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4.7.1.7 Entitlement to material reception conditions



Developments in 2020 pointed towards more restricted access to material reception conditions, either in their time limit and review, such as in Malta and Greece, or for a certain group of applicants, as in Belgium and the Netherlands. Courts were frequently faced with cases to decide on access to material reception conditions in general or on obtaining certain forms of material reception conditions.

AWAS in Malta reduced the length of contracts signed with male adult applicants for their accommodation from 1 year to 6 months, due to increased arrivals by boat since 2018. When accommodation is potentially not prolonged, AWAS reviews the specific cases with the Social Work Unit and the Psychological Support Unit to determine whether services should be extended due to the applicant's special needs or vulnerability. Aditus observed that applicants are often requested to leave before their asylum application is concluded, applicants have difficulties in securing housing and employment with temporary documents and the financial allowance was not sufficient to find a decent place to live.582

A new law in Greece stipulates that reception support in cash and in kind is terminated immediately when a person is recognised as a beneficiary of international protection and recognised residents have to leave the accommodation within 30 days.583 This entailed modifications of some related ministerial decisions, for example, on the accommodation scheme called ESTIA II programme, which is carried out in cooperation with UNHCR.584 Many civil society organisations noted that 30 days are not enough for newly-recognised beneficiaries to make the transition to live on their own and placed them at high risk of becoming homeless.585 UNHCR found that this very short period did not allow for enough preparation to exit the reception system and make the transition to everyday life, for example, to find accommodation or employment.586

The Minister of Asylum and Migration in Belgium announced new measures at the beginning of 2020, aiming to fight against the abuse of the asylum system. After an individual assessment, Fedasil could decide not to allocate a reception place for people already benefitting from international protection in another EU Member State and for Dublin applicants who absconded and re-applied for reception after 6 months. These applicants retained the right to medical care and were provided with the necessary information on their asylum procedure and reception rights. The Council of State issued its opinion on the initiative in June 2020 and noted – referring to the CJEU judgment in Jawo – that the automatic exclusion from material reception conditions and the general refusal of reception for these groups of applicants were not permitted. In parallel, several civil

society organisations launched an appeal in front of the Council of State to annul the measures.[587] Finally, Fedasil withdrew this policy in September 2020, as the new Belgian government was about to be sworn in and replaced it with a new instruction on the Dublin trajectory. The instruction clarified the role of Fedasil and the Immigration Office in the provision of information, counselling and reception conditions, including the allocation to a Dublin reception place within Fedasil's reception network.

Following up on the initiative from the State Secretary for Justice and Security,[588] the COA in the Netherlands started to accommodate at a separate location in Budel applicants from safe countries of origin and those who had already obtained international protection in another Member State. Applicants receive only basic material reception conditions in kind, and stricter reporting obligation apply to them as they need to report daily and each time they leave or return. The location has extra security personnel. Vulnerable applicants cannot be accommodated at this location.[589]

The Irish International Protection Accommodation Services (IPAS) implemented a policy in respect of COVID-19 prevention which placed certain restrictions on residents staying away from their assigned accommodation overnight during periods where broader government restrictions on travel and social engagement were in place. Under this policy measures are tightened and relaxed as required in keeping with wider government efforts to control the spread of virus and in line with public health advice, with the goal of protecting all residents in IPAS centres from the worst effects of the virus. The IPAS has also created an IPAS Living with COVID Plan[590] for residents which explains how different levels of government restrictions may affect them. This plan has been in place since summer 2020 and is available online and advertised to all residents through the IPAS residents newsletter. Still, the Irish Refugee Council found that this policy was not communicated in a proper manner and many applicants were not aware of it. Applicants had to formally request accommodation again, and some had to wait several days without a place to stay before their accommodation was restored.[591]

The Hungarian Helsinki Committee pointed out the impact of the new asylum legislation (see Section 4.1) on an applicant's entitlement to material reception conditions. Applicants were assumed to have sufficient subsistence means and were not offered reception when they arrived with a visa, from a visa-free country or already had a residence permit at the time of application.[592]

