EU/non-Dublin country has already granted protection</li> </ul> </li> </ul> <p>Track 4(b)</p> <ul style="list-style-type: none"> <li>Applicant comes from a country whose citizens are most often rejected and</li> <li>A quick return or removal of the person is possible and</li> <li>No particular examinations appear necessary</li> </ul>	Protection status will most likely not be granted
Track 5	<ul style="list-style-type: none"> <li>Another EU Member State is responsible for processing the asylum claim (Dublin case) or</li> <li>Another EU Member State or member state of the Dublin regulation has already granted protection</li> <li>Protection has already been granted by another state</li> </ul>	Protection status will most likely not be granted

\*Granting of protection is anticipated in cases in which the Migration Agency considers that all applicants from a specific country will normally be granted protection, or when a particular group normally receives protection, i.e. an ethnic or religious minority, or an age group. This can change over time, depending on the circumstances in the country of origin.

Source: Swedish Migration Agency.

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95 European Migration Network, *EMN Inform – Safe Countries of Origin* (Brussels, 2018).

96 In 2020, the Swedish government drafted a law to introduce the safe country of origin concept in the Swedish Aliens Act. According to the proposal, the government can instruct the Migration Agency to draw up a list of safe countries of origin. The law is expected to enter into force in May 2021, see Government Offices of Sweden, *Uppenbart ogrundade ansökningar och fastställande av säkra ursprungsländer* (Lagrädsremiss, Stockholm, 26 November 2020).

97 A person can be excluded from refugee status if there are, for example, serious reasons for considering that they have committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes; see e.g., Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted, Article 12.

98 There is no exact numeric threshold for this assessment.

99 Migrationsverket, *Processbeskrivning Migrationsverkets skyddsprocess*, 29 March 2017.

During the period September – December 2017, around ten percent of all registered asylum cases were assigned to *Track 1*, 26 percent to *Track 2*, 12 percent to *Track 3*, 9 percent to *Track 4a*, and 10 percent to *Track 4b*. 16 percent were not assigned to any track and therefore examined under the pre-existing standard procedure. On average, asylum cases were sorted into a track eight days after the application was registered.

#### i. Extended processing times – an ongoing challenge

Despite the new sorting system instituted in 2016–2017, increased processing times for first instance decisions on asylum applications has remained a central challenge for the Migration Agency until long after the crisis situation of 2015. In 2012, asylum seekers who received their first-instance decision had waited on average 108 days. This average wait time was 142 days in 2014, and 229 in 2015.<sup>100</sup> Although additional funding was provided by a 2016 budget bill aimed at reducing the average amount of time an applicant is enrolled in the reception system, and despite the recent decrease in new asylum seekers coming to Sweden, processing times continued to increase in 2016–2018. This clearly demonstrates that the situation in 2015 created massive capacity problems at the Migration Agency, which have taken a long time to resolve. During the first few months of 2018, the Agency was still busy processing cases that had been received during earlier years, including during the extraordinary refugee situation of autumn 2015 and before. This indicates that the Agency had initially prioritised, to cope with the extraordinary number of applications, the processing of relatively “simple” cases over more complicated, time-consuming ones. In fact, the average processing time was 328 days for all asylum applications that were decided in 2016, 496 days for those receiving a decision in 2017, and as much as 534 days for those decided during the first quarter 2018. The processing times then started to decrease again and were back at around 288 days on average at the end of 2019. In 2020

(January – November), the average processing time was 297 days.<sup>101</sup>

During the period 2010–2019, the main nationality groups of asylum seekers coming to Sweden were Syria, Afghanistan, Iraq, Eritrea and Somalia. As Figure 3 shows, there were no major differences between the average asylum processing times for these five groups until 2015. Then, however, processing times became longer for all five main groups, and the disparities regarding different processing times increased. Those asylum seekers from Afghanistan that received a first-instance decision in 2018 had been waiting for on average 785 days for their cases to be decided. Syrian cases were considered easier, hence they had to wait for less than half that time, 344 days. Eritreans had been waiting for 308 days. The main reason for these divergences is that some cases were considered more complex than others. In 2020, processing times were significantly shorter for these three nationality groups again, and the divergences between them were smaller as well.

Asylum processing for nationalities that are often rejected are often much shorter than for those who have relatively high chances to receive protection. For example, applications by nationals of Georgia were decided within 64 in 2019, and the average processing times for Serbians and Ukrainians was 85 and 117 days, respectively.<sup>102</sup>

Another way of analysing bottlenecks and capacity problems in terms of the processing of asylum cases is to look at the number of asylum cases awaiting a first instance decision at the end of each year. This number started to increase in 2012; a development that accelerated in 2013, 2014 and 2015, as a result of rising number of new asylum claims. Since 2016, the number of pending cases has been decreasing. (See Figure 4).

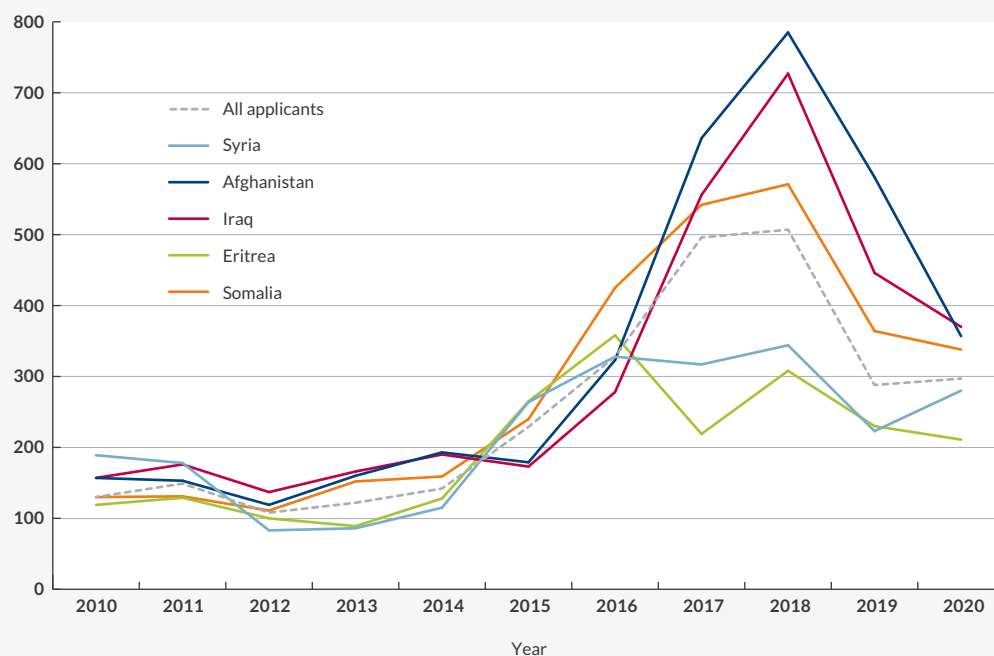
100 Source: Swedish Migration Agency, official statistics, <https://www.migrationsverket.se/English/About-the-Migration-Agency/Facts-and-statistics-/Statistics.html>, retrieved 28 August 2019 and 17 December 2020.

101 Ibid.

102 Ibid.

FIGURE 3 Average processing times (first instance) for top-5 nationalities of asylum applicants (in days), 2010-2020<sup>103</sup>

In days

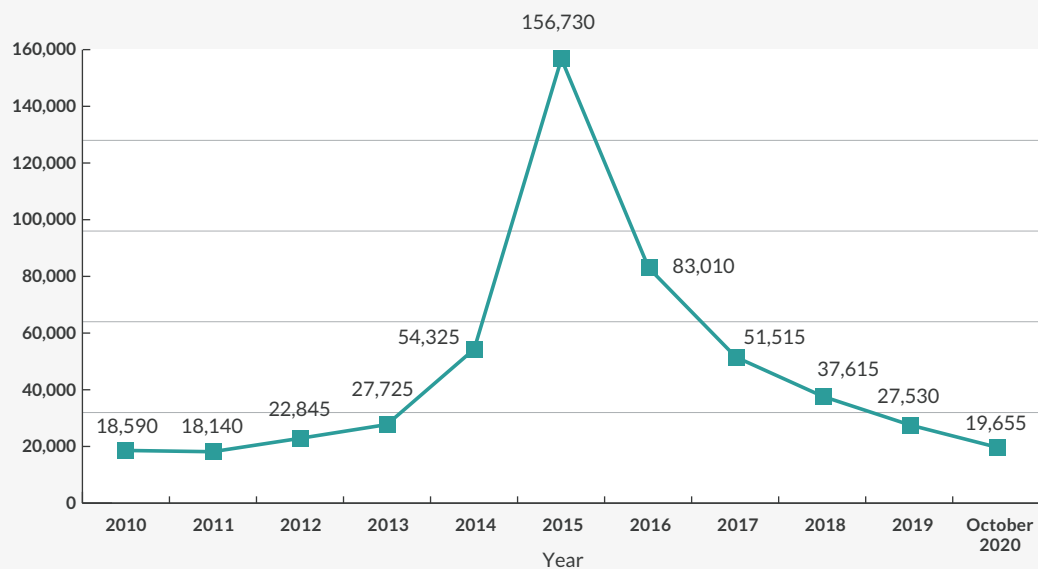


Source: Swedish Migration Agency, official statistics.

