

The Asylum Appeals Procedure in Relation to the aims of European Asylum Systems and Policies

Final Report

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Abbreviations

AF	Afghanistan
AG	Algeria
AIDA	Asylum Information Database
AnKER	Zentrum für Ankunft, Entscheidung, Rückführung (arrival, decision, return)
APD	Asylum Procedures Directive
APR	Asylum Procedures Regulation (proposal)
ASAP	Project: Study on the Asylum Appeals Procedure
BAMF	Bundesamt für Migration und Flüchtlingen
CJEU	Court of Justice of the European Union (CJEU)
COI	Country of Origin Information
DT&V	Dienst Terugkeer en Vertrek
COL	Centraal Opvanglocatie
EASO	European Asylum Support Office
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
ECRE	European Council for Refugees and Exiles
FTE	Full-time equivalent
GDISC	General Directors of Immigration Services Conference
GE	Georgia
ICMPD	International Centre for Migration Policy Development
IND	Immigratie- en Naturalisatiedienst
IQ	Iraq
IR	Islamic Republic of Iran
NOAS	Norsk organisasjon for asylsøkere
NG	Nigeria
NGO	Non-Governmental Organisation
OF	Office for Foreigners
REAN	Return and Emigration Assistance from the Netherlands
RU	The Russian Federation
RvR	Raad voor Rechtsbijstand
SEM	Staatssekretariat für Migration
SY	Syrian Arab Republic
TR	Turkey
UA	Ukraine
UDI	Utlendingsdirektoratet
UNE	Utlendingsnemnda



Executive Summary

Fair and efficient asylum procedures are an essential element of a well-managed migration system. They should enable a state to swiftly and reliably identify which applicants are eligible for international protection and allow applicants to realistically assess their chances of being granted protection. Long and inefficient procedures are costly for the asylum seekers, who suffer from uncertainty, as well as the states' administrations who must bear the various costs associated with the procedure.

The research for this report focused on the impact of the appeals procedure and the provision of legal assistance on the asylum system. Through interviews with experienced practitioners from administrative and judicial institutions as well as involved non-state actors, desk research and data analysis, it explored the potential effects of measures to increase the efficiency of asylum procedures at the appeals level in six European countries: Germany, Greece, the Netherlands, Norway, Poland and Switzerland. The surveyed countries vary significantly in terms of their geographical location, size, legal tradition, organisation of asylum systems, composition of asylum caseload and the number of asylum decisions issued per year. This heterogeneity needs to be borne in mind when considering the study's conclusions.

The apparent lack of reliable and comparable asylum data disaggregated by type of procedure, despite the relatively extensive statistics for asylum in Eurostat, lead the authors to recommend making use of the current reform of the Migration Statistics Regulation to address this knowledge gap. The reform of the Regulation, which governs the collection and compilation of asylum and migration data, could lead to access to better and comparable data that may help to evaluate the efficiency of asylum systems and, if supported by Member States, could lead to respective transnational pilot studies (as envisaged by the tabled proposal).

All six surveyed countries know some form of special procedures as foreseen in the recast Asylum Procedures Directive. Accelerated procedures are applied to applicants who come from safe countries of origin, when the application is manifestly unfounded, or when applicants misled the authorities. Not bound by EU law, the Swiss accelerated procedure is applied in all cases.

Time limits to prevent prolonged asylum procedures are important both from a human rights and efficiency perspective and varying deadlines are in place in all surveyed countries. With the exception of the Netherlands and Poland where delays are penalised, time limits are mostly indicative to prevent an efficiency-quality trade off and are generally perceived as useful 'goal posts'.

From the applicants' perspective, rapidity can be at odds with the right to good administration and information. According to the study respondents' experience, a sound and fair (albeit lengthy) procedure outweighs concerns about prolonged uncertainty. Applicants must be sure that their case has been handled properly and must be able to comprehend its outcome. This requires a certain amount of empowerment of the applicant to understand his or her role and responsibility in preparing and presenting the case. The provision of early information plays an important role in that regard. All surveyed countries do equip newly arrived asylum seekers with materials about the procedure, but it is not always customised to the specific needs of the applicant. A key recommendation from this



research therefore centres on the provision of early, individualised and continuous information about the rights, duties and obligations of the asylum seeker by a qualified and impartial source.

The provision of legal assistance plays a similar role in engaging the applicant in the procedure. Experience from Switzerland and the Netherlands has shown that access to free legal representation in the first instance helps to better prepare applicants for the procedure, thereby improving the quality of decision-making and the overall efficiency of the procedure. Crucial in the area of legal aid are measures to regularly control the quality of the legal assistance provided, as well as to enable adequate payment schemes to the legal assistance providers. In that regard, lump sum payments have emerged as a good practice, provided they appropriately cover the average hours spent on a case.

Turning to the institutional set up of appeals instance(s), the six countries examined in this report show significant divergences: judicial versus administrative decision-making body; tribunals versus single judge decision-making; centralised versus decentralised courts; review in fact and/or in law. A correlation between the number of appeals and the institutional set-up could not be measured, but the study's findings suggest that centralised decision-making at appeals instance leads to better consistency and predictability of legal decisions.

The study at hand has reconfirmed the strong interlinkages of the many state and non-state actors involved in the asylum procedure. The first instance authorities perform a particularly important role in the chain of institutions and actors lined up in the asylum procedure. Placed in the early stages of the process, their performance is inextricably linked to questions of integration, appeals and return. Although shortcomings in one phase of the procedure obviously have repercussions on the following ones, the currently prevailing approach seems to consider each institution like a stand-alone bureaucratic entity. The report therefore recommends the adoption of a systemic approach towards the entire asylum procedure, which considers the exact functions, capacities, and resources along the entire procedural chain. Such a big picture perspective allows for better planning and supports periodic evaluation.



Project Background

The report at hand presents the findings of the project “**The Asylum Appeals Procedure in Relation to the Aims of European Asylum Systems and Policies (ASAP)**”, which analyses the asylum systems currently in place in Germany, Greece, the Netherlands, Norway, Poland and Switzerland.

The research, which was financed by the Swiss State Secretariat for Migration (SEM), the German Federal Office for Migration and Refugees (BAMF) and the General Directors of Immigration Services Conference (GDISC) Secretariat, was initiated by Switzerland and implemented by the International Centre for Migration Policy Development (ICMPD).

The objective of the project was to increase the evidence base for policy and decision making in EU member states plus Switzerland, Norway, Iceland and Liechtenstein (EU+), in the area of asylum procedures. In particular, it aimed to identify the impact of appeals procedures on the objective of the Common European Asylum System: to create fast and fair asylum procedures.

The study thus attempted to identify the impact of appeals procedures on the efficiency, duration and fairness of asylum procedures. As such, the research covered the impact of different appeals procedures, the various forms of accelerated asylum procedures, the provision of free legal assistance, as well as other measures to improve the quality and duration of asylum procedures.

Methodology

The research combined the collection of primary and secondary data. Desk research had the main purpose of getting acquainted with the different national practices of organising the asylum procedures more efficiently and at a high quality. A specific focus was placed on special procedures which had been introduced with the aim of increasing the effectiveness of national asylum systems, the different appeals systems, the design of legal assistance systems and related measures taken in the selected countries.

Deficiencies in quantitative data did not allow for a comparison of the impact of specific policy decisions on the effectiveness of the asylum system in different countries. The research therefore had to be based on available data from desk research, Eurostat and qualitative interviews with stakeholders in the surveyed countries. Interview questionnaires were designed following the major themes of the research, thus covering mainly more general aspects of the overall asylum procedure, the appeals procedure and legal assistance. The questions were understood as guidelines, and were open to modifications during the interviews. Also, not all questions were asked of all stakeholders, depending on their profile and area of expertise.

The partner countries of the study were requested to nominate appropriate interview partners from national-level public administration, the judiciary, local administration and civil society. They also supported the project by establishing contacts with the identified interview partners wherever possible.



The research

Desk research

The first research phase of the project focused on desk research to review the available literature and past reports on the appeals procedure in the European countries the research covers, i.e. Germany, Greece, the Netherlands, Norway, Poland and Switzerland. Following a first analysis of the data and gathered information, interview guidelines were drafted for the field research, including a questionnaire and a selection of interview partners per researched country.

Field research and reporting

In the next phase, the interviews with national experts were prepared. The aim was to reach out to experts with knowledge on the issues covered by the research: persons with specific experience in the areas of asylum appeals procedure, legal representation of applicants, strategic operational planning of the asylum procedure and persons involved in policy measures aimed at improving efficiency and quality of the asylum procedure.

The Swiss SEM raised awareness and sought cooperation in other countries at the GDISC Conference and network meetings. The SEM further requested cooperating countries to nominate national experts of the first instance and, if feasible, contact points at the appeals instance, as well as representatives for legal assistance involved in the national asylum systems.

The field research started in May 2019, with stakeholder interviews in three countries: Germany, Poland and Switzerland. The findings of this phase formed the information base for a preliminary report. After the summer 2019, further interviews were held and additional research in Greece, the Netherlands and Norway was conducted in September and October 2019. The preliminary report was subsequently extended to include the findings from these additional three countries. The final report was drafted in November 2019 and submitted to the donor by the end of November 2019.

Comments on the field research

Overall 24 stakeholders were interviewed in six countries. In each country the target was to hold at least one interview with representatives of the first instance, a judge from the appeals instance and a representative for legal assistance. In Switzerland, Poland, the Netherlands and Norway all three actors (first instance, appeals instance and legal assistance) were covered. In Germany, no interview with the appeals instance stakeholders materialised, and in Greece, no interview with the first instance stakeholders could be scheduled. The latter two have been compensated through deeper desk research.

Interviews were conducted via telephone or skype. Two respondents from the Netherlands, one from Switzerland and one from Greece chose to provide answers to the questionnaire in writing first, which was followed up by additional exchanges to clarify open points of interest.

The interviews were recorded, if permitted by the interviewee. Recorded interviews were transcribed, while the non-recorded were summarised. All respondents were provided with the opportunity to review and comment on the draft of their respective country report.



1 Comparative analysis: appeals procedure and legal representation in European asylum systems

1.1 Introduction

The present report first discusses the main themes of the study in a horizontal comparison between the six countries. This part is built on desk research, previous reports, collected data¹ and includes information from the conducted interviews. The second part synthesises the collected information. In doing so, this part aims to analyse how different measures in the asylum process, particularly in the appeals procedure and the inclusion of legal assistance,² can lead to a more efficient asylum system. The synthesis highlights good practices or possible recommendations.

1.2 First instance³

1.2.1 First instance authorities

All six countries face different asylum situations and accordingly developed different national systems (see further details in the country case studies annexed to this report), which needs to be kept in mind when comparing or analysing them. It is not only a question of policies, but also a question of the overall preconditions and specificities of the migration situation in the countries involved.

Table 1. Number of staff in first instance asylum authorities

	Germany	Greece	Netherlands	Norway	Poland	Switzerland
first instance agency	Bundesamt für Asyl und Migration (BAMF)	Asylum Service	Immigratie- en Naturalisatiedienst (IND)	Utlendingsdirektoratet (UDI)	Office for Foreigners (OfF)	Staatssekretariat für Migration (SEM)
Approximate number of staff by mid-2019	6,680 (~2,000 case workers)	679	3,788 (figures for asylum sectors not available)	250	Ca 500 (31 case workers, 36 in asylum sector total)	568

¹ Data used in this report is – if not otherwise sourced – based on Eurostat data. Eurostat data may diverge from data published at national level but allows for better cross-national comparison.

² Sometimes also referred to as ‘legal aid’.

³ For the purpose of this study, ‘first instance’ refers to the authority issuing the first decision in the asylum procedure. Appeals instances can be broken up into ‘first appeal instance’, which refers to the administrative, judicial or quasi-judicial authority that decides on appeals against a first instance decision (also referred to as the ‘second instance’ of the asylum procedure), and ‘onward appeal(s)’, which are also referred to as ‘third instance’ and ‘fourth instance’ of the asylum procedure.



1.2.2 First instance data

The size of the six countries greatly varies and so does the number of asylum applications. Germany received 1.8 million applicants for international protection in the past five years (2014-2018), followed by Greece with 199,360, the Netherlands with 132,645 applications and Switzerland with 123,315 first-time applications. In Norway, 52,190 people applied during that timeframe, and 41,670 people filed their application in Poland. In 2018 alone, 184,180 persons applied for asylum in Germany; 66,965 in Greece; 24,025 in the Netherlands; 15,160 in Switzerland; 4,110 in Poland; and 2,660 in Norway.

Table 2. Asylum applications in the six selected countries

	Germany	Greece	Netherlands	Norway	Poland	Switzerland
Asylum applications 2014-2018	1,831,050	199,360	132,645	52,190	41,670	123,315
Asylum applications 2018	184,180	66,965	24,025	2,660	4,110	15,160
Decisions first instance 2014-2018	1,680,935	91,265	94,360	45,405	13,790	99,605
Decision first instance 2018	179,110	32,345	10,285	2,130	2,500	17,030

Source: Eurostat; AIDA country reports; collected by authors

In 2018, Germany accounted for 30% of all first instance decisions in the EU+⁴ (EASO 2019, p 55). Germany, together with France and Italy accounted for three quarters of all decisions in 2018.

In more detail, the asylum agency in Germany, the BAMF, consists of a workforce of 6,680 full-time equivalent staff. In 2018, the BAMF issued 179,110 first instance decisions; the Swiss SEM, with a staff of 568, issued 17,030 asylum decisions, and in Poland 31 decision-makers issued 2,500 asylum decisions in the same year. The Asylum Department of the UDI in Norway employs approximately 250 staff, of which some 45 caseworkers catch up on pending cases; the remaining caseworkers issued 2,115 first instance decisions in 2018. The Dutch IND employs some 3,788 staff members in total and the figures of employees in the asylum department are currently not available. Interlocutors in the Netherlands were, however, unanimous that the staffing levels are insufficient to deal with the caseload in the Netherlands (see Country report Netherlands). In 2018, the IND issued 10,285 first instance decisions. Finally, the Asylum Service in Greece consists of 679 staff, many of which work on a temporary basis only. The Asylum Service issued around 32,000 decisions in 2018.

The figures above highlight the diverseness of the surveyed countries. As the tasks and composition of decision-makers greatly vary from country to country, it is impossible to draw conclusions from a juxtaposition of staff numbers and the amount of issued decisions (see ECRE 2019e).

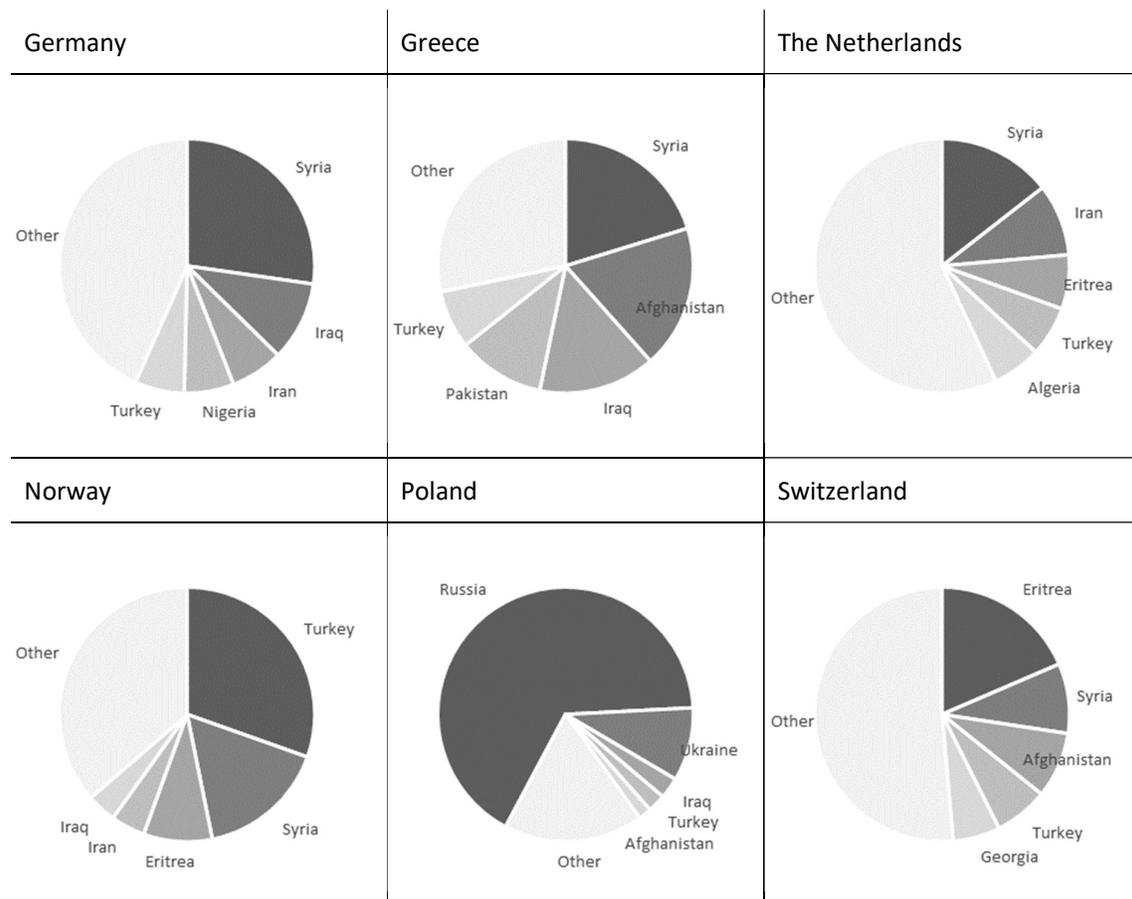
Besides staff numbers, the composition of the countries of origin of applicants also impacts on the efficiency of asylum systems. In this respect, the selected countries vary too: overall, the top

⁴ EU Member States plus Switzerland, Norway, Iceland and Liechtenstein.



nationalities in all countries are mainly from refugee producing countries. The Syrian nationality tops the list in Germany, Greece and the Netherlands; Russian in Poland; Eritrean in Switzerland; and Turkish in Norway. For organisational and policy purposes, it is equally relevant how homogenous or heterogeneous the composition of applicants is. In Poland for example, 66% of applicants come from only one country, namely the Russian Federation. In three other countries the top five countries constitute more than 50% of all asylum seekers that is 72% in Greece, 64% in Norway, and 51% in Switzerland. In Germany and the Netherlands, less than half of the applicants come from the main five countries of origin with 43% of the caseload. Available data from Germany illustrates the connectivity between the duration of procedures and the country of origin. Among the main countries of origin in Germany, Georgian (4.2 months) and Syrian (4.9 months) cases were processed the fastest, whereas the processing of cases from the Russian Federation lasted the longest (12.9 months) (see German country report section 4.1.2.4 and 4.1.4.4).

Figure 1. Five main countries of origin of asylum applicants (2018)



Source: Eurostat

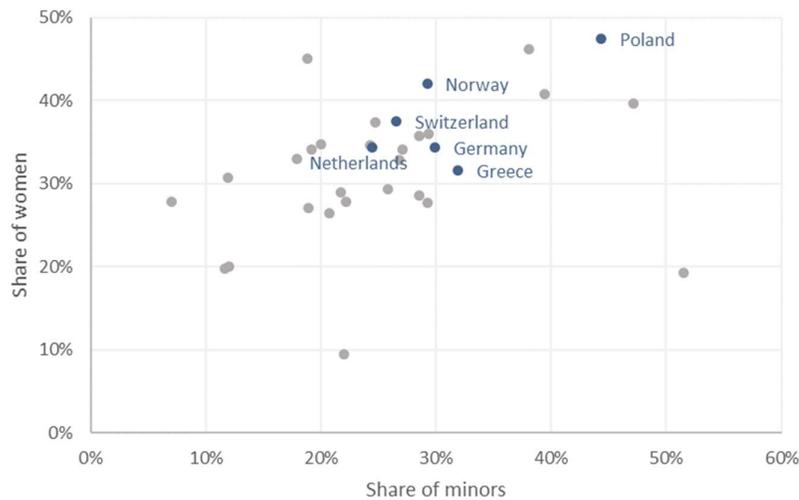
Potentially, also the profile of applicants for international protection is of relevance and may influence the duration of asylum procedures. Minors and women are particularly vulnerable and may thus require more in-depth determination. Additional deliberation may be required, when the



determination would not lead to the recognition of refugee status based on any convention ground, but on human rights considerations. In Germany, as an example, first instance procedures of unaccompanied minors lasted on average 9.8 months, whereas the overall processing time was 7.5 months in 2018 (see German country report, section 4.1.2.4).

Comparing the six countries (see below Figure 2) shows that Poland has the largest percentage of women and minors. The other five countries are grouped more closely together. Norway has a higher percentage of female applicants whereas Greece sees a higher percentage of applications from minors.

Figure 2. Demographic profile of asylum applicants in the EU+ countries (pending procedures July 2019)



Source: Eurostat

Certainly, the numbers summarised above provide just some indicators that manifest certain limitations when comparing these countries with respect to asylum procedures and efficiency considerations.

1.2.3 First instance procedures

1.2.3.1 Regular procedure

Basically all parties and stakeholders agree that the duration of the average asylum procedure needs to be kept short. Both integration of recognised refugees, as well as the return of denied applicants should be implemented as early as possible to end insecurity for the applicant and reduce costs for the asylum system.

Several European countries aimed at shortening the processing times by introducing time limits for the regular procedure. The Netherlands and Switzerland reformed their respective asylum procedures with a view to processing all asylum claims in a speedy manner. As a result, the regular procedure has



been turned into a ‘short procedure’ that is dealt with within a set (and short) deadline.⁵ It is interesting to note that along with the procedures the mind set also changed, which now considers the shortened procedure as the ‘new normal procedure’. The underlying assumption is thus that the majority of cases can be delivered in a short time period.

Table 3. Time limits for first instance procedure in six countries

	Germany	Greece	Netherlands	Norway	Poland	Switzerland
Legal time limit	No time limit (target: 6 months)	6 month (extendable to overall 12 months)	8 days (max. 22 days) 6 months (max. 9 months) (Extended procedure)	No time limit (target: 8 month incl. appeal)	6 months (extendable to 15 months)	8 days (target: 100 working days for appeal & return) max. 1 year (Extended procedure)
Average processing time		~8.5 months		~ 7 months (212 days)		

As such, the regular procedure in the Netherlands lasts eight days (more complex cases are dealt with in the extended procedure of six months). In Switzerland the newly established ‘accelerated procedure’ where around a third of all cases are targeted to be processed, is to last eight days. Greece and Poland have targeted time limits of six months in place. No time limits are foreseen in Germany and Norway. However, if in Germany no decision at first instance has been taken within six months, the applicant can request information from BAMF on when a decision is likely to be taken. Norway has the (internal) target of eight months for the overall asylum procedure (including appeals).

The time-limit for the examination of applications under a regular procedure, provided for in Article 31 (6) of the recast Asylum Procedures Directive⁶ (further referred to as recast APD), is also six months following the determination of responsibility of the state. Also the proposal for an Asylum Procedures Regulation⁷ (APR proposal) keeps the six month time limit extendable once by a further period of three months in cases of disproportionate pressure or due to the complexity of a case (Art 34 (2) and (3)).

⁵ The regular procedure is the procedure that is applied for all applicants except for those cases which are identified as too complex and thus require more processing time in an extended procedure

⁶ Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection. This Directive is one of several EU legal acts forming the Common European Asylum System (CEAS). The core of the CEAS consists of four EU Directives (Asylum Procedures Directive, the Qualification Directive, the Reception Conditions Directive and the Temporary Protection Directive) and two Regulations (Dublin Regulation and the Eurodac Regulation). Switzerland and Norway are not EU Member States and are therefore not bound by the CEAS and its instruments. However, Switzerland, as well as other non-EU states like Norway, Liechtenstein and Iceland take part in and are thus bound to the Schengen and the Dublin legislative framework as per the Association Agreement.

⁷ COM(2016) 467 final; Proposal for a Regulation of the European Parliament and the Council establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU.



1.2.3.2 *Special procedures*

As a means to give more flexibility to EU Member States to develop a more efficient asylum procedure, the recast APD distinguishes between accelerated and prioritised procedures. Prioritised procedures foresee a more rapid examination of claims “without derogating from normally applicable procedural time limits, principles and guarantees” (recital 19). Accelerated procedures differ from regular procedures “in particular by introducing shorter, but reasonable time limits for certain procedural steps” (recital 20). Accelerated procedures therefore are characterised by shorter time limits mainly at first instance. Often appeals have no (automatic) suspensive effect over removal decisions.

At EU level, different shortened procedures are laid down with varying time limits. While the recast APD suggests reasonable time limits, while leaving them to the discretion of member states, the APR proposal indicates time limits for accelerated, prioritised and inadmissible procedures.

Table 4. Time limits in the recast APD and APR proposal

Type of special procedures	Recast Asylum Procedures Directive	Asylum Procedures Regulation proposal
Accelerated procedure	No time limit (Art 31 (8))	2 months (Art 40 (2))
Prioritised procedure	No time limit (Art 31 (7))	In compliance with procedural standards (Art 33 (5))
Border procedure	4 weeks (Art 43 (2))	4 weeks (Art 41 (2))
Treatment of inadmissible applications	No time limit (Art 33)	1 month (Art 34 (1))

All the six surveyed countries use various forms of fast-track or accelerated procedures. The countries process cases in accelerated procedures, among others, when applicants are from safe (or special) countries of origin (Germany, Greece, Netherlands, Norway), the application is manifestly unfounded (Greece, Poland, Norway) or applicants misled the authorities (Germany, Greece, Poland). Not bound by EU law, the Swiss accelerated procedure applied to all cases, unless there are facts that need to be examined in more detail in an extended procedure.

Accelerated procedures foresee shorter time limits (e.g. Germany 1 week, Greece 30 days, Poland 30 days, Norway 48 hours), but may equally just omit some of the procedural steps (e.g. skipping the “rest and preparation period” in the Netherlands and reducing the number of interviews).

1.2.3.3 *Time limits first instance*

For the majority of first instance procedures in the analysed countries, time limits are either regulated by law or there are internal targets. However, they are mostly only indicative. If they are not respected – which is quite frequently the case – there are weak or no tangible consequences. An exception is the Netherlands, where in the first instance, the IND is subject to fines to be paid to the applicant for each day surpassing the time limit.

In general, time limits are perceived as positive by those interviewed, even when they cannot be kept: they define an aim for the administration and the caseworker, according to a representative of the Polish Off (Interview_PL_2).



In the case of the Dutch practice of enforcing the time limits in the first instance, interlocutors noted the time pressure and additional administrative workload of processing penalty payments as detrimental to the efficiency of the asylum procedure.

“On the one hand, time limits provide direction and national law puts a (financial) penalty on the Immigration Service for not deciding within the time limits. On the other hand, the decision-making capacity in relation to the inflow and existing working stock is decisive, and penalty payments generate procedures that take time and impact decision-making capacity.”
(Interview_NL_3)

1.2.3.4 Early information on the asylum procedure and prospects

While practice varies significantly, in all six countries some form of early information is provided to the applicant, be it in the form of written material, videos, individual counselling and group sessions. Interview partners considered the provision of information in general as useful and necessary. However, they could not identify any significant positive influence on the acceptance of asylum decisions: the information on the asylum system might not be read or understood; group sessions remain superficial and are not specific enough. Only where individual and detailed legal assistance was provided to the applicant and a relationship was built, could a positive effect be noted (Interview_CH_4).

A more nuanced experience was derived from the evaluation of the test phase for the new asylum procedure in federal asylum centres in Switzerland. Focus group discussions with asylum seekers showed that the provision of information gave a more realistic view of their chances in the asylum process (Schweizerisches Kompetenzzentrum fuer Menschenrechte 2015, p 30). The evaluation further concludes that systematically informing applicants ensures that it is much less a matter of chance that asylum seekers are properly informed about the process and their prospects. Additionally, the fact that such information is provided by non-governmental actors increases the acceptance of the information by applicants (ibid). This experience is also shared in the Netherlands and in Norway. In the Netherlands, the Dutch Refugee Council provides early counselling to applicants during their rest and preparation period, although as a rule no estimate of the outcome of the procedure is given. At the beginning of 2019, the registration of asylum applications was expanded to include questions about identity and the migration route. This now precedes the provision of early information and while it is too early to assess the impact of this change, interview respondents surmised that having applicants provide preliminary information before they even understand what is expected from them will have a detrimental effect on asylum procedures. In Norway, the NGO, NOAS, provides information to applicants in the arrival centre. The scope of their counselling includes information about the applicants' rights and duties, the asylum system, and preparation for the asylum interview. Norwegian interlocutors deemed that the early provision of that kind of information is important to refute rumours and misconceptions and allows applicants to make informed decisions. They found it equally important that all relevant services, including the immigration authorities and the police, are represented in the arrival centre so that applicants can verify the information they have received with the different services.

“What we see is that when all these functions are gathered together from the start, we have a better chance to correct incorrect information [...] because, we see examples of people



fleeing who were being given bad advice, false information, fueled with rumors of what to do, what not to do, what stories to tell, what not to tell. And so, after we've given them information [...] they can go back and forth between our guidance and the police to correct incorrect information. [...] And so, this kind of prompt loading of the asylum process is positive, we think." (Interview_NOR_1)



1.3 Appeals instances

According to international obligations, states need to provide for an effective remedy (Art 13 European Convention on Human Rights (ECHR)). Article 47 of the EU Charter of Fundamental Rights further determines that an effective remedy can only be “safeguarded by a court or tribunal”, a principle also reflected in the recast APD. Article 46 of the recast APD thus ensures the right to an effective remedy, but it does not prescribe harmonised standards in terms of the organisation of appeal or the procedure to be followed.

The six countries examined in this report show significant divergences in the institutional set up of appeals instances.

1.3.1 First appeal instance authority

1.3.1.1 Characteristic of the first appeal instance authority

Judicial versus administrative decision body

Poland and Norway installed administrative bodies – the centralised Refugee Board in the case of Poland and the Appeals Board in Norway – as first appeal instances. In light of Article 46 of the recast APD, the Polish Refugee Board should be treated as a quasi-judicial body. In Germany, Switzerland and the Netherlands judicial authorities, in the form of administrative courts, decide over first instance decisions. Greece only recently changed the composition of the Administrative Appeals Committees which are now composed of judges and a migration expert – thus a ‘quasi-judicial body’. Poland stipulates that members of the Refugee Board should be asylum experts and at least half of them should be lawyers.

Table 5. First appeal instances in the six selected countries

Appeals instance	Germany	Greece	Netherlands	Norway	Poland	Switzerland
Name	Administrative Court	Administrative Appeals Committees	District Courts	Immigration Appeals Board	Refugee Board	Federal Administrative Court
Type of body	Judicial	Quasi-judicial	Judicial	Independent administrative agency	Administrative body (quasi-judicial)	Judicial
Staff	51 Administrative courts	20 Committees (2 judges + 1 expert)	11 District Courts		1 Board (12 members +6 employees)	~35 Judges tasked with asylum portfolio
Full review in fact and law possible	Yes	Yes	Yes	Yes	Yes	Yes



Appeals instance	Germany	Greece	Netherlands	Norway	Poland	Switzerland
Suspensive effect	Yes (except if inadmissible or manifestly unfounded)	Yes	Yes (except if inadmissible or manifestly unfounded)	No	Yes	Yes

Specialisation in asylum

The administrative appeals and quasi-judicial appeal bodies consist of specialised asylum judges and experts, while the administrative courts may deal with all kinds of administrative legal issues. Albeit, in many countries – particularly those that face larger asylum caseloads – the administrative courts created specialised chambers that focus on asylum and migration cases. Such specialisation has been reported for example in Switzerland where a number of judges deal with asylum portfolios.

Tribunals versus single judge decisions

Some courts decide in tribunals (Greece,⁸ Poland), while others foresee single judge or chairperson decisions (Germany, Switzerland, Netherlands, Norway). Still, basically all courts have procedures that foresee decisions by a committee of judges should the case be of specific interest and importance, e.g. if former jurisprudence is changed or the case needs to set new jurisprudence.

