

# Country Report: Portugal



2018  
Update



## Acknowledgements & Methodology

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

The information in this report draws on the experience of CPR staff, gathered *inter alia* through research, advocacy, legal assistance and reception services, as well as data and information shared by national authorities, civil society organisations and other stakeholders consisting of SEF, ISS, ACM, ANQEP, CRESCER, CSTAF, DGE, DGESTE, IEFP, OTSH, SCML, UNICEF and UNHCR. The views expressed in this report are those of the authors and do not in any way represent the views of the contributing organisations.

The information in this report is up-to-date as of 31 December 2018, unless otherwise stated.

## The Asylum Information Database (AIDA)

The Asylum Information Database (AIDA) is coordinated by the European Council on Refugees and Exiles (ECRE). It aims to provide up-to date information on asylum practice in 23 countries. This includes 20 EU Member States (AT, BE, BG, CY, DE, ES, FR, GR, HR, HU, IE, IT, MT, NL, PL, PT, RO, SE, SI, UK) and 3 non-EU countries (Serbia, Switzerland, Turkey) which is easily accessible to the media, researchers, advocates, legal practitioners and the general public through the dedicated website [www.asylumineurope.org](http://www.asylumineurope.org). Furthermore the project seeks to promote the implementation and transposition of EU asylum legislation reflecting the highest possible standards of protection in line with international refugee and human rights law and based on best practice.



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## Glossary & List of Abbreviations

<b>ACM</b>	High Commission for Migration   Alto Comissariado para as Migrações
<b>AGD</b>	Age, Gender and Diversity   Idade, Género e Diversidade
<b>ACSS</b>	Central Administration of the Health System   Administração Central do Sistema de Saúde
<b>ANMP</b>	National Association of Portuguese Municipalities   Associação Nacional de Municípios Portugueses
<b>ANQEP</b>	National Agency for Qualification and Vocational Education   Agência Nacional para a Qualificação e o Ensino Profissional
<b>APP</b>	Family Planning Association   Associação para o Planeamento da Família
<b>APIC</b>	Portuguese Association of Conference Interpreters   Associação Portuguesa de Intérpretes de Conferência
<b>CA</b>	Steering Commission   Comissão de Acompanhamento
<b>CACR</b>	Refugee Children Reception Centre   Centro de Acolhimento para Crianças Refugiadas
<b>CAP</b>	Anti-Trafficking Reception and Protection Centre   Centro de Acolhimento e Proteção para Vítimas de Tráfico
<b>CAR</b>	Refugee Reception Centre   Centro de Acolhimento para Refugiados
<b>CATR</b>	Temporary Reception Centre for Refugees   Centro de Acolhimento Temporário para Refugiados
<b>CAVITOP</b>	Centre for the Support of Torture Victims in Portugal   Centro de Apoio às Vítimas de Tortura em Portugal
<b>CHPL</b>	Psychiatric Hospital Centre of Lisbon   Centro Hospitalar Psiquiátrico de Lisboa
<b>CIT</b>	Temporary Installation Centre   Centro de Instalação Temporária
<b>CJEU</b>	Court of Justice of the European Union
<b>CNAIM/CLAIM</b>	National and Local Support Centres for Migrant Integration   Centros Nacionais e Locais de Apoio à Integração de Migrantes
<b>CNIS</b>	National Confederation of Solidarity Institutions   Confederação Nacional das Instituições de Solidariedade
<b>CPR</b>	Portuguese Refugee Council   Conselho Português para os Refugiados
<b>CRC</b>	Central Registrations Service   Conservatória dos Registos Centrais
<b>CSTAF</b>	High Council of Administrative and Fiscal Courts   Conselho Superior dos Tribunais Administrativos e Fiscais
<b>CVP</b>	Portuguese Red Cross   Cruz Vermelha Portuguesa
<b>DGAL</b>	Directorate General of Local Municipalities   Direcção-Geral das Autarquias Locais
<b>DGE</b>	Directorate General for Education   Direcção-Geral da Educação
<b>DGEE</b>	Directorate General for Schools and School Clusters   Direcção-Geral dos Estabelecimentos Escolares
<b>DGS</b>	Directorate General for Health   Direcção-Geral da Saúde
<b>DRC</b>	Democratic Republic of Congo
<b>EASO</b>	European Asylum Support Office
<b>ECHR</b>	European Convention on Human Rights
<b>ECRI</b>	European Commission Against Racism and Intolerance

<b>EctHR</b>	European Court of Human Rights
<b>EDAL</b>	European Database of Asylum Law
<b>EPVA</b>	Teams for the Prevention of Violence between Adults   Equipas para a Prevenção da Violência entre Adultos
<b>GAR</b>	Asylum and Refugees Department   Gabinete de Asilo e Refugiados
<b>GIP</b>	Professional Insertion Office   Gabinete de Inserção Profissional
<b>GRETA</b>	Group of Experts on Action Against Trafficking in Human Beings
<b>GTO</b>	Technical Operative Group   Grupo Técnico Operativo
<b>ICRC</b>	International Committee of the Red Cross
<b>IEFP</b>	Employment and Vocational Training Institute   Instituto do Emprego e Formação Profissional
<b>IGAI</b>	General Inspectorate of Internal Administration   Inspecção Geral da Administração Interna
<b>IHRU</b>	Institute for Housing and Urban Rehabilitation   Instituto da Habitação e da Reabilitação Urbana
<b>INE</b>	National Institute for Statistics   Instituto Nacional de Estatística
<b>INMLCF</b>	National Institute of Legal Medicine and Forensic Science   Instituto Nacional de Medicina Legal e Ciências Forenses
<b>IOM</b>	International Organisation for Migration
<b>ISS</b>	Institute of Social Security   Instituto da Segurança Social
<b>JRS</b>	Jesuit Refugee Service
<b>MAI</b>	Ministry of Home Affairs   Ministério da Administração Interna
<b>MdM</b>	Doctors of the World   Médicos do Mundo
<b>MoU</b>	Memorandum of Understanding
<b>NISS</b>	Social Security Identification Number   Número de Identificação da Segurança Social
<b>OTSH</b>	Observatory on Trafficking in Human Beings   Observatório do Tráfico de Seres Humanos
<b>PAR</b>	Refugee reception platform   Plataforma de Apoio aos Refugiados
<b>RSI</b>	Social Insertion Revenue   Rendimento Social de Inserção
<b>SCML</b>	Santa Casa da Misericórdia de Lisboa
<b>SEF</b>	Immigration and Borders Service   Serviço de Estrangeiros e Fronteiras
<b>SGMAI</b>	General Secretariat of the Ministry of Home Affairs   Secretaria Geral do Ministério da Administração Interna
<b>STA</b>	Supreme Administrative Court   Supremo Tribunal Administrativo
<b>SNS</b>	National Health Service   Serviço Nacional de Saúde
<b>TAC</b>	Administrative Circle Court   Tribunal Administrativo de Círculo
<b>TAFS</b>	Administrative and Fiscal Court of Sintra   Tribunal Administrativo e Fiscal de Sintra,
<b>TCA</b>	Central Administrative Court   Tribunal Central Administrativo
<b>UCAT</b>	Antiterrorism Coordination Unit   Unidade de Coordenação Antiterrorismo
<b>UHSA</b>	Unidade Habitacional de Santo António
<b>UNHCR</b>	United Nations High Commissioner for Refugees
<b>UNICEF</b>	United Nations Children's Fund

## Statistics

### Overview of statistical practice

The Immigration and Borders Service (SEF) publishes a yearly statistical report providing information on asylum applications: number, nationalities, place of application, gender, unaccompanied children, positive first instance decisions, relocation.<sup>1</sup>

### Applications and granting of protection status at first instance: 2018

	Applicants in 2018	Pending at end 2018	Refugee status	Subsidiary protection	Rejection	Refugee rate	Sub. Prot. rate	Rejection rate
Total	1,285	90	220	405	415	21.2%	38.9%	39.9%

Breakdown by top ten countries of origin of the total numbers

Angola	225	25	0	0	65	0%	0%	65%
Ukraine	135	15	0	50	20	0%	71.4%	28.6%
DRC	130	5	0	5	100	0%	4.8%	95.2%
Guinea	70	5	0	0	20	0%	0%	100%
Pakistan	50	5	0	5	20	0%	20%	80%
Guinea-Bissau	50	5	0	0	10	0%	0%	100%
Eritrea	45	0	55	0	0	100%	0%	0%
Venezuela	40	0	0	0	10	0%	0%	100%
Somalia	40	5	5	0	0	100%	0%	0%
Comoros	25	0	0	0	25	0%	0%	100%
Iraq	15	0	20	85	5	18.2%	77.3%	4.5%
Syria	10	0	65	230	0	22%	78%	0%
Afghanistan	5	5	0	0	0	-	-	-

Source: Eurostat. Rejection includes inadmissibility decisions.

According to SEF statistics for 2018, there were 1,270 applicants, and SEF took 226 decisions granting refugee status and 405 granting subsidiary protection.

<sup>1</sup> SEF, *Yearly Statistical Reports*, available at: <http://sefstat.sef.pt/relatorios.aspx>.

### Gender/age breakdown of the total number of applicants: 2018

	Number	Percentage
<b>Total number of applicants</b>	1,285	-
Men	840	65.4%
Women	445	34.6%
Children	300	23.3%
Unaccompanied children	40	3.1%

Source: Eurostat.

### Comparison between first instance and appeal decision rates: 2018

Overall statistics on appeals decisions are not available.

According to the information provided by the High Council of Administrative and Fiscal Courts (*Conselho Superior dos Tribunais Administrativos e Fiscais*, CSTAF), in 2018 the Administrative Circle Court (*Tribunal Administrativo de Círculo*, TAC) of Lisbon continued to be the only Court with specific registration string and therefore statistics pertaining to asylum-related appeals. The other first instance administrative courts do not have such a registration string and higher Courts do not collect autonomous data on asylum-related processes. Furthermore, TAC Lisbon was (by far) the first instance court with the most abundant asylum-related case law in Portugal.

TAC Lisbon registered a total of 374 appeals of negative decisions in asylum procedures. The most representative nationalities among appellants included the Democratic Republic of Congo (65), Angola (44), Guinea (24), Cameroon (23), Guinea-Bissau (21), Comoros (19), Pakistan (17) and Ukraine (13). Nationalities such as Afghanistan (4) and Iraq (3) remained marginal in the overall number of registered judicial appeals. There were no appeals from asylum seekers registered as Syrians.

In 2018 the TAC of Lisbon rendered a total of 363 asylum-related appeal decisions, but the statistical information shared does not include a breakdown per type of asylum procedure. Of these, 49 were in favour of the applicant (data is not available on whether these were decisions granting international protection or annulling a first instance decision and ordering the authorities to reassess the application). Additionally, there were 293 decisions ruling against the appellants and 21 rulings of dismissal of the appeal on technical grounds.<sup>2</sup>

<sup>2</sup> These relate to various legal grounds such as the lack of legal capacity of appellants, *lis pendens*, *res judicata*, etc.

The overall success rate of appeals (all nationalities and procedures included) stood roughly at 13.5%. In the case of the Democratic Republic of Congo, the most representative nationality, the success rate of appeals was around 18.5%. With few exceptions, the success rate for other nationalities was equally low. For the most representative nationalities at appeals stage, the success rates were as follows: Angola (11.6%); Guinea (25%); Cameroon (13.6%); Guinea-Bissau (5%); Comoros (0%); Pakistan (6.7%) and Ukraine (38.5%).

While neither the information provided by SEF nor CSTAF (regarding the TAC of Lisbon) includes a breakdown allowing for clear-cut statistics on decision rates per type of procedure, according to the information available to CPR the main type of asylum procedures used in 2018 per country of origin to reject asylum applications at first instance consisted of accelerated procedures in the case of the Democratic Republic of Congo (80 out of a total 100 rejections), Angola (49 out of 49), Cameroon (13 out of 16); Comoros (24 out of 24), Pakistan (16 out of 21) and Ukraine (15 out of 24); and Dublin procedures in the case of Guinea (24 out of 36) and Guinea-Bissau (29 out of 37).

## Overview of the legal framework

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

Title (EN)	Original Title (PT)	Abbreviation	Web Link
Act n. 27/2008 of 30 June 2008 establishing the conditions for granting asylum or subsidiary protection, transposing Directives 2004/83/EC and 2005/85/EC  <i>Amended by:</i> Act n. 26/2014 of 5 May 2014 amending Act n. 27/2008, transposing Directives 2011/95, 2013/32/EU and 2013/33/EU	Lei n.º 27/2008 de 30 de junho que estabelece as condições e procedimentos de concessão de asilo ou protecção subsidiária e os estatutos de requerente de asilo, de refugiado e de protecção subsidiária, transpondo para a ordem jurídica interna as Directivas n.os 2004/83/CE, do Conselho, de 29 de Abril, e 2005/85/CE, do Conselho, de 1 de Dezembro  Lei n.º 26/2014 de 5 de maio que procede à primeira alteração à Lei n.º 27/2008, de 30 de junho, que estabelece as condições e procedimentos de concessão de asilo ou protecção subsidiária e os estatutos de requerente de asilo, de refugiado e de protecção subsidiária, transpondo as Directivas n.os 2011/95/UE, do Parlamento Europeu e do Conselho, de 13 de dezembro, 2013/32/UE, do Parlamento Europeu e do Conselho, de 26 de junho, e 2013/33/UE, do Parlamento Europeu e do Conselho, de 26 de junho	Asylum Act	<a href="http://bit.ly/2npMI5T">http://bit.ly/2npMI5T</a> (PT)  <a href="http://bit.ly/1jd3hcG">http://bit.ly/1jd3hcG</a> (PT) <a href="http://bit.ly/2AfJ7sS">http://bit.ly/2AfJ7sS</a> (EN)
Act n. 23/2007 of 4 July 2007 on the legal status of entry, residence, departure and removal of foreigners from the national territory	Lei n.º 23/2007, de 4 de julho, que aprova o regime jurídico de entrada, permanência, saída e afastamento de estrangeiros do território nacional	Aliens Act	<a href="https://goo.gl/9KBsS1">https://goo.gl/9KBsS1</a> (PT)
Act n. 15/2002 of 22 February 2002 approving the Code of Procedure before the Administrative Tribunals	Lei n.º 15/2002 de 22 de fevereiro que aprova o Código de Processo nos Tribunais Administrativos	Administrative Court Procedure Code	<a href="http://bit.ly/2yekj3x">http://bit.ly/2yekj3x</a> (PT)
Act n. 13/2003 of 21 May 2003 establishing the Social Insertion Revenue	Lei n.º 13/2003, de 21 de maio que cria o rendimento social de inserção	RSI Act	<a href="http://bit.ly/2zyQuOc">http://bit.ly/2zyQuOc</a> (PT)
Act n. 220/2006 of 3 November 2006 establishing the legal framework for the social protection in case	Lei n.º 220/2006, de 3 de Novembro, Regime jurídico de protecção social da eventualidade de desemprego dos trabalhadores por conta de outrem		<a href="https://bit.ly/2JzdoHt">https://bit.ly/2JzdoHt</a> (PT)

of unemployment of persons working for an employer			
Decree-Law 176/2003 of 2 August 2003 establishing the family allowance to children and youth and defining protection in case of family expenses in the context of the family protection subsystem	Decreto-Lei n.º 176/2003, de 2 de Agosto, que Institui o abono de família para crianças e jovens e define a protecção na eventualidade de encargos familiares no âmbito do subsistema de protecção familiar		<a href="https://bit.ly/2IDrmGX">https://bit.ly/2IDrmGX</a> (PT)
Act n. 35/2014 of 20 June 2014 governing employment in public functions	Lei n.º 35/2014 de 20 de junho que aprova a Lei Geral do Trabalho em Funções Públicas		<a href="http://bit.ly/2B27JEC">http://bit.ly/2B27JEC</a> (PT)
Act n. 7/2009 of 12 February 2009 approving the Labour Code	Lei n.º 7/2009 de 12 de fevereiro que aprova a revisão do Código do Trabalho	Labour Code	<a href="http://goo.gl/8gcMW6">http://goo.gl/8gcMW6</a> (PT)
Act n. 37/81 of 3 October 1981 approving the Act on Nationality	Lei n.º 37/81 de 3 de outubro de 1981 que aprova a Lei da Nacionalidade	Nationality Act	<a href="http://bit.ly/2jukiBm">http://bit.ly/2jukiBm</a> (PT)
Act n. 81/2014 of 19 December 2014	Lei n.º 81/2014 de 19 de dezembro alterada pela Lei n.º 32/2016 de 24 de Agosto que estabelece o novo regime do arrendamento apoiado para habitação	Public Leasing Act	<a href="http://bit.ly/2ndGox8">http://bit.ly/2ndGox8</a> (PT)
Amended by: Act n. 32/2016 of 24 August 2016	Lei n.º 32/2016 de 24 de agosto		

#### Main implementing decrees, guidelines and regulations on asylum procedures, reception conditions, detention and content of international protection

Title (EN)	Original Title (PT)	Abbreviation	Web Link
Decree-Law n. 252/2000 of 16 October 2000 Organisational structure of the Immigration and Borders Service	Decreto-Lei n.º 252/2000 de 16 de outubro que aprova a estrutura orgânica e define as atribuições do Serviço de Estrangeiros e Fronteiras	SEF Structure Decree-Law	<a href="http://goo.gl/F7KoBY">http://goo.gl/F7KoBY</a> (PT)
Decree-Law n. 4/2015 of 7 January 2015 - Code of Administrative Procedure	Decreto-Lei n.º 4/2015 de 7 de janeiro que aprova o novo Código do Procedimento Administrativo	Administrative Procedure Code	<a href="http://bit.ly/2mmF8Hw">http://bit.ly/2mmF8Hw</a> (PT)
Act n. 147/99 of 1 September 1999 - Children and Youths at Risk Protection Act	Lei n.º 147/99, de 01 de Setembro – Lei de Protecção de Crianças e Jovens em Perigo		<a href="http://goo.gl/7G71tX">http://goo.gl/7G71tX</a> (PT)
Act n. 141/2015 of 8 September 2015 - General Regime of Civil Guardianship Process	Lei n.º 141/2015, de 08 de Setembro – Regime Geral do Processo Tutelar Cível		<a href="https://goo.gl/agJ1yj">https://goo.gl/agJ1yj</a> (PT)

Decree-Law n. 464/80 of 13 October 1980 establishing new conditions of access and entitlement to social pension	Decreto-Lei n.º 464/80 de 13 de outubro que estabelece em novos moldes as condições de acesso e de atribuição da pensão social		<a href="http://bit.ly/2yqCxIG">http://bit.ly/2yqCxIG</a> (PT)
Ministerial Order 23/2018 of 18 January 2018 approving the annual revaluation of pensions and other social allowances for 2018	Portaria n.º 23/2018 de 18 de janeiro que procede à atualização anual das pensões e de outras prestações sociais, para o ano de 2018		<a href="http://bit.ly/2FJ2YGC">http://bit.ly/2FJ2YGC</a> (PT)
Ministerial Order 257/2012 of 27 August 2012 implementing Law 13/2013 on the Social Insertion Revenue (RSI) and determining the value of the RSI	Portaria n.º 257/2012, de 27 de Agosto que estabelece as normas de execução da Lei n.º 13/2003, de 21 de maio, que institui o rendimento social de inserção, e procede à fixação do valor do rendimento social de inserção.		<a href="http://goo.gl/kpb5mR">http://goo.gl/kpb5mR</a> (PT)
Ministerial Order 21/2018 of 18 January 2018 approving the annual revaluation of the social assistance index value	Portaria n.º 21/2018, de 18 de Janeiro que procede à atualização anual do valor do indexante dos apoios sociais (IAS)		<a href="https://bit.ly/2sEpoQB">https://bit.ly/2sEpoQB</a> (PT)
Decree Law n. 113/2011 of 29 November 2011 regulating access to National Health Service in respect to co-payments and special benefits	Decreto-Lei n.º 113/2011, de 29 de novembro que regula o acesso às prestações do Serviço Nacional de Saúde por parte dos utentes no que respeita ao regime das taxas moderadoras e à aplicação de regimes especiais de benefícios		<a href="http://bit.ly/2iaqtL7">http://bit.ly/2iaqtL7</a> (PT)
Decree-Law n. 227/2005 of 28 December 2005 defining the framework of of granting the recognition of foreign qualifications	Decreto-Lei n.º 227/2005 de 28 de dezembro que define o novo regime de concessão de equivalência de habilitações de sistemas educativos estrangeiros a habilitações do sistema educativo português ao nível dos ensinos básico e secundário		<a href="http://bit.ly/2zd71Ea">http://bit.ly/2zd71Ea</a> (PT)
Decree-Law n. 83/2000 of 11 May 2000 on the new regime for the issuance of passports	Decreto-Lei n.º 83/2000 de 11 de maio que aprova o novo regime legal da concessão e emissão dos passaportes	Travel Documents Order	<a href="http://bit.ly/2AjwA7G">http://bit.ly/2AjwA7G</a> (PT)
Governmental Decree n. 84/2007 of 5 November 2007 regulating Act n. 23/2007 of 4 July 2007 on the legal status of entry, residence, departure and removal of foreigners from the national territory	Decreto Regulamentar n.º 84/2007, de 5 de novembro que regulamenta a Lei n.º 23/2007, de 4 de Julho, que aprova o regime jurídico de entrada, permanência, saída e afastamento de cidadãos estrangeiros de território nacional		<a href="https://goo.gl/Jzaqqw">https://goo.gl/Jzaqqw</a> (PT)
Ministerial Order n. 1334-E/2010, 31 December	Portaria n.º 1334 -E/2010, de 31 de dezembro, que fixa as taxas e demais encargos a cobrar pelos procedimentos administrativos previstos na Lei n.º 23/2007, de 4 de julho,		<a href="http://goo.gl/jWnPVS">http://goo.gl/jWnPVS</a> (PT)

<i>Amended by:</i> Ministerial Order n. 305-A/2012 of 4 October 2014	com as alterações introduzidas pela Lei n.º 29/2012, de 9 de Agosto		
Decision n. 10041-A/2015 of 3 September 2015 establishing the Working Group on the European Agenda on Migration	Despacho n.º 10041-A/2015 que cria um Grupo de Trabalho para a Agenda Europeia para as Migrações	European Agenda on Migration Working Group Order	<a href="http://bit.ly/1KtbCGk">http://bit.ly/1KtbCGk</a> (PT)
Council of Ministers resolution n. 5/2016 of 27 January 2016 assigning the political coordination of the Working Group created by Decision n. 10041-A/2015 of 3 September 2015 to the Deputy Minister	Resolução do Conselho de Ministros n.º 5/2016, de 27 de janeiro que manda no Ministro Adjunto a coordenação política do Grupo de Trabalho constituído pelo Despacho n.º 10041-A/2015, de 31 de agosto, publicado no Diário da República, 2.ª série, n.º 172, de 3 de setembro		<a href="https://goo.gl/nY6AkL">https://goo.gl/nY6AkL</a> (PT)
Parliament Resolution n. 167/17 of 25 July 2017 recommending the Government to publish an evaluation report of the Portuguese reception policy for refugees	Resolução da Assembleia da República n.º 167/2017 que recomenda ao Governo a publicação de um relatório de avaliação da política portuguesa de acolhimento de refugiados		<a href="https://bit.ly/2GdX39b">https://bit.ly/2GdX39b</a> (PT)
Ministerial Order n. 30/2001 of 17 January 2001 establishing the specific modalities of health care in different stages of the asylum procedure	Portaria n.º 30/2001 de 17 de Janeiro que estabelece as modalidades específicas de assistência médica e medicamentosa a prestar nas diferentes fases do procedimento de concessão do direito de asilo, desde a apresentação do respectivo pedido à decisão final que recair sobre o mesmo		<a href="http://bit.ly/2yyIMRL">http://bit.ly/2yyIMRL</a> (PT)
Ministerial Order n. 1042/2008 of 15 September 2008 establishing the terms of access of asylum seekers and their family members to the National Health Service	Portaria n.º 1042/2008 de 15 de setembro que estabelece os termos e as garantias do acesso dos requerentes de asilo e respectivos membros da família ao Serviço Nacional de Saúde		<a href="http://bit.ly/2zywnzF">http://bit.ly/2zywnzF</a> (PT)
Ministerial Order n. 224/2006 of 8 March 2006 approving comparative tables between the Portuguese education system and other education systems	Portaria n.º 224/2006 de 8 de março que aprova as tabelas comparativas entre o sistema de ensino português e outros sistemas de ensino, bem como as tabelas de conversão dos sistemas de classificação correspondentes		<a href="https://bit.ly/2FUHTYE">https://bit.ly/2FUHTYE</a> (PT)
Ministerial Order n. 699/2006 of 12 July 2006 approving comparative tables between the	Portaria n.º 699/2006 de 12 de julho 2006 que aprova as tabelas comparativas entre o sistema de ensino português		<a href="https://bit.ly/2HUjgxh">https://bit.ly/2HUjgxh</a> (PT)

Portuguese education system and other education systems	e outros sistemas de ensino, bem como as tabelas de conversão dos sistemas de classificação correspondentes		
Decree-Law n. 131/95 of 6 June 1995 approving the Civil Registration Code	Decreto-Lei n.º 131/95 de 6 de Junho que aprova o Código do Registo Civil		<a href="http://goo.gl/wQHHx8">http://goo.gl/wQHHx8</a> (PT)
Decree-Law n. 237-A/2006 of 14 December 2006 approving the regulation of the Portuguese nationality	Decreto-Lei n.º 237-A/2006 de 14 de dezembro que aprova o Regulamento da Nacionalidade Portuguesa	Portuguese Nationality Regulation	<a href="http://bit.ly/2neir5o">http://bit.ly/2neir5o</a> (PT)
Ministerial Order n. 176/2014 of 11 September 2014	Portaria n.º 176/2014 de 11 de setembro, que regulamenta a realização da prova do conhecimento da língua portuguesa, prevista na alínea b) do n.º 2 do artigo 25.º do Regulamento da Nacionalidade Portuguesa, aprovado pelo Decreto-Lei n.º 237-A/2006, de 14 de dezembro, na sua atual redação.	Nationality Language Assessment Test Order	<a href="http://bit.ly/2k5N2Ey">http://bit.ly/2k5N2Ey</a> (PT)
Ministerial Order n. 302/2015 of 22 September 2015 Template refugee travel document  <i>Amended by:</i> Ministerial Order n. 412/2015 of 27 November 2015	Portaria n.º 302/2015 de 22 de setembro, Modelo do título de viagem para os cidadãos estrangeiros residentes em Portugal na qualidade de refugiados  Portaria n.º 412/2015 de 27 de novembro	Refugee Travel Document Order	<a href="http://bit.ly/1JmsAOR">http://bit.ly/1JmsAOR</a> (PT)  <a href="http://bit.ly/2ih7QIN">http://bit.ly/2ih7QIN</a> (PT)
Ministerial Order n. 1262/2009 of 15 October 2009 approving the creation of Portuguese language courses for non-native speakers and the rules pertaining to teaching methodologies and certification.  <i>Amended by:</i> Ministerial Order n. 216-B/2012 of 18 July 2012	Portaria n.º 1262/2009 de 15 de outubro alterada pela Portaria 216-B/2012 de 18 de julho que cria os cursos de Português para Falantes de Outras Línguas, assim como as regras a que obedece a sua lecionação e certificação		<a href="https://goo.gl/16V8io">https://goo.gl/16V8io</a> (PT)  <a href="https://goo.gl/NjrrTe">https://goo.gl/NjrrTe</a> (PT)
Regulation n. 84/2018 of 2 February 2018 governing the public leasing of housing from IHRU, IP	Regulamento n.º 84/2018 de 2 de Fevereiro de 2018 de Acesso e Atribuição de Habitações do IHRU, I.P., em Regime de Arrendamento Apoiado		<a href="https://bit.ly/2R682G2">https://bit.ly/2R682G2</a> (PT)

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

The report was previously updated in **March 2018**.

### Asylum procedure

- ❖ **Dublin:** In September 2018, Portugal and Germany signed an administrative arrangement pursuant to Article 36 of the Dublin Regulation. The agreement aims to facilitate returns by introducing non-binding shorter timeframes and providing for group instead of individual transfers. In October 2018, the authorities also announced a bilateral agreement with Greece to implement a pilot relocation process for 100 asylum seekers from Greece to Portugal. The agreement, signed in early 2019, may lead, according to the Ministry of Home Affairs, to the transfer of up to 1,000 applicants for and beneficiaries of international protection.

In 2018, the TAC Lisbon annulled transfer decisions on the basis that, according to its interpretation of either Article 17 of the Asylum Act or Article 5 of the Dublin Regulation, SEF has to inform the applicant and give him or her the opportunity to reply not only to the statements provided during the Dublin interview, but also to a report containing the information that underlies the transfer decision.

In February 2018, the Tribunal Administrativo e Fiscal de Sintra (TAFS) annulled a transfer decision to Hungary on the basis that the available information regarding the functioning of the Hungarian asylum system revealed the existence of valid reasons to believe that there were systemic flaws in the asylum procedure and reception conditions amounting to the threshold of inhuman or degrading treatment (namely due to the systematic detention and acts of violence towards asylum seekers in the country). While CPR is not aware of any case where the Court annulled a transfer decision to Italy due to the existence of systemic flaws in the asylum procedure and reception conditions, in at least two cases, TAC Lisbon annulled transfer decisions on the basis that the examining authority failed to analyse the conditions of the Italian asylum system, and determined that SEF had to reassess the case with updated and reliable information. Notwithstanding, the jurisprudence regarding transfers to Italy varied.

- ❖ **Age assessment:** In 2018, age assessments by other EU Member States have been used by the SEF as negative credibility indicators, notably those from Malta regarding asylum seekers who were transferred to Portugal in the framework of *ad hoc* disembarkation-related EU solidarity measures and claimed to be children upon arrival in Portugal. The absence of an initial age assessment from the SEF prior to the referral to the CACR in cases where the appearance and demeanour of the applicant raise serious doubts regarding their age has led CPR to refer those applicants to CPR's CAR, informing the Public Prosecutor's Office accordingly for purposes of ratification this procedure aimed at preserving the security and integrity of the CACR.

### Reception conditions

- ❖ **Housing:** The significant increase in the number of referrals from SEF meant that overcrowding in CAR persisted throughout the year. Between January and December 2018, CPR provided accommodation at CAR and in private accommodation to 1,112 applicants. Aggravating factors included the fact that the CAR was partially closed for long due renovation works starting in the last quarter of 2018 and ending in March 2019, and that despite the existing arrangements, asylum seekers who have appealed the rejection of their application at the border are systematically referred to the CAR upon their release for purposes of transitional accommodation during the referral process to the GTO. Furthermore, the transition into private accommodation provided by SCML as per the existing arrangements has experienced significant delays throughout the year.

- ❖ **Access to education:** The Government introduced the “student in an emergency situation for humanitarian reasons” status for higher education that can be claimed by any non-Portuguese / EU student who originates from a region affected by armed conflict, natural disaster, generalised violence or human rights violations requiring a humanitarian response. The beneficiaries of international protection and asylum seekers admitted to the regular procedure under the Asylum Act are entitled to the status by operation of law. Students with “emergency situation for humanitarian reasons” status are entitled to alternative procedures for assessing entry conditions in the absence of documentation such as diplomas, equal treatment to Portuguese students regarding university fees and other levies and full access to social assistance available to higher education students. However, the new rules do not address the issue of access to entry visas for eligible students living abroad.

#### *Detention of asylum seekers*

- ❖ **Detention of children:** In July 2018, following media reports on detention of young children at Lisbon Airport, and remarks by the Ombudsperson and UNICEF, the Ministry of Home Affairs issued an order determining, among others, that children under 16 years old (whether accompanied or not) cannot be detained in the CIT for more than 7 days. According to the information available to CPR, for the whole of 2018, a total of 24 unaccompanied children, of which one later determined to be an adult after a second-stage age assessment, were detained at the border for periods ranging from 1 to 15 days (on average 6 days). The information available to CPR regarding 51 children accompanied by adults reveals that they were detained at the border for periods ranging between 1 and 59 days (on average 16 days). While CPR has observed a tendency for the decrease of detention periods to which children were subjected following the order issued in July 2018 by the Ministry of Home Affairs, this practice remains concerning in light of international standards that prohibit any immigration detention of children.
- ❖ **Detention conditions:** The SEF signed an MoU with the NGO Doctors of the World (*Médicos do Mundo*, MdM) in June 2018 for the provision of enhanced medical care at the Lisbon airport detention area. According to MdM, the project aims at assessing the health condition of detainees; prevent the deterioration of chronic conditions; whenever possible offer out-patient treatments; assist in dealing with infectious diseases within the detention area and in case of release from the detention area in cooperation with the DGS; training of staff to deal with episodes of acute disease and treatment follow-up. For that purpose, MdM is expected to provide medical and nursing care, medication, medical tests, referrals to the SNS in case of emergency care or other not eligible for out-patient treatment and referrals to the DGS.

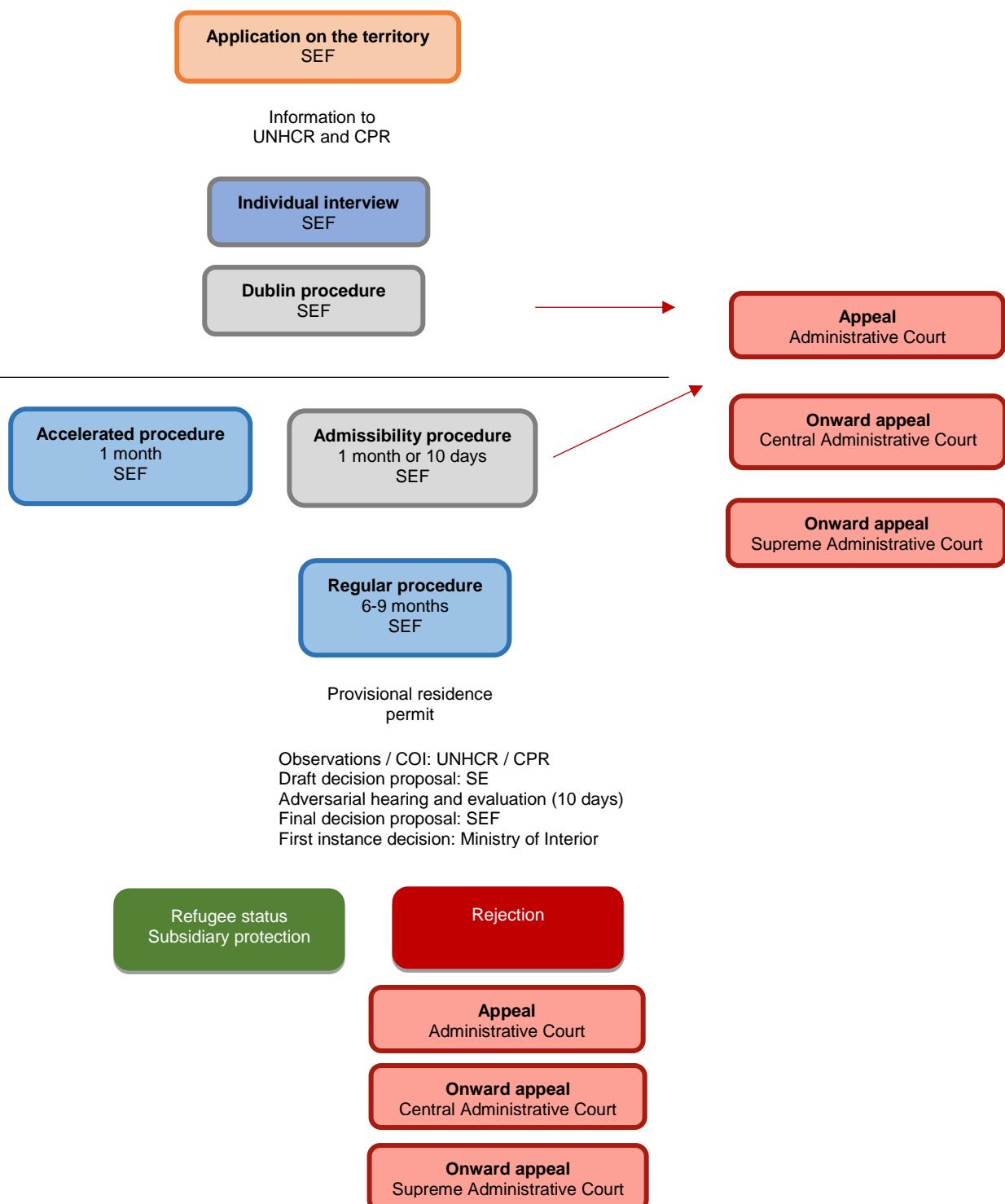
#### *Content of international protection*

- ❖ **Naturalisation:** The Nationality Act was recast in July 2018. The changes will likely have a positive impact on acquisition of nationality by beneficiaries of international protection and their children. Most notably, the recast reduced the regular residence requirement for naturalisation (the avenue most often used for nationality acquisition by adult beneficiaries) from 6 to 5 years. Additionally, following the recast, children born in Portugal to foreigners who are not at the service of their State of nationality are Portuguese by origin if one of the parents has been legally residing in the country for at least 2 years at the time of the birth and if they do not state that they do not want to be Portuguese. The recast Nationality Regulation was not yet published at the time of writing.
- ❖ **Family reunification:** While the average duration of family reunification procedures remained unchanged, there was a relevant increase in the waiting time for an appointment at the SEF for the purposes of family reunification. In the case of SEF’s Lisbon regional office, in particular, that deals with a significant number of applications, waiting times rose to as much as 5-6 months in certain cases.

# Asylum Procedure

## A. General

### 1. Flow chart



## 2. Types of procedures

### Indicators: Types of Procedures

Which types of procedures exist in your country?

- ❖ Regular procedure:
    - Prioritised examination:<sup>3</sup>
    - Fast-track processing:<sup>4</sup>
  - ❖ Dublin procedure:
  - ❖ Admissibility procedure:
  - ❖ Border procedure:
  - ❖ Accelerated procedure:<sup>5</sup>
  - ❖ Other:
- |   |                             |
|---|-----------------------------|
| <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |

Are any of the procedures that are foreseen in the law, not being applied in practice?  Yes  No

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

Stage of the procedure	Competent authority (EN)	Competent authority (PT)
Application <ul style="list-style-type: none"> <li>❖ At the border</li> <li>❖ On the territory</li> </ul>	Immigration and Borders Service	Serviço de Estrangeiros e Fronteiras (SEF)
Dublin	Immigration and Borders Service	Serviço de Estrangeiros e Fronteiras (SEF)
Refugee status determination	Immigration and Borders Service Ministry of Home Affairs	Serviço de Estrangeiros e Fronteiras (SEF) Ministério da Administração Interna
First appeal	Administrative Court of Lisbon Administrative and Fiscal Courts	Tribunal Administrativo de Círculo de Lisboa Tribunais Administrativos e Fiscais
Onward appeal	Central Administrative Courts Administrative Supreme Court	Tribunais Centrais Administrativos Supremo Tribunal Administrativo
Subsequent application	Immigration and Borders Service Secretary of State for Internal Administration	Serviço de Estrangeiros e Fronteiras (SEF) Secretaria de Estado da Administração Interna

## 4. Number of staff and nature of the first instance authority

Name in English	Number of staff	Ministry responsible	Is there any political interference possible by the responsible Minister with the decision making in individual cases by the first instance authority?
Immigration and Borders Service (SEF), Asylum and Refugees Department (GAR)	13	Ministry of Home Affairs	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

Source: SEF.

The Asylum and Refugees Department (GAR) of the Immigration and Borders Service (SEF) is composed of ten case officers who are responsible for the examination of asylum applications. Two additional

<sup>3</sup> For applications likely to be well-founded or made by vulnerable applicants.

<sup>4</sup> Accelerating the processing of specific caseloads as part of the regular procedure.

<sup>5</sup> Labelled as "accelerated procedure" in national law.

officials are responsible for revising the files and/or proposals drafted by the case officers and one additional official is responsible for the final decisions.

## 5. Short overview of the asylum procedure

The Portuguese asylum procedure is a single procedure for both refugee status and subsidiary protection.<sup>6</sup> There are different procedures depending on whether the asylum application: is submitted to the regular procedure; is deemed unfounded (including in the case of applications following a removal procedure) and therefore submitted to an accelerated procedure; or is presented at a national border.

Anyone who irregularly enters or remains on Portuguese national territory must present his or her request to the SEF or to any other police authority as soon as possible, orally or in writing. In the latter case, the police authority has 48 hours to inform the SEF of the application.<sup>7</sup> The SEF is required to immediately inform the United Nations High Commissioner for Refugees (UNHCR) and the Portuguese Refugee Council (CPR), as an organisation working on its behalf, of all asylum applications.<sup>8</sup> The SEF is required to register the asylum application within 3 days of presentation and to issue the applicant a certificate of the asylum application within 3 days after registration.<sup>9</sup>

Except for special cases e.g. applicants lacking legal capacity,<sup>10</sup> all asylum applicants must undergo either a Dublin interview or an interview that addresses the remaining inadmissibility grounds and the merits of the application. This is provided both on the territory<sup>11</sup> and at the border.<sup>12</sup> Following the interview, the SEF produces a document narrating the essential facts of the application and in the case of applications on the territory (with the exception of subsequent applications and applications following a removal decision) the applicant has 5 days to seek revision of the narrative.<sup>13</sup>

### Admissibility

With the exception of Dublin decisions, the National Director of the SEF has 30 days to make a decision on the admissibility of applications on the territory,<sup>14</sup> (10 days for subsequent applications and applications following a removal order)<sup>15</sup> as opposed to 7 days for applications at the border. If the Director denies admissibility on the territory, the asylum seeker has 8 days to appeal the decision before the Administrative Court with suspensive effect,<sup>16</sup> with the exception of 4 days for inadmissible subsequent applications and applications following a removal order,<sup>17</sup> or, failing an appeal, 20 days to leave the country.<sup>18</sup> In the case of border procedures, the time limit to appeal is reduced to 4 days.<sup>19</sup> In the particular case of a Dublin decision, the deadlines for the admissibility decision is suspended pending a reply from the requested Member State.<sup>20</sup> Upon notification of a “take charge” / “take back” decision from the SEF, the applicant has 5 days to appeal before the Administrative Court with suspensive effect.<sup>21</sup>

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<sup>6</sup> Article 10(2) Asylum Act.

<sup>7</sup> Articles 13(1) and (2) and 19(1)(d) Asylum Act.

<sup>8</sup> Article 13(3) Asylum Act.

<sup>9</sup> Articles 13(7) and 14(1) Asylum Act.

<sup>10</sup> Articles 16(5) Asylum Act.

<sup>11</sup> Article 16 Asylum Act.

<sup>12</sup> Article 24(2) and (3) Asylum Act.

<sup>13</sup> Article 17 Asylum Act.

<sup>14</sup> Article 20(1) Asylum Act.

<sup>15</sup> Articles 33(4) and 33-A(5) Asylum Act.

<sup>16</sup> Articles 22(1) Asylum Act.

<sup>17</sup> Articles 33(6) and 33-A(6) Asylum Act.

<sup>18</sup> Articles 21(2) and (3) and 33(9) Asylum Act.

<sup>19</sup> Article 25(1) Asylum Act.

<sup>20</sup> Article 39 Asylum Act. This article refers to applications on the territory and border applications with the exception of subsequent applications and applications following a removal decision.

<sup>21</sup> Article 37(4) Asylum Act.

