

**Reception and Detention Conditions
of applicants for international
protection in light of the Charter of
Fundamental Rights of the EU**

**RECEPTION
AND
DETENTION
CONDITIONS**

January 2015

This study has been prepared in the framework of the “Promoting the EU Charter of Fundamental Rights within the legal networks active in the field of asylum and migration in Europe” (FRAME) project. The project partners include the Dutch Council for Refugees and the Romanian National Council for Refugees.



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RECEPTION AND DETENTION CONDITIONS

1. Introduction

When people arrive in the EU wanting to claim asylum, after fleeing persecution, conflicts and human rights abuses, they often lack or cannot access resources that would allow them to provide for themselves. Member States may also prohibit an applicant for asylum to freely provide for themselves, and may assign them to a specific place for the duration of their asylum claim.¹ Furthermore, most Member States do not allow applicants for international protection to work immediately after arriving; under the recast Reception Conditions Directive an applicant may be waiting nine months before they can access the labour market and which may be subject to numerous conditions.² Having adequate reception conditions is imperative in order to make a cohesive and comprehensive application for international protection; otherwise the applicant may not be able to properly present their claim. However, applicants face significant problems accessing reception conditions. Overcrowding and destitution are real problems in a number of Member States; excessive administrative burdens and delays in registering an asylum claim can also render an asylum seeker homeless. Lengthy asylum procedures for those applicants being kept in a state of limbo and with insufficient access to activities and services can cause long-term psychological problems.

The detention of applicants for international protection, and the detention conditions they are exposed to, is also a matter of grave concern. The recast Reception Conditions Directive now sets down an exhaustive list of grounds, establishing the basis on which asylum seekers can be detained, provided such detention is necessary, and proportional, and that no less coercive measures can be applied.³ Persons fleeing persecution, in principle, should never be detained, as they have committed no crime; and being subject to a punitive environment can cause an applicant to have serious mental health problems, particularly after fleeing a traumatic experience. The detention conditions themselves can be far from adequate, with many reports of overcrowding and insufficient sanitary conditions. Applicants can also sometimes be held in prisons or police stations which are wholly inappropriate for asylum seekers.

Reception conditions, and now detention conditions, are regulated at the EU level through the Reception Conditions Directive⁴ and its recast.⁵ The recast aimed to provide better and common standards in relation to reception conditions and more procedural safeguards for detained asylum seekers. Whilst certain improvements have been made with the recast, the standards therein are open to interpretation. The aim of this paper is to examine these standards and assess them in light of the EU Charter of Fundamental Rights and general principles of EU law. The interpretation of EU law and the national implementing legislation must comply with fundamental rights and general principles of the EU legal order. If legislation can be interpreted in a number of different ways, it still must be interpreted in the way that complies with fundamental rights. This paper illustrates how different provisions in the Charter can be used to ensure a more rights based reading of the Reception Conditions Directive and its recast.

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1. Article 7 of Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast) Recast Reception Conditions Directive (hereinafter recast Reception Conditions Directive).
 2. Article 15 of the recast Reception Conditions Directive provides that Member States shall ensure that applicants have access to the labour market within 9 months if no decision has been taken on their first instance asylum claim. Member States can also decide on the conditions for granting access to the labour market.
 3. Member States still detained persons before the recast Reception Conditions Directive came into being but the grounds and safeguards under which a person claiming international could be detained were not set out in secondary legislation.
 4. Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers (hereinafter Reception Conditions Directive).
 5. Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast) (hereinafter recast Reception Conditions Directive).

2. Aim and Methodology

This paper will examine whether, and how, the provisions of the Charter of Fundamental Rights of the European Union (“the Charter”), and general principles of EU law, can be used to improve reception and detention conditions for those seeking international protection in the EU. Since the entry into force of the Lisbon Treaty in December 2009,⁶ the Charter has become a binding source of primary EU law. It provides a wealth of unexplored potential and this paper aims to illustrate how some of the provisions therein can promote the adherence to better reception and detention standards within the EU. It will do this by examining the scope and meaning of the relevant Charter Articles, as informed by *the Explanations to the Charter of Fundamental Rights*, case law from the Court of Justice of the European Union (CJEU) and the European Court of Human Rights (ECtHR).

Each section sets out the applicable EU legal framework for reception and detention conditions. This is then assessed in light of the relevant fundamental rights and principles. Given that the CJEU is engaged in interpreting secondary legislation its case law is discussed. Where the meaning and scope of a Charter right is the same as those set out in the European Convention on Human Rights (ECHR), ‘the meaning and scope of those rights shall be the same’ as those laid down by the Convention; however this shall not prevent the Charter right in providing more extensive protection.⁷ The scope of the ECHR right is not only determined by the text of the ECHR itself but also by the case law of the ECtHR and, as a result, its case law will also be discussed.

Following this, the paper will set out the current standards and practice in certain EU Member States. This does not intend to be an exhaustive analysis of the situation in each Member State; rather, it aims to highlight certain practices in selected Member States. Due to the difficulties in many of the Member States to get comprehensive information, and given that in many States conditions can be vastly different - depending on the region or the specific detention or reception centre the applicant is placed in - the country information should not be seen as a comprehensive overview, but rather, a snapshot of some of the more prevalent issues that were highlighted in the different country reports. The information gathered from the country reports is a result of a questionnaire that was sent to country experts in February 2014; thus the information is valid as of July 2014. This report documents developments in 2013 and the first half of 2014 and in some instances the information has been updated to take into account significant developments in a particular Member State. More details on the specific standards in each Member State can be found on the Asylum Information Database (AIDA) website. This paper will not look at the rights of those who have been granted a protection status, but will just concentrate on those who are currently within the asylum process.

This paper is separated into three parts. The first part will set out the relevant legal framework and the scope of the EU Charter of Fundamental Rights. The second part will look at reception conditions including reception conditions for applicants seeking international protection; health care for applicants seeking international protection and applicants for international protection with special reception needs. The third part will look at the detention of applicants for international protection in the EU, detention conditions in the EU, the health care of applicants for international protection in detention and the detention of vulnerable persons with special protection needs.

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6. European Union, *Treaty of Lisbon Amending the Treaty on European Union and the Treaty Establishing the European Community*, 13 December 2007, 2007/C 306/01.

7. Article 52 (3) of the Charter.

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The paper is aimed at practitioners, decision makers and advocacy officers across the EU who will be able to use arguments based on the EU Charter of Fundamental Rights Charter and general principles of EU law to influence progressive interpretations of the EU asylum *acquis* in order to advance the goal of improving detention and reception conditions for those claiming international protection across Europe.

The legal framework and the scope of the EU Charter of Fundamental Rights

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3. The legal framework and the scope of the EU Charter of Fundamental Rights

At the primary law level, as will be explained in the section below, all EU legislation and implementing legislation needs to comply with the Charter of Fundamental Rights of the European Union.⁸ The two main pieces of relevant EU legislation for asylum seekers in relation to detention and reception conditions are the Reception Conditions Directive⁹ and the recast Reception Conditions Directive.¹⁰ The recast Reception Conditions Directive entered into force in July 2013 and the deadline for transposition is July 2015. The UK has not opted into the recast but is still bound by the 2003 Reception Conditions Directive. Ireland and Denmark did not opt in to the Reception Conditions Directive or its recast. However, some provisions of the recast are still applicable for these Member States; namely, if an applicant for international protection is detained under the Dublin III Regulation for the purposes of a transfer, the detention safeguards and standards, as set out in the recast Reception Conditions Directive, still apply.¹¹

Given that the Charter is now primary law it has two main functions. Firstly, any provision of EU secondary law found to be in breach of the Charter will be void and any national law implementing EU law that violates the Charter needs to be set aside. Like general principles of EU law, the Charter can be relied upon as grounds of judicial review.¹² Secondly, the Charter, like general principles of law, serves as an aid to interpret secondary EU law and national law falling within the scope of EU law, which must be read in light of the Charter.¹³

However, there are limitations as to when the Charter is applicable. The most important caveat in the Charter, in terms of its scope, is Article 51 (2), which states that Charter provisions are only addressed to the Member States when they are 'implementing European Union law'. There is considerable academic debate as to what is meant by 'implementing', but more clarity on the issue was given when the CJEU in *Akerberg Fransson* equated 'implementation' of EU law to 'falling within the scope of' EU law.¹⁴ To put it another way, the Charter is only applicable in instances where EU law is applicable.¹⁵ This was recently confirmed in the recent *Texdata* case.¹⁶ The Court also looked at this issue in *N.S. v UK and Ireland*.¹⁷ One of the questions posed to the Court was whether a Member State's decision to examine a claim for asylum that is not its responsibility on the basis of Article 3 (2) Dublin Regulation¹⁸, falls within the scope of EU law for the purposes of Article 6 TEU and/or Article 51 of the Charter. The Court found that the discretionary element of Article 3 (2) forms part of the Dublin Regulation and in turn, part of the CEAS. Therefore, a Member State that exercises that discretionary power must be considered to be implementing EU law within the meaning of Article 51(2) of the Charter.

The following categories can be said to fall within the scope of European Union law:

- Measures implementing EU law (or measures falling within the scope of EU law, such as regulations);
- Any national measure that negatively affects any of the individual rights guaranteed by EU law, in particular measures that affect a person's free movement rights. i.e. measures adopted under EU derogation in order to justify a measure which restricts fundamental freedoms protected by the Treaty.¹⁹

With regard to the derogation type situation, when a Member State derogates from the substantive provisions of EU law, it is still implementing EU law given that the derogations must always meet the provisions imposed by EU law.²⁰

8. European Union: Council of the European Union, *Charter of Fundamental Rights of the European Union (2007/C 303/01)*, 14 December 2007, C 303/1.

9. *Council Directive 2003/9/EC of 27 January 2003 Laying Down Minimum Standards for the Reception of Asylum Seekers in Member States*, 6 February 2003, OJ L. 31/18-31/25; 6.2.2003, 2003/9/EC, (hereinafter referred to as 'Reception Conditions Directive').

10. *Directive 2013/33/EU of the European Parliament and Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast)*, 29 June 2013, L 180/96, (hereinafter referred to as the 'recast Reception Conditions Directive').

11. Article 28 (4) of the Dublin III Regulation provides 'as regards the detention conditions and the guarantees applicable to persons detained, in order to secure the transfer procedures to the Member State responsible, Articles 9, 10 and 11 of Directive 2013/33/EU shall apply'.

12. Koen Lenaerts, *Exploring the Limits of the EU Charter of Fundamental Rights*, *European Constitutional Law Review*, 8 (2012), p. 376.

13. For more on the role and use of the Charter see ECRE and the Dutch Council for Refugees *The Application of the EU Charter of Fundamental Rights to asylum procedural law, sections 1 and 2*.

14. CJEU, *Aklagaren v Hans Åkerberg Fransson*, Case C-617/10, 26 February 2013, para 21.

15. Craig, Paul, 'EU Administrative Law' Oxford University Press, p503. For more on the meaning of Article 51 (2) see Xavier Groussot, Laurent Pech and Gunnar Thor Petursson, *The Scope of the Application of EU Fundamental Rights on Member States' Action: In Search of Certainty in EU Adjudication*, Eric Stein Working Paper No 1/2011.

16. CJEU, *Texdata Software GmbH*, Case C – 418/11, 26 September 2013.

17. CJEU, *N. S. (C 411/10) v. Secretary of State for the Home Department and M. E. (C 493/10) and others v. Refugee Applications Commissioner, Minister for Justice, Equality and Law Reform*, C-411/10 and C-493/10, 21 December 2011, Para 68.

18. *Council Regulation (EC) No. 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third country national*, L 50/1 25.2.2003.

19. *Elliniki Radiophonia Tileorassi*, Case C-260/89, 18 June 1991. For a more detailed explanation regarding the scope of EU law and the scope of Fundamental Rights more generally see 'Groussot, Xavier and Pech, Laurent and Petursson, Gunnar Thor, *The Scope of Application of Fundamental Rights on Member States' Action: In Search of Certainty in EU Adjudication*, July 1, 2011.

20. See for example, CJEU, *N. S. (C 411/10) v. Secretary of State for the Home Department and M. E. (C 493/10) and others v. Refugee Applications Commissioner, Minister for Justice, Equality and Law Reform*, C-411/10 and C-493/10, 21 December 2011.

Generally, matters which involve purely national law are not governed by the Charter and general EU law principles. However, when it comes to national procedural rules, they can be covered by EU fundamental rights. This is in line with the principle of effectiveness which is now enshrined in Article 19 TEU²¹ and in Article 47 of the Charter. Member States must ensure the full effect of EU law, including the obligation that national remedies must ensure that substantive rights provided by EU law are upheld.²²

The Charter also provides its own limitations as to when it is applied. Article 52(1) provides; ‘Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by law and respect the essence of those rights and freedoms. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others’.

3.1. The application of the EU Charter of Fundamental Rights

An EU or national implementing measure can be challenged on the grounds that it infringes an EU general principle of law or a fundamental right. If the national court finds that there is a question regarding the legality of an EU law provision, it can refer a question to the CJEU. Article 267 TFEU provides that only ‘a court or tribunal of a Member State against whose decisions there is not judicial remedy under national law’ must refer such a question of Union law to the Court of Justice for the latter to issue a ruling under the preliminary reference procedure. Other lower courts or tribunals can use the procedure to seek clarification on the interpretation or validity of a provision of EU law but they are not obliged to do so. The CJEU can then rule on whether a provision of secondary EU law breaches a fundamental right or principle or Charter Article.

National courts however, do not have the ability to declare an act of EU law invalid, otherwise there would be incoherence in the application of EU law.²³ Therefore, the party that is directly concerned can ask the national court to make a preliminary reference to the CJEU to rule on the legality of the relevant provision.

National courts and the CJEU are required to use Charter provisions and general principles of EU law to interpret EU legislation. EU legislation cannot be interpreted in such a way that it breaches a Charter Article.²⁴ Similarly, Member States must not only interpret their national law in a manner consistent with European Union law, but also make sure they do not rely on an interpretation of an instrument of secondary legislation which would be in conflict with the fundamental rights protected by the European Union legal order or with the other general principles of European Union law.²⁵

Where there is ambiguity over the interpretation of an EU law provision, preference must, as far as possible, be given to an interpretation that ensures that it is compatible with general principles of EU law.²⁶ As a result of the rights and principles set out in the Charter, a provision of EU law may need to be set aside; it could also set additional standards that would need to be complied with other than those set out in the relevant piece of legislation. Therefore, one needs to bear in mind the standards in the Charter and the relevant principles of EU law, not just the standards contained within the relevant legislation.²⁷

3.2. The interplay between the European Convention on Human Rights and the Charter of Fundamental Rights of the European Union

Many of the rights contained in the Charter have their origin in the European Convention on Human Rights (ECHR). Article 52 (3) of the Charter is designed to ensure consistency between the Charter and the ECHR. It states that the meaning and scope of Charter Articles that correspond to ECHR Articles should be given the same meaning and scope as those laid down in the ECHR.²⁸ This includes the case law of the European Court of Human Rights (ECtHR). The provision suggests that the CJEU should follow the jurisprudence of the ECtHR to the extent that it must offer at least the same level of protection.²⁹ With regard to the second sentence of Article 52 (3) of the Charter,³⁰ the explanations

21. Article 19 TEU (1) states that ‘Member States shall provide remedies sufficient to ensure effective legal protection in the fields covered by Union law’.

22. This was recently illustrated in the CJEU Case *DEB Deutsche Energiehandels –und Beratungsgesellschaft*, C-279/09, 22 December 2010.

23. This was also found in *Foto-Frost, Ammersbek v Hauptzollamt Lübeck-Ost*, Case C- 314/85, 22 October 1987, para 17 -20.

24. *Jasna Detiček v Maurizio Sgueglia*, Case C-403/09, 23 December 2009, para 55.

25. CJEU, *Lindqvist*, Case C-101/01,2003, para 87.

26. Reneman, A.M. *EU Asylum Procedures and the right to an effective remedy*, Uitgeverij BOX Press, 2012, p 14.

27. Reneman, (n25) p14.

28. Explanations relating to the Charter of Fundamental Rights, OJ [2007] C303/17.

29. See also, ECRE and the Dutch Council for Refugees, ‘the Application of the EU Charter of Fundamental Rights to asylum procedural law’, October 2014.

30. In so far as this Charter contains rights which correspond to rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, the meaning and scope of those rights shall be the same as those laid down by the said Convention. This provision shall not prevent Union law providing more extensive protection.

provide that where there is a corresponding ECHR right, it is not to preclude the granting of wider protection by the EU, i.e. certain Charter rights can grant a wider scope of protection in their application than their ECHR counterpart. This was also confirmed by the CJEU in *DEB Deutsche Energiehandels- und Beratungsgesellschaft mbH v. Germany*.³¹

31. CJEU, *DEB Deutsche Energiehandels- und Beratungsgesellschaft mbH v. Germany*, Case C-279/09, 22 December 2010, para 35.

Reception conditions of applicants for international protection

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4. Reception conditions of applicants for international protection

Under secondary EU law, asylum seekers are entitled to certain material reception conditions. Member States may introduce or maintain more favourable provisions than those set out in the Reception Conditions Directive and its recast. By virtue of the ECHR, primary EU law and international law, Member States must ensure that reception conditions are accessible and of a certain standard.

4.1. Secondary legislation

4.1.1. Reception Conditions Directive

Article 5 of the Reception Conditions Directive provides that Member States shall inform applicants, within a reasonable time not exceeding fifteen days after they have lodged their application, of at least any established benefits and obligations that they must comply with. They shall also ensure that they are informed about organisations or groups of persons that provide specific legal assistance and organisations that might be able to help or inform them concerning the available reception conditions, including health care.

Article 13 (1) provides that ‘Member States shall ensure that material reception conditions are available to applicants when they make their application for asylum’. Member States are also obliged to ensure that the material reception conditions provided allow for an adequate standard of living for the health of applicants and capable of ensuring their subsistence.³² Recital 5 provides that the Directive respects fundamental rights as laid down in the Charter; in particular it seeks to ensure full respect of the right to human dignity and to promote the application of the right to asylum.

States may make the provision of some, or all of the material reception conditions and health care, subject to the condition that applicants do not have sufficient means to have a standard of living adequate for their health and to enable their subsistence. They can also require applicants to cover or contribute to the cost of the reception conditions and the health care if they have sufficient resources.³³ The material reception conditions can also be provided for *in kind*, such as by financial vouchers or allowances.³⁴

It also provides that the transfer of an applicant from one housing facility to another should only take place when necessary and that staff shall be adequately trained and bound by confidentiality.³⁵

The Reception Conditions Directive and its recast both provide that when housing is provided it should take one or a combination of one of the following forms:

- premises for the purposes of housing applicants during the examination of an application for asylum lodged at a border (or in transit zones);
- accommodation centres that guarantee an adequate standard of living;
- private houses, flats, hotels or other premises adapted for housing applicants.³⁶

The Reception Conditions Directive allows for exceptions to these conditions, which, in any event, shall cover basic needs for a reasonable period which shall be as short as possible when:

- an initial assessment of the specific needs are required;
- material reception conditions as described are not available in a certain geographical area;
- housing capacities are temporarily exhausted;
- the asylum seeker is detained or confined to border posts.³⁷

4.1.2. Recast Reception Conditions Directive

The recast Reception Conditions Directive repeats that Member States shall inform applicants of their rights and

32. Reception Conditions Directive Article 13 (2).

33. Reception Conditions Directive Article 13 (3) and (4).

34. Reception Conditions Directive Article 13 (5).

35. Reception Conditions Directive, Article 14 (4) and (5).

36. Reception Conditions Directive Article 14 (1) (a) (b) and (c) and recast Reception Conditions Directive Article 18 (1) (a) (b) and (c).

37. Reception Conditions Directive, Article 14 (8).

obligations within 15 days,³⁸ and also provides that it shall ensure that material reception conditions are available to applicants when they make their application for international protection.³⁹ It goes somewhat further than the Reception Conditions Directive when it states that the 'material reception conditions provide an adequate standard of living for applicants which guarantees their subsistence *and protects their physical and mental health*' [emphasis added].⁴⁰ Recital 11 states that standards for the reception of applicants that will suffice to ensure them a dignified standard of living should be laid down.

The recast also provides that Member States can make the provision of material reception conditions subject to a means check and that they may require applicants to cover or contribute to the cost of the reception or health care provided. With regard to the form of the reception conditions, it again provides that this may be given by way of financial allowances or vouchers and the amount shall be determined by the Member States and allows that the amount given may be lower than that provided to nationals.⁴¹ As to the type of accommodation offered, it repeats the allowed forms as per the Reception Conditions Directive.⁴²

Similar to the Reception Condition Directive, the recast also provides that the transfer of applicants from one housing facility to another should only take place when necessary and that staff shall be adequately trained and bound by confidentiality.⁴³

The recast also allows for exceptions to these conditions, which, in any event, shall cover basic needs for a reasonable period which shall be as short as possible. It limits the grounds to:

- an initial assessment of the specific needs are required;
- housing capacities are temporarily exhausted.⁴⁴

4.2. Relevant Fundamental Rights and Principles

4.2.1. The right to good administration

The principle of the right to good administration is applicable to both EU institutions and Member States when applying EU law.⁴⁵ Member States need to comply with it when adopting decisions which fall within the scope of EU law, even when there is no specific procedure in place. It also covers instances whereby a party to the proceedings would be penalised by virtue of the fact that they did not comply with procedural rules 'when this non-compliance arises from the behaviour of the administration itself'.⁴⁶

Member States are obliged to provide applicants with information about their rights and obligations with regard to material reception conditions.⁴⁷ Should a State fail to provide them with this information, the applicant should not be penalised for failing to comply with any obligations contained therein. The ECtHR examined this issue in *MSS v Greece and Belgium*.⁴⁸ It found that the brochure provided to asylum seekers did not contain any accommodation information, and that the wording in the brochure regarding the obligation to report to the police to register one's address was ambiguous and could not be considered as sufficient information. As a result, the Court found that the applicant was not duly informed of the accommodation possibilities that were available to him.

4.2.2. The right to human dignity

Article 1 of the Charter provides that 'human dignity is inviolable. It must be respected and protected'. The right to human dignity is applicable to all persons, regardless of their nationality or status within the Union. There is no specific article in the ECHR which provides the right to human dignity; however, the ECtHR has found that 'the very essence of the

38. Recast Reception Conditions Directive, Article 5.

39. Recast Reception Conditions Directive Article 17 (1).

40. Recast Reception Conditions Directive Article 17 (2).

41. Recast Reception Conditions Directive Article 17 (4) and (5).

42. Recast Reception Conditions Directive Article 18 (1) (a) (b) and (c).

43. Recast Reception Conditions Directive, Article 18 (6) and (7).

44. Recast Reception Conditions Directive, Article 18 (9).

45. For a more extensive analysis on the application of the principle of the right to good administration see ECRE, Dutch Council for Refugees *The application of the EU Charter of Fundamental Rights to asylum procedural law*, Section 2.2.5. In *YS*, the Court found that the right to effective legal protection, including the right to good to good administration was a general principle of EU law on which everyone can rely. See CJEU (Joined Cases), C-141/12 and C-372/12, *YS v. Minister voor Immigratie, Integratie en Asiel, and Minister voor Immigratie, Integratie en Asiel v. M. S.* 17 July 2014, paras 66-69.

46. CJEU, Case C-428/05, *Firma Laub GmbH & Co. Vieh & Fleisch Import-Export v Hauptzollamt Hamburg-Jonas*, 21 June 2007.

47. Reception Conditions Directive and recast Reception Conditions Directive Article 5.

48. ECtHR, *M.S.S. v. Belgium and Greece*, Application No. 30696/09, 21 January 2011, para 255.

Convention is respect for human dignity and freedom'.⁴⁹ Given the relative abstract nature of the right to human dignity, the following paragraphs will set out its scope and give some indication as to its content. It will look at what positive and negative obligations it imposes on a State and how it can be applied to reception conditions for persons applying for international protection.

Scope and content of the right to human dignity

There are two different schools of thought with regard to its scope and the nature of the right. The first reading is that it is an absolute right and cannot be derogated from.⁵⁰ As a result, it places human beings 'at the top of the EU normative pyramid which prescribes that the power balance between human beings and the EU is tipped in favour of the former, so that none of the EU activities may breach human dignity'⁵¹ such as the creation or operation of a Common European Asylum System. However, such a reading could mean that the right to human dignity would only be invoked in very limited and severe circumstances. Another reading is that dignity is more relative, Article 52 (1), which stipulates the circumstances under which a Charter Article can be limited, does not exclude the right to human dignity from its scope of application. Nevertheless, even if its scope was restricted, 'any limitation on the exercise of (the right to human dignity) must be provided for by law and respect the essence of those rights and freedoms'. In any event, 'the essence' of human dignity must always be respected.

The content of the right to human dignity has not been explicitly defined by the ECtHR or the CJEU. Nevertheless, some indicators give an idea as to its perimeters to date. According to some academics, the minimum content of human dignity is that every human possesses an innate worth, just by being human. This worth needs to be respected and recognised and certain treatment can be inconsistent with respect for this intrinsic worth.⁵² According to Kantian Philosophy, the essence of human dignity rests on the autonomy which is inherent in each individual.⁵³ Advocate General Stix-Hackl in *Omega* made similar arguments in his attempt to define the concept of human dignity, when he stated that 'human dignity is an expression of the respect and value to be attributed to each human being on account of his or her humanity'. It concerns the protection of, and respect for, the essence or nature of the human beings per se – that is to say the 'substance' of mankind'. Human dignity reflects the idea that every human being is considered to be endowed with certain inherent or inalienable rights, and because of his ability to forge his own free will he is a person and must not be downgraded to a thing or object.⁵⁴ As to what forms of conduct are inconsistent with one's intrinsic worth is open to interpretation, but a selection of case law below can give some idea as to what the Court of Justice of the European Union and the European Court on Human Rights believe this to mean to date.

The ECtHR has equated a person's right to human dignity with the right to be detained in conditions that do not amount to inhuman and degrading treatment.⁵⁵ This standard is also applicable in terms of reception standards.⁵⁶ In *Pretty v UK* the ECtHR spoke about dignity in terms of Article 8. Here the Court associated dignity with quality of life that is intrinsic in Article 8.⁵⁷ If reception conditions do not provide a sufficient quality of life, the right to human dignity could be engaged. This is particularly pertinent if someone is kept in a reception centre for long periods of time with little recourse to work, medical treatment, educational or recreational activities.

In *I v United Kingdom*, the ECtHR connected dignity to the right to personal autonomy and provided that there is a right to protection 'to the personal sphere of each individual'.⁵⁸ Whilst this case concerned the right of transsexuals to establish their personal identity the Court stressed the right of everyone to their own personal autonomy, which is applicable in terms of reception conditions. It denotes a freedom of choice over one's life. Of course personal autonomy is not an unlimited right and must be balanced against the interest of the individual and the public.⁵⁹

Kurić and Others v. Slovenia concerned a government policy which made the applicants stateless and which denied them access to Slovenian citizenship. The ECtHR found that the government policy which denied the applicants access

49. ECtHR, *Pretty v United Kingdom*, Application no. 2346/02, 29 July 2002, para 65.

50. Catherine Dupré, 'Article 1' in Steve Peers, Tamara Hervey, Jeff Kenner, Angela Ward *The EU Charter of Fundamental Rights, A Commentary*, Oxford, Hart Publishing, 2014, p 23.

51. *Ibid* p 23

52. McCrudden, Christopher, 'Human Dignity and Judicial Interpretation of Human Rights' *The European Journal of International Law*, 2008 Vol. 19, no. 4, 655 – 724, p 679.

53. John O'Shea, 'Direct Provision: Human Dignity, Personal Autonomy and ECHR' *Human Rights in Ireland*, 3 June 2014.

54. CJEU, *Omega Spielhallen- und Automatenaufstellungs-GmbH v Oberbürgermeisterin der Bundesstadt Bonn*; Case C-361-02; Opinion of Advocate General Stix-Hackl, 12 March 2004, paras 75 – 79.

55. See Section 8.2 for more case law in relation to detention standards and the right to human dignity.

56. ECtHR, *Orchowski v. Poland*, Application no. 17885/04, 22 October 2009 paras 120 and 153.

57. It provided 'the very essence of the Convention is respect for human dignity and human freedom. Without in any way negating the principle of sanctity of life protected under the Convention, the Court considers that it is under Article 8 that notions of the quality of life take on significance'. ECtHR, *Pretty v United Kingdom*, Application no. 2346/02, 29 July 2002 para 65.

58. ECtHR, *I v The United Kingdom*, Application no. 25680/94, 11 July 2002, para 70. The Court stated that under Article 8 of the Convention in particular, where the notion of personal autonomy was an important principle underlying the interpretation of its guarantees, protection was given to the personal sphere of each individual. Whilst this case concerned the right of transsexuals to establish their identity as individual human beings, the reasoning can apply to those who are in immigration detention.

59. Article 52 (1) of the Charter.

to Slovenian citizenship also left them bereft of any legal status conferring 'the right to have rights'. The Court found that this was a 'serious encroachment on human dignity'.⁶⁰ The same reasoning can be applied to persons who, through no fault of their own, cannot register an asylum claim, leaving them without rights, responsibilities and entitlements.⁶¹

In the *Cimade* judgment, the CJEU noted that due to the general scheme and purpose of the Reception Conditions Directive, in order to observe fundamental rights, the right to human dignity must be respected and protected. As a result asylum seekers may not be deprived, even for a temporary period of time, of the protection of the minimum standards laid down by that directive.⁶²

The duty to 'respect and protect'

The right to human dignity places a negative obligation on states not to interfere with a person's right to human dignity, but it also places a positive obligation on States to ensure that an applicant's right to dignity is not breached. This is particularly significant in terms of transfers under the Dublin III Regulation.⁶³ The right to dignity is not mentioned in *NS*, but the judgment's reasoning can be applied to instances where there is a real danger that a person's human dignity will not be respected. It found Member States may not transfer an asylum seeker to the Member State responsible under the Dublin Regulation where they cannot be unaware of the systemic deficiencies in the asylum procedure and in the reception conditions for asylum seekers where there are substantial grounds for believing that the asylum seeker would face a real risk of being subjected to inhuman or degrading treatment within the meaning of Article 4 of the Charter.⁶⁴

The right to human dignity requires that the quality of life of an applicant for international protection must be one that is of a sufficient standard. Applicants must be placed in conditions that respect the personal sphere of an individual, which also links with the prohibition of over-crowding in terms of Article 3 ECHR. The essence of the right to human dignity is that you cannot treat a human as an object; you must respect their intrinsic worth. The ECtHR has also found that in certain instances (such as when a person is in state care) minimum materials need to be provided (food, access to adequate sanitary conditions, clothes and bedding) to meet the standard in Article 3.⁶⁵ In addition, the onus cannot be placed on the applicant to ensure that their essential needs are met.⁶⁶

In *Saciri*, the CJEU looked at what level of support a Member State should provide when they opt to provide material support in the form of a financial allowance as per Article 13 (5) of that Directive. It found that the amount must be sufficient to ensure a dignified standard of living and adequate for the health of applicants and capable of ensuring their subsistence.⁶⁷ It also linked it to the specific needs of individuals, and accordingly, 'the financial allowances must be sufficient to preserve family unity and the best interests of the child which, pursuant to Article 18(1), are to be a primary consideration'.

In terms of what is specifically meant by 'adequate standard of living' is open to interpretation. Guidance can however be found in other instruments, such as the European Social Charter; Article 31 thereof provides the right to housing. Article 11 of the International Covenant of Economic Social and Cultural Rights (ICESCR) provides that everyone has the right to 'an adequate standard of living for himself and his family including adequate food, clothing and housing, and to the continuous improvement of living conditions'. According to the travaux préparatoires, the provision is of broad scope and not limited to food, shelter and clothing alone and other factors should be taken into consideration.⁶⁸

60. ECtHR, *Kurić and Others v. Slovenia*, Application no.26828/06, 26 June 2012, para 319.

61. See section 4.3.1 Problems accessing reception conditions.

62. CJEU, *Cimade, Groupe d'information et de soutien des immigrés (GISTI) v. Ministre de l'Intérieur, de l'Outre-mer, des Collectivités territoriales et de l'Immigration*, C-179/11, 27 September 2012, para 56.

63. In CJEU, *Cimade* C-179/11, the Court found that the right to human dignity is also applicable in terms of Dublin Regulation procedures. In *Moussa Abdida*, C-562/13, a case which concerned the Returns Directive, the CJEU stated at paragraph 42 that 'that the provisions of Directive 2008/115 are to be interpreted, as stated in recital 2 thereto, with full respect for the fundamental rights and dignity of the persons concerned'.

64. CJEU, *N. S. (C 411/10) v. Secretary of State for the Home Department and M. E. (C 493/10) and others v. Refugee Applications Commissioner, Minister for Justice, Equality and Law Reform*, C-411/10 and C-493/10, 21 December 2011 para 94.

65. This is in terms of human dignity intrinsic in Article 3, see for instance ECtHR, *MS v UK*, 3 May 2012, para 39 and 44.

66. In *Riad and Idiab v. Belgium*, the ECtHR found that once a State has decided to deprive an applicant of their liberty, there was a duty on the State to ensure that the applicant was detained in conditions that were compatible with respect for human dignity. 'It could not merely expect the applicants themselves to take the initiative in approaching the centre in order to provide for their essential needs'. ECtHR, *Riad and Idiab v. Belgium*; Applications nos. 29787/03 and 29810/03; ECHR, 24 January 2008, para 103.

67. CJEU, Case C-79/13, *Federaal agentschap voor de opvang van asielzoekers v Saciri*, 24 February 2014 para 40.

68. M. Craven, *The International Covenant on Economic, Social and Cultural Rights: A Perspective on its Development* (Oxford: Oxford University Press, 1995) p301. See also, Jeff King, *An Activist's Manual On The International Covenant on Economic, Social and Cultural Rights*, March 2003. In addition, one of the recommendations of the Commissioner for Human Rights of the Council of Europe on the implementation of the right to housing, provided that "the requirement of dignity in housing means that even temporary shelters must fulfil the demands for safety, health and hygiene, including basic amenities, i.e. clean water, sufficient lighting and heating. The basic requirements of temporary housing include also security of the immediate surroundings. Nevertheless, temporary housing need not be subject to the same requirements of privacy, family life and suitability as are required from more permanent forms of standard housing, once the minimum requirements are met." *Recommendation of the Commissioner for Human Rights of the Council of Europe on the implementation of the right to housing*, 30 June 2009, document ComDH(2009)5.

Selected National Courts assessment of the right to human dignity

Given the fact there is limited case law from the CJEU and the ECtHR on what standards the right to human dignity can place on material reception conditions, it is worth noting two leading national cases on this issue. In a German case, the German Constitutional Court stated, 'if persons do not have the necessary material resources to ensure a dignified existence... the state is required, within its mission to protect human dignity... to ensure that the material conditions for the needy are available'. The German Constitutional court went on to give some indications as to what benefits would need to be given to ensure a dignified existence. 'It guarantees the entire minimum level of subsistence through a uniform fundamental rights which covers both the physical existence of a human being i.e. food, clothing, household items, shelter, heating sanitation and health, and the opportunity to maintain interpersonal relationships and a minimum level of participation in social, cultural and political life, since a human being as a person necessarily exists in human relationships'.⁶⁹ This minimum standard was based on German standards of living.

In the UK case, *Refugee Action v Secretary of State for the Home Department*,⁷⁰ the Court ruled that the level of financial support for those who apply for international protection unlawfully excluded certain basic needs of asylum seekers. The level of financial support now needs to be reconsidered in accordance with the guidance contained in the judgment. Some of the items that need to be included, when setting the level of support, are essential household goods such as; cleaning materials and disinfectant, special requirements of new mothers, babies and very young children and non-prescription medication. Moreover, the Court found that in order to maintain a minimum standard of dignity, there needs to be an ability to maintain interpersonal relationships and a minimum level of participation in social, religious and cultural life.⁷¹

4.2.3. The right to the integrity of the person

Article 3 (1) of the Charter provides that everyone has the right to respect for his or her physical and mental integrity. In *A.B.C AG Sharpston* considered the right to bodily integrity in terms of assessing facts and circumstances under Article 4 of the recast Qualification Directive and the credibility of an applicant's averred sexual orientation. She found that medical tests and explicit questions concerning an applicant's sexual activities violate an individual's integrity as guaranteed by Article 3 (1) of the Charter as well as violating the respect for private and family life.⁷² From this it may be deduced that there must be respect for an applicant's individual characteristics. Case law from other jurisdictions can also shed some light on its meaning, in particular when it is read with Article 1 of the Charter. In *Law v Canada (Minister of Employment and Immigration)*, the Court found that 'human dignity means that an individual or group feels self-respect and self-worth. It is concerned with psychical and psychological integrity and empowerment'. It is harmed by unfair treatment based on personal traits or circumstances which do not relate to individuals' needs.⁷³ In a UK case, *CL (Vietnam) v Secretary of State for the Home Department*, which concerned the deportation of child back to Vietnam, the Court held that a proper consideration of the child's private life should also consider the circumstances which would await that child upon removal.⁷⁴ 'Those circumstances arguably include in most cases the adequacy of reception and care arrangements for the child in the receiving country. If they were inadequate, there might be serious consequences for the child's physical and mental well-being'.⁷⁵ The Court considered that when a claim involves the right to respect for private life, it 'may require a consideration of the effect of removal on the individual's physical and mental integrity'.⁷⁶ This, arguably, is also relevant for the purposes of carrying out a transfer under the Dublin III Regulation.

Article 18 (4) of the recast Reception Conditions Directive provides that Member States shall take measures to prevent assault and gender-based violence, including sexual assault and harassment within the premises and accommodation centres. Should these procedures not be put in place, it could result in asylum seekers being at an increased risk of assault. There is a positive obligation on states to ensure that the right to human dignity is 'respected and protected', and as a result, in order to comply with Article 1 and 3 of the Charter (and indeed with the recast Reception Conditions Directive), these need to be meaningful measures that can work in practice.

There is also an obligation on Member States to take into consideration age and gender specific concerns and the situation of vulnerable persons when placing them in accommodation. In order to ensure their physical integrity, and to ensure that they are not unfairly treated, they should be placed in accommodation that takes into account their individual characteristics.

69. German Federal Constitutional Court in BVerfG, 1 BvL 10/10 1 BvL 2/11, 18 Jul 2012.

70. *Refugee Action, R (On the Application Of) v The Secretary of State for the Home Department*, [2014] EWHC 1033 (Admin), United Kingdom: High Court (England and Wales), 9 April 2014.

71. *ibid*, para 115.