Centralised versus decentralised

The first appeal instances in Poland and Norway are centralised bodies, while Greece has several administrative committees distributed across the country. The Netherlands and Germany have decentralised courts. In many examples, it is evidenced that decentralised courts potentially lead to diverging jurisprudence and less predictability of legal decisions.

Numerous comments by interviewees particularly touched upon the consequences of decentralised decision-making. Interviewees from the Netherlands, as well as from Germany and Greece, identified the lack of a common jurisprudence as an important challenge at national level. Different regional courts or chambers often come to contradicting rulings, which hinders the legal predictability for applicants and results in onward appeals.

“It doesn’t really matter whether courts of first instance have different opinions on some topics but if they vary a lot, then it is difficult for lawyers to deal with a case and it is difficult for the applicants. Because if you have to go through court [x] you will get a decision, and if you go to court [y] you will get a different decision. And that is kind of awkward for the applicants and for the lawyers as well.” (Interview_NL_04)

More centralised decision-making at the first appeal instance leads to more consistent decision-making and predictability of legal decisions. A correlation between the number of appeals and more or less centralisation, however, is impossible to measure.

⁸ This will, however, change with the new law entering into force in 2020. Then the Administrative Committee will decide either as single judges or in chambers of three judges on appeals in second instance.



1.3.1.2 *Review in fact and in law by a judicial body*

In some EU+ countries, the first appeal instance examines and decides on the case *de novo* (in fact and in law), while in others it only decides on the legality of the first instance decision. Thus, in some EU+ countries, the relevant second instance (i.e. first appeal instance) bodies take decisions on the merits of each application, while in others they order the first instance body to review its first instance decision (EASO 2018, p 62). Article 46 of the recast APD requires Member States to set a full and *ex nunc* examination of facts and points of law at least in appeals procedures before a court or tribunal of first instance (Art 46 (3)).

In the six countries, the first appeal instance has the possibility to review the case in detail – thus in facts and law. Evidently, the higher the appeals instance the less the courts decide on substance, instead they review the legality of the decision, as well as cases of higher interest.

The question at what level a review of facts and law should be allowed has been answered differently in the interviews. In fact, in Germany the administrative appeals instance was abolished by the constitutional court in the 1980s since it prevented the administrative court from the establishment (not just appraisal) of facts in asylum cases (Interview_DE_1). This was found to be in contradiction with legal principles.

1.3.1.3 *Time limits*

Time limits for lodging an appeal

The recast APD asks member states to provide reasonable time limits for the applicant to exercise the right for an effective remedy: any “time limits shall not render such exercise impossible or excessively difficult” (Art 46 (4)). The APR proposal, however, changes this and sets time limits for lodging appeals depending on the qualification of the application.

Table 6. Time limits for lodging an appeal as proposed by the APR proposal

Time limits for different types of appeals as foreseen in the Asylum Procedures Regulation proposal (Art 53 (6))	Time limit
Appeals against decision rejecting a subsequent application as inadmissible or manifestly unfounded;	1 week
Appeals against a decision rejecting an application as inadmissible or in the case of a decision rejecting an application as explicitly withdrawn or as abandoned, or in the case of a decision rejecting an application as unfounded or manifestly unfounded in relation to refugee or subsidiary protection status following an accelerated examination procedure or border procedure or while the applicant is held in detention;	2 weeks
Appeals against decisions rejecting an application as unfounded if the examination is not accelerated or in the case of a decision withdrawing international protection.	1 month

With the time-limits introduced in the APR proposal, the EC intends to ensure the effectiveness of the appeal procedure and connect it with the necessity of free legal assistance and representation (see COM(2016) 467 final, p 7).

The six countries foresee a wide range of different time limits. Calculated in weeks, these range from one week in the Netherlands (in the case of the short regular procedure), two weeks in Poland and



Germany, three weeks in Norway, to four weeks in Greece and Switzerland (appeals in the extended procedure in the Netherlands also have to be lodged within four weeks).

However, basically all countries also apply shorter time limits for submitting an appeal in inadmissible or manifestly unfounded cases, thus for cases that are dealt with in accelerated procedure. The time limits for submission of appeals is in most cases around one week (Germany, Netherlands, Norway, Poland, and Switzerland). Only Greece provides a time limit of nearly three weeks (21 days in such cases). However, Greece also has additional shorter time-limits for subsequent applications and for appellants staying in one of the hotspots.

In addition, different time limits apply to the Dublin procedure.

Table 7. Time limits for lodging an asylum appeal in selected countries

Appeals instance		Germany	Greece	Netherlands	Norway	Poland	Switzerland
Name		Administrative Court	Administrative Appeals Committee	District Courts	Immigration Appeals Board	Refugee Board	Federal Administrative Court
Time limit for lodging an appeal	In regular procedure	14 days (1 month to submit evidence)	30 days	1 week 4 weeks (Extended procedure)	3 weeks	14 days	30 days (if on merit)
	In special procedures	7 days (Unfounded)	20 days (Accelerated procedure) 15 days (Dublin procedure) 7 days (Hotspot) 5 days (Subsequent application)	1 week (Manifestly unfounded in extended procedure)	1 week (Manifestly unfounded) 48 hours (Dublin cases)	7 days (Accelerated procedure)	5 days (Inadmissibility, airport procedure, safe country of origin ruling)

Except in the case of Norway, all appeals are granted automatic suspensive effect in regular first appeal procedures. Germany and the Netherlands, however, stressed that suspensive effects may not be granted in manifestly unfounded or inadmissible cases.

Time limits for appeals decisions

According to EU law, Member States *may* lay down time limits for the court or tribunal to examine the decision of the determining authority (Art 46(10) recast APD). However, the voluntary “may” provision was turned into a mandatory “shall” provision in the latest APR proposal, distinguishing different cases (Art 55 APR proposal).

Table 8 Time limits for the first level of appeal as foreseen in the APR proposal

Types of procedure foreseen in the Asylum Procedures Regulation proposal	Time limit
For a decision rejecting the application as unfounded in relation to refugee or subsidiary protection status if the examination is not accelerated or in the case of a decision withdrawing international protection.	6 months



For a decision rejecting an application as inadmissible or in the case of a decision rejecting an application as explicitly withdrawn or as abandoned or as unfounded or manifestly unfounded in relation to refugee or subsidiary protection status following an accelerated examination procedure or a border procedure or while the applicant is held in detention.	2 months
For a decision rejecting a subsequent application as inadmissible or manifestly unfounded.	1 month
In cases involving complex issues of fact or law.	Prolongation by an additional 3-month-period

The six countries have varying time limits for the courts and administrative bodies to come to a decision. In this comparison, Switzerland provides the shortest time limitation for the Federal Administrative Court of only 20 days. The Refugee Board in Poland and the District Courts in the Netherlands (for the (short) regular procedure) have one month to decide on an appeal. Longer timelines are foreseen in Greece (three months). No time limits are applicable in Germany and Norway.

Commonly, however, none of the time limits bear consequences if they are not upheld by the respective appeals instance institutions. Not all countries were able to provide average processing times. In the Netherlands, the average time for the regular (short) procedure was nine weeks. In Switzerland, it used to be roughly five months, in Germany 12.5 months and in Norway roughly 4.5 months. The remaining countries could only provide overall average procedure times (i.e. first and appeal instances) of 7.8 months in Poland and eight months as an agreed general rule in Greece.

Table 9. Time limits for deciding on appeals in selected countries

Appeals instance		Germany	Greece	Netherlands	Norway	Poland	Switzerland
Name		Administrative Court	Administrative Appeals Committee	District Courts	Immigration Appeals Board	Refugee Board	Federal Administrative Court
Time limit for decision	By law	No time limit	3 months	4 weeks 23 weeks (Extended procedure)	No time limit 8 months (target for entire procedure)	1 month	20 days (Accelerated procedure) 30 days (Extended procedure)
	Average processing time	12.5 months (2018) 7.8 months (2017)	8 months (general rule)	4 to 6 weeks (Accelerated procedure) 9 weeks (Regular processing) 31 weeks (Extended processing)	131 days / 4.3 months (2018)	235 days / 7.8 months (2018) 104 days / 3.4 months (2017) – whole process	159 days / 5.3 months (2015-2017)

Time limits at the appeals instances are usually not strict or legally binding; binding time limits would be perceived as an infringement on judicial independence.



Representatives of courts view time limits to be a general guiding framework and, as a matter of principle, consider them only as indicative, since a strict time limits would jeopardise the quality of the decision.

“We have a saying that we don't care about the time limits, the quality should be as high as possible. So, you're trying to balance between the time limits and the quality. But there's one thing that's paramount: that nobody should be returned to persecution. Meaning that if that's what is needed, you'll use more time.” (Interview_NOR_3)

“We always put quality over time limits.” (Interview_PL_3)

When the foreseen time limits are exceeded in Poland – which is often the case for the accelerated procedure – a formal decision to prolong the procedure has to be taken, where the reasons for the delay are stated. In such cases, the applicant can also lodge a complaint to the court on account of inaction or delay of the first or the appeals instance administrative authorities (OfF or Refugee Board). The administrative court may order the administrative authority to pay the asylum seeker damages (the maximum is fixed in the law). However, such a complaints are only rarely made (Interview_PL_1).

Even if there are rarely negative consequences for exceeding the foreseen timeframe, time limits are considered useful by some interview partners, while others oppose them.

“The effect is similar to the recommended speed limit – the “Richtgeschwindigkeit” – on a highway: the intention is clear, and to the extent possible efforts are made to speed up decisions and to prioritise certain cases.” (Interview_DE_1)

“Time limits are very helpful in reducing the duration of the overall asylum procedure, because they define the goal, and the heads of the offices and managers are working towards creating a system that allows the processing of a case in accordance with the law.” (Interview_PL_1)

“I do not think that there is a need of the law to put in a time-limit, for a judgment of the court. I do not think it would be a good idea generally speaking.” (Interview_PL_2)

However, all countries impose time limits on the appeals instances in the case of caseloads that are dealt with in accelerated procedures. Strict time limits thus do exist and are generally adhered to, mainly in the accelerated procedures. Still, this is sometimes undermined by events beyond control, e.g. when waiting for a response from Eurodac, the verification of documents, or when bottlenecks arise due to a lack of resources (Interview_DE_1).

Time limits make sense in straightforward cases with a set jurisprudence. However, in a number of interviews with judges from the appeals instances, time limits were perceived negatively when cases at hand could lead to a shift in jurisprudence or have not been decided at a higher level yet. The interviewee from Greece, as an example, referred to cases that had to determine whether Turkey would be considered a safe third country, a case with broader implications for future cases to come. Time limits in such cases are counterproductive as a high-quality, well-reasoned decision will have overall more impact on the effectiveness and duration of asylum procedures to come than the delay in the one initial case (Interview_GR_1).

Time limits often cannot be followed when resources are lacking, the number of appeals is suddenly increasing, or, as an interviewee from Poland pointed out, the procedure is too complex to be completed in the required amount of time.



“The majority of cases at the Refugee Board takes longer than the foreseen time limit, because according to the Polish administrative procedure and the specific refugee procedure it is almost impossible to finish a case in 1 month.” (Interview_PL_3)

Certainly, however, special procedures with shortened time limits well illustrate that time limits effectively contribute to a shortening of the asylum process.

Procedural time limits and their impact on the appellants’ acceptance of the decision

Interlocutors in Norway and the Netherlands did, however, not attribute too much weight to time limits with respect to a greater or lesser acceptance of an asylum decision. According to their assessment, deadlines do not matter for the appellants whose main concern is the outcome of the decision and that it is based on a sound, predictable and fair procedure. In that context a few respondents underlined the importance of explaining the reasoning behind the decision to the appellant.

“I think it is not the duration of the proceedings [that increases the acceptance], it is how you motivate the decision. [...] Most applicants come from countries where the judiciary is corrupt, so they are happy when we are not corrupt, and we are dealing with their cases in a respectful way. So, I’m not even sure that applicants are aware of the time limits and I don’t think that is their main concern. Their main concern is, “can I stay, or can I not stay”. [Interview_NL_4]

“The experience is that it has nothing to do with the time you take. It has more to do with how you explain the decision. If you are good at explaining all through the procedure that, “this is going to be handled this way, your appeal will be dealt with in that way...” I think this is much more important than whether it’s quick or not.” (Interview_NOR_3)

1.3.2 Onward appeals

At EU level, it is not regulated how many appeals instances should be accessible by applicants for international protection.⁹ The Court of Justice of the European Union (CJEU) held in *Diouf* that “the principle of effective judicial protection affords an individual a right of access to a court or tribunal but not to a number of levels of jurisdiction”.¹⁰ The number of appeals instances varies across the reviewed countries. The Swiss Federal Administrative Court is for most cases the first and only appeals body in Switzerland. In Germany, Greece, the Netherlands, Norway and Poland, the procedure allows for onward appeals to the High Administrative Court, the Administrative Court of Appeal, the Council of State, the Oslo District Court or the Voivodeship Administrative Court, respectively. Only in exceptional cases, supreme courts in Germany, Norway and Poland can be addressed – mainly in cases of fundamental, legal or constitutional questions of high relevance. In Greece, there is also a fourth instance that can be addressed with an appeal, the Council of State.

Evidently, the pressure and responsibility on appeals courts that decide in second and final instances are higher than for courts whose decisions may further be challenged. This responsibility, paired with

⁹ See also EASO 2018, FN 459, where the CJEU, referring to other administrative areas, determined that a review of decisions by a single national court meets the requirement of effectiveness.

¹⁰ *Brahim Samba Diouf v Ministre du Travail, de l’Emploi et de l’Immigration*, C-69/10, para 69.



tight time limits, may pose a particular pressure on courts. In the Swiss case, the changes are too recent to understand the impact on both quality and gained efficiency (Interview_CH_8). Equally, it may lead to more decisions overruling first instance decisions (ibid).

Table 10. List of possible onward appeals in selected countries

	Germany	Greece	Netherlands	Norway	Poland	Switzerland
Onward Appeals	High Administrative Court	Administrative Court of Appeal	Council of State	Oslo District Court	Voivodeship Administrative Court	Federal Supreme Court
	Federal Administrative Court	Council of State		Courts of Appeal	Supreme Administrative Court	
	Federal Constitutional Court			Supreme Court		

Source: AIDA country reports; Eurostat; Interviews

None of the interviewees saw much positive impact of more than one appeals instance, apart from a further onward appeal possibility to a higher Court, particularly in precedent-setting and more important cases.

Among the countries researched, interviewees in Greece also admitted that the second administrative (quasi-judicial) instance could be replaced by direct access to judicial review, thereby reducing the number of appeals instances (Interview_GR_1 and _2). The effect of onward appeals to the German High Administrative Court (Oberverwaltungsgericht), the second judicial instance, on the efficiency on the asylum process cannot be identified, since these cases are so rare that they do not have a measurable effect on the average duration of asylum procedures (Interview_DE_1).

1.3.3 Decisions in appeals instances

A review of applications and the development of the decisions in first and appeal instances (see Figure 3 below) shows first of all that in all countries, the numbers are dropping since 2015, with the exception of the Netherlands, which recently observed increased inflows (compared to 2016 and 2017) and Greece, which, particularly since the EU-Turkey statement and accompanying measures, has more applicants registering and applying for international protection.

All countries faced significant increases in decisions following the events in 2015/2016 in both the first and appeal instances. EU+-wide, first instance decisions were highest in 2016 with overall 1.1 million decisions, which constituted a three-times increase compared to 2014. The most significant increase of first instance decisions was reported in Germany with an increase of 648% from 2014 to 2016. In the Netherlands, the number of decisions increased by 154% and in Norway by 252%. A more modest increase was noted in Switzerland (103%) and a slight decrease was seen in Poland (92%). Only Greece faced a peak of increased decisions in 2018, as the number of applications in Greece only started to increase later.



The decisions in the appeals instances also grew. The peak in appeals decisions emerged, however, two years after the peak of first instance decisions, namely in 2018 with an increase of 227% of appeals decisions compared to 2014. Germany issued the majority of appeals decisions: while Germany issued from 2008 to 2014 less than 40,000 appeals decisions per year, these peaked in 2017 with close to 160,000 appeals decisions and still 147,000 in 2018. Only Norway reported a decrease of appeals decisions, which dropped to only 25% in 2018 compared to 2014.

In the first instance, Germany tried to react by employing more staff (staff capacities were increased from 2,100 employees in 2014 to 7,400 in 2017) or by shifting responsibilities of staff towards decision-making. Germany reached a peak of making 87,649 decisions per month in May 2017.¹¹

¹¹ BAMF (2018). The changing influx of asylum seekers in 2014-2016: Germany's response.



Figure 3. Asylum procedures: new applications and decisions (2014-2018)

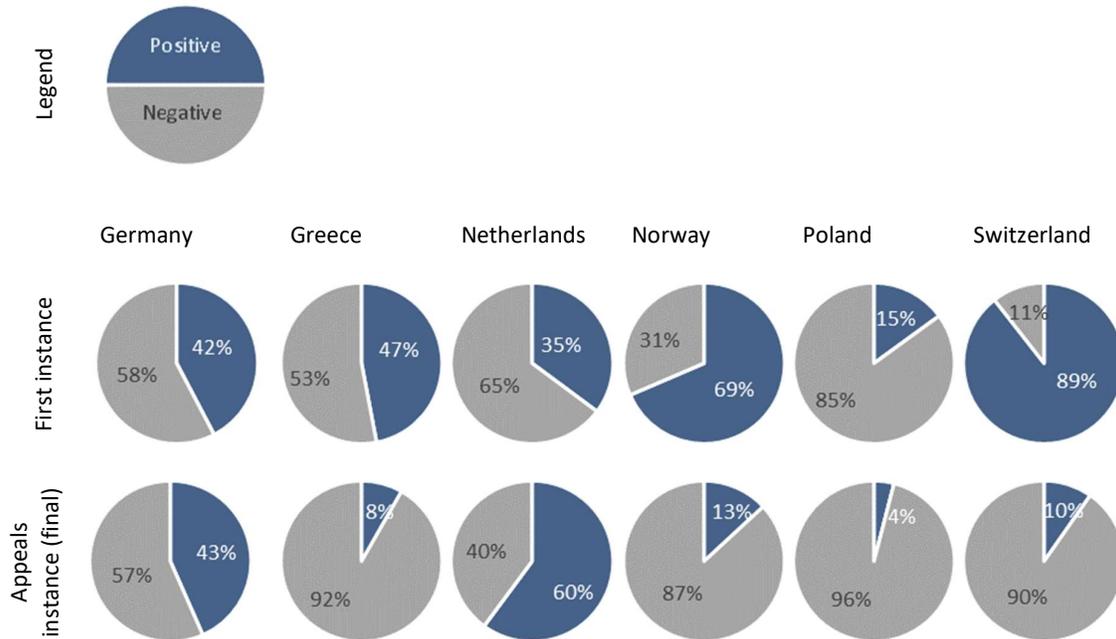


Source: Eurostat



A review of the recognition rates – retrieved from Eurostat – in first and appeal instances shows that Switzerland (89%)¹² and Norway (69%) have quite high recognition rates in first instance decisions. The low number of overturned negative first instance decisions (i.e. recognitions) in these countries in the appeals instances is most likely connected with high recognition in the first instance decisions.

Figure 4. Recognition rates in the first and (final) appeals instances (2018)



Source: Eurostat

Poland, on the other side, has a very low recognition rate in first instance decisions, but – as has been shown above – received the majority of applications from only one country, the Russian Federation (distantly followed by Ukraine). The low recognition rate corresponds to the composition of applicants in Poland and the EU-wide recognition rate of applicants from the Russian Federation of about 20% (EASO 2019, p 55). Despite the low recognition rate in first instance decisions, the appeals instances overturned only relatively few decisions (4%). The most overturned decisions are found in the Netherlands (60%) followed by Germany (43%).

¹² Note that Eurostat counts differently than the SEM: SEM also counts decisions that deny responsibility (Dublin) in the total number of decisions. Also, returned cases from the appeals instance are counted as first time applications at SEM but not at Eurostat. SEM accordingly published a recognition rate of 60.8% (see: <https://www.sem.admin.ch/dam/data/sem/publiservice/statistik/asylstatistik/2018/stat-jahr-2018-kommentar-d.pdf>, p 18.). For reasons of comparability Eurostat data is used in this report across the countries researched.



1.4 Coordination and cooperation

1.4.1 Coordinated proceeding strategy

Coordination between the first and appeal instances is very limited in the countries researched and seems to be the exception rather than the rule. Between administrative instances (i.e. Poland) the coordination seemed stronger. Coordination between administrative and the judicial level (e.g. Switzerland and onward appeals to administrative courts in Poland) is comparatively limited, in order to avoid compromising the independence of the judiciary. Overall there is little formal coordination, beyond information sharing. Also in Greece, there is hardly any coordination between the first and the appeal instances.

However, there are some areas where the first and appeal instances started to develop a more structured exchange. This ranges from a more formal exchange of information on statistics and activities, to more substantive exchanges on particular caseloads, such as expected increases in appeal numbers, or specifics with regard to a legal question that has arisen and is in need of a precedent-setting decision by the courts.

1.4.2 Information exchange between first and appeal instances

Basically all reviewed countries have formal and informal information exchanges in place between the first and appeal instances. At minimum they extend to sharing of statistics, activity reports, or periodical information exchange meetings. Most of the information sharing takes place in meetings and focuses on practical and administrative issues. Individual cases are not discussed.

Switzerland has recently replaced hard copy files with an electronic system, which gives the appeals instance instant access to all relevant documents of a case. This is expected to save time. To what extent that expectation will be met still has to be evaluated.

In Poland, there is contact on a daily basis between the Office of Foreigners (Off) and the Refugee Board. In addition to that, the Refugee Board tries to organise a meeting with the Off twice a year.

“This exchange of information does not have any effect on the duration of the procedure, but it has an impact on the quality of the decisions.” (Interview_PL_1)

In exceptional cases, the Polish Refugee Board has provided feedback on fundamental issues or technical problems in first instance decisions and on how their quality could be improved.

“Usually the refugee board is sending us some information about the main technical problems they found in first instance decisions. How we can improve the quality. It is general case related information and not specifically to cases.” (Interview_PL_1)

There is a general understanding that information exchange between first and appeal instances may have a positive impact on the efficiency of the asylum processes. Respondents referred to the old practice when the first and appeal instances worked against each other and not with each other, which was not helpful for anyone (Interview_CH_1). Evidently, the courts take leading decisions, which require implementation from the first instance authorities. Equally, the first instance authorities share information and evidence with the appeals instance bodies if they are convinced that certain decisions



lack some ground. Steering massively against each other is only counterproductive and prolongs the overall procedure – both instances thus can support each other, which can only have a positive influence on the efficiencies of the procedure (Interview_CH_1).

A typical area for potential information sharing refers to country of origin information (COI). Most EU+ countries have established COI units. Some are more independent (e.g. Landinfo in Norway) while others are closer to the first instance authorities. The Swiss SEM for example runs an electronic platform where COI is stored, which is also accessible to the court. Still, the Swiss court additionally employs COI researchers to independently obtain information and thus guarantee the independence of the appeals instance. Information exchange in this case is thus limited. Exchanging information about upcoming new COI also allows courts to assess the desirability of ruling on a case or, on the contrary, waiting for the new COI before ruling.

Information is, however, not only shared between first and appeal instances but also between the different levels of appeals instances. In the Netherlands, as an example, the appeals instances (District Courts and Council of State) meet every two months for a general exchange on key issues. There is, however, no coordination in terms of planning. Appeals courts must sometimes wait for a long time for precedent-setting by the Council of State. Often, they proceed with their statutory interpretation without the Council's guidance, which leads to diverging verdicts in similar cases by different courts.

1.4.3 Information on caseloads

In Switzerland, the Federal Administrative Court reorganised its departments to correspond to the six asylum regions of the SEM, which is perceived as facilitating the cooperation between the various involved actors.

The exchange between first and appeal instances also acts as an early warning system, indicating whether the number of appeals is expected to rise or fall, allowing the court to be able to make necessary arrangements (Interview_CH_1). The appeals instance is informed about the caseload of the first instance, which is used to support their resource planning and personnel management. The SEM also alerts the appeals instance institutions about unresolved questions which lead to a high number of appeals.

*“When the court is informed about the workload and which applications are still open, and then we realise that lawyers file a lot of appeals in one field then we can inform the court about it and ask it to clarify it. We explain to the court that if they resolve this question quickly then a big workload and flow of appeals that all just are about this one unresolved question could be avoided. They can then try to clarify this point. We give them our observations and then they decide okay this question is important and we will clarify it. Further if we explain them our strategy of action and they acknowledge it and they can then comment it.”
(Interview_CH_1)*

A similar coordination arrangement exists in Norway, where the exchange of information mainly concerns planning issues, such as sharing the number of expected first-instance decisions in order to anticipate the required court capacity to deal with the caseload.

“What we do is, we [the first and appeal instances] are in contact so that we know when we can expect different cases to come so we can adjust at the appeal stage so that our organization is ready to receive the cases.” (Interview_NOR_3)



Data and information on the caseload with the aim to provide the appeals instances a better allocation of resources is also applied in Germany (Interview_DE_1).

The interviewed interlocutors identified such information exchange as an important precondition for the appeals instance, allowing it to appropriately adapt resource allocations to the numbers, profiles and countries of origin of appeals against first instance decisions. Thus the appeals instance institutions can react in a more targeted way to a sudden increased influx and are also aware of the main countries of origin.

1.4.4 Short procedures and backlogs

1.4.4.1 Acceleration of procedures

Accelerated procedures as indicated above are characterised by (among others) shortened time limits in first instance procedure compared to the regular procedure and that suspensive effect is not automatically granted. From the six countries, however, only in Greece also the appeals instance is obliged to comply with shorter time-limits in accelerated procedures. In Germany, the Netherlands, Norway and Poland, the appeals instance institutions have no time limitation in accelerated procedures. Switzerland has generally shorter processing times for the appeals instance.

How often suspensive effect is granted or how often applicants are returned despite the lodging of an appeal was neither possible to obtain from interviews nor retrieve from secondary desk research.

1.4.4.2 Prioritisation

In general, prioritisation entails the first instance authorities prioritising certain groups of applicants and informing the appeals instance institutions about it. In Poland, the appeals instance may follow this practice, particularly when it comes to detainees, vulnerable groups or Dublin cases. Norway has a similar system in place, whereby the first instance authorities can propose a prioritisation of specific cases to the Appeals Board.

In the case of Switzerland, the appeals instance must by law (Art 129b AsylG) take into account the strategy of the SEM. This guarantees that prioritisation of the first instance authorities is not hampered but supported by the appeals instance institutions. For the prioritised groups that benefitted from the coordination, quicker decisions were reached which hints to positive effects of coordinated proceedings.

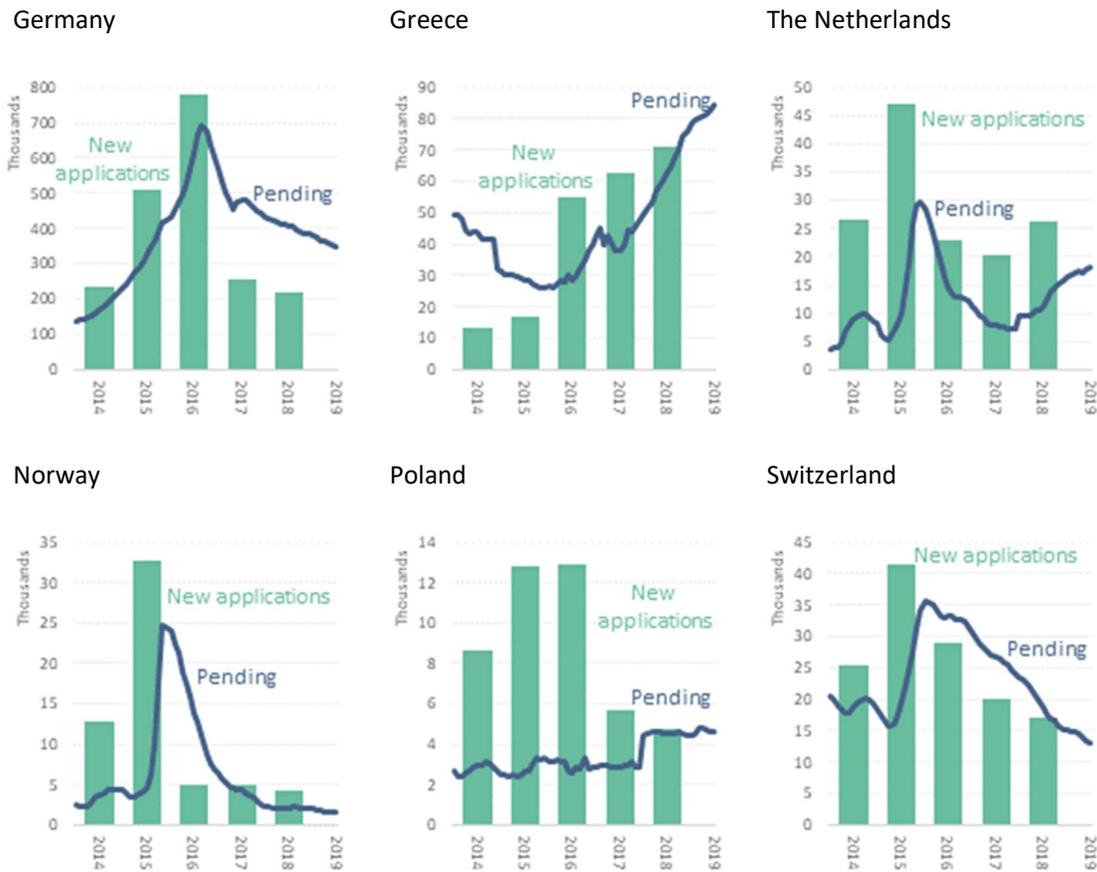
1.4.4.3 Pending cases and backlogs

When comparing the situation in the six countries as regards pending asylum procedures, Germany, Norway and Switzerland managed to reduce the backlog year by year since 2016. In the Netherlands and Poland, but especially in Greece, the pending caseload is increasing. Increases in the stock of pending applications (pending at first and appeal instances) are evidently driven by new asylum applications. The drop in applications after 2016 has also led to a decline in the stock of pending asylum cases. While Switzerland was able to reduce the backlog to pre-2015 levels by the end of 2018, Germany was still dealing with 367,000 pending asylum cases in March 2019. In Poland, the number



of pending applications has also increased, but arrival peaks were not as pronounced as for the other destination countries. In the Netherlands, approximately 8,000 cases were pending at first instance in the beginning of 2019 due to a 27% increase of first-time applications in 2017/2018.

Figure 5. New asylum applications (2014-2018) and stock of pending applications (2014-mid 2019)



Source: Eurostat

The countries addressed the backlogs in different ways. Germany increased staff, especially for first instance procedures. In Greece a special backlog committee was tasked to lower the backlog of pending appeals against decisions on applications lodged before 7 June 2013, i.e. before the establishment of the Asylum Service.

Poland opened a local branch of the OfF in Biala Podlaska, a small town on the border to Belarus, in reaction to a massive influx of applicants from Chechnya via the border crossing point in that area. This office allowed the OfF to conduct interviews with these applicants in a much faster manner (Interview_PL_1).

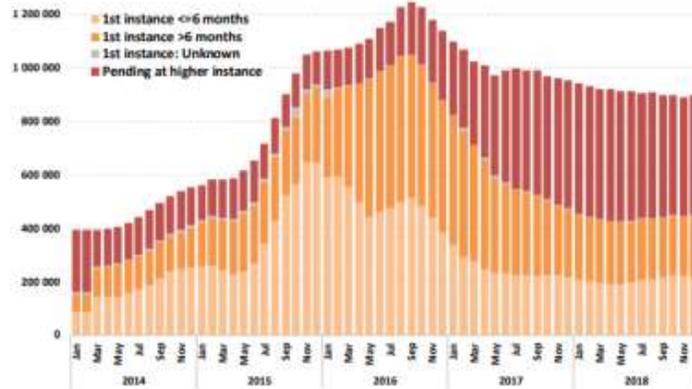
A massive backlog of cases at the Supreme Administrative court in Poland lead to an average waiting time of 1.5 years for a judgement. In response to this problem, a resolution was adopted in May 2016, which allows judges of the Supreme Administrative court to identify cases which should be given



priority, thereby effectively reducing the waiting period to six to eight months or at least less than a year. The list of priority cases includes all applicants in need of protection. Return cases are not mentioned on that list, but due to their sensitivity it is common practice to prioritise them as well. Apart from that prioritisation, the cases are listed for public hearing in the order they come in – however, the Head of Unit does have some flexibility regarding this (Interview_PL_2).

