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DIRECTIVE 2003/09 RECEPTION CONDITIONS NATIONAL REPORTS

STUDY ON THE "CONFORMITY CHECKING OF THE TRANSPOSITION BY MEMBER STATES OF 10 EC DIRECTIVES IN THE SECTOR OF ASYLUM AND IMMIGRATION" DONE FOR DG JLS OF THE EUROPEAN COMMISSION END 2007(CONTRACT JLS/B4/2006/03)

A Network coordinated by the Institute for European Studies
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of the / de l'Université Libre de Bruxelles

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NATIONAL REPORT DONE BY THE ODYSSEUS NETWORK FOR THE EUROPEAN COMMISSION ON THE IMPLEMENTATION OF THE DIRECTIVE ON RECEPTION CONDITIONS FOR ASYLUM SEEKERS IN: AUSTRIA

by

PRIEWASSER Claudia
Mag,
claudia.priewasser@sbg.ac.at

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1. NORMS OF TRANSPOSITION

Q.1. Identify the main norm of transposition (indicate the title, date, number, date of entry into force and references of publication into the official journal) and indicate its legal nature (legislative, regulatory, administrative); indicate in your answer if this norm was only devoted to the directive or if it has been included in a more general text and indicate in that case by quoting precisely the numbers of the provisions adopted to transpose the directive.

For the purpose of this study, it must be illustrated in the beginning that Austria is a federal state consisting of the Federation and nine federal states, the Laender. Under the Austrian federal system, apart from the Federation also the Laender are authorised to issue legislative acts, the competences of the respective federal entities being laid down in Art. 10-15 of the Austrian Constitution. The Laender have their own Parliaments (*Landtag*), responsible for formal legislation, and Governments as supreme administrative organs. For the purpose of the implementation of the present Directive, it has to be decided in the first step whether the Federation or the Laender are competent to issue legislation in the field of reception conditions for asylum seekers. At present, the federal entities are sharing the opinion that both sides are competent in the field (for a closer explanation see below at Q.3.), therefore no single basic norm of transposition can be identified, because the Federation and the Laender are responsible for different steps of the procedure. The Laender Acts have equal rank on their respective territories.

1) Federal Basic Welfare Support Act

Bundesgesetz, mit dem die Grundversorgung von Asylwerbern im Zulassungsverfahren und bestimmten anderen Fremden geregelt wird (Grundversorgungsgesetz - Bund 2005 - GVG-B 2005)
Federal Law Gazette 405/1991, last amendment Federal Law Gazette I 100/2005
Date of publication of latest amendment: 16 August 2005

Entry into force: 17 August 2005 (entry into force of new Title, Subtitle and Abbreviation as well as Sect. 9 §§ 3a and 3b and Sect.10 § 1) and 1st January 2006
Earlier amendment relevant for transposition of the Directive: Federal Law Gazette I 32/2004
Date of Publication: 27 April 2004
Entry into force: 1st January 2005

Consolidated German version at http://ris.bka.gv.at/bundesrecht/ (search page), see also at http://www.unhcr.at/fileadmin/unhcr_data/pdfs/rechtsinformationen/A-Gesetze/A_-_Grundversorgungsgesetz_Bund_2005_-_1486.pdf

The law is applicable only to asylum seekers in the admissibility procedure, which is in line with the Agreement concluded between the Federation and the Laender (see below at Q.2), laying down the Federation's responsibility to grant reception conditions in this first stage of the procedure. Once asylum seekers are admitted to the regular procedure, the responsibility for reception of asylum seekers devolves upon the Laender.

Although there is no formal reference to the Directive, the law was basically intended to transpose the Directive. A reference can be found in the Basic Welfare Support Agreement (see Q.2. below at 1). The law also contains several provisions not covered by the Directive (eg. Sect. 12 on advice on and support of voluntary return). Like the Laender Acts as well, it was designed also to transpose Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof, by including special provisions on cases of mass influx of displaced persons, eg. Sect. 11 § 3).

2) Care Acts of the Laender:

2.1. Burgenland

Burgenland Care Act
Gesetz vom 18. Mai 2006 über die vorübergehende Grundversorgung von Asylwerberinnen und Asylwerbern und sonstigen hilfs- und schutzbedürftigen Fremden (Asylwerberinnen und Asylwerber, Asylberechtigte, Vertriebene und andere aus rechtlichen oder faktischen Gründen nicht abschiebbare Menschen) im Burgenland (Burgenländisches Landesbetreuungsgesetz - Bgld. LBetreuG)
Law Gazette of Burgenland 42/2006
Date of Landtag decision: 18 May 2006
Date of publication: 11 August 2006, entry into force: 1st September 2006

According to Sect. 12 § 3 the law is designed to transpose EC Directives 2003/9/EC, 2001/55/EC, 2004/81/ECand 2004/83/EC.[1]

German version also at:
http://www.unhcr.at/fileadmin/unhcr_data/pdfs/rechtsinformationen/A-Gesetze/A_-_Burgenl_Landesbetreuungsges_18Mai06_-_1788.pdf

2.2. Carinthia

Carinthia Basic Welfare Support Act
Gesetz vom 4. April 2006 über Maßnahmen zur vorübergehenden Grundversorgung für hilfs- und schutzbedürftige Fremde (Asylwerber, Asylberechtigte, Vertriebene und andere aus rechtlichen oder faktischen Gründen nicht abschiebbare Menschen) in Kärnten (Kärntner Grundversorgungsgesetz – K-GrvG)
Law Gazette of Carinthia 43/2006
Date of Landtag decision: 4 April 2006
Date of publication: 4 July 2006, entry into force: 5 July 2006

According to Sect. 12 the law is designed to transpose Directives 2003/9/EC and 2001/55/EC (special provision in Sect. 5).

German version also at:
http://www.unhcr.at/fileadmin/unhcr_data/pdfs/rechtsinformationen/A-Gesetze/A_-_Kaerntner_Grundversorgungsges_-_1717.pdf

2.3. Lower Austria

Lower Austria Basic Welfare Support Act
NÖ Grundversorgungsgesetz
Law Gazette of Lower Austria 9240-0, No. 15/07
Date of Landtag decision: 14 December 2006
Date of publication: 15 February 2007, entry into force: 16 February 2007

According to Sect. 26 the law is designed to transpose Directives 2001/55/EC, 2003/9/EC, 2004/81/EC and 2004/83/EC.

2.4. Salzburg

Salzburg Basic Welfare Support Act
Gesetz vom 14. März 2007 zur Sicherstellung der vorübergehenden Grundversorgung von hilfs- und schutzbedürftigen Fremden in Salzburg (Salzburger Grundversorgungsgesetz)

[1] Rules on Directives 2001/55/EC (special rules in Sect. 8), 2004/81/EC (Sect. 2 § 1 no. 6 declares the law applicable for people who are victims of human trafficking) and 2004/83/EC (Sect. 2 § 1 no. 2 declares the law applicable for people having been granted humanitarian status, no. 3 on people who cannot be expelled for factual reasons and no. 5 for people having been granted asylum during the first four months from the decision).

Law Gazette of Salzburg 35/2007
Date of Landtag decision: 14 March 2007
Date of publication: 30 May 2007; entry into force: 1st July 2007

According to Sect. 22 the law is designed to transpose Directives 2001/55/EC, 2003/9/EC, 2004/81/EC and 2004/83/EC.

2.5. Styria

Styria Care Act
Gesetz vom 5. Juli 2005, mit dem die Landesbetreuung von hilfs- und schutzbedürftigen Fremden geregelt wird (Steiermärkisches Betreuungsgesetz – StBetrG)
Law Gazette of Styria 101/2005
Date of Landtag decision: 5 July 2005
Date of publication: 18 October 2005; entry into force: 19 October 2005

According to Sect. 15 the law is designed to transpose Directives 2003/9/EC, 2001/55/EC and 2004/83/EC.[2]

German version also at:
http://www.unhcr.at/fileadmin/unhcr_data/pdfs/rechtsinformationen/A-Gesetze/A_-_Steierm_Betreuungsgesetz_-_1718.pdf

2.6. Tyrol

Tyrol Basic Welfare Support Act
Gesetz vom 15. Dezember 2005, mit dem das Tiroler Grundversorgungsgesetz erlassen wird
Law Gazette of Tyrol No. 21/2006
Date of Landtag decision: 15 December 2005
Date of publication: 14 February 2006, entry into force: 1st March 2006

According to Sect. 22 the law is designed to transpose Directives 2001/55/EC, 2003/9/EC, 2004/83/EC.[3]

German version also at:
http://www.unhcr.at/fileadmin/unhcr_data/pdfs/rechtsinformationen/A-Gesetze/A_-_Tiroler_Grundversorgungsge-_1716.pdf

2.7. Upper Austria

[2] Special rules on Directives 2001/55/EC (Sect. 9) and 2004/83/EC (Sect. 3 § 1 no. 2 and 4 extending the scope of application to persons who cannot be deported for legal or factual reasons, no. 5 to persons against whom an expulsion order has been issued until the date of effectuation of the expulsion and no. 6 to people having been granted asylum during 12 months from the decision).
[3] Special rules on Directives 2001/55/EC (Sect. 8) and 2004/83/EC (Sect. 4 lit. a extending the scope of application to refugees who have been granted asylum, persons having been granted subsidiary protection and displaced persons, lit. b to persons who cannot be deported for legal or factual reasons).

Upper Austria Basic Welfare Support Act
Landesgesetz über die Umsetzung der Grundversorgungsvereinbarung (Oö. Grundversorgungsgesetz 2006)
Law Gazette of Upper Austria No. 12/2007
Date of Landtag decision: 7 December 2006
Date of publication: 16 February 2007, entry into force: 1st March 2007

The title of the Act refers to the transposition of the Basic Welfare Support Agreement, but not to the Directive.

2.8. Vienna

Vienna Basic Welfare Support Act
Gesetz über Maßnahmen zur vorübergehenden Grundversorgung für hilfs- und schutzbedürftige Fremde (Asylwerber, Asylberechtigte, Vertriebene und andere aus rechtlichen oder faktischen Gründen nicht abschiebbare Menschen) in Wien
(Wiener Grundversorgungsgesetz – WGVG)
Law Gazette of Vienna 46/2004.
Date of Landtag decision: 30 June 2004
Date of publication: 13 October 2004, entry into force: 1st May 2004[4]

German version also at:
http://www.unhcr.at/fileadmin/unhcr_data/pdfs/rechtsinformationen/A-Gesetze/A_-_Wiener_Grundversorgungsges_-_1530.pdf

2.9. Vorarlberg

Vorarlberg Social Welfare Act
Gesetz über die Sozialhilfe (Vorarlberger Sozialhilfegesetz)
Law Gazette of Vorarlberg 1/1998, published on 8 January 1998, amended by Law Gazettes of Vorarlberg 43/2001, 58/2001, 38/2002, 3/2006 and 51/2006.

Date of Landtag decision of the relevant amendment, Law Gazette of Vorarlberg 3/2006: 10 November 2005
Date of publication: 24 January 2006, entry into force: 25 January 2006[5]

According to a footnote at Law Gazette of Vorarlberg 3/2006 the amendment is designed to transpose Directives 2001/55/EC, 2003/9/EC, 2004/81/EC and 2004/83/EC.

German version also at:
http://www.unhcr.at/fileadmin/unhcr_data/pdfs/rechtsinformationen/A-Gesetze/A_-_Vorarlb_Sozialhilfegesetz_-_1614.pdf

Provisions on reception conditions for asylum seekers, have been included into the general Social Welfare Act, the relevant paragraphs for the purpose of the Directive being Sect. 1, 3 § 4, Sect. 7a, 9-13, 15 § 8 and Sect. 35 of the Social Welfare Act.

[4] Retroactive entry into force.
[5] Sect. 7 Kundmachungsgesetz.

Q.2. List by order of importance by using numbers (1, 2, 3) the others norms of transposition if there are more than one (indicate for each norm the title, date, number and references of publication into the official journal; include in your answer the administrative measures taken to ensure implementation of the directive and of the transposition norms like regulations, administrative circulars, special instructions,…)

- Put as an annex to your report a paper copy of each norm in the original language with a reference number to help the reader to find it easily;
- Send us as an electronic version of each norm or a weblink to the text (this will be used for the website we are building);
- Provide the texts of any translation of the above norms into English if they are available.

NOTE: all laws are available after publication at www.ris.bka.gv.at/auswahl (search page in German). Since 2004 the official publication of all Federal Laws is done via Internet.
A selection of legal texts translated into English is usually published on the UNHCR website (http://www.unhcr.at/information-in-english/austrian-asylum-legislation.html), most of the federal acts have been translated by now (as far as the Aliens Police Act is concerned, only those parts relating to detention have been translated). The Welfare Support Acts of the Laender have not been translated by UNHCR.

1) Basic Welfare Support Agreement

Agreement between the Federation and the Laender concerning joint measures for the temporary granting of basic welfare support to aliens in need of assistance and protection […]

Vereinbarung zwischen dem Bund und den Ländern gemäß Art. 15a B-VG über gemeinsame Maßnahmen zur vorübergehenden Grundversorgung für hilfs- und schutzbedürftige Fremde (Asylwerber, Asylberechtigte, Vertriebene und andere aus rechtlichen oder faktischen Gründen nicht abschiebbare Menschen) in Österreich (Grundversorgungsvereinbarung - Art. 15a B-VG)

Federal Law Gazette I 80/2004
Date of publication in the Federal Law Gazette: 15 July 2004
Entry into force: 1st May 2004

English version at http://www.unhcr.at/fileadmin/unhcr_data/pdfs_at/information_in_english/1503.pdf
German version see also UNHCR at
http://www.unhcr.at/fileadmin/unhcr_data/pdfs/rechtsinformationen/A-Gesetze/A_-_Grundversorgungsvereinb-_Art15a_-_1480.pdf

The main purpose of the Agreement was to clarify the distribution of competence within the federal system in order to facilitate the transposition of the present Directive. According to Art. 1 § 2 the Agreement is devoted also to Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a

mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof. It contains a special provision concerning this group in Art. 8.
According to Art. 1 § 1 the Agreement applies to "aliens in need of assistance and protection in Austria (asylum seekers, persons having entitlement to asylum, displaced persons and other persons who may not be deported for legal or practical reasons)"

3) Care Facility Entry Regulation

Verordnung der Bundesministerin für Inneres, mit der das unbefugte Betreten und der unbefugte Aufenthalt in den Betreuungseinrichtungen des Bundes verboten wird 2005 (Betreuungseinrichtungen-BetretungsV 2005 – BEBV 2005),
Federal Law Gazette II 2/2005.
Date of publication: 3rd January 2005, entry into force: 4 January 2005

English version see http://www.unhcr.at/fileadmin/unhcr_data/pdfs_at/information_in_english/1502.pdf
German Version see also
http://www.unhcr.at/fileadmin/unhcr_data/pdfs/rechtsinformationen/A-Gesetze/A_-_Betreuungseinrichtungen-BetretungsV_2005_-_1479.pdf

4) Rules of the House

Verordnung des Bundesasylamtes zur Erlassung einer Hausordnung für die Betreuungseinrichtungen des Bundes.
Legislative regulation issued by the Federal Asylum Office on the rules of the house for care facilities run by the Federation, not published in the Federal Law Gazette (not necessary according to Sect. 4 § 1 no. 2 of the Law on the Federal Law Gazette (BGBlG)).

Note: this regulation might have been replaced by new rules together with the new legislation in force as of 1st January 2006.

5) Asylum Act 2005

Bundesgesetz über die Gewährung von Asyl (Asylgesetz 2005 – AsylG 2005)
Federal Law Gazette I 100/2005
Date of publication: 16 August 2005, entry into force: 1st January 2006

English version see http://www.unhcr.at/fileadmin/unhcr_data/pdfs_at/information_in_english/1723.pdf
German Version see also
http://www.unhcr.at/fileadmin/unhcr_data/pdfs/rechtsinformationen/A-Gesetze/A_-_Asylgesetz_2005_-_1478.pdf

6) Aliens Police Act 2005

Bundesgesetz über die Ausübung der Fremdenpolizei, die Ausstellung von Dokumenten für Fremde und die Erteilung von Einreisetitel (Fremdenpolizeigesetz 2005 – FPG)

Federal Law Gazette I 100/2005, last amendment Federal Law Gazette I 99/2006
Date of publication: 16 August 2005, entry into force: 1st January 2006

English version see http://www.unhcr.at/fileadmin/unhcr_data/pdfs_at/information_in_english/1706.pdf (covering parts on detention)
German Version see also
http://www.unhcr.at/fileadmin/unhcr_data/pdfs/rechtsinformationen/A-Gesetze/A_-_Fremdenpolizeigesetz_-_1508.pdf

7) Detention Regulation

Verordnung der Bundesministerin für Inneres über die Anhaltung von Menschen durch die Sicherheitsbehörden und Organe des öffentlichen Sicherheitsdienstes (Anhalteordnung - AnhO)

Federal Law Gazette II 128/1999, last amendment Federal Law Gazette II 439/2005

English version see http://www.unhcr.at/fileadmin/unhcr_data/pdfs_at/information_in_english/1712.pdf
German Version see also
http://www.unhcr.at/fileadmin/unhcr_data/pdfs/rechtsinformationen/A-Gesetze/A_-_Anhalteordnung_-_1711.pdf

8) Aliens Employment Act

Bundesgesetz vom 20. März 1975, mit dem die Beschäftigung von Ausländern geregelt wird (Ausländerbeschäftigungsgesetz - AuslBG)
Federal Law Gazette 218/1975, last amendment Federal Law Gazette I 99/2006

9) Information sheet on rights and duties of asylum seekers

10) Information sheet on the asylum procedure

11) More Laender legislation:

a) Social Welfare Legislation

The competence to issue legislation in the field of social welfare lies with the Laender. Apart from Vorarlberg, which has included welfare support for asylum seekers in its Social Welfare Act, other Laender rather exclude asylum seekers from social welfare than include them. For further information see the relevant questions on social welfare.

Burgenland: Gesetz vom 4. November 1999 über die Regelung der Sozialhilfe (Burgenländisches Sozialhilfegesetz 2000 - Bgld. SHG 2000)
Law Gazette of Burgenland 5/2000, last amendment Law Gazette of Burgenland 12/2007
Carinthia: Kärntner Mindestsicherungsgesetz - K-MSG
Law Gazette of Carinthia 15/2007
Lower Austria: NÖ Sozialhilfegesetz 2000 (NÖ SHG)

Law Gazette of Lower Austria 9200, No. 15/00, last amendment Law Gazette 9200-4, 4th amendment No. 13/07
Salzburg: Gesetz vom 13. Dezember 1974 über die Sozialhilfe im Lande Salzburg (Salzburger Sozialhilfegesetz)
Law Gazette of Salzburg 19/1975, last amendment Law Gazette of Salzburg 35/2007
Styria: Gesetz über die Sozialhilfe (Steiermärkisches Sozialhilfegesetz - SHG)
Law Gazette of Styria 29/1998, last amendment Law Gazette of Styria 27/2006, relevant amendment Law Gazette of Styria 21/2006
Tyrol: Gesetz vom 15. Dezember 2005, mit dem die Grundsicherung in Tirol geregelt wird (Tiroler Grundsicherungsgesetz – TGSG)
Law Gazette of Tyrol 20/2006
Upper Austria: Landesgesetz über die soziale Hilfe in Oberösterreich (Oö. Sozialhilfegesetz 1998 - Oö. SHG 1998)
Law Gazette of Upper Austria 82/1998, last amendment Law Gazette of Upper Austria 9/2006
Vienna: Gesetz über die Regelung der Sozialhilfe (Wiener Sozialhilfegesetz - WSHG)
Law Gazette of Vienna 11/1973, last amendment Law Gazette of Vienna 58/2006
Vorarlberg: Gesetz über die Sozialhilfe (Sozialhilfegesetz)
Law Gazette of Vorarlberg 1/1998, last amendment Law Gazette of Vorarlberg 51/2006 (see already above at Q.1 point 2.9)

b) Hospital legislation.

The organisation and financial fundament of hospitals also lies within the competence of the Laender on the basis of legislation on basic principles provided by federal legislation (special form of distribution of competences under Art. 12 of the Austrian Constitution). For the purpose of this study, these Acts are of minor importance, because they only include one provision pertaining to asylum seekers, excluding repayment of costs of hospitalisation. however, most of the Acts have not yet been brought in line with the new asylum legislation. The latest amendments are not relevant for the purpose of this study.

Burgenland: Gesetz vom 27. April 2000 über die Krankenanstalten im
Burgenland (Burgenländisches Krankenanstaltengesetz 2000 - Bgld. KAG 2000), Law Gazette of Burgenland 52/2000, last amendment Law Gazette of Burgenland 82/2005 (Sect. 60 § 1 no. 2)
Carinthia: Kärntner Krankenanstaltenordnung 1999 - K-KAO, Law Gazette of Carinthia 26/1999 (republished), last amendment Law Gazette of Carinthia 85/2005
Lower Austria: NÖ Krankenanstaltengesetz (NÖ KAG), Law Gazette of Lower Austria 9440, latest version Law Gazette of Lower Austria 9440-25, 23rd amendment No. 133/05
Salzburg: Salzburger Krankenanstaltengesetz 2000 – SKAG, Law Gazette of Salzburg 24/2000 (republished), last amendment Law Gazette of Salzburg 112/2006
Styria: Steiermärkisches Krankenanstaltengesetz 1999 – KALG, Law Gazette of Styria 66/1999 (republished), last amendment Law Gazette of Styria 145/2006

Tyrol: Gesetz vom 10. Dezember 1957 über Krankenanstalten (Tiroler Krankenanstaltengesetz - Tir KAG), Law Gazette of Tyrol 5/1958, last amendment Law Gazette of Tyrol 75/2006
Upper Austria: Oö. Krankenanstaltengesetz 1997 - Oö. KAG 1997, Law Gazette of Upper Austria 132/1997 (republished), last amendment Law Gazette of Upper Austria 99/2005
Vienna: Wiener Krankenanstaltengesetz 1987 - Wr. KAG, Law Gazette of Vienna 23/1987, last amendment Law Gazette of Vienna 59/2006
Vorarlberg: Gesetz über Krankenanstalten (Spitalgesetz), Law Gazette of Vorarlberg 54/2005, last amendment Law Gazette of Vorarlberg Law Gazette of Vorarlberg 7/2006.

Q.3. Explain which level of government is competent to adopt the legal norms on reception conditions for asylum seekers (specify in particular in case of a federal or regional State, if it is the federal/central power or the components; in case, specify below when it is impossible for you to answer a question because it is about the competence of the components and it is impossible for you to gather reliable information about all of them)

Under the Austrian Constitution, it does not seem entirely clear whether the duty to grant adequate reception conditions to asylum seekers falls within the scope of asylum, which is within the competence of the Federation (Art. 10 § 1 no. 3 and 7 of the Federal Constitutional Act), or social welfare, falling within the competence of the nine Laender). For a long time, the reception of asylum seekers was effected basically by the Federation on the basis of the "Federal Care Provision Act" (now Federal Basic Welfare Support Act). However, this system did not cover all asylum seekers but left a large number of them in homelessness. Some Laender therefore also took some responsibility and created care systems on the basis of their competence in social welfare. Since it was at the time seen as a matter of social law, the Federation took up this responsibility without constitutional obligation under the system of competences, acting not as an authority, but as a private actor (*Privatwirtschaftsverwaltung*). In 2003 the Supreme Court (*Oberster Gerichtshof*), as the last instance court in private law matters, issued a significant decision on the federal care system, ruling that even if the Federation was not acting under administrative law, it was still bound by fundamental rights laid down by the Constitution, above all the equality principle. Therefore, no asylum seeker could be denied benefits of federal care, if he or she fulfilled the requirements laid down by law. In view of rising numbers of asylum seekers and the date of transposition of the Directive pending, the Federation demanded more action from the Laender and after three years of negotiations on a new repartition of duties, the Federation and the nine Laender concluded an agreement, which is provided for in Art. 15a of the Austrian Constitution as a constitutional instrument. This Basic Welfare Support Agreement ("*Grundversorgungsvereinbarung*") stipulates that the Federation is responsible for granting reception conditions in the first phase of the procedure, the admissibility procedure (Art. 3 of the Agreement; see below Q.11.), while the Laender are responsible after an application for asylum has been declared admissible (Art. 4). The theoretical

background of this repartition of duties is that while an asylum seeker has not yet been admitted to the asylum procedure, he or she is subject to aliens law as a part of legislation guaranteeing public order and security. Therefore, at this stage of the procedure, the asylum seeker's neediness is not a criterion for his or her admission to federal care, but all asylum seekers are taken into federal care. This solution also serves their availability for the carrying out of the admissibility procedure. After having been admitted to the procedure and thus residing legally on the territory, his or her welfare falls within the scope of social welfare.[6] In a decision of 3rd October 2006, Reference number G33/06 ua, the Constitutional Court has accepted this repartition of competences as in conformity with the Constitution. The costs of all measures provided for by the Agreement are partitioned between the Federation and the Laender (Art. 10; see also Q.10.). The Agreement aims at granting equal benefits all over the country (Art. 1 § 1) and lays down which benefits must be granted by the parties, but it does not convey rights to individuals itself.
As a result, this means that the Federation as well as the Laender must adopt legislation in order to grant reception conditions to the degree of their responsibilities under the Agreement.
Although it seems clear that for the purpose of transposition of rules of European Law, the Federation remains solely responsible, it seemed necessary to reveal the Austrian system of competences. Moreover, it has to be added that only the Ministry of the Interior replied to the practical questionnaire distributed for the sake of this study. Apparently, the federal entities decided that since the Federation is accountable to the European Commission for the transposition of the Directive, additional information from the part of the Laender was not deemed necessary. Therefore, the information used in the following derives from an analysis of the Laender legislation as far as available, as well as telephone interviews with Government officials and NGOs.