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FIGURE 4 Number of asylum applications pending at end of year, 2010-2020

Number of persons



Source: Eurostat database.

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103 For 2020, the average processing time indicated in the Figure is for the period January–November 2020.

## ii. New system outcomes and risks

The new, differentiated asylum process introduced in 2016 has led to processing times being shortened for some groups. For example, the processing period for Eritrean nationals – who normally receive protection – was significantly reduced in 2017, and the processing of Syrian applicants remained relatively stable that year while the average processing times for all applicants as well as people from Afghanistan, Iraq and Somalia, continued to increase (due to a backlog from 2015).

The processing time for manifestly unfounded applications was also kept relatively short. For example, during the second half of 2017 and the beginning of 2018, the number of Georgian asylum applicants increased in Sweden, which is largely considered a result of the introduction of visa-free travel for Georgian nationals.<sup>104</sup> In 2017, it took the Migration Agency on average 148 days to take a decision on applications by Georgian nationals, who are now commonly sorted into *Tracks 4a* or *4b*. This processing time was reduced to 67 days during the first quarter of 2018.

By contrast, an internal review report for the period May 2016 to May 2017 found that the processing times were longest for asylum cases that were handled in *Track 2* (121 days) and *Track 3* (112 days). This is an expected result as the examination and investigation needs within these tracks are – according to the definition of these tracks – supposed to be more comprehensive. However, cases within *Track 2* should in theory require less time to investigate than cases in *Track 3*, which might indicate that some cases were initially sorted into the wrong Track and later assigned to a different one.<sup>105</sup>

In 2018, a new challenge arose from a judgement of the Court of Justice of the European Union as regards clearly unfounded applications and the use

of accelerated procedures for such cases in Sweden. The Court ruled that, since Sweden had not implemented parts of the EU's Asylum Procedures Directive relating to a list of safe third countries, the Swedish Migration Agency may not refer applicants of international protection to protection by state authorities in their home countries, and based on that, assess related asylum applications as clearly unfounded.<sup>106</sup> As a consequence of this judgement, many such cases are now processed in a normal or, in some cases, prioritised asylum procedure, instead of accelerated procedures for clearly unfounded applications.

Over recent years, efforts were also made to shorten the processing times for Dublin cases. In 2015, the average processing time for outgoing Dublin cases (i.e. where Sweden requests another state to take over) stretched to 174 days (between the registration of an incoming asylum application in Sweden and the transfer of the respective individuals to other Member States).<sup>107</sup> The Dublin system was therefore called a “waiting room”, instead of a system that – as intended – would quickly allocate responsibility and give asylum applicants quick access to an asylum procedure.<sup>108</sup> The number of days it took the Migration Agency to make a decision in a Dublin case also increased from 87 in 2015 to 143 days in 2016.<sup>109</sup> As the number of asylum seekers decreased, including the number of Dublin cases, the time it took to make a decision in a Dublin case could be reduced to 78 days in 2018 and 68 days in 2019.<sup>110</sup>

Other challenges have remained. In 2018, a substantial share of all cases was still not assigned to any track, and the time that passed between the registration of an asylum application and its assignment to a track varied between the different administrative regions of the Swedish Migration Agency. The Migration Agency also considered the processing times for asylum cases in *Track 4b*, which is used for applicants from countries with

104 Johanna Sjövall, “Fördubbling av asylsökande från Georgien”, *Sveriges Radio*, 11 January 2018.

105 Migrationsverket, *Uppföljning av skyddsprocessen*, uppföljningsrapport, 24 May 2017, 16–17.

106 Court of Justice of the EU, Judgment of the Court (First Chamber) of 25 July 2018, *A v Migrationsverket*, C-404/17.

107 Migrationsverket, *Årsredovisning 2017* (2018), 46.

108 Pernilla Bäckman, “Hur kan Dublinförordningen reformeras?”, *seminariesammanfattning* (Svenska institutet för europapolitiska studier, Stockholm, 2016).

109 Ibid.

110 Migrationsverket, *Årsredovisning 2019* (2020), 47.

high rejection rates such as Georgia, as still too long. High staff turnover at the Migration Agency as a result of the refugee situation in 2015 has likely contributed to increased processing times and prolonged the implementation of the new tracks system since many new asylum case-workers and decision-makers were recruited while more experienced staff moved on to other tasks.<sup>111</sup>

In addition, there are a few risks associated with the new asylum process at the Migration Agency and the allocation of cases to the various tracks, which have to be kept in mind. For example, there is a risk that the nationality of an applicant plays too strong a role for the selection of the appropriate track. If applicants from countries with high rejection rates are more or less automatically assigned to the track for manifestly unfounded applications, caseworkers might overlook exceptions from the rule, i.e. that even individuals from countries with high rejection rates in fact can have grounds for protection. This means that even caseworkers and decisions-makers that are tasked to make quick decisions within the track used for manifestly unfounded cases must be sufficiently qualified and open-minded to identify political persecution or other risks of protection-grounding serious harm.

Another risk lies in the fact that allocation of a case into *Track 1* is done on the presumption of the person being granted protection, without differentiating between refugee status and subsidiary protection. This may result in too little emphasis placed on the examination of the criteria for refugee status. Decision-makers might grant subsidiary protection, e.g., based on the security situation in the country of origin, without sufficiently investigating individual grounds for refugee status.

Finally, the allocation of cases to tracks bears a general risk of “lock-in” effects, which means that a case remains in the track that it was originally assigned to even if there are circumstances that might necessitate a change of track. The Migration Agency itself has emphasised that it is important that asylum units remain flexible

enough to acknowledge changing circumstances and assigning cases anew.

### iii. System evaluation and further reforms

The Quality department of the Migration Agency regularly reviews the various tracks. Some are expected to be modified to further improve the system, and there are also plans to make the operational criteria for sorting a case into one of the tracks clearer. Another prospective reform is to better link the existing tracks to the reception system and accommodation for asylum seekers. As mentioned above, asylum seekers from countries considered to be safe or whose applications are otherwise “clearly unfounded” are already accommodated in areas near an international airport, to the extent possible. A concrete reform idea is to accommodate asylum seekers who are assumed to receive protection (Track 1) in those municipalities that will later also be responsible for their settlement and integration (e.g., language courses), to minimise the need for new arrivals to move and change their place of residence within Sweden.<sup>112</sup>

To further speed up the Swedish asylum procedure, a pilot project was launched in 2018 at the Migration Agency with the aim of handling asylum cases within 30 days. It is expected to increase the efficiency of the procedure, and to combine the accommodation of asylum seekers and the examination of their applications into one comprehensive process. The longer-term ambition is that 50% of the total asylum caseload can be managed and brought to a first-instance decision within 30 days. According to the Agency, this target was reached in December 2018. The pilot was called “Asyl360”, which shall symbolise the pilot’s all-encompassing perspective and express that all departments within the Agency shall focus on reducing the handling times on new asylum applications. In 2019, the Migration Agency envisaged to mainstream the experiences made with the “Asyl360” pilot in a wider sense, i.e. to establish processing time targets for the ordinary asylum procedure.<sup>113</sup>

111 Telephone conversation with asylum process specialist at the Migration Agency’s quality department (25 May 2018).

112 Telephone conversation with asylum process specialist at the Migration Agency’s quality department (25 May 2018).

113 Migrationsverket, *Årsredovisning 2019* (2020), 52 and 57.



Another element of the Swedish asylum procedures that requires improvements relates to the identification of asylum applicants. Applicants who cannot prove their identity by presenting a passport shall – according to the internal routines of the Agency – be tasked to identify themselves (e.g., by providing other documents). An internal guideline sets out that the persons concerned should be given concrete tasks to work on regarding the clarification of their identity,<sup>114</sup> but these guidelines are not always followed. As an internal review report has shown, ID-related tasks to asylum applicants are not always documented and even their outcomes are often unclear. This makes quality follow-ups more difficult and can also have negative consequences for asylum seekers who want to work. Asylum applicants who have clarified their identity or at least actively contribute to such clarification are normally excepted from the requirement to have a work permit for being allowed access to the labour market in Sweden. If their identity is not clear and an applicant does not undertake steps to document their identity,<sup>115</sup> permission to work is not given. However, in the electronic administration systems of the Migration Agency there have been many cases of asylum seekers who have fulfilled their identity-related tasks but not been granted an exemption from the work permit requirement, which indicates poor follow-up and documentation of ID-related investigations.<sup>116</sup>

#### iv. Other challenges

In addition to extended processing times, there have been a number of other challenges facing the asylum procedure in Sweden. These include concern over age assessment techniques for young unaccompanied asylum applicants without identity documents, the potential sacrifice of high-quality decision making in the interest of increased efficiency as the Migration Agency attempted to clear the backlog created by the 2015 crisis, and

capacity shortages within the Agency and the police force that hinder the enforcement of returns, exacerbating existing blockages throughout the system.