Textbox 1. Evolution of pending cases in the EU+, by instance

According to EASO data, around half of the pending asylum decisions in EU+ in the first instance have been pending for less than six months, the other half for six months or more. This ratio has not changed significantly since 2016. However, before the mass inflows of 2015 and 2016, the number of recently initiated procedures (less than six months) was larger than the number of procedures pending in the first instance for six months or more, suggesting that the average processing time was shorter in the years before 2015.



The number of pending cases at higher (appeals) instances has increased drastically since 2016. Out of the almost 900,000 pending asylum cases in the EU+, around half are currently being examined in appeals (second or higher) instances. Whereas numbers of new asylum applications have dropped, the backlog of asylum decisions is only slowly vanishing, as many asylum seekers appeal their rejected application, leading to a transfer of the backlog from first instance to higher appeals instances.

Source: EASO Annual Report on the situation of asylum in the EU 2018 (p 67)



1.5 Legal assistance

EU legislation requires EU Member States to provide legal assistance to asylum seekers upon request during appeal procedures (Art 20 recast APD). Provision of legal assistance in the first instance is typically contingent upon the availability of resources and is left to the discretion of the respective EU Member State (EASO (2019), p 127). EASO further notes that in 2018, EU+ countries introduced several changes in the area of legal assistance (ibid). Generally, in the first appeal instance, representation by a lawyer is not mandatory in any of the countries.

While EU law requires free legal assistance in the appeals instances, applicants can also access state financed free legal services in first instance procedures in Switzerland and the Netherlands. The new system in Switzerland is founded on the idea that a streamlined procedures can only be successfully implemented if all actors work together seamlessly. In the federal asylum centres, NGO consortia provide free legal assistance, which is contracted and paid for by the SEM. In the Netherlands, early information is provided by the Dutch Refugee Council (Vluchtelingenwerk Nederland). In addition, applicants are entitled to free legal assistance by lawyers as soon as the asylum procedure starts. However, the Netherlands are currently considering restricting the provision of free legal assistance in the first instance.¹³

In Germany free legal assistance is currently only offered at some the AnkER (*Ankunft, Entscheidung, Rückführung* – arrival, decision, return) and arrival centres by NGOs.¹⁴ This, however, means that legal assistance is only partly provided at first instance but is restricted to those centres. Norway has contracted an NGO to provide initial procedural and legal advice to applicants in the arrival centre. In Poland, the first instance authority only provides information on the legal proceedings in the asylum procedure.

Table 11. Legal assistance in first instance procedures

Legal assistance in first instance procedures						
	Germany	Greece	Netherlands	Norway	Poland	Switzerland
Responsible agency	BAMF	Asylum Service	Legal Aid Board	UDI	Office for Foreigners	SEM
Free legal assistance	Yes Partly provided in (AnkER) centres Additional assistance	No Additionally assistance provided by NGOs	Yes Provided by lawyers Early information provided by the Dutch	Yes Legal information provided by an NGO contracted by UDI	No Information provided by the OfF	Yes In federal asylum centres provided by a service provider contracted by SEM (fast-track and Dublin

¹³ See ECRE: “Netherlands: an end to legal aid at first instance” at: <https://www.asylumineurope.org/news/18-11-2019/netherlands-end-legal-aid-first-instance>

¹⁴ This will change beginning of 2020, when free and independent legal assistance will be rolled-out to all centres (see country report Germany).



Legal assistance in first instance procedures						
	Germany	Greece	Netherlands	Norway	Poland	Switzerland
	provided by NGOs		Refugee Council			procedures); different consortia of civil society agencies (regular procedure)

All six countries, however, offer free legal assistance in the appeals instance, which is obligatory for EU Member States according to Article 20 of the recast APD. Member States may limit legal aid to those appeals with tangible prospects of success ('merit test' – see Art 20 recast APD) and to applicants without the financial means to cover the cost of their legal assistance ('means test'). A merit test is intended to prevent the misuse of resources on cases with no tangible prospect of success. Germany conducts such a merit test as well as Switzerland. While in Germany it is the Court that conducts such a test, remarkably, it is the legal assistance providers themselves who conduct a merit test in Switzerland. The merit test is not applied in the Netherlands.

The recast APD allows legal assistance to be provided by NGOs, professionals from government authorities or from specialised services of the State (Art 21). The selected countries mainly concluded agreements with lawyers as part of a pool of lawyers. Switzerland has a special agreement with different consortia of civil society agencies, which are contracted by the SEM.

Table 12. Legal assistance in first appeal instance

Free legal assistance in first appeal instance						
	Germany	Greece	Netherlands	Norway	Poland	Switzerland
Responsible agency	Administrative Court	Asylum Service	District Courts	UDI	Office for Foreigners	SEM; Federal Administrative Court
Free Legal assistance	Upon request Based on pass of merit test	Yes Based on budgeted availability	Yes	Yes	Yes	Yes Based on pass of merit test (by the legal assistance provider, not by SEM or courts)
Comment	Legal representation (covering court hearing and legal advice) is non mandatory	Budget is limited; assistance is allocated on a first come first	Same as in first instance; pool of 417 lawyers coordinated by the Legal Aid Board	Lawyers registered with the UDI; and an NGO	Pool of 140 legal counsellors, 200 advocates and 3 NGOs (for legal representation, appeal preparation)	Same providers as in first instance ¹⁵

¹⁵ Different for appeals procedures outside asylum centres (for prolonged procedure) and in case assistance in the federal asylum centre was rejected, the Court decides upon request of the applicant on free legal assistance.



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For onward appeals, legal representation needs to be applied for and can be granted in case of insufficient resources. In Germany legal representation is mandatory for onward appeals.

Table 13. Legal assistance in onward appeals instances

Legal assistance in onward appeals instances						
	Germany	Greece	Netherlands	Norway	Poland	Switzerland
Responsible agency	High Administrative Court; Federal Administrative Court; Federal Constitutional Court	Administrative Court of Appeal; Council of State	Council of State (Administrative Jurisdiction Division)	Appeals Board (for onward appeal); Oslo District Court	Voivodeship Administrative Court; Supreme Administrative Court	Federal Supreme Court (rare cases)
Free legal assistance	Upon request Legal representation mandatory	Yes Provided by Courts Based on pass of merit test	Yes	Yes Provided by an NGO through pro bono support	Upon request Based on financial means test	Yes Based on pass of merit test

1.5.1 Free legal assistance: impact on decision-making and efficiency

Respondents from the Netherlands and Switzerland, the two countries that provide free legal representation throughout the asylum procedure, confirmed that the provision of free legal assistance during the first instance procedure has a positive impact on the efficiency of the asylum procedure: it can contribute to enlisting the asylum seekers' full cooperation and improves the completeness and quality of the dossier. This is confirmed in the Swiss system where lawyers have a 21-day period for the preparation of a dossier, but is less certain in the Dutch procedure where the tight timing of the procedure can place time constraints on lawyers. At the same time, the different stages of the regular and extended procedures give Dutch lawyers the opportunity to submit corrections or additions to the decision-making authority and to provide a response to its intention to reject a decision.

"I'm experiencing [free legal aid throughout the asylum procedure] as beneficial, not just for the asylum seekers, but for the whole chain in the procedure, to have well prepared asylum seekers at very early stage. So, they come out with their true motives, their actual asylum motives at the first possible interview. [...] A very confidential meeting [with a lawyer] is very important, because you have to trust a lawyer and it is difficult for asylum seekers from any country to trust any lawyer about the law, so a lawyer can use this opportunity to start a relationship that is very important during the procedure." (Interview_NL_2)

A representative of Germany has a more critical position towards free legal assistance.

"It is a matter for debate. In difficult cases it is useful, since they are better prepared, with the facts and available documentation in order. In simple cases however, e.g. when applicants from the Western Balkans are concerned, it is doubtful whether a lawyer would be able to make a positive contribution. In such cases a quick hearing and decision is preferable." (Interview_DE_1)



In comparison, interlocutors in Poland did not support that conclusion, complaining that the quality of the documents still oftentimes has to be assessed as low.

“Unfortunately, I can see the same argumentation in every case. The way it works now, it cannot be considered helpful.” (Interview_PL_3)

While in Germany the Swiss model of legal representation from the start is currently under discussion, its introduction could lead to a prohibition of introducing new evidence in front of an appeals court, which was considered problematic from a legal point of view by interlocutors from Germany (Interview_DE_1).

The Swiss and Dutch experiences confirm that free legal representation helps establish facts that are relevant for the entire procedure, including appeals. It must be borne in mind, however, that both countries provide free legal assistance from the outset of the procedure. It is also important to note that their appeals instance institutions are general courts that do a judicial review of the applicant’s appeal ground and an *ex nunc* examination of the case, but do not reassess the facts of the case.

“As a judge, I hope that the system will stay as it is. It makes my job easier because the proceedings were good. And I am not a fact-finding judge. I will not interview the applicant, so I have to base my conclusion on the decision. I do a judicial review of the applicant’s appeal ground. And if the decision is not ok, and the appeal ground is not ok, I cannot really do anything as a judge. So; I really need a lawyer to be involved in the early stage of the proceeding.” (Interview_NL_4)

1.5.2 Free legal assistance: correlation with the number of appeals

The appraisal of the correlation between the provision of free legal assistance to applicants from the outset of the asylum procedure and the rate of appeals is conflicting. Currently only two countries provide this type of assistance, Switzerland and the Netherlands.

Germany will start introducing free legal assistance as of January 2020, but whether it will be provided by the BAMF or civil society agencies is yet to be decided (Interview_DE_2).

While Switzerland has seen a decrease in the number of appeals (Interview_CH_3), the appeals rates in the Netherlands remain consistently high. According to Dutch interlocutors, lawyers do (and are required to) discuss the chances of success of an appeal with their clients but can only rarely prevent them from trying to exhaust all avenues to obtain a permit to stay in Europe.

“People will appeal the decision because it is their only chance to stay in Europe. So, yes [free legal assistance] does certainly raise the quality of the decision and the proceedings, but we cannot relate that to the number of appeals.” (Interview_NL_4)

“It depends on where they were before they came here, some of them I think have huge psychological problems so when you talk to them, they won’t listen. But, even then, it’s worth a try [... and] the more independent you look, the more your client will accept and trust you. So, that really depends on the way you conduct this interview [...]. That’s why it is so hard to make a statement or a general conclusion, because there are quite a lot of differences between different groups of asylum seekers, countries of origin, etcetera.” (Interview_NL_2)

“Legal representation does not change the number of the appeals, because many applicants mainly appeal in order to prolong their stay in Poland, e.g. to get social assistance during the appeals procedure.” (Interview_PL_1)



In Poland, interview partners did see a direct link between legal assistance and the number of appeals.

“Lawyers encourage people to appeal more. They go to the refugee camps and provide information about this option. I have seen cases in court and in the court of second instance, even though there is no room for discussion in this case.” (Interview_PL_3)

“Legal representatives usually do not discourage their clients when an asylum seeker contacts them for an appeal whether justified or not, because the client might have overriding interests, e.g. s/he needs more time. They will, however, inform their client about the chances for success. Still, it is difficult to make predictions: e.g. some time ago there was no chance for Ukrainians to get protection. 1 year later the situation had changed completely. If one considers the time procedures take and the backlog of cases, one realises that some clients who profited from this new situation actually had appealed at a time when their chances still had to be considered hopeless.” (Interview_PL_5)

According to a Polish interlocutor, of the 869 decisions made in 2017 by the Refugee Board 320 were appealed – more than a third of the cases. This is a steep increase compared with earlier times, when the rate was about 10% or less. With the introduction of legal representation, the appeal numbers increased, but with no effect on the overall final recognition rates. According to internal statistics only 5.8% of the decisions of the Refugee Board are overturned, in the vast majority of cases the decision is upheld (Interview_PL_3). Unfortunately, relevant data in the countries is lacking and the correlation between appeals and legal assistance is thus difficult to make.

1.5.3 Free legal assistance: efficiency and quality control

Legal aid at the appeals stage is organised by the first instance authorities, a legal assistance institution, or directly by the appeals instance body. The first option may raise impartiality questions. Appellants, however, usually do have the opportunity to opt for their own lawyer whose costs are equally covered. The interviews for this study did not point to any concerns in this respect but revealed the need of a closer monitoring of the work and performance of legal assistance providers.

The need for quality control of lawyers providing legal assistance to asylum seekers came out as a result of this study. Interlocutors from countries that have a quality control system in place, such as the Netherlands (voluntary peer-review) and Switzerland (detailed catalogue of standards and obligations for the legal representation) seem to have an overall more positive assessment of the efficiency of legal assistance than respondents from countries that have no quality control systems in place and thus do not have the means to measure or compare the performance of legal assistance.

Poland for example does not have this kind of quality control system, and the involved legal representatives – not all are specialised lawyers – are not held accountable for the quality of their support. Also Norway sees the need to monitor and review the work of legal assistance more closely.

“We see a great variation in the work that's done by lawyers. [...] So, we advocate with both politicians and the authorities that checks should be done on the work that is done by lawyers for asylum seekers every five years or something so that you can have a kind of checks and balances, with the legal help that is given to the asylum seeker, the help that it gives the system because if it is done well it can prevent unnecessary appeals, but also that the authorities get value for their money when they pay five hours to lawyers.” (Interview_NOR_1)



1.5.4 Free legal assistance: payment schemes

The six countries apply different contracting schemes for legal assistance. Some countries link payments with specific procedural steps or an appeal, others have flat rate payment schemes in place. The compensation for legal assistance in Switzerland is paid to the service provider (an NGO or NGO consortium) in which the legal assistants are employed. The legal assistants therefore have no immediate negative consequences to bear, regardless whether an asylum decision passes with a complaint to the Federal Administrative Court or is dismissed due to lack of prospect.

The Netherlands and Norway have a similar flat-rate arrangement in the form of a system of fixed fees for a maximum number of paid hours on a case. The underlying idea of the system is that there should be a natural compensation between the more complex and time-consuming cases and cases requiring less work. In Norway, interlocutors noted that the number of paid hours is insufficient to deal with a case and that accordingly, the compensation of lawyers is too low in relation to the required efforts. In the Netherlands, where free legal assistance is provided in the first instance, the principle of ‘no cure, less fee’ was introduced in 2014 in order to discourage the prolongation of applications. A lawyer’s remuneration is also reduced in subsequent applications when the appeal has been declared inadmissible.

“It’s difficult for lawyers who do other kind of work, other types of cases in their everyday job, to have enough country of origin information to be able to actually assist in complicated cases within only five hours of paid time. In most cases, they would need to use translators and that takes time going back and forth. Many asylum seekers come from a background with little education and they come from very different societies- [...] so, there’s a lot of things to explain to them. We advocate that five hours paid as a set standard, independent of the type of cases, is not enough to secure legal assistance that can actually make a difference when it comes to what cases are appealed and those that should actually not go beyond the first instance because they are actually not founded.” (Interview_NOR_3)

The fixed fees system and resulting underpayment are also viewed as potentially problematic for the integrity of the asylum system.

“We have a disincentive measure to lessen the number of repeated applications, that’s by giving the lawyers less money. It has been criticised a lot because it could be a dangerous measure: people who really need protection might not get it because the fees are so low that a lawyer is almost forced to ask for extra money from the asylum seeker, because he can’t run his practice with too many applications like that.” (Interview_NL_2)

Fixed fee systems don’t take account of the applicants’ needs beyond the ‘official’ timeframe of the provision of legal assistance, for example to cope with the uncertainty of waiting periods or when facing a final negative decision.

“[Due to the current] huge backlog, the waiting period [before the asylum procedure is launched] is up to a year. Nothing happens for asylum seekers in the meantime, they have many questions, they are insecure about what is going to happen and what they do, is they start to approach lawyers they heard of through relatives or friends and they ask them for advice. [In this] preliminary phase, before the procedure start, there is no compensation for these lawyers. There is no financial budget to pay for that preliminary stage. So, they have to work for free in that period.” (Interview_NL_2)



“We see that many lawyers because they only have these five {paid} hours, they have spent all the five hours in the process between the first and the second [instances], and they have no more paid hours. So, either they just have a quick phone call and tell [the asylum seeker] that the negative decision is coming, or it's forwarded in the mail to the asylum seeker at the reception centre where the asylum seeker is staying. Or they just forward it in an envelope from their lawyer's office with no further explanation.” (Interview_NOR_3)

In Poland, where a flat-rate for legal assistance exists only for the first appeal instance, counterparts reported that legal representatives were clearly interested in and sometimes actively encouraged appeals, even when no realistic chances for success existed.

“Lawyers do not actively discourage a client from appealing even when the chances for success are small, because with the appeal the representative also has a job. Sometimes they even go to refugee centres, informing applicants about the possibility to appeal. Therefore, the legal representation does not lower the number of appeals.” (Interview_PL_1)



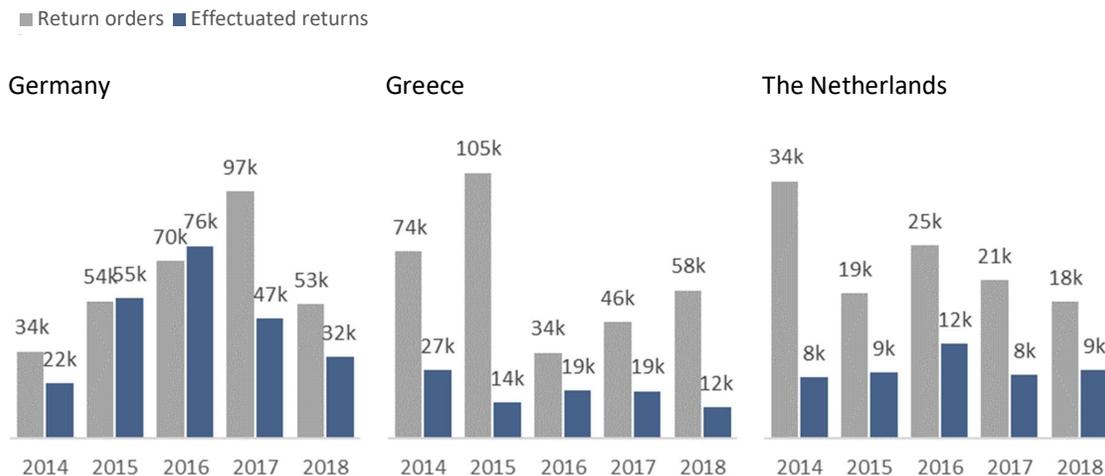
1.6 Return

Return procedures in the surveyed countries vary in terms of enforcing institution and practices. Germany and the Netherlands have a dedicated service or agency in place, which coordinates different types of return, while the SEM in Switzerland plays that coordinating role and returns are effectuated by the relevant Cantonal authorities. In the case of Norway and Greece, return is the responsibility of a dedicated unit of the police.

All surveyed countries have voluntary return programmes in place and measures that refer rejected asylum seekers to return counselling either by an NGO, IOM or a national agency.

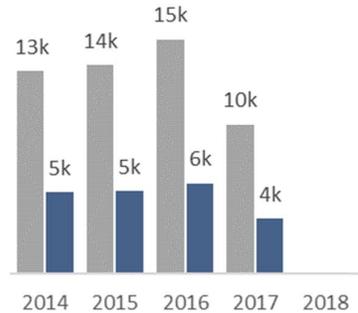
A more difficult task is to arrive at reliable data about returns of denied asylum applicants. Eurostat does not provide such data but only overall return numbers of all (irregular) migrants, among them denied asylum applicants. The proportion of denied applicants compared to the overall return numbers ultimately cannot be deduced and is also scarcely available at national level. Data collected by the EMN (2016, p 9) suggests that, in some countries, over 60% of the returnees were denied asylum applicants, while in others, the proportion was much lower of about 10%.

Figure 6. Return orders and effectuated returns (2014-2018)

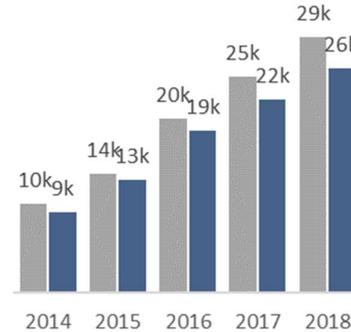




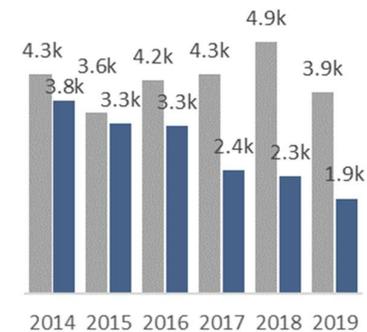
Norway:



Poland:



Switzerland:



Source: Eurostat (for DE, EL, NL, NO and PL); State Secretariat for Migration (CH)¹⁶

1.6.1 Short asylum procedures and quick return decisions

Migrants as well as applicants for international protection gain rights the longer they stay in a host country. The rights may be of legal or humanitarian nature (e.g. private rights gained according to Article 8 ECHR, advanced integration status or engagement in education, etc.). Evidently, the longer an asylum procedure lasts, the more reasons may emerge why a person cannot be returned, even if the protection status has been denied.

First and appeal instance representatives, as well as interlocutors from NGOs in the Netherlands and Norway ventured that quick return decisions or short asylum procedures do not promote the acceptance by the asylum seeker. Respondents shared the view that a more decisive factor in acceptance of a final negative decision is the way it is motivated and explained to the applicants either by the judge/chair of the appeals board or their lawyer. As far as the lawyers are concerned, the statutory limit of paid hours is usually already exceeded at that stage and it is essentially up to the individual lawyer to take the time to explain the criteria and reasoning behind a negative decision to his or her client. In many cases, asylum seekers turn to NGOs, who explain the case and the decision and provide counselling on the available options.

"[...] [I]t's of great importance for [the asylum seekers] to have somebody who knows the law, knows the system, to sit down with them and explain why; and when they have understood why, more of them are open to consider assisted return." (Interview_NOR_1)

An evaluation of a return programme in Germany (Schmitt et al 2019) looked into a possible correlation between the length of stay and the readiness of (denied) applicants for international protection to return. Based on a broad sample of interviews, the study did not find statistically significant differences of the relationship between the length of stay in Germany and the probability that the return

¹⁶ Note that the definition of 'return orders' and 'effectuated returns' differ between the two sources, hence comparability is limited. For Norway, data is not available for 2018.



counselling influenced the return decision. Other elements were considered more important for the readiness to accept a return decision.

1.6.2 Early information about the implications of submitting an unfounded claim

As part of the information about the asylum procedure, some providers inform applicants about the consequences of submitting an unfounded claim. This is particularly relevant for asylum seekers coming from the Western Balkans who might not be aware of the entry ban that might be imposed on them if their application is rejected as unfounded. Far from being a deterrence measure, it is above all seen as a way to enable applicants to make an informed decision on whether they want to proceed with their claim.

“For people from the Balkans, we tell them that if they proceed with the asylum application and it is found without merit at all – it’s an unfounded claim – they will be given a negative decision with an expulsion from the whole of Schengen for a period of one to five years, depending on how serious the violations and the misuse of the asylum system may be seen by the Norwegian authorities. [...] And if you are interested in the possibility of entering Schengen at a later time, maybe during seasonal work in the southern part of Europe for instance, you should think it through whether you want to continue with an asylum application in Norway or not. [...] And in most cases we see that or we experience that they understand this and they reflect whether they accept the content of it ... and quite a few decide then to withdraw their asylum application.” (Interview_NOR_1)

1.6.3 Early information on return and its impact on the willingness to return voluntarily

While it is only a small percentage of asylum seekers who choose voluntary return, it was noted that the rate of returns during the procedure (before a decision was issued) has increased. A SEM representative (Interview_CH_1) linked that to the following factors:

- legal advice about the chances of success at the beginning of the asylum procedure;
- return advice offered in the centres;
- digressive return assistance: the earlier in the process a person decides to return, the higher the assistance.

In Germany, the BAMF provides early information about return possibilities, and considers it useful.

“Clear information at an early stage is definitely an advantage. Once people start integrating, e.g. children in school, etc., voluntary return becomes a less interesting option.” (Interview_DE_1)

This assessment, however, is not necessarily shared by other stakeholders. According to the experience of a German civil society organisation, the interest in return information is not very high.

“Typically, asylum seekers who have started the procedure want to continue.” (Interview_DE_2)

Interlocutors in the Netherlands and Norway expressed similar views. They did not estimate that early information on return increases the applicants’ willingness to return as most of them file an appeal.

“We see that many of [applicants] don’t really consider [information about return possibilities] because they are only focussed on the appeal, even though they are informed that there is a



low number of cases being overturned...negative decisions being overturned by the appeal board. They still hope that their case will be the exception.” (Interview_NOR_1)

Likewise from a Polish interviewee’s point of view, early information on voluntary return does not normally have a tangible impact on the applicants’ decision to proceed with a claim or an appeal, unless they are fully aware of their negative prospects.

“Except if the clients have already considered voluntary return before. Plus maybe some clients who had not been aware before that they have absolutely no chance of a positive decision due to their nationality.” (Interview_PL_5)

Voluntary return is usually only considered upon receipt of a final negative decision and when living circumstances in the host country have become too difficult.

“We see that more people are open to seek assisted return when they are explained and when they understand the criteria, how their process has gone, what has actually been considered in their case. [...] So, there's a lot of complicated cases, but we see that if they understand that there's no way for them to get a right to stay in Norway through the asylum process, that they have to go another way, some of them consider – even those with a child in Norway – that maybe they can go back to their own country and then from their home country apply for family reunification with their partner and child in Norway.” (Interview_NOR_1)

Similarly, the above quoted study on the German assisted return programme identified the desire to reunite with family and the lack of a residence prospects in Germany as the most decisive reasons to return. Regardless of the length of stay, the majority of respondents (between 56% and 69%) indicated that information and counselling was relevant to the decision to return (Schmitt et al 2019, p 46). The study concludes that “both people who go to a return counselling centre relatively soon after entering the country benefit from return counselling in the same manner as migrants who are considering return home only after a longer time staying in Germany” (ibid).



2 Synthesis

This report is set to assess developments in the asylum practices of selected EU and associated states, which were introduced with the aim of speeding up decision-making. It focuses on two elements of the asylum procedure: the appeals procedure and the provision of legal assistance. Both elements usually lie outside government control, as they are typically provided by independent bodies. While in general, first instance procedures are relatively well-researched and scrutinised regarding effectiveness and efficiency, the appeals process and legal assistance, as important checks and corrective measures for the quality of national procedures, oftentimes receive less attention, despite their effects on the overall duration and efficiency of the procedure.

In a way, the timing of the research was both unfavourable, and of increased interest: unfavourable because the (available) data is somewhat exceptional due to the game changing years of 2015/2016. The increased arrival of migrants and applicants for international protection led to several changes in national policies, procedures and governance and the results of those changes have not been evaluated and analysed yet. Some countries (especially Greece) are in fact still in a mode of continued crisis. On the other hand, this period is of particular interest, as countries were obliged to foster their asylum systems and increase the efficiency of their procedures. Still, interpretations and findings need to consider the specifics of this post-2015/2016 period, the impact of which is only reaching the appeals instances now.

This synthesis reflects the information collected from the desk research, interviews and available data. The conclusions mentioned here are the interpretation of the drafters of the report based on a variety of sources, and therefore do not represent individual opinions of interview partners. However, the findings are based and informed by the interviews and the research in the six selected countries. The synthesis below extracts some of the major points from the research, highlights good practices and puts forward recommendations.

2.1 Comparability of asylum appeals systems

The present report summarises the findings from research in six countries: Germany, Greece, the Netherlands, Norway, Poland and Switzerland. They vary in many ways. Their size, respective geographical position in the Schengen area (core or external border), location on major migration routes, as well as the nature and length of their borders determine the scope of the migratory pressures they are facing. Size and composition of caseloads vary significantly, as do the legal traditions, asylum systems, and the human and financial resources that are at the disposal of the asylum and appeals authorities.

The largest country, Germany, hosted 1.8 million asylum applicants from 2014 to 2018. Greece saw 199,360 first-time applications in the same period, and the Netherlands registered 132,645 applications. In Switzerland, 123,315 applicants submitted their claims. During that same timeframe, 52,190 persons applied for asylum in Norway; and 41,670 in Poland. Germany issued 1.6 million decisions between 2014 and 2018, Switzerland 99,605, Greece 91,265, the Netherlands 94,360,



Norway 45,405 and Poland 13,790 decisions. Also, the size of the asylum administrations varies significantly. The German BAMF employs 6,680 people (around 2,000 of whom in the asylum sector), the IND in the Netherlands employs 3,788 people, the Greek Asylum Service 679, the Swiss SEM 560, Norway's UDI 250, and the Office for Foreigners in Poland about 550 (36 of whom are tasked with asylum determination).

Asylum appeals systems are anchored in the broader administrative and legal environment of their respective countries, and developed gradually over a longer period of time in response to specific caseloads. Relevant differences can be thus identified in the organisation of the asylum systems. The appeals instance in Poland and Greece, for example, is split into an administrative and a judicial instance, while in the remaining countries only one judicial appeals body reviews first appeal instance decisions. Legal assistance on the other hand is more formally embedded in the (fast-track and Dublin) procedures in Switzerland and the Netherlands (offered to all applicants as a part of this type of procedure), than in Germany, Greece or Poland. Free legal assistance in the appeals instance is offered in all six countries, in line with EU legislation, even though it only constitutes an obligation for the four EU member states.

Recommendations:

- When comparing asylum systems in different countries, their respective national, geographic, legal and historic backgrounds must be taken into consideration. Good practices of one country need to be checked for their transferability and adaptability to other legal and practical environments. Good practises are thus highly dependent on a broad range of preconditions and realities.

Good practices:

- The development of the Swiss asylum procedure was inspired by the Dutch asylum system, a system developed to process a similar number of applications as in Switzerland and a country with comparable financial resources at hand. Instead of copying the Dutch system, Switzerland, however, adapted the system and tailored it to national needs and realities.

2.2 Lack of comparative research

A somewhat surprising finding of this research is the apparent lack of comparative research on asylum appeals systems, their instances and appeals authorities. In contrast, the first instance received quite some comparative attention – above all through the work of EASO but also research done by the EMN and others. Given the importance of the appeals instance for the overall aim of an efficient Common European Asylum System, a better knowledge of the differently operating appeals systems is necessary. The gap of relevant research in this area also underlines one crucial fact: the systems are (still) so diverse that they can hardly be compared to each other.

Recommendations:

- Encourage the European chapter of the International Association of Refugee Law Judges (IARLJ) or the respective working group for asylum judges in EASO to extend, launch and publish comparative information on the asylum appeals systems across European countries.



2.3 Lack of comparable data

Another factor that renders comparisons difficult are the very different ways countries collect data and the different ways of measuring efficiency. For example, data on the duration of appeals is often not accessible in a standardised way; while one country identifies how many cases are appealed per type of procedure (regular, accelerated, prioritised), another country only collects overall data on appeals. Also, and in the present context of relevance, countries (yet) do not collect data distinguishing between procedures that involve state-provided legal assistance and those without. The latter, however, is crucial to better understand how legal assistance can contribute to efficient procedures.

In recent years, EU+ states have harmonised their asylum procedures according to the relevant EU acquis (recast APD) well. Nevertheless, due to the discretionary introduction and application of different types of procedures (fast-track, accelerated, etc.), countries do not make use of similar procedures in a uniform way. Countries use accelerated procedures for different reasons, or some apply fast-track procedures, which include elements that other countries process under accelerated procedures.

Furthermore, the insufficient provision to Eurostat of harmonised data on different types of procedures, on appeals and on the duration of administrative and judicial procedures hampers the objective comparison of efficiency and/or quality based on the mere numbers. In addition, data on the (average) duration of procedures is provided by some EU+, but definitions and measures differ.

Reforms to optimise and increase the efficiency of asylum procedures are far too often based on assumptions and past experiences instead of statistical evidence; often, this is because the necessary data is simply not available.