Apart from the special system in reception conditions for asylum seekers, it can be resumed that social welfare legislation in general falls within the competence of the Laender (as part of "poverty legislation", see Art. 12 § 1 no. 1 Federal Constitutional Act; the right to social welfare benefits is in most Laender subsidiary to the Welfare Support Acts). Moreover, the Laender are competent in the fields of youth welfare and hospitals (see also Art. 12 § 1 no. 1). These domains are shared by the Laender with the Federation, which has the right to adopt legislation on the general principles, while the Laender are responsible for implementing legislation. The Federation has renounced this right in the field of social welfare, therefore the Laender are solely responsible.

Aliens Legislation falls within the competence of the Federation, to a certain extent conditions covered by this questionnaire are provided by the Asylum Act 2005 (eg. documents or information rendered to asylum seekers during the asylum procedure) or the Aliens Police Act 2005; legislation on employment is equally the Federation's competence (Art. 10 § 1 no. 11, except for employment in the agrarian sector), as well as – for the present study – legislation on the school system (with special competences of

[6] Marth, Bundesbetreuungsgesetz "neu": Grundversorgungsvereinbarung und Betreuung von Asylwerbern, SIAK-Journal 2005, p 13.

the Laender in a series of organisational questions, see the repartition of competences in Art. 14 Federal Constitutional Act).

Q.4. Explain the legal technical choices done to transpose the directive (comment on the nature and level of the norms used to do the transposition: legislative, regulatory, administrative like instructions, etc). Add any other element about the technique of transposition of the directive which is interesting for the implementation of Community law.

The only permissible way to grant benefits to persons under the Rule of Law as understood by the Austrian Constitution is by formal legislation, because only this choice provides the possibility that the norm be reviewed by the Constitutional Court as to its constitutionality. Regulations may only be issued on the basis of a law and by the federal entity competent for legislation in the field. As explained in Q.3., the Basic Welfare Support Agreement is an agreement between the federal entities which does not convey rights to individuals. The Agreement has been transposed or will be transposed by the Federation and the Laender by law.

Additionally some laws and proposals contain an authorisation of administrative bodies to rule specific questions by legislative regulation. Subordinate regulations may always be issued according to Austrian constitutional law. In cases where the reception of asylum seekers (meaning the supply of all or nearly all benefits granted to asylum seekers, as accommodation, food, counselling, payment of benefits provided in money) has been accorded to NGOs (eg. Vorarlberg, Salzburg, Vienna…), the Land remains the responsible political and administrative organ. However, the quality of reception conditions to be met and the rules of the house have not been fixed by law but have been included in the contracts with the NGOs.

This system chosen has a significant effect on the possibilities to enforce asylum seekers' rights. At current, Salzburg is the only Land which has not yet enacted legislation, but is granting benefits de facto by applying the Basic Welfare Support Agreement. A (non-official) internal regulation telling the administration how to apply it in practice has been issued. A problem arises out of this repartition of competences, in so far as the Federation and the Laender have to reach an agreement if asylum seekers are to be moved from a federal care facility to one of the Laender. In cases where none of the Laender is willing to accept to take over an asylum seeker, he or she does not have access to a legal remedy (see below at Q.11.).

It is important to note that the European Convention on Human Rights has the status of Constitutional Law in Austria, so that laws, regulations or administrative decisions can be challenged before the Constitutional Court in view of their conformity with the Convention, especially with the guarantees provided by Art. 3 and 8.

Q.5. Mention if there is a general tendency to just copy the provisions of the directive into national legislation without redrafting or adaptation them to national circumstances? If yes, give some of the worst examples and

explain if there is a risk that those provisions remain unapplied or will create difficulties of implementation in the future.

In view of the relatively complicated system of distribution of competences in Austria with regard to reception of asylum seekers, the Directive has been transposed in an individual way in the Basic Welfare Support Agreement. The Laender have either chosen individual ways of transposing the Agreement (eg. Vorarlberg Social Welfare Act) or copied to a large extent the provisions of the Agreement or of the Federal Act. Most of them did not visibly take into account the specific guarantees foreseen by the Directive. Therefore, not all of the Laender Acts are very detailed. Only the Lower Austrian Act is more elaborated, and contains a series of provisions, which have been taken over from the Directive, because they were not included in the Agreement (eg. the list of vulnerable persons whose interests have to be taken into account, Sect. 6 § 4). This is, however, rather a positive example, because Lower Austria took into account the Directive when transposing the Basic Welfare Support Agreement, which other Laender did not.

Q.6. Have all the texts necessary to ensure the effective implementation of the new rules of transposition been adopted, prepared or at least foreseen in the future (for example a regulation completing a new law and the necessary instructions telling the administration how to apply the new rules)?

As far as existing or previewed legislation is concerned, references can be found at Q. 1 and 2. The Federation has issued the above mentioned regulations concerning prohibition of unauthorised entry and rules of the house. Administrative instructions are hardly ever published in the legal information system database, and could not be gathered from the Ministry of the Interior, so all information given on such instructions are taken from information given by NGOs and other internet sources. Several provisions of the Directive were not transposed in federal legislation explicitly, others were introduced into the Federal Basic Welfare Support Act in the form of a general guarantee, lacking however concrete instructions concerning procedures to be applied or measures to be taken by the authorities in order to grant the effective implementation of these rules.

As far as the Laender are concerned, the above mentioned legislation has either been adopted or is currently in the legislative process. No information on further implementing texts, apart from the legislation given, could be gathered. According to Sect. 7 § 1 of the Styria Care Act the Government is authorized to issue a legislative regulation prohibiting unauthorised access to care facilities run by the Land "if this is necessary in the interests of order in the care facility, of the prevention of attacks against life, health, the freedom of humans or property of beneficiaries, or the protection of equipment of the centre". In case this regulation has been published already, it can however not be found in the legal information system. Such regulations are, however, not necessary for the implementation of the Directive.

A Basic Welfare Support Act for Salzburg has not yet been issued, but apparently – according to the website of the Landtag giving information on the outcome of a meeting of the Landtag constitutional committee – the Act has been adopted on 14 March, its publication may therefore be expected soon.

Practical rules are also contained in specific contracts concluded between the Federation or the Laender with NGOs. But these provisions differ from Land to Land and are not public.

As far as the new (or forthcoming) legislation of the Laender is concerned, it must be said that the Basic Welfare Support Acts are rather imprecise and leave a large margin of appreciation to the officials in charge, without providing the necessary rules how to make use of their discretionary power. The legitimacy of such legal provisions under the rule of law as understood by the Austrian Constitution may be doubtful. The Acts contain very general guarantees of benefits granted to asylum seekers, including only a list taken over from the Basic Welfare Support Agreement. Since the Agreement was only devoted to the repartition of duties between the Federation and the Laender and not to the granting of rights to individuals, the Laender Acts are generally short of the much more detailed guarantees foreseen by the Directive, because they put more emphasis on copying the Basic Welfare Support Agreement and did not always take into account the provisions of the Directive. While these Acts are intended to transpose the Directive, the effectiveness of its implementation may be doubted. This applies mainly to those Laender which issued legislative acts soon after the Agreement entered into force. Laender which only recently issued legislation show a more differentiated picture.

2. BIBLIOGRAPHY

Q.7. Has an in-depth preparatory study been made public about the changes at the occasion of the transposition? If yes, thanks for trying to provide us a copy *(please contact to answer this question adequately the body and person who was responsible for the preparation of the transposition of the directive in the public administration).*

For the *Federation* see the Government Bill on the Basic Welfare Support Agreement. The legal project for the Federal Welfare Support Act was based on a report of the Parliamentary Committee responsible for Internal Affairs, and has been changed during the legislation process, which can be followed at:
http://www.parlament.gv.at/portal/page?_pageid=908,658639&_dad=portal&_schema=PORTAL
The reasons for the amendments proposed at the occasion of the implementation of the Agreement can be found in the protocols of the legislation process in Parliament, at:
http://www.parlament.gv.at/pd/steno/PG/DE/XXII/NRSITZ/NRSITZ_00055/SEITE_0112.html?P_PM=SEITE_0112

For the *Laender* see:

Burgenland – reasoned Government Bill
Carinthia – reasoned Government Bill
Lower Austria – reasoned draft proposal
Salzburg – reasoned Government Bill
Styria – reasoned Government Bill
Tyrol – reasoned Government Bill
Upper Austria – reasoned draft proposal
Vienna – reasoned draft proposal
Vorarlberg – reasoned Government Bill

There were no other extensive preparatory studies done about necessary changes at the occasion of the transposition neither on the level of the Federation or in the Laender. The results of the usual preparatory work done in the course of the legislative process are incorporated in the explanatory notes which are attached to draft proposals and Government Bills and are published with those. The explanatory notes issued relating to the Basic Welfare Support Agreement have definitely known a thorough preparation and have been copied to a large extent by the Laender in the explanatory notes of their drafts and bills.

Q.8. Quote any recent scientific book or article published about the directive, the transposition rules or the question of reception conditions for asylum seekers in general (answer even if this literature is only available in your language and provide the complete title in your language (without translation) with all references; indicate author, title, in case name of periodical, year and place of publication).

Books

Martin Diehsbacher, Bundesbetreuungsrecht, Vienna, Graz 2005

Louise Sperl/Karin Lukas/Helmut Sax, Wirtschaftliche, soziale und kulturelle Rechte von AsylwerberInnen, Vienna 2004

Periodicals

Johannes Fessl, Aktuelles zur Betreuung von Asylwerbern, UVS Aktuell, Vienna 2007, p 29

Wolfgang Wessely, Zum Grundversorgungsgesetz-Bund (GVG-B), UVS Aktuell, Vienna 2007, p 16

Johannes Gregoritsch, Zur Gesundheitsversorgung von Asylwerbern in Österreich, Soziale Sicherheit, Vienna 2006, p 55

Christian Filzwieser/Barbara Liebminger, Rechtsberater im österreichischen Asylverfahren - Rechtsfragen des Tätigkeitsbildes, migraLex, Vienna 2005, p 49

Andreas Janko, Raumordnungsrechtliche Aspekte der Errichtung von Betreuungseinrichtungen für hilfsbedürftige Asylwerber, bbl (Baurechtliche Blätter), Vienna 2005, p 9

Lamiss Magdalena Khakzadeh, Das AsylG 2005 - Neuerungen und verfassungsrechtliche Fragen, migraLex, Vienna 2005, p 74

Thomas Marth, Bundesbetreuungsgesetz „neu“: Grundversorgungsvereinbarung und Betreuung von Asylwerbern, SIAK-Journal (Sicherheitsakademie-Journal – Zeitschrift für Polizeiwissenschaft und polizeiliche Praxis), Vienna 2005, p 12

Gerda Marx, Umsetzung der Aufnahmerichtlinie in Österreich, migraLex, Vienna 2005, p 82

Theo Öhlinger/Christoph Grabenwarter, Der Rücktritt Kärntens von der Grundversorgungsvereinbarung, migraLex, Vienna 2005, p 38

Johannes Peyrl, Die Änderungen beim Zugang zu Beschäftigung für Nicht-EU-Bürger nach dem Fremdenrechtspaket 2005, RdA (Das Recht der Arbeit), Vienna 2005, p 558

Nora Pichler, Restriktive Entwicklungen in nationalen Asylsystemen im Zusammenhang mit der europäischen Asylharmonisierung – ein Überblick über die Asylsysteme in Deutschland, der Schweiz und Großbritannien, migraLex, Vienna 2005, p 93

Nicolas Raschauer/Wolfgang Wessely, Anhaltung von Fremden im Transitbereich, migraLex, Vienna 2005, p 88

Peter Steiner, Dolmetschkosten im Krankenhaus, RdM (Recht der Medizin), Vienna 2005/ no 67

Johannes Fessl, Verstößt das Bundesbetreuungsgesetz gegen die Kompetenzverteilung des B-VG?, ZUV (Zeitschrift der Unabhängigen Verwaltungssenate), Vienna 2004, p 123

Michaela Möstl, Krankenversicherung für hilfs- und schutzbedürftige Fremde in Österreich, ASoK (Arbeits- und SozialrechtsKArtei), Vienna 2004, p 234

Gerhard Thallinger, Das neue Asylgesetz – ein verfassungsrechtlicher Grenzgänger, ZfV (Zeitschrift für Verwaltung), Vienna 2004, p 161

Nadja Lorenz, AsylwerberInnen - jetzt kann der nächste Winter kommen, juridikum, Vienna 2003, p 158

Gerhard Muzak, Vorwegnahme des Asylverfahrens durch Ausschluss von der Bundesbetreuung?, migraLex, Vienna 2003, p 13

Christian Schmid, Aufnahmerichtlinie der Europäischen Gemeinschaft, ZUV 2003, 123 and migralex, Vienna 2003, p 108

Louise Sperl/Karin Lukas, Alles neu macht die EU? Die österreichische Asylpolitik, gemessen an einer neuen EG Richtlinie, juridikum, Vienna 2003, p 61

Andreas Lepschi, Überleben als Asylwerber in Österreich (?), juridikum, Vienna 2002, p 18

Q.9. Quote any interesting decision of jurisprudence based on the implementation of the new rules of transposition of the directive (indicate references of publication if any)?

Constitutional Court

VfGH 14 June 2007, G 14/07-10, G 40/07-6
The Constitutional Court turned down a request of the Administrative Court to abolish the provision in the Aliens Police Act which allows to take asylum seekers in whose case it can be assumed that the alien's application for international protection will be declared inadmissible lacking Austrian responsibility to assess the application (Dublin cases) into detention pending deportation. The Administrative Court claimed that the provision according to which the aliens police authority had to assess the likelihood of the application being turned down, was unconstitutional, arguing that in the light of Art. 5 § 1 lit. 1 ECHR detention could only be ordered when the asylum authority had expressed its intention to expel the persons concerned. The Constitutional Court upheld the position of the Government which had argued in the legislation procedure that the ECHR does not ask for a formal expulsion procedure to order detention and the assessment of the police authority is therefore sufficient.

VfGH 16 March 2007, B 1397/06-9
The Constitutional Court turned down a complaint lodged by an asylum seeker who argued that an amendment of the Family Allowances Act which excluded asylum seekers from benefits granted under the act was unconstitutional. The Court ruled that the legislator had a margin of discretion when deciding on the granting of measures intended to support families and that it was allowed to require a special close relationship to Austria. It could therefore not be considered unconstitutional if the legislator excluded a group of persons from benefits which does not have a right to residence under the Settlement and Residence Act but who receive basic benefits under the basic welfare support system. Since the Court estimated that the complaint had very little chances of success, it decided to turn it down without entering into the merits.

VfGH 8 March 2006, G41/05 ua (no number in the Collection of Decisions yet)
Full text available at www.ris.bka.gv.at/vfgh (search page)
The Constitutional Court turned down several applications of Independent Administrative Tribunals in the Laender (*UVS*) for a constitutionality test of Sect. 9 § 2 and 3 of the Federal Care Provision Act (old name of the Federal Basic Welfare Support Act) and for abrogation of the said provisions. The provisions have been newly published in 2004 – before the end of the procedure. Therefore the Constitutional Court ruled that the authorities did no longer have to apply the provisions in question, whereas the new provisions had not been challenged, so that there was no competence for the Constitutional Court to abrogate the provisions in question in the law currently in force.

VfGH 3 October 2006, G 33/06a (no number in the Collection of Decisions yet)
The Constitutional Court turned down renewed applications of two Independent Administrative Tribunals in the Länder (UVS) for a constitutionality test of Sect. 2 § 2 and 3 of the Federal Basic Welfare Support Act, FLG I 100/2005, arguing the legislator has a margin of discretion when deciding on the competences of authorities as long as the "core" of "asylum matters" which lies with the competence of the Independent Federal Asylum Board, is not being touched.

VfGH 26 September 2005, Collection of Decisions No. 17611
Full text available at www.ris.bka.gv.at/vfgh (search page)
The Constitutional Court turned down an appeal of an asylum seeker who sought damages for state liability for failing to transpose the Directive. Since the claimant relied on facts upon which a decision could have been given by an administrative or a judicial organ, the Constitutional Court declared itself incompetent to decide on the matter. Irrespective of the fact that the Federal Welfare Support Agreement does not grant a legal claim to asylum seekers, the claimant would have had to address the ordinary courts and sue either the Federation (for Labour Legislation) or the Land Tyrol (for Social Welfare Law).

VfGH 9 March 2005, Collection of Decisions No. 17495
The Constitutional Court ruled that the legal advisor, who is responsible to represent unaccompanied minor asylum seekers, remains responsible after an application has been turned down for inadmissibility until the minor is assigned to a care facility in the Laender and that he or she may file an appeal for the client. Only when the asylum seeker has been assigned to a care facility, the youth welfare office of the Land concerned will take over responsibility.
see also UBAS 02.06.2005, 258.291/0-X/24/05 (available at www.asylanwalt.at)
containing a lengthy discussion as to why the initial reception centre cannot be considered a care facility an applicant has been assigned to)

Supreme Court
OGH 19 October 2005, OGH 7 Ob 209/05v
The High Court ruled that in the present case an unaccompanied minor asylum seeker must be placed under the guardianship of the youth welfare office, even when his or her accommodation, food, clothing, schooling and medical care are covered by reception

conditions according the Welfare Support Agreement. The decision on guardianship has to be taken with respect to the welfare of the child, irrespective of the fact that the minor is over 14 years old and may therefore take care of minor affairs himself. In the present case the applicant, who had lost both father and mother, claimed that he did not speak German well and needed someone to support and assist him and take care of his affairs by way of an overall responsibility such as provided for by the legal system.

Independent Administrative Tribunal for Upper Austria

UVS Oberösterreich 13 March 2006, VwSen-400775/7/SR/Ri
(see also already on 8 February 2006, VwSen-400764/3/SR/Ri)
Full text available at http://www1.land-oberoesterreich.gv.at/uvs/ (search page)
The Independent Administrative Tribunal for Upper Austria ruled that an asylum seeker, whose application has been turned down in the first instance, may not be taken in detention, if upon an individual examination of the asylum seeker's situation there is no need to safeguard his or her return. Detention can be justified if there are reasons to presume that the asylum seeker would go into hiding. Since he was granted reception conditions and there are no reasons to assume that these would be withdrawn, and in view of the conduct of the asylum seeker in Austria, no individual security need could be established. The authority would have had to apply more lenient measures.
See also a similar case where UVS Vienna displayed a similar reasoning:
UVS Vienna, 5 July 2006, 01/10/5607/2006/9

UVS Oberösterreich 16 March 2006, VwSen-700002/6/WEI/An
The Tribunal repealed a decision on withdrawal of reception conditions because the first instance authority had not been able to demonstrate that the asylum seeker had committed an aggressive attack, due to its failure to carry out an investigation procedure and to adequately reason its decision. (see below at Q 21.E.)

Independent Administrative Tribunal for Burgenland
UVS Burgenland 6 September 2006, 166/10/06046
The Tribunal had to decide on a complaint against a detention order with which the aliens police authority (competent under the Aliens Police Act) ordered detention pending deportation upon an asylum seeker, who was in a Dublin procedure where consultations were lead with Poland. After the asylum authority received a negative answer from Poland, it started consultations with Slovakia. The Tribunal ruled that detention pending deportation could not be upheld, because the aliens police authority was obliged by the Aliens Police Act to make sure that detention would last as short as possible. Although the expulsion decision relevant for detention is taken by a different authority, the aliens police authority has to take measures against delays or in case of delays cannot uphold detention. In the present case, consultations could have been started earlier, which caused an unnecessary delay the aliens police authority would have had to consider.

3. GENERAL INFORMATION ABOUT THE SYSTEM OF RECEPTION CONDITIONS

The purpose of the following two questions is to help the reader to understand easily and quickly the system of reception conditions in your Member State and also to avoid that you have to repeat general elements in other parts of the questionnaire. ***Please do not write more than one or maximum two pages and do not include large historical developments.***

Q.10. Describe <u>in general the system of reception conditions</u> in your Member State (in particular which are the main actors in charge of reception conditions?)

As explained above at Q.3., the system of reception conditions in Austria is marked by political discussions on whether the Federation or the Laender are responsible for granting reception conditions which led them to conclude the Basic Welfare Support Agreement, which partitions the duties between the parties. The Agreement obliges the parties to transpose its provisions into their own legislation, which all of them have done or envisaged.
Carrying out the procedure on *granting asylum* remains a federal competence and is done by the branch offices of the Federal Asylum Office which are situated in the Laender.

The Agreement stipulates that the Federation is responsible for asylum seekers during the admissibility procedure and therefore has to take care of all the duties relevant in this first stage (information, documentation etc). Currently, there are five federal care facilities, among which two initial reception centres (*Erstaufnahmestellen – EAST*[7], which are responsible for carrying out the admissibility procedures and are attached to relatively large accommodation centres), two smaller facilities[8] used for asylum seekers who are in a procedure in which the Dublin II-Regulation is applied. Moreover, there is an initial reception centre at Vienna International Airport (see below, at Q.11.). If an application has been declared inadmissible, the asylum seeker will remain in one of these centres until his or her departure from Austria. If an application is declared admissible, the asylum seeker shall be assigned to a care facility in one of the Laender. A coordination office (*Koordinationsstelle*) set up by the Federation in the initial reception centres is responsible to arrange this assignment and to organise the transport of asylum seekers to their new place of residence (Art. 3 § 2 of the Basic Welfare Support Agreement). According to Sect. 6 § 1 of the Federal Basic Welfare Support Act, the office shall seek the accordance of the responsible office in the Land.

The Laender are obliged to take over a certain quota of asylum seekers which is determined in relation to the percentage of their population. They are obliged to provide for the necessary "infrastructure" (accommodation and other material support of asylum seekers) which they can either organise themselves or outsource. If they do not take the due amount of persons into their care, the additional costs incurred by another entity will have to be compensated at the end of the settling period. The maximum costs for benefits are also laid down in the Agreement, which are used not only for settlement between the

[7] EAST Ost in Traiskirchen, Lower Austria and EAST West in Thalham, Upper Austria.
[8] In Bad Kreuzen, Upper Austria and in Reichenau, Lower Austria.

Federation and the Laender, but also for compensation paid to accommodation providers and for the calculation of the amount of money paid to asylum seekers who are not accommodated in a care facility but live individually. The Laender also decide on dismissal of asylum seekers from care in accordance with the Federal Asylum Office and have further organisational duties supporting the Office in carrying-out the asylum procedure and facilitating the repartition system. They remain responsible for reception of asylum seekers until a final decision on the application has been issued. However, if the asylum procedure is not closed within 12 months from the date it has been recorded, the cost will have to be carried by the Federation again according to the amount fixed by the Agreement.

Several federal entities have issued a call for tender and consequently outsourced the management of care facilities or the provision of social counselling to private organisations. Often in these calls for tender the requirements to be met have been set, and organisations have been chose according to a rating of the services offered .In the federal care facilities, reception conditions are provided by the company European Homecare, which has won the contract to provide accommodation, food, social care and other benefits to asylum seekers in the federal care facilities.

According to the information that could be gathered, the current system of care in the Laender is the following:
In Burgenland, Carinthia, Lower Austria and Styria material reception conditions are organised basically, if not exclusively by the Government. NGOs have been commissioned with the provision of care activities, and also provide information (partly limited, eg. not really in Carinthia), legal and social counselling.
Salzburg (Caritas), Vorarlberg (Caritas), Upper Austria (Caritas and Volkshilfe) have concluded contracts with NGOs which organise the whole reception system (ie receipt of applications, communication of decisions, running of care facilities or payment and monitoring of private guesthouses providing reception conditions in kind, payments to asylum seekers, information, legal and social counselling). Formal decisions are being taken by the Governments.
Tyrol is the only Land where care is effected by the Government.

In Vienna the responsible organisation is the Fonds Soziales Wien (a fund financed by the Government which has taken over a series of tasks in the area of social affairs of the Land from the governmental department of social affairs), which has contracts with about 15 NGOs running different projects (social care, accommodation of unaccompanied minor refugees, women). The fund is responsible for distributing asylum seekers to the care facilities and has commissioned Caritas (*Caritas Asylzentrum*) with the running of a basic care and welfare service centre, where health insurance is organised and reception conditions provided in money are paid to asylum seekers. Also, the Fonds Soziales Wien has commissioned several NGOs with care provision to asylum seekers. Furthermore, a number of NGOs provide information, legal and social counselling. Since asylum seekers have no legal title to benefits under the Basic Welfare Support Act, the Fonds Soziales Wien does not decide by formal decisions under the Administrative Procedures Act.