##### a. Age assessment practices – a point of controversy

Children have special rights under international and Swedish law,<sup>117</sup> which is also important in asylum procedures and asylum adjudication as the threshold for being considered in need of protection is lower for children than for adults. The statistics of the Migration Agency also show that the protection rate for children, especially unaccompanied minors, is higher than for adults.

Young unaccompanied asylum seekers often lack documents that can prove their age. Where there is doubt as to whether an asylum seeker is a child or an adult, the Migration Agency must make an assessment of the person's age in light of the evidence in the case. There are various methods – both medical and non-medical – that can be used to assess age, but none of them can precisely establish a person's age if he or she does not have reliable identity documents, e.g., a national passport. In the asylum process, the burden of proof lies with the asylum seeker to plausibly demonstrate his or her account (regarding the need for protection) and identity (including age). This applies even to children and means that asylum seekers themselves are primarily responsible for providing relevant information to guide the assessment of their need for protection.

Sweden has used various age assessment methods as part of its asylum procedure, and the methods and practices used have changed several times. In April 2016 the government decided that the National Board of Forensic Medicine would carry out medical age assessments of young unaccompanied asylum seekers in cooperation with the Migration Agency.

<sup>114</sup> Such tasks can relate, for example, to certain activities to arrange documents supporting the identity of an applicant.

<sup>115</sup> Identity can be proven or made plausible in different ways. If an applicant does not have a passport or identity card, other documents or a combination of other documents can be taken into account as well, such as drivers' licenses, birth certificates or nationality certificates. The Migration Agency can task an applicant to try to obtain identity-related documents. What these tasks are depends on the individual case, see Migrationsverket, *Protection and asylum in Sweden, Applying for asylum, Tell us who you are*, last updated: 29 June 2020, <https://www.migrationsverket.se/English/Private-individuals/Protection-and-asylum-in-Sweden/Applying-for-asylum/Tell-us-who-you-are.html>.

<sup>116</sup> Migrationsverket, *Uppföljning av skyddsprocessen, uppföljningsrapport*, 24 May 2017, 9–12.

<sup>117</sup> For example, Sweden has not only signed the *Convention on the Rights of the Child* but also decided, in 2018, to implement it as a national law. The law *Lag om Förenta nationernas konvention om barnets rättigheter*, statute (2018:1197), entered into force on 1 januari 2020.



Moreover, amendments were made to the Aliens Act in 2017, which imply that the Migration Agency has to assess an applicant's age earlier in the asylum process.<sup>118</sup> Swedish law now states that a temporary age assessment should be carried out immediately, and that a temporary appealable decision regarding the age should be taken in the initial phase of the asylum procedure. A final decision regarding the age is taken in the context of the decision on an asylum claim. Where there is doubt as to whether an asylum seeker is a child or an adult, the Swedish Migration Agency must make an assessment of the person's age in light of the evidence in the case, including the verbal statement made at the asylum interview. If an asylum seeker is assessed as a child, the asylum procedure continues on the basis that the person is of minor age.

Medical age assessments play a major role in practice although they are not the only type of evidence that an applicant can use to fulfil the burden of proof with respect to age. The Migration Agency has an obligation to inform young asylum applicants of the possibility to undergo a medical examination to establish their age. The methods currently used include examining the applicants' wisdom teeth (with panoramic x-ray), and the knee joints (with an MRI examination). Ever since medical age assessments in accordance with the new guidelines started in spring 2017, they have provoked controversy. Reports of the National Board of Forensic Medicine state that the results of medical age assessments often indicate that minors are in fact adults,<sup>119</sup> and while the government and competent authorities have claimed that these assessments are reliable, some debaters and experts including medical doctors have questioned their legal certainty and scientific basis.<sup>120</sup>

The age of young unaccompanied asylum seekers has often been discussed in public debate as well, where some voices claim that many of these

are in reality adults, which others deny. Much of this debate has centred on the particular group of young asylum seekers from Afghanistan, who were possibly unaccompanied minors at the time they arrived in Sweden, but who – due to long asylum processing times at the Migration Agency – reached adulthood and were subsequently denied protection and required to leave Sweden. In many cases, age assessments were carried out late in the asylum process and resulted in the originally stated age being changed upwards. Grass roots organisations such as *Ung i Sverige* ("Young in Sweden") and *Vi står inte ut* ("We Can't Stand This") as well as foster families of unaccompanied minors have called for an end of returns to Afghanistan, and for an amnesty, not least because they have considered the processing times and age assessment methods unfair. By contrast, the Swedish government and most opposition parties have emphasised that return decisions should be enforced, including in cases of unaccompanied minors who reached majority age while waiting for an asylum decision.

Eventually, however, the Swedish Parliament adopted a new temporary policy expanding the possibility for some unaccompanied minors to receive a residence permit to complete their secondary school education. As mentioned in Box I, unaccompanied minors enrolled in upper secondary education that had an enforceable return decision could receive a temporary residence permit under certain conditions, thus – at least for some time – regularising their stay in Sweden.<sup>121</sup>

#### **b. Efficiency vs. quality?**

The rising number of asylum seekers coming to Sweden over recent years has made it necessary to increase the number of employees of the Swedish Migration Agency, especially in the Agency's operative departments. Over the period 2014–2016,

118 Government Offices of Sweden, *Åldersbedömning tidigare i asylprocessen*, proposition 2016/17:121, Stockholm, 23 February 2017, <https://www.regeringen.se/4929bb/contentassets/5befe38df943447ba6365a7cf06a8375/aldersbedomning-tidigare-i-asylprocessen-prop-201617121>.

119 Oskar Jönsson, "Medicinska åldersbedömningar klara – majoriteten av de som undersökts bedöms vara äldre än 18 år", *Sveriges Television*, 30 May 2017, <https://www.svt.se/nyheter/inrikes/forsta-medicinska-aldersbedomningar-klara-majoriteten-bedoms-alldre-an-18-ar>.

120 Migrationsverket, *National Approaches to Unaccompanied Minors Following Status Determination – Country Report Sweden* (2018, Report from EMN Sweden 2017:4), 10–11. The daily newspaper *Svenska Dagbladet* published a series of critical reports in 2017 and 2018 on the reliability of age assessment techniques and the process of selecting and implementing them.

121 Migrationsverket, *National Approaches to Unaccompanied Minors Following Status Determination – Country Report Sweden* (2018, Report from EMN Sweden 2017:4), 47.

the total number of employees of the Agency grew from 5,351 at the end of the 2014, to 7,623 at the end of 2015, and 8,432 at the end of 2016.<sup>122</sup> Towards the end of 2016, a process of systematic downsizing was started, as the number of asylum cases decreased.

As the Agency has various tasks in the area of legal migration, asylum, citizenship, and voluntary return, among others, only a minor share of its staff are case-workers and decision-makers for asylum cases. The equivalent of 1,087 full-time employees were used to process and decide on asylum cases in 2014. In 2015, the equivalent of 1,456 full-time employees were used for asylum procedures, and 1,986 in 2016. Whether this number was sufficient is debateable as the processing times for asylum cases have stretched longer and longer following the increased arrival of refugees in 2015. But both budgetary constraints and difficulties to find new qualified staff at short notice obviously impeded an even more dynamic upscaling of the Agency's operations.