Recommendations:

- The recast APD allows for different types of procedures (border, accelerated) which are used by EU+ countries to different degrees (see EASO Annual Report 2018, p 61). However, this variety of asylum procedures is not reflected in Eurostat asylum decision data. Providing data on procedures disaggregated by the type of procedure will cast light on that phenomenon. Furthermore, developing a clear, common and harmonised measure of duration of procedure will allow for an effective evaluation of the efficiency of asylum systems over time, or the measurement of the impact of policy changes.

Good practices:

- The Council Migration Statistics Regulation (EC No 862/2007) has improved accessibility and comparability of asylum-related data. Even when states employ different types of statistics (due to national legislation), Eurostat is able to provide harmonised data. However, in practice, this often comes at the expense of detail, rendering the data provided to Eurostat unable to provide an authentic picture of the national situation.

2.4 Institutional interdependence and independence – systemic perspective

While an asylum system involves a variety of state and non-state actors and several instances with very different tasks and processes, the overall objective is the same: ensuring a fair and efficient system



that delivers high quality decisions while working efficiently in terms of timeframes and costs. In order to achieve this aim, a systemic view is required, which recognises the need for a seamless and (to the extent possible) friction-free cooperation across all instances and actors involved.

Yet in practice, the focus often seems to be on isolated parts of the process rather than on the whole, even though the quality and timeliness of the work of one instance directly affects the next, and the work of decision-makers, information and legal assistance providers, as well as judges and appeals authorities is strongly interconnected and interdependent. This is also relevant when new reforms are planned: the introduction of an accelerated procedure, for example, might not have the desired effect and even lead to additional delays down the line, if the next instance cannot cope with the increased caseload in a timely fashion due to a lack of resources.

At the same time, frictions between policy and jurisprudence or first instance authorities and legal assistance providers are sometimes inevitable as the task of appeals instance institutions is to review the lawfulness and correctness of first instance decisions, and it is the task of legal assistance providers to represent the interest of applicants. However, examples in all countries examined show that often controversial roles do not necessarily mean working on different sides. A common view of upcoming tasks and the common goal of being part of a high-quality, balanced process can help to achieve better results overall.

The integration of the appeals instance into strategies of the first instance has clear limits. The control function requires the appeals instance to remain independent and to rely on their own resources and information. Without prejudice to the need to maintain objectivity in individual cases, there is room for better procedural coordination between the different instances. Room for more cooperation between the instances is particularly relevant in cases where the first instance is pressed to conclude decisions in an accelerated procedure. If such accelerated review of cases is not foreseen in the appeals instance, it will certainly impact and jeopardise the efficiency of such processes as evidenced in Germany by the quite long average duration of procedures for cases from safe countries of origin. At the same time, accelerated processes bear a higher risk of violating fundamental rights of applicants, which makes a thorough review even more necessary. Accelerated procedures thus require the inclusion of even more safeguards in the first instance procedure, e.g. through comprehensive legal assistance to compensate for quick procedures.

Recommendations:

- In the interest of the effectiveness of reform measures, the requirements, capabilities and challenges of all relevant stakeholders need to be taken into account by involving them in the planning from the very beginning.
- The various instances represent different positions and their possibilities of cooperation are, in the interest of their independence, limited. Within this context, the exchange of information has proven to be beneficial, e.g. advance information about numbers and types of the caseloads to be expected should be used for resource planning.
- The potential loss of quality in special – particularly accelerated – procedures requires increased cooperation between first and appeal instances, giving both the environment to compensate for the tightened timelines through a faster flow of information, as well as increasing legal



safeguards such as legal assistance. Accelerated processes thus require more resources and safeguards, not less.

- From a systemic perspective, the research also showed that much would already be won if the different instances understood their roles of checks and balances but at the same time also kept in mind that efficient asylum procedures require all involved to work towards common goals.

Good practices:

- Switzerland has introduced an electronic system, which gives the appeals instance instant access to all relevant documents of a case, in order to save time and reduce the risks of documents being lost.
- In Poland, the Office for Foreigners (Off) and the Refugee Board are in contact on a daily basis. In addition to that, in some cases, the Polish Refugee Board provides feedback on fundamental issues or technical problems in first instance decisions and on how their quality could be improved.
- The concentration of various involved actors under one roof, as piloted in Switzerland (and partly also in Germany) and practiced already for some time in the Netherlands, is a system that became a model for many other countries.

2.5 Provision of early information

Asylum determination is not only a rational, administrative but also a social process that involves (diverging) human interests, interactions and communication. Applicants might be traumatised, do not speak the language of the destination country and frequently do not know what to expect from the asylum procedure. They therefore require a clear and objective briefing by an independent and trustworthy person who provides accurate information and corrects any misinformation, misconceptions or rumours the applicants may have heard.

One-size-fits-all information sharing showed a number of disadvantages (e.g. difficult terminologies and corresponding language barriers, too little information in some cases while an information overload in others, etc.). By contrast, information that is provided in an individualised and personalised manner ensures that the information is understood. Providing the opportunity to applicants to ask detailed questions is thus an effort that may well pay off in the long run of a procedure as it can correct unrealistic expectations or misunderstandings. Applicants should also be able to develop trust in the information provider and ultimately the asylum procedure that they are going to face.

Recommendations:

- Information about the asylum procedure should be provided to applicants early on and well before any interview takes place.
- The provision of individual, independent and consistent information ensures that asylum seekers are properly informed about the process and their responsibilities and prospects, and have a realistic perspective of their chances to be successful.



Good practices:

- In Norway, the Netherlands and Switzerland, NGOs offer tailored information and advice to newly-arrived asylum seekers, including about the process of seeking asylum, criteria for protection, and rights and obligations. They also brief the applicants on what to expect, how to prepare for the asylum interview, which documents to bring, and the significance of the latter for the outcome of their claim. The same NGOs assist asylum seekers at different stages of the asylum process, thereby becoming a trusted source of support and information.

2.6 The duration of asylum proceedings

All stakeholders, whether governmental or non-governmental, agreed on the desirability of short and fair procedures. Short procedures are favourable for the applicants as they receive a timely response to their claim and can consequently plan their further lives and, e.g. start the process of integration. Short procedures are at the same time also in the interest of the state, not only from a financial and logistical (e.g. housing, etc.) perspective, but also to prevent new asylum grounds from emerging (e.g. illness, political activism, etc.).

Whether longer (or shorter) asylum procedures have an impact on the attractiveness of a country for asylum seekers is difficult to assess due to the lack of available data. Factors rendering a country of destination attractive – in literature often referred to as ‘pull factors’ – are based on a range of reasons that hardly can be decoupled from each other. Still, there is some indication of an effect of quick negative decisions, e.g. for a certain group of applicants or applicants from a specific country of origin, which correlated with consequently less applications from the group concerned.

Comparing and assessing the impact of procedural time limits on the actual duration of the examination of asylum claims proved difficult. This is due to the divergence of the institutional arrangements, the differences in size and composition of the caseloads, and the fact that the prescribed time limits differ in their scope and definition. Similarly, the average processing times in the surveyed countries vary significantly.

The majority of interview partners expressed the view that time limits for the examination of asylum claims are relevant to place all stakeholders on the same page and work towards a common objective. They also help to plan and prioritise, and work as an incentive to prevent unnecessary delays.

Recommendations:

- Along with other indicators, time limits should determine benchmarks and set indicators for the evaluation of the asylum system’s performance.
- Time limits need regular monitoring. A consistent disrespect of time limits needs to be addressed, as it might be an indicator of systemic problems.
- However, in order to avoid undue pressure on asylum authorities, and considering that individual circumstances of claims do vary, deadlines should remain realistic – particularly taking increasing arrivals of applicants into account.



- Sanction regimes for disrespecting time limits seem inappropriate as they won't tackle the causes of delays and result – in countries where such systems exist – in an additional administrative burden of a (potentially) already overburdened administration.

Good practices:

- In reaction to high numbers of arrivals of applicants for international protection through a specific border crossing point, Poland opened a local branch of the OfF in Biala Podlaska, a small town on the border to Belarus. This administrative flexibility allowed the OfF to conduct interviews much quicker and thereby shorten the overall duration of the asylum procedure (Interview_PL_1).

2.7 First instance

Time is a critical factor for first instance authorities, but also one that is difficult to prescribe given the complexity of the asylum determination procedure. The surveyed countries have introduced different deadlines for asylum determination authorities in order to prevent undue prolongations. Switzerland and the Netherlands have set deadlines that are significantly shorter than the six months for the regular procedure foreseen in the recast APD. In the context of accelerated procedures, the timeframes range from 48 hours (Norway) to one week (Germany) to 30 days (Greece and Poland).

As mentioned above, non-abidance with prescribed time limits does not entail consequences for first instance authorities, except in the Netherlands where the IND can be subjected to a financial penalty for missing time targets and Poland where the administrative court may order the administrative authority to pay the asylum seeker damages in case of inaction and delay. A review of the practice has revealed that time limits can be difficult to comply with, and that first instance authorities, which are often understaffed and underfunded, are grappling with backlogs both for cases dealt with in the regular or special procedures. Although first instance authorities play a crucial role in the duration and quality of an asylum procedure, this is not always matched with the required financial and human resources. The findings of this research therefore support the long-standing recommendation by ECRE, UNHCR and others to frontload asylum systems, that is, to increase investments in asylum determination authorities. Questions of appeals, subsequent applications and departure are inextricably linked to the performance of the first instance and a well-resourced asylum determination authority is at the core of a fair and effective asylum system.

Recommendations:

- Investments in the capacities of first instance authorities benefit the efficiency and quality of the entire asylum procedure. This includes financial resources for adequate working conditions and payment for decision-makers who bear a high responsibility and high stress levels in the performance of their duties.
- Staffing levels must match existing needs, including the implementation of special procedures to ensure that an appropriate number of staff members is available to handle a specific number of cases in accelerated or special procedures. In many countries, including some of the surveyed ones, this ultimately requires an increase of staff in order to decrease processing times and backlogs.



- Staff retention by first instance authorities is crucial in order to build up experience and institutional memory. In addition to the above-mentioned working conditions, high quality continuous training is not only indispensable for sustainable decision-making but can also be a motivating factor for staff.

Good practices:

- Germany showed in 2015/2016 that backlogs can only be overcome if sufficient staff is hired; this was similarly experienced in Greece. In both countries, however, the challenges of fast expanding resources also became visible. Fast recruitments of large numbers of additional staff to handle a peak situation can result in bad hires and in most cases, newcomers will not be able to make up for experienced decision-makers.
- Switzerland and the Netherlands have had good experiences with short regular procedures (Netherlands), or accelerated procedures with a target of processing about a third of the cases under this procedure (Switzerland). To channel those applications that can be decided more quickly, a solid triage system is needed to distinguish between cases that can be decided quickly and those that require an extended examination. In order to ensure that the tight time-limits do not negatively affect the quality of decisions, Switzerland and the Netherlands provide full access to free legal assistance for the first instance procedure for all cases (Netherlands), or at least for those processed in the accelerated procedure (Switzerland).

2.8 Appeals instance(s)

The organisation of appeals systems in the surveyed countries is very diverse and is, among other things, rooted in different legal traditions. The composition of the appeals instances derives quite clearly from international (ECtHR) and EU (CJEU) jurisprudence and EU law necessitating that an effective remedy requires a full review possibility by at least one judicial court. While an appeals system composed of an administrative body as first appeal instance may allow a review of the case by a specialised asylum institution, an additional judicial body needs access to full review of the case in compliance with international standards. There seems thus little gain from involving an administrative body as one of the appeals instances. Immediate access to judicial review as a first appeal instance may therefore have a positive impact on the overall duration of the procedure.

The appropriateness of having more than one appeals instance in place depends on the general setup of the legal and judicial system of the countries. Decentralised court systems may require an additional instance that harmonises decisions and takes guiding and precedence-setting decisions. Overall the conviction among the surveyed practitioners remains, however, that the more instances are in place, the longer the procedure takes.

Time limits at courts of appeals are a contested issue. They are clearly counterproductive in complex cases, especially if they are landmark cases with a decisive influence on future similar cases: a well-reasoned decision of high quality might have a higher impact on the effectiveness and duration of asylum procedures to come than a delay in the original case. Also of concern are tight time limits in procedures that are intended to run quickly (e.g. accelerated procedures for manifestly unfounded cases) as particularly such processes may come at costs of quality. Compensating legal safeguards are thus essential if the courts are bound to shortened time limits.



Recommendations:

- It became apparent from the study that centralised courts tend to develop more coherent jurisprudence, which lead to better legal predictability for applicants and lawyers, and thereby increase the overall efficiency of national asylum systems.
- The opinion prevails that fewer instances shorten the overall processing time. Data is, however, difficult to obtain and compare.
- Similarly to first instance authorities, time limits in the appeals stage should be considered as evaluation benchmarks to measure delays and identify their causes.
- Specialised asylum courts or chambers within administrative courts may be justifiable if the number of applicants and appeals are high, otherwise they might waste resources.
- Asylum appeals instance bodies must be closely involved in the development of policies for asylum procedures so that measures to speed up the process find the necessary backing and can be realistically implemented at all relevant levels.

Good practices:

- In response to the problem of a serious backlog of cases at the Supreme Administrative Court in Poland, judges were authorised to prioritise certain cases, e.g. applicants with special vulnerabilities and quite often return cases. This reduced the waiting period for sensitive cases (Interview_PL_2).

2.9 Legal assistance

There is no evidence that legal assistance reduces the number of appeals lodged against negative decisions. In fact, high appeal numbers suggest that applicants, for whom the stakes are high, exhaust all avenues to get their claim accepted. Legal assistance has, however, been identified as having important benefits: it ensures the fairness and objectivity of the procedure and preserves the rights of the applicants. A well-equipped system for legal assistance may be a further necessary legal safeguard compensating shortened time limits to process asylum applications in a speedy process.

What has emerged from this study is that a certain number of framework conditions must be in place in order to fully exploit the benefits of legal assistance. These include timing, adequate payment, quality control and measures to ensure accountability. The research showed that the surveyed countries make use of different payment schemes. Switzerland provides a flat-rate payment to the legal assistance provider irrespective of the outcomes/duration of the procedure. The Netherlands and Norway pay a fixed fee for a maximum number of hours, and Greece provides a certain amount per case, which is linked to the scope of the assistance.

Payment schemes for legal assistance face a conundrum: fixed fees may cover the different costs of legal assistance but can also serve as an incentive for lawyers to submit appeals even in cases with low chances for success. At the same time, introducing a cap for the number of hours that can be spent on a case can result in underpayment of lawyers and negatively impact on the quality of legal assistance. Flat rate payments on the other hand may outbalance more work in one case and less in another. Commonly and evidently, an expectation of increased quality through legal assistance depends on a legal assistance system that is appropriately financed.



Recommendations:

- In order to be able to prepare an applicant for the asylum procedure, legal assistance should be provided as early in the process as possible and before the applicant is asked to provide information that will be used for the determination of his or her case. Early legal assistance not only contributes to building a more solid evidence-base for decision-making, it also helps lawyers to build rapport with their clients and encourage them to come out with their true story and motives.
- The provision of legal assistance should extend beyond the submission of the appeal and include a detailed explanation by the lawyer of a negative final decision and the reasoning that led to that decision. This is important as the result of the appeal process has a profound impact on the applicant's life. A personal conversation about the outcome of his or her case can increase the applicant's understanding and acceptance of the decision and may ultimately help him or her to make a more informed decision about the next steps (see also recommendation related to assisted return).
- Flat rate or fixed fees payment systems generally seem to work but in some cases were reported to be too tightly calculated. Regular reappraisals of the actual duration of average working hours on asylum cases can lead to more commensurate payments of legal assistance providers.
- Organizing legal assistance and interpreters or translators for applicants and processing payments can create additional logistical tasks and administrative procedures for first instance authorities. Relegating these tasks to a legal assistance institution helps to save important human capacities of the determining authorities and contributes to objectivity and transparency of the system of assignment of lawyers.
- Quality control and accountability measures for lawyers who provide legal assistance in asylum cases can address concerns about unnecessary prolongations of applications. Regular but independent monitoring, is decisive for contributing to the efficiency of processes by legal assistance providers. The quality of legal assistance is as crucial for applicants as it is for the efficiency of the asylum procedure. Monitoring also needs to periodically review whether the framework arrangements allow for good quality and adequate legal assistance.

Good practices:

- The early provision of free legal assistance in Switzerland and the Netherlands has helped applicants to understand what to expect during the procedure. Experience in both countries has shown that the early involvement of an asylum attorney in a case helps to build a relationship of trust with the applicant so that he or she feels free to tell his or her entire story. Empowering the applicant to become an active participant in the preparation and representation of his or her case ultimately benefits the entire procedure and increases its efficiency. The attorney-applicant relationship is also important in case of a negative final decision: a conversation with a trusted attorney about the legal requirements for asylum eligibility leads to a better acceptance of a negative decision and potentially increases the applicant's willingness to return voluntarily.
- In Switzerland, a detailed catalogue of standards and obligations for the legal representation ensures a standard against which the performance of legal assistance providers can be measured or compared.
- Lawyers wishing to work on asylum cases in the Netherlands must comply with a number of requirements, including initially working under supervision of an experienced lawyer. The Dutch



Legal Aid Board has also introduced several quality assurances for legal assistance providers, such as dealing with at least 10 cases per year and continuous specialised training. In addition, the Board has set up a voluntary peer-review system whereby lawyers can subscribe to a review by a colleague of one or more of his or her asylum cases or attendance of a court session. It is a self-regulatory measure meant to uphold or improve the quality of legal assistance and promote collegiality among lawyers.

2.10 Return

Take-up rates for assisted return programmes remain low in general. Applicants most often only consider return once they have exhausted all avenues to obtain a right to remain in the country of destination.

The study also showed that data connecting the asylum and the return procedures are scarce: return data does not distinguish between, e.g. irregular migration procedures and asylum procedures that end in return. The lack of such data makes it difficult to draw conclusions on whether shorter asylum procedures lead to more effective return processes. In the absence of reliable and comparative data, the study thus based its conclusions on the perceptions of interview partners regarding which information is key to the frictionless return of rejected asylum applicants.

Recommendations:

- According to the qualitative data collected in this study, the applicants' willingness to apply for assisted return increases when he or she is provided with a detailed explanation of the legal grounds that led to a final rejection of the asylum claim. The provision of that kind of information should therefore be considered as part of free legal assistance.

2.11 The European context

With the set aim to harmonise asylum procedures across the members of the EU, the recast APD provides a framework for common standards. As a matter of negotiations, the directive is in many ways not specific, leaves much leeway for the implementation of EU Member States. While Member States are obliged ("shall") to examine applications for international protection in regular first instance within six months (Art 31/2), the directive does not mention any time limits for special procedures (Art 31/8). For the appeals decisions, time limits "may" be introduced by Member States (Art 46/10). Member States "shall" ensure free legal assistance in the appeals procedure upon request (Art 20/1) and may, for example, restrict it to applicants who lack the financial resources (Art 21/2a) or cases with a tangible prospect of success (Art 20/3). Member States may also provide free legal assistance for the procedure in first instance.

By contrast and as also put forward in this Synthesis, the APR proposal addresses the whole of procedure for international protection, and, thus, includes binding provisions for the appeals instance including time-limits for lodging appeals and for decisions at the first appeal stage (APR proposal, p 12). The vague time limits of the recast APD are exchanged for – directly applicable – time limits for appeals in a regular procedure (six months), accelerated or border procedures (two months) and



decisions rejecting a subsequent application as inadmissible or manifestly unfounded (one month). In the negotiations, Member States pointed out the need for a measure of flexibility to be able to deal with situations of large influx of asylum seekers and a disproportionate number of simultaneous applications.

Under the APR proposal, legal assistance is to be extended to “all parts of the procedure” and defined as an obligation (“shall”) for Member States. However, it can be limited in cases where the applicant has the financial means (means test) or there is a lack of prospect of the appeal (merit test). In this respect, the proposed amendments support the findings of the study that – in principle – access to legal assistance at an early stage of the procedure can compensate for shortened time limits and allow for a better access to information on the asylum procedure for the applicants.

In principle, the concrete procedural steps set out in the APR proposal with respect to the core topics of this study (i.e. appeals procedure and legal assistance) seem appropriate to adhere to the goals of an increased harmonisation of asylum systems in Europe. However, it comes with a considerable impact on Member States’ practice and procedural guarantees for the applicants. A healthy balance between efficiency and procedural guarantees is therefore necessary. Tighter timelines need to be compensated by higher procedural guarantees (e.g. a broader and high quality legal assistance), which would also reflect the jurisprudence of the ECtHR (see for example *I.M. v France*, para 147).

With respect to improving the available data, it is promising to see the recent approval on 4 December 2019 of the Permanent Representatives Committee (COREPER II) of the Council of the European Union on the political agreement reached by co-legislators on the reform of the Migration Statistics Regulation that governs the asylum and migration data supplied by Member States to Eurostat. This reform would task Eurostat with collecting data of relevance for the topic of this study, such as data on accelerated procedures, legal assistance and return. The reform will also introduce a framework for Eurostat to launch pilot studies with voluntary participation of Member States in order to test the feasibility of data collection in other but related areas of asylum systems (see Council of the European Union, Draft Regulation of the European Parliament and of the Council amending Regulation (EC) No 862/2007 – Revised mandate, 20 November 2019).

Recommendations:

- Proposals for increased efficient asylum procedures, such as the current Asylum Procedures Regulation proposal at EU level that make shorter procedures mandatory in certain cases (e.g. mandatory admissibility procedures, including based on safe country concepts, or accelerated procedures) should come along with mandatory procedural safeguards.
- Countries should make use of the Eurostat pilot studies envisaged within the proposal for reform of the Migration Statistics Regulation, in order to test the feasibility of asylum (and return) data collection beyond the status quo and to deepen the knowledge-base on different types of procedures, duration of procedures and the link between (rejected) asylum and return procedures. Considerations on what data could help to measure the efficiency of asylum systems by looking into related processes (return, legal assistance, etc) and make those comparable at European level could become a well-needed source for policy relevant decisions.



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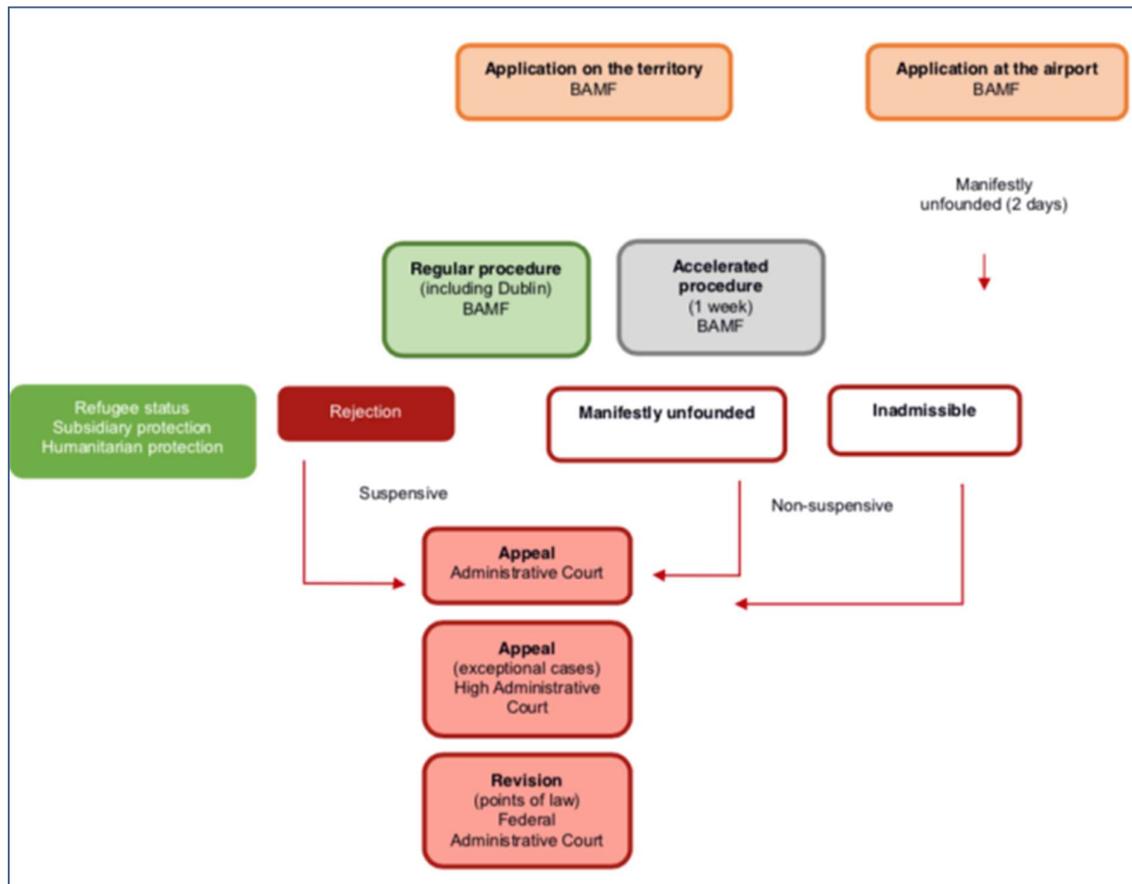


4 Country Reports

4.1 Country report Germany

4.1.1 Asylum procedure Germany

4.1.1.1 Overview



Source: ECRE (2019a)

4.1.1.2 Asylum application

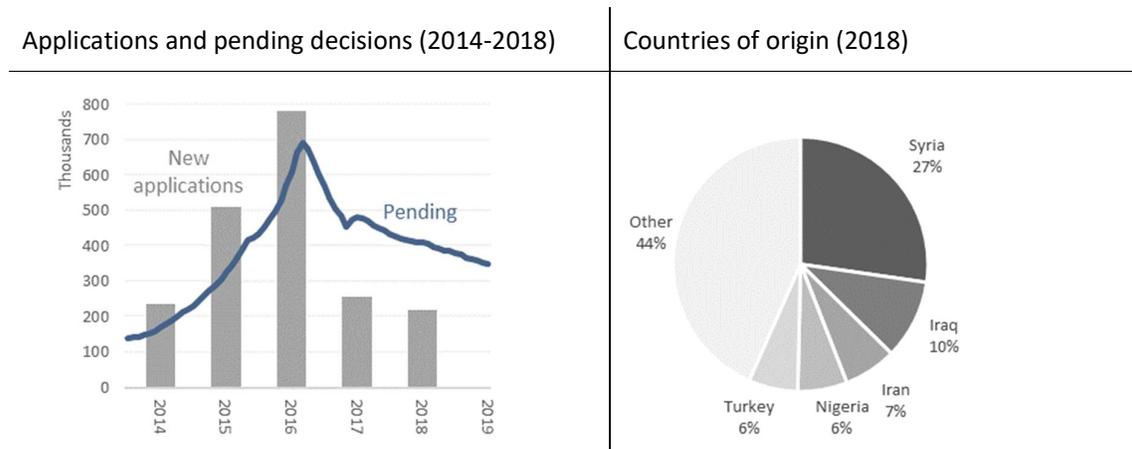
The Federal Office for Migration and Refugees (*Bundesamt für Migration und Flüchtlinge – BAMF*), a federal authority within the portfolio of the Federal Ministry of the Interior, is the responsible organisation to register asylum applications on the territory of Germany.

Applications at the border are made to the Federal Police (*Bundespolizei*); applications within the country should be made at a branch office of the BAMF, but can also be submitted to a police station or an office of the foreigners' authorities, which subsequently forward the application to BAMF.



At the border with Austria, migrants can, since mid-2018, be denied entry – if it can be proven within 48 hours that they have already applied for asylum in Greece or Spain. While targeting Dublin cases, this procedure does not fall under the Dublin regulation, but is based on direct administrative agreements with those two countries.

Figure 7. Applications and pending decisions (2014-2018) and countries of origin (2018)

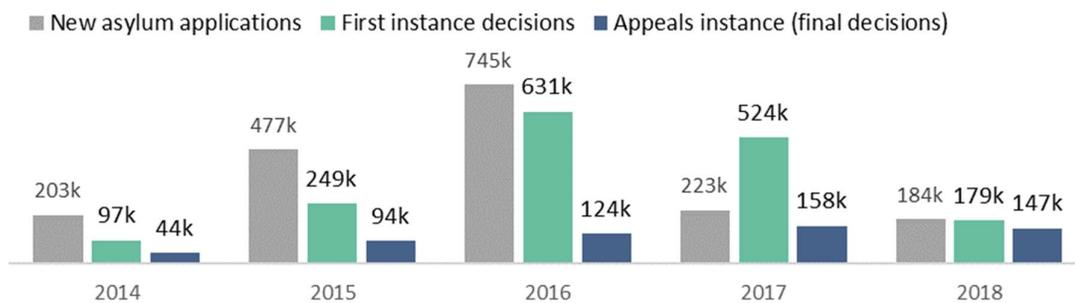


Source: Eurostat

Germany received 1.8 million applications for international protection from 2014 to 2018. Following the significant peak in 2016 of 745,000 applications, the numbers in 2017 dropped to 184,000 applications, which was below the pre-crisis year of 2014. Equivalently, the number of pending cases peaked in 2016 and has decreased since.

Germany receives applications for international protection from a quite heterogeneous group of people. Still, more than a quarter (27%) came from Syria, 10% from Iraq, 7% from Iran, followed by Nigeria (6%) and Turkey (6%). The top five countries thus amount to 56% of the overall applications. Still, most of those countries are refugee producing countries and thus require a thorough determination of the applicants' claims.

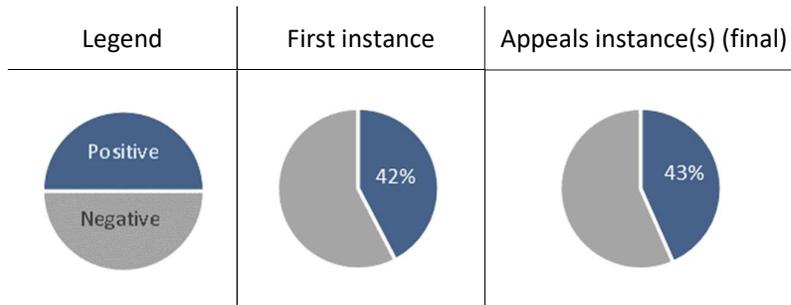
Figure 8. Asylum procedures in Germany (2014-2018)





It is interesting to note that the German BAMF increased the issuance of first instance decisions from around 97,000 in 2014 to 631,000 decisions in 2016. The decisions in the appeals instance increased almost four times between 2014 and 2017.

Figure 9. Recognition rate (2018)



Source: Eurostat

In 2018, the first instance authorities granted protection status in 42% of the cases. In 43% of the cases going to appeal the first instance decision was overturned.

4.1.1.3 Reception

For up to 18, months asylum seekers are accommodated at an initial reception centre (*Aufnahmeeinrichtung*) during the first instance procedure. Only applicants from safe countries of origin are exempted from this time limit and remain at the centre until the decision or their return in case of a rejection. After that, they are sent to local accommodation centres until the procedure is concluded.

Some of the initial reception centres qualify as ‘arrival centres’, where authorities are located at the same premises and the various processes (registration, identity and security checks, interview and decision making) are streamlined.

In mid-2018, AnKER centres (*Ankunft, Entscheidung, Rückführung* – arrival, decision, return) were established, which follow a similar concept as ‘arrival centres’ by centralising all steps related to asylum cases at one location and thereby shortening the duration of the procedure.

4.1.1.4 Time limits

- Application at the Austrian border: 48 hours to verify whether the applicant can be refused entry.
- Applicants on German territory are expected to contact the BAMF ‘immediately’; however, no exact timeframe is given.
- Asylum seekers can stay up to 18 months at arrival centres. Exception: no time limit for asylum seekers:
 - from safe third countries;
 - who violate their obligation to cooperate with the Federal Office for Migration and Refugees;



- who continuously deceive the authorities regarding their identity;
- who do not cooperate regarding the elimination of obstacles to their return, especially concerning identity documents.