72. CJEU, *A.B and C* Joined Cases C-148/13, C-149/13 and C-150/13, Opinion of Advocate General Sharpston, 17 July 2014.

73. *Law v Canada (Minister of Employment and Immigration)* [1999] ISCR, para 51.

74. UK - Court of Appeal, 10 December 2008, *CL (Vietnam) v Secretary of State for the Home Department* [2008] EWCA Civ 1551.

75. *Ibid*, para 21.

76. *Ibid*, para 20.

4.2.4. The prohibition of inhuman or degrading treatment or punishment

Article 4 of the Charter provides for the prohibition of torture and inhuman or degrading treatment or punishment and states that '[N]o one shall be subjected to torture or to inhuman or degrading treatment or punishment'. In accordance with the Explanations to the Charter, it has the same meaning and scope as Article 3 of the ECHR and as a result the following paragraphs will examine relevant ECtHR case law.

Member States, under Article 4 of the Charter, cannot place an applicant in conditions that would amount to inhuman or degrading treatment, even if it was not intentional. Where treatment humiliates or debases an individual, showing a lack of respect for, or diminishing, his or her human dignity, or arouses feelings of fear, anguish or inferiority capable of breaking an individual's moral and physical resistance, it may be characterised as degrading and also fall within the scope of Article 3.⁷⁷ If Member States provide material reception conditions that are wholly insufficient and put the applicant at risk of real poverty, it could, in principle raise issues under Article 4 of the Charter.⁷⁸

The ECtHR has consistently held that the lack of resources of a State will not normally justify the failure to fulfil their obligations under the Convention, and particularly when considering Article 3 ECHR issues.⁷⁹ In *Larioshina v Russia*, a case that was ultimately dismissed, the Court found that a complaint about a wholly insufficient pension and other social benefits may raise an issue under Article 3;⁸⁰ however the conditions were not met in this case. In *Budina v Russia*, the Court found that the State could be found responsible for treatment, where an applicant, in circumstances 'wholly dependent on State support, found herself faced with official indifference when a situation of serious deprivation or want was found to be incompatible with human dignity'.⁸¹ Under the Reception Conditions Directive and its recast, asylum seekers can work, but only after a certain amount of time.⁸² Therefore, it is foreseeable that if an asylum seeker is not provided with the essentials for living, if they are wholly lacking their own resources and if they are not permitted to work, there could be a breach of Article 3.

In *M.S.S. v Greece and Belgium* the ECtHR found both Belgium and Greece in violation of Article 3 due to the conditions that the applicant was subject to whilst living in Greece. They found that Belgium violated Article 3 due to the fact that they knowingly sent the applicant back to Greece where there was a risk he would face treatment that would be contrary to Article 3 ECHR. The applicant, M.S.S., lived in extreme poverty, and did not receive any subsistence or accommodation. He was homeless and lived in a park, had no access to sanitation facilities and relied on other organisations such as churches for food. The Court took into account that the applicant, being an asylum seeker, was particularly vulnerable due to everything he had been through during his migration and the traumatic experiences he was likely to have previously endured.⁸³ It also found that there is a positive obligation on Member States to provide asylum seekers with accommodation and decent material conditions due to the fact they implemented the Reception Conditions Directive.⁸⁴

Similarly, in *Tarakel v Switzerland*, the Court took into account the applicants' inherent vulnerability when considering the reception conditions the applicant could be subject to in Italy.⁸⁵ The ECtHR found a violation of Article 3 (prohibition of inhuman or degrading treatment) of the ECHR if the Swiss authorities were to send an Afghan couple and their six children back to Italy under the Dublin Regulation without having first obtained individual guarantees from the Italian authorities that the applicants would be taken charge of in a manner adapted to the age of the children and that the family would be kept together.⁸⁶

4.2.5. The right to private life

In accordance with the explanations of the Charter, Article 7 of the Charter corresponds with Article 8 of the ECHR. The ECtHR has made it clear that there is no specific right, under the right to private life, to be provided with a home⁸⁷ or to a

77. ECtHR, *Dikme v. Turkey*, Application no. 20869/92, 11 July 2000, para 91.

78. ECtHR, *Larioshina v. Russia*, Application no 56869/00, 23 April 2002.

79. See for example *Poltoratskiy v Ukraine*, Application no. 38812/97, 29 April 2003.

80. ECtHR, *Larioshina v Russia*, Application no. 56869/00.

81. ECtHR, *Budina v Russia*, Application no. 45603/05, 18 June 2009.

82. Article 11 (1) of the Reception Conditions Directive provides that Member States can decide on a time period before asylum seekers have access to the labour market. Article 11(2) provides that 'If a decision at first instance has not been taken within one year of the presentation of an application for asylum and this delay cannot be attributed to the applicant, Member States shall decide the conditions for granting access to the labour market for the applicant'. Article 15 (1) of the recast Reception Conditions Directive provides that 'Member States shall ensure that applicants have access to the labour market no later than 9 months from the date when the application for international protection was lodged if a first instance decision by the competent authority has not been taken and the delay cannot be attributed to the applicant'. Article 15 (2) provides that Member States shall decide the conditions for granting access to the labour market for the applicant, while ensuring that applicants have effective access to the labour market.

83. ECtHR, *M.S.S v Greece and Belgium*, Application no. 30696/09, ECtHR, 21 January 2011, paras 232 – 238.

84. *M.S.S. v Greece and Belgium*, ECtHR, Application no. 30696/09, 21 January 2011, para 250.

85. See Section 4.3 for a more detailed description of the reception conditions in Italy.

86. ECtHR *Tarakhel v Switzerland*, Application no. 29217/12, 4 November 2014, para 122.

87. ECtHR, *Chapman v UK*, Application no. 27238/95, 18 January 2001, para 99

certain standard of living.⁸⁸ However, in *M.S.S v Greece and Belgium*, the Court found that there is a positive obligation on Member States to provide asylum seekers with accommodation and decent material conditions due to the fact they implemented the Reception Conditions Directive.⁸⁹

In *Evans v UK*, the ECtHR held that ‘private life’ includes aspects of an individual’s physical and social identity, including the right to personal autonomy, personal development and to establish and develop relationships with other human beings and the outside world.⁹⁰ If an applicant is placed in an accommodation centre that has very restrictive rules, in very remote locations with limited means to move from there, it could engage the right to private life. It must be borne in mind however, that the right to private life can be limited if the interference is proportionate and has a legitimate aim.

4.2.6. The right to property

Article 17 (1) of the Charter provides that ‘everyone has the right to own, use, dispose of and bequeath his or her lawfully acquired possessions. No one may be deprived of his or her possessions, except in the public interest and in the cases and under the conditions provided for by law, subject to fair compensation being paid in good time for their loss. The use of property may be regulated by law in so far as is necessary for the general interest’. In accordance with the Explanations of the Charter, the provision is based on Article 1 of the Protocol to the ECHR.

In the admissibility decision of *Stec v United Kingdom* the ECtHR found that where an individual has an assertable right under domestic law to a welfare benefit, whether contributory or non-contributory, it falls within the scope of Article 1 of the Protocol to the ECHR.⁹¹ Arguably, this provision is also applicable to the financial allowances that are provided to asylum seekers as stipulated in Article 17 (5) of the recast Reception Conditions Directive and Article 13 (5) of the Reception Conditions Directive. Article 17 (5) of the recast Reception Conditions Directive provides that ‘where Member States provide material reception conditions in the form of financial allowances or vouchers, the amount thereof shall be determined on the basis of the level(s) established by the Member State concerned either by law or by the practice to ensure adequate standards of living for nationals’.

Article 1 of the Protocol to the ECHR (reflected in Article 17 of the Charter), when read in conjunction with Article 14 ECHR (Article 21 of the Charter), precludes refusing benefits on the ground of nationality.⁹² Article 1 of the Protocol alone does not give a right to receive a benefit of a particular amount. Nevertheless, when read with Article 1 (the right to dignity) and Article 21 (non-discrimination) of the Charter, granting a benefit at a level lower than what is necessary to ensure an ‘adequate standard of living for nationals’⁹³ could breach Article 17 of the Charter.⁹⁴ This can be an important safeguard for asylum seekers to ensure that their right to dignity is respected and they are provided with enough support to allow them to live in a dignified manner.

4.3. Reception practices in selected Member States

As explained in the Methodology, this section will only look at selected Member States’ reception conditions. Furthermore, it will only look at certain issues raised in the context of this chapter, principally difficulties in lodging registrations, the capacity and layout of Member States reception conditions, overcrowding, as well as the actual reception conditions in certain Member States. Due to the difficulties in many of the Member States to get comprehensive information, and given that in many States conditions differ depending on the region or accommodation centre and applicant is placed in, this should not be seen as a comprehensive overview, but, rather, a snapshot of some of the more prevalent issues that were highlighted in the different country reports.

88. ECtHR, *Muslim v Turkey*, Application no. 53566/99, 26 April 2005. See also, Thornton, Liam *Law, Dignity and Socio-Economic Rights, The case of Asylum Seekers in Europe*, p 15.

89. ECtHR, *M.S.S. v Greece and Belgium*, Application no. 30696/09, 21 January 2011, para 250.

90. ECtHR, *Evans v. The United Kingdom*, Application no. 6339/05, para 71.

91. ECtHR, *Stec and Others v the United Kingdom*, Application no. 65900/01, 12 April 2006, para 51. Article 1 of Protocol 1 provides that ‘Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law. The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.’

92. *Koua Poirrez v France*, Application no. 40892/98, ECtHR, 30 September 2003

93. Recast Reception Conditions Directive, Article 17 (5).

94. See also Françoise Tulkens, ‘Implementing the European Convention on Human Rights in times of economic crisis’ as part of the Seminar to mark the opening of the judicial year of the European Court of Human Rights, 25 January 2013.

4.3.1. Problems accessing reception conditions

4.3.1.1. When reception conditions are linked to the issuance of a residence card

In certain countries the actual receipt of material reception conditions is tied to the issuance of the residence card. Delays in issuing the card, where the delay is caused by the relevant administration itself, can raise questions as to whether the principle of good administration is being complied with. This also has a very serious consequence for the applicant, which can in certain instances leave the applicant destitute and homeless.

In **Greece**,⁹⁵ there are only two Regional Asylum Offices; the responsible offices for registering asylum applications which are not located in detention centres. One of the offices, the Regional Asylum Office in Attica, is currently in charge of registering the vast majority of asylum claims in Greece. Consequently, many people who want to make an asylum application are reportedly forced to wait in long queues and attempt to enter several times in order to have their application registered. Until they manage to lodge their application asylum seekers are deprived of access to medical services and any other reception services.

An additional delay is imposed on those presenting 'subsequent' applications. It must be noted that the term 'subsequent' can be misleading. In Greece, a new Asylum Service has replaced the old asylum system operated by the Greek police, due to significant shortcomings in the old examination procedure. For those whose first application was refused under the old procedure, they must now lodge a 'subsequent' application via the new Asylum Service, even though this is, in reality, the first effective opportunity to present a claim for asylum. For such applicants, even once they overcome the queues pre-registration, an asylum seeker's card is initially withheld pending transmission of the old file from the formerly competent police authority. This initial withholding period can reportedly exceed 5 months, during which the subsequent applicant has no rights to material reception.

In **Cyprus**,⁹⁶ where asylum seekers cannot be provided with accommodation and other reception conditions in kind by the Asylum Service, they must apply for material reception conditions from Welfare Services. Such an application can only be made once an application for international protection has been submitted. However, the document confirming the submission of an application for international protection can reportedly take 3-10 days to be provided to the applicant. In addition the Welfare Services reportedly often require the applicant to submit their 'alien registration number', which is not included in the initial confirmation and only issued a few weeks after the application for asylum is submitted. Even once an application for material reception conditions is submitted, the average processing time is reportedly between 1 and 3 months.

In **Bulgaria**,⁹⁷ asylum applicants are given registration cards by the State Agency for Refugees (SAR), which in turn provide access to shelter, subsistence, health insurance, access to healthcare, psychological support and education. However, due to a lack of capacity and the influx of asylum applicants since October 2013, the SAR switched to issuing so-called 'notifications', instead of registration card. Such a notification contains instructions about when to re-appear before the SAR to obtain a registration card. The period between the date of issuing the notification and the date planned for registration presently exceeds 6 months, according to the April 2014 update to the Asylum Information Database Country Report on Bulgaria. During this waiting period asylum seekers do not have access to accommodation, medical assistance and other material reception.

In **Italy**, by law, access to reception conditions should be available from the moment an applicant applies for asylum. However, in practice, applicants may only access accommodation after the formal registration, the so-called "*verbalizzazione*". When asylum seekers apply for asylum at the Police Headquarters (when applications are made in-land rather than at the border), according to a report from 2011, the *verbalizzazione* can take weeks or even months to process and during this period asylum seekers can face obstacles in finding alternative temporary accommodation solutions. The waiting times between the registration of a claim and it being lodged differs from area to area and it also depends on the number of asylum applications. As a result of this delay, asylum seekers lacking economic resources are obliged to either resort to friends or to emergency facilities, or to sleep on the streets.⁹⁸ However, there have been some significant improvements. In 2014, asylum seekers rescued at sea have been transferred to emergency reception centres⁹⁹ regardless of the registration of their applications.¹⁰⁰ Moreover, the SPRAR system has been enlarged in order to respond to the

95. Greek Council for Refugees, *Communication from a NGO (Greek Council for Refugees) (28/04/2014) in the case of M.S.S. against Belgium and Greece (Application No. 30696/09) to the Committee of Ministers of the Council of Europe*, 28 April 2014, p.2-4, available at: <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2521234&SecMode=1&DocId=2138030&Usage=2>

96. Information based on responses to questionnaire by Cypriot experts.

97. Asylum Information Database, National country report Bulgaria pp.38-39.

98. For more information see the report "Il Diritto alla Protezione: la Protezione internazionale in Italia: quale futuro?" (The Right to Protection: International protection in Italy: what future?) edited by ASGI in partnership with AICCRE, Caritas Italiana, CESPI, Consorzio Communitas onlus and funded by the Ministry Interior through the European Refugee Fund, June 2011.

99. Emergency reception centres (the so called CAS: extraordinary and temporary structures) are those structures established on the basis of an agreement between Prefectures and non governmental entities to face the growing number of arrivals.

100. In this context, it should be noted that asylum seekers arriving by sea are immediately transferred to reception facilities, thus they do not encounter delays. On the other hand, as said above, asylum seekers presenting their application after they enter the national territory may have access to reception after a certain time.

growing number of asylum seekers, and additional reception facilities have been opened. The Ministry of Interior, through its decrees of July and September 2013,¹⁰¹ foresaw the creation of more reception places between 2014 and 2016 in the SPRAR System.¹⁰² In October 2014, around 19,900 places are made available within the SPRAR system¹⁰³, which in early 2015 reached 21,000 places. A further increase to 40,000 places has been announced but financial coverage is not yet fully determined.

4.3.1.2. The provision of information to applicants for international protection on their rights and obligations with regard to reception conditions

Member States are under an obligation to provide information to applicants, within a reasonable time not exceeding 15 days, after they have lodged their application for international protection, of at least any established benefits and of the obligations with which they must comply relating to reception conditions, as well as with information on organisations that provide specific legal assistance and organisations that might be able to help, or inform, them concerning the available reception conditions, including health care.¹⁰⁴

According to the recast, this information should be supplied in writing in a language that the applicant understands or is reasonably supposed to understand, and where appropriate, this information may also be supplied orally.¹⁰⁵

From the country reports, it became apparent that in many Member States insufficient information was provided, or information was provided in a language that was not understood by the applicant for international protection, which can have serious consequences for the applicant. In other instances, no information was provided at all. Proper information is required in order to ensure that applicants have effective access to reception conditions and are not penalised for non-compliance with rules applicants didn't know existed. It is also necessary to ensure proper access to legal assistance and information so that their application for international protection is properly and comprehensively completed.

In **Austria**, information with regard to an applicant's reception entitlements and obligations are given in the initial reception centre, with more detailed information being provided in the actual reception centres. Asylum seekers living in flats need to attend the office of the social advice organisations, and one social worker is responsible for giving information to 170 asylum seekers in certain regions.¹⁰⁶ In **Germany**, in the initial reception centre, applicants are given basic information on where and when the asylum seeker can receive assistance, but, in general, asylum seekers are expected to contact the social services in the reception centres in order to find out more detailed information on reception conditions.¹⁰⁷ In **Bulgaria**, in practice, this information was not provided, particularly when there was an influx of asylum seekers within the 15 day time limit, and many had to wait a considerable period of time before this information was provided.¹⁰⁸ In **Cyprus**, in practice, no specific information is provided on an applicant's rights and obligations to reception conditions, the only information provided is general information on the asylum procedure, and due to a number of practical obstacles, this is not being provided for at present.¹⁰⁹ In **Greece**, according to Article 3 of the Presidential Decree 220/07, the authorities competent to receive and examine an application for asylum must inform the applicant immediately and in any case within 15 calendar days, providing them with information in a language that they understand.¹¹⁰ However, in practice these leaflets are rarely provided and do not include the necessary information.¹¹¹

4.3.2. Actual material reception conditions in selected Member States

One of the main aims of the Reception Conditions Directive and its recast is to provide a dignified standard of living for those in need of international protection. The recast Reception Directive aims to ensure 'adequate and comparable reception conditions throughout the EU'. Despite this, conditions vary rather dramatically between States. This, coupled with a lengthy asylum procedure and insufficient reception capacity in many Member States, results in a failure to provide a dignified standard of living. Under the Reception Conditions Directive and its recast, material reception conditions include accommodation, food, clothing and a daily allowance. The recast Directive requires States to provide material reception conditions in the form of vouchers or financial allowances on the basis of the levels established either by law or practice to ensure adequate standards of living for nationals. Less favourable conditions can be provided where it is

101. Ministry of Interior Decree n. 9/2013 of the 30 July 2013, and Decree of 17th September 2013 adopted by the Ministry of Interior (Department of civil liberties and Immigration).

102. Ministry of Interior Decree n. 9/2013 of the 30 July 2013, and Decree of 17th September 2013 adopted by the Ministry of Interior (Department of civil liberties and Immigration).

103. Cfr. ANCI/Cittalia, SPRAR, Caritas, Migrantes, Rapporto sulla Protezione Internazionale in Italia 2014, page 77. This information has been integrated orally by SPRAR on 29th December 2014

104. Article 5 Reception Conditions Directive, and Article 5 and recast Reception Conditions Directive.

105. Recast Reception Conditions Directive Article 5 (2).

106. Asylum Information Database, National country report Austria, pp. 60 -61.

107. Asylum Information Database, National country report Germany, p. 63.

108. Asylum Information Database, National country report Bulgaria, p.45.

109. Asylum Information Database, National country report Cyprus.

110. Asylum Information Database, National country report Greece p.70.

111. Asylum Information Database, National country report Greece, p.70.

given in kind.

This section will examine reception capacity and overcrowding in selected Member States, what basic material conditions are provided as well as the sanitation facilities. It will also look at the availability of recreational activities as well as the food given to applicants for international protection. It will not examine the daily allowance provided to persons in need of international protection, as in most Member States there are many variables that determine the level of assistance granted, which made it very difficult to make any meaningful comparison and would not have taken into account the true situation in the Member State. This would however, benefit from further research.

4.3.2.1. Type of reception provided in selected Member States

In nearly all the Member States' reports, reception conditions varied widely, depending on the area or the actual centre. In many States the various types of accommodation offered, generally being reception centres, are run by a variety of actors, including governments, private companies and private security companies, NGO's as well as international organisations. There were numerous reports of overcrowding, although some incidents were limited to specific centres, or information confirming overcrowding could only be gathered from specific centres.

Type of reception facility

Indicators/ Countries	Type of accommodation most frequently used in a regular procedure: (Reception Centre, Hotel/ Hostel, Emergency Shelter, Private housing, Other)	Type of accommodation most frequently used in an accelerated procedure: (Reception centre, Hotel/Hostel, Emergency shelter, Private housing, Other)
AT	Reception centre, Private housing	Reception centre
BE	Reception centres and Private	Reception centre, other (EU citizens and persons waiting for an admissibility decision (both accelerated procedures) are not entitled to any reception accommodation)
BG	Reception centre	Reception centre
CY	Private housing	Private housing
DE	Reception centre	Reception centre
FR	Reception centre	Emergency shelter
GR	Hotel/hostel	Hotel/hostel
HU	Reception centre	N/A
IE	Hotel/hostel	Hotel/hostel
IT	Reception centres, camps a and emergency centres	Not applicable
MT	Other	Other
NL	Reception centre	Reception centre
PL	Reception centre	Reception centre
SE		
UK	Reception centres and Private	Reception centres and Private
SK	Reception centre	Reception centre
RO	Reception centre	Reception centre

Type of reception facility

In certain Member States the type of accommodation provided can vary depending on what stage the applicant is at in the procedure. This is the case in **Belgium**,¹¹² **France**,¹¹³ **Italy** and **Germany**.¹¹⁴ In **Germany**, asylum seekers have to be accommodated in initial reception centres for a period of up to three months. After this initial period, as per Section 53 of the Asylum Procedures Act, asylum seekers, as a rule, should be housed in collective accommodation. However, in practice, this varies widely between Federal States and also between municipalities; in some regions or towns persons applying for international protection are staying in their own apartments.¹¹⁵

In **Italy**, a reception request is transmitted by the Questura to the Prefecture (local governmental office), who is also in charge of finding a place for the asylum seekers in reception centres.¹¹⁶ The Prefecture consults the SPRAR (System of protection for asylum seekers and refugees) to verify availability in its structures.¹¹⁷ If there is no place in the SPRAR system, asylum seekers can be referred to CARAs¹¹⁸ (reception centres for asylum seekers) under the responsibility of the Prefectures.

There are five main types of reception centres and these can be described as follows:

- Emergency accommodation, which is generally used for persons who have been rescued at sea through the Mare Nostrum operation;
- CDAs and CPSAs. These are used to house applicants when they first lodge their asylum claim and generally stay in these centres for between one to three months. However, some applicants stay in the CDAs for the duration of their asylum claim, particularly when they are located within a CARA (reception centres for asylum seekers);
- SPRAR's (System of protection for asylum seekers and refugees)¹¹⁹ The SPRAR, established in 2002,¹²⁰ is a publicly funded network of local authorities and non-profit organisations which accommodates asylum seekers, refugees and other beneficiaries of international protection.
- The other main type of accommodation is CARAs (reception centres for asylum seekers)¹²¹ which were established in 2008 and replaced previous identification centres.¹²² Applicants can be accommodated in CARAs in some specific circumstances.¹²³

Applicants who do not have travel or identity documents, or who have false or counterfeited documents, are only supposed to stay in CARAs for identification reasons, but due to the lack of accommodation places in SPRAR centres, or due to turnover difficulties, many applicants have to stay in a CARA for the duration of their asylum claim.¹²⁴ Applicants who stay in CARAs on the basis of the other grounds provided by law can be accommodated until the end of the procedure that, however, can last up to one year.

Reports from December 2012 identified 'chronic deficiencies' in the reception system, and recognised that there were thousands of people on waiting lists for a place in a SPRAR accommodation centre.¹²⁵ However, there have been significant changes to the reception centre in Italy. The Ministry of Interior, through its decrees of July and September 2013,¹²⁶ foresaw the creation of more reception places between 2014 and 2016 in the SPRAR System and confirmed that capacity of the SPRAR System will be enhanced to up to 20,000 places during this time period.¹²⁷ At present, around 21,000 places are made available within the SPRAR system.¹²⁸ Moreover, to manage the numbers arriving by sea, the

112. Asylum Information Database, National country report Belgium p. 61.

113. Quoted in National Assembly, *Rapport d'information sur l'évaluation de la politique d'accueil des demandeurs d'asile (Information report on the evaluation of the reception conditions offered to asylum seekers)*, Jeanine Dubié and Arnaud Richard, 10 April 2014.

114. For an overview of accommodation policies in the Federal States (as at the beginning of 2011), cf. Die Landesflüchtlingsräte und Pro Asyl (eds.), *AusgeLagert, Zur Unterbringung von Flüchtlingen in Deutschland*, ("DeCamped, on accommodation of refugees in Germany"), Sonderheft der Flüchtlingsräte (Special issue of refugee councils' newsletters), 2011, pp. 54-70.

115. Ibid.

116. Art. 6(2) of the Legislative Decree No. 140/2005.

117. Art. 5(2) of the Reception Decree No. 140/2005.

118. Art. 20 of the Legislative Decree No. 25/2008.

119. Art. 5 (2) of the Reception Decree No. 140/2005.

120. Law 189/2002 concerning amendments on immigration and asylum.

121. Art. 20 of the Legislative Decree No. 25/2008.

122. See Legislative Decree No. 25/2008.

123. These include: a) if they do not have travel or identity documents or if they have false or counterfeited documents; b) if the asylum request has been lodged after the asylum seeker has been stopped for having escaped or attempted to escape the border controls or soon after; or c) if they present their asylum request after being stopped for irregular stay in the Italian territory. See also Asylum Information Database, Italy, p. 44.

124. Italy country report p. 44.

125. See Third Party Intervention of the Aire Centre, ECRE and Amnesty International in ECtHR, *Tarakhel v Switzerland*, Application no. 29217/12, *Note on country material concerning Italy*, p. 5.

126. Ministry of Interior Decree n. 9/2013 of the 30 July 2013, and Decree of 17th September 2013 adopted by the Ministry of Interior (Department of civil liberties and Immigration).

127. Ministry of Interior Decree n. 9/2013 of the 30 July 2013, and Decree of 17th September 2013 adopted by the Ministry of Interior (Department of civil liberties and Immigration).

128. Cfr. ANCI/Cittalia, SPRAR, Caritas, Migrantes, *Rapporto sulla Protezione Internazionale in Italia 2014*, page 77. This information has been integrated orally by SPRAR on 29th December 2014.

Italian Ministry of Interior has increased the funds partially allocated to the accommodation system¹²⁹. With specific regard to the increased funds for reception conditions, Law Decree no. 119/2014¹³⁰ established an additional 50.8 million euros to the National Funds for policies and services of asylum, aiming at enlarging the SPRAR system and creating a new provisional fund, allocating 62.7 million euros to the exceptional migratory flows to Italy (including funds for return measures).

Since the beginning of 2014, 156,362 migrants were rescued at sea in the framework of the “Mare Nostrum” operation.¹³¹ Given the increase, the Italian authorities issued a Circular requesting local Prefectures to find reception places.¹³² Further instructions have been issued by the Ministry of interior in June 2014¹³³ requesting local Prefectures to provide additional places in reception facilities. Each Region has to receive a share of migrants identified at a centralized level, while the governance of the system is carried out at a Regional level. As of the end of December 2014, such centres host around 35,000.

In **Belgium**¹³⁴ the law provides that accommodation should be adapted to the individual’s situation, but in practice places are generally assigned depending on availability.¹³⁵

In **Malta**, a major practical obstacle for applicants for international protection accessing material reception conditions is that the vast majority are detained in closed centres, which generally do not meet the appropriate standards set out under the recast Reception Conditions Directive.¹³⁶ Applicants can only enter an open centre if: it is confirmed they are unaccompanied children below the age of 18; if, after an assessment by the Welfare of Asylum-seekers, it is confirmed that they are vulnerable adults; or if the applicant has been in the asylum procedure for more than 12 months.¹³⁷

In **Poland**, the main form of accommodation is reception centres. Conditions often vary between centres that are managed either by the migration authority or a private contractor.¹³⁸

In **Ireland** applicants basic needs are provided through a system known as direct provision, to which there is no statutory basis.¹³⁹ The majority of the properties are buildings which had a different initial purpose, i.e. former hotels, guesthouses, hostels, former convents/nursing homes, and, in some instances, a holiday camp and a mobile home site.¹⁴⁰

In **the UK**, most applicants for international protection are placed in an initial reception centre, which generally hold 200 people, although short-term bed and breakfast use has become more frequent, particularly when the centres become over crowded.¹⁴¹ Generally, asylum seekers stay in such centres for 19 days but in some centres this can be extended to three weeks. After a period in the initial reception centres, if the applicant qualifies for support, they are generally moved into smaller units, mainly flats or shared housing. Since the beginning of 2012, all accommodation for asylum seekers is managed by large private companies under contract to the Home Office; and in four of the six regions sub-contracted to local companies.

129. Art. 1(2) of the Legislative Decree n. 120 of the 15 October 2013 on Urgent Measures on the rebalances of the public finances and regarding migration.

130. Available at: <http://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legge:2014;119#cap1>

131. Figures of migrants rescued from the 1st January to the 31st October available on the Italian Navy website: <http://www.marina.difesa.it/attivita/operativa/Documents/Dati%20statistici%20Mare%20Nostrum.pdf> See also: UNHCR, Briefing Notes “Mediterranean crossings rise in first months of 2014 – many fleeing war and persecution”, 11 April 2014.

132. Circular of the Ministry of Interior, 8 January 2014 and subsequent circular of 19 March 2014.

133. http://anci.lombardia.it/xnews/apl/_private/cli/STRATEG91Q9ZXXG/att/CIRCOLARE%20AFFLUSSO%20CITTADINI%20STRANIERI.pdf

134. Asylum Information Database, National country report Belgium, p. 60.

135. Articles 11, 22, 28 and 36 Reception Act.

136. See Human Rights Watch, ‘Boat Ride to Detention’, 2012 and Asylum Information Database, Malta, p. 39.

137. Asylum Information Database, National country report Malta, p. 40.

138. Asylum Information Database, National country report Poland, p. 40.

139. Asylum Information Database, National country report Ireland, p. 46.

140. Asylum Information Database, National country report Ireland, p. 50.

141. Asylum Information Database, National country report The United Kingdom, pp. 55-56.

4.3.2.2. Overcrowding in the reception facilities in selected Member States

Indicators/ Countries	AT	BE	BG	CY	DE	FR	GR	HU	IE	IT	MT	NL	PL	SE	UK	SK	RO
Are there instances of asylum seekers not having access to reception accommodation because of shortage of places? (Yes/No)	N	N	Y	Y	Y	Y	Y	N	N	Y	N	N	N	N	Y	N	N

Overcrowding was reported as an issue in many Member States. In **Austria**,¹⁴² there were reports of overcrowding in one of the centres. In **Belgium**,¹⁴³ there was a serious accommodation crisis between 2009 and the first half of 2012, which resulted in approximately 12,000 people being rendered homeless. As a result of this crisis Belgium has taken steps to provide more accommodation places and to put in place emergency measures to prevent such a re-occurrence. To date, these steps have not yet been implemented, exposing the country to a shortfall of accommodation places in the future. By the end of 2013 there were 21,000 accommodation places, which have since been reduced to 18,000. The aim is to reduce places to 16,000 places with 2,000 buffer places.¹⁴⁴ In **Cyprus**, before the recent expansion (October 2014) of the reception centre, which can now accommodate 400 people,¹⁴⁵ there were reports of overcrowding, but the majority of asylum seekers live in private accommodation.¹⁴⁶ In **Germany**, overcrowding was reported in initial reception centres.¹⁴⁷ In some centres, mobile units (housing containers) were used for temporary housing. The rise in numbers of asylum applications thus proved to be a challenge both for the Federal States' centres and for many municipalities. In 2012 and 2013 Federal States and municipalities responded to the rise in numbers by increasingly commissioning non-state actors (welfare organisations as well as companies) to provide accommodation for asylum seekers. In addition, housing containers and individual apartments were increasingly used.¹⁴⁸ In **Ireland** the Reception and Integration Agency (RIA) state that all accommodation centres operate in compliance with the 1966 Housing Act, which includes a definition of overcrowding.¹⁴⁹ In a report from the Irish Refugee Council (IRC), where two focus groups were interviewed, residents reported that overcrowding was one of the main problems, with families often living in one room, or single parent families required to share a room with another family. Overcrowding of rooms was recorded as being prevalent with whole families – adults and children of varying ages – sharing one bedroom. The report stated that this could lead to familial disputes and increased incidents of abuse, as well as the spreading of childhood illnesses.

In **Bulgaria**, in 2013 and early 2014 there was severe overcrowding in the centres where asylum seekers were living in the common areas of the facilities.¹⁵⁰ The reception centres in Vrazhdebna and Voenna Rampa were mostly hosting families with children who have been living for months in large classroom-like halls, divided by pieces of sheets into smaller compartments which provide little, if any, privacy. Given the fact that renovation and construction works were ongoing, certain parts of the building were off-limits, leading to severe overcrowding. This was also partially due to the fact that recognized refugees continued to stay in reception centres in the absence of any meaningful integration support. The containers in Harmanli are also overcrowded, hosting entire families, resulting, in some instances, in as many as seven people having to share a room of approximately 10m².¹⁵¹

In **Italy**, CDA, CPSA and CARA's are often overcrowded. If there is no place in both SPRAR structures and CARA centres, the Prefecture should, by law, grant a financial allowance,¹⁵² however, in practice, this provision has never been applied. Even if no space is available in the SPRAR System or the CARA centres, the Prefecture sends asylum seekers to these structures, thereby exceeding the maximum reception capacity of these facilities; the consequence being overcrowding and a deterioration of the material conditions. In the CARA in Mineo (Sicily), there are several housing units, which host thousands of asylum seekers. The official capacity of the Mineo Cara is 3,000 persons, but according to the data of the

142. Asylum Information Database, National country report Austria, p. 56.

143. Asylum Information Database, National country report Belgium, pp. 59 -60.

144. A law of 8 May 2013 introduced the legal possibility to oblige all PCSW's to create a local reception initiative (LRI) in case of an emergency and face financial sanctions in case they do not comply with such obligations; Article 57ter/1 of the Organic Law of 8 July 1976 on the PCSW's. Asylum Information Database, National country report Belgium, p. 60.

145. See the official announcement by the Press and Information Office regarding the expansion of the Refugee Reception Center in Kofinou ([Here.](#))

146. Asylum Information Database, National country report Cyprus, p. 32.

147. Once an asylum seeker has filed their application, they are obliged to stay in a centre for up to three months (Section 47 of the Asylum Procedures Act).

148. Overview of the regulations of seven Federal States in Andreas Müller: *The Organisation of Reception Facilities for Asylum Seekers in Germany*. Focussed Study of the German National Contact Point for the European Migration Network (EMN), Working Paper 55, p. 29-31 and Asylum Information Database, National country report Germany, p. 59.

149. The Act provides that there must be 'no less than 400 cubic feet (about 11m³) per person in each room and that a house shall be deemed to be overcrowded when [the number of persons] are such that any two of those persons, being persons of ten years of age or more of the opposite sexes and not being persons living together as husband and wife, must sleep in the same room'. Ireland country report p51 and Corona Joyce and Emma Quinn, The Economic and Social Research Institute, 'The Organisation of Reception Facilities for Asylum Seekers', February 2014.

150. Asylum Information Database, National country report Bulgaria, p. 41.

151. Amnesty International, *Suspension of returns of asylum-seekers to Bulgaria must continue*, 31 March 2014, pp. 6 -7.

152. Art. 6 (7) of the legislative Decree 140/2005.

Ministry of Interior, in March 2014 there were 3,750 asylum seekers living in this centre, which makes it one of the biggest reception centres in the EU.¹⁵³ As of December 2014 there were nearly 3,500 applicants living in the centre. However, as mentioned in the section above, (type of reception provided in selected Member States) additional places have been made available in the Italian reception system.¹⁵⁴

In **Malta**, overcrowding becomes an issue at various periods throughout the year, particularly when there are increased releases from detention and when residents who are supposed to leave the open centre fail to do so.¹⁵⁵

In **the Netherlands**, in the first eight months of 2014, there was an unprecedented rise in the number of applications. Approximately 6,000 people from Syria applied for asylum, and in April and May of 2014 there was a big increase in the numbers of Eritreans claiming asylum. As a result of the unexpected increase in numbers there was a shortage of reception facilities. Numerous emergency venues were opened to host the applicants, which included sporting venues, party venues and former prisons. Concerns were raised as to whether these facilities met the requirements as set down in the Reception Conditions Directive; however, the Government's view, considering the unprecedented increase in applications, is that they had little choice in the matter.¹⁵⁶

In **Hungary**, for the first half of 2014, overcrowding was not a significant issue, but in the second half of the year, particularly in the autumn months, there were between 300-400 new asylum seekers arriving per day. In November alone more than 9,000 asylum applications were registered, reception centres remain overcrowded; people sleep on mattresses in sport halls and dining rooms. However, in the first asylum procedure, nobody, as of yet, is left on the streets.¹⁵⁷

4.3.2.3. Basic material reception conditions

It is difficult to measure the quality of basic material reception conditions. Consequently, the country experts were asked a variety of questions about the cleanliness of the centres, the sanitation facilities, the nutritional value of the food, the sleeping conditions and, more generally, the conditions of the reception facilities. The questions were based on what the ECtHR and national courts have taken into account when examining the quality of state-provided accommodation. The responses once again varied, depending on the centre, or type of centre, involved. Similarly, in some instances the district of the centre was a factor, and in others, information could only be provided for certain centres for which that access was provided, or where information was available. As a result these findings should not be seen as providing a holistic view of the material conditions in the Member States mentioned.

In **Bulgaria**, in the Voenna Rampa centre, some residents were staying in a former gymnasium that lacked heating and electricity. The residents extended cables from the nearby hall, thus providing themselves with improvised lighting.¹⁵⁸ The sanitation facilities in Voenna Rampa and Vrazhdebna remain inadequate. As of March 2014, there were approximately 600 residents in Voenna Rampa with only six showers and 12 toilets, although present reconstruction plans include additional sanitation facilities.¹⁵⁹

In **Austria**,¹⁶⁰ the Ombudsman issued a report highlighting the poor and unhealthy conditions in two of the reception centres in Carinthia and Burgenland. Following the report, a working group was established to define appropriate standards in reception centres, resulting in some of the centres being closed down.

In **Germany**, there are no set standards in national law with regard to the accommodation standards for asylum seekers staying in initial accommodation centres, but Federal States often draw up 'sanitation plans' for communal living spaces, based on other centres, such as residential homes or homeless shelters.¹⁶¹ The accommodation centres for people living in collective accommodation have often been referred to as 'camps'.¹⁶² If asylum seekers stay in collective accommodation for the duration of their asylum procedures (as generally prescribed by law) it can take several years. In addition, people whose asylum applications have been rejected are often obliged to stay in collective accommodation centres as long as their stay is "tolerated". It has been argued that a stay in collective accommodation that lasts several years corresponds with increased health risks, especially an increased risk of mental disorders.¹⁶³

153. Data provided by the Ministry of Interior to CIR on 19 March 2014, see also Asylum Information Database, Italy, p. 53.