## **Regular procedure**

As soon as an asylum application is deemed admissible,<sup>22</sup> it proceeds to the eligibility evaluation.<sup>23</sup> In accordance with the law, this stage lasts up to 6 months but can be extended to 9 months in cases of particular complexity.<sup>24</sup> The asylum seeker receives a provisional residence permit valid for 6 months renewable that grants access to education and employment.<sup>25</sup> During this phase, the SEF conducts due diligence, evaluating all relevant facts to prepare a reasoned decision. This is generally done on the basis of the personal interview conducted during the admissibility stage of the procedure given that this interview also encompasses the merits of the application.<sup>26</sup> UNHCR and CPR as its representative are entitled to present their observations to the SEF at any time during the procedure in accordance with Article 35 of the 1951 Refugee Convention.<sup>27</sup> Upon notification of the proposal for a final decision, the applicant has 10 days to evaluate the SEF's reasoning and may produce documentation to that effect.<sup>28</sup> The SEF then sends its recommendation to the Director, who has 10 days to present it to the Ministry of Home Affairs that in turn has 8 days to make a final decision.<sup>29</sup> In the event of a negative decision, the applicant may appeal with suspensive effect to the Administrative Court within 15 days,<sup>30</sup> voluntarily depart from national territory within 30 days or face a removal procedure.<sup>31</sup>

## **Accelerated procedure**

The law contains a list of grounds that, upon verification, determine that an application is subjected to an accelerated procedure and deemed unfounded. These grounds include, among others, subsequent applications that are not deemed inadmissible and applications following a removal procedure.<sup>32</sup> While the rules governing accelerated procedures provide for the basic principles and guarantees of the regular procedure,<sup>33</sup> they lay down time limits for the adoption of a decision at first instance regarding the merits of the application that are significantly shorter than those of the regular procedure.<sup>34</sup> In addition, it entails reduced guarantees such as exclusion from the right of the applicant to seek revision of the narrative of his or her personal interview,<sup>35</sup> or to be notified and evaluate the SEF's reasoning of the proposal for a final decision, as well as shorter appeal deadlines.<sup>36</sup>

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<sup>22</sup> Article 20(4) Asylum Act. In the absence of a decision within 30 days the application is automatically admitted to the procedure.

<sup>23</sup> Article 21(1) Asylum Act.

<sup>24</sup> Article 28(2) Asylum Act.

<sup>25</sup> Article 27(1) Asylum Act. Ministerial Order 597/2015 provides for the model and technical features of the provisional residence permit.

<sup>26</sup> Article 28(1) Asylum Act.

<sup>27</sup> Article 28(5) Asylum Act.

<sup>28</sup> Article 29(2) Asylum Act.

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

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

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

<sup>32</sup> Article 19 Asylum Act.

<sup>33</sup> This includes access to the procedure, the right to remain in national territory pending examination, the right to information, personal interviews, the right to legal information and assistance throughout the procedure, the right to free legal aid, special procedural guarantees, among others.

<sup>34</sup> These consist of 30 days (Article 20(1) Asylum Act) except for applications following a removal procedure which are subject to a time limit of 10 days (Article 33-A(5) Asylum Act). The time limit is reduced to 7 days in the case of accelerated procedures at the border (Article 24(4) Asylum Act).

<sup>35</sup> This is limited to accelerated procedures at the border and in the case of applications following a removal procedure.

<sup>36</sup> These consist of 8 days for accelerated procedures on the territory (Article 22(1) Asylum Act) except for the case of subsequent applications and applications following a removal procedure, where the deadline is 4 days (Articles 33(6) and 33-A(6) Asylum Act). The time limit is reduced to 4 days in the case of accelerated procedures at the border (Article 25(1) Asylum Act).

## Border procedure

The law provides for a special procedure regarding applications made at a national border.<sup>37</sup> While this procedure provides for the basic principles and guarantees of the regular procedure,<sup>38</sup> it lays down a significantly shorter time limit for the adoption of a decision regarding admissibility or the grounds for the accelerated procedure.<sup>39</sup> Additionally, the border procedure is characterised by a shorter appeal deadline of 4 days before the Administrative Court,<sup>40</sup> as well as reduced guarantees such as exclusion from the right of the applicant to seek revision of the narrative of his or her personal interview.<sup>41</sup> Asylum seekers are detained during the border procedure.<sup>42</sup>

## B. Access to the procedure and registration

### 1. Access to the territory and push backs

#### Indicators: Access to the Territory

1. Are there any reports (NGO reports, media, testimonies, etc.) of people refused entry at the border and returned without examination of their protection needs?  Yes  No

The Portuguese authorities are bound by the duty to protect asylum seekers and beneficiaries of international protection from *refoulement*.<sup>43</sup> National case law has reaffirmed on different occasions the protection against *refoulement* both on national territory and at the border, regardless of the migrant's status and in cases of either direct or indirect exposure to *refoulement*.<sup>44</sup> CPR is unaware of national case law that addresses the extraterritorial dimension of *non-refoulement*.

There are no published reports by NGOs about cases of actual *refoulement* at the border of persons wanting to apply for asylum. CPR does not conduct border monitoring and only has access to applicants after the registration of their asylum claim and once the SEF has conducted the individual interview, which constitutes an additional risk factor. However, it receives at times third party contacts informing it of the presence of individuals in need of international protection at the border. With rare exceptions, and even where CPR does not immediately intervene, the registration of the corresponding applications in these cases is normally communicated by the SEF to CPR in the following days.

Notwithstanding this, in 2014 CPR carried out research on access to protection and the principle of *non-refoulement* at the borders and in particular at **Lisbon Airport**.<sup>45</sup> While no cases of actual push backs at the border were identified, the research allowed for the identification of certain shortcomings such as extraterritorial *refoulement* in the framework of extraterritorial border controls by air carrier personnel in conjunction with the SEF in Guinea Bissau.

Regarding persons refused entry at border points, shortcomings with the potential to increase the risk of *refoulement* included: (a) challenges in accessing free legal assistance and an effective remedy, compounded by the absence of a clear legal / policy framework for the systematic assessment of the risk of *refoulement*; and (b) poor information provision to persons and lack of training to immigration staff on *non-refoulement* obligations.

<sup>37</sup> Article 23(1) Asylum Act.

<sup>38</sup> This includes access to the procedure, the right to remain in national territory pending examination, the right to information, personal interviews, the right to legal information and assistance throughout the procedure, the right to free legal aid, special procedural guarantees, among others.

<sup>39</sup> These consist of 7 days for both admissibility decisions and accelerated procedures at the border (Article 24(4) Asylum Act) as opposed to 30 days for admissibility decisions on the territory and between 10 and 30 days for accelerated procedures on the territory.

<sup>40</sup> Article 25(1) Asylum Act.

<sup>41</sup> Article 24 Asylum Act.

<sup>42</sup> Articles 26(1) and 35-A(3)(a) Asylum Act.

<sup>43</sup> Articles 2(aa), 47 and 65 Asylum Act; Articles 31(6), 40(4) and 143 Aliens Act.

<sup>44</sup> See e.g. Administrative Court of Lisbon, Decisions No 1480/12.7BELSB and No 2141/10.7BELSB.

<sup>45</sup> CPR, *Access to Protection: a Human Right, country report, Portugal*, 2014, available at: <http://bit.ly/2xA2aiV>.

While the information available does not substantiate ongoing instances of extraterritorial *refoulement*, there have not been significant changes regarding shortcomings for persons refused entry at the border since then, notably regarding access to free legal assistance and an effective remedy. These risk factors are aggravated by the absence of border monitoring by CPR and/or other independent organisations and delays in accessing asylum seekers. (see [Border Procedure](#)). In this context, the situation in relation to refusals of entry and resulting possible risks of *refoulement* is opaque.

It should be noted that in 2017 CPR was denied access by the SEF to a stowaway on board a vessel that docked in Portugal travelling from Spain to the United Kingdom on the grounds that the individual, reportedly of Eritrean nationality, did not intend to apply for asylum in Portugal but rather seek international protection in the UK. While this information was later confirmed to UNHCR and CPR by the captain of the vessel, the situation is an indicator of ongoing constraints to border monitoring by civil society organisations in Portugal. No such incidents were reported in 2018.

## 2. Registration of the asylum application

### Indicators: Registration

1. Are specific time limits laid down in law for asylum seekers to lodge their application?  
 Yes  No
2. If so, what is the time limit for lodging an application?

While the asylum application can be presented (“made”) either to the SEF or to any other police authority that must then refer the claim to the SEF, responsibility to register asylum claims lies solely with the SEF.<sup>46</sup> If an asylum application is presented to a different police authority, it must be forwarded to the SEF within 48 hours.<sup>47</sup> In accordance with the SEF’s internal organisation,<sup>48</sup> the responsibility for organising asylum files (including registration) lies with its Asylum and Refugees Department (GAR). The SEF/GAR is required to inform CPR as an organisation working on UNHCR’s behalf of the registration of individual asylum applications. In 2018, out of a total of 1,270 spontaneous applicants registered, 1,190 were communicated to CPR. Furthermore, 14 cases of relocated applicants were communicated to CPR.

In accordance with the law, anyone who irregularly enters Portuguese national territory or is refused entry at the border must present his or her request to the SEF or to any other police authority as soon as possible. Despite not laying down specific time limits for asylum seekers to lodge their application, the law provides for use of the [Accelerated Procedure](#) in case the asylum applicant enters or remains irregularly on national territory and fails to apply for asylum as soon as possible without a valid reason.<sup>49</sup> However, this provision has rarely, if ever, been applied in practice. It should also be noted that failure to apply for asylum at the earliest possible time, unless the applicant can demonstrate good reason for not having done so, constitutes a ground for not granting the benefit of the doubt.<sup>50</sup> This provision has been applied by the SEF in practice. Additionally, it should be noted that persons refused entry at the border are liable to immediate removal to the point of their departure,<sup>51</sup> meaning that they are required to present their asylum application immediately in practice.

Upon presentation of the application, the asylum seeker is required to fill out a preliminary form that among others includes information on identification, itinerary, grounds of the asylum application, supporting evidence and witnesses. The preliminary form is available in Portuguese, English and French. However according to CPR’s experience asylum seekers are not systematically provided quality interpretation services at this stage of the procedure, resulting in the collection of insufficient and poor quality information.

<sup>46</sup> Article 13(7) Asylum Act.

<sup>47</sup> Article 13(2) Asylum Act.

<sup>48</sup> Article 17 Decree-Law 252/2000.

<sup>49</sup> Article 19(1)(d) Asylum Act.

<sup>50</sup> Article 18(4)(d) Asylum Act.

<sup>51</sup> Article 41(1) Aliens Act.

The SEF is required to register the asylum application within 3 days of presentation and to issue the applicant a certificate of the asylum application within 3 days of registration.<sup>52</sup> Despite isolated delays in obtaining appointments at SEF/GAR for registration, or delays related to the registration of asylum applications presented in the SEF's regional representations, CPR has not encountered systemic or serious problems regarding the registration of applications as opposed to some instances of delayed issuance and extension of the certificates of the asylum application.

## C. Procedures

### 1. Regular procedure

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

##### Indicators: Regular Procedure: General

- |  |   |
|--|---|
| 1. Time limit set in law for the determining authority to make a decision on the asylum application at first instance:     | 6 months  |
| 2. Are detailed reasons for the rejection at first instance of an asylum application shared with the applicant in writing? | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |
| 3. Backlog of pending cases at first instance as of 31 December 2018:  | 90  |

In accordance with the Asylum Act and the SEF's internal organisation,<sup>53</sup> the responsibility for examining applications and drafting first instance decisions lies with SEF/GAR, while the decision is formally adopted by the Ministry of Home Affairs. The SEF/GAR is a specialised authority in the field of asylum whose competences are restricted to the following asylum-related tasks: (i) to organise and process asylum applications; (ii) to organise and process subsidiary protection applications; (iii) to organise and process Dublin procedures and where necessary to issue *laissez passer*; (iv) to issue reasoned opinions on submissions for refugee resettlement; (v) to issue reasoned opinions on applications for the renewal of refugee travel documents presented before the Portuguese Consulates; (vi) to issue refugee identity cards and travel documents as well as residence permits provided for in the Asylum Act as well as renew and extend the validity of such documents; (vii) to act as contact point of the European Asylum Support Office (EASO); and (viii) to provide for the strategic planning of EASO-related activities.

The first instance determining authority is required to take a decision on the asylum application within 6 months. This time limit is additional to the duration of the admissibility procedure and can be extended to 9 months in cases of particular complexity.<sup>54</sup> The Asylum Act does not provide for specific consequences in case of failure to meet the time limit and in practice asylum seekers are reluctant to act on the delay on the basis of general administrative guarantees, e.g. by requesting Administrative Courts to order SEF to issue a decision on the application within a given time limit.<sup>55</sup>

The significant increase in the number of spontaneously arriving and relocated asylum seekers, leading to an increase in asylum applications from 447 in 2014 to 896 in 2015, 1,469 spontaneous and relocated applicants in 2016, 1,750 spontaneous and relocated applicants in 2017, and 1,270 spontaneous applicants in 2018, has led SEF/GAR to recruit additional staff in the recent past. The SEF indicates that the average duration of the asylum procedure in 2018 was 7 working days, a reference probably related to the average duration of admissibility and accelerated procedures at the border. SEF did not share information regarding the average duration of the asylum procedure at first instance in the cases of nationals from Syria, Iraq and Afghanistan.

<sup>52</sup> Articles 13(7) and 14(1) Asylum Act.

<sup>53</sup> Article 29(1) Asylum Act; Article 17 Decree-Law 252/2000.

<sup>54</sup> Article 28(2) Asylum Act.

<sup>55</sup> Article 129 Decree-Law 4/2015; Article 66(1) Administrative Court Procedure Code.

In the 4 cases communicated to CPR by SEF in 2018, the duration of the regular procedure ranged from 302 to 1,394 days. CPR is uncertain whether the low number of notifications of asylum decisions is related to gaps in communication or indicates further delays in the decision-making process.

## 1.2. Prioritised examination and fast-track processing

While no precise statistics are available, according to the SEF, while there are no precise statistics available, cases of vulnerable applicants such as pregnant women, applicants accompanied by young children, elderly or those in need of medical care and unaccompanied children are fast-tracked.

The statistical information collected by CPR for 2018 based on the information received from the SEF does not indicate a clear trend in this regard, as the average duration of the first instance procedure for vulnerable asylum seekers such as unaccompanied children in the regular procedure does not seem to clearly differ from that of other caseloads. In 2017, the National Confederation of Solidarity Institutions (*Confederação Nacional das Instituições de Solidariedade* (CNIS) reported that the examination of the asylum application of the 4 unaccompanied asylum-seeking children transferred to Portugal from Greece in the framework of its pilot project (see [Dublin: General](#)) were clearly prioritised (processed under 6 months) in relation to other clients in the framework of the relocation programme. No children were transferred to Portugal under this scheme in 2018.

## 1.3. Personal interview

### Indicators: Regular Procedure: Personal Interview

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

The Asylum Act provides for the systematic personal interview of all asylum seekers in the regular procedure prior to the issuance of a first instance decision,<sup>56</sup> except for cases where:

1. The evidence already available allows for a positive decision; or
2. The applicant lacks legal capacity due to long-lasting reasons beyond his or her control.<sup>57</sup> In this case, the SEF is required to offer the applicant or his or her dependant(s) the opportunity to communicate relevant information by other means.<sup>58</sup>

The asylum seeker is entitled to give his or her statement in his or her preferred language or in any other language that he or she understands and in which he or she is able to communicate clearly.<sup>59</sup> To that end, he or she is entitled to the assistance of an interpreter when applying for asylum and throughout the asylum procedure, if needed.<sup>60</sup> The asylum seeker can also be assisted by a lawyer but the absence thereof does not preclude the SEF from conducting the interview.<sup>61</sup>

According to the information shared by SEF, in 2018 there were no cases where a decision was taken without a personal interview. However, according to the information available to CPR, in 2018, not all asylum seekers were provided a personal interview in the framework of Dublin Procedures (see: [Dublin: Personal Interview](#)).

<sup>56</sup> Article 16(1), (2) and (3) Asylum Act.

<sup>57</sup> Article 16(5) Asylum Act.

<sup>58</sup> Article 16(6) Asylum Act.

<sup>59</sup> Article 16(1) Asylum Act.

<sup>60</sup> Article 49(1)(d) Asylum Act.

<sup>61</sup> Article 49(7) Asylum Act.

The interview is generally conducted by SEF/GAR, although interviews are at times conducted by the SEF's regional representations in cases of asylum applications made in more remote locations. Such interviews are conducted on the basis of a questionnaire prepared by SEF/GAR. According to CPR's observations, the interviews conducted by the SEF's regional representations tend to be less technically accurate and sometimes fail to adequately clarify material facts of the claim.

### Interpretation

The quality of interpretation services used for interviews remains a serious challenge, as in many cases service providers are not trained interpreters but rather individuals with sufficient command of source languages. While the interpreters are bound by a legal duty of confidentiality, there is no agreed code of conduct used by the SEF. In 2015, CPR conducted training for interpreters in partnership with the Portuguese Association of Conference Interpreters (APIC) focusing on technical aspects of interpretation and on asylum law.

In November 2017, the ACM organised a training for interpreters who work with reception service providers as well as professionals who resort to interpreters in the provision of reception and health services to asylum seekers and beneficiaries of international protection. The training was conducted by experts of the International Rescue Committee 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 and consisted of a 2-day training for interpreters and a 1- to 2-hour training for professionals. The training was not focused on interpretation in asylum procedures, however. According to the information shared by ACM, an online training to interpreters and professionals was conducted by EURITA in January 2018.

In the case of rarer languages – e.g. Tigrinya, Pashto, Bambara, Lingala, Tamil, Kurdish and to a lesser extent Arabic and Farsi – securing interpreters with an adequate command of the target language remains very challenging, including in the framework of the EU relocation scheme.

### Recording and report

The Asylum Act does not provide for the audio and/or video recording of the interview or for conducting interviews and/or interpretation through video-conferencing, and CPR is not aware of its use during first or second instance procedures.

The SEF produces a written report narrating the most important elements raised during the interview. The report is immediately provided to the applicant who has 5 days to seek revision of the narrative.<sup>62</sup> CPR provides systematic legal assistance to asylum seekers at this stage, with the assistance of interpreters, for the purpose of reviewing and submitting comments / corrections to the report of SEF/GAR. Given that the written report is drafted during the interview, the case officer is under significant time pressure to complete both the interview and the report and this generally results in the applicant having to make many comments and corrections. Moreover, in many instances, applicants reported to CPR that the document was not read to them in a language they understand before they were asked to sign it.

### 1.4. Appeal

#### Indicators: Regular Procedure: Appeal

1. Does the law provide for an appeal against the first instance decision in the regular procedure?  
❖ If yes, is it  Yes  No  
❖ If yes, is it automatically suspensive  Judicial  Administrative  
 Yes  No
2. Average processing time for the appeal body to make a decision: Not available

<sup>62</sup> Article 17 Asylum Act.

The Asylum Act provides for an appeal against the first instance decision in the regular procedure consisting of judicial review of relevant facts and points of law by the Administrative Court.<sup>63</sup> The asylum seeker has 15 days to lodge the appeal, which is automatically suspensive.<sup>64</sup>

A ruling of the Supreme Administrative Court has clarified that appeals against decisions regarding the grant of asylum are free of charge.<sup>65</sup>

Administrative Courts have a review competence which allows them to either: (1) confirm the negative decision of the first instance decision body; (2) annul the decision and refer the case back to the first instance decision body with guidance on applicable standards;<sup>66</sup> or (3) overturn it by granting refugee or subsidiary protection status.<sup>67</sup>

The Asylum Act qualifies the judicial review as urgent,<sup>68</sup> and provides for a simplified judicial process with reduced formalities and time limits with the objective of shortening the duration of the judicial review.<sup>69</sup>

The information provided by the CSTAF for 2018 regarding the duration of judicial reviews of first instance decisions only covers the TAC of Lisbon and does not make a distinction between the type of asylum procedure. According to these statistics, the average duration of appeals ranged from 2.5 to 6 months depending on whether witnesses are called to testify during the court procedure. The average duration of appeals did not change significantly in the case of Iraq (1 month), and Afghanistan (2 months).

While the Asylum Act does not specifically provide for a hearing of the asylum seeker during the appeal procedure, such a guarantee is enshrined in the general procedure that provides for the hearing of the parties,<sup>70</sup> although this is rarely used in practice by lawyers as procedures before the Administrative Court tend to be formalistic and essentially written. As a general rule, the hearing of the appeal body is public but the judge may rule for the need of a private audience based on the need to protect the dignity of the individual or the smooth operation of the procedure.<sup>71</sup> Only the rulings of second instance Administrative Courts (*Tribunal Central Administrativo*, TCA) and the Supreme Administrative Court (*Supremo Tribunal Administrativo*, STA) are systematically published.<sup>72</sup>

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

According to the CSTAF, there were a total 374 appeals lodged at the TAC of Lisbon against negative decisions on asylum applications in 2018, a decrease of 21% when compared to 2017. During this period, the TAC of Lisbon rendered 363 rulings on asylum-related appeals. The information provided by the CSTAF for 2018 regarding the outcome of judicial reviews of first instance decisions before the TAC of Lisbon indicates a very poor success rate. However, as mentioned in [Statistics](#), these figures do not make a distinction between the type of asylum. In this regard, it must be acknowledged that the quality of many appeals submitted is often poor, given that very few lawyers have any relevant expertise in the field.

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<sup>63</sup> Article 30(1) Asylum Act; Article 95(3) Administrative Court Procedure Code.

<sup>64</sup> Article 30(1) Asylum Act.

<sup>65</sup> Supreme Administrative Court, Decision 408/16, 17 November 2016, available in Portuguese at: <https://bit.ly/2W9NY9L>.

<sup>66</sup> Article 71(2) Administrative Court Procedure Code. In practice this is normally the case when the courts find that there are relevant gaps in the assessment of the material facts of the claim, thus requiring the first instance decision body to conduct further investigations.

<sup>67</sup> Article 71(1) Administrative Court Procedure Code.

<sup>68</sup> Article 84 Asylum Act.

<sup>69</sup> Article 30(2) Asylum Act; Article 110 Administrative Court Procedure Code.

<sup>70</sup> Article 90(2) Administrative Court Procedure Code; Article 466 Act 41/2013.

<sup>71</sup> Article 91(2) Administrative Court Procedure Code; Article 606 Act 41/2013.

<sup>72</sup> Decisions are available at: <http://www.dgsi.pt/>.

## Onward appeal

In case of rejection of the appeal, onward appeals are possible before the TCA, consisting of a full judicial review of relevant facts and points of law,<sup>73</sup> with suspensive effect.<sup>74</sup> Furthermore, the law provides for an additional appeal with suspensive effect before the STA on points of law but only in exceptional cases of fundamental importance of the appeal for legal and social reasons or to improve the quality of legal reasoning in decision-making more broadly.<sup>75</sup> The STA makes its own assessment and decision on the facts of the case.<sup>76</sup> In both cases the asylum seeker has 15 days to lodge the appeal.<sup>77</sup>

### 1.5. Legal assistance

#### Indicators: Regular Procedure: Legal Assistance

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

The Portuguese Constitution enshrines the right of every individual to legal information and judicial remedies regardless of their financial condition.<sup>78</sup>

#### 1.5.1. Legal assistance at first instance

The Asylum Act in particular provides for the right of asylum seekers to free legal assistance at all stages of the asylum procedure which is to be understood as including the first instance of the regular procedure.<sup>79</sup> Such legal assistance is to be provided without restrictions by a public or private non-governmental organisation in line with a Memorandum of Understanding (MoU).<sup>80</sup>

Furthermore, under the Asylum Act, UNHCR and CPR as an organisation working on its behalf must be informed of all asylum applications in Portugal and are entitled to personally contact all asylum seekers irrespective of the place of application to provide information regarding the asylum procedure, as well as regarding the intervention of UNHCR in the procedure (dependent on the consent of the applicant).<sup>81</sup> These organisations are also entitled to be informed of key developments in the asylum procedure upon consent of the applicant,<sup>82</sup> and to present their observations at any time during the procedure pursuant to Article 35 of the 1951 Refugee Convention.<sup>83</sup>

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

- Providing information regarding the asylum procedure, rights and duties of the applicant;

<sup>73</sup> Article 149(1) Administrative Court Procedure Code; Article 31(3) Act 13/2002.

<sup>74</sup> Article 143(1) Administrative Court Procedure Code.

<sup>75</sup> Articles 143(1) and 150(1) Administrative Court Procedure Code.

<sup>76</sup> Article 150(3) Administrative Court Procedure Code.

<sup>77</sup> Article 147 Administrative Court Procedure Code.

<sup>78</sup> Article 20(1) Constitution.

<sup>79</sup> Article 49(1)(e) Asylum Act.

<sup>80</sup> *Ibid.*

<sup>81</sup> Article 13(3) Asylum Act. See also Article 33(3) Asylum Act concerning subsequent applications.

<sup>82</sup> Article 17(3): document narrating the essential facts of the request; Article 20(1): decision on admissibility and accelerated procedures in national territory; Article 24(5): decision on admissibility and accelerated procedures at the border; Article 29(6) first instance decision in the regular procedure; Article 37(5): Dublin take charge decision.

<sup>83</sup> Article 28(5) Asylum Act.

- Conducting refugee status determination interviews in order to assist the applicants in reviewing and submitting comments / corrections to the report narrating the most important elements of their interview with the determining authority;
- Providing the SEF with observations on applicable legal standards and country of origin information (COI);
- Providing assistance in accessing free legal aid for appeals; and
- Assisting lawyers appointed under the free legal aid system in preparing appeals with relevant legal standards and COI.

Regarding particularly vulnerable asylum seekers, CPR provides for specific legal assistance to unaccompanied asylum-seeking children who benefit from the presence of one of its legal officers during the personal interview with the SEF given its legal representative capacity (see [Legal Representation of Unaccompanied Children](#)), as well as legal information and assistance in the framework of legal representation and protection procedures before the Family and Juvenile Court.<sup>84</sup>

In the case of relocated asylum seekers, CPR provides legal information and assistance as requested by applicants and hosting entities. In practice, support has focused on providing legal information on the asylum procedure, submission of observations on applicable legal standards advocating for the recognition of refugee status to Syrian nationals when appropriate as well as information and assistance on [Family Reunification](#).

According to the SEF, the total number of requests for legal assistance by asylum seekers during the first instance procedure in 2018 was 378,. However, these statistics are most likely related to legal assistance at appeal stage and do not offer a breakdown of the total number of requests by type of procedure concerned.

In 2018, CPR provided support to 1,020 spontaneously arriving asylum seekers in all types of asylum procedures in 2018 (about 86% of the total number of spontaneous applications communicated to CPR according to the Law and 80% of the total number of spontaneous applicants).

However, the continuing increase in spontaneous asylum applications in 2017 and 2018 has further exacerbated the pressure on CPR's capacities and resulted in corresponding gaps in the provision of legal information and assistance during at first instance, particularly regarding asylum seekers placed in detention or private accommodation in more remote locations.

It should be noted that there are other organisations that also provide legal information and assistance to asylum seekers during the first instance of the regular procedure such as the Jesuit Refugee Service ([JRS](#)) Portugal, the [CNIS](#) regarding unaccompanied asylum-seeking children who were transferred to Portugal in accordance with the "humanitarian clause" of the Dublin Regulation under a pilot project in 2017, and to a lesser extent the High Commission for Migration ([ACM](#)) through their National Centres for Migrants' Integration ([CNAI](#)) and 99 Local Support Centres for Migrants Integration (*Centro Local de Apoio à Integração de Migrantes*, [CLAIM](#)) spread throughout the country. According to the available information, these services these remain residual and mostly focused on integration.

### **1.5.2. Legal assistance in appeals**

Regarding legal assistance at the appeal stage, the Asylum Act provides for the right of asylum seekers to free legal aid in accordance with the law.<sup>85</sup> The legal framework of free legal aid provides for a "means assessment" on the basis of the household income,<sup>86</sup> as only applicants who do not hold sufficient income are entitled to free or more favourable conditions to access legal aid.<sup>87</sup> The application is submitted to the

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<sup>84</sup> These procedures are provided in the General Regime of Civil Guardianship Process, 141/2015, and the Children and Youths at Risk Protection Act, 147/99.

<sup>85</sup> Article 49(1)(f) Asylum Act.

<sup>86</sup> Act 34/2004; Ministerial Order 10/2008.

<sup>87</sup> Article 8-A and Annex Act 34/2004.

Institute of Social Security (*Instituto da Segurança Social*, ISS) that conducts the means assessment<sup>88</sup> and refers successful applications to the Portuguese Bar Association (*Ordem dos Advogados*) that appoints a lawyer,<sup>89</sup> on the basis of a random / automatic selection procedure.<sup>90</sup> The sole responsibility for organising the selection lies with the Portuguese Bar Association but such procedure should however ensure the quality of the legal aid provided.<sup>91</sup>

It should be noted that national legislation provides for a “merits test” to be conducted by the appointed lawyer according to which free legal assistance can be refused on the basis that the appeal is likely to be unsuccessful. In that case the free legal aid lawyer can excuse him or herself from the case and ultimately the Portuguese Bar Association can choose not to appoint a replacement.<sup>92</sup> While the average duration of this procedure in 2018 was around 2 weeks, the law provides for the suspension of the time limit for the appeal upon presentation of the free legal aid application and until the free legal aid appointed lawyer submits the judicial appeal.<sup>93</sup>

According to the figures provided by the SEF, the likely number of requests for legal assistance by asylum applicants at appeal stage in 2018 was 378. These statistics do not offer a breakdown of the total number of requests by type of procedure concerned.

In general, asylum seekers in the regular procedure enjoy unhindered access to free legal aid at appeal stage as the practical implementation of potential bottlenecks such as the “means test” conducted by ISS or the “merits test” conducted by free legal aid appointed lawyers have not resulted in a significant number of refusals.

- In the case of the “means test” conducted by the ISS, the fact that asylum seekers admitted to the regular procedure are issued a provisional residence permit and are therefore entitled to access the labour market (see [Access to the Labour Market](#)) has at times resulted in asylum applicants having a level of income that excludes them from free legal aid. In this case, given the usually limited levels of income, they can still be offered more favourable conditions to access legal aid such as instalments that can however discourage them from applying.
- In the case of the “merits test”, instances where free legal aid lawyers excuse themselves from the case for reasons of merit remain limited, as do cases where the Portuguese Bar Association chooses not to appoint a replacement. In this regard, the practice of the Portuguese Bar Association has been inconsistent, sometimes refusing to appoint a replacement after a single lawyer excuses him or herself from a case and in others only after several lawyers do so.

A more significant concern relates to the overall quality of free legal aid at appeal stage, as the current selection system is based on a random / automatic selection procedure managed by the Portuguese Bar Association on the basis of preferred areas of legal assistance chosen beforehand by the appointed lawyers,<sup>94</sup> that are general in nature and not specifically related to asylum law. In general, appointed lawyers are not trained in asylum law and have limited experience in this particular field of law. In 2018, CPR in partnership with UNHCR continued its efforts to engage with the Portuguese Bar Association with the aim of providing training to legal aid lawyers. Discussions are also ongoing regarding the creation of a specific area of legal assistance dedicated to asylum within the legal aid system, which could eventually contribute to the overall quality of appeals. In September and October 2017, CPR provided a training module to judges, public prosecutors and lawyers on European and EU asylum case law in the framework of an EU funded training programme.<sup>95</sup> In January 2019, CPR provided a training session for judges and public prosecutors of the Administrative Courts focusing on evidence and credibility assessment, within

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<sup>88</sup> Article 22 Act 34/2004.

<sup>89</sup> Article 30 Act 34/2004.

<sup>90</sup> Article 2(1) Ministerial Order 10/2008.

<sup>91</sup> Article 10(2) and (3) Ministerial Order 10/2008.

<sup>92</sup> Article 34(5) Act 34/2004.

<sup>93</sup> Article 33(4) Act 34/2004. See e.g. TCA South, Decision 10733/13, 2 April 2014, available in Portuguese at: <http://bit.ly/2gyVQOJ>.

<sup>94</sup> Article 3(3)(c) Regulation of the Bar Association 330-A/2008 of 24 June 2008.

<sup>95</sup> The Charter of Fundamental Rights of the EU "in action", available at: <https://goo.gl/1G9LBf>.

the framework of a continuous training on asylum and immigration organised by the Centre for Judicial Studies (*Centro de Estudos Judiciários*, CEJ).

Additional persisting challenges include the absence of an easily accessible interpretation service, which hinders the communication between the lawyer and the client during the preparation stage of the appeal. Although ACM's translation hotline can constitute a useful tool in this regard, it is insufficiently used by lawyers according to CPR's experience.<sup>96</sup> The expenses for the preparation of the appeal, including for interpretation and translation of documents, need to be paid in advance by the appointed lawyer who can then ask the court for reimbursement.<sup>97</sup> This is an additional obstacle to effective legal representation at this stage.

## 2. Dublin

### 2.1. General

#### Dublin statistics: 2018

Outgoing procedure			Incoming procedure		
	Requests	Transfers		Requests	Transfers
Total	254	22	Total	1,681	357
Italy	82	3	France	957	135
Germany	46	3	Germany	388	114
Spain	28	2	Belgium	98	5
France	25	2	Switzerland	44	10
Switzerland	11	2	Netherlands	42	9
Sweden	10	2	Sweden	41	15
Norway	8	3	Norway	27	19
Austria	7	2	Austria	26	9
Lithuania	7	0	Finland	18	17
Denmark	5	0	Ireland	11	0
Poland	5	0	Italy	7	2
Netherlands	4	0	United Kingdom	5	0
Finland	3	0	Iceland	4	0
Hungary	3	0	Luxembourg	3	0
Belgium	2	2	Czechia	2	1
Bulgaria	2	0	Malta	2	0
United Kingdom	2	0	Greece	2	1
Romania	1	0	Liechtenstein	1	0
Malta	1	0	Denmark	1	0
Slovakia	1	0	Slovakia	1	0
Luxembourg	1	0	Croatia	1	0
Czechia	0	1			

<sup>96</sup> ACM's interpretation hotline relies on a database of 58 interpreters/translators to enable communication with non-Portuguese speaking citizens. Access is free of charge (cost of a local call) and can be used on working days, between 9:00 and 17:00. Additional information, including the list of languages covered, is available at <http://bit.ly/2A4Ekga>.

<sup>97</sup> Article 8(3) Ministerial Order 10/2008.

Source: SEF. Note that this includes 27 outgoing and 139 incoming information requests under Article 34 of the Regulation.

### **Application of the Dublin criteria**

The Asylum Act makes a formal reference to the criteria enshrined in the Dublin III Regulation for determining the responsible Member State.<sup>98</sup> However, CPR is unaware of any additional formal guidelines from the SEF regarding the practical implementation of those criteria.

Empirical evidence of the implementation of the Dublin criteria pertaining to family unity is also scarce given the usually very limited number of incoming or outgoing requests pursuant to responsibility criteria provided in Articles 8-11 of the Regulation. In 2017 there were only 1 outgoing and 14 incoming “take charge” requests under Article 8 and, according to CPR, which provides legal and social assistance to unaccompanied children in Dublin procedures, there were no actual incoming or outgoing transfers during this period according to such criteria. SEF did not share disaggregated data by each responsibility criterion for 2018.

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

In 2017, the TAC of Lisbon offered clear guidance to the SEF regarding the interpretation of Article 6 of the Dublin Regulation in a judgment that overturned a transfer decision to Germany of an unaccompanied child under the care of CPR, for failing to give due consideration to the best interests of the child in its reasoning, notably regarding the minor’s well-being, social development and views.<sup>99</sup>

As for the remaining family unity criteria, CPR is aware of a “take charge” request in 2017 regarding a border application that was presented by the SEF on the basis of Article 9. The application was rejected by the competent authority of the requested Member State on the basis of insufficient evidence of family ties. This could indicate a flexible interpretation of evidence requirements from the SEF to initiate the procedure.

In 2018, the SEF issued multiple transfer decisions to asylum seekers claiming to be under 18-years-old but that were previously registered as adults in other Member States. These decisions made no reference to the applicant’s claim of minority. While in one case the applicant eventually disclosed that he was in fact over 18-years-old, that did not happen in all cases. In one instance, following the filing of an appeal, SEF overturned the transfer decision on the basis of the applicant being an unaccompanied child.

### **The discretionary clauses**

The “sovereignty clause” enshrined in Article 17(1) of the Dublin Regulation and the “humanitarian clause” enshrined in its Article 17(2) are at times applied in practice but the criteria for their application are unclear and no specific statistics are available on their use, except for the number of outgoing and incoming take charge requests under these clauses.<sup>100</sup>

In 2017 a group of four unaccompanied children and one young adult were transferred from Greece to Portugal in accordance with the “humanitarian clause” enshrined in Article 17(2) of the Dublin Regulation under a [pilot project](#) involving the national authorities, the [CNIS](#) in Portugal and the Greek organisation

<sup>98</sup> Article 37(1) Asylum Act.

<sup>99</sup> TAC Lisbon, Decision 2334/17.5BELSB, 24 November 2017, unpublished.

<sup>100</sup> According to the SEF, in 2018 there were 3 outgoing and 2 incoming take charge requests pursuant to Article 17(2) of the Regulation.

Metadrasi. According to the data shared by SEF, there were 2 incoming requests based on the “humanitarian clause” in 2018.

According to SEF, the “sovereignty clause” was applied in two cases in 2017. CPR was informed of the use of the “sovereignty clause” by the SEF in the case of an asylum application for health reasons. However, in CPR’s experience the underlying criteria in the application of the clause remain unclear. According to the information shared by SEF, the sovereignty clause was not applied in 2018.

There have been no transfer decisions to Greece since the *M.S.S. v. Belgium and Greece* judgment of the European Court of Human Rights (ECtHR) with the sovereignty clause being applied in potential transfer cases to Greece assisted by CPR during this period. Unlike in 2016 and 2017, no transfer decisions to Bulgaria or Hungary were communicated to CPR in 2018.<sup>101</sup>

In October 2018, the authorities announced a bilateral agreement with Greece to implement a pilot relocation process for 100 asylum seekers from Greece to Portugal.<sup>102</sup> The agreement was signed in early 2019, and covers asylum seekers and beneficiaries of international protection who are in refugee camps in Greece. According to the Ministry of Home Affairs, the process may lead to the transfer of up to 1000 seekers and beneficiaries of international protection. The Ministry also reported that the project has received green light from the European Commission and will be supported by IOM.<sup>103</sup>

## 2.2. Procedure

### Indicators: Dublin: Procedure

1. On average, how long does a transfer take after the responsible Member State has accepted responsibility? 15-20 days

According to the Asylum Act a procedure for determining the Member State responsible for examining an application for international protection under the Dublin Regulation shall be conducted whenever there are reasons to believe that such responsibility lies with another Member State. In such cases the SEF shall make a “take charge” or “take back” request to the competent authorities of the relevant Member State.<sup>104</sup>

While the law allows for the detention of asylum seekers submitted to a procedure for determining the responsible Member State pursuant to Article 28 of the Dublin III Regulation,<sup>105</sup> the consequences of an asylum seeker's refusal to comply with the obligation to be fingerprinted<sup>106</sup> are limited to the application of an Accelerated Procedure.<sup>107</sup> There are no legal provisions on the use of force to take fingerprints and CPR is not aware of any operational guidelines to that end. According to the information available to CPR, asylum seekers are systematically fingerprinted and checked in Eurodac in practice. Among those who benefit from CPR's legal assistance, instances of accelerated procedures due to a refusal to be fingerprinted are a very rare (to non-existent) occurrence.

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

<sup>101</sup> The transfer decisions to such countries issued in 2016 and 2017 did not include any reference to possible risks of *refoulement*, indicating that detention and reception conditions, guarantees in the asylum procedure and access to an effective remedy in the responsible State are not consistently taken into consideration when deciding whether or not to apply the “sovereignty clause”.

<sup>102</sup> See further AIDA, ‘Portugal/Greece: Bilateral agreement for relocation of asylum seekers’, 24 October 2018, available at: <https://bit.ly/2CUCn6>.

<sup>103</sup> Ministry of Home Affairs, ‘Portugal e Grécia formalizam Acordo Bilateral para transferência de refugiados’, 8 March 2019, available in Portuguese at: <https://bit.ly/2ImWSMI>.

<sup>104</sup> Articles 36 and 37(1) Asylum Act.

<sup>105</sup> Article 35-A(3)(c) Asylum Act.

<sup>106</sup> Article 15(1)(e) Asylum Act.

<sup>107</sup> Article 19(1)(j) Asylum Act.

identification, itinerary, grounds for the asylum application, prior stays in Europe and supporting evidence. During the individual interview with the SEF the asylum seeker is also asked to clarify relevant Dublin-related issues such as his or her identity and nationality, travel documents, visas and travel arrangements, itinerary and transportation to Portugal, and prior asylum applications. This information can eventually lead to a Dublin procedure that is preliminary to the assessment of the application and, once initiated, suspends the applicable time limits for the issuance of a decision on the (other) inadmissibility grounds or the merits of the application.<sup>108</sup>

The Asylum Act provides for the right of the asylum seeker to be informed of the purpose of fingerprinting as well as of other rights provided in the Eurodac Regulation.<sup>109</sup> CPR has no indication that this obligation is systematically implemented in practice or that the common information leaflet set out in Article 4(3) of the Dublin III Regulation is systematically distributed. The information offered by the SEF regarding the implementation of the Dublin Regulation is contained in a leaflet that mentions the possibility of a “take charge” request and applicable time limits.<sup>110</sup> Another leaflet containing information on the Dublin Regulation and fingerprinting is available online in Portuguese.<sup>111</sup> However, CPR is not aware of its distribution to asylum seekers in practice. The possibility of a “take charge” request as well as a waiver for sharing information under Article 34 of the Regulation is also included in the document narrating the individual interview that is signed and handed out to the asylum applicant. In cases where at the time of the individual interview there are relevant indicators that warrant a Dublin procedure, the SEF may give the applicant the opportunity at that point to raise any relevant objections to the transfer that should be considered in the procedure.

Asylum seekers are systematically informed in writing of the request made to another Member State, the corresponding supporting evidence and the reply of that Member State but only at the time of written notification of the actual transfer decision.<sup>112</sup>

### **Individualised guarantees**

According to the information available to CPR, SEF does not seek individualised guarantees that the asylum seeker will have adequate reception conditions upon transfer in practice, either systematically or for specific categories of applicants or specific Member States.<sup>113</sup> In the case of transfer decisions issued in 2018 to Italy, the reasoning bore no reference to possible risks of ill-treatment in the responsible State, with most of the decisions being issued on the basis of the absence of a timely response from the requested Member State. This has also been the practice in 2017, namely regarding transfer decisions to Italy and Hungary. CPR has no indication that such guarantees are sought following the notification of the transfer decision / prior to the transfer of the asylum applicant to the responsible Member State as well.

It should be noted that this practice is supported by the case law of Administrative Courts. According to this case law in the absence of incorrect application of the Dublin criteria systemic deficiencies in the asylum system of the requested Member State remain the only situation where the authorities’ compliance with the Dublin Regulation may be challenged, as opposed to capacity shortages of asylum systems in particular areas and in light of the particular needs of the applicant.<sup>114</sup>

### **Transfers**

While the law provides for the detention of asylum seekers subject to the Dublin procedure,<sup>115</sup> this provision is not implemented in practice and CPR is unaware of detentions on this ground.

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<sup>108</sup> Article 39 Asylum Act.

<sup>109</sup> Article 49(1)(b) Asylum Act.

<sup>110</sup> SEF, *Guia do requerente asilo*, available in Portuguese at: <http://bit.ly/2hpa3xZ>.

<sup>111</sup> SEF, *Regulamento Dublin III*, available in Portuguese at: <https://bit.ly/2Hq5aEy>.

<sup>112</sup> Article 37(2) Asylum Act.

<sup>113</sup> ECtHR, *Tarakhel v. Switzerland*, Application No 29217/12, Judgment of 4 November 2014.

<sup>114</sup> TCA South, Decision 13607/16, 22 September 2016.

<sup>115</sup> Article 35-A(3)(c) Asylum Act.

In accordance with the law, asylum seekers are entitled to a standard *laissez-passer* upon notification in writing of the transfer decision.<sup>116</sup> However, given the high rate of appeals, such a document is usually not issued at this point in time. According to the information available to CPR all transfers are voluntary and the applicant is informed of the exact date, time and place he or she should present him or herself to the SEF for travel purposes.

According to the SEF, in the absence of a judicial appeal, the average duration of the Dublin procedure is from the moment an outgoing request is issued until the effective transfer takes place is 35 days (“take back”) or 80 days (“take charge”). The average duration from the moment another Member State accepts responsibility until the effective transfer takes place, if the applicant does not abscond or appeal, is 15 to 20 days. Practical experience in this regard is limited as only a very small percentage of outgoing Dublin requests resulted in actual transfers in 2018. There were 22 outgoing transfers in 2018.