4.1.2 First instance

4.1.2.1 Regular procedure

The BAMF, with its more than 6,500 staff, including more than 2,000 caseworkers,¹⁷ is responsible for all asylum procedures – including Dublin procedures – except in those cases when entry is denied at the border.

First instance procedures are decentralised: the BAMF has branch offices in all the Federal States, which carry out the procedure, including the filing of the application, the conducting of the interview and issuing the decisions.

BAMF's central office in Nuremberg has a Quality Control Department which regularly screens decisions (ECRE 2019b, p 50).

While there are regional differences, in the regular procedure, asylum seekers are usually accommodated in an initial reception centre (*Aufnahmeeinrichtung*) for up to 18 months during the first stage of their asylum procedures; asylum seekers from safe countries of origin are foreseen to stay at these centres for the whole duration of their procedures. In many cases the initial reception centres are located on the same premises as a branch office of the BAMF.

The interview is supposed to take place while asylum seekers are in these centres, which in practice, however, is not always the case (*Informationsverbund Asyl und Migration*). Following the initial reception period, asylum seekers (except those originating from safe countries of origin) are usually sent to local accommodation centres for the remaining time of their procedures, including appeals, if relevant. But there are also some municipalities which grant access to the regular housing market (*ibid*).

While accelerated procedures exist, the following cases always fall under the regular procedure (*ibid*):

- The facts of the case cannot be established immediately, but further examinations are necessary;
- The applicant states he or she is not able to be interviewed for physical or mental reasons;
- A 'special officer' should be consulted but is not readily available;
- The applicant states that a severe illness prevents him or her from returning to their country of origin. In these cases, the applicant should be given four weeks to undergo further medical examinations and to obtain a qualified medical report;

¹⁷ As of June 2019, there were 6,574.1 full-time equivalent (FTE) staff including 2,038.9 FTE caseworkers. See ECRE (2019b): Asylum Authorities. An overview of internal structures and available resources. AIDA Asylum Database, p 30.



- The applicant has already appointed a lawyer, in which case the interview should take place on a date which enables the lawyer to attend;
- The applicant is an unaccompanied child.

4.1.2.2 *Accelerated procedure*

Accelerated procedures are applied to the following cases:

- Asylum seekers who are from safe countries of origin;
- Asylum seekers who are considered to have deliberately deceived the authorities about their identity;
- Asylum seekers who have deliberately destroyed their identity documents;
- Asylum seekers who have lodged a subsequent application;
- Asylum seekers who have lodged an application for the sole reason of preventing their return;
- Asylum seekers who refuse to comply with the obligation to give their fingerprints;
- Asylum seekers who pose a threat to the national security or public order;
- At some airports, an airport procedure (Flughafenverfahren) is in place, which foresees accelerated decisions, whether asylum seekers are granted entry to Germany or not.

However, Germany makes only little use of accelerated procedures according to Article 30a German Asylum Law. In 2018 from overall 185,853 applications, only 550 (0.30%) were processed in accelerated procedures.¹⁸

4.1.2.3 *Other procedures*

Arrival Centres

The arrival centres (*Ankunftszentren*) were introduced in December 2015 with the aim of fast-tracking procedures. At the beginning of 2019, 28 branch offices of the BAMF were functioning as arrival centres (AIDA 2019). The concept of arrival centres is also known as ‘integrated refugee management’, a form of fast-tracking of procedures but distinct from the accelerated procedure introduced into law in March 2016. In these centres the tasks of the various relevant authorities are ‘streamlined’, in the sense that the recording of personal data, the medical examinations, the registration of the asylum applications, interviews and decision-making all take place at the same place. This opens up the possibilities for an accelerated procedure (*Direktverfahren*) for clear cut cases, which is supposed to be completed within one week.

This is an example of an accelerated procedure at the arrival centre Berlin, which was completed within four days:

- Day 1: The asylum seeker reports to the authorities and is sent to a central accommodation centre and receives instructions on the next steps of the procedure.

¹⁸ Federal Government, Reply to parliamentary questions by The Left: 19/13366; 19.09.2019



- Day 2: The asylum seeker is transported to the central office of the arrival centre, where the following steps take place: (a) medical examination; (b) formal registration, including identification checks; (c) decision on where the asylum procedure is to be carried out.
- Day 3: At the central office of the arrival centre, the asylum application is now lodged with the BAMF and the arrival certificate is replaced with the 'permission to stay' (Aufenthaltsgestattung). If the 'direct procedure' applies, the personal interview could be carried out on the same day.
- Day 4: In some simple, clear cut cases it is possible that the decision is already handed out. If protection is granted, a residence permit can be applied for on the same day. In the case of a rejection, the reasons are explained to the applicant.

If the accelerated procedure in an arrival centre cannot be completed within the foreseen timeframe of one week, it turns into a regular procedure.¹⁹

AnKER centres

Since August 2018, three Federal States – Bavaria, Saxony and Saarland – established the so called AnKER centres, where all the activities relating to the asylum procedure are centralised.

The authorities present at, e.g. the AnKER centres in Bavaria are (ECRE 2019c, p 7):

- Federal Office for Migration and Refugees (Bundesamt für Migration und Flüchtlinge, BAMF);
- Federal Agency for Employment (Bundesagentur für Arbeit);
- Bavarian State Office for Asylum and Returns (Bayerisches Landesamt für Asyl und Rückführungen, LfAR);
- Central Aliens Office (Zentrale Ausländerbehörde, ZAB);
- Social Welfare Office (Sozialamt);
- In some AnKER centres, Registrar of the Administrative Court (Verwaltungsgericht, VG).

As there are no general standards, the procedure in the AnKER centres can vary depending on the location, and is similar to the one applied in the arrival centres (*Informationsverbund Asyl und Migration*):

- Step 1: The registration is carried out by the regional authorities. A room on the premises of the AnKER centre is assigned and medical examinations are scheduled.
- Step 2: The applicant receives general information on the asylum procedure ('Asylverfahrensberatung') by staff members of the BAMF in the form of a group session. The possibility to request individual appointments exists. After that the asylum application is lodged at the BAMF.
- Step 3: Interview with the BAMF, usually conducted within 2-3 days of lodging the application. This is followed by the decision.

¹⁹ Art 30a para 2 AsylG; Federal Government, Reply to parliamentary questions by The Left: 19/13366; 19.09.2019.



4.1.2.4 Time limits

For the standard first instance procedure no time limit is foreseen. But if no decision has been taken within six months, the applicant can request information from BAMF when a decision is likely to be taken.

According to a reply to a parliamentary question in September 2019, the Federal Government listed details of the average processing time in Germany (see below Figure 11). Following this data, in 2018 the first instance had an average processing timeline of 7.5 months. For unaccompanied minors, the average processing time was longer at 9.8 months. More detailed procedures for applications from the Russian Federation lasted the longest at 12.9 months on average. Among the main countries of origin, Georgian and Syrian cases were processed the fastest with first instance decisions issued at 4.2 and 4.9 months.

Unsurprisingly, the shortest average procedure times are found among the countries that were considered as safe by the German government. In particular, applications from countries of the Western Balkans were handled on average in between two (Bosnia and Herzegovina) to 2.7 (Albania) months. Somewhat surprising are the partly longer processing times of other safe countries of origin such as Senegal and Ghana.

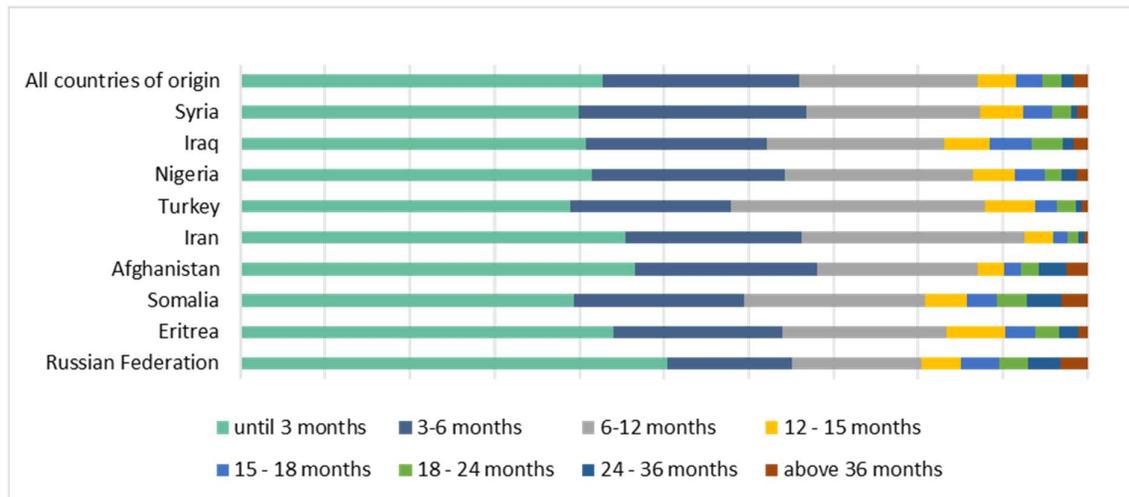
Accelerated procedures:

- 48 hours at the border with Austria;
- According to the Berlin arrival centre, a fast-track 'direct procedure' (*Direktverfahren*) can in principle be concluded in as little as four days in straight forward cases where all required information is available. However, it needs to be noted that the procedures in the various arrival centres are not harmonised.

The total number of pending cases in the first instance by mid-2019 was 52,457.²⁰

Figure 10. Pending cases at the first instance

²⁰ Informationsverbund Asyl und Migration, 30 August 2019, in: ECRE 2019b, p 34.



4.1.3 Appeals instance

Appeals have to be submitted to the Administrative Court (*Verwaltungsgericht*), which in principle is considered the final instance in asylum cases. The asylum seeker's place of residence determines which of 51 Administrative Courts competent to deal with asylum matters is responsible for a particular case. The appeal has a suspensive effect, except if it is manifestly unfounded or inadmissible.

The Administrative Court investigates and evaluates the facts of the case, which usually includes a hearing of the asylum seeker. As part of the civil law system principle, judges are not bound by precedent.

4.1.3.1 Time limits

When appealing a simple rejection, the appeal has to be submitted within two weeks (14 calendar days) and has suspensive effect. The appellant has 1 month to submit reasons and evidence.

When appealing a 'manifestly unfounded' (*offensichtlich unbegründet*) rejection, the timeframe for submitting appeals is reduced to one week, and the appeals do not have automatic suspensive effect. Both the appeal and a substantiated request to restore suspensive effect have to be submitted to the court within one week.

4.1.4 Onward appeals

4.1.4.1 High Administrative Court

Only if the decision of the Administrative Court touches upon a case of fundamental significance, deviates from a decision of a higher court or violates basic principles of jurisprudence, an appeal to the High Administrative Courts (*Oberverwaltungsgericht* or *Verwaltungsgerichtshof*) is possible.



4.1.4.2 Federal Administrative Court

In exceptional cases, an appeal against the decision of the High Administrative Court to the Federal Administrative Court (*Bundesverwaltungsgericht*) is possible, which decides only on points of law and can issue a ‘revision’ of the case.

4.1.4.3 Federal Constitutional Court

In the (rare) case that a constitutional right is violated, the possibility to lodge a ‘constitutional complaint’ with the Federal Constitutional Court exists.

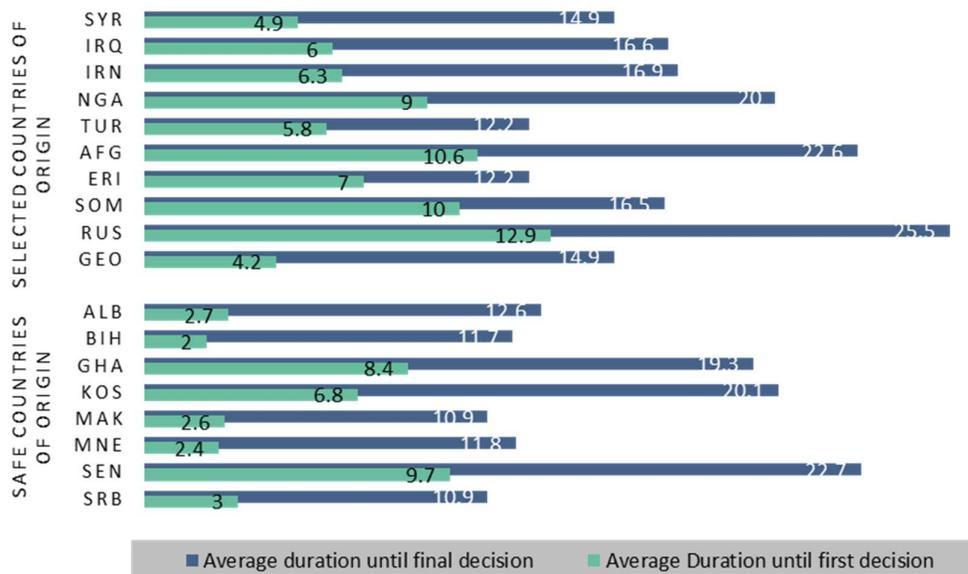
4.1.4.4 Time limits

The application must be made within three months after the applicant has learned of the grounds for resumption of proceedings (ECRE 2019a, p 56).

There are no time limits foreseen for the appeals instances to decide upon appeals against first instance decisions in regular procedures, nor for the processing of subsequent applications.

In 2018, the average processing time until a final decision was 17.6 months.²¹ As indicated in Figure 11 below, the overall procedures for cases from the Russian Federation lasted the longest. Remarkable are the somewhat long average duration of procedures for some dedicated safe countries of origin, like Senegal, Kosovo and Ghana.

Figure 11. Average duration of asylum procedures until first instance decision and final decision



²¹ This, however, includes all cases until their final binding decision. Average processing time in the appeals instance alone can thus not be deducted from those numbers.



Source: Federal Government, Reply to parliamentary questions by The Left: 19/13366; 19.09.2019

4.1.5 Legal assistance

At the beginning of the application phase, the applicant is informed about his or her rights and obligations and provided, as required by law,²² with information about the asylum procedures in German and in the language of the country of origin of the applicant by the BAMF. Also, during the interview and when the decision is issued, relevant information is provided. Most of it is in written form; if needed an interpreter is made available. In addition to that, the online platform of the BAMF can be consulted.²³

Until the end of 2019, asylum seekers did not systematically receive legal assistance at the application stage. For applicants accommodated at AnkER centres (and at several other facilities as well), BAMF officers provided legal counselling in the form of general information and group sessions, including on the topic of return.

In addition to that, to some extent basic legal advice was offered for free by welfare organisations and NGOs. In some initial reception centres (including the arrival centres and AnkER centres), welfare organisations or refugee councils were accessible or have regular office hours. However, such advice services were not available in all centres and not all of the time.²⁴

Based on experiences during a pilot phase, which started in AnkER and similar centres in mid-2018, Germany has recently created the legal basis for the introduction of a voluntary independent governmental counselling on asylum issues (*freiwillige, unabhängige staatliche Asylverfahrensberatung – AVB*) (Art 12a AsylG). It will consist of two steps:²⁵

- Step 1: group counselling at the beginning of the procedure by the BAMF
- Step 2: individual counselling until the end of the procedure. Here the applicant can choose between the BAMF and an NGO.

The country-wide rollout is foreseen for early 2020. While some of the details are yet to be elaborated, NGOs already voiced concerns that the shift of federal funding towards BAMF will undermine their operations, since only material costs, but no coverage for personnel of NGOs is foreseen.²⁶ Also the level of training and neutrality of the BAMF counsellors was called into question (Interview_DE_4). In the 2020 budget it is foreseen that the majority of federal funding for legal assistance will be assigned to the BAMF, who will be responsible for providing legal counselling to asylum seekers.

²² Art 24 para 1 AsylG

²³ Evaluation des Pilotprojekts "Asylverfahrensberatung". Draft, 25.09.2017. BAMF, 2017

²⁴ <http://www.asylumineurope.org/reports/country/germany/asylum-procedure/procedures/regular-procedure>.

²⁵ Federal Government, Reply to parliamentary questions by The Left: 19/13366; 19.09.2019.

²⁶ Pressemitteilung Pro Asyl, 29.11.2019, <https://www.proasyl.de/pressemitteilung/bundeshaushalt-pro-asyl-prangert-mogelpackung-bei-der-asylverfahrensberatung-an/>.



The NGOs cannot represent their clients during the first instance procedure at the BAMF. If asylum seekers want to be represented by a lawyer, have to bear the costs themselves.²⁷

For the first appeal, legal representation is not a necessity, but for subsequent appeals, it is required. The asylum seekers have the possibility to apply for legal aid to pay for a lawyer in the case of appeals, which is decided upon by the judge responsible for the asylum case, depending on the its presumed chances of success.

This ‘merit test’ is carried out by the same judge who has to decide on the case itself. Since decision-making in the legal aid procedure may take considerable time, lawyers might have to accept a case before they know whether legal aid is granted or not.

4.1.6 Return

Voluntary and forced return is, since December 2014, carried out by the Joint Centre for Return Assistance (*Gemeinsames Zentrum zur Unterstützung der Rückkehr (ZUR)*). The Agency coordinates the Federation, the Länder and the local authorities regarding voluntary return, removal, transfers within the Dublin procedure, and reintegration.

The Federation and the Länder try to foster voluntary return through various measures, including the REAG/GARP humanitarian assistance programme (Re-integration and Emigration Programme for Asylum-Seekers in Germany/Government Assisted Repatriation Programme). This programme supports persons who are willing to return by granting financial travel benefits, covering transportation costs, as well as providing initial aid.²⁸ Since 2017, the REAG/GARP programme has been supplemented by the Start Aid Plus programme, which grants returnees in over 40 target countries reintegration support.²⁹ The programme was recently evaluated based on interviews with more than 1,000 returnees (Schmitt et al 2019). According to this study, the lack of a legal status in Germany was the main reason to decide to return, it, however, was coupled with other reasons (ibid, p 5). More than 60% of the study participants stated that the return counselling influenced their decision to return, irrespective of length of stay and status in Germany. The authors come to the conclusion that both people who go to a Return Counseling Centre relatively soon after entering the country and migrants who are considering returning at a later date benefit equally from information and advice on a possible return (ibid, p 46).

²⁷ <http://www.asylumineurope.org/reports/country/germany/asylum-procedure/procedures/regular-procedure>.

²⁸ www.bamf.de (Nov. 2019).

²⁹ See: <https://www.bamf.de/DE/Themen/Rueckkehr/rueckkehr-node.html> (Nov 2019).



4.1.6.1 Data

Figure 12. Return orders and effectuated returns



Source: Eurostat

4.1.7 References

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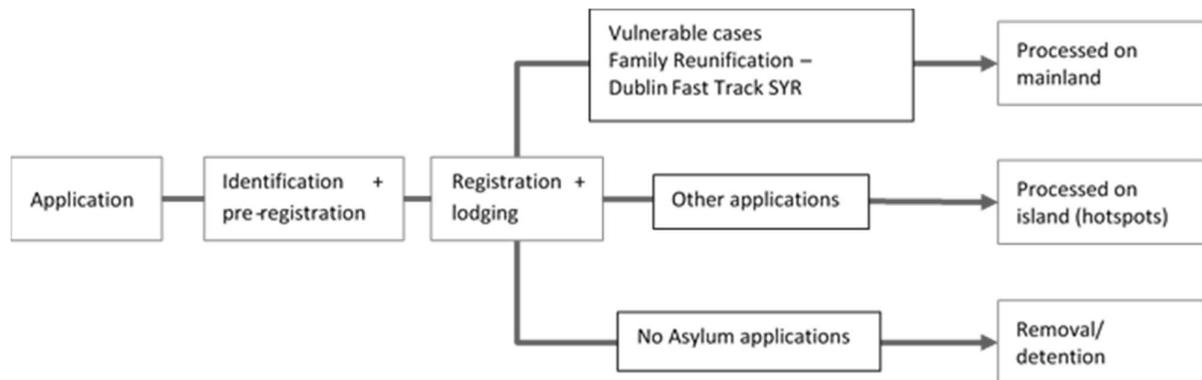


4.2 Country report Greece

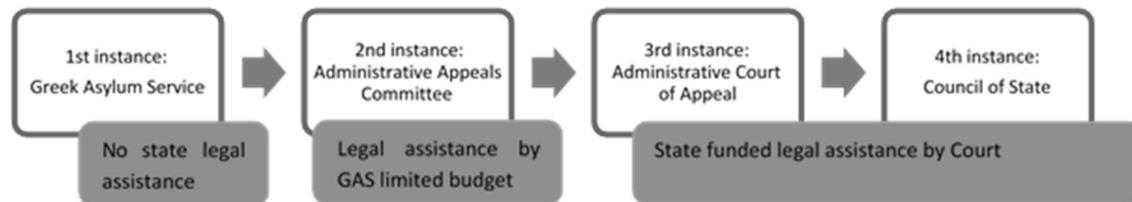
4.2.1 Asylum procedure Greece

4.2.1.1 Overview

Since the EU-Turkey deal and in line with the hotspots approach, Greece coordinates the caseload of applications depending on the different processes either directly at one of the five hotspots at the islands in the Aegean Sea or on the mainland. Vulnerable cases and cases that are most likely eligible for protection status in Greece (or are transferred based on Dublin family criteria to another Member State) are transferred to the mainland.



The first instance asylum authority in Greece is the Greek Asylum Service. A decision by the Asylum Service can be appealed to the Administrative Appeals Committee as an appeals (second) instance and onward to two judicial instances, the Administrative Court of Appeal and the Council of State as the fourth and last instance.



4.2.1.2 Asylum application

In the past years, Greece received a very significant number of applications at the external border. From 2014 to 2018, 199,360 applications for international protection were submitted to the Greek asylum authorities. While initially applicants moved on to other EU countries, the numbers of applications registered and submitted in Greece rose since 2016 and continued to rise until 2018.

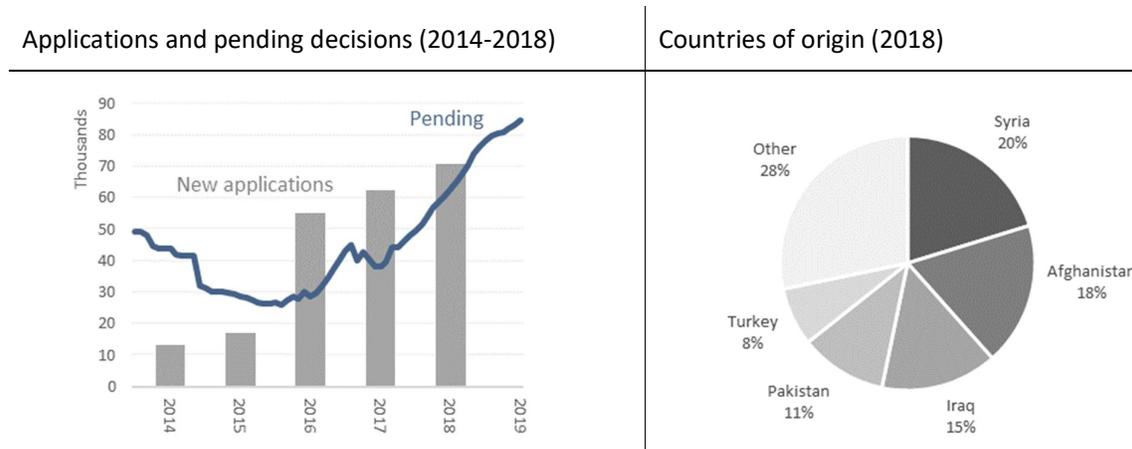
In 2018, the top five countries of origin of applicants together filed 72% of the overall applications. The majority originated from Syria (20%), followed by Afghanistan (18%), Iraq (15%), Pakistan (11%) and Turkey (8%). The top five countries are thus composed of major refugee producing countries. In 2018,



applicants that received all a high recognition rate were from Syria (99.6%), Afghanistan (72%), Iraq (69%) and Iran (60%). Only Pakistan is among the countries with the lowest recognition rate of 2.5%.

According to the statistics of the Greek Asylum Service,³⁰ 68% of the applicants were male and 32% female. Among them, 4% were unaccompanied minors.

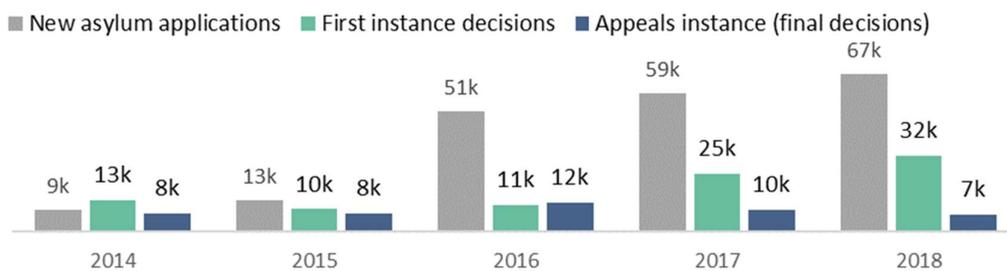
Figure 13. Applications and pending decisions (2014-2018) and countries of origin (2018)



Source: Eurostat

The first instance asylum procedure saw a five times increase of applications from 2015 to 2016 due to increased registration efforts and the instalment of the EU-Turkey Statement and the closure of the Western Balkan Route (ECA 2019, p 46). The first instance decisions tripled between 2016 and 2018. Appeals instance decisions rose from 2015 to 2016 but decreased again since then.

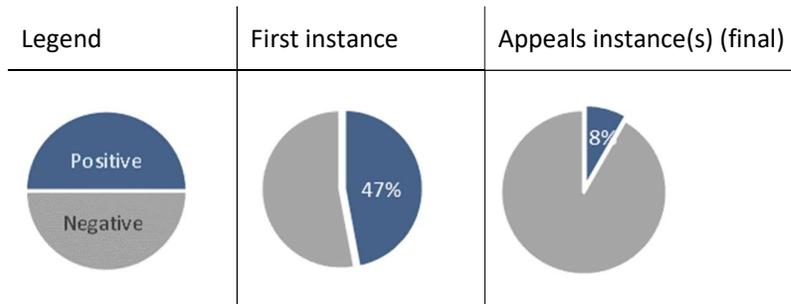
Figure 14. Asylum decisions in Greece (2014-2018)



In 2018, the Greek Asylum Service granted international protection to 47% of applications. A small number of 8% of the first instance decisions were overturned by the appeals instance.

Figure 15. Recognition rate (2018)

³⁰ http://asylo.gov.gr/en/wp-content/uploads/2019/11/Greek_Asylum_Service_data_October_2019_en.pdf (retrieved on 27.11.2019)



Source: Eurostat

4.2.1.3 Reception

The 2015, refugee flows constituted, among other challenges, a hard test for Greece’s reception mechanism. The First Reception Service became operational in 2013 (Dimitriadi & Sarantaki 2019). Until 2015, only one such centre had been set up in Evros (AIDA Greece 2019, p 31). Reception, registration and identification of arrivals at the islands in summer 2015 was organised in less formal premises. In response to the increasing needs and in cooperation with EU measures the identification process was transferred to – so-called – ‘hotspots’ to swiftly identify, register and fingerprint incoming migrants. Five hotspots were created on the islands from autumn 2015 until summer 2016 (AIDA Greece 2019, p 30). By then, the termination of Greece’s status as a transit country and the EU-Turkey Statement have even more increased pressure for a stricter and better organised reception and identification framework (Kourachanis 2018). The introduction of the law 4375/2016, foresaw the succession of First Reception Service with the Reception and Identification Service (RIS), which would be staffed with about 750 persons. At regional services of the RIS, there are Reception and Identification Centres (RICs), Mobile Units of Reception and Identification, as well as (open) Temporary Reception facilities for asylum seekers and (open) Temporary Accommodation facilities for third-country nationals.

In parallel, 26 temporary reception/accommodation facilities (‘sites’, ‘camps’) for asylum seekers were opened on the mainland of Greece. Only three are officially established under the supervision of RIS. The other centres were mostly created in emergency situations as a response to the closure of the ‘Balkan route’ in early 2016. They “operate without a prior Ministerial Decision and the requisite legal basis” (AIDA 2019, p 123). By 2018, their operation has been coordinated unofficially by the office of the Minister of Migration Policy (AIDA 2019, p 123).

RICs are successors of hotspots and constitute the most important element of the whole reception framework after the EU-Turkey Statement. Five of them operate in the five Eastern Aegean islands; since all persons who arrive have to remain on the islands for a shorter or longer period for the examination of their asylum application. These five RICs also operate as Temporary Reception/Accommodation centres; moreover, in four out of five of them, the Asylum Service offices are actually situated within the RIC area. Another RIC operates in Evros (Greek-Turkish land border);

According to Article 9, L. 4375/2016, reception and identification procedures for all those who arrive irregularly in Greece include: a) registration of their personal data and fingerprinting, b) verification of



their identity and nationality, c) medical screening and provision of care, d) information about their rights and obligations, in particular on the asylum procedure or voluntary return programmes, e) attention to vulnerable groups, f) referring those who wish to submit an asylum application, g) referring those who do not submit an asylum application or whose application is rejected while they remain in the RIC to the competent authorities for readmission or return. This law (Art 13) foresees that these procedures are allocated to specific units within each RIC (e.g. information unit, medical screening unit). In practice, given that RICs' demarcated spaces host various procedures and services (reception, asylum, accommodation and/or education), various other official actors (Police, FRONTEX, UNHCR, IMO, EASO) or volunteer groups and NGOs (especially during 2015-2016) contribute or complement to one or another extent to the implementation of these procedures (AIDA 2019, p 36). According to Article 14 of the law, the liberty of those entering the RIC may be restricted (prohibition to leave the centre) for a period up to 25 days, for the purpose of completion of all reception and identification procedures. In practice, however, this prohibition is not applied in most cases or does not exceed the first 2-3 days; instead, a geographical restriction of movement within the island is enforced (AIDA 2019, pp 33-34, 154).

4.2.2 First instance

4.2.2.1 Regular procedure

The competent authority in first instance procedures is the Asylum Service. At the end of 2018, it consisted of twelve Regional Asylum Offices and eleven Asylum Units (AIDA 2019). The Asylum Service is an autonomous body reporting directly to the Minister of Citizen Protection.³¹ It has a staff of 679 employees. According to ECRE almost half of the employees of the Asylum Service staff are employed on a short-term basis. This and precarious working environments for employees (e.g. staying unpaid for a period exceeding three months) create problems in the operation of the Asylum Service (AIDA 2019, p 24). The Asylum Service may be assisted by European Asylum Support Office (EASO) staff in registration and interviews.

The applicant submits the asylum claim at the Asylum Service, which conducts several checks such as taking fingerprints. Should the claim be a first application and if the case is not forwarded to the fast-track border procedure (see below), the full registration is made, constituting the official lodging of the application for international protection. The Greek law refers to simple registration to describe the notion of 'registration' and full registration to describe the notion of 'lodging' of an application under the recast Asylum Procedures Directive (AIDA 2019, p 38).

Due to understaffing of the Asylum Service, the interview date may be scheduled only after a waiting period of several months (Interview_GR_2). The applicant receives an International Protection Applicant's Card which is valid for a (extendable) six-month period.

³¹ http://asylo.gov.gr/en/?page_id=39



The Asylum Service is also competent authority for applying the Dublin procedure, with most requests and transfers concerning family reunification in other Member States (AIDA 2019).

Although the Asylum Service provides information to applicants, the complexity of the procedure and constantly changing legislation and practice is reportedly a matter of concern (AIDA 2019, 112ff). As legal assistance is only accessible at the appeals procedures, applicants are often left in the first instance procedure without sufficient information.

4.2.2.2 *Accelerated procedure*

Within the regular procedure, an ‘accelerated’ procedure is envisaged (Art 41 (7), L. 4375/2016). It essentially applies to cases where asylum applications are considered highly unlikely to receive a positive decision. The nominal timeframe for the examination of these claims is reduced to three months. According to the newly adopted law, 4636/2019, asylum claims are examined under the accelerated procedure in the following cases:

- a) the applicant mentioned facts that are not relevant to the needs of international protection;
- b) the applicant comes from a safe country of origin;
- c) the applicant presented false information or documents or did not reveal information or documents related to his or her nationality or ID;
- d) the applicant mentioned inconsistent information or presented contradictory claims that do not correspond to the country of origin information;
- e) the applicant has intentionally destroyed an ID or travel document that could assist in the definition of his or her nationality;
- f) the applicant has submitted a subsequent application;
- g) the applicant submitted the application aiming to postpone or obstruct a return decision;
- h) the applicant entered irregularly in the country and did not submit the asylum claim the soonest possible;
- i) the applicant refuses fingerprinting;
- j) the applicant is considered a threat to the national security or public order or he or she was previously deported from Greece for reasons of national security or public order;
- k) the applicant is vulnerable or a person in need of special reception conditions, provided he or she is assisted by lawyer and interpreter.