The AIDA report for Poland noted that applicants received a declaration to apply for asylum when they could not lodge an application due to the pandemic restrictions, but this document did not entitle them to health care or other reception support.[593] The Polish Border Guard underlined that the limitations on lodging an application were in place between 26 March and 10 May 2020 and were related to persons who had their own place of residence and thus were not in immediate need to receive health care and reception support. The authority explained that the objective of these restrictions was to minimise movements on the territory in line with the general rules applicable to all citizens. COVID-19 measures caused delays in accessing reception also for example in Romania.[594] NGOs stepped in to fill in the gap.[595] In 2020, the Ombudsperson visited the reception facility in Galati and recommended the employment of more staff in the centre, including medical staff.[596] The centre took note and replied to the recommendations.[597] In 2020 the Polish Commissioner for Children's Rights started to control reception conditions for children. As a result, on 17 March 2021

a post-inspection letter was submitted to the Office for Foreigners, in which the Commissioner for the Children's Rights positively assessed all the activities carried out by the Office for Foreigners.

Courts were called upon several times to assess the entitlement of applicants to material reception conditions and deliberate on the start and end of reception. The first instance tribunal in Brussels ruled that the online appointment system established for the registration of applications was against national law and the recast Reception Conditions Directive, as it found that applicants became entitled to reception at the moment they registered for their appointment and were without support until they could register *(see Section 4.1).*

In Czechia, the Supreme Administrative Court issued urgent interim measures and required the Ministry of the Interior to continue providing reception for a family with three children from Kirgizstan in view of the exceptional circumstances due to the pandemic, even though their asylum application was rejected with a final decision and they would have not been entitled for support any longer. Similarly, in Italy the court ordered interim measures and suspended the implementation of a decision which revoked an applicant's accommodation in a reception centre during the first wave of the COVID-19 pandemic. The court held that the situation would put the applicant in serious risk of infection and could lead to potential risks for the community as well.

In another case, the Court of Appeal in Rome found that the prefecture and the police violated the applicant's rights when they automatically rejected his attempts to submit a subsequent application and prevented him from access to reception, forcing him to live on the streets. In another case, the Administrative Tribunal of Molise noted that, following the CJEU judgment in Haqbin, articles of a legislative decree should be disapplied, which allowed for the full withdrawal of material reception conditions when an applicant seriously or repeatedly breached the facility's rules.

The Swedish Supreme Administrative Court delivered a judgment on the entitlement to reception of a person who was granted a residence permit for the purpose of secondary-level studies but was not recognised as a beneficiary of international protection, thus, was not assigned a place in a municipality. The court decided that he remained entitled to reception and remained covered by the Law on Reception of Asylum Seekers and Others. The uncertainty arose from the fact that in 2016 Sweden adopted a Temporary Law that noted that the Residence Act, which governs the re-distribution of recognised beneficiaries of international protection to municipalities, does not apply to persons who were granted residence permit for secondary studies. This group mainly concerns unaccompanied minors who did not qualify for international protection but received a right to stay based on their studies. The judgment clarified that they continued to have the right to reception.

The form of providing adequate reception was considered in France and in the Netherlands. In France, the Council of State rejected the appeal of an Algerian family with two children who were offered material reception conditions without accommodation, and underlined that the refusal to offer accommodation is not a serious or manifest violation of the right to asylum in the light of the serious saturation of the reception system and the fact that the applicants could not established that they should be treated in priority due to their medical or psychological situation. In a similar case, it rejected the applicant family's request for accommodation and financial allowance, noting that they have already been cared for in an emergency accommodation and their situation was not

an emergency case which required immediate intervention by the judge.

The Dutch Council of State delivered a judgment on the form of material reception conditions and underlined that the national reception authority is obliged to provide an adequate standard of living throughout the whole reception period, but it is not obliged to provide a certain form of reception and the modalities of reception should also not be impacted by the length of the process. The case concerned applicants who went through a much longer rest and preparation period in 2015 – which usually takes only a few days – and continued to receive exclusively in kind support, instead of a mix of in kind and in cash support which is provided in the next reception phase. Another case was dismissed by the court as well when applicants complained that their planned transfer to another reception facility and the infrastructure of the facility itself was not compliant with COVID-19 regulations. The judge found that this type of reception facility (AZC, *asielzoekerscentrum*) did not fall under the emergency rules.[598]

The European Network on Statelessness reported on a case from Czechia, where the court underlined that not admitting a stateless applicant to the reception facility is unlawful.[599] Finally, related to appealing a decision on the entitlement to reception, the Administrative Court in Finland found that the notification of the reception centre's deputy director to end reception services was not an administrative act which could be separately appealed.

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