### 2.3. Personal interview

#### Indicators: Dublin: Personal Interview

Same as regular procedure

1. Is a personal interview of the asylum seeker in most cases conducted in practice in the Dublin procedure?  
❖ If so, are interpreters available in practice, for interviews?  Yes  No  
 Yes  No
2. Are interviews conducted through video conferencing?  Frequently  Rarely  Never

The Asylum Act provides for the systematic personal interview of all asylum seekers, including of those in a Dublin procedure,<sup>117</sup> except for cases where: (i) the evidence already available allows for a positive decision; or (ii) the applicant lacks legal capacity due to long lasting reasons that are not under his or her control.<sup>118</sup>

While in recent years asylum seekers in a Dublin procedure were systematically offered a personal interview, the information available to CPR in 2017 and 2018 no longer confirms this assessment. CPR was informed by the SEF of 141 transfer decisions regarding applications filed in 2018 by adult applicants/unaccompanied minors but only of 46 individual interviews, raising the question of whether the gap is related to a failure in communicating the interviews in accordance with the law or the lack of individual interviews altogether. It should be noted that recent case law from the TAC of Lisbon has confirmed the right of an asylum seeker to an individual interview in accordance with Article 5 of the Dublin Regulation and overturned a transfer decision to Denmark because SEF failed to provide the applicant with such an interview.<sup>119</sup>

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

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

In 2018, the TAC Lisbon annulled transfer decisions on the basis that, according to its interpretation of either article 17 of the Asylum Act or Article 5 of the Dublin Regulation, SEF has to inform the applicant and give him or her the opportunity to reply not only to the statements provided during the Dublin interview,

<sup>116</sup> Article 37(3) Asylum Act.

<sup>117</sup> Article 16(1)-(3) Asylum Act.

<sup>118</sup> Article 16(5) Asylum Act.

<sup>119</sup> TAC Lisbon, Decision 2379/17.6 BELSB, 15 January 2018, unpublished.

but also to a report containing the information that underlies the transfer decision.<sup>120</sup> This jurisprudence followed a decision from the Supreme Administrative Court from 2017 that considered that failing to give the applicant the possibility to be heard regarding the “essential information” of his or her application in similar circumstances amounted to an omission of an essential procedural requirement.<sup>121</sup>

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

In the course of 2018, SEF altered the format of Dublin interviews and corresponding transcripts. According to the current transcripts to which CPR had access, the interview includes an explanation of the aims and criteria of the Dublin Regulation and questions focus on identification and contacts of family members, travel documents / visas, Eurodac registrations, information on entry / stay and previous applications for international protection. The form also contains a section on vulnerability but apparently follows a limited understanding of the concept, as it only includes questions on the health condition of the applicant and his/ her family members.

The current transcript form also includes a section where the relevant Dublin Regulation criteria for the case are signalled and a question allowing the applicant to reply to such information

## 2.4. Appeal

### Indicators: Dublin: Appeal

Same as regular procedure

1. Does the law provide for an appeal against the decision in the Dublin procedure?

- ❖ If yes, is it
- ❖ If yes, is it suspensive

<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
<input checked="" type="checkbox"/> Judicial	<input type="checkbox"/> Administrative
<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No

The Asylum Act provides for an appeal against the decision in the Dublin procedure consisting of a judicial review of relevant facts and points of law by the Administrative Court.<sup>122</sup> The asylum seeker has 5 days to lodge the appeal.<sup>123</sup> As in the regular procedure, the initial appeal and onward appeals are automatically suspensive,<sup>124</sup> and the law provides for a simplified judicial process with reduced formalities and time limits with the objective of shortening the duration of the judicial review.<sup>125</sup>

The scarce case law available indicates that the asylum seeker can challenge the correct application of the Dublin criteria,<sup>126</sup> as per the ruling of the Court of Justice of the European Union (CJEU) in *Ghezelbash*.<sup>127</sup> The court also verifies if all formalities have been respected by the SEF, including applicable deadlines set forth in the Dublin Regulation.<sup>128</sup>

As mentioned above, the case law of Administrative Courts indicates that (failing an incorrect application of the Dublin criteria) systemic deficiencies in the asylum system of the requested Member State remain the only situation where the authorities’ compliance with the Dublin Regulation may be challenged.<sup>129</sup>

<sup>120</sup> TAC Lisbon, Decision 275/18.9BESLB, 12 April 2018.

<sup>121</sup> Supreme Administrative Court, Decision 0306/17, 18 April 2017, available in Portuguese at: <https://bit.ly/2RYEoXW>.

<sup>122</sup> Article 37(4) Asylum Act; Article 95(3) Administrative Court Procedure Code.

<sup>123</sup> *Ibid.*

<sup>124</sup> Article 37(4) and (6) Asylum Act.

<sup>125</sup> Article 37(5) Asylum Act.

<sup>126</sup> TCA Lisbon, Decision 2183/15.6BESLB, 25 November 2015, unpublished, which states that a Dublin transfer decision can be challenged in case of incorrect application of the criteria enshrined in the Dublin Regulation and then moves on to assess the content of the criteria enshrined in Articles 8 to 10 and 17(1) in light of the particular circumstances of the applicant.

<sup>127</sup> CJEU, Case C-63/15 *Ghezelbash*, Judgment of 7 June 2016.

<sup>128</sup> TCA Lisbon, Decision 1235/16.0BESLB, 14 September 2016, unpublished.

<sup>129</sup> TCA South, Decision 13607/16, 22 September 2016, unpublished.

However, according to the information available to CPR in certain cases where deficiencies have been raised by the applicant, the court has failed to conduct an *ex officio* inquiry on the nature of those deficiencies on the basis of objective criteria such as reception conditions, recognition rates or procedural guarantees (see [Suspension of Transfers](#)).<sup>130</sup>

The information provided by the CSTAF for 2018 regarding the number, nationalities of appellants, average duration and results of judicial reviews by the TAC of Lisbon of first instance decisions does not make a distinction between the type of asylum procedures (see [Statistics](#)). However, according to the information available to CPR, Dublin procedures were the main type of asylum procedure used in 2018 to reject asylum applications at first instance in the case of nationals of Guinea and Guinea-Bissau (two of the most representative nationalities at appeals stage).

## 2.5. Legal assistance

### Indicators: Dublin: Legal Assistance

Same as regular procedure

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

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

## 2.6. Suspension of transfers

### Indicators: Dublin: Suspension of Transfers

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

According to the information available to CPR there have been no transfer decisions to **Greece** since the *M.S.S. v. Belgium and Greece* judgment of the European Court of Human Rights (ECtHR). During this period the SEF has applied *ex officio* the sovereignty clause in potential transfer cases to Greece assisted by CPR and the asylum seekers were granted access to the asylum procedure.

However, in 2017 the SEF issued transfer decisions to countries such as **Hungary** without any relevant reasoning pertaining to possible risks of *refoulement*. In the case of Hungary, Administrative Courts failed to conduct an *ex officio* inquiry in 2016 on the nature of potential deficiencies of the asylum system in the destination country despite the appeal court stating that systemic deficiencies in the asylum system of the requested Member State could be a valid ground for challenging the authorities compliance with the Dublin Regulation.<sup>131</sup>

In 2017, the *Tribunal Administrativo e Fiscal de Sintra* (TAFS) requested *ex officio* the CPR to issue an advisory opinion in the framework of an appeal of a Dublin transfer to Hungary in order "...to assess the

<sup>130</sup> TCA Lisbon, Decision 350/17.7BESLB, 3 May 2017, unpublished; TCA South, Decision 13607/16, 22 September 2016, unpublished.

<sup>131</sup> TCA Lisbon, Decision 1062/16.4BELSB, 12 June 2016, unpublished; TCA South, Decision 13607/16, 22 September 2016.

existence or inexistence of ‘systemic failures in the asylum procedure and the reception conditions of asylum seekers that imply a risk of inhumane or degrading treatment in accordance to Article 4 of the Charter of Fundamental Rights of the European Union’ taking into consideration Article 3 (2) of Regulation (EU) n.º 604/2013...”<sup>132</sup> In February 2018, the Court annulled the transfer decision on the basis that the available information regarding the functioning of the Hungarian asylum system revealed the existence of valid reasons to believe that there were systemic flaws in the asylum procedure and reception conditions amounting to the threshold of inhuman or degrading treatment (namely due to the systematic detention and acts of violence towards asylum seekers in the country).<sup>133</sup>

While CPR is not aware of any transfer decision to Hungary adopted in 2018, according to the information shared by SEF, there were 3 outgoing requests thereto during the year.

In 2018, TAC Lisbon upheld transfer decisions to **France** and **Spain**, ruling that it was not demonstrated that there were valid reasons to believe that asylum procedures and reception systems of the Member States do not comply with the applicable standards.<sup>134</sup>

The jurisprudence regarding transfers to **Italy** varied. While CPR is not aware of any case where the Court annulled a transfer decision to Italy due to the existence of systemic flaws in the asylum procedure and reception conditions, in at least two cases, TAC Lisbon annulled transfer decisions on the basis that the examining authority failed to analyse the conditions of the Italian asylum system, and determined that SEF had to reassess the case with updated and reliable information in order to determine if the transfer was not possible due to the existence of systemic flaws.<sup>135</sup>

Regrettably, one of these decisions was latter annulled by TCA South on appeal. The Court reversed the decision on the basis that, as the take back request was accepted by the Italian authorities, the Portuguese authorities correctly decided to transfer the applicant to the responsible Member State.<sup>136</sup>

At least in one case, TAC Lisbon upheld a transfer decision to Italy arguing that the applicant did not demonstrate a concrete risk of inhuman or degrading treatment and that, during the personal interview, the applicant only complained about the inaction of the Italian authorities regarding his health condition.<sup>137</sup>

It is worth mentioning that, in a 2018 decision focusing on the applicant’s right to be heard in Dublin procedures, TAC Lisbon considered that, if the applicant invokes issues related to deficient reception conditions in the receiving Member State during the personal interview, the examining authority has a duty to consider that in its decision.<sup>138</sup>

## 2.7. The situation of Dublin returnees

The National Director of the SEF is the competent authority to accept the responsibility of the Portuguese State for “assessing an application for international protection” presented in other Member States of the European Union.<sup>139</sup> In practice asylum seekers do not face relevant or systematic obstacles in accessing the asylum procedure following a “take charge” decision and their transfer to Portugal.

Currently, SEF usually informs CPR beforehand of the date of arrival, flight details and medical reports (if applicable). Upon arrival at the airport, the asylum seekers are a notification to present themselves at SEF/GAR in the following day(s) and sent to CPR’s Refugee Reception Centre (CAR) in **Bobadela**.

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<sup>132</sup> TAF Sintra, Application 555/17.0BESNT.

<sup>133</sup> TAF Sintra, Decision 555/17.0BESNT, 15 February 2018, unpublished.

<sup>134</sup> TAC Lisbon, Decision 461/18.1BELSB, 10 April 2018, unpublished; TAC Lisbon, Decision 741/18.6BELSB, 8 August 2018, unpublished.

<sup>135</sup> TAC Lisbon, Decision 1353/18.0BELSB, 17 September 2018, unpublished; TAC Lisbon, Decision 2291/18.1 BELSB, 30 January 2019, unpublished.

<sup>136</sup> TCA South, Decision 1353/18.0BELSB, 5 December 2018 and 10 January 2019, unpublished.

<sup>137</sup> TAC Lisbon, Decision 2030/18.7BELSB, 14 December 2018, unpublished.

<sup>138</sup> TAC Lisbon, Decision 367/18.4BELSB, 2 May 2018, unpublished.

<sup>139</sup> Article 40(1) Asylum Act.

In accordance with the Asylum Act, where the asylum seeker withdraws his or her application implicitly by disappearing or absconding for at least 90 days without informing the SEF, the file can be deemed closed by the National Director of the SEF.<sup>140</sup> Notwithstanding this, the asylum applicant is entitled to reopen his or her asylum case by presenting him or herself to the SEF at a later stage. In this case the file is to be resumed at the exact stage where it was discontinued by the National Director of the SEF.<sup>141</sup>

According to the information available to CPR, asylum seekers who had previously abandoned their application and left the country have not faced relevant or systematic problems in reopening their asylum cases and have not been treated as subsequent applicants following incoming transfers. Indeed, none of the subsequent asylum applications communicated to CPR by the SEF in 2018 concerned individuals transferred back to Portugal after having abandoned their application, despite 357 incoming transfers throughout the year.<sup>142</sup>

On 10 September 2018, Portugal and Germany signed an administrative arrangement pursuant to Article 36 of the Dublin Regulation. The agreement aims to facilitate returns by introducing non-binding shorter timeframes – one month instead of three months for a “take charge” request – and providing for group instead of individual transfers. The European Commission has notified the two countries that the arrangement is generally in line with the Dublin Regulation.<sup>143</sup>

The Ministry of Home Affairs stated that Portugal had readmitted at least seven asylum seekers from Germany under the administrative arrangement.<sup>144</sup> The applicants have been returned similarly to other Dublin cases, and have been accommodated in the CAR. No change has been witnessed so far in the Dublin procedure.

### 3. Admissibility procedure

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

The law provides for an admissibility procedure that is characterised by: specific grounds for considering an asylum application inadmissible;<sup>145</sup> specific time limits for the first instance decision on admissibility;<sup>146</sup> legal implications in case the deciding authority does not comply with those time limits;<sup>147</sup> the right to an appeal against the inadmissibility decision;<sup>148</sup> and specific rights attached to the admission to the procedure which represent a distinctive feature of the Portuguese asylum procedure.<sup>149</sup>

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

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

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<sup>140</sup> Article 32(1)(c) and (2) Asylum Act.

<sup>141</sup> Article 32(3) of the Asylum Act.

<sup>142</sup> According to the statistics collected by the SEF, a total of 13 subsequent applications were lodged in 2018 (see [Subsequent Applications](#)).

<sup>143</sup> European Commission, Ares(2018)4489201, 31 August 2018.

<sup>144</sup> Ministry of Home Affairs, ‘Nota à Comunicação Social’, 23 October 2018, available in Portuguese at: <http://bit.ly/2zmmVgC>.

<sup>145</sup> Article 19-A Asylum Act.

<sup>146</sup> Articles 20(1),24(4), 33(4) and 33-A(5) Asylum Act.

<sup>147</sup> Articles 20(2) and 26(4) Asylum Act.

<sup>148</sup> Articles 22(1) and 25(1) Asylum Act.

<sup>149</sup> Article 27(1)-(3) Asylum Act pertaining to the issuance of a provisional residence permit and Article 54(1) pertaining to the right to access the labour market.

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

The National Director of the SEF has 30 days to take a decision on the admissibility of the application<sup>150</sup> which is reduced to 10 days in the case of subsequent applications,<sup>151</sup> and applications following a removal order,<sup>152</sup> and to 7 days in the case of the **Border Procedure**.<sup>153</sup> In case the SEF does not comply with these time limits, the claim is deemed automatically admitted to the procedure.<sup>154</sup>

In practice, all asylum applicants undergo an interview that assesses the above mentioned inadmissibility clauses along with the merits of the application,<sup>155</sup> including those at the border. However, except for Dublin-related decisions, the number of asylum applications deemed inadmissible in 2018 was minimal. The statistics shared by SEF indicate that among 9 inadmissibility decisions, there were: 2 subsequent applications without new elements, 3 “safe third country” decisions, and 4 “first country of asylum decisions”. The information gathered by CPR on the basis of communications from SEF, however, points to 18 (non-Dublin) inadmissibility decisions issued in 2018 among which: 5 subsequent applications without new elements; 3 “safe third country” decisions; 9 “first country of asylum” decisions and 1 decision concerning an applicant granted protection in another EU Member State.

While the SEF generally admits asylum seekers to the regular procedure in case of non-compliance with applicable time limits, the automatic admission and issuance of a provisional residence permit has at times required a proactive intervention of the asylum seeker or of his or her legal counsel. Unlike in previous years, throughout 2018, CPR witnessed a growth of such decisions.

### 3.2. Personal interview

#### Indicators: Admissibility Procedure: Personal Interview

Same as regular procedure

1. Is a personal interview of the asylum seeker in most cases conducted in practice in the admissibility procedure?
  - ❖ If so, are questions limited to nationality, identity, travel route?  Yes  No
  - ❖ If so, are interpreters available in practice, for interviews?  Yes  No
2. Are interviews conducted through video conferencing?  Frequently  Rarely  Never

The Asylum Act provides for the systematic personal interview of all asylum seekers, including for assessing admissibility,<sup>156</sup> except for cases where: (i) the evidence already available allows for a positive decision; or (ii) the applicant lacks legal capacity due to long lasting reasons that are not under his or her control.<sup>157</sup>

According to the information shared by SEF, in 2018 there were no cases where a decision was taken without a personal interview. However, according to the information available to CPR, in 2018, not all asylum seekers were provided a personal interview in the framework of Dublin procedures ([Dublin: Personal Interview](#)). In practice, the individual interview can either focus on Dublin related questions only or cover both admissibility and the merit of the claim. The modalities of the interview are the same as those of the regular procedure and the interview is generally conducted by SEF/GAR, although interviews

<sup>150</sup> Article 20(1) Asylum Act.

<sup>151</sup> Article 33(4) Asylum Act.

<sup>152</sup> Article 33-A(5) Asylum Act.

<sup>153</sup> Article 24(4) Asylum Act.

<sup>154</sup> Articles 20(2) and 26(4) Asylum Act.

<sup>155</sup> Article 16 Asylum Act.

<sup>156</sup> Article 16(1)-(3) Asylum Act.

<sup>157</sup> Article 16(5) Asylum Act.

are at times conducted by SEF's regional representations in cases of asylum applications made in more remote locations.

### 3.3. Appeal

#### Indicators: Admissibility Procedure: Appeal

Same as regular procedure

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

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

The Asylum Act provides for an appeal against an inadmissibility decision consisting of a judicial review of relevant facts and points of law by the Administrative Court.<sup>158</sup> The time limit for lodging the appeal varies according to the inadmissibility ground and depending on whether border procedures apply. Time limits vary as follows:

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

As in the regular procedure, the first appeal and onward appeals are automatically suspensive,<sup>159</sup> with the exception of onward appeals concerning inadmissible subsequent applications.<sup>160</sup> The law also provides for a simplified judicial process with reduced formalities and time limits with the objective of shortening the duration of the judicial review.<sup>161</sup>

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

The information provided by the CSTAF for 2018 regarding the number, nationalities of appellants, average duration and results of judicial reviews by the TAC of Lisbon of first instance decisions does not make a distinction between the type of asylum procedures (see [Statistics](#)).

<sup>158</sup> Articles 22(1), 25(1), 33(6) and 37(4) Asylum Act and Article 95(3) Administrative Court Procedure Code.

<sup>159</sup> Articles 22(1), 25(3) and 37(6) Asylum Act.

<sup>160</sup> Article 33(6) Asylum Act.

<sup>161</sup> Articles 22(2), 25(2), 33(7) and 37(5) Asylum Act.

### 3.4. Legal assistance

#### Indicators: Admissibility Procedure: Legal Assistance

Same as regular procedure

1. Do asylum seekers have access to free legal assistance during admissibility procedures in practice?  
❖ Does free legal assistance cover:  
 Yes       With difficulty       No  
 Representation in interview  
 Legal advice
  
2. Do asylum seekers have access to free legal assistance on appeal against an inadmissibility decision in practice?  
❖ Does free legal assistance cover  
 Yes       With difficulty       No  
 Representation in courts  
 Legal advice

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

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

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

##### Indicators: Border Procedure: General

1. Do border authorities receive written instructions on the referral of asylum seekers to the competent authorities?  
 Yes       No
  
2. Can an application made at the border be examined in substance during a border procedure?  
 Yes       No
  
3. Is there a maximum time limit for a first instance decision laid down in the law?  
❖ If yes, what is the maximum time limit?  
 Yes       No  
7 days

The law provides for a specific procedure regarding applications made at a national border.<sup>162</sup> A distinctive feature of the legal framework of border procedures consists in the provision for the detention of asylum seekers for the duration of the admissibility stage / accelerated procedure (see [Detention of Asylum Seekers](#)).<sup>163</sup>

Portugal has 36 external border posts, of which 8 air border posts and 28 maritime border posts.<sup>164</sup> The SEF is responsible for border controls, including for refusing entry and exit from the territory.<sup>165</sup> The overwhelming majority of border procedures in 2018 were conducted at **Lisbon Airport**. The statistics provided by the SEF indicate a total of 408 border procedures, but do not include a breakdown per border post. The information collected by CPR suggests that at least 376 procedures were conducted at Lisbon Airport in 2018, compared to 428 in 2017.

In practice a person who: does not meet the entry requirements set in the law; is subject to a national or an EU entry ban; or represents a risk or a serious threat to public order, national security or public health, is refused entrance in national territory,<sup>166</sup> and is notified in writing by the SEF of a decision of refusal of entry to the territory.<sup>167</sup> The notification bears a reference to the right of individuals refused entry at the border to seek asylum as enshrined in the law.<sup>168</sup> The SEF also informs the carrier company (i.e. the air company for most cases) for the purposes of return of the individual in the shortest possible time either to: the point where the individual initiated travel with the company; the country that issued the travel

<sup>162</sup> Article 23(1) Asylum Act.

<sup>163</sup> Articles 26(1) and 35-A(3)(a) Asylum Act.

<sup>164</sup> Annex II Decree-Law 252/2000.

<sup>165</sup> Article 2 Decree-Law 252/2000.

<sup>166</sup> Article 32 Aliens Act.

<sup>167</sup> Article 38(2) Aliens Act.

<sup>168</sup> Article 40(4) Aliens Act.

document; or any country where entrance is guaranteed.<sup>169</sup> This is done in accordance to the Convention on International Civil Aviation,<sup>170</sup> as according to the SEF the individual remains in the international area of the airport and is therefore not subject to the rules applicable to removal procedures from national territory.<sup>171</sup> When the individual refused entry into national territory applies for asylum, the air company is immediately informed by the SEF of the suspension of return.

While the border procedure provides for the basic principles and guarantees of the regular procedure,<sup>172</sup> it lays down time limits for a decision on admissibility or for accelerated procedures regarding applications deemed unfounded on certain grounds (see [Accelerated Procedure](#) grounds) that are significantly shorter than those in national territory. Additionally, border procedures are characterised by shorter appeal deadlines, as well as reduced guarantees such as the exclusion from the right of the applicant to seek revision of the narrative of his or her personal interview,<sup>173</sup> or the possibility to consult with CPR prior to the individual interview conducted by the SEF.

The National Director of the SEF has 7 days to issue a decision either on admissibility or on the merits of the application in an accelerated procedure.<sup>174</sup> In the absence of inadmissibility grounds or grounds for deeming the application unfounded in an accelerated procedure, the SEF admits the asylum seeker to the regular procedure and authorises entry into national territory / release from border detention.<sup>175</sup> Non-compliance with those time limits results in the automatic admission of the applicant to the regular procedure and release from the border.<sup>176</sup>

The asylum seeker remains in detention in the international area of the airport or port until the National Director of the SEF issues a decision on the admissibility / merits of the claim,<sup>177</sup> or for up to 60 days in the case of appeal (see [Duration of Detention](#)). While in the overwhelming majority of cases the National Director of the SEF issues a decision within the 7-day time limit, the automatic admission of the asylum application is generally upheld in the rare cases where that does not happen.

### **Exempted categories**

The law identifies a sub-category of individuals whose special procedural needs result from torture, rape or other serious forms of psychological, physical or sexual violence and who may be exempted from the border procedure under certain conditions (see [Special Procedural Guarantees](#)).<sup>178</sup> Furthermore, the placement of unaccompanied and separated children in temporary installations (detention) at the border – and hence application of border procedures – must abide by applicable international recommendations such as those of UNHCR, UNICEF and ICRC.<sup>179</sup>

The border procedure is applied systematically, while certain categories of vulnerable asylum seekers such as unaccompanied children, pregnant women and seriously ill were usually released from the border and submitted to an admissibility procedure and/or regular or accelerated procedure in national territory. However, CPR has witnessed a change in practice since 2016, due to which a very significant percentage of vulnerable applicants such as unaccompanied children, families with children and pregnant women were detained and subject to the border procedure (see [Detention of Vulnerable Applicants](#)).

<sup>169</sup> Articles 38(3) and 41(1) Aliens Act.

<sup>170</sup> Chicago Convention on International Civil Aviation, 7 December 1944, Annex IX, Chapter V, points 5.9 -5.11.1.

<sup>171</sup> CPR, *Access to Protection: a Human Right, country report, Portugal*, 2014, available in Portuguese at: <http://bit.ly/2xA2aiV>, para 2.1.

<sup>172</sup> This includes access to the procedure, the right to remain in national territory pending examination, the right to information, personal interviews, the right to legal information and assistance throughout the procedure, the right to free legal aid, special procedural guarantees, among others.

<sup>173</sup> Article 25 Asylum Act.

<sup>174</sup> Article 24(4) Asylum Act. On the territory, decisions on admissibility must be taken within 30 days and decisions in the accelerated procedure within 10 to 30 days.

<sup>175</sup> Article 26(4) Asylum Act.

<sup>176</sup> *Ibid.*

<sup>177</sup> Article 26(1) Aliens Act.

<sup>178</sup> Article 17-A(4) Asylum Act. Exemption from border procedures is dependent on the impossibility to offer "support and conditions to asylum seekers identified as being in need of special procedural guarantees."

<sup>179</sup> Article 26(2) Asylum Act.

While since July 2018, following an instruction of the Ministry of Home Affairs (see [Detention of Vulnerable Applicants](#)), CPR registered changes regarding the detention of families with children and unaccompanied children, according to the information available to CPR, this had not resulted in significant changes regarding exemption from border procedures.

The lack of standard operational procedures and tools allowing for the early and effective identification of survivors of torture and/or serious violence and their special procedural needs has meant that in general, and despite the lack of provision of special procedural guarantees at the border, asylum seekers who claimed to be survivors of torture, rape or other serious forms of psychological, physical or sexual violence were not exempted from border procedures.<sup>180</sup>

Statistics provided by the SEF for 2018 refer to a total of 408 asylum seekers subject to the border procedure (approximately 32% of the 1,270 spontaneously arriving asylum seekers), but figures on the outcome of those applications or the number of persons in need of special procedural guarantees were not available, except for unaccompanied children (see also [Detention of Vulnerable Applicants](#)). According to SEF, 16 unaccompanied children were subjected to the border procedure in 2018. While SEF did not share a breakdown of the decisions taken under the border procedure by outcome, according to the information collected by CPR in 2018, the negative decisions taken in the border procedure included at least: 231 applications deemed unfounded in an accelerated procedure; 4 applications rejected as inadmissible on Dublin grounds; and 6 applications rejected as inadmissible on a ground other than Dublin.

## 4.2. Personal interview

### Indicators: Border Procedure: Personal Interview

Same as regular procedure

1. Is a personal interview of the asylum seeker in most cases conducted in practice in the border procedure?
  - ❖ If so, are questions limited to nationality, identity, travel route?  Yes  No
  - ❖ If so, are interpreters available in practice, for interviews?  Yes  No
2. Are interviews conducted through video conferencing?  Frequently  Rarely  Never

The rules and modalities of the interview are the same as those of the regular procedure and the interview is generally conducted by SEF/GAR. However, given the short time limits of the border procedure, the interview is conducted in detention at the Temporary Installation Centre (CIT) a few days after arrival, with little time to prepare and substantiate the asylum application and with reduced guarantees such as the exclusion from the right of the applicant to seek revision of the narrative of the interview.<sup>181</sup> An additional problem regarding interviews conducted at the **Lisbon Airport** are the space constraints of the interview offices which leave very limited space and privacy, notably due to inadequate sound isolation (see [Conditions in Detention Facilities](#)).

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

Regarding certain categories of vulnerable asylum seekers such as survivors of torture, rape or other serious forms of psychological, physical or sexual violence, the absence of identification and vulnerability assessments means that potential special needs may not be known to the asylum authorities and may not have been taken into account at the time of interview. CPR is unaware of the implementation of special

<sup>180</sup> Italian Council for Refugees *et al.*, *Time for Needs: Listening, Healing, Protecting*, October 2017, available at: <http://bit.ly/2xZqCGh>.

<sup>181</sup> Article 25 Asylum Act.

procedural guarantees at the border such as the postponement of the interview, additional time for submitting supporting evidence or the attendance of supporting personnel in the interview in 2018.<sup>182</sup>

### 4.3. Appeal

#### Indicators: Border Procedure: Appeal

Same as regular procedure

1. Does the law provide for an appeal against the decision in the border procedure?

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

The Asylum Act provides for an appeal against a rejection decision at the border, either on admissibility grounds or on the merits in an accelerated procedure. The appeal consists of a judicial review of relevant facts and points of law by the Administrative Court.<sup>183</sup> The time limit for lodging the appeal is 4 days for all grounds.<sup>184</sup>

As in the regular procedure, the first and onward appeals are automatically suspensive.<sup>185</sup> The law also provides for a simplified judicial process with reduced formalities and time limits with the objective of shortening the duration of the judicial review.<sup>186</sup> However, the Administrative Courts rarely reach a decision on the appeal within the maximum detention time limit of 60 days, meaning that the asylum applicant is granted access to the territory, albeit liable to a removal procedure in case his or her application is rejected by final decision.<sup>187</sup>

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

The information shared by CSTAF does not include a breakdown by type or outcome of procedures but indicates a poor success rate at appeals stage. In this regard, it must be acknowledged that the quality of many appeals submitted is often poor as in the other procedures, given that very few lawyers have relevant expertise and training in the field. It should be noted that while CPR may be requested to intervene in the judicial procedure, namely by providing country of origin information or guidance on legal standards, it is not a party thereto and is therefore not systematically notified of judicial decisions by the courts.

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

<sup>182</sup> Article 17-A(3) Asylum Act. See also Italian Council for Refugees *et al.*, *Time for Needs: Listening, Healing, Protecting*, October 2017, available at: <http://bit.ly/2xZqCGh>.

<sup>183</sup> Article 25(1) Asylum Act; Article 95(3) Administrative Court Procedure Code.

<sup>184</sup> Article 25(1) Asylum Act.

<sup>185</sup> Article 25 Asylum Act.

<sup>186</sup> Article 25(2) Asylum Act.

<sup>187</sup> Article 21(2) and (3) Aliens Act.

#### 4.4. Legal assistance

##### Indicators: Border Procedure: Legal Assistance

Same as regular procedure

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

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

Regarding free legal assistance at first instance, the law expressly provides the possibility for UNHCR and CPR as an organisation working on its behalf to interview the asylum seeker at the border<sup>188</sup> and to provide assistance.<sup>189</sup> However, following the registration of the asylum claim CPR only has access to applicants once the SEF has conducted its individual interview covering admissibility and eligibility.

The Asylum Act also provides for an accelerated free legal aid procedure at the border for the purposes of appeal on the basis of a MoU between the Ministry of Interior and the Portuguese Bar Association.<sup>190</sup> However, such a procedure remains to be implemented to date, meaning that securing access to free legal aid at appeal stage is currently an integral part of the legal assistance provided by CPR at the border. To that end, CPR is obliged to resort to the same (bureaucratic and lengthy) procedure used in the territory albeit faced with specific constraints (e.g. shorter deadlines for application, communication problems, timely access to interpreters, etc.)

As mentioned in [Regular Procedure: Legal Assistance](#), in 2018, CPR in partnership with UNHCR continued its efforts to engage with the Portuguese Bar Association with the aim of providing training to free legal aid lawyers. The CPR also continued advocating for the Portuguese Bar Association to engage with the Ministry of Interior in order to promote the full implementation of the legal provisions mentioned above regarding an accelerated free legal aid procedure at the border for the purposes of appeal.

While CPR provided support to 1,020 asylum seekers that applied for international protection in 2018, the continuing increase in spontaneous asylum applications in 2018 has further impacted on its capacity to provide legal information and assistance in the case of asylum seekers placed in detention at the border, similar to the regular procedure. This problem is aggravated by shorter deadlines, communication problems and bureaucratic clearance procedures for accessing the restricted area of the airport where the CIT is located regarding interpreters and limitations in the timely provision of information by the SEF regarding dates of interviews and language skills of the asylum seekers.

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

As with the regular procedure, the overall quality of free legal aid at appeal stage remains a concern due to the current selection system of lawyers based on a random / automatic procedure. The unscrupulous

<sup>188</sup> Article 24(1) Asylum Act.

<sup>189</sup> Article 49(6) Asylum Act.

<sup>190</sup> Article 25(4) Asylum Act.

activity of a limited number of private lawyers at the **Lisbon Airport**'s CIT, providing poor quality services in exchange for excessively high fees, remained a problem in 2018. This concern has been raised by CPR with the SEF and the Portuguese Bar Association but is still ongoing despite past criminal investigations conducted by the SEF that have resulted in criminal charges related to smuggling and trafficking in human beings. In September 2018, the SEF reported that an investigation involving a lawyer in the Lisbon area is ongoing. According to the press note,<sup>191</sup> the authorities conducted house and office searches and the lawyer was formally put under investigation ("constituída arguida"). The topic was covered by multiple media outlets that emphasised that the lawyer incited "abusive asylum applications".<sup>192</sup>

## 5. Accelerated procedure

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

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

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

- a. Misleading the authorities by presenting false information or documents or by withholding relevant information or documents with respect to identity and/or nationality that could have had a negative impact on the decision;
- b. In bad faith, destroying or disposing of an identity or travel document that would have helped establish identity or nationality;
- c. Making clearly inconsistent and contradictory, clearly false or obviously improbable representations which contradict sufficiently verified COI, thus making the claim clearly unconvincing in relation to whether the applicant qualifies for international protection;
- d. Entering the territory of the country unlawfully or prolonging the stay unlawfully and, without good reason, failing to make an application for international protection as soon as possible;
- e. In submitting the application and presenting the facts, only raising issues that are either not relevant or of minimal relevance to the examination of whether the applicant qualifies for international protection;
- f. Coming from a **Safe Country of Origin**;
- g. Introducing an admissible subsequent application;<sup>193</sup>
- h. Making an application merely in order to delay or frustrate the enforcement of an earlier or imminent decision which would result in removal;
- i. Representing a danger to the national security or public order; and
- j. Refusing to comply with an obligation to have fingerprints taken.

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

<sup>191</sup> SEF, 'SEF faz buscas em casa de advogada suspeita de envolvimento numa célula em Dakar', 28 September 2018, available in Portuguese at: <https://bit.ly/2uQ4D5L>.

<sup>192</sup> See e.g. Sic Notícias, 'SEF constitui arguida advogada suspeita de pedidos de asilo abusivos', 28 September 2018, available in Portuguese at: <https://bit.ly/2IlyOv>; Expresso, 'SEF. Advogada suspeita de se dedicar à apresentação abusiva de pedidos de asilo', 28 September 2018, available in Portuguese at: <https://bit.ly/2KI8LVQ>.

<sup>193</sup> In the case of subsequent applications admitted to the procedure under Article 19(1)(g) Asylum Act, there seems to be incoherence in the law as Article 33(5) provides for the application of the regular procedure where, following a preliminary assessment within 10 days, the application is deemed admissible because it includes new elements or findings pertaining to the conditions for qualifying as a beneficiary of international protection.

A first instance decision on the territory must be taken within 30 days for all grounds, except for cases concerning an application following a removal order which must be decided within 10 days.<sup>194</sup> In contrast to the regular procedure,<sup>195</sup> the National Director of SEF is the responsible authority for issuing a first instance decision on the merits of the application in the accelerated procedure,<sup>196</sup> while non-compliance with the applicable time limits grants the applicant automatic access to the regular procedure.<sup>197</sup>

In practice all applications are channelled through the accelerated procedure where the specific grounds provided in the law apply.<sup>198</sup> In 2018, the statistics collected from the SEF indicated a total of 417 asylum applications processed under an accelerated procedure.

SEF was unable to share statistics on the total number of decisions taken under the accelerated procedure or the breakdown of the total number of decisions taken under the accelerated procedure by outcome. According to the information available to CPR. In 2018 there were at least 111 applications rejected under the accelerated procedure on the territory and 231 at the border. In CPR's experience, most of rejections in accelerated procedures continued to be based on inconsistency or irrelevance.

## 5.2. Personal interview

### Indicators: Accelerated Procedure: Personal Interview

Same as regular procedure

1. Is a personal interview of the asylum seeker in most cases conducted in practice in the accelerated procedure?
  - ❖ If so, are questions limited to nationality, identity, travel route?  Yes  No
  - ❖ If so, are interpreters available in practice, for interviews?  Yes  No
2. Are interviews conducted through video conferencing?  Frequently  Rarely  Never

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

The law foresees reduced guarantees in the accelerated procedure, namely by excluding asylum seekers from the right to seek revision of the narrative of their personal interview in cases concerning applications following a removal order,<sup>199</sup> or the right to be notified and evaluate the SEF's reasoning of the proposal for a final decision.<sup>200</sup>

## 5.3. Appeal

### Indicators: Accelerated Procedure: Appeal

Same as regular procedure

1. Does the law provide for an appeal against the decision in the accelerated procedure?
  - ❖ If yes, is it  Yes  No
  - ❖ If yes, is it suspensive  Judicial  Administrative
  - ❖ If yes, is it suspensive  Yes  No

<sup>194</sup> Articles 20(1) and 33-A(5) Asylum Act.

<sup>195</sup> Article 29(5) Asylum Act.

<sup>196</sup> Articles 20(1) and 24(4) Asylum Act.

<sup>197</sup> Articles 20(2) and 26(4) Asylum Act.

<sup>198</sup> There is a distinction to be made between border procedures from which certain categories of vulnerable asylum seekers may be exempted and accelerated procedures. While the vulnerable asylum seeker may be exempted from the bordure procedure and be released from detention, he or she will remain liable to an accelerated procedure in national territory.

<sup>199</sup> Article 33-A(4) and (5) Asylum Act.

<sup>200</sup> Article 29(2) Asylum Act.

The Asylum Act provides for judicial review of facts and points of law by the Administrative Court against a rejection decision in an accelerated procedure.<sup>201</sup>

The time limit for lodging the appeal on the territory varies according to the specific ground of the accelerated procedure: from 4 days for applications following a removal order,<sup>202</sup> to 8 days for the remaining grounds.<sup>203</sup> As in the regular procedure, the initial appeal is automatically suspensive.<sup>204</sup> However, the onward appeal in the case of an application following a removal order is not.<sup>205</sup> The law also provides for a simplified judicial process with reduced formalities and time limits with the objective of shortening the duration of the judicial review.<sup>206</sup>

The information provided by the CSTAF for 2018 regarding the number, nationalities of appellants, average duration and results of judicial reviews by the TAC of Lisbon of first instance decisions does not make a distinction between the type of asylum procedures (see [Statistics](#)). However, according to the information available to CPR the main type of asylum procedures used in 2018 to reject asylum applications consisted of accelerated procedures in the case of the Democratic Republic of Congo (80 out of a total 100 rejections), Angola (49 out of 49), Cameroon (13 out of 16); Comoros (24 out of 24), Pakistan (16 out of 21) and Ukraine (15 out of 24).

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

Without prejudice to issues discussed for the regular procedure such as the poor quality of legal assistance and language barriers therein that have an impact on the quality and effectiveness of appeals, CPR is not aware of systemic or relevant obstacles faced by asylum seekers to appealing a first instance decision in the accelerated procedure.

#### 5.4. Legal assistance

##### Indicators: Accelerated Procedure: Legal Assistance

Same as regular procedure

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

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

<sup>201</sup> Articles 22(1), 33-A(6) and 25(1) Asylum Act and Article 95(3) Administrative Court Procedure Code.

<sup>202</sup> Article 33-A(6) Asylum Act.

<sup>203</sup> Articles 22(1) Asylum Act.

<sup>204</sup> Articles 22(1) and 33-A(6) Asylum Act.

<sup>205</sup> Article 33-A(8) Asylum Act.

<sup>206</sup> Article 22(2) and 33-A(7) Asylum Act.

## D. Guarantees for vulnerable groups

### 1. Identification

#### Indicators: Special Procedural Guarantees

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

The Asylum Act defines an “applicant in need of special procedural guarantees” in terms of reduced ability to benefit from the rights and comply with the obligations stemming from the Asylum Act due to individual circumstances.<sup>207</sup> Even though it does not include an exhaustive list of asylum seekers presumed to be in need of special procedural guarantees, it refers to age, gender, gender identity, sexual orientation, disability, serious illness, mental disorders, torture, rape or other serious forms of psychological, physical or sexual violence as possible factors underlying individual circumstances that could lead to the need of special procedural guarantees.<sup>208</sup> The Asylum Act provides for the need to identify persons with special needs and the nature of such needs upon registration of the asylum application or at any stage of the asylum procedure.<sup>209</sup> The nature of special procedural needs should be assessed before a decision on the admissibility of the application is taken.<sup>210</sup>

#### 1.1. Screening of vulnerability

Despite these legal obligations, there are no (specific) mechanisms, standard operating procedures or unit in place to systematically identify asylum seekers who need special procedural guarantees. In 2018, however, the SEF/GAR has introduced two general questions in the questionnaire used in first instance asylum interviews that address the applicant’s self-assessed health condition and capacity to undergo the interview,<sup>211</sup> as well as a couple of questions in Dublin interviews on health-related vulnerabilities.<sup>212</sup>

Publicly available statistics regarding vulnerable asylum seekers are scarce and relate mostly to unaccompanied children and families with children. CPR also collects statistical information on asylum seekers who self-identify or are identified as vulnerable on the basis of information received from the SEF in accordance with the law, collected directly from clients or provided by other service providers.<sup>213</sup> In 2018, of the 1,190 spontaneous asylum applicants whose cases were communicated by the SEF, a total of 468 were identified as vulnerable:

Asylum seekers communicated to CPR and identified as vulnerable: 2017-2018		
Category of vulnerable group	2017	2018
Unaccompanied children	41	67
Accompanied children	194	219
Single-parent families	67	53
Pregnant women	17	9
Elderly persons	2	3

<sup>207</sup> Article 17-A(1) Asylum Act.

<sup>208</sup> *Ibid.*

<sup>209</sup> Article 77(2) Asylum Act.

<sup>210</sup> Article 17-A(1) Asylum Act.

<sup>211</sup> The questions read (1) “Do you feel alright, are you comfortable? Do you have any health problems?” and (2) “Do you feel capable of talking to me at the moment?”

<sup>212</sup> The questions read (1) “Are you in good health – Y/N? Do you have health problems-Y/N? Which problems?” and (2) “Are you accompanied by a relative with health problems?”

<sup>213</sup> The identification criteria and age assessment procedures used by the SEF may explain the difference between the number of unaccompanied children identified by the SEF and CPR.

Disabled persons	1	1
Survivors of torture	12	14
Survivors of physical, psychological or sexual violence	74	91
Persons with chronic or serious illnesses	13	12
Persons with addictions	1	0
<b>Total</b>	<b>422</b>	<b>468</b>

Source: CPR.

Of the 67 declared unaccompanied children who applied for asylum in 2018, according to the information available to CPR, 27 were later determined to be adults, including on the basis of the applicants' statements, second-stage age assessment procedures (X-ray) requested by the Family and Juvenile Court or information received from other EU Member States (e.g. Dublin and *ad hoc* disembarkation arrangements).

In the case of survivors of torture and/or serious violence, past research concluded that identification is conducted *ad hoc* and mostly on the basis of self-identification during refugee status determination, social interviews or initial medical screenings.<sup>214</sup> The staff working with asylum seekers lack specific training on the identification of survivors of torture and/or serious violence and their special needs. In the specific case of victims of trafficking, the SEF claimed to have staff with specific training in trafficking indicators operating at the **Lisbon Airport**,<sup>215</sup> and while CPR is unaware of the identification of trafficking victims in border procedures, particularly regarding unaccompanied children, some were referred to CPR for **Accommodation** with an informal indication of possible trafficking risks. The CPR offered recommendations during the year at the request of the Observatory on Trafficking in Human Beings (*Observatório do Tráfico de Seres Humanos – OTSH*) regarding the flowchart of the current National Referral Mechanism! which does not provide for clear procedures regarding referrals of unaccompanied asylum-seeking children in the asylum procedure or age assessment procedures.<sup>216</sup>

Furthermore, CPR is unaware of instances where asylum applicants were granted access to the asylum procedure or granted international protection on the basis of a well-founded fear of persecution for reasons of trafficking in human beings.

