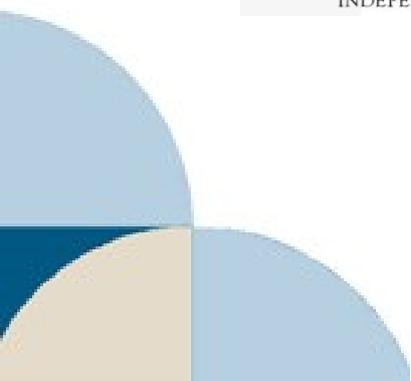




# BORDER PROCEDURES RECEPTION AND APPLICATION FOR INTERNATIONAL PROTECTION



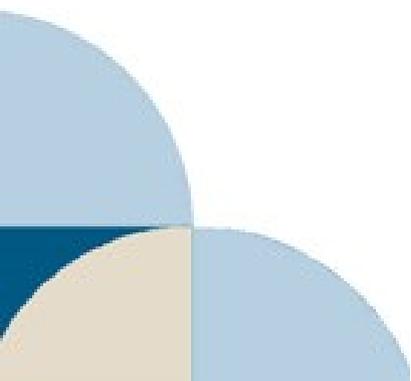


# Border Procedures Reception and Application For International Protection

Following the route of a potential asylum seeker, from entering the borders of an EU member-state, as an irregular migrant, to obtaining an official asylum seeker document.

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## Introduction

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The European Board of IOI, meeting in Barcelona on 4.4.2017, decided that a discussion paper would be drafted on refugees/asylum seekers, and a steering group would be formed by the Dutch National Ombudsman, the Greek Ombudsman and the Ombudsman of the Basque country.

The aim of this study is to open for further discussion in the IOI plenary session the main challenges faced by EU Ombudsman institutions, their respective answers and best practices on the field.

The 2nd part of the discussion paper on Integration of refugees/asylum seekers, was drafted by the Dutch National Ombudsman in 2018.

The European Board of IOI, in its meeting in Athens on 20.3.2019, decided to assign to the Greek Ombudsman, following his proposal, the drafting of the first part of the discussion paper for this study, focusing on entry and screening of potential asylum seekers in the borders.

The Greek Ombudsman proposed to undertake the 1st part of the study on admission (reception) and application of asylum seekers, due to his long-standing interventions in border procedures, given that Greece is mainly a country of entry in EU, as explained in pp. 2-3 of the discussion paper on Integration.

The hypothesis of the 1st part of the study is that, whereas the actual assessment of applications for international protection, once deposited, follows detailed EU rules and procedures (Asylum Procedures Directive 2013/32/EU, Qualifications Directive 2011/95/EU, Dublin Regulation EU 604/2013) and is closely monitored by UNHCR, on the opposite, the reception, screening and identification of asylum seekers among irregular migrants in the mixed flows entering the EU space is a field of varying practices and controversial border policies that may be jeopardizing fundamental rights, demanding Ombudsman's attention.

The study is expected to bring to the fore best practices, exercised at national level, that effectively address the challenges posed by refugee/asylum seekers' flows.

The group sample of counterpart institutions for the purpose of this part of the study, was selected among the IOI members, having a nationwide mandate over the border refugee procedures, to draw from their experience on the field, looking also into the numbers of first-time asylum applicants in EU member states according to Eurostat data, in order to form a representative sample of countries with potentially different policies and practices in border procedures, given their geographical position in EU (France, Spain, Netherlands, Poland, Slovenia and Greece).

The Greek Ombudsman sent a detailed Questionnaire to his colleagues, which was answered by the end of August 2019. A meeting in person with a colleague from the Dutch Ombudsman's office followed, and the Dutch Ombudsman expressed his will to contribute to this study with members of his staff as may needed. The draft study was finalized in April 2020 after having addressed the 6 participants in the study for further remarks as well as enquiring whether they wished to add any concerns or recommendations issued by their respective national institutions on the situation at the borders and asylum seekers facilities regarding prevention measures against the Coronavirus, given that the public health risk from the COVID-19 pandemic was-and still is- imminent and relevant measures escalated in March 2020 in all countries.

The present paper was drafted by senior investigators of the Greek Ombudsman's office, on the basis of the written answers of the Ombudsman's offices, drawing from their valuable experience on entry and screening of potential asylum seekers in the borders.

The focus of this paper is to identify common trends, best practices and potential fields of interventions for Ombudsman institutions on the matter, following the route of a third country national, from entering the borders of an EU member-state, as an irregular migrant, to obtaining an official asylum seeker document.

# Border entry and first reception

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In this chapter, a preliminary remark (1) relates to the mandate of the Ombudsman institutions. The border procedures are approached by answering the basic questions who is involved (2) and what type of facilities are designated to the newcomers in the country (3). The question of variety of border procedures (4) is followed by the content of first reception services (5). The assessment of conditions of living of asylum seekers (6) is a critical question for the potential Ombudsman intervention, as well as the question of the length of procedures (7).

## I.1 Mandate of the Ombudsman institutions

The first important finding is that the mandate of all of the six Ombudsman institutions participating in this part of the study (Greece, France, the Netherlands, Spain, Slovenia, Poland), covers border procedures.

This is due to the broad mandate of the National Ombudsman described in their statutory laws to cover all fundamental rights and all public administration activity. Their mandate covers complaint investigation and recommendations to the Administration.

**Best practice:** the FR Ombudsman formed a special unit to investigate complaints about violations of rights of foreigners in 2015.

## I.2 Who is involved?

The key players involved, state authorities or other agencies, in each stage are interesting to discern, as follows:

### In Border procedures (arrest, reception etc.)

	GR	FR	NL	ES	SLOV	POL
Army	+		+			
Police	+	+	+	+	+	
Coastguard	+		+	+		
FRONTEX	+					
Home migration officers	+		+	+		
EASO	+					
Other		Customs	Central body for the Reception of Asylum seekers (COA)	Lawyers NGOs		Head of the Office for Foreigners Border Guard

Police is always the principal factor, notwithstanding other state departments, but specialized bodies sometimes overtake (Central Body for the Reception of Asylum seekers (COA) in the Netherlands, Head of the Office for Foreigners Border Guard in Poland). EU agencies, such as FRONTEX and EASO are reported to play a role only in Greece.

**Best practice-Ombudsman recommendation:** The Greek Ombudsman, in a special report on managing mixed flows in 2017, stated that EASO's support to the Greek Asylum service, should apply the same principles as the Greek Service that retains the decisive power in decision-making.

## Identification procedures

	GR	FR	NL	ES	SLOV	POL
Police	+	+	+	+	+	+
FRONTEX	+			+		+
Home/migration officers		+ (prefecture)	+	+		+
NGOs		+				
Army			+			
Embassies			+			
Other		Office français de l'immigration et de l'intégration (OFII) agents				Border Guard

### I.3. Facilities

The type and number of facilities for newcomers and asylum seekers vary.

**I.3.1.** It must first be noted that out of the 6 countries in question, half are holding reception centres at the borders. Namely:

In Greece there is the hotspot approach, as adopted by the EU Commission in 2015, leading to the creation of 5 Reception and Identification Centres (RICs-hotspots) in 5 Aegean islands, in addition to the pre-existing Reception centre (hotspot) at the Evros land-border with Turkey. The RICs in the islands of Lesbos, Chios, Samos, Leros and Kos, were affected by the EU-Turkey Joint Statement of 18.3.2016, which remains the underlying factor in all relevant domestic legislation since 2016 to the present day.

In the Netherlands there is also Reception at the borders (they are called application centers): one near Schiphol Airport (stay max 4 weeks) for asylum seekers coming by plane. And one at the land border in Ter Apel for people coming over the land borders (just to register and to make an appointment for the asylum application). After registration in Ter Apel the asylum seekers goes to one of the reception centers and wait for their appointment with the Immigration service.

In Spain there is also Reception at the borders (hotspots):

- 3 “CATE” (Center for Temporary Assistance to Foreigners): Algeciras, Málaga, Motril.
- 2 Border crossing points: Melilla and Ceuta.
- 7 airports: Madrid, Barcelona, Valencia, Alicante, Málaga, Tenerife, Bilbao.

In Slovenia and Poland there is no Reception centre at the border. Reception is also not organized at the border in France. This seems to be a choice by policy, in which pull and push factors would be weighed. However, de facto situations are bound to arise when massive movements occur, see the Defender of Rights report on Calais camp.

The first 3 countries, Greece, Netherlands and Spain, seem to acknowledge the need to hold reception facilities at the border. However, this may be a strong policy indication that asylum seekers should not enter further in the countries' territory, as it is the case with the 5 island hotspots in Greece, following the EU-Turkey Joint Statement of 18.3.2016. It seems also to be the case in Spain, where, except from the borders, there is no Immigrant/refugee camp in the country and no other housing rental scheme in cities.

### **1.3.2. Immigrant/refugee camps in the country, except from the borders**

In Greece there are already 15 existing open camps for asylum seekers in the country, and the new Government announced that they are seeking for 5 large camps to be created, more strictly controlled. Plus, close centres will be created as special units in the pre-removal camps. The implementation of this plan is expected in 2020. Also hotels are used for temporary accommodation in the 2nd semester of 2019, due to the acute increase of inflows to the country and the plan to de-congest the overcrowded islands. The Government plan to spread temporary accommodation all over the country was met with local protests. A housing rental scheme (HESTIA) under the initiative of UNHCR was developed since 2018 in Athens, Salonica and other cities, 16 in all, offering 20,000 places.

**Best practice:** a housing rental scheme offers opportunity for gains to the local proprietors and also facilitates the integration of the asylum seekers to the local community. It needs however support measures for real integration.

The HESTIA programme, now supervised by the Ministry for Social Welfare, also offers accommodation for 6 months to asylum seekers in hostels run by NGOs. However, the problem of evacuation is imminent in order for new asylum seekers to be accommodated whereas recognized refugees tend to remain in the scheme due to the inefficient alternatives (HELIOS programme, just starting in the end of 2019 by IOM) for their accommodation.

**Best practice-Ombudsman's recommendation:** the Greek Ombudsman was successful in recommending that persons with a pending application for a temporary judicial protection order against the rejection of their asylum application, should not be automatically evicted from the HESTIA housing programme.

In France Immigrant/refugee camps are to be found especially in the North of France and big cities, like Paris. see the Defender of Rights report on Calais camp

In the cities, there are about 50,000 places available for asylum seekers in Asylum Seekers hosting centers (Centres d'accueil des demandeurs d'asile (CADA)) and in emergency shelters. There are also 10 000 places available in Reception and Orientation Centres (centres d'accueil et d'orientation (CAO)) created in 2015 to host people living in camps and orient them to apply for asylum.

In the Netherlands, the number of camps varies. This moment there are about 60 locations. Including a few camps for people who have to leave the country. They can stay there for max 12 weeks if they are willing to return and return is possible. They can leave the camp but are not allowed to leave the municipality.

**Best practice:** the camps for those willing to return where return is possible, is a sound alternative to detention.

In Spain, as aforementioned, except form the borders, there is no Immigrant/refugee camp in the country and no other housing rental scheme in cities. The only alternative accommodation is offered by NGOs, the red Cross etc. In Slovenia there is one main refugee camp—the Asylum Home in Ljubljana—and three branch facilities on separate locations. No other housing scheme.

In Poland there are 12 refugee centres. There seems to be no housing rental scheme.

Summarising the aforementioned data, various refugee camps actually operate in all countries' mainland (except in Spain, where they operate only in the borders). Some may be near the big cities. However the differentiating factor would be the countries where alternative housing is offered in hostels (France) and even flats on a rental scheme (Greece). It is an effort to achieve blurring with the community versus a ghetto-type seclusion. It could be the first step towards integration, a target however that needs more than a rental scheme.