4.2.2.3 *Other procedures*

Law 4375/2016 (Art 41 (6)) generally foresees that applications by certain categories of applicants can be examined with priority. Cases may be prioritised due to the following criteria (Art 51(6) L. 4375/2016):

- a) the applicant belongs to vulnerable group or is in need of special procedural guarantees;
- b) the applicant is applying from detention, at the border or from a Reception and Identification Centre;



- c) the applicant is likely to fall within the Dublin procedure;
- d) the applicant has a case reasonably believed to be well-founded;
- e) the applicant has a case which may be considered as manifestly unfounded;
- f) the applicant represents a threat to national security or public order; or
- g) the applicant files a subsequent application.

A fast-track border procedure is applied to applicants subject to the EU-Turkey statement, i.e. applicants who arrived on the Greek islands after 20 March 2016, and takes place in the Reception and Identification Centres (RIC) where hotspots are established (Lesvos, Chios, Samos, Leros, Kos). Under the fast-track border procedure interviews may also be conducted by EASO staff.

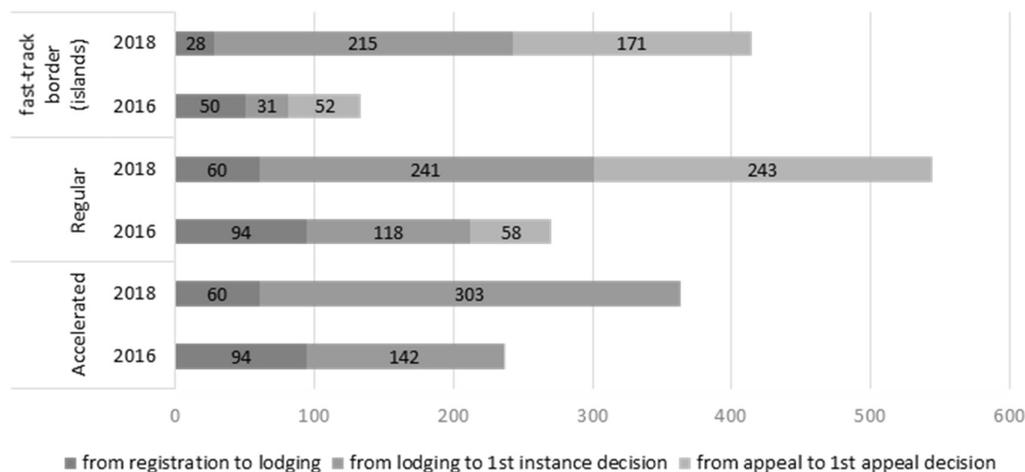
	2016	2017	2018	2019
Fast-track procedures	913	2,986	3,531	

Article 14(8) of L. 4375/2016 considers the following groups as vulnerable: unaccompanied minors; persons who have a disability or are suffering from an incurable or serious illness; elderly people; women in pregnancy or having recently given birth; single parents with minor children; victims of torture, rape or other serious forms of psychological, physical or sexual violence or exploitation; persons with a post-traumatic disorder, in particularly survivors and relatives of victims of ship-wrecks; victims of human trafficking. EASO staff is involved in vulnerability assessments, which raises issues of legality and competences (AIDA Greece, p 90).

4.2.2.4 Time limits

In 2018, the average period between pre-registration and full registration was 42 days (AIDA 2019, p 41). According to the law, the first instance procedure should be concluded within six months which can be extended for up to a year. In 2018, the actual average processing time at first instance was, according to AIDA (AIDA Greece 2019, p 15), about 8.5 months.

Figure 16. Overview of processing time by type of procedure (in days)



Source: ECA 2019, p 48



4.2.2.5 Data

Based on information of the Asylum Service, it received 66,969 new applications in 2018, of which 30,943 were initially channelled under the Fast-Track Border Procedure. Of those, 22,963 were referred to the regular procedure due to vulnerability and 2,062 due to the application of the Dublin Regulation (AIDA 2019, p 42).

4.2.3 Appeals procedure

Decisions of the first instance Asylum Service may be appealed to the Administrative Appeals Committee with different time limits for the appeal (according to the new law entering into force in 2019) (Interview_GR_2):

- a. 30 days for asylum claims (refugee status and subsidiary protection status) rejected under the regular procedure;
- b. 20 days for asylum claims rejected as inadmissible or examined under the accelerated procedure or when the applicant is detained;
- c. 15 days for appeals challenging the decision issued by the Dublin Unit (including the transfer decision);
- d. seven days for asylum claims examined under the border procedure or while the applicant is hosted in a hotspot;
- e. five days for appeals challenging a decision that rejects the subsequent application as inadmissible.

The Administrative Appeals Committee was established by law 3907/2011. It examines at the appeals (second) instance administrative (quasi-judicial) appeals lodged against decisions issued by the Asylum Service (first instance). Initially, the Committees were composed of one representative of the Ministry of Interior, one human rights expert selected by the government from a list compiled by the National Commission on Human Rights and a representative from UNHCR. Following strong recommendations by the European Council and the European Commission to the Greek authorities, the newly established Independent Appeals Committees are composed of two judges of the Administrative Courts and one representative of UNHCR or the National Commission on Human Rights. The aim of this change was to make them 'more objective and independent'. Pursuant to law 4375/2016 (amended by law 4399/2016), the new Appeals Authority thus established as an autonomous Service, which reports directly to the Minister of Migration Policy.³² The term of the Committee members is three years. Under the Greek constitution they are considered quasi-judicial tribunals (Interview_GR_1).

Greece has made an effort to boost the capacity of its appeal authorities. In December 2018, the number of appeal committees increased from 12 to 20 (ECA 2019, p 50). In case of large numbers of appeals, the possibility to invoke rapporteurs from EASO was introduced. According to ECRE, 22

³² The Committees provided in the new law will be composed by three active administrative Judges. There will be two types of Committees; a) Committee with one Judge and b) Committee with three judges. The one judge Committee will also examine appeals requesting the suspension of deportation/readmission/return decision.



rapporteurs were made available to the Appeal Authority, of whom 11 were deployed to the Appeals Authority by EASO in the course of 2018 (AIDA 2019, p 49).

An appeal is registered with the first instance authority, the Asylum Service. It is the Asylum Service that enters the appeal into the Committee's system. The judges then only have access to the file a few days before the hearing is scheduled. Following the appeal, the Administrative Appeals Committee reviews the case in fact and in law. Appeals have automatic suspensive effect, which, however, will be changed under the new law.

4.2.4 Onward appeals

Against a negative appeals instance decision an onward appeal for annulment of the Administrative Appeals Committee decision can be filed before the Administrative Court of Appeals within 60 days from notification. This appeal has no automatic suspensive effect. Also this Court's decision can be further appealed which makes the Greek asylum system a four instance procedure.

The Administrative Court are usually not specialised in asylum and migration cases – only the bigger court in Athens has specialised chambers that specifically hear asylum and migration cases. The Court decides only in law not in facts.

4.2.4.1 Time limits

There are a number of different time limits. However, time limits have never been observed by the administrative instances. The Administrative Committees have to decide within three months. There is no legal time line for Administrative Courts, however, the general rule for the issuance of court judgements is eight months (Interview_GR_1).

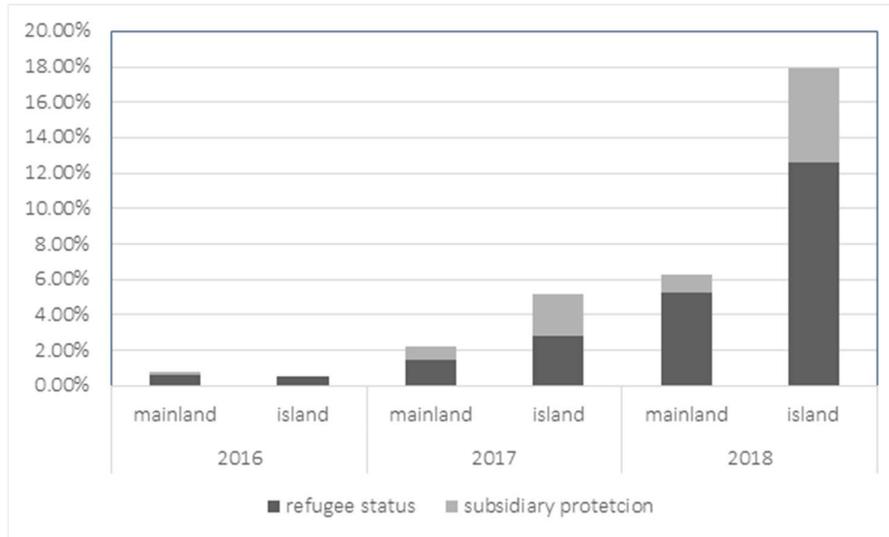
4.2.4.2 Data

In 2018, 15,355 appeals were lodged to the Independent Appeals Committees. At the end of that year, 13,755 appeals were pending, of which 10,061 appeals had not been examined, while another 3,694 had been examined but the issuance of the decision was pending.

One major reason for a significant backlog of decisions – mainly for Syrians – resulted from a case which was pending at the Council of State on deciding whether Turkey was a safe third country or not. During this time, most appeal Committees did not issue any decision on cases that mainly concerned Syrian applicants. On 22 September, the Council of State of Greece decided (dec n° 2347/2017 and 2348/2017, available only in Greek) that Turkey qualifies as a safe third country for two Syrians. Evidently this judgement was decisive for a large number of Syrian applicants.

The European Court of auditors identified a possible decrease in the quality of Greek asylum decisions at the islands due to a sharp increase of overturned first-instance decisions by the appeals instances.

Figure 17. Share of overturned first-instance decisions in Greece



Source: ECA 2019, p 51

4.2.5 Legal assistance

Greece does not provide free legal representation at the first instance at the proceedings before the Asylum Service. However, since 21 September 2017, free legal representation started operating for the examination of appeals before the Appeals Committees and before the Administrative Courts.

The conditions of providing free legal representation are, however, not the same for the Appeals Committees and for the Courts. Before the Appeals Committee, a state-run programme provides legal assistance through lawyers at the cost of the state. Since September 2017, and in line with EU law, asylum applicants now receive free legal assistance at the appeal stage of the asylum procedure from lawyers registered in the Asylum Service's 'Registry of Lawyers' (EMN 2018).³³ The lawyer is appointed by the Asylum Service as long as the budget is available (Interview_GR_2). Legal aid provided by the Court must pass a merit test showing good prospects for a well-founded claim (Art 9 L. 3226/2004). Legal assistance at the appeal stage includes meetings between the lawyer and the applicant, drafting of the appeal and the presentation of the case before the Appeals Authority (EMN 2018).

According to the Asylum Service "free and reliable information on the asylum procedure as well as free legal assistance at the appeal stage of the asylum procedure safeguards the rights of the applicant whilst also guaranteeing a fair asylum procedure" (EMN 2018).

While it is overall satisfactory that Greece now provides legal assistance at the appeal stage, the coverage still remains a matter of concern for ECRE. According to the 2018 AIDA country report, out of a total of 15,355 appeals lodged in 2018, only 3,351 (21.8%) applicants benefited from the state-

³³ Before the creation of the Asylum Service's Registry of Lawyers the NGO's, METAdrasi and the Greek Council of Refugees (both implementing partners of UNHCR) provided free legal assistance at the appeal stage to asylum applicants. This practice was based on a Memorandum of Cooperation between the Ministry of Migration Policy and UNHCR (EMN 2018).



funded legal assistance scheme (AIDA 2019, p 16). In 2018, an additional 600 applicants received legal assistance in appeal procedures under UNHCR’s Memorandum of Cooperation with the Ministry of Migration Policy (ibid, p 58).

4.2.5.1 Contract/Payment schedule

Lawyers providing legal assistance through the Asylum Service are paid per case. The legal assistance package includes drafting and submission of an appeal, representation of the applicant before the Appeals Committee, when he or she is invited for an oral hearing, drafting and submission of memos and of documents that support the case and meeting with the applicant for the proper preparation of his or her case. Lawyers are paid EUR 120 per case when they provide all above-mentioned services. When they provide less – through no fault of their own – they are paid EUR 90 per case. Lawyers are paid when the case is completed (i.e. when they submit all documents to the Asylum Service proving that they provided legal assistance for the case appointed to them) (see Ministerial Decision 2864/B/2016; Ministerial Decision 528/B/2019).

4.2.5.2 Data

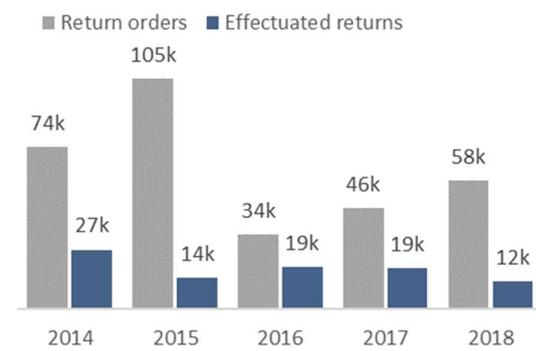
According to ECRE, out of a total of 15,355 appeals lodged in 2018, 3,351 (21.8%) asylum seekers benefited from the state-funded legal aid scheme. There is therefore no guarantee of legal assistance. About 50 lawyers are on the list managed by the first instance institution, the Greek Asylum Service.

4.2.6 Return

Return decisions are made by the Greek police. However, the coordination between the Asylum Service and the police is difficult as they operate with different data systems and are thus not automatically informed if an application for international protection has been denied. The return procedure and the return order can thus only be processed if the person is apprehended by the police (see also ECA 2019, p 60). Another factor for low return numbers in Greece according to the findings of the ECA (2019, p 61) is the length of the asylum process.

4.2.6.1 Data

Figure 18. Return orders and effectuated returns





Source: Eurostat

4.2.7 References

AIDA Greece 2019: Asylum Information Database – Country Report Greece at: [file:///C:/Users/wagnerm/Downloads/aida_gr_2018update%20\(2\).pdf](file:///C:/Users/wagnerm/Downloads/aida_gr_2018update%20(2).pdf)

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Ministerial Decision 528/B/2019: Τροποποίηση της οικ.12205/16-8-2016 κοινής υπουργικής απόφασης «Παροχή νομικής συνδρομής σε αιτούντες διεθνή προστασία». (Amendment to Joint Ministerial Decision 12205 / 16-8-2016 "Providing legal assistance to applicants for international protection"; Published in official gazette 528/B/2019) available at: <http://asylo.gov.gr/wp-content/uploads/2019/02/%CE%A6%CE%95%CE%9A-%CE%9D%CE%9F%CE%9C%CE%99%CE%9A%CE%97-%CE%A3%CE%A5%CE%9D%CE%94%CE%A1%CE%9F%CE%9C%CE%97-21.02.19.pdf>

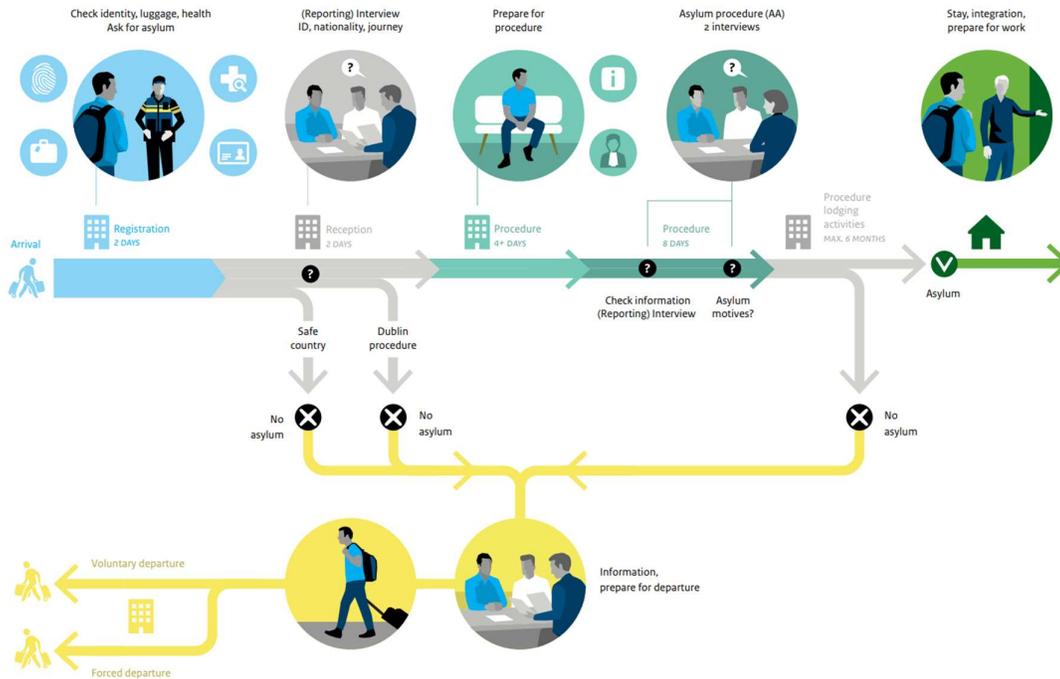
Tsiliou A. (2018): When Greek judges decide whether Turkey is a Safe Third Country without caring too much for EU law; at: <https://eumigrationlawblog.eu/when-greek-judges-decide-whether-turkey-is-a-safe-third-country-without-caring-too-much-for-eu-law/>



4.3 Country report Netherlands

4.3.1 Asylum procedure Netherlands

4.3.1.1 Overview



Source: IND

4.3.1.2 Asylum application

Applications for asylum in the Netherlands have to be lodged with the Immigration and Naturalisation Service (Immigratie- en Naturalisatiedienst- IND) of the Ministry of Justice and Security.

Asylum seekers who have crossed a land border must report to the Central Reception Centre (Centraal Opvanglocatie – COL) in Ter Apel within 48 hours of their arrival. Both the IND and the Aliens Police, Identification and People Trafficking Department (AVIM) are located in that Centre. The latter records the asylum seekers' personal data and takes their fingerprints.

Persons arriving by sea or air who wish to apply for asylum must report to the Royal Military Police (Koninklijke Marechaussee) or the seaport police who will register the applicants and refer them to the IND.

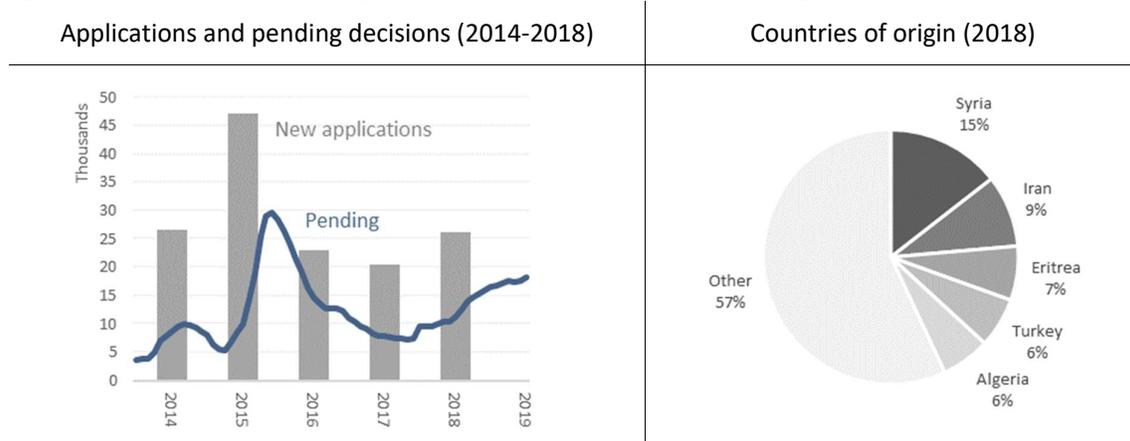


Between 2014 and 2018, the Netherlands received 132,645 asylum applications. The year 2015 saw a peak in new arrivals accounting for 44,970 applications; in comparison, 24,025 applications were lodged in 2018. Between January and August 2019, first-time applications reached 14,430.³⁴

In 2018, the largest number of first-time applications came from Syria (2,960), followed by applications from Iran (1,870), Eritrea (1,410), Turkey (1,300), and Algeria (1,270). Overall the top 5 countries of origin of asylum seekers made up 43% of all applications. The countries of origin are thus more heterogenous in the Netherlands compared to some other EU countries.

The asylum seekers are by majority male, accounting for 78% of the first-time applications. From 2014 to 2018, 8,925 unaccompanied minors were counted among the applicants, 1,225 of whom filed their application in 2018.

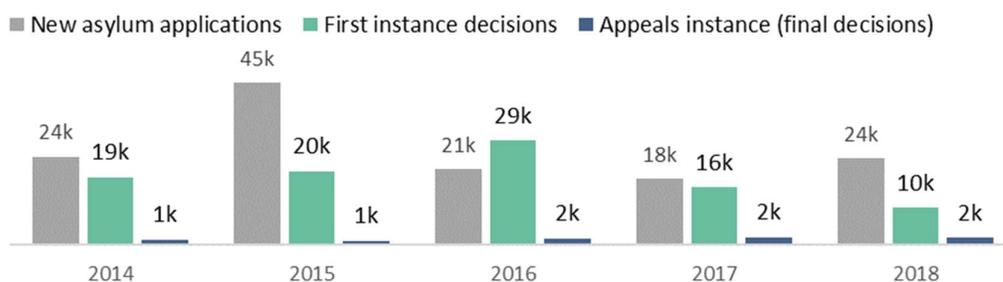
Figure 19. Applications and pending decisions (2014-2018) and countries of origin (2018)



Source: Eurostat

First instance decisions increased by around a third in 2016 compared to 2014 but since then drastically decreased. The appeals instance decisions doubled in 2016 compared to 2015 and remained at about 2,000 decisions per year until 2018.

Figure 20. Asylum procedures in the Netherlands (2014-2018)



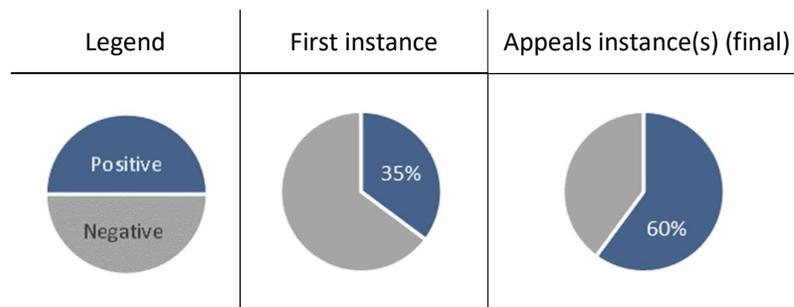
Source: Eurostat

³⁴ All data cited in this chapter is from Eurostat, unless otherwise stated.



In 2018, the recognition rate of first instance decisions was 35%. A significant number of appeals instance decisions (60%) overruled the first instance decisions.

Figure 21. Recognition rate (2018)



Source: Eurostat

4.3.1.3 Reception

The reception of asylum seekers is organised along the stages of the procedure. Following their registration in the Central Reception Centre in Ter Apel (which usually takes three to four days), asylum seekers are transferred to one of the 12 process reception centres (Proces Opvanglocatie), where they stay for the duration of the regular procedure. In case the regular procedure proves insufficient for the examination of the case, the applicant is relocated to one of the centres for asylum seekers (Asielzoekerscentrum) for the duration of the extended procedure (ECRE 2018, p 18).

Other types of accommodations include small housing facilities for unaccompanied minors (kleine woonvoorziening) and centres with freedom of movement restrictions such as supervised reception centres for applicants who have caused nuisance in a regular centre (extra begeleiding en toezichtlocaties), or freedom-restricting centres and family housing (gezinslocatie) for the pre-departure period.

Overall, the 60 locations run by the Central Agency for the Reception of Asylum Seekers can provide accommodation for some 27,000 applicants.³⁵ During peak times, such as in 2015, emergency reception centres were opened to cope with the space shortage in the regular centres. These temporary centres have now been closed. The numbers of asylum seekers in reception centres, however, remain high and the Dutch Refugee Council has expressed concern about the situation, also because the centres are not adequately equipped for long waiting times.

³⁵ <https://www.coa.nl/nl/actueel/nieuws/opvangcapaciteit-asielzoekers-voor-eind-2018-naar-27000-plaatsen> (accessed 23 October 2019)



4.3.2 First instance

4.3.2.1 Regular procedure

The IND, as the determining authority, channels asylum applications into five procedural tracks depending on the type and circumstances of the respective case. The regular procedure (*algemene asielprocedure*) is the so-called track 4 procedure, which is foreseen to take eight days but can be extended by another 14, 16 or 22 days, depending on the reason for the extension.

Applicants whose case is handled within the regular procedure are granted a rest and preparation period of at least six days starting with the formal application. In addition to providing the applicant with an opportunity to repose, this period is used for the investigation of documents, medical examinations, and provision of information about the Dutch asylum procedure by the Dutch Council for Refugees.

Once the regular procedure is launched, it follows a densely planned schedule of eight days which alternate between interviews by the IND and preparation of responses by the appointed lawyer:

- Day 1: First interview by the IND
- Day 2: Recap of first interview with the appointed lawyer and preparation for the second interview
- Day 3: Second interview by the IND
- Day 4: Recap of second interview and submission of corrections and/or additions by the lawyer
- Day 5: Issuance by the IND of intention to reject application or issuance of the decision to grant the asylum permit
- Day 6: Submission of response to the intention by the lawyer
- Days 7 and 8: Issuance of decision by the IND

Should further investigations into the case be needed, the IND can redirect the applicant to the extended asylum procedure (*verlengde asielprocedure*), which should be carried out within six months (ECRE 2018, p 20).

The IND has a total workforce of 2,933 civil servants and 855 external employees.³⁶ The staff numbers of the Asylum Department are not available but deemed insufficient to deal with the caseload. A number of factors have exacerbated the lack of staff capacities in the IND's asylum department, including the amount of pending cases at the beginning of 2019 (see section 4.3.2.5.), a higher number of first-instance applications in 2018 than expected, and an increase in applications that result in a rejection and involve longer decision-making procedures than positive decisions.

³⁶ The figures reflect the situation at the end of 2018. Source: Cijferoverzicht IND jaarresultaten 2018. <https://ind.nl/nieuws/Paginas/IND-jaarcijfers-2018-Driekwart-aanvragen-bij-IND-vooral-voor-gezinshereniging,-studie-of-werk.aspx> (accessed 12.11.2019)



4.3.2.2 *Accelerated procedure*

The Netherlands have introduced a simplified and several types of accelerated procedures, which are prioritised and supposed to be handled in less than eight days. They do not foresee any rest and preparation period and the applicants are interviewed only once. The simplified procedure is the Dublin procedure (track 1). In 2018, the Netherlands received 5,042 incoming and submitted 8,619 outgoing requests. It handled 835 incoming and 1,849 outgoing transfers in that same year.

The accelerated procedures include the following:

- The track 2 procedure for persons who come from a safe country of origin or already enjoy protection in another EU member state. Between 1 March and 31 December 2019, some 2,000 applications were processed under that procedure (AIDA 2019d, p 41).
- A fast-track procedure for manifestly well-founded cases, i.e. 'prima facie' refugees (track 3) and the related track 5 procedure for cases which require further investigation into the identity or nationality of the applicant. Neither track 3 nor track 5 have ever been implemented. There have, however, been projects that prioritised similar asylum cases from Syria and Yemen.

The subsequent asylum procedure that is assessed in the so-called one-day review (*eendagstoets*). The term is misleading in so far as only the issuance of the intended decision is supposed to take place within one day. The actual duration of the procedure depends on the response and whether further investigations are needed. In addition, there is also a special procedure for last minute subsequent applications submitted before imminent removal (i.e. at the airport). It entails an interview of the applicant by IND officials who will assess whether the application entails any new information. This procedure is only applicable when the subsequent application is lodged with the intention of preventing or delaying the removal. It can also be applied if the applicant has submitted a second or later subsequent application without presenting new information. In that case, it is not required that the later subsequent application has been lodged with the intention of preventing or delaying the removal.

4.3.2.3 *Other procedures*

The border procedure is technically not defined as a separate track and roughly follows the schedule of the regular procedure. It is distinct, however, in that the applicant is placed in the closed application centre at the airport in Schiphol where he or she will remain for the duration of the asylum procedure. The border procedure must not last longer than four weeks, after which the application is channelled into the regular procedure. These four weeks do not include the appeals procedure, which may last longer.

4.3.2.4 *Time limits*

Tight planning and prescribed time limits are specific features of the Dutch asylum system. In the case of the regular procedure, the stipulated maximum duration is 22 days (eight days, which can be extended by another 14, 16 or 22 days). Asylum applications that are examined in the extended procedure must come to completion within six months. If justified, this period can, however, be extended by nine months. Due to the increase in applications in 2015, an additional nine months



extension was provisionally granted for the time period between February 2016 and February 2017. Not staying within the prescribed time limits results in a financial penalty for the IND to be paid to the applicant for each transgressing day.³⁷

As mentioned above, the high influx in 2015-2016 has caused a considerable backlog and the IND currently exceeds the time limits in cases that are not dealt with in the accelerated procedure. In 2018, the average lead times (counted from the initial registration to the IND's first decision) were 16 weeks for the regular procedure and 46 weeks for the extended procedure (*Ministerie van Justitie en Veiligheid*, 2019; p 25). The current delays also affect the duration of the rest and preparation phase, which creates uncertainties with regard to the exact date of the beginning of the procedure and thereby affects the planning of the provision of legal assistance (see section 4.3.5).

The prescription and enforcement of time limits were perceived ambivalently by the interlocutors in the Netherlands: on the one hand, they were seen as important to provide direction and structure to the procedure. On the other hand, they were said to create time pressures that can negatively affect the quality of decision-making (time pressures can, for example, prevent the IND from waiting for new country-of-origin information) and legal assistance (with lawyers not having enough time to properly prepare for a case. See also section 4.3.5). In addition, the payment of penalties was assessed as adding to the immigration service's and the appeal courts' workload because it generates new procedures and processing requirements.

4.3.2.5 Data

As mentioned above, 193,240 first-time applications were filed between 2008 and 2018. During the same timeframe, the IND issued 182,060 decisions on first-time applications. In 2018, the IND took 10,285 first instance decisions with an approval rate of 35%. The three main citizenships granted protection in the Netherlands in 2018 were Syrian, Eritrean and Iranian.

Approximately 8,000 cases were pending at the beginning of 2019.³⁸

4.3.3 Appeals procedure

Rejected applications can be appealed at a regional court³⁹ (*Rechtbank*). The appeal must be submitted within one week in the cases of the regular, the accelerated and the Dublin procedures.

Asylum seekers whose case was negatively assessed in an extended procedure must submit their appeal within four weeks unless their claim was rejected as manifestly unfounded or dismissed as inadmissible, which reduces the applicable submission deadline to one week.

³⁷ The daily fees are EUR 20 for the first fortnight, EUR 30 for the next fourteen days and EUR 40 for all subsequent days up to a maximum of 42 days.
<http://curia.europa.eu/juris/document/document.jsf?text=&docid=207681&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=2129566> (accessed 25.10.2019)

³⁸ Onderzoekscommissie Langdurig verblijvende vreemdelingen zonder bestendig verblijfsrecht 2019: 146

³⁹ Sometimes translated as 'district courts'.



Regardless to whether the regular, accelerated or extended procedure was followed, the appeal only has automatic suspensive effect if the application is deemed unfounded. Appeals submitted in cases where the application is deemed inadmissible (including Dublin cases) or manifestly unfounded, must be submitted with a request for a provisional measure to prevent the asylum seeker's expulsion pending the appeal.

