7.1 Access to procedure

The term access to procedure covers access to territory and the first steps of the asylum procedure which include making, registering and lodging an application for international protection. Effective access to procedure implies that people seeking international protection need to be able to reach the authorities of a Member State and they must be granted access to a fair and efficient process. The EU's recast Asylum Procedures Directive guides EU countries on common procedures to undertake when an asylum application is submitted in the territory of a Member State, including at the border, in territorial waters or in transit zones.

The Directive outlines access to procedure as a three-step process:

Making an application: A person expresses the wish to any national authority to apply for international protection.

Registering an application: This is a procedural step where the competent authority officially records the application for international protection.

Lodging an application: The application is formally lodged when all administrative formalities have been completed.

Time limits for the examination of an application start running when the claim is lodged.

No major legislative or policy changes were reported for access to procedure in 2019. Most EU+ countries focused on implementing and improving national asylum procedures according to changes in legislation, policy and practice which had been introduced over recent years.[304] Continuing to improve access to procedures and addressing flows of irregular migrants are essential when public debate centred around fundamental legal, political and social issues regarding the EU's external borders, in particular in relation to search and rescue in the Mediterranean Sea, disembarkation and relocation.

7.1.1 Access to territory

Access by sea

As challenges with territorial borders and sea arrivals continued throughout 2019, Member States focused on strengthening measures for border management. At the same time, UNHCR and civil society organisations underlined that the right to asylum and access to territories should be respected.[305]

The debate continued over which authority is responsible for search and rescue operations and identifying countries which will share the responsibility more evenly with states at the frontline of disembarkations. Deliberations on disembarkations and receiving states further increase the time migrants spend at sea and increase the risks of their journey.[306]

In an effort to address irregular migration flows, a new security decree was adopted by the Council of

Ministers in Italy in June 2019, which significantly slowed down search and rescue operations in the Central Mediterranean (IT LEG 01). According to the decree, boats suspected of facilitating irregular migration may be refused entry into Italian ports, and boats violating the ban could face substantial fines and be seized by the authorities.[307] At the end of June 2019, the Sea Watch vessel entered Lampedusa port against the ban, and the ECtHR did not grant interim measures which would have allowed disembarkation in Italy.[308] The captain of the ship was arrested for docking without authorisation, but the Italian court later cleared all charges.[309]

The Sea Watch 3 case is not unique. The FRA Fundamental Rights Report 2020 lists 28 incidents in 2019 when vessels were kept at the sea for longer than 24 hours, including 8 instances when boats needed to wait more than a week.[310]

The European Commission recognised the need for a more structured temporary solution[311] and began to coordinate action to ensure safe disembarkation and rapid relocation of rescued migrants. On 23 September 2019, the Ministers of France, Germany, Italy and Malta met in the presence of the Commission and the Finnish EU Presidency to agree on a predictable and structured approach to disembarkations and relocation. The proposal was discussed in October at the JHA Council and the European Commission launched the process to develop Standard Operating Procedures based on the declaration, encouraging Member States to sign on.[312]

As mentioned in the progress report on the European Agenda on Migration, the European Commission, with the assistance of EASO, coordinated ad hoc relocations from disembarkations in Italy and Malta throughout 2019 upon requests from Member States.[313] The 14 cases up to October 2019 involved 1 187 pledges from Member States (including, for example, Germany, Finland, France, Lithuania, Luxembourg, the Netherlands, Portugal, Slovenia and Spain) and 368 relocated migrants.

The Italian authorities noted that applicants waiting for ad hoc relocation, who are accommodated in different facilities in Italy, typically remain there for a substantial period of time due to lengthy interview processes and organisation of transfers. To address challenges with relocation, ECRE published recommendations for a mechanism which is based on a fair and effective implementation of existing EU rules, without adding new obligations for Member States.[314]

While some countries may receive a higher number of disembarkations due to geographical location, migrants arrive by boat to other Member States as well. For example, Cyprus generally received relatives of Syrians who have been granted subsidiary protection, possibly because this status in the country does not allow for family reunification.[315]

Access by land

Access to territory can be impeded by ‘pushbacks’, when migrants are forced back over land borders without the possibility to apply for international protection. As a measure to control land borders more tightly, several Member States have temporarily reintroduced controls at internal Schengen borders.[316]

Nonetheless, as in previous years, international organisations and civil society organisations continued to report on pushbacks at sea and land borders, in particular along the Evros River at the Greek-Turkish border.[317] Indeed, the Greek Council for Refugees filed several complaints throughout 2019, including a report to the Prosecutor of the Supreme Court.[318] As the situation continued to escalate, several thousands of people arrived at the Turkish side of the Greek border at the end of February 2020 attempting to enter Greek territory, but they were denied access.[319]