154. See pp26 -27 for more information.

155. Asylum Information Database, National country report Malta, p. 41.

156. The ELENA Network, *Quarterly Legal Developments Update*, the Netherlands. Report with the author.

157. Updated information retrieved from the national country expert for Hungary.

158. Amnesty International, *Suspension of returns of asylum-seekers to Bulgaria must continue*, 31 March 2014, p. 7.

159. Ibid, p. 7.

160. Asylum Information Database, National country report Austria, p. 56.

161. Asylum Information Database, National country report Germany, p. 58.

162. For an overview of concerns cf. Die Landesflüchtlingsräte und Pro Asyl (eds.). *AusgeLagert, Zur Unterbringung von Flüchtlingen in Deutschland*, ("DeCamped, on accommodation of refugees in Germany"), Sonderheft der Flüchtlingsräte, (Special Issue of refugee councils' newsletters), 2011, pp. 4-7.

163. Asylum Information Database Germany, p. 59.

In **Ireland**, according to some residents, parents often had no control of the physical conditions of their sleeping room; with inadequate heating, poor insulation and general lack of cleanliness and safety reported.¹⁶⁴ In summer 2013, the then Ombudsman for Ireland, (now European Ombudsman) Emily O'Reilly, described living in direct provision as 'involving very little privacy, frequent overcrowding, no choice of diet, no facilities to have visitors, little scope for recreation or any meaningful activity and, not least, effectively no income. Enforced idleness and lack of engagement with wider society tend to be a feature of the lives of asylum seekers in Ireland'.¹⁶⁵

In **Italy**, the standards between CARAs and SPRARs differ considerably. Generally CARAs are often overcrowded. Serious concerns have been raised about the conditions within the centres. It is difficult to generalise with regard to the actual conditions in the CARAs as they vary considerably between centres. In one of the centres - the CARA of Crotona (in Calabria, in the south-east of the country) - 1,236 asylum seekers live in two different facilities.¹⁶⁶ Approximately 700 persons are hosted in prefabricated housing units that have toilets but no kitchens. Approximately 500 live in containers, with 6 - 8 persons in each container, in which there are no bathroom facilities (the toilets are located outside the containers). It is reported that, in the future, these containers will be replaced by flats.¹⁶⁷ In the Mineo CARA near Catania, it is reported that applicants for international protection 'sleep on sponge mattresses without sheets, toilets do not work properly and there is no shower inside the housing units'.¹⁶⁸ A number of protests have taken place in various CARAs against the conditions of the centres and the inadequacy of the food.¹⁶⁹

According to a report from October 2013, due to the shortage of family reception places in big cities, families may sometimes be separated. For instance, in the municipality of Milan, families can be separated, with mothers and children in one centre and fathers in another.¹⁷⁰ In Rome, in certain instances, families could also be housed separately, although families with children are generally housed together.

In *Tarakhel v. Switzerland*, the ECtHR found that there would be a violation of Article 3 of the Convention if the Swiss authorities were to send the applicants back to Italy under the Dublin Regulation without having first obtained individual guarantees, from the Italian authorities, that the applicants would be taken charge of in a manner adapted to the age of the children and that the family would be kept together. The case concerned the refusal of the Swiss authorities to examine the asylum application of an Afghan couple and their 6 children and the decision to send them back to Italy.¹⁷¹ The Court stated that it cannot be dismissed as unfounded 'that a significant number of asylum seekers may be left without accommodation or accommodated in overcrowded facilities without any privacy, or even in insalubrious or violent conditions'.¹⁷²

In **Malta**, asylum seekers living in Open Centres experience difficulties in securing an adequate standard of living. The daily allowance provided is barely sufficient to provide for the most basic of needs, and the lack of access to social welfare support exacerbates these difficulties.¹⁷³ Given the large number of residents accommodated in each of the centres, (e.g. approx. 400 in the Marsa Open Centre, 500 in the Hangar site)¹⁷⁴ this inevitably results in severe hygiene and maintenance problems. The living conditions in the open centres, save for a few exceptions, are extremely challenging. Low hygiene levels, severe over-crowding, lack of physical security, the remote location of most centres, the poor material structures and occasional infestation of rats are the main concerns expressed in relation to the open centres.¹⁷⁵ The Hal-Far Hangar Open Centre in Malta consists of an old building, with a second building for toilets, showers, a kitchen and a common recreational zone. The main building, now closed, is an old aircraft hangar that hosted several large tents in which families lived. Beside for this, there are also a number of containers. As part of a visit by the International Commission of Jurists to the hangar, the delegation saw conditions that were very unsanitary, with young children playing on the dirty ground. Rats also entered the hangar, and the surrounding buildings, particularly at night. The toilets were dirty and the floor was covered with sand.¹⁷⁶

In **Poland**, in some centres, there were reported problems with insects and many of the residents suffered from insect bites.¹⁷⁷ In **the UK**, in the initial housing centres, the showers are generally shared between men and women, some

164. Irish Refugee Council, 'State Sanctioned Child Poverty and Exclusion: The case of children in state accommodation for asylum seekers', 2012 and Asylum Information Database, National country report Ireland p. 52.

165. Asylum Information Database, National country report Ireland, p. 53.

166. This data was received by CIR from the Ministry of Interior on 29 December 2014.

167. Asylum Information Database, National country report Italy, pp. 52-53.

168. Attilio Occhipinti, 'Emergency at the CARA of Mineo', 19 April 2014 and see Asylum Information Database, National country report Italy, pp. 53-54.

169. Asylum Information Database, National country report Italy, p. 54.

170. Swiss Refugee Council, *Reception conditions in Italy: Report on the current situation of asylum seekers and beneficiaries of protection, in particular Dublin returnees*, October 2013, p. 51.

171. ECtHR *Tarakhel v Switzerland*, Application no. 29217/12, 4 November 2014.

172. Ibid, the court said that this possibility 'cannot be dismissed as unfounded', para 115.

173. Asylum Information Database, National country report Malta, p. 39.

174. These figures are valid as of the time of writing, (September 2014), it should be noted however that the numbers do fluctuate.

175. Asylum Information Database, National country report Malta, p. 41.

176. International Commission of Jurists, *Not here to stay: Report of the International Commission of Jurists on its visit to Malta on 26-30 September 2011*, May 2012, pp. 42-43.

177. Asylum Information Database, National country report Poland, p. 41.

of which are said to be dirty. There were also reports of women feeling unsafe.¹⁷⁸ Following accommodation in the initial housing centre, most applicants live in flats, or in shared housing, where basic furniture and cooking facilities are provided. Although there is a requirement for the sub-contractors to provide accommodation that is in good repair, there were some complaints in some of the accommodation provided that the housing was unsanitary and in need of repairs. Other problems reported were pest infestations, the lack of heating, the inability to lock the front door and the lack of basic amenities.¹⁷⁹

4.3.2.4. Quality indicators for reception facilities

Persons in need of international protection are often left waiting for lengthy periods before a decision is reached on their asylum application. The quality of life experienced by applicants can vary substantially, depending on the country, area, or type of accommodation provided. Evidently, quality of life is affected by overcrowding and the quality of the material reception conditions provided, but it is also affected by one's ability to access recreational and educational activities, particularly where there are restrictions on the right to work. In certain Member States asylum seekers were left destitute¹⁸⁰ for part of, or all of their asylum procedure; being a very serious issue that needs to be immediately addressed. Other factors that have proven very important to the quality of someone's life are whether they have the ability to cook their own meals and the quality of the food provided. Some of these activities will be reviewed below. The right to access the labour market and any restrictions thereto do not form part of this section.

Recreational activities

In **Cyprus**, in the main reception centre there are few recreational activities. The centre is located in a very sparse area of Cyprus, 25km from the nearest city, with very few bus connections.¹⁸¹ In **France**, a circular was issued in 2011 to staff working in CADA centres encouraging them to organise cultural activities to prevent boredom amongst the residents of the centre.¹⁸² In **Germany**, in some of the centres, it was reported that there was limited space for children and recreation activities, together with no separated spaces for children to do their homework.¹⁸³ In **Hungary**, events are organised by the social and community workers on an ad-hoc basis. Every facility has computers, a community room and a sports field, although only some have a playground. In one of the centres there is a small library.¹⁸⁴ In **Ireland** it was reported that children often had no privacy and had no access to a safe space for play; the spaces allocated were often dirty or not appropriate, with insufficient toys for the number of children using the area.¹⁸⁵ In **Malta**, the majority of centres do not offer any form of activities for residents, but applicants are free to leave as they please.¹⁸⁶ In **Poland**, Polish language courses are organised in all reception centres, except for one. Workshops are organised in the centres by NGOs, although it is dependent on their financing. Not all centres have a library and access to the internet (computer rooms exist in 4 centres). In the centre in Linin there is free internet access.¹⁸⁷

Cooking facilities

In **Austria**¹⁸⁸ asylum seekers are allowed to cook for themselves, a right that has proven to both contribute to their well-being and to reduce tensions in the centres. In **Cyprus**¹⁸⁹ and **France**¹⁹⁰ applicants can generally use the kitchen facilities; meals are provided by the centre. In **Germany**, in facilities in which food is provided, applicants for international protection sometimes cannot prepare their own food and/or no cooking facilities exist; and where the food is given in the form of pre-packed meals, the quality is often criticised.¹⁹¹ In **Ireland**, in all accommodation centres, residents receive all meals and cannot cook for themselves. In an article written by the national newspaper, the Irish Times, it was suggested that not allowing asylum seekers to cook for themselves was cruel and degrading.¹⁹² In May 2014, in a report issued by NASC, it was concluded that the food provided was not satisfactory and not suited to the cultural and multi-faith religious needs of asylum seekers living in Cork city, and, consequently, that the food system, in direct provision centres, has a

178. Asylum Information Database, National country report The UK, p. 56.

179. Asylum Information Database, National country report The UK, pp. 57-58.

180. Destitution in this context means lacking in any means and suffering from such severe poverty that the individual cannot provide for themselves, this also includes being homeless.

181. Asylum Information Database, National country report Cyprus, p. 33.

182. Asylum Information Database, National country report France, p.61.

183. Asylum Information Database, National country report Germany, p. 61.

184. Asylum Information Database, National country report Hungary, p. 40.

185. Asylum Information Database, National country report Ireland, p. 52.

186. Asylum Information Database, National country report Malta, p. 41.

187. Asylum Information Database, National country report Poland p. 41.

188. Asylum Information Database, National country report Austria, p. 57.

189. Asylum Information Database, National country report Cyprus, p. 33.

190. Asylum Information Database, National country report France, p. 61.

191. Asylum Information Database, National country report Germany, p. 61.

192. Irish Times, 'Stand up for the right to cook', 29 April 2014.

negative impact on those families and children who are residents of Directive Provision centres.¹⁹³

In **Italy** in CARAs, in general, asylum seekers are not allowed to cook. Meals are provided by an external catering facility in a common canteen. In some of the SPRAR centres, asylum seekers can cook for themselves.¹⁹⁴ In **Poland**, in one of the twelve centres, asylum seekers have to cook for themselves, whilst in the others, they are given their three main meals; although there is a kitchen in all centres should asylum seekers choose to use it, and have the resources to do so.¹⁹⁵ In **the UK**, when applicants are moved from the initial accommodation centre, they usually live in flats or shared accommodation, which enables applicants to cook for themselves.

4.3.3. Destitution during the asylum procedure

In **Bulgaria**, destitution is a serious problem for asylum seekers. Approximately half of registered asylum seekers live outside the reception centres.¹⁹⁶ Many, in an attempt to leave the detention centre, sign a waiver which states that they forfeit their entitlement to any social assistance; these waivers were largely solicited by the State Agency for Refugees, in contravention of Bulgarian law.¹⁹⁷ As a result of the prolonged period of detention the applicants provide a fictitious address. By signing the waiver many are left destitute and homeless.¹⁹⁸ Some applicants congregate around open centres and abandoned buildings nearby, one of which is known as the 'the Rutz', which is an open structure with no exterior walls, plumbing or electricity.¹⁹⁹

In **Cyprus**, when there are no vacancies in the reception centre; there is one reception centre which, as of October 2014, has been expanded and can now accommodate up to 400 people. The applicant can submit an application for material reception conditions with the Social Welfare Services. However, in order to submit the application for material assistance, a valid residential address must be provided, thus excluding homeless asylum seekers from accessing material assistance. In addition, the practical difficulties of obtaining certain requirements, such as a rental agreement, and the property's tax details, are not taken into consideration by Welfare Services during the application submission process.²⁰⁰ Additionally, asylum seekers are permanently denied access to material assistance by Social Welfare Services in those instances where they refuse to take up accommodation or accept the material reception conditions offered at the Reception Centre. This includes those vulnerable persons for whom the reception centre is either not suitable or may not adequately cover their needs, either due to the facilities itself or the fact that it is located in a remote area far from necessary services.²⁰¹

In **France** asylum seekers are regularly placed in temporary, emergency or regular accommodation. If the applicant did not succeed in getting access to a reception centre before lodging their appeal, their chances of being offered a place at the appeal stage are very slim.²⁰² If there is a shortage of places, asylum seekers often have to rely on night shelters or to live on the street.²⁰³ There is a significant shortage of accommodation places in regular accommodation centres (CADA). According to the Minister of Interior, on 30 June 2013, only 32% of applicants who should have been able to access the centre were able to be accommodated.²⁰⁴ As of 31 December 2013, there were 15,000 asylum seekers waiting to obtain a place in a CADA reception centre, with the average waiting time of one year.²⁰⁵ Asylum seekers subject to a Dublin transfer procedure are unable to receive accommodation in one of these centres.²⁰⁶ Those waiting to receive a place in the reception centre receive a temporary waiting allowance. Whilst there has been an increase in the use of emergency accommodation (there are between 20,000 - 25,000 places), this does not cover the amount of places needed, which leaves thousands seeking international protection destitute.²⁰⁷ In September 2013, asylum seekers protested in Besançon, in the east of France, due to the lack of housing for more than 100 asylum seekers, including pregnant women and more than 15 young children, sleeping in tents in a car park.²⁰⁸

193. Nasc, *What's Food Got To Do With It: Food Experiences of Asylum Seekers in Direct Provision* by Keelin Barry, Published by Nasc, the Irish Immigrant Support Centre.

194. Asylum Information Database, National country report Italy, pp. 54 -55.

195. Asylum Information Database, National country report Poland, p. 41.

196. Human Rights Watch, 'Containment Plan, Bulgaria's Pushbacks and Detention of Syrian and other Asylum Seekers and Migrants', April 2014, p. 61.

197. Law on Asylum and Refugees, Art. 29, Para 6

198. Human Rights Watch, 'Containment Plan, Bulgaria's Pushbacks and Detention of Syrian and other Asylum Seekers and Migrants', p. 61.

199. Ibid, p. 61.

200. Asylum Information Database, National country report Cyprus, p. 42.

201. Asylum Information Database, National country report Cyprus, p.42.

202. European migration network – French contact point, *The organisation of reception structures for asylum seekers in France*, September 2013.

203. Asylum Information Database, National country report France, p. 55.

204. Quoted in National Assembly, *Rapport d'information sur l'évaluation de la politique d'accueil des demandeurs d'asile (Information report on the evaluation of the reception conditions offered to asylum seekers)*, Jeanine Dubié and Arnaud Richard, 10 April 2014.

205. French National Report p54 and National Assembly, *Rapport d'information sur l'évaluation de la politique d'accueil des demandeurs d'asile (Information report on the evaluation of the reception conditions offered to asylum seekers)*, Jeanine Dubié and Arnaud Richard, 10 April 2014.

206. Asylum Information Database, National country report France, p. 55.

207. Presentation by France Terre d'Asile at ECRE's Annual General Conference, 15 – 17 October 2014.

208. France Bleu, *Manifestation des demandeurs d'asile à Besançon (Protest of asylum seekers in Besançon)*, 27 September 2013.

In **Greece**, as of 31 July 2014, there were 1,006 reception places/beds available for asylum seekers in Greece,²⁰⁹ whilst in 2013, 8,230 new asylum applications were lodged.²¹⁰ Destitution is a huge problem for applicants for international protection. As Nils Muižnieks, Commissioner for Human Rights of the Council of Europe, noted: “This situation leaves a large number of asylum seekers homeless and destitute and renders them particularly vulnerable to manifestations of intolerance and racist violence.”²¹¹ Racist hate crimes are on the rise at an alarming rate in Greece. The impunity of perpetrators, together with the police discouraging victims to file an official complaint leaves them without any support mechanisms.²¹² They are left homeless and at an increased risk of being subjected to xenophobic violence. UNHCR have described the lack of reception places as a “humanitarian crisis”.²¹³

In **Italy**, destitution is a problem for asylum seekers, including Dublin returnees to Italy. It has been reported that some Dublin returnees stay for a few days at Malpensa or Fiumicino airport, without accommodation, until some form of housing can be found for them.²¹⁴ Following this, they can avail themselves of a number of different reception centres, including CARAs and accommodation established under the European Refugee Fund (ERF); but only if there is space available. There are 11 centres for Dublin Returnees²¹⁵ that can accommodate 443 persons on the short/medium term, on a turnover basis.²¹⁶ It is reported that on some occasions there are no spaces available, which results in Dublin returnees sleeping on the streets. In *Tarakhel v Switzerland* the ECtHR found that ‘the possibility that a significant number of asylum seekers may be left without accommodation or accommodated in overcrowded facilities without any privacy, or even in insalubrious or violent conditions, cannot be dismissed as unfounded’.²¹⁷

Generally, applicants for international protection stay in first accommodation centres (CDAs and CPSAs) for between one to three months, depending on the length of the asylum procedure and the spaces that are in the SPRAR system. When applicants are placed in SPRAR and CARA accommodation centres, their stay is guaranteed for the entirety of the asylum procedure, including the appeal. However there are incidents of people having difficulty registering and lodging a claim at police headquarters. Some of these applicants then have difficulty finding accommodation and can be forced to live on the streets.²¹⁸ There are also applicants for international protection who are granted accommodation in another part of Italy but choose not to take it as they wish to remain in a big city.²¹⁹ According to an article in *Der Spiegel* from 2013, 4,000 asylum seekers and refugees were living on the streets of Rome.²²⁰

According to a report from October 2013, as a result of the lack of accommodation in **Italy**, many asylum seekers and beneficiaries of international protection live in squats or shanty towns in various cities.²²¹ The conditions in these squats are precarious, particularly for persons with special reception needs or those who are particularly vulnerable. In one slum, asylum seekers and other persons who cannot find accommodation have taken over a former university building called Salam Palace. As of October 2013, 800 people were living there, many of whom were applicants for international protection or beneficiaries of international protection. According to the OSAR report, violence is rife, particularly due to the volatile situation the inhabitants find themselves in. In particular as reported by Cittadini del Mondo in the interview released to OSAR in May 2013, ‘women (who live) in squats are often exposed to sexual violence... and (at times) to domestic violence’.²²² There is only one shower and toilet for 250 people, there is no heating and as a result many fires are lit inside the building, risking children burning their hands. There is only cold water available and in winter many people fall ill.²²³ Some children, now eight and nine years old, have lived there since birth.²²⁴ It should be noted that the slums and squats are generally concentrated in cities.

In response to the high level of destitution asylum seekers face, and the increased number of arrivals, the Ministry

209. Asylum Information Database, National country report Greece, p. 62.

210. UNHCR, Asylum Levels and Trends in Industrialized Countries, 2013, 21 March 2014, p.8 and p.22.

211. Council of Europe: Commissioner for Human Rights, *Report by Nils Muižnieks Commissioner for Human Rights of the Council of Europe following his visit to Greece from 28 January to 1 February 2013*, 16 April 2013, paras 138-139.

212. See for instance Human Rights Watch, *Hate on the Streets. Xenophobic Violence in Greece*, July 2012, p. 78-87.

213. UNHCR, *Contribution to the dialogue on migration and asylum*, May 2012. See also Asylum Information Database, Greece, p62

214. SFH-OSAR, ‘Reception Conditions in Italy’ October 2013 p. 14.

215. Seven of these centres are for vulnerable persons. There are three centres in Rome, three in Milan province of Milan, two in Venice, two in Bologna and one in Bari.

216. See Asylum Information Database, National country report Italy updated report p 56 See also See CIR, “Access to protection: a human right”, October 2013, p. 46; UNHCR, “*UNHCR Recommendations on important aspects of refugee protection in Italy*”, July 2013, p. 6. Information is also acquired by CIR operators in the field.

217. ECtHR *Tarakhel v Switzerland*, Application no. 29217/12, 4 November 2014, para. 115.

218. As evidenced by NGO’s in Italy.

219. As evidenced by NGO’s in Italy.

220. *Der Spiegel* 25/2013, Mogadischi in Apulien, p. 34.

221. According to the Swiss Refugee Council in their report on conditions in Italy in October 2013, ‘there are not enough places for women to meet demand. Single women returned to Italy under the Dublin Regulation are therefore also unlikely to find a place in accommodation’, p. 55.

222. Swiss Refugee Council, *Reception conditions in Italy: Report on the current situation of asylum seekers and beneficiaries of protection, in particular Dublin returnees*, October 2013, p. 55

223. *Ibid* pp. 38 -39.

224. Swiss Refugee Council, *Reception conditions in Italy: Report on the current situation of asylum seekers and beneficiaries of protection, in particular Dublin returnees*, October 2013, p. 53.

of Interior has stated that 20,000 extra accommodation places will be created between 2014 and 2016;²²⁵ and these places are being made available. Furthermore, the Italian authorities issued a Circular requesting local Prefectures to find reception places ('preferably not hotels') and signed an agreement with local entities and NGOs to manage the new centres.²²⁶ Further instructions were issued by the Ministry of interior in June 2014 requesting local Prefectures to provide additional places in reception facilities.²²⁷ Each Region has to receive a share of migrants identified at a centralized level, while the governance of the system is carried out at a Regional level. As of the end of December 2014, such centres hosted about 35,000 people.²²⁸

In 2014 over 156,362 migrants were rescued at sea in the framework of the "Mare Nostrum" operation, but not all persons rescued stayed in Italy.²²⁹

4.4. Conclusion

Applicants who apply for international protection are inherently vulnerable;²³⁰ they have often fled a situation, leaving behind their resources and valuables, and find themselves in a position where they are dependent on the country of asylum to provide for them. Member States have a specific obligation to provide applicants for international protection with reception conditions, as set down in the Reception Conditions Directive and its recast. These conditions, read in the light of the fundamental rights and principles found in the Charter must be of a sufficient quality and able to guarantee their subsistence.

An applicant should not be penalised as a result of the failure to issue a residence card, or the failure to inform the applicants of their rights and obligations when this is a result of the failure of the administration themselves. In both the Reception Conditions Directive and its recast, it stipulates that the standards for the reception of applicants need to provide for a dignified standard of living.²³¹ In order to ensure compliance with the right to good administration, and with the right to asylum, as guaranteed by Article 18 of the Charter, information needs to be offered to the applicant for international protection on their reception options and obligations, including health care and information on organisations that provide specific legal assistance.

As per the *Cimade* judgment, in order to respect an applicant's human dignity they must not be deprived - even for a temporary period of time - of the standards set out under the Reception Conditions Directive; this also applies to its recast. Applicants for international protection must be able to avail of these rights and services and should be able to provide for their essential needs.²³² Article 1 of the Charter also requires that the level of material support provided must be of a sufficient quality. Previous indicators from national courts, as well as the CJEU and the ECtHR, include the right to not be deprived of material reception conditions, as set out in the Reception Conditions Directive and its recast, for even a limited amount of time; to be given the minimum support necessary to have an adequate quality of life; to have the ability to maintain interpersonal relationships; to live in conditions that are not overcrowded, or of such a low quality that they affect one's autonomy, cause considerable mental suffering or leave applicants feeling humiliated and debased.²³³

There is also an obligation under Article 4 of the Charter to not place an individual who is wholly dependent on the State in a position where they face dire conditions, destitution and homelessness. In *MSS v Greece and Belgium*, the Court found that there is a positive obligation on Member States to provide asylum seekers with accommodation and decent material conditions due to the fact they implemented the Reception Conditions Directive.²³⁴

Member States are obliged to take into consideration specific concerns e.g. gender and age and the situation of vulnerable persons when placing them in accommodation. In order to ensure their right to integrity of the person, (Article 3 of the Charter), and to ensure that they are treated fairly, applicants for international protection need to be placed in accommodation that takes into account their individual characteristics.

Furthermore, Member States must also take into account the applicant's right to private life (Article 7 of the Charter), which includes aspects of an individual's physical and social identity, including the right to personal autonomy, personal

225. Ministry of Interior Decree n. 9/2013 of the 30 July 2013, and Decree of 17th September 2013 adopted by the Ministry of Interior (Department of civil liberties and Immigration).

226. Circular of the Ministry of Interior, 8 January 2014 and subsequent circular of 19 March 2014.

227. See http://anci.lombardia.it/xnews/apl/_private/cli/STRATEG91Q9ZXXG/att/CIRCOLARE%20AFFLUSSO%20CITTADINI%20STRANIERI.pdf

228. Data have been provided to CIR by Ministry of Interior on December 2014. For a more detailed analyses of emergency reception system (Mare Nostrum reception system) refer to: Asylum Information Database, Italy, pp. 50-64.

229. Figures of migrants rescued from the 1st January to the 31st October available on the Italian Navy website: <http://www.marina.difesa.it/attivita/operativa/Documents/Dati%20statistici%20Mare%20Nostrum.pdf>. See also: UNHCR, Briefing Notes "Mediterranean crossings rise in first months of 2014 – many fleeing war and persecution", 11 April 2014.

230. ECtHR *Tarakhel v Switzerland*, Application no. 29217/12, 4 November 2014, para. 232.

231. Reception Conditions Directive Recital 7 and recast Reception Conditions Directive Recital 11.

232. ECtHR, *M.S.S v Greece and Belgium*, para 252 and 253.

233. Ibid, para 107.

234. Ibid, para 250.

development and to establish and develop relationships with other human beings and the outside world.²³⁵ Any limitation thereto as per Article 52 (1) of the Charter must be proportionate and necessary to protect the rights and freedoms of others.

235. ECtHR, *Evans v. The United Kingdom*, Application no. 6339/05, para 71.

The health care of applicants for international protection

RECEPTION
AND
DETENTION
CONDITIONS

5. The health care of applicants for international protection

One of the major problems revealed by the evaluation report of the implementation of the Reception Conditions Directive was that the reception conditions provided by Member States were too low to ensure asylum seekers subsistence and full health.²³⁶ This is particularly the case where Member States provide a financial allowance to asylum seekers. In some States, the allowance is lower than the level of the minimum social support granted to nationals.²³⁷ Given the trauma that some applicants for international protection experience, receiving the necessary medical treatment can be essential to ensure that applicants are in a position to present their asylum claim in a coherent manner. Despite this, many applicants are unable to receive the necessary health care, particularly those with mental health needs. Whilst the recast Reception Conditions Directive addresses some of these issues, Member States must implement these standards and apply them in line with the Charter. This section will illustrate what standards are required under EU Law that can be used to advocate for better health care for persons seeking asylum.

5.1. Secondary Legislation

5.1.1. The Reception Conditions Directive and its recast

Under the Reception Conditions Directive, Member States are required to safeguard a standard of living for maintaining the health of applicants and for adequately ensuring their subsistence.²³⁸ It also provides that applicants will receive the necessary health care which shall include, at least, emergency care and essential treatment of illness.

Under the recast Reception Conditions Directive, Member States shall ensure that the material reception conditions provide an adequate standard of living for applicants which guarantees their subsistence and protects their physical and mental health. It also provides that applicants will receive the necessary health care which shall include, at least, emergency care and essential treatment of illness, but adds that they should also receive treatment for serious mental health disorders.²³⁹ It further contends that Member States shall provide necessary medical or other assistance to applicants who have special reception needs, including appropriate mental health care where needed. There are also, for the first time, provisions that take into account the specific needs of persons with special reception needs. These will be looked at in section 6.

5.2. Relevant Fundamental Rights and Principles

Health care and general standards under the ECHR

Unlike the Charter, under the ECHR there is no express right to health care. However, the ECtHR has found that under certain circumstances a State can be engaged when it is shown that they have put an individual's life at risk through acts or omissions that deny an individual healthcare that ordinarily would be available. Nevertheless, as will be illustrated below, the Court has only found, in extreme examples, a violation of the Convention for socio-economic reasons, including health care.

5.2.1. The right to private life and the right to physical integrity

Mental health is regarded as a crucial part of private life (Article 7 of the Charter), particularly with a person's moral integrity (Article 3 of the Charter). In *Bensaid v The United Kingdom* the ECtHR stated that Article 8 protects an individual's right to identity and personal development and the right to develop relationships with the outside world. As a result 'the preservation of mental stability is in that context an indispensable precondition to effective enjoyment of the right to respect for private life'.²⁴⁰ Whilst in this case, the Court found that by deporting the applicant back to Algeria would not breach the right to private life, as the risk of damage to the applicant's health was based largely on hypothetical factors and his moral integrity would not be substantially affected to a degree falling within the scope of the right to private life; the principles in this case could be applied to asylum seekers whose health care needs go beyond emergency health care, and which protects their physical and mental health. One could, for example, see a scenario where a person should not be moved to a certain area of the country, or perhaps transferred to another Member State under the Dublin Regulation

236. Odysseus, *Comparative Overview of the Implementation of the Directive 2003/9 of 27 January 2003 laying down minimum standards for the reception of asylum seekers in the EU Member States*, October 2003 and COM (2007) 745 final, *Report on the application of the Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers*, 26 November 2007.

237. *Ibid.*, p. 29.

238. Article 13 (2), Reception Conditions Directive.

239. Article 19 (1), recast Reception Conditions Directive.

240. ECtHR, *Bensaid v The United Kingdom*, Application no. 44599/98, 6 February 2001, para 47.

if it would detrimentally affect their private life.²⁴¹ Similarly, conditions in reception centres should be conducive to protect ones identity and personal development. The right to private life is not absolute, and can be subject to limitations; but these limitations need to be proportionate and necessary to meet the objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others (Article 52 (1) of the Charter).

5.2.2. The right to life and health care

In accordance with the explanations of the Charter, Article 2 of the Charter (the right to life), is based on Article 2 (1) ECHR²⁴² and Article 1 of Protocol No 6 to the ECHR.²⁴³ The ECtHR has established that there are some positive obligations on States to provide medical treatment to persons who are in the care of the State. In *Angurlova v Bulgaria* the ECtHR found that the delay in providing medical treatment to someone who subsequently died resulted in a violation of Article 2.²⁴⁴

There is an obligation on States to ensure that they take appropriate steps to ensure to safeguard the lives of those within its jurisdiction. An issue may arise under Article 2 ECHR where it is shown that the authorities put an individual's life at risk through the denial of healthcare that is available to the population generally.²⁴⁵ Article 2 ECHR and similarly Article 2 of the Charter is applicable to all individuals within a States jurisdiction, regardless of their status, including asylum seekers.

In *Nencheva et al v Bulgaria*, the Court looked at the right to life and social provision, including health care.²⁴⁶ This case dealt with the death of fifteen children with profound disabilities who were living in a State institution. Given large-scale cutbacks, the manager of the institution did not have sufficient funds to provide light, heat, clothing and medical care for the children. The ECtHR found that the government authorities, when they were informed about the problem, did not take necessary steps to provide assistance to the facility, and subsequently found that Bulgaria violated Article 2 of the Convention. They found a violation of Article 2 despite the fact that it could not be definitely proven that the absence of food, healthcare and heat caused the deaths of the children.

5.2.3. The right to health care

Article 35 of the Charter provides that '[e]veryone has the right of access to preventive health care and the right to benefit from medical treatment under the conditions established by national laws and practices. A high level of human health protection shall be ensured in the definition and implementation of all Union policies and activities'. It is applicable to all persons, not just Union citizens. Article 35 is relevant to the extent that it falls within the scope of EU law; therefore, it is applicable when Member States are implementing the health care provisions under the Reception Conditions Directive and its recast. With regard to the first sentence of Article 35, in practice this provides that persons seeking international protection must be guaranteed access to at least emergency health care and essential treatment of illness, and when the recast is implemented treatment for serious mental health disorders.²⁴⁷ Again with the implementation of the recast at national level, applicants should have access to appropriate mental health care when needed, as this will be established under national law with the implementation of the Directive.

As per the Explanations of the Charter, the term 'preventative health care', is based on Article 168 TFEU (Public Health) and Article 11 (the right to protection of health) and Article 13 (the right to social and medical assistance) of the European Social Charter.²⁴⁸ From this it can be deduced that there is an obligation on the State to ensure that applicants are not placed in a situation which would cause ill-health, i.e. prevent their ill-health.²⁴⁹ It can be argued that this also imposes an obligation on Member States to inform applicants for international protection on what health care options are available to them in order for them to be able to access it, or at least ensure that health care is accessible.²⁵⁰ In *FIDH v France*,

241. Frankfurt Administrative Court, 1 L 1994.12.F.A., June 2012. The case concerns return of an Iranian woman to Italy who was suffering from severe mental stress and who had a fiancé living in Germany. The Court ordered the BAMF to carry out asylum procedure in Germany due to imminent risk of inhuman and degrading treatment.

242. Article 2 provides for the right to life, it states 'Everyone's right to life shall be protected by law...'

243. Article 1 of Protocol No 6 to the ECHR, reads as follows; 'The death penalty shall be abolished. No-one shall be condemned to such penalty or executed.'

244. ECtHR, *Anguelova v Bulgaria*, Application no. 38361/97, 13 June 2002. The Commission also found in *Hurtado v Switzerland*, that the Swiss authorities violated Article 3 because they didn't provide the applicant with immediate medical treatment.

245. ECtHR *Cyprus v Turkey*, Application no. 25781/94, 10 May 2001, para, 219.

246. ECtHR, *Nencheva and others v Bulgaria*, Application no. 48609/06, 18 June 2013.

247. Recast Reception Conditions Directive, Article 19 (1).

248. Explanations relating to the Charter of Fundamental Rights; 2007/C 303/02.

249. Article 11 of the European Social Charter provides that '[w]ith a view to ensuring the effective exercise of the right to protection of health, the Parties undertake, either directly or in cooperation with public or private organisations, to take appropriate measure designed inter alia: to remove as far as possible the causes of ill-health'.

250. Article 19 (1) recast Reception Conditions Directive provides that Member States shall ensure that applicants receive the necessary health care... (emphasis added). It can be argued that this cannot be received unless they are informed about it or can access it in practice. Article 11 of the European Social Charter provides that the parties shall undertake to 'provide advisory and educational facilities for the promotion of health and the encouragement of individual responsibility in matters in health'. This could be deduced as meaning that Member States need to inform applicants of health care available in order to ensure the promotion of health and that they take responsibility for their own health care.

the European Social Rights Committee found a violation of Article 13, (the right to social and medical assistance). They found that legislation or practice that denies an entitlement to medical assistance, regardless of the migrant's status, violated Article 13 (4) of the European Social Charter.²⁵¹ In a decision on the case *Conference of European Churches (CEC) v. the Netherlands*, the European Committee of Social Rights found that the current Dutch social welfare system violates the rights of irregular migrants under the European Social Charter. In particular, as the large majority of irregular adult migrants without resources are generally not provided with accommodation and are denied medical assistance in legislation and practice, the Committee found the situation not to be in conformity with Article 13 (4) (right to social and medical assistance) and with Article 31 (2) (right to housing).²⁵²

'A high level of human health protection'

The second sentence of Article 35 provides that there is a positive obligation to ensure a high level of human health protection in the implementation of all the Union's policies and activities. Given that the Reception Conditions Directive and its recast forms part of the CEAS, Member States implementing the Reception Conditions Directive and its recast must ensure that they provide a high level of human health protection to those seeking international protection.

The meaning of a 'high level of human health protection' under Article 35 of the Charter is open to interpretation. Very few cases have come before the CJEU on this point, and the one case that the CJEU examined in terms of Article 35 concerned the high level of human health protection with regard to food labels and health claims made. It is also useful to examine Article 11 and 13 of the European Social Charter, on which the principles found in Article 35, are based.²⁵³ According to the explanations of the European Social Committee's digest of case law, Article 11, the right to protection of health, covers both physical and mental well-being.²⁵⁴ With regard to the right to health itself, the UN Committee on Economic, Social and Cultural Rights found that the right to health needs to be understood as a 'right to the enjoyment of a variety of facilities, goods, services and conditions necessary for the realization of the highest attainable standard of health'.²⁵⁵

5.2.4. The right to dignity and the prohibition of torture and inhuman or degrading treatment or punishment

The right to dignity is also applicable in the provision of health care. In *Saciri*, the CJEU held that where material reception conditions are provided in the form of financial allowances, 'those allowances must be sufficient to ensure a dignified standard of living and adequate for the health of applicants [...]'.²⁵⁶ In *Amirov v Russia*, one of the complaints of the applicant was that he was unable to access the requisite medical care whilst in detention.²⁵⁷ The ECtHR found that as a result of the lack of comprehensive and adequate medical treatment, the applicant was exposed to 'prolonged mental and physical suffering that is diminishing his human dignity. The authorities' failure to provide the applicant with the medical care he needs amounts to inhuman and degrading treatment within the meaning of Article 3 of the Convention'.²⁵⁸ The conditions the applicant was exposed to were of a very severe nature but the principle is still applicable to reception conditions if it reaches a certain level of severity.

5.3. Health care in Member States

There are significant disparities between Member States regarding the standard of health care that is provided and many applicants face difficulties in accessing health care. This section will look at the level of health care provided to applicants for international protection in general and assess any obstacles that inhibit them from receiving an adequate standard of health care.

251. *International Federation of Human Rights Leagues (FIDH) v. France (decision on the merits)*, Complaint No. 14/2003, Council of Europe: European Committee of Social Rights, 8 September 2004. However, eight EU Member States have not signed up to Article 13 (4) ESC/revESC. These are Bulgaria, Cyprus, Estonia, Lithuania, Poland, Romania, Slovakia and Slovenia.

252. *Conference of European Churches (CEC) v. The Netherlands (complaint)*, Complaint No 90/2013, Council of Europe: European Committee of Social Rights, 21 January 2013.

253. All Member States have accepted Article 11 ESC whilst Cyprus and Slovenia and not accepted Article 13(1) and Bulgaria, Romania, Slovakia, Lithuania and Slovenia have not accepted Article 13 (4).

254. Council of Europe, 'Digest of the case law of the European Committee of Social Rights'; 1 September 2008 p81.

255. UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12 of the Covenant)*, 11 August 2000, E/C.12/2000/4, p3. Article 12 (1) ICESCR, provides that everyone has the right of the 'highest attainable standard of physical and mental health'. The Committee has interpreted this as an all-inclusive right, which ensure that there should be access to timely and appropriate health care but also to the factors of health such as clean water and adequate sanitation, adequate food, housing and nutrition and access to health-related information.