Overall, the number of asylum decisions taken, as well as the productivity of the asylum process (measured in the number of decisions taken per full-time employee), increased substantially in 2016. In 2015, a full-time employee decided, on average, 40 asylum cases per year. In 2016, this number was 56. This increased productivity was a result of a lower level of new asylum applications in 2016, which opened opportunities for administrative improvements, more effective working methods and a de-prioritisation of asylum cases requiring extensive examination and administration.<sup>123</sup> In 2017, this productivity figure decreased again, however, to 39 decided cases per full-time employee.<sup>124</sup> In 2018 and 2019, overall productivity in the asylum process increased, but the available data cannot be compared to earlier periods because the method used for measuring and evaluating productivity changed.<sup>125</sup>

There has been a debate, however, on whether increased efficiency has come at the expense of quality and legal certainty. Spokespersons of the Migration Agency often refer to the percentage of the Agency's asylum decisions being successfully appealed against by asylum applicants in courts as an indicator of the quality of its decision-making. While the Agency itself sees this overturn percentage as "relatively low", it admits that it increased from five percent in 2015 and 2016 to eight percent in 2017. This means that in eight percent of all asylum decisions appealed by applicants in one of the Swedish migration courts, a negative decision by the Agency at first instance was changed to a positive decision. Another six percent of the cases that were brought before courts were sent back to the Agency for revision.<sup>126</sup>

In 2018 and 2019, the overturn rates increased substantially. In 2019, 17 percent of all appeals against negative asylum decisions by the Migration Agency were successful, and another four percent of appeal cases were sent back to the to the Agency for revision. Cases that were overturned often concerned asylum seekers from Afghanistan and involved issues such as the credibility of religious beliefs or atheism. Asylum seekers from Somalia, in particular women, were also often successful in courts. The most significant explanation for the higher overturn rates in 2018 and 2019 however relates to the temporary law to regularise the legal situation of young migrants who had come to Sweden as unaccompanied minors before 2016 (see Box I). Some individuals who had been rejected by the Migration Agency but already had a pending appeal case when the regularisation entered into force could now be granted a residence permit under this law. Even if a court decision to grant a residence permit under the regularisation law does not mean that that the Migration Agency's initial asylum decision was wrong, such cases are regarded as overturned.<sup>127</sup>

122 Migrationsverket, Årsredovisning 2016 (2017), 90.

123 Migrationsverket, Årsredovisning 2016 (2017), 38.

124 The main reasons given for the recent decrease is that case officers had to decide many older and complicated asylum cases in 2017, as "easier" cases had been prioritised in 2016. Reduced efficiency in 2017 can also be related to a lack of experience among new employees and the introduction of new laws and routines, such as for medical age assessments of unaccompanied minors, see Migrationsverket, Årsredovisning 2017 (2018), 23.

125 Migrationsverket, Årsredovisning 2019 (2020), 52.

126 Migrationsverket, Årsredovisning 2017 (2018), 51–52.

127 Migrationsverket, Årsredovisning 2019 (2020), 86–87.

This illustrates that the overturn rate is not a sufficient indicator for quality. Successful appeals are not always a consequence of the Migration Agency having made a wrong decision. Applicants may also invoke new grounds for protection, not least post-arrival circumstances (such as conversion to a different religion) or personal circumstances that were not mentioned or not seriously taken into account at first (such as LGBTQ-issues), which can make a new assessment (and possibly a different decision) necessary. Legislative changes that affect pending cases can also impact court decisions. Furthermore, there is a causality problem in the sense that a low overturn rate can indicate good quality in first-instance examinations, but also that appeal instances do not question the Migration Agency's decisions seriously and thoroughly enough.

In the Swedish press, there has been a number of reports about quality deficits in asylum proceedings at the Migration Agency. In March 2018, the newspaper *Sydsvenskan* reported that every fifth asylum examination had deficits, many were poorly written, and that thousands of decisions were based on insufficient groundwork.<sup>128</sup> In April, two anonymous asylum caseworkers from the Migration Agency criticised that asylum seekers had to bear the consequences of internal pressures on caseworkers and decision-makers to examine cases and make decisions as quickly as possible, also stating that colleagues who rejected many applicants were more popular than those that took their duties more seriously. As a consequence of the extraordinary number of people applying for asylum in Sweden in 2015, the Migration Agency hired asylum staff without being able to offer all of them adequate training, they argued.<sup>129</sup> Quality issues have also been raised by the Agency itself, as Section D below ("Adjudication") will show.

### c. Enforcing Returns

When looking at asylum in Sweden from a systemic perspective, another significant problem is a mismatch between the number of asylum seekers

rejected and the number of individuals who actually leave Sweden following their rejection. While voluntary returns, which are assisted and carried out by the Migration Agency, work relatively well in terms of the number of rejected applicants leaving, only a minor share of those cases that are transferred to the Police for forced return result in actual removals. In 2017, for example, the Migration Agency managed around 19,300 return cases. In roughly 9,500 of these cases, it was decided that the respective persons would leave Sweden voluntarily, while another 8,200 cases were handed over to the Police. During the same year, approximately 9,100 persons left voluntarily, but only 2,800 were removed by the Police.<sup>130</sup>

In 2019, the Agency handled around 17,800 return cases. 8,300 were considered for voluntary return and 7,600 were handed over to the Police. During that year, just under 6,000 individuals left voluntarily, and roughly 3,300 were returned by the Police.<sup>131</sup>

While the number of cases naturally changes from year to year, the pattern has been similar throughout recent years with the number of people who refuse to leave and become subject to forced return proceedings by far exceeding the number of people whose removal is actually carried out. As the whereabouts of these individuals are often unknown, it is unclear how many are continuing their stay in Sweden on an irregular basis, and how many leave for other countries without notifying the authorities. As mentioned above in the "Policy responses" Section, the Swedish Reception of Asylum Seekers Act was changed in 2016, and adults without minor children who refuse to leave can now lose their right to accommodation and daily allowances. While this is likely to exercise pressures on the persons to leave and also relieves the asylum reception system of individuals who are not entitled to stay, the measure might be counterproductive to the aim of creating a more efficient and enforceable return system. As long as an individual is registered in the official reception system, the authorities know where they are.

128 Olle Lönneaeus / Erik Magnusson, "Migrationsverket medger: Tusentals asylbeslut bygger på dåligt underlag", *Sydsvenskan*, 4 March 2018.

129 Anonymous, "Rättsligt osäkert med Migrationsverkets produktionskrav", *Dagens ETC*, 12 April 2018.

130 These figures include Dublin transfers out of Sweden, see Migrationsverket, *Månadsrapport December 2017* (2018), 25-27.

131 Migrationsverket, *Årsredovisning 2019* (2020), 70-74.

When people are deregistered from this system, it is often unclear where they end up staying.

Another explanation behind the relatively poor return rate is, according to the Migration Agency, that many return cases concern persons from Afghanistan, Iraq and Iran. Among these groups, the willingness to return voluntarily is comparatively low and carrying out forced returns to these countries has been difficult as well. If the Migration Agency comes to the conclusion that neither the Agency nor the Police will be able to carry out a return, the respective return case remains open. Statistical data from recent years indicate that the number of open return cases has been growing, from roughly 13,500 in 2019 to more than 25,000 in 2019.<sup>132</sup>

This trend, and the general mismatch between people obliged to leave and the number of returns, suggests that the Swedish Aliens Act might lack humanitarian provisions, which would make it possible for some individuals to receive a residence permit on humanitarian or grace grounds despite the fact they do not qualify for refugee or subsidiary protection. While the regular Aliens Act at least contains provisions on legal stays due to “exceptionally” and “particularly distressing circumstances”, the temporary law of 2016 has severely restricted these provisions. The possibilities of the Migration Agency and the courts to issue residence permits to rejected asylum seekers who have fallen ill, or who have lost connections to their home countries due to prolonged stays in Sweden, have become much more limited as a consequence of the temporary law. The Swedish provisions regarding possibilities to grant a residence permits in cases of obstacles to return are relatively strict as well.

Enhanced enforcement measures alone are unlikely to mitigate the problematic situation regarding returns, even if voluntary return incentives such as reintegration benefits, liaison officers deployed to countries of return, and cooperation with relevant countries of origin are further improved. While it is true that the government has required the Migration Agency to create more spaces in detention

centres, this is not likely to fundamentally change the worrisome situation regarding termination of stay and forced returns. During recent years, the focus of asylum policies has clearly been on restrictions and on disincentivising irregular stays. Whether these policies really will encourage more rejected asylum applicants to return, or just make their lives more difficult, complicate the work of the Police and accrue higher costs, remains to be seen.

## D. Adjudication

The term adjudication refers to the decision-making in asylum cases. First-instance decisions are made by the Swedish Migration Agency, which examines all asylum applications lodged in Sweden. The Agency makes its decisions independently and bases them on the relevant international, EU and national asylum laws and ordinances; direct interference from the government with the decision-making in asylum cases is not allowed. The agency often adopts internal “legal positions”, which provide guidelines for how its caseworkers and decision-makers should assess the situation in a specific country of origin or how they should consider applications submitted by people with specific profiles.