Since Vienna currently fulfils its quota by about 150%, it has issued an instruction that only those asylum seekers can be granted reception conditions who have been resident in Vienna before 1st May 2004 (date of entry into force of the Basic Welfare Support Agreement). After the entry into force of the Basic Welfare Act, it turned out that there were a lot more asylum seekers living in Vienna in self-organised accommodation than had been expected. A great number of these people were as a consequence granted reception conditions (in money) by the Land. There is fear in Vienna, that if a general entitlement to all residents was granted, a lot of asylum seekers would come to Vienna on their own initiative.

The Ministry of the Interior has a contract with organisations which provide care to persons who are in detention pending deportation, including asylum seekers (*Schubhaftbetreuung*). These organisations are not supposed to provide legal counselling. One of them relies to almost 100% to funding of the Ministry of the Interior and the European Refugee Fund, its independence from the government may therefore be called into question.

Vienna which was the first Land to proceed to legal transposition, failed to introduce a legal entitlement to basic welfare support benefits into the Vienna Basic Welfare Support Act. This means that there are no administrative decisions on the granting or withdrawal of benefits and consequently no means to appeal against negative decisions before an administrative authority. However, following the jurisdiction of the Supreme Court but there is access to the civil courts in cases of withdrawal, where benefits may be claimed if the applicant meets the preconditions set by legislation.

Q.11. **Q.11. A.** Explain if you have <u>different types and levels of reception conditions following the different stages of the asylum procedure</u> (this implies that you have to give briefly the necessary explanations about the asylum procedure). Make if relevant for reception conditions a distinction between the following procedural stages: determination of the responsible Member State on the basis of the Dublin II Regulation, special procedures at the border (including transit zones in airports), accelerated procedures, admissibility procedures, eligibility procedures and the different possibilities of appeals (suspensive or not) against a refusal of the asylum request. Indicate what the main differences of reception conditions are between the different stages (if necessary by detailing between the different elements of reception conditions, in particular housing) and explain what the evolution of reception conditions is following the different stages of the procedure.

According to the Asylum Act 2005, the procedure is split into two stages, an admissibility procedure and the "ordinary" procedure on eligibility. There are special provisions for procedures carried out at airports and for applications filed by family members of a refugee or an asylum seeker (which do not have an effect on reception conditions). To be brief, the following description is as short as possible and therefore cannot take into account all details of the procedure.

During the *admissibility procedure* the Federation is responsible for granting reception conditions. An application for asylum is usually first made before a police organ, but has to be recorded at an initial reception centre (*EAST*) to start the procedure (Sect. 29). From that moment, the Federal Asylum Office has to declare an application inadmissible (*Zurückweisung*) within a period of 20 days[9] after the application has been recorded at the initial reception centre, otherwise it must declare the application admissible. An application for international protection can be declared inadmissible basically if an asylum seeker could have seek protection in a safe third country (Sect. 4 § 1 Asylum Act 2005)[10] or if another state is responsible to carry out the asylum procedure on the basis of a contract or the Dublin II Regulation (Sect. 5 § 1 Asylum Act 2005)[11]. It can also grant asylum or declare the application unfounded (*Abweisung*). If an appeal against a negative decision declaring the application unfounded is lodged which has or is granted suspensive effect, the application is considered admissible. For the period of 20 days after the application has been recorded, the asylum seeker's residence is tolerated (*geduldet*) on the territory of the district administrative authority where the asylum seeker receives welfare support, after that time he or she is tolerated on the whole Austrian territory if not admitted to the regular procedure (Sect. 12 – unless there is a right to residence on a different legal basis). Negative decisions in the asylum procedure are combined with an expulsion order[12]. An appeal against a negative decision on admissibility does not have suspensive effect, but the appeal against an expulsion order can be granted suspensive effect by the second instance – the Independent Federal Asylum Tribunal – within a period of seven days. During this period the expulsion order must not be effected. Unless the asylum seeker is taken in detention, he or she remains in a federal care facility until the final decision on admissibility or the – voluntary or forced – departure from the country.

Dublin II procedure: An application can be rejected in the admissibility procedure if the asylum seeker may seek protection in a safe third country (Sect. 4 Asylum Act, which does not make a difference for reception conditions) or if another country is responsible to conduct the asylum procedure according to the Dublin II Regulation (or according to another treaty referring to such responsibility; Sect. 5). According to Sect. 39 § 3 no. 4 Aliens Police Act an asylum seeker may be arrested and according to Sect. 76 § 2 no. 4 he or she may be detained by the police authorities, if because of the result of the police interrogation, search or photographing and fingerprinting it can be assumed that the

[9] Exceptions are possible in Dublin II consultation procedures and when an asylum seeker fails to contribute to the procedure or eludes from the procedure (Sect. 28 § 2 Asylum Act 2005).

[10] The application may not be turned down if a negative decision would violate Art. 8 ECHR, if the asylum seeker is a national of an EEA-country or if a very close relative (as laid down by the Act) has been accorded international protection in Austria.

[11] Unless there is a real risk that protection cannot be granted in such a country, for very specific reasons lying in the person of the asylum seeker.

[12] Exception: if the asylum seeker has the right to residence on a different legal basis or if the expulsion would constitute a breach of Art. 8 ECHR (Sect. 10 § 2 Asylum Act). If the effectuation of an expulsion order would constitute a breach of Art. 3 ECHR which is not permanent, the Federal Asylum Office has to declare that the deportation has to be suspended (Sect. 10 § 3).

application of the asylum seeker will be rejected for lack of responsibility of Austria for its examination.

If an asylum seeker is in detention, reception conditions are not granted (Sect. 2 § 3 Federal Basic Welfare Support Act). The rights of the asylum seeker during detention are laid down in the Detention Regulation (Anhalteordnung), which also allows for medical care and other guarantees. If they are not detained, asylum seekers who are in a procedure under the Dublin II Regulation (mainly families) are sometimes not accommodated in an initial reception centre, but moved to live in one of the federal care facilities outside an initial reception centre ("care centres", Sect. 1 no. 4 Federal Basic Welfare Support Act). NGOs complain that often when asylum seekers are released from detention for the purpose of application of more lenient measures, or when someone applies for asylum during detention pending deportation, they are not, or at least not immediately, taken into the reception conditions system. The same accounts for situations in which asylum seekers have been taken into detention and are later released when the Administrative Court holds that detention is illegitimate (see also below at Q.14).

If consultations pursuant to the Dublin II Regulation are initiated, the asylum seeker has to be informed within 20 days. The time limit of 20 days for declaration of inadmissibility of an application is not applicable in this case (Sect. 28 § 2 Asylum Act 2005).

Airport procedure: A special regime is provided for cases of asylum applications at Vienna International Airport, where an initial reception centre (to carry out the admissibility procedure) is installed, but no care facility. An asylum seeker who makes an application for asylum after having arrived at the airport or during a deportation via the airport has to be brought to the initial reception centre, unless the Federal Asylum Office allows his or her entry to the country if a rejection or a dismissal of the application is unlikely. As long as the entry is not permitted, the asylum seeker must remain within the border control area or the initial reception centre. Nevertheless, he or she is always allowed to leave the country (Sect. 31 et seq. Asylum Act 2005). The Federal Asylum Office has to inform UNHCR of the decision envisaged within one week after the asylum seeker has been brought before the Office. An application can only be dismissed (refusal of asylum) or rejected for protection in a safe third country if UNHCR agrees. Consultations under the Dublin II Regulation must be initiated within one week. The time limit for appeals is one week; the Independent Federal Asylum Tribunal must take a decision within two weeks. The authorities do not issue an expulsion order (because the asylum seeker has not entered the country yet) but may proceed to the execution of the refusal of entry (*Zurückweisung*) after a final decision has been taken. Apparently, the Federal Basic Welfare Support Act is not deemed applicable to the transit zones of the airport and the care facility does not appear on the official statistic published on the website of the Ministry of the Interior. However, care is provided by an NGO (Caritas) in the special transit zone, and given the definition of a federal care facility in the Act as "any accommodation outside an initial reception centre, where welfare supply for the basic needs of asylum seekers is actually granted" (Sect. 1 no. 4 Federal Basic Welfare Support Act), the care facility should be considered a federal care facility under the Act.

The Caritas "airport social service" (Sozialdienst am *Flughafen*) offers accommodation for 35 persons and is co-financed by the Federal Government, the Government of Lower Austria (where Schwechat is actually situated) and Caritas. Asylum seekers are not allowed to leave the special transit zone, unless for the purpose of departure from Austrian territory or in case of authorisation (eg. for medical purpose). Under Austrian usage, the asylum seeker's obligation to stay at the airport is not considered detention, but a means to "secure the refusal of entry to the territory" (*Sicherung der Zurückweisung*). However, the Constitutional Court has in cases under the old legislation accepted that depending on the circumstances confinement could amount to detention.[13] The maximum period of confinement of an asylum seeker to the special transit zone is six weeks (Sect. 32 § 4 Asylum Act 2005).

After an application has been declared admissible, the asylum seeker may remain in the federal care facility for a maximum period of 14 days until he or she can be assigned to a care facility of a Land (Sect. 6 § 2 Federal Basic Welfare Support Act). From the decision on the admissibility onwards, the asylum seeker has a right to residence in the Austrian territory. From the moment of assignment to a local care facility, the Laender are responsible for granting reception conditions. Apart from different organisational duties of the Federation and the Laender under the Basic Welfare Support Agreement, the benefits which are to be granted to asylum seekers according to the Agreement by the Federation and the Laender are the same, as listed in Art. 6 of the Agreement and special benefits for unaccompanied minor refugees in Art. 7. However, since there are in the end ten different regimes of reception, and since the actual guarantees have to be provided for by law, conditions actually granted can vary in legislation and in practice.
The Laender remain responsible until a final decision on the application is issued or the asylum seeker has left the country.

Until an agreement between the coordination office and the Land can be reached, the asylum seeker may remain in federal care for a maximum period of 14 days. According to the information gathered by NGOs, there are cases where Laender refuse to take over asylum seekers assigned to them by the coordination office, or where no assignment decision is issued, in such cases the asylum seeker will often remain in the federal care facility (initial reception centre) for some time without legal basis and is then dismissed without formal decision, hence without the possibility to file an appeal, since the federation is no longer competent under the federal care system. **The Laender do not accept or refuse to take over asylum seekers from the coordination office by formal decision, so that there is no legal remedy against a negative decision in that stage of the system either.** (See Q 15 for details).

Q.11. B. Indicate precisely for which stage(s) of the asylum procedure the answers on reception conditions you give below are valid.

A differentiation will be made between conditions during the admissibility procedure ruled by the Federal Basic Welfare Support Act and conditions guaranteed in the later

[13] Raschauer/Wessely, Anhaltung von Fremden im Transitbereich, migraLex 2005, p 89.

stage under the Laender Acts, as far as information could be gathered. A reference to the Dublin II procedure or the procedure at the airport will only be made if relevant under the particular question.

4. GENERAL RULES ON RECEPTION CONDITIONS

Q.12. **Q.12. A.** Are material reception conditions provided in kind, in money or in vouchers or in a combination of these elements (see article 13, §5 which is an optional provision)? Distinguish between the different elements (housing, food, clothes, health, transportation, pocket money,…). **If reception conditions are provided in money (in general or in some cases, for instance when no places are anymore available in accommodation centres), indicate the precise amount given to the asylum seekers. Indicate in your answer what is provided in general and if there are exceptional cases.** Specify in your answer if reception conditions are different from the general system of social aid for nationals or aliens and if yes, if and when (which stage of the asylum procedure) can asylum seekers have access to the general system of social aid?

A combination of these elements is possible, depending upon the individual system in the care facility: there is organised accommodation, where food is also provided, organised accommodation where food is not provided but foodstuffs are given in kind or a certain amount for food is paid in money or in vouchers, and individual, eg. self-organised accommodation, where benefits are provided in money. In the federal care facilities and the majority of the other facilities, reception conditions like housing and food are provided in kind and a pocket money of 40,- Euro per month as well as a sum of 150,- Euro per year for clothing is paid to the asylum seekers. Apparently European Homecare also has a repertory of clothes given to asylum seekers when they arrive at an initial reception centre if needed, especially in winter. If an asylum seeker is accommodated individually, reception conditions are provided in money.
Other benefits are provided in a combination of these elements, depending on the system provided for by the Government or NGO responsible. In Salzburg schooling material has to be bought by asylum seekers themselves and is later refunded upon presentation of the receipt, a certain amount for clothing is given in vouchers. In Vorarlberg pocket money is paid to a bank account which is opened for each asylum seeker upon arrival.

The benefits to be granted are listed in the Basic Welfare Support Agreement and have been taken over by legislation of the federal entities either by reference to Art. 6 and 7 of the Agreement[14] or by listing them anew[15]; (note: Art. 7 refers to minor refugees, see below Q.31.)

[14] Sect. 2 § 1 and Sect. 1 no. 3 Federal Basic Welfare Support Act; Sect. 1 § 1 Upper Austria Basic Welfare Support Act; Sect. 7a § 1 Vorarlberg Social Welfare Act.
[15] Sect. 4 Burgenland Care Act; Sect. 3 Carinthia Basic Welfare Support Act; Sect. 5 Lower Austria Basic Welfare Support Act, Sect. 6 § 1 Salzburg Basic Welfare Support Act; Sect. 4 Styria Care Provision Act; Sect. 5 Tyrol Basic Welfare Support Act; Sect. 3 § 1 Vienna Basic Welfare Support Act.

Benefits according to Art. 6 include:

- accommodation, ensuring the respect of human dignity and family unity[16]
- food
- a monthly pocket money (of € 40,-) which is not paid to asylum seekers in individual accommodation
- if necessary a medical screening at reception of an asylum seeker
- health insurance under the Austrian insurance system (by payment of the insurance premium)
- other necessary benefits not covered by health insurance upon individual decision
- measures for persons in need of special care
- information, counselling and social care effected by qualified staff with a view to their guidance in Austria and to voluntary return
- costs of transport in case of change of accommodation and of citation to a public authority
- costs of travel to school and costs of schooling material
- measures to ensure a structured daily routine where necessary (aimed at minors)
- provision of clothing
- costs of funeral
- counselling, travel costs and a nonrecurring financial aid in special cases of voluntary return

Art. 9 of the Agreement sets the maximum cost for the benefits mentioned, which are used for the calculation of refund between the federal entities, but also applied to asylum seekers when they receive reception conditions in money[17]:
The amounts paid in case of individual accommodation are the following (in Euro):

- for food for adults and unaccompanied minors	180,-
for other minors	80,-
- for accommodation of a single person	110,-
for families (minimum two persons)	220,-
- schooling material per child per year	200,-
- for clothing per person per year	150,-

- for transport to school (up to a maximum amount fixed by law) - the actual costs

Higher amounts may be paid in Burgenland (Sect. 9, in individual cases), Tyrol (Sect. 9, to avoid undue hardship – up to the maximum amount of social aid granted to nationals) and Styria (Sect. 11, in well-founded cases, eg. to avoid undue hardship, or if it serves the integration of the asylum seeker – up to the maximum amount of social aid granted to nationals).

[16] Nearly all federal entities provide that accommodation must be "suitable": Federation Sect. 1 no. 3, Burgenland Sect. 4 § 1 no. 1, Carinthia Sect. 3 § 1 lit. a, Lower Austria Sect. 5 § 1 no. 1, Styria Sect. 4 § 1 no. 1, Tyrol Sect. 5 § 1 lit. a, Upper Austria Sect. 3 § 1, Vienna Sect. 3 § 1 no. 1, Vorarlberg Sect. 7a § 1.
[17] Sect. 9 Burgenland, Sect. 6 § 1 Carinthia, Sect. 7 § 1 Lower Austria, Sect. 10 Styria, in Salzburg the Government may set maximum costs by regulation (Sect. 6 § 4); Sect. 5 Tyrol. Other Laender do not fix the sums in their legislation, but apply the Agreement in practice.

Carinthia additionally grants an amount of 10,- Euro for the purpose of leisure activities of persons living in organised accommodation (Sect. 6 § 1 lit. l) and 3,63 Euro per person per tuition unity for German courses for unaccompanied minor aliens which cover a maximum of 200 tuition unities (Sect. 6 § 1 lit. m).

All Laender provide in their Hospitals Acts that unlike other aliens asylum seekers cannot be asked to pay the actual cost of hospitalisation[18], but only the contributions determined under health insurance (which are covered by welfare support, see above).

In most of the Laender, granting of social welfare benefits is among other requirements subject to the fact that the asylum seeker has a right to residence on the Austrian territory. Since asylum seekers are only tolerated during the admissibility procedure, no access to social welfare is granted in this stage of the procedure. After the application has been declared admissible or has become admissible by law, in most of the Laender social aid can only be granted if there is no possibility to ask for support on a different legal basis (eg. Salzburg, Sect. 6 § 5 Social Welfare Act; Lower Austria, Sect. 4 § 5) or if no benefits are being granted on a different basis (eg. Burgenland, Sect. 2 § 1; Upper Austria, Sect. 6 § 3). In Tyrol (Sect. 4 § 3 Basic Social Welfare Act[19]), Upper Austria (Sect. 7 § 1 Basic Welfare Support Act), in Styria (Sect. 4 § 1a Social Welfare Act) and in Vienna (Sect. 7a § 4 Social Welfare Act), it is explicitly excluded for persons receiving benefits from basic welfare support. In Carinthia (Sect. 4 § 2 Social Welfare Act) granting of social aid is possible to avoid undue hardship, in Vorarlberg, basic welfare support benefits are seen as a part of social welfare and regulated in the Social Welfare Act. In all Laender where access to benefits of social welfare is not excluded, asylum seekers do not have an entitlement to benefits of social aid, these can be granted[20], leaving a margin of appreciation to the officials in charge and causing considerable discrepancies in the practice of the Laender offices. While for example in Vorarlberg asylum seekers are granted social aid when they are dismissed from a care facility, in order to protect them from homelessness[21], asylum seekers are generally not granted social aid in most the other Laender.

Beneficiaries of social aid may be asked to repay the sums obtained if they have an income or acquire means another way *later*. In some of the Laender, this does not account for benefits granted under the welfare system. The exceptions are Vorarlberg, where the welfare system for asylum seekers has been incorporated in the Social Welfare Act and therefore falls within the same rules (benefits granted can be reclaimed up to a

[18] Sect. 60 § 1 no. 2 Burgenland Hospitals Act; Sect. 65 § 2 lit. b Carinthia Hospitals Rules, Sect. 52 § 2 no. 2 Lower Austria Hospitals Act, Sect. 68 no. 2 Salzburg Hospitals Act, Sect. 39 § 2 no. 2 Styria Hospitals Act, Sect. 44 § 2 lit. b Tyrol Hospitals Act, Sect. 63 § 2 no. 2 Upper Austria Hospitals Act, Sect. 51 § 3 no. 2 Vienna Hospitals Act, Sect. 87 § 2 lit. b Vorarlberg Hospitals Act.

[19] "*Tiroler Grundsicherungsgesetz*", which is equivalent to the Social Welfare Acts of the other Laender.

[20] In most Laender a formal decision under the Administrative Procedures Act is being issued (including the right to a reasoned decision and legal remedies), in others no such formal decision is issued to asylum seekers (Sect. 4 § 5 Lower Austria Social Welfare Act, Sect. 6 § 3 Upper Austria Social Welfare Act). However, the granting of benefits is in any case still subject to fundamental rights, especially to the equality principle, under the Austrian Constitution.

[21] Information given by the competent district administrative authority for Bregenz (Vorarlberg).

period of 10 years from the date when they were granted; Sect. 9 and 11 Social Welfare Act). Lower Austria provides for a time limit of three years to reclaim benefits (Sect. 14 § 1). Burgenland (Sect. 5 § 6) and Tyrol (Sect. 10 § 1) only state that asylum seekers may be asked to repay benefits granted when they acquire financial means (with the exception in Tyrol of benefits granted to minors).

Q.12. B. Can the reception conditions in kind, money or vouchers be considered as <u>sufficient</u> "to ensure a standard of living adequate for the health of applicants and capable of ensuring their subsistence" as requested by article 13, §2 of the directive (which is a mandatory provision but leaves a certain space to Member States)? In order to help to assess the respect of this rule when reception conditions are provided in money, include if necessary in your answer points of comparison with the minimum amount of social aid guaranteed for nationals in your Member State.

A person in self-organised accommodation may just about live on the amount paid[22], but in comparison with the minimum amount of social aid for nationals it is significantly lower – it is about 50% of average social aid or even less. This fact has also been criticised by the Committee on Economic, Social and Cultural Rights in its observations of 25 January 2006 E/C.12/AUT/CO/3[23].

The Ministry of the Interior argues that differences in the character of benefits under social welfare and basic welfare support respectively are the reason for different amounts paid: While social aid is meant to support persons lacking sufficient means of subsistence who will be asked to repay benefits granted once he or she acquires means, the concept of basic welfare support is that it cannot be reclaimed when an asylum seeker acquires money later.

The amount of social aid varies in the Laender, regularly a certain amount for means of subsistence (*Lebensunterhalt*) and accommodation are being set by regulation. In some Laender two additional monthly rates are being paid. The actual figures for a single person are the following (for means of subsistence plus an additional allowance for accommodation, rates for 2007):

Burgenland	€ 433,-
Carinthia	€ 435,- plus € 149,-
Lower Austria	€ 501,30 plus € 92,30
Salzburg	€ 421,- plus € 408,- (basis: 40 m^2 for a single person)
Styria	€ 507,- plus the actual rent if it is adequate

[22] It was considered insufficient or hardly sufficient by representatives of different NGOs, and sufficient by the Ministry of the Interior.

[23] http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/4a217b5c9439b901c125711500571f80?Opendocument, p 3, at D.15.

Tyrol	€ 431,20 plus actual rent for max 40 m^2 for a single person
Upper Austria	€ 542,30 plus € 101,10 for accommodation or more if it is adequate
Vienna	€ 427,- plus € 256,-
Vorarlberg	€ 480,40 plus the actual rent if it is adequate

As for asylum seekers who live in organised accommodation where accommodation and food are being provided in kind, there has been criticism that food was sometimes insufficient and not good.[24] However, the underlying survey was based on a small and not representative sample. Other than that, there is no information on complaints about insufficient conditions of care. Reception conditions granted in kind can be considered sufficient to ensure a standard of living adequate for (physical) health, even if maybe not for personal well-being. The amounts paid to care providers by the Federation have been criticised by NGOs in the context of the call for tender for care provision at the federal care centres, stating that the low prices tendered by European Homecare must be at the expense of quality, especially in the area of social care, and especially concerning special care measures for specially vulnerable persons, which are two areas involving higher personnel expenditure.[25] NGOs also stress that care facilities run by them are generally co-financed by other resources, since the financial contribution as laid down in the Basic Welfare Support Agreement is not sufficient to guarantee an adequate standard of living.

5. PROCEDURAL ASPECTS

Q.13. **Q.13. A. Does the national legislation specifically provide that a request for international protection is presumed to be under the Geneva Convention unless explicitly requested otherwise? (see article 2, b which is a mandatory provision)**

The Austrian Asylum Act 2005 provides only for one application for international protection in its Sect. 2 § 1 no. 13. It is defined as any "a request howsoever made by an alien in Austria to be accorded the protection of Austria"[26]. This application is presumed to be aimed at being granted asylum status (Sect. 3 Asylum Act 2005), or, if this status is denied, the application is presumed to be aimed at being granted subsidiary protection (Sect. 8 Asylum Act 2005).

Q.13. B. Explain if the scope of application of reception conditions is extended to other asylum seekers than refugees in the sense of the Geneva Convention, in particular to persons asking for subsidiary

[24] Asylkoordination, Report on changes in the federal care system, December 2005, p 37, http://www.asyl.at/fakten_2/studie_aenderungen_bundesbetreuung.pdf

[25] see eg. the criticism of the Red Cross, which was part of a bidding consortium at the tender, at: http://religion.orf.at/projekt02/news/0302/ne030227_asyl.htm#SA; see also Asylkoordination, Report on changes in the federal care system, December 2005, p 34 et seq., http://www.asyl.at/fakten_2/studie_aenderungen_bundesbetreuung.pdf.

[26] UNHCR unofficial translation, English version of the Asylum Act 2005, available at: http://unhcr.at/pdf/1723.pdf.

protection or to other forms of protection like humanitarian statuses (see article 3, § 4 which is an optional provision)? If not, explain briefly which the differences between these special regimes and the directive are.

Yes, the scope is extended, see A above. Since there is only one application for international protection, in the course of the procedure, it has to be decided first on granting asylum status, and if this is denied it has to be decided on granting subsidiary protection. Other forms of protection cannot be claimed separately in Austria. In any procedure, the question whether or not the deportation of an asylum seeker is permissible must also be answered.