256. CJEU, *Saciri and others*, Case C- 79/13, 14 February 2014, para 40.

257. ECtHR, *Amirov v Russia*, Application no. 51857/13 , 27 November 2014.

258. *Ibid*, para 93.

Access to emergency health care

	AT	BE	BG	CY	DE	FR	GR	HU	IE	IT	MT	NL	PL	SE	UK	RO	SK
Is access to emergency health care for asylum seekers guaranteed in national legislation? (Yes/No)	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	Y	Y	Y	Y	Y	Y
In practice, do asylum seekers have adequate access to health care? (Yes/No/With Limitations)	WL	Y	WL	WL	WL	WL	WL	WL	Y	Y	WL	WL	WL	WL	WL	WL	WL

5.3.1. Difficulties in accessing health care

One of the main findings from this study is that there are significant barriers for applicants to effectively access health care, even if it is provided for in legislation. This is due to a variety of reasons, including delays in registering the asylum claim during which applicants are unable to access any services; including health care, language barriers, the cost of health care and the location of some of these services.

In **Bulgaria**,²⁵⁹ accessing health care is tied to the receipt of a residence card. However due to the increased number of applicants for international protection claiming asylum, combined with a staff shortage, since October 2013 applicants are issued 'notifications' rather than a registration card, resulting in them having no access to health care. The time period between being issued a 'notification' and a residence card is approximately 6 months.²⁶⁰ In **Cyprus**,²⁶¹ accessing health care is tied to the issuance of a 'residence welfare dependency report' indicating a lack of resources. However, given the delays between registering an asylum claim and being issued with this card (between one and three months) applicants may have difficulties in accessing health care. Nevertheless, some applicants have received 'hospital care' following an investigation into their resources.²⁶²

In **Italy**, in 2012, the Commissioner for Human Rights, Nils Muižnieks visited Selam Palace²⁶³ and was informed that the inhabitants had severe difficulties in accessing health services due to administrative hurdles, despite many applicants having serious health issues, including mental health problems caused by the trauma of the conditions they fled and the journey *en route* to Italy.²⁶⁴ Furthermore, people who are homeless and have mental health issues may not be allowed to live in squats because this accommodation is considered unfit for communal living. According to the Swiss Council for Refugees, this situation is similar to that in the state-run CARA and SPRAR centres, and in the municipal centres, all of which have few, or no suitable places available for people with a mental illness.²⁶⁵ This places people in a Catch 22 situation whereby they cannot address their mental health problems until they find accommodation, but which they cannot get because of their mental health issues.

In **France**, under the CMU system, depending on the region the applicant for international protection is living in, there can be lengthy delays to access healthcare. However, in 2006 in **France**, the Comede (Comité médical pour les exilés), the Health Ministry and the National Institute for Prevention and Health Education (INPES) published a handbook to assist migrants understand the French public health care system. This handbook is available in 22 languages and includes much practical information on how to access health care in France.²⁶⁶

In **Ireland**, the Irish Refugee Council reported some problems accessing health care due to the location of the specialised services and because applicants for international protection need to pay a fee to receive a prescription (2.50 EUR per item).²⁶⁷

In **Malta**, access to health care is available in the open reception centres, however the vast majority of applicants

259. Asylum Information Database, National country report Bulgaria p. 47.

260. See section When access to material reception conditions is tied to the issuance of a material residence card

261. Asylum Information Database, National country report Cyprus.

262. See section When access to material reception conditions is tied to the issuance of a material residence card

263. See section Actual material reception conditions in selected Member States

264. Council of Europe: Commissioner for Human Rights, Report by Nils Muižnieks Commissioner for Human Rights of the Council of Europe: Following his visit to Italy from 3 to 6 July 2012, 18 September 2012, CommDH(2012)26 paras 159 – 162.

265. SFH-OSAR, 'Reception Conditions in Italy', October 2013 p. 37.

266. Asylum Information Database, National country report France, p. 69

267. Asylum Information Database, National country report Ireland p. 60.

are detained and as a result of their detention applicants face real difficulties accessing health care. Although some health care facilities are provided in detention, they are not sufficient for the needs of asylum seekers, particularly those suffering from mental health problems.

In **England**, pregnant mothers who are required to move to another accommodation centre, or location, usually lose the continuity of their ante-natal care. Mothers can be moved to another location during pregnancy, including at very late stages of pregnancy, even when doctors and midwives advise against a move; and this is believed to contribute to a far higher infant and mother mortality rate among asylum seekers than the average population.²⁶⁸ The result of these moves sometimes results in a break of several weeks in antenatal care including in the monitoring and treatment of conditions such as diabetes or hepatitis.²⁶⁹

Language difficulties and other barriers

In **Cyprus**, some asylum seekers reported that medical staff were racist toward them.²⁷⁰ Difficulties in accessing the health care system as a result of language problems and the lack of interpreters were encountered in **Cyprus**, where the medical staff were reluctant or unable to speak in English²⁷¹ as well as in **Hungary**,²⁷² **Italy**,²⁷³ and **Poland**.²⁷⁴

5.3.2. Emergency and material health care

In most Member States, as indicated on the graph above, applicants for international protection have access to emergency health care. In all the Member States covered as part of this study practice differed as to whether applicants for international protection were entitled to health care that extended beyond emergency care. Even if legislation provided for the more extensive health care, in practice it is often difficult to effectively access health care. Below is an illustration of the type of health care provided in selected Member States.

In **Bulgaria**, applicants are entitled to the same health care as nationals, but this does not always occur in practice.²⁷⁵ In the Voenna Rampa centre, the Director of the centre stated that although there was a Bulgarian doctor in another centre he does not have transport for the residents to visit that doctor. According to the Director, Médecins Sans Frontières (MSF) volunteers visit the centre three days per week. In **Cyprus**, asylum seekers lacking resources are entitled to free medical care in public medical institutions, covering, at a minimum, emergency and essential treatment. Residents of the reception centre, and receivers of welfare aid, are eligible for free medical care. However, recent amendments to the national health legislation set down some charges in accessing health care to all citizens. In practice, residents of the reception centre are excluded from the charges, while dependants on welfare must pay. Free emergency health care is still offered to both groups.²⁷⁶

In **Belgium**, asylum seekers are entitled to medical care to ensure they 'live a life of human dignity'.²⁷⁷ In **France** asylum seekers in the regular procedure who have an income below a certain level have access to health care as part of the universal health care insurance (CMU) system.²⁷⁸ In **Germany**, asylum seekers are entitled to health care to treat 'acute diseases or pain', in which 'necessary medical or dental treatment has to be provided including medication, bandages and other benefits necessary for convalescence, recovery, or alleviation of disease or necessary services addressing consequences of illnesses'.²⁷⁹ 'Necessary' treatment has not been defined, but the view that it amounts to more than emergency health care has been accepted by courts in several cases.²⁸⁰

In **Ireland**, asylum seekers are given access to health care under the same conditions as people who receive social welfare; thus it goes further than the provision of emergency health care.²⁸¹ They must pay 2.50 EUR per item received on prescription, or a maximum 25 EUR per month. In **Italy**, asylum seekers are entitled to the same health care conditions as nationals. All medical expenses are covered by the Italian health system on the basis of a self-declaration of destitution.²⁸² In the **Netherlands**, basic health care is provided under the same conditions as for nationals, unless the applicant is

268. Refugee Council and Maternity Action, *When Maternity Doesn't Matter*, 2013.

269. Refugee Council and Maternity Action, *When Maternity Doesn't Matter*, 2013.

270. Asylum Information Database, National country report Cyprus p. 56.

271. Asylum Information Database, National country report Cyprus p. 56.

272. Asylum Information Database, National country report Hungary p. 47.

273. Asylum Information Database, National country report Italy p. 63.

274. Asylum Information Database, National country report Poland p. 49.

275. Asylum Information Database, National country report Bulgaria p. 47.

276. Asylum Information Database, National country report Cyprus p. 56.

277. Asylum Information Database, National country report Belgium p. 67.

278. Asylum Information Database, National country report France p. 68.

279. Asylum Information Database, National country report Germany p. 68.

280. Georg Classen, *Krankenhilfe nach dem Asylbewerberleistungsgesetz (Medical assistance according to the Asylum Seekers' Benefits Act)*. Updated version, May 2012. pp. 6-7.

281. Asylum Information Database, National country report Ireland p. 59.

282. Asylum Information Database, National country report Italy pp. 61-62.

living in a family housing location, (*Gezinslocatie GL*) in which case health care is only provided in extreme cases.²⁸³ Similarly, in **Poland**, asylum seekers are required to comply with the same conditions as Polish nationals with health insurance to receive health care.²⁸⁴ In **Slovakia**²⁸⁵ and **Hungary** applicants have access to 'urgent health care' and if, after an examination, it is determined that there are special needs for the provision of health care; these costs shall also be covered. In **England** most asylum seekers are entitled to free hospital treatment²⁸⁶ and in **Scotland, Wales and Northern Ireland**, asylum seekers are entitled to full free health care.²⁸⁷

5.3.2.1. Mental health facilities

Information was not available in all Member States as to the accessibility of mental health facilities. However, in nearly all the Member States from where information was obtained, there were severe shortages of mental health assistance, or in some cases, no help was provided at all. This section should also be read in conjunction with Section 6.3 which looks at specialised medical care for traumatised persons and victims of torture.

In **Belgium**, there are specialised services for the mental health of migrants, but they are not able to cope with the demand. Public centres for mental health care are open to asylum seekers and have adapted rates, but are mostly lacking the specific expertise needed. Centres with specific expertise have long waiting lists. In Wallonia there is a specialised Red Cross reception centre for traumatised young asylum seekers, but this centre also has a waiting list.²⁸⁸ In **Cyprus**, there are no specialised mental health facilities despite the fact that the Regulation stipulates the need to identify those with special reception needs.²⁸⁹ In **Hungary**, asylum seekers with special needs are entitled to psychological care, however in practice this is rarely provided.²⁹⁰ In **the UK**, specialised treatment for victims of torture and traumatised people is available, but demand often exceeds supply.²⁹¹

In **France**, national legislation does not guarantee access to mental health care. Asylum seekers can theoretically benefit from psychiatric or psychological counselling thanks to their health care cover (under AME or CMU), however, in practice, access remains difficult because many professionals refuse to receive non-Francophone patients as they lack the tools to communicate non-verbally and / or funds to work with interpreters.²⁹² Given the amount of care needed for victims of torture, the 'regular' health system cannot cope with the demand.²⁹³

In **the Netherlands**, there are a number of specialist treatment facilities for applicants with psychological problems which they can access under their health care entitlements.²⁹⁴ In **Poland**, asylum seekers can receive treatment for mental health problems and psychologists work in all the reception centres.²⁹⁵ Their help is limited to basic consultations.²⁹⁶

In **Italy**, the health, and, particularly, the mental health of some of the applicants for international protection has progressively worsened as a result of the conditions they are forced to live in.²⁹⁷ According to the municipality of Rome, nearly 20 percent of persons in municipal housing have mental health problems.²⁹⁸ There are a number of facilities to treat victims of torture and other persons with mental health problems, but the demand greatly exceeds the resources available. Nevertheless, with the introduction of Legislative Decree no. 18/2014 modifying the "Qualification Decree" there have been some improvements. As a result, the Ministry of Health shall adopt guidelines on rehabilitation and on the treatment of mental health problems affecting beneficiaries of international protection who were subject to torture, rape and other serious forms of violence. Such guidelines should also include training programs for specialized health personnel.

283. Asylum Information Database, National country report Netherlands p. 49.

284. Asylum Information Database, National country report Poland, p. 49.

285. Slovakian Asylum Act section 22.

286. Those who are not in receipt of S.95 or S.4 support generally cannot avail of free hospitalisation treatment. S. 95 support is available to asylum seekers who are deemed to be destitute and S. 4 support is available to certain asylum seekers whose claims have been refused. For further information see Asylum Information Database, National country report , the United Kingdom pp. 50-52.

287. Asylum Information Database, National country report the United Kingdom p. 65.

288. Asylum Information Database, National country report Belgium p. 67.

289. Regulation 26(1), Reception Conditions Regulations of 2005.

290. Asylum Information Database, National country report Hungary p. 68.

291. Asylum Information Database, National country report the United Kingdom, p. 64.

292. Asylum Information Database, National country report France p. 69.

293. Primo Levi Association, *Livre blanc (White Paper)*, June 2012

294. Asylum Information Database, National country report the Netherlands p. 49.

295. Information obtained from Department for Social Assistance, Office For Foreigners, 25.03.2014. See also European Migration Network, *The Organisation of Reception Facilities for Asylum Seekers in different Member States. National Contribution of Poland*, 2013, p. 39. See also Asylum Information Database, National country report the Poland p. 49.

296. According to the Office for Foreigners, the psychologists concentrates on psychological support and counselling as well as on diagnosing mental disorders, including PTSD.

297. Asylum Information Database, National country report Italy p. 63.

298. Swiss Refugee Council, *Reception conditions in Italy: Report on the current situation of asylum seekers and beneficiaries of protection, in particular Dublin returnees*, October 2013, p48. Interview with the municipality of Rome, 28 May 2013.

5.3.3. Health care when material reception conditions are reduced/withdrawn

Information was not available in many Member States, but from the information available, in the majority of cases, when material reception conditions are reduced or withdrawn, at a minimum, access to emergency health care is still available.

In **Austria**, if reception conditions are withdrawn, asylum seekers are still entitled to emergency care and essential treatment. However, in practice, this is not always the case. If an asylum seeker has lost basic care due to violent behaviour or due to their absence from the initial reception centre (EAST) for more than 2 days, they will not receive medical help because it is assumed that they could visit the medical station in the EAST. However, as those asylum seekers are no longer registered in the EAST, they will not be allowed to enter and receive medical treatment there. Without health insurance or access to the medical station of the EAST, asylum-seekers may have severe difficulties accessing the necessary medical treatment.²⁹⁹

In **Belgium**,³⁰⁰ **Hungary**,³⁰¹ **Malta**³⁰² and **Slovakia**³⁰³ if reception conditions are reduced or withdrawn, medical care facilities are not affected. In **Germany**, if material reception conditions are reduced/withdrawn, at a minimum 'essential treatment' needs to be provided.³⁰⁴

5.4. Conclusion

Member States have an obligation to provide applicants for international protection with conditions that are appropriate for both their physical and mental health. Under both the Reception Conditions Directive and its recast, applicants must be provided with an adequate standard of living. The place of living must be adequate for the health of applicants³⁰⁵ which indicates they must not be made destitute, or exposed to reception conditions that causes them ill-health.

The ECtHR recognised that the preservation and development of relationships can be integral for one's mental stability. In line with Member States' obligations under the Directives and the Charter, persons should be placed in facilities that allow them to maintain close family relationships, and any limitation thereto would need to be proportionate to protection the rights and freedoms of others (Article 52 (1)) of the Charter.

Member States must always provide essential and emergency health care; insufficient funds will never be accepted as an excuse to not do so. Member States can and should provide the necessary health care including mental health care, not just emergency health care and essential treatment of illnesses and of serious mental disorders. Proper health care is essential in order for the applicant to be in the correct frame of mind to properly present their application for international protection and will also assist with their integration. In light of Article 35 of the Charter, and the EU principle of the right to good administration, and their obligations under the Reception Conditions Directive and its recast, Member States must not place applicants in a situation where they are unable to access essential health care, particularly if access is being denied as a result of a failure of the Member State itself. Any barriers that affect an applicant's ability to access health care must be removed.

299. Asylum Information Database, National country report Austria p. 64.

300. In Belgium, the provision of medical care to ensure 'a life in dignity' is only the case as long as the applicant has a pending asylum application. Once the asylum application is refused or not taken into consideration the applicant is only entitled to urgent medical help. See Asylum Information Database, National country report Belgium p. 67.

301. Asylum Information Database, National country report Hungary p. 47.

302. Asylum Information Database, National country report Malta, p. 47.

303. Slovakia country report, report with author.

304. Asylum Information Database, National country report Germany p. 67.

305. CJEU, *Saciri and others*, C-79/13, 14 February 2014, para 40.

**Applicants for international
protection with special reception
needs**

**RECEPTION
AND
DETENTION
CONDITIONS**

6. Applicants for international protection with special reception needs

When the European Commission recast the asylum *acquis*, one of the main aims was to ensure that the level of protection afforded to asylum seekers, particularly vulnerable asylum seekers, was heightened. As a result, there are additional guarantees for vulnerable persons and persons with special reception needs under the recast Reception Conditions Directive.³⁰⁶ These are looked at below.

6.1. Secondary Legislation

6.1.1. Reception Conditions Directive

Under the Reception Conditions Directive, there is a specific provision for victims of torture and violence as well as persons with special reception needs. Article 13 (2) states that material reception conditions provided shall ensure a standard of living for the health of applicants and capable of ensuring their subsistence. Member States shall ensure that that standard of living is met in the specific situation of persons who have special needs. Recital 9 provides that the reception of groups with special needs should be specifically designed to meet those needs.

Article 20 states that Member States shall ensure that, if necessary, persons who have been subjected to torture, rape or other serious acts of violence receive the necessary treatment of damages cause by the aforementioned acts. Article 18, which deals with minors, states that the best interest of the child shall be a primary consideration for Member States when implementing the provisions which involve minors. Member States shall also ensure access to rehabilitation services for minors who have been victims of any form of abuse, neglect, exploitation, torture or cruel, inhuman and degrading treatment or who have suffered from armed conflict and ensure that appropriate mental health care is developed and qualified counselling is provided when needed. It also has a specific provision on unaccompanied minors. Article 24 provides that Member States shall take appropriate measures to ensure that the authorities and organisations implementing this Directive have received basic training with regard to the needs of the applicants. States are also obliged to allocate the necessary resources when implementing the Directive.

6.1.2. Recast Reception Conditions Directive

Under the recast there is a much more extensive provision on vulnerable persons. Whilst not defining what is meant by vulnerable persons, Article 21 provides a non-exhaustive list of groups that Member States must take into account when implementing the Directive. These include persons such as minors, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children, victims of human trafficking, persons with serious illnesses, persons with mental disorders and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence such as victims of female genital mutilation in the national law implementing this Directive.

Article 23 (1) states that the best interest of the child shall be a primary consideration for Member States when implementing the provisions which involve minors. It also provides that Member States shall ensure a standard of living adequate for the minor's physical, mental, spiritual, moral and social development. It lists a number of factors that should be taken into account when assessing their best interests. Article 23 (2) also provides that Member States shall ensure that minors have access to leisure activities appropriate to their age as well as open air activities (Article 23 (3)). Member States shall ensure access to rehabilitation services for minors under the same conditions as those provided for in the Reception Conditions Directive (Article 23 (4)).

Article 19 (2), states that Member States shall provide the necessary medical or other assistance to applicants who have special reception needs, including appropriate mental health care where needed. Article 25 (1) provides that persons who have been subjected to torture, rape or other serious acts of violence receive the necessary treatment for the damage caused by such acts, in particular access to appropriate medical and psychological care. Those working with these victims shall have had, and shall continue to receive, appropriate training concerning their needs (Article 25 (2)).

Article 18 (3), which deals with reception conditions, states that Member States shall take into consideration gender and age-specific concerns and the situation of vulnerable persons in relation to applicants in accommodation centres

306. According to ECRE, such 'vulnerable groups' include, but are not limited to, children (especially unaccompanied children), disabled people, elderly or persons suffering from serious illnesses, pregnant women, single parents with children, persons suffering from mental health problems, victims of human trafficking and victims of torture, rape or any other form of psychological, physical or sexual violence, see <http://www.ecre.org/topics/areas-of-work/protection-in-europe/93-vulnerable-groups.html> for more details.

and housing at border and transit zones. Article 17 (2) provides that Member States shall ensure that material reception conditions provide an adequate standard of living for applicants which guarantees their subsistence and protects their physical and mental health and that that standard is met in the specific situation of vulnerable persons.

Article 29 provides that Member States shall take appropriate measures to ensure that the authorities and organisations implementing this Directive have received basic training with regard to the needs of the applicants. States are also obliged to allocate the necessary resources when implementing the Directive.

Identification and content of special reception needs

Article 22 (1) of the recast Reception Conditions Directive provides that Member States shall assess whether the applicant has special reception needs, but does not impose an obligation to establish a specific procedure to identify vulnerable persons with special reception needs (Article 22 (2)). The assessment needs to take place within a reasonable period of time and the special needs must be addressed even when they become apparent at a later stage in the asylum procedure. Article 22 (3) provides that only vulnerable persons in accordance with Article 21 may be considered to have special reception needs and thus benefit from specific support

It is difficult to see how the assessment can be carried out without some sort of screening system being put in place. Although the Directive does not explicitly require Member States to take an individual decision on the special reception needs of each asylum seeker, it may be necessary in order to ensure that the guarantees as laid out in Article 21 and Article 22 of the Directive are carried out in practice.³⁰⁷ Indeed, the European Commission's report on the implementation of the Reception Conditions Directive found that the 'identification of vulnerable asylum seekers is a core element without which the provisions of the Directive aimed at special treatment of these persons will lose any meaning'.³⁰⁸ There is no sure method to identify vulnerability, but a number of organisations have provided support tools such as the PROTECT Questionnaire (Process of Recognition and Orientation of Torture Victims in European Countries to Facilitate Care and Treatment, Questionnaire and Observations for Early Identification of Asylum Seekers having suffered Traumatic Experiences). Similarly the Centre of Law and Emotion have given trainings on the topic.

6.2. Fundamental Rights and Principles

6.2.1. Assessment of vulnerability by the European Court of Human Rights

While the recast Reception Conditions Directive takes into account the specific situation of certain vulnerable groups, the European Court on Human Rights has found that asylum seekers are an inherently vulnerable population group.³⁰⁹ In *M.S.S v Belgium and Greece* the Court stated that it 'must take into account that the applicant, being an asylum seeker, was particularly vulnerable because of everything he had been through during his migration and the traumatic experiences he was likely to have endured previously'.³¹⁰ It continued that 'the Court attaches considerable importance to the applicant's status as an asylum seeker and, as such, a member of a particularly underprivileged and vulnerable population group in need of special protection'. It noted the existence of a broad consensus at the international and European level concerning this need for special protection, as evidenced by the Geneva Convention, the remit and the activities of the UNHCR and the standards set out in the European Union Reception Directive.³¹¹ This was reiterated by the ECtHR in *Tarakhel v Switzerland*, during which the Court placed an importance on the vulnerability of the applicant by virtue of the fact that he was seeking asylum and as a result needed special protection.³¹²

The ECtHR has also, on occasion, found that persons from a certain minority can be considered as vulnerable; minorities are not a group that is considered vulnerable in the non-exhaustive list as set out in Article 21 of the recast Reception Conditions Directive. In *Moldovan and Others v Romania*, the Court found that 'as a result of their history, the Roma have become a specific type of disadvantaged and vulnerable minority (...) therefore, they require special protection'.³¹³

6.2.2. Special position of children

By virtue of a child's inherent vulnerability as a result of their dependence on others, the best interests of the child should

307. See also, ECRE, 'Not There Yet: An NGO Perspective on Challenges to a Fair and Effective Common European Asylum System' *Asylum Information Database*, Annual Report 2012/2013, pp. 29 -30.

308. European Commission, Report from the Commission to the Council and the European Parliament on the application of Directive 2003/9/EC of January 27th 2003 laying down minimum standards for the reception of asylum seekers, 26 November 2007, COM(2007) 745 final, point 3.5.1.

309. ECtHR, *Tarakhel v Switzerland*, Application no. 29217/12, para 118.

310. ECtHR, *M.S.S. v Greece and Belgium*, Application no. 30696/09, ECtHR, 21 January 2011, para 232

311. *Ibid*, para 252

312. ECtHR *Tarakhel v Switzerland*, para 118

313. ECtHR, *Moldovan and Others v Romania*, Applications nos. 41138/98 and 64320/01, 12 July 2005, para 147

always be the authorities' primary consideration. The ECtHR has also recognised that the 'special protection' that should be afforded to asylum seekers is especially important when the persons concerned are children, even when they are accompanied by their parents. In *Tarakhel v Switzerland*, the ECtHR found that reception conditions for asylum seeking children must be adapted to their age, to ensure that those conditions do not 'create for them a situation of stress and anxiety with particularly traumatic consequences'. Otherwise, the conditions in question would attain the threshold of severity required to come within the scope of Article 3 of the Convention.³¹⁴ It subsequently found that if the applicants were to be returned to Italy without the Swiss getting individual guarantees that the applicants would be taken charge in a manner adopted to the age of the children, and that the family would be kept together, there would be a violation of Article 3 of the Convention.³¹⁵

6.2.3. The Right to be heard

The right to be heard forms part of the right to good administration; it is applicable in proceedings that are liable to adversely affect the person, even in instances where there are no procedural rules governing the proceedings in question (such as the assessment of special needs).³¹⁶ It requires 'that the addressees of decisions which significantly affect their interests should be placed in a position in which they may effectively make known their views on the evidence on which the contested decision is based'.³¹⁷ Therefore, the applicant could submit observations as to why they should benefit from special reception conditions.

The right to be heard also provides that the authorities pay due attention to observations submitted by the person concerned, examining carefully and impartially all the relevant aspects of the individual case and giving a detailed statement of reasons for their decision.³¹⁸ As a result, the reasons submitted by the applicant as to why they need special reception needs would need to be taken into account when Member States are carrying out the assessment.³¹⁹

6.2.4. The duty to state the reasons

Member States are not under an obligation to set up a specific administrative procedure when assessing whether a vulnerable person has specific reception needs. Nevertheless, Member States are under an obligation to carry out the assessment. Given the fact that it does not need to take the form of an administrative procedure, an essential safeguard is the duty to state the reasons as to whether or not the person has special reception needs and what form they take.³²⁰ This is even more important as Member States need to ensure that those special reception needs are addressed, if they become apparent at a later stage in the asylum procedure.³²¹ The precision of the statement of the reasons for a decision needs to be balanced against the practical realities, the time and technical facilities available for making the decision.³²²

6.2.5. The right to human dignity, human integrity and the right to private life

Persons with special reception needs can be provided with medical or other assistance and appropriate health care that Member States take into consideration when placing vulnerable persons in accommodation centres or in accommodation in border and transit zones. Furthermore, they must ensure that they have an adequate standard of living.³²³ In terms of the Charter, the right to dignity can require that individuals have personal autonomy and a certain quality of life. Moreover, under both the right to dignity and the right to private life, persons must have the ability to maintain inter-personal relationships, (*Bensaid v UK*) which can impose restrictions as to where an applicant is housed. The ECtHR has taken into account a Member State's violation of the Reception Conditions Directive before going on to find a violation at the Council of Europe level. In *M.S.S v Greece and Belgium*, the ECtHR relied on the existence of a positive obligation under the Reception Conditions Directive to host asylum-seekers in a dignified way. It can be argued that taking into account the special reception needs of an individual to ensure an adequate standard of living also requires access to recreational facilities, outdoor space and mental stimulation. These are all provided for under the recast Reception

314. ECtHR, *Tarakhel v Switzerland* para 119.

315. *Ibid.*, para 122.

316. In *MM v Minister for Justice Equality and Law Reform*, the CJEU found that Article 41(2) of the Charter, by its very wording is of general application. It stated that the 'Court has always affirmed the importance of the right to be heard and its very broad scope in the EU legal order, considering that that right must apply in all proceedings which are liable to culminate in a measure adversely affecting a person'. CJEU, *MM v Minister for Justice, Equality and Law Reform, Ireland*, Case C-277/11, 22 November 2012, paras 83 -85.

317. CJEU, *Dokter and Others v Minister van Landbouw, Natuur en Voedselkwaliteit*, Case C-28/05, 15 June 2006, para 74.

318. CJEU, *HauptzooUamt München-Mitte v Technische Universität München* Case, Case C-269/90, 21 November 1991, para 14.

319. If there is a breach of the right to be heard, it will only lead to an annulment of the decision if the procedure could have produced a different decision, should the right have been complied with, as a result it may be a difficult standard to prove. CJEU, *Mário Campolargo v Commission*, Case T-372/00, 23 April 2002, para 39. It is also not an absolute principle and may be restricted, provided the restrictions correspond with the objectives of the measure in question and that they do not constitute a disproportionate interference with the very substance of the rights guaranteed, *Dokter*, para 75.

320. *Mellor*, para 58.

321. Recast Reception Conditions Directive, Article 22 (1).

322. For more information see ECRE, 'An examination of the Reception Conditions Directive and its recast in light of Article 41 and 47 of the Charter of Fundamental Rights of the European Union' December 2013.

323. See Section 4.2, The right to human dignity for more on what 'adequate standard of living' could entail.

Conditions Directive.

Member States are allowed to reduce or withdraw material reception conditions for persons with special reception needs, but when doing so they must ensure access to health care and ensure a dignified standard of living for all applicants. Moreover, they must also comply with their obligations under Article 7 of the Charter, the right to private life. In *O'Rourke v UK*, the ECtHR found that a refusal by the authorities to provide housing assistance to an individual suffering from a serious disease may in certain circumstances give rise to an Article 8 violation due to the impact of such a refusal to the private life of an individual. (In this instance they found there was no such violation as the applicant was provided with temporary hotel accommodation.)³²⁴

6.2.6. Prohibition of torture and inhuman or degrading treatment or punishment

Certain treatment that does not take into account the individual characteristics of a particularly vulnerable applicant could breach Article 4 of the Charter. In *Tarakhel v Switzerland* the Court found that the reception conditions for children seeking asylum must be 'adapted to their age, to ensure that those conditions do not create for them a situation of stress and anxiety, with particularly traumatic consequences'.³²⁵ It found that if the family were to be returned to Italy without assurances from the Italian authorities that the applicants would be taken charge of in a manner adapted to the age of the children, and that the family would be kept together, there would be a violation of Article 3 of the Convention (Article 4 of the Charter).³²⁶

6.2.7. The right to health care

Member States must also ensure applicants with special reception needs receive adequate health care. The standards set out in Section 5.2 are also relevant in this section.

6.3. Member State practice with regard to the identification of persons with special reception needs

Certain countries consider, either through law or practice, that specific groups have special reception needs. Under the recast Reception Conditions Directive, only vulnerable persons may be considered to have special reception needs and can thus benefit from the extra support provided. Therefore, an individual initially needs to be considered to be vulnerable,³²⁷ and only then will an assessment be carried out as to whether or not they have any special reception needs. From the Country Reports it is evident that there is wide divergence in practice in this area. Member States have different definitions as to who is considered vulnerable; some Member States do not assess special needs at all, and even if they are assessed it is generally done by way of an ad hoc administrative arrangement. Moreover, as to who does the identifying varies between States, and the consequence of the identification, also differs significantly between States. This section will illustrate the lack of consensus amongst States as to who is considered vulnerable, and review whether there are procedures in place to assess this vulnerability. It will then look at who carries out this assessment and will, finally, examine the consequences, and what assistance, if any, is given when an individual is considered to have a special reception need.

6.3.1. Who is considered vulnerable

Article 21 of the recast provides a non-exhaustive list as to who may be considered vulnerable. Nevertheless, not all Member States have a definition as to who is vulnerable and, where it does exist it varies between States.

For example, in **Bulgaria**, the legal definition³²⁸ includes unaccompanied children, pregnant women, elderly people, single parents (if accompanied by their underage children), individuals with disabilities and those who have been subjected to severe forms of psychological, physical or sexual abuse.³²⁹ In **Belgium and Hungary**, the same groups are considered vulnerable, with the addition, in **Belgium**,³³⁰ of trafficked victims. In **Hungary** there is an explicit mention of victims of rape.³³¹ In **Cyprus**, the Refugee law is being amended and it is expected that the categories considered vulnerable will

324. ECtHR, *O'Rourke v the United Kingdom*; Application no. 39022/97, 26 June 2001.

325. ECtHR, *Tarakhel v Switzerland*, Application no. 29217/12, para 119. Furthermore, in accordance with Article 24 of the Charter 'In all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration'

326. *Ibid*, para 122.

327. Recast Reception Conditions Directive, Article 22 (3).

328. Law on Asylum and Refugees, Article 30 (a).

329. Asylum Information Database, National country report Bulgaria, p. 44.

330. Article 36 Reception Act.

331. Section 2 (k) of the Asylum Act, Asylum Information Database, National country report Hungary p. 42.

be in accordance with Article 21 of the recast Reception Conditions Directive.³³² In **Greece**, according to Article 11 (2) of Law 3907, for the purposes of receiving special treatment, vulnerable groups are victims of torture, rape or other serious forms of psychological or sexual violence. However, under **Polish** legislation, four categories of asylum seekers are considered vulnerable; unaccompanied children, disabled people, victims of violence and, to some extent, single women (including if they have minor children). Other categories such as elderly people, who are not seriously ill, pregnant women if they are not single and single fathers with children, are not considered vulnerable by law and in practice.³³³

In **Malta**, the Reception Regulations provide an indicative non-exhaustive list of vulnerable persons, including children, unaccompanied children and pregnant women.³³⁴ In **Slovakia**, there is no legal definition of vulnerable persons in the asylum legislation, there is however a term which considers 'person with specific care'; these include pregnant women, minors, persons with disabilities, torture victims, or persons who were raped or victims of serious forms of, physical or sexual violence.³³⁵

In **Austria**, this is determined on a regional basis. The Basic Care laws of Lower Austria and Vorarlberg consider the following groups of individuals as vulnerable, the elderly, pregnant women, single parents and victims of torture, rape or other forms of severe psychological, physical or sexual violence.³³⁶ In the federal provinces Vienna, Carinthia, Upper Austria, Salzburg, Tyrol and Burgenland vulnerable asylum seekers are not mentioned.

6.3.1.1. Special identification measures for persons with special reception needs in legislation and in practice.

Very few Member States have a procedure set down in legislation which allows for the identification of persons with special reception needs.

Only **Belgium** and **Greece** have an identifying mechanism in place in law to identify the special protection needs of applicants for international protection. In **Belgium**, a legal mechanism is in place to assess the specific needs of vulnerable persons in the reception facilities.³³⁷ Within thirty calendar days after having been assigned a reception place, the individual situation of the asylum seeker should be examined to determine if the accommodation is adapted to their personal needs. Particular attention has to be paid to signs of vulnerability that are not immediately detectable.³³⁸ A Royal Decree formalised this evaluation procedure, requiring an interview with a social assistant, followed by a written evaluation report within thirty days, which has to be updated continuously, and permanently, and should lead to a conclusion within a maximum of six months on the adequacy of the accommodation for the individual's medical, social and psychological needs, with a recommendation as to appropriate measures to be taken, if any.³³⁹ No public monitoring or evaluation of the efficiency of this vulnerability identification mechanism has taken place. Since it allows up to six months before taking measures, and the processing time of asylum applications is often much shorter, its efficiency is not guaranteed.

In **Greece**, the Presidential Decree 220/2007 foresees the identification of a referral system for persons who are deemed to be vulnerable. Article 20 foresees special medical treatment for persons who are deemed vulnerable. Article 11 (2) of Law 3907 provides that the head of the centre, upon receiving a recommendation, should refer persons belonging to the competent body of social support or protection.³⁴⁰

In other countries such as **Austria**,³⁴¹ **Bulgaria**, **Cyprus**, **Germany**, **Hungary** and **Italy**, even though there are provisions for certain groups of vulnerable persons, there are no identifying mechanisms to assess who has special reception needs set down in law.

In **Italy**, there is no legal provision as to how an assessment should take place, Article 8 (1) of the Legislative Decree 140/2005 provides that accommodation should be provided taking into account of the special needs of asylum seekers and their family members, in particular vulnerable persons such as children, disabled persons, elderly people, pregnant women, single parents, and persons who have been subjected to torture, rape or other forms of psychological, physical or sexual violence.³⁴²

332. Asylum Information Database, National country report Cyprus p. 51.

333. Information obtained from Department for Social Assistance, Office For Foreigners, 25.03.2014, Asylum Information Database, National country report Poland, p43.

334. Regulation 14 Reception Regulations.

335. Slovakia country report p. 7.

336. (NÖ § 6 (4)) Asylum Information Database, National country report Austria, p. 60.

337. Asylum Information Database, National country report, Belgium, p. 64.

338. Article 22 Reception Act.

339. Royal Decree of 25 April 2007 on the modalities of the assessment of the individual situation of the reception beneficiary: http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&c... (French version) - - See more at: http://www.asylumineurope.org/reports/country/belgium/reception-conditions/access-and-forms-reception-conditions/addressing#footnote2_qbp9es4

340. Asylum Information Database, National country report Greece, p. 69.

341. This only refers to Lower Austria and Vorarlberg, Asylum Law Database, National country report, Austria, p. 60.

342. Asylum Information Database, National country report Italy, p. 57.

In **Hungary**, Section 4 (3) of the Asylum Act states that persons requiring special treatment shall be given due consideration for their special needs,³⁴³ but given that there is no identification mechanism in place this provision lacks substance.

In other countries, there is some sort assessment procedure in place, in practice, to identify some persons with special reception needs. For example, in **France**, some vulnerable persons are identified during a social assessment carried out by 'orientation platforms', being reception desks managed by the government or by NGOs, where asylum seekers receive information, and are oriented about the reception centres. People who are not accommodated in reception centres come to these 'platforms' in order to receive social and legal support. Some asylum seekers, or persons supporting their asylum application, can ask for specialised housing.³⁴⁴ In **the UK**, there is no mechanism set down in legislation to identify persons with special reception needs but there is a policy that instructs caseworkers to carry out an assessment to see whether an asylum seeker has any special medical needs that will affect where they are accommodated.³⁴⁵ In **Malta** the Reception Regulations provide that that an individual evaluation will be conducted to assess the special needs of vulnerable persons.³⁴⁶

In **Ireland**, there are no provisions in law to assess or identify the special reception needs of vulnerable people. There is one exception, being that unaccompanied minors are not placed in a reception centre until after they turn 18.³⁴⁷ In **Romania** there is no identification system for persons with special reception needs.³⁴⁸

6.3.1.2. Who identifies an individual as having special reception needs

There is no consistent pattern amongst the Member States as to who identifies an individual with special reception needs. In some States it is the asylum seekers themselves who are required to prove that they have special reception needs. In others it is the NGOs, or a social worker, whilst in others it is the manager of a reception centre or the person taking a decision on their asylum claim.

In **Austria, Bulgaria and Slovakia and Ireland**, NGO's all play a role in identifying who has special reception needs.