**1.3.3.** As to Detention for irregular migrants and asylum seekers, Preremoval Detention Centres exist in all 6 countries. These fall mainly under the scope of the Return Directive (EU 2008/115/EC) for safeguarding the enforcement of forced return of aliens with no legal stay in the country, including people whose asylum application has been rejected. However administrative detention of asylum seekers is not excluded by EU Law, under Directive 2013/33/EU.

There are 8 Preremoval Detention Centres in Greece, 2 of them in the islands (Lesvos and Kos). Two additional Preremoval centres were announced by the Greek Government after the national elections of July 2019.

In France there are about 30 administrative detention centers (Centres de rétention administrative (CRA)).

In the Netherlands there is 1 pre-removal center consisting of 2 locations. One near Rotterdam airport for male migrants and one in Zeist for families, women and unaccompanied minors. See above (3.2.) the alternative of camps for those willing to return where return is possible.

In Spain there are 7 Detention Centers for Migrants (Centros de internamiento de extranjeros).

In Slovenia there is 1 Preremoval detention centre.

In Poland there are 6 Preremoval detention centres.

The varying number of administrative Detention facilities would be better assessed if data on detainees numbers were supplied.

The numbers of persons vary, in camps, in detention, awaiting for a 1st instance decision.

In Greece 26,500 are in the hotspots)-but currently removal scheme of vulnerable persons in camps in the mainland. In other camps there are 42,000 persons.

Pre-removal detention touched 4.000 people, approximately 2.500 in pre-removal centres+1500 in police cells. Awaiting for asylum status are 69,387 persons. The total number of persons is 95,000)

n France about 45,000 people are in administrative detention (CRA and LRA).

More than 120,000 asylum applications were registered in France in 2018. There is no available data on the aggregate number of asylum seekers.

In the Netherlands: Registration centers (Schiphol and Ter Apel (only registration). Only in Schiphol is a reception facility (which you cannot leave for maximum 4 weeks) during the boarder procedure. The capacity is 90 persons. On this moment there are 40 asylum seekers.

In other camps 24,654 (July 2019) (of which 5384 person with a residence permit are waiting in reception centers for housing in municipalities)

In pre-removal detention around 300 persons.

There are 19,270 persons awaiting for asylum status. The numbers in total are 24.654 and 40 in registration center Schiphol (July 2019).

In Spain, in 2018, there were 65,000 irregular arrivals in Spain. The figure has dropped by 39% in 2019 (data from august 2019). More than 100,000 people are awaiting for asylum status.

In Slovenia, a total of 430 persons is reported. Around 400 persons are residing in camps, 350 of which awaiting for asylum status. 30 are detained in Preremoval Centres

It must be noted that numbers are indicative of the management of the facilities, however exact statistics in the flows of asylum seekers and the ration to the countries' inhabitants is to be found ibn the data released periodically by Eurostat (see introductory chapter of this part of the study).

#### I.4. Border procedures

Border procedures are, surprisingly enough, not the same in all six countries questioned in the study. Arrest of all the newcomers irregularly through the borders, seems to be the case in Greece, France and Slovenia, though not in Spain, Poland and the Netherlands. In Netherlands a closed border procedure is followed only for people arriving by plane.

Criminalisation is avoided for people crossing the borders irregularly. Even in countries where criminal charges may be brought in law by the Public Prosecutor (Greece, France) they are not imposed in practice and procedures are overwhelmingly of administrative nature. Criminal charges for falsified documents are not however to be excluded.

Administrative detention is thus the rule for border procedures in Greece, France, Spain, Slovenia and the Netherlands at the airport border (Schiphol). In Poland it is ordered by the Court, which takes part in the procedures also in Spain. This Police detention (Military Police in the Dutch case) varies in length, from maximum 6 hours, ie the time required to process apprehended migrants, in Slovenia, to 3-10 days and a maximum of 4 weeks in the Dutch (Schiphol) airport or 6 months and more in the Greek border case, in which border procedure is not easily discernible from pre-removal detention. In France, the average time spent in administrative detention is 14.7 days. In Netherlands, detention of asylum seekers after a final rejection of the application lasts 44 days on average. In Spain, detention of asylum seekers takes place only if they have asked for asylum at the airport, border facilities or detention centers and lasts from 3 to 8 days (approximately). In Slovenia, de facto detention has a duration of 5–6 days on average. If formal detention is imposed, it usually takes around 1–2 months (maximum of 4 months or until the Dublin procedure is finished). In Poland, the court issues a decision on placing the applicant or the person on behalf of whom the applicant is acting, up to 60 days. In special circumstances, the period of stay may be extended, however, it may not exceed 6 months.

Pre-removal migrant detention centres in the islands are described in law as the rule to be followed in Greece. In practice geographical restriction in hotspots is still the case in Greece. Geographical restriction in Spain is to be found only in Ceuta and Melilla.

Closed migration centres is also the rule in France and in the Netherlands the closed detention centre is part of a bigger judicial

complex. In the Netherlands, geographical restriction to an area is possible but only when their asylum request is rejected (and that will take some time). In some cases, when they refuse to leave the country after a rejection and they are not willing to cooperate, they are transferred to a special detention center.

However, closed detention centres is not the case in Slovenia and in Spain where they are designated only for people who have not asked for asylum. Slovenia notes that although restriction to a migration camp is prescribed by law however almost never applied in practice as it is considered inefficient; detention in the Aliens Centre is imposed instead when the authorities want to prevent absconding.

Migrants are exceptionally put in ordinary police cells, as an alternative to closed detention centres only in Spain, for a maximum of 72 hours, in Slovenia in a special waiting area at Police stations for apprehended migrants but in Greece as a standard alternative to pre-removal centres amounting to 1/4 of administrative detention in the recent years. Restriction to a camp is the Polish case, which is also a possibility under the new law in Greece entered in force in January 2020 and closed migration camps are yet to be applied in practice later in the year.

### **I.5. What do first reception procedures include**

One might think that First Reception Procedures would invariably include the following steps: Nationality and personal identification, recording of vulnerable persons, including vulnerable for health reasons, basic information given on international protection, registering asylum applications, which consists in minimum of the first asylum interview. To implement the above, adequate shelter, alimentation, medical support, interpretation and legal aid would be required. Educational, language learning and recreational schemes might supplement first reception. The procedure as a whole could require restriction on movement, geographical restrictions etc. The above form part of the Reception Standards (Recast) Directive 2013/33/EU which lays down standards for the reception of applicants for international protection but leaves a considerable margin of discretion to the member-states as to the content of reception measures.

The reality of the borders presents considerable variations in the six countries participating in the study. Nationality and personal identification (Eurodac, SIS etc.) is the common feature par excellence of all procedures at the border in the countries participating in the

study. Vulnerability screening seems also to take place everywhere, however in some countries (Slovenia, Greece) the accuracy of the vulnerability recording raises certain doubts.

Information on the international protection is given at this stage but not necessarily by the state authorities. In the Greek case, information on international protection was provided solely by UNHCR until 31.12.2019, and the Asylum service is vested with this competence since the beginning of 2020.

The asylum interview forms part of the border procedures in Greece, France, Poland, and Slovenia. In the case of Spain, border procedure are the only ones accommodating asylum interviews. In the Netherlands only the 1st interview is part of the border procedures, leading to an asylum seeker status and after the first interview asylum seekers go to one of the reception centers of the Central Body for the Reception of Asylum seekers (COA). Except for the asylum seekers who come by plane, who stay for 28 days maximum in a detention center near Schiphol airport. After this period they go to a regular asylum seekers center and if their application is rejected they go to a special center.

Legal aid is provided in the first reception procedures, with two exceptions: Poland and Greece, the latter providing only for the 2nd instance of the asylum procedure. Interpretation is available in the asylum and identification stage in all countries- not necessarily in subsequent stages.

Obligatory medical assessments to all newcomers are the theoretical rule in 5 countries (Greece, Spain, Poland, Slovenia, Netherlands) and medical assistance on a need basis is given in France by public hospitals and NGOs, in Spain also the Red Cross seems to play a role next to state authorities. Medical assistance if needed is provided for all in the Netherlands, in Slovenia it is given to adults in urgent cases and to minors in all cases. In Greece the shortage of doctors is predominant in first reception and many medical NGOs (eg the MsF clinic in Moria) are both working and advocating for the need of proper care including sanitary living conditions. A controversial legal provision in November 2019 made it impossible for asylum seekers to access medical care except for emergencies, until February 2020, a gap that existed in practice since July 2019.

The Greek Ombudsman in public statements and his letters of recommendation to the Ministries, explaining the situation and offering

solutions to the problem in order to bridge the gap on medical care.

Alimentation is provided by the Migration civil service in Poland, Slovenia, Spain, by the Army in the Greek hotspots as a mixed system with a cash card provided by UNHCR. In Netherlands the Central Body for the Reception of Asylum seekers and (COA) provides for alimentation or else the asylum seekers receive cash.

Housing in first reception may take place in containers or caravans in Spain, Slovenia and Greece. Greece however seems to be the only country, 5 years after the so called refugee crisis, to use to some extent tents for people in overcrowded hotspot camps (Moria, Samos).

We should differentiate the situation between the reception at the borders and, humanitarian assistance in specific centers as the first phase of reception for asylum seekers. Emergency housing may include flats/houses, centers or hotel rooms (France), temporarily location in a sports complex (Spain), vacation homes, former monasteries and all kinds of converted vacant buildings (Slovenia), old industrial buildings in some camps (Greece).

In Spain, asylum seekers in the second phase of reception are placed in private housing, as the final aim is their autonomy within society. This is also the case of Greece, where flats and houses according to the ESTIA programme of UNHCR 25.424 persons on October the 1st 2019, 56% of them in Attica, 20% in Northern Greece etc (estia.unhcr.gr).

Educational schemes for children are offered in Poland, Slovenia, Spain, Netherlands and in Greece in the camps in mainland. In Greece, connecting the hotspots with the educational system was delayed due to the temporary but lengthy character of the stay in islands. In the mainland camps, schooling is provided in the area's public educational system (but governmental statements in February 2020 made uncertain the future of the schooling) and there are nurseries within the camps for infants. In some camps ie Elaionas, Koutsochero some additional courses and activities are provided.

Language learning schemes for adults exist in Slovenia and Spain, and in some mainland camps in Greece (Greek, English, Informatics courses are offered).

Recreation activities are rare, they seem to exist only in Spain, Slovenia and the Netherlands, whereas in Greece they are provided sporadically in mainland camps only for minors in some hotspots. Also in

Greek mainland camps with a predominant Muslim element, there are separate recreation rooms/activities for women.

Detention to asylum seekers is de facto or de jure on the first stage at the borders. Restriction to a migration camp or aliens centre usually follows (see previous chapter).

**Best practices:** The overall assessment of the shortcomings in first reception procedures and detailed recommendations have been issued by the Ombudsman institutions in France and in Greece. The French Ombudsman notes that the first reception procedure include all these aspects in theory but the actual implementation does not conform, as described in the Defender of Rights' report on "Exiles and fundamental rights". The Greek Ombudsman in the report "Migration flows and Refugee protection. Administrative challenges and human rights" gives a detailed commentary on all aspects of the first reception.

This assessment is brought into date in the Greek Ombudsman's legal opinions to the Parliament on the Draft law for transposing the Dir.2013/33/EU in April 2018 and on the recent legislation amending all aspects of asylum law in November 2019.

## 1.6. Conditions of living

The overall assessment of the conditions of living for asylum seekers upon first reception is far from satisfactory in Greece, France and Spain. In the other 3 countries of the study, namely the Netherlands, Slovenia and Poland, conditions are described as satisfactory. The split between EU border countries and those of subsequent reception in Europe, is the obvious explanation.