The result of asylum decision-making can either be a positive decision that grants refugee status, subsidiary protection, complementary national protection, or a right to stay in Sweden based on humanitarian considerations, so-called “exceptionally” or “particularly distressing circumstances”. As outlined earlier in the report, national complementary protection and residence on humanitarian grounds were significantly restricted with a temporary law adopted in 2016. Persons who are not found to be in need of protection are rejected and obliged to leave Sweden. In some cases, however, a residence permit can be granted because a rejected applicant cannot return to their home country due to obstacles to return, or because a rejected applicant has been working in Sweden and qualifies for a permit for work purposes in the framework of a “status change”.

132 Migrationsverket, *Årsredovisning 2019* (2020), 69–70.

As yet, Sweden does not operate a list of “safe countries of origin” as many other EU Member States do.<sup>133</sup> In 2020, however, the government drafted a law to introduce the safe country of origin concept in the Swedish Aliens Act. According to the proposal, the government can instruct the Migration Agency to draw up a list of safe countries of origin. The law is expected to enter into force in May 2021.<sup>134</sup>

#### i. Recognition rates

By international comparison, Sweden has long been notable for a relatively high recognition rate. According to a study of 2015, Sweden’s recognition rate was still on average higher than would be expected given the average decision-making practices across all EU Member States.<sup>135</sup> Some nationality groups were more likely to receive protection in Sweden than elsewhere in the EU, the study found.

It is also true, at the same time, that those who have sought refuge in Sweden have often indeed come from countries in which violent conflict, civil war and/or political persecution are prevalent and where basic human rights are often violated, such as Syria or Eritrea.

Since 2016, however, recognition rates have decreased for several nationality groups, especially Afghans and Iraqis. In 2017–2019, the Swedish recognition rate for Afghans and Iraqis was in fact significantly lower than in several other European countries or the EU average.<sup>136</sup>

Over the period 2010–2019, the biggest nationality groups among those seeking asylum in Sweden were nationals of Syria, Afghanistan, Iraq, Eritrea and Somalia. The protection rates for these groups varied over the period, but they were still fairly high compared to other groups such as applicants from Western Balkan countries, or – more recently – Georgia or Ukraine, who all had protection rates close to zero percent.

As Figure 5 and Table 3 show, the number of asylum decisions taken increased substantially until 2016, and especially in 2016, as a consequence of the many new asylum seekers arriving in 2015. The overall protection rate increased as well, as Syrians and Eritreans, who normally receive protection, represented a large share among all asylum seekers receiving decisions. Since 2017, the number of decisions taken has been declining, as did the share of Syrians and Eritreans among all asylum seekers. This also lowered the overall Swedish protection rate for asylum seekers.

Until 2016, in most cases of positive decisions, the Migration Agency granted subsidiary protection. Since 2017, there refugee status is more frequently granted than subsidiary protection. By contrast, the number and share of positive decisions due to humanitarian considerations decreased, which is an expected development given the restrictions that were introduced via the temporary law of 2016.

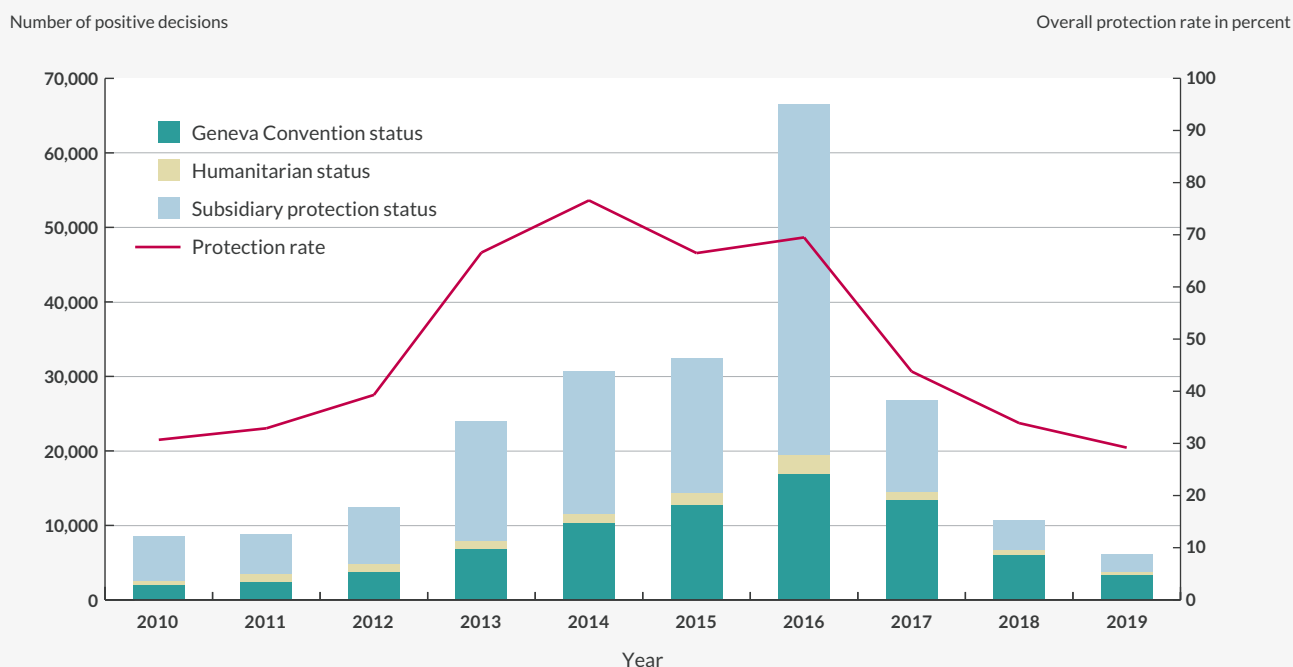
133 European Migration Network, *EMN Inform – Safe Countries of Origin* (Brussels, 2018).

134 Government Offices of Sweden, *Uppenbart grundade ansökningar och fastställande av säkra ursprungsländer* (Lagrådsremiss, Stockholm, 26 November 2020).

135 Arjen Leerkes, *How (un)restrictive are we? ‘Adjusted’ and ‘expected’ asylum recognition rates in Europe* (Ministerie van Veiligheid en Justitie, Amsterdam, 2015).

136 Bernd Parusel, *Pieces of the Puzzle – Managing Migration in the EU* (European Liberal Forum / Fores, Brussels / Stockholm, 2020), 57–58.

FIGURE 5 Number and types of positive decisions and overall protection rate (first instance) for all asylum seekers, 2010-2019



Source: Eurostat, "First instance decisions on applications by citizenship, age and sex Annual aggregated data (rounded)", migr\_asycdfsta, last update 1 September 2020, extracted 17 December 2020.

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TABLE 3 Number of asylum decisions, types of positive decisions and overall protection rate (first instance) for all asylum seekers, 2010-2019

YEAR	TOTAL DECISIONS	TOTAL POSITIVE DECISIONS	% POSITIVE DECISIONS	REFUGEE STATUS	SUBSIDIARY PROTECTION	HUMANITARIAN STATUS
2010	27 715	8 510	30.7%	1 935	5 970	605
2011	26 760	8 805	32.9%	2 335	5 390	1 075
2012	31 570	12 400	39.3%	3 745	7 595	1 060
2013	36 065	24 020	66.6%	6 750	16 145	1 125
2014	40 015	30 650	76.6%	10 245	19 095	1 310
2015	48 685	32 360	66.5%	12 740	18 125	1 495
2016	95 845	66 590	69.5%	16 875	47 210	2 500
2017	61 115	26 775	43.8%	13 330	12 265	1 185
2018	31 370	10 650	33.9%	5 990	3 985	670
2019	20 755	6 065	29.2%	3 300	2 300	465