In **Austria** It is up to the asylum-seeker, social adviser, social pedagogue or the landlord to ask for adequate reception conditions for an individual who is seen to have special reception needs.³⁴⁹ In **Bulgaria**, as part of the 'Level 1 Emergency' response mission to the reception crisis, led by the EU Commission and UNHCR, they have started to address a number of serious deficiencies in the reception system. Amongst these measures, the Bulgarian Helsinki Committee and the Bulgarian Red Cross have been tasked with identifying individuals with vulnerabilities and special needs.³⁵⁰ In **Slovakia**, social workers from the migration office as well as social workers from NGO's can assess whether an applicant has any special reception needs.³⁵¹ In **Ireland** SPIRASI staff (an NGO) have access to certain accommodation centres and can help to identify victims of torture.³⁵²

In **Hungary and Poland** it is the first instance decision-making body that assess whether an individual has special reception needs. In **Hungary**, it is the Office of Immigration and Nationality (OIN) that assesses whether an applicant has any special reception needs. The OIN can also request expert assistance by a doctor or a psychologist.³⁵³ There is no system in place which allows for the identification of vulnerable asylum seekers in a reception facility, therefore it very much depends on the actual asylum officer as to whether the special needs of a particular asylum seeker are identified at the beginning, or through the procedure. In **Poland**, the Head of the Office for Foreigners is responsible for carrying out medical or psychological examinations on applicants who inform the authorities that they are a victim of violence, or are disabled, or whose 'psychophysical status allows them to assume that they are a victim of violence'.³⁵⁴ There is nothing set down in legislation to identify vulnerable groups and the existing method has been criticised and is not considered to be effective.³⁵⁵

In **Cyprus**, there is no formalised identification procedure; however special needs may be identified when applicants meet with the Welfare Services or during the refugee status determination procedure by the Asylum Service. This may

343. Asylum Information Database, National country report, Hungary, p. 42.

344. Asylum Information Database, National country report, France, p. 64.

345. Asylum Information Database, National country report, the UK, p. 60.

346. Asylum Information Database, National country report Malta, p. 43.

347. Asylum Information Database, National country report Ireland, p. 56.

348. Annual ELENA Developments, 2013, report is with the author.

349. Asylum Information Database, National country report Austria, p. 60.

350. Asylum Information Database, National country report Bulgaria, p. 44.

351. Slovakia country report p. 7.

352. Asylum Information Database, National country report Ireland, p. 60.

353. Section 3(1) (2) of the Government Decree 301/2007.

354. Article 68 section 1 of the Law on Protection, Asylum Information Database Poland, p. 44.

355. Asylum Information Database, National country report Poland, p. 44.

lead to some basic referrals to public health services.³⁵⁶

In **Belgium, Greece, Italy and the Netherlands**, either in law or in practice, the reception centre plays a role in identifying the special reception needs of an applicant.

In **Belgium**, it is the social care workers in the centre that are tasked with identifying the special reception needs of a beneficiary. A Royal Decree formalised the evaluation procedure; being an interview with a social assistant followed by a written evaluation report within thirty days, which must be updated on a continuous basis. Within six months a decision needs to be taken on the adequacy of the accommodation and a recommendation to take any appropriate measures.³⁵⁷

In **Greece**³⁵⁸ in accordance with Article 11 (5) of Law 3907, the referral for special reception needs will originate from the head of the screening centre, and shall be done within 15 days from being admitted to the reception procedure. Under exception circumstances this can be extended for a period of 10 days; however the law is not applied as there are no screening centres in place.³⁵⁹ In practice it is the NGO's who manage the accommodation centres and identify vulnerable persons who will be offered a place.³⁶⁰ In **Italy**, Article 8 (2) of the Legislative Decree 140/2005 provides that the managers of reception centres set up special accommodation services, in cooperation with the local public health, centres to provide adequate psychological support in order to address the special needs of asylum seekers. It also provides that in SPRAR centres, specific measures should be established to meet the special needs of asylum seekers.³⁶¹ The assessment is conducted in the accommodation centre, but it is done in an ad hoc manner, depending on the availability of funds and whether, or where, the services actually exist.³⁶²

In **the Netherlands**, the Central Agency for the Reception of Asylum Seekers (COA) is responsible for the reception of asylum seekers. The employees of the centre must make sure that applicants have an adequate standard of living; and, in order to do so they need to take into account the special needs of asylum seekers.³⁶³

In **Malta**, when asylum seekers are detained in a detention centre a vulnerability assessment is carried through interviews.³⁶⁴ If identified as vulnerable the applicant can be released into an open centre. If an applicant is not considered vulnerable when entering an open centre but, during their stay, becomes vulnerable, they may also be identified by the centre. In both instances the identifying and confirmation of the vulnerability is carried out by the Agency for Welfare of Asylum-Seekers (AWAS).

In **the UK**, if the asylum seeker can prove that they have a special reception need, for example through a medical report, the accommodation provider must take this into account.³⁶⁵ If an asylum seeker discloses a health need before being dispersed the Home Office has an obligation to provide the necessary information to the accommodation provider to ensure that necessary arrangements for dispersal are put in place i.e. appropriate travel, accommodation and location. The accommodation provider is then 'contractually obliged to take an asylum seeker to a General Practitioner within five days of dispersal if s/he has a pre-existing condition or is in need of an urgent General Practitioner review'.³⁶⁶ Staff at the initial accommodation are not required or trained to assess the asylum seeker's health needs on arrival. They need not be pro-active in finding out about needs.

In nearly all countries covered for the purpose of this study no on-going assessment was carried out to assess whether an individual had any special reception needs.

6.3.2. Actual special material reception condition provided

There is no consistency across States as to what measures are taken to address the needs of the applicants who are identified as having special reception needs. Under the recast Reception Conditions Directive, Member States have an obligation to indicate the nature of any special reception needs and shall ensure that these are addressed.³⁶⁷ Article 19 (2), of the recast, states that Member States shall provide the necessary medical or other assistance to applicants who have special reception needs, including appropriate mental health care where needed. This does not always happen. Some

356. Asylum Information Database, National country report Cyprus, p. 50. Given that the applicant will only meet individuals in the asylum service during the asylum interview, there can be delays in the rehabilitation process. There is no psychological or legal support prior to an applicant's interview, which can be detrimental for the victim of torture.

357. Asylum Information Database, National country report Belgium, p. 64.

358. Asylum Information Database, National country report Greece, p. 69.

359. Ibid, p. 69.

360. Ibid, p. 69.

361. Asylum Information Database, National country report Italy pp 57 -58.

362. Ibid, pp. 57 -78.

363. Asylum Information Database, National country report the Netherlands, p. 44.

364. Asylum Information Database, National country report Malta, p/ 43.

365. Asylum Seeker (Reception Conditions) Regulations SI 2005/7.

366. Asylum Information Database, National country report the UK, p. 60.

367. Recast Reception Conditions Directive, Article 22 (1).

Member States, due to the shortage of accommodation, merely give accommodation to persons with special protection needs; others are assigned to a particular area of an accommodation centre whilst others are offered additional medical care. Article 18 (3) provides that Member States shall take into consideration gender and age-specific concerns and the situation of vulnerable persons in relation to applicants in accommodation centres and housing at border and transit zones; though in practice little consideration is given to these concerns.

In many countries, even if someone is considered to have special reception needs, due to the lack of accommodation or resources, no measures are taken. For example in **Bulgaria**, the law requires that vulnerability is taken into account when deciding on accommodation, but due to the severe shortage of accommodation places, and the poor material reception conditions, this is only applied exceptionally, if at all.³⁶⁸

In other instances, people are merely given accommodation if they are considered to have a special reception need. In **Greece**, if it is identified that an applicant has a special reception need, in practice, due to the severe shortage of accommodation, most of the 1,006 accommodation spaces are given to persons who are considered to be vulnerable. In **France**, even though there is no formalised system for the identification of persons with special reception needs, some reception centres provide separate reception centres or places for vulnerable persons.³⁶⁹ Places in the CADA centres are generally offered to asylum seekers deemed most vulnerable; being families with young children, pregnant women and the elderly.³⁷⁰

In **Malta**, if an individual is identified as vulnerable they will be released from detention and can benefit, under law, from the maintenance of a family unit, where possible.³⁷¹ The Regulation also states that they can benefit from material reception conditions that are of an adequate standard of living, although this is left undefined.³⁷² In practice, once identified as vulnerable, they are released from the detention centre and accommodated in an open centre or a specialised open centre. Despite this, some vulnerable persons are never identified, and even if an individual is identified they may not necessarily be able to access the care and support they require.³⁷³ The capacity to treat persons with special reception needs remains problematic, particularly for needs that could be refugee-specific and related to torture, as there is a lack of expertise and facilities to effectively deal with these issues.

Other countries provide for specialised centres or provide accommodation to individuals in separate wings. For example, in **Belgium**, there are specialised centres, or specific place in regular centres for unaccompanied children; and some centres for single women with children, for victims of trafficking and for persons with psychological problems. However, demand exceeds availability with regard to the other vulnerable asylum seekers.³⁷⁴ Similarly, in **Germany**, several reception centres have tried to introduce a policy to house families and single women in separate parts of the centre. However, due to overcrowding, it is not always possible to carry out this policy.³⁷⁵

In **Poland**, single women whose safety may be at risk can be accommodated outside a centre. There is also one reception centre for single women and single women with children. Other than this, there are no specific mechanisms provided either in law or in practice to address the special reception needs of applicants for international protection.³⁷⁶ According to the Office for Foreigners, staff working in the centres monitors asylum seekers' needs, and can then react, as required, to any issue that occurs during the asylum procedure.³⁷⁷

In **Hungary, Romania, the Netherlands and Slovakia** persons identified as having special reception needs are given access to additional medical treatment and special accommodation.

In **Hungary**, persons with special needs shall be eligible for additional health care services, rehabilitation, psychological and clinical psychological care or psychotherapeutic treatment. The Office of Immigration and Nationality need to ensure separated accommodation for asylum seekers with identified special needs.³⁷⁸

In **Romania**, persons identified as having special reception needs receive separate accommodation if they are considered to be traumatised and require specific medical treatment.³⁷⁹ In **the Netherlands**, if an applicant for international protection is considered to have special reception needs, some of their individual needs can be taken into account. For example, if the applicant is wheelchair bound, the authorities will ensure that they have a room on the ground floor. If an applicant is unable to properly take care for themselves and is unable to wash themselves, they are entitled to regular home care

368. Asylum Information Database, National country report Bulgaria, pp 60-61.

369. Asylum Information Database, National country report France, p. 64.

370. Ibid, p. 64.

371. Regulation 7, Reception Regulations.

372. Regulation 11 (2) Reception Regulations.

373. Asylum Information Database, National country report Malta, p. 43.

374. Asylum Information Database, National country report Belgium, p. 64.

375. Asylum Information Database, National country report Germany, p. 62.

376. Asylum Information Database, National country report Poland p44

377. Ibid, p. 44.

378. Section 33 (1) of the Government Decree 301/2007

379. Romanian country report (with author).

facilities. In this instance they are entitled to the same health care as Dutch nationals. There are, however, no specific reception facilities for asylum seekers with special reception needs, save for those with psychological problems and children.³⁸⁰

In **Slovakia**, if an individual is identified as having special reception needs they are placed in the accommodation centre in Opatovska Nova Ves. Single women and families are also placed in this facility. Under Slovakian legislation, persons with special reception needs can access additional medical treatment.³⁸¹

In **Austria**, in Lower Austria and Vorarlberg, the Basic Care laws include provisions for the special needs of vulnerable persons³⁸²; however, apart from some specific provisions on the rights of unaccompanied minors, it does not specify what special material conditions should be provided. In the east of Traskirchen there is a separate building for single women or mothers. There are also some special facilities throughout federal provinces for this vulnerable group.³⁸³ A specific allowance (€ 2,480) is given when certain persons with special reception needs need nursing care in specialised facilities; these generally cater for persons who are ill, disabled or elderly. However, according to Asylkoordination, this often doesn't cover all of their needs and NGO's have to employ professionals if they offer places for asylum seekers with special, mainly medical needs.

6.3.2.1. Specialist medical care for traumatised persons and victims of torture

Specialised medical treatment is provided for trauma victims and victims of torture in many Member States, but generally on a very limited basis with demand often exceeding supply. Moreover, in most Member States it is provided by specialist NGO's³⁸⁴ who, by their very nature, cannot treat all persons who need it; many suffer from a lack of funding, which makes it difficult to provide care on a continuous basis. It is worth noting the decision of the European Committee on Social Rights in *Conference of European Churches (CEC) v. The Netherlands* which stated that the provision of services by third parties such as Churches and NGO's, particularly when the delegation of these tasks is not based on 'any legal, administrative or financial agreements or safeguards agreed upon between the Government and the bodies'... cannot fulfil the positive obligations assumed by the Government under Article 13 (4), the right to social and medical assistance.³⁸⁵

In **Austria**, in each federal province, one NGO provides treatment to victims of torture and traumatised asylum seekers; however, they are not able to provide a service to all who need it.³⁸⁶ In **Germany**, traumatised asylum seekers and victims of torture can access specialised treatment, but since the number of treatment centres are limited, access is not always guaranteed.³⁸⁷

In **France**, there are a number of NGO's that provide counselling to victims of torture, however, there are only a few specialised centres - unevenly distributed across the country - and they cannot meet the rising demand for its services.³⁸⁸ The 'regular' health care system cannot cope with the demand for specialised services. The Primo Levi Centre, one of the centres that provides counselling to traumatised asylum seekers, published a white paper in 2012 which found that only 6,000 people were receiving adequate support out of an estimated 50,000 persons who were affected by torture.³⁸⁹ Given the demand for mental health care, and the shortage of supply, in **France** Forum Réfugiés-Cosi set up in 2007 the first mental health centre (ESSOR) in the Rhone area, specialising in the treatment of, and support to, victims of torture and trauma resulting from the conditions of their exile. In 2013, approximately 2,700 appointments were carried out. It provides a multidisciplinary approach where doctors, psychologists, physiotherapists and an art-therapist offer comprehensive and multifaceted care to patients. An important feature of the proposed treatment is to allow the patients to express themselves in their own language, through interpretation.

In **Hungary** the Cordelia Foundation (an NGO) provides psychological assistance for torture survivors and traumatised asylum seekers in Debrecen and Bicske reception centres, but their capacity is limited and due to funding difficulties each year there is a question as to whether they will continue to operate. Referrals are carried out on an *ad hoc* basis, dependent on the professional level and goodwill of the asylum officer assigned to the asylum seeker's case.³⁹⁰ Asylum seekers can also be referred to Cordelia by social workers or legal counsellors.

380. Asylum Information Database, the Netherlands, p 44

381. Slovakia country report p 7.

382. NÖ Grundversorgungsgesetz, LGBl. 9240, §6

383. Asylum Information Database, National country report Austria, p. 60.

384. See for example [Pharos](#).

385. *Conference of European Churches (CEC) v. The Netherlands (complaint)*, Complaint No 90/2013, Council of Europe: European Committee of Social Rights, 21 January 2013, para 119.

386. Asylum Information Database, National country report Austria, p. 64.

387. Asylum Information Database, National country report Germany, p. 67.

388. Asylum Information Database, National country report France, p. 70.

389. Asylum Information Database, National country report France p. 70.

390. Asylum Information Database, National country report Hungary, p. 43 and p. 47.

In **Ireland**, specialised treatment for trauma and victims of torture is available through an NGO called SPIRASI.³⁹¹ In **Italy**, asylum seekers suffering mental health problems, including torture survivors, may benefit from specialised services provided by the National Health System and by specialised NGOs or private entities. In 2007, NIRAST (Italian Network for Asylum Seekers who Survived Torture) was established, which provided torture victims with rehabilitation services and specialised medical and psychological care. It ceased operation in March 2012 due to a lack of funds, but it is hoped that the network *per se* will reopen in the near future.³⁹² Meantime the single clinics/ambulatories that were part of the network continue to operate in the national territory, receiving funds from different sources (both from municipalities and transnational projects.) In **Romania**, the ICAR Foundation, an NGO who receives project funding from the European Commission, can provide specialist care for victims of torture in a very limited number of cases.³⁹³

In **the UK**, limited specialised treatment for victims of torture and traumatised asylum seekers is available. It is provided by a number of independent charities, the largest being Freedom from Torture, the Helen Bamber Foundation and the Refugee Therapy Centre. Specialist trauma practitioners, including psychiatrists, psychologists, trauma counsellors and therapists also work in health authorities and trusts around the country, but they are few in number and access is extremely limited.³⁹⁴

According to the Bulgarian Helsinki Committee, there is no specific medical treatment available for victims of torture in **Bulgaria**.³⁹⁵ In **Malta**, no specialised services exist for victims of torture or trauma.³⁹⁶ In **Poland**, while asylum seekers can obtain the services of a psychiatrist or a psychiatric hospital, according to some experts, specialised treatment for victims of torture or traumatised persons is not available in practice.³⁹⁷

In **Cyprus**, asylum seekers who need to receive essential medical treatment that is not available are generally not included in the cross-border healthcare scheme. However, there have been incidents where the Ministry has covered the costs of asylum seeking children needing health care outside the country.³⁹⁸ In 2006 Future Worlds Center established a specialized Unit in Cyprus for torture victims. The Unit for the Rehabilitation of Victims of Torture (URVT) is the only body in the country to be offering services to victims of torture, but it frequently encounters funding difficulties. URVT's works closely with a network of service providers, medical professionals, interpreters and all governmental authorities, in order to help victims recover from their trauma and to facilitate their integration into the Cypriot society.³⁹⁹

6.4. Conclusion

Whilst no formal administrative procedure is necessary to assess an individual's special reception needs, it must be carried out by suitably trained individuals⁴⁰⁰ and there must be an opportunity for the individual to present any relevant information as to why they may require special reception needs. The assessment should be carried out as soon as possible after the applicant has lodged their application for international protection. Once this occurs Member States should provide the relevant accommodation, taking into account the specific and particular vulnerabilities an applicant faces. It is imperative that they are placed in conditions that are conducive to their particular characteristics and that they obtain the necessary health care, including mental health care so that they can present their claim in a comprehensive manner. Member States must ensure that the reception conditions provided are suitable for persons with special reception needs. Sufficient resources must be provided to carry out these services.

In relation to families and children, reception conditions must be specifically adopted for their age and to ensure that the conditions they are subject to for the duration of their asylum claim do not create a situation of anxiety for them. Families should never be separated.

391. Asylum Information Database, National country report Ireland, p. 60.

392. Asylum Information Database, National country report Italy, p. 62.

393. Romanian national report (with author).

394. Asylum Information Database, National country report the UK, p. 64.

395. Asylum Information Database, National country report Bulgaria, p. 46.

396. Asylum Information Database, National country report Malta, p. 46.

397. Asylum Information Database, National country report Poland, p. 49.

398. Asylum Information Database, National country report Cyprus, p. 56.

399. ELENA Coordinators update 2013, p12.

400. Article 29, recast Reception Conditions Directive.

**The detention of applicants
for international protection**

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7. The detention of applicants for international protection

Under both EU and Council of Europe law, Member States can detain individuals seeking asylum under certain circumstances and need to comply with numerous safeguards. The recast Reception Conditions Directive, for the first time in EU law, states the reasons as to when an asylum seeker can be detained. ECRE has consistently held that, as a rule, persons applying for international protection should not be detained, but that if asylum seekers are detained, it should only be in exceptional cases and should comply with all procedural safeguards.⁴⁰¹ The detention of asylum seekers concerns the deprivation of liberty of individuals who have committed no crime and their detention is 'inherently undesirable'.⁴⁰²

The following section will set out the EU legal framework in relation to the reasons for detention. Given the aim of this paper, namely, to examine reception and detention conditions across the EU, this paper does not intend to provide an exhaustive analysis of the reasons for detention nor comprehensively detail what safeguards need to be adhered to when examining the reasons for detention. Neither will it examine State practice in relation to the reasons for detention. In the following sections, however, before examining the conditions of detention, it is important that some context is provided under which an individual can be detained.

7.1. Secondary Legislation

7.1.1. Reception Conditions Directive and its recast

The Reception Conditions Directive and the recast Directive describe detention as the 'confinement of an asylum seeker by a Member State within a particular place, where the applicant is deprived of his or her freedom of movement'.⁴⁰³

Grounds for Detention

Detention is a measure of last resort and an exception to the fundamental right to liberty.⁴⁰⁴ At the EU level, the reasons for detaining a person seeking international protection are regulated by the recast Reception Conditions Directive and the Dublin III Regulation. Article 18 of the Asylum Procedures Directive and Article 26 of the recast Asylum Procedures Directive provides that an asylum seeker should not be detained for the sole reason that he/she claimed asylum.⁴⁰⁵

Article 8 of the recast Reception Conditions Directive provides that an applicant cannot be detained for the sole reason that they are an applicant for international protection. Applicants can be detained when it proves necessary, and on the basis of an individual assessment of each case, and if other less coercive alternative measures cannot be applied effectively. Article 8 (3) of the recast, as set out below, provides an exhaustive list of reasons as to why an individual can be detained.

An applicant may be detained only:

- a) in order to determine or verify his or her identity or nationality;
- b) in order to determine those elements on which the application for international protection is based which could not be obtained in the absence of detention, in particular when there is a risk of absconding of the applicant;
- c) in order to decide, in the context of a procedure, on the applicant's right to enter the territory;
- d) when he or she is detained subject to a return procedure under Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals in order to prepare the return and/or carry out the removal process, and the Member State concerned can substantiate on the basis of objective criteria, including that he or she already had the opportunity to access the asylum procedure, that there are reasonable grounds to believe that he or she is making the application for international protection merely in order to delay or frustrate the enforcement of the return decision;
- e) when protection of national security or public order so requires;
- f) In accordance with Article 28 of Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person.

401. See ECRE, *Position Paper on the Detention of Asylum Seekers*, April 1996 and ECRE, *The Way Forward, Towards Fair and Efficient Asylum Systems in Europe*, September 2005, p. 41.

402. UNHCR, *UNHCR's Guidelines on Applicable Criteria and Standards relating to the Detention of Asylum-Seekers*, February 1999, p. 1.

403. Reception Conditions Directive, Article 2 (k) and recast Reception Conditions Directive Article 2 (h).

404. See also, ECRE, *Comments from the European Council on Refugees and Exiles on the Amended Commission Proposal to recast the Reception Conditions Directive (COM (2011) 320 final)*, September 2011.

405. This is also reiterated in Article 8 of the recast Reception Conditions Directive.

7.1.2. Dublin III Regulation

The Dublin III Regulation also stipulates that a Member State shall not hold a person in detention for the sole reason that they are subject to a Dublin procedure. A Member State can only hold a person in detention when there is a significant risk of absconding, in order to allow them to secure a transfer procedure. The detention needs to be made on the basis of an individual assessment and only in so far as the detention is proportional and other less coercive alternate measures cannot be effectively applied.⁴⁰⁶

7.2. EU Fundamental Rights and Principles

All grounds for the detention of an applicant for international protection as set out in national legislation must comply with one of the grounds listed in Article 5 of the ECHR, (and for the purposes the detention of asylum seekers, the relevant provision is Article 5 (1) (f)) and its equivalent Article 6 of the Charter. A basic indication of the legal basis for the detention by itself is insufficient.⁴⁰⁷ In addition, where the applicant has managed to infer the reason for detention, this does not absolve the state from directly giving the reasons as to why the applicant was in detention.⁴⁰⁸

7.2.1. Charter of Fundamental Rights of the European Union

Article 6 of the Charter of Fundamental Rights of the European Union provides that ‘everyone has the right to liberty and security of person’. According to the explanations of the Charter, ‘the rights in Article 6 are the rights guaranteed by Article 5 of the ECHR, and in accordance with Article 52(3) of the Charter, they have the same meaning and scope. Consequently, the limitations which may legitimately be imposed on them may not exceed those permitted by the ECHR’. Therefore, Member States must abide by the restrictions imposed by Article 5 ECHR when implementing or interpreting EU law.

7.2.2. Procedural Safeguards

If a Member State is going to detain an applicant for international protection they must comply with many procedural safeguards, only some of which are briefly set out below.

Applicants need to be informed immediately as to why they are being detained. In *Athary v Turkey*, the Court found that there was a violation of Article 5 (1) ECHR because the applicant was not given a sufficient reason for his detention upon his arrest and only given a justifiable reason after he was held in detention for five days.⁴⁰⁹

There is also a right under EU law and the ECHR to review the reasons for detention. Article 47 of the Charter provides that there is a right to an effective remedy and a fair trial. It is broader than its counterpart in the ECHR (Article 13) and the ICCPR (Article 2 (3)) as it does not require an ‘arguable claim’ of a violation of a fundamental right. Article 47 of the Charter provides that there is a right to judicial scrutiny of a decision taken by EU or national authorities on the basis of an EU law provision.⁴¹⁰ The right is only applicable where the decision has legal effect and capable of infringing rights guaranteed under EU law.

Article 5 (4) ECHR specifically requires that ‘everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful’. Two of the key safeguards state that the review needs to be carried out speedily and that the review is accessible. As such, Article 5 (4) provides that a judge needs to decide on the lawfulness of detention in a timely manner, but it also requires that the Court periodically reviews the need for continued detention. In addition, the review must provide an accessible and effective means to challenge the detention measure.⁴¹¹ Generally, when the CJEU is looking to see whether a measure meets the principle of effectiveness, it states that ‘rules that [make] it virtually impossible or excessively difficult to protect rights should be set aside’.⁴¹²

There is also an obligation on the state to provide information for the reasons for his arrest in a language that the applicant actually understands. In *Abdolkhani and Karimnia v. Turkey* the Court found that ‘by virtue of Article 5 (2) any person arrested must be told, in simple, non-technical language that can be easily understood, the essential legal and factual grounds for the arrest, so as to be able, if he or she sees fit, to apply to a court to challenge its lawfulness in accordance with Article 5 (4)’.⁴¹³ The standard set out in Article 9 (4) of the recast Reception Directive may not meet this standard as

406. Dublin III Regulation Article 28 (1) and (2).

407. ECtHR, *Fox, Campbell and Hartley v. The United Kingdom*, Application no. 12244/86; 12245/86; 12383/86, 30 August 1990, para 41.

408. ECtHR *Shamayev and Others v Georgia and Russia* Application no. 36378/02, 12 April 2005, para 425.

409. ECtHR, *Athary v Turkey*, Application no. 50372/09, ECHR, 11 March 2013, para 36.

410. CJEU, *Lili Georgieva Panayotova and Others v Minister voor Vreemdelingenzaken en Integratie*, Case C-327/02.

411. ECtHR, *Nasrulloev v. Russia*, Application no. 656/06, 11 October 2007, para 86.

412. CJEU, *Amministrazione delle Finanze dello Stato v San Giorgio*, Case C-199/82 9 November 1983.

413. ECtHR, *Abdolkhani and Karimnia v. Turkey*, Application No. 30471/08, 22 September 2009, para 136.

it provides that the detained applicants shall immediately be informed in writing, in a language which they understand or are *reasonably* supposed to understand, of the reasons for detention and the procedures laid down in national law for challenging the detention order as well as the possibility to request free legal assistance and representation (authors emphasis).

For more information on the procedural safeguards that need to be adhered with see:

- European Union: European Agency for Fundamental Rights, *Handbook on European law relating to asylum, borders and immigration*, June 2013.
- European Council on Refugees and Exiles, *Not There Yet: An NGO Perspective on Challenges to a Fair and Effective Common European Asylum System*, 9 September 2013.

Detention conditions of applicants for international protection

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8. Detention conditions of applicants for international protection

When asylum seekers are detained, the conditions of their detention must be in accordance with European and International law. The following section will look at these conditions, firstly under secondary law and then under the Charter and General Principles of EU law. It will then look at the detention conditions in selected Member States.

8.1. Secondary Legislation

8.1.1. Reception Conditions Directive and its recast

There are no specific provisions in the Reception Conditions Directive on detention conditions for asylum seekers, but the general reception standards for reception conditions are also applicable when asylum seekers are detained. (See Section 4.1 Secondary legislation). As the recast Reception Conditions Directive regulates the circumstances under which applicants for international protection can be detained, there are now specific provisions on detention conditions. Article 10 of the recast Reception Conditions Directive states that the detention of applicants shall take place, as a rule, in specialised detention facilities. Where this cannot be provided and a Member State needs to resort to prison accommodation, the detained shall be kept separately from ordinary prisoners. It also provides that, as far as possible, detained applicants shall be kept separately from other third-country nationals who have not lodged a claim for asylum.⁴¹⁴ Detained applicants shall have access to open air spaces. Recital 18 of the recast Reception Conditions Directive states that 'applicants who are in detention should be treated with full respect for human dignity and their reception should be specifically designed to meet their needs in that situation. In particular, Member States should ensure that Article 37 of the 1989 United Nations Convention on the Rights of the Child is applied'.⁴¹⁵

8.1.2. Dublin III Regulation

When an applicant is detained under the Dublin III Regulation for the purposes of a transfer, Member States need to adhere to the detention conditions as stipulated in the recast Reception Conditions Directive. These standards are also applicable to States that are not party to the recast Reception Conditions Directive. Article 28 (4) states 'as regards the detention conditions and the guarantees applicable to persons detained, in order to secure the transfer procedures to the Member State responsible, Articles 9, 10 and 11 of Directive 2013/33/EU shall apply'. The Charter is also applicable for the detention conditions in these Member States when they detain an individual for the purposes of a transfer as the transfer falls within the scope of EU law.

8.2. EU Fundamental Rights and Principles

8.2.1. The right to human dignity

Member States must respect and take into account a person's human dignity when deciding whether to detain an applicant for international protection. (For a detailed analysis of the right to human dignity see section 4.2).

The ECtHR has referred to a person's right to human dignity when finding that a person has a right to be detained in conditions that do not amount to inhuman and degrading treatment. In *Orchowski v. Poland*, the Court stated 'under Article 3 the State must ensure that a person is detained in conditions which are compatible with respect for his human dignity...'⁴¹⁶ The lack of resources cannot justify conditions which are so poor that they reach the threshold of treatment contrary to Article 3 of the Convention. 'If the State is unable to ensure that prison conditions comply with the requirements of Article 3 of the Convention, it must abandon its strict penal policy in order to reduce the number of incarcerated persons or put in place a system of alternative means of punishment'.⁴¹⁷ The manner and method in which States execute the treatment must be carried out in a way that does not subject the applicant to distress or hardship of an intensity exceeding the un-

414. Article 10 (1) recast Reception Conditions Directive.

415. Recital 18, recast Reception Conditions Directive.

416. ECtHR, *Orchowski v. Poland*, Application no. 17885/04, 22 October 2009.

417. *Ibid.*, paras 120 and para 153. In *Nazarenko v. Ukraine* the Court stated 'The Court has also borne in mind, when considering the material conditions in which the applicant was detained and the activities offered to him, that Ukraine encountered serious socio-economic problems in the course of its systemic transition and that prior to the summer of 1998 the prison authorities were both struggling under difficult economic conditions and occupied with the implementation of new national legislation and related regulations. However, the Court observes that lack of resources cannot in principle justify prison conditions which are so poor as to reach the threshold of treatment contrary to Article 3 of the Convention. Moreover, the economic problems faced by Ukraine cannot in any event explain or excuse the particular conditions of detention which it has found [...] to be unacceptable in the present case'.

avoidable level of suffering inherent in detention.⁴¹⁸ ECRE believes that detaining an applicant for international protection in a prison rather than in a detention centre undermines the principle of human dignity, in particular if they are imprisoned for extended periods of time. They have not committed a crime, and as per Article 31 of the Geneva Convention, asylum seekers shall not be penalised for claiming asylum. By placing such persons in a facility alongside persons who have committed crimes could invoke the right to human dignity.

In *Peers v Greece*, the ECtHR took into account, in particular, that, for at least two months, the applicant had to spend most of his days confined to his bed in a cell with no ventilation and no window, resulting, at times, in the cell becoming unbearably hot. He also had to use the toilet in the presence of another cell-mate and be present while the toilet was being used by his cell-mate. It found that the prison conditions diminished the applicant's human dignity and aroused in him feelings of anguish and inferiority capable of humiliating and debasing him and possibly breaking his physical or moral resistance. It went on to find a breach of Article 3.⁴¹⁹

In *Rahimi v. Greece*, the ECtHR found that even though the applicant was only detained for two days, the conditions of the detention centre were so unhygienic and the infrastructure was so bad they violated the very meaning of human dignity. As a result the court found that being subject to such detention conditions amounted to inhuman and degrading treatment in breach of Article 3.⁴²⁰

The right to human dignity in Section 4.2 also looks at other case law in more detail that is relevant for this section. For example in *Pretty v UK* the Court associated dignity with quality of life that is intrinsic in Article 8.⁴²¹ If the detention conditions do not provide for a sufficient quality of life there could be a breach of the right to human dignity. This is particularly pertinent if someone is detained for a long period of time with little recourse to educational or recreational activities. Similarly, if they are separated from their family for extended periods of time, this could have an immensely negative effect on their quality of life.

Detaining an individual in overcrowded conditions could invoke Article 1 of the Charter. In *I v United Kingdom*, the ECtHR linked dignity to the right to personal autonomy and provided that there is a right to protect 'the personal sphere of each individual'.⁴²² Whilst this case concerned the right of transsexuals to establish their personal identity the Court stressed the right of everyone to their own personal autonomy; which is also applicable in immigration detention. People cannot be placed in conditions where they are given insufficient space or where their personal autonomy is affected to such an extent that their human dignity is violated.

From the case law above it can be concluded that there is a positive obligation on the State to ensure that the applicant is not detained in conditions that are incompatible with human dignity.⁴²³ In both the Reception Conditions Directive and its recast, it provides that the reception standards for applicants should ensure a dignified standard of living.⁴²⁴

It has not yet clear whether the right to human dignity requires a lesser threshold than what is required to breach Article 3 of the ECHR (Article 4 of the Charter). Some of the case law mentioned above was decided on the basis of Article 3 ECHR, but where the violation of the applicant's human dignity played a central role in finding that violation. It can be argued that the right to human dignity requires that the quality of life of an applicant for international protection in detention must be one that is of a sufficient standard.⁴²⁵ In addition, they must be placed in conditions that respect the personal sphere of an individual, which also links with the prohibition of over-crowding in terms of Article 3 ECHR. The right to dignity has an important role with regard to detention conditions Member States need to abide by. The essence of the right to human dignity implies that a human being cannot be treated as an object and that their intrinsic worth must be respected. The onus cannot be placed on the applicant to ensure that their essential needs are met.⁴²⁶

418. ECtHR, *Valašinas v. Lithuania*, Application no. 44558/98, 24 October 2001, para 102.

419. ECtHR, *Peers v Greece*, Application no. 28524/95, 19 April 2001.

420. ECtHR, *Rahimi v. Greece*, Application No. 8687/08, 5 July 2011, para 86.

421. It provided 'the very essence of the Convention is respect for human dignity and human freedom. Without in any way negating the principle of sanctity of life protected under the Convention, the Court considers that it is under Article 8 that notions of the quality of life take on significance'. ECtHR, *Pretty v United Kingdom*, Application no. 2346/02, 29 July 2002 para 65.

422. ECtHR, *I v The United Kingdom*, Application no. 25680/94, 11 July 2002, para 70. The Court stated that under Article 8 of the Convention in particular, where the notion of personal autonomy was an important principle underlying the interpretation of its guarantees, protection was given to the personal sphere of each individual. Whilst this case concerned the right of transsexuals to establish their identity as individual human beings, the reasoning can apply to those who are in immigration detention.

423. In *Aden Ahmed v Malta*; the Court provided that 'Under Article 3, the State must ensure that a person is detained in conditions which are compatible with respect for human dignity'; ECtHR, *Aden v Malta*, Application no. 55352/12 ; ECHR, 23 July 2013, para 86.

424. Recital 7 Reception Conditions Directive and Recital 11 recast Reception Conditions Directive.

425. See Section 4.2.2.1. Scope and content of the right to human dignity for more information.

426. In *Riad and Idiab v. Belgium*, the Court found that once a State has decided to deprive an applicant of their liberty, there was a duty on the State to ensure that the applicant was detained in conditions that were compatible with respect for human dignity. 'It could not merely expect the applicants themselves to take the initiative in approaching the centre in order to provide for their essential needs'. ECtHR, *Riad and Idiab v. Belgium*; Applications nos. 29787/03 and 29810/03; 24 January 2008, para 103.

8.2.2. Prohibition of torture and inhuman or degrading treatment or punishment

Article 3 of the European Convention on Human Rights and Article 4 of the Charter of Fundamental Rights of the European Union prohibit torture and inhuman or degrading treatment or punishment. Member States may not expose applicants to detention conditions which could amount to such treatment.⁴²⁷

In order for treatment to fall within the scope of Article 3, the ill-treatment must attain a minimum level of severity, the assessment of which depends on all the circumstances of the case, such as the duration of the treatment, its physical or mental effects and, in some cases, the sex, age and state of health of the victim.⁴²⁸ In *Dougoz v Greece*, the Court stated that when assessing conditions of detention, 'account has to be taken of the cumulative effects of these conditions, as well as of specific allegations made by the applicant'.⁴²⁹ Significantly, in *Dybeku v Albania*, the Court found that an important factor, along with the detention conditions, is the detention regime. In assessing whether a restrictive regime may amount to treatment contrary to Article 3, regard must be had to the particular conditions, the stringency of the regime, its duration, the objective pursued and its effect on the person concerned.⁴³⁰ In *MSS v Belgium and Greece* the Court stated that they must 'take into account that the applicant, being an asylum seeker, was particularly vulnerable because of everything he had been through during his migration and the traumatic experiences he was likely to have endured previously'.⁴³¹

Lack of space and overcrowding

In *Aden Ahmed v Malta*, the Court considered the extreme lack of space in a prison cell as a significant factor when assessing whether detention conditions amounted to degrading treatment as per Article 3 of the ECHR. It provided that the Court has to have regard to the following elements:

- a) each detainee must have an individual sleeping place in the cell;
- b) each detainee must dispose of at least three square metres of floor space; and
- c) the overall surface area of the cell must be such as to allow the detainees to move freely between the furniture items.