However, giving the floor to the national Ombudsmen themselves, reveals other covert factors that may affect the quality of the living conditions at first reception of asylum seekers, such as administrative efficiency in organization, the length of procedures.

In Greece, overcrowding and inefficient organization contribute to bad conditions in the island hotspots.

This is widely reported sine 2016 and up to the beginning of 2020. Lack of adequate accommodation, lack of medical personnel, unsafe conditions especially for women and minors, incomplete information, long procedures, lack of special treatment for the vulnerable, including

torture victims, amount to inhuman conditions for those in geographical restriction to the 5 hotspot islands. The Greek Ombudsman yearly assesses the steps forward and backwards and points that the EU-Turkey Joint Statement of 18.3.2016 has a negative effect on living conditions of the newcomers.

In his report on Exiles and fundamental rights, the French Defender of Rights denounced the extreme vulnerability in which exiles find themselves.

This is especially true for those living in makeshift camps and close proximity. Living conditions are particularly harsh in first reception, with difficult access to food, water and sanitation.

Exiles met by the services of the Defender of Rights in various places find themselves in a state of extreme deprivation, lacking basic shelter, their primary concern being providing for their own vital needs: drinking, feeding themselves, washing themselves”.

The Defender of Rights is especially concerned with the situation of minor migrants in France, who are affected in an even harder way by this generalization of breaches of fundamental rights. “These young men are left to their own devices because of the largely unsuitable and undersized mechanisms provided to support them, would it be regarding their sheltering, their evaluation or their lasting care”.

It is noteworthy the decision of an Administrative Court in Germany who suspended the return of an Iranian asylum seeker and her 10-year-old child to France under the Dublin Regulation. The court ruled that there was sufficient proof that two might be subjected to severe hardship, and spoke of a potential for a “violation of human rights” in this particular instance

In Spain, the conditions are described as bad. There are insufficient facilities for all the asylum seekers. Some complaints show that there are families sleeping on the streets or in precarious conditions. Also the procedures are too long and there is lack of appropriate documentation. The Ombudsman has made several recommendations and suggestions in order to improve these situations and to ensure that the rights of the asylum seekers are respected.

In the Netherlands the conditions are rather satisfactory. The Netherlands has a long history of receiving asylum seeker. Existing problems refer to the fact that people often have to move from one

accommodation to another several times. In the event of a sudden increase in the number of asylum seekers, improvisation may sometimes lead to lower standards of accommodation. Another issue is that sometimes people don't feel safe (The reasons can be for instance religious differences, sexual orientation or bad experiences from the past). And the common phenomenon occurs in the Netherlands too, of unaccompanied minor asylum seekers disappearing from reception centers. But in general the conditions of living are satisfactory if the stay is not prolonged.

In Slovenia, the conditions are considered satisfactory. However, quality may decline in times of higher occupancy. The facilities are not appropriate for a longer stay, especially for families and other vulnerable groups (problematic since the length of asylum procedures often extends well over the prescribed maximum of 6 months).

In Poland, the conditions are considered satisfactory, as analysed below:

According to Helsinki Foundation for Human Rights report, living conditions differ across the reception centres. In the centres managed by private contractors ensuring certain minimum living conditions standards is obligatory on the basis of agreements between these contractors and the Office for Foreigners. Thus, centres have to have furnished rooms for asylum applicants, a separate common room for men and for women, kindergarden, space to practice religion, a recreation area, school rooms, specified number of refrigerators and washing machines. Other conditions are dependent on the willingness and financial situation of the contractor.

The Supreme Audit Office (during an audit which took place in years 2012-2014) assessed living conditions in 10 controlled centers as good. However, generally, asylum seekers assess the conditions in the centers rather low. In the research conducted in the center in Grupa foreigners predominantly complained on the food served in the center. They assessed the center's cleanliness, appearance and furnishings mostly as 'average' or 'bad'. No more recent monitoring has been conducted.

None of the centers was built in order to serve as a center for foreigners. Most of them were used for different purposes before, as army barracks, hostels for workers or holiday resorts. The standard in those centers is diverse, but generally rather low. Most often one family stays in one room, without separated bedrooms or kitchen. Moreover,

usually the centers do not offer separated bathrooms and kitchens, only the common ones. The Office for Foreigners reports that in the reception center in Dębak there is a renovated building of high standard in use since 2016, fully adjusted to the needs of persons with disabilities. In Biata Podlaska the rooms, corridors and preschool area have been renovated as well.

## **I.7. Length of procedures**

Specifying the length of procedures, in law and, more importantly, in practice:

### **Border identification**

In Greece, 3 days by law, in Spain some days, in the Netherlands 3 to ten days (in general) at the land border center (ter Apel). Airport border procedure takes maximum 28 days.

However, in 2 countries the border identification lasts considerably less: 1 day in Spain and 6 hours in Slovenia.

### **First reception and stay in a camp**

In Greece the stay is 25 days at RICs. Geographical restriction results in stay in the hotspots for many months, even beyond a year until 2nd degree asylum decision. In the camps in the mainland they stay for 1-2 years. But now the resettlement scheme to other M/S has ended. Also the new law to enter into force on 1/1/2019 stipulates accelerated procedures.

In the Netherlands there is no specified information, it depends on the influx.

In Spain, 72 h is the maximum in first reception temporary centers. After that period of time, the people are moved to ordinary reception centers, where they receive humanitarian assistance for three months.

In Slovenia it is noted that most applicants abscond within 1 month from arrival.

It seems that Greece is where people go through the most lengthy procedures in reception border centres.

### **Detention of asylum seekers**

In Greece, up to 2019 detention is 45 days after the application +another 45 days for detainees, however there is also a waiting period for submitting the application (1-3 months waiting to lodge). The law has been changed on 1.11.2019 and from 1.1.2020 detention will be up to 18 months, irrespective of other period of detention as irregular migrant/pre-return.

In France, the average time spent in administrative detention: 14.7 days.

In the Netherlands, Detention takes place after a final rejection of the application. Average: 44 days.

In Spain, detention of asylum seekers takes place only if they have asked for asylum at the airport, border facilities or detention centers: from 3 to 8 days (approx.).

In Slovenia there is a de facto detention in the duration of 5–6 days on average. If formal detention is imposed, it usually takes around 1–2 months (maximum of 4 months or until the Dublin procedure is applied). In Poland, the court issues a decision on placing the applicant or the person on behalf of whom the applicant is acting, in detention up to 60 days. In special circumstances, the period of stay may be extended, however, it may not exceed 6 months.

It is noteworthy that Greece has the longest periods of detention for asylum seekers.

Also, Poland is the only example that issues a Court's order for detention.

### **Until obtaining an asylum seeker's official status**

3 months to 3 years in Greece, on the opposite example of France where the waiting period is only 3 days (10 days in exceptional circumstances, when a large number of foreigners apply for asylum at the same time).

This is the official length of procedures (3 days, 10 days maximum). However the Defender of Rights stressed in its report on exiles and fundamental rights that the overload of reception schemes and lack of information makes it more difficult to access asylum procedures and considerably increase the time needed to obtain asylum seeker's status. In the meantime, exiles are constrained to live in hiding,

enduring particularly unworthy living conditions (access to material and social assistance depend on the holding of an asylum seeker's status). The official length of 3 days (10 days maximum) is therefore only theoretical, and the actual length of the procedure is difficult to measure (we estimate it can take several months).

In the Netherlands, First instance decisions: vary from 3 weeks till 46 weeks.

In Spain, the ordinary procedure should take no more than six months, but, in practice, final resolutions are normally issued after two or more years (depending on the case). There are around 100.000 pending resolutions from previous years. The Ombudsman Institution has found delays to be occurring during the period throughout which this study was being prepared and has detected specific problems in applications lodged by citizens of certain specific nationalities. The delays in concluding the case file proceedings also contribute toward discouraging applications for asylum being lodged and affect the access to certain social rights.

In Slovenia, procedure lasts from 1 month to 2 years or longer (including appeals and repeated procedures at first instance).

**Best practice-ombudsman recommendation:** The long duration of asylum procedures has been investigated by the Ombudsman of Slovenia as a systemic problem.

In Poland, the length of procedure according to the law is 6 months, but in reality - average length of procedures according to report by the Supreme Chamber of Control – it is as much as 14 months.

In general, the length of the procedures exceeds the prescribed time by law. It depends not only on the procedures but also on the area (eg. in Spain on the Autonomous Community where the applicant is) and also on the influx of asylum seekers. Greece and Spain seem to be the most overburdened systems, however policy considerations in discouraging applications in all countries cannot be excluded.

## Vulnerability Screening

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Vulnerable applicants are usually defined in all national legislations, following the definitions of Directives 2013/32/EU and 2013/33/EU, to include minors, persons with disabilities, elderly persons, pregnant women, single-parent families with dependent minors, persons who have suffered torture, rape or other severe forms of psychological, physical or sexual violence, victims of human trafficking.

Additional definitions are rare. Recently, Greek legislation (November 2019) abolished the post-traumatic syndrome as a ground of vulnerability, arguing abuse of the system.

The Greek Ombudsman issued a recommendation (October 2019) on the amendment of the domestic legislation on international protection asking for the specific protection of adult disabled members of the family, having regard also to its mandate under the UN Convention for the Rights of the Disabled.

Age assessment procedures are often commented by Ombudsman institutions but this is not the subject of this part of the IOI study. Human trafficking in Spain and Greece has very low rates, which leads to doubts as to the procedures at the borders being efficient in detecting the victims.

The question of specifying adequate care mentioned in the EU law is not unambiguous in practice. In the Spanish reception system, efforts are made to place asylum seekers in the reception place which best fits their profile and needs depending on their age, sex, household, nationality, existence of family networks, maintenance, etc. A case by case assessment is made between OAR and the NGO in charge of the reception centers and, after assessing the availability of reception spaces and the individual characteristics of the applicant, the person is placed in the place that responds to his or her needs. In Spain also, based on vulnerability factors referred to under the Asylum Act, most vulnerable profiles are allowed to longer reception compared to the normal 18-month period.

Medical and psychological support is the case for vulnerable persons. There is a contrast in the standards offered, however, between the Netherlands where, if necessary, special accommodation is offered (like a room on the ground floor) or change of centre closer to a hospital or to a centre where a person feels safer), and Greece, where

adequate treatment is not available in practice and unsafety is a general problem in overcrowded island hotspots.

The actual support provided to vulnerable individuals arriving in France does not always comply with the legal standards. According to NGOs, more than 2000 migrants are living in the streets in Paris, and housing for asylum seekers is completely overloaded. As explained in the previous chapter, living conditions in camps in Paris, in the North or France, or in other areas are particularly harsh for migrants, living in close proximity, with difficult access to basic needs: water, food, sanitation, medical assistance and education.

**Best Ombudsman practice:** The Greek Ombudsman recommended reversing the burden of proof to the authorities on the existence of adequate care for seriously ill persons so that if they could not be properly treated on the islands, the geographical restriction should be lifted in order to receive proper medical care.

**Best Ombudsman practice:** The Spanish Ombudsman found that the situation of vulnerability which may concur in applicants who are inmates in detention centres or detainees at border posts does not entitle them to any special intervention or action, as a result of which they are treated the same as persons who do not pertain to vulnerable groups, and their application is processed by means of accelerated procedures. Such a way of proceeding must be revised. This type of applications require an in-depth evaluation, and neither a border post nor a detention centre are a suitable place affording the possibility of correctly identifying whether a person is in need of international protection.

Specialised reception places are not in all countries available to asylum applicants such as victims of trafficking, victims of torture, unaccompanied asylum-seeking children or persons with mental disorders, although some NGOs offer specialised services.