Despite the absence of identification procedures for unaccompanied children victims of trafficking either at the border or on the territory, CPR systematically flags presumed unaccompanied children victims of trafficking under its care at the Refugee Children Reception Centre (*Centro de Acolhimento para Crianças Refugiadas*, CACR) to the National Observatory on Trafficking in Human Beings (on the basis of an anonymous form with indicators), as well as to the SEF's asylum and criminal investigation departments for the purposes of criminal investigation and protection. In the very limited number of instances where CPR caseworkers are able to obtain the unaccompanied child's consent for adequate protection, the cases are further referred to the multidisciplinary team of the Family Protection Association (APF) that conducts an initial assessment that can lead to the placement of the presumed victim in an Anti-Trafficking Reception and Protection Centre (CAP). In 2018, AKTO, a Portuguese NGO, inaugurated the first CAP

<sup>214</sup> Italian Council for Refugees et al., *Time for Needs: Listening, Healing, Protecting*, October 2017, available at: <http://bit.ly/2xZqCGh>.

<sup>215</sup> See Expresso, 'SEF cria equipas especializadas para proteção das vítimas de tráfico de seres humanos', 18 October 2018, available in Portuguese at: <https://bit.ly/2TIN8OU>; Público, 'SEF vai ter três equipas especializadas em tráfico de seres humanos', 29 May 2018, available in Portuguese at: <https://bit.ly/2ANfFj>. According to these sources, in 2018 the SEF expanded its capacity for the identification and protection of victims of trafficking at the border and on national territory following the concerns raised by the Council of Europe Group of Experts on Action Against Trafficking in Human Beings (GRETA) report published in 2017, available at: <https://bit.ly/2RLfYRy>, which also raised specific concerns regarding the disappearance of unaccompanied asylum-seeking children.

<sup>216</sup> The National Referral Mechanism consists of guidance for the identification, referral and integration of trafficking victims in Portugal and aims to set out the procedures to be adopted by relevant professionals. The National Referral Mechanism was developed by the Network for the Support and Protection of the Victims of Trafficking (*Rede de Apoio e Protecção às Vítimas de Tráfico*, RAPVT) and is based on a Manual available in Portuguese at: <https://bit.ly/2uCIYPz>, and a flowchart containing referral procedures developed in 2014, available in Portuguese at: <https://bit.ly/2TzCNV6>.

in Portugal exclusively dedicated to children victims of trafficking,<sup>217</sup> and conducted bilateral meetings with relevant stakeholders, including with CPR, to provide information on service provision and referral procedures.

In 2018, a total of 16 out of 61 unaccompanied children accommodated by CPR throughout the year absconded from CPR's reception centres,<sup>218</sup> and during this period CPR made 5 referrals to the National Observatory on Trafficking in Human Beings although none were granted victim status by the authorities or placed in a specialised reception centre for victims of trafficking due to their early absconding.

## 1.2. Age assessment of unaccompanied children

Despite the obligation to refer unaccompanied children to Family and Juvenile Courts for the purposes of legal representation,<sup>219</sup> the Asylum Act does not provide for a specific identification mechanism for unaccompanied children or objective criteria to establish which asylum seekers must undergo an age assessment.

The SEF may resort to medical expertise using a non-invasive examination to determine the age of the unaccompanied child who must be given the benefit of the doubt in case well founded doubts persist regarding his or her age after the examination.<sup>220</sup> The unaccompanied child must be informed that his or her age will be determined by means of such expertise and his or her representative must give prior consent.<sup>221</sup> Refusal to allow an expert examination shall not result in the rejection of the application for international protection, but does not prevent a decision from being issued in this regard.<sup>222</sup> The age assessment procedure may also be triggered by the Family and Juvenile Court in the framework of court procedures aimed at ensuring legal representation for the child (see [Legal Representation of Unaccompanied Children](#)) or by the unaccompanied child's legal representative.

In practice, age assessment procedures can be triggered either by the SEF after the personal interview when there are significant doubts regarding the age of the applicant on the basis of physical appearance and/or demeanour or by Family and Juvenile Courts in the framework of legal representation and child protection procedures (see [Legal Representation of Unaccompanied Children](#)). While the SEF was unable to provide statistics, in 2018 age assessment procedures remained limited but have been increasingly used by Family and Juvenile Courts.<sup>223</sup>

The absence of objective criteria to establish what constitutes reasonable doubt, who must undergo an age assessment, and the nature of the initial age assessments is particularly problematic: (a) in the framework of border procedures, where the SEF has at times refused to trigger age assessment procedures and/or give the benefit of the doubt to asylum seekers claiming to be children, with significant implications regarding detention and access to procedural rights in the absence of a legal representative; (b) in a few cases of asylum applicants who were referred by the SEF to the CACR as children despite legitimate doubts regarding the age of the applicant on the basis of his or her physical appearance and/or demeanour thus putting at risk the integrity and security of the facility; and (c) in a few cases where asylum applicants claim to be adults but there are legitimate doubts regarding the possibility of them being children on the basis of earlier statements that were later withdrawn, physical appearance and/or demeanour (d) increased use of second stage age assessment by Family and Juvenile Courts without adequate justification of their reasonableness and proportionality.

<sup>217</sup> AKTO, 'Centro de Acolhimento e Proteção para Crianças Vítimas de Tráfico de Seres Humanos', available in Portuguese at: <https://bit.ly/2sqeqXr>.

<sup>218</sup> These include 36 unaccompanied children who applied for asylum in 2018 and 25 who applied for asylum in previous years.

<sup>219</sup> Article 79(2) Asylum Act.

<sup>220</sup> Article 79(6) Asylum Act.

<sup>221</sup> Article 79(7) Asylum Act.

<sup>222</sup> Article 79(8) Asylum Act.

<sup>223</sup> According to the information available to CPR, in 2018 a total of 14 second-stage age assessments were conducted by Family and Juvenile Courts (13) and SEF (1) regarding spontaneous asylum-seeking children in Portugal.

The initial age assessment is conducted by SEF and does not involve child protection staff while second stage assessments fail to meet the holistic and multidisciplinary standards proposed by UNHCR.<sup>224</sup> Indeed, the methods used only include wrist and dental X-rays and are conducted by the National Institute of Legal Medicine and Forensic Science (INMLCF).<sup>225</sup> Despite the established technical limitations of such methods, their results have been used by the SEF and Family and Juvenile Courts as evidence of the adulthood of the applicant, and as grounds for refusing the benefit of the doubt despite their inability to establish an exact age. This practice has been overturned by Administrative Courts in at least one instance regarding the asylum procedure,<sup>226</sup> and was recently criticised by the Council of Europe.<sup>227</sup>

In 2018, age assessments by other EU Member States have also been used by the SEF as negative credibility indicators, notably those from Malta,<sup>228</sup> regarding asylum seekers who were transferred to Portugal in the framework of *ad hoc* disembarkation-related EU solidarity measures and claimed to be children upon arrival in Portugal. Furthermore, the absence of an initial age assessment from the SEF prior to the referral to the CACR in cases where the appearance and demeanour of the applicant raise serious doubts regarding their age has led CPR to refer those applicants to CPR's CAR, informing the Public Prosecutor's Office accordingly for purposes of ratification this procedure aimed at preserving the security and integrity of the CACR.

The initial and second-stage age assessment determinations are made for different purposes including: (i) the provision of special procedural guarantees i.e. referral to the Family and Juvenile Courts for the purposes of legal representation in the asylum procedure; (ii) the provision and the cessation thereof of special reception conditions i.e. immediate referral to the CACR and referral to the Family and Juvenile Courts for purposes of confirming the provision of special reception conditions there; and (iii) for the purposes of refugee status determination as a material fact of the asylum application. With regard to legal remedies, while the law does not provide for a specific appeal on the initial age assessment determination conducted by the SEF for purposes other than refugee status determination, despite their interim nature, these remain administrative decisions that can be challenged before the Administrative Courts in accordance with the law.<sup>229</sup> Additionally, the Family and Juvenile Courts also conduct their own second stage age assessment for purposes of legal representation (following the SEF's referral) that can be appealed pursuant to general rules. In practice, however this is rarely – if ever – the case given the limited number of age assessments conducted, and the lack of available legal expertise. According to the information available to CPR, the applicants were not offered the opportunity to challenge these "derivative" age assessments in Portugal.

## 2. Special procedural guarantees

### Indicators: Special Procedural Guarantees

1. Are there special procedural arrangements/guarantees for vulnerable people?  
 Yes    For certain categories    No  
❖ If for certain categories, specify which: Unaccompanied children, pregnant women, Families with children

<sup>224</sup> UNHCR, *The Way Forward to Strengthened Policies and Practices for Unaccompanied and Separated Children in Europe*, July 2017, available at: <http://bit.ly/2ngwmYT>.

<sup>225</sup> In 2019, the methods used by the INMLCF regarding 4 unaccompanied children who applied for asylum in 2018 have exceptionally included an observation of the genitalia which has generated significant discomfort among those concerned.

<sup>226</sup> See e.g. TAC Leiria, Decision 784/14.9 BELRA, 19 July 2014, unpublished.

<sup>227</sup> GRETA, *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Portugal*, GRETA(2017)4, 17 March 2017, available at: <https://bit.ly/2RLfYRy>.

<sup>228</sup> According to the information provided by SEF, these assessments were conducted on the basis of physical appearance, demeanour, demography and other types of relevant country of origin information, and X-Rays (FAV Test).

<sup>229</sup> Article 51(1) and (2) Administrative Court Procedure Code.

While the implementation of certain special procedural guarantees will necessarily require a decision from the SEF, the responsibility for implementing these measures lies with the Institute of Social Security (ISS).<sup>230</sup>

## 2.1. Adequate support during the interview

Applicants identified as needing special procedural guarantees can benefit from the postponement of refugee status determination interviews and extended deadlines for presenting evidence or carrying out interviews with the assistance of experts.<sup>231</sup>

As mentioned in [Identification](#), there is no specific unit in place with specially trained staff that can provide special procedural guarantees such as special interview techniques or tailored support during personal interviews. With the exception of asylum seekers whose reduced ability to benefit from the rights and comply with the obligations stemming from the Asylum Act are self-evident due to serious illness, pregnancy, etc., postponement of refugee status determination interviews, adequate support during the interviews and extended deadlines for presenting evidence are not implemented in practice.

Recent case law regarding the provision of special procedural guarantees in the asylum procedure has encouraged this approach.<sup>232</sup> In an isolated but significant departure from this approach, the SEF has recently invited CPR to attend a first instance interview in order to provide support to a particularly vulnerable applicant suffering from a mental condition.<sup>233</sup>

In the particular case of survivors of torture and/or serious violence, recent research in the framework of the project “[Time for Needs: Listening, Healing, Protecting](#)” found that the practical implementation of special procedural guarantees such as the possibility to postpone the refugee status determination interview is hampered by the lack of a specific identification tool or mechanism.<sup>234</sup> Even where a medical report concerning the vulnerability of the applicant for mental health reasons is presented, the SEF might refuse to postpone the interview unless the medical report clearly states the reduced capacity of the applicant, the need for medical assistance, as well as a prediction of when the applicant is expected to be able to attend the interview, if need be accompanied by a mental health professional, in order to avoid excessive delays in the procedure.

Furthermore, in 2017 CPR conducted two training sessions and one national awareness meeting for national stakeholders, including the SEF, in the framework of the project “[Time for Needs: Listening, Healing, Protecting](#)”, aimed among others at the dissemination of a tool for the identification of special procedural needs and special reception needs of survivors of torture and/or serious violence developed in the framework of the project.<sup>235</sup> No such trainings were held in 2018. There is no indication that the tool has been adopted by the SEF. CPR is currently planning the implementation of the tool in the framework of its legal information and assistance.

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<sup>230</sup> Article 17-A(5) Asylum Act.

<sup>231</sup> Article 17-A(3) Asylum Act.

<sup>232</sup> TAC Lisbon, Decision 1502/18.8BELSB, 24 October 2018, unpublished. The case relates to an asylum seeker suffering from documented epilepsies and depression who was not identified as a vulnerable case prior to his interview and was therefore not provided special procedural guarantees by the SEF during the first instance procedure. The applicant was unable to review the report of his interview due to his condition and later managed to submit to the SEF medical reports of his condition and mental care with the support of CPR prior to the issuance of a first instance refusal decision. According to the TAC, such issues were not material to the asylum application and were not relevant to assess the need for special procedural guarantees in accordance to the law “as the serious condition of the appellant was not due to him being a victim of torture, rape or other form of psychological, physical or sexual violence in his country of origin...”

<sup>233</sup> Notwithstanding, following a suggestion from CPR on the need to equate a structured approach to the provision of special procedural guarantees and additional special procedural guarantees in the particular case, such as a medical evaluation/report and the presence of support staff from the institution that was providing medical and social support to the applicant at the time, the SEF decided to conduct the interview in the absence of any support.

<sup>234</sup> Italian Council for Refugees *et al.*, [Time for Needs: Listening, Healing, Protecting](#), October 2017, available at: <http://bit.ly/2xZqCGh>.

<sup>235</sup> 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>.

In accordance with the law,<sup>236</sup> the CPR provides specific legal assistance to unaccompanied asylum-seeking children that includes the presence of a legal officer during the personal interview with the SEF given its legal representative capacity (see [Legal Representation of Unaccompanied Children](#)).<sup>237</sup>

## 2.2. Exemption from special procedures

Applicants in need of special procedural guarantees shall be exempt from border procedures held in detention.<sup>238</sup> There are still no standard operating procedures or exemption in practice from border procedures and/or accelerated procedures for survivors of torture and/or serious violence.

In the particular case of unaccompanied children, the law provides for their exemption from accelerated procedures, with the exception of subsequent applications that have not been deemed inadmissible, as well as certain grounds for inadmissibility, such as Dublin, first country of asylum and third safe country grounds.<sup>239</sup>

According to the information available to CPR, the SEF resorted to accelerated procedures only once regarding unaccompanied asylum-seeking children in 2018 and that decision was later overturned at appeal stage for being in breach of the Asylum Act and the recast Asylum Procedures Directive.<sup>240</sup>

While pregnant women, families with children and the severely ill were generally exempted from border procedures and such guarantee was also generally extended to unaccompanied asylum-seeking children, between 2017 and July 2018 the immediate release of families with children and pregnant women from border points and exemption from border procedures was no longer standard practice. New guidance from the Ministry of Interior was issued in July 2018 regarding the duration of detention of vulnerable asylum seekers but this has not resulted in systematic exemption from border procedures. (see [Detention of Vulnerable Applicants](#)).<sup>241</sup>

## 3. Use of medical reports

### Indicators: Use of Medical Reports

1. Does the law provide for the possibility of a medical report in support of the applicant's statements regarding past persecution or serious harm?  
 Yes       In some cases       No
  
2. Are medical reports taken into account when assessing the credibility of the applicant's statements?  
 Yes       No

The Asylum Act contains a general provision on the right of asylum seekers to submit supporting evidence in the asylum procedure,<sup>242</sup> as well as a provision giving the SEF the possibility to request experts to issue reports on specific issues (e.g. cultural or medical) in the regular procedure.<sup>243</sup> Nevertheless, there are no specific standards in law or administrative guidance pertaining to medical reports for those claiming to have been subjected to torture or other serious acts of physical, psychological and sexual violence.

In the particular case of survivors of torture and/or serious violence, the lack of standard operational procedures regarding the issuance, content and relevance of supporting medical reports in the asylum

<sup>236</sup> Article 79(3) Asylum Act.

<sup>237</sup> In 2018, CPR accompanied 7 unaccompanied asylum-seeking children in their interviews with the SEF.

<sup>238</sup> Article 17-A(4) Asylum Act.

<sup>239</sup> Article 79(9) Asylum Act.

<sup>240</sup> TAC Lisbon, Decision 869/18.2BELSB, 24 June 2018, unpublished.

<sup>241</sup> According to SEF, in 2018 a total of 16 asylum applications by unaccompanied minors were processed under a border procedure. In accordance to the information available to CPR of the 18 declared unaccompanied children who applied for asylum at the border after the new guidance was introduced, 9 were exempted from the border procedure.

<sup>242</sup> Article 15(2) Asylum Act.

<sup>243</sup> Article 28(3) Asylum Act.

procedure has been highlighted by past research.<sup>244</sup> Medical reports are currently not issued based on the methodology laid down in the Istanbul Protocol. Even where mental health service providers issue medical reports concerning the vulnerability of the applicant for the purposes of postponing the individual interview, the SEF tends to refuse due to factors pertaining to the content of the report (see [Special Procedural Guarantees](#)).

#### 4. Legal representation of unaccompanied children

##### Indicators: Unaccompanied Children

1. Does the law provide for the appointment of a representative to all unaccompanied children?

Yes       No

Under the Asylum Act, all unaccompanied child asylum seekers and beneficiaries of international protection are entitled to legal representation to enjoy the rights and discharge their obligations enshrined in the law.<sup>245</sup> Legal representation can either be provided by an organisation or consist of any of the legal representation modalities in the law,<sup>246</sup> such as those provided by the General Legal Regime of Civil Guardianship Act.<sup>247</sup> In this regard, the SEF is required to immediately flag the need of the unaccompanied asylum-seeking child for legal representation to the Family and Juvenile Court while informing the child of the procedure.<sup>248</sup>

Regarding the (specificities of the) scope of legal representation in the case of unaccompanied asylum-seeking children, the legal representative must be informed in advance by the SEF of the refugee status determination interview and is entitled to attend the interview and make oral representations.<sup>249</sup> The absence of the legal representative does not however exempt unaccompanied children from the personal interview.<sup>250</sup> Additionally, the SEF must ensure that the legal representative is given the opportunity to inform the child of the significance and implications of the personal interview and on how to prepare for it.<sup>251</sup> The legal representative must give prior consent to the SEF for the purpose of age assessment procedures.<sup>252</sup>

In practice, the legal representation of unaccompanied asylum-seeking children has taken varying legal modalities in accordance with General Legal Regime of Civil Guardianship Act and the Children and Youths at Risk Protection Act,<sup>253</sup> and its scope usually covers the representation of the child for all legal purposes, including the asylum procedure and reception conditions.<sup>254</sup> The Family and Juvenile Court usually appoints CPR's Director to act as legal representative,<sup>255</sup> while the material protection of the child is provided in accordance with the protective measures set out in the Children and Youths at Risk Protection Act, by referring him or her to CPR's CACR.

CPR's Legal Department provides legal information and assistance to unaccompanied children throughout the asylum procedure, attends personal interviews given its legal representative capacity, ensures that children have access to legal aid for appeals and provides assistance to lawyers appointed within this mechanism. The Family and Juvenile Court at times also appoints a free legal aid lawyer to the child in the framework of the judicial procedures conducted in the framework of the Children and Youths at Risk Protection Act.

<sup>244</sup> Italian Council for Refugees *et al.*, *Time for Needs: Listening, Healing, Protecting*, October 2017, available at: <http://bit.ly/2xZqCGh>.

<sup>245</sup> Article 79(1) and (2) Asylum Act.

<sup>246</sup> *Ibid.* See also Article 2(1)(ad) Asylum Act.

<sup>247</sup> Act 141/2015 of 8 September 2015.

<sup>248</sup> Article 79(1) and (2) Asylum Act.

<sup>249</sup> Article 79(3) Asylum Act.

<sup>250</sup> Article 79(5) Asylum Act.

<sup>251</sup> Article 79(3) Asylum Act.

<sup>252</sup> Article 79(7) Asylum Act.

<sup>253</sup> Act 147/99 of 1 September 1999.

<sup>254</sup> Article 25(1)(a) recast Asylum Procedures Directive; Article 24(1) recast Reception Conditions Directive.

<sup>255</sup> In 2018, CPR was appointed legal representative of 44 unaccompanied asylum seekers who claimed to be children, of which 42 applied for asylum in 2018 and 2 in 2017.

Except for cases where, according to the SEF, there was a doubt regarding the age of the applicant (see [Identification](#)), the SEF would usually flag the need of the unaccompanied asylum-seeking child for legal representation to the Family and Juvenile Court within a few days following the registration of the asylum application, including in the case of border procedures. In 2018, however, such referrals have not taken place systematically. In most cases, and particularly regarding asylum application on the territory, the CPR has not received confirmation from the SEF that it had flagged the unaccompanied child to the Family and Juvenile Court prior to their referral to CPR. As such, the CPR, it had to take upon itself to immediately inform the Court of the admission of such unaccompanied children to one of its reception centres.

An additional challenge in this regard concerns children travelling with adult siblings in possession of valid travel documents and entry visas for Portugal or having been transferred to Portugal with adult siblings in the framework of the Dublin Regulation. According to the information provided to CPR by SEF in 2018, in these cases the understanding is that there is a presumption of legal representation by the adult sibling, exempting the SEF from the legal obligation to flag the child to the Family and Juvenile Court.<sup>256</sup>

The Family and Juvenile Court usually appoints CPR as a legal representative / guardian of unaccompanied children within a few weeks following the SEF's communication, including for the purpose of representation in the asylum procedure, given its knowledge and experience in the field of international protection.

It should be noted that while the SEF does not conduct individual interviews prior to the appointment of a legal representative, there is no best interests' assessment or intervention of a legal representative prior to the registration of the asylum claim. While in 2017, and despite the law providing for that possibility,<sup>257</sup> the SEF refused to register the asylum application of two unaccompanied children in the absence of legal representatives, in 2018 this has not materialised in a structural change that could potentially bring the procedure regarding unaccompanied children more in line with UNHCR recommendations in this regard.<sup>258</sup>

When appointed as legal representative, CPR is normally asked by the SEF to give prior consent for the purpose of age assessment procedures in the asylum procedure, but this is not the case regarding age assessment procedures that are conducted by Family and Juvenile Courts in the framework of the General Legal Regime of Civil Guardianship Act and the Children and Youths at Risk Protection Act.

While the law does not provide for specific requirements for being eligible as a representative of an unaccompanied asylum-seeking child, the Children and Youths at Risk Protection Act contains rules governing the composition of the technical staff of reception centres for children. The teams must be multidisciplinary and include personnel with, at least, a BA in the field of Psychology and Social Work. The technical director of the centre must be appointed among staff members with that background.<sup>259</sup>

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<sup>256</sup> The current definition of unaccompanied children in the Asylum Act contributes to this problematic understanding from SEF which, in CPR's view, is not in line with the protective duties entrusted to all public authorities regarding children at risk in accordance to relevant provisions in the General Legal Regime of Civil Guardianship Act and the Children and Youths at Risk Protection Act. Indeed, the current Asylum Act has failed to transpose into national law the definition of "unaccompanied minor" enshrined in Article 2(l) recast Qualification Directive and still refers to "third-country nationals (...) unaccompanied by an adult responsible for them *whether by law or custom*" as per the definition contained in Article 2(i) Directive 2004/83/EC.

<sup>257</sup> Article 13(6) Asylum Act.

<sup>258</sup> UNHCR, *The Way Forward to Strengthened Policies and Practices for Unaccompanied and Separated Children in Europe*, July 2017.

<sup>259</sup> Article 54 Children and Youth at Risk Protection Act.

## E. Subsequent applications

### Indicators: Subsequent Applications

1. Does the law provide for a specific procedure for subsequent applications?  Yes  No
2. Is a removal order suspended during the examination of a first subsequent application?
  - ❖ At first instance  Yes  No
  - ❖ At the appeal stage  Yes  No
3. Is a removal order suspended during the examination of a second, third, subsequent application?
  - ❖ At first instance  Yes  No
  - ❖ At the appeal stage  Yes  No

The law provides for specific features in the [Admissibility Procedure](#) regarding subsequent applications that include: a time limit of 10 days for the adoption of an admissibility decision at first instance i.e. preliminary assessment;<sup>260</sup> the absence of automatic consequences in case of non-compliance with the time limit for deciding on admissibility; reduced guarantees regarding the right to a personal interview and to seek revision of the narrative of his or her personal interview;<sup>261</sup> specific criteria for assessing the admissibility of the claim;<sup>262</sup> and partially different time limits and effects of (onward) appeals.

The Asylum Act does not provide, however, for specific rules regarding the right to remain in national territory pending the examination of the application,<sup>263</sup> or the suspension of a removal order,<sup>264</sup> nor does it provide specific time limits or limitations on the number of subsequent applications a person can lodge.<sup>265</sup> However, an “unjustified” subsequent application can lead to the [Reduction or Withdrawal of Reception Conditions](#).<sup>266</sup>

The SEF remains the competent authority to take a decision on the admissibility of subsequent applications.<sup>267</sup>

The criteria for assessing the admissibility of the subsequent claim are enshrined in the Asylum Act and consist in whether new elements of proof that entitle the applicant to international protection have been submitted or if the reasons that led to the rejection of the application have ceased to exist.<sup>268</sup> The law does not provide further clarifications on what is to be considered a new element of proof or the cessation of the rejection motives but clarifies that the preliminary admissibility assessment also encompasses cases where the applicant has explicitly withdrawn his or her application and cases where the SEF has rejected an application following its implicit withdrawal.<sup>269</sup>

A first instance decision on the admissibility of a subsequent application from 2016 makes reference to a “substantial and fundamental” difference as criteria for assessing the admissibility of the subsequent application whereas several first instance decisions from 2018 refer to “any event occurred since prior decisions at first instance and appeal stages”, “new elements of proof regarding the alleged facts” and that the “absence of new facts is also enhanced by the fact that according to his statement the applicant did not return to his country of origin or left European soil since his last application”.

Recent case law has failed to offer significant guidance in this regard.<sup>270</sup> However, it has determined that past facts not presented during the initial application without reason cannot be considered new facts. At

<sup>260</sup> Article 33(4) Asylum Act.

<sup>261</sup> Article 33(2), (4) and (6) Asylum Act.

<sup>262</sup> Article 33(1) and (6) Asylum Act.

<sup>263</sup> Articles 13(1) and 33(9) Asylum Act.

<sup>264</sup> In this case it should be understood that the general rule providing for the suspension of a removal order until a final decision is reached in the asylum application applies: Article 12(1) Asylum Act.

<sup>265</sup> Article 33(1) Asylum Act, according to which the asylum seeker is entitled to present a new application whenever there are new elements in light of the first asylum procedure.

<sup>266</sup> Article 60(3)(f) Asylum Act.

<sup>267</sup> Article 33(6) Asylum Act.

<sup>268</sup> Article 33(1) Asylum Act.

<sup>269</sup> Article 2(1)(t) Asylum Act.

<sup>270</sup> TAC Lisbon, Decision 1748/18.9BELSB, 26 November 2018, unpublished.

the same time the Court also conducts an assessment – echoing the SEF’s own first instance assessment – of whether the new facts alleged by the applicant constitute relevant grounds for a well-founded risk of persecution, which seems to be at odds with the admissibility assessment at hand.

The limited number of subsequent applications received by the SEF – only 13 lodged in 2018, compared to 9 in 2017 – does not allow for a general assessment of existing obstacles in lodging a subsequent application related to the interpretation of the applicable admissibility criteria pertaining to new facts, evidence or a change in the rejection motives. The information available to CPR in 2018 shows however that of 12 subsequent asylum applications, 7 were deemed inadmissible and 5 were rejected in accelerated procedures.

According to the information collected by CPR in 2018,<sup>271</sup> 12 out of the 13 subsequent applications communicated to CPR underwent a preliminary interview to assess whether new elements were submitted as defined in national legislation.<sup>272</sup> The preliminary interview to assess the admissibility of the application differed from a personal interview conducted in the admissibility / regular procedure insofar as it mainly sought to ascertain new facts, evidence or changes in circumstances related to persecution since the presentation of the initial asylum application. The reasoning of the corresponding inadmissibility decisions included an assessment of the existence, credibility and relevance of new facts and changes in circumstances since the presentation of the initial asylum application. The evidentiary value of documents and other elements of proof submitted, and inconsistencies between the information provided and the facts described in the context of the original application were also analysed.

The Asylum Act provides for an appeal against the decision to reject a subsequent application (see [Admissibility Procedure: Appeal](#)). The time limit for lodging the appeal is 4 days.<sup>273</sup> The initial appeal before the Administrative Court is automatically suspensive,<sup>274</sup> as opposed to onward appeals that have no automatic suspensive effect.<sup>275</sup>

With regard to access to free legal assistance for asylum seekers during the preliminary admissibility assessment (*mutatis mutandis* given the specific changes in the procedure e.g. the possible absence of a personal interview) and at appeal stage, the general rules and practice of the regular procedure apply (see [Regular Procedure: Legal Assistance](#)).

In practice, CPR is not aware of systemic or relevant obstacles faced by asylum seekers to appealing a first instance decision on the admissibility of a subsequent application.

Only 13 subsequent applications were lodged in 2018, of which 2 from nationals of D.R. Congo, 2 from Nigeria, 1 from Ukraine, 1 from Morocco and 1 from Albania.

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<sup>271</sup> The only exception was an applicant from late 2018 who may still be offered an individual interview.

<sup>272</sup> Article 33 Asylum Act states that subsequent applications are submitted to the SEF with all available supporting evidence and that the SEF may, following the application, provide the applicant with a reasonable time limit to present new facts, information or evidence.

<sup>273</sup> Article 33(6) Asylum Act.

<sup>274</sup> *Ibid.*

<sup>275</sup> Article 33(8) Asylum Act.

## F. The safe country concepts

### Indicators: Safe Country Concepts

- |   |   |
|---|---|
| 1. Does national legislation allow for the use of “safe country of origin” concept?<br>❖ Is there a national list of safe countries of origin?<br>❖ Is the safe country of origin concept used in practice? | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No<br><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No<br><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |
| 2. Does national legislation allow for the use of “safe third country” concept?<br>❖ Is the safe third country concept used in practice?  | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No<br><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No  |
| 3. Does national legislation allow for the use of “first country of asylum” concept?  | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No   |

### 1. Safe country of origin

The Asylum Act provides for a definition of “safe country of origin” that is in line with Article 36 of the recast Asylum Procedures Directive.<sup>276</sup> However, with the exception of its inclusion among the possible grounds for applying an *Accelerated Procedure*,<sup>277</sup> the law does not provide for further rules and modalities for its application.

To date, the authorities have not introduced legislation that allows for the national designation of safe countries of origin for the purposes of examining applications for international protection in line with Annex I of the Directive.

According to the information available to CPR, the SEF does not have a list of safe countries of origin as a matter of administrative guidance and the concept is not used in practice as a ground for channelling asylum applications into an accelerated procedure. According to SEF, in 2018 there were no rejection decisions based on the concept of “safe country of origin”.

### 2. Safe third country

The Asylum Act provides for a definition of “safe third country” that presents some inconsistencies with Article 38 of the recast Asylum Procedures Directive.<sup>278</sup> These inconsistencies were raised in 2014 by CPR during the legislative process that transposed the second-generation *acquis* into national law,<sup>279</sup> and include the following:

- a. The provision applies *ratione personae* to asylum seekers alone, as opposed to applicants for international protection;<sup>280</sup>
- b. The provision does not include the absence of a risk of serious harm as a condition for the application of the concept;
- c. The provision does not include the possibility for the applicant to challenge the existence of a connection between him or her and the third country;
- d. A standard of possibility rather than reasonableness is set in the provision concerning the return on the basis of a connection between the applicant and the third country concerned.<sup>281</sup>

It should also be noted that the Asylum Act, while excluding EU Member States from the concept of safe third country,<sup>282</sup> does not provide for specific rules regarding EU and non-EU European safe third countries.

<sup>276</sup> Article 2(1)(q) Asylum Act.

<sup>277</sup> Article 19(1)(f) Asylum Act.

<sup>278</sup> Article 2(1)(r) Asylum Act.

<sup>279</sup> CPR, *Proposta de Lei 187 - XII que altera a Lei n.º 27/2008, de 30 de Junho – Comentários*, January 2014, available in Portuguese at: <http://bit.ly/2zT1oef>.

<sup>280</sup> Article 2(1)(r) Asylum Act.

<sup>281</sup> Article 2(1)(r)(i) Asylum Act.

<sup>282</sup> Article 19-A(1)(d) Asylum Act that excludes EU Member States from the concept of third safe country.

Although the concept is a ground for inadmissibility (see [Admissibility Procedure](#)),<sup>283</sup> according to the information available to CPR, to date the authorities have not introduced further rules in national legislation such as relevant connection indicators or rules regarding the methodology by which the SEF satisfies itself that the safe third country concept may be applied to a particular country or to a particular applicant.

According to the information available to CPR, the SEF does not have a list of countries designated to be generally safe as a matter of administrative guidance. While the number of inadmissibility decisions on safe third country grounds is generally very limited, countries designated as such in the past have included **Morocco, Turkey, South Africa, Ecuador** and last year **Brazil**.

According to SEF, in 2018 there were 3 rejection decisions based on the concept of “safe third country”, all of which related to **Brazil** (see [Admissibility Procedure](#)).

### Connection criteria

The establishment of a connection rendering the applicant's transfer to a safe third country reasonable by the SEF has been based to date on indicators such as transit (sometimes as short as a few weeks), the registration of an asylum application or residence rights, and the remaining legal requirements of the clause have usually not been (adequately) analysed. A ruling of the TAC Lisbon from November 2017 considered the transit and the holding of a 3-month visa as evidence of a sufficient connection between the applicant and the third country concerned on the basis of which it would be reasonable for that person to go to that country.<sup>284</sup> This decision was later overturned by the TCA South, according to which the mere transit for 28 days and the submission of an asylum application were not sufficient to establish a meaningful connection for purposes of rendering the applicant's transfer to the safe third country reasonable.<sup>285</sup>

Asylum seekers assisted by CPR whose applications were rejected on the basis of this inadmissibility ground were not given a document in the language of the safe third country stating that their claim was not examined on the merits. It should be noted that the issuance of such document is currently not enshrined in the law.

### 3. First country of asylum

The Asylum Act provides for a definition of “first country of asylum” that is in line with Article 35 of the recast Asylum Procedures Directive,<sup>286</sup> and that attempts a merger with the criteria listed in Article 38(1) of the Directive.<sup>287</sup> Without prejudice to challenges in clarity resulting from the merger, the current definition seems to exclude formal recognition of refugee status or sufficient protection in accordance to the Refugee Convention as stand-alone criteria to apply the concept as it also requires that (i) life and liberty are not threatened (ii) the principle of *non-refoulement* in accordance with the Refugee Convention is respected and that (iii) the prohibition of the right to freedom from torture and cruel, inhuman or degrading treatment is respected. The “first country of asylum” concept is included among the inadmissibility grounds enshrined in the Asylum Act.<sup>288</sup>

According to SEF, in 2018 there were 4 inadmissibility decisions based on the concept of “first country of asylum” in relation to **Brazil** (for 2018, see [Admissibility Procedure](#)).

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<sup>283</sup> Article 19-A(1)(d) Asylum Act.

<sup>284</sup> TAC Lisbon, Decision 2163/17.7BESLB, 30 November 2017, unpublished.

<sup>285</sup> TCA South, Decision 2163/17.7BESLB, 15 March 2018, available in Portuguese at: <https://bit.ly/2DpS327>. A previous decision from TAC Lisbon had already excluded the mere transit and the presentation of an asylum application as sufficient to establish a meaningful connection: TAC Lisbon, Decision 1792/17.3BESLB, 30 September 2017, unpublished.

<sup>286</sup> Article 21(1)(z) Asylum Act.

<sup>287</sup> Indeed certain elements of the definition of the “safe third country” such as that contained in Article 38(1)(b) of the recast Asylum Procedures are not included.

<sup>288</sup> Article 19-A(1)(c) Asylum Act.

In those limited cases the analysis conducted by the SEF into the conditions of the concept generally focused on the legal status of the applicant, failing to adequately assess security risks in the first country of asylum alleged by the applicant. CPR is aware of one noticeable exception where the SEF conducted a thorough assessment of protection conditions in the first country of asylum (Cameroon) following a decision from the TAC Lisbon that quashed the initial first instance inadmissibility decision.

According to the information available to CPR, case law regarding the interpretation of the concept is very limited but includes a ruling from a second-instance Administrative Court focusing on the definition of “sufficient protection”. According to the court’s generous interpretation of the provision enshrined in the Asylum Act, such protection should be interpreted to encompass the principle of *non-refoulement* in accordance with the Refugee Convention but also *refoulement* where a civilian’s life or person is at risk by reason of indiscriminate violence in situations of armed conflict.<sup>289</sup>

However, as stressed by the TAC Lisbon in a ruling from November 2017, the formal recognition of refugee status is not *per se* sufficient to qualify a third country as a first country of asylum in the absence on a meaningful assessment of possible risks to the security of the applicant in that country.<sup>290</sup>

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

### 1. Provision of information on the procedure

#### Indicators: Information on the Procedure

1. Is sufficient information provided to asylum seekers on the procedures, their rights and obligations in practice?  Yes  With difficulty  No
- ❖ Is tailored information provided to unaccompanied children?  Yes  No

The Asylum Act provides for the right to:

- A broad set of information on the asylum procedure and reception conditions in general;<sup>291</sup>
- Information on key developments and decisions relating to the individual asylum file;<sup>292</sup>

<sup>289</sup> TAC Lisbon, Decision 1791/15.0BESLB, 29 September 2015, unpublished; TCA South, Decision 12873/16, 11 February 2016, available at: <http://bit.ly/2zUrEVt> on Brazil as a first country of asylum for a Syrian asylum seeker.

<sup>290</sup> TAC Lisbon, Decision 2163/17.7BESLB, 30 November 2017, unpublished.

<sup>291</sup> This includes information on assistance and the asylum procedure by the UNHCR and CPR (Article 13(3)); information on the right to an individual application regarding dependant relatives (Article 13(5)); general information on the rights and duties in the asylum procedure (Article 14(2)); information in writing on the rights and duties in border procedures (Article 24(2)); information on the extension of the time limit for the examination and, upon demand, of the grounds for the extension and expected time limit for the decision in the regular procedure (Article 28(2)); oral information or an information brochure on the rights and duties of asylum seekers and in particular regarding the asylum procedure; applicable time limits; the duty to substantiate the claim; available service providers of specialised legal assistance; available reception and health care service providers; legal consequences of failing to cooperate with the SEF in substantiating the asylum claim; the purpose of fingerprinting and of all rights of data subjects in accordance to the EURODAC Regulation; information on the admissibility decision (Article 49(1)(a), (b), (c) and (2)); information on the rights and duties of beneficiaries of international protection (Article 66).

<sup>292</sup> This includes the individual notification of first instance decisions in admissibility and accelerated procedures on national territory (Article 20(3)); the individual notification of first instance decisions in admissibility and accelerated procedures and the right to appeal at the border (Article 24(5)); individual notification of the SEF’s proposal for a first instance decision in the regular procedure (Article 29(2)); individual notification of the first instance decision and the right to appeal in the regular procedure (Article 29(6)); individual notification of the first instance decision, the right to appeal and the obligation to abandon national territory within 20 days regarding subsequent applications (Article 33(6) and (9)); individual notification of the first instance decision and the right to appeal regarding applications following a removal procedure (Article 33-A(6)); individual notification of outgoing Dublin take charge or take back decisions (Article 37(2)); individual notification of the SEF’s proposal for the cessation, revocation, ending or refusal to renew the international protection status (Article 41(6)); individual notification of the cessation, revocation, ending or refusal to renew the international protection status (Article 43(2)).

- Information on detention;<sup>293</sup> and
- Specific information rights of unaccompanied children.<sup>294</sup>

Furthermore, the law provides for a general right to interpretation “whenever necessary” during registration of the application and throughout the asylum procedure,<sup>295</sup> along with specific references to the right to interpretation into a language that the asylum seeker understands or is reasonably expected to understand to ensure the effectiveness of the right to information in some of the aforementioned instances.<sup>296</sup>

In practice, while the SEF generally complies with the obligation to inform asylum seekers of key developments, decisions and associated rights in their individual asylum files throughout the asylum procedure and regardless of the type of procedure, interpretation for that purpose is not systematically available and rarely includes an explanation of the grounds of the decision. The absence of translation has also been problematic in cases where the SEF informs asylum seekers of developments in their asylum applications by postal mail, using letters written in Portuguese to which are attached documents such as Dublin transfer decisions or proposals for a final decision in the regular procedure in Portuguese, a problem that is mostly related to asylum seekers in private accommodation. CPR has also received a few complaints from asylum seekers according to whom the SEF did not provide for the interpretation of the document narrating the essential facts at the end of their personal interview and prior to its signature. This is despite the document stating that its content was translated in full and that the applicant ratified its content accordingly.

Upon registration, the asylum seeker receives written information (available in a limited number of languages e.g. French, English) regarding the rights and duties attached to the certificate of the asylum application. The SEF has also produced information leaflets that briefly cover some of its information obligations such as the asylum procedure and the rights and duties of applicants of international protection,<sup>297</sup> reception conditions,<sup>298</sup> the Dublin III and Eurodac Regulations,<sup>299</sup> and a specific information leaflet for unaccompanied children regarding the asylum procedure, reception conditions, rights and duties including legal representation and age assessment.<sup>300</sup> The information contained in the leaflets is brief and not considered user-friendly particularly in the case of unaccompanied children.

According to CPR’s experience, the leaflets are available in a limited number of foreign languages (e.g. French, English, Arabic) and is not distributed systematically. Furthermore, and despite written requests to that end, asylum seekers are rarely if ever informed of the extension of the time limit for the examination, its grounds and expected time limit for the decision in the regular procedure.

CPR has no indication that the common information leaflet provided for in Article 4(3) of the Dublin III Regulation is systematically distributed and the only information given on the functioning of the Dublin system is contained in the general information leaflet on the Dublin III and Eurodac Regulations, which is very limited. Asylum seekers are systematically informed in writing of the request made to another Member State, the corresponding supporting evidence and the reply of that Member State but only at the time of written notification of the actual transfer decision.<sup>301</sup>

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<sup>293</sup> This includes immediate information in writing on the grounds of detention as well as the right to appeal and to free legal aid (Article 35-B(2)); information on the internal rules of the detention facility and the detainee’s rights and duties (Article 35-B(5)).

<sup>294</sup> This includes information on mandatory legal representation (Article 79(1)); information on the purpose, potential consequences and preparation of the personal interview by the legal representative (Article 79(4)); information on the submission to an age assessment expertise (Article 79(7)).

<sup>295</sup> Article 49(1)(d) Asylum Act.

<sup>296</sup> Articles 14(2), 24(2) and (5), 29(6), 33(6), 35-B(2) and (5), 37(2), 43(2), 49(1)(a), (b) and (2) and 66 Asylum Act.

<sup>297</sup> SEF, *Informação para Requerentes de Proteção Internacional em Portugal*, available in Portuguese at: <https://bit.ly/2MoTRez>.

<sup>298</sup> SEF, *Acolhimento em Portugal*, available in Portuguese at: <https://bit.ly/2MkBnvC>.

<sup>299</sup> SEF, *Regulamento Dublin III*, available in Portuguese at: <https://bit.ly/2Hq5aEY>.

<sup>300</sup> SEF, *Informação para Menores Não-Acompanhados Requerentes de Proteção Internacional em Portugal*, available in Portuguese at: <https://bit.ly/2FFVjc3>.

<sup>301</sup> Article 37(2) Asylum Act.

In the case of asylum seekers detained at the border, the certificate of the asylum application contains a brief reference to Article 26 of the Asylum Act that provides for the systematic detention of asylum seekers in the border procedure. Asylum seekers are not systematically informed or aware of their rights and obligations in detention despite the existence of information leaflets available in a limited number of foreign languages.<sup>302</sup>

Despite having been designated as legal representative for many unaccompanied children who applied for asylum in 2017, CPR is unaware of the provision of child-friendly information by the SEF, including the specific information leaflet for unaccompanied children and the information leaflet provided for by Article 4(3) of the Dublin Regulation.