The Spanish-Moroccan border at Ceuta and Melilla was also an area which received attention for limiting access to protection. The UN Committee on the Rights of the Child condemned the pushbacks of

unaccompanied minors, and other international and civil society organisations also reported on the same issue.[320] However, the ECtHR Grand Chamber judgement in *N.D. and N.T. v Spain*, delivered in early 2020, found that Spain did offer legal entry into the country but the applicants acted unlawfully by attempting to cross in a group of 600 people. Furthermore, it ruled that their immediate return without the possibility to challenge the removal was not in breach of the right to effective remedy, under the European Convention on Human Rights (ECHR) in conjunction with the prohibition of collective expulsion under Protocol No. 4.

In Hungary, the state of crisis remained in effect throughout 2019, and an application for international protection could only be lodged in one of the transit zones at the Hungarian-Serbian border, unless the applicant already has the right to stay or is detained. However, the Hungarian Helsinki Committee has signalled that the State Border Act still allows the police to remove third country nationals who are staying on the territory unlawfully to the Serbian side of the border fence without the right to seek asylum or without any procedure.[321] Excessive use of force has also been reported.[322] Access to the two transit zones also remained restricted, with just 394 applicants allowed to enter in 2019.[323] In response, the European Commission formally brought Case C-808/18 before the CJEU, which concerned – among other issues – the compliance of these provisions with EU legislation on asylum and return.

Turning to the Western Balkan region, the Border Violence Monitoring Network[324] – which has been reporting on the area since 2016 –noted an increasing number of reported chain pushbacks and use of excessive police force.[325] Croatian authorities rebutted the reports and contested the methodology of the reporting, which relied mostly on anonymous complaints that are considered by the authorities to be unverified and thus not credible. Slovenian authorities stated that the reports do not correspond to the actual findings of authorities competent for the supervision of the work of the police or the monitoring of proceedings with foreigners.

Other sources also reported occurrences of pushbacks persisted in Bulgaria,[326] Croatia [327] and Slovenia.[328] In February 2019, the Ombudsperson in Slovenia published the results of its investigation at the borders and noted several shortcomings preventing people from making and registering an application for international protection.[329] Slovenian authorities underlined that there was no restriction to access asylum procedures and the allegations were not confirmed by the police within internal controls nor reported by UNHCR when conducting police monitoring of the procedure with foreigners and access to the procedure of international protection. In addition, the Constitutional Court ruled on the constitutionality of the Aliens Act on the temporary suspension of the right to asylum with regard to the principle of non-refoulement.

Based on a tripartite agreement and protocol between the Croatian Ministry of the Interior, the Croatian Law Centre and UNHCR Croatia, a report presenting the findings from monitoring police conduct towards (potential) applicants for international protection in 2018 was published. Several issues were brought to the attention of the Ministry of the Interior, such as the lack of interpreters, recording identical statements for a group of foreigners or police officers not recognising intentions to apply for international protection.[330]

In Bulgaria, the Ministry of the Interior and the Chief Directorate Border Police continued to implement measures in response to increased pressure on the Bulgarian-Turkish border, including the deployment of specialised police operations at the border and the preparation of an emergency action plan.[331] A border fence was set up along the Bulgarian-Turkish border already in 2014, but the AIDA report on Bulgaria noted that this can be crossed easily and those who are able to access the territory are also typically able to transit through without being detected.[332]

In Poland, pushbacks were reported at the border crossing point in Terespol by various sources, as has been the case in previous years.[333] The Polish authorities have explained this situation as a typical border deciding process where persons not fulfilling the conditions of entry and not declaring the wish of applying for asylum are were refused entry. In April 2019, the Helsinki Foundation for Human Rights published an overview of legal challenges and access to procedure in Poland for the period 2015 to 2019.[334] The issue was highlighted

again by a coalition of NGOs which held a protest in Terespol in December 2019.[335] Following ECtHR interim measures set in 2017, which aim to prevent the removal of persons who try to apply for international protection at this border crossing point, four cases are still pending in front of the ECtHR.

Removal without proper identification remains a concern at the Swiss-Italian border.[336] The Swiss Refugee Council noted that asylum seekers attempting to enter the country with fake documents through the airport were typically admitted to the territory after a 24-hour retention, but the Public Prosecutor often charged them with the offence of document forgery.[337]

In France, local NGOs requested in December 2019 that a parliamentary commission be established to investigate violations reported at the French-Italian, French-Spanish and French-British borders, including restricted access to asylum and pushbacks.[338]

7.1.2 Access to asylum procedure

In 2019, changes introduced in previous years were further developed and implemented, such as the establishment of arrival centres, the introduction of new technologies to support applicant identification and the extension of the applicant's duty to cooperate and provide all documents and relevant information at the early stages of the procedure.