However, in Slovenia, individuals who are identified as vulnerable can receive additional health services, if approved by a special multidisciplinary committee. They can also be accommodated in special facilities such as medical facilities or nursing homes if appropriate accommodation for them cannot be provided in the Asylum Home. Families and unaccompanied minors are accommodated in separate branch facilities of the Asylum Home or in separate sections of the Asylum Home.

In Poland, special requirements apply in the asylum interview: upon request of the applicant, activities in the proceeding must be conducted by the same-sex person or with the participation of a psychologist, doctor or translator – male or female, depending on the needs of applicant.

## Procedure prior to asylum interview

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Article 8 of the recast Asylum Procedures Directive refers to the information and counseling in detention facilities and at border crossing points, without obliging though the member states to do so. It indicates that “where there are indications that third country nationals or stateless persons held in detention facilities or present at border crossing points, including transit zones, at external borders, may wish to make an application for international protection, Member States shall provide them with information on the possibility to do so”.

The provision of information is not applied in a uniform manner throughout the member states. In Netherlands the article 8 is promptly implemented while in Spain the Ombudsman has repeatedly reiterated the need of the third-country nationals who gain access to Spanish territory, regardless of how they may have entered, being provided with adequate information concerning the possibility of applying for international protection. The obligation of furnishing this information must be considered as being a guarantee that a person who find himself or herself in this situation will know that they are entitled to do so. For example, the interviews which are regularly conducted with third-country nationals during the visits to the Migrant Detention Facilities on the part of this Institution’s technical team reveal that many are unaware of the possibility of applying for asylum.

This is also the case for France as the Defender of rights has pointed out the lack of information as one of the main impediments to access the asylum procedure. After a recommendation made in 2015, the number of representative spreading information across camps have increased, but still fluctuates following the number of appointments available at the Prefecture for the registration of the asylum application, and the number of rooms available in housing centers.

In Greece, according to the law, the Asylum Service in cooperation with the authorities operating in these places and/or civil society organizations ensure the provision of information on the possibility to submit an application for international protection but the applicant is not fully informed before being referred to the competent asylum authorities.

In Slovenia, posters and leaflets used to be available at most entry points, however they are currently outdated and may not be available at all locations (especially not in all required languages).

The respective countries are trying to inform all the applicants for the temporary changes and arrangements to procedures for access to the asylum due to the impact of COVID-19. For this purpose they use public announcements, leaflets, messages through social media, public websites of the competent authorities, NGOs etc.

Regarding the national level, most of the countries have a national legislation that requires authorities to provide proactive information prior or after to the making of a claim. This is the case for Netherlands, Poland, France Greece, Slovenia and Spain.

In Slovenia the law does not require the Police or other authorities to proactively inform migrants on the right to asylum, prior to them expressing intent for asylum while in Greece there is no prior information but the competent authorities shall inform applicants in writing, within a reasonable time not exceeding 15 days after they have lodged their application for international protection, of at least any established benefits and of the obligations with which they must comply relating to reception conditions.

The applicants are provided with information on organisations or groups of persons that provide specific legal assistance and organisations that might be able to help or inform them concerning the available reception conditions, including health care, in a language that the applicant understands or is reasonably supposed to understand, otherwise this information may also be supplied orally, using interpretation.

In Spain the Asylum Regulation, which gives practical application to the Asylum Act, makes specific reference to the provision of information to asylum seekers on their rights. It provides that the Spanish administration, in collaboration with UNHCR and other NGOs who work with refugees, will elaborate leaflets for the provision of relevant information to asylum seekers in several languages. In addition, the Asylum Regulation specifies that information on the asylum procedure and on applicants' right will be given orally by the authority in charge of the registration procedure, and in particular on their right to free legal assistance and interpretation service.

In France, the Guide for asylum seekers is provided in 22 available languages. The Asylum Seekers Platform (PADA), where Asylum Seekers get their appointment at the Prefecture to register their asylum applications, also provides information on the procedure.

The applicants are informed about their rights and obligations in many languages through leaflets, brochures, information boards, videos or posters.

In Greece, the Asylum Service provides a detailed guide for International Protection Applicants in 19 languages (English, French, Amharic, Arabic, Swahili, Ukrainian, Turkish, Russian, Sorani, Moldovan, French, Georgian, Farsi, Chinese, Dari, Bengali, Urdu, Tigrinya, Spanish, Albanian) and also audiovisual information on the procedure (10 videos in 8 languages). In Slovenia, every person expressing an intent for asylum is informed about their rights and obligations. This is carried out through a meeting—information session in the duration of 30–60 minutes—carried out by an NGO (same organisation also providing legal assistance and representation) prior to the first interview. In the past persons expressing intent for asylum also received information through a brochure, however this is not the case as of 2019, since it contains outdated information and is not available in all currently relevant languages. The asylum authority is now in the process of procuring new brochures, as well as video material which will be used instead of the written brochure for informing of illiterate persons and minors.

In Netherlands, there are brochures in many languages (about 13), the Refugee Council gives information in person and has produced a relevant video in different languages, while Legal Aid advises and gives also information in person. In Spain, the Ministry of Interior has published a leaflet, available online, and handed to all applicants on the moment they express the will to ask for international protection, so that they can contact any organization that provides support and assistance. The information is available in English, French, Spanish and Arabic. Besides institutional information channels, other organizations design and disseminate information leaflets and brochures regarding the asylum procedure and related rights.

The information may be provided in several languages, depending on the entity promoting the material. In France, all means of providing information exist (leaflets, brochures, etc.) and are provided by the OFII in different available languages. NGOs also take part in providing information to applicants but they are not allowed to enter waiting and transit zones, where information is therefore harder to access.

In Poland, the applicant shall be informed in writing and in a language which he/she understands of the rules and procedure for granting international protection and of his/her rights and obligations resulting

from the lodging of the application, as well as of social and medical assistance and free legal aid.

Concerning the issue of introduction of an asylum application in some countries there is a single procedure, while in others there are discrete stages. For example in the Netherlands and Poland there is a single procedure but in Slovenia when an asylum seeker expresses an intent to submit an asylum application to a public authority, the police carries out the registration procedure and then transports the person to the Asylum Home in Ljubljana. In the Asylum Home the application is formally lodged through the first asylum interview administered by the asylum authority.

On the other hand in Greece, due the large number of persons who wish to submit an application someone may not be able to actually submit his/her application in person to the Asylum Service. Therefore, there is the obligation to book an appointment for the submission of application (full registration) via Skype. At the borders however, and in detention centres, the will to submit an application is first registered by the Police authorities.

In France, applicants can apply for asylum on the Asylum Seekers Platform (Plateforme d'Accueil des Demandeurs d'Asiles (PADA)). They get an appointment at the prefecture in the following 3 days and at the Prefecture, they register their application at a "one stop service" (Guichet Unique d'accueil des demandeurs d'asile (GUDA)). The application is then sent to the Office française des réfugiés et des apatrides (OFPRA) who will examine it and take a decision on the asylum claim. If an applicant is rejected, he can appeal the decision at the National Court of Asylum Right (Cour Nationale du Droit d'Asile (CNDA)).

In Spain, the Asylum Act provides that the authorities responsible for the lodging of asylum claims are: the Office of Asylum and Refuge (OAR), any Foreigners' Office, Detention Centre for Foreigners (CIE) or police station. In practice, "registration" and "lodging" of asylum applications entail different procedural steps. The process begins with the presentation ("making") of the application, which the applicant shall present in person or, if this is not possible, with representation by another person. For persons disembarking in ports, the intention to apply for international protection is registered by the police, usually following the intervention of NGOs. Upon the registration of the intention to apply for asylum, the applicant receives a paper-form "certificate of intention to apply for asylum" (Manifestación de

voluntad de presentar solicitud de protección internacional). After registration has been completed, the applicant is given an appointment for the formalisation (“lodging”) of the application, which consists of an interview and the completion of a form, and shall be always be realised in the presence of a police official or an officer of the OAR. Upon the lodging of the application, the person receives a “receipt of application for international protection” (Resguardo de solicitud de protección internacional), also known as “white card” (tarjeta blanca). This document is later replaced by a “red card” (tarjeta roja), issued after the asylum application has been deemed admissible by the OAR.

The competent authority for receiving (lodging) and examining the application for asylum is the same in Greece (the Asylum Service), in Slovenia and in the Netherlands (the Immigration Service/ different departments). On the contrary, in the other countries there are different authorities. In Spain, all asylum decisions are examined by the Office of Asylum and Refuge (OAR) of the Ministry of Interior. The examination of an application by the OAR culminates in a draft decision which is submitted to the Inter-Ministerial Asylum and Refugee Commission (CIAR), which will decide to grant or to refuse international protection. The resolution passed within said Commission must be signed by the Minister of the Interior, although it is standard practice for it to be signed by the Under-Secretary of the Interior by delegation of signature authority. In France, while the GUDA and the prefecture are responsible for the asylum application, the examination of the application is done by the OFPRA. In Poland, an applicant for granting international protection must report first to the competent authority of the Border Guard and then the application is examined by the Head of the Office for Foreigners.

Regarding the Dublin Procedure, in almost all countries (Greece, Poland, Slovenia, Spain, the Netherlands) the same authority which handles the application for asylum (determining authority) is responsible also for examining the Dublin requests, after an asylum application has been lodged. France, however, follows a different practice since the Prefecture is competent for applying the Dublin procedure at the first stage of the asylum procedure (GUDA) which is different from the determining authority (OFPRA).

After arriving on the national territory there is a time limit for making an application for asylum in Greece, Spain and France. For example in Greece the Law provides the time limits of 3 working days respectively for the basic registration of the application. This may be extended to 15

working days in cases where a large number of applications are submitted simultaneously and render registration particularly difficult. However, if someone applies for asylum after this limit, his/her application will be examined. In Spain, persons willing to seek international protection must make a formal application during their first month of stay and when this time limit is not respected, the law foresees the possibility to apply the urgent procedure, although in practice applications are usually accepted by the ordinary procedure. In France, an asylum application must be made within the first 90 days after arrival on French territory. However, if someone applies for asylum after this limit, his/her application will be examined by the OFPRA, but it will be placed under the accelerated procedure. On the other hand, in Poland there is no time limit for making an application while in the Netherlands, although there is also no time limit, when you wait very long you will have to explain why you did not ask for asylum without delay. In Slovenia, not applying immediately after arrival is one of the legal criteria that may lead to the asylum application being rejected as manifestly unfounded.

However, with regard to the question if all the applicants arrive to lodge a claim after expressing their will to do so, in Greece the increasing numbers of asylum seekers have led to delays in registration either at the pre-registration of application via skype or registration in person before the competent administrative authorities. However a new law, following a government decree, has prohibited all asylum seekers arriving in Greece between 1 and 31 March 2020 from applying for asylum. According to this law, expired on the 31st of March, none of the new asylum applications was registered and all the asylum seekers who entered the country during this month were supposed to be returned as soon as possible.

The problem of the big number of applications arises also in France where there is a general backlog in the system and is difficult to get an appointment at the Prefecture for the registration of an asylum application. The same occurs in Spain where some people decide not to file claims in the end for different reasons.

One of the alleged causes is the huge delay in processing asylum applications along with the low recognition rates for asylum seekers in this country. In Slovenia, while this is not specifically set out in law, the applicants do arrive to lodge a claim but in practice they do not travel by themselves and they are instead transported by the Police to the Asylum Home in Ljubljana to lodge their claim.