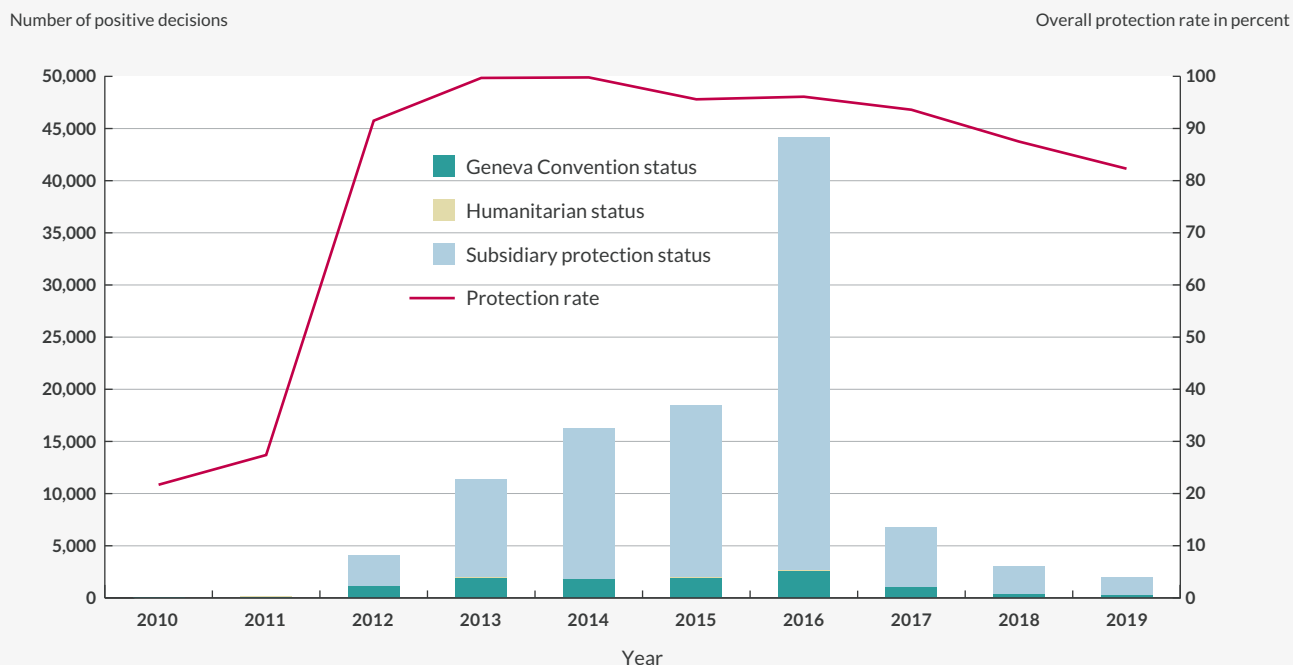
Source: Eurostat, "First instance decisions on applications by citizenship, age and sex Annual aggregated data (rounded)", migr\_asycdfsta, last update 1 September 2020, extracted 17 December 2020.

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Taking a closer look at asylum decision-making regarding Syrian applicants (Figure 6 and Table 4), it becomes clear that since 2012, subsidiary protection has been the main ground on which

positive decisions were based. Refugee status was only adjudicated to a much smaller proportion of Syrian asylum applicants. In 2016, subsidiary protection was granted in more than 94% percent

FIGURE 6 Number and types of positive decisions and protection rate (first instance) for applicants from Syria, 2010-2019



Source: Eurostat, "First instance decisions on applications by citizenship, age and sex Annual aggregated data (rounded)", migr\_asydcfsta, last update 1 September 2020, extracted 17 December 2020.

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TABLE 4 Number of asylum decisions, types of positive decisions and protection rate (first instance) for applicants from Syria, 2010-2019

YEAR	TOTAL DECISIONS	TOTAL POSITIVE DECISIONS	% POSITIVE DECISIONS	REFUGEE STATUS	SUBSIDIARY PROTECTION	HUMANITARIAN STATUS
2010	415	90	21.7%	45	10	35
2011	530	145	27.4%	90	45	10
2012	4 470	4 090	91.5%	1 130	2 960	5
2013	11 430	11 390	99.7%	1 910	9 475	5
2014	16 325	16 295	99.8%	1 760	14 535	0
2015	19 345	18 485	95.6%	1 915	16 550	15
2016	45 985	44 180	96.1%	2 570	41 580	25
2017	7 305	6 835	93.6%	965	5 830	40
2018	3 430	3 000	87.5%	345	2 615	40
2019	2 375	1 955	82.3%	210	1 710	30

Source: Eurostat, "First instance decisions on applications by citizenship, age and sex Annual aggregated data (rounded)", migr\_asydcfsta, last update 1 September 2020, extracted 17 December 2020.

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of all positive decisions taken for Syrians that year, and the share of refugee status among all positive decisions was only six percent. In 2017, refugee status became a somewhat more frequent status

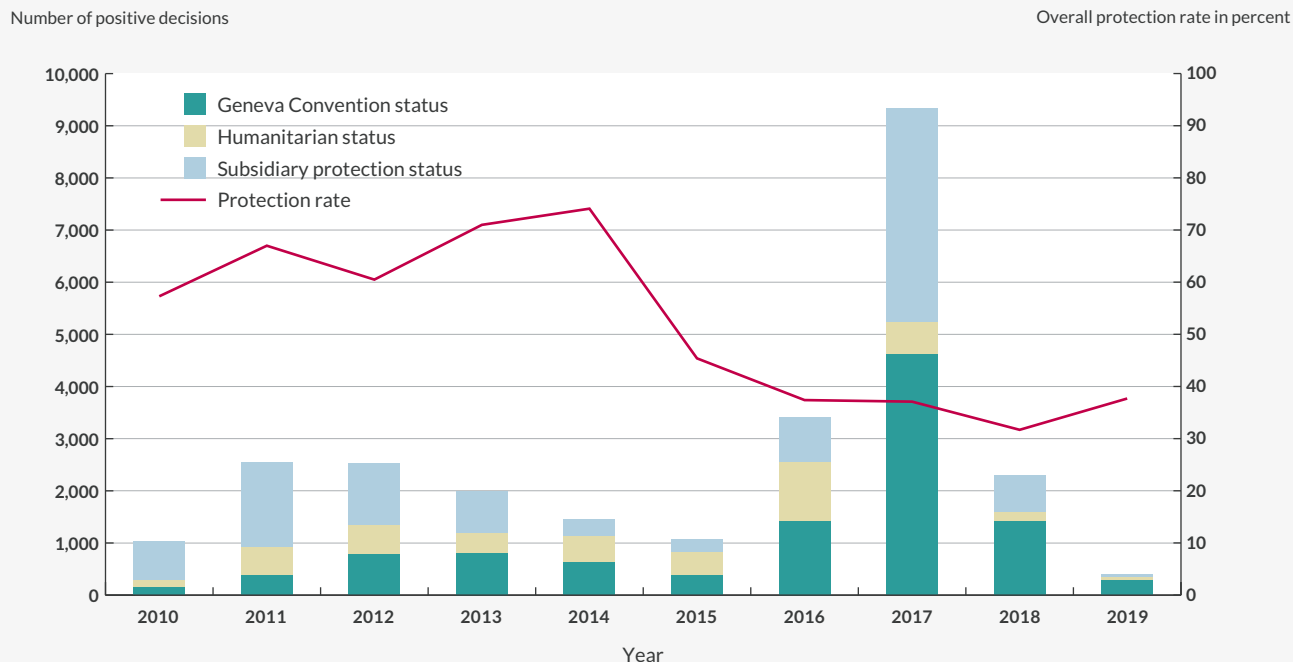
for Syrians, with around 14 percent of all positive decisions. This share then decreased again.



The picture regarding Afghan applicants, the second largest group after Syrians, is rather different. To a higher degree than Syrians, Afghans have been affected by the stricter application of the Swedish rules on residence on humanitarian grounds after 2016. Also, as applications submitted by Afghan nationals were considered difficult to assess, many of those who came in 2015 had to wait until 2017 before they received a first-instance decision. As mentioned in Box I, individuals who were initially classified as unaccompanied minors were particularly affected by this problem. Those young Afghan asylum seekers who came in 2015 but only received a decision in 2017 were often not considered minors anymore, as they had turned 18 years old while waiting, or because the Migration Agency reassessed their initially stated age after a medical age assessment.<sup>137</sup> Single male adults from Afghanistan are much less likely to receive protection than unaccompanied minors,

hence the procedural delay reduced the chances of young Afghans to be granted a protection status. In 2019, the vast majority of old cases from 2015 were no longer in the system, which also explains why the overall protection rate for Afghans increased slightly again.

FIGURE 7 Number and types of positive decisions and protection rate (first instance) for applicants from Afghanistan, 2010-2019



Source: Eurostat, "First instance decisions on applications by citizenship, age and sex Annual aggregated data (rounded)", migr\_asydcfsta, last update 1 September 2020, extracted 17 December 2020.

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137 Bernd Parusel, "Lessons from Sweden: How Not to Solve an Asylum Crisis", *The Globe Post*, 9 May 2019.