### Information by NGOs

CPR provides free legal information to asylum seekers throughout the asylum procedure that broadly cover the information requirements provided in the law, including tailored information to unaccompanied children and to relocated asylum seekers on the basis of individual interviews and legal attendance. CPR has also developed the [HELP](#) information portal which offers among others cultural orientation information, information on the asylum procedure, reception services and relevant institutional contacts. The portal is available in Portuguese, English, French and Spanish. However, challenges in capacity have restricted the provision of legal information during the first instance asylum procedure, particularly regarding asylum seekers placed in detention or private accommodation in more remote locations (see [Regular Procedure: Legal Assistance](#)).

Other organisations also provide legal information and assistance to asylum seekers during the first instance of the regular procedure such as JRS Portugal, CNIS for unaccompanied asylum-seeking children. To a lesser extent the ACM, through its National and Local Support Centres for Migrants Integration, and the [CRESCER](#) also provide information and assistance albeit in a limited number of cases and mostly focused on integration.

## 2. Access to NGOs and UNHCR

### Indicators: Access to NGOs and UNHCR

1. Do asylum seekers located at the border have effective access to NGOs and UNHCR if they wish so in practice?       Yes       With difficulty       No
2. Do asylum seekers in detention centres have effective access to NGOs and UNHCR if they wish so in practice?       Yes       With difficulty       No
3. Do asylum seekers accommodated in remote locations on the territory (excluding borders) have effective access to NGOs and UNHCR if they wish so in practice?       Yes       With difficulty       No

Regarding access to UNHCR as well as to CPR as an organisation working on its behalf and other NGOs at the border and in detention, see the sections on [Border Procedure](#) and [Access to Detention Facilities](#).

<sup>302</sup> Portuguese Ombudsman, *Tratamento de Cidadãos Estrangeiros em situação irregular ou requerentes de asilo nos centros de instalação temporária ou espaços equiparados*, September 2017, available in Portuguese at: <http://bit.ly/2z15JPu>, Chapter II, Section 9.

## H. Differential treatment of specific nationalities in the procedure

### Indicators: Treatment of Specific Nationalities

1. Are applications from specific nationalities considered manifestly well-founded?  Yes  No  
❖ If yes, specify which: Syria, Eritrea
  
2. Are applications from specific nationalities considered manifestly unfounded?<sup>303</sup>  Yes  No  
❖ If yes, specify which:

The SEF has a tendency to grant subsidiary protection to Syrians, as opposed to Eritreans who are generally granted refugee status, notably in the framework of relocation.

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<sup>303</sup> Whether under the “safe country of origin” concept or otherwise.

## Reception Conditions

## A. Access and forms of reception conditions

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

## Indicators: Criteria and Restrictions to Reception Conditions

1. Does the law make material reception conditions to asylum seekers in the following stages of the asylum procedure?

  - ❖ Regular procedure       Yes  Reduced material conditions  No
  - ❖ Dublin procedure       Yes  Reduced material conditions  No
  - ❖ Admissibility procedure       Yes  Reduced material conditions  No
  - ❖ Border procedure       Yes  Reduced material conditions  No
  - ❖ Accelerated procedure       Yes  Reduced material conditions  No
  - ❖ First appeal       Yes  Reduced material conditions  No
  - ❖ Onward appeal       Yes  Reduced material conditions  No
  - ❖ Subsequent application       Yes  Reduced material conditions  No

2. Is there a requirement in the law that only asylum seekers who lack resources are entitled to material reception conditions?       Yes  No

## 1.1. Responsibility for reception

The primary responsibility for the provision of material reception conditions lies with the Ministry of Home Affairs,<sup>304</sup> except for asylum seekers who pass the admissibility procedure and are in the regular procedure, who fall under the responsibility of the Ministry of Employment, Solidarity and Social Security.<sup>305</sup> Nevertheless, the authorities can cooperate with public and/or private non-profit organisations in the framework of a MoU to ensure the provision of such services.<sup>306</sup>

The practical framework for the reception of asylum seekers in Portugal currently stems from both bilateral MoUs,<sup>307</sup> and a multilateral MoU between relevant stakeholders.<sup>308</sup> The latter is coordinated by a Steering Commission (*Comissão de Acompanhamento*, CA) presided by the Institute of Social Security (*Instituto da Segurança Social*, ISS).<sup>309</sup> The Memoranda provide for an overall responsibility-sharing mechanism among stakeholders according to which different entities provide reception conditions depending on the type and stage of the procedure or the profile of the applicant:

1. The **Institute for Social Security (ISS)** offers material receptions conditions to asylum seekers in the regular procedure;

304 This includes admissibility procedures (including Dublin procedures); accelerated procedures, border procedures, subsequent applications and applications following a removal decision: Article 61(1) Asylum Act.

305 Article 61(2) Asylum Act.

### 306 Article 61(1) and (2) *in fine* Asylum Act.

<sup>307</sup> Notably MoUs between the Ministry of Home Affairs / SEF and CPR, between ISS and CPR, and between the ISS and Santa Casa da Misericórdia de Lisboa (SCML).

308 The initial signatories in 2012 included the SEF, ISS, SCML, CPR, ACM and the Employment and Vocational Training Institute (*Instituto do Emprego e Formação Profissional*, IEFP). In 2014, the partnership was extended to include the Directorate General for Health (*Direcção-Geral da Saúde*, DGS), the Central Administration of the Health System (Administração Central do Sistema de Saúde, ACSS), the Directorate General of Education (*Direcção-Geral da Educação*, DGE), the Directorate General of Education Institutions (*Direcção-Geral dos Estabelecimentos Escolares*, DGEE), the National Association of Portuguese Municipalities (*Associação Nacional de Municípios Portugueses*, ANMP) and JRS. In 2018, the National Agency for Qualification and Vocational Education (*Agência Nacional para a Qualificação e o Ensino Profissional*, ANQEP) also joined the partnership. ANQEP is a public entity responsible for the coordination of formative policies for young people and adults.

309 and adults.  
The Steering Commission is assisted by a Technical Operative Group (*Grupo Técnico Operativo*, GTO) tasked, among others, with ensuring operational guidance and coordination of reception and integration services provided to spontaneous asylum seekers and resettled refugees at central and local levels.

2. **Santa Casa da Misericórdia de Lisboa (SCML)** is tasked with assisting asylum seekers who have submitted an appeal against a Dublin decision or a first instance decision (with the exception of a first instance decision in the regular procedure) as well as certain categories of asylum seekers in the regular procedure (e.g. vulnerable cases such as unaccompanied children initially accommodated at CACR that move into assisted apartments and former unaccompanied children initially accommodated at CACR; or individuals and families with strong social networks in the Lisbon area);;
3. The **Portuguese Refugee Council (CPR)** offers reception services to asylum seekers in the admissibility (including Dublin) and accelerated procedures in the national territory. In the particular case of unaccompanied children, CPR also provides for material reception conditions in the regular procedure and at appeal stage in accordance with protective measures adopted by Family and Juvenile Courts in the framework of the Children and Youths at Risk Protection Act (see [Legal Representation of Unaccompanied Children](#)).
4. The **Immigration and Borders Service (SEF)** retains responsibility for material reception conditions in border procedures and procedures in detention following a removal order (see [Conditions in Detention Facilities](#)).<sup>310</sup>

In the particular case of relocation , a special coordination framework, the Working Group for the Agenda for Migration, was launched in 2015 to assess existing capacities, plan and prepare an action plan for relocation under the political coordination of the Deputy Minister.<sup>311</sup> The Working Group was composed of various public and private stakeholders and reception service providers.<sup>312</sup> Relocated asylum seekers benefited from an 18-month support programme and the main providers of reception services included the Platform for Reception of Refugees (PAR), followed by CPR (in partnership with municipalities), the Municipality of Lisbon, União de Misericórdias, the Portuguese Red Cross (CVP), and other stand-alone municipalities. In the case of PAR, the initial support programme lasted 24 months.<sup>313</sup> At the time of writing, a governmental decision on the creation of a unified system was still pending.

According to a procedure jointly adopted by the ISS and ACM, the responsibility for the provision of reception conditions to relocated asylum seekers in the regular procedure reverts to the ISS three months after completion of the initial the 18- to 24-month support programme provided in the framework of the Working Group for the Agenda for Migration. While according to the information provided by the relevant authorities in 2017 the phase-out stage of the relocation programme, that was coordinated by the ACM and initiated 6 months before the end of individual support, ran smoothly, hosting entities raised concerns about the length of the transition process,<sup>314</sup> and in consultations with CPR in 2017 some voiced concern that the 3-month period adopted by the ISS could lead to gaps in the provision of material reception conditions to relocated asylum seekers upon completion of their initial support programme.

## 1.2. The right to reception and sufficient resources

The law provides for the right of asylum seekers to material reception conditions regardless of the procedure they are in,<sup>315</sup> with the exception of a possible withdrawal or reduction of those conditions in

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<sup>310</sup> Article 61(1) Asylum Act.

<sup>311</sup> Ministerial Order n. 10041-A/2015and Council of Ministers Resolution n. 5/2016.

<sup>312</sup> These include: SEF, ACM, General Secretariat of Internal Administration (*Secretaria Geral da Administração Interna*, SGAI), Ministry of Foreign Affairs (*Ministério dos Negócios Estrangeiros*, MNE), DGE, ANMP, Directorate General of Local Municipalities (*Direcção-Geral das Autarquias Locais*, DGAL), ISS, DGS, Municipality of Lisbon, Institute for Housing and Urban Rehabilitation (*Instituto da Habitação e da Reabilitação Urbana*, IHRU), IEFP, CPR, União das Misericórdias, União das Mutualidades, PAR, JRS, CVP and CNIS.

<sup>313</sup> ACM, *Relatório de Avaliação da Política Portuguesa de Acolhimento de Pessoas Refugiadas, Programa de Recolocação*, December 2017, unpublished. The report, coordinated by the ACM, was drafted following the approval of Resolution 167/17 by the Parliament in June 2017 [and](#) involved input from 39 hosting entities and 1 refugee community organisation.

<sup>314</sup> *Ibid.* According to the report, as of September 2017 a total of 39 relocated individuals had been referred to ISS and SCML for the provision of reception conditions at the end of the initial 18- to 24-month support programme.

<sup>315</sup> Articles 51(1) and 56(1)-(2) Asylum Act.

the case of “unjustified” subsequent applications.<sup>316</sup> Asylum seekers are entitled to support from the moment they apply for asylum,<sup>317</sup> until a final decision is reached on their asylum application,<sup>318</sup> without prejudice to the suspensive effect of appeals<sup>319</sup> and the provision of material reception conditions beyond the final rejection in case of ongoing need for support on the basis of an individual assessment of the applicant’s social and financial circumstances.<sup>320</sup>

Furthermore, there is a requirement in the law according to which only asylum seekers who lack resources are entitled to material reception conditions.<sup>321</sup> The law provides for criteria to assess the sufficiency of resources that consist in either the lack thereof or a level of financial resources which is inferior to the “social support allowance” provided in the law.<sup>322</sup> To date the ISS has interpreted this provision as referring to the social pension (*pensão social*) that in 2018 stood at 207.01 € per month.<sup>323</sup> Asylum seekers can be called to contribute,<sup>324</sup> or reimburse,<sup>325</sup> partly or in full, the cost of material reception conditions and health care depending on the level and the point in time when the authorities become aware of their financial resources. However, neither the law nor administrative guidelines specify at what point the asylum seeker is required to declare any financial resources he or she might have.

In practice, the majority of spontaneous asylum seekers are systematically referred by the SEF and have benefited from the provision of material reception conditions by CPR in the framework of admissibility, including Dublin, and accelerated procedures on the territory. This was done without a strict assessment of resources by the SEF as many asylum seekers had recently arrived in the country and were considered manifestly in need of assistance. In cases where they had financial resources or relatives in Portugal, certain asylum seekers chose not to benefit from the accommodation provided by CPR. Along with the fact that asylum seekers are not entitled to access paid employment at this stage (see [Access to the Labour Market](#)), that encouraged a system based on trust.

In the case of referrals to CPR’s Refugee Reception Centre (*Centro de Acolhimento para Refugiados*, CAR) that accommodates isolated adults and families, access was dependent on the applicant presenting an individual certificate of the asylum application or a written request (e.g. email) from SEF/GAR where the timely issuance of the certificate was not possible. As for unaccompanied children, referral by the SEF to CPR’s CACR is made by the most expedient means available such as telephone or email, and of children released from the border, are escorted by the SEF to the premises. Finally, for those asylum seekers who have opted for private housing with relatives, the provision of material reception conditions such as financial assistance by CPR is dependent on the presentation of an individual certificate of the asylum application. CPR does not proactively engage in means assessments for the duration of the provision of material reception conditions given that asylum seekers are not entitled to access paid employment at this stage of the procedure.

Following admission to the regular procedure, or if the application is deemed inadmissible or is rejected in an accelerated procedure,<sup>326</sup> the asylum seeker is generally referred by frontline service providers such as CPR to the GTO using a standard individual monitoring report. The GTO decides on the provision of material reception conditions in the regular procedure (by ISS) or at appeal stage (by SCML) based on

<sup>316</sup> Article 60(3)(f) Asylum Act. The meaning of “unjustified subsequent application” seems to indicate that the potential withdrawal or reduction would only intervene at the end of the 10-day admissibility/preliminary assessment as per Article 33(4). According to the information available to CPR, such possibility was not enforced in 2018, as SEF referred subsequent applicants in need of housing the relevant entities.

<sup>317</sup> Articles 51(1), 56(1) and 2(1)(ae) Asylum Act that entitle third-country nationals or stateless persons who have “presented” an asylum application to material reception conditions. The presentation of the asylum application is to be understood as preceding the registration of the asylum claim under Article 13(1) and (7) Asylum Act.

<sup>318</sup> Article 60(1) Asylum Act.

<sup>319</sup> Articles 60(1) *in fine* and 30(1) Asylum Act.

<sup>320</sup> Article 60(2) Asylum Act.

<sup>321</sup> Articles 51(1) and 56(1) Asylum Act.

<sup>322</sup> Article 56(3) Asylum Act.

<sup>323</sup> Decree-Law 464/80 and Ministerial Order 23/2018.

<sup>324</sup> Article 56(4) Asylum Act.

<sup>325</sup> Article 56(5) Asylum Act.

<sup>326</sup> This includes rejected asylum seekers released from the border after the expiry of the 60-day time limit (see [Duration of Detention](#)).

the report that includes information on the socio-economic circumstances of the individual. CPR is unaware of asylum seekers refused material reception conditions at this stage due to a strict application of criteria pertaining to sufficient resources. This can be explained by the fact that at this stage asylum seekers admitted to the regular procedure have just been given access to paid employment and are often unemployed. According to the information available to CPR the contribution or reimbursement of material reception conditions at this stage is not implemented in practice.

While spontaneous asylum seekers do not face systematic obstacles in gaining access to available material reception conditions e.g. due to delays in the issuance of the individual certificate of the asylum application or a strict assessment of resources, some concerns remain regarding access to support. These include support provided by CPR to asylum seekers accommodated in private accommodation in remote locations due to the lack of information from the SEF's regional representations regarding available assistance and the costs associated with travel and communications for initial and follow-up interviews with social workers at CPR. Another concern stems from the potential exclusion of asylum seekers from material reception conditions in the regular procedure in case of refusal to accept the dispersal policy in place managed by the GTO (see [Freedom of Movement](#)).

## 2. Forms and levels of material reception conditions

### Indicators: Forms and Levels of Material Reception Conditions

1. Amount of the monthly financial allowance/vouchers granted to adult asylum seekers as of 31 December 2018 (in original currency and in €): 269 €

The Asylum Act provides for a general definition of material reception conditions,<sup>327</sup> as well as a closed list of forms of material reception conditions in Article 57(1) that includes:

- a. Housing;<sup>328</sup>
- b. Food;
- c. Monthly social support allowance for food, clothing, transport and hygiene items;
- d. Monthly complementary allowance for housing; and
- e. Monthly complementary allowance for personal expenses and transport.

Additionally, Article 57(3) establishes a closed list of possible combinations of forms of material reception conditions that consist of:

- a. Housing and food in kind with a [monthly] complementary allowance for personal expenses and transportation; and
- b. Housing in kind or complementary allowance for housing with a social support allowance [for food, clothing, transportation and hygiene items].

However, asylum seekers may exceptionally be offered forms and combinations of material reception conditions other than those provided in the law for a limited period of time where: (i) there is a need for an initial assessment of the special needs of the applicant; (ii) the housing in kind as per the law is not available in the area where the asylum seeker is located; and/or (iii) available reception capacity is temporarily exhausted and/or the international protection applicants are detained at a border that is not equipped housing declared as equivalent to reception centres.<sup>329</sup>

While the Asylum Act enshrines the right of asylum seekers to the satisfaction of their basic needs to a level that guarantees their human dignity,<sup>330</sup> it does not provide for specific criteria to determine what is

<sup>327</sup> Article 2(1)(e) Asylum Act: housing, food, clothing and transportation offered in kind, through financial allowances, vouchers or daily allowances.

<sup>328</sup> Under Article 57(2), housing and food in kind can consist of: (a) housing declared as equivalent to reception centres for asylum seekers in the case of border applications; (b) installation centres for asylum seekers or other types of housing declared equivalent to installation centres for asylum seekers that offer adequate living conditions; and (c) private houses, apartments, hotels or other forms of housing adapted to accommodate asylum seekers.

<sup>329</sup> Article 57(4) Asylum Act.

<sup>330</sup> Article 56(1) Asylum Act.

an adequate standard of living which guarantees their subsistence and protects their physical and mental health as per Article 17(2) of the recast Reception Conditions Directive.

The specific criteria for establishing the value of the financial allowances consists of a percentage of the “social support allowance”,<sup>331</sup> which to date has been interpreted by the ISS as referring to the social pension (*pensão social*).<sup>332</sup> These percentages represent the upper limit of the allowances and in 2018 consisted of the following:

Level of financial allowances per expense: 2018		
Type of monthly allowance	Percentage	Amount
Social support allowance for food, clothing, transport and hygiene items	70%	144.91 €
Complementary allowance for housing	30%	62.10 €
Complementary allowance for personal expenses and transport	30%	62.10 €

In practice, asylum seekers referred by the SEF to CPR in the framework of admissibility procedures (including Dublin) and accelerated procedures on the territory benefit from housing at CAR or in private accommodation provided by CPR (see [Types of Accommodation](#)), along with a monthly allowance of 150 € per adult, 50 € per child below the age of four and to 75 € per child over the age of four to cover food and transport expenses.

During the first week, asylum seekers receive food items instead of the (*pro rata* of the) financial allowance for reasons related to the practical organisation of payments in cash at the CAR. Furthermore, CPR’s Social Department provides asylum seekers with second hand clothes as well as food items on a needs basis and/or weekly with the support of the Food Bank (*Banco Alimentar*), a charity organisation that supports social institutions by providing food items to be distributed to final beneficiaries. Depending on the individual circumstances the CPR also pays for: (i) medication due to problems related to access to State funded medication through the National Health Service (*Serviço Nacional de Saúde*, SNS); (ii) school supplies for children; (iii) differentiated health care e.g. dentists; and (iv) taxi transportation e.g. in case of a medical emergency or for particularly vulnerable individuals. In the particular case of unaccompanied children in the regular procedure and at appeal stage, CPR provides for material reception conditions in kind such as housing, food, clothing, transportation, school supplies, sports activities, haircuts, as well as a monthly allowance for personal needs that varies according to the age: 8 € for children up to the age of 10; 12 € for children between the age of 11 and 14; and 16 € for children aged 15 and over.

In the regular procedure or pending an appeal against a rejection decision during the admissibility stage or in an accelerated procedure, the financial allowance provided by the ISS and by the SCML is expected to cover all expenses. In the case of SCML there is the possibility of providing additional financial support for medication and school supplies following an individual needs assessment.

The monthly allowance for all expenses is calculated in accordance to the percentages of the social pension set out in the Asylum Act,<sup>333</sup> as mentioned above, albeit with a regressive percentage per additional member of the household:

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<sup>331</sup> Article 58 Asylum Act.

<sup>332</sup> Decree-Law 464/80. In 2017 the value of the social pension stood at 203.35 € / month: Ministerial Order 98/2017.

<sup>333</sup> Article 58 Asylum Act.

Level of ISS / SCML financial allowance for all expenses: 2018	
Category of applicant	Amount
Head of household	269.11 €
Other adult in household	188.38 €
Child	134.56 €

Financial allowances for asylum seekers and beneficiaries of international protection in the regular procedure and in appeal saw a sharp decrease in 2012 during the financial crisis and the reasoning of the ISS since has been to bring them strictly in line to those provided in the law to destitute nationals. According to the law, the social pension constitutes a measure of solidarity to offer social protection to the most vulnerable populations.<sup>334</sup>

Even though no qualitative research has been conducted to date on destitution of asylum seekers in the asylum procedure, the current level of financial allowances is manifestly low and CPR's Social Department receives regular complaints from asylum seekers at all stages of the asylum procedure regarding financial difficulties to meet basic needs and anxiety regarding low levels of income, although short of outright destitution. Such difficulties might constitute a contributing factor to the high level of absconding and cessation of support in the regular procedure and in the relocation programme (see [Reduction or Withdrawal of Reception Conditions](#)).

Following a resolution passed by the Parliament in June 2017 recommending the publication of an evaluation report of the Portuguese reception policy for refugees,<sup>335</sup> the Government opted for a more limited assessment of the national relocation programme leaving out the reception system for spontaneous asylum seekers. The report, coordinated and drafted by ACM, collected inputs from 39 hosting entities and 1 refugee community organisation and was completed in December 2017.<sup>336</sup> The evaluation conducted by the ACM is based on a set of general indicators drawn from the priority areas of the Working Group's national plan for the reception and integration of relocated persons. Despite the general acknowledgement of some challenges, the overall evaluation of the programme is very positive. However, the results presented regarding reception and integration conditions are based on very general quantitative indicators and provide limited qualitative information.<sup>337</sup> The qualitative information presented in the report is mostly based on the consultation conducted with hosting and refugee community organisations and points to challenges such as insufficient financial support and the need for longer reception programmes; gaps in pre and post departure information; lack of translators; and insufficient and ill adapted language training as well as insufficient vocational training opportunities.

### 3. Reduction or withdrawal of reception conditions

#### Indicators: Reduction or Withdrawal of Reception Conditions

1. Does the law provide for the possibility to reduce material reception conditions?  
 Yes  No
2. Does the law provide for the possibility to withdraw material reception conditions?  
 Yes  No

<sup>334</sup> Preamble to Law Decree 464/80 regarding the social pension that refers to "improving social protection for the most destitute". The social pension is provided among others to nationals, who are not entitled to a pension from the contributory social security system who lack any revenue or whose revenue is below the value of the social pension (Article 1).

<sup>335</sup> Resolução da Assembleia da República n.º 167/2017 Recomenda ao Governo a publicação de um relatório de avaliação da política portuguesa de acolhimento de refugiados, available at: <https://bit.ly/2GdX39b>.

<sup>336</sup> ACM, *Relatório de Avaliação da Política Portuguesa de Acolhimento de Pessoas Refugiadas, Programa de Recolocação*, December 2017, unpublished.

<sup>337</sup> The indicators used included a 100% rate regarding registration with the SNS and access to medical care; 98% access to Portuguese language classes; around 80% access of children to education; around 80% first instance decisions on the asylum application; 29 births on the territory; 50% of persons in working age that remained in Portugal in training or employment; around 90% and 80% of persons granted fiscal identification numbers and social security numbers.

The Asylum Act provides for a closed list of grounds that may warrant the reduction or withdrawal of material reception conditions.<sup>338</sup> These consist of:

- a. Abandoning the place of residence determined by the authority without informing the SEF or without adequate permission;
- b. Abandoning the place of residence without informing the reception organisation;
- c. Failing to comply with reporting duties;
- d. Failing to provide information that was requested or to appear for personal interviews when summoned;
- e. Concealing financial resources and hence unduly benefiting from material reception conditions; and
- f. Lodging a subsequent application.

For the reduction or withdrawal to be enacted, the behaviour of the applicant needs to be unjustified,<sup>339</sup> implying the need for an individualised assessment of the legality of the decision, which is however not clearly stated in the law. Such decisions have to be individual, objective, impartial, and reasoned.<sup>340</sup> The asylum seeker is entitled to appeal the decision under these grounds before an Administrative Court,<sup>341</sup> with suspensive effect,<sup>342</sup> and may benefit from free legal aid to that end.<sup>343</sup> Reception conditions reduced or withdrawn pursuant to grounds (a) to (c) above can be reinstated if the asylum seeker is found or presents him or herself to the authorities.<sup>344</sup>

CPR is not aware of the adoption of any decision to reduce or withdraw material reception conditions of asylum seekers in the regular procedure under these grounds in 2018. ISS was not able to provide data on the number of reduction or withdrawal and on the number of asylum seekers in the regular procedure that abandoned *proprio motu* the support provided. SCML reported that, from a total of 327 referred cases, 53 abandoned *proprio motu* the support. The rate of absconding in the relocation programme from 2015 to 2017 was also quite significant.<sup>345</sup> It cannot be excluded that, in certain instances, such abandonments may be linked to poor living standards offered by material reception conditions.

However, according to the information available to CPR the absconding of spontaneous and relocated asylum seekers was not followed by formal decisions of reduction or withdrawal of material reception conditions, rendering irrelevant the issue of reinstatement of reception conditions provided in the law. In the particular case of relocation, asylum seekers who have absconded and later transferred back to Portugal in accordance to the Dublin Regulation are systematically provided reception conditions upon arrival either by the initial reception service provider, or by a different service provider.

The law does not provide for specific sanctions for seriously violent behaviour or serious breaches of the rules of accommodation centres and other housing provided in the framework of material reception conditions. Nevertheless, service providers are required to adopt adequate measures to prevent violence, and notably sexual and gender-based violence.<sup>346</sup> In the case of the **CAR**, both the Regulation and the individual contract signed between CPR and the asylum seeker include specific prohibitions of abusive and violent behaviour that can ultimately result in withdrawal of support following an assessment of the individual circumstances of the case and taking into consideration the vulnerability of the applicant.<sup>347</sup> In

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<sup>338</sup> Article 60(1) Asylum Act.

<sup>339</sup> Article 60(3) Asylum Act.

<sup>340</sup> Article 60(5) Asylum Act.

<sup>341</sup> Article 60(8) Asylum Act.

<sup>342</sup> Articles 63(1) and 30(1) Asylum Act.

<sup>343</sup> Article 63(2) Asylum Act.

<sup>344</sup> Article 60(4) Asylum Act.

<sup>345</sup> Público, ‘Quase metade dos 1500 refugiados que chegaram já deixou Portugal’, 16 October 2017, available in Portuguese at: <http://bit.ly/2j8gF7J>; News Deeply, ‘Portugal Offers Refugees a Warm Welcome, but Can’t Get Them to Stay’, 1 September 2017, available at: <http://bit.ly/2gMuHdW>. According to the evaluation report of the relocation programme, on 28 November 2017 the overall rate of absconding stood at 45%: ACM, *Relatório de Avaliação da Política Portuguesa de Acolhimento de Pessoas Refugiadas, Programa de Recolocação*, December 2017.

<sup>346</sup> Article 59(1)(e) Asylum Act.

<sup>347</sup> The contract is currently available *inter alia* in Portuguese, English, French and is otherwise interpreted to the client if not available in a language that he understands.

the case of **CACR**, while the Regulation contains similar prohibitions and age appropriate sanctions,<sup>348</sup> the accommodation of unaccompanied children stems from and can only be reviewed by the Family and Juvenile Courts in the framework of the Children and Youths at Risk Protection Act (see [Legal Representation of Unaccompanied Children](#)).

In practice, without prejudice to criminal proceedings where relevant, instances of withdrawal of support from CPR following abusive and/or violent behaviour in breach of internal rules remain an extremely rare event. For most cases the consequences consist of transfer into private accommodation to ensure the security and well-being of the remaining clients. In the particular case of unaccompanied children, the Family and Juvenile Courts generally prioritise the stability of the living environment,<sup>349</sup> and are extremely reluctant to uproot the child by transfer into another institution.

#### 4. Freedom of movement

##### Indicators: Freedom of Movement

1. Is there a mechanism for the dispersal of applicants across the territory of the country?  
 Yes       No
  
2. Does the law provide for restrictions on freedom of movement?     Yes       No

The Asylum Act does not contain specific restrictions on the freedom of movement or grounds for residence assignment but provides for the duty of asylum seekers to keep the SEF informed of their address and immediately flag any changes thereto.<sup>350</sup> Furthermore, the authorities may decide to transfer the asylum seekers from housing facilities when needed for an adequate decision-making process regarding the asylum application or to improve housing conditions.<sup>351</sup>

Since 2012, the operational framework for the reception of asylum seekers in Portugal provides for a dispersal mechanism of asylum seekers (see [Criteria and Restrictions to Access Reception Conditions](#)). Following the admissibility procedure and admission to the regular procedure, or if the application is deemed inadmissible or rejected in an accelerated procedure, the asylum seeker is generally referred by frontline service providers such as CPR to the GTO, using a standard individual monitoring report. The GTO meets at least once a month to discuss individual cases and decides on the provision of material reception conditions in the regular procedure (generally by ISS) or at appeal stage (by SCML) on the basis of the report and in accordance to existing reception capacity nationwide. This can either result in a dispersal decision implemented by local Social Security services for those admitted to the regular procedure or their placement in private housing in the **Lisbon** area under the responsibility of SCML for those who have appealed the rejection of their application.

In practice, according to the statistics shared by the ISS, as of December 2018 there were a total of 1,043 spontaneous asylum seekers and beneficiaries of international protection – including relocated persons – who benefited from ISS material support, residing in the following areas:

Dispersal of applicants and beneficiaries of international protection receiving ISS support	
Area	Number
Lisbon	500
Porto	145
Coimbra	67

<sup>348</sup> These include, by order of increasing severity, an oral warning; a reprimand; to execute a repairing task; reduction of pocket money; limitation of authorisations to leave the CACR; restriction of ludic and pedagogical activities, notably with fellow children; and transfer to another institution.

<sup>349</sup> Article 78(2)(e) Asylum Act provides for stability of housing as a contributing factor to upholding the best interests of the child.

<sup>350</sup> Article 15(1)(f) Asylum Act.

<sup>351</sup> Article 59(2) Asylum Act.

Castelo Branco	63
Setúbal	55
Braga	46
Évora	31
Portalegre	27
Guarda	25
Santarém	23
Vila Real	21
Beja	12
Viseu	12
Aveiro	8
Leiria	3
Viana do Castelo	3
Bragança	1
Faro	1
<b>Total</b>	<b>1,043</b>

Source: ISS.

Most asylum seekers and beneficiaries of international protection receiving material reception conditions from ISS in 2018 resided in **Lisbon**. Additionally, SCML supported a total of 471 individuals (including cases from 2017), all of whom resided in Lisbon or in nearby districts due to difficulties in accessing the housing market in Lisbon (see [Types of Accommodation](#)).

There is some flexibility in the implementation of the dispersal policy. According to the ISS, asylum seekers admitted to the regular procedure may request a review of their dispersal decision and their accommodation in a particular area where accommodation, education, employment and health related grounds justify an exception(e.g. regarding unaccompanied children enrolled in schools, asylum seekers who are employed at the time of the decision or particularly vulnerable asylum seekers who benefit from specialised medical care in Lisbon, see [Responsibility for Reception](#)). Otherwise, the refusal to accept the dispersal decision by failing to report to the local Social Security service or abandoning its support following the dispersal decision will generally result in the withdrawal of material reception conditions. According to the information available to CPR, once the dispersal decision is made by the GTO, asylum seekers are not subjected to onward dispersal decisions resulting in their move from the initial District of assignment.<sup>352</sup>

Even though no research has been conducted to date to assess the impact of the dispersal policy, according to the information collected by CPR, the main concerns raised by asylum seekers include isolation, lack of interpreters and specialised mental health care, difficulties in accessing specialised legal assistance, including that provided by CPR due to the geographical distance, and lack of tailor-made integration services such as language training and vocational training.

The law only provides for the possibility to appeal a decision to withdraw or reduce material reception conditions in case of abandonment of the place of residence assigned by the competent authority without informing the SEF, without proper authorisation or without informing the reception service provider.<sup>353</sup>

<sup>352</sup> It should be noted that in accordance to Article 59(2) Asylum Act, decisions ordering the transfer of asylum seekers from housing facilities can only occur when needed for an adequate decision-making process regarding the asylum application or to improve housing conditions.

<sup>353</sup> Articles 60(3)(a)-(b) and (8), and 63(1) Asylum Act.

## B. Housing

### 1. Types of accommodation

Indicators: Types of Accommodation	
1. Number of reception centres:	2
2. Total number of places in the reception system:	65
3. Total number of places in private accommodation (incl. beneficiaries):	1,043
4. Type of accommodation most frequently used in a regular procedure: <input type="checkbox"/> Reception centre <input type="checkbox"/> Hotel or hostel <input type="checkbox"/> Emergency shelter <input checked="" type="checkbox"/> Private housing <input type="checkbox"/> Other	
5. Type of accommodation most frequently used in an accelerated procedure: <input checked="" type="checkbox"/> Reception centre <input checked="" type="checkbox"/> Hotel or hostel <input type="checkbox"/> Emergency shelter <input type="checkbox"/> Private housing <input checked="" type="checkbox"/> Detention	

As mentioned in [Freedom of Movement](#), asylum seekers are generally referred by frontline service providers to the GTO following admission to the regular procedure or in case of appeal of the rejection of the application at first instance. At this point the provision of housing is relayed by either local Social Security services for the duration of the regular procedure or by SCML in the Lisbon area at appeal stage.

According to information provided by the ISS, asylum seekers are mostly provided with private housing (rented flats/houses and rooms) without prejudice to accommodation provided by relatives in Portugal and collective accommodation such as hotels or non-dedicated reception centres e.g. emergency shelters, nursing homes, etc. In the case of SCML, the provision of housing consists mostly of accommodation in private rooms, hostels or inns in the Lisbon area. A very limited number of asylum seekers are sometimes referred to homeless shelters managed by the organisation on a temporary basis to address specific vulnerabilities.

In 2018, the number of asylum seekers and beneficiaries of international protection assisted by the ISS and SCML for the provision of private housing reached 1,043 people.<sup>354</sup>

In the current reception system, adults and families with children are accommodated at CPR's Refugee Reception Centre (**CAR**) or in private accommodation provided by CPR (rooms in private apartments or hostels) during admissibility (including Dublin) and accelerated procedures in the territory. In the case of unaccompanied children, CPR's Refugee Children Reception Centre (**CACR**) offers age-appropriate housing and reception conditions during the regular procedure and at appeal stage.

Capacity and occupancy of the asylum reception system		
Centre	Capacity	Occupancy at 31 December 2018
CAR	52	39
CACR	13	24
<b>Total</b>	<b>65</b>	<b>63</b>

Source: CPR. The CAR initiated renovation works in the last quarter of 2018, which were completed in March 2019.

The **CAR** is an open reception centre located in **Bobadela**, Municipality of Loures, and operates in the framework of MoUs with the Ministry of Home Affairs and the Ministry of Labour, Solidarity and Social Security. The official capacity of the CAR stands at 52 places. In 2018, CPR provided reception assistance

<sup>354</sup> In 2018, the ISS provided private housing to 835 individuals. An additional 208 individuals were provided housing either in hostels, collective accommodation or stayed with relatives while being provided material reception conditions by the ISS. The SCML provided material receptions conditions to 471 individuals. These included 274 spontaneous asylum seekers and 46 relocated asylum seekers (following the completion of the initial 18-24 month support programme) who were referred in 2018, as well as 151 individuals referred prior to 2018. During the year a total of 188 individuals were provided accommodation in private housing.

to a total of 1,171 asylum seekers of which only 26% were accommodated at CAR, 69% in alternative private accommodation, and the remaining 5% with friends / family.

CPR ensures accommodation until ISS/SCML take over and asylum seekers only leave its facilities when alternative accommodation is secured (see [Responsibility for Reception](#)).

The significant increase in the number of referrals from SEF meant that overcrowding in CAR persisted throughout the year. Between January and December 2018, CPR provided accommodation at CAR and in private accommodation to 1112 applicants. Aggravating factors included the fact that the CAR was partially closed for long due renovation works starting in the last quarter of 2018 and ending in March 2019, and that despite the existing arrangements, asylum seekers who have appealed the rejection of their application at the border are systematically referred to the CAR upon their release for purposes of transitional accommodation during the referral process to the GTO. Furthermore, the transition into private accommodation provided by SCML as per the existing arrangements has experienced significant delays throughout the year. Along with the difficulties faced by asylum seekers in finding private housing due to the lack of available properties and increased market prices all these factors contributed to stays in CPR's CAR or private accommodation of up to 6 months.

The [CACR](#), on the other hand, is an open reception house for unaccompanied asylum-seeking children located in **Lisbon** that operates since 2012 in the framework of MoUs with the Ministry of Home Affairs, the Municipality of Lisbon and the Ministry of Labour, Solidarity and Social Security. The official capacity stands at 13 places and in 2018 the CPR provided housing at CACR to a total of 61 unaccompanied children.

Following consecutive yearly increases in the number of asylum applications, CPR has developed a new reception centre with the financial support of the Council of Europe Development Bank and in partnership with the Ministry of Home Affairs. The new Reception Centre for Refugees (**CAR II**) is located in S. João da Talha, Municipality of **Loures**, has a maximum capacity of 90 places, of which 30 for unaccompanied children, and aims to offer transitory accommodation to resettled refugees and address the chronic reception gap for asylum seekers currently eligible for accommodation at CAR and CACR. The new reception was inaugurated in December 2018 and will come into operation in 2019.<sup>355</sup>

In the particular case of asylum seekers arriving through relocation, the hosting organisations offer an initial 18-month support programme – 24-month in the case of PAR – that generally includes housing in kind either in private accommodation rented by the hosting organisation or in collective accommodation such as reception centres for vulnerable populations. Since 2016, CPR established MoUs with 23 municipalities and institutions for the reception of up to 395 relocated asylum seekers that for the most part benefited from rented accommodation. In February 2016, the Lisbon Municipality inaugurated a Temporary Reception Centre for Refugees (*Centro de Acolhimento Temporário para Refugiados, CATR*) that provides transitory reception to relocated asylum seekers. The CATR has a capacity of 26 places and is complemented by temporary accommodation in private housing supervised by designated operational partners.

ACM conducts individual interviews with relocated beneficiaries at three stages: six months before, three months before, and upon completion of the initial 18-month support programme. These interviews are tailored to assist the transition into the general support system available to asylum seekers in the regular procedure.<sup>356</sup>

Following consultations in late 2017 with reception providers and relocated asylum seekers, CPR was informed of concerns regarding delays in the process of transition to the general support system and

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<sup>355</sup> See CPR, 'Novo Centro de Acolhimento para Refugiados (CAR II)', 19 December 2018, available in Portuguese at: <https://bit.ly/2RQDr3C>.

<sup>356</sup> ACM, *Relatório de Avaliação da Política Portuguesa de Acolhimento de Pessoas Refugiadas, Programa de Recolocação*, December 2017.

regarding the level of support provided, which was considered too low an income on which to survive. However, it was noted that such problems similarly affected Portuguese nationals.

## 2. Conditions in reception facilities

### Indicators: Conditions in Reception Facilities

1. Are there instances of asylum seekers not having access to reception accommodation because of a shortage of places?  Yes  No
2. What is the average length of stay of asylum seekers in the reception centres?
  - ❖ Adults 150 days
  - ❖ Unaccompanied children 222 days
3. Are unaccompanied children ever accommodated with adults in practice?  Yes  No

The main form of accommodation used during admissibility, including Dublin, and accelerated procedures in national territory were CPR's (funded) private accommodation and reception centres while in the regular procedure and at appeal stage as well as in the case of relocation was private accommodation (see [Types of Accommodation](#)). There is currently no regular system of reception monitoring in place.

The ISS is among the competent authorities for the licensing and is responsible for the monitoring and provision of technical support to the operation of reception centres, including for asylum seekers.<sup>357</sup> The applicable rules to collective accommodation facilities have been laid down by the ISS regarding temporary reception centres for children at risk (such as the CACR).<sup>358</sup> Furthermore, the law provides for specific standards regarding housing in kind for asylum seekers,<sup>359</sup> and children at risk such as unaccompanied children in particular.<sup>360</sup> The specific material reception standards of the CAR and CACR are encapsulated in the underlying bilateral MOUs (see [Types of Accommodation](#)) and their internal regulations.

The **CAR** is composed of shared rooms with dedicated bathrooms / toilets and is equipped to accommodate asylum seekers with mobility constraints; it includes a lift and adapted bathrooms / toilets. The residents are expected to cook their own meals in a communal kitchen and have access to common fridges and cupboards. The centre also has a laundry service, a playground, a day-care / kindergarten for resident and local community children, as well as a library connected to the municipal library system and a theatre / event space that can be rented out. The centre provides psychosocial and legal assistance, Portuguese language training, socio-cultural activities as well as job search support (see [Access to the Labour Market](#)). There is logistical support staff present 24 hours a day and the overall cleaning of the centre is carried out by a private company, though the residents are expected to cooperate in the cleaning of their room and the common kitchen. The residents have converted part of the common area into a prayer space.

The average stay at the CAR was around 5 months as ongoing problems in the transition into private housing provided by the ISS and SCML tend to extend the stay well beyond the duration of the admissibility (including Dublin) and accelerated procedures in the national territory(see [Types of Accommodation](#)). The official capacity stands at 52 places. However, existing gaps in centralised

<sup>357</sup> Decree-Law No 64/2007.

<sup>358</sup> These rules are contained among others in technical guidelines that provide for quality standards on issues such as capacity, duration of stay, composition and technical skills of staff, hygiene and security standards, location and connectivity, access to the building, construction materials, composition and size of the building, internal regulation, personal integration plans, activities planning, reporting and evaluation etc. An earlier version from 1996 is available at: <http://bit.ly/2meygMC>. According to the information available at: <http://bit.ly/2mljDHo>, the ISS has also adopted quality standards for other temporary reception centres (such as the CAR and the CATR) contained in technical guidelines dated 29 November 1996 (unpublished).

<sup>359</sup> Article 59 Asylum Act: protection of family life, including the unity of children and parents / legal representatives; right to contact relatives and representatives of UNHCR and CPR; adoption of adequate measures by the management of the facility to prevent violence, and notably sexual and gender-based violence.

<sup>360</sup> Articles 52-54 Children and Youth at Risk Protection Act.

reception capacity have resulted in chronic overcrowding that has been partially averted by resorting to the private housing market (hostels, rooms, apartments) usually in the Municipality of **Loures** and **Lisbon** but more recently also in other municipalities (e.g. **Torres Vedras**, **Setúbal**) due to shortages in available private accommodation for asylum seekers in the Lisbon district area.

Systematic overcrowding and long due conservation works have put severe strains on the living conditions and access to services, despite the continuous efforts to accommodate specific needs both at CAR and in external accommodation that included the recruitment of an additional social worker for the CAR by the end of the year and the use of additional collective sessions to improve access to social support. However, available staff remains significantly insufficient to address existing needs. These consist among others in conflicts in the use of the common kitchen and storing spaces, petty thefts and tensions with other residents, restrictions regarding access to services such as social and legal assistance and complaints regarding insufficient socio-cultural activities.<sup>361</sup>

It should be noted that between September and December 2018 the CPR was forced to temporarily limit the number of asylum seekers accommodated at the CAR and transfer some of its residents into private housing due to renovation and repair work needed to ensure adequate living standards (see [Types of Accommodation](#)).

The **CACR** is also composed of shared rooms with dedicated bathrooms / toilets and is equally equipped to accommodate asylum seekers with mobility constraints. A resident cook is responsible for the provision of meals in line with the nutritional needs of children, but children are on occasion allowed to cook their own meals under supervision. The centre also has a laundry service, a playground and a small library and provides psychosocial and legal assistance, Portuguese language training and socio-cultural activities. The children accommodated at the CACR are systematically enrolled in local schools or in vocational training programmes. The staff of the CACR includes a social worker and support workers and are complemented by the support of legal officers and a language trainer. There is logistical support staff present 24 hours a day that also ensures the overall cleaning of the centre, while the residents are expected to cooperate in the cleaning of their room and the common areas.