The judicial review by the administrative judges of the regional courts focuses on a legal and procedural assessment of the process leading to the negative decision by the IND. In particular, it centres on requirements of due care, sound reasoning, and rightfulness. This includes an assessment of the reasoning of the IND on the asylum claim's credibility. The court does not make an independent appraisal of the credibility of the asylum claim. The underlying assumption is that the IND has better expertise and tools than the courts in that regard and a certain amount of discretion in parts of its decision-making. In a ruling of 2016, however, the Council of State assessed that the entry into force of Article 46(3) of the Procedures Directive required a greater intensity of the judicial review (Raad van State 2016). Since then, this is a standing practice of the courts. The regional courts also carry out *ex nunc* examinations, i.e. consideration of new facts and circumstances that may have appeared following the decision issued by the IND.

4.3.4 Onward appeals

Onward appeals by the applicant or the IND can be submitted to the Administrative Jurisdiction Division Department of the Council of State (*Afdeling Bestuursrechtspraak Raad van State*). Cases handled in a general asylum procedure must be handed within one week following the regional court's judgment; in the context of the extended procedure the deadline is four weeks. The appeal does not have suspensive effect unless the Council of State issues a provisional measure.

The onward appeal is, in general, limited to an *ex tunc* review of the regional court's judgement. In cases that depend on an appraisal of the general security situation in countries of origin, the Council, however, tends to include documents that parties have submitted after the judgement in its review (Raad van State, 2018).

4.3.4.1 Time limits

The regional courts should rule on the appeal within a time limit of four weeks, except if the application has been rejected as unfounded in the extended procedure, in which case the court should rule on the appeal within a time limit of 23 weeks. The timeframe for the Administrative Jurisdiction Division of the Council of State to take a decision on an appeal is 23 weeks (EMN 2018). In practice, the average lead times in accelerated procedures (Dublin and track 2) are four to six weeks. In the regular and extended procedures, the average processing time for appeals is nine and 31 weeks respectively (Ministerie van Justitie en Veiligheid, 2019, p 26). Exceeding the prescribed time limits does not result in any consequences for the appeals instances.



4.3.4.2 Data

Although there is no data available on the rate of appeals, interlocutors estimate it to be high. A very rough comparison of the number of total asylum decisions taken by the IND in 2017 and 2018 with the numbers of first instance appeals provides a prudent estimate of 95% (Ministerie van Justitie en Veiligheid 2019, p 24p).

An indication of the appeal rate per procedure may be derived from a 2019 report by the Investigative Committee Long-term Resident Aliens without Permanent Residence (*Onderzoekscommissie Langdurig verblijvende vreemdelingen zonder bestendig verblijfsrecht*), which indicates the following appeal rates for the year 2017:

- Regular procedure: 79%
- Extended procedure: 91%⁴⁰

An explanation for the difference in the appeal rate may lie in the fact that cases dealt with in the extended procedure are by nature more complex than the ones dealt with in the regular procedure.

In 2017, the regional courts received 16,450 appeals and issued 15,780 decisions. In 2018, the intake numbers of the regional courts saw a slight decrease of 3% with 15,870 appeals; it ruled in 15,810 cases.

The Council of State took in 5,670 onward appeals and issued 5,520 decisions in 2017. In 2018, it received 5,740 onward appeals (which is an increase of 1% compared to 2017) and decided on 5,727 applications.⁴¹

Only a small percentage of the IND's decisions are overturned by the courts. According to the most recent data available, it ranged between 10 and 15% (Ministerie van Justitie en Veiligheid 2018, p 42) in the years 2013 to 2016.

4.3.5 Legal assistance

The below description of the provision of legal assistance in the Netherlands reflects the situation at the time of writing. Following an announcement by the State Secretary for Justice and Security of the government's intention to limit the current provision of legal assistance at first instance, the Parliament has requested the implementation of an *ex ante* feasibility test. A decision on the matter is pending.

Currently, applicants are entitled to free legal assistance as of the launch of the asylum procedure and in principle before their first interview takes place. However, in early 2019, the registration procedure was expanded for applicants who have crossed a land border to include an elaborate questionnaire focusing on identity and the migration route. The information collected in that process is used in the asylum determination procedure. Interlocutors have expressed concerns about that practice because

⁴⁰ Onderzoekscommissie Langdurig verblijvende vreemdelingen zonder bestendig verblijfsrecht 2019, p 121

⁴¹ *ibid*, p 25



it prevents applicants from receiving procedural and legal advice before they make statements about their personal history.

The appointment of a lawyer takes place after the registration of the asylum application during the rest and preparation period. It is organised by the Legal Aid Board (*Raad voor Rechtsbijstand*), an independent public body, instituted by the Minister of Justice and Security.

Representatives of the Legal Aid Board are present in the Central Reception Centre and manage the lawyers who work on rotation. An appointed lawyer from the Legal Aid Board is free of charge for the asylum seeker. Asylum seekers can also opt for their own lawyer and, provided the lawyer is recognised by the Legal Aid Board, the latter will cover the costs.⁴² The Legal Aid Board needs to wait for information about the start of the procedure in order to be able to appoint a lawyer who is available and geographically close to the applicant and because counselling prior to the launch of the procedure is not remunerated. Meanwhile, and in order to cope with the uncertainty of the prolonged rest and preparation period, some applicants approach a lawyer they have heard of and choose to be represented by him or her.

Asylum seekers also receive counselling (individual or collective) from the Dutch Council for Refugees. This begins during the rest and preparation period and can be solicited throughout the duration of the procedure. Applicants can also request the Council's or their lawyer's presence during the interviews.

Once a regular procedure has been launched, the lawyer has to follow a strict schedule (see section 4.3.2.1), which, according to interview respondents, doesn't always allow him or her to adequately research and prepare for a case, collect supporting documentation (e.g. medical statements or counter-inquiries) or prepare the applicant. There is no merits of claim testing at this stage although individual lawyers can always make their own assessment of the case's merits.

Asylum seekers continue to have access to free legal assistance during the appeals stage and no merit test applies. The aim of the Legal Aid Board is to ensure the continuity of legal assistance by linking one lawyer to an asylum seeker who will work together throughout the whole procedure, from the launch of the procedure to the final decision.

4.3.5.1 *Contract/Payment schedule*

Legal assistance to asylum seekers is provided by lawyers who are members of the Dutch Bar Association and registered with the Legal Aid Board. They must fulfil a number of requirements, including the completion of specialised courses, be members of the Legal Aid to Refugees Working Group of the Dutch Refugee Council and comply with the standards of the Best Practice Guide on Asylum Law (Butter, 2014, p 5). In order to prolong their activity in the asylum area, lawyers must attend continuous training and have at least ten asylum cases a year. The latter proves challenging in practice as there are currently more lawyers in the Legal Aid Board's roster than cases to work on. The Board ensures supervision and quality control of the legal services.

⁴² The subsidies for legal assistance are provided by the Ministry of Justice and Security.



The remuneration of the lawyers is regulated through a system of fixed fees, which attributes a number of ‘points’ to specific parts of the procedure. One point amounts to approximately one hour of work on an individual or family case and is worth EUR 108.57. The maximum number of points that can be generated for the eight days-general procedure is 12; a prolongation into the extended procedure results in the allocation of up to two additional points (Butter, 2014, p 11). Dublin cases are granted four points for the entire general asylum procedure (ibid, p 15). In order to discourage the prolongation of applications, the principle of ‘no cure, less fee’ was introduced in 2014. In line with that principle, the lawyers’ remuneration is reduced in subsequent applications when the appeal has been declared inadmissible (EMN 2017, p 19).

Interlocutors noted that the fixed fee system doesn’t always do justice to the actual amount of working hours spent on a case: depending on the circumstances, a lawyer could spend less or significantly more time on a case. Lawyers can ask for reimbursement of extra hours for extraordinary cases but according to a study conducted in 2014, this extra payment is hardly ever granted (Butter 2014, p 13).

4.3.5.2 Data

The Legal Aid Board operates several rosters, covering different fields of law, of which asylum is one. Presently there are 417 lawyers on the roster for distribution of asylum cases in the application centres.

4.3.6 Return

The Return and Departure Service (*Dienst Terugkeer en Vertrek– DT&V*) of the Ministry of Justice and Security is responsible for implementing the Netherlands’ return policy. The moment an applicant receives a rejection of his or her application, the file is transferred to the DT&V which initiates the return process. The applicant receives the negative decision, along with the return decision, and information about the appeal option, as well as possibilities for return. Among those possibilities are the referral to the Dutch Council of Refugees, which provides information and support after the asylum procedure or the IOM for the provision of return assistance (in the context of the Return and Emigration Assistance from the Netherlands – REAN programme). The applicant is also contacted by the DT&V for an invitation to an interview during which the different return options (with or without the applicant’s cooperation) are considered. Return is either preceded by an expulsion from the reception centre (in which case the applicants have to fend for themselves) or a transfer to a regular reception facility for applicants who agree to return voluntarily, and a restricted reception centre for applicants who have not left the country within the prescribed timeframe. Families with minors are transferred to dedicated family locations.

4.3.6.1 Time limits

The return decision is issued in conjunction with the negative asylum decision, and its implementation depends on whether an appeal is lodged and the outcome of that appeal (see section 4.3.3). Applicants have in general 28 days to leave the Netherlands voluntarily. In some cases, they will be obliged to leave the country immediately, for example when their application was assessed as manifestly ill-founded because the applicants come from a safe country of origin.



4.3.6.2 Data

The below return figures include the departure of all aliens (spontaneous, voluntary and forced) and are thus not limited to that of rejected asylum seekers. In 2019 (October included), 12,500 persons left the Netherlands out of which 2,045 were forced returns and 7,100 were voluntary but took place under DT&V supervision.

In 2018, the overall return figure was 14,880, out of which 2,650 were forced and 8,620 supervised returns. In 2017, the numbers were slightly higher with overall 15,120 returns, including 2,700 forced and 9,020 voluntary but supervised returns.⁴³

4.3.7 References

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Raad van State (2018), <https://www.raadvanstate.nl/@5789/201706057-1-v2/>

⁴³ <https://www.dienstterugkeerenvertrek.nl/Mediatheek/Vertrekcijfers/index.aspx>



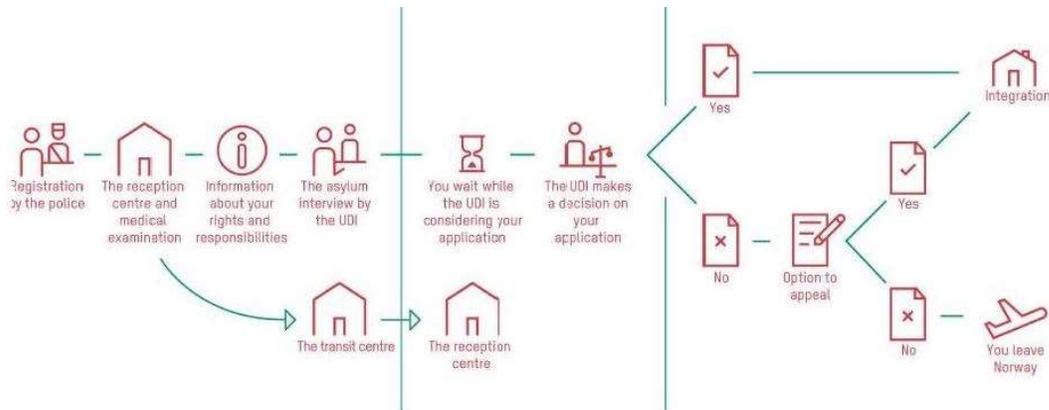
Raad van State (2016): Ruling of the Administrative Jurisdiction Division of the Council of State in case no. 201507952/1/V2 (unofficial English translation) at <https://www.raadvanstate.nl/publish/pages/8984/english-version-of-ruling-201506502-1.pdf+&cd=2&hl=de&ct=clnk&gl=at> (13 April 2016)



4.4 Country report Norway

4.4.1 Asylum procedure Norway⁴⁴

4.4.1.1 Overview



Source: NOAS

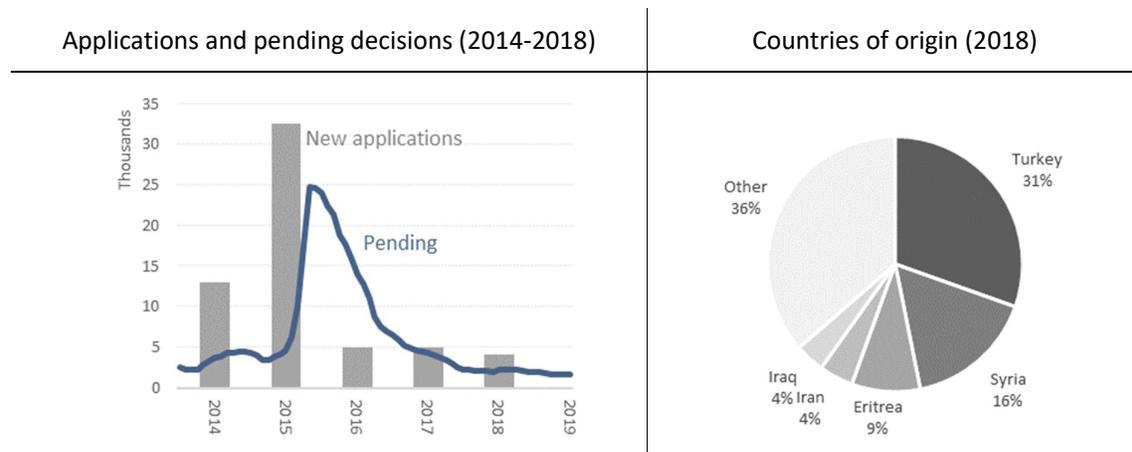
4.4.1.2 Asylum application

The first line of contact for persons wishing to apply for asylum in Norway is the National Police Immigration Service (*Politiets utlendingsenhet*) in Oslo, which conducts an initial interview in order to establish the applicant's identity and travel route. Following their registration, the applicants are relayed to the determining authority, the Asylum Department of the Norwegian Directorate of Immigration (*Utlendingsdirektoratet – UDI*). The UDI is an administration placed under the Ministry of Justice and Public Security (EMN Norway 2012, p 8).

⁴⁴ As a non-EU member, Norway is only bound by the Dublin and Eurodac regulations.



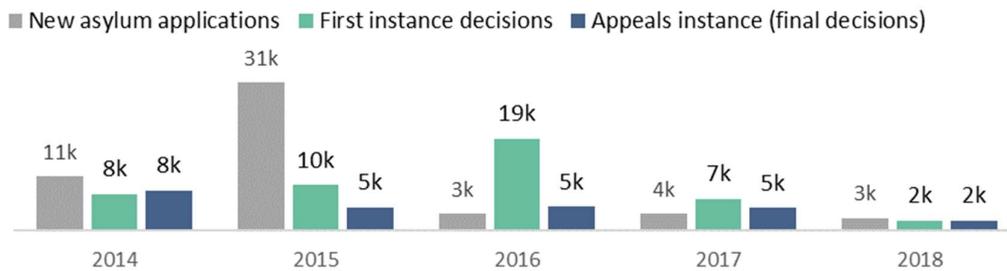
Figure 22. Applications and pending decisions (2014-2018) and countries of origin (2018)



Source: Eurostat

Between 2008 and 2018, some 119,425 persons lodged a first-time application in Norway.⁴⁵ In 2018, the UDI received 2,530 applications mainly from citizens of Turkey (770), Syria (415), Eritrea (220), Iran (110) and Iraq (95). The majority of applicants between 2009 and 2018 were male at an average rate of 74% and a slightly lower rate of 62% in 2018. Among the first-time applicants of 2008 to 2018, 11,825 were considered minors, of which 145 submitted their application in 2018. In 2015, Norway faced a peak in arrivals of minors, which accounted for 16% of the overall numbers.

Figure 23. Asylum procedures in Norway (2014-2018)



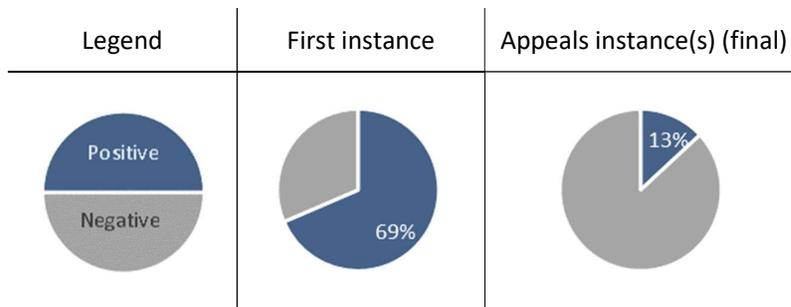
Source: Eurostat

First instance decisions nearly doubled in 2016 compared with 2015 as a consequence of the peak of applications in 2015. Appeals instance decisions interestingly enough were higher on 2014 than the years of the – so-called – migration crisis in 2015 and 2016. In 2018, the number of appeals instance decisions further decreased and in fact halved compared to 2017.

⁴⁵ Data cited in this chapter is from Eurostat, unless otherwise stated.



Figure 24. Recognition rate (2018)



Source: Eurostat

In first instance decisions, 69% were granted protection. The appeals instance granted protection in 13% of the cases brought before the Immigration Appeals Board.

4.4.1.3 Reception

The authority responsible for the housing of asylum seekers is the Department for Regions, Reception and Return of the UDI. It runs six regional sub-offices that oversee the reception centres in their respective region. This also includes facilities run by municipalities and private actors. The accommodation of unaccompanied minors is the responsibility of the Norwegian Directorate for Children, Youth and Family Affairs (Ministry of Children and Equality), which provides housing in separate centres or dedicated units within general reception centres.

The first reception centre through which all applicants are channelled is the arrival centre in Råde, in the county of Østfold, 80 kilometres south of Oslo, where their stay has been limited to approximately one week for preparations for the procedure (medical checks and counselling). While they are waiting for their interview with the UDI, applicants are accommodated in transit reception centres close to the Oslo region. After the interview, they are moved to other facilities in the country.

In order to improve the efficiency of case handling, Norway is currently upgrading the arrival centre in Råde to have all the responsible stakeholders will be represented, in order to better coordinate their respective activities. The objective is to channel all future applicants through this new centre and handle 70 % of the cases in 21 days.

A distinct feature of the Norwegian reception system is the referral of successful applicants to integration reception centres, where they go through a mandatory qualification programme of language classes, teachings about social and cultural affairs, career counselling and other types of training meant to support integration into the Norwegian society.



4.4.2 First instance

4.4.2.1 Regular procedure

The Asylum Department of the UDI is responsible for the processing of asylum applications. It is divided into units with a regional or thematic focus and employs approximately 250 employees. Some 45 caseworkers are working on pending asylum applications.

Applicants who are channelled through the regular or 'normal' procedure will be interviewed by the UDI within approximately three weeks of their registration. Processing times vary depending on the case but the objective is to stay within a timeframe of eight months in 80% of the cases (see also section 4.4.2.4).

4.4.2.2 Accelerated procedure

Norway uses an accelerated procedure in the following cases:

- The Dublin Procedure. In 2018, Norway received 2,028 incoming and submitted 1,042 outgoing requests; it handled 329 incoming and 280 outgoing transfers.
- The 48-hour procedure for asylum seekers who submit a supposedly manifestly unfounded application or come from countries that Norway considers to be safe.
- The three weeks procedure for asylum seekers from Bangladesh, Belarus, Nepal, the Russian Federation (only ethnic Russians) or Kosovo (only minorities from Kosovo).

4.4.2.3 Other procedures

Individual cases may be prioritised (see section 4.4.2.4) but no other formal procedures apply.

4.4.2.4 Time limits

There are no formal time limits in place but the Ministry of Justice has set an objective of handling 80% of all cases within a timeframe of eight months counting from the registration of the application to the decision by the Appeals Board. Applications submitted in 2017 or before may have longer processing times of up to nine months.⁴⁶ In general, interlocutors deem the timeframe as realistic, in particular in the current period of low arrival numbers. The UDI has currently an average processing time of 212 days (all procedures included).

The legally non-binding time limit of eight months was described by the Norwegian interlocutors as a useful framework for the prioritisation of cases. It allows for cases that risk to exceed the deadline to be taken out of the queue and handled with priority. Other examples of cases that are prioritised are Dublin cases, cases involving crime or those of applicants who have caused nuisance for others in reception centres, revocation cases related to expulsion decisions, and EU/EEA cases. Since the appeals

⁴⁶ <https://www.une.no/en/case-processing-times/asylumprotection/>



process is counted in the eight month timeframe, the Ministry of Justice proposes to the Appeals Board which cases should be prioritised.

4.4.2.5 Data

In the years 2008-2018, 119,425 persons lodged a first-time application. Last year (2018) saw 2,530 first-time applications, compared to the peak year of 2015, which registered 30,470 first-time applications. Between 2008 and 2018, the UDI took 116,300 first-instance decisions, of which 2,115 were taken in 2018.⁴⁷

At the time of writing (November 2019) there were approximately 1,100 pending asylum applications.

4.4.3 Appeals procedure

The Immigration Appeals Board (*Utlendingsnemna – UNE*) is the specialised appellate body for immigration cases. It is an independent, quasi-judicial body that considers appeals against decisions made by the UDI.

Applicants who wish to appeal a negative asylum decision must submit their request to the UDI, which will review its own decision and may overturn it in light of possible new information. In most cases, however, the UDI forwards the appeal to the UNE Appeals Board. UNE's decision-making process is determined by a board chair on a case-by-case basis and can either consist of a hearing by two lay members with the appellant (mostly to establish credibility),⁴⁸ an individual decision taken by the board chair (the most-used method), or a decision taken by the UNE secretariat (by at least two caseworkers for very simple cases). Precedent-setting cases involving principled questions are considered by a Grand Board consisting of three board leaders and four lay board members.

The Appeals Board undertakes a full review of the case in order to determine whether the UDI has taken the right decision and will consider any possible new information relevant to the case.⁴⁹

The submission of an appeal does not have automatic suspensive effect. The appellant has to submit his or her appeal within a three-week deadline. This timeframe is shorter for appellants whose case was considered to be manifestly unfounded (one week) and in Dublin cases (48 hours). In general, most appellants will be entitled to remain in Norway while their case is being reconsidered, with the exception of those who did not file their appeal on time; whose claim was considered to be manifestly unfounded; are in the Dublin procedure; or whose removal is in the national interest.

⁴⁷ In 2018, the UDI granted asylum in 1,333 cases, other protection in 52 cases and humanitarian grounds in 68 cases. In the same period, 548 applications were rejected, 126 were considered to be from safe third countries, and 402 were Dublin cases (source: <https://www.udi.no/en/statistics-and-analysis/statistics/asylum-decisions-by-citizenship-and-outcome-2018/>)

⁴⁸ UNE has been subject to criticism by government-appointed committees for only rarely (in 4 to 6% of cases) holding hearings with appellants.

⁴⁹ <https://www.une.no/en/your-case/case-processing/une-considers-your-case/>



4.4.3.1 *Time limits*

The overall (non-binding) time limit of eight months is described in section 4.4.2.4 and includes both the first and appeal instance decisions. The Appeals Board currently has an average processing time of 131 days per case.⁵⁰

Other time limits that the Appeals Board works with related to the issuance of a suspension of removal (up to six days), and expulsion cases, which should be processed within 90 days with the average duration being 69 days in 2018.

4.4.3.2 *Data*

Between January and November 2019, the UDI has received 705 appeals. It has reversed its own decision in 10 cases. Most rejections are not reversed by the Appeals Board either.

The appeal application rate in 2019, was as follows:

- Dublin procedure: 100%
- Regular procedure: 84%
- 48 hours procedure: 56%

A possible explanation for the lower appeals rate in the accelerated procedure may be due to the applicants' realisation (and/or a lawyer's counselling) that the prospects for deferred implementation or reversal are small.

4.4.4 Onward appeals

Negative decisions reached by the Appeals Board are final in principle. However, failed asylum seekers can submit a written request to UNE asking it to reconsider its decision. UNE does so in a limited number of cases, for instance when new information is available, or the circumstances have changed significantly.

UNE's negative decision can be brought before the Oslo County Court for a judicial review of the case (EMN Norway 2012, p 8) and onwards in the court system (Courts of Appeal and Supreme Court of Norway) provided resources are made available through pro bono support or otherwise for the appellant.

4.4.5 Legal assistance

The Norwegian Immigration Act provides for free of charge counselling in all asylum procedures. The counselling entails information about the applicant's rights and duties, the asylum system, and the preparation for the asylum interview. It is provided by the Norwegian Organisation for Asylum Seekers

⁵⁰ <https://www.une.no/en/statistikk/> (26.11.2019)



(NOAS), an independent and rights-based NGO that has been commissioned by the Ministry to provide information and guidance to newly arrived asylum seekers in Norway.

Free legal assistance is only provided at the appeals stage, with the exception of unaccompanied minors (who are entitled to free assistance from a lawyer throughout the asylum process), cases involving national security or foreign policy considerations, and exclusion from the refugee status. The general number of hours of free legal assistance is limited to five units (one unit amounting to one hour); in Dublin cases it is only two units. The costs are covered by the County Governor (*Fylkesmannen*)

The UDI holds regional lists of registered lawyers and an on-call list for the 48 hours procedure from which it assigns a lawyer to the applicant depending on the region where he or she is based. Asylum seekers can also choose their own lawyer in which case the costs are also covered by the County Governor.

NOAS also provides free legal assistance to asylum seekers who approach the NGO after their appeal has been rejected by the Appeals Board. NOAS provides such assistance in approximately 800 to 1,000 cases per year and on the basis of an assessment of the merits of the case. In the last two years, it has achieved a reversal of the final decision in some 40 to 50% of the cases that it has taken on following a merit assessment.

4.4.5.1 Contract/Payment schedule

Lawyers who wish to be part of the UDI's list must have a license to practice law and are required to be familiar with asylum and refugee law. There is currently no requirement for mandatory advanced training, although concession announcements emphasise special competences relevant for asylum cases, such as children's rights or women's rights. The term limit for lawyers to be part of the UDI-run lists is four years, which can be extended for another four years (the current one is valid until 2023). An Oxford evaluation undertaken in 2012 found considerable differences in the individual lawyer's competence and motivation (Oxford Research 2012, p 16). According to the same evaluation, two to five hours of remunerated legal assistance do not reflect the actual time that lawyers spend on a case. Accordingly, compensation for lawyers is considered to be too low in relation to the required effort. In cases that require more than double of the foreseen time, lawyers can submit a request for extended support to the County Governor but reportedly consider the procedure too time-consuming and restrictive in its application (Oxford Research 2012, p 16).

4.4.5.2 Data

Between 2007 and 2011, some 151 lawyers were included in the UDI's list. According to an Oxford survey, the number of cases handled by each lawyer ranged from 436 cases for one attorney handling most of the cases between 2007 and 2011, to 31 lawyers handling a single case each. The same research cites the following costs of appeals against asylum cases: 33.5 million NOK in 2009, 43.2 million NOK in 2010 and 29 million NOK in 2011 (Oxford Research 2012, p 15).



4.4.6 Return

The administrative decision ordering individuals to leave Norway is taken by the UDI, which informs the person about the deadline for leaving the country. The removal is coordinated and implemented by the National Police Immigration Service (*Politiets utlendingsenhet – PU*). Individuals who are considered to be at risk of absconding may be detained in a detention centre in Trandum to await their departure.

The UDI co-operates with the IOM, immigrant associations, and the municipalities in its outreach efforts to raise awareness about assisted return options upon receipt of a negative first-instance decision and a refusal on appeal. Return counselling is provided by UDI staff in reception centres and, provided it receives funding to that effect, by NOAS. The IOM-run Voluntary Assisted Returns Programme (VARP) in Norway has been in operation since 2002.

4.4.6.1 Time limits

Unsuccessful applicants usually have to leave Norway within 30 days. Applicants whose submission was rejected as manifestly unfounded are ordered to leave the country immediately.

4.4.6.2 Data

Figure 25. Return orders and effectuated returns



Source: Eurostat

In 2018, the Immigration Service of the Police enforced 3,169 returns. This includes rejected asylum seekers, Dublin returns, refused entries and expulsions and amounts to the same amount of persons returned between January and September 2019.⁵¹

4.4.7 References

EMN Norway (2012): The Organisation of Asylum and Migration Policies in Norway – Report to the European Migration Network from the Norwegian Contact Point at <https://www.udi.no/en/statistics->

⁵¹ PU statistics for September 2019.



[and-analysis/european-migration-network---norway/emn-studies-and-reports/studies/the-organisation-of-asylum-and-migration-policies-in-norway-2012/](#) (April 2012)

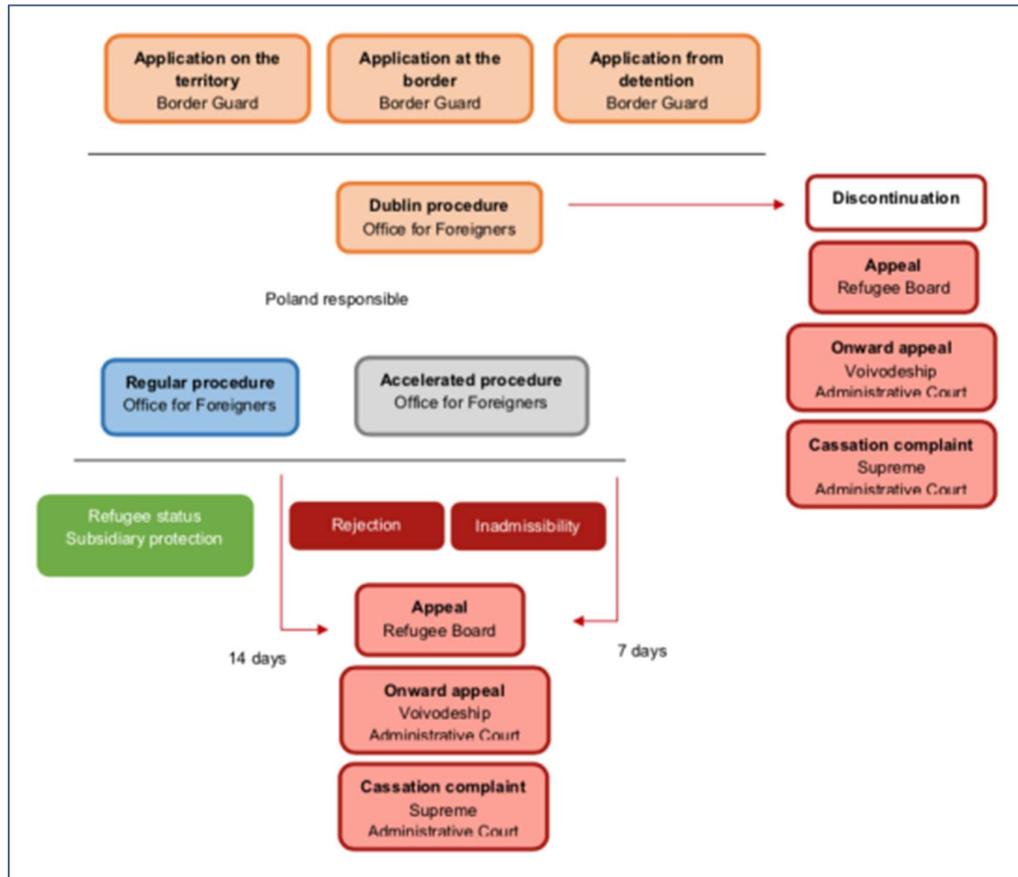
Oxford Research (2012): Evaluering av advokatordningen for asyl-søkere at https://www.udi.no/globalassets/global/forskning-fou_i/beskyttelse/evaluering-av-advokatordningen-for-asylsokere.pdf (October 2012)



4.5 Country report Poland

4.5.1 Asylum procedure Poland

4.5.1.1 Overview



Source: ECRE 2019a, p 12

4.5.1.2 Asylum application

The responsible authority to receive asylum applications in Poland is the Polish Border Guard (Straż Graniczna – SG). Applications to the SG can be made at the following locations:

- on the territory of Poland;
- at the border;
- in a detention centre.