TABLE 5 Number of asylum decisions, types of positive decisions and protection rate (first instance) for applicants from Afghanistan, 2010-2019

YEAR	TOTAL DECISIONS	TOTAL POSITIVE DECISIONS	% POSITIVE DECISIONS	REFUGEE STATUS	SUBSIDIARY PROTECTION	HUMANITARIAN STATUS
2010	1 790	1 025	57.3%	145	735	145
2011	3 815	2 555	67.0%	375	1 635	540
2012	4 190	2 535	60.5%	775	1 185	575
2013	2 810	1 995	71.0%	810	810	375
2014	1 970	1 460	74.1%	620	340	500
2015	2 370	1 075	45.4%	380	245	445
2016	9 155	3 420	37.4%	1 420	880	1 120
2017	25 155	9 325	37.1%	4 610	4 105	615
2018	7 245	2 300	31.7%	1 420	715	170
2019	1 060	400	37.7%	280	55	60

Source: Eurostat, "First instance decisions on applications by citizenship, age and sex Annual aggregated data (rounded)", migr\_asycfst, last update 1 September 2020, extracted 17 December 2020.

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## ii. Challenges regarding protection status determination

As mentioned earlier, the asylum decisions of the Swedish Migration Agency are relatively seldom overturned by courts, but the overturn rate increased as a result of the crisis situation in 2015. Generally, the decision-making of the Agency is often subject to public criticism as the media time and again report about individuals who have received decisions that might seem unfair. A major debate has been going on regarding the security situation in Afghanistan and the fact that the Migration Agency considered parts of this country as safe enough for certain groups to return to. Civil society groups and humanitarian organisations have therefore been campaigning for a different assessment of the security situation in Afghanistan and appealed to the Swedish government to stop forced returns.<sup>138</sup> The press has also noted

that the likelihood of Afghan nationals to receive protection in Sweden is lower than in other EU countries.<sup>139</sup> Public criticism has also been raised regarding the correct assessment of asylum claims based on gender, sexual orientation, or religious converts.

As regards status determination in more general terms, refugee support groups have criticised Sweden for a too narrow, or too strict interpretation of refugee status, arguing that there are many cases in which asylum seekers are granted subsidiary protection where the grounds for refugee status could be fulfilled.<sup>140</sup> Law research has in principle confirmed this.<sup>141</sup> Refugee status is a stronger status than subsidiary protection, but traditionally, the status granted did not in practice matter very much for the respective individuals in Sweden as there were no major differences between the legal consequences and entitlements

138 Röda Korset, "Nytt ställningstagande från Svenska Röda Korset om tvångsutvisningar till Afghanistan", November 2017, <https://www.redcross.se/press-och-opinion/roda-korset-tycker2/migration/nytt-stallningstagande-fran-svenska-roda-korset-om-tvangsutvisningar-till-afghanistan/>.

139 Stefan Wahlberg, "Mellan 0,5 och 91,7 procent av afghanerna beviljas asyl - beroende på i vilket EU-land de ansöker", *Dagens Juridik*, 21 November 2017, <http://www.dagensjuridik.se/2017/11/mellan-05-och-917-procent-av-afghanerna-beviljas-asyl-beroende-pa-i-vilket-eu-land-de-ansoke>.

140 Alexandra Segenstedt / Rebecca Stern, *Vad krävs för att få skydd?* (Svenska Röda Korset, Stockholm, 2011).

141 Rebecca Stern, "Hur bedöms ett skyddsbehov? Om gränsdragning, konsekvens och förutsägbarhet i svensk asylpraxis" (*Svensk Juristtidning*, Vol. 3, 2012), 282–299.

resulting from these respective statuses. It was therefore not important for them whether they received refugee status or subsidiary protection. For example, Sweden generally issued permanent residence permits to beneficiaries of protection, irrespective of the ground that protection was based on. The temporary law that was adopted in 2016 changed this, however. Refugees are initially issued a residence permit for three years, whereas subsidiary protection beneficiaries only receive permits for 13 months. As opposed to refugees, subsidiary protection beneficiaries were excluded from the right to family reunification between July 2016 and July 2019.<sup>142</sup> Hence the ground on which protection is based has made a major difference since the adoption of the temporary law in 2016.

Meanwhile, research has shown that there are differences among the EU Member States regarding the statuses granted to persons found to be in need of protection. For the creation of a Common European Asylum System, in which the chances of asylum applicants to receive protection should be the same or at least similar regardless of where in the EU an asylum decision is made, this is a major challenge. For example, a number of Member States, especially Ireland, Greece, Italy, Lithuania, Luxembourg, Austria and the United Kingdom almost only adjudicated refugee status when they granted asylum applicants from Syria protection in 2016. By way of contrast, the Czech Republic, Spain, Cyprus, Latvia, Hungary, Malta and Sweden almost exclusively granted Syrians subsidiary protection. Not even among the top five receiving countries in the EU of Syrians, which were Germany, Sweden, Austria, the Netherlands and Belgium (in that order), there seems to be agreement on the legal bases of protection granted. In 2016, Austria granted refugee status in almost 95 percent of their Syrian cases, followed by Belgium (75 percent), Germany (58 percent) and the Netherlands (52 percent). By contrast Sweden had a 94 percent share of subsidiary protection.<sup>143</sup>

### iii. Quality of adjudication – internal reviews and needed reforms

The Swedish Migration Agency regularly conducts internal reviews of the quality of its asylum decisions. The necessity to do so arises from the Swedish government's instruction to the Migration Agency, which states that the Agency shall have a predictable and uniform decision-making of high legal quality. Quality reviews can have a thematic focus and/or a regional approach, which means that the performance of the different administrative regions of the Agency is compared. A comprehensive analysis report for 2017, covering 401 randomly selected asylum decisions taken between January and 25 September 2017, found that the decisions whether or not to grant protection were correct in 86 percent of all 401 cases. According to the review team, ten percent of the decisions were debateable, and four percent were wrong. These percentages relate to both positive and negative decisions.

The review team came to the conclusion that the examination of asylum cases still needed to be improved. The most serious deficits that were found relate to insufficient investigations into the respective individuals' grounds for protection. The reasons behind these quality deficits are not entirely clear, but the strong external pressures on the Migration Agency, and from the hierarchy of the Agency on its staff, to speed up its decision-making to cope with the effects of the asylum reception crisis in 2015, could have played a role. As there were high expectations on the Agency to decide quickly, the quality of asylum examinations suffered. Another factor is that the Migration Agency was unable to provide all new employees sufficient training when the number of employees was quickly expanded in response to the extraordinary refugee situation in 2015–2016. As mentioned earlier in this study, the Agency recruited a huge number of new, often inexperienced staff, while more experienced caseworkers and decisions-makers moved on to other positions. Within newly established or expanded asylum examination units, staff were not always sufficiently

142 In July 2019, the temporary restrictive law of 2016 was prolonged until 2021, but beneficiaries of subsidiary protection were allowed to reunite with family members again, under the same conditions as persons with refugee status.

143 Parusel and Schneider (2017), 110.

stress resistant, and the hierarchy of the Agency was at times more concerned with the quantitative output of asylum units than with the legal quality of the decisions taken.<sup>144</sup> An aggravating factor was certainly the coming into effect of the temporary law on restrictions to the right to receive a residence permit in Sweden, in July 2016. This law increased the complexity of the legal framework for protection, as caseworkers now had to apply both the standard rules of the Aliens Act and the rules of the temporary law, depending on when the respective asylum applicants had arrived in Sweden. This increased the need for knowledge on the various legal grounds for protection. Overall, the protection-related legal framework has certainly become more complicated since 2016.<sup>145</sup>

The internal quality report also stated that there were certain variations in the quality of decisions between the different administrative regions of the Migration Agency. In particular, the administrative region “North” showed worse results than the remaining regions (Stockholm, “Centre”, “South” and “West”), which can be related to difficulties in the Northernmost parts of Sweden to recruit suitable caseworkers and decision-makers.<sup>146</sup>

Overall, however, the quality report for 2017 showed significantly better results as the same report for 2016, which is an expected result as the pressures on the Agency to make quick decisions gradually decreased and quality-related work received more attention again.

An internal quality report for 2018 found that 90 percent of a sample of 400 asylum decisions that were taken that year were correct, which points to an improvement compared to 2016 and 2017.<sup>147</sup>

144 Migrationsverket, *Nationell kvalitetsuppföljning med regionalt fokus – analysrapport asylärenden* (2017), 19.

145 Telephone conversation with specialist at the Migration Agency's legal department (25 May 2018).

146 Migrationsverket, *Nationell kvalitetsuppföljning med regionalt fokus – analysrapport asylärenden* (2017), 20-21.

147 Migrationsverket, *Årsredovisning 2018* (2019), 69. No information is available for 2019 or 2020.

## IV. Conclusions

Reflecting on the various stages and elements of the asylum system in Sweden, as analysed in this Case Study, the picture that emerges is twofold.