The scope of application of the Basic Welfare Support Agreement is furthermore extended to other "aliens in need of help and protection". The groups of aliens that are entitled to welfare support are listed it Art. 2 § 1 of the Agreement and contain among others aliens who have been granted humanitarian status, who can for legal or factual reasons not be deported, or aliens who have been granted asylum, for a certain period of time.
These groups are entitled to the same conditions.

Q.13. C. Are there specific provisions in national law for reception conditions in case of diplomatic or territorial asylum requests submitted through a diplomatic or consular representation (see article 3, §2 which is an optional provision)?

No. An asylum request can only be submitted to an embassy by a family member of a person who has been granted asylum or subsidiary protection in Austria (Sect. 35 Asylum Act 2005). As applicants are not accommodated in diplomatic representations, the law does not provide for reception conditions in such cases. According to Sect. 1 § 1 Federal Basic Welfare Support Act reception conditions are only granted to asylum seekers whose applications have been "recorded" (see below at Q.14.). According to Sect. 35 § 4 Asylum Act 2005 an application is only recorded once the asylum seeker submits it at an initial reception centre inside the country.

Q.14. Are reception conditions available as from the moment one asylum application is introduced? How is article 13, §1 which is mandatory legally understood? Do asylum seekers have to satisfy any other condition in order to get reception conditions?

The Austrian Asylum Act 2005 differs between applications which are "made" (*gestellt*; basically at the border before a security organ) and applications which are "recorded"[27] at an initial reception centre (*eingebracht*). When an asylum seeker asks for protection before a police organ, the police organ has to arrest him or her and take him or her to the initial reception centre (after having made a first interrogation and search of the asylum

[27] This expression is used by Mrs Baldacchini in the practitioners' guide for what seems to be a similar problem in the UK.

seeker). In exceptional cases where an asylum seeker has a right to residence inside the territory, he or she will be asked to go to the initial reception centre to have an application recorded there. Reception conditions only start when the asylum seeker appears before the initial reception centre, because this is the moment when he or she starts to be an "asylum seeker inside the admissibility procedure" granted reception conditions according to Sect. 2 § 1 Federal Basic Welfare Support Act. Sect. 1 no. 1 defines the "asylum seeker in the admissibility procedure" as "an asylum seeker whose application for asylum has been recorded…".

At this stage of the procedure, the asylum seeker does not have to be in need of help and protection. According to the legislation of the Laender, this is a requirement at a later stage (see relevant questions below).

NGOs claim that there is a practical problem in the case of persons who apply for asylum while already in detention pending deportation, or asylum seekers who are in a Dublin procedure and therefore in detention (see Q.33. on detention) and are then released for the sake of more lenient measures or because the Administrative Court has declared the underlying detention order illegitimate. It can be noted that these people are often not – or at least not immediately- taken up in the reception system. The reason for this may be a lack of communication between the police authorities who are responsible to order release and the authorites responsible for granting reception conditions who are not informed of such a release nor make an effort to keep track of asylum seekers in detention. The same accounts for persons whose application is considered admissible during detention and who are then to be transferred to one of the Laender. They are released from detention but are not granted reception conditions until they are assigned to one of the Laender and the respective Land has given its consent. Lower Austria explicitly demands an assignment decision for admission of an asylum seeker in basic welfare support legislation[28], other Laender require it in practise.

Q.15. **Explain when reception conditions <u>end</u>, for instance after refusal of the asylum request** (include in your answer the link with the right of appeal against a decision of refusal of the status, in particular the question of its suspensive effect)

As stated at Q.10. reception conditions granted by the Federation end when the Federation is no longer competent under the Basic Welfare Support Agreement. According to Sect. 2 § 1 the Federation grants reception conditions to asylum seekers, as long as there is no decision on the admissibility of the application and as long as the proceedings are not discontinued (Sect. 1 no. 1 of the Federal Act). Proceedings may be discontinued under Sect. 24 Asylum Act 2005, when an asylum seeker absconds from the procedure (ie when his or her place of stay is not known and cannot be established by the authority or when he or she leaves the country) and the relevant facts of the case cannot be established. Moreover, conditions are granted to asylum seekers if their application has been declared inadmissible or unfounded until their departure from the territory. – In cases where applications are declared unfounded in the admissibility procedure, an appeal

[28] Sect. 3 § 2 No. 3 Lower Austria Basic Welfare Support Act,

having or being granted suspensive effect will render the application admissible by law. At this moment, the competence of the Federation ends (see above Q.10.).

Generally reception conditions end when a final decision on the application for asylum is taken. During the appeals procedure before the second instance, the Independent Federal Asylum Tribunal[29], reception conditions are continuously granted, irrespective whether the appeal has suspensive effect or not. A decision is final, when there are no more ordinary legal remedies at disposal. The Senate's decision is usually final.

When an asylum seeker whose application has been turned down, brings a complaint before a High Court[30] (an *irregular* remedy), practice is differing in the Laender. Apparently in some Laender, asylum seekers continue to benefit from reception conditions when the High Court has accorded the complaint suspensive effect.[31] In other Laender reception conditions end with the final decision of the Independent Federal Asylum Tribunal. The Basic Welfare Support Act of Lower Austria explicitly states in Sect. 4 § 2 no. 3 that in case suspensive effect is granted to a High Court complaint, the asylum seeker will recover the right to reception conditions.

There is one important gap after the end of the admissibility procedure in the practical implementation of the burden sharing system of the Federation and the Laender, which needs to be pointed out at this place:
After an application has been declared admissible, the Federation is no longer competent to grant reception conditions, therefore there is no appeal against a dismissal from a federal care facility. The Laender are obliged to take over asylum seekers assigned to them, but there is no legal remedy accorded to the asylum seeker, because this obligation for the Laender arises only from the Basic Welfare Support Agreement.[32] If a place cannot be found for the asylum seeker in one of the Laender, and a decision on assignment is not taken, he or she may remain in the federal care facility for two weeks (Sect. 6 § 2 Federal Basic Welfare Support Act). NGOs state that it happens regularly that asylum seekers are dismissed from federal care after these two weeks without perspective to accommodation and other conditions, because the Laender refuse to take asylum seekers into their care which have not been assigned to them. Asylum seekers who are being released from detention pending deportation because their application was declared admissible in Dublin procedures find themselves in the same situation (see above at Q.14.). As for possible legal remedies in these cases see below Q.22.A.

[29] However, when an appeal does not have suspensive effect and during the time frame until suspensive effect is granted by the Tribunal, the asylum seeker may be detained.
[30] A complaint can be made before the High Administrative Court by an asylum seeker claiming a breach of law by the asylum decision, and before the Constitutional Court, if the asylum seeker claims a violation of his or her constitutional rights or the application of an unconstitutional legal norm.
[31] Information given by the UNHCR Office in Austria.
[32] The only remedy against a breach of an agreement under Art. 15a of the Constitution is a complaint which can be brought before the Constitutional Court according to Art. 138a of the Constitution by the Federal Government or one of the Laender Governments. The Constitutional Court is competent to decide whether a breach of the Agreement has occurred.

Most of the Laender Acts stipulate that reception conditions also end when the asylum seeker leaves the territory of the Land.
Moreover, reception conditions end when they are withdrawn (see below Q.21.).
Reception conditions are suspended during the time an asylum seeker is in detention (see below Q.33.).

On the contrary, some Laender are also granting benefits after a final decision has been taken in that they are applying the provisions on reception conditions to persons who have been granted subsidiary status or who are in the territory on the basis of a regulation enacted in a case of mass influx of aliens, people having a right to residence for humanitarian reasons and persons who cannot be deported (Burgenland, Carinthia, Lower Austria, Salzburg, Styria, Tyrol) as well as persons who have been granted asylum for a period of four months from the decision granting asylum (Carinthia, Burgenland, Salzburg) or even for 12 months from the positive decision (Styria); and finally to aliens who are or were victims of trafficking in human beings, even when they have entered Austrian territory illegally (Burgenland). It can be noted that the fact that persons having been granted asylum stay in the reception conditions system after a positive decision deprives them from access to social security benefits equal to nationals and is seen as an obstacle to early integration, especially in the case of Styria, where the period of time where refugees stay in reception centres is particularly long.

Q.16 Are there special rules or practices regarding reception conditions in case of successive applications for asylum introduced by the same person?

Yes. Asylum seekers who have lodged a successive asylum application within six months after the first application has been decided finally, may be excluded from reception conditions according to Sect. 3 § 1 no. 3 Federal Basic Welfare Support Act. The same provision has been included in the respective Acts in Burgenland (Sect. 5 § 3 no. 4), Salzburg (Sect. 9 § 1 no. 5), Styria (Sect. 5 § 1 no. 2), Tyrol (Sect. 6 § 1 lit. b), Upper Austria (Sect. 3 § 2 no. 4) and finally Lower Austria, where reception conditions can also be denied if an application has been made later than six months from the final decision, if it can be assumed that the aim of the application was to prevent deportation or to acquire financial benefits from the Land or other advantages (Sect. 8 § 1 no. 2 and 3).

Q.17. Information of asylum seekers about their rights and obligations in terms of reception conditions, in particular about established benefits (see article 5 which is too large extend a mandatory provision; do not confuse this question with the information to be provided to asylum seekers about the asylum procedure):

Q.17. A. Are asylum seekers informed, and if yes about what precisely?

Federation: The Federal Basic Welfare Support Act does not contain any obligation to provide information on rights and benefits of asylum seekers under the Act. Sect. 29 § 1 **Asylum Act** 2005 states that immediately after lodging an application the asylum seeker must receive general information (*Orientierungsinformation*). There are information

sheets informing about rights and duties of asylum seekers (provided for by Sect. 17 § 9 Asylum Act 2005), which are also relevant to the withdrawal of reception conditions. The paper informs in particular about the duty of the asylum seeker to be at the authorities' disposal to carry out the procedure and about the legal consequences of a violation.[33] The information sheet provides little information on material reception conditions, and particularly no information on benefits asylum seekers are entitled to.
In the Laender, legislation provides that asylum seekers must be informed about their duty to give all the necessary information to determine whether they are in need of help, and about the legal consequences of providing false information in Burgenland (Sect. 5 § 2), Carinthia (Sect. 3 § 7) and Styria (Sect. 5 § 6). In Lower Austria Sect. 5 § 2 provides that asylum seekers must be informed about their rights and duties under the Basic Welfare Support Act within 15 days, in writing and possibly in a language the asylum seeker can understand, or, if appropriate, orally. According to Sect. 3 of the Salzburg Basic Welfare Support Act persons covered by the act must be informed about their rights and obligations "when they are taken over into care". Information has to be given possibly in writing and in a language the asylum seeker can understand. Vorarlberg the authorities are obliged by Sect. 35 § 2 and 4 to inform asylum seekers on rights and duties, legal consequences of failure to furnish information to determine if the asylum seeker is in need of help, as well as information on the place of residence, health care, organisations which can provide legal counselling or other forms of care, possibly in writing and in a language the asylum seeker can understand.

In fact, the provision of information is depending on the organisation: As far as information could be gathered[34], usually social counsellors (of the Government or of NGOs) are available at accommodation centres, and they visit private care facilities regularly. Newly arrived beneficiaries are informed about their rights and duties, available health care (eg. a list of doctors in the region, possibilities of special care if available, leisure activities etc). Legal orientation should also be provided by counsellors, but may not always be guaranteed[35]. NGOs in the Laender claim that the information provided to asylum seekers in the initial reception centres is rather insufficient and when they arrive in the Laender, they are usually poorly informed. The Basic Welfare Support Agreement provides that costs for information, counselling and social care (not including costs for interpreting services) are being paid for one social counsellor per 170 asylum seekers (Art. 9 no. 9). The Federation and the Laender have transferred this provision into their legislation.

Q.17. B. Is the information provided in <u>writing</u> or, when appropriate, orally?

At the beginning of the asylum procedure, the information sheet is handed out to asylum seekers. There is additional information furnished in the federal reception centres by means of placards and there is an information desk in the initial reception centres.

[33] Information given by Ministry of the Interior.
[34] Information given by NGOs.
[35] Legal orientation should also be provided by counsellors, but may not always be guaranteed due to time and language constraints.

In the Laender there is often no written information on rights and duties in general, most of the information needed is given orally by the social counsellors.

Q 17. C. Is that information in general provided in a language understood by asylum seekers? Specify the list of languages in which it is available

Federation: According to Sect. 17 § 9 Asylum Act 2005 the information sheet must be held available in the languages the asylum seekers may reasonably be supposed to understand. There are translations in 34 languages; additional translations can be made when necessary.[36]

In the Laender, often information sheets only contain addresses of doctors, legal advisors, special care facilities, therefore a translation is not considered necessary. If there are translations, they are usually in the most common languages (eg. French, English, and Russian).[37] The social counsellors working for NGOs provide most of the common languages of the asylum seekers.[38]

Q.17. D. Is the deadline of maximum 15 days respected?

The information sheet is handed over to an asylum seeker immediately when his or her application is being recorded at the initial reception centre.[39]
As a rule the deadline is respected also when oral information is given by social or government counsellors. However, it seems that asylum seekers must show an interest in gathering information and ask for counselling; otherwise they might not get information.[40]

Q.18. Information of asylum seekers about the existence of organisations or groups promoting their interest and defending their rights (see article 5 which is to a large extend a mandatory provision):

Q.18. A. Is there a list of organisations dressed by the authorities and if yes is it comprehensive? Is this in particular the case about the possibilities to get legal assistance and health care?

The information sheet handed out in the initial reception centres states that independent legal and refugee advisors (see below at Q.22) are available (it also says that a list is attached[41]) and the information is given that private advisors may also be employed, but no names or addresses are given. Asylum seekers are also informed that they may turn to NGOs, and several names are given, but this list is not comprehensive. Moreover the information sheet on the asylum procedure informs that they may turn to UNHCR,

[36] Information given by Ministry of the Interior.
[37] Information given by NGOs.
[38] Information given by NGOs.
[39] Information given by Ministry of the Interior.
[40] Information given by NGOs.
[41] According to the knowledge of the UNHCR Office in Austria lists are generally not available, but it is assumed that advisors can be traced anyhow in the respective authority buildings.

providing the address. A list of doctors or medical care facilities is not given, but medical assistance is provided in the reception centres.

In the Laender there are not always lists of NGOs, especially where only one NGO is responsible (eg. Voralberg, Salzburg). As a rule there is a list available in the housing facilities for asylum seekers mentioning the responsible counselling centre for them. At the counselling centre all the other information (e.g. about health care) is available. But this also depends on the particular system in the federal state.[42] Asylum seekers in detention are not always informed about all organisations promoting their interests. This accounts particularly for Laender where the authority has entered into a contract with one organisation to provide social and/or legal counselling. In such cases, it happens that representatives of other organisations do not have access to places of detention, unless they can argue they want to see a specific person of who they know he or she is in detention (which is hardly possible lacking information on the names of these persons), or unless an asylum seeker asks for a specific contact. Here, it is often not possible to establish contacts between detainees and NGOs.

Q.18. B. Is the information provided to the asylum seekers, and if yes, in writing or, when appropriate, orally?

In federal care facilities there is an information desk and information material at disposal.
In the Laender this depends on the counselling centre. Sometimes written information is given by information sheets, lists of addresses (eg. of legal counsellors or of doctors), or on notice boards in care facilities.

Q.18. C. Is that information in general provided in a language understood by asylum seekers? Specify if possible the list of languages in which it is available.

Since written information consists mainly of lists of addresses, these lists are usually in German.
If information is provided by NGOs when they are in charge of legal and social counselling, they usually have trained staff skilled in the necessary languages.

Q.18. D. How many organisations are active in that field in your Member State?

There are about 15 different NGOs and other organisations active in that field (most of them only in one or a few federal states). There is no umbrella organisation.[43] Among the most important ones are Caritas, Diakonie, Volkshilfe, SOS Menschenrechte; specialised organisations or projects for traumatised persons, eg. Omega, Zebra; Netzwerk Asylanwalt (a legal counselling project of UNHCR, Caritas, Red Cross and other partners), Asylkoordination (a cooperation of a large number of NGOs in the field), and

[42] Information given by NGOs.
[43] Information given by NGOs.

plenty of others, sometimes very small ones. Networks of these NGOs often promote the provision of care for vulnerable persons (eg. separated children and traumatised persons).

Q.19. Documentation of asylum seekers (see article 6):

Q.19. A. What kind of document is delivered to the asylum seeker? Explain the legal value of this document (just a certification of the status as asylum seeker or also prove of identity?) (see §1 of article 6 which is a mandatory provision)

When an asylum seeker's application has been recorded at an initial reception centre, a Procedure Card is issued (Sect. 50 Asylum Act 2005, *Verfahrenskarte*), which is a title to stay in the initial reception centre and to enjoy reception conditions.

Following a positive admissibility decision asylum seekers are issued a Residence Entitlement Card (Sect. 51 Asylum Act 2005: *Aufenthaltsberechtigungskarte*) which is a proof of identity and a proof that the asylum seeker is legally residing in the territory.

Q.19. B. Are there situations or specific cases in which another equivalent document or even no document is issued? (in particular is there an exception for "procedures to decide on the right of the applicant legally to enter the territory" as made possible by §2 of article 6)?

There is no exception for airport procedures, but in practice, in airport procedures[44] and when an asylum seeker is in detention, a Procedure Card is usually not delivered – this accounts mainly for procedures where the Dublin II Regulation is applied.

Q.19. C. For how long is this document in principle valid and is it necessary to renew it after a certain period?

On the first document delivered to the asylum seeker (Verfahrenskarte), the date of invalidation is inserted by the authority. There are no rules on the period of validity, but the state of the procedure will also be shown on the document, so that this might be relevant for the period of validity. When an application is admissible, the identity document (Aufenthaltsberechtigungskarte, Sect. 51 Asylum Act 2005) must be issued, which is valid until the asylum seeker is obliged to leave the country because an enforceable decision has been taken or the procedure is discontinued (eg. because the asylum seeker absconded from the care facility). Then he or she must return it to the competent police authority (Sect. 51 § 2 Asylum Act 2005)

Q.19. D. What is the deadline for the delivery of that document? Is the mandatory deadline of 3 days set by article 6, §1 respected[45]?

[44] ICF II Report, p 12.

The deadline for delivery of the *Verfahrenskarte* is three days (Sect. 17 § 6 Asylum Act 2005). However, the deadline only starts when an application for asylum has been recorded at an initial reception centre (for the procedure see above paragraph 2 of Q.11.). NGOs confirm that this deadline is generally respected, with the exception of cases when asylum seekers are in detention.

Q.19. E. Is it possible for an asylum seeker to get a travel document for serious humanitarian reasons (see §5 of article 6 which is an optional provision)?

There is no such possibility.

Q.19. F. Is there a central system of registration of asylum seekers and is it or not separate from the registration of aliens? If yes, describe it briefly (content) and indicate in particular if it is an electronic database.

There is an electronic database called "Care Information System" (*Betreuungs-informationssystem* – BIS), which contains information about the name, date of birth, distinguishing marks, country of origin, data of his or her documents, profession, religion, ethnic group and state of health (Sect. 8 § 1 Federal Basic Welfare Support Act). It is run by the Ministry of the Interior, and is separate from the registration system for aliens, but authorities may use data from the aliens registration system.
There is also a "Central Procedure Database" which comprises information on applications, decisions and legal remedies of asylum seekers and authorises asylum authorities to share information acquired by them on this database (Sect. 56 Asylum Act 2005).
Moreover, there is an electronic database called "Asylum Seekers Information System" (Asylwerberinformationssystem, AIS), which is a part of a larger information system of the Ministry of the Interior ("electronic criminal police information system", elektronisches kriminalpolizeiliches Informationssystem) which comprises also the aliens information system and Schengen information system (EKIS/FIS/SIS). AIS contains information eg. on procedural stages, registered place of residence, police measures (arrest, detention) etc.

Q.20. Residence of asylum seekers[46]:

Q.20. A. Is in principle an asylum seeker free to move on the entire territory of your Member State or only to a limited part of it and in case, which part? (see article 7, §1 which is a mandatory provision)

[45] To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.
[46] Nota bene: the case of detention is covered by other questions and should be ignored under this question.

Until the decision on admissibility, but for 20 days at the longest, the asylum seeker's residence is only tolerated within the administrative district he or she is living in. His or her stay is tolerated on the whole territory if this is necessary to fulfil legal duties, if he or her has been summoned by a court or an administrative authority or if it is necessary for medical care or treatment (Sect. 12 § 2 Asylum Act 2005).
At a later stage, the asylum seeker's freedom to move can be limited to a certain area, which must be at least the area of an administrative district, if the right to residence is withdrawn ("prohibition of return", *Rückkehrverbot*, Sect. 62 Aliens Police Act), because the asylum seeker represents a risk to public order and security or other reasons cited under Art. 8 § 2 ECHR. In this case he or she may not be deported.
Restriction to a district may also be a more lenient measure when detention would be legitimate.
According to NGOs there are no reports that this measure would often be invoked in practice.

Q.20. B. About the <u>place of residence (see §2 of article 7)</u>: explain to which extend the person is free to choose her residence and if this depends of the stage of the asylum procedure (for instance before and after admissibility); if there are constraints limiting the choice, explain which ones and their reasons (for instance processing of application, attribution of reception conditions,…).

There is no choice for needy asylum seekers to choose their place of residence, but they are assigned to a certain place by the authorities. In the admissibility procedure, they have to stay in a federal care facility, and after that decisions on the distribution of asylum seekers to the Laender are taken by the coordination office of the Federal Asylum Office with the consent of the Laender according to their quota and depending on availability.
The procedure to be applied by the coordination office is not laid down by law, and no more information on a possible different legal basis or on the practical functioning of the office could be gathered. Of course, the coordination office is also bound by the Austrian constitution and therefore has to take decisions individually and objectively (under the constitutional equality principle). When assigning asylum seekers to a specific place of residence it also has to find an agreement with the Land concerned which also has an interest that asylum seekers fit within the social structure already existing.

Generally the Laender grant benefits only to asylum seekers whose place of residence is in the territory of the Land[47]. If an asylum seeker moves to a certain Land individually, he or she is theoretically entitled to reception conditions under most of the respective Laender Acts. Lower Austria (Sect. 3 § 2 no. 2 and 3), Salzburg (Sect. 5 § 1 no. 2 and 3) and Upper Austria (Sect. 3 § 2 no. 1 and 2) declare this to be a reason for exclusion from benefits. Carinthia requires that an asylum seeker has been assigned to the Land by the coordination office, but provides for an individual decision to take also other asylum seekers into care (Sect. 1 § 2 Carinthia Basic Welfare Support Act,). In other Laender,

[47] Sect. 3 § 2 Burgenland, Sect. 3 § 1 no. 1 Lower Austria, Sect. 2 § 1 Carinthia, Sect. 3 § 3 Styria, Sect. 4 lit. c and Sect. 2 § 3 Tyrol, Sect. 1 § 1 Upper Austria, Sect. 2 § 1 Vienna and Sect. 7a § 1 Vorarlberg.

however, the asylum seeker may also be excluded from reception conditions in this case being regarded as not needy since he or she could get support from other resources.[48] Only Vienna does not grant an entitlement to reception conditions and has issued a regulation that no asylum seekers will be taken into care who have not been residing in Vienna before 1st May 2004 (see above Q.10.).

In the legislation of some of the Laender, the right to a specific form of accommodation is explicitly excluded (Lower Austria Sect. 7 § 2; Salzburg, Sect. 2 § 3, Upper Austria Sect. 1 § 2, Burgenland concerning the right to a specific place of residence Sect. 5 § 4).

Q.20. C. About the <u>place of reception (meaning where the asylum seeker has to stay to benefit from reception conditions) (see § 4 of article 7)</u>: explain which are the general rules about the determination of this place (to which extend are the decisions determining the place taken individually and do they take into account the personal situation of the asylum seeker?) and to which extend the person is free to choose it and if it depends of the stage of the asylum procedure (for instance before and after admissibility); if there are constraints limiting the choice, explain which ones and their reasons (for instance attribution of reception conditions, processing of the application,…).

There is hardly any choice for needy asylum seekers[49]. Upon making an application, asylum seekers are arrested and are taken to one of the initial reception centres by the authorities. Asylum seekers who are residing on Austrian territory legally might choose one of them to have their applications recorded, but this is a fairly infrequent case.
Under Art. 3 § 2 Basic Welfare Support Agreement the Federation is obliged to install a coordination office whose task it is to distribute asylum seekers to the Laender. After an application has been declared admissible, the coordination office will assign the asylum seeker to a certain place of reception in one of the Laender with the consent of the Land in question. There is no formal decision and therefore no right to file a remedy against this decision. However, the authority is of course bound by constitutional requirements to decide individually and objectively.

Rules for the distribution are laid down in the Federal Welfare Support Act and the respective Laender Acts:
Under the Federal Welfare Support Act (Sect. 2 § 2), the decision on the place of residence of the asylum seeker has to take into account family relations, the special needs of single women and minors, and ethnic particularities.
The Basic Welfare Support Agreement obliges the federal entities to take into account family unity when providing accommodation to asylum seekers (Art. 6 § 1 no. 1) and to grant special conditions to unaccompanied minor refugees (Art. 7 § 1 and 2). These provisions have been taken over by the Laender Acts (see above Q.12.).