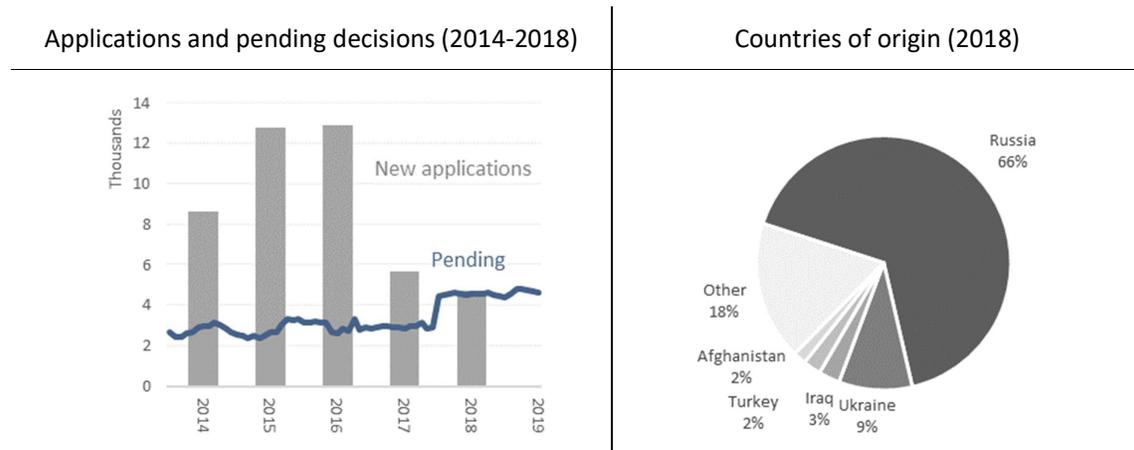
The SG passes the application on to the Office for Foreigners (Urzędu do Spraw Cudzoziemców – Off).

Poland received 41,670 applications for international protection between 2014 and 2018. Poland received more applications in 2015/2016, but, compared to some other EU Member States, at a much



lower level of around 12,000 applications. The number of asylum applications in 2016 was 12,305, in 2017 it was 5,045, in 2018 4,110 and between January and June 2019 it was 1,835 (ECRE 2019b, pp 27 and 31).

Figure 26. Applications and pending decisions (2014-2018) and countries of origin (2018)



Source: Eurostat

Figure 27. Asylum procedures in Poland (2014-2018)

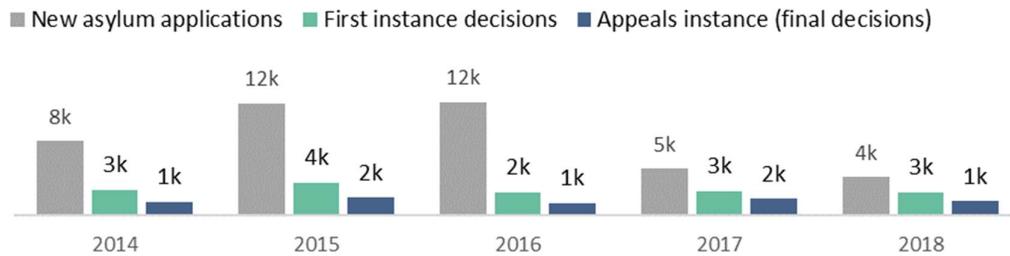
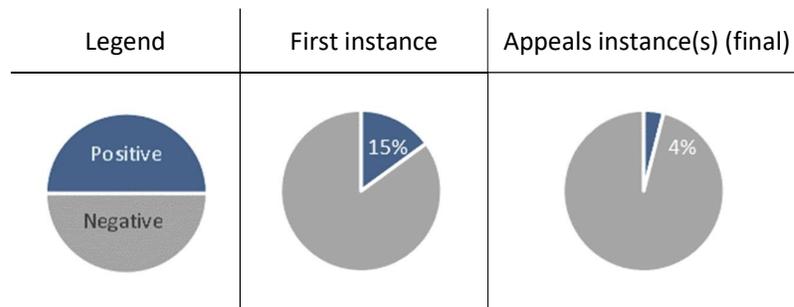


Figure 28. Recognition rate (2018)



Source: Eurostat



4.5.2 First instance

4.5.2.1 Regular procedure

The authority responsible for the first instance of the asylum procedure is the OfF, which is supervised by the Ministry of Interior and Administration. Department for Refugees Procedures of the OfF is divided into four units handling regular procedures (three units located in the headquarters of the OfF in Warsaw and one unit at the Regional branch of the OfF in Białą Podlaska), with one unit responsible for accelerated and inadmissibility procedures (Helsinki Foundation for Human Rights in: ECRE 2019b, p 10).

The number of dedicated staff in 2018 was 36 (45 in 2016).⁵² In addition, there are five persons who coordinate work of the caseworkers.

The OfF applies a single procedure, which examines the admissibility of an application and grants, refuses or withdraws the refugee status or subsidiary protection, and decides on the responsibility of the state for Dublin cases.

During the first half of 2019, 2,025 first instance decisions were taken (ECRE 2019b, p 34).

4.5.2.2 Accelerated procedure

For vulnerable applicants and detainees, prioritised examination and fast-track processing is foreseen. This procedure is also used in manifestly unfounded cases.

4.5.2.3 Other procedures

In very rare cases, a separate procedure is used to grant a national protection status called ‘asylum’, where political aspects are taken into account, and where the granting of protection is in the national interest.

4.5.2.4 Time limits

There are no time limits for an asylum seeker to lodge an application. When the SG is not able to process the application immediately, e.g. because an interpreter is needed, it has three working days (in the case of massive influx this can be expanded to 10 working days) to ensure the application is lodged and registered.

The time limit for a decision in the regular procedure is six months. However, it can be extended to 15 months if the case is complex, if many asylum seekers apply at the same time, or if the asylum seeker does not fulfil obligations concerning cooperation with the Office for Foreigners and participation in the interview.

⁵² ECRE 2019b, p 33 and Eurostat, Asylum and first-time asylum applicants by citizenship, age and sex: Annual aggregated data (rounded); available at: <https://bit.ly/2YwFJt1>.



If the decision is not issued within six months, the OFF is supposed to provide a written explanation to the applicant, and the latter can lodge a complaint with the appeals instance authority. He or she can also apply for a work permit valid until the end of the asylum procedure.

The accelerated procedure should lead to a decision within 30 days. If this time limit is not kept, the OFF has to inform the applicant about the reason for the delay and commit to a new date.

In the first half of 2019, the number of pending cases in the first instance procedure was 3,108 (ECRE 2019b, p 34).

4.5.3 Appeals procedure

4.5.3.1 Administrative appeals procedure – Refugee Board

All negative first instance decisions (including Dublin cases) can be appealed before the Refugee Board (*Rada do Spraw Uchodźców*). It is an administrative body, which either annuls the first instance decision (e.g. if essential information is missing), overturns the decision, thereby granting protection, or confirms the decision.

In the regular procedure, decisions are taken by a panel of three members of the Refugee Board. The procedure includes an assessment of facts and normally also a hearing of the applicant. In the case of an accelerated procedure, the decision is not made by a panel, but by but member of the Refugee Board alone.

Appeals to the Refugee Board have to be lodged within 14 calendar days after the applicant was informed about the first instance decision; appeals in the accelerated procedure must be lodged within seven days. The appeals have an automatic suspensive effect.

The time limit for the duration of the appeals procedure is one month.

4.5.4 Onward appeals

4.5.4.1 Voivodeship Administrative Court

An onward appeal can be made against decisions of the Refugee Board to the Voivodeship Administrative Court in Warsaw (*Wojewódzki Sąd Administracyjny w Warszawie*) regarding substantive as well as procedural infringements of law: the court reviews not only the procedure carried out by the administration, but also controls the correct interpretation and application of the substantive refugee law by the administrative authority. The difference between the judicial and the administrative procedure is that the court does not conduct evidentiary proceedings in the shape in which it is conducted by the administration: the court can admit only documents as evidence (with some restrictions).

The procedure is adversarial, with the Refugee Board and the asylum seeker being parties before the court. A public hearing is held in every case, and the asylum seeker is also allowed to speak directly to the judge.



When a violation of substantive or procedural law is identified, the administrative decision is quashed and the case is sent back to the administrative authority, which is obligated to follow the court's judgements, including its interpretation of substantive and procedural law.

4.5.4.2 *Supreme Administrative Court*

It is possible to make a cassation complaint about the ruling of the Voivodeship Administrative Court to the Supreme Administrative Court (*Naczelny Sqd Administracyjny*).

4.5.4.3 *Time limits*

The appeal to the Voivodeship Administrative Court has to be lodged within 30 days. It does not have automatic suspensive effect on the decision of the Refugee Board, but it may be granted for the time of the court proceedings upon request of the applicant.

Also, the Supreme Administrative Court can, upon request, suspend the execution of the appealed decision for the time of the court proceedings.

4.5.5 Legal assistance

At the application stage no free legal assistance for asylum seekers is foreseen.

The OfF only provides legal information in cases of a negative first instance decision, informing the applicant about the possibilities for appeal.

For the first appeal instance, free legal support is provided to the applicant by lawyers, legal counsellors and representative NGOs, who are contracted by the OfF and receive around EUR 170 per client (Interview_PL_5). The support covers the preparation of the appeal and legal representation in front of the court.

Since representation for the Voivodeship Administrative Court and the Supreme Administrative Court can only be provided by legal professionals like lawyers or legal counsellors, asylum seekers with insufficient financial means have the possibility to apply for free legal representation, just like Polish citizens.

In addition to the above, a number of NGOs are assisting asylum seekers in legal matters at all stages of the procedure on a pro-bono basis, depending on the availability of resources. The support can, e.g. include the collection of evidence and background information about the country of origin, as well as data and documents of the applicant. They also provide information about the asylum procedure as well as the chances of success for the asylum seeker, or prepare the documentation which is required for the application for a state-funded lawyer.

Since the funding for legal assistance, which had been provided under the Asylum, Migration and Integration Fund, was suspended in mid-2015, NGOs were forced to reduce the provision of legal assistance compared to the years before (ECRE 2019b, p 21f).



4.5.6 Return

The return procedure is separate from the asylum procedure. A return decision can only be issued after the administrative asylum procedure is concluded.

Figure 29. Return orders and effectuated returns



Source: Eurostat

4.5.7 References

ECRE (2019a): Helsinki Foundation for Human Rights: Country Report: Poland, 2018 updated; at: <https://www.asylumineurope.org/reports/country/poland>,

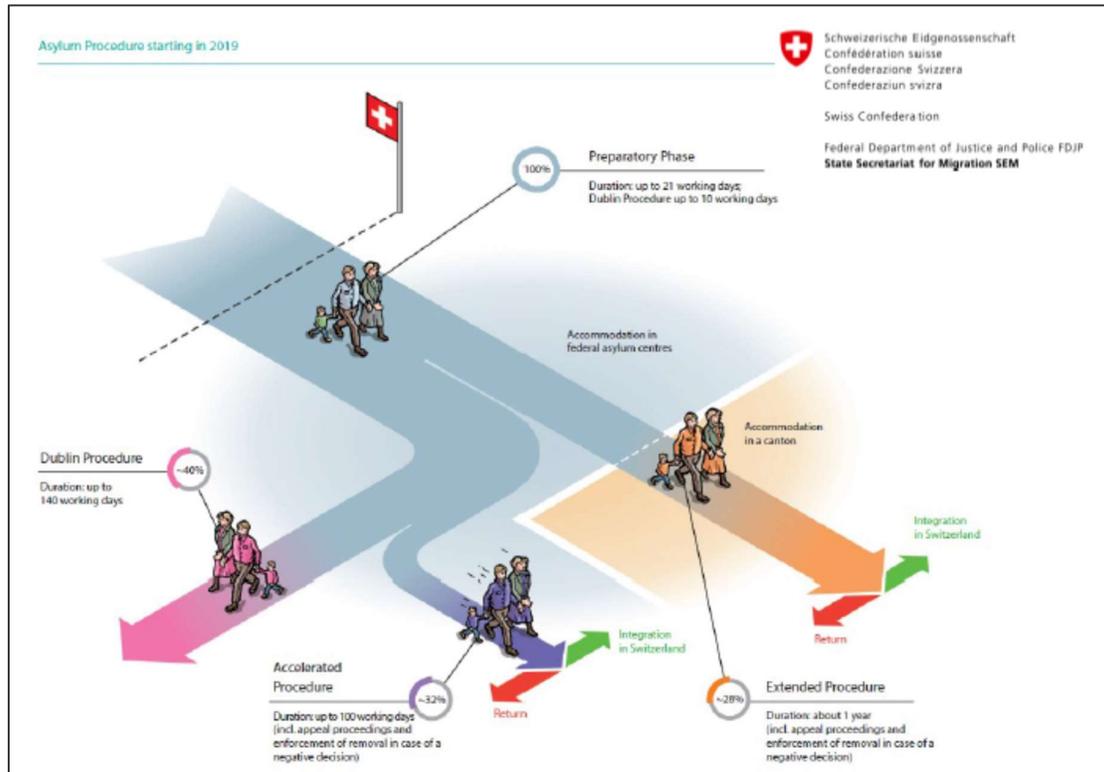
ECRE (2019b): Asylum Authorities. An overview of internal structures and available resources; at: http://www.asylumineurope.org/sites/default/files/shadow-reports/aida_asylum_authorities.pdf



4.6 Country report Switzerland

4.6.1 Asylum procedure Switzerland

4.6.1.1 Overview



Source: SEM⁵³

4.6.1.2 Asylum application

In March 2019, after two pilot phases of several years, a new single procedure asylum system became operational in Switzerland. It aims at shortening the duration of asylum procedures through the restructuring of procedures as well as organisational changes, such as bringing all the main actors together under one roof.

Applications for asylum in Switzerland can be lodged with the State Secretariat for Migration (*Staatssekretariat für Migration – SEM*) at a federal asylum centre (*Bundesasylzentrum*), with the Border Police (*Grenzwachtkorps*) at a border crossing point (BCP), or the Airport Police (*Flughafenpolizei*) at an international airport.

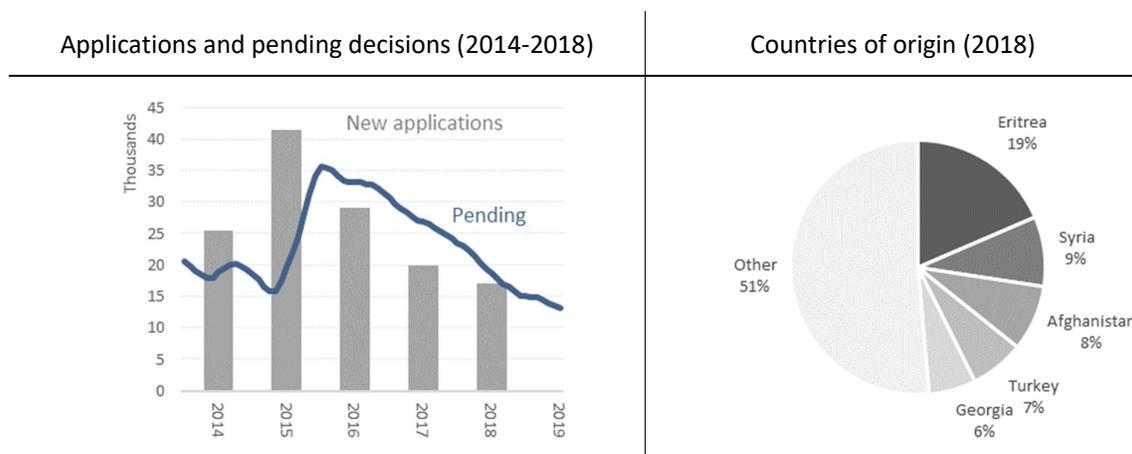
⁵³ <https://www.sem.admin.ch/dam/data/sem/asyl/beschleunigung/grafik-asylprozess-e.pdf>.



From 2014 to 2018, Switzerland received 123,315 asylum applications. As in many European countries, also in Switzerland the number peaked in 2015 with around 40,000 asylum applications registered at the SEM. Along with this peak, pending decisions rose but the SEM soon managed decrease them (as per the latest available data in mid-2019). The decrease of pending cases was certainly also supported by the decrease in new asylum applications which dropped after 2015.

Different to many European countries, the list of the top countries of origin is led by applications from Eritrea (19%), followed by Syria (9%), Afghanistan (8%), Turkey (7%) and Georgia (6%). The top five countries of origin constitute slightly less than half of all applications submitted in 2018.

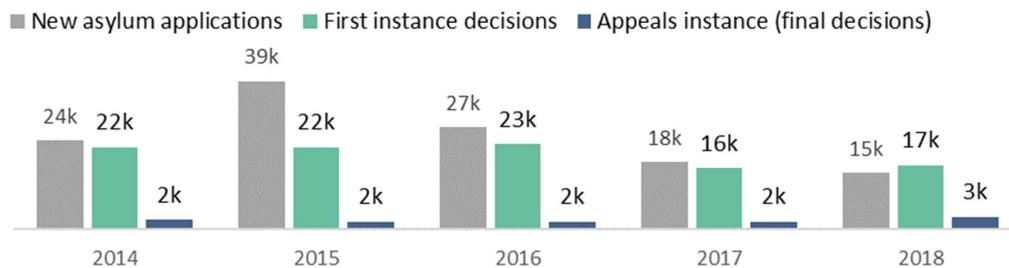
Figure 30. Application and pending decisions (2014-2018) and countries of origin (2018)



Source: Eurostat

Interestingly enough, the first instance decisions in 2015 and 2016 remained roughly the same as in 2014, despite a significant increase in applications in 2015. The numbers then dropped in 2017. The appeals instance decisions remained stable throughout the years but increased in 2018.

Figure 31. Asylum procedures in Switzerland (2014-2018)

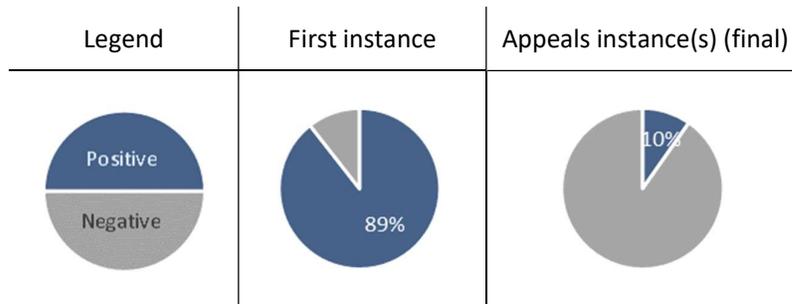


Source: Eurostat



Eurostat data shows quite a high recognition rate in first instance decisions, with 89%⁵⁴ of applicants granted some form of protection. Only 10% SEM decisions were later overturned on appeal.

Figure 32. Recognition rate (2018)



Source: Eurostat

4.6.1.3 Reception

The majority of asylum seekers are assigned to one of the six federal asylum centres (with procedural facilities managed by the SEM), where they can stay for a maximum of 140 days (with the possibility of extension in exceptional cases).⁵⁵ If the procedure is not completed by then, the applicants are transferred to a Canton, where they are supposed to stay until their status has been decided.

4.6.2 First instance

4.6.2.1 Preparatory phase

Every applicant upon arrival and submission of an asylum application is first accommodated in a federal asylum centre. During an initial preparatory phase, the SEM registers the applicant, and takes fingerprints and possibly other biometric data. SEM documents and cross checks this information. During this preparatory phase of a maximum of 21 days, the applicant also receives information about the asylum procedure and attends a preliminary interview with the SEM to determine whether another state may be responsible according to the Dublin system.

Following the preparatory phase, the SEM is responsible for processing each claim individually. There are three strands of procedures for the SEM to determine the asylum claim (Arts 26b, 26c, 26d AsylG):

- the Dublin procedure;

⁵⁴ Note that Eurostat counts differently than the SEM: SEM also counts decisions that deny responsibility (Dublin) in the total number of decisions. Also, returned cases from the appeals instance are counted as first time applications at SEM but not at Eurostat. SEM accordingly published a recognition rate of 60.8% (see: <https://www.sem.admin.ch/dam/data/sem/publiservice/statistik/asylstatistik/2018/stat-jahr-2018-kommentar-d.pdf>, p 18.). For reasons of comparability Eurostat data is used in this report across the countries researched.

⁵⁵ See Art 24 Asylgesetz (AsylG)



- the accelerated procedure for straightforward cases which are easy to decide;
- the extended procedure for cases that require additional information and clarifications.

4.6.2.2 *Accelerated procedure*

The accelerated procedure follows a strict sequence of procedural steps which starts with an interview to determine the asylum seeker's reasons for flight. If the interview shows that the claim can be dealt without further clarifications, the claim is decided in an accelerated procedure within eight working days. The SEM decides directly in the federal centre and legal assistance is provided (see below).

Should SEM grant a right to stay, the applicant is allocated to one of the Cantons of Switzerland for his or her integration in the host society.

A negative decision is presented as a draft to the legal assistant. The legal assistant may reply to the draft decision within 24 hours. SEM needs to take the reply into account and issues the final decision, which is presented to the applicant. The applicant may appeal the decision at the Federal Administrative Court within seven days.

4.6.2.3 *Extended procedure*

Should further information or clarification be necessary to decide upon a claim, the case is channelled to the extended procedure. Applicants in an extended procedure are no longer accommodated in federal asylum centres but are transferred to the Cantons. This procedure may last longer as it has fewer strict timelines. The case should be decided within two months after the preparatory phase has ended but within a year at the latest (Art 26d AsylG). A negative decision may be appealed to the Federal Administrative Court within 30 days.

4.6.2.4 *Airport procedure (Art 22 AsylG)*

If an asylum application is lodged at the border control of a Swiss airport and the entry is refused to the applicant, the procedure can be carried out in the transit area of the airport. The SEM has to issue the decision within 20 working days; if it takes longer, entry is granted, and the applicant is transferred to a federal asylum centre or to a Canton and goes through the regular procedure.

4.6.2.5 *Time limits*

The time limit for the preparation phase is three weeks. For the Dublin procedure 10 days are foreseen. The maximum amount of time a person can be accommodated at the airport is 60 days (including a possible appeal procedure).⁵⁶

⁵⁶ Art 22 AsylG.



4.6.3 Appeals procedure

A negative decision of the SEM can be appealed at the Federal Administrative Court, which is the first and also last court of appeal in asylum cases for both substantive as well as inadmissibility decisions. It can either issue a new decision or send the case back to the SEM for reassessment. Within the appeals procedure, a hearing can be ordered by the court, which in practice is, however, the absolute exception.

Onward appeals to the Federal Supreme Court are only possible in relation to extradition as well as in appeals against the refusal of recognition of statelessness by the SEM.

The appeal has suspensive effect; in Dublin cases the suspensive effect can be granted by the Federal Administrative Court.

4.6.3.1 Time limits

The appeals instance procedure has a number of different non-compulsory time limits, depending on the type of procedure. The following is a summary of the time limits that apply to decisions of the Federal Administrative Court in Switzerland (compare Art 109 AsylG):

- Accelerated procedures: 20 days
- Extended procedure: 30 days
- *'Nichteintretentscheide'*⁵⁷ (Inadmissibility including Dublin and safe country-decisions) and Decisions at the airport: five working days
- Other appeals against final decisions: 20 days

The applicant has to respect the following deadlines to appeal against a decision (Art 108):

- Accelerated procedures: seven working days
- Extended procedure: 30 days
- *'Nichteintretentscheide'*⁵⁸ (Inadmissibility including Dublin and safe country-decisions): five working days
- Decisions at the airport: 5 working days
- Other appeals against final decisions: 30 days

4.6.4 Legal assistance

The provision of legal assistance in the Swiss asylum procedure depends on the type of procedure. Legal advice is more pronounced, the shorter the procedural deadlines are. Summarised legal assistance is provided in the following manner according the different procedures:

⁵⁷ Switzerland does not assume responsibility.

⁵⁸ Switzerland does not assume responsibility.



- In the fast-track and Dublin procedure conducted in the federal asylum centre, the SEM assigns legal assistance to each applicant. It is implemented by different consortia of civil society agencies, which are contracted by the SEM. The assistance is free of charge.
- In the prolonged asylum procedure, the applicant may make use of available counselling and legal representation by NGOs free of charge. However, such services are provided by legal counselling offices, which are different to those involved in the procedure within the federal asylum centre. The SEM pays a lump sum to the accredited legal counselling offices in the Canton for advice and legal representation in the case of decision-relevant steps in the extended first instance procedure, in particular for the accompaniment of asylum seekers during a supplementary hearing.
- For appeals procedures not covered by the organised legal assistance in federal asylum centres and in case an applicant rejected such service in the centre, legal assistance may be granted by the court free of charge upon request by the applicant.

In addition to the above, guidelines and circulars of the SEM relating to the asylum procedure are publicly accessible and can be consulted online.⁵⁹

4.6.5 Return

If a negative decision is issued, the SEM examines whether a removal of the asylum seeker is permitted, reasonable and possible. If this cannot be confirmed, then a temporary admission (F permit) is issued. Otherwise the removal is carried out by the responsible Cantonal authorities with support of the SEM.

4.6.5.1 Data

Figure 33. Return orders and effectuated returns



Source: State Secretariat for Migration⁶⁰

⁵⁹ SEM, Guidelines and circulars, available in French, German and Italian at: <https://bit.ly/2IRH7nn>.

⁶⁰ Differing to the definitions applied by Eurostat, 'return orders' here refer to rejected asylum applications, excluding persons who are granted temporary admission and excluding applications that were deemed



5 ANNEXES

5.1 Annex 1 – Interview Questionnaire

Procedural rules relevant for the appeal procedures

- Coordinated proceeding strategy
 - Do first and second instance (in asylum procedures) coordinate their proceedings?
 - If yes, how? Prioritization of different caseloads?
 - If yes, which effect does it have on duration of asylum procedures?
- [Note to interviewer: please ask to elaborate on what ground the interviewee bases her/his assumption]
- Information exchange
 - Do courts and migration authorities exchange information?
 - If yes, what type of information? Only case related? COI?
 - If yes, which effect does it have on duration of asylum procedures?
- [Note to interviewer: please ask to elaborate on what ground the interviewee bases her/his assumption]
- Administrative time limits
 - Are administrative time limits in place for each of the instances?
 - How do the time limits relate to reality? Which share of applications can be processed within the time limits?
 - Are time limits effective in reducing the duration of asylum procedures?
 - Are time limits detrimental to the quality of asylum procedures/decisions?
- Number of instances in the appeal procedure
 - How many instances exist in the national asylum system?
 - What are the appeals rates in each of these instances? And how many decisions are overturned in each of the instances?
 - Is the number of instances a relevant factor for the duration of procedures?
- Quick return decisions
 - Are quick return decisions accepted more easily by returnees/better to enforce?
 - What does your country do in order to accelerate return decisions?
 - What are the main impediments in accelerating return decisions?

inadmissible (e.g. Dublin procedure). ‘Effectuated return’ refers to reliably recorded returns (forced or voluntary) to third countries, excluding returns under the Dublin procedure.



- Which circumstances support the quick implementation of return decision, which impede them?
- [Note to interviewer: please ask to elaborate on what ground the interviewee bases her/his assumption]
- Acceleration of asylum procedure
 - What efforts is making/has made your country in order to accelerate asylum procedures?
 - Introduction of accelerated procedures
 - Legal/organizational changes
 - Which measures have been effective?
- [Note to interviewer: please ask to elaborate on what ground the interviewee bases her/his assumption]

Free legal representation

- Early information on asylum procedure and prospects
 - Does your country make efforts in providing early information on asylum procedure and prospects to applicants?
 - Does early information on asylum procedure and prospects increase acceptance for decision and therefore lower the appeal rate?
- [Note to interviewer: please ask to elaborate on what ground the interviewee bases her/his assumption]
- Legal representative (from the start of the asylum procedure)
 - Is your country providing free legal representation for applicants?
 - In first and second instance?
 - Does the provision of free legal representation increase acceptance for decision/decreases numbers of appeals?
 - Does involvement of legal representation for the purpose of establishing facts for the asylum case improve the quality of the decision (less decisions overturned)?
- [Note to interviewer: please ask to elaborate on what ground the interviewee bases her/his assumption]
- Reduce incentives to appeal in cases where chances are bad.
 - How can appeals be disincentivised in cases where chances are bad?
 - Are legal representatives disincentivised from appealing in cases where chances are bad?
- [Note to interviewer: please ask to elaborate on what ground the interviewee bases her/his assumption]

Pull effects



- Pull-effects for unfounded asylum requests.
 - Do short procedures reduce pull-effects for unfounded asylum requests?
- [Note to interviewer: please ask to elaborate on what ground the interviewee bases her/hos assumption]
 - What efforts is making/has made your country to reduce pull-effects for unfounded asylum requests?

Supporting measures

- Early information on return possibilities and assistance
 - Do you provide early information on return possibilities and assistance?
 - Does early information on return possibilities and assistance increase willingness to return?
- [Note to interviewer: please ask to elaborate on what ground the interviewee bases her/his assumption]
- Quick positive asylum decisions
 - Do quick positive asylum decisions favour integration of persons with the right to stay while at the same time easing the burden on the asylum system?
 - If so, is this a priority for your country, e.g. by prioritizing applicants from countries with high recognition rate?

Data

- Do you have any data to substantiate the effectiveness of measures in each of the topics above?

Reporting

The interviewer is requested to:

- Ask for consent of the interviewed expert, signing a “Consent Form” which guarantees anonymousness of the expert
- record all interviews (if agreed upon with the respondent) and store the audio file according to ICMPD data protection guidelines;
- Provide an interview report for each interview, containing:
 - Information box on the profile of the interviewed stakeholder (see point “Information on the interviewee” below
 - Interview summaries which answer each question of the questionnaire (unless a question has not been answered by the interviewee at all). The interview summary should follow the structure of the questionnaire; any additional information that has been mentioned during the interview should be captured in the final section named “other comments”.
 - relevant quotations for potential use in study reports translated into English wherever appropriate and fitting to further substantiate the response



5.2 Annex 2 – Consent Form

Informed Consent Form for Interviews with Experts

“The asylum appeals procedure in relation to the aims of European Asylum Systems and Policies (ASAP)”

Contact Person/ Institution
Martin Wagner, ICMPD
Senior Policy Advisor Asylum
T: +43 1 504 46 77 – 2324
Martin.Wagner@icmpd.org

I confirm that:

- I have been given information explaining about the study “The asylum appeals procedure in relation to the aims of European Asylum Systems and Policies (ASAP)” Project (hereinafter called “The Project”) relates to. I also received an information sheet containing all relevant information.
- I had an opportunity to ask questions and discuss this study.
- I received satisfactory answers to all questions I asked about the scope and the aims of the Project.

Personal data will be anonymized according to a degree chosen by the expert. The following anonymization options are available:

- A. **Partial consent I:** Reference to type of organization (EU body, country, NGO, etc.) in research reports, publications and other deliverables, the interview will be recorded electronically;

Example: Representative of Organization XYZ, London, United Kingdom

- B. **Partial consent II:** Reference to country or type of stakeholder/interviewee in research reports, publications and other deliverables, the interview will be recorded electronically;

Example: representative of a national government organization, United Kingdom

- I select option: _____

I understand that:

- my data will be treated with utmost confidentiality and made anonymous right after the interview; by which all identifying information will be removed. The Project acts in accordance with the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data;
- that my participation in this project is voluntary;
- I have the opportunity to end the interview and to withdraw my consent to its electronic and written recording without any penalties resulting from such withdrawal;



- I have the right to receive access to my personal data and the right to demand its correction until they are made anonymous
- I can exercise this right by contacting the interviewer who gave me the information sheet containing all contact information

I consent to:

- my answers being recorded electronically and transcribed after the interview;
- the electronic recording of the interview being stored on the computers of the research institution;
- the anonymized Record and summary of my interview being stored on the computers of the research institution;
- only certified employees and representatives of the cooperating partners of this research project receiving access to the anonymized questionnaires and database;

I hereby agree to take part in the study ASAP Project

I agree to take part in the interview and consent to the abovementioned information and processing of my personal data. I have received a copy of my signed "Informed Consent Form".

I would like to receive further information on the work and results of this research project.

First Name: _____

Surname: _____

Organization: _____

Position in Organization: _____

Address: _____

Telephone: _____

E-Mail: _____

_____	_____	_____
Name of Interviewee	Date	Signature

_____	_____	_____
Name of Researcher	Date	Signature