The absence of any of the above elements creates in itself a strong presumption that the conditions of detention amounted to degrading treatment and were in breach of Article 3.⁴³²

In *Abdolkhani and Karimnia v. Turkey*, the applicants were held in the basement of the police headquarters for three months. The Court found that the length of detention and the overcrowded conditions the applicants were subject to were contrary to Article 3. The ECtHR found that if the Turkish Government's estimate of 42 detainees in a 70m² facility was accurate, holding that many people in such a small space, even for one day, constituted severe overcrowding.⁴³³

M.S.S. v Greece and Belgium concerned an applicant who was transferred under the Dublin II Regulation to Greece from Belgium. The ECtHR noted that in the holding centre next to the airport the sector for asylum seekers was rarely unlocked; the detainees had no access to water and had to drink from toilets. There were 145 detainees in a 110 sq. m space. There was one bed for 14 - 17 people and most had to sleep on a bare floor. In addition, due to the overcrowding, there was a lack of sufficient ventilation and the cells were unbearably hot. The sanitary conditions were also woefully inadequate and they were deprived of outdoor exercise. The Court found that the conditions breached Article 3.⁴³⁴

Other aspects

The Court also takes into account other physical conditions when assessing whether conditions can be classified as 'degrading'. Such elements include 'access to outdoor exercise, natural light or air, the availability of ventilation and the adequacy of heating arrangements, the possibility of using the toilet in private, and compliance with basic sanitary and hygienic requirements'. Therefore, even where the detention space is adequate, there can be a breach of Article 3 if

427. The general standard the ECtHR sets when examining what treatment is contrary to Article 3 is 'treatment is considered to be degrading when it humiliates or debases an individual, showing a lack of respect for, or diminishing, his or her human dignity, or arouses feelings of fear, anguish or inferiority capable of breaking an individual's moral and physical resistance ECtHR, *Pretty v. the United Kingdom*, Application no. 2346/02, ECHR, para 52. Also see *Peers v Greece* (n420).

428. ECtHR, *Mubilanzila Mayeka and Kaniki Mitunga v. Belgium*; Application no. 13178/03, 12 October 2006, para 48.

429. ECtHR, *Dougoz v Greece*; Application no. 40907/98, 6 March 2001, para 46.

430. ECtHR, *Dybeku v Albania*, Application no. 41153/06, 18 December 2007 para 39.

431. ECtHR, *M.S.S v Belgium and Greece*; Application no. 30696/09, 21 January 2011, para 232.

432. ECtHR, *Aden Ahmed v Malta*, Application no. 55352/12, 23 July 2013, para 87.

433. ECtHR, *Abdolkhani and Karimnia v. Turkey (No. 2)*, Application no. 50213/08, 27 July 2010.

434. ECtHR, *M.S.S. v. Belgium and Greece*, Application no. 30696/09, Council of Europe, 21 January 2011.

some of the above elements are present.⁴³⁵

In *S.D. v Greece* the Court found that confining an asylum seeker to a prefabricated cabin for two months without allowing him to go outdoors or to make a telephone call, where he was provided with no clean sheets or hygiene products amounted to a breach of Article 3.⁴³⁶

In *Canali v France* the Court found that even though the actual living conditions the applicant was subjected to were of a sufficient standard, other aspects of his detention needed to be taken into consideration. The applicant had very limited opportunity to spend time in a courtyard outdoors that measured 50 sq. m. In addition, the sanitary and hygiene facilities in the prison were not of a sufficient standard. The Court stressed that access to appropriate toilets and the maintenance of good hygiene conditions were essential elements in an environment for humans. Prisoners had to have easy access to sanitary facilities in which their privacy was protected. A toilet annex that was only partially closed off was not acceptable in a cell occupied by more than one prisoner. It found that the cramped conditions, combined with the unhygienic conditions, subjected him to feelings of despair and inferiority capable of debasing and humiliating him. As a result the conditions of detention amounted to degrading treatment, leading to a violation of Article 3.⁴³⁷

It should be emphasised that the Convention is a living instrument and that given the ‘increasingly high standard being required in the area of the protection of human rights and fundamental liberties correspondingly and inevitably requires greater firmness in assessing breaches of the fundamental values of democratic societies’⁴³⁸. The above elements should only be seen as a guide and not as a definitive standard.

In *Modarca v Moldova*, the ECtHR also took into account the quality of food and bedding in finding a violation of Article 3. It found that the applicant was detained in ‘extremely overcrowded conditions with little access to daylight, limited availability of running water, especially during the night and in the presence of heavy smells from the toilet, while being given insufficient quantity and quality of food or bed linen. Moreover, he had to endure these conditions for almost nine months’.⁴³⁹

The ECtHR has found that Greece violated Article 3 in numerous judgments as a result of the detention conditions in their detention centres and their prisons. In *HH v Greece*,⁴⁴⁰ the ECtHR found that Greece violated Article 3. The applicant was placed in Soufli and Feres border posts between 2010 and 2011, and submitted that he could not go outside to walk or exercise. The conditions had a particularly adverse effect on his mental health, subsequently leading to suicide attempts. He also claimed that the centre was severely overcrowded, unhygienic and under-equipped. The Court, whilst reiterating that in order to reach the Article 3 threshold the ill-treatment had to reach a certain gravity - depending principally upon the duration of treatment and the effects on the applicants mental and physical health - found that this was evident in the present case. Relying on UNHCR and the Committee for the Prevention of Torture reports, the Court concluded that nothing had improved in Soufli from its previous jurisprudence to counteract the present applicant’s arguments. Thus, Greece had violated the applicant’s Article 3 rights.

Appropriate premises

Under the recast Reception Conditions Directive, an applicant can be detained, under certain circumstances in a prison or in a transit zone. The ECtHR has examined the standard of appropriateness of certain premises that house detainees. In *Riad and Idiab v. Belgium*, the Court found that detaining the applicants for more than ten days in the transit zone violated Article 3. By its very nature, it was a place intended to receive people for extremely short periods of time. It found that the transit zone could arouse in detainees a feeling of solitude, had no external area for walking or taking physical exercise, no internal catering facilities, and no radio or television to ensure contact with the outside world; it was in no way adapted to the requirements of a stay of more than ten days.⁴⁴¹ It found that the conditions which the applicants were required to endure while being detained for more than ten days ‘caused them considerable mental suffering, undermined their dignity and made them feel humiliated and debased’.⁴⁴²

In *Horshill v Greece* the Court considered that police stations are not appropriate premises for detaining applicants

435. ECtHR, *Ananyev and others v. Russia*; Applications nos. 42525/07 and 60800/08, 10 January 2012; para 149. In *Suso Musa v. Malta*, which concerned an asylum seeker in Malta who was detained upon arrival, the Court stated that ‘conditions of detention should be appropriate, bearing in mind that the measure is applicable not to those who have committed criminal offences but to aliens who, often fearing for their lives, have fled from their own country’; ECtHR, *Suso Musa v. Malta*, Application 42337/12, ECHR, 23 July 2013, para 93.

436. ECtHR, *S.D v Greece*, Application no. 53541/07, 11 June 2009, paras 49 -54. Similarly in *Tabesh v Greece*, the detention of an asylum seeker for three months and who had no access to any recreational activities and no proper meals was considered degrading treatment; ECtHR, *Tabesh v Greece*, Application no. 8256/07, 26 November 2009, paras 38 – 44.

437. ECtHR, *Canali v France*; Application no. 40119/09, 25 July 2013.

438. *Mubilanzila Mayeka and Kaniki Mitunga v. Belgium*; Application no. 13178/03, ECtHR, 12 October 2006, para 48

439. ECtHR, *Modarca v Moldova*, Application no. 14437/05, 10 May 2007, para 68.

440. ECtHR, *HH v Greece*, Application no. no. 63493/11, 9 October 2014.

441. ECtHR, *Riad and Idiab v. Belgium*, Application nos. 29787/03 and 29810/03, 24 April 2008, para 104.

442. *Ibid*, para 107.

awaiting the application of an administrative measure. The applicant had been held in detention for 15 days in two different police stations, in a basement with no natural light. There were no adjoining showers, he was unable to go outside or take part in physical activity. The Court found that there was a violation of Article 3.⁴⁴³ The Court also looked at the stringency of the regime when assessing whether there was a violation of Article 3 ECHR.

Ill-treatment

Member States are also under an obligation to ensure that detained applicants are not subject to ill-treatment by other detainees or by the staff of the facilities and to mitigate harm. If there is alleged ill-treatment carried out by the authorities there needs to be an investigation, carried out by competent, qualified and impartial experts who are independent of the suspected perpetrators and the agency they serve.⁴⁴⁴ The investigation also needs to be prompt, thorough and effective.⁴⁴⁵ If there is a medical examination after the alleged ill-treatment, the forensic doctor must enjoy formal and de facto independence, have specialised training and be afforded a mandate which is broad in scope.⁴⁴⁶

In *Keenan v United Kingdom*, the Court noted that ‘in respect of a person deprived of his liberty, recourse to physical force which has not been made strictly necessary by his own conduct diminishes human dignity and is in principle an infringement of the right set forth in Article 3’.⁴⁴⁷

Member States also have an obligation to take all reasonable measures to prevent or end a situation where a detainee faces a real threat from another private individual to their life, or physical integrity, and from treatment that could be classed as cruel or inhuman.⁴⁴⁸ This includes taking reasonable and effective measures to prevent ill-treatment to children and other vulnerable individuals which the authorities were or ought to have been aware of.⁴⁴⁹ The Committee against Torture have repeatedly stated that certain factors, such as unhygienic conditions and over-crowding can lead to inter-prison violence.

8.2.3. Right to liberty and security

Member States, albeit under strict conditions, may detain asylum seekers in prison accommodation; which is very regrettable given the importance of differentiating asylum-related detention from imprisonment as a result of criminal charges or conviction. The ECtHR requires that there must be some relationship between the grounds of permitted deprivation of liberty relied on and the place and conditions of detention.⁴⁵⁰ If this link cannot be established there may be a breach of Article 5 (1) ECHR or Article 6 of the Charter.⁴⁵¹

International standards stipulate that, except for short periods of time, detained migrants should be held in specifically designed centres in conditions tailored to their legal status and catering for their particular needs.⁴⁵² Under Article 5 ECHR (and its equivalent Article 6 of the Charter), holding a detainee in a facility which is inappropriate in light of the grounds on which he or she is held (for example for the prevention of unlawful entry or pending deportation under Article 5.1(f)) may violate the right to liberty.⁴⁵³ The ECtHR has found that holding a child asylum seeker with adults in a facility not adapted to her needs, violated the right to liberty.⁴⁵⁴ A similar rationale could apply to the long-term use of prisons or police cells for immigration detention.

Moreover, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), when examining the standards as regards the detention of immigrants in prisons, found that ‘[E]ven if the actual conditions of detention for these persons in the establishments concerned are adequate - which has not always been the case - the CPT considers such an approach to be fundamentally flawed. A prison is by definition not a suitable place in

443. ECtHR, *Horshill v Greece*, Application no. 70427/11, 1 November 2013.

444. ECtHR, *Ramsahai and Others v. the Netherlands* [GC], Application no. 52391/99, 2007, para 327.

445. ECtHR, *Kişmir v. Turkey*, Application no. 27306/95, 31 May 2005, para 117.

446. ECtHR, *Premininy v Russia*, Application no. 44973/04, 10 February 2011, para 111.

447. ECtHR, *Keenan v United Kingdom*, Application no. 27229/95, 03 April 2001 para 113.

448. ECtHR, *Osman v United Kingdom*, Application no. 23452/94, 28 October 1998.

449. ECtHR, *Okkalil v. Turkey*, Application no. 52067/99, 17 October 2006, para 70.

450. ECtHR, *Mubilanzila Mayeka and Kaniki Mitunga v. Belgium*, Application no. 13178/03 12 October 2006, para. 102.

451. *Ibid.*, the Court found that the applicant, a minor was held in a closed centre intended for adult irregular migrants; the Court found that these conditions were not adapted to the position of extreme vulnerability in which the applicant found herself in as a result of her position as an unaccompanied foreign minor. In these circumstances, the Court considered that the Belgian legal system at the time and as it functioned in this instance did not sufficiently protect the second applicant’s right to liberty.

452. *CPT Standards*, *op. cit.*, fn. 629, page 54, Extract from 7th General Report [CPT/Inf (97) 10], para. 29; *European Guidelines on accelerated asylum procedures*, CMCE, *op. cit.*, fn. 119, Principle XI.7: ‘detained asylum seekers should normally be accommodated within the shortest possible time in facilities specifically designated for that purpose, offering material conditions and a regime appropriate to their legal and factual situation and staffed by suitably qualified personnel. Detained families should be provided with separate accommodation guaranteeing adequate privacy’. See also, *Vélez Looor v. Panama*, IACtHR, *op. cit.*, fn. 536, para. 209.

453. ECtHR, *Aerts v. Belgium*, Application No. 25357/94, Judgment of 30 July 1998, para. 46.

454. ECtHR, *Mayeka and Mitunga v. Belgium*, Application no 13178/03, 12 October 2006. See also Section 10.2 The detention of children for more detailed information.

which to detain someone who is neither convicted nor suspected of a criminal offence'.⁴⁵⁵ The ECtHR also held that the place and conditions of detention must be appropriate in order for detention not to be arbitrary, 'bearing in mind that the measure is applicable not to those who have committed criminal offences but to aliens who, often fearing for their lives, have fled from their own country'.⁴⁵⁶ (See also Section 10.2 'the detention of children' as it is also relevant for this section).

Relevant Court of Justice of the European Union case law on the appropriateness of a detention facility

In July 2014, the CJEU issued three judgments that are also relevant for the detention of asylum seekers. In *El Dridi*⁴⁵⁷ and *Achughbabian*,⁴⁵⁸ the CJEU was asked in to interpret Article 16 (1) of the Returns Directive which provides that when someone who is subject to a return decision needs to be detained, detainees shall be held in immigration detention, and where this is not possible, and Member States are obliged to resort to prison accommodation, the detained applicant shall be kept separately from other prisoners. The Court found that a Member State cannot rely on the fact that there are no specialized detention facilities in a part of its territory to justify keeping non-citizens in prison pending their removal.

In *Pham*, which also dealt with prison accommodation in Germany under the Returns Directive, the CJEU found that the obligation for migration detainees to be kept separated from ordinary prisoners is not coupled with any exception, even where the applicant had expressed a wish to remain in prison to stay in contact with compatriots. The separation requirement is more than a specific procedural rule for carrying out detention in prisons and constitutes a substantive condition for that detention, without compliance of which such detention would, in principle, not be consistent with the Directive.⁴⁵⁹

The same standards with regard to prison accommodation and any exceptions thereto (the obligation to separate migration detainees from other prisoners) are contained in Article 10 of the recast Reception Conditions Directive; therefore, following these judgments, asylum seekers should not be placed in prison accommodation if there are other specialised detention facilities in other parts of the Member State. Furthermore, if, under exceptional circumstances, applicants are placed in prison accommodation, they must be separated from ordinary prisoners, something that does not always happen at present.

8.2.4. Freedom of thought, conscience and religion

Member States must respect an applicant's freedom of thought, conscience and religion. This can take many forms including worship, teaching, practice and observance. If there is an alleged breach of freedom of thought, conscience and religion, the breach must be such that it attains a certain level of 'cogency, seriousness, cohesion and importance'.⁴⁶⁰ There is a positive obligation on States to take reasonable and appropriate measures to ensure that the applicant can enjoy the rights guaranteed to them under Article 9 and also to ensure that any limitation on this right as provided by Article 9 (2) ECHR are 'necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others'.

If an applicant has certain dietary requirements in accordance with their religious beliefs, this can fall within the remit of Article 9 ECHR and Article 10 of the Charter. Member States may be under an obligation to provide the requisite meals for the applicant concerned. In *Jakóbski v. Poland* the Court found that the State did not strike a fair balance between the interests of the institution and the applicant as the provision of a vegetarian diet would not have 'entailed any disruption to the management of the prison or to any decline in the standards of meals served to other prisoners'.⁴⁶¹ Member States are therefore under an obligation to take into account the special dietary needs of an applicant for international protection when in detention, but these dietary needs need to be balanced against the interests of the institution in general.⁴⁶²

455. European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, CPT Standards, CPT/Inf/E/(2002) 1 – Rev. 2010 (Hereinafter 'CPT Standards'), par. 28 available at <http://www.cpt.coe.int>. The CPT was set up under the Council of Europe's "European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment". The CPT is not an investigative body, but provides a non-judicial preventive mechanism to protect persons deprived of their liberty against torture and other forms of ill-treatment. It thus complements the judicial work of the European Court of Human Rights.

456. ECtHR, *Saadi v. United Kingdom*, Application No. 13229/03, 29 January 2008, para 74.

457. CJEU, Case C - 61/11, *Hassen El Dridi* 29 April 2011.

458. CJEU, Case – 329/11, *Alexandre Achughbabian v Préfet du Val-de-Marne*, 6 December 2011.

459. CJEU, Case – 474/13, *Thi Ly Pham v Stadt Schweinfurt, Amt für Meldewesen und Statistik*, 17 July 2014, paras 17, 19 and 21.

460. ECtHR, *Cha'are Shalom Ve Tsedek v. France* [GC], Application no. 27417/95, 27 June 2000, para 73.

461. ECtHR, *Jakóbski v. Poland*; Application no.18429/06, 7 December 2010, para 52.

462. The Court stated that whilst the decision to make special arrangements for one prisoner within the system can have financial implications for the custodial institution and thus indirectly on the quality of treatment of other inmates, 'it must consider whether the State can be said to have struck a fair balance between the interests of the institution, other prisoners and the particular interests of the applicant', para 50.

8.3. Detention Conditions in Member States

Member States must ensure that when detaining an individual, which should always be a measure of last resort, the conditions of detention are of a certain quality and they should be treated with full respect for their human dignity,⁴⁶³ but it is apparent that this is not always complied with in practice. In certain countries applicants for international protection are detained in prisons, or in police stations, the latter of which, at times, are even worse than prisons. Whilst certain countries have specialised detention facilities, many country reports noted that they had a similar characteristic of being “prison-like”. In certain countries there were incidents of overcrowding, and riots and hunger-strikes were not a rare occurrence. Practice differed with regard to open-air facilities, with certain Member States limiting outdoor access to one hour a day, outside a locked cell, whilst in others States detainees could move relatively freely throughout the day. One disturbing and alarming trend was the level of reports of abuse by the staff working in the detention centre. This section does not detail the period of time applicants for international protection generally spends in detention as it can vary substantially in relation to the particular facts involved. However, the time period obviously has a significant impact (for better or worse) in the specific centres referred to below.

8.3.1. Detention facilities

Asylum seekers who are detained are generally held in specialised detention facilities, but prisons and police stations are sometimes used to house them. These three facilities will be looked at below

8.3.1.1. Prisons

Whilst most countries do not detain applicants in actual prisons, asylum seekers are detained in police stations which can resemble prisons and where applicants are treated the same as other prisoners who are being detained for criminal offences.

In **Germany**, detention facilities are the responsibility of the Federal States.⁴⁶⁴ In certain instances, until the autumn of 2014, Federal States detained applicants for international protection in prisons. As a result, they were subjected to the same rules and restrictions as sentenced or even remand prisoners.⁴⁶⁵ Following the CJEU decisions referred to above, this practice has been under review in the second half of 2014, with several Federal States announcing that the detention of migration detainees in ordinary prisons would be abolished and specialised detention centres were to be established instead.⁴⁶⁶ In **Ireland**, asylum seekers are rarely detained, but if they are they are detained in regular prisons. In 2011, the CPT stated that they were concerned at the placement of immigration detainees in ordinary prison facilities together with convicted or remand prisoners.⁴⁶⁷

8.3.1.2. Police stations and the conditions in the stations

In **Austria**, some asylum seekers are detained in police cells, the conditions of which are regularly criticised by the Human Rights Board.⁴⁶⁸ In **Bulgaria**, a new border police station was opened in Elhovo, for the pre-registration of asylum seekers,⁴⁶⁹ but it is also used to detain applicants apprehended outside official border checkpoints for a period of up to 20 days. In Elhovo, there is a modern part and an older part that was used when the modern block became overcrowded. According to the station chief, the older part is no longer used but was in use up until November 2013. In the older part, the migrants were housed in an indoor ‘basket court’ that was separated into five cages, one for women and children and the rest on the basis of nationality.⁴⁷⁰

In **Cyprus**, asylum seekers can be detained in police stations before being transferred to the main detention centre and may also be held with persons accused of committing a criminal offence pending trial.⁴⁷¹

In **Greece**, asylum seekers are often kept in police stations in appalling conditions for extended periods of time. MSF reported that detainees spend several months, in some cases for as long as 17 months inside the cell area with no

463. Recital 18, recast Reception Conditions Directive.

464. Asylum Information Database, National country report Germany, p. 71.

465. European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), Report on the visit to Germany from 25 November to 7 December 2010, CPT/Inf (2012) 6, 22 February 2012, p. 21. See also Asylum Information Database, National country report Germany p. 71.

466. For instance, the Ministry of the Interior of the Federal State of Nordrhein-Westfalen (North-Rhine-Westphalia) announced on 26 November 2014 that the prison at Bueren, which had been used both for migration detainees and sentenced prisoners in the past, is to be converted into a “facility for detention pending deportation” (Abschiebungsgewahrsam), which will only house migration detainees.

467. Asylum Information Database, National country report Ireland, p. 66.

468. Asylum Information Database, National country report Austria, p. 71.

469. EASO, *Stock taking report on the asylum situation in Bulgaria*, March 2014, 3.2. Asylum Determination Procedure.

470. Human Rights Watch, ‘Containment Plan Bulgaria’s Pushbacks and Detention of Syrian and Other Asylum Seekers and Migrants’ March 2014 p. 32.

471. Asylum Information Database, National country report Cyprus, p. 61.

access to the outdoors. There were reports of a lack of natural light, ventilation and heating in many of the police stations. People detained in cells often have no access to natural light and fresh air.⁴⁷² There is limited access to sanitary facilities for detainees in Feres border police station in Evros. MSF teams visited a number of police stations and found that people are locked in cells for most of the day without direct access to bathroom facilities or shower areas.⁴⁷³ In August 2013, the ECtHR in *Horshill v Greece*, found that Greece violated Article 3 as a result of the conditions the applicant was subject to, one of which was detaining the applicant in a police station which they found was not an appropriate place to detain someone waiting for an administrative application.⁴⁷⁴

8.3.1.3. Specialised detention facilities

In **Austria**, a new detention centre was opened in January 2014 which can detain 200 persons. This is in addition to the existing 500 places that are available in the existing detention centres in Vienna and Salzburg.⁴⁷⁵

In **Bulgaria**, the two main detention centres, the Busmantsi and Lubimets detention centres are designed for the return of irregular migrants, however, the centres are also used for the detention of undocumented asylum seekers who crossed the border irregularly but were unable to apply for asylum before the border police officers apprehended them, and who could therefore only apply for asylum when placed in the detention centre.⁴⁷⁶ As of October 2013 a 'distribution centre' opened in Elhovo.

In **Cyprus** the main specialised detention facility is in Menogia and was purpose built in 2013.⁴⁷⁷ In **France** people who are detained are held in specialised detention facilities (administrative detention facilities). In **Poland**, if detained, asylum seekers are generally held in 'guarded centres for foreigners'.⁴⁷⁸

In **Hungary**, since July 2013, asylum seekers are detained in specialised asylum detention facilities.⁴⁷⁹ The amendments to Government Decree 301/2007, relating to asylum detention, provide that detention shall be carried out in 'closed asylum reception centres' that cannot be established on the premises of police jails or penitentiary institutions.⁴⁸⁰ The Hungarian Helsinki Committee has previously expressed concern about the Debrecen detention facility which is located inside the open reception centre for asylum seekers. The detention facility has a huge fence that is very intimidating, not only for detainees, but also for the asylum seekers accommodated in the open reception centre. The watchtowers installed on the fence, reinforce this effect, creating the impression of a high-security prison. The fact that the detainees see asylum seekers moving freely on the other side of the fence increases their frustration and the risk of aggression.⁴⁸¹

In **Italy**, when asylum seekers are detained (which is quite rare), they are generally detained in one of five closed administrative centres (Identification and Expulsion Centres - CIEs); and conditions vary considerably between the centres.⁴⁸² Third country nationals who have received an expulsion order are also held here.

In **Malta**, there are currently two immigration detention facilities in use, Safi Barracks (Safi) and Lyster Barracks, Hermes Block (Hal Far).⁴⁸³ In **the UK**, when asylum seekers are detained, they are detained in immigration removal centres, usually under the same legal regime and in the same premises as other people subject to immigration detention. It is estimated that 60% of the detainees in the immigration removal centres are asylum seekers. There are 11 Immigration Removal Centres, three short-term holding facilities, and Cedars, which is only used to detain families.⁴⁸⁴

472. Mediciens Sans Frontiers 'Invisible Suffering, Prolonged and systematic detention of migrants and asylum seekers in substandard conditions in Greece'. See also, Asylum Information Database, National country report Greece. P. 81.

473. Asylum Information Database, National country report Greece, p. 81.

474. ECtHR, *Horshill v Greece*, Application no. 70427/11, 1 August 2013.

475. Asylum Information Database, National country report Austria p. 71.

476. Asylum Information Database, National country report Bulgaria p. 49 -50.

477. Asylum Information Database, National country report Cyprus p. 61.

478. Asylum seekers can also be held in two centres for the purposes of expulsion if it is necessary for reasons of defence or safety of the state or public order and safety. See Asylum Information Database, National country report Poland pp. 51- 52.

479. Asylum Information Database, National country report, Hungary, p. 53.

480. Sections 36/A to 36/F of the amended Government Decree 301/2007, see also Asylum Information Database, National country report Hungary p. 55.

481. <http://helsinki.hu/wp-content/uploads/anonim-MHB-jelentes-menekeltugyi-orizet-gyakorlatrol.pdf>

482. Asylum Information Database, National country report Italy p. 69. In this category are included those who have been convicted for one of the crimes listed in Article 380 (1) and (2) of the code of penal procedure - for which is a 5 years detention sentence is envisaged - as well as for crimes related to drug trafficking, smuggling of migrants towards Italy and from Italy towards other countries, recruitment of persons into prostitution and sexual exploitation, employment of children in illegal activities. Some third-country nationals who served a sentence and then received an expulsion order.

483. Pursuant to the Immigration Act, anyone who enters the territory without the necessary documents is detained, either until their removal is possible, or, in the case of asylum seekers, until their asylum application has been decided, and they have been granted international protection, see Asylum Information Database, Malta, p. 52.

484. Asylum Information Database, National country report the UK, p. 66.

8.3.1.4. Detention Conditions in specialised facilities

In **Austria**, conditions in the detention centres are generally satisfactory. Nevertheless, the Ombudsman has demanded that detention conditions improve. There is a lack of activities for those detained, particularly for those that do not have access to the open air zones.⁴⁸⁵

In **Bulgaria**, the conditions are very poor. In Busmantsi, on a visit to the centre in December 2013, Human Rights Watch witnessed one of the dormitories having no glass in one of the windows and that the men detained used a bed sheet to stop the draft and the rain.⁴⁸⁶ There were cockroaches everywhere and the detainees had very little food. In all the centres it is reported that the shower and toilet facilities are insufficient to meet the needs of the applicants; they are allowed to clean the detention centre themselves but are provided with no means (cleaning products) so they must do so at their own cost. No clothing is provided, except for that provided by NGO's. Bed linen is only cleaned once a month.⁴⁸⁷

In **Cyprus** the main detention facility in Menogia is described by Amnesty International as 'prison like'. Detainees live behind a double metal fence that is several metres high and are allowed outside for only two and a half hours a day. Generally, eight detainees share one room that is 18m² that is taken up by metal bunk beds. Each night the cells are locked between 10:30pm until 7:30am.⁴⁸⁸

In **France**, any administrative detention centre that was built after 2006 has been described as prison like.⁴⁸⁹ In general, men and women are held in separate living spaces, and most of the time there are between two to six persons per room - but are never private. In the administrative centre in Mayotte, the centre lacked mattresses, tables and chairs and people had to either stand or sit on the ground. On 20 February 2012, the administrative court of Mamoudzou declared that the conditions in the centre in Mayotte were so bad for detainees that they represented inhuman and degrading treatment.⁴⁹⁰ In all of the centres there have been complaints about the lack of recreational activities and boredom is a big factor for most of the detainees.⁴⁹¹

In **Germany**, it is mainly applicants who are subject to a Dublin III Regulation transfer that are held in a specialised detention facility, which are generally used to detain persons subject to the return procedure. Until autumn 2014, detention also took place in regular prisons in some Federal States, but this practice is now under review following the CJEU *Pham judgment* of July 2014 (referred to above). In 2010, the CPT stated that care should be taken to avoid, as far as possible, any impression of a prison environment.⁴⁹² In 2012, an extensive study was carried out by a number of leading NGO's in **Germany**, found:

[I]n all facilities... the predominant impression is that one is confronted with a prison atmosphere. Appearances in all facilities are as follows: enforcement (of deprivation of liberty) in cells, locked corridors or sections, a predominantly heavy regimentation of movement within the facility, inadequate social support and recreational activities, plus largely missing opportunities of the inmates to organise their daily activities on their own.⁴⁹³

In **Greece**, the ECtHR has found on multiple occasions that the conditions of detention centres in Greece breach Article 3 of the ECHR.⁴⁹⁴ Despite the fact that many violations have been found against Greece, and despite efforts taken to improve their asylum procedure,⁴⁹⁵ the conditions in detention centres are considered deplorable. Médecins Sans Frontières (MSF) described the conditions in the detention centres as a 'living hell' for the detainees. In one detention centre in Khomeini, medics saw human excrement seeping through cracked pipes between the building's floors.⁴⁹⁶ The appalling detention conditions have also been illustrated by a decision of the criminal court of first instance of Igoumenitsa, Greece, according to which a group of 17 migrants who escaped from a Greek detention centre were acquitted on the

485. Asylum Information Database, National country report Austria, p. 72.

486. Human Rights Watch, 'Containment Plan Bulgaria's Pushbacks and Detention of Syrian and Other Asylum Seekers and Migrants' March 2014 p. 39.

487. Asylum Information Database, National country report Bulgaria, p. 51.

488. Cyprus: Abusive detention of migrants and asylum seekers flouts EU law, Press Release, Amnesty International, 18 March 2014.

489. Asylum Information Database, National country report France, p. 77.

490. Administrative Court of Mamoudzou, 20 February 2012, n° 1200106, 1200107, 1200108, see also Asylum Information Database, National country report France, p. 77.

491. Asylum Information Database, National country report France, p. 77.

492. European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), Report on the visit to Germany from 25 November to 7 December 2010, CPT/Inf (2012) 6, 22 February 2012, p. 27. See also Asylum Information Database, National country report Germany, p. 72.

493. Diakonieiin Hessen und Nassau, Pro Asyl, eds. *Schutzlos hinter Gittern. Abschiebungshaft in Deutschland (Without protection behind bars. Detention pending deportation in Germany)*. Authors: Marei Pelzer and Uli Sextro, June 2013, p. 15.

494. The Commissioner for Human Rights of the Council of Europe notes that between 2009 and 2012 no less than 11 judgments were issued against Greece finding a violation of Article 3 ECHR because of detention conditions of migrants. See Council of Europe, Commissioner for Human Rights, *Report by Nils Muižnieks Commissioner for Human Rights of the Council of Europe following his visit to Greece from 28 January to 1 February 2013*, 16 April 2013, CommDH(2013)6. As recently as 31 July 2014, the ECtHR issued two further judgments finding Greece in violation of Article 3 as a result of the conditions detainees face in detention centres.

495. Efforts taken include the adoption of Presidential Decree 114/2010 amending the previous legislation on the asylum procedure, and setting, for a transitional period, appropriate standards and safeguards for the fair and efficient examination of applications for asylum; as well as the adoption of a comprehensive law (3907/2011) providing for the establishment of a new Asylum Service independent from the police, and the establishment of a First Reception Service to set up Centres of First Reception at border locations.

496. The Guardian, 'Migrants face 'living hell' in Greek detention', 1 April 2014.

grounds that the conditions of detention were judged as inhuman and in breach of Article 3 ECHR.⁴⁹⁷

In **Hungary**, residents of asylum detention facilities complained about inadequate housing conditions. The detention facility in Debrecen is not yet fully equipped and in Békéscsaba some of the toilets are lacking doors, some of the taps are not working and therefore access to hot water is not always available. In Békéscsaba, the windows and doors of the community areas cannot be closed, thus lowering the temperature in the building which can result in windows breaking.⁴⁹⁸ In Nyírbátor, the residents reported that they do not receive cleaning equipment and detergents to clean the toilet and the showers. During monitoring visits that HHC carried out in 2014, they received complaints about unhygienic conditions in Nyirbator and Debrecen.

In **Italy**, the conditions of the administrative detention centres vary considerably between centres, but are generally very poor. According to the Italian Council for Refugees, this is mainly due to the fact that they are run by private companies hired through public procurement contracts, exclusively based on a 'value for money criterion'.⁴⁹⁹ The basic services provided are usually very low and inadequate.⁵⁰⁰ Numerous reports illustrate that some of the detention centres do not comply with CPT standards.⁵⁰¹ Some of the centres have serious structural deficiencies (CIE in Trapani) or in a state of deterioration (CIE in Roma). In general, it has been reported⁵⁰² that the critical elements found in all CIEs are crumbling buildings and furniture, the lack of common space and recreational activities, the deficiency of cultural mediation and legal assistance services.⁵⁰³ The majority of centres look like prisons, for instance, the detention centres of Rome, Trapani, Caltanissetta and Bari are usually surrounded by a double wall. Inside the first wall there is a yard and the administrative buildings, and inside the second wall are the accommodation blocks that are described as 'small cages in which there are rooms for detainees'.⁵⁰⁴

With regard to the hygienic-sanitary conditions, the Union of Italian Criminal Chambers reported that in several CIEs, such as in the structure of Ponte Galeria in Rome, bathrooms are crumbling, there are squat toilets, and in some cases doors do not close.⁵⁰⁵ In 2012, the UN Special Rapporteur on the human rights of migrants summarised the detention conditions, defining CIEs as 'poor facilities, lacking of adequate structures for exercise, characterized by intermittent hot water, poor hygiene, limitations on soap and laundry, jail-like conditions in which detainees are locked in cells, and lack of privacy, coupled with a lack of a clear framework on how specific requests by detainees are handled by staff'.⁵⁰⁶

In **Malta**, asylum seekers are detained in a military barracks which are overcrowded, offer inadequate sanitation and hygiene facilities, and allow no privacy for the detainees. Whilst each detainee has their own bed, there is little space in-between the beds and there is no place to store personal possessions. Detainees are provided with cleaning materials and are expected to take care of the cleaning of the centre. Although detainees are issued with basic items of clothing upon arrival, there is no systematic or consistent practice for the distribution of weather-appropriate clothes. Most of the detainees' clothing are donated on a charitable basis to the detention service management and is then distributed accordingly. Moreover, there is little to no heating or ventilation, exposing migrants to extreme cold and heat.⁵⁰⁷ In *Aden Ahmed v Malta*, the European Court of Human Rights found that the detention conditions which the applicant was subject to, for fourteen and a half months at Hermes Block, Lyster Barracks, constituted inhuman, cruel and degrading treatment.⁵⁰⁸

In **the UK**, the purpose built immigration removal centres in which asylum seekers are housed (Colnbrook, Brook House and the new wings at Harmondsworth) are built to high security prison designs, and in practice the physical environment means that most detainees experience these centres as prisons.⁵⁰⁹ Some of the other centres are converted prisons,

497. See Criminal Court of first instance of Igoumenitsa, Judgment 2 October 2012, and see also Asylum Information Database National country report Greece, p. 81.

498. Asylum Information Database, National country report Hungary p. 55.

499. As provided by art. 22(1) of the Presidential Decree 394/99 implementing the Consolidated Immigration Act, and the Ministerial Decree of 21 November 2008 concerning the procurement for the management of the CIEs, CIEs are managed by a variety of private entities, including private companies and non-governmental associations on the basis of an agreement concluded with the local Prefecture.

500. LasciateCIEntrare Campaign, Mai più CIE ("Never ever CIE"), 2013, p. 9.

501. Asylum Information Database, National country report Italy, p. 72.

502. Human Rights Commission of the Senate, Report on Centres of identification and expulsion, September 2014, at p. 30.

503. There has been a change in the law relating to the time in which third country nationals can be detained. Under Law 286/98 related to expulsion and detention of third-country nationals, third country nationals could be detained for up to 18 months and could spend a long time in CIEs. This law has been amended with Law 161/2014 which reduces the detention period to 90 days. Although these laws are means for third country nationals who are subject to the return procedure, it also affects asylum seekers who are detained. However, the asylum laws in relation to the time limits for asylum seekers in detention is prevalent as *lex specialis*.

504. Asylum Information Database, National country report Italy, p. 72. See also, Borderline-Europe KISA, Borderline Sicily Mugak and Andalucía Aco-ge, *At the Limen. The implementation of the return directive in Italy, Cyprus and Spain*, February 2014, at pp. 25-26.

505. Asylum Information Database, National country report Italy, p. 74. See also, Union of Italian Criminal Chambers, report of the visit at the CIE of Bari (16 July 2013), report of the visit at the CIE of Milan (3 April 2013), report of the visit at the CIE of Rome (9 April 2013).

506. UN Special Rapporteur on the human rights of migrants, François Crépeau, Mission to Italy (29 September–8 October 2012), Report 20 April 2013, p. 16.

507. Asylum Information Database, National country report, Malta, p. 52.

508. ECtHR, *Aden Ahmed v Malta*, Application no. 55352/12, July 23, 2013.

509. Asylum Information Database, National country report the UK, p. 70. See also the Gatwick Detainees Welfare Group (GDWG): *A Prison in the Mind: Mental health implications of detention in Brook House Immigration Removal Centre*, 2012.

albeit with lower security.⁵¹⁰

8.3.2. Overcrowding in detention

In **Bulgaria**, overcrowding can be an issue given the increase in the number of applicants for international protection and the delay in registering applicants.⁵¹¹ When Human Rights Watch visited Bulgaria in December 2013, in Busmantsi, there were 30 men to a room with little space to sit down. There was, however, a small separate room with a television set and a recreation yard.⁵¹²

In **Greece**, overcrowding in detention centres and police stations was identified as a serious issue. According to the Greek police in Corinth, the number of detainees rose from 700 in October 2012 to 1000 in May 2013; the number of detainees in Amygdaleza has tripled between September 2012 and March 2013. It was also reported that the police station in Drapetsona held 100 people in a space of 70m².⁵¹³ Also, overcrowding is such a serious issue that detainees often have to share beds and sleep in shifts, or otherwise simply use the floor, lying at best on mattresses or sleeping bags provided by NGOs and at worst on cardboard and blankets. It has also been reported that, overcrowded conditions render sleeping possible only in a sitting position, or force detainees to sleep lying down next to garbage or close to toilet sewage.⁵¹⁴

In **Ireland**, overcrowding remains a serious problem in prisons where detainees are held (although it should be borne in mind that applications for international protection are rarely detained).⁵¹⁵ In **Malta**, overcrowding is a serious issue in detention centres, In *Aden Ahmed v Malta* when finding a violation of Article 3 of the ECHR, the Court took into account that the dormitories were shared by so many people that the detainees had little or no privacy.⁵¹⁶

8.3.3. Access to open air facilities and the ability of applicants to leave their cells

There is no consistent practice with regard to the amount of time applicants spend outdoors; as it differed depending on the detention centre within a State. There were also differences in relation to whether detainees were locked in a cell for the majority of the day or whether they had freedom to walk around the centre. Similarly, there were also differences depending on whether an applicant was detained in a police station or in a specialised detention centre.