[48] Information given by the UNHCR Office in Austria.
[49] Persons who address themselves to an Initial Reception Centre will usually be accepted there.

An asylum seeker may apply for the right to move to another care facility, then the government has to give its consent – if the asylum seeker wants to move to another Land, the government there must give its consent, too. If an asylum seeker leaves the assigned place of reception, reception conditions may usually be withdrawn because the asylum seeker is not considered to be in need of help anymore.
The asylum seeker may also apply for permission to move from an accommodation centre to individual accommodation, though there is no such procedure foreseen by the Laender Acts, and some Acts stipulate explicitly that there is no right to a specific form of reception conditions (Sect. 7 § 1 Lower Austria and Sect. 1 § 2 Upper Austria). Such permission is seldom given. Apparently some Laender only accept such a change in accommodation after a certain waiting period which is not laid down by law.[50]

Q.20. D. If all asylum seekers are not placed in accommodation centres because of capacity limits, explain <u>how the persons are distributed between accommodation centres and other accommodation facilities</u> (which authority takes the decisions, on the basis of which elements, can that decision be appealed by the asylum seeker,…)[51]

Before the entry into force of the new legislation, the Austrian Red Cross and several NGOs created emergency facilities (*Notquartiere*), asylum seekers who were denied access to other care facilities because of capacity limits could turn there. Under the new legislation the Federation is obliged to provide for the initial reception of asylum seekers and may outsource this task (Art. 3 § 1 and 5 Basic Welfare Support Agreement). The Federation is also responsible for creating contingency capacities with a view to meeting accommodation shortages in the Laender (Art. 3 § 4). At the moment the number of places seems enough. There are no rules on a formal procedure for the distribution of places yet.

Q.20. E. How can an asylum seeker ask to <u>leave temporarily</u> the place of residence or of reception or an assigned area? How is the individual AND impartial character of the decision ensured? (see §5 of article 7 which is a mandatory provision)

An asylum seeker who is restricted to the area of the administrative district during the first 20 days of the admissibility procedure does not need a permission to leave the assigned area, if this is necessary to fulfil legal duties, when he or she is summoned to a judicial or administrative authority or when it is necessary for the provision of medical care and treatment (Sect. 12 § 2 Asylum Act 2005). There is no provision allowing other exceptions. If the asylum seeker leaves the assigned area, he or she is no longer tolerated on the territory and may thus be arrested and taken back to the district of his or her residence, and a fine may be imposed on him or her under the Aliens Police Act (Sect. 120).

[50] ICF II-Report, p 24.
[51] To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

The decision restricting the place of residence of an asylum seeker to an assigned area under Sect. 62 Aliens Police Act has to be done by an individual formal decision (*Bescheid*) which can be appealed. There is no possibility to apply for a permission to leave the assigned area, but a stay outside the assigned area is not considered an infringement, if it was necessary, especially for the purpose of medical treatment or the fulfilment of other legal obligations (Sect. 121 Aliens Police Act).

For both categories, this means that if an asylum seeker leaves the assigned area without such reasons foreseen by law, this constitutes an administrative offence. It will be determined during the administrative criminal procedure whether or not his stay outside the assigned area was necessary and therefore justified.

An asylum seeker may not leave his assigned place of accommodation for more than 24 hours according to the rules of the house for the federal care facilities, without giving reasons for his or her absence, otherwise he or she might be expelled from the care facility. The decision on withdrawal of federal care must be taken according to the procedure explained in Q.21.

Q.21. **Q.21. A. Do rules on <u>reduction or withdrawal of reception conditions</u> exist in internal legislation and if yes in which cases (mention in particular if there are cases not foreseen by article 16, § 1 and 2 which are optional provisions)? Distinguish in your answer between cases of reduction and withdrawal and explain which conditions can be reduced and if access to emergency health care is always ensured as requested by article 16, §4, last sentence.**

Rules of reduction and withdrawal exist in the Federal and in the Laender legislation. Some cases mentioned there are not foreseen in the Directive. Hardly any of them make a distinction between cases in which reception conditions can be withdrawn or restricted, nor do they state explicitly which forms of restrictions can be imposed. Since all the benefits foreseen in the Basic Welfare Support Agreement must be considered necessary to satisfy basic needs, the only thinkable restriction of benefits can be the restriction or withdrawal of pocket money.

In all of the Acts, access to **emergency health care** is guaranteed.[52]

Under the Federal Welfare Support Act and several of the Laender Acts reception conditions can be withdrawn, restricted, or legal restraints can be imposed, when:

- an asylum seeker represents **a risk** to the order of the care facility (with or without a reference to a continuous severe violation of the rules of the house of a care facility) (Sect. 2 § 4 no. 1 Federal Basic Welfare Support Act; Burgenland Sect. 5 § 3 no. 1; Carinthia Sect. 3 § 3; Lower Austria Sect. 8 § 1 no. 5; Salzburg, Sect. 9 § 1 no. 3;

[52] Federation Sect. 2 § 4; Burgenland Sect. 5 § 5, Carinthia Sect. 3 § 4, Lower Austria Sect. 9, Salzburg Sect. 9 § 2, Styria Sect. 4 § 5, Tyrol Sect. 5 § 3, Upper Austria Sect. 3 § 7, Vienna Sect. 3 § 4 and Vorarlberg Sect. 7a § 5.

Styria Sect. 4 § 3 no. 1; Tyrol Sect. 5 § 3 lit. a; Upper Austria Sect. 3 § 2 no. 6; Vienna Sect. 3 § 3; Vorarlberg Sect. 7a § 5 lit. b)

- an asylum seeker has been evicted from the care facility by a police organ under Sect. 38a Security Police Act (Sicherheitspolizeigesetz). Under this provision, a police organ may evict a person from a place of accommodation and its neighbourhood if there has been an **aggressive attack** before and an attack against life, health or freedom of another person is to be expected. (Sect. 2 § 4 no. 2 Federal Welfare Support Act; Burgenland Sect. 5 § 3 no. 1; Carinthia Sect. 3 § 3; Styria Sect. 4 § 3 no. 2; Salzburg Sect. 9 § 1 no. 2; Tyrol Sect. 5 § 3 lit. c; Vienna Sect. 3 § 3 second indent; Vorarlberg Sect. 7a § 5 lit. b second indent)
- an asylum seeker has been convicted of an **exceptionally serious crime** and therefore represents a risk to the community (Sect. 2 § 5 Federal Welfare Support Act; Carinthia Sect. 5 § 3 lit. d; Upper Austria Sect. 3 § 2 no. 9, all in connection with Sect. 6 Asylum Act 2005)

  Other Acts stipulate the condition that a reason for exclusion from asylum under Sect. 13 of the Asylum Act 1997 is given, which refers to exclusion grounds under Art. 1 F of the Geneva Convention (Sect. 13 § 1) and allows for exclusion from asylum when an alien for cogent reasons constitutes a danger to the security of the Republic or when he or she has been convicted of a particularly serious crime and, by reason of such punishable act, represents a danger to the community (Sect. 13 § 2; Carinthia Sect. 3 § 3[53]; Styria Sect. 4 § 3 no. 3; Vienna Sect. 1 § 5; Vorarlberg Sect. 7a § 5 lit. c, with a reference to Art. 2 § 4 Basic Welfare Support Agreement); Salzburg (Sect. 9 § 1 no. 1) and Lower Austria (Sect. 8 § 1 no. 4) refer to the new provision on exclusion grounds in Sect. 6 Asylum Act 2005.
- an asylum seeker resorts to **severe violence**. (Tyrol Sect. 5 § 3 lit. b)
- an asylum seeker displays **unacceptable behaviour** vis-à-vis other residents or the management of the care facility. (Upper Austria Sect. 3 § 2 no. 6 second indent)

Moreover, asylum seekers may be excluded from reception conditions if they:

- are nationals of an EU member state or of Switzerland, Norway, Iceland or Liechtenstein Sect. 3 § 1 no. 1
- do not comply with requests to provide **information on their identity and their need for support**, or refuse to cooperate in the asylum procedure (Sect. 3 § 1 no. 2; Burgenland Sect. 5 § 3 no. 3; Lower Austria Sect. 8 § 1 no. 6; Salzburg Sect. 9 § 1 no. 8; Upper Austria Sect. 3 § 2 no. 3 and no. 7; Vorarlberg Sect. 7a § 5 lit. a);
- lodge an application for international protection within six months after a final decision of an **earlier application** (successive applications) Sect. 3 § 1 no. 3; Burgenland Sect. 5 § 3 no. 4; Lower Austria Sect. 8 § 1 no. 2; Salzburg Sect. 9 § 1 no. 5; Upper Austria Sect. 3 § 2 no. 4;
- Lower Austria also excludes asylum seekers from basic welfare support, when a successive application has been lodged more than six months from the final decision on the first application, if there are facts which justify the assumption that the second application was lodged with the purpose to avoid deportation or to obtain financial benefits from the Land or other benefits (Sect. 8 § 1 no. 3).

[53] The provision also mentions Sect. 6 § 1 no. 4 which also refers to a serious crime as mentioned in the other provisions.

- **do not cooperate** in the establishment of the facts necessary to carry out the asylum procedure Sect. 3 § 1 no. 4;
- **have abandoned** the assigned place of accommodation for more than three days or do not reside there regularly (Burgenland Sect. 5 § 3 no. 5, Lower Austria Sect. 8 § 1 no. 9, Salzburg Sect. 9 § 1 no. 4)

In Lower Austria benefits may also be denied, withdrawn or reduced if the asylum seeker does not provide evidence that the application for international protection was lodged within four weeks from his or her arrival in Austria. In Salzburg (Sect. 9 § 1 no. 7) and Upper Austria (Sect. 3 § 2 no. 10) reception conditions may be withdrawn or reduced if an asylum seeker unjustifiably **refuses to take up an employment.**
In Upper Austria (Sect. 3 § 2 no. 11) reception conditions may be withdrawn or refused if a third party is obliged by law or contract to provide similar benefits. Lower Austria (Sect. 4 § 1) stipulates that in this case the applicant is to be considered not needy. In other Laender persons who are entitled to benefits from other sources would most probably not be considered needy.

In Salzburg (Sect. 9 § 1 no. 6) and Lower Austria (Sect. 8 § 1 no. 8) reception conditions may be withdrawn or refused if an asylum seeker continuously uses the money paid in cash for purposes other than originally intended.

In Lower Austria (Sect. 9) and Upper Austria (Sect. 3 § 6), decisions must be taken individually under consideration of the **proportionality** principle taking into account the specific situation and the question whether the asylum seeker is a specially vulnerable person. The Vienna Basic Welfare Support Act refers to Art. 1 § 2 Basic Welfare Support Agreement in case of withdrawal, refusal or restriction of benefits, the Carinthian Act refers to its Sect. 1 § 3, both provisions referring to the provisions of the Directive.

Q.21. B. Has article 16, §2 dealing with refusal of reception conditions for <u>unreasonably late applications</u> for asylum been transposed by your Member State (or was this case already applicable before transposition)? Are there cases in practice[54]?

It has been transposed only by Lower Austria (Sect. 8 § 1 no. 1) and Upper Austria (Sect. 3 § 2 no. 5): In case of late applications there is no legal entitlement to benefits anymore in these Laender, but a margin of appreciation is left to the Laender Government. In other Laender it can be assumed that in such cases asylum seekers would be considered not needy because they had been able to support themselves on other means before filing an application.
There is no information whether there are cases in practice.

Q.21. C. How is it ensured that decisions of reduction or withdrawal are taken individually, objectively AND in

[54] To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

particular impartially (for instance through and independent arbitrator) (see article 16, §4 which is a mandatory provision)?

In the Federation and the Laender, decisions on reduction or withdrawal have to be taken individually by the administrative authorities (the administrative district authorities or more often the government itself, depending on the Land). According to most of the Laender Acts[55], a formal written decision (*Bescheid*) has to be issued only when the asylum seeker asks for it. The procedure is determined by the Austrian Administrative Procedures Act (Allgemeines Verwaltungsverfahrensgesetz; AVG) which grants basic procedural guarantees. Sect. 7 lays down the impartiality principle and Sect. 58 § 2 states that decisions which do not fully acknowledge claims must always be reasoned.
Several Laender Acts provide for additional requirements for the procedure.[56] The Federal Basic Welfare Support Act – which is applicable in the admissibility stage of the procedure – also asks for a previous interrogation of the asylum seeker if possible (Sect. 2 § 6).

In Vienna, decisions on withdrawal are not taken formally under the Administrative Procedures Act because the institution responsible for granting and withdrawing benefits, the Fond Soziales Wien, does not have competences as a public authority. Decisions are subject to the substantive requirements laid down by the Basic Welfare Support Act. Of course the authority, when fulfilling official duties, is also bound by the Austrian constitution and especially the equality principle, asking for an objective and impartial decision. The Government is responsible for the supervision of the staff of the fund but has no decision-making authority.

Q.21. D. Is statement 14/03 adopted by the Council at the same moment as the Directive respected (see the documentation pack you received at our meeting in Brussels in April)?

Since the ECHR has the status of Constitutional Law in Austria, it must be respected in all administrative decisions, decisions on withdrawal can be challenged before the Constitutional Court, if the asylum seeker alleges a breach of Art. 3 or Art. 8 ECHR. If reception conditions are withdrawn, emergency healthcare must be granted (Federal and all Laender Acts).
In cases where there is no legal basis at present or where decisions are not taken under the Administrative Procedures Act, the Supreme Court may also become involved, because it is competent to rule on claims for compensation for violations of Community Law (see the case brought before the civil court as described at Q.21.E.). The Supreme

[55] Burgenland Sect. 11 § 3; Carinthia Sect. 9 § 3, Lower Austria Sect. 17 § 2 (as far as accommodation, food, clothing and pocket money are concerned), Salzburg Sect. 15 § 1 (as far as accommodation, food, clothing and emergency healthcare are concerned), Styria Sect. 14 § 4, Tyrol Sect. 21 § 2, Upper Austria Sect. 4 § 1. In Vorarlberg, decisions on denial, withdrawal or restriction of reception conditions always have to be taken by formal decision (Sect. 7a § 6).
[56] A decision can only be taken after a hearing of the asylum seeker in Burgenland (Sect. 5 § 3), Tyrol (Sect. 21 § 1) and Carinthia (Sect. 9 § 4).

Court also has to take into account constitutional law in its decision-making, even if it has no competence to rule on constitutional matters.
In some Laender (eg. Vorarlberg[57]) asylum seekers will receive social aid, when material benefits have been withdrawn; in some Laender (eg. Upper Austria, where asylum seekers are not entitled to social aid, Sect. 6 § 3 Social Welfare Act) benefits are usually entirely withdrawn, so that the asylum seeker is deprived of any financial substance to live on.

Q.21. E. Are there already administrative appeal decisions or judgements on cases of reduction, withdrawal or refusal which have been taken, and if yes, what has been the outcome[58]?

One decision on the merits is accessible on the website of the Independent Administrative Tribunal for Upper Austria (http://www1.land-oberoesterreich.gv.at/uvs/ (search page)).
The Independent Administrative Tribunal – acting as second instance in application of the Federal Basic Welfare Support Act, because the initial reception centre East (Thalham) is situated in Upper Austria – repealed a decision on withdrawal of reception conditions following an appeal. The appellant claimed that an aggressive attack he was said to have committed had never occurred, a fact that was confirmed by the alleged victim. (The victim was allegedly thrown out of the first floor of the care facility into a snow hump while he said he had jumped himself for fun). The Tribunal held that the authorities had failed to carry out an investigation procedure, but only took over the very short official note remitted by the police officer who had investigated the incident, although the evidence was unclear. Moreover, it had failed to adequately reason its decision as to why the appellant had severely violated the rules of the house and why there was imminent danger emanating from him so that his further stay in the premises was considered unacceptable. The authority had also not explained why in the interest of public welfare for reasons of imminent danger the exclusion of the suspensive effect of the appeal was deemed necessary.

In September 2005 the Constitutional Court had denied its competence to rule on claims for benefits based upon the fact that the Directive had not been transposed and referred claimants to the ordinary civil courts to claim compensation from the Laender or the Federation, depending on the benefit they intended to claim (with the Supreme Court (Oberster Gerichtshof) as last instance court). The civil courts are competent to decide on cases of state liability for failure to transpose Community law, if damage has been caused by an act of an administrative authority or a court. If damage has been caused because of a decision of an administrative authority on an application for a work permit, the Federation is accountable (because under the Constitution employment is a federal competence). The Land (in the present case: Tyrol) is accountable for decisions taken by the authorities on the amount of social welfare (a constitutional competence of the Land), irrespective of whether the asylum seeker is entitled to benefits or not (see above at Q.9., VfGH 26.9.2005, A 10/05).

[57] Information given by the competent administrative authority (Bezirkshauptmannschaft) for Bregenz.
[58] To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

Another case had been brought before a civil court in Linz/Upper Austria in April 2006 by an Austrian lawyer who claimed benefits for a client from the Land Upper Austria (where at current there is no legal basis for reception conditions). The claimant, who had been living in a care facility in Linz, had been evicted from care for reasons he contested in the action brought before the court. No other benefits were being granted to him, and apparently he was not insured in the health insurance system anymore. He argued that the Directive was directly applicable and that he therefore had a right to be taken up in the care system again, claiming material benefits for the future and compensation for the time he had been without welfare support.[59] The procedure ended with an agreement between the applicant and the Land that benefits would be provided further on.

Q.22. **Q.22. A. <u>Appeal</u> against a negative decision relating to the granting of benefits or based on article 7 (see article 21 which is a mandatory provision): indicate against which decision an appeal can be introduced, describe the system of appeal in general and include in particular in your answer the information given to asylum seekers about possibilities of appealing, deadline for appealing, if the appeal has or not a suspensive effect, if there are different steps (for instance first an administrative appeal and in particular if the guarantee of an appeal before a judicial body in the last instance is respected)?**

Under Austrian legislation, as has been indicated above at Q.3. and Q.15., there are two possibilities for the public authorities to act: legislation can either foresee that they must act under administrative law, then they have to follow the rules of the General Administrative Procedures Act, leading to an appeals procedure before administrative appeals authorities or tribunals and allowing for complaints to the High Administrative and Constitutional Courts. But – especially when it is about granting benefits to which an applicant shall not be entitled – legislation might also authorise them to act under private law. In such cases there is generally no legal remedy. However, under the recent jurisdiction of the Supreme Court in the case of benefits granted on a private law basis (see above at Q.3.), it seems to be accepted that the equality principle requires that benefits be granted equally to all applicants fulfilling the criteria set by law. Therefore, in case of withdrawal or refusal of reception conditions, an asylum seeker may file an application for (re)admission to the care facility before the civil court, against whose decision an appeal is possible. In such procedures, interim measures may also be applied for.
The civil courts are also competent to decide claims for compensation for failure to transpose the Directive in those Laender where currently a legal basis does not exist (see above at Q.21.E.)

This Austrian administrative specific renders the situation relatively complicated. However, the appeals procedures and problems arising in the field of reception conditions should be pointed out in the following.

[59] Information given by the claimant's legal representative.

Appeals against all formal decisions by administrative authorities are brought before Independent Administrative Tribunals (according to the Federal and Laender Basic Welfare Support legislation[60]) These are situated in the Laender and meet the requirements of Art. 6 ECHR. They decide in the last instance, against their decision, which is considered final, a complaint before the High Administrative Court is possible.
Only Vienna does not provide for an appeal, because decisions of the Fonds Soziales Wien are not taken formally under the Administrative Procedures Act. Here, an application for readmission before a civil court can be possible in cases of withdrawal of reception conditions[61], but it must be remembered for cases of refusal that Vienna requires that an asylum seeker should have been resident in the territory before 1st May 2004.

The decision on assignment of an asylum seeker to a certain place in a Land cannot be appealed by him or her, since it is only communicated to him informally (Sect. 6 § 1 Federal Basic Welfare Support Act).

In cases where after a positive decision on admissibility a decision on assignment of an asylum seeker to a certain Land is not taken (as described above at Q. 15), NGOs state that it happens regularly that asylum seekers are dismissed from federal care after two weeks. In this case, a legal remedy against the Federation would be vain, lacking federal competence under the Constitution.
But also the Laender refuse to grant reception conditions in such cases to asylum seekers who have not been assigned to them by the coordination office. Where the decision comes under private law, an application for admission before a civil court is possible. If the Land issues a negative formal administrative decision, an appeal is possible. However, in some Laender[62], the assignment decision is a prerequisite for granting welfare support (see above at Q.20.B.), there a legal remedy against a negative decision would not have any effect. In other Laender, the assignment is no legal requirement. However, according to NGOs also those sometimes refuse asylum seekers without taking a formal decision, although they might be obliged to do so under their respective Welfare Support Acts. In such cases, the only remedy against inaction of the authority is laid down in Sect. 73 of the Act (Devolutionsantrag), but can only be filed after a period of six months.
It seems unclear whether the asylum seeker has a possibility to oblige the coordination office to take a assignment decision, since this requires the consent of the Laender.

According to the Administrative Procedures Act a formal decision always has to contain the information on possibilities of appeal (Sect. 61). An appeal against a formal administrative decision (*Bescheid*) has to be submitted within two weeks from the date of delivery of the first instance decision (Sect. 63 § 5).

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[60] Federation Sect. 9 § 2, Burgenland Sect. 11 § 5, Carinthia Sect. 9 § 5, Lower Austria Sect. 18 § 1, Salzburg Sect. 15 § 2, Styria Sect. 14 § 2, Tyrol Sect. 20 § 2, Upper Austria Sect. 4 § 2, Vorarlberg Sect. 15 § 8 in connection with UVS-G.
[61] Sect. 1 Act on the Jurisdiction of the Civil Courts (Jurisdiktionsnorm).
[62] Carinthia (Sect. 1 § 2 lit. a); Lower Austria (Sect. 3 § 2 no. 2 and 3); Salzburg (Sect. 5 § 1 no. 2 and 3); Upper Austria (Sect. 3 § 1 no. 2).

According to the Administrative Procedures Act an appeal usually has suspensive effect. Suspensive effect of an appeal can be excluded by the authority adopting the decision if early enforcement is in the interest of a party or for the common good because of imminent danger. (Sect. 64 Administrative Procedures Act).

Under the Federal Basic Welfare Support Act (Sect. 9 § 3), in Burgenland (Sect. 11 § 5) and Upper Austria (Sect. 4 § 3), suspensive effect can be granted in this case by the Independent Administrative Tribunal. The Basic Welfare Support Act for Lower Austria authorises the Independent Administrative Tribunal to exclude suspensive effect in addition to the possibilities stated in the Administrative Procedures Act, if there are facts that justify the assumption that the asylum seeker is not needy, if an asylum seeker did not comply with the conditions or orders issued when granting reception conditions or if he or she not just temporarily left Lower Austria or has taken residence outside the Land, or if the asylum seeker's place of residence is unknown.

Q.22. B. Explain which are the possibilities for asylum seekers to benefit from legal assistance when they introduce such an appeal (see article 21, §2 which is a mandatory provision but leaves space to Member States)?

During the admissibility procedure, asylum seekers have the right to assistance provided by a legal advisor in the initial reception centre (Sect. 64 Asylum Act 2005; *Rechtsberater*), their obligation, however, is to assist asylum seekers in the admissibility procedure, but they can also provide information in such cases. During the procedure on eligibility at the Offices of the Federal Asylum Office asylum seekers can seek the assistance of a "refugee advisor" (Sect. 66 Asylum Act 2005, *Flüchtlingsberater*) – the latter, however, only have limited resources[63]. No legal assistance (*Verfahrenshilfe*) is foreseen for persons who do not have the means to pay for a legal advisor in the second instance procedure. Only when a case is brought before the High Administrative Court, legal aid can be granted by the Court upon application (Sect. 61 High Administrative Court Act), and a lawyer will be provided by the Bar Association. Legal aid can be granted by the Independent Administrative Tribunals only in administrative criminal procedures.
If a case is brought before a civil court (eg. in Vienna), legal assistance (Verfahrenshilfe) can be granted according to Sect. 63 ff of the Rules on Civil Procedures (Zivilprozessordnung).

Q.22. C. Are there already administrative appeal decisions or judgements which have been taken and if yes, which are the main important ones[64]?

There are no decisions under the new legislation. Apparently several Independent Administrative Tribunals intend to challenge their competence as second instance before

[63] Information given by the UNHCR Office in Austria.
[64] To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

the Constitutional Court, arguing that the competent authority under the constitution would be the Independent Federal Asylum Tribunal. They have done so under the old legislation, but the Constitutional Court did not rule on the question.

Q.22. D. Is a mechanism of complain for asylum seekers about quality of receptions conditions in general (even if they are not personally concerned) organised? If yes, before which authority? Is it linked to the system of guidance, control and monitoring of reception conditions (see below question n° 39)?