According to the recent EU Guidance concerning procedures affected by measures against COVID-19, even if there are delays, third-country nationals who apply for international protection must have their application registered by the authorities and be able to lodge them. They must be treated with dignity, and be, at a minimum, able to access, and exercise their basic rights. The Commission even suggested to lodge applications for international protection via postal mail or preferably online. In accordance with Article 6(4) of the Asylum Procedures Directive, the application will be deemed lodged once the form has reached the competent authorities.

The average waiting period between first registration and the appointment to lodge a claim varies among the countries. In Greece, no time limit is set by law for lodging an asylum application. The average time between the applicant's expression of intention to apply for asylum and the interview in 2018 was 8.5 months, due to the average 42-day delay between pre-registration and Registration of the application, and the average delay of 212 days between registration and personal interview. In Slovenia, persons wishing to lodge their claim have to wait in the Asylum Home in conditions of de facto detention for (on average) 5–6 days. In the Netherlands, the average waiting period is a few days after registration but because of serious staff shortage at the Immigration Service it can now take months or even a year before you can lodge a claim after the first registration. In Spain, the waiting period depends on the Autonomous Community where the asylum seeker is living. It can vary from one week to almost one year while in France the official period is from 3 to 10 days but the actual wait can last several months.

The competent authorities for registration have local offices in different parts of the country and not only a single registration location. In Greece the competent authorities to register application are the Regional Asylum Offices and the asylum units. The Regional Asylum Offices operate in 12 regions all over Greece (Athens, Lesvos, Thrace, Rhodes, Thessaloniki, Samos, Western Greece, Leros, Chios, Crete, Piraeus, Alimos) and there are 11 additional asylum units. If the applicant is in detention or remains in a First Reception Center he/she is transferred to the nearest Regional Asylum Office or he/she will be fully registered by an Asylum Unit that operates in the facility where you he/she is detained or confined. In Slovenia, initial registration procedure is carried out at any Police Station. The lodging of the asylum claim and second interview are carried out at the Asylum Home. An optional third interview is carried out at the Ministry of the Interior main office in another part of Ljubljana. In the Netherlands, at

this moment, the competent authorities are situated in 2 places (Ter Apel and Schiphol) while in Spain there are different offices in different parts and in France there is local one stop services (GUDA) all around the country. In Poland, the Head of the Office for Foreigners is the receiving authority. Applications may be submitted to any border guard post. The issues related to the issuance of residence permits, work permits and registration of invitations for foreigners are handled by the foreigners' affairs departments and the civil and foreigners' affairs departments in voivodeship offices.

Some of the countries use a special platform for making an appointment. This is the case for Greece for example when the applicant is not able to actually submit the application- due to the large number of persons who wishes to do so he/she might book an appointment for the submission of the application (full registration) via Skype. The Asylum Service publishes the registration schedule according to which appointments for lodging international protection applications will be booked. Also in France, the appointment at the prefectures must be done on the PADA which is a platform run by NGOs. In other countries, like Poland, there isn't such an option. In Slovenia, the applicants can communicate with the authorities directly or with the help of their legal representatives (NGO), in the Netherlands only when you want to ask asylum for the second time you first have to contact the Immigration service (by phone) while in Spain it is necessary to go to a police office. However, other appointments must be made online (official website of the Ministry in charge).

**Best practice-Ombudsman recommendation:** The Greek Ombudsman has constantly highlighted that accessing the asylum procedure through Skype is a “restrictive system” which “appears to be in contrast with the principle of universal, continuous and unhindered access to the asylum procedure”. According to the Ombudsman, the Skype system has become part of the problem, rather than a technical solution.

There are no obstacles/barriers, like quotas, regarding the registration in the countries. All applicants have the opportunity to register a claim after entering the territory. In Spain, due to the increase in asylum applications in recent years, leading to a slowing down of responses by the Spanish asylum system, applicants wait long periods of time before getting an appointment to be interviewed by the OAR (the average waiting time for an appointment varies from one week to 6 months, even though delays vary depending on the province). Waiting times can range from 1 month to 1 year. In France, the 2018 report observes

persistent impediments to entry into the asylum procedure: there is a general backlog in getting an appointment at the Prefecture. People can access the PADA, but they can wait for several months before getting an appointment to register their application at the Prefecture. In the Netherlands it may be one year waiting time for the interview.

**Best practice-Ombudsman recommendation:** The Spanish Ombudsman highlighted the difficulties detainees have to apply for asylum at CIE (detention centers), namely in Madrid where individuals were instructed to put their written intention to apply for asylum in a mailbox and to wait until the mailbox has been opened for the asylum procedure to start, and the fact that many persons have been expelled without having had access to the asylum procedure. In July 2018, the General Commissariat for Foreigners and Borders of the Minister of Interior accepted the recommendation made by the Spanish Ombudsman, thus it issued instructions to all CIE to adapt their systems for registration of asylum applications to the existing law.

In all countries the applicant has a direct access to the competent authority. Only in France PADA works as a mediator between the applicant and the competent authority and in Spain NGOs, related to the asylum system, can also “mediate”, but there is no official mediator as in other countries.

The personnel working at the competent authorities receive the necessary training for providing information about international protection in most of the countries. In Greece, each case-handler must be sufficiently qualified to take into account the personal or general circumstances regarding the application, including the applicant's cultural origin. In particular, case- handler shall be trained especially concerning the special needs of women, children and victims of violence and torture. For this purpose the Central Asylum Service ensures that the personnel have knowledge of the national and international legislation and case law on international protection and organizes training seminars independently, as well as in cooperation with the UNHCR and the European Asylum Support Office (EASO).

In Slovenia, training on different topics is provided sporadically while in the Netherlands they run also training programs, provided by the Immigration Naturalization Service of the Ministry of Justice and the Ombudsman. In Spain, generally speaking, they received training. Nevertheless, there are claims for improving the training, as it has proven to be insufficient. In France, the personnel in charge of registering asylum's application and choosing the procedure applying

to one's situation, fail to promptly fulfil this mission as the Defender of Rights is noticing. This can be explained by the fact that agents lack training (especially when it comes to applying the Dublin procedure) and they are overloaded with work.

The police are one of the competent authorities that register the applications for international protection at the borders/first reception centres in many countries. In Slovenia, the police carry out the initial registration. This is also the case if a person expresses intent for asylum in the pre-removal detention centre (Aliens Centre in Postojna). In the Netherlands, the registration is made by the police or Royal Military Police (at Schiphol) and in France by the police or/and prefecture. In Spain the Asylum Act provides that the authorities responsible for the lodging of asylum claims are the Office of Asylum and Refuge (OAR), any Foreigners' Office, Detention Centre for Foreigners (CIE) or police station.

In Poland, the registration is handled by the Head of The Office for Foreigners while in Greece the Asylum Service receives, examines and adjudicates at first instance on applications for international protection and additionally the Regional Asylum Offices operating in the Reception and Identification Centres or the Asylum Units that operate in the facility where asylum seekers are detained or confined, also receive the applications after these having been transmitted by the Police, within the limits of their local jurisdiction.

The national legislation provides prioritized examination and fast-track processing in all countries. In Greece, according to the new legislation most of the applications for international protection are examined under the accelerated procedure rather than the regular one and for that reason new Fast Track Asylum Units are established. Among the applications 12 categories are examined under the accelerated procedure, 8 categories are examined by priority and 2 categories are examined as an absolute priority. The accelerated border procedure is applied for the implementation of the EU- Turkey Statement and refers to the applications submitted in transit zones of ports or airports in the country. In this case the decision must be taken within 28 days. The competent receiving authorities may register and examine by priority applications for international protection which concern for example individuals belonging to vulnerable groups or are in need of special procedural guarantees. The determining authority shall examine an application under the accelerated procedure when the applicant for example comes from a safe country of origin, the application is manifestly unfounded, the applicant misled the authorities by

presenting false information etc. There is also a fast track border procedure for the applicants subject to the EU-Turkey statement (Eastern Aegean islands). In this case, the asylum procedure may be conducted by staff of the Hellenic Police or the Armed Forces and/or the Asylum Service may be assisted, in the conduct of interviews with applicants for international protection as well as any other procedure, by staff and interpreters deployed by the European Asylum Support Office (EASO).

In Slovenia, the law provides an accelerated procedure for manifestly unfounded claims, however in practice this procedure is not much different from a regular procedure. The law also states that procedures of vulnerable and detained persons are to be prioritised, however this is often not respected. The fast-track procedure and/or the prioritized examination is also applicable in the Netherlands, where the applications coming from the list of safe countries (for example from Senegal, Morocco, Albania or Algeria) are examined according to the fast procedures (1 interview instead of 2, shorter preparation, no appeal).

The article 25 of the Asylum Act in Spain lays down the urgent procedure, a prioritised procedure whereby the application will be examined under the same procedural guarantees as the regular procedure, but within a time limit of 3 months instead of 6 months. The urgent procedure is applicable in the following circumstances: a)The application is manifestly well-founded; b)The application was made by a person with special needs, especially unaccompanied minors; c)The applicant raises only issues which have no connection with the examination of the requirements for recognition of refugee status or subsidiary protection; d)The applicant comes from a safe country of origin and has the nationality of that country or, in case of statelessness has residence in the country; e)The applicant applies after a period of one month, without justification; or f)The applicant falls within any of the exclusion grounds under the Asylum Act.

The urgent procedure is also applied to applicants who have been admitted to the in-merit procedure after lodging a claim at the border or within the CIE. In France, when registering an asylum application at the one stop service (GUDA), a Prefecture official conducts an interview with the applicant in order to determine the procedure that applied to one's asylum application. The application can be placed under the normal procedure, or under the accelerated procedure (the OFPRA will then examine the application within 15 days).

In Poland the procedure will be accelerated (a decision will be issued within 30 days of the submission of the application) if the applicant: provided other grounds for lodging an appeal than fear of being persecuted for reasons of race, religion, nationality, political opinion or membership of a particular social group or the risk of suffering serious harm or failed to provide any information on circumstances related to the fear of persecution or the risk of suffering serious harm, misled the authority examining the application by keeping information or documents secret or by presenting false information or documents of significance for granting the refugee status or subsidiary protection concerning his or her identity or nationality, presented inconsistent, contrary, improbable or insufficient explanations to confirm the fact of being persecuted or being at risk of suffering serious harm, which are contrary to verified country of origin information, lodged an application in order to delay or disturb the enforcement of the return decision, poses a threat to the state security or public order or has been expelled from the territory of the Republic of Poland in the past.

During the process the presence of a lawyer, a cultural mediator or interpreter is provided. In Greece the applicants may communicate with the United Nations High Commissioner for Refugees or any other organization providing legal, medical and psychological assistance. In Slovenia according to law interpreters are obligatory during Police procedures. In case of unaccompanied minors, a representative of a local Social Work Centre also needs to be present. In practice both of these rules are sometimes violated. A lawyer and an interpreter—as well as a legal guardian in case of an unaccompanied minor—are always present during lodging of the application and other interviews in front of the asylum authority. In the Netherlands the presence of a lawyer, interpreter and the Refugee Council is guaranteed. In Spain legal assistance is mandatory when using the border procedure and it is optional in the regular procedure. In any case, free legal assistance can be accessed by all asylum seekers. In France there is officially a lawyer, a cultural mediator and interpreters in the process. However the Defender of Rights do not control whether this is correctly implemented. In Poland, it is possible for representatives of non-governmental organisations to appear during the process.

Regarding the presence of an interpreter of a language understood by the applicant during the procedures the law in Greece envisages that an interpreter of a language understood by the applicant is present at the interview. The interview shall be conducted with the assistance of an interpreter capable to ensure the necessary communication, in order for the applicant to confirm the facts stated in the application.

Ombudsman's visits to Police Stations in Slovenia show that during police procedures with migrants an appropriate interpreter is not always present. Later, during procedures in the Asylum Home, this is usually guaranteed (unless an interpreter for a rare language is not available). In the Netherlands the presence of an interpreter during the procedures is ensured, provided by the special interpreters organisation for free.