The CACR offers unaccompanied children age-appropriate housing and reception conditions for an average stay period of 7 months and 12 days, regardless of the stage of the asylum procedure. The official capacity stands at 13 places but the existing gap in specialised reception capacity has also resulted in overcrowding that has been partially averted by: changing arrangements in rooms to expand capacity while preserving adequate accommodation standards; resorting to separate accommodation of unaccompanied children above the age of 16 at the **CAR**, supervised by the Family and Juvenile Court; and, depending on the individual circumstances, promoting the placement of children above the age of 16 in supervised private housing by decision of the Family and Juvenile Court in line with the protective measures enshrined in the Youths at Risk Protection Act.<sup>362</sup> Despite the overcrowding, living conditions remain adequate but put a strain on the timing and quality of support provided. A relevant concern is absconding, which concerned a total of 16 out of 61 (26.23%) unaccompanied children accommodated by CPR in 2018,<sup>363</sup> compounded by instances of trafficking in human beings (see [Special Reception Needs](#)). During the same period, CACR's team flagged 5 instances of suspicions of trafficking in human beings to the Observatory on Trafficking in Human Beings.

As mentioned in [Freedom of Movement](#), no research has been conducted to date on the impact of the dispersal component of the reception policy implemented by the GTO. According to the information collected by CPR, there have not been systemic problems regarding the quality of private housing provided upon dispersal. However, there are difficulties in securing private housing in the **Lisbon** area with conditions that are up to the standard.

<sup>361</sup> Italian Council for Refugees *et al.*, *Time for Needs: Listening, Healing, Protecting*, October 2017, available at: <http://bit.ly/2xZqCGh>.

<sup>362</sup> Act 147/99.

<sup>363</sup> These include 36 unaccompanied children who applied for asylum in 2018 and 25 who applied for asylum in previous years.

In the case of relocation, even though the poor quality of accommodation was sometimes raised by asylum seekers during consultations conducted by the CPR in late 2017, reception conditions did not stand out as a particular factor in motivating onward movements and the overall appraisal was positive.

## C. Employment and education

### 1. Access to the labour market

#### Indicators: Access to the Labour Market

- |  |  |
|--|--|
| 1. Does the law allow for access to the labour market for asylum seekers?<br>❖ If yes, when do asylum seekers have access the labour market? | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No<br>7-30 days |
| 2. Does the law allow access to employment only following a labour market test?  | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No              |
| 3. Does the law only allow asylum seekers to work in specific sectors?<br>❖ If yes, specify which sectors:                                   | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No              |
| 4. Does the law limit asylum seekers' employment to a maximum working time?<br>❖ If yes, specify the number of days per year                 | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No              |
| 5. Are there restrictions to accessing employment in practice?   | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No              |

The Asylum Act provides for the right of asylum seekers to access the labour market following admission to the regular procedure and the issuance of a provisional residence permit.<sup>364</sup> In case of admission to the regular procedure, access to the labour market can therefore be granted after 7 days in the context of the border procedure or after 10 to 30 days in procedures on the territory.<sup>365</sup> Furthermore, asylum seekers entitled to access the labour market can also benefit from support measures and programmes in the area of employment and vocational training under specific conditions to be determined by the competent Ministries.<sup>366</sup>

There are no limitations attached to the right of asylum seekers to employment such as labour market tests or prioritisation of nationals and legally resident third country nationals. The issuance and renewal of provisional residence permits by the SEF, which clearly state the right to employment,<sup>367</sup> are free of charge.<sup>368</sup> The only restriction on employment enshrined in the law consists in limited access for all third-country nationals to certain categories of employment in the public sector.<sup>369</sup> Furthermore, asylum seekers benefit from the same conditions of employment of nationals, including those pertaining to salaries and working hours.<sup>370</sup> The law provides, however, for specific formalities in the case of employment contracts of third-country nationals such as the need for a written contract and its (online) registration with the Authority for Labour Conditions (*Autoridade para as Condições do Trabalho*, ACT).<sup>371</sup>

With the exception of the submission of beneficiaries of international protection to the conditions applicable to nationals of the same country,<sup>372</sup> there are no specific rules regarding the recognition of diplomas and academic qualifications in the Asylum Act. The general rules for granting the recognition of

<sup>364</sup> Articles 54(1) and 27(1) Asylum Act.

<sup>365</sup> The 10 days correspond to the time limit of admissibility decisions in subsequent applications and applications following a removal order (on the territory) and the 30 days to the remaining admissibility procedures in the territory: Articles 33(4)-(5), 33-A (5) and 20(1) Asylum Act.

<sup>366</sup> Article 55 Asylum Act.

<sup>367</sup> Ministerial Order 597/2015.

<sup>368</sup> Article 84 Asylum Act.

<sup>369</sup> Article 15(2) Constitution and Article 17(1)(a) and (2) Act 35/2014.

<sup>370</sup> Article 4 Labour Code.

<sup>371</sup> Article 5 Labour Code.

<sup>372</sup> Article 70(3) Asylum Act.

foreign qualifications at basic and secondary level include conditions that are particularly challenging for asylum seekers and beneficiaries of international protection,<sup>373</sup> such as:

- a. The presentation of original diplomas,<sup>374</sup> and eventually of additional supporting documents;<sup>375</sup>
- b. Duly translated and legalised documents;<sup>376</sup>
- c. In the absence of such documents, a statement from an Embassy or a reception organisation related to the country of origin confirming exceptional individual circumstances;<sup>377</sup> and
- d. A competency examination.<sup>378</sup>

To address these challenges in 2016 the Directorate-General for Education (DGE) issued a circular letter in the framework of the relocation programme regarding the recognition of foreign qualifications at basic and secondary level and its scope was later extended to all asylum seekers and beneficiaries of international protection.<sup>379</sup> While the guidelines clarify who may issue statements confirming exceptional individual circumstances and exempt asylum seekers and beneficiaries of international protection from translating and legalising diplomas, the other conditions remain applicable. Moreover, the guidelines are applicable only to children and young adults, given that in accordance to the law the competences of the DGE are limited to the preschool, basic and secondary education levels.

There are no statistics available on the number of asylum seekers in employment at the end of 2018. However, according to the information provided by IEFP, 84 asylum seekers admitted to the regular procedure and/or beneficiaries of international protection were registered in their services as “job applicants”, and 57 as “users” as of 7 March 2019.<sup>380</sup> Additionally, 20 asylum seekers were registered as “users”, presenting a declaration of application for international protection (therefore, it is likely that they had still not been admitted to the regular procedure).

In the context of relocation, the ISS shared in 2017 provisional information concerning asylum seekers who were coming to the end of the 18-month integration programme according to which a third of those in working age who have remained in the country had secured employment since arriving in Portugal.<sup>381</sup> In this regard, a total of 31 out of the 146 relocated asylum seekers hosted by CPR who remained in Portugal had secured paid employment as of October 2017.

According to CPR’s experience, asylum seekers and beneficiaries of international protection face many challenges in securing employment that are both general and specific in nature.

Even though the economic situation of the country has reverted to and even improved from pre-crisis levels, in September 2018 the unemployment rate still stood at around 6.7% for the general working population.<sup>382</sup> This adverse context is compounded by specific fragilities that include poor language skills and professional skills that are misaligned with the needs of employers, thus requiring professional recycling which itself presents many challenges.

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<sup>373</sup> Decree-Law 227/2005.

<sup>374</sup> Article 7(2) Decree-Law 227/2005.

<sup>375</sup> Article 7(4) Decree-Law 227/2005.

<sup>376</sup> Article 7(4) Decree-Law 227/2005.

<sup>377</sup> Article 10(1) Decree-Law 227/2005.

<sup>378</sup> The content of the examination varies according to the level of education and the curriculum, but always includes a Portuguese as a Second Language. See Article 10(5) (basic and lower education) and Article 10(6) (secondary education) Decree-Law 227/2005.

<sup>379</sup> DGE, *Agenda Europeia para as Migrações - medidas a implementar no sistema educativo*, 1 March 2016, available in Portuguese at: <http://bit.ly/2jqFkok> and DGE, *Crianças e jovens refugiados - medidas a implementar no sistema educativo*, 21 October 2016, available in Portuguese at: <http://bit.ly/2z0dgzf>.

<sup>380</sup> IEFP is able to provide information on registered persons disaggregated by the type of document presented. As both asylum seekers admitted to the regular procedure and beneficiaries of international protection hold residence permits (although distinct types), it is not possible to establish how many of them are asylum seekers in the regular procedure and how many were beneficiaries of international protection.

<sup>381</sup> See Working Group on the European Agenda on Migration, ‘Quase 30 por cento dos refugiados inseridos no mercado de trabalho’, 26 September 2017, available in Portuguese at: <http://bit.ly/2A1ypZM>.

<sup>382</sup> Eurostat, ‘Euro area unemployment at 8.1%’, 30 November 2018, available at: <https://bit.ly/2DQ3D7j>.

Challenges of a more bureaucratic nature include: difficulties in obtaining equivalence of diplomas as described above which are particularly relevant for regulated professions; lack of a social security identification number (*Número de Identificação da Segurança Social*, NISS) at the time of application and bureaucratic difficulties in the issuance of a NISS on the basis of the temporary residence permit; or the provisional residence permit stating not to be an identification document.<sup>383</sup> These issues may put off employers from hiring asylum seekers in a very competitive employment market. Additional challenges, include lack of support network, limited knowledge about the labour market and cultural norms, etc. In the particular case of victims of torture and/or serious violence, these include specific vulnerabilities related to health, mental health and high levels of anxiety related to the uncertainty of the asylum procedure, separation from relatives, and financial instability that hinder the ability to focus on a medium-long term individual integration process (see [Special Reception Needs](#)).

CPR provides literacy and Portuguese language training free of charge to asylum seekers who are accommodated at **CAR, CACR**, in private housing provided by the institution, and to asylum seekers and beneficiaries of international protection assisted by other institutions that live nearby CPR's facilities or that can easily reach them. This training includes a sociocultural element, with activities inside and outside the classroom, aiming to promote integration in the hosting society.

Asylum seekers are able to register with IEFP to access to Portuguese language training in the framework of the programme “Portuguese for All” (*Português para Todos*), an initiative of the Ministry of Employment, Solidarity and Social Security and the Ministry of Education,<sup>384</sup> that is managed by the ACM and funded by the European Social Fund. *Português para Todos* offers certified language training modules delivered by public schools and training centres of the IEFP corresponding to A2 (150 hours) and B2 (150 hours) levels as well as technical Portuguese language training (25 hours) in areas such as business, hotel and tourism, beauty care, civil construction and engineering. The ACM also funds informal language training, including some alphabetic training, that is delivered by civil society organisations, including CPR, and Municipalities.<sup>385</sup>

In 2018, CPR provided certified language training at A1, A2 and B1 levels to 430 asylum seekers and refugees, as well as literacy and complementary language training for children enrolled in schools (a total of 1,427 hours of training in the classroom, excluding sociocultural activities outside the classroom). Available language training following admission to the regular procedure consisted mostly of A1-A2 *Português para Todos* language training that is tailored for more advanced users, who are familiar with the Latin alphabet and is therefore not necessarily tailored to asylum seekers and beneficiaries of international protection who may present low levels of education / illiteracy / poor knowledge of the Latin alphabet. Notwithstanding, opportunities for alphabetic training for foreigners remained very limited. Furthermore, available *Português para Todos* language training at B1 and B2 levels remained limited according to the experience of CPR's Professional Insertion Cabinet (GIP), thus curtailing the employability of asylum seekers and refugees.

Such programmes were available at national level in public schools and training centres following registration with and referral from IEFP employment centres or ANQEP Centres (*Centros Qualifica*),<sup>386</sup> registration with schools or ACM. It should be noted that these require putting together groups of a minimum size, which constitutes an additional challenge in certain locations given the current dispersal policy (see [Freedom of Movement](#)). In March 2016, ACM launched an [Online Platform for Portuguese](#) to promote informal learning of Portuguese. The modules are currently available in Arabic in order to tackle the needs of the asylum seekers.

CPR's GIP, which operates at CAR since 2001 in the framework of a MoU with the IEFP, offers individual assistance and training sessions on job search techniques, equivalence procedures, search and referrals

<sup>383</sup> Ministerial Order 597/2015.

<sup>384</sup> Ministerial Order 1262/2009 and Ministerial Order 216-B/2012.

<sup>385</sup> For more information on these programmes see ACM, *Learning of the Portuguese Language*, available at: <http://bit.ly/2iqmXQg>.

<sup>386</sup> Ministerial Order 232/2016.

to vocational training and volunteering opportunities, among others. In 2018, CPR also provided support to 200 refugees and asylum seekers in 17 municipalities throughout the country in the framework of an EU funded project. The implemented activities included detailed analysis of individual profiles, individual counselling, group training sessions on job-search and soft skills and engagement with employers to advocate for inclusive recruiting policies and provide post-hiring support to both refugees and employers.<sup>387</sup>

Other organisations that provide similar employment assistance to spontaneous asylum seekers, and more recently relocated asylum seekers, include the JRS that also offers a robust employability programme in partnership with private sponsors as well as personal skills training and vocational training in areas such as food retail, domestic services, geriatric care, food and beverage, hostelleries or child care.<sup>388</sup>

Upon admission to the regular procedure, asylum seekers can also register as “job applicants” with the IEFP, being able to search for jobs, and benefit from vocational training and assistance.

In this regard, the IEFP has included asylum seekers admitted to the regular procedure and beneficiaries of international protection among the target population of some of its employability support measures. These include the Measure for Professional Internships (*Medida Estágios Profissionais*)<sup>389</sup> that provides for 9 month paid internships without requiring prior equivalence procedures or academic diplomas; and the Measure Employment Contract (*Medida Contrato Emprego*)<sup>390</sup> that provides financial incentives to employers which recruit employees for 12 months or longer under the obligation to provide them with vocational training. However, the IEFP was not in possession of conclusive statistics regarding the implementation of such measures in the case of asylum seekers and beneficiaries of international protection.

Regarding vocational training, the low level of language skills associated with the lack of diplomas and/or challenging equivalence procedures described above render access to vocational training offered by the IEFP and its partners within the public system inaccessible to most asylum seekers and beneficiaries of international protection while vocational training in the private sector is generally unaffordable. In this regard, as of 2018 asylum seekers admitted to the regular procedure and beneficiaries of international protection whose diplomas and academic qualifications have not been recognised in the Portuguese educational system are registered by IEFP as “literate users” in the SIGO platform.<sup>391</sup> Other than Portuguese language training courses in the framework of the programme “Portuguese for All” (*Português para Todos*), such registration only provides access to (a) modular training<sup>392</sup> at basic education level; (b) training in basic skills (reading, writing, calculation and information and communication technologies) in preparation for EFA Courses; and (c) Education and Training Courses for Adults (*Cursos de Educação e Formação para Adultos*, EFA) with equivalence to the 4th or 6th year of basic education or a professional certificate.<sup>393</sup> Neither modular training nor training in basic skills entail an academic certification.

In the context of relocation, ACM has created a Refugee Support Unit as well as tailored services within the National and Local Support Centres for the Support of Migrants (*Centros Nacionais e Locais de Apoio à Integração de Migrantes*, CNAIM/CLAIM) to support asylum seekers (e.g. hiring a permanent Arabic-

<sup>387</sup> For more information, see CPR, *Começar de Novo*, available in Portuguese at: <https://bit.ly/2TSaAcs>.

<sup>388</sup> For 2018, see JRS, *Projeto Integra +*, available in Portuguese at: <https://bit.ly/2MXK6EE>, which provided support to 22 trainees, of whom 19 were able to secure employment by the end of the 5-month programme.

<sup>389</sup> IEFP, *Estágios*, available in Portuguese at: <https://bit.ly/2qryv5n>.

<sup>390</sup> IEFP, *Apoios à contratação*, available in Portuguese at: <https://bit.ly/2YfGp26>.

<sup>391</sup> Integrated Information and Management System for Education and Training Courses (*Sistema Integrado de Informação e Gestão da Oferta Educativa e Formativa*, SIGO) which contains a national catalogue of education and training courses offered by training institutions at national level and the certification of individual trainees: DGEEC, ‘Sobre o Sistema Integrado de Informação e Gestão da Oferta Educativa e Formativa’, 3 July 2017, available in Portuguese at: <https://bit.ly/2uok84C>.

<sup>392</sup> Modular training aims to refresh and improve the practical and theoretical knowledge of adults and improve their educational and vocational training levels. For more information see IEFP, *Fomação Modular*, available in Portuguese at: <https://goo.gl/aCPTX1>.

<sup>393</sup> IEFP, *Cursos de Educação e Formação para Adultos* (*Cursos EFA*), available in Portuguese at: <https://bit.ly/2HCey7a>.

speaking intercultural mediator, promoting entrepreneurship training for refugees). A number of services, such as free legal support and information on employment, training and recognition of qualifications, provided by multiple institutions are available at CNAIM, also known as one-stop-shop. The ACM has also launched the **Refujobs** online platform, that aims to match potential employers and asylum seekers and beneficiaries of international protection looking for employment as well as to build their capacity for self-employment. In 2018, the ACM and the Institute of Tourism (*Instituto do Turismo*) have provided certified vocational training in the framework of a bilateral Memorandum of Understanding.<sup>394</sup>

## 2. Access to education

### Indicators: Access to Education

- |  |   |
|--|---|
| 1. Does the law provide for access to education for asylum-seeking children? | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |
| 2. Are children able to access education in practice?                        | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |

The Asylum Act provides for the right of asylum-seeking children to public education under the same conditions as nationals and third-country nationals whose mother tongue is not Portuguese.<sup>395</sup> This right cannot be curtailed if the asylum seeker reaches adulthood while already attending school to complete secondary education.<sup>396</sup> The Ministry in charge of education retains sole responsibility to ensure the right of children to education.<sup>397</sup>

Enrolment in schools at basic and secondary levels requires an equivalence procedure but children must be granted immediate access to schools and classes while that procedure is pending.<sup>398</sup> Given that asylum seekers are rarely in possession of duly legalised diplomas and other supporting documents, the procedure generally entails a placement test conducted by the school that takes into consideration the age and school year of the applicant.<sup>399</sup> In accordance with the law, schools should offer children in these conditions appropriate pedagogical support to overcome their difficulties on the basis of an individual diagnosis, notably regarding their Portuguese language skills.<sup>400</sup> In 2016 the DGE issued a circular letter which among others grants schools increased autonomy for adapting pedagogical activities to the specific needs of asylum seekers and beneficiaries of international protection with an increased focus on Portuguese language training for non-native speakers (*Português Língua Não Materna*, PLNM) and additional resources for that purpose (see **Access to the Labour Market**).<sup>401</sup> Such adaptations include a progressive convergence with the regular curriculum by temporarily exempting students from certain subjects and additional Portuguese language classes. The guidelines also clarify the entitlement of asylum seekers and beneficiaries of international protection under the most favourable regime to the various modalities of social assistance available to students enrolled in the public education sector for the purposes of food, accommodation, financial assistance and school supplies.<sup>402</sup> In 2018, the national curriculum in public and private schools regarding basic and secondary education further enshrined the principle of access to Portuguese language training for non-native speakers both in the framework of academic and vocational curricula.<sup>403</sup>

Regarding higher education, in 2018 the Government introduced the “student in an emergency situation for humanitarian reasons” status,<sup>404</sup> following a review of the Portuguese educational system by the

<sup>394</sup> ACM, ‘Terminou o primeiro curso em Cozinha/Restaurante para pessoas refugiadas’, 21 May 2018, available in Portuguese at: <https://bit.ly/2WQvKdo>.

<sup>395</sup> Article 53(1) Asylum Act.

<sup>396</sup> Article 53(2) Asylum Act.

<sup>397</sup> Article 61(4) Asylum Act.

<sup>398</sup> Article 8(5) Decree-Law 227/2005.

<sup>399</sup> Article 10(3) Decree-Law 227/2005.

<sup>400</sup> Article 11(2), (3) and (4) Decree-Law 227/2005.

<sup>401</sup> DGE, *Agenda Europeia para as Migrações - medidas a implementar no sistema educativo*, 1 March 2016, available in Portuguese at: <http://bit.ly/2jqFkok> and DGE, *Crianças e jovens refugiados - medidas a implementar no sistema educativo*, 21 October 2016, available in Portuguese at: <http://bit.ly/2z0dgzf>.

<sup>402</sup> Ministry of Education Legislative Order 8452-A/2015 of 31 July 2015, as amended by Legislative Order 7255/2018 of 31 July 2018.

<sup>403</sup> Articles 1, 2(1) and 6(2)(j) Decree Law 55/2018.

<sup>404</sup> Article 8A Decree-Law 36/2014, inserted by Decree-Law 62/2018.

OECD.<sup>405</sup> The status can be claimed by any non-Portuguese or EU student who originates from a region affected by armed conflict, natural disaster, generalised violence or human rights violations requiring a humanitarian response.<sup>406</sup> According to the law, beneficiaries of international protection as well as asylum seekers admitted to the regular procedure under the Asylum Act are entitled to the status by operation of law.<sup>407</sup> Students with “emergency situation for humanitarian reasons” status are entitled to alternative procedures for assessing entry conditions in the absence of documentation such as diplomas,<sup>408</sup> equal treatment to Portuguese students regarding university fees and other levies<sup>409</sup> and full access to social assistance available to higher education students.<sup>410</sup> It should be noted that the new rules do not address the issue of access to entry visas for eligible students living abroad.<sup>411</sup>

In practice, accompanied and unaccompanied children are systematically referred to public schools upon accommodation at **CAR** and **CACR** or contact with CPR’s social workers. According to the experience of CPR’s Social Department, enrolment in local public schools is generally guaranteed within a reasonable period, although the placement of students in secondary education (i.e. over the age of 15) can prove problematic due to more demanding bureaucratic procedures and placement examinations. Additionally, the resources available in public schools for the provision of complementary support to foreign students, notably regarding Portuguese language training, is at times limited. These findings regarding access to education by asylum-seeking children have also been confirmed in 2017 by CNIS regarding unaccompanied children hosted in the framework of their pilot project,<sup>412</sup> and hosting organisations regarding relocated asylum seekers in the framework of informal consultations conducted by UNHCR and CPR.

In this regard, the DGE was unable to provide quantitative or qualitative information regarding the implementation of the measures provided for in its 2016 circular letter aiming at adapting pedagogical activities to the specific needs of asylum seekers and beneficiaries of international protection.

The review of the Portuguese educational system conducted in 2018 by the OECD does not specifically address the situation of asylum seekers and beneficiaries of international protection. While acknowledging the impressive accomplishments of Portugal in recent years, it nonetheless raises concerns regarding persisting differences in students’ outcomes from under-privileged backgrounds, including immigrant students,<sup>413</sup> with immigrant, language and ethnic backgrounds remaining highly predictive of their performance in school.<sup>414</sup>

The Asylum Act limits vocational training to asylum seekers who are entitled to access the labour market i.e. admitted to the regular procedure and in possession of a provisional residence permit.<sup>415</sup>

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<sup>405</sup> OECD, *OECD Reviews of School Resources: Portugal 2018*, December 2018, available at: <https://bit.ly/2BlpEbS>.

<sup>406</sup> Article 8A(1) Decree-Law 36/2014.

<sup>407</sup> Article 8A(2) (a) and (b) and 3(a) Decree-Law 36/2014.

<sup>408</sup> Article 14(1)(c) Decree-Law 36/2014.

<sup>409</sup> Article 8A(5) Decree-Law 36/2014.

<sup>410</sup> Article 10(1) Decree-Law 36/2014.

<sup>411</sup> For a critical assessment of Decree-Law 36/2014, see JRS, *Estudante em Situação de Emergência por Razões Humanitárias: Mais um direito sem visto?*, November 2018, available in Portuguese at: <https://bit.ly/2qlpGF3>.

<sup>412</sup> CNIS also reported difficulties in the transition from the regular track to vocational training in the case of unaccompanied children inserted in their pilot project.

<sup>413</sup> OECD, *OECD Reviews of School Resources: Portugal 2018*, December 2018, 13, 19 and 64. It should be noted that according to the report “differences in results are mostly driven by first-generation immigrants... There are no significant performance differences between second-generation immigrants and the native-born population after students’ socio-economic status and home language have been taken into account. In fact, most of these differences in performance are associated with the language spoken at home...”

<sup>414</sup> *Ibid*, 22.

<sup>415</sup> Article 55(1) Asylum Act.

In 2018 some unaccompanied asylum-seeking children were referred to Education and Vocational Training Integrated Programmes (*Programas Integrados de Educação e Formação*, PIEF) regardless of their residence status.<sup>416</sup>

Access to vocational training by adults on the other hand remains particularly limited as opportunities generally require a good command of the Portuguese language and diplomas that asylum seekers and beneficiaries of international protection rarely have or are unable to legalise due to the legal requirements of equivalence procedures (see [Access to the Labour Market](#)).

## D. Health care

### Indicators: Health Care

1. Is access to emergency healthcare for asylum seekers guaranteed in national legislation?  
 Yes       No
2. Do asylum seekers have adequate access to health care in practice?  
 Yes       Limited       No
3. Is specialised treatment for victims of torture or traumatised asylum seekers available in practice?  
 Yes       Limited       No
4. If material conditions are reduced or withdrawn, are asylum seekers still given access to health care?  
 Yes       Limited       No

The Asylum Act enshrines the right of asylum seekers and their family members to health care provided by the National Health System (*Serviço Nacional de Saúde*, SNS)<sup>417</sup> and includes a specific provision on the right to adequate health care at the border.<sup>418</sup> The primary responsibility for the provision of health care lies with the Ministry of Health,<sup>419</sup> except for asylum seekers detained at the border that fall under the responsibility of the Ministry of Home Affairs.<sup>420</sup> The latter can however cooperate with public and/or private non-profit organisations in the framework of a MoU to insure the provision of such services.<sup>421</sup>

In accordance with the Asylum Act,<sup>422</sup> the specific rules governing access of asylum seekers and their family members to health care<sup>423</sup> are provided by Ministerial Order No 30/2001 and Ministerial Order No 1042/2008,<sup>424</sup> according to which:

1. Access to health care encompasses medical care and medication and is available from the moment the asylum seeker applies for asylum;<sup>425</sup>

<sup>416</sup> The PIEFs consist of alternative education / training programmes available to children e.g. who have not completed 4 years of education at the age of 15 or who are 3 years older than the appropriate age of students in any given level at basic or secondary education. Such programmes, initially created to combat the exploitation of child labour, have proved useful in dealing with particularly complex cases of unaccompanied asylum-seeking children with very poor education levels at arrival: DGE, *Programa Integrado de Educação e Formação*, available in Portuguese at: <https://bit.ly/2CR8aVN>.

<sup>417</sup> Articles 52(1) and 56(1) Asylum Act.

<sup>418</sup> Article 56(2) Asylum Act. This provision should be read in conjunction with Article 146-A(3) Aliens Act that provides for the right of pre-removal detainees in CIT to emergency and basic health care.

<sup>419</sup> Article 61(3) Asylum Act.

<sup>420</sup> Article 61(1) Asylum Act. While not included in this provision, the SEF should also be considered responsible for providing access to health care to asylum seekers in pre-removal detention given its managing responsibilities of CIT: Article 146-A(3)-(4) Aliens Act.

<sup>421</sup> *Ibid.*

<sup>422</sup> Article 52(1) *in fine* Asylum Act.

<sup>423</sup> The legal and operational background pertaining to the access of asylum seekers to health care was recently revisited by the ACSS and the DGS in an internal guidance note issued on 12 May 2016 in the framework of the European Agenda for Migration, available at: <http://bit.ly/2jdBIFW>.

<sup>424</sup> Ministerial Order No 1042/2008 extends Ministerial Order No 30/2001 *ratione personae* to applicants for subsidiary protection and their family members.

<sup>425</sup> Ministerial Order No 30/2001, para 2. Under Article 52(2) Asylum Act, the asylum seeker is required to present the certificate of the asylum application to be granted access to health care under these provisions. The internal guidance note issued on 12 May 2016 by the ACSS and the DGS provides for possible documents entitling the asylum seeker to access health care and includes a complete list of documents issued to the asylum seeker by the SEF during the asylum procedure (e.g. renewal receipts of the certificate of the asylum application, provisional residence permit, etc.)

2. Medical assistance and access to medicines for basic health needs and for emergency and primary health care are to be provided under the same conditions as for Portuguese citizens;<sup>426</sup>
3. Asylum seekers have access to the SNS free of charge<sup>427</sup> for emergency health care, including diagnosis and treatment, and for primary health care,<sup>428</sup> as well as assistance with medicines, to be provided by the health services of their residence area.<sup>429</sup>

Furthermore, the special needs of particularly vulnerable persons must be taken into consideration in the provision of health care,<sup>430</sup> through adequate medical care,<sup>431</sup> and specialised mental health care including for survivors of torture and serious violence,<sup>432</sup> including in detention.<sup>433</sup> The responsibility for special treatment required by survivors of torture and serious violence lies with the ISS.<sup>434</sup>

In practice, asylum seekers have effective access to free health care in the SNS in line with applicable legal provisions. However, persisting challenges have an impact on the quality of the care available. According to previous research,<sup>435</sup> and information available to CPR, these include language and cultural barriers due to the reluctance of health care services to use and the accessibility of interpretation services such as ACM's translation hotline; difficult access to diagnosis procedures and medication paid by the SNS due to bureaucratic constraints; or very limited access to mental health care and other categories of specialised medical care (e.g. dentists)<sup>436</sup> in the SNS. The difficulties in accessing specialised care in the SNS, including dentists, also came out as the main concerns in recent consultations conducted by CPR in October 2017 in the framework of the relocation programme.

It should be noted in this regard that CPR provides financial support to unaccompanied asylum-seeking children and asylum seekers in admissibility and accelerated procedures to cover the costs of diagnosis procedures and medication depending on the individual circumstances and available resources.

In accordance with the law, asylum seekers are entitled to health care until a final decision rejecting the asylum application unless required otherwise by the medical condition of the applicant.<sup>437</sup> Additionally, the reduction or withdrawal of reception conditions cannot restrict the access of asylum seekers to emergency health care, basic treatment of illnesses and serious mental disturbances or, in the case of applicants with special reception needs, to medical care or other types of necessary assistance, including adequate psychological care where appropriate.<sup>438</sup> This provision remains to be tested in practice due to the extremely limited number of such decisions to date (see [Reduction or Withdrawal of Reception Conditions](#)).

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<sup>426</sup> *Ibid.*

<sup>427</sup> Article 4(1)(n) Decree-Law 113/2011.

<sup>428</sup> For the purposes of free access to the SNS, primary health care is to be understood as including among others: (i) Health prevention activities such as out-patient medical care, including general care, maternal care, family planning, medical care in schools and geriatric care (ii) specialist care, including mental care (iii) in-patient care that does not require specialised medical care, (iv) complementary diagnostic tests and therapies, including rehabilitation and (v) nursing assistance, including home care: Ministerial Order No 30/2001, para 6.

<sup>429</sup> Ministerial Order No 30/2001, para 5.

<sup>430</sup> Article 77(1) Asylum Act.

<sup>431</sup> Articles 52(5) and 56(2) Asylum Act.

<sup>432</sup> Articles 78(3)-(4) and 80 Asylum Act.

<sup>433</sup> Article 35-B(8) Asylum Act.

<sup>434</sup> Article 80 Asylum Act.

<sup>435</sup> Italian Council for Refugees *et al.*, *Time for Needs: Listening, Healing, Protecting*, October 2017, available at: <http://bit.ly/2xZqCGh>.

<sup>436</sup> In this regard, DGS notes that such difficulties are similar to those faced by Portuguese citizens.

<sup>437</sup> Ministerial Order No 30/2001, para 8.

<sup>438</sup> Article 60(7) Asylum Act.

## E. Special reception needs of vulnerable groups

### Indicators: Special Reception Needs

1. Is there an assessment of special reception needs of vulnerable persons in practice?

Yes

No

An “applicant in need of special reception needs” is defined in terms of reduced ability to benefit from the rights and comply with the obligations stemming from the Asylum Act due to his or her vulnerability. The Asylum Act provides for a non-exhaustive list of applicants with an increased vulnerability risk profile that could present a need for special reception conditions: minors, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children, victims of human trafficking, persons with serious illnesses, persons with mental disorders and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence, such as victims of domestic violence and female genital mutilation.<sup>439</sup> While the Asylum Act also refers to guarantees available to particularly vulnerable persons,<sup>440</sup> the two concepts seem to be used interchangeably, meaning that any person with special reception needs is *a priori* a vulnerable person for the purposes of the Asylum Act.<sup>441</sup>

The identification of persons with special needs and the nature of such needs must take place upon registration of the asylum application or at any stage of the asylum procedure,<sup>442</sup> but within reasonable delay following registration.<sup>443</sup> The provision of special reception conditions should take into consideration: (i) the material reception needs of particularly vulnerable persons;<sup>444</sup> (ii) their special health needs; including those particular to survivors of torture and serious violence.<sup>445</sup>

The law details further the modalities of some of these categories of special reception conditions particularly regarding the special needs of children (including unaccompanied children) and housing conditions.

There are no specific mechanisms, standard operating procedures or unit in place to systematically identify asylum seekers in need of special reception conditions. The only exceptions consist of age assessment procedures to identify unaccompanied children and the identification and protection of potential unaccompanied children victims of trafficking that present practical and technical implementation challenges (see [Identification](#)).

In the framework of admissibility (including Dublin) and accelerated procedures on the territory asylum seekers who present apparent vulnerabilities entailing special reception needs such as children, disabled people, elderly people, pregnant women, single parents with minor children, persons with serious illnesses or mental disorders would generally be identified by CPR within a reasonable period of time after registration. This was done on the basis of information received from the SEF prior to their referral to CPR’s reception centres or during legal assistance, social interviews or initial medical screenings conducted during the provision of material reception conditions. However, in 2018 overcrowding has generated significant challenges in terms of service capacity (see [Conditions in Reception Facilities](#)).

According to SCML, asylum seekers referred by the GTO benefit from specific social counselling at the appeal stage and may be referred to homeless shelters managed by the organisation on a temporary basis to address specific vulnerabilities. Similarly, the ISS claims to assess the special needs and provide differentiated support to vulnerable asylum seekers during the regular procedure, notably in the case of children, disabled and the elderly. However, no further quantitative or qualitative information is available

<sup>439</sup> Article 2(1)(ag) Asylum Act.

<sup>440</sup> Article 2(1)(y) Asylum Act.

<sup>441</sup> Article 77(1) and (3) Asylum Act.

<sup>442</sup> Article 77(2) Asylum Act.

<sup>443</sup> Article 77(3) Asylum Act.

<sup>444</sup> Articles 56(2) and 77(1) of Asylum Act.

<sup>445</sup> Articles 35-B(8), 52(5), 56(2), 78(3)-(4) and 80 Asylum Act.

and to date no research has been conducted to assess the impact of the dispersal policy implemented during the regular procedure (see [Conditions in Reception Facilities](#)).

In 2017, CPR updated its Age, Gender and Diversity (AGD) Strategy that is aimed at preventing Sexual and Gender Based Violence (SGBV) and promoting participation, awareness, and empowerment. . From August to December 2017, CPR developed participatory assessments, focus groups and semi-structured discussions, with both asylum seekers and staff. The participatory assessments aimed to identify the specific needs and risks of women and inform the development of a strategy to address these issues. This resulted in 43 actions (focusing on infrastructure, services and activities) that were implemented related among others to the full individualisation of financial support, organisation of gender balanced activities (e.g. painting), and seeking partnerships with feminine hygiene products suppliers.

## **1. Reception of families and children**

The accommodation of unaccompanied children who are 16 and over in adult reception centres and the initiation of family tracing are dependent of a best interests assessment.<sup>446</sup> Under the Asylum Act, the best interests of the child also require that children: be placed with parents or, in their absence, with adult relatives, foster families, specialised reception centres or tailored accommodation; not be separated from siblings; are offered stability, notably by keeping changes in place of residence to a minimum; are ensured well-being and social development; have security and protection challenges addressed, notably where there is a risk of human trafficking; have their right to express opinions depending on their age and maturity taken into consideration.<sup>447</sup>

The provision of special reception conditions during the asylum procedure includes a specialised reception centre for unaccompanied children, the **CACR**, and the accommodation of unaccompanied children who are 16 or older in separate accommodation at the **CAR** as a measure of last resort in the absence of appropriate alternatives (see [Types of Accommodation](#)). CPR promotes family tracing in partnership with the CVP if considered to be in the best interests of the child and taking into consideration his or her opinion.

Both CPR's reception centres offer facilities to accommodate disabled people and playgrounds for children who are systematically enrolled in public education. Despite the chronic overcrowding families are generally given separate accommodation either at CAR or in external accommodation. Asylum seekers are generally referred to the SNS for health assessments and care, including differentiated care, even though referral capacity constraints from CPR due to overcrowding and challenges particularly for mental health care and certain categories of specialised medical care were experienced throughout the year.

To the extent possible and upon consent of the applicants the unit of the family should be preserved in the provision of housing,<sup>448</sup> while adult asylum seekers with special reception needs should be accommodated with adult relatives already present on the territory that are legally responsible for them.<sup>449</sup> Adequate measures must be adopted to avoid sexual and gender-based violence and harassment in reception centres and other housing provided to asylum seekers.<sup>450</sup>

## **2. Reception of survivors of torture and violence**

While the ISS is specifically responsible for ensuring access to rehabilitation services for survivors of torture and serious violence,<sup>451</sup> the provision of material reception conditions and health care adapted to the special needs of vulnerable persons seems to be submitted to the responsibility-sharing rules applicable to asylum seekers in general.

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<sup>446</sup> Article 79(10) and (14) Asylum Act.

<sup>447</sup> Article 78(2)(a)-(h) Asylum Act.

<sup>448</sup> Articles 51(2) and 59(1)(a) and (b) Asylum Act.

<sup>449</sup> Article 59(1)(c) Asylum Act.

<sup>450</sup> Article 59(1)(e) Asylum Act.

<sup>451</sup> Article 80 Asylum Act.

In the specific case of survivors of torture and/or serious violence on the territory, the information collected in 2017 by CPR, including in the framework of the project “Time for Needs: Listening, Healing, Protecting”,<sup>452</sup> showed that identification and follow-up of their special reception needs also initiates with an individual psychosocial interview at CPR’s reception centres conducted by a social worker upon arrival and at regular intervals during the admissibility stage of the asylum procedure. In the case of survivors of torture and/or serious violence, such assessment might result in referrals to the local health centre of the SNS for onward referral to differentiated care such as gynaecology and urology. According to DGS, local health centres are also the gateway to specialised mental health care and have multidisciplinary teams (Teams for the Prevention of Violence between Adults – *Equipas para a Prevenção da Violência entre Adultos*, EPVA) that are responsible for identifying and offering follow-up to vulnerable cases that are victims of violence. However, according to other stakeholders such as CPR and SCML, specialised outpatient mental health care is mainly available through voluntary organisations such as the Centre for the Support of Torture Victims in Portugal (*Centro de Apoio às Vítimas de Tortura em Portugal*, CAVITOP) / Psychiatric Hospital Centre of Lisbon (*Centro Hospitalar Psiquiátrico de Lisboa* – CHPL) whose multidisciplinary team offers free and specialised psychiatric and psychological care upon referral from frontline service providers such as the CPR, SCML and JRS. According to CPR’s experience, mental health care for children constitutes an exception and is readily available in the SNS.

In 2018 CPR disseminated a tool and information materials pertaining to the identification and provision of special procedural needs and special reception needs of survivors of torture and/or serious violence developed in the framework of the project.<sup>453</sup> While there is no indication that the tool has been adopted by the stakeholders to date, CPR is planning the implementation of the tool in the framework of its reception services and will seek to mainstream its use in the referral process to the GTO (see [Freedom of Movement](#)).

The provision of reception conditions by the ISS in the regular procedure following a dispersal decision by the GTO is done in accordance to agreed standards. In each district there is a responsible officer for reception conditions who reports directly to central services but there is no specialised team dedicated to survivors of torture and/or serious violence. In the case of asylum seekers placed in the area of **Coimbra** (only), the ISS has the possibility to make referrals to the [Centre for the Prevention and Treatment of Psychogenic Trauma](#) that provides differentiated mental health care adapted to the needs of survivors of torture and/or serious violence.

<sup>452</sup> Italian Council for Refugees et al., *Time for Needs: Listening, Healing, Protecting*, October 2017, available at: <http://bit.ly/2xZqCGh>.

<sup>453</sup> The Questionnaire for the Assessment of the Special Needs of Survivors of Torture and/or Serious Violence Among Asylum Seekers and Beneficiaries of International Protection (QASN) and other information materials are available at: <https://goo.gl/2BP2vh>.

## F. Information for asylum seekers and access to reception centres

### 1. Provision of information on reception

The Asylum Act provides for the right of asylum seekers to be immediately informed about their rights and duties related to reception conditions,<sup>454</sup> and in particular pertaining to the organisations that can provide assistance and information regarding available reception conditions, including medical assistance.<sup>455</sup> Furthermore, the SEF is required to provide asylum seekers with an information leaflet without prejudice to providing the information contained therein orally.<sup>456</sup> In both cases the information must be provided either in a language that the asylum seeker understands or is reasonably expected to understand to ensure the effectiveness of the right to information.

In practice, upon registration, asylum seekers at times receive an information leaflet from the SEF that briefly cover some of its information obligations including reception conditions,<sup>457</sup> and a specific information leaflet for unaccompanied children which among other includes information on reception conditions.<sup>458</sup> The information contained in the leaflets is brief and not considered user-friendly particularly in the case of unaccompanied children. According to CPR's experience, the leaflet is only available in a limited number of foreign languages (e.g. French, English, Arabic) and is not distributed systematically. This includes the case of unaccompanied children where the CPR is not aware of its distribution despite having been appointed as legal representative on numerous occasions throughout the year.

In accordance to existing MoUs with the authorities (see [Responsibility for Reception](#)), CPR provides information to asylum seekers throughout the asylum procedure on the territory and particularly during admissibility (including Dublin) and accelerated procedures on the basis of individual interviews and social and legal support. The information provided by CPR broadly covers the information requirements provided in the law pertaining to the institutional framework of reception, including the dispersal policy, types and levels of material reception conditions available, access to health care, education, employment, etc. This includes the provision of tailor-made information to unaccompanied children upon their admission to the **CACR** orally and using written materials such as a leaflet that contains child-friendly information on internal rules, available services, geographical location, general security tips and contacts, etc. (available in Portuguese, English, Russian, Tigrinya and French). CPR has also developed the [HELP](#) information portal which offers among others cultural orientation information, reception services and relevant institutional contacts. The portal is available in Portuguese, English, French and Spanish.

The serious capacity challenges faced by the CPR (see [Conditions in Reception Facilities](#) and [Regular Procedure: Legal Assistance](#)) have however restricted the provision of information during the first stage of the asylum procedure, particularly regarding asylum seekers placed in private accommodation in more remote locations.

During the regular procedure and at appeal stage asylum seekers should benefit from an individual follow-up with ISS and SCML. While no research has been conducted to date to assess the impact of the dispersal policy, CPR is not aware of serious challenges in accessing social services or in the provision of information regarding reception conditions during this stage of the asylum procedure despite some complaints regarding difficulties in securing an appointment or language barriers. Other organisations also provide information and assistance to asylum seekers during the first instance of the regular procedure such as JRS, CNIS for unaccompanied asylum-seeking children within their pilot project and to a lesser extent the ACM through their Local Support Centres for Migrants Integration (CLAIM), albeit in a limited number of cases and mostly focused on integration.

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<sup>454</sup> Article 49(1)(a) Asylum Act.

<sup>455</sup> Article 49(1)(a)(iv) Asylum Act.

<sup>456</sup> Article 49(2) Asylum Act.

<sup>457</sup> SEF, *Acolhimento em Portugal*, available in Portuguese at: <https://bit.ly/2MkBnvC>.

<sup>458</sup> SEF, *Informação para Menores Não-Acompanhados Requerentes de Proteção Internacional em Portugal*, available in Portuguese at: <https://bit.ly/2FFVjc3>.