The possibilities of complaint depend on the system of care. In federal care facilities, there is no formal mechanism of complaint. Complaints can be made anytime before employees, NGOs or legal advisors[65].
In the Laender the situation depends on the organisation of the care system. Usually there are regular controls of the care system effected by social counsellors and/or government officials. In Salzburg there are regular controls of the care facilities effected by officials. Complaints will often be made before the social counsellor who will forward the information on the circumstances of the case to the Government. In Vorarlberg, Caritas has introduced an internal management system for complaints, reaching from individual counsellors to heads of department and then to the Government. In Lower Austria, asylum seekers can complain at the counselling centres or directly at a specific office at the Government of Lower Austria, in Vienna there is a complaint procedure before the responsible institution, the Fonds Soziales Wien.
Apparently the way in which the different offices deal with these complaints is very different.[66]

6. RIGHTS AND OBLIGATIONS OF ASYLUM SEEKERS

Q.23. **Family unity of asylum seekers: define how a family is defined in relation with article 2, (d) which is a mandatory provision and explain how housing is provided to a family (see articles 8 which is a mandatory provision but leaves space to member States and 14, §2, (a) which is a mandatory provision).**

Most of the Basic Welfare Support Acts do not define the term "family". In the Asylum Act 2005 and the Aliens Police Act the definitions cover only spouses and minor children. Lower Austria also provides a similar definition (Sect. 2 § 1 no. 3). The Upper Austria Basic Welfare Support Act explicitly refers to non-married partnerships which are put on an equal footing with marriage (Sect. 2 § 1). The Austrian aliens legislation, however, does not treat unmarried partners like married couples.
Practice shows that the authorities are more generous, and housing is provided also to more distant relatives in one place, as far as possible. The only case where families are

[65] Information given by Ministry of the Interior.
[66] Information given by NGOs.

often separated is in procedures in which the Dublin II Regulation is applied. Often, adult male family members are detained while women and children are not.[67]
All Basic Welfare Support Acts have taken over the provision of Art. 6 § 1 no. 1 Basic Welfare Support Agreement which stipulates that housing must be granted with respect to family unity[68].

Q.24. **Q.24. A. How is <u>housing</u> of asylum seekers organised: describe the system in general and indicate in particular what is the most frequently system used (see article 14, §1 which is a mandatory provision but leaves space for Member States; distinguish between accommodation centres, private houses and apartments, hotels places or other premises).**

There are four federal care facilities, among which two big initial reception centres and two smaller facilities.
In the Laender a combination of different premises exists. The usual differentiation made in Austria is between organised accommodation centres and organised private facilities. Accommodation centres exist only in some of the Laender and are generally rather small; most asylum seekers live in organised private hotels and guesthouses or flats that have been adapted for the accommodation of asylum seekers.

The statistics only differ between organised accommodation and individual accommodation in private flats organised by the asylum seekers themselves. Individual accommodation is scarce in the Laender, frequent only in Lower Austria and Vienna[69] (see Q.10.). The Burgenland Basic Welfare Support Act specifies in Sect. 4 § 1 no. 1 that accommodation shall generally be provided in places organised by the Land, private accommodation is accessible only under certain conditions.

Q.24. B. What is the total number of available <u>places</u> for asylum seekers?[70] Distinguish in your answer between accommodation centres, private houses and apartments, hotels or other premises.

Federation: 1423 (initial reception centres and federal care facilities)
Laender: 29.200 (16.000 in accommodation centres and 13.200 in organised private premises)[71]

[67] ICF II-Report, p 14.
[68] By general reference to the Basic Welfare Support Agreement in Sect. 2 § 1 and Sect. 1 no. 3 Federal Basic Welfare Support Act; Sect. 1 § 1 Upper Austria Basic Welfare Support Act and Sect. 7a § 1 Vorarlberg Social Welfare Act; and explicitly in Sect. 4 § 1 no. 1 Burgenland Care Act; Sect. 3 § 1 no. 1 Carinthia Basic Welfare Support Act; Sect. 1 § 2 Lower Austria Basic Welfare Support Act, Sect. 2 § 1 no. 2 Salzburg Basic Welfare Support Act; Sect. 4 § 1 no. 1 Styria Care Provision Act; Sect. 5 § 1 lit. a Tyrol Basic Welfare Support Act; Sect. 3 § 1 no. 1 Vienna Basic Welfare Support Act.
[69] Information given by NGOs.
[70] To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.
[71] Information given by Ministry of the Interior.

Q.24. C. Is this number of places for asylum seekers sufficient in general or frequently insufficient?[72]

The total number seems to be sufficient[73], especially since the amount of applications for international protection has decreased. However, the quotas set by the Basic Welfare Support Agreement internally are not met, which leads to political difficulties within the federal system.

Q.24. D. Are there special measures foreseen in urgent cases of a high number of news arrivals of asylum seekers (outside the case of application of the directive on temporary protection)?

see Q. 32 B und C
Art. 3 § 4 Basic Welfare Support Agreement obliges the Federation to create contingency capacities in the Laender for cases of accommodation shortages. According to Sect. 11 Federal Basic Welfare Support Act, the Ministry of the Interior must create these capacities to cope with unpredictable and inevitable shortages of places in the Laender. It may therefore declare military camps a care facility by regulation. No other specific measures are foreseen.

Q.25. Accommodation centres **(important note: all the following questions are about open and not closed centres where asylum seekers are detained which are covered by another question)**

Q.25. A Are there different categories of accommodation centres, for instance depending of the stage of the procedure (admissibility and eligibility)?

To a certain extent there are different categories depending on the stage of the procedure. Asylum seekers are, unless detained, accommodated in two big accommodation centres attached to the initial reception centres[74] during the beginning of the admissibility procedure. If their applications are not admitted they may be transferred to one of the two other, smaller federal care facilities (especially in procedures where the Dublin II Regulation is applied, which often take longer).
Upon admission, they are transferred to smaller facilities in the Laender to undergo the eligibility procedure. Facilities in the Laender can be accommodation "centres", which are by nature generally relatively small, or private guesthouses. These categories are however not linked to the stage of the procedure but come as the management systems of reception conditions and the infrastructure are different in the Laender.
For more detailed information on the repartition of duties between the Federation and the Laender see above at Q.10. and 11.

[72] To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.
[73] Information given by NGOs and the Ministry of the Interior.
[74] EAST in Traiskirchen and Thalham.

Q.25. B. Is there a legal time limit for accommodation in a centre after which the asylum seekers have access to private houses or apartments or is this limit linked to a stage of the asylum procedure?

Asylum seekers remain in the federal care facilities for a maximum of 20 days (and probably longer up to 14 days, until a place in one of the Laender is found). In the Laender there are no time limits, but in practice it seems that the permission to move to private premises is seldom given and according to NGOs the authorities in the Laender have a general idea that asylum seekers should stay in accommodation centres for about half a year (or sometimes even a year) before moving to individual accommodation.[75]

Q.25. C. Is there a general regulation about the internal functioning of those centres and the rights and duties of the asylum seekers? If yes, is this general regulation applicable to public and private centres? If not, are the centres supposed to adopt an internal regulation and does a central authority have or not a kind of control about its content?

In all the premises there are rules of the house, provided for by the management of the care facility. There is no general rule applicable for all facilities. The Federation has issued rules of the house, but no information could be gathered if these are still up to date or if they have been replaced by new ones with the new Basic Welfare Support Act. In addition, a regulation prohibiting entry to federal care facilities for unauthorised persons has been issued by the Ministry of the Interior. If the Governments of the Laender are responsible for organising reception conditions, they might decide on the rules of the house themselves (eg. Sect. 7 § 3 Styria Care Act). Since they are also responsible for concluding contracts with NGOs and other service providers they do have at least an indirect influence on these rules. Above all, it is them who decide on withdrawal of benefits for the breach of such rules. Apparently the rules in the different premises are quite similar.[76]

Q.25. D. Do the regulations foresee the possibility of sanctions against asylum seekers in case of breach of the rules? (see article 16, §3) If yes, which sanctions for which rules? Which is the competent authority to decide? How is it ensured that decisions are taken individually, objectively and in particular *impartially* (for instance through an independent arbitrator) as requested by §4 of article 21 which is mandatory provision? Which are the possibilities of appealing against those decisions if the system is different from the general one under question n°22? Are there already administrative appeal decisions or

[75] Information given by NGOs, see also ICF II-Report, p 24.
[76] Information given by NGOs.

judgements which have been taken and if yes, which are the main important ones? [77]

The Basic Welfare Support Agreement authorises the federal entities to foresee sanctions in case an asylum seeker poses a threat to the order inside the care facility. The Federal Basic Welfare Support Act (Sect. 2 § 4 no. 1) and the rules of the house for the federal care facilities provide that in case of breach of the rules, reception conditions may be limited or withdrawn. A thinkable limitation can only be the withdrawal of pocket money, but no further information on a relation between breaches of rules and sanctions could be gathered. Sanctions are also foreseen in other rules of the house but these are in general not made public, so that there is equally not much information. Apparently in Styria, where the rules of the house are issued by the government, sanctions can be imposed by the (public) management of the facility and start at eg. 5 Euro for minor violations.[78]

In case of violent behaviour, asylum seekers are usually expelled from the place of accommodation. If there are other difficulties between the management of the care facility and the asylum seeker, he or she is often transferred to another care facility.[79]

The formal decisions of the authorities fall under the same rules as in Q.21. C and 22.

Q.25. E. Are asylum seekers involved in the management of these centres? If yes, how (advisory board, appointment or election of representatives)? (see article 14, §6 which is an option provision)

Asylum seekers are not officially involved. In individual guesthouses, asylum seekers may take over organisational duties (eg. taking care of the keys of the premises etc), but there is no general custom. There is no organised form of representation of asylum seekers in the places of accommodation.

Q.25. F. Do specific rules exist on work of asylum seekers inside the accommodation centres different from the general ones about employment (see below)? If yes, which ones? Can working inside accommodation centres be considered as a (mandatory) contribution of the asylum seekers to the management of the centres, is it or not paid and considered as implying access to the labour market and subject to the same rules?

In the Federation and in most of the Laender asylum seekers can work on a voluntary basis inside the accommodation centres and are allowed to fulfil tasks which are directly

[77] To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.
[78] Information given by NGOs.
[79] Information given by NGOs.

linked to their accommodation and care (eg. cleaning, kitchen, transport etc).[80] These works are generally remunerated, the amount depending on the management of the centre (€ 3 to 5 per hour, according to a federal regulation[81]). If there are eg. cleaning plans and cleaning is limited to the asylum seekers' own rooms and the ordinary cleaning of the premises they are living in (especially in smaller facilities) it is usually not paid.
In Burgenland this form of work is considered mandatory.[82]

In addition, the Federation the Laender or the local authorities can draw on asylum seekers for non-profit services. These are usually also remunerated and can be rendered on a voluntary basis.[83]

All these possibilities for asylum seekers to work fall outside the legislation on aliens' employment and

Q.26. **Q.26. A. How can asylum seekers <u>communicate</u> with legal advisers, representatives of UNHCR and NGOs? (see article 14, §2, (b) which is a mandatory provision).**

Since accommodation centres are not closed asylum seekers can always enter into contact with legal advisors, representatives of UNHCR and NGOs, though the costs of travel for this purpose are not foreseen by the benefits listed in the Federal and the Laender Acts. Moreover, it has to be remembered that during the admissibility procedure an asylum seeker's stay is only tolerated within the district of his or her residence. Social counselling is provided in all care facilities. Access to UNHCR is guaranteed under Sect. 63 Asylum Act 2005. Moreover, these people cannot be excluded from permission to enter care facilities (see below at B.).

Q.26. B. What are the rules about <u>access</u> of legal advisers, UNHCR and NGOs regarding access to accommodation centres and other housing facilities (see article 14, §7 which is a mandatory provision)

The Federal Care Facility Entry Regulation, issued by the Ministry of the Interior, provides that unauthorised entry to federal care facilities is prohibited, unless the person has a legitimate interest in such entry or stay. UNHCR personnel is always authorised to enter federal care facilities (Sect. 1 § 2). Moreover, legal advisors and representatives of NGOs are considered to have a legitimate interest in entering the care facility (Sect. 1 § 3). According to Sect. 1 § 3 no. 2, organs or representatives of organisations in charge of providing care have a legitimate interest when they need to enter a care facility in order to provide these tasks. While the legal requirement appears to be that they must

[80] Eg. Sect. 7 § 3 no. 1 Federal Basic Welfare Support Act, Carinthia Sect. 3 § 8, Lower Austria Sect. 1 § 8, Styria Sect. 4 § 6 no. 1; Vienna Sect. 3 § 5.
[81] ICF II-Report, p 16.
[82] Sect. 6 § 1 no. 1 Burgenland Care Act.
[83] Burgenland Sect. 6 § 1 no. 2, Carinthia Sect. 3 § 8, Styria Sect. 4 § 6 no. 2.

have been commissioned by the asylum seeker, NGOs do not seem to encounter big difficulties and even non-official confidants are usually granted access.[84] They need an entry permit which is issued by the management of the house between 8 am and 5.30 pm according to the federal rules of the house.

In most of the Laender access to accommodation centres is not limited. The only Land where there is a legal authorisation to issue a regulation on prohibition of entry is Styria (see Sect. 7 § 1). Such a regulation has not (yet) been issued.

Q.26. C. Can the access of legal advisers, UNHCR and NGOs be limited for security reasons or any other reason (see article 14, §7, last sentence)?

The access of persons with a legitimate interest as explained above cannot be limited. No information could be gathered on the Styrian regulation on prohibition of entry to care facilities. Apparently under the regulation access can be limited for NGOs.

Q.27. Q.27. A. Is a medical screening organised by the receiving State, is it mandatory or voluntary? Does it include HIV tests? (see article 9 which is an optional provision)

There is a mandatory medical screening taking place in both initial reception centres. It includes an x-ray of the lungs and a test for tuberculin for children and pregnant women. It does not include a HIV test.
In addition, the voluntary visit of a doctor must be admitted in the initial reception centre.[85]

Q.27. B. Do the legal provisions on reception conditions ensure that asylum seekers receive at least emergency care and essential treatment of illness as requested by article 15 §1 which is a mandatory provision? Do they have a further access to health care?

Every asylum seeker undergoing an asylum procedure in Austria and included in the system of reception conditions enjoys health insurance[86]. Health insurance covers all direct treatment costs. Additional costs for necessary treatment like psychotherapeutical care and other benefits not covered by the insurance can also be covered by reception

[84] ICF II-Report, p 13.
[85] Information given by NGOs and Ministry of the Interior.
[86] Federation Sect. 1 no. 3, Burgenland Sect. 4 § 1 no. 5, Carinthia Sect. 3 § 1 lit. e, Lower Austria Sect. 5 no. 5, Salzburg Sect. 6 § 1 no. 4 (the Act is speaking of necessary health care, in fact asylum seekers are in the insurance system), Styria Sect. 4 § 1 no. 4, Tyrol Sect. 5 § 1 lit. d, Upper Austria Sect. 1 § 1, Vienna Sect. 3 § 1 no. 5, Vorarlberg Sect. 7a § 1 – reference to the Basic Welfare Support Agreement in the Federal Act, Upper Austria and Vorarlberg.

conditions upon an individual decision[87]. If reception conditions are withdrawn or restricted, access to emergency healthcare is guaranteed in the Federal and all Laender Acts.[88]

Q.27. C. What is the practice regarding access of asylum seekers to health care and how is it organised? In particular, what is the situation in accommodation centres (are doctors coming to the centres or do asylum seekers go to doctors outside)?[89]

The initial reception centre in Traiskirchen hosts four general practitioners, three doctors trained in psychology and two specialists (x-ray and lungs). Reception conditions cover also psychological care and other benefits not paid for by the health insurance system.[90]
In most other reception centres asylum seekers go out to see practitioners who would make referrals to specialist doctors as appropriate.
There are no doctors coming to the centres in a periodical way (only when they are called because of emergency cases). Frequently travelling costs to doctors and hospitals are to be paid by the asylum seekers themselves. The language barrier is also an important obstacle to adequate health care.[91]

Q.28. **Q.28. A. What is the length of the period determined by the concerned Member State during which asylum seekers have no access to the labour market? (see article 11 which is a mandatory provision)**

Asylum seekers do not have access to the labour market during the first three months after an application has been registered, Sect. 4 § 3 no. 7 Aliens Employment Act (Ausländer-Beschäftigungsgesetz, AuslBG).
During this period, asylum seekers are also not allowed to work on the basis of self-employment (which is not covered by the Aliens Employment Act) according to Sect. 7 § 2 Federal Basis Welfare Support Act.

Q.28. B. After that period, are asylum seekers or not obliged to obtain a work permit? In case is there a limit for the administration to deliver the permits and how quick are they delivered? What is their length?

[87] Federation Sect. 1 no. 3, Burgenland Sect. 4 § 1 no. 6, Carinthia Sect. 3 § 1 lit. f, Lower Austria Sect. 5 no. 6, Styria Sect. 4 § 1 no. 5, Tyrol Sect. 5 § 1 lit. e, Upper Austria Sect. 1 § 1, Vienna Sect. 3 § 1 no. 6, Vorarlberg Sect. 7a § 1 – reference to the Basic Welfare Support Agreement in the Federal Act, Upper Austria and Vorarlberg.
[88] All Acts speak of "emergency healthcare", only Vorarlberg and Salzburg grant access to "emergency healthcare and the essential treatment of illnesses". In practise, this differentiation in wording will not make a difference. Provisions are to be found in: Federation Sect. 2 § 4; Burgenland Sect. 5 § 5, Carinthia Sect. 3 § 4, Lower Austria Sect. 9, Salzburg Sect. 9 § 2, Styria Sect. 4 § 5, Tyrol Sect. 5 § 3, Upper Austria Sect. 3 § 7, Vienna Sect. 3 § 4 and Vorarlberg Sect. 7a § 5.
[89] To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.
[90] Art. 6 § 1 no. 6 Basic Welfare Support Agreement, taken over by the respective Federal and Laender legislation (see above at Q.12.A).
[91] Information given by NGOs.

Yes, asylum seekers need a work permit (*Beschäftigungsbewilligung*) under the Aliens Employment Act, which has to be applied for by a possible future employer (Sect. 3 § 1). The authorities have to decide on first applications for regular work permits within six weeks (Sect. 20a).
Ordinary work permits can be granted for one year, work permits for professions which are usually limited to a specific time of the year (seasonal work) can be limited to the time necessary (Sect. 7 § 1 and 2), but to a maximum period of six months. In this case, a second work permit cannot be issued immediately after an earlier work permit has expired
According to an administrative instruction issued by the Ministry of Economic Affairs and Employment, asylum seekers shall only be granted work permits for seasonal work. If a person has been working for 52 weeks within the last 24 months, he or she will be able to achieve an "ordinary" work permit under the above mentioned provision. This is the necessary period of work until an employee is entitled to unemployment benefits and is considered to be available on the labour market.[92] Given that this possibility can therefore only become relevant after two years, it should be reminded that access to the labour market is only open to asylum seekers as long as a final decision has not been taken (unless they have a residence permit on a different legal basis).

Other forms of work permits are not accessible to asylum seekers.

Q.28. C. After that period, what are the <u>conditions</u> for access of the asylum seekers to the labour market? (in particular, are there rules concerning the maximum allowed of working hours or days per week, month or year, limits in terms of type of work or of professions authorised?

Taking into account the limitation of asylum seekers to seasonal work, the priority for EEA and Turkish nationals (below at D.) and the fact that the work permit has to be applied for by the future employer, NGOs criticise that the present rules are so strict that in practice they exclude asylum seekers from the labour market.[93]
The general conditions for the granting of work permits are laid down in Sect. 4 et seqq. Aliens Employment Act. According to Sect. 4, a work permit has to be issued if the status and development of the labour market allow it and if no important public or economic reasons stand against it. According to Sect. 4b § 1 the labour market allows an employment of an alien if, for the vacation in question, no national and no other alien admitted to the labour market is available. In addition, a maximum number of aliens to be granted work permits per year are supposed to be set by the Federation and cumulatively by the Laender for enterprises on their territory. Among other conditions it has to be expected that the employer will employ the asylum seeker in his business and that rules on wages and working conditions will be respected.
There are no other rules on specific conditions of work.

[92] Information given by a member of the Upper Austrian Chamber of Labour (Arbeiterkammer Oberösterreich).
[93] ICF II-Report, p 16.

Q.28. D. What are the rules in terms of priorities between asylum seekers on the one hand and nationals, EU or EEE citizens and legally third-country nationals on the other?

In addition to the above mentioned conditions, there is priority for EEA citizens and Turkish nationals falling under the association agreement, as well as other third country nationals under certain conditions (eg. when they are entitled to unemployment allowances or already have a work permit; Sect. 4b § 1).

Q.28. E. Do asylum seekers have access to vocational training, does this or not depend of their right to access to the labour market, and in case at which conditions? (see article 12 which is optional regarding §1 and mandatory regarding § 2)

There are no rules excluding asylum seekers or other aliens from vocational training. However, access to vocational training is linked to the availability of a person on the labour market. The "Labour Market Service" (Arbeitsmarktservice, AMS) is an institution installed by law which fulfils public duties on the one hand (eg. payment of unemployment benefits) and provides other services. According to Sect. 32 of the Act on the Labour Market Service (Arbeitsmarktservicegesetz, AMSG), the institution has to provide its services with a view to placing unemployed persons in vacancies, securing employment and securing the subsistence of unemployed persons. The target of the AMS must be to aim at combining the markets of demand and supply of the workforce and thus to secure the employment of all persons who are available on the Austrian labour market (Sect. 29 AMSG). The competent offices of the AMS only afford access to courses to asylum seekers who are within the system of unemployment benefits, thus who have been working at least 52 weeks during the last 24 months. Moreover, a right to legal residence on the territory is necessary for being considered available on the labour market, it is not sufficient if an asylum seeker is only being *tolerated*. Since asylum seekers are not integrated into the system of the employment service, they do not have access to vocational training.[94]
Apparently there are a lot of asylum seekers who are still under the old asylum legislation, who are therefore in the work process and have access to unemployment benefits and vocational training. The competent offices generously offer German courses, and sometimes training in nursery schools. Other courses are scarcely offered to asylum seekers, but his is subject to the individual official in charge.[95] Under the new Asylum Act 2005 it will depend on the progress of the asylum procedure, because asylum seekers can be considered "available" on the labour market if they have a right to residence. This is granted during the first and second instance procedure (unless where an application has been declared inadmissible in the asylum procedure, and when in such cases suspensive effect is not granted by the Independent Federal Asylum Tribunal). If suspensive effect is being granted by the High Administrative Court, the asylum seeker still has a right to residence then.

[94] ICF II-Report, p 16.
[95] Information given by a member of the Upper Austrian Chamber of Labour.

If an asylum seeker meets the requirements for his or her admission to a university, he or she does not have to pay a tuition fee only if he or she comes from a country listed in annex 1 or 2 of the regulation on the tuition fee (Sect. 3 § 1 Studienbeitragsverordnung 2004). In addition to that, some (small) scholarships are available.

Q.28. F. Are the rules regarding access to the labour market adopted to transpose the directive more or less generous than the ones applicable previously?

The rules have changed with the whole revision of the aliens law regime. Unlike before, access to a more favourable follow-up work permit (issued after an employment of 12 months) now depends upon lawful *establishment* on the territory (*Niederlassungbewilligung*), a requirement which cannot be met by asylum seekers. This work permit is attributed to aliens themselves (and not to the employer), and is valid on the territory of a Land, for a maximum period of two years. Due to the shorter duration of asylum procedures envisaged under the new asylum legislation and the fact that asylum seekers often will not have a right to residence on the territory but will only be tolerated, they will frequently not be considered "available" on the labour market and therefore not have access to work permits exceeding seasonal work or vocational training.

Q.29. Are reception conditions subject to the fact that asylum seekers do not have sufficient resources? Are asylum seekers requested to contribute to reception conditions when they have personal resources (for instance if they work) or to refund the authorities if it appears that they have resources? (see article 13 §§ 3 and 4 which are optional provisions)

Under the federal legislation, reception conditions are being granted without this requirement[96]. However, if the asylum seeker has an income or other means, he or she will have to refund the costs incurred according to Sect. 3 § 2 of the Federal Welfare Support Act.
In the Laender, reception conditions are subject to the fact that the asylum seeker is in need of help and protection (*hilfs- und schutzbedürftig*). Persons who do not have the necessary means of subsistence for themselves and their family members are considered to be in need of help[97]. If it appears that asylum seekers have an income or other resources, they can be asked to refund. The income of relatives of the asylum seeker, who are obliged to maintain the asylum seeker by law (eg. parents, children), can equally be deducted from benefits granted, and these relatives can be asked to refund.

[96] Martin Diehsbacher, Bundesbetreuungsrecht, 2005, p 18.
[97] Burgenland Sect. 2 § 1; Carinthia Sect. 2 § 2; Lower Austria Sect. 4 § 1; Salzburg Sect. 5 § 2; Styria Sect. 3 § 1; Tyrol Sect. 4 and Sect. 1 lit. f; Upper Austria Sect. 2 § 1; Vienna Sect. 1 § 2; Vorarlberg Sect. 3 § 4 and Sect. 1 § 3.