In Spain, the Asylum Act provides the right of all asylum seekers to have an interpreter. This is respected in practice. However, there are many complaints regarding the interpreters, mainly regarding the border procedures. In France the applicant will be provided with an interpreter in the language of his choice for the different interviews he/she will have to do. In Poland Border Guard officers conduct a short interview with the applicant (they ask about the reasons for leaving the country of origin, the distance travelled), check his/her identity and take his/her fingerprints. The collected information is forwarded to the Head of the Office for Foreigners in the form of a completed form. The interview should take place in a language understood by the foreigner and the Border Guard is obliged to provide him/her with the assistance of an interpreter. Many countries, during the current pandemic period, have postponed the personal interviews, while others are trying to use other methods such as videoconferences with the applicants and interpreters in order not to suspend totally the interviews.

The issue of a free legal assistance is addressed differently across the countries. In Greece there is not a free legal assistance provided by the country. Throughout the procedure the applicant has the right to ask for the support of a lawyer or other counselor of his/her choice (without mediation by the Asylum Service) but the fee and expenses of the lawyer or other counselor will be completely at his/her own cost. According to law, free legal assistance is provided to applicants only in appeal procedures before the Appeals' Authority. In Slovenia also free legal assistance is not provided in Police procedures. While this is not set out in law, in practice free legal assistance is provided to all asylum applicants throughout the first instance procedure in front of the asylum authority. This is carried out by an NGO through a project, co-financed by the Asylum, Migration and Integration Fund of the EU Commission and the Slovenian Government. In appeals procedures, which take place in front of the Administrative Court of the Republic of Slovenia, the law provides for free legal representation for asylum applicants by specialized lawyers. In the Netherlands there is a free legal assistance before the interview, provided by the Bar Association. In Spain free legal assistance is provided by law to both detained

persons and asylum seekers in general. In France NGOs assist applicants with free legal advice. However, they are not permitted in waiting and transit zones. In Poland there is a possibility to benefit from free legal aid in appeal proceedings. The organizations/persons providing advice and counseling/human rights experts have effective access to detention facilities in Greece, Slovenia, the Netherlands, Spain, France and Poland. In Greece IOM and UNHCR have access and sometimes duty stations in the detention facilities. The Greek Ombudsman conducts monitoring visits and random checks with or without prior notification of the relevant authorities, as the national monitoring mechanism for the return of third country nationals and as responsible for executing the competence of the National Preventive Mechanism under OPCAT.

NGOs may have also access to the detention facilities, after being issued with the necessary permit from the competent authority. In Slovenia anyone can meet with detainees in the detention facility (Aliens Centre in Postojna) during daily visiting hours. Furthermore, legal representatives are allowed to meet their clients at any other time outside of these hours. All meetings with detainees take place in a visiting room and visitors normally do not have access to other parts of the facility, unless agreed in advance and approved by the Aliens Center. Pursuant to law the Ombudsman has the power to access and investigate any part of the detention facility without prior announcement. In Spain several obstacles faced by lawyers and interpreters to access the CIE have been reported. This is mainly due to shortcomings regarding social and legal assistance and difficulties in external communications.

The main reported criticisms on legal assistance and access to international protection for third-country nationals who have been issued a removal order (and wait for the procedure within detention) concern the lack of information on the asylum procedure at the time the person enters the centre, and the short timeframe of the urgent procedure applied to asylum claims made in detention, as they require a fast reaction to official notifications, which is hard to realize when the applicant is detained. In the Netherlands IOM and UNCHR can have access to the detention facilities, while the Ombudsman visits the place after having received relevant complaints. In France NGOs have access to administrative detention centers (centres de détention administrative (CRA)) but not to waiting and transit zones. During the pandemic many of the countries have suspended the access to the facilities for members of NGOs or other actors in order to prevent the spread of COVID-19.

## Summarising the problems and issuing recommendations

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Summarising the problems upon reception of asylum seekers in the border procedure, the 6 Ombudsman institutions participating in the study, identified the main issues in the respective countries and highlighted their interventions and recommendations as follows:

In the Greek case, the lack of a coherent EU and Greek policy is part of the problem. Geographical restrictions after the EU-Joint Statement of 18-3-2016 do not take into consideration the length of asylum procedures in both degrees and they create a bottleneck and inhumane conditions in the overcrowded hotspots. The lack of standardized procedures in first reception and a contingency plan for all services to be provided to newcomers to the 5 hotspot islands is obvious, 5 years after the refugee influx of summer 2015. People living in tents in Moria and Samos, first reception without proper medical assistance and detention without interpreters, fall short of basic human rights requirements. The Covid-19 pandemic raised even greater concerns about the unhygienic conditions in overcrowded facilities, such as the border hotspots and the detention centres, as well as the refugee camps in the mainland that do not allow social distancing.

In March 2020, an exceptional legislative decree was adopted, following a massive flow of migrants/asylum seekers driven to the north-eastern land frontiers at the end of February. The legislative decree, later voted by Parliament, invoking the urgent need to protect national sovereignty from a disproportionate threat, provided for the suspension, as of 01.03.2020 and for one month, of submitting asylum applications of those who cross illegally the borders in this period, and for their return to their country of origin or previous destination.

The Greek Ombudsman issued, among others, the following:

- A Special report in 2017 on “Migration flows and Refugee protection. Administrative challenges and human rights” addressing the management of the newcomers as a whole and pointing out shortcomings in registration and statistics, vulnerability screening, access to asylum, housing, catering, health services, detention and returns, treatment of unaccompanied minors, coordination and legal framework, and concluding in findings of insouciance about human rights and the lack of a coherent strategic plan. Many of the findings

and recommendations of this report still apply.

- A detailed legal opinion in 2018 on the draft law incorporating the Recast Reception Directive, focusing on geographical restrictions, detention, the protection of minors etc.

- A Recommendation for a new Relocation procedure in EU as a permanent measure, taking into consideration the shortcomings of the temporary measure of 2015-2017, analysed in a Special Report presented in the meeting of IOI Regional European Board in Athens in March 2019, namely the lack of procedural safeguards, lack of pace between offer and demand, the too high threshold of (75%) the EU recognition rate, the quota that should also be on the basis of GDP, the de facto non-eligibility of incomers after the EU-Turkey Joint statement of 18-3-2016. Any new policy should take into account that mixed flow in EU borders is a permanent and not exceptional phenomenon and be designed accordingly.

- A recommendation in August 2019 to prolong reception benefits such as housing in case an asylum seeker has submitted an application of judicial protection against the rejection of his/her asylum claim.

- A public letter of recommendation to the newly elected Government in September 2019 to bridge the gap of access of asylum seekers and minors in public health structures, analyzing the legal basis in EU law on the right to work and to health and offering concrete practical solutions.

- A detailed legal opinion on the amendment of legislation on international protection in October 2019, on closed detention camps, procedural requirements for applying for international protection, protection of minors, disabled and other vulnerable persons, effective remedies etc.

- A letter to the Government in March 2020 expressing its concerns about the legislative decree, providing for the suspension as of 01.03.2020 of submitting asylum applications of those who enter illegally the country until 01.04.2020 and for their return to their country of origin or previous destination. The Greek Ombudsman's concerns, on the face of applicable international and EU law consisted in preserving in any case the principle of non-refoulement, deducing from the recent ECtHR ruling in the case of Spain (ND and NT v.Spain,13.2.2020) that access to asylum must be safeguarded at least as the possibility to apply in competent services outside the borders. The Ombudsman noted that, following the right of access to international protection established also by EU primary legislation (TFEU art.78, Charter of Fundamental Rights art.18,19) the relevant EU Directive 2013/32/EU (art.6) allowed only the suspension of deadlines to register asylum applications. In April 2020 the Government considered that the

prescribed period of suspension had expired and announced that pre-registration of the will to apply for international protection would take place by those residing in two camps in the mainland after having entered the country illegally in March. The Ombudsman insisted in the right of access to asylum and non-refoulement also by Turkish and other nationals, detained in detention centres, after crossing the borders in March. The developments remain to be seen, after the Asylum Service resumes its works that have been suspended, as a precaution measure to Coronavirus, until mid-May.

## The COVID-19 challenge

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The Greek Ombudsman issued a recommendation to the Government on 27.3.2020 concerning the most vulnerable groups requiring extra precaution measures against the COVID-19 pandemic. Concerning the immigrant population, the Ombudsman recommended:

- Addressing overcrowding as the paramount risk in all detention centres, by replacing detention with alternative measures to the extent that this is possible.
- Avoiding all detention facilities that do not attain the necessary requirements of the Return Directive for pre-removal centres. Massive confinement in a ship, such as the measure of last resort used for newcomers in Lesbos in the second week of March, are not to be allowed in times of pandemic.
- Precaution hygienic measures and appropriate distancing in transfers from the islands to the mainland, both for the immigrants and the police escorts.
- Extending the precaution measures, provided by a recent by-law for the hotspots, to all refugee camp facilities in the mainland. The actual implementation of the precaution measures prescribed or in the by-law is crucial for fighting the spread of COVID-19.
- Equal medical care against COVID-19 to immigrants and enhanced medical units to areas in a proximity with hotspots and refugee camps.

In France, the Ombudsman (Defender of Rights), in an extensive report on “Exiles and Fundamental Rights” pointed out several problems, including: Numerous breaches of fundamental rights of exiles not yet registered as asylum seekers, with a lot of them living in slums: lack of basic shelter, access to food, water and sanitation.

The way the police treats exiles in these camps: police presence has been strengthened during the evacuation of these camps (with use of unnecessary tear gas in some cases) and identity checks are being deviated from their original purpose and used to deter access of exiles to places of assistance.

Persistent impediments to access the asylum procedure: due to overload of reception schemes and lack of information. For example, the branch of Calais’ sub-prefecture dedicated to welcoming asylum seekers has been closed. As a consequence, migrants have to go to Arras to file their request, which makes the procedures nearly

impossible.

The Defender of Rights is particularly concerned about the situation of children, whether they are unaccompanied or with their family. The Greek Ombudsman issued, among others, the following:

The French Ombudsman issued, among others, the following:

- On the Dublin procedure: The Defender of Rights recommends to abandon the procedure that is vain, inequitable (concentrating a large number of asylum applications in countries at the European borders) and ineffective (for linguistic, cultural or social reasons, people might want to apply for asylum in a different country than the first one they crossed. This can dissuade them to apply for asylum since they know they will be rejected when they crossed another border first. People are left living in irregular situations, and in extremely harsh living conditions, especially in camps).

- On the growing penalization of acts of solidarity : the Defender of Rights recommends to enlarge penal immunity to all acts made following a humanitarian objective and to solely sanction acts accomplished knowingly and on a for profit basis.

- The COVID-19 challenge: In view of the exceptional health context linked to the COVID-19 epidemic in France, the Defender of Rights considers that the placement of illegal foreigners in the administrative detention centers (CRA), as well as their detention or holding in waiting areas, is likely - particularly in view of the overcrowded and unhygienic conditions - to create a danger to the lives of these persons and the staff present in these places of deprivation of liberty. He also notes that, when there are no longer any prospects of short-term deportation because of the restrictions on entry into their territory imposed by many States in order to stem the epidemic, these deprivations of liberty lose their legal basis.

For this reason, in two letters dated 18 and 20 March 2020, the Defender of Rights asked the French Minister of the Interior to immediately close detention centres and waiting areas and to release all foreigners held there, pending improvement of the health situation. He also presented observations before the judge in charge of summary proceedings of the Conseil d'Etat (Highest administrative court) to whom several associations had submitted a request concerning the legality of maintaining French CRAs in operation in the current context of the pandemic (decision No. 2020-082 of 25 March 2020).