## 2. Access to reception centres by third parties

### Indicators: Access to Reception Centres

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

The Asylum Act provides for the right of access to reception centres and other reception facilities for family members, legal advisers, UNHCR, CPR and other refugee-assisting NGOs recognised by the State for the provision of assistance to asylum seekers.<sup>459</sup> The internal regulation of the **CACR** provides for the right of unaccompanied children to visits from family and friends that must be approved by the Family and Juvenile Court, while the internal regulation of **CAR** provides for a general right to visits upon authorisation of the (Director of the) Centre.

In practice, asylum seekers accommodated at the CAR and CACR benefit from legal assistance from CPR's staff (see [Regular Procedure: Legal Assistance](#)) as well as from information and facilitation of contacts and meetings with lawyers at appeal stage. Such meetings can either take place at the reception centres or at the lawyers' offices depending on the choice of the lawyer, in the presence of CPR's representative in the case of unaccompanied children.

## G. Differential treatment of specific nationalities in reception

There is no information available regarding discrimination or preferential treatment of asylum seekers pertaining to reception conditions such as accommodation, health care, employment, education or others, on the basis of nationality.

<sup>459</sup> Article 59(4) Asylum Act.

## Detention of Asylum Seekers

### A. General

#### Indicators: General Information on Detention

1. Total number of asylum seekers detained in 2018:	Not available
2. Number of asylum seekers in detention at the end of 2018:	Not available
3. Number of detention centres specifically for asylum seekers: <sup>460</sup>	3
4. Total capacity of detention centres specifically for asylum seekers:	58

The SEF was not able to share statistics regarding the overall number of persons placed in detention during 2018 or that were in detention at the end of the year. According to the Ombudsman, a total of 2,444 third-country nationals were placed in detention in 2016 (80% of whom at **Lisbon Airport**), compared to 2,071 in 2015.<sup>461</sup> However, the figures the Ombudsman obtained from the SEF do not include a breakdown by legal status of the persons detained.

The legal framework of detention centres is enshrined in Act 34/94 that provides for the detention of migrants in Temporary Installation Centres (*Centros de Instalação Temporária*, CIT) that are managed by the SEF for either security reasons e.g. aimed at enforcing a removal from national territory or for attempted irregular entry at the border. The detention facilities at the border,<sup>462</sup> while not CIT *per se*, have been classified as such by Decree-Law 85/2000 for the purposes of detention following a refusal of entry at the border. These are therefore detention centres with a strict separation between asylum seekers and other migrants.<sup>463</sup>

According to the SEF, detention of asylum seekers in Portugal is limited to applicants at the border. The 3 detention facilities at the border are located in the international area of **Lisbon**, **Porto** and **Faro** airports and have separated detention areas for asylum seekers with a capacity of 30, 14 and 14 places respectively. Out of the three, the **Lisbon** airport is the most relevant to the detention of asylum seekers. Bearing in mind that the Asylum Act provides for the systematic detention of asylum seekers at the border,<sup>464</sup> the 2018 statistics provided by the SEF show that a total of 408 asylum seekers were submitted to border procedures and hence placed in detention for a period of up to 60 days (see [Border Procedure](#)).

Additionally, it should be noted that an asylum seeker who applies for asylum while in detention at a CIT due to a removal procedure can and usually remain in detention during the asylum procedure.<sup>465</sup> According to the statistical information available to CPR, in 2018, at least 25 asylum seekers applied for asylum while in detention in a CIT: 18 applied from the **Porto – Unidade Habitacional de Santo António** (CIT – UHSA),<sup>466</sup> and 7 from **Lisbon**.

While the Asylum Act also provides for the possibility of placing in detention other categories of asylum seekers,<sup>467</sup> including those subjected to Dublin procedures, in practice only the aforementioned asylum seekers are systematically detained.

<sup>460</sup> This includes only the detention facilities at international airports, where asylum seekers may be detained. CIT are excluded.

<sup>461</sup> Ombudsman, *Tratamento dos cidadãos estrangeiros em situação irregular ou requerentes de asilo nos centros de instalação temporária ou espaços equiparados*, September 2017, available in Portuguese at: <https://goo.gl/Hbfdvk>.

<sup>462</sup> Council of Ministers Resolution 76/97.

<sup>463</sup> Indeed, as the Ombudsman recalls "The confinement of foreign citizens, including where it takes place in the international area of an airport, indeed consists in a deprivation of freedom (...) that goes beyond a mere restriction of freedom. On this matter cf. the judgement of the European Court of Human Rights n.º 19776/92, 25 June 1992 (*Amuur v France*).": *Ibid*, fn. 14.

<sup>464</sup> Article 35-A(3)(a) Asylum Act.

<sup>465</sup> Article 35-A(3)(b) Asylum Act.

<sup>466</sup> Decree-Law 44/2006 provides for the creation and functioning of CIT – UHSA in Porto.

<sup>467</sup> Article 35-A(3) Asylum Act.

The competent authority to place and review the detention of an asylum seeker in a CIT<sup>468</sup> or in detention facilities at the border<sup>469</sup> is the Criminal Court which has territorial jurisdiction over the place where detention is imposed. In the case of detention at the border, the SEF initially imposes detention but is required to inform the Criminal Court of the detention within 48 hours of arrival at the border for the purpose of maintaining the asylum seeker in detention beyond that period.<sup>470</sup>

Taking into consideration the absence of special guarantees at the border such as social and psychological assistance, and the negative impact of detention on the mental well-being of certain categories of vulnerable asylum seekers, it is legitimate to assume that detention at the border is currently having a negative impact on the quality of procedures, namely for survivors of torture and/or serious violence and victims of trafficking.

Additionally, there are shorter deadlines and reduced procedural guarantees both in detention at the border and asylum applications from detention due to removal procedures: asylum seekers in detention at the border or who apply for asylum from detention are not entitled to a 5-day period to review and offer representations regarding SEF's written report on their refugee status determination interview. While in detention at the border, asylum seekers are only entitled to 5 minutes of free telephone communications. These reduced guarantees also entail risks of poorer quality decision-making, notably in light of the significant number of applications deemed manifestly unfounded under these procedures.<sup>471</sup> While in accordance with the law, UNHCR and CPR, lawyers, legal representatives and other NGOs have effective access to asylum seekers in detention at the border,<sup>472</sup> access to legal information and assistance in detention is hindered in practice by a combination of factors that include short deadlines, limited capacity of service providers, poor quality of legal assistance provided by lawyers and of interpretation services and time consuming bureaucratic procedures for accessing the airports' restricted areas.

## B. Legal framework of detention

### 1. Grounds for detention

#### Indicators: Grounds for Detention

- |  |   |  |   |
|--|---|--|---|
| 1. In practice, are most asylum seekers detained                       | <input type="checkbox"/> Yes            | <input checked="" type="checkbox"/> No |   |
| ❖ on the territory:  | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No            |   |
| ❖ at the border:   |   |  |   |
| 2. Are asylum seekers detained during a regular procedure in practice? | <input type="checkbox"/> Frequently     | <input type="checkbox"/> Rarely        | <input checked="" type="checkbox"/> Never |
| 3. Are asylum seekers detained during a Dublin procedure in practice?  | <input type="checkbox"/> Frequently     | <input type="checkbox"/> Rarely        | <input checked="" type="checkbox"/> Never |

Under the Asylum Act, the placement of asylum seekers in detention cannot be based on the application for international protection alone,<sup>473</sup> and can only occur on the following grounds:

- ❖ National security, public order, public health; or
- ❖ Risk of absconding;

based on an individual assessment and whether it is possible to effectively implement less prejudicial alternative measures.<sup>474</sup>

<sup>468</sup> Article 35-A(5) Asylum Act.

<sup>469</sup> Article 35-A(6) Asylum Act.

<sup>470</sup> *Ibid.*

<sup>471</sup> According to the (partial) statistical information collected by CPR, in 2018, 231 out of 386 asylum applications at the border and 9 out of 25 applications from detention due to removal procedures were deemed manifestly unfounded.

<sup>472</sup> Article 49(6) Asylum Act.

<sup>473</sup> Article 35-A(1) Asylum Act.

<sup>474</sup> Article 35-A(2) Asylum Act.

The possible grounds for detention of asylum seekers also include:

- ❖ Applying for asylum at the border;
- ❖ Applying for asylum following a decision of removal from national territory; or
- ❖ During Dublin procedures;

if it is not possible to effectively implement less coercive alternative measures.<sup>475</sup> These provisions are nonetheless to be interpreted against the (apparently contradictory) provision of unqualified detention of asylum seekers in border procedures.<sup>476</sup>

As mentioned in **General**, systematic detention of asylum seekers in Portugal is limited to border procedures in which asylum seekers are detained until their application is admitted to the procedure (7 days)<sup>477</sup> or for a maximum of 60 days in case of an appeal against the rejection of the application.<sup>478</sup> The asylum seekers who apply for asylum in detention at a CIT due to a removal procedure will also usually remain in detention during the asylum procedure until their application is admitted to the procedure (10 days)<sup>479</sup> or for a maximum of 60 days in case of an appeal against the rejection of the asylum application.<sup>480</sup> While the Asylum Act provides for the suspension of all administrative and/or criminal procedures related to the irregular entry of the asylum applicant in the national territory, and for that purpose requires that the competent authorities be informed of the asylum application within 5 days,<sup>481</sup> detention at a CIT due to a removal procedure will seldom, if ever, be suspended *ex officio* by the Criminal Courts on that basis.

CPR is unaware of instances of detention of asylum applicants in the framework of Dublin procedures, on grounds of national security, public order, public health, or when there is a flight risk, and hence of the interpretation of such grounds by criminal courts in practice.

## 2. Alternatives to detention

### Indicators: Alternatives to Detention

1. Which alternatives to detention have been laid down in the law?  Reporting duties  
 Surrendering documents  
 Financial guarantee  
 Residence restrictions  
 Other
2. Are alternatives to detention used in practice?  Yes  No

As mentioned in **Grounds for Detention**, according to the law, the placement of asylum seekers in detention is dependent on an assessment of the individual circumstances of the applicant and of the possibility to effectively implement less coercive alternative measures,<sup>482</sup> thus requiring proof that alternatives to detention cannot be effectively applied before asylum seekers can be detained. The Asylum Act lays down alternatives to detention consisting of either reporting duties before the SEF on a regular basis or residential detention with electronic surveillance (house arrest).<sup>483</sup>

Despite the safeguards enshrined in the law to ensure that detention of asylum seekers, including in the case of detention at the border, is used as a last resort and only where necessary, in practice criminal courts seldom conduct an individual assessment on whether it is possible to effectively implement

<sup>475</sup> Article 35-A(3) Asylum Act.

<sup>476</sup> Article 26(1) Asylum Act.

<sup>477</sup> Article 26(4) Asylum Act.

<sup>478</sup> Article 35-B(1) Asylum Act.

<sup>479</sup> Article 33-A(5) Asylum Act.

<sup>480</sup> Article 35-B(1) Asylum Act.

<sup>481</sup> Article 12(1) and (3) Asylum Act.

<sup>482</sup> Article 35-A(2) and (3) Asylum Act. While the need for an assessment of the individual circumstances of the applicant is only mentioned in the case of detention on the grounds of national security, public order, public health or when there is a flight risk, it is difficult to conceive an assessment of less coercive alternative measures for the remaining grounds for detention that is not based on the individual circumstances of the applicant.

<sup>483</sup> Article 35-A(4)(a) and (b) Asylum Act.

alternatives to detention. Nevertheless, following repeated requests for the release of vulnerable asylum seekers from the border, namely unaccompanied children and families with children, CPR has witnessed a growing tendency on the part of the Criminal Court of Lisbon to invite the SEF to give due consideration to the release of families with children and to their referral to the CAR since 2017.<sup>484</sup> However, these decisions fall short of conducting an individual assessment of necessity and proportionality and of issuing an order to the SEF.

With the exception of release of vulnerable asylum seekers without conditions from the border (see [Detention of Vulnerable Applicants](#)), CPR is unaware of the application of alternative to detention in practice. SEF has not provided statistics regarding the number of asylum seekers subjected to alternatives to detention or any information with regard to compliance rates for alternatives to detention.

The report of the European Commission against Racism and Intolerance (ECRI), published in October 2018, made reference to the excessive use of detention in the context of asylum.<sup>485</sup>

### 3. Detention of vulnerable applicants

#### Indicators: Detention of Vulnerable Applicants

1. Are unaccompanied asylum-seeking children detained in practice?  
 Frequently    Rarely    Never  
❖ If frequently or rarely, are they only detained in border/transit zones?  Yes    No
2. Are asylum seeking children in families detained in practice?  
 Frequently    Rarely    Never

The Asylum Act defines an “applicant in need of special procedural guarantees” in terms of reduced ability to benefit from the rights and comply with the obligations stemming from the Asylum Act due to his or her individual circumstances.<sup>486</sup> Even though it does not include an exhaustive list of asylum seekers presumed to be in need of special procedural guarantees, it refers to age, gender, gender identity, sexual orientation, disability, serious illness, mental disorders, torture, rape or other serious forms of psychological, physical or sexual violence as possible factors underlying individual circumstances that could lead to the need of special procedural guarantees.<sup>487</sup>

Within these applicants, the Asylum Act identifies a sub-category of individuals whose special procedural needs result from torture, rape or other serious forms of psychological, physical or sexual violence and may therefore be exempted from border procedures and hence detention.<sup>488</sup> Furthermore, the placement of unaccompanied and separated children in detention facilities at the border must abide by applicable international recommendations such as those of UNHCR, UNICEF and the International Committee of the Red Cross (ICRC).<sup>489</sup>

In practice, asylum seekers are systematically detained at the border for periods up to 60 days. While up to 2016 years certain categories of particularly vulnerable applicants such as unaccompanied children, families with children, pregnant women and the severely ill were generally released without conditions, SEF changed its practice in this regard.

<sup>484</sup> Judicial Court of the Lisbon District, Local Misdemeanour Court of Lisbon – Judge 2, Applications Nos 3881/17.5T8LSB, 13 February 2017; 19736/17.0T8LSB, 11 September 2017; 22330/17.2T8LSB, 16 October 2017; 22779/17.0T8LSB, 20 October 2017; 23770/17.2T8LSB, 3 November 2017; 25058/17.0T8LSB, 20 November 2017; 25060/17.1T8LSB, 20 November 2017.

<sup>485</sup> ECRI, *ECRI Report on Portugal (fifth monitoring cycle)*, CRI(2018)35, 2 October 2018, par.84, available at: <https://bit.ly/2sIFsAQ>.

<sup>486</sup> Article 17-A(1) Asylum Act.

<sup>487</sup> *Ibid.*

<sup>488</sup> Article 17-A(4) Asylum Act.

<sup>489</sup> Article 26(2) Asylum Act.

In 2017, the detention of an asylum-seeking family with children at the **Lisbon Airport** detention facility drew criticism from the Ombudsman, particularly regarding the inadequate detention conditions offered to a child with special health needs (see [Conditions in Detention Facilities](#)).<sup>490</sup>

In July 2018, following media reports on detention of young children at **Lisbon Airport**,<sup>491</sup> and remarks by the Ombudsperson and UNICEF,<sup>492</sup> the Ministry of Home Affairs issued an order determining:<sup>493</sup>

- An internal review of the functioning of the CIT at Lisbon Airport;
- The urgent presentation by the SEF of a report on the recommendations issued by the Ombudsman in 2017 regarding the above-mentioned centre;
- That children under 16 years old (whether accompanied or not) cannot be detained in the CIT for more than 7 days;
- That the construction of Temporary Reception Centre of Almoçageme (CATA), located in the municipality of **Sintra** is given maximum priority. So far there is no definite information on whether it will be an open or closed centre.

According to the information available to CPR, for the whole of 2018, a total of 24 unaccompanied children, of which one later determined to be an adult after a second-stage age assessment, were detained at the border for periods ranging from 1 to 15 days (on average 6 days). The information available to CPR regarding 51 children accompanied by adults reveals that they were detained at the border for periods ranging between 1 and 59 days (on average 16 days). While CPR has observed a tendency for the decrease of detention periods to which children were subjected following the order issued in July 2018 by the Ministry of Home Affairs, this practice remains concerning in light of international standards that prohibit any immigration detention of children.<sup>494</sup>

SEF did not share data on the number of persons with special reception needs detained throughout 2018.

#### 4. Duration of detention

##### Indicators: Duration of Detention

- |  |         |
|--|---------|
| 1. What is the maximum detention period set in the law (incl. extensions): | 60 days |
| 2. In practice, how long in average are asylum seekers detained?           | 60 days |

In accordance with the Asylum Act, an asylum seeker either at the airport or land border “who does not meet the legal requirements for entering national territory” can be detained for up to 7 days for the conduct of an admissibility procedure.<sup>495</sup> If the SEF takes a positive admissibility decision or if no decision has been taken within 7 working days, the applicant is released for the remainder of the asylum procedure. If the claim is deemed inadmissible or unfounded in an accelerated procedure the asylum seeker can challenge the rejection before the administrative courts with suspensive effect and remains detained for up to 60 days during the appeal proceedings. However, after 60 days, even if no decision has yet been taken on the appeal, SEF must release the individual onto the territory. The maximum detention period of 60 days is equally applicable in instances where the application is made from detention at a CIT due to a removal procedure.<sup>496</sup>

<sup>490</sup> Ombudsman, *Tratamento dos cidadãos estrangeiros em situação irregular ou requerentes de asilo nos centros de instalação temporária ou espaços equiparados*, September 2017, 28.

<sup>491</sup> See e.g. Público, ‘SEF detém crianças requerentes de asilo contra recomendações da ONU’, 22 July 2018, available in Portuguese at: <https://bit.ly/2uILRNP>.

<sup>492</sup> See e.g. Público, ‘Provedora, “Centros de instalação são o no man’s land contemporâneo”, 22 July 2018, available in Portuguese at: <https://bit.ly/2UI9URU>; Expresso, ‘UNICEF Portugal exige fim de detenção de crianças no aeroporto’, 24 July 2018, available in Portuguese at: <https://bit.ly/2G9xisZ>.

<sup>493</sup> AIDA, ‘Portugal: Persisting detention of children at the airport’, 4 September 2018, available at: <https://bit.ly/2LWn4LZ>.

<sup>494</sup> Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and Committee on the Rights of the Child *Joint general comment No. 4 (2017) on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return*, 16 November 2017, CMW/C/GC/4-CRC/C/GC/23, available at: <https://bit.ly/2ploRvd>.

<sup>495</sup> Article 26 and 35-A(3)(a) Asylum Act.

<sup>496</sup> Article 35-B(1) Asylum Act.

According to the information available to CPR, a total of 24 unaccompanied children, including one subsequently determined to be an adult, were detained at the border for periods ranging from 1 to 15 days, with an average detention period of 6 days. The information available to CPR regarding 51 children accompanied by adults reveals that they were detained at the border for periods ranging between 1 and 59 days (on average 16 days).

Even though CPR is not aware of instances where the maximum detention duration was exceeded in the case of asylum seekers, in 2017 the Ombudsman raised concerns regarding isolated instances of detention of third-country nationals beyond the 60-day time limit with respect to **CIT – UHSA**; the legal status of persons detained was not specified.<sup>497</sup>

## C. Detention conditions

### 1. Place of detention

#### Indicators: Place of Detention

1. Does the law allow for asylum seekers to be detained in prisons for the purpose of the asylum procedure (i.e. not as a result of criminal charges)?  Yes  No
2. If so, are asylum seekers ever detained in practice in prisons for the purpose of the asylum procedure?  Yes  No

Asylum seekers may be detained in Temporary Installation Centres (CIT).<sup>498</sup> The legal framework of detention centres is enshrined in Act 34/94, which provides for the detention of migrants in CIT that are managed by the SEF either for security reasons e.g. aimed at enforcing a removal from national territory, or for attempted irregular entry at the border. The detention facilities at the border,<sup>499</sup> while not CIT *per se*, have been qualified as such by Decree-Law 85/2000 for the purposes of detention following an entry refusal at the border. These are therefore detention centres with a strict separation between asylum seekers and other migrants refused entry at the border.<sup>500</sup>

According to SEF, there are no detention centres for asylum seekers in Portugal and the detention of asylum seekers is limited to applicants at the border who are subjected to detention in transit areas. The 3 detention facilities at the border are located in the international area of Lisbon, Porto and Faro airports and have separated detention areas for asylum seekers:

Detention capacity for asylum seekers in border detention centres: 2018	
Detention centre	Capacity for asylum seekers
Detention facility – Lisbon airport	30
Detention facility – Porto airport	14
Detention facility – Faro airport	14
<b>Total</b>	<b>58</b>

Source: SEF.

With the exception of instances of temporary overcrowding at the **Lisbon Airport**'s detention facility which at times entail the transfer of certain asylum seekers to airport detention facilities in **Porto** and **Faro** airports or the **CIT – UHSA**, where they will be detained with other migrants in detention following a

<sup>497</sup> Ombudsman, *Tratamento dos cidadãos estrangeiros em situação irregular ou requerentes de asilo nos centros de instalação temporária ou espaços equiparados*, September 2017, 23-24.

<sup>498</sup> Article 35-A(2) and (3) Asylum Act.

<sup>499</sup> Council of Ministers Resolution 76/97.

<sup>500</sup> Council of Ministers Resolution 76/97. See also Article 35-A(3)(a) Asylum Act, according to which asylum seekers can be detained in CIT in the case of border procedures.

removal decision, CPR is unaware of the detention of asylum seekers with other migrants, in police stations or in regular prisons for the purposes of the asylum procedure.

## 2. Conditions in detention facilities

### Indicators: Conditions in Detention Facilities

- |   |   |  |
|---|---|--|
| 1. Do detainees have access to health care in practice? | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No            |
| ❖ If yes, is it limited to emergency health care?       | <input type="checkbox"/> Yes            | <input checked="" type="checkbox"/> No |

### 2.1. Overall conditions

In the absence of legal standards for the operation of CIT, the detention facilities at the border and the **CIT – UHSA** in Porto are managed by the SEF pursuant to internal regulations.<sup>501</sup>

Regarding **Lisbon Airport** – the most relevant detention facility in the case of asylum seekers – the reception desk and operational assistance are managed by the staff of a private security company which includes male and female employees; up to 2017<sup>502</sup> The staff is responsible among others for: the initial registration; collection and access to personal belongings; administration of medication; medical triage of visitors; registration and referrals of requests for medical assistance; and distribution of meals. The detention facility is regularly cleaned by staff of a cleaning company. In his latest visit, the Ombudsman considered the hygienic conditions of the facility to be good overall.<sup>503</sup> CPR concurs this assessment for 2018.

The reception area includes an office for a member of SEF's staff who is present at the detention facility during office hours. Additionally, there are two offices in the reception area to conduct individual interviews, one of which is used by SEF and the other by lawyers and NGOs such as CPR. Due to space and structural constraints, the offices are small and do not ensure adequate privacy, notably due to inadequate sound isolation.<sup>504</sup>

The detention facility has separate wings for asylum seekers and other passengers refused entry into the territory. Each wing has two collective dormitories with bunk beds and closets that are separate for men and women. The closets have been moved to the hallway and the doors and hooks have been removed as they are considered a security risk by SEF. Other than a few clothes and shoes detainees do not really use the closets to store belongings as these are confiscated upon arrival. Each wing also has separate bathroom and toilet facilities that include showers with hot water, toilets, hand washing facilities and urinals, and a common lounge used for meals and leisure that includes common tables with chairs, individual couches and a television.

The Ombudsman recalled the risks of mixed detention facilities such as those of the **Lisbon Airport** – as opposed to **CIT – UHSA** where men and women are accommodated on different floors – and the need to adopt adequate measures to tackle potential risks of sexual violence and exploitation against female detainees. Similar risks exist in **Faro Airport**. During 2018, a detained female asylum seeker complained of sexual harassment from one of the workers of the private security company in charge of operational assistance and from other detainees at the **Lisbon Airport** and the case was referred to the Public Prosecutor's Office.<sup>505</sup>

<sup>501</sup> Ministerial Decision n. 5863/2015 of 2 June 2015 regulates in detail detention conditions by police forces, including the SEF, but is only applicable to the initial 48-hour detention period.

<sup>502</sup> According to a 2017 report from the Ombudsman, this was not the case in the **Porto** and **Faro** airport facilities: Ombudsman, *Tratamento dos cidadãos estrangeiros em situação irregular ou requerentes de asilo nos centros de instalação temporária ou espaços equiparados*, September 2017, 22-23.

<sup>503</sup> *Ibid.* 30.

<sup>504</sup> *Ibid.* 41.

<sup>505</sup> See Público, 'Estrangeiras detidas no aeroporto de Lisboa estão "mais expostas" a assédio', 3 September 2018, available in Portuguese at: <https://bit.ly/2C88KR3>.

The Ombudsman further noted that the specific needs of pregnant women and young mothers should be better accommodated, namely through the accessibility of hygienic items without the need for intervention of the supporting staff.<sup>506</sup> CPR has received complaints from detainees due to difficulties in accessing luggage.

The detainees at **Lisbon Airport** are served meals provided by the air companies that are similar to those served on airplanes. At times CPR receives complains from detainees because of insufficient or poor quality food; such complaints have also been addressed to the Ombudsman.<sup>507</sup> With the exception of Lisbon Airport, the Ombudsman has raised concerns regarding the quantity of food in detention facilities at the border, and pointed to the need for better adapted food for younger children, pregnant women and mothers.<sup>508</sup> If needed due to religion, health or other reasons, the air company is informed in advance to provide for special diet meals and the CPR has not received relevant complaints in this regard.

According to information collected by CPR, including in the framework of the project “Time for Needs: Listening, Healing, Protecting”,<sup>509</sup> the staff from SEF at the border receives general in-house training on international protection. In early 2019, UNHCR has also provided training on statelessness to the staff from the SEF at the border. CPR is unaware of any training provided to other staff working at the airport detention facility regarding human rights and international protection.

Furthermore, the Ombudsman has raised concerns about the lack of specific training and language skills of supporting staff from security companies to perform their duties and the impact it could have on detainees in terms of isolation and access to services such as health care. He also reported a complaint of physical abuse from staff during his visit to the **Lisbon Airport** facility, corroborated by other detainees.<sup>510</sup>

CPR has received rare but recurrent allegations over the years from asylum seekers regarding physical abuse by SEF inspectors mainly at the border support unit (as opposed to the detention facility, CIT). In 2017, the CPR has demanded a formal investigation into these allegations and SEF has conducted internal inquiries. According to the information provided by the SEF to CPR, the procedures did not lead to any proof of wrongdoing and were therefore classified. No physical abuse from SEF inspectors is reported by the Ombudsman in his latest report.

Following the public debate during the summer of 2018 regarding the detention of vulnerable asylum seekers and the detention conditions at the **Lisbon Airport** (see [Detention of Vulnerable Applicants](#)), the Ministry of Interior adopted a decision on 24 July 2018 determining among others an inquiry into the functioning of the detention facility by the General Inspectorate of Internal Administration (*Inspecção Geral da Administração Interna – IGAI*) and a report from the SEF to the Ombudsman regarding the state of implementation of its report recommendations from 2017. At the date of writing, CPR was not aware of the publication of the results of these initiatives.

## 2.2. Activities

In accordance with the law, detainees in each wing of the detention facility at the **Lisbon Airport** have unrestricted access to a courtyard of 70m<sup>2</sup> with table and chairs during a reasonable period of time in the mornings and afternoons.<sup>511</sup> However, the courtyards in the border detention facilities have been criticised (again) by the Ombudsman for being too small, surrounded by walls and lacking natural lighting.<sup>512</sup> The

<sup>506</sup> Ombudsman, *Tratamento dos cidadãos estrangeiros em situação irregular ou requerentes de asilo nos centros de instalação temporária ou espaços equiparados*, September 2017, 34-35.

<sup>507</sup> *Ibid*, 30. Food provision was found adequate in **CIT – UHSA**, however.

<sup>508</sup> *Ibid*, 30-31.

<sup>509</sup> Italian Council for Refugees et al., *Time for Needs: Listening, Healing, Protecting*, October 2017, available at: <http://bit.ly/2xZqCGh>.

<sup>510</sup> Ombudsman, *Tratamento dos cidadãos estrangeiros em situação irregular ou requerentes de asilo nos centros de instalação temporária ou espaços equiparados*, September 2017, 21-22.

<sup>511</sup> Article 35-B(9) Asylum Act.

<sup>512</sup> Ombudsman, *Tratamento dos cidadãos estrangeiros em situação irregular ou requerentes de asilo nos centros de instalação temporária ou espaços equiparados*, September 2017, 33.

absence of reading materials in different language, the television and some toys for children<sup>513</sup> are the only leisure proposed to detainees,<sup>514</sup> whose mobile phones along with other personal belongings are generally confiscated upon arrival at the detention facility.<sup>515</sup>

In the case of the **Porto Airport**, an unannounced inquiry to the CIT conducted by the IGAI in 2017 resulted in a number of recommendations in March 2018 that were later accepted by the Ministry of Interior in a decision of 12 June 2018. The decision recommends that the SEF, if needed in cooperation with national or international human rights organisations, provide reading materials in different languages to detainees and playing areas furnished with office tables, chairs, games and learning materials to children.

While the law provides for access to education of children asylum seekers under the same conditions as nationals,<sup>516</sup> and the rules governing CIT provide for the access of detained accompanied children to education depending on the duration of their detention,<sup>517</sup> children in detention do not have access to education in practice either at the detention facility or by accessing normal schools. This situation needs to be considered in light of the periods of detention of asylum-seeking children in detention facilities at the border.

### 2.3. Health care and special needs in detention

The responsibility for providing health care to asylum seekers at the border lies with the Ministry of Home Affairs that can however rely on public or private service providers for that purpose on the basis of Memoranda of Understanding (MoU).<sup>518</sup>

The Asylum Act provides for the right of asylum seekers and their relatives to adequate health care at the border (i.e. in detention),<sup>519</sup> and for the right of vulnerable asylum seekers in detention to regular health care that meets their particular needs.<sup>520</sup> The Asylum Act does not, however, specify this particular standard<sup>521</sup> and/or whether it differs from the general standard of health care provision in the asylum procedure.<sup>522</sup>

In practice there seems to be varying levels of service provision depending on the location of detention.<sup>523</sup>

Until recently detainees at the **Lisbon Airport**'s detention facility only had access to basic medical screenings conducted by nurses of the Portuguese Red Cross (*Cruz Vermelha Portuguesa*, CVP) following an initial triage conducted by the security staff without any specific training or protocol.<sup>524</sup> In case

<sup>513</sup> Article 146-A(7) Aliens Act governing CIT states that accompanied children in detention must be offered leisure activities, including age appropriate games and recreational activities.

<sup>514</sup> Ombudsman, *Tratamento dos cidadãos estrangeiros em situação irregular ou requerentes de asilo nos centros de instalação temporária ou espaços equiparados*, September 2017, 33-34.

<sup>515</sup> *Ibid*, 42.

<sup>516</sup> Article 53 Asylum Act.

<sup>517</sup> Article 146-A(7) Aliens Act.

<sup>518</sup> Article 61(1) Aliens Act.

<sup>519</sup> Article 56(2) Asylum Act.

<sup>520</sup> Article 35(b)(8) Asylum Act.

<sup>521</sup> However, Article 146-A(3) Aliens Act states that an alien detained at a CIT or an equivalent detaining facility (i.e. at the border) is entitled to emergency and basic health care only and that special attention should be provided to vulnerable individuals, particularly to minors, unaccompanied minors, handicapped persons, elderly persons, pregnant women, families with children and survivors of torture, rape and other forms of serious psychological, physical or sexual violence.

<sup>522</sup> In accordance with Article 52(1) Asylum Act and Ministerial Orders ("Portaria") No 30/2001 and No 1042/2008, asylum seekers and their relatives are entitled to medical assistance and access to medicines for basic needs, and for emergency and primary care in the National Health Service (SNS) under the same conditions as nationals. Primary care is to be understood as including at least access to general practitioners, access to specialists, inpatient care, complementary diagnostic tests and therapies, and nursing assistance. Furthermore, Article 4(1)(n) Decree-Law No 113/2011 (recast) provides for free access to the SNS by asylum seekers.

<sup>523</sup> See Italian Council for Refugees *et al.*, *Time for Needs: Listening, Healing, Protecting*, October 2017, available at: <http://bit.ly/2xZqCGh>.

<sup>524</sup> Ombudsman, *Tratamento dos cidadãos estrangeiros em situação irregular ou requerentes de asilo nos centros de instalação temporária ou espaços equiparados*, September 2017, 27.

of need, asylum seekers were referred to emergency care, including emergency mental health care in hospitals. The triage system generated complaints regarding effective and/or timely access to health care.<sup>525</sup> In order to address these problems, the SEF signed an MoU with the NGO Doctors of the World (*Médicos do Mundo*, MdM) in June 2018 for the provision of enhanced medical care at the Lisbon airport detention area.<sup>526</sup> According to MdM, the project aims at assessing the health condition of detainees; prevent the deterioration of chronic conditions; whenever possible offer out-patient treatments; assist in dealing with infectious diseases within the detention area and in case of release from the detention area in cooperation with the DGS; training of staff to deal with episodes of acute disease and treatment follow-up.<sup>527</sup> For that purpose, MdM is expected to provide medical and nursing care, medication, medical tests, referrals to the SNS in case of emergency care or other not eligible for out-patient treatment and referrals to the DGS.

CPR received sporadic complaints by asylum seekers detained at **Lisbon Airport** of difficulties in accessing requested medical assistance throughout the year, including after the MoU between the SEF and the MdM came into force. Unless and until the person is released from detention at the border, the individual is allowed to leave as often as necessary the border detention facility escorted by the SEF to receive emergency care or but according to the information available to CPR there is no psychological counselling / mental health care available in the detention facility.

While no similar occurrences were reported to CPR in 2018, in 2017 CPR was informed by the DGS of an ongoing risk of a chickenpox contagion at the **Lisbon Airport** detention facility and of the need to temporarily suspend the admission to CPR's reception centres of asylum seekers released from that detention facility. In the framework of the legal information and assistance provided to asylum seekers detained at the Lisbon Airport, CPR also became aware of episodes of a contagion risk of scabies that required stringent containment measures. It should be noted that the absence of arrangements for the washing of the detainees' clothes in all airport detention facilities was criticised by the Ombudsman as posing a risk to the health of both detainees, SEF inspectors and supporting staff.<sup>528</sup>

In the case of asylum seekers detained in the **CIT – UHSA** due to removal procedures, the medical care is provided twice a week by doctors, nurses and psychiatrists and includes basic medical care, including dental care and medical screenings of diseases such as hepatitis and HIV, medication and training of staff on health-related topics. These volunteer health workers from MdM<sup>529</sup> are in a position to identify the needs and make referrals to the National Health Service (SNS) and also provide training to the remaining staff of the detention centre, in what was described as a good practice by the Ombudsman.<sup>530</sup>

According to previous research,<sup>531</sup> and the information available to CPR there are no specific mechanisms or standard operational procedures for the early identification of vulnerable asylum seekers and their special reception needs at the border or in pre-removal detention. The SEF was not able to provide statistical data on the total number of persons with such needs detained throughout the year.

The detention facilities have separate wings for asylum seekers and other passengers refused entry into the territory, and separate dormitories for men and women.

When kept in detention (see [Detention of Vulnerable Applicants](#)) vulnerable applicants are granted access to services and medical treatment under the same standards described above that are applicable to all

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<sup>525</sup> *Ibid.*

<sup>526</sup> See Público, 'SEF e Médicos do Mundo juntos na prestação de cuidados de saúde a imigrantes', 4 June 2018, available in Portuguese at: <https://bit.ly/2JdtGcw>.

<sup>527</sup> MdM, *Embarque na Saúde, Project Information Sheet*, s.d., available in Portuguese at: <https://bit.ly/2RFBnfl>.

<sup>528</sup> Ombudsman, *Tratamento dos cidadãos estrangeiros em situação irregular ou requerentes de asilo nos centros de instalação temporária ou espaços equiparados*, September 2017, 28-29.

<sup>529</sup> MdM, *Unidade Habitacional de Santo António, Project Information Sheet*, s.d., available in Portuguese at: <https://bit.ly/2Uc068m>.

<sup>530</sup> Ombudsman, *Tratamento dos cidadãos estrangeiros em situação irregular ou requerentes de asilo nos centros de instalação temporária ou espaços equiparados*, September 2017, 28.

<sup>531</sup> See Italian Council for Refugees et al., *Time for Needs: Listening, Healing, Protecting*, October 2017, available at: <http://bit.ly/2xZqCGh>.

detrainees. This has drawn criticism from the Ombudsman in the case of a family with a child whose special health needs were not appropriately met during detention.<sup>532</sup>

### 3. Access to detention facilities

#### Indicators: Access to Detention Facilities

1. Is access to detention centres allowed to

- ❖ Lawyers:  Yes  Limited  No
- ❖ NGOs:  Yes  Limited  No
- ❖ UNHCR:  Yes  Limited  No
- ❖ Family members:  Yes  Limited  No

The Asylum Act and the internal regulation of the detention facility at **Lisbon Airport** provide for the right of detainees to receive visits from legal representatives, embassy representatives, relatives and national and international human rights organisations.<sup>533</sup> In the particular case of legal assistance, asylum seekers in detention are entitled to receive visits from lawyers, UNHCR and CPR.<sup>534</sup> Restrictions to access to the detention facilities can only be based on grounds of security, public order or operational reasons and only to the extent these do not restrict access in a significant or absolute manner.<sup>535</sup>

The visiting hours during the morning and afternoon are reasonable but visits need to be preapproved by SEF depending e.g. on the expected duration of detention. Detainees are entitled to a maximum of three visitors at the same time and the duration of the visit cannot exceed one hour. In accordance to CPR's experience, the access procedures for free legal aid and private lawyers are cumbersome, bureaucratic and involve obtaining access cards in advance. CPR has unrestricted access to asylum seekers detained at the border or in pre-removal detention but only following the refugee status determination interview conducted by SEF, as opposed to lawyers who have unrestricted access to detainees prior to and during the refugee status determination interview. CPR has not received significant complaints from asylum-seeking detainees regarding refused visits from lawyers or relatives. With the exception of language barriers in the communication with lawyers, the Ombudsman has also concluded that the visiting system works well.<sup>536</sup> However, CPR is aware of concerns raised by free legal aid lawyers regarding an 11 € fee charged by ANA, S.A., the private company in charge of national airports, for accessing the restricted area of the airports where the CIT are located which can discourage them from visiting their clients.<sup>537</sup>

In accordance with the internal regulation of the detention facilities at the border, the detainees are not allowed to keep their mobile phones but are entitled to use public phones that are freely accessible in each wing of the detention facility using coins, prepaid cards or collect calls. Furthermore, each detainee is entitled upon arrival to 5 minutes of national and international calls using the telephones of the facility. According to the information available to CPR, in general the SEF also provides for phone calls to lawyers and organisations such as CPR for purposes of legal assistance in case the detainee has exhausted 5 minutes for calls. However, the Ombudsman has denied this being the case regarding the ACM, the Portuguese Bar Association, CPR and other NGOs and made no reference to such an exception regarding contacts with lawyers.<sup>538</sup> He also criticised the prepaid card system as being inconsistently applied across the different detention facility and as not taking into consideration the duration of detention.<sup>539</sup> According to the Ombudsman, the contacts of relevant support organisations are only available in the administrative support services.<sup>540</sup> At times CPR receives complaints from detainees regarding the limited time for calls and having to choose between contacting family or lawyers. Furthermore, in 2018 it received sporadic complaints from detainees who were refused a phone call to

<sup>532</sup> *Ibid.* 28.

<sup>533</sup> Article 35-B(3) Asylum Act.

<sup>534</sup> Article 49(6) Asylum Act.

<sup>535</sup> Article 35-B(4) Asylum Act.

<sup>536</sup> Ombudsman, *Tratamento dos cidadãos estrangeiros em situação irregular ou requerentes de asilo nos centros de instalação temporária ou espaços equiparados*, September 2017, 42.

<sup>537</sup> See Público, 'Taxa cobrada a advogados para ver detidos no aeroporto é "nonsense", acusa bastonário', 3 September 2018, available in Portuguese at: <https://bit.ly/2NocWka>.

<sup>538</sup> *Ibid.* 43-44.

<sup>539</sup> *Ibid.* 42-43.

<sup>540</sup> *Ibid.* 42-44.

contact CPR while some phone calls between its lawyers and detainees were abruptly interrupted by staff of the private security company in charge of operational assistance.

In accordance with the law, UNHCR and CPR as the non-governmental organisation acting on its behalf, have the right to be informed of all asylum claims presented in Portugal and to personally contact asylum seekers irrespective of the place of application in order to provide information on the asylum procedure, as well as regarding their intervention throughout the process.<sup>541</sup> In this framework, CPR is regularly present (i.e. generally every week) at the **Lisbon Airport** detention facility to provide free legal information and assistance,<sup>542</sup> in particular regarding: the asylum procedure; promoting access to free legal aid at appeal stage; promoting the release without conditions of particularly vulnerable asylum seekers either by SEF *ex officio* or by means of review from the Criminal Courts; and at times and depending on its capacity the review of the refugee status determination interview report produced by SEF.

CPR is not aware of any organisations that provide social assistance, leisure or other occupational activities at the **Lisbon Airport** detention facility. In the case of the **CIT – UHSA** in Porto, the law provides for an MoU with the International Organisation for Migration (IOM) and the Jesuit Refugee Service (JRS) Portugal,<sup>543</sup> that are responsible for training of staff at the CIT – UHSA and the provision of social, psychological and legal assistance to detainees. According to CPR's experience regarding asylum seekers who have applied from detention at CIT – UHSA, JRS Portugal has a social worker and a lawyer in the detention facility that provide in-house assistance while the provision of in-house medical and psychological assistance is provided by volunteer organisations such as MdM.

## D. Procedural safeguards

### 1. Judicial review of the detention order

#### Indicators: Judicial Review of Detention

- |   |   |                             |
|---|---|-----------------------------|
| 1. Is there an automatic review of the lawfulness of detention? | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| 2. If yes, at what interval is the detention order reviewed?    | 7 days                                  |                             |

The law provides for the right of asylum seekers to information in writing regarding the grounds for their detention, access to free legal aid and legal challenges against detention in a language they either understand or are reasonably expected to understand.<sup>544</sup>

In practice, the declaration issued by SEF to asylum seekers at the border for the purposes of certifying the registration of the asylum application contains a brief reference to the norm of the Asylum Act that provides for the systematic detention of asylum seekers at the border.<sup>545</sup> CPR is unaware of the provision of information in writing pertaining to the grounds, the right to access free legal aid and legal challenges for the purposes of detention review.<sup>546</sup> That being said, asylum seekers benefit from legal information and assistance from CPR at the border, which also includes free legal assistance for purposes of detention review, albeit limited to vulnerable asylum seekers due to capacity constraints.

The competent authority to impose and review the detention of an asylum seeker in a CIT,<sup>547</sup> or in detention facilities at the border,<sup>548</sup> is the Criminal Court which has territorial jurisdiction over the place where detention is practiced. In the case of detention at the border, the SEF is required to inform the

<sup>541</sup> Article 13(3) Asylum Act.

<sup>542</sup> Article 49(1)(e) and (6) Asylum Act.

<sup>543</sup> Article 3 Decree-Law 44/2006.

<sup>544</sup> Article 35-B(2) Asylum Act.

<sup>545</sup> Article 26 Asylum Act.

<sup>546</sup> Even though the declaration issued by the SEF to asylum seekers at the border for the purposes of certifying the registration of the asylum application contains a brief reference to their right to legal aid, it does not specify that such legal aid also encompasses Criminal Court procedures pertaining to their detention at the border.

<sup>547</sup> Article 35-A(5) Asylum Act.

<sup>548</sup> Article 35-A(6) Asylum Act.

Criminal Court of the detention within 48 hours of arrival at the border for purposes of maintaining the asylum seeker in detention beyond that period.<sup>549</sup> The review of detention can be made *ex officio* by the Criminal Court or upon request of the detained asylum seeker at all times on the basis of new circumstances or information that have a bearing on the lawfulness of the detention.<sup>550</sup>

In the case of asylum seekers at the border, the Criminal Court usually requires the SEF to inform on developments of the asylum application within 7 days after their initial request for confirmation of the detention. This procedure allows the Criminal Court to reassess the lawfulness of the detention on the basis of the decision from the SEF regarding the admissibility of the asylum application.