Reception conditions can also be granted in part, if the asylum seeker's needs are adequately satisfied.[98] When asylum seekers have an income this is deducted from any financial benefits they can get (e.g. pocket money).[99]
According to NGOs, asylum seekers who leave the care facility for more than three days can be dismissed from a care facility, applications for re-entry into the care system are often rejected because the asylum seeker is not considered in need of help anymore[100] (see eg. Sect. 5 § 3 no. 5 Burgenland Welfare Support Act; see also No. 9 of the Rules of the House for the federal care facilities, which provides that reception conditions may be withdrawn if the asylum seekers leaves the care facility for more than 24 hours without reason).

7. SPECIAL NEEDS OF PARTICULAR CATEGORIES OF ASYLUM SEEKERS

Q.30. **Q.30. A. Which of the different categories of persons with special needs considered in the directive are taken into account in the national legislation (see article 17, §1 which is a mandatory provision): disabled people, elderly people, pregnant women, single parents with minor children, persons who have been tortured, raped or victims of serious physical or psychological violence? Include in your answer all other categories envisaged in national law.**

The Basic Welfare Support Agreement provides for special measures for unaccompanied minor applicants in its Art. 7. Other than that, no special provisions for specific groups are provided.
The Federal Basic Welfare Support Act provides that the special needs of single women and minors are to be taken into account in the process of assignment of asylum seekers to a place of reception. Sect. 30 Asylum Act 2005 considers persons with mental health problems due to torture or an equally severe incidence a specially vulnerable group. Lower Austria (Sect. 9) and Upper Austria (Sect. 3 § 6) refer to the needs of specially vulnerable person to be taken into account in procedures on withdrawal of benefits. In Sect. 7a § 3 Vorarlberg stipulates that ethnic particularities, individual needs of the beneficiary and special needs of particularly vulnerable persons are to be taken into account when granting welfare support benefits, especially concerning medical support. Single women and minors, elderly people, disabled people or persons who have been subject to torture, rape or other forms of psychological, physical or sexual violence are considered particularly vulnerable persons.
According to Sect. 4 no. 5 of the Salzburg Basic Welfare Support Act specially vulnerable persons are to be considered: minors, disabled persons, elderly persons, pregnant women, single women or men with minor children, as well as persons who have suffered from torture, rape or other serious forms of psychological, physical or sexual violence. There is, however, no further specific reference to this group of persons in the Act.

[98] Information given by Ministry of the Interior.
[99] Information given by NGOs.
[100] ICF II-Report, p 22.

In all other legislation, there is no reference to persons with special needs, such groups can only be identified from the context of benefits granted, which include measures for persons in need of particular care (*Pflegebedürftig*e)[101], health insurance and benefits not covered by insurance on the basis of an individual decision, and information, counselling and social care (Art. 6 Basic Welfare Support Agreement).

Q.30. B. How is their <u>specific situation taken into account</u> (see articles 13, §2, second indent, 16 §4 second sentence and 17 which are mandatory provisions)?

According to Sect. 30 Asylum Act 2005 asylum seekers who are suffering from a mental health problem because of torture or an equally severe incidence are a specially vulnerable group. If the problem amounts to a disease, a negative decision on the merits cannot be taken in the admissibility procedure and his or her special needs shall be taken into account in the further course of the procedure. Benefits granted under reception conditions include "other necessary benefits not covered by health insurance upon individual decision" (for references see Q.12.). This means that the additional costs of psychotherapy or other necessary medical treatment are covered when granting reception conditions. However, according to the information provided by a physician working in the field, "these facilities are scarce and places there are insufficient.[102] For persons who have been tortured, raped or victims of serious physical or psychological violence several NGOs provide psychotherapy. Access to psychotherapy for the latter group is often difficult since all NGOs are based in the provincial capitals and travel costs are usually not covered. Also these NGOs have long waiting lists. Other assistance for them than psychotherapy is scarce."[103] Another limit for access to psychotherapy is the language barrier, since the costs of translation services are equally not covered.
Disabled persons can apply for nursing allowance and fund their necessary support. Measures for persons in need of special care (Pflegebedürftige) are covered up to an amount of € 2480,- per person per month
In the initial reception centre in Traiskirchen, there are special premises for single women and for unaccompanied minors. There, women are provided with an information pack on rights of women in Austria[104]. There are no special care structures for them in Thalham.[105] For pregnant women with families no special procedures are foreseen and there is no similar procedure for single fathers[106]. Unaccompanied minors shall be placed in special forms of accommodation and be granted benefits which go beyond ordinary welfare support and which are listed in Art. 7 of the Basic Welfare Support Agreement.

[101] Art. 6 § 1 no. 7 Basic Welfare Support Agreement. 2480 Euro per month are to be paid for accommodation in special institutions if necessary according to Art. 9 no. 6.
[102] Art. 9 no. 6 Basic Welfare Support Agreement.
[103] Information given by NGOs.
[104] Information given by Ministry of the Interior.
[105] Information given by the UNHCR Office in Austria.
[106] Single fathers with minor children are defined as specially vulnerable persons in Sect. 4 no. 5 of the Salzburg Basic Welfare Support Act.

At the moment, there seems to be a sufficient number of places available for separated children in the Laender.

Q.30. C. How and when are the special needs of the concerned persons supposed to be legally identified (see article 17 § 2 which is a mandatory provision and clarify how it has been interpreted by transposition)?

There is no procedure laid down in legislation for the identification of such groups. The Federal and Laender Acts only add to the list of benefits to be granted, "other necessary benefits not covered by health insurance upon individual decision". In the Austrian administrative system, a formal negative decision will have to be taken if an asylum seeker claims specific benefits under this provision. If a question can only be answered by an expert (eg. whether a person is a minor or whether a person is traumatised) an expert opinion will have to be obtained under the ordinary administrative procedure.

The persons concerned shall be identified possibly by the police organs or asylum authorities during the first interview. Their specific need can be taken into account at any stage of the procedure. According to Sect. 20 Asylum Act victims of violations of sexual self-determination shall be interviewed by organs of the same gender. The procedure before the Independent Federal Asylum Tribunal, which is in general public, can be carried out in camera.[107]

According to the information gathered by NGOs, persons who have visible special needs should be identified upon arrival at the reception centre. Others with invisible needs will either contact NGOs dealing with persons who have been tortured, raped or victims of serious physical or psychological violence themselves. Most of them get this information through fellow countrymen or they are identified by local doctors, reception centre staff, and above all during social counselling. But as the counselling only takes place on a voluntary basis, not every asylum seeker makes demand of these offers. But since even NGOs often do not have expert personnel who could for example identify traumatised persons, social counsellors can only be attentive to situations, experience and emotions asylum seekers describe during an interview which could provide an indication of special needs.[108]

Q.30. D. Is the necessary medical and other assistance provided to persons with special needs as requested by article 15, §2 which is a mandatory provision and in particular to victims of torture and violence as requested by article 20 which is a mandatory provision?

Generally, medical assistance is provided under the ordinary health care system by doctors who have a contract with the social insurance institution, or by a series of projects

[107] Information given by the Ministry of the Interior.
[108] Information given by NGOs.

providing special intercultural counselling and psychotherapy. Medical care is generally adequate also for persons with special needs (elderly, minors, pregnant women etc).
In the federal care facility in Traiskirchen, three specialists are providing psychological care. However, as far as psychotherapy and other treatment of traumatised persons and victims of torture is concerned, in both systems (health insurance and special projects) resources are scarce and there are long waiting lists. In addition, interpretation and travel costs, which are not covered by health insurance, are huge obstacles in the access to necessary assistance.[109]
The most important NGOs in the field (Ankyra, Innsbruck/Tyrol, ASPIS, Klagenfurt/Catinthia, Hemayat, Vienna, Oasis, Upper Austria, Onderos, Salzburg and Omega and Zebra, Graz) have created a network under the title "Intercultural psychotherapy for extremely traumatised persons" (*Interkulturelle Psychotherapie nach Extremtraumatisierung*) which is coordinated by the Asylkoordination in Vienna.[110]
In a recent publication on the identification of traumatised persons during the asylum procedure[111] Klaus Ottomeyer, who is the coordinator of the project Aspis, organised at the University of Klagenfurt/Carinthia and offering psychological care to asylum seekers and refugees, criticises that reports of asylum seekers on traumatising experience are not adequately being registered during the asylum procedure by the expert appointed. The author points out that often experts do not discern symptoms described by their patients as signals for post-traumatic stress disorders or did not draw the necessary conclusions. In other cases the expert opinions given are reported to be so short that the findings of the expert could not be reconstructed from his or her report on the examination of the patient. This study is supposed to be published in autumn this year.

Q.31. **About minors:**

Q.31. A. Till which age are asylum seekers considered to be minor?

18 years (Sect. 21 § 2 of the Civil Code).

Q.31. B. How is access of minor asylum seekers to the education system ensured? Is it at school or in case inside accommodation centres and can it be considered as similar to the conditions for nationals as requested by article 10, §1?

Up to the age of 15 years, minor asylum seekers are subject to compulsory education under Sect. 1 § 1 of the Compulsory Education Act, and are subject to the same rules as nationals. Unless special education projects of NGOs are being offered (which target mainly older asylum seekers), lessons are given at school within the ordinary school system. Minor asylum seekers who do not (yet) have the necessary knowledge of the

[109] Information given by NGOs.
[110] Aspis yearly report 2005, p 13.
[111] Klaus Ottomayer, Gutachtenverwahrlosung in österreichischen Asylverfahren, in: Klaus Ottomayer/Walter Renner (eds), Interkulturelle Traum-Diagnostik, Vienna 2006, p 13. See also Der Standard (Austrian newspaper), 7 June 2006.

language of tuition to follow classes as ordinary pupils can be accepted as extraordinary pupils according to Sect. 4 School Tuition Act.

For minors over 15 years, there is no legal title to be admitted to a specific school, but admission is subject to fulfilment of legal requirements (eg. language skills, a certain standard of tuition – usually the requirement is the positive conclusion of tuition at a lower school, sometimes also certain minimum grades, or places available) which are laid down in Sect. 4 § 2 Act on the Organisation of Schools. Also here, the provisions applying for asylum seekers are the same as for nationals.
Access can also be granted to minor refugees older than 15 years, but it lies within the competence of the school to decide whom it admits for tuition. Of course, the school management is also bound by legislation, but has discretion as to the fulfilment of legal requirements.

Education is generally provided for unaccompanied minors, who are in special forms of accommodation and care (eg. projects run by NGOs). For accompanied minors, living with their family in "ordinary" care facilities, access to education is not always provided, depending on the place where the minor lives.[112] This is also due to the fact that transport costs are not always provided to minors who are not covered by compulsory education.[113]
Art. 7 § 3 no. 5 of the Basic Welfare Support Agreement stipulates that for unaccompanied minors an integration plan shall be elaborated and measures taken to make use of existing schooling, education and vocational activities with a view to self-preservation. Decisions on the future of accompanied minors are to be taken in the interest of the welfare of the child by their guardians. The Ministry of the Interior deems that there is no reason to restrict the guardians' rights in this respect.[114]

Q.31. C. Is access to education ensured <u>not later than 3 months</u> as requested by article 10, §2 (or after maximum one year if specific education for asylum seekers is provided) and till an expulsion decision is really <u>enforced</u>?

Usually minors who are subject to compulsory education are not integrated into the schooling system during the admissibility procedure, because they are supposed to stay there only for 20 days. If this time limit is exceeded, they are enrolled in the public schools. The time limit of three months is usually not exceeded. However, NGOs and UNHCR state that this provision has been violated in several cases of minor asylum seekers who were in a procedure under the Dublin II-Regulation.[115]
If minor refugees cannot attend ordinary classes due to a lack of language skills, they can be accepted at public schools as extraordinary pupils for 12 months at the maximum. This time limit may be extended for another 12 months if the minor failed to acquire the

[112] Information provided by NGOs.
[113] ICF II-Report, p 15.
[114] Information provided by the Ministry of the Interior.
[115] UNHCR, The Dublin II Regulation. A UNHCR Discussion Paper, p 51; http://www.unhcr.org/cgi-bin/texis/vtx/home/opendoc.pdf?tbl=RSDLEGAL&id=4445fe344.

language skills necessary to attend classes and if he or she cannot be held responsible for this failure.

Q.31. D. Is specific education (like language classes) available for asylum seekers, in particular to facilitate their effective access to the education system of the reception Member State (see article 10, §2 which is an optional provision)?

At some schools, specific language classes for students with insufficient knowledge of German are available. These classes are being offered in addition to or as a preparation for ordinary tuition. In the larger care facilities and accommodation centres run by NGOs there are language classes available, in most guesthouses in small villages on the countryside there are no possibilities to attend language classes.

Q.31. E. Are minors in general accommodated with their parents or with the person responsible of them? (see article 14, § 3)

They are. Minors are generally accommodated with their parents, the person responsible for them, or if possible with other relatives, even when they are less close.

Q.31. F. Do minors with special needs enumerated by article 18, §2 which is a mandatory provision, have access to appropriate mental health care and qualified counselling?

In general, minors have the same access to health care, especially to psychotherapy and other necessary medical treatment as adults (see Q.30.D). Art. 7 Basic Welfare Support Agreement obliges the federal entities to grant benefits to *unaccompanied* minors which go beyond benefits granted to adults and must comprise social and psychological support when needed. Moreover, "such persons shall be assisted by initial clarification and stabilization measures whose purpose should be to strengthen their emotional state and create a basis of trust". This provision has been taken up by the Federation and nearly all the Laender in their legislation[116] (see Q.12.A). Only Vienna has not issued a provision concerning special benefits for minor asylum seekers with special needs.
In practice, for unaccompanied minors in special forms of accommodation the necessary care and counselling is granted there. For all other minors, the situation depends on the place they are living in. Special support is subject to a lack of supply in some areas, which complicates access, lack of places in general, waiting lists for psychological support and lack of interpreting services.[117] Moreover, since there are no screening

[116] Sect. 2 § 1 and Sect. 1 no. 3 Federal Basic Welfare Support Act; Sect. 7 Burgenland Care Act; Sect. 4 Carinthia Basic Welfare Support Act; Sect. 6 Lower Austria Basic Welfare Support Act; Sect. 6 § 2 no. 2 Salzburg Basic Welfare Support Act; Sect. 8 Styria Care Provision Act; Sect. 7 Tyrol Basic Welfare Support Act; Sect. 1 § 1 Upper Austria Basic Welfare Support Act; Sect. 7a § 1 Vorarlberg Social Welfare Act.
[117] Information given by NGOs and ICF II-Report, p 23 et seq.

procedures the special needs of accompanied minors or of minors who are not living in a special form of accommodation granting specific social counselling are often not being identified.

Q.31. G. How and when is organised the representation of unaccompanied minors (guardianship, special organisation) and regularly assessed? (see article 19, §1 which is a mandatory provision)

According to Sect. 2 § 7 Federal Basic Welfare Support Act Sect. 16 § 5 Asylum Act 2005 is also applicable in questions of capacity to act and representation of minors in the procedure under this Act. Thus, during the admissibility procedure unaccompanied minors are represented in federal care matters by the legal advisor of the initial reception centre. After admission of an application and assignment of the minor to a place of reception in one of the Laender, the youth welfare office of the respective Land is responsible (see also the jurisdiction of the Constitutional Court, B 1290/04, above at Q.9.).

Youth welfare is a constitutional competence of the Laender, therefore all Laender have their own Youth Welfare Acts which are generally applicable to minor asylum seekers as well. These Acts grant assistance to all minors whose interests cannot be represented by their parents or other persons. Several Basic Welfare Support Acts of the Laender explicitly refer to their Youth Welfare Acts, declaring them applicable as far as care is concerned[118] or granting at least access to the data of the care information system (database) to the youth welfare offices.[119] The youth welfare office may also take the minor under guardianship in a formal procedure. During the admissibility procedure, this is often not done because it can be expected that the minor will leave the reception centre soon and move to another Land or country. In the Laender, it depends on the particular youth welfare office, which policy it takes on unaccompanied minors. In some Laender youth welfare offices do not take steps to take unaccompanied minors under guardianship.[120] In a recent decision, the High court ruled that an unaccompanied minor has a right to be taken under guardianship in the interest of his or her welfare (see above at Q.9., OGH 7 Ob 209/05v).

Q.31. H. How is placement of unaccompanied minors organised (with adult relatives, a foster family, in special accommodation centres or other suitable accommodation)? (see article 19, §2 which is mandatory provision)

According to Art. 7 § 1 Basic Welfare Support Agreement unaccompanied minors must be accommodated in special shared accommodation groups (for minors with special

[118] Sect. 8 § 1 Styria, Sect. 7 § 1 Tyrol, Sect. 1 § 4 Vorarlberg.
[119] Sect. 10 § 3 Burgenland, Sect. 8 § 2 Carinthia, Sect. 24 § 3 no. 1 Lower Austria, ~~[Salzburg],~~ Sect. 12 § 3 no. 6 Styria, Sect. 18 § 3 lit. a Tyrol, Sect. 8 § 3 Upper Austria, Sect. 4 § 1 Vienna.
[120] ICF-II Report, p 23.

needs), special accommodation centres (for minors unable to care for themselves) or other suitable accommodation, or in individual accommodation.[121]
In practice, unaccompanied minors are rarely accommodated with foster families during the asylum procedure. This is a solution which is only being used exceptionally in case of minors below 14 years or asylum-seeking children with relatives in Austria[122]. NGOs complained that the number of places available for unaccompanied minors in special accommodation facilities was insufficient and were concerned about inadequate placement of minors.[123] Apparently, this situation has changed so that right at the moment the number of places seems to be sufficient.[124]

Q.31. I. How is the tracing of the family members of the unaccompanied minors organised? Are measures taken to protect confidentiality of information when necessary? (see article 19, §3 which is a mandatory provision)

Tracing of family members is done within the regular asylum procedure. If relatives of the minor are in Austria, they can be found via the aliens information system. If relatives are within the Eurodac-system, they can be traced there.

All information gathered during this procedure is subject to the general confidentiality provisions of the Austrian Constitution, the Data Protection Act and the regulations on duties of public servants. Moreover, Sect. 54 of the Asylum Act 2005 provides that asylum authorities may only use personal data for the fulfilment of the tasks assigned to them and Sect. 57 rules which authorities may receive data collected in the Asylum seeker information system, the procedure database or the aliens information system.

Art. 7 § 1 no. 2 and 4 Basic Welfare Support Agreement provide that special care for unaccompanied minors covers tracing their family members and in case making family reunification possible. This provision has been taken over by the Federation, Upper Austria and Vorarlberg (by general reference to Art. 7), Burgenland (Sect. 7 § 3 no. 2 and 4), Carinthia (Sect. 4 § 3 lit. b and d), Styria (Sect. 8 § 3 no. 2 and 4) and Tyrol (Sect. 7 § 3 no. 2 and 4). Tracing of family members, but not family reunification is foreseen in Lower Austria (Sect. 6 § 3 no. 2) and Salzburg (Sect. 6 § 2 no. 4). No reference to the tracing of family members is made in the Basic Welfare Support Act for Vienna.

Since according to the legal provisions, tracing is part of special care for minors, those responsible under the respective care systems will have to take adequate measures.

[121] Reference to housing for unaccompanied minors or to Art. 7 Basic Welfare Support Agreement in: Sect. 2 § 1 and Sect. 1 no. 3 Federal Basic Welfare Support Act; Sect. 7 § 1 and 2 Burgenland Care Act; Sect. 4 § 1 and 2 Carinthia Basic Welfare Support Act; Sect. 6 § 1 and 2 Lower Austria Basic Welfare Support Act; Sect. 6 § 2 no. 1 Salzburg Basic Welfare Support Act; Sect. 8 § 1 and 2 Styria Care Provision Act; Sect. 7 § 1 and 2 Tyrol Basic Welfare Support Act; Sect. 1 § 1 Upper Austria Basic Welfare Support Act; Sect. 7a § 1 Vorarlberg Social Welfare Act.
[122] ICF II-Report, p 25 and information given by the UNHCR Office in Austria.
[123] ICF II-Report, p 23.
[124] Information given by NGOs.

Unaccompanied minors are generally accommodated in special forms of accommodation, run by specialized organisations which in practice are well informed about and make use of the Red Cross Tracking Service.[125]

8. EXCEPTIONAL MODALITIES OF RECEPTION CONDITIONS

Q.32. Apart from detention covered by the next question, are there exceptional modalities for reception conditions in the following cases and if yes, which ones and for how long are they applicable, knowing that they should be "as short as possible" (see article 14, §8)?

Q.32. A. Persons with specific or special needs, regarding in particular the period of assessment of those needs?

There are no exceptional modalities. Until specific needs of asylum seekers (eg. psychotherapy, other medical care or accommodation in nursing homes) are identified, they receive the usual reception conditions.

Q.32. B. Non availability of reception conditions in certain areas

There are no exceptional modalities. In practice, when places in accommodation centres are rare, asylum seekers may be given the permission to live individually in private apartments and reception conditions will be granted in money. When a Land refuses to take over asylum seekers assigned to them by the coordination office for lack of free places in accommodation centres, the coordination office will have to find another place of residence.

Q.32. C. Temporarily exhaustion of normal housing capacities

Under Art. 3 § 4 Basic Welfare Support Agreement and Sect. 11 Federal Basic Welfare Support Act, the Federation is obliged to provide contingency housing capacities as a precaution for capacity limits in the Laender with a view to meeting unpredictable and inevitable accommodation shortages in the Laender. In consultation with the Ministry of Defence, military camps can be declared accommodation centres by regulation.

Q.32. D. The asylum seeker is confined to a border post

Asylum seekers who arrive at **Vienna International Airport** are subjected to the special procedural rules under Sect. 31 et seqq. Asylum Act 2005. The existing legislative norms do not provide any special provisions for reception conditions for asylum seekers who are confined to the special transit zone at the airport. **Moreover, it is not considered to fall under the Federal Basic Welfare Support Act, so that no reception conditions are being granted there on a legal basis.** The care facility existing there

[125] Information provided by the Red Cross Headquarters Vienna.

(*Sondertransitheim*) is run by the NGO Caritas[126], which provides social and legal counselling, food and accommodation for 35 persons. However, there is **no legal responsibility** of the Government to guarantee the maintenance of the place of reception, nor are formal decisions on reception conditions taken and judicial remedies granted. Above all, asylum seekers are not entitled to a place in the care facility of the special transit zone and might be forced to remain outside in case of exhaustion of places. In addition, there is a particular zone "to secure the refusal of entry to the territory" in the transit area (*Zurückweisungszone*) to which social counsellors do not have access.
Under the wording of the Federal Basic Support Act, the care facility at the airport is not necessarily excluded from the scope of application of the Act (Sect. 1 no. 5, according to which a care facility is any "accommodation outside an initial reception centre, where the satisfaction of basic needs of an asylum seeker is being factually granted"). Moreover, the Care Facility Entry Regulation 2005 explicitly defines in its Sect. 1 § 1 no. 3 the accommodation at Vienna International Airport (Building 800) as a "care facility".

In fact, the care facility at the airport seems to be simply ignored by legislation, and no contribution to the discussion could be found in the documents preparing the different amendments to the basic welfare support act in the past.

As for the period of time an asylum seeker might stay in the transit zone, see the information on the special airport procedure at Q. 11.A. Deadlines for authorities to act are rather short. According to Sect. 32 § 4 Asylum Act 2005 the maximum period of time for an asylum seeker to stay there is six weeks.

On other borders asylum seekers are not confined to border posts.

Q.32. E. All other cases not mentioned in the directive (for instance urgent situation in case of a sudden high number of applicants outside a case of application of the directive on temporary protection).

See above at C.

Q.33. Detention of asylum seekers (we do not cover the situation of rejected asylum seekers detained for the purpose of their return) (see articles 6 §2, 7 §3, 13, §2 2nd indent and 14 §8 which implies that the directive is in principle applicable in case of detention):

Q.33. A. In which cases or circumstances and for which reasons[127] (identity verification in particular if the persons have no or false documents, protection of public order or national security, refugee status determination, way of entry into the territory, etc) can an asylum seeker be detained during the

[126] See http://www.caritas-wien.at/flughafen_1605.htm.
[127] Please specify if article 18 §1 of the Directive on asylum procedures of 1 December 2005 which specifies that *"Member States shall not hold a person in detention for the sole reason that he/she is an applicant for asylum"* is or not respected (even if has not yet to be transposed).

asylum procedure till his request has been finally rejected. Quote precisely in English in your answer the legal basis for detention of asylum seekers in national law.