In an order of 27 March 2020, the judge in charge of summary

proceedings at the Conseil d'Etat ruled that the current health situation did not constitute a serious and manifestly unlawful infringement of the freedom of movement such that it would require the temporary closure of all the CRAs by a general measure. In his order, the judge based his ruling on the small number of persons still detained in the CRAs, but also on the lack of proven deficiency in access to health care for detained foreigners or in the provision of hygiene products to enable compliance with the general instructions given in the context of the fight against the COVID-19 epidemic. Lastly, the judge relied on the fact that the administrative authority was still managing to carry out deportations despite the restrictions on entry to their territory issued by many States.

Although the decision does not contain any reservations that might provide a framework for the administration's action to better protect the health of detained foreigners - including minors - or of the personnel called upon to intervene in the centres during a pandemic, prefects are not exempt from ensuring the legality of each detention measure taken individually, bearing in mind the drastic restriction on the prospects for enforcing removal measures as a result of the pandemic. As the Courts have recently pointed out on numerous occasions in view of the current context, the prefect must therefore lift the detention measure when there is no longer any reasonable prospect of short-term removal. The Defender of Rights therefore continues to intervene before the prefects when they receive individual complaints in this regard.

**Best Ombudsman practice:** Giving the floor to the asylum seeker sent to another country following the Dublin procedure.

The French Defender of Rights intervened in several claims of asylum seekers about to be transferred to another country following the Dublin procedure. On these occasions, the Defender acted as a mediator with the prefecture in order to reach a friendly resolution and enable the claimants to apply for asylum in France.

This was the case for example of a Sudanese asylum seeker who was going to be transferred back to Italy, the competent country following Dublin procedure. The Defender of Rights acted as a mediator with the prefecture, and requested the prefect to re-examine the case, considering Italy's asylum policy and its cooperation with Sudanese authorities, which could put the asylum seeker at risk if he was to be sent back to Italy. Following these exchanges, a friendly resolution was reached: the prefecture agreed to let the asylum seeker apply for

asylum in France. This case was part of a joint claim to the Defender of Rights made by 11 asylum seekers from Sudan and Libya, all of whom were then re-examined by the prefect and enable to apply for asylum in France.

In Spain the Ombudsman has reiterated the need of availing of expeditious ways of entry for family members of the beneficiaries of international protection who are already in Spain. The enforcement of the laws and regulations on the subject of visas on the part of Spain's diplomatic missions abroad regarding refugees is not suitable, as is also the case of the requirement of furnishing certain documentation for family extension or reunification case file procedures to which it is not possible to gain access in situations of armed conflict.

Also, the number of complaints received by the Spanish Ombudsman concerning the access to the asylum procedure has increased considerably during 2018. Most of these complaints refer to the arbitrariness of police decisions. Actual access in detention centres for migrants is also a source of complaints. Access to information on the right of international protection is often reduced to a mere leaflet to detainees.

**Best Ombudsman practice:** looking into actual access to asylum. Since the end of May 2018, people in need of international protection in Madrid were required to appear before the police station of Aluche to register their asylum application. The police station only accepted 99 people per day. Due to this quota, up to 200 people, including pregnant women, children and persons with medical conditions, unsuccessfully waited outside the station and slept rough for several days in hope of getting an appointment. After obtaining access to the police station and receiving a "Certificate of intention to apply for asylum", asylum seekers were given an appointment to lodge it with the police, for dates as late as December 2020, claiming that the system has collapsed. No appropriate receipt was given to any of the asylum seekers. This fact, along with the delays during the procedure, causes them defencelessness. For this reason, the Spanish Ombudsman initiated ex officio action and made a reminder of legal duties to the General Department on Alien Affairs and Borders.

However, for the time being, it has been rejected:

- Interpretation services have been the subject of repeated complaints due to the lack of interpreters of specific languages, poor interpretation or even untrustworthy interpreters. This undermines

effective refugee response and constitutes a major issue as well as interpreters of a gender which does not cause the applicant to feel threatened or uncomfortable.

- The long processing times for asylum claims remain a key concern for the Spanish Ombudsman. The profile of the interviewer differs depending on the location where the application is lodged. Interviews are mostly carried out by police officers without sufficient and specialized training in asylum.
- A considerable number of complaints have been received concerning the difficulties in accessing the Reception System, as well as the conditions of the centers. In 2018, many vulnerable individuals and families have been found sleeping on the streets or in substandard housing, while they were waiting to formalize their application. In some cases, the Secretary for Migration has provided them with housing after the Spanish Ombudsman's intervention.

The Spanish Ombudsman recommended, among other issues:

- In 2016, the Spanish Ombudsman recommended the Minister of the Interior to amend Law 12/2009 of October 30th for the purpose of introducing the possibility of lodging applications for international protection at the diplomatic missions abroad. In the event that the foregoing were not to be possible, to urgently implement a humanitarian visa allowing a potential applicant to enter the national territory to request asylum within the country. The recommendation has not been followed.
- In 2018, the Ombudsman as National Mechanism for the Prevention of Torture and other Cruel, Inhuman or Degrading Treatment visited a variety of centres situated in the Andalusian coast. Some of the conclusions have already been published (<https://www.defensordelpueblo.es/noticias/dia-personas-migrantes>).
- Among the conclusions was the recommendation to avoid legal collective assistance to third country nationals that have just gained access to Spanish territory. Legal assistance should, instead, be individualized, adapted and effective.
- The reception services do not last during all the procedure, mainly taking into account that procedures suffer from remarkable delays. Housing, food, clothing and financial support is granted only during a limited number of months. Exceptionally, this kind of help can be extended, but it is not the general rule. This has led to a recommendation of the Spanish Ombudsman to the Office of the Secretary for Migration to adopt the necessary measures in the reception system for granting the protection to the applicants throughout the full length of the time it takes for their applications to be

processed, in compliance of the reception directive.

- The regulations implementing the Spanish Asylum Law (Ley 12/2009) should be approved as soon as possible, in order to give full effect to the provisions of the Law.
- The Spanish Ombudsman has repeatedly highlighted the unsustainable situation in which the Office of Asylum and Refuge (OAR) has been operating. Although additional personnel is being incorporated into the Asylum and Refugee Office Staff in order to reduce the severe delays in the asylum-seeking process, this measure is insufficient bearing in mind the amount of asylum applications that are ongoing. The Office of Asylum and Refuge (OAR) should have a higher position on the organizational structure of the Ministry of Interior. In addition, one essential element is more coordination between the Ministry of Interior and the Ministry of Labour, Migrations & Social Security.

The Spanish Ombudsman has recommended the renewal of the data processing system of the Asylum and Refugee Office in order to improve the management and publication of the statistics on international protection. It would be necessary to differentiate the data by gender or by persons belonging to vulnerable groups and to include the average length of time involved in order for a decision to be issued concerning the case files.

The Spanish Ombudsman has stressed the need to clarify the compatibility of the asylum procedures with those governed under the Aliens Law, particularly those procedures related to minors and trafficking in human beings.

In the Netherlands, the Ombudsman assessed that in general there is good access to international protection. What is not good is the difference in handling an asylum request between people entering the Netherlands by plane or over the land borders. If you arrive by plane you are in a worse position because you are in detention during the first period of your asylum request. Another recent problem is the long waiting period between registration and the actual starting of the official asylum procedure. It can take months or even 1-2 years. The Immigration Service is putting a lot of money and effort (they have welcomed many new staff) in trying to reduce the waiting period within 2020. Another issue identified by the Ombudsman is that the Immigration Service gives priority to applications from so-called safe countries like Morocco and Albania. This is a political choice and understandable but means that other people have to wait longer. And a worrying development is the government's plan to make free

legal assistance only available at a later stage in the asylum procedure (only after the intention of the Immigration service to reject the asylum application).

The Dutch Ombudsman proceeded to the following:

In 2001, a report about the living conditions in so called registration centers (in that period there were 4 registration centers), containing more than 20 recommendations about privacy, food, excess to luggage, treatment by security officers etc. These recommendations have been taken over. A few years ago another report was issued about a new huge temporary refugee camp that was needed because of sudden large influx. This was also about the living conditions. Soon after the report was presented the camp was closed as planned.

A letter of concern was sent to the Government in March 2020 stating the long waiting period before getting the opportunity to start the asylum procedure and the poor living conditions in shelters during this period.

In February 2020 the Dutch Ombudsman published a report on the detention regime at the Rotterdam detention centre, where migrants are held before their deportation, stressing that detention in view of deportation is not a punishment but an administrative measure. The National Ombudsman recommended to the Minister of Justice and Security to proceed as quickly as possible to make a number of changes at the Rotterdam detention centre. These changes will help to give immigration detention the non-punitive character it ought to have:

- Provide meaningful daytime activities for detainees.
- Tailor accommodation to the administrative nature of immigration detention and give detainees the option of an individual cell;
- Exercise the greatest restraint concerning the use of solitary confinement;
- Stop using solitary confinement as a way of punishing detainees who refuse to share a cell;
- Ensure standard medical supervision whenever detainees are held in solitary confinement.

A letter of concern was sent to the Government in March 2020 stating the long waiting period before getting the opportunity to start the asylum procedure and the poor living conditions in shelters during this

period.

The Covid-19 challenge: The Dutch Ombudsman expressed also its concerns about the precaution measures or Covid-19 amongst those immigrants who live close together and share common facilities. Being already concerned about the unprecedentedly long waiting times before an asylum application could be submitted, the Ombudsman expects more delays, due to the suspension of works of the asylum service, affecting, among other things, family reunification, but also the chance of successful integration.

In Slovenia the Ombudsman identified 3 main problems:

- In early 2017, Slovenia adopted amendments to the Aliens Act which allow for a future restriction on the right to asylum. According to the amendments the National Assembly (Parliament) can vote on suspending access to asylum procedure in case migration poses “a threat to public order and internal safety in the Republic of Slovenia”.
- Around June 2018 concerns were raised that Slovenian Police had started to illegally return to Croatia individuals who expressed an intention for asylum. This was suspected due to a sudden change in numbers of asylum requests and Police returns and also corroborated with several individual testimonies.
- Asylum seekers are subject to de facto detention prior to lodging of their asylum claim.

The Slovenian Ombudsman proceeded to the following:

- The aforementioned amendments of the Aliens Act are currently under review by the Constitutional Court of the Republic of Slovenia upon the request of the Ombudsman.
- In response to allegations of push-backs, the Ombudsman (in its capacity as the National Preventive Mechanism) carried out several unannounced visits to border Police Stations. The findings of the Ombudsman's investigation were presented to the public through an interim report in August 2018 and a final report in February 2019.