On the one hand, Sweden has a long tradition as a receiving country and has put ambitious systems in place to handle the arrival of people in need of protection. During the extraordinary inflow of asylum applicants in autumn 2015, which can be seen as a serious test to the – until then – positive Swedish approach on accommodating refugees, there was a great willingness to manage the situation as well as possible. This is true, to give some example, for the Migration Agency, which tried hard to register all applicants and provide them with housing as swiftly as possible; for the Swedish government and Parliament, which coordinated inter-agency emergency measures and made more funding available on short notice; many municipalities; and civil society, which became active to a much greater degree than earlier by, for example, providing advice to newcomers and hosting unaccompanied minors in foster families. To put it simply, the various state and non-state actors in the field had an ambition to make a positive impact – based on the duties and tasks assigned to them by the state; national, international and European law; and private engagement and commitment. The aim to handle asylum responsibly was very visible throughout.

On the other hand, the increasing number of asylum seekers since 2014, and especially in 2015, has also represented a major shock to many parts of Swedish society, and this is still felt at

the time of writing, five years after the crisis. The situation created pressures, stress and uncertainties in many public institutions, not least the Migration Agency, exposed weaknesses, and triggered a radical policy turnaround. The effects of this shock are likely to continue to affect the policy realm, public administration, as well as the public discourse on migration, integration and asylum for quite some time. While Sweden has long had a generally positive discourse in this area, highlighting the positive potentials and benefits of international migration and the granting of protection, policy changes are now – with very few exceptions – almost exclusively directed towards making Sweden less attractive as a refugee-receiving country, restricting inflows, and increasing returns. “Regulated migration” and “safeguarding the right to asylum” are some of the key words used in this context. They essentially mean that Sweden should be more selective with regard to admission and protection, and that the country has done its fair share in terms of moral duties to admit refugees.

Summarising the various sections of this Chapter, it turns out that the different stages of asylum procedures in Sweden (registration, reception, procedures and adjudication) are closely interlinked, and they all fall – almost exclusively – within the mandate of one single state agency, the Swedish Migration Agency, although other actors are involved as well. This also means that problems or challenges in one stage often affect all subsequent stages as well. If the registration system is under stress due to unusually many people applying for

asylum, it is difficult to arrange accommodation and provide reception services, asylum procedures take more time, and the quality of asylum decision-making can suffer due to time constraints, political pressures and staff shortages. At the same time, the bundling of tasks and responsibilities within a large agency makes it possible to direct resources and staff to where they are most needed, and to manage asylum as a chain that starts with a person entering Sweden and ends with either settlement or return.

The reception and accommodation of asylum seekers clearly emerged as a main challenge when the number of asylum seekers increased in 2014–2015. While the current system of contracting and procurement of housing guaranteed a high level of flexibility, as additional spaces can be rented and abandoned again when they are no longer required, the structural housing shortages in many parts of Sweden have represented a major obstacle, not only in 2015 and 2016 but also earlier as well as later. This problem is hard to overcome. While a state agency as the Migration Agency could in principle be given the possibility to acquire and maintain its own reception facilities, including excess capacities for emergency situations, extra spending for such measures would be politically hard to justify if it turns out that these buffer capacities are not needed. A sensible balance is hard to find, but progress in this regard is in fact required if chaotic situations as the reception crisis in 2015 are to be avoided in the future. Housing shortages also affect the settlement and integration of those asylum seekers that are granted protection.

As concerns asylum procedures, the study found indications that there can be conflicts between speed and quality, especially in situations where pressures are high as a result of rising numbers of asylum applicants. As the Section on Asylum Procedures has shown, the Migration Agency has rolled out a new asylum process, which entails that asylum cases are now subdivided into different tracks, with the aims of allocating resources more efficiently and ultimately making the procedure more effective and reliable. Undoubtedly,

speedier and more tailor-made procedures that lead to shorter processing times are a positive ambition. Quick and legally certain procedures are to be welcomed both with regard to applicants with unfounded claims and for those who indeed need protection. Long procedures can act as an incentive for people without grounds for protection to access asylum procedures and remain in the country as long as they can, and for those who need asylum, lengthy processes can lead to prolonged inactivity and difficulties to establish themselves in society. A careful approach is needed, however, as the situation in 2015 and onwards has demonstrated that the pressure on the Migration Agency to cope as quickly as possible with a huge, accumulated workload led to quality deficits. Problems have been revealed by the media, but also in internal follow-ups within the Migration Agency. The need to recruit a lot of new staff on short notice, and equally the need to downsize operations as soon as the situation was better controlled again, has undoubtedly had a negative effect on the quality of the examination of asylum claims, the motivation of the Agency's staff, and adjudication of protection. Again, however, it is difficult to argue for (expensive) buffer or excess capacities in terms of staff and resources if they turn out not to be needed.

Regarding asylum adjudication, systematic quality follow-ups appear useful and needed. This is not only true for first-instance decisions by the Migration Agency, but also regarding the appeals system, which is not often studied.<sup>148</sup> The fact that asylum adjudication in Sweden deviates from the practices in some other experienced countries of destination in the EU by granting subsidiary protection to a greater degree, and refugee status to a lesser extent than others, should be scrutinised. Formerly, practically all people who were found to be in need of protection were given permanent residence permits and a right to family reunification irrespective of the ground for protection. Therefore, the question whether an individual was granted protection as a refugee, subsidiary protection or a national humanitarian status, did not matter very much in practice, obviating the need for close scrutiny of asylum decisions in

148 There are some recent studies, however, such as Livia Johannesson, *In Courts We Trust: Administrative Justice in Swedish Migration Courts* (Department of Political Science, Stockholm University, 2017).

terms of the status granted. However, the temporary law of 2016 has fundamentally changed the situation as there are now distinct differences between refugee status and subsidiary protection, which directly affect people's lives. The proposals from the 2019–2020 parliamentary commission on the future migration policy in Sweden suggest that differences will continue to apply even after the temporary restrictive law expires in summer 2021. Studying asylum adjudication has therefore become even more important, not only with regard to whether or not protection is granted, but also the form that protection takes. As the study has shown, it is true that relatively few negative asylum decisions are overturned in courts, but the question remains whether this mainly indicates a good quality of decisions at first instance (by the Migration Agency) or also insufficient capacity at the Migration Courts to carefully review and question these.

As concerns policies and public debates, the goal of the Swedish government seems to be to keep the number of incoming asylum applicants at the level of 2017–2018 or below that. The events of 2015 are today generally not so much discussed as an achievement, or an exemplary commitment to refugee protection, but rather as a failure to keep migration under control, as a collapse, or a historical aberration that cannot be allowed to repeat itself in the future. In other words, although the Migration Agency in 2017 adopted a contingency plan for rapid increases in the number of asylum seekers, Sweden is preparing itself to keep asylum-related inflows under control and within manageable quantitative margins rather than to be better equipped to cope with future events similar to those of 2015. But, as the refugee situation in 2015 was unforeseen until it actually started to manifest itself, this approach seems risky.

Finally, the temporary restrictive law of 2016 has certainly made Sweden less attractive as a destination for asylum seekers, not least by replacing permanent residence permits for those granted protection with temporary ones and restricting family reunification rights. However, this also created new challenges and risks. For example, restricted family reunification encourages family members abroad of refugees and other beneficiaries of protection residing in Sweden to undertake

dangerous irregular journeys to Europe and Sweden if they can no longer apply for a residence permit that enables legal travel.

Furthermore, the temporary law significantly reduced the possibility of people who do not qualify for refugee status or subsidiary protection to receive a right to stay on humanitarian grounds. As far fewer asylum seekers than before can receive a residence permit on such grounds, a greater share of people is now rejected and brought into the return system, which has already been under pressure for a long time. In addition, changes to the Reception of Asylum Seekers Act led to rejected applicants losing their right to accommodation (and daily allowances), which has made it more difficult for the Swedish Police to know the whereabouts of the people they are supposed to return. As the return system is already often criticised as ineffective, Sweden runs the risk that restrictions to protection, new disincentives to enter and stay in Sweden as well as additional enforcement measures are overemphasised in a situation that seems to call for more pragmatism and realism. Moreover, the mismatch between the number of rejected asylum seekers and those who actually leave the country creates political tensions and risks making the asylum system appear inconsequential. The parliamentary commission on Sweden's future migration policy has proposed that Sweden should return to a somewhat more generous approach regarding residence permits on humanitarian grounds. This could improve the situation because relatively fewer people would be channelled from the asylum system into the return system, and the total protection rate would increase.

Overall, however, the proposals of the commission suggest that Sweden will stick to a more restrictive set of rules on asylum and family reunification than before the coming into force of the temporary law of 2016. In April 2021, the government transformed these proposals – with some changes – into a legislative bill, which is expected to be adopted by Parliament and to enter into force in July 2021. How the new law will affect the operations of the Swedish Migration Agency and the integration of asylum seekers who are granted protection in Sweden as well as their family members remains to be seen.



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