8.3.3.1. Police stations and prisons

In **Austria**, when people are detained in police stations, they lack access to open air facilities, and are kept in their cells for almost the whole day. According to Austrian law, detainees must have access to open air facilities for at least one hour a day.⁵¹⁷ In **Cyprus**, in the police stations, many lack sufficient open-air spaces and there are reports of detainees having very limited time outside. In one instance an unaccompanied child asylum seeker was detained in a holding cell and it was reported that he was only taken outside once every 3-4 days for 20 minutes.⁵¹⁸ The holding cells do not have any recreational facilities.⁵¹⁹ In **Greece**, in some of the police stations visited by MSF teams, detainees spent several months at a time, in some cases for as long as 17 months, inside the cells area with no access to the outdoors.⁵²⁰ In **Germany**, depending on the prison facilities, the doors to the corridors are open between 4.5 to 24 hours a day. However, it was also reported that, in one prison, doors to the corridors were never opened and inmates had to contact prison staff in order to be let out of their cells. Access to the yards was granted for only one hour in some facilities and for up to eight hours in others.⁵²¹

510. Asylum Information Database, National country report Bulgaria, p 70. These centres include Dover, Haslar, The Verne and Morton Hall.

511. Asylum Information Database, National country report Bulgaria, p49 and Open Society Institute, *Civil Monitoring in Detention centers*, Sofia, February 2012.

512. Human Rights Watch, 'Containment Plan Bulgaria's Pushbacks and Detention of Syrian and Other Asylum Seekers and Migrants' March 2014 p. 39.

513. Asylum Information Database, National country report ,Greece, p. 81.

514. Human Rights Watch (2011) *The EU's Dirty Hands: Frontex Involvement in Ill-Treatment of Migrant Detainees in Greece*. New York: Human Rights Watch and Pro Asyl (2012) *Walls of Shame: Accounts from the Inside: The Detention Centres of Evros*. Frankfurt/Main: Pro Asyl. See also Leonidas K Cheliotis, *Behind the veil of philoxenia: The politics of immigration detention in Greece*, European Journal of Criminology 2013 10: 725 p. 731.

515. Asylum Information Database, Ireland p. 66.

516. ECtHR, *Aden Ahmed v Malta*, Application no. 55352/12, July 23, 2013.

517. Ordinance concerning the arrest of persons by the security authorities Section 17, BGBl. II Nr. 128/1999 has been changed by BGBl. II Nr. 439/2005. See also Asylum Information Database, National country report Austria, p. 71.

518. Based on the findings of a lawyer representing the child on behalf of the NGO Future Worlds Center, when visiting the child in detention. See also, Asylum Information Database, National country report Cyprus, p. 64.

519. Asylum Information Database, National country report Cyprus, p. 64.

520. Asylum Information Database, National country report Greece p. 81.

521. Asylum Information Database, National country report Germany, p. 73.

8.3.3.2. Specialised detention facilities

In **Austria**, in the new detention centre in Vordernberg, applicants for international protection are allowed to leave their cells during the day.⁵²² However, this new centre is an exception, as the reality for most detained persons in the other detention facilities is that they are kept in their cells for most of the day.⁵²³ In **Greece**, many detainees have no or limited access to the outdoors. In the detention facilities in Evros and Komotini, migrants were allowed in the yard for a maximum of one hour in the morning and one hour in the afternoon.⁵²⁴

In **Belgium**, asylum seekers have access to open air spaces; in some of the centres they can go outside whenever they want whilst in others they are only permitted to be outside for two hours a day.⁵²⁵ In **Hungary** asylum seekers can access open-air freely, during the day.⁵²⁶ The open-air space is of adequate size; however the Debrecen facility's yard is not sufficiently equipped. The yard consists of a small area of concrete, where no meaningful physical exercise, sports or other activities can be carried out. In addition, there's no bench, trees that can provide shade or other facilities, that, in the summer heat, makes it almost impossible to stay for any length of time in the yard. The Nyirbator open-air space is also problematic. The yard is covered with sand, making it difficult to play certain sports, and in rainy or cold weather it's almost impossible to play *any* sport. The detainees complained that the sand makes them very dirty and damages their shoes. In addition, there are still no benches or trees to provide shade or protection from the sunlight and rain.⁵²⁷ Although each centre also has a fitness room there are no organized physical activities.⁵²⁸

In **Cyprus**, detained asylum seekers in Menogia have access to open-air spaces twice daily for about an hour, or one hour and 15 minutes at a time; once in the morning and once in the afternoon. Some detainees complained about the lack of available space. In **Slovakia**, detainees can walk outside twice a day for one hour at a time.

In **Malta**, detainees are given daily access to a yard from late morning to late afternoon; however in one particular centre access to the yard is limited to only one hour and a half per day.⁵²⁹ There are no recreational or educational activities except for those provided on an ad hoc and voluntary basis by NGOs. The asylum seekers have one television set per centre as well as a football for the men and a volleyball for the women.⁵³⁰ In **Italy**, access to open-air spaces seems to be guaranteed, although in some cases there are some limitations. Detainees spend a lot of their time in their cells since no 'large common spaces [are] equipped for recreational activities – with the exception of the football fields in Roma, Bari and Caltanissetta – due to the potential security threat that these kinds of activities could cause'.⁵³¹

In **Poland**, since 2013, there is no limitation on the amount of time detainees can spend outdoors. The open-air space is of adequate size and sufficient recreational facilities are provided (e.g. playing field for volleyball or basketball, in Bialystok there is an open-air gym and in Ketrzyn, a well-equipped playground for children). In practice the detainees have the possibility to take part in outdoor exercises on a regular basis.⁵³²

In **the UK**, each detainee should have the opportunity of at least one hour in the open air every day. This can be withdrawn in exceptional circumstances for safety or security reasons. In some IRCs the opportunity for exercise is part of the daily routine (Brook House, Colebrook,) however, in these two centres the detainees spend the majority of the day locked in their rooms. Physical freedom varies between centres. In some wings in Harmondsworth detainees are locked into rooms at night, and in other wings they were locked into the wing at night but not into individual rooms. In Dungavel detainees are not locked into their rooms. In Tinsley House corridors are locked at 11pm but detainees can leave their rooms.⁵³³

8.3.4. Management of detention centres and the treatment of applicants for international protection by detention centre staff

One of the most worrying trends documented in this study was the number of recorded incidents of physical or verbal abuse to detainees by staff. Whilst in certain cases these may have been isolated incidents this does not seem to be the case in all instances. Another noticeable trend is that the staff responsible for running some of the centres are private security companies or police officers who reportedly tended to treat asylum seekers as criminals.

522. Asylum Information Database, National country report Austria, p. 71.

523. Asylum Information Database, National country report Austria, p. 72.

524. Asylum Information Database, National country report Greece p. 81.

525. Article 82, Royal Decree Closed Centres, see also Asylum Information Database, National country report Belgium p. 74.

526. This is contrary to the immigration jails, where open-air access is guaranteed only one hour per day.

527. <http://helsinki.hu/wp-content/uploads/anonim-MHB-jelentes-menekeltugyi-orizet-gyakorlatarol.pdf>

528. Asylum Information Database, National country report Hungary, p. 56.

529. The detention centre is Hermes Block at Lyster Barracks, accommodating men, women and couples, which when at maximum capacity houses 450 detainees. See Asylum Information Database, Malta p 53

530. Asylum Information Database, National country report Malta, p. 53.

531. Borderline-Europe, *At the Limen. The case of Italy, Spain and Cyprus*, February 2014, at p. 26.

532. Asylum Information Database, National country report Poland, p. 58.

533. Asylum Information Database, National country report the UK, p. 71.

In **Bulgaria**, verbal abuse by staff is often reported by detainees. More worryingly, there are reports of physical abuse from staff. Given the conditions that the applicants are subject to, there is also violence between the inmates. Applicants can be subject to solitary confinement in the Busmantsi centre. Human Rights Watch interviewed an Algerian man who described his treatment after being held in segregation in Busmantsi for eight days:

‘[T]he police officer brought me to the isolation cell. He locked the door and covered the camera and started hitting me on my back with his electric truncheon. Outside, two officers were beating up on my friend. The officer hit me very hard several times. I lost count. This happened [date withheld]. The police officer was crazy. While I was in solitary confinement the police took my food rations. The officer would take my bread and apples off my plate. They threw me a dirty blanket. I have scabies on my leg and it’s very bad so I need medical attention. After the beating, I wanted to go to the doctor, but when I asked the police, he just told me I was a donkey and pushed me on my shoulder.’⁵³⁴

In another incident recorded by Human Rights Watch, on 30 November 2013, a fight broke out which was allegedly started when the guards started teasing and humiliating one of the detainees. The Algerians who were detained then declared a hunger strike. The police tried to remove who they saw as the ringleader, which was resisted by the other detainees. According to the detainees, the guards then started beating them, causing serious injuries, including broken bones and in one instance, kidney failure.⁵³⁵

In **Cyprus**, the detention centre and holding cells are under the management of the police; de facto, the guards are police officers. They often lack training, perceiving detainees as criminal offenders and treat them as such. As a result, detainees often complain about the behaviour of the officers.⁵³⁶ The UN Committee against Torture also stated in its fourth report on Cyprus that it remained concerned by the allegations of ill-treatment by police in Menogia.⁵³⁷ According to the NGO KISA, in response to a protest by detainees at Menogia in 2013, the staff beat the detainees with truncheons, and when the injured detainees were transferred to the hospital the police officer told the doctor that they injured themselves while playing football.⁵³⁸ According to the report’s country expert, in the latter half of 2014 there have been changes in the management of Menogia, which has led to a slight improvement in the attitudes of the individuals in charge of the detainees, however these efforts are still not considered sufficient. There are also indications that Menogia may be privatised, which also raises concerns, as there are fears that if this privatisation is implemented that there will be a focus on generating profits rather than ensuring that the detainees are safe, secure, treated with respect and detained in humane conditions; more so, it could hamper efforts to promote alternatives to detention.

In **Greece**, while revolting against the very poor detention conditions and the prolonged detention periods, detainees in Amygdaleza detention centre started a riot on 10th August 2013, protesting against the treatment they were receiving. According to Amnesty International, police guards cut off the electricity in two of the containers used as sleeping areas after the migrants started using the air conditioning; some were hit and verbally abused by the police.⁵³⁹

It is also reported that detainees are subject to violent treatment by the detention staff on a frequent basis. Reported treatment ranged from racist verbal abuse, to destruction of detainees’ religious symbols, to aggressive body searches and direct physical assaults. In many of the incidents recorded, the beaten detainee was denied medical treatment after the incident. These are not isolated incidents; there seems to be systematic abuse by the detention staff towards detainees. One incident, reported by Pro Asyl, is documented below:

On August 29 2011 a couple, A.K. and his wife, were transferred to Tycheroborder guard station. They were kept in a cell, together with other families and unaccompanied minors. AK, the husband, suffers from epilepsy. His wife has psychological problems and uterine cancer. She documented an assault by the police officers on her and her husband:

‘One night – 15-20 days ago – my husband had one of his epileptic seizures. He fainted in the middle of the cell. I started shouting for the guards to come and take him to a doctor. Three to four police officers came. They opened the door of the cell and started beating a friend who was trying to help my husband. They also beat my husband and they threatened to beat all the others, shouting ‘move back, move back’. They pulled the unconscious body of my husband out into the corridor and continued beating him there. Outside, there were more officers. I ran out and begged them to stop. They made me stand with the face against the wall and my hands up and started beating me too.’⁵⁴⁰

In **Hungary**, asylum detention facilities are managed by the Office of Immigration and Nationality (OIN). The security in

534. Human Rights Watch interview L51 (name withheld), Busmantsi, Bulgaria, December 13, 2013, Human Rights Watch, ‘Containment Plan Bulgaria’s Pushbacks and Detention of Syrian and Other Asylum Seekers and Migrants’ March 2014 p. 42.

535. Human Rights Watch, ‘Containment Plan Bulgaria’s Pushbacks and Detention of Syrian and Other Asylum Seekers and Migrants’ March 2014 p. 43.

536. Asylum Information Database, National country report Cyprus, p. 62.

537. Concluding Observations on the Fourth Report of Cyprus, Committee against Torture, 21 May 2014.

538. Detention conditions and Juridical overview on detention & deportation mechanisms in Cyprus, January 2014, KISA, p. 32. See also Asylum Information Database, National country report, Cyprus p. 62.

539. Amnesty International, *Greece: Systematic and Prolonged Detention of Irregular Migrants and Asylum- Seekers Provokes Riot*, 13th August, 2013. See also, Asylum Information Database, National country report Greece p. 80.

540. Walls of Shame – Accounts from the Inside: the Detention Centres of Evros, ProAsyl, April 2012 p. 79.

the centres is carried out by the police, who are trained. However, there are complaints that the security guards are overly aggressive in all of the centres. Detained asylum seekers are handcuffed when they are moving from the facility to court for hearings, or on other outings (such as to visit a hospital, bank or post office).⁵⁴¹

In **Malta**, the detention centres are managed by the Detention Service (DS), a government body that falls under the Ministry for Home Affairs and National Security. The DS is neither established nor regulated by a specific law. It is made up of personnel seconded from the armed forces and civilians specifically recruited for the purpose, many of whom are ex-security personnel. DS staff receive some in-service training, however people recruited for the post of DS officer, or seconded from the security services, are not required to have particular skills or competencies.⁵⁴²

In recent years there have been a number of incidents within the centres which raised concern because of allegations of excessive use of force. There is also a lack of any systematic review of DS conduct and of any effective remedies to provide redress wherever abuse or ill-treatment by DS staff is alleged. Two migrants, Mamdou Kamara (June 29, 2012) and Christian Ifeanyi Nwokaye (16-17 April 2011), died following recapture by the DS after they escaped from custody. In both cases there were allegations that the migrants were beaten during the capture. According to newspaper reports, Mamdou Kamara died from a cardiac arrest triggered by intense pain when he was struck in his groin area.⁵⁴³ Christian Ifeanyi Nwokaye died of a cardiac arrest, while still handcuffed one hour after being placed in an isolation cell; unlike Mamadou Kamara, there is no evidence that he died as a direct result of his injuries.⁵⁴⁴ In both these cases a number of AFM soldiers are currently undergoing criminal proceedings. In the case of Mamadou Kamara two soldiers stand charged with murder and another one with tampering with evidence and in the case of Christian Ifeanyi Nwokaye three soldiers stand charged with involuntary homicide.⁵⁴⁵

In **the UK**, in 2013 it was revealed that there had been sexual abuse of women detainees in Yarl's Wood. Those responsible were dismissed, and the inspector found that women's histories of victimisation were insufficiently recognised by the authorities, and that more women staff were needed.⁵⁴⁶

In **Belgium**, closed centres are run by the Aliens Office (AO). Asylum seekers basic rights are set out in the Royal Decree. However, the Managing Director of the closed centre has far-reaching competences to limit or even refuse the execution of most of these rights if he deems this necessary for reasons of public order or safety, to prevent criminal acts or to protect the health, morality or the rights of others. A wide range of measures of internal order, disciplinary measures, measures of coercion and body search can be imposed by the Managing Director of the centre, and in some cases by other staff members.⁵⁴⁷ In **Germany**, responsibility for applicants who are detained pending deportation⁵⁴⁸ lies with the prison authorities of the federal states, therefore the staff are usually either prison officers or employees of the administrative staff of the prison authorities.⁵⁴⁹ In some instances, private security services are responsible for certain tasks who lack training on the penitentiary system.⁵⁵⁰

In **Austria**, the new detention centre in Vordernberg is run by a private security company, G4S. This raised concerns about the division of tasks between the public security service and a private company.⁵⁵¹ The Minister of the Interior emphasised in Parliament that G4S will only *assist* the police with their tasks and that ultimate and final responsibility remains with the public security authorities.⁵⁵² In **Poland**, the border guard officers are running the centres and there are no major issues reported concerning staff behaviour and no evidence of ill-treatment, but in some centres officers do not address the detainees by name, but rather refer to them by a number.⁵⁵³

8.4. Conclusion

Persons seeking international protection are inherently vulnerable as a result of the situation they are fleeing. ECRE has consistently said that, as a rule, asylum seekers should not be detained and that if detention must occur, it should only

541. Asylum Information Database, National country report Hungary, p. 55.

542. Asylum Information Database, National country report Malta, p. 54.

543. Times of Malta, "Updated - Accused had 31 bite marks caused by victim - Migrant suffered such intense pain, he died of a heart attack-", 20 September 2012.

544. Times of Malta, "Migrant died after being beaten by DS officer, court told", 6 February 2014

545. Asylum Information Database, National country report Malta, p. 53.

546. HM Inspector of Prisons, *Report on unannounced inspection of Yarl's Wood Immigration Removal Centre, 17-28 June and 30 Sept – 1 Oct 2013*. See also, Asylum Information Database, National country report the UK, p. 71.

547. Article 85-111/4 Royale Decree on Closed Centres, see also Asylum Information Database National country report Belgium, p. 73.

548. These include individuals who are being transferred under the Dublin III Regulation, see Asylum Information Database, National country report Germany p. 71.

549. Asylum Information Database, National country report Germany p. 71.

550. Nationale Stelle zur Verhütung von Folter, Jahresbericht 2013 (Annual Report 2013), April 2014, pp. 23 and 50. See also Asylum Information Database, National country report Germany p. 71.

551. Der Standard, Irene Brickner, *Securitys auf Rundgang in der neuen Schubhaft* (Security on tour in the new detention centre), 2 April 2014.

552. Parliamentarian request 11/AB XXV. GP from 30.12.2013 minister Mikl-Leitner

553. Asylum Information Database, National country report Poland, p. 56.

be used as a last resort, in exceptional cases, where necessary on the basis of an individual assessment and only where less coercive methods cannot be applied effectively. Persons claiming asylum are not criminals and if they are to be detained, it is imperative that the standards in the Charter, as informed by the case law from the CJEU and the ECtHR, are used to ensure that the detention conditions provided allow for an adequate standard of living.

Prisons should never be used for detaining asylum seekers, and neither are police stations suitable facilities; yet, despite this, applicants for international protection are housed in these facilities in certain EU Member States for lengthy periods of time. This may be incompatible with Article 1 and 4 and 6 of the Charter. Overcrowding is also a serious issue in numerous Member States, which causes severe problems for applicants who are detained, and leaves them at risk of living in conditions that are undignified, inhuman and degrading. If applicants cannot be detained in dignified conditions they should be released.

Finally, asylum seekers who are detained should never suffer violence, meted out by detention authorities. Numerous Member States reports found that violence had been carried out against the detainees by the staff working in the facilities, and in certain incidents with little follow-up or redress. This is a serious concern that warrants further research and investigation.

Health care of applicants in detention

RECEPTION AND DETENTION CONDITIONS

9. Health care of applicants in detention

Applicants for international protection must be able to access and receive the necessary health care, including mental health care, when they are detained. Arguably it is all the more important that they have sufficient access to health care, given the tougher conditions they are exposed to. The following section will set out what applicants are entitled to under secondary EU legislation and how this should be interpreted in light of the Charter and general principles of EU law. This section should be read in conjunction with Section 10 as some of the fundamental rights and principles mentioned in that section are also relevant here.

9.1. Secondary Legislation

9.1.1. Reception Conditions Directive

Although the Reception Conditions Directive does not include any provisions on detention, its provisions on material reception conditions are also applicable to applicants for international protection who are detained. Under the Reception Conditions Directive, Member States are required to ensure a standard of living adequate for the health of applicants and capable of ensuring their subsistence.⁵⁵⁴ It also provides that applicants receive the necessary health care, which shall include, at the very least, emergency care and essential treatment of illness.

9.1.2. Recast Reception Conditions Directive

Under the recast Reception Conditions Directive, Member States shall also ensure for detainees that the material reception conditions provide an adequate standard of living for applicants that guarantees their subsistence, and protects their physical and mental health. It also provides that applicants will receive the necessary health care which shall include, at least, emergency care and essential treatment of illness; but adds that they should also receive treatment for serious mental health disorders.⁵⁵⁵

9.2. Fundamental Rights and Principles

9.2.1. The prohibition of torture and inhuman or degrading treatment or punishment

Member States must always ensure that applicants are never exposed to treatment that would amount to torture and inhuman or degrading treatment or punishment (Article 4 of the Charter/Article 3 ECHR). If authorities do not protect the health of persons deprived of their liberty, or deny them appropriate medical care, it could amount to treatment contrary to Article 3. The ECtHR has taken into account the medical treatment provided and the supervision and the detainee's state of health when assessing whether there was a breach of Article 3 of the ECHR.⁵⁵⁶ As a result, there is a positive obligation on States to protect the health of detainees.

Article 3 of the ECHR and, similarly, Article 4 of the Charter, does not provide a general obligation to release detainees on health grounds, but it does impose an obligation on the State to protect the well-being of persons deprived of their liberty by providing them with the requisite medical assistance.⁵⁵⁷ If an applicant is denied medical care, or if there is a significant delay in providing medical care that is urgently needed, this could amount to a breach of Article 3.⁵⁵⁸ Furthermore, the detention should not cause more distress or hardship of a level of intensity exceeding the unavoidable level of suffering inherent in detention.⁵⁵⁹

9.2.2. Health care and the right to human dignity

Member States must ensure that they respect the detainee's dignity, in both the administration of health care and the level of care that they receive. The ECtHR has found that States have a degree of flexibility with regard to the standard of health care, however, standard needs to be compatible with the 'human dignity of a detainee' but also take into account the practical demands of imprisonment.⁵⁶⁰

554. Article 13 (2), Reception Conditions Directive.

555. Article 19 (1), Recast Reception Conditions Directive.

556. ECtHR *Ilhan v. Turkey*, Application no. 22277/93, 27 June 2000, para 87.

557. ECtHR, *Hurtado v. Switzerland*, Application no. 17549/90, 28 January 1994.

558. ECtHR, *Ilhan v. Turkey*, Application no. 22277/93, 27 June 2000, para 87.

559. ECtHR, *Kaprykowski v Poland*, Application no. 23052/05, 03 February 2009.

560. ECtHR, *Ivakhnenko v. Russia*, Application no. 12622/04, 04 July 2013, para 45.

9.2.3. The right to health care

Article 35 of the Charter, (the right to health care) which is examined in Section 5.2, is also a relevant safeguard. The first sentence provides that everyone has the right of access to preventive health care and the right to benefit from medical treatment under the conditions established by national laws and practices. It could be argued that there is an obligation on the State to ensure that applicants are not placed in a situation which would cause ill-health, i.e. prevent their ill-health.⁵⁶¹ It could impose an obligation on Member States to inform applicants for international protection as to what health care options are available to them so as to enable them to access the necessary and relevant treatment.⁵⁶²

The second sentence of Article 35 provides that ‘a high level of human health protection shall be ensured in the definition and implementation of all Union policies and activities’. According to the JRS Study *Becoming vulnerable in detention*, an estimated one-third of detainees attribute their poor physical health to the psychological stress they experience in detention.⁵⁶³ Knowingly keeping an individual in detention when it becomes apparent that it is seriously affecting their health, particularly when there are alternatives, may breach a Member State’s obligation to provide a ‘high level of human health protection’. The ECtHR has found on a number of occasions that Article 3 cannot be construed as laying down a general obligation to release a prisoner on the ground of health, yet there is an obligation on States to protect their physical well-being.⁵⁶⁴ However, these cases relate to a breach of Article 3, ECHR not the general right to health care, and also deal with individuals who are in prison and are serving a sentence for a crime they have committed. Persons seeking international protection have not committed a crime and should not be punished for the sole reason that they are seeking asylum.⁵⁶⁵ In any event, if applicants are exposed to detention conditions that are unsanitary, overcrowded, and there is no ability to go outdoors, then Article 35 (and Article 4) of the Charter may be engaged.

9.3. Health care in detention in selected Member States

9.3.1. Difficulties in accessing or being denied health care in detention

In numerous Member States there were reports of applicants for international protection having difficulty in accessing health care whilst detained. In **Belgium**, in practice, persons who are detained may have difficulties in accessing and obtaining sufficient medical care. In the case of *Yoh-Ekale Mwanje v. Belgium*, the ECtHR found that Belgium violated Article 3 ECHR for not providing the necessary medical care. The delay in determining the appropriate treatment for the detainee at an advanced stage of her HIV infection was considered to be a degrading and inhuman treatment.⁵⁶⁶

In **Cyprus**, the law provides for the criminal prosecution of a detainee, who, if proven, abuses the right to medical treatment; that being, requesting treatment without suffering from a health complication.⁵⁶⁷ If a detainee is found guilty they can face up to three years in prison or a fine of over 5,000 EUR. Whilst no information was found of a detainee being found guilty under this provision, there have been reports of it being used to intimidate a detainee who had already undergone numerous examinations.⁵⁶⁸ Generally, those who are held in police detention have access to medical care, but there are reports of medical care being refused. In one incident, an unaccompanied child asylum seeker, detained in a holding cell, reported that he requested to see a medical doctor and to receive pain killers but that neither request was met.⁵⁶⁹

In **Greece**, the Council of Europe Human Rights Commissioner highlighted, after his visit to Greece in early 2013, the lack of access to health care in the police run detention facilities. He noted that a lack of funds hindered the implementation of any regular health care programme.⁵⁷⁰ Doctors Without Borders also highlighted the fact that on the Greek Islands, and in northern Greece, there was a lack of health screenings for new detainees, they were unable to continue with any health care they were carrying out and there were obstacles in connecting with public health authorities.⁵⁷¹ As a result

561. Article 11 of the European Social Charter provides that ‘[w]ith a view to ensuring the effective exercise of the right to protection of health, the Parties undertake, either directly or in cooperation with public or private organisations, to take appropriate measure designed inter alia: to remove as far as possible the causes of ill-health’

562. Article 19 (1) recast Reception Conditions Directive provides that Member States shall ensure that applicants *receive* the necessary health care... (emphasis added). It can be argued that this cannot be received unless they are informed about it or can access it in practice. Article 11 of the European Social Charter provides that the parties shall undertake to ‘provide advisory and educational facilities for the promotion of health and the encouragement of individual responsibility in matters in health’. This could be deduced as meaning that Member States need to inform applicants of health care available in order to ensure the promotion of health and that they take responsibility for their own health care.

563. Jesuit Refugee Service, *Europe: Becoming Vulnerable in Detention*, June 2011, p. 63.

564. ECtHR, *Hurtado v. Switzerland*, Application no. 17549/90, 28 January 1994.

565. Article 31 of the Geneva Convention for Refugees and Article 26 (1) of the recast Procedures Directive also provides that ‘Member States shall not hold a person in detention for the sole reason that he or she is an applicant’.

566. ECtHR, *Yoh-Ekale Mwanje v Belgium*, Application No 10486/10, Judgment of 20 December 2011.

567. Article 30 of the Rights of Persons who are Arrested and Detained Law 2005, [L.163(I)/2005].

568. Asylum Information Database, National country report Cyprus, p. 61.

569. *Ibid*, Cyprus, p 63.

570. Asylum Information Database, National country report Greece, p. 82.

571. *Ibid*, p. 82.

of the fact that there is a lack of health screenings, people with chronic diseases such as TB are placed alongside other people without the disease, increasing the risk that the disease will spread. Diabetics, in need of special treatment and specialized diets, are not properly classified, resulting in severe, and life-threatening, health risks...⁵⁷²

Where there are no medical staff in detention facilities, which is always the case in regular police stations, detained migrants depend exclusively on the police, who have to decide who is in need of medical attention and how urgent it is. As the police lack the necessary expertise to identify and follow up on health conditions, there is a high risk of serious medical cases being neglected.⁵⁷³ The Greek Ombudsman has also reported complaints of non-referral of detainees to hospital who are in need of urgent care. One incident highlights the tragic effects of such a practice; an Afghan detainee who was held for 11 months in Corinth repeatedly stated that he was in severe pain. Despite this, there was a delay in transferring him to hospital which ultimately led to his death on 27th July 2013.⁵⁷⁴

In **Italy**, there are several difficulties reported in accessing effective health care. For example, in one CIE, Trapani Milo, there is a severe lack of drugs available, such as insulin. Moreover, there are difficulties reported in accessing specialist care outside the detention centre.⁵⁷⁵

The lack of language interpretation when obtaining medical treatment

The lack of interpretation in the Member States was another problem which impacted on the ability to access medical care or on the quality of the medical care itself.

In **Cyprus**, language problems were reported by detainees; in some instances no interpreter was present during the examination, and consequently the applicant had no way of communicating with the medical doctor. This was also reported in **Germany**, **Greece**,⁵⁷⁶ **Hungary**⁵⁷⁷ and **Malta**.⁵⁷⁸

In **Poland**, the doctors in the detention centres generally know some foreign languages (Russian or English). In practice, if they do not know the patient's mother tongue an interpreter is made available. The interpreter is usually a border guard working in the education section in the centre. In some centres (Ketrzyn, Przemysl) border guards stated that they were requested to provide translations for rare languages, although it has not been possible to confirm this in a concrete example.⁵⁷⁹

Actual medical care available in detention centres

In many Member States applicants can visit a doctor or nurse upon arrival.⁵⁸⁰ In most Member States surveyed, there is usually a doctor or nurse on site, weekly visits from a nurse or doctor or the possibility of seeing a health care professional when needed. This is the case in **Austria**⁵⁸¹ **Hungary**,⁵⁸² **Malta**,⁵⁸³ **Poland**,⁵⁸⁴ **the Netherlands**,⁵⁸⁵ and **the UK**.⁵⁸⁶ In **Belgium** each detention centre has its own medical service with independent doctors.⁵⁸⁷

In other countries, even if health care is available, it can be difficult, in practice, to access it. In **Cyprus**, in order for a detainee to receive medical care, they must submit a medical request in writing in either Greek or English. For those that cannot write in one of those two languages, a fellow detainee must write the request for them.⁵⁸⁸ When there is no

572. Asylum Information Database, National country report Greece, p. 82.

573. MSF Report. *Invisible Suffering. Prolonged and systematic detention of migrants and asylum seekers in substandard conditions in Greece. MSF Operations in Immigration Detention Facilities In Greece 2008-2014.*

574. Asylum Information Database, National country report Greece, p. 82.

575. Asylum Information Database National country report Italy, p. 75.

576. MSF Report. *Invisible Suffering. Prolonged and systematic detention of migrants and asylum seekers in substandard conditions in Greece. MSF Operations in Immigration Detention Facilities In Greece 2008-2014*, p14.

577. Asylum Information Database, National country report Hungary, p. 56.

578. Asylum Information Database, National country report Malta, p. 53.

579. Asylum Information Database, National country report Poland, p. 59.

580. This is the case, for example in France, Malta, Germany and the UK.

581. Maria Sterkl: Starvation for the doctor's visit, Der Standard, 25 May 2011, see also Asylum Information Database, National country report Austria, p. 73.

582. Asylum Information Database, National country report Hungary, p. 56. Nurses are present in all of the centres and doctors regularly visit the facilities.

583. Asylum Information Database, National country report Malta, p. 53. The services of a doctor are available in the detention centres between two to three mornings a week.

584. Asylum Information Database, National country report Poland, p. 59. In all centres there is medical staff working, at least one physician and one nurse, but there are often more.

585. If the applicant has any medical difficulties they have the right to see a doctor, this is based on Article 8(b) and (d) of the Border Regime Facilities Code. See Asylum Information Database, National country report the Netherlands p. 56.

586. Asylum Information Database, the UK, pp. 70-71.

587. Article 53 Royal Decree on Closed Centres.

588. Asylum Information Database, National country report Cyprus, p. 63.

in-house doctor available, asylum seekers are handcuffed for the duration of the journey to the doctor and during the medical examination. In **the UK**, the charity Medical Justice has documented cases of the denial of crucial medical care.⁵⁸⁹ The Independent Monitoring Board for Harmondsworth has reported serious shortcomings in medical provision, and this situation has worsened.⁵⁹⁰ In **Malta**, medicines prescribed by the doctors in detention, are brought from pharmacies outside the centre, resulting in undue delays - from a few days up to a couple of weeks.⁵⁹¹ In **Greece**, the Greek Council for Refugees reported that there is no health screening for new arrivals. This, combined with lengthy periods of detention, and given the fact that there is no re-examination of the detention order throughout the detention period, creates a hazardous situation for detainees.⁵⁹²

In **Ireland**, detainees are held in prisons and thus have the same access to health care as the general prison population. Legislation provides that a prisoner shall be entitled to the provision of health care of a diagnostic, preventative, curative and rehabilitative nature that is, at least, of the same or a similar standard as that available to persons outside of prison who are holders of a medical card (a medical card allows a person to access health care free of charge). In relation to persons who require psychiatric care, the Prison Rules simply state that the Minister may arrange for the provision of psychiatric and other health care as is considered appropriate.⁵⁹³

9.3.2. Health of applicants for international protection affected as a result of being detained

JRS Europe have extensively documented the deterioration of the mental health of detainees in the report *Becoming Vulnerable in Detention*. From their data it showed that detention harms otherwise healthy people, 'Whereas one quarter of people detained for one month describe their physical health as being poor, 72 percent of people detained for four to five months say they have very poor physical health'. Furthermore, 'prolonged detention compounds the adverse mental health effects of detention: 71 percent of persons detained for four to five months blame their psychological problems on detention itself'.⁵⁹⁴ Some of these practices are highlighted below.

In **France**, according to the 2012 report of five NGOs working in the administrative detention centres, some people suffering from serious psychological problems are held in detention centres.⁵⁹⁵ In 2012 the CPT Committee also recommended that the provision of psychological care needed to improve. Dozens of suicide attempts are reported each year in these centres. Given the lack of availability of psychiatric care, the 'General Controller' of places of *freedom deprivation* recommended that detention centres should set up agreements under which mental health care would be accessible.⁵⁹⁶

In **Greece**, it is reported that many detainees develop mental disorders while in detention. Due to the fact that a detention order is never re-examined, and given the sub-standard reception conditions detainees are subject to and the fact there is very little health care available, detainees mental health further deteriorates while in detention.⁵⁹⁷ Furthermore, the physical conditions, particularly in the police stations and in the pre-removal centres, are so poor that they affect the health of the detainees. Given the inadequate heating, the lack of hot water and a lack of ventilation, there are many outbreaks of respiratory, gastrointestinal and dermatological diseases.⁵⁹⁸ There are also frequent scabies outbreaks that are indicative of the substandard conditions. It was also reported that only one razor was distributed, intended to be used by more than one person, putting those in detention at risk of the transmitting of infections such as HIV, hepatitis B and hepatitis C.⁵⁹⁹

Protests, hunger strikes and suicide attempts are not uncommon. One 16 year old Afghan who was in detention stated the following to MSF doctors:

'There was a guy who was already 12 months in detention. On the day that he was to be released he was told the law had changed and he would be kept in custody another six months. He went mad, stopped eating and sewed his mouth. The police officers paid no attention for two or three days. When he fainted he was taken out in handcuffs and a knife was used to open his mouth by force.'⁶⁰⁰

589. Medical Justice: *Detained and Denied: the clinical care of detainees living with HIV/AIDS*, 2011

590. Asylum Information Database, National country report the UK, pp. 70-71.

591. Asylum Information Database, National country report Malta, p. 53.

592. Asylum Information Database, National country report Greece, p. 81.

593. Statutory Instrument No. 252 of 2007, Prison Rules, 2007

594. JRS Europe, 'Becoming Vulnerable In Detention' 2010, pp 9-10.

595. Assfam, Forum réfugiés-Cosi, France Terre d'asile, la Cimade et l'Ordre de Malte, *Centres et locaux de rétention administrative, Rapport 2012 (Administrative detention centres and facilities, Report 2012)*, 4 December 2013.

596. General controller of places of freedom deprivation, *Activity Report 2013*, 11 March 2014. Asylum Information Database, National country report France, p. 77.

597. Asylum Information Database, National country report Greece, p. 79.

598. According to Medecins Sans Frontiers, in 2013-14, the most common complaints were upper respiratory tract infections (24.7%); gastrointestinal disorders (14.7%); musculoskeletal problems (13.7%); skin diseases (8.5%); and dental problems (7.9%).

599. Asylum Information Database, National country report Greece, p. 82.

600. Medecins Sans Frontiers, *Invisible Suffering, Prolonged and systematic detention of migrants and asylum seekers in substandard conditions in Greece* p. 14.

Up until January 2013, in **Hungary**, some asylum seekers were held in immigration detention.⁶⁰¹ The Hungarian Helsinki Committee received reports from psychiatrists working with the Cordelia Foundation for Survivors of Torture, that detained asylum seekers were showing signs of drug dependence, most probably due to their forced medication and sedation. This information was, however, not officially confirmed by any on-site investigations.⁶⁰²

In **the UK**, visitors to the detention centres increasingly report that detainees are experiencing high levels of anxiety and distress, are self-harming, have symptoms of depression or post-traumatic stress disorder (PTSD), or are suffering from severe and enduring mental illness.⁶⁰³ The courts have now held that even someone who is so severely ill as to be hospitalised may remain in immigration detention in hospital. In Harmondsworth, the largest detention centre, serious shortcomings in medical provision were reported and there were major concerns as a result of 'an inadequate focus on the needs of the most vulnerable detainees, including elderly and sick men, those at risk of self-harm through food refusal, and other people whose physical or mental health conditions made them potentially unfit for detention'.⁶⁰⁴ Detainees can activate what is known as a 'rule 35 report' by reporting to an officer that their health is injuriously affected by detention, but, rule 35 reports rarely result in the applicant's release.⁶⁰⁵

9.4. Conclusion

Health care in detention must be accessible to applicants for international protection. Member States also have an obligation to provide health care to applicants, and the denial of urgent health care is a serious issue and can amount to a breach of Article 2 or 4 of the Charter along with Article 35, the right to health care.

Detention conditions must be of an adequate standard, one which guarantees asylum seekers subsistence and protects their physical and mental health. Applicants should not be subject to conditions that actually cause their physical or mental health to deteriorate, something which was reported to occur in numerous Member States. Difficulties in accessing requisite health care and detention conditions that actually contribute to a person's ill health were reported in numerous Member States and these need to be addressed as soon as possible.