**Best Ombudsman practice:** While the alleged violations of rights from push-backs had not been conclusively proven, the Slovenian Ombudsman made several recommendations to the authorities on how to better implement and document border procedures, as follows: a) that the police should implement appropriate training regarding identification of asylum seekers within mixed migrant flows and adopt guidelines, instructions and recommendations about how such

identification is executed in procedures and also suitably documented.

b) In order to observe international, European and national law, the National Preventive Mechanism (NPM) expressed the expectation that the police will at least inform all aliens stating that they flee persecution in their home country (and further clarify these statements if necessary) about the possibility of applying for international protection in Slovenia, the consequences of filing an application for international protection or the consequences of the omission of such conduct (e.g. return to Croatia). The NPM expressed the expectation that police officers would record the aforementioned in police documentation, as well as the alien's reply to the possibility of applying for international protection.

c) Information leaflets and posters with the rights of detained persons should be installed particularly in rooms where procedures take place and where aliens are accommodated so that they can actually access them; otherwise their purpose is meaningless. Such information must be translated accordingly and accessible in the languages of aliens being processed by police officers. When informing about rights, the Ombudsman noticed the lack of information on the right of an alien to apply for international protection. The Ombudsman thus suggested to the Ministry of the Interior and the Police to adopt measures to provide systematic informing of aliens about this right.

d) The NPM also noted that informing of the next of kin outside the Republic of Slovenia must be conducted according to the law, i.e. through the ministry responsible for foreign affairs. The right to notify the next of kin abroad must be strictly separated from the right of the diplomatic and consular representation of the country the citizen of which is the detained alien to be informed about the alien's detention (after all, this is stipulated in the Vienna Convention on Consular Relations).

e) The NPM also recommended the adoption of measures for more consistent documenting of all circumstances in police procedures involving aliens (including their statements on reasons for leaving their home countries), which would later allow an insight into the correctness and legality of the decision made. Police officers should namely conduct and record the procedures in such a way as to leave no doubt about whether an alien processed by a police officer wanted to file an application for international protection.

f) The NPM asked the Police to provide new, appropriate and terminologically correct translation of all information for aliens in police procedures and eliminate doubt about the actual protection of the

rights of these persons in procedures of restricting liberty. The Slovenian Ombudsman carried out unannounced visits to the Asylum Home in 2018 and concluded that persons awaiting asylum procedure are indeed deprived of their liberty. They are placed in rooms, that are locked and under video surveillance, while any potential exit is monitored by security guards. The Ombudsman raised the issue with relevant authorities and called attention to the fact that any deprivation of liberty has to be grounded in law.

In Poland since at least 2015, the Office of the Commissioner for Human Rights has been regularly receiving complaints from persons to whom the Commander of the Border Guard unit in Terespol has refused entry to Poland regardless of the declarations of intent they made during the border control. At that border crossing, between Poland and Belarus, foreigners coming mainly from Chechnya and Tajikistan, who have no documents that give them the right to cross the border, try to enter Poland. Those foreigners declare to inform Border Guard officers that they intend to file applications for international protection.

Every person who declares his/her intention to seek such protection should be allowed to enter the territory of Poland, and officers of the relevant Border Guard unit should accept his/her application for the protection. However, the complaining persons, mostly families with children, arrive every day by train from the Belarusian city of Brest, undergo a border control and, according to them, they inform Border Guard officers about their intention to seek international protection in Poland. According to the complainants, the Border Guard officers, however, do not accept such information and do not make it possible for those persons to file applications for such protection.

The Polish Ombudsman proceeded to the following: Concluding that only direct participation of the Ombudsman's representatives, as observers, in the border check activities there, would make it possible to assess the situation at the border crossing, Office employees carried out inspection visits on 11 August 2016 and on 15 May 2018. The inspection visits carried out at the Terespol railway border crossing confirmed the need to establish legal guarantees of foreigners' effective access to procedures concerning the examination of their applications for international protection. Neither the applicable law, nor the Border Guard practice do provide such guarantees.

In the Ombudsman's opinion, the current method of documenting the questioning process is insufficient, which results in low effectiveness of foreigners' appeals against decisions refusing entry to Poland, which

decisions are issued by the Border Guard unit Commander. A foreigner who files such an appeal has no evidence of what specific information he/she actually provided to the officer during the border control. A letter of recommendations was sent accordingly to the Ministry of the Interior and Administration.

## Concluding remarks

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The aforementioned procedures upon reception of asylum seekers at the borders of the 6 member-states participating in this part of the study, as perceived by the respective Ombudsman national institutions, seem to present a variety of actors and measures involved. Their broad similarities are also interesting in this transitional period in Europe, currently in search of a Common Asylum system beyond Dublin III.

Starting from the actors involved:

Police, or a special branch thereof, is the key player at the borders, combined with the Home/Migration office. Specialized bodies exist only in the Netherlands and Poland. FRONTEX seems to play an active role only in the southern overburdened EU borders, namely the Greek borders.

Administrative detention is thus the rule for border procedures in Greece, France, Spain, Slovenia and the Netherlands at the airport border (Schiphol). Only in Poland detention relies only to the Courts. De-criminalisation of the illegal entry is thus a fact, but closer consideration reveals the trend to hold the newcomers in closed, controlled facilities. The length of the initial detention, for identifying the person and his/her claim varies depending on the influx in the country, but in all countries is counted in days, in contrast with the subsequent detention that may last for a couple of months or more (the longest period of detention applying in Greece).

Border procedures found in most case to contain the following: nationality and personal identification, recording of vulnerable persons, including vulnerable for health reasons, basic information given on international protection, registering asylum applications, which consists in minimum of the first asylum interview. However the adequacy of the shelter, alimentation, medical support, interpretation and legal aid was not confirmed in all cases, as analysed above. Furthermore, educational, language learning and recreational schemes were the exception.

The fact that conditions of living, found not satisfactory in Greece, Spain and France, is confirming the obvious split between border countries and those of subsequent reception in EU, gives ground for the Ombudsman institutions' advocacy for humane conditions throughout Europe. The first point could be solidarity and burden

sharing between member states, a subject already addressed by the IOI/Greek Ombudsman's study on Relocation. Burden sharing is at present very high in the EU Commission's agenda for restructuring a common asylum system. However, it has also to be noted that in the current status quo of overburdened frontier countries in Europe, the Ombudsman is also the institution capable par excellence to investigate on relevant administrative factors, such as administrative structure and cooperation, organizational standards, the length of procedures etc. that may have a negative effect on the actual conditions of living of asylum seekers in the respective country.

It has to be noted that there is a general finding of lengthy procedures until obtaining an asylum seeker's status, attributable more to practice than in law. The split between border countries in EU and countries of subsequent settlement is also apparent in this case.

Vulnerability screening is not considered efficient when it comes to difficult cases such as victims of trafficking. The vagueness of the EU relevant directives on adequate care and special reception needs results in practice in inadequate standards of care, especially in EU border countries.

Regarding the procedure prior to the asylum interview, the provision of actual information concerning the possibility of applying for international protection is not applied in a uniform manner throughout the member states in detention facilities and at border crossing points, despite the availability of leaflets, brochures or other information for the rights and obligations of the applicants in many languages.

The registration of an asylum application in 2 of the countries (the Netherlands and Poland), is a one step procedure, while in the others there are discrete stages of pre-registration and submission. The Police is in general responsible for pre-registration. Some of the countries use a special platform for making an appointment. The competent authorities for registration have local offices in different parts of the country and not only a single registration location. The competent authority for receiving (lodging) and examining the application for asylum is the same in Greece (the Asylum Service), in Slovenia and in the Netherlands (the Immigration Service/ different departments).

The determining authority is responsible also for examining the Dublin requests, with 1 exception (France). Strict time limits for making an application for asylum do not seem to apply, but delayed applications have indirect effects, procedural or substantial. The average waiting

period between first registration and the appointment to lodge a claim varies among the countries. There are no obstacles/barriers, like quotas, regarding the registration in the countries but applicants may have to wait for long periods of time before getting an appointment to be interviewed (Spain, Greece). The national legislation provides prioritized examination and fast –track processing in all countries. During the process the presence of a lawyer, a cultural mediator or interpreter is provided. Free legal assistance is not a uniform rule. Access to the applicant detainees is a rule for the Ombudsman institutions but it is not always the same approach for NGOs.

Last, but by no means least, the Covid-19 pandemic presented an imminent risk also for the immigrant population, among other vulnerable groups, especially those immigrants in massive housing, in hostels, camps or detention centres. The French, Greek and Dutch national Ombudsmen already informed IOI through this study for their first reactions in order for timely precaution measures to be adopted by their respective Governments, as stated further in section IV above. The Ombudsmen, by submitting observations to the Conseil d'Etat (France), issuing recommendations (Greece) and expressing their concerns (Netherlands), called for enhanced hygienic measures, proper accommodation of the most vulnerable among the migrants, and de-congestion of detention centres and/or overcrowded camp facilities. All these measures align with the recommendations issued between 20-25.3.2020 by all relevant international organisations (UNHCR, UN-SPT, UN-OHCHR, Council of Europe) as well as the EU Commission's subsequent reaction of 14.4.2020, in a guidance to the member-states asking, among others, for quarantine measures to be reasonable, proportionate and non-discriminatory.

Although reduction of the detainee population is at the core of all the aforementioned recommendations, it has to be noted that the Commission advises against the automatic assumption that there is no reasonable prospect of removal, the reasonable prospect being the legal basis for pre-removal detention according to art.15.4 of the Return Directive. At present, in many countries (Greece, Spain, France) detainees appeal to the Courts trying to lift detention orders by claiming that there is no visible prospect for returns due to the Covid-19 pandemic.

## Best Ombudsman practices and other recommendations

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The Ombudsman institutions might consider the following:

- To create a special unit within the Ombudsman institution to deal with the rights of migrants and asylum seekers, especially in countries with a heavy influx or xenophobic phenomena.
- To identify the need for all actors involved at the borders, national or EU agencies, state or private/NGO actors, to apply common, clear and transparent criteria, for the reception and identification of asylum seekers.
- To request full documentation of the questioning process by Police at the borders as to the will to ask for international protection, when refusing entry.
- Humanitarian visas for entering the country and easy access to diplomatic missions abroad, especially after the ECtHR recent decision on “illegal entry” in Spain.
- To raise awareness of the situation of and required adequate care for vulnerable groups among the newcomers, minors, single-parent families, persons with disabilities etc.
- To emphasize that detention is an exceptional measure for asylum seekers under EU law, not to be used as a general deterrent. To advocate against detention of minors under the excuse of protective custody.
- To conduct visits to detention centres for monitoring the conditions of living.
- To ensure that asylum seekers are not held in camps or detention centres in unhygienic conditions and that proper preventive measures for COVID-19 and adequate medical care is provided to them. To that end, also the number of detainees should be reduced accordingly; detention should be replaced by alternative measures. The most vulnerable groups should receive particular care avoiding overcrowded camps.

- To recommend prompt and adequate information as to the right of international protection, detailed recording of police interviews, accurate translation of information, proper training and guidelines to the police operating at the borders, in order to avoid alleged phenomena of push-backs.
- To recommend that the right of access to international protection and non-refoulement should be safeguarded in any case and exceptional circumstances resulting in suspending registering relevant applications should be timely reassessed.
- To recommend that access to the international protection should not be delayed in case of Police pre-registration. Appointment mechanisms (skype etc.) should be functional in practice and not restrictive.
- Focusing on actual access to asylum, especially by pointing out disproportionate delays in registration or restrictive systems of appointments.
- To investigate the systemic factors of the problem of the long duration of asylum procedures in the respective countries.
- To make recommendations for raising the standards of living in the first reception temporary facilities and addressing overcrowding, when needed, in order to have humane conditions in all reception camps.
- To stress the need for including in the first reception procedures some basic requirements, such as: Identifying and recording minors and other vulnerable persons, including vulnerable for disability or health reasons, in order to receive the special care required. Properly informing the newcomers of the stages of the procedure ahead, including giving basic information on international protection. Providing adequate shelter, alimentation, medical support, interpretation and legal aid, in order for the reception procedures to be complete. Depending on the length of procedures awaiting for the examination of the asylum application, the stay in a camp to include educational, language learning and recreational schemes.
- To recommend housing/flat renting schemes and the right to employment for the second phase of reception of asylum seekers, in order to facilitate their smooth integration to local communities.

- To recommend prolonging reception benefits (housing etc.) as long as it is needed for asylum applicants, including when appealing to the Court against the rejection of their claim.
- To act as mediators when the applicant claims that he/she should not be sent to the country prescribed for resettlement, in order to reach a friendly resolution with the national authorities and avoid secondary movements in EU.