Several EU+ countries noted a change in applicant profiles. Belgium and the Netherlands, for example, reported a significant increase in the number of applicants under the Dublin system and applicants who have already obtained international protection in another EU Member State or Dublin state. Following the entry into force in 2018 of the amendment granting accompanied minors the explicit right to lodge a separate application in their own name, Belgium also experienced an increase in the number of applications from accompanied minors, typically after a parent's application was rejected, with the aim to maintain material reception rights.[339]

While these developments had an impact on the length of procedures at first instance *(see Section 7.6)*, they did not increase the length of the registration and lodging procedures. In December 2018, Belgium opened a temporary arrival centre in Brussels, and throughout 2019, Fedasil made improvements to the arrival path, rendering registration and lodging procedures quicker and more efficient. The International Protection Department of the Immigration Office, responsible for registration within the arrival path, also increased its staff.

Registration staff was also significantly increased, for example, in France to decrease the waiting times for appointments at the one-stop services *(Guichet unique pour demandeurs d'asile).* As a result, the average time for registration significantly decreased, but long waiting periods persisted in the Île-de-France region. In response, the Administrative Court of Paris ordered the *préfecture* to increase the number of daily appointments.

In Italy, the Civil Court of Napoli ordered the Police Office to accept and register the asylum application of an applicant who could not register via the online form.

Long waiting periods for registration and lodging persisted in other Member States. In Spain, civil society organisations reported a restricted number of daily appointments and other bureaucratic burdens in several locations across the country to register and lodge an application.[340] In addition, an applicant's legal situation is unclear in this situation, and there is a risk of detention and removal if the applicant is found to be unlawfully on the territory. Applicants also cannot access material reception conditions until they are registered.[341]

The situation is similar in Greece. People arriving along the Evros River and in need of international protection may in some cases have to wait for months or sometimes even years before the applications are registered.[342] Access to procedures is somewhat better for persons transferred from the islands to mainland Greece, but registration still typically takes five to six months and documentation is often lacking to prove the applicant's legal situation.[343]

In an effort to provide faster access to procedures, EASO provided additional support for registrations in Cyprus, Greece and Malta, based on respective Operational and Technical Assistance Plans signed in 2019.[344]

France and Lithuania implemented legislative changes in 2019 aimed to accelerate the initial steps of the asylum procedure. In France, new measures were implemented with the Law of 10 September 2018 (FR LEG 06) and Decree 2018-1159 (FR LEG 07), which entered into force in January 2019. The measures specified the conditions to orient applicants to the appropriate authority to lodge an application. The Circular of 10 May 2019 lists the jurisdiction of the *préfectures* responsible for registering applications on the territory and issuing the first certificate of asylum application (FR LEG 02). Furthermore, the Inter-Ministerial Instruction of 16 August 2019 set up a new protocol model to manage applications from detention and the entire procedure – including registration – is now undertaken remotely and in written (FR LEG 08).

In Lithuania, the Migration Department took over all asylum-related tasks from the police and applicants can now lodge an application directly with the institution (or the State Border Guard). In addition, since 1 July 2019, the initial interview with the applicant must be recorded (video or audio) and attached to the personal file. The department can now also issue a Certificate of Acceptance of an Application for Asylum, confirming an applicant's status and serving as a Foreigner's Registration Certificate, pending the issuance of the latter.

Germany and Finland amended their legislations to better establish an applicant's identity and any other circumstances of the case. In Germany, the Second Data Exchange Improvement Act was adopted, making fingerprinting obligatory for children over 6 years old as of 1 April 2021, while the current age limit is 14 years (DE LEG 01). In Finland, the authorities can now take and retain an applicant's travel documents at any time in the asylum procedure (FI LEG 01).

In regard to subsequent applications, the IND in the Netherlands introduced a change to policy and practice for registrations. Applicants must now submit a subsequent application in person at the application centre in Ter Apel, together with any family members. In case an application is not submitted in person or is incomplete, the person has one week to present at the Ter Apel centre and complete his application. If applicants do not present themselves at the centre within one week, the application is considered to be withdrawn and the right to reception is no longer applicable. The change in policy and practice was a result of a ruling from the Council of State in 2018, when applicants had no entitlement to reception until the IND had examined, accepted and declared the letter expressing a wish to submit a subsequent application as admissible.[345]

In Spain, local NGOs have flagged a lack of information on the asylum procedure as a potential barrier for making an application, especially at the Spanish.[346] They have also noted that the border procedure applicable in the Spanish enclaves at the border with Morocco may impede access to potential applicants.[347]

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