To CPR's understanding, once the SEF informs the Criminal Court that the asylum application at the border was rejected, there are no additional *ex officio* reviews prior to release even in cases where the court invites the SEF to consider the release of vulnerable applicants (see [Alternatives to Detention](#)). Where the applicant appeals the rejection of the asylum application and is therefore not removed from the border, release usually takes place at the end of the maximum detention time limit of 60 days (see [Duration of Detention](#)).

## 2. Legal assistance for review of detention

### Indicators: Legal Assistance for Review of Detention

1. Does the law provide for access to free legal assistance for the review of detention?  
 Yes       No
2. Do asylum seekers have effective access to free legal assistance in practice?  
 Yes       No

The law sets out the right of asylum seekers to free legal aid under the same conditions as nationals,<sup>551</sup> and such right must be understood to encompass Criminal Court procedures pertaining to their detention at the border. Access to legal aid is processed under the same conditions as nationals, which include a "means test".<sup>552</sup> While in the case of legal aid for the purposes of appealing the rejection of the asylum application, this test is generally applied in a flexible manner. CPR has no experience of legal aid applications for the purposes of detention review, however.

Up to 2018 legal aid procedures tended to exceed 60 days, rendering assistance inefficient in the context of detention review, as the asylum seekers would usually be released from detention before the free legal aid lawyer was appointed by the Portuguese Bar Association (*Ordem dos Advogados*). Recently, such procedures have been reduced to 1-2 weeks which could present an opportunity for effective legal representation of asylum seekers for purposes of detention review. That being said, the current capacity of CPR to process these additional free legal aid applications at the border is very limited and while the law provides for an accelerated free legal aid procedure at the border on the basis of an MoU between the Ministry of Home Affairs and the Bar Association,<sup>553</sup> such procedures are only for purposes of the application and remain to be implemented to date.

In practice asylum seekers benefit from legal information and assistance from CPR at the border, which also includes free legal assistance for the purposes of detention review, albeit limited to vulnerable asylum seekers due to capacity constraints.

<sup>549</sup> *Ibid.*

<sup>550</sup> Article 35-A(6) Asylum Act.

<sup>551</sup> Article 49(1)(f) Asylum Act.

<sup>552</sup> Act 34/2004.

<sup>553</sup> Article 25(4) Asylum Act.

## **E. Differential treatment of specific nationalities in detention**

CPR is unaware of any increased risk of detention and/or systematic detention and/or longer periods of detention of asylum seekers based on nationality.

# Content of International Protection

## A. Status and residence

### 1. Residence permit

#### Indicators: Residence Permit

1. What is the duration of residence permits granted to beneficiaries of protection?
  - ❖ Refugee status 5 years
  - ❖ Subsidiary protection 3 years

The Portuguese authorities are bound by a duty to issue beneficiaries of international protection a residence permit.<sup>554</sup> The duration of residence permits is dependent upon the type of international protection granted: the residence permit for **refugees** is valid for 5 years,<sup>555</sup> while the residence permit for **subsidiary protection** beneficiaries is valid for 3 years.<sup>556</sup> According to the statistics provided by the SEF, in 2018 a total of 106 residence permits were issued to refugees and 403 residence permits were issued to beneficiaries of subsidiary protection.

On the basis of CPR's experience of providing legal information and assistance to asylum seekers and beneficiaries of international protection at all stages of the asylum procedure (see [Regular Procedure: Legal Assistance](#)), the average length of the procedure for issuing a residence permit following a decision granting international protection in previous years was considered reasonable, ranging from a few weeks to a month and a half. In the course of 2018, CPR noticed increased waiting periods for the issuance of residence permits (first permit and subsequent renewals). During such periods, asylum seekers are issued a declaration from SEF certifying their application for a residence permit. It should be noted that asylum seekers admitted to the regular procedure are in possession of a provisional residence permit, valid and renewable for 6 months, at the time they are granted international protection (see [Short Overview of the Asylum Procedure](#)).<sup>557</sup>

In late 2014 and 2015, the launch of a cessation procedure by the SEF regarding Guinean nationals, the first ever to target citizens of a specific nationality in a collective manner, has been characterised by significant shortcomings, including a curtailment of the residence rights of those concerned by failing to renew or by delaying the renewal of expired residence permits during the procedures (see [Cessation](#)).

### 2. Civil registration

#### 2.1. Registration of child birth

According to the law, civil registration acts of foreign authorities such as child birth certificates regarding aliens can only be transcribed into the Portuguese civil registry if the applicant demonstrates a legitimate interest in the transcription,<sup>558</sup> and if the act is: duly translated;<sup>559</sup> and legalised or does not raise well-founded doubts regarding its authenticity.<sup>560</sup>

<sup>554</sup> Article 67 Asylum Act. This provision is generally in line with Article 24 recast Qualification Directive.

<sup>555</sup> Article 67(1) Asylum Act.

<sup>556</sup> Article 67(2) Asylum Act.

<sup>557</sup> Article 27(1) Asylum Act.

<sup>558</sup> Article 6(4) Civil Registration Code.

<sup>559</sup> Article 49(8) Civil Registration Code.

<sup>560</sup> Article 49(1) Civil Registration Code. In case the civil registry officer is not satisfied with the credibility of the foreign registration act it may suspend the procedure and contact *ex officio* the issuing authority for clarifications at the expense of the applicant, an option that is ill adapted to beneficiaries of international protection: Article 49(2) and (3) Civil Registration Code. The applicant may also lodge a judicial appeal against the decision of the civil registration officer to refuse partially or in total the authenticity of the document (Article 49(4)-(6) and 292(2) Civil Registration Code) in which case he or she will be allowed to present statements and alternative evidence: Article 49(7) Civil Registration Code.

In practice, the need of beneficiaries of international protection to transcribe foreign child birth certificates normally arises in the framework of naturalisation procedures that require the registration of their birth by the Central Registrations Service (*Conservatória dos Registos Centrais*, CRC) based on a duly legalised birth certificate prior to the registration of the acquisition of Portuguese nationality.<sup>561</sup> Furthermore, it also arises in the case of marriage (transcription of foreign marriages and registration of marriages contracted in Portugal) and the regulation of parental authority as both are added to the birth registry of the grooms<sup>562</sup> However, in the case of **Naturalisation** procedures and registration of marriages the law provides for alternative avenues in case the applicant is unable to produce a duly legalised birth certificate.

According to the experience of CPR, there are no other recurring instances where the need for the registration of child birth arises given that the SEF does not require such registration for identification and issuance of international protection residence permits, given the specific standards of proof applicable, and that these in turn replace identification documents for all legal purposes.<sup>563</sup>

The registration of birth of a child on the Portuguese territory is mandatory regardless of nationality.<sup>564</sup> It must be declared to the civil registry authorities of the Ministry of Justice either by (1) the parents, another legal representative of the child or a person assigned that responsibility in writing by the parents, (2) the next closest relative of the child, or (3) an official of the maternity institution where the birth took place or to which the birth was orally reported.<sup>565</sup> The time limit and the place for reporting the birth varies depending on the place of birth.<sup>566</sup>

The actual registration of birth that follows the declaration can either take place at the maternity, which is usually the case, or at a civil registry office. Following the registration of birth, the information is also automatically transferred to the Ministry of Health, the ISS and, upon request, to the Ministry of Finance for purposes of registration of the child with its services.<sup>567</sup>

The registration of birth requires that identification documents of the parents be produced “whenever possible”.<sup>568</sup> According to the Aliens Act the residence permit replaces the identification document for all legal purposes.<sup>569</sup> An interpreter must be appointed in case the parents are unable to communicate with the civil registry officer in Portuguese and the civil registry officer is not familiar with the language spoken by the parents.<sup>570</sup>

In the case of the child or his or her parent(s) being an alien, born abroad or having an additional nationality, the law allows for their registration under an alien first name.<sup>571</sup>

According to CPR’s experience, beneficiaries of international protection whose children are born in Portugal do not face significant or systematic challenges in the registration of their birth as they are in possession of a valid **Residence Permit** that is considered an adequate identification document by civil registry offices. However, some problems arise with the registration of paternity where the father cannot personally declare his willingness to be registered as such before a Portuguese civil registry office and the marriage contracted abroad is not previously registered in Portugal, as is generally the case. In these cases, a paternity investigation is usually conducted by the Family Court with uncertain results given the potential difficulties of beneficiaries of international protection to meet evidentiary requirements.<sup>572</sup>

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<sup>561</sup> Article 50(1) Portuguese Nationality Regulation.

<sup>562</sup> Article 69(1)(a) and (e) Civil Registration Code.

<sup>563</sup> Article 84 Aliens Act.

<sup>564</sup> Article 1(1) and (2) Civil Registration Code.

<sup>565</sup> Article 97(1) Civil Registration Code.

<sup>566</sup> Articles 96 and 96-A Civil Registration Code. This can either be at the maternity up to the moment the mother leaves the premises; or at any civil registry office (*conservatória de registo civil*) within 20 days from the date of birth.

<sup>567</sup> Articles 101, 101-A and 101-B Civil Registration Code.

<sup>568</sup> Article 102 Civil Registration Code.

<sup>569</sup> Article 84 Aliens Act.

<sup>570</sup> Article 42 Civil Registration Code.

<sup>571</sup> Article 103 Civil Registration Code.

<sup>572</sup> Article 120 Civil Registration Code and Articles 1847, 1853(a), 1864 and 1865 Civil Code.

## 2.2. Registration of marriage

In practice, according to CPR's experience, the need of beneficiaries of international protection to transcribe foreign marriage registries is not a recurring issue given that the SEF does not require such registration for purposes of derivative international protection / family reunification of a relative who is in a third country (see [Family Reunification](#)).

The marriage between foreigners in Portugal, on the other hand, requires the presentation of the spouses' residence permits,<sup>573</sup> birth certificates<sup>574</sup> and certificates of no impediment<sup>575</sup> that must either be duly legalised or not raise well-founded doubts regarding their authenticity.<sup>576</sup> Where the spouses are unable to produce a duly legalised birth certificate or a certificate of no impediment for the purposes of marriage, the law provides for alternative legal avenues to either replace the birth certificate,<sup>577</sup> or justify the absence of the certificate of no impediment,<sup>578</sup> where there are adequate reasons. To that end, the civil registry officer may choose to conduct the investigations deemed appropriate,<sup>579</sup> and consider alternative evidence such as witness statements.<sup>580</sup>

According to CPR's experience, beneficiaries of international protection do not face significant or systematic challenges in contracting marriage in Portugal as civil registry offices generally accept alternative legal avenues to either replace the birth certificate or justify the absence of the certificate of no impediment where relevant reasons pertaining the international protection needs of the applicants were ascertained.

## 3. Long-term residence

### Indicators: Long-Term Residence

- |   |               |
|---|---------------|
| 1. Number of long-term residence permits issued to beneficiaries in 2018: | Not available |
|---|---------------|

Competence for issuing a long-term residence lies with the National Director of the SEF,<sup>581</sup> that must issue a decision within 6 months of application.<sup>582</sup> The residence permit is valid for 5 years and is automatically renewed at the request of the beneficiary.<sup>583</sup> The following criteria must be met to obtain a long-term resident status regardless of the type of international protection held by the beneficiary:<sup>584</sup>

- ❖ Legal and continuous residence in the national territory for 5 years following the date of the application for international protection (no difference being drawn between refugee status and subsidiary protection);
- ❖ Stable and regular resources to ensure his or her survival and its of his or her family members, without having to resort to the social assistance system;
- ❖ Health insurance;
- ❖ Accommodation;
- ❖ Fluency in basic Portuguese.

<sup>573</sup> Article 137(1) Civil Registration Code.

<sup>574</sup> Article 137(2) Civil Registration Code.

<sup>575</sup> Article 166(1) Civil Registration Code.

<sup>576</sup> Article 49(1) Civil Registration Code.

<sup>577</sup> Articles 135(5), 137(5) and 266 to 269 Civil Registration Code.

<sup>578</sup> Article 166(2) Civil Registration Code.

<sup>579</sup> Article 268(1) Civil Registration Code.

<sup>580</sup> Articles 143(1) and 166(3) Civil Registration Code.

<sup>581</sup> Article 128 Aliens Act.

<sup>582</sup> Article 129(4) Aliens Act. The time limit can be extended by 3 months in particularly complex cases but the applicant must be informed of the extension of the time limit (Article 129(5) Aliens Act) and the application is automatically accepted in the absence of a decision at the end of the 3-month time limit extension (Article 129(6) Aliens Act).

<sup>583</sup> Article 130(2) Aliens Act.

<sup>584</sup> Article 126 Aliens Act.

A former beneficiary of international protection whose refugee status has ceased because he or she has voluntarily re-availed him or herself of the protection of the country of nationality or, having lost his or her nationality, has voluntarily re-acquired it, can be refused long term residence status (see [Cessation](#)).<sup>585</sup>

SEF did not share statistics regarding the number of long-term residence status attributed to beneficiaries of international protection. As the main provider of legal information and assistance to asylum seekers and beneficiaries of international protection, CPR is not aware of any issuance of long-term residence status to beneficiaries of international protection in 2018 and has provided legal assistance in a very limited number of cases for that purpose. According to its experience, access to such status by beneficiaries of international protection is very rare for reasons mostly related to lack of information and awareness, adequate financial resources, insufficient language skills and the priority given to applications for [Naturalisation](#).

#### 4. Naturalisation

##### Indicators: Naturalisation

1. What is the minimum residence period for obtaining citizenship?	
❖ Refugee status	6 years
❖ Subsidiary protection	6 years
2. Number of citizenship grants to beneficiaries in 2018:	Not available

Competence for obtaining Portuguese nationality lies either with the Minister of Justice regarding naturalisation,<sup>586</sup> or the Central Registrations Service (*Conservatória dos Registos Centrais*, CRC) of the Ministry of Justice regarding other modalities for obtaining Portuguese nationality.<sup>587</sup> According to the law, and in the absence of any deficiencies or irregularities in the procedure attributable to the applicant the time limit for taking a final decision on the file is at least 3.5 months in naturalisation cases,<sup>588</sup> and 3 months in the remaining cases.<sup>589</sup>

Some of the modalities for obtaining Portuguese nationality are of particular relevance to beneficiaries of international protection. According to these, foreign citizens, including refugees and beneficiaries of subsidiary protection, are eligible for naturalisation under the following conditions:<sup>590</sup>

- ❖ 18 years of age or emancipation in accordance with Portuguese law;
- ❖ Minimum legal residence of 5 years in Portugal, following a reform in July 2018;<sup>591</sup>
- ❖ Proof of proficiency in Portuguese (A2);
- ❖ No conviction of a crime punishable with a prison sentence of at least 3 years.
- ❖ Not being a danger or a threat to national security or defence due to their involvement in activities related to the practice of terrorism, in accordance to the law that governs terrorism.

Furthermore, children of foreign nationals born on national territory are eligible for naturalisation under the following conditions.<sup>592</sup>

- ❖ Proof of proficiency in Portuguese (A2);
- ❖ No conviction of a crime punishable with a prison sentence of at least 3 years;
- ❖ Not being a danger or a threat to national security or defence due to their involvement in activities related to the practice of terrorism, in accordance to the law that governs terrorism.
- ❖ At least one parent legally residing in the country for the past 5 years at the time of application; or completion of at least one level of basic education or the secondary education in Portugal.

<sup>585</sup> Article 123(3) Aliens Act.

<sup>586</sup> Article 27 Portuguese Nationality Regulation.

<sup>587</sup> Article 41 Portuguese Nationality Regulation.

<sup>588</sup> Article 27 Portuguese Nationality Regulation.

<sup>589</sup> Article 41(1) and (2) Portuguese Nationality Regulation.

<sup>590</sup> Article 6(1) Nationality Act; Article 19 Portuguese Nationality Regulation.

<sup>591</sup> The Nationality Act was recast in July 2018. The recast reduced the residence requirement established in the above mentioned article from 6 to 5 years.

<sup>592</sup> Article 6(2) Nationality Act; Article 20 Portuguese Nationality Regulation.

It should be noted that on the basis of a reasoned request, the Ministry of Justice may decide to exempt naturalisation applicants from presenting supporting evidence in special and justified cases where it is shown that the facts for which supporting evidence is required are true beyond doubt.<sup>593</sup> The law also provides in detail for the specific modalities regarding supporting evidence of proficiency in Portuguese,<sup>594</sup> notably regarding assessment tests that are of particular relevance to beneficiaries of international protection.<sup>595</sup>

Children born in Portugal to foreigners who are not at the service of their State of nationality are Portuguese by origin if one of the parents has been legally residing in the country for at least 2 years at the time of the birth and if they do not state that they do not want to be Portuguese.<sup>596</sup>

Foreign citizens, including refugees and beneficiaries of subsidiary protection, can (i) acquire Portuguese citizenship if they have been married or have been in a civil union with a Portuguese citizen for at least 3 years.<sup>597</sup>

CPR's experience shows that the main challenges in obtaining naturalisation are related to poor language skills and obtaining supporting evidence. Supporting evidence required in naturalisation applications generally consists of duly legalised original birth certificates and criminal records from the country of nationality and former countries of residence, including EU Member states in the case of Dublin returnees. In accordance to applicable provisions the CRC is generally flexible regarding supporting evidence in naturalisation applications in the case of refugees and beneficiaries of subsidiary protection who present reasoned justifications with the support of CPR that clarifies international legal standards applicable to administrative assistance.

Information on the number of beneficiaries of international protection granted Portuguese nationality in 2018 is not available.

## 5. Cessation and review of protection status

### Indicators: Cessation

1. Is a personal interview of the beneficiary in most cases conducted in practice in the cessation procedure?  Yes  No
2. Does the law provide for an appeal against the first instance decision in the cessation procedure?  Yes  No
3. Do beneficiaries have access to free legal assistance at first instance in practice?  Yes  With difficulty  No

Competence for deciding the cessation of international protection lies with the Ministry of Home Affairs on the basis of a proposal put forward by the national director of the SEF.<sup>598</sup> The representative of UNHCR or the CPR, as the non-governmental organisation acting on the UNHCR's behalf, shall be informed of the declaration of the loss of the right to international protection.<sup>599</sup>

The Asylum Act establishes the grounds for cessation of international protection.<sup>600</sup> Regarding **refugee status**, the right to asylum ceases when the foreign national or stateless person:<sup>601</sup>

- a. Decides voluntarily to re-avail him or herself of the protection of the country of his or her nationality;

<sup>593</sup> Article 26 Portuguese Nationality Regulation.

<sup>594</sup> Article 26(2)-(9) Portuguese Nationality Regulation.

<sup>595</sup> Ministerial Order 176/2014.

<sup>596</sup> Article 1(1)(f) Nationality Act.

<sup>597</sup> Article 3 Nationality Act; Article 14 Portuguese Nationality Regulation.

<sup>598</sup> Article 43(1) Asylum Act.

<sup>599</sup> Article 43(3) Asylum Act.

<sup>600</sup> Article 41 Asylum Act.

<sup>601</sup> Article 41(1) Asylum Act.

- b. Voluntarily reacquires his or her nationality after having lost it;
- c. Acquires a new nationality and enjoys the protection of the country of the newly acquired nationality;
- d. Returns voluntarily to the country he or she left or outside which he or she had remained for fear of persecution;
- e. Cannot continue to refuse to avail of the protection of the country of nationality or habitual residence, since the circumstances due to which he or she was recognised as a refugee no longer exist; or
- f. Expressly renounces the right to asylum.

Regarding **subsidiary protection**, the right ceases when the circumstances resulting in said protection no longer exist or have changed to such an extent that the protection is no longer necessary.<sup>602</sup>

The ground pertaining to a change in circumstances warranting cessation of refugee status or subsidiary protection can only be applied if the SEF concludes that the change in circumstances in the country of origin or habitual residence is sufficiently significant and durable to exclude a well-founded fear of persecution or a risk of serious harm.<sup>603</sup> Furthermore, this cessation ground is without prejudice to the principle of *non-refoulement*,<sup>604</sup> and is not applicable to refugees who are able to invoke imperative reasons related to prior persecution to refuse to avail themselves of the protection of the country of their nationality or habitual residence.<sup>605</sup>

The SEF is required to notify the beneficiary of the intended cessation for purposes of allowing the beneficiary of international protection to exercise his or her right to an adversarial hearing in writing within 8 days.<sup>606</sup> A decision on cessation is subject to a judicial appeal with suspensive effect,<sup>607</sup> and in the absence of specific provisions it should be understood that beneficiaries of international protection are entitled to apply for free legal aid at appeal stage under the same conditions as nationals as legal aid is an integral part of the social security system (see [Regular Procedure: Legal Assistance](#)).<sup>608</sup>

Finally, the cessation of international protection results in the applicability of the Aliens Act to former beneficiaries,<sup>609</sup> according to which an individual whose refugee status has ceased is entitled to a temporary residence permit without the need to present a residence visa,<sup>610</sup> even though other requirements such as a travel document, accommodation, income, etc. still apply.

CPR is not aware of a systematic review of protection status in Portugal in practice. Nonetheless, according to the statistics provided by the SEF there were 14 cessation decisions of subsidiary protection regarding Guinean nationals in 2016 but none in 2017 and 2018. In the framework of the legal assistance provided to some of those concerned in 2016, CPR identified several shortcomings in these cessation proceedings including the lack of renewal of the residence permits while the cessation process was pending and the poor quality of the assessment conducted into the change in circumstances in the country of nationality. Indeed, the assessment conducted did not take into consideration the specific / individual circumstances of each individual concerned as the same information was used for all persons meaning that it lacked an actual assessment of whether there was a significant and durable change in circumstances for each individual concerned.

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<sup>602</sup> Article 41(2) Asylum Act.

<sup>603</sup> Article 41(3) Asylum Act.

<sup>604</sup> Article 47 Asylum Act.

<sup>605</sup> Article 41(4) Asylum Act.

<sup>606</sup> Article 41(6) Asylum Act.

<sup>607</sup> Article 44 Asylum Act.

<sup>608</sup> Article 72 asylum Act.

<sup>609</sup> Article 42(2) Asylum Act.

<sup>610</sup> Article 122(1)(f) Aliens Act.

## 6. Withdrawal of protection status

### Indicators: Withdrawal

1. Is a personal interview of the beneficiary in most cases conducted in practice in the withdrawal procedure?  Yes  No
2. Does the law provide for an appeal against the withdrawal decision?  Yes  No
3. Do beneficiaries have access to free legal assistance at first instance in practice?  
 Yes       With difficulty       No

The Asylum Act establishes specific grounds for revocation of, ending or refusal to renew international protection that are assessed pursuant to the same procedural rules applicable to **Cessation**.

These include the cases where the beneficiary of international protection:<sup>611</sup>

- (a) Should have been or can be excluded from the right to asylum or subsidiary protection, pursuant to the exclusion clauses;
- (b) Has distorted or omitted facts, including through the use of false documents, that proved decisive for benefitting from the right to asylum or subsidiary protection;
- (c) Represents a danger for national security;
- (d) Having been sentenced by a final judgment for an intentional common law crime punishable with a prison term of more than three years, represents a danger for national security or for public order.

According to the statistics shared by the SEF, while there was one decision to revoke, end or refuse to renew international protection status of a Guinean national in 2017, no such decision was adopted in 2018.

## B. Family reunification

### 1. Criteria and conditions

#### Indicators: Family Reunification

1. Is there a waiting period before a beneficiary can apply for family reunification?  Yes  No  
❖ If yes, what is the waiting period?
2. Does the law set a maximum time limit for submitting a family reunification application?  Yes  No  
❖ If yes, what is the time limit?
3. Does the law set a minimum income requirement?  Yes  No

Refugees and beneficiaries of subsidiary protection have the same right to family reunification under the law.<sup>612</sup> While the right to family reunification encompasses the family members listed in the Asylum Act, its exercise is mostly governed by the provisions of the Aliens Act.<sup>613</sup>

#### 1.1. Eligible family members

A person granted international protection in Portugal can reunite with the following family members:<sup>614</sup>

<sup>611</sup> Article 41(5) Asylum Act.

<sup>612</sup> Article 68(1) Asylum Act.

<sup>613</sup> *Ibid.*

<sup>614</sup> Articles 68 and 2(1)(k) Asylum Act.

- Spouse or unmarried partner,<sup>615</sup> including same-sex partner, if the relationship is regarded as a sustainable relationship i.e. at least 2 years of living together in conditions analogous to marriage;<sup>616</sup>
- Minor children if dependent on the sponsor and/or on his or her spouse / unmarried partner and regardless of their marital status. The right to family reunification also includes minor children and adopted minor children of the sponsor or of his or her spouse / unmarried partner. Adult children who lack legal capacity (e.g. for reasons of mental health) and are dependent on the sponsor and/or on his spouse / unmarried partner are also included;
- Parents, if the sponsor is under 18 years old.

Unaccompanied minor children can apply for family reunification with their parent(s). If there are no biological parents, they can apply for family reunification with an adult responsible for the child (e.g. grandparents, legal guardians or other family members).

It is not required that family formation predates entry into Portugal.

The list of eligible family members in the case of beneficiaries of international protection is more restrictive than that enshrined in the Aliens Act for migrants. The latter, also includes: (i) dependent children over 18 years old who are unmarried and studying in Portugal; (ii) dependent first-degree ascendants in the direct line; (iii) minor siblings, as long as the resident is their guardian, according to a decision issued by the competent authority of the country of origin, recognised in Portugal.<sup>617</sup> While in the past it was common for the SEF to extend the more favourable regime to beneficiaries of international protection, information gathered by CPR shows this is no longer the case as the authorities now tend to restrict family reunification to eligible relatives included in the Asylum Act.

## 1.2. Family reunification procedure

The request for family reunification can be made immediately upon the sponsor being granted international protection and there is no time limit within which to apply for family reunification following arrival in Portugal.

The sponsor in Portugal must apply for family reunification at the SEF regional office in his or her residence area if the family member is living abroad at the time of application. If the family member is in Portugal at the time of application, the sponsor must apply for family reunification at SEF/GAR in Lisbon. Applications are *not* accepted at Portuguese embassies.

The following official documents need to be presented with the application:<sup>618</sup>

- a. Copy of the travel document of the family member;
- b. Criminal record of the family member, including country of nationality and any country of residence where the family member has lived for over 1 year;
- c. Statement of parental authorisation from the other parent if not travelling with the child, where applicable;
- d. Death certificate of other parent of the child or evidence of sole legal guardianship if original death certificate is not obtainable, where applicable.

The following official documents are required to prove family relations:

1. Spouses: marriage certificate;
2. Children: birth certificate, decision of adoption duly recognised by a national authority (if applicable); proof of legal incapacity of adult child (if applicable);
3. Other adults in charge of an unaccompanied minor: decision of guardianship duly recognised by a national authority.

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<sup>615</sup> Both the sponsor and the spouse/unmarried partner must be at least 18 years old.

<sup>616</sup> Unmarried partner unions may be attested by any means of proof provided in the law (testimony, documentary proof, affidavit, common children, etc.) In accordance with the law, when a refugee is unable to present official documents to prove his or her family relations, other means of proof will be taken into consideration.

<sup>617</sup> Article 99 Aliens Act.

<sup>618</sup> Article 103 Asylum Act; Article 67 Governmental Decree n. 84/2007 of 5 November 2007.

In accordance with the law, all official documents need to be translated and duly legalised by a Portuguese embassy prior to their submission to the SEF.

Regarding refugees, in the absence of official documents to demonstrate family relations, other types of proof should be taken into consideration. The application for family reunification cannot be denied on the sole basis of lack of documentary evidence. Other types of proof can consist of interviews of the sponsor and family members, copies of original documents, witness testimonies, or common children in the case of unmarried partnerships. Portuguese authorities do not conduct DNA testing in the framework of family reunification applications. Even though not formally required, the law does not exclude DNA testing as means of proof of family relations.

In practice, this more favourable regime is generally extended to beneficiaries of subsidiary protection, depending on the particular circumstances of their case.

Furthermore, refugees are exempted from the general obligation to present proof of accommodation and income in family reunification procedures.<sup>619</sup> This legal provision has also been applied to beneficiaries of subsidiary protection.

The application may be refused on the following grounds: misrepresentation or omission of facts; non-fulfilment of legal requirements; where the potential beneficiary family member would be excluded from refugee status or subsidiary protection; where the potential beneficiary is barred from entrance into Portugal; and/or where the potential beneficiary poses a risk to public order, public security or public health. Non-fulfilment of legal requirements may involve: lack of adequate travel documents; lack of criminal records of the potential beneficiary family member; when a parent other than the sponsor has not authorised the family reunification of his/her child with the sponsor; or non-eligibility of the family member.<sup>620</sup>

The application should be decided within 3 months, with a possible extension for an additional 3 months if the delay is duly justified by the complexity of the case. In case of extension of the deadline, the applicant should be informed of the reason.<sup>621</sup>

In the absence of a decision within 6 months, counting from the date of the application and unless the applicant bears responsibility for the delay (e.g. unanswered request for additional information and/or documents), the application is deemed automatically accepted. According to CPR's experience, family reunification applications made with CPR support in 2015 were processed in 3.5 months on average, ranging from 1 month to 11 months. While the average duration of family reunification procedures remained unchanged, there was a relevant increase in the waiting time for an appointment at the SEF for the purposes of family reunification. In the case of SEF's Lisbon regional office, in particular, that deals with a significant number of applications, waiting times rose to as much as 5-6 months in a couple of cases that were assisted by CPR.

SEF received 100 applications for family reunification with beneficiaries of international protection, of which 28 with nationals of Pakistan, 15 of Guinea, 12 of Ukraine and 78 of DRC. SEF took 35 positive decisions in 2018, of which 11 for nationals of Pakistan and 8 for Sierra Leone.

## **2. Status and rights of family members**

In accordance with the law, family members receive the same legal status as the sponsor and have the same status and rights as the sponsor.<sup>622</sup> This is generally the case in practice.

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<sup>619</sup> Article 101(2) Aliens Act.

<sup>620</sup> Article 106 Aliens Act.

<sup>621</sup> Article 105 Aliens Act.

<sup>622</sup> Article 68(2) Asylum Act.

## C. Movement and mobility

### 1. Freedom of movement

Beneficiaries of international protection are guaranteed freedom of movement throughout the national territory under the same conditions provided for foreign nationals legally residing in Portugal.<sup>623</sup> CPR is not aware of any limitations in this regard in practice, with the exception of those arising from the existing dispersal in policy implemented by the GTO that may result in limitations for reasons of access to material support (see [Reception Conditions: Freedom of Movement](#)).

### 2. Travel documents

The Portuguese authorities are bound by a duty to issue travel documents to refugees and beneficiaries of subsidiary protection.<sup>624</sup>

The refugee travel document consists of an electronic travel document,<sup>625</sup> following the Refugee Convention format,<sup>626</sup> which is valid for an initial one-year period and is renewable for identical periods.<sup>627</sup> The authorities competent for granting refugee travel documents consist of the National Director of the SEF for applications made on the national territory, and consulates for applications made abroad.<sup>628</sup>

In the case of beneficiaries of **subsidiary protection**, however, the issuance of travel documents is left to the discretion of national authorities,<sup>629</sup> at odds with Article 25(2) of the recast Qualification Directive. The Asylum Act states that “a Portuguese passport for foreigners may be issued to beneficiaries of subsidiary protection...”

As regards the Portuguese passport for foreigners, beneficiaries of subsidiary protection are required to present a valid residence permit and to demonstrate their inability to obtain a national passport, notably on the basis of relevant proof or credible statements showing a potential risk to their own safety or the refusal of their country's consular representation to issue such a passport.<sup>630</sup> The Portuguese passport for foreigners is valid for a period of up to two years,<sup>631</sup> and in 2018 it had a cost of 109.60 €.<sup>632</sup>

According to SEF, in 2018 a total of 282 travel documents were issued to beneficiaries of international protection, of which 171 consisted of renewals.

On the basis of CPR's experience, refugee travel documents issued in 2018 were still not electronic. The length of the procedure for issuing a travel document can be considered reasonable overall and does not exceed a couple of months.

In 2017, CPR recorded multiple instances of refusal of requests of a Portuguese passport for foreigners by beneficiaries of international protection from Ukraine. The SEF considered that they could contact the Ukrainian authorities for the issuance of travel documents or use passports previously issued by them and that were still valid, despite the beneficiaries' claims.

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<sup>623</sup> Article 75 Asylum Act.

<sup>624</sup> Article 69 Asylum Act; Article 19 Aliens Act.

<sup>625</sup> Ministerial Order 302/2015 of 22 September 2015 and Ministerial Order 412/2015 of 27 November 2015.

<sup>626</sup> Article 69(1) Asylum Act.

<sup>627</sup> Article 19 Aliens Act.

<sup>628</sup> Article 20 Aliens Act.

<sup>629</sup> Article 69(2) Asylum Act.

<sup>630</sup> Decree-Law 83/2000 of 11 May 2000, as amended by Decree-Law 138/2006 of 26 July 2006.

<sup>631</sup> Article 38 Decree-Law 83/2000 of 11 May 2000.

<sup>632</sup> Ministerial Order n. 1334-E/2010 of 31 December 2010, as amended by Ministerial Order n. 305-A/2012.

## D. Housing

### Indicators: Housing

- |  |     |
|--|-----|
| 1. For how long are beneficiaries entitled to stay in reception centres?       | N/A |
| 2. Number of beneficiaries staying in reception centres as of 31 December 2018 | N/A |

The law provides for the right of refugees and beneficiaries of subsidiary protection to housing under the same conditions of foreign nationals legally residing in Portugal.<sup>633</sup> Therefore this encompasses public housing.<sup>634</sup>

In practice, the financial assistance provided to asylum seekers admitted to the regular procedure in the framework of the dispersal policy managed by the GTO for renting private housing (see [Forms and Levels of Material Reception Conditions](#)) will usually be maintained beyond a final decision in the asylum procedure. This typically means that beneficiaries of international protection will generally retain the private housing they have rented throughout the regular procedure. Access of beneficiaries of international protection to public housing remains extremely limited for reasons that according to CPR's experience have traditionally been linked to legal constraints under previous rules, limited stock of available public housing, lack of prioritisation of beneficiaries of international protection in public housing policy and heavy bureaucratic requirements.

## E. Employment and education

### 1. Access to the labour market

The law provides for the right of refugees and beneficiaries of subsidiary protection to access to the labour market pursuant to general rules.<sup>635</sup>

As in the case of asylum seekers (see [Reception Conditions: Access to the Labour Market](#)) there are no limitations attached to the right of beneficiaries of international protection to employment such as labour market tests or prioritisation of nationals and third-country nationals. The issuance and renewal of residence permits by the SEF is free of charge.<sup>636</sup> The only restriction on employment enshrined in the law consists in limited access for all third-country nationals to certain categories of employment in the public sector.<sup>637</sup> Furthermore, beneficiaries of international protection benefit from the same conditions of employment of nationals, including those pertaining to salaries and working hours.<sup>638</sup> The law provides, however, for specific formalities in the case of employment contracts of third-country nationals such as the need for a written contract and its (online) registration with the Authority for Labour Conditions (*Autoridade para as Condições do Trabalho*, ACT).<sup>639</sup>

Furthermore, beneficiaries of international protection are equally entitled to access work related training opportunities for adults, vocational training and workplace practical experience opportunities under the same conditions as nationals.<sup>640</sup>

With the exception of the submission of beneficiaries of international protection to the conditions applicable to nationals of the same country,<sup>641</sup> there are no specific rules regarding the recognition of

<sup>633</sup> Article 74 Asylum Act.

<sup>634</sup> Article 5 Public Leasing Ac; Article 5 Regulation 84/2018.

<sup>635</sup> Article 71(1) Asylum Act.

<sup>636</sup> Article 67(4) Asylum Act.

<sup>637</sup> Article 15(2) Constitution; Article 17(1)(a) and (2) Act 35/2014.

<sup>638</sup> Article 71(3) Asylum Act; Article 4 Labour Code.

<sup>639</sup> Article 5 Labour Code.

<sup>640</sup> Article 71(2) Asylum Act. Even though related to the right to education, Article 70(2) Asylum Act seems to enshrine a similar right to training.

<sup>641</sup> Article 70(3) Asylum Act.

diplomas and academic qualifications in the Asylum Act and the general rules and practical challenges facing asylum seekers apply.

There are no statistics available on the number of beneficiaries of international protection in employment at the end of 2018. According to CPR's experience, despite existing support mechanisms pertaining to language training and employment assistance, asylum seekers and beneficiaries of international protection face many challenges in securing employment that are both general and specific in nature (see [Reception Conditions: Access to the Labour Market](#)).

## 2. Access to education

The Asylum Act provides for the right of children who are refugees or beneficiaries of subsidiary protection to education under the same conditions as national citizens.<sup>642</sup> The right to education under the same conditions as nationals is extended to adult beneficiaries of international protection.<sup>643</sup> The access of children who are beneficiaries of international protection to public education and equivalence procedures bares no relevant distinction to asylum seeking children and has already been described in detail. The same holds true for access of adult beneficiaries of international protection to vocational training (see [Reception Conditions: Access to Education](#)).

## F. Social welfare

According to the Asylum Act, the general rules governing the social welfare system are applicable to refugees and beneficiaries of subsidiary protection.<sup>644</sup> Refugees and beneficiaries of subsidiary protection are entitled to the same rights and access social welfare under the same conditions as nationals.

The Social Insertion Revenue (*Rendimento Social de Inserção*, RSI) is a social protection measure that aims to support individuals in serious economic need at risk of social exclusion and is the most relevant social allowance available to beneficiaries of international protection.<sup>645</sup>

In addition to the financial allowance, RSI comprises an inclusion programme, based on a contract established with the household. Access to the measure by beneficiaries of international protection is subject to the fulfilment of the general conditions proscribed by law, namely:

- If the applicant lives alone – his or her monthly income cannot exceed the amount of the allowance; if the applicant lives with family members – the combined monthly income cannot exceed the amount of the total allowance;
- The applicant must be 18 years of age or older (although there are situations in which younger persons are also eligible);
- The applicant must be registered with IEFP.

The financial allowance of the RSI is as follows:<sup>646</sup>

Rendimento Social de Inserção: 2018	
Category of applicant	Amount
Head of household	187.15 €
Other adult in household	131 €
Child	93.57 €

<sup>642</sup> Article 70(1) Asylum Act.

<sup>643</sup> *Ibid.*

<sup>644</sup> Article 72 Asylum Act.

<sup>645</sup> Act 13/2003.

<sup>646</sup> Ministerial Order 257/12; Ministerial Order 21/2018.

A legislative amendment introduced in 2017 removed the requisite of one year of regular residence in the country to access the RSI. Therefore, beneficiaries of international protection are immediately directed to this allowance upon recognition of the refugee status or conferral of subsidiary protection and the assistance described in [Reception Conditions](#) ceases.

According to the law, refugees and beneficiaries of subsidiary protection are also entitled to other social allowances such as child benefits / family allowances,<sup>647</sup> unemployment benefits,<sup>648</sup> and other benefits, under the same conditions as nationals and as long as they meet the applicable conditions.

In practice, the follow up of social welfare matters is provided by ISS and SCML,<sup>649</sup> following the assistance provided throughout the asylum procedure.

In general, refugees and beneficiaries of subsidiary protection are required to present their residence permit in order to have access to such support measures. While CPR is unaware of systemic problems in accessing support, refugees and beneficiaries of subsidiary protection often report difficulties in meeting their basic needs with the low income provided by the social welfare system.

## G. Health care

The Asylum Act enshrines the right of refugees and beneficiaries of subsidiary protection as well as their family members to health care provided by the SNS under the same conditions as nationals.<sup>650</sup> Furthermore, it provides for the right to tailored health care, including the treatment of mental conditions, for vulnerable refugees under the same conditions as national citizens.<sup>651</sup> The special needs of particularly vulnerable persons including beneficiaries of international protection must be taken into consideration in the provision of health care,<sup>652</sup> notably through rehabilitation and psychological support to children who have been subjected to various forms of violence,<sup>653</sup> and adequate treatment to survivors of torture and serious violence.<sup>654</sup> Responsibility for special treatment required by survivors of torture and serious violence lies with the ISS.<sup>655</sup>

Asylum seekers and refugees are exempt from any fees to access the National Health System.<sup>656</sup> Additionally, all minors i.e. persons under the age of 18 are also exempt from such fees.<sup>657</sup>

In practice, beneficiaries of international protection have effective access to free health care in the SNS in line with applicable legal provisions. However, as with asylum seekers (see [Reception Conditions: Health Care](#)) persisting challenges have a significant impact on the quality of the care available. According to research and information available to CPR, these include language and cultural barriers due to the reluctance of health care services to use available interpretation services such as ACM's translation hotline; restricted access to diagnosis procedures and medication paid by the SNS due to bureaucratic constraints; or very limited access to mental health care and other categories of specialised medical care (e.g. dentists) in the SNS.<sup>658</sup>

<sup>647</sup> Decree-Law 176/2003.

<sup>648</sup> Act 220/2006.

<sup>649</sup> SCML also supports refugees and beneficiaries of international protection in specific situations, e.g. vulnerable cases such as unaccompanied children that move into assisted apartments and former unaccompanied children previously accommodated at CACR; individuals and families with strong social networks in the Lisbon area.

<sup>650</sup> Article 73(1) Asylum Act.

<sup>651</sup> Article 73(2) Asylum Act.

<sup>652</sup> Article 77(1) Asylum Act.

<sup>653</sup> Article 78 (3)-(4) Asylum Act.

<sup>654</sup> Article 80 Asylum Act.

<sup>655</sup> *Ibid.*

<sup>656</sup> Article 4(1)(n) Decree-Law 113/2011 of 29 November 2011.

<sup>657</sup> Article 4(1)(b) Decree-Law 113/2011 of 29 November 2011.

<sup>658</sup> Italian Council for Refugees *et al.*, *Time for Needs: Listening, Healing, Protecting*, October 2017, available at: <http://bit.ly/2xZqCGh>.

## ANNEX I – Transposition of the CEAS in national legislation

### Directives and other CEAS measures transposed into national legislation

Directive / Regulation	Deadline for transposition	Date of transposition	Official title of corresponding act	Web Link
<b>Directive 2011/95/EU</b> Recast Qualification Directive	21 December 2013	5 May 2014	Act n. 26/2014 of 5 May 2014 amending Act n. 27/2008, transposing Directives 2011/95, 2013/32/EU and 2013/33/EU	<a href="http://bit.ly/1jd3hcG">http://bit.ly/1jd3hcG</a> (PT) <a href="http://bit.ly/2AfJ7sS">http://bit.ly/2AfJ7sS</a> (EN)
<b>Directive 2013/32/EU</b> Recast Asylum Procedures Directive	20 July 2015 Article 31(3)-(5) to be transposed by 20 July 2018	5 May 2014	Act n. 26/2014 of 5 May 2014 amending Act n. 27/2008, transposing Directives 2011/95, 2013/32/EU and 2013/33/EU	<a href="http://bit.ly/1jd3hcG">http://bit.ly/1jd3hcG</a> (PT) <a href="http://bit.ly/2AfJ7sS">http://bit.ly/2AfJ7sS</a> (EN)
<b>Directive 2013/33/EU</b> Recast Reception Conditions Directive	20 July 2015	5 May 2014	Act n. 26/2014 of 5 May 2014 amending Act n. 27/2008, transposing Directives 2011/95, 2013/32/EU and 2013/33/EU	<a href="http://bit.ly/1jd3hcG">http://bit.ly/1jd3hcG</a> (PT) <a href="http://bit.ly/2AfJ7sS">http://bit.ly/2AfJ7sS</a> (EN)
<b>Regulation (EU) No 604/2013</b> Dublin III Regulation	Directly applicable 20 July 2013	5 May 2014	Act n. 26/2014 of 5 May 2014 amending Act n. 27/2008, transposing Directives 2011/95, 2013/32/EU and 2013/33/EU	<a href="http://bit.ly/1jd3hcG">http://bit.ly/1jd3hcG</a> (PT) <a href="http://bit.ly/2AfJ7sS">http://bit.ly/2AfJ7sS</a> (EN)