601. There was no immigration detention between January and July 2013.

602. Asylum Information Database, National country report Hungary, p. 53.

603. Ali McGinley and Adeline Trude, *Positive duty of care? The mental health crisis in immigration detention*, AVID and BID, 2012, see also Asylum Information Database, National country report the UK, p. 69.

604. HM Inspector of Prisons, *Report on an unannounced inspection of Harmondsworth Immigration Removal Centre, 5-16 August 2013*.

605. Asylum Information Database, the UK, p. 71.

**Detention of vulnerable persons
and of applicants with special
reception needs**

**RECEPTION
AND
DETENTION
CONDITIONS**

10. Detention of vulnerable persons and of applicants with special reception needs

Any applicant for international protection is in a vulnerable position, but the ability of certain individuals to present an application for international protection is further impaired due to particular personal characteristics or especially traumatic experiences. Vulnerable people constitute a significant proportion of persons seeking international protection. Many experienced traumatic events which can contribute to certain health conditions. According to Pharos (National Knowledge and Advisory Centre on Migrants, Refugees and Health Care Issues), clinical research on asylum seekers and refugees in western countries demonstrate a high prevalence of post-traumatic stress disorder (PTSD). They state that vulnerable asylum seekers are ten times more likely to develop PTSD than a similar group of the host country.⁶⁰⁶

The Jesuit Refugee Service found in their study, 'Becoming Vulnerable in Detention' that many people enter detention with pre-existing medical conditions, or, the imposition of detention itself leads to the onset of previously inexperienced conditions. 'In other cases, detention exacerbates long dormant medical conditions such as those related to mental trauma'.⁶⁰⁷ As a result, vulnerable persons can have specific reception needs and Member States are under an obligation to ensure that these specific needs are met.

The section below sets out the relevant provisions that relate to the conditions and health standards that Member States need to adhere to when detaining vulnerable applicants and persons with special reception needs. It should be read in conjunction with section 6, specifically with regard to identifying persons with special reception needs and section 9.

10.1. Secondary Legislation

10.1.1. Reception Conditions Directive

There is no explicit provision under the Reception Conditions Directive dealing with the detention conditions and health care for vulnerable persons who are detained. Nevertheless, Member States can and do detain vulnerable asylum seekers. Member States are required to ensure a standard of living adequate for the health of applicants and capable of ensuring their subsistence.⁶⁰⁸ It has specific provisions in relation to the health care of persons with special needs. It provides that Member States shall provide necessary medical or other assistance to applicants who have special reception needs⁶⁰⁹ and those applicants who have been subject to torture, rape or other serious acts of violence receive the necessary treatment.⁶¹⁰

10.1.2. Recast Reception Conditions Directive

Vulnerable persons and applicants with special reception needs can be detained under the recast Reception Conditions Directive. When vulnerable persons or persons with special reception needs are detained, Member States shall ensure regular monitoring and adequate support, taking into account their particular situation, including their health.⁶¹¹ Member States shall ensure that persons who have been subject to torture, rape or other serious acts of violence receive the necessary treatment for the damage caused by such acts, in particular access to appropriate medical and psychological treatment or care.⁶¹² Member States shall provide necessary medical or other assistance to applicants who have special reception needs, including appropriate mental health care where needed.⁶¹³ The health, including the mental health of applicants in detention who are vulnerable shall be the primary concern of national authorities.⁶¹⁴

The recast Reception Conditions Directive has detailed provisions on minors and unaccompanied minors and women these provide that:

- Minors can also be detained, but only as a measure of last resort and after it has been established that other less coercive alternative measures cannot be applied effectively and the minor's best interests shall be a primary

606. Pharos and IRCT, *Protect Process of Recognition and Orientation of Torture Victims in European Countries to Facilitate Care and Treatment*, p 34.

607. Jesuit Refugee Service, *Europe: Becoming Vulnerable in Detention*, June 2011, p 61. See also Pharos, *Protect Process of Recognition and Orientation of Torture Victims in European Countries to Facilitate Care and Treatment*.

608. Article 13 (2) Reception Conditions Directive.

609. Article 15 (2) Reception Conditions Directive.

610. Article 20 Reception Conditions Directive.

611. Article 11 (1) recast Reception Conditions Directive.

612. Article 25 (1) recast Reception Conditions Directive.

613. Article 19 (2) recast Reception Conditions Directive.

614. Article 11 (1) recast Reception Conditions Directive.

consideration for Member States.⁶¹⁵

- When minors are detained, they shall have the possibility to engage in leisure activities, including play and recreational activities appropriate to their age.⁶¹⁶
- Unaccompanied minors shall only be detained in exceptional circumstances and all efforts shall be made to release the detained unaccompanied minor as soon as possible.⁶¹⁷ They shall never be detained in prison accommodation.⁶¹⁸ The explicit prohibition for unaccompanied minors does not extend to minors who are accompanied but the minor's best interest shall always be a primary consideration for the Member States.
- Unaccompanied minors shall be provided with accommodation in institutions provided with personnel and facilities which take into account the needs of persons of their age.⁶¹⁹
- Detained families shall be provided with separate accommodation guaranteeing adequate privacy.⁶²⁰
- Female detainees shall be accommodation separately from male applicants unless they are family members.⁶²¹

In duly justified cases and for a reasonable period that shall be as short as possible, when an applicant is detained at a border post or in a transit zone, Member States can derogate from providing minors with leisure activities, ensuring that families have separate and private accommodation and ensuring females are detained separately to males.⁶²²

10.2. EU Fundamental Rights and Principles

When dealing with detained persons who are particularly vulnerable, there is a need for increased vigilance when reviewing whether an applicant's fundamental rights have been complied with. In general, there are three elements that need to be considered in relation to the compatibility of an applicant's health when in detention:

- I. the medical condition of the detainee,
- II. the adequacy of the medical assistance and care provided in detention,
- III. the advisability of maintaining the detention measure in view of the state of health of an applicant.⁶²³

10.2.1. The prohibition of torture and inhuman or degrading treatment or punishment

In relation to vulnerable persons, in particular to mentally ill detainees, when assessing whether the treatment breached Article 3, consideration is taken of their vulnerability and in certain instances of their inability to coherently complain about how they are affected by a particular treatment.⁶²⁴ If a detainee is suffering from obviously severe injuries and there is a delay in treating the injuries, there could be a breach of Article 3.⁶²⁵ If the applicant is particularly vulnerable, it is up to the authorities to preserve the physical and mental health of the patients who are incapable of deciding for themselves as to whether medical treatment is necessary.

In *Dybeku v Albania*, the ECtHR found that the feeling of inferiority and powerlessness, which is typical of persons who suffer from a mental disorder, calls for increased vigilance in reviewing whether the Convention has been complied with.⁶²⁶ It found that the applicant's specific medical condition (a chronic mental disorder) made him more vulnerable in detention, which exasperated his feelings of distress and fear. Given the fact that no action was taken to improve the conditions, and given the state of the conditions that the applicant was subjected to, the Court found a breach of Article 3. It found that considering 'the nature, duration and severity of the ill-treatment to which the applicant was subjected and the cumulative negative effects on his health are sufficient to be qualified as inhuman and degrading'.⁶²⁷

10.2.2. Health care and the right to human dignity

In *M.S. v the United Kingdom*, the Court found that mentally ill people are in a position of particular vulnerability, and clear issues of respect for their human dignity arise whenever such persons are detained by the authorities. The case concerned the applicant, who, in a highly agitated state, committed a violent assault and was imprisoned. There was no

615. Article 11 (2) recast Reception Conditions Directive.

616. Article 11 (2) recast Reception Conditions Directive.

617. Article 11 (2) recast Reception Conditions Directive

618. Article 11 (3), recast Reception Conditions Directive.

619. Article 11 (3) recast Reception Conditions Directive.

620. Ibid, Article 11 (4).

621. Ibid, Article 11 (5).

622. Ibid, Article 11 (6).

623. ECtHR, *Dybeku v Albania*; Application no. 41153/06, 18 December 2007.

624. ECtHR, *Keenan v United Kingdom*, Application no. 27229/95, 03 April 2001, para 110.

625. ECtHR, *Ilhan v Turkey*, Application no. 22277/93, 27 June 2000. In this case, the Court found that given the severity of the ill-treatment suffered by the applicant (by the authorities) and given the significant amount of time that lapsed before being treated, his treatment amounted to torture. However, it can be argued that even if the ill-treatment does not come from the authorities in the Member State, there is still an obligation to ensure that they have effective and fast access to health care when needed.

626. ECtHR, *Dybeku v Albania*, Application no. 41153/06, 02 June 2008, para 47.

627. ECtHR, *Dybeku v Albania*, Application no. 41153/06, 02 June 2008, para 51.

question as to whether the initial imprisonment was lawful. However, it found that his prolonged detention (four days) before he received essential psychological care violated his right to dignity and ultimately found there to be a violation of Article 3. Given that the applicant was under the control of the State, they were under an obligation to safeguard his dignity as they are responsible for the treatment he experienced.⁶²⁸

What is notable in this case is that even though the authorities made substantial efforts to ensure that the applicant received the necessary care, the Court found a violation of Article 3 given the fact that the applicant was detained and not transferred to a mental health facility as soon as possible. The delay came about due to coordination difficulties between the relevant health authorities. The Court found that the conditions that the applicant was required to endure were an affront to human dignity and reached the threshold of degrading treatment under Article 3.

In *Kaprykowski v Poland* the Court found that the lack of adequate medical treatment which ultimately led the applicant to become dependent on his inmates and placed him in a position of inferiority vis-à-vis his healthy cellmates undermined his dignity. The ECtHR found that the lack of adequate medical treatment amounted to particularly acute hardship that caused anxiety and suffering beyond that inevitably associated with any deprivation of liberty. This led the Court to find a violation of Article 3 ECHR.⁶²⁹

10.2.3. The right to the integrity of the person

Article 3 (1) of the Charter provides that '[E]veryone has the right to respect for his or her physical and mental integrity'. The ECtHR has found that Article 8 (Right to respect for private and family life) of the ECHR provides for the right to the integrity of the person. Article 3 of the Charter is applicable to everyone, regardless of status. The ECtHR has found that not every act which adversely affects a person's moral or physical integrity will interfere with the right to respect to private life guaranteed by Article 8. 'However, the Court's case-law does not exclude that treatment which does not reach the severity of Article 3 treatment may nonetheless breach Article 8 in its private-life aspect where there are sufficiently adverse effects on physical and moral integrity'.⁶³⁰

In this respect the Court found that mental health is a crucial part of a person's private life associated with moral integrity. As a result, the preservation of mental stability is, in that context an indispensable precondition to the effective enjoyment of the right to respect for private life.⁶³¹ Therefore, it could be argued that if an applicant's detention is going beyond the acceptable level of suffering associated with being in detention, it could engage Article 3 under the Charter and/or Article 8 ECHR.

10.2.4. The detention of children

Children are seen as a particularly vulnerable group and, as a result, their extreme vulnerability takes precedence over other considerations, such as their legal status. Furthermore, as per Article 24 of the Charter (The rights of the Child), 'children shall have the right to such protection and care as is necessary for their well-being' and 'in all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration'. It is never in the child's best interest to be detained and the ECtHR has found that detaining children in premises that are not suitably adapted to their needs violated Article 3 ECHR. In *Mubilanzila Mayeka and Kaniki Mitunga v. Belgium* the five-year old applicant was detained for two months in a centre that had initially been designed for adults, even though she was unaccompanied by her parents and no one had been assigned to look after her. No measures were taken to ensure that she received proper counselling and educational assistance.⁶³² The Court found that the detention conditions caused her considerable distress and the authorities who ordered her detention have failed to be aware of the serious psychological effects it would have on her. Her detention in such conditions demonstrated a lack of humanity to such a degree that it amounted to inhuman treatment.⁶³³

In *Rahimi v. Greece*⁶³⁴ in finding a violation of Article 3, the ECtHR affirmed that reception conditions should take account of the specific needs of children, and reiterated that the Reception Conditions Directive places an obligation on states to ensure that the best interests of the child shall be a primary consideration.⁶³⁵ In *Kangaratnam and others v Belgium*, the ECtHR observed that the family had been detained for almost four months in a centre that the Court had already held to be inappropriate for the needs of children because of the conditions of detention, which were disastrous for their balance and development, and went on to find a violation of Article 3 ECHR.⁶³⁶

628. ECtHR, *M.S. v the United Kingdom*, Application no. 24527/08, 03 May 2012.

629. ECtHR, *Kaprykowski v Poland*, Application no. 23052/05, 03 February 2009.

630. ECtHR, *Bensaid v The United Kingdom* Application no. 44599/98, 06 February 2001, para 46.

631. ECtHR, *Bensaid v The United Kingdom*, para 47.

632. ECtHR, *Mubilanzila Mayeka and Kaniki Mitunga v. Belgium*; Application no. 13178/03, 12 October 2006, para 50.

633. *Ibid.*, para 58.

634. ECtHR, *Rahimi v. Greece*, Application. No. 8687/08, 5 April 2011.

635. *Ibid.*, para 108.

636. ECtHR, *Kangaratnam and others v Belgium*, Application no. 15297/09, 13 December 2011.

The Court reiterated that the particular vulnerability of the children, who were already traumatised before their arrival in Belgium as a result of circumstances relating to the civil war in their home country and their flight, had been recognised by the Belgian authorities as they had finally granted the family refugee status. Due to the fact they were detained, and despite the fact they were with their mother, they were exposed to feelings of anxiety and inferiority, and that the Belgian authorities, had, in full knowledge of the facts, risked compromising their development. Consequently, the situation experienced by the children had amounted to inhuman and degrading treatment.

10.3. Member States treatment of persons with special reception needs in detention

Very few States have mechanisms in place to identify whether an applicant is vulnerable and if they have special reception needs when detained. In **Austria**,⁶³⁷ **Bulgaria**, **Cyprus**,⁶³⁸ **Belgium**,⁶³⁹ **Greece**,⁶⁴⁰ **Hungary**,⁶⁴¹ **Italy**,⁶⁴² and **Poland**⁶⁴³ there is no mechanism in place to identify vulnerable persons or persons with special reception needs when applicants for international protection are detained. In **Belgium**, in practice, a doctor can decide that a person should no longer be detained because it could damage their physical or mental health.⁶⁴⁴ The Managing Director of the centre then informs the Director-General of the Aliens Office, who has to decide whether to suspend the detention. Should the Director-General disagree, an opinion from another doctor is sought.⁶⁴⁵

In **Greece**, there is no assessment as to whether detainees have special reception needs.⁶⁴⁶ This is despite the fact that in law there are special provisions for persons with special reception needs.⁶⁴⁷ At present, vulnerable persons, including unaccompanied children, are detained in the same conditions as other migrants and asylum seekers.⁶⁴⁸ In January 2013, the Greek government announced that women, unaccompanied children and people with health problems should not be detained and should be accommodated in two open reception centres. However, as of September 2014, these centres have yet to be built.⁶⁴⁹

In **Italy**, there are no specific legislative guarantees for vulnerable groups. The competent prefecture signs an ad hoc agreement with the manager of each centre,⁶⁵⁰ and, according to these agreements, a screening shall take place upon arrival which aims to check the detainee's general health and identify vulnerable cases.⁶⁵¹ This, however, does not happen in practice.⁶⁵² In **Poland**, there are no regulations for the identification of persons with special reception needs. Even if someone is considered to be vulnerable there is no procedure in place stating what should be done.⁶⁵³ According to a study that was carried out that examined the identification of vulnerable persons in Poland, between January and April 2013, approximately 85 vulnerable persons were held in detention.⁶⁵⁴

In **Bulgaria**, a bill is currently pending before Parliament that proposes to detain all persons seeking international protection, regardless of their individual characteristics, vulnerability, age, health status, special needs or other relevant circumstances.⁶⁵⁵ Should this bill pass, it would be in direct contravention of Article 8(1) of the recast Reception Conditions Directive, according to which Member States may not detain a person solely on the basis that they are an applicant for international protection.⁶⁵⁶

In **Germany** and **Malta** there are measures in place to identify vulnerable persons or other persons with special reception needs. In **Germany** however, these measures are not carried out systematically and so the screening process does not lead to the identification of persons with special reception needs.⁶⁵⁷ In **Malta**, persons who arrive irregularly are

637. Asylum Information Database, National country report Austria, p. 73.

638. Asylum Information Database, National country report Cyprus, p. 66.

639. Asylum Information Database, National country report Belgium, p. 73. Besides the consideration of the minority of age, no other vulnerability assessment is made whatsoever before deciding on the detention of asylum seekers, especially at the border.

640. Asylum Information Database, National country report Greece, p. 78.

641. Asylum Information Database, National country report Hungary, p. 56.

642. Schema di capitolato di appalto per la gestione dei centri di accoglienza per immigrati

643. Asylum Information Database, National country report Poland, p. 53.

644. Asylum Information Database, National country report Belgium, p. 73.

645. Article 61 Royal Decree on Closed Centres.

646. Asylum Information Database, National country report Greece, p. 78.

647. Presidential Decree 220/2007 foresees the identification of and a referral system for persons who are deemed to be vulnerable.

648. Asylum Information Database, National country report Greece, p. 78.

649. Council of Europe: Commissioner for Human Rights, *Report by Nils Muižnieks Commissioner for Human Rights of the Council of Europe following his visit to Greece from 28 January to 1 February 2013*, 16 April 2013, CommDH(2013)6, para. 145. See also Asylum Information Database, National country report Greece, p. 78.

650. Schema di capitolato di appalto per la gestione dei centri di accoglienza per immigrati

651. Asylum Information Database, National country report Italy p. 74.

652. Asylum Information Database, National country report Italy, pp. 74-75.

653. Asylum Information Database, National country report Poland, p. 53.

654. Asylum Information Database, National country report Poland, p. 53.

655. Parliament bill of 19 November, see also Asylum Information Database, Austria, p. 49.

656. Asylum Information Database, National country report Austria, p. 73.

657. Asylum Information Database, National country report Germany p. 73.

detained even if they wish to apply for asylum. However, persons who, by virtue of their physical conditions and/or age are considered to be vulnerable are exempt from detention and are accommodated in alternative centres. An indicative list identifies potential vulnerable groups as including unaccompanied minors, persons with a disability, families and pregnant women.⁶⁵⁸ In order to give effect to this policy, two procedures were put in place to assess 'vulnerability' in individual cases. These procedures are known as the Age Assessment Procedure and the Vulnerable Adults Assessment Procedure. Both of these procedures are implemented by the Agency for the Welfare of Asylum Seekers.⁶⁵⁹ Where the special need is not immediately evident, the assessment takes considerably longer. In **the UK**, generally, health care is outsourced to private entities by the NHS, and as a result, staff and facilities for identifying and treating mental illness and distress varies greatly between detention centres.⁶⁶⁰

In **Ireland**, legislation provides that when persons are placed in detention (prison), due respect will be paid to the personal rights of detainees and their dignity, and regard shall be had for the special needs of any of them who may have a physical or mental disability.⁶⁶¹

10.3.1. Special reception conditions for those who are vulnerable or who have special reception needs

There is very little meaningful assistance or facilities available for vulnerable persons and those who have special reception needs. All that was available, in certain countries, were specific sections of detention centres that applicants could be housed in.

In **Austria**, (Zinnergasse detention centre)⁶⁶² **Bulgaria**,⁶⁶³ **France**,⁶⁶⁴ **the Netherlands**,⁶⁶⁵ **Germany** (in two detention centres)⁶⁶⁶ and **the UK**,⁶⁶⁷ there are specific sections in certain facilities for families with children who are detained. In **Hungary** there is a specific detention centre for families. In a number of detention centres in **Austria**, **Bulgaria**,⁶⁶⁸ **Belgium**,⁶⁶⁹ **Germany**,⁶⁷⁰ **Greece**,⁶⁷¹ **Italy**,⁶⁷² **Hungary** and **the UK**⁶⁷³ men and women are separated.

However, in **Germany**, given the low number of women detained, some find themselves in effective isolation, at times with no interpretation.⁶⁷⁴ In **Greece**, this is not always provided in practice. Similarly in **Italy**, separate rooms are not always provided and at times they even have to share a room with former prisoners.⁶⁷⁵ In **Austria**, in one of the detention centres in Vienna, (Roßauer Lände), one floor is used for mothers with small children.⁶⁷⁶ In **Hungary**, the Hungarian Helsinki Committee reported regularly seeing persons with special needs who are detained not getting adequate support.⁶⁷⁷

In **Poland**, as provided for by law, asylum seekers, whose psychophysical state indicate that they are victims of violence or have a disability, are not placed in detention centres unless their behaviour poses a threat to safety, life or health of other foreigners staying in the reception centre or employees of the reception centre.⁶⁷⁸ In practice however, vulnerable asylum seekers are detained, even when they were diagnosed as having mental problems as a result of past events.⁶⁷⁹

658. 'Refugees, Irregular immigrants and Integration', MJHA and MFSS, January 2005, pp11-13 see also Asylum Information Database, Malta, pp. 49-50.

659. Asylum Information Database, National country report Malta, p. 50.

660. Asylum Information Database, National country report the UK, p. 69.

661. Section 4 of S.I. No. 344/2000 - Refugee Act, 1996 (Places and Conditions of Detention) Regulations, 2000, see also Asylum Information Database, National country report Ireland, p. 65.

662. Asylum Information Database, National country report Austria, p. 73.

663. Asylum Information Database, National country report Bulgaria, p. 52.

664. Separate facilities are provided for families (including children) in the 10 administrative detention centres.

665. Asylum Information Database, the Netherlands, p. 57.

666. Asylum Information Database, National country report Germany, p. 73.

667. There are units for families at the Cedars, and at Tinsley House, which is a short-term holding facility. Some asylum-seeking families may be detained on arrival at Tinsley House, as well as before removal, Asylum Information Database, the UK, p. 71.

668. Asylum Information Database, National country report Bulgaria, p. 52.

669. Asylum Information Database, National country report Belgium, p. 72.

670. Asylum Information Database, National country report Germany, p. 73.

671. Asylum Information Database, National country report Greece, p. 78.

672. Asylum Information Database National country report Italy, p. 76. see also Commissione straordinaria per la tutela e la promozione dei diritti umani del Senato "Rapporto sullo stato dei diritti umani negli istituti penitenziari e nei centri di accoglienza e trattenimento per migranti in Italia", February 2012 (Extraordinary Commission for the protection and promotion of human rights of the Senate, Report on the status of human rights in the penitentiary institutions and in the reception and detention centres for migrants in Italy).

673. Asylum Information Database, National country report the UK, p. 71.

674. Asylum Information Database, National country report Germany, p. 73.

675. Asylum Information Database National country report Italy, p. 76. See also Commissione straordinaria per la tutela e la promozione dei diritti umani del Senato "Rapporto sullo stato dei diritti umani negli istituti penitenziari e nei centri di accoglienza e trattenimento per migranti in Italia", February 2012 (Extraordinary Commission for the protection and promotion of human rights of the Senate, Report on the status of human rights in the penitentiary institutions and in the reception and detention centres for migrants in Italy). A Directive dated 14 April 2000 of the Ministry of the Interior regulates the structural characteristics of the centres which provides that separate wings should be available for women, men and families and the family unit should be guaranteed.

676. Asylum Information Database, National country report Austria, p. 73.

677. Asylum Information Database, National country report Hungary p. 56.

678. Article 88 section 3 point 2 of the Law on Protection. See also Asylum Information Database, National country report Poland p. 52.

679. Asylum Information Database, National country report Poland, p. 52.

In the Netherlands, if a detainee has medical health problems, and the detention centre cannot provide the necessary care, they will be transferred to a regular hospital, a prison psychiatric hospital or a closed health care facility.⁶⁸⁰ There are also special units for families with children where pedagogically trained staff are available.⁶⁸¹

In the UK, it is policy that vulnerable people are unsuitable for detention, and should only be detained exceptionally, or when their care can be satisfactorily managed. Those who, according to policy guidance, should be treated as vulnerable are; the elderly, pregnant women (unless there is the clear prospect of early removal and medical advice suggests that there is no question of the baby arriving before this), people with serious disabilities, people with serious medical conditions or mentally ill, unaccompanied children and young people under 18, persons identified by the competent authorities as victims of trafficking, and torture victims. Nevertheless, in practice, some individuals in all of these groups are detained.⁶⁸² It is also reported that since August 2010, there was a change in policy so that only people who were 'suffering from serious mental illness' which could not be 'satisfactorily managed in detention' benefited from the policy.⁶⁸³ It is also reported that the centres are not equipped for elderly people and those with disabilities, deficiencies that have been criticised by the UN Committee against Torture.⁶⁸⁴

The High Court in England has found a number of breaches of Article 3 in relation to the detention of severely mentally ill people, and such detentions have also repeatedly been found unlawful under domestic law and in the Court of Appeal. In one such instance, *R (S) v Secretary of State for the Home Department*,⁶⁸⁵ which according to NGO's is not an isolated incident, rather, an illustration of a broader policy by the UK Home Office the Court,⁶⁸⁶ found that the circumstances in which S was detained at Harmondsworth constituted inhuman and degrading treatment in breach of Article 3 ECHR.

Those circumstances included:

- being detained despite a clear history of severe mental illness, and contrary to the clear expert advice of a number of mental health professionals;
- serious deterioration in his mental state, and allowing him to reach such a deteriorated state that he lacked capacity to make decisions in his own best interests;
- the failure to respond assessments by the in-reach psychiatrist that he was unfit for detention and required urgent compulsory treatment in hospital under the Mental Health Act; and
- one incident in which officers encountered S, naked and bleeding, being pulled along a corridor by another detainee in view of a crowd of detainees after he had attempted suicide.

In Belgium families with minor children who claim asylum at the border are explicitly excluded from detention in a closed centre and are placed in facilities adapted to the needs of such families.⁶⁸⁷ Following the *Muskhadzhiyeva* judgment⁶⁸⁸ and the *Kanagaratnam* case,⁶⁸⁹ the then Secretary of State decided that from 1 October 2009 onwards families with children, arriving at the border who are not removable within 48 hours after arrival, should also be accommodated in a family unit. These family or housing units are individual houses or apartments provided for a temporary stay. Legally these persons are not considered to have entered the territory, and are in detention, but in practice these families have a certain liberty of movement, under the control of a so-called "return coach".⁶⁹⁰ There is, however, a new practice of separating families, by detaining the father, aimed to pressure the family to accept a 'voluntary' return. The new Secretary of State has also announced his intention to return to detention for families in family units within the closed centres.

680. Asylum Information Database, National country report the Netherlands, p. 57.

681. Asylum Information Database, National country report the Netherlands, p. 57.

682. Asylum Information Database, National country report the UK, p. 68.

683. Jed Pennington, *Deplorable Failure, Bureaucratic Inertia and Callous Indifference: The Immigration Detention of Mentally Ill People by the UK Border Agency*, *Journal of Immigration Asylum and Nationality Law* (2013) Vol. 27 no.1 pp. 41-46.

684. UNCAT, *Concluding observations on the fifth periodic report of the United Kingdom*, adopted by the Committee at its fiftieth session, 6-31 May 2013.

685. *R (BA) v Secretary of State for the Home Department* [2011] EWHC 2748 (Admin) (26 October 2011)

686. Jed Pennington, *Deplorable Failure, Bureaucratic Inertia and Callous Indifference: The Immigration Detention of Mentally Ill People by the UK Border Agency*,

687. Article 74/9 Aliens Act. This provision still allows for a limited detention of the family in case they do not respect the conditions they accepted in a mutual agreement with the AO (§3, al. 4), but this seems not to be applied in practice at all.

688. ECtHR, *Muskhadzhiyeva and Others v Belgium*, Application no. 41442/07, 19 January 2010. The Court found a violation Articles 3 and 5 (1) ECHR because of the administrative detention for one month of a Chechen woman and her four small children who had applied for asylum in Belgium while waiting to be expelled to Poland, the country through which they had travelled to Belgium.

689. ECtHR, *Kanagaratnam and Others v Belgium*, Application no. 15297/09, 13 December 2011.

690. Return coaches are staff members of the Aliens office that assist the families concerned during their stay in the family unit. For further information see Vluchtelingenwerk Vlaanderen a.o., *An Alternative to detention of families with children. Open housing units and coaches for families with children as an alternative to forced removal from a closed centre: review after one year of operation*, December 2009.

10.3.2. The detention of children in selected Member States

Indicators/ Countries	AT	BE	BG	CY	DE	FR	GR	HU	IE	IT	MT	NL	PL	SE	UK	RO
Are unaccompanied asylum-seeking children detained in practice? (Frequently/Rarely/Never)	R	R	F	R	R	R	F	R ⁶⁹¹	N	N	F	R	R	N	R	N
If frequently or rarely, are they only detained in border/transit zones? (Yes/No)	N	Y	N	N	N	Y	Y			N	N	Y	N	N	R	N
Are asylum seeking children in families detained in practice? (Yes/No/R)	R	N	F		R	R	F	Y	R	N	F	R	F	R	N	R

Across the Member States surveyed, children detained are either defined as an ‘unaccompanied child’ or as a ‘family member claiming asylum’. Whilst many countries explicitly state that unaccompanied children should not be detained, in practice this happens in many Member States. For example, in **Bulgaria**, the Law on Aliens was amended in March 2013 to prohibit the detention of unaccompanied children and to introduce a maximum period of three months for the detention of accompanied children who are detained with their parents.⁶⁹² In practice, however, unaccompanied children continue to be detained; both asylum-seeking and migrant children.⁶⁹³ In **Hungary**, by law, unaccompanied children are excluded from asylum detention.⁶⁹⁴ Nevertheless, the Hungarian Helsinki Committee, during its monitoring mission in 2014, ⁶⁹⁵ noted that many persons who may be children may be held in detention. In **Italy**, there is an explicit provision which provides that unaccompanied children can never be detained.⁶⁹⁶ However, children who are wrongly age-assessed can be detained in Identification and Expulsion Centres.⁶⁹⁷

In **Poland**, by law, unaccompanied children should not be detained, but in practice it can happen when there are disputes about their age.⁶⁹⁸ Asylum seeking children with their parents can be placed in detention with other adults.⁶⁹⁹ In **the UK**, where a person is assessed, after screening, as under 18, they are not detained. However, there are instances of applicants detained as adults who were later found to be children. Those identified and assisted by the Refugee Council numbered 26 in 2010, 22 in 2011 and 22 in 2012.⁷⁰⁰

In **Greece**, unaccompanied children can be detained as a matter of course; the detention of children is being imposed systematically as a result of the lack of places in reception centres.⁷⁰¹ During 2013-2014, MSF identified over 100 young persons who were registered as adults but who were most probably children. Several had documents stating their age, but these were dismissed by the police.⁷⁰²

In **Cyprus**, in general, unaccompanied children are not routinely detained. However, there are cases where unaccompanied children are detained when arrested, or convicted of a criminal offence, such as trying to leave the country on false/forged documents; and in such instances they are detained as ‘prohibited immigrants’. There have also been a number of cases where the authorities had not released the child, despite having knowledge of their age.⁷⁰³

In **the Netherlands**, unaccompanied children are not detained and where there is a dispute over the age of the child, they

691. In Hungary, according to the law UAMs are not detained, but in practice we do find them, due to poor age assessment. Also under this table this is explained for Hungary. So I would put R for Hungary.

692. Law on Aliens, Article 44, para 9, see also Asylum Information Database, National country report Bulgaria, p. 51.

693. Asylum Information Database, National country report Bulgaria, p. 51.

694. Section 56 of the TCN Act and Section 31B(2) of the Asylum Act.

695. Asylum Information Database, National country report Hungary, p. 52.

696. Article 26 (6) of the Procedures Decree 25/2008.

697. Asylum Information Database, National country report Italy, p. 68.

698. Asylum Information Database, National country report Poland, p. 53.

699. Ibid, p. 53.

700. Judith Dennis, *Not A Minor Offence; Unaccompanied Children Locked up as Part of the Asylum Process*, Refugee Council 2012, see also Asylum Information Database, National country report the UK, p. 68.

701. Asylum Information Database, National country report Greece, p. 78.

702. MSF Report. *Invisible Suffering. Prolonged and systematic detention of migrants and asylum seekers in substandard conditions in Greece*. MSF Operations in Immigration Detention Facilities in Greece 2008-2014.

703. Asylum Information Database, National country report Cyprus, p. 64.

are not detained during the age determination procedure. Families with children, who wish to seek protection, arriving through Schiphol International Airport, can be detained for up to 14 days.⁷⁰⁴

Detention conditions for children detained in Member States

Unaccompanied children in **Bulgaria**, after being transferred from border police stations, are detained with adults in one of two camps for irregular migrants. There is no separate unit for unaccompanied children despite their vulnerability.⁷⁰⁵

In **Cyprus**, families are not detained, although the authorities have stated that they will soon complete a wing in Menogia for the purposes of detaining families with children.⁷⁰⁶ When unaccompanied children are detained in Menogia, they are detained in the same conditions, alongside adults. In police cells, where there are indications that a detainee is a minor, they are kept separated from adults. However, as a result of this policy, in a recent incident (March 2014) an unaccompanied child was kept in isolation for nearly five months.⁷⁰⁷

In **Greece**, children and unaccompanied children are being detained in the same sub-standard detention conditions as adults. The ECtHR found in *Housein v Greece* that Greece violated his right to liberty as a result of his automatic detention for two months in an adult detention centre.⁷⁰⁸ In **Poland**, as of 2013, families with children of school age are placed in two assigned detention centres (Ketrzyn and Biala Podlaska).

10.4. Conclusion

As a rule, asylum seekers should not be detained, they are inherently vulnerable and placing them in such a formidable environment can cause the onset of previously inexperienced medical conditions. For persons who are already vulnerable, detention is not an appropriate environment and Member States have the option not to detain them. There is also an obligation in the recast Reception Conditions Directive for Member States to take into account the specific position of vulnerable persons in detention (Article 17 (2)) and the health and mental health care of detained persons shall be of primary concern to national authorities (Article 11 (1)). Member States should review an applicant's detention in light of their state of health and ensure the applicant's right to human dignity.

Member States should never detain children, it is never in their best interest and the ECtHR has found that the detention conditions a vulnerable child asylum seeker was subject to violated Article 3 of the ECHR.

Member States also have an obligation to ensure that persons with special reception needs receive the necessary medical treatment, including necessary mental health treatment. Despite this, in most Member States at present, it is NGO's who mainly provide treatment for traumatised and torture victims. In nearly all Member States demand exceeds the services available and many NGO's who provide this treatment are experiencing funding problems. Member States should ensure that adequate resources are provided to fund specialist care for torture victims.

Finally, certain Member States, such as Bulgaria and Greece, are currently breaching their international and EU obligations by detaining children, including unaccompanied children alongside adult detainees. They should act immediately to rectify this practice and refrain from routinely detaining unaccompanied minors and children.⁷⁰⁹

704. Asylum Information Database, National country report the Netherlands, p. 55.

705. Human Rights Watch, *Containment Plan Bulgaria's Pushbacks and Detention of Syrian and Other Asylum Seekers and Migrants* March 2014 p. 55.

706. Asylum Information Database, National country report Cyprus, p. 64.

707. Asylum Information Database, National country report Cyprus, p. 64.

708. ECtHR, *Housein v Greece*, Application no. 71825/11, 24 October 2013.

709. Human Rights Watch, *Containment Plan Bulgaria's Pushbacks and Detention of Syrian and Other Asylum Seekers and Migrants* March 2014 p. 55.

Conclusion

RECEPTION AND DETENTION CONDITIONS

11. Conclusion

Given the binding character of the Charter of Fundamental Rights, practitioners can use the provisions therein to enhance reception and detention standards for those seeking international protection. The Charter also assists in providing a proper interpretation of the standards contained in the Reception Conditions Directive and its recast, and the national implementing legislation. Ensuring proper and adequate reception conditions is crucial so that applicants are in a safe environment to present their claim for international protection. Adequate standards also ensures that applicants are not exposed to further traumatising, which can occur if an applicant is subject to substandard conditions or are offered no reception conditions; which happens in numerous Member States.

While improvements have been made to the conditions that need to be provided in the recast Reception Conditions Directive, Member States have substantial discretion when implementing the Directive. It's crucial that the recast's provisions are informed and interpreted in line with the Charter. Member States are required under both the Reception Conditions Directive and its recast to provide an adequate standard of living for those seeking international protection. While little guidance is given as to what is meant by an adequate standard, the Charter, as informed by the case law from the CJEU and the ECtHR can assist in interpreting what is required to meet this standard. Many Member States have significant problems in their reception systems; destitution, overcrowding or isolation is what faces many asylum seekers in the Member States surveyed, which can have detrimental effects on the applicant.

The recast Reception Conditions Directive now provides enhanced assistance to persons with special reception needs. Nevertheless, Member States have substantial scope when deciding how and what extra assistance is provided. A major difficulty will be ensuring that these provisions are implemented in a meaningful way so that those who are vulnerable are given the necessary assistance. The recast does not require an administrative procedure to determine whether an applicant has special reception needs. Practice shows that the identification of persons with special reception needs is done on an ad hoc basis, by a range of individuals, such as the reception centre itself, the refugee determination body or the asylum seeker themselves. One of the biggest challenges will be to ensure that those who are in need of assistance will be identified early in the procedure or when it becomes apparent. At present, little extra assistance is given to persons with special reception needs, in some instances no extra assistance is given or in others cases it only results in their being given accommodation. Most psychological assistance is provided by NGO's, who often have gaps in their funding, which means that care is not always guaranteed and that the resources are lacking to ensure that everyone who needs assistance receives it. It is crucial that this problem is addressed; otherwise these new protection standards are rendered meaningless.

The other major change brought about by the recast is that it now regulates the use of detention for those seeking international protection. Although the recast includes safeguards as to when and under what circumstances detention can be used, the grounds can be interpreted in a broad manner, which could lead to an increased use of detention. The detention of persons seeking international protection is inherently undesirable and should be avoided; they have committed no crime. The country reports described detention centres as feeling 'prison like as they and so too, the police stations in which asylum seekers can also be held are wholly unsuitable. Overcrowding, the lack of access to outdoors and the lack of suitable facilities for persons with special reception needs are all problems encountered in various Member States. The Charter can assist in ensuring that adequate standards are provided to those who are detained; which should be as short as possible, and only when an individual assessment has been carried out with regard to the necessity of the detention.

Applicants who are seeking international protection have fled violence, torture and most have undertaken an arduous journey in order to reach Europe's shores. Applicants should not face a situation where they are left destitute, or where they are detained in high security conditions and treated with disrespect and sometimes even violence by the relevant authorities. The Charter of Fundamental rights can help ensure that applicants are provided with a proper standard of living in order to ensure they can navigate the asylum procedure in the best conditions possible.



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