According to **Sect. 47 § 1 Asylum Act 2005**, an asylum seeker shall be arrested in order to be taken to the initial reception centre under Sect. 43 § 2 Asylum Act 2005 or when it has been ordered by the Federal Asylum Office under Sect. 26 Asylum Act 2005.
1) According to Sect. 43 § 2 of the Act, an asylum seeker must be arrested and taken to the initial reception centre, when he or she does not have a right to residence in the territory and has applied for international protection before a police organ. The same accounts for asylum seekers who have a right to residence but do not present themselves at the initial reception centre within 14 days, when his right to residence has expired in the meantime.
2) An asylum seeker can be arrested by a request of the Federal Asylum Office according to Sect. 26 Asylum Act 2005 if an asylum seeker has left the initial reception centre without justification or has "eluded" from the procedure (see Sect. 24 § 1: when the Office cannot determine the asylum seeker's place of residence or when he or she leaves the country (in certain circumstances)). If the asylum seeker is arrested, the Federal Asylum Office has to inform the persons holding the asylum seeker in custody, when and to which initial reception centre he or she is to be taken. After the necessary procedural steps the asylum seeker must be set free.

3) According to **Sect. 76 § 2 Aliens Police Act;** *Schubhaft*) the aliens police authority can issue an detention order to secure the expulsion procedure or to secure deportation, if:

a) an expulsion order (Sect. 10 Asylum Act 2005) has been issued which can be effected by deportation, even when it is not yet final (no. 1).

An expulsion order has to be issued under Sect. 10 Asylum Act 2005 in case of any negative decision, be it for inadmissibility (under the Dublin II Regulation or for the existence of a safe third country) or for ineligibility (when neither an asylum status nor a status of subsidiary protection is granted).

An expulsion order may not be issued if the asylum seeker has a right to residence upon a different legal basis, or if this would constitute a violation of Art. 8 of the European Convention on Human Rights.

If a deportation would constitute a violation of Art. 3, and if this situation is not durable, the authority has to declare that deportation be suspended for the time being.

b) an expulsion procedure has been opened on him or her under the Asylum Act 2005 (no. 2).

According to Sect. 27 an expulsion procedure is considered opened if

- the authority informs the asylum seeker in the admissibility procedure that it envisages to reject the application for inadmissibility or dismiss it for ineligibility (such procedural steps have to be taken according to Sect. 29 § 3

no. 4 and 5 respectively Asylum Act 2005 before a formal decision is taken[128])

- if the Independent Federal Asylum Tribunal discontinued the procedure (which it can do according to Sect. 24 § 2 Asylum Act 2005 if the asylum seeker has absconded from the procedure and a decision cannot be taken without a further interview) in a case in which the first instance had issued an expulsion order.
- An expulsion procedure must also be opened if the investigation done may justify the assumption that the application will be rejected or dismissed and there is a particular interest in an accelerated procedure. This is the case when an asylum seeker has been convicted, indicted by the public prosecutor or caught in the very act of certain serious crimes (Sect. 27 § 2 and 3) Asylum Act 2005). If the asylum authority opens an expulsion procedure, it has to notify the aliens authorities.

c) an expulsion order or a decision on prohibition of residence had been issued before an application for international protection was made, when these decisions can be effected by deportation (no. 3; eg. when an appeal does not have suspensive effect).

According to Sect. 76 § 6, an alien may be kept in detention after having made an application for international protection, if he or she has been in detention for the purpose of his return before. The change of the legal basis for detention has to be annotated in the asylum seeker's records.

d) it can be assumed by reason of the results of an interrogation, a personal search and a check of the police records that the alien's application for international protection will be declared inadmissible lacking Austrian responsibility to assess the application. This provision aims at asylum seekers who will be subject to a procedure under the Dublin II-Regulation.

These provisions equally concern asylum seekers and persons whose application has been finally decided.

Q.33. B. Has your member State adopted measures to transpose §3 of article 7 which is an optional provision? If yes, how has this provision been legally understood (is it a case of detention or an obligation to stay in and not leave a certain place?) and for which reasons can an asylum seeker be "confined" in such a place?

There is no explicit reference to Art. 7 § 3 of the Directive and there are no cases of confinement to a place, which are not covered by the legislation on detention. Confinement to a certain place, meaning a decision on a place of residence and the obligation to report to police authorities regularly, is a general alternative to detention as a more lenient measure (see below at C.).

[128] The asylum seeker will then be referred to a legal advisor and will be granted a preparation time of at least 24 hours to prepare for the interview, in which the legal advisor will also be present.

Q.33. C. Are there legally alternatives to detention, like obligation to report to the authorities, obligation to stay in a place, provision of a guarantor or of a financial guarantee?

According to Sect. 77 Aliens Police Act the aliens authority has to renounce detention, if the purpose of detention may be reached by more lenient measures. It is obliged to resort to more lenient measures vis-à-vis minors, unless there is reason to believe that the purpose of detention cannot be reached. Sect. 77 § 3 takes as examples for more lenient measures the obligation to take residence in a certain place designed by the authority or to report at regular intervals at a certain police station.
In cases of families whose applications have been turned down for inadmissibility under the Dublin II Regulation, often men are taken in detention, while women and children are subjected to more lenient measures (usually the above mentioned alternatives to stay in a certain care facility and report regularly to the police station).[129]

Q.33. D. Which is the competent authority to order the detention of an asylum seeker? Explain if different authorities are involved to first take and later confirm the decision.

1) If an asylum seeker is arrested by a police organ in order to be taken to the initial reception centre, no detention order is issued.

2) If an asylum seeker's residence is unknown, the competent authority to request his or her arrest is the Federal Asylum Office.

3) The competent authority to order detention for the purpose of return is the aliens police authority. In some bigger cities this is the Federal Police Directorate (*Bundespolizeidirektion*), where no such directorates exist, it is the district administrative authorities (*Bezirksverwaltungsbehörden*).

Q.33. E. For how long and till which stage of the asylum procedure can an asylum seeker be detained?

1) The asylum seeker can be held in custody for a maximum time limit of 48 hours (Sect. 47 § 2 Asylum Act 2005).

2) The asylum seeker can be held in custody for a maximum of 72 hours (Sect. 26 Asylum Act 2005)

3) According to Sect. 80 § 1 Aliens Police Act, the authorities have to make sure that the length of detention is as short as possible. Asylum seekers detained under Sect. 76 § 2 can be detained until the fourth week after a final decision has been taken, has passed. If an asylum seeker cannot be deported for certain reasons listed in Sect. 80 § 4 no. 1 to 3

[129] Information given by NGOs.

the overall maximum duration of detention is six months. If an appeal filed by an asylum seeker against a negative decision, in which his or her application has been declared inadmissible, has been granted suspensive effect by the Independent Federal Asylum Tribunal, the asylum seeker may be detained until a final decision is taken. After that, detention may be held up if the Tribunal has issued a negative decision.

If the asylum seeker shall be kept in detention for more than six months, the Independent Administrative Senate shall verify on the first day after that period, and then every four weeks, if the reasons for detention are still existing and whether it is proportional to hold up detention (Sect. 80 § 6).
Altogether, the maximum duration of detention must not exceed ten months within a period of two years.

The same rules account for asylum seekers detained because they are in a procedure under the Dublin II-Regulation. It has to be reminded that if consultations under the Dublin II-Regulation are being initiated, the deadline of 20 days for the authority to decide on the admissibility of an application is not applicable. Therefore, asylum seekers who are being detained because there is reason to believe that the alien's application for international protection will be declared inadmissible lacking Austrian responsibility to assess the application will often be detained for a relatively long time, even *before* a decision has been taken in the first instance.

Q.33. F. In which <u>places</u> (can we call them "closed centres"?) are asylum seekers detained (places in a special closed centres reserved only to asylum seekers, together with returnees like illegal aliens or even in a normal prison, in case within separated areas or with the other detainees)? Indicate if a difference has to be made following the location of the "closed centres" at the border or on the territory? Which is the authority managing those places and is it the same as the one in charge of reception conditions?

If asylum seekers are arrested in order to be taken to an initial reception centre or an asylum authority that has summoned him or her, they usually stay for a short period of time at the police station of the district where they were arrested. If they cannot be taken to their place of destination, they can be transferred to a police detention centre to wait for further transport there. Asylum seekers detained pending deportation are being detained in prison-like police detention centres (*Polizeianhaltezentren*). These are designed for the ordinary detention scheme for administrative infractions, among which infractions of aliens police legislation, and are usually located in major police stations. Asylum seekers are detained there together with other aliens detained pending deportation, and also other persons, detained for administrative infractions.[130] However

[130] In Austria, administrative authorities (district administrative authorities, police authorities, mayors) can impose prison sentences of up to two weeks, and six weeks if necessary for particularly aggravating reasons (Sect. 12 Administrative Penal Act).

according to Sect. 4 § 3 of the Detention Regulation (Anhalteordnung), these two groups of people are to be detained in separate departments, if possible. Due to efforts of NGOs, today there are several departments in police detention centres for aliens pending deportation where the doors of cells are open during the day as long as there are no disciplinary problems (*Offener Vollzug*).
If the police authorities are not able to detain an asylum seeker in a police detention centre, they have to ask the head of the local jailhouse (which is usually attached to a criminal court) to take the asylum seeker in detention (Sect. 78 § 1 Aliens Police Act).

At the border, the only place which could be considered a "closed centre" is the special transit zone at the airport. It is not considered to be a place of detention, because asylum seekers are free to leave when they decide to leave the country and are thus considered to stay in the transit zone voluntarily. The Human Rights Advisory Board is of the opinion that the obligation to stay in the special part of the transit zone which is separated as a zone "to secure the refusal of entry to the territory" (*Zurückweisungszone*), where social counsellors do not have access, must be considered a deprivation of personal liberty under the Federal Constitutional Law of 29 November 1988 on the Protection of Personal Liberty. However, there are voices in literature which do not share this view.[131]

Q.33. G. Does UNHCR and NGOs have access to the places of detention and under which conditions?

UNHCR generally and NGOs if they wish to see detainees known to them have access to asylum seekers who are in detention. According to Sect. 21 § 3 of the Detention Regulation (Anhalteordnung), legal advisors and representatives of "institutions which have been installed by International Agreements for the Protection of Human Rights" and other persons have access if it is demonstrated that their visits are of importance for an asylum seeker's personal affairs. In addition, some NGOs have contracts with the Ministry of the Interior to provide social care for aliens in detention pending deportation.

Q.33. H. What appeal(s) can asylum seekers introduce against the fact he is detained? Is article 18 of the directive on asylum procedures of 1 December 2005 following which *"Where an applicant for asylum is held in detention, Member States shall ensure that there is a possibility of speedy judicial review"* respected (even if it has not yet to be transposed)?

1) and 2) If an arrest under the Asylum Act 2005 can be considered an act of "immediate administrative instruction and compulsion", a complaint can be filed before the Independent Administrative Tribunals, according to Art. 129a of the Constitution. The request of the asylum authority to detain an asylum seeker who has absconded from a care facility or whose residence is unknown (Sect. 26 Asylum Act 2005; *Festnahmeauftrag*), is not taken by formal decision, therefore no remedy is granted.

[131] Nicolas Raschauer/Wolfgang Wessely, Anhaltung von Fremden im Transitbereich, migraLex 2005, p 88.

An asylum seeker can file a complaint against an order imposing detention pending deportation before the Independent Administrative Tribunal which is competent for the territory of the district administrative authority where the asylum seeker has been arrested. (Sect. 82 et seq. Aliens Police Act). The complaint can be submitted to the authority which has arrested him or her or to the authority which has ordered the arrest, the respective authority having to submit the complaint to the Independent Administrative Tribunal within two days. If the detention has ended earlier, the authority has to notify the Tribunal of a complaint without undue delay. The Independent Administrative Tribunal has to decide on the continuation of detention within one week (Sect. 83 § 2 Aliens Police Act). The deadline is prolonged if the Tribunal rejects the complaint to the complainant for the purpose of its amendment in case relevant information is missing (Sect. 83 § 3 Aliens Police Act).

Q.33. I. Is the directive on reception conditions considered to be in principle applicable to the places where asylum seekers are detained? In particular which information do they receive about their rights, which access do they have to legal advice and health care?

The Directive is in principle applicable to cases of detention. During detention no benefits of welfare support are granted according to the Federal and Laender Acts[132], but they are suspended. Only the Basic Welfare Support Act for Upper Austria does not foresee this exception. When detention ends, the asylum seeker is again entitled to benefits under these Acts. In Lower Austria, he or she has to appear before the competent authority (ie the Government) in order to be granted reception conditions again.

Since during detention, the Federation is responsible for the well-being of detainees, reception conditions are being based on a federal legal basis. The applicable norm is the Detention Regulation (a legislative regulation issued by the Ministry of the Interior; *Anhalteordnung*). According to Sect. 1 § 2 the text of this regulation must be held available in the place of detention in the official languages of the UN, in the languages of the countries surrounding Austria[133] and in Croatian, Romanian, Serbian and Turkish languages. The detainee may ask for a language version upon his choice. In the rooms where people are detained, a list of their rights and duties under the regulation must be available in a shortened version.
According to Sect. 10 § 1, necessary health care shall be effected by a public health officer (*Amtsarzt*), or it has to be assured that a medical treatment by a physician is guaranteed without undue delay if necessary. According to Sect. 7 § 3 all detainees have to undergo a medical screening before the public health officer without undue delay, but within 24 hours at the latest. If the state of health of an asylum seeker requires, the

[132] Sect. 2 § 3 Federal Basic Welfare Support Act, Sect. 2 § 2 Burgenland, Sect. 3 § 4 Carinthia, Sect. 10 Lower Austria, Sect. 3 § 2 Styria, Sect. 10 Salzburg, Sect. 2 § 8 Tyrol, Sect. 1 § 4 Vienna, Sect. 7a § 1 Vorarlberg.
[133] Italian, Slowenian, Hungarian, Slowak and Chech languages.

asylum seeker can also be kept in detention in a suitable hospital according to Sect. 78 § 7 Aliens Police Act.
According to Sect. 21 § 3 the legal advisor of an asylum seeker has access to the place of detention. However, this requires that the advisor has already been commissioned by the asylum seeker for his or her representation. NGOs are allowed to provide only social counselling under their contracts with the Ministry.[134] In Tyrol, Upper Austria and Vienna, the contract for social counselling in police detention centres has been concluded with the NGO Verein Menschenrechte Österreich, an organisation which has come in for a lot of criticism on the part of other NGOs working in the field and was accused of partiality because it also provides legal counselling on voluntary return in detention centres.[135] It should be added that according to Austrian procedural rules the authority which is carrying out a procedure (eg. upon a complaint against detention before the Independent Administrative Tribunal) has the duty to inform about procedural rights and duties and "lead" parties through the procedure (Manuduktionspflicht).

Q.33. J. Apart from freedom of movement, what are the main differences between normal reception conditions and exceptional modalities for reception conditions in case of detention, knowing that they should be "as short as possible" (see article 14, §8)? If it is about closed centres, are the regulations of those places in line with the requirements of the directive (is article 13, §2, second indent of the directive following which "*Member States shall ensure that standards of living is met (…) in relation to the situation of persons who are in detention*" respected?).

The conditions of detention are laid down in the Detention Regulation which contains (in some cases very detailed) provisions on the detainees' rights to places of detention adequate for the protection of their dignity and health, hygiene of places of detention, clothing if necessary, adequate food etc. Benefits under the respective Welfare Support Acts are explicitly suspended for the duration of detention. Therefore asylum seekers do not receive pocket money. Asylum seekers in detention are accommodated together with other detainees[136] in ordinary prison-like detention centres. There is no effective access to legal counselling and to health care that goes beyond screenings effected by the public health officer. According to a member of the Human Rights Advisory Board, detention of asylum seekers is sometimes unnecessarily prolonged because the two different databases used – the aliens information system and the asylum seekers information system – are not compatible, therefore information is not adequately shared between the authorities.

[134] ICF II-Report, p 20.
[135] See for example http://www.asyl.at/fakten_2/betr_2006_01.htm, http://no-racism.net/old/staatsrassismus/schubhaftbetreuung_ausschaltung_010303.htm, recently Der Standard, 30 May 2006.
[136] They are accommodated together with persons arrested by police organs, persons convicted of administrative infractions or detained upon a formal decision for other reasons under aliens or security legislation.

As far as adequate health care is concerned, a report of the Human Rights Advisory Board of 2007[137] states that in practice there is a problem of communication between doctors and patients which is on the one hand due to the lack of translators, but also due to the fact that doctors in such cases often do not see the need to communicate with patients but only provide information to the authorities, there being no sanctions for inadequate information of patients. Information provided between private/hospital doctors and public health officials (responsible inside detention centres) is equally considered inadequate. These factors may be considered a structural problem and bear a risk that situations escalate. In one case a similar situation may have contributed to an unexpected death, which was the motive for the report and induced the Human Rights Advisory Board to issue a formal recommendation to the Minister of the Interior.

Q.33. K. Are measures taken to avoid detention of asylum seekers with special needs (if yes, which ones?) or are special measures taken because of their needs?

According to Sect. 7 § 3 Detention Regulation all detainees will have do undergo a medical screening within 24 hours at the latest. If they are considered unfit for detention in the detention centre, detention has to be continued in a hospital (Sect. 78 § 7 Aliens Police Act).

As for regulations concerning minors see below at L.

Q.33. L. Can minor asylum seekers be detained together with relatives? Can unaccompanied minor asylum seekers be detained? If yes, are there special measures which take into account that children are concerned?

According to Sect. 79 § 3 Aliens Police Act and Sect. 4 § 4 Detention Regulation minors shall be detained together with their parent/s unless the welfare of the minor requires otherwise. According to Sect. 77 Aliens Police Act more lenient measures have to be applied to minors, unless there is reason to believe that the aims of detention cannot be reached. Minors under 16 years old may only be detained if accommodation and care adequate to his or her age and adolescence can be guaranteed (Sect. 79 § 2 Aliens Police Act). The Ministry of the Interior has issued an administrative instruction[138] according to which detention must be the last resort vis-à-vis minors and minors under 14 years must not be detained. If necessary, more lenient measures can be imposed.[139] Moreover, it stipulates that in cases where the authority cannot exactly determine the age of an alien who claims to be a minor, the authorities have to start from the assumption that he or she

[137] available at http://www.menschenrechtsbeirat.at/cms/mrb_pdf/thematische_berichte/2007_Gesundheitsversorgung_%20in_%20Schubhaft.pdf.
[138] Of 10 April 2000, No 31.340/17-III/16/00.
[139] http://www.sosmitmensch.at/static/www/files/schubaftminors_3456_ab_3545_j_xxii.pdf.

is a minor. Minors in detention must not be detained together with adults (apart from their parents or family members) according to Sect. 4 § 3 Detention Regulation.
In practice, these requirements do not seem to be met. The independent Human Rights Advisory Board installed at the Ministry of the Interior has issued a report in 2000, criticising that conditions of detention were not adequate to the needs of minors. In the meantime, the Ministry of the Interior has taken up several proposals, issuing among others the above mentioned instruction. However, it seems that the practical situation, especially for unaccompanied minors in detention, has not much improved. Minors are often taken in detention, because their declaration as to their age is not found credible. Sometimes, minors are taken in detention as minors, but then fall within the ordinary detention regime in practice. This situation is also due to the fact that police detention centres are not adequately equipped with staff, and since the police reform in 2005 they have been assigned more tasks without being accorded more personnel.[140] Sometimes, the age of the minor is determined by expert opinions estimating the age of the asylum seeker, the reliability of which is questioned by NGOs. However, sometimes persons are also deemed to be adults but in detention treated as minors.[141]

Q.33. M. In particular is article 10 regarding access to education of minors respected in those places?

Minors who are in detention do not have access to education.[142]

Q.33. N. How many asylum seekers are for the moment detained in your Member State? Which proportion does this represent in comparison of the total number of asylum seekers at the same moment?

The Ministry of the Interior informed, that in April 2006 a total number of 215 asylum seekers were registered in detention pending deportation under Sect. 76 § 2 Aliens Police Act. This number contains asylum seekers as well as persons whose applications have been finally rejected. It further informed that in the reference date of 30 April 2006, 13.233 procedures were being carried out in the first instance, 28.624 in the second instance.

NGOs give a number of 900 detainees at the moment, which is a proportion of 1:31, compared to asylum seekers under reception conditions. Compared to the number of asylum procedures actually pending before the first and second instance[143] – 40.521 – this would be a ratio of 2,2% of asylum seekers in detention.

The latest statistic of the first half-year 2006 shows the following numbers of detention orders (!) issued:

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[140] Information given by a member of the Austrian Human Rights Advisory Board.
[141] Information given by the UNHCR Office in Austria.
[142] Information given by NGOs.
[143] Figures of September 2006, see statistic at:
http://www.bmi.gv.at/downloadarea/asyl_fremdenwesen_statistik/2006/08/asylstatistik_0806.pdf.

detention with a view to return Sect. 76 FPG (not only asylum seekers)		5902
among which detention under Sect. 76 § 2 FPG	Sect. 76 § 2 no. 1 FPG (expulsion order under Sect. 10 Asylum Act 2005)	188
	Sect. 76 § 2 no. 2 FPG (expulsion procedure opened under Asylum Act 2005)	572
	Sect. 76 § 2 no. 3 FPG (expulsion order or prohibition of residence before application was made)	186
	Sect. 76 § 2 no. 4 FPG (rejection for inadmissibility to be expected)	954
		1900
More lenient measures – Sect. 77 FPG		618

Source: Ministry of the Interior, http://www.bmi.gv.at/downloadarea/asyl_fremdenwesen_statistik/2006/09/fremdenwesenstatistik_0906.pdf

The lastest statistic on numbers of minors in detention is the following:

(1st Jan-31st Dec)	**2002**	**2003**	**2004**	**2005**
- 16 years	58	69	25	11
16–18 (19) years	293	307	250	130

Source: http://www.sosmitmensch.at/static/www/files/schubaftminors_3456_ab_3545_j_xxii.pdf

According to the Ministry of the Interior, 171 minors were in detention pending deportation in 2005, among which 14 persons aged between 14 and 16 years, 157 between 16 and 18 years. In the period between 1st January 2006 and 31st March 2006 there were 52 minors in detention pending deportation, among whom 2 persons aged between 14 and 16 years, 50 between 16 and 18 years.[144]

9. ORGANISATION OF THE SYSTEM OF RECEPTION CONDITIONS

Q.34. Explain if the system of providing reception conditions is centralised or decentralised (which levels of government do provide practically reception conditions?) (do not confuse this question with question number 3 about the competence to make rules about reception conditions).

See Q.10.

[144] Answer of the Minister of the Interior to a parliamentary inquiry, available at http://www.parlinkom.gv.at/pls/portal/docs/page/PG/DE/XXII/AB/AB_04012/FNANAMEORIG_063953.HTML (answer to questions 62 and 63).

Q.35. In case, are accommodation centres public or/and private (managed by NGOs? If yes, are the NGOs financially supported by the State?)[145]

See Q.10.
All federal care facilities are public.

In most Laender there are few small public accommodation centres. Only in Styria and Tyrol accommodation is managed to a large extent by the Government. More frequently care facilities are private (mainly hotels, private pensions, flats), and are managed either by private innkeepers of by NGOs. Such premises are often made available for welfare support because they are situated in remote areas and cannot be used for the purpose of tourism.[146] These premises fall under the category of "organised facilities" in Austria – to be distinguished from private places of asylum seekers who receive reception conditions in money.
Organised facilities are financially supported by the state. They receive a maximum amount of 17,- Euro per day per asylum seeker for providing accommodation and food, as laid down in Art. 19 no. 1 Basic Welfare Support Agreement – the actual amounts paid are laid down in the contracts with the care providers. For the high standard usually granted in facilities run by NGOs, this amount is not adequate and NGOs will have to finance parts of these accommodation centres themselves.
Additional equipment like playgrounds and leisure activities is often financed on donations.

Q.36. In case, how many accommodation centres are there in your Member State (distinguish in your answer between public and private centres)?[147]

There are four federal care facilities, among which two initial reception centres (*Thalham* and *Traiskirchen*). In the Laender there are approximately 600 care facilities.[148]

Statistics do not differentiate between public and private (organised) facilities. The following chart only shows the number of places in organised facilities in comparison with individual private accommodation.

Lower Austria	56 accommodation centres	2100 asylum seekers
Lower Austria	Private apartments	1600 asylum seekers
Burgenland	15 accommodation centres	533 asylum seekers
Vienna	31 accommodation centres	2663 asylum seekers
Vienna	Private apartments	5900 asylum seekers
Carinthia	28 accommodation centres	1200 asylum seekers
Salzburg	19 accommodation centres	720 asylum seekers
Salzburg	Private apartments	200 asylum seekers

[145] To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.
[146] ICF II-Report, p 18.
[147] To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.
[148] Information given by Ministry of the Interior.

Tyrol	22 accommodation centres	1100 asylum seekers
Tyrol	Private apartments	460 asylum seekers
Vorarlberg	40 accommodation centres	750 asylum seekers

Source: ICF II- Report, p 17

Note: This is no complete list, but serves as an example for how much the situation differs between the Laender. Special premises for unaccompanied minor refugees are not included.

Other available numbers specify that in Vorarlberg there are 5 accommodation centres (for more than 40 people) and 220 private facilities (care facilities run by privates and individual accommodation).[149] In Salzburg there are 2 accommodation centres and 17 private facilities.[150] In Tyrol there are 15 public accommodation centres and 6 private guesthouses.[151]

Q.37. Is there in the legislation a plan or are there rules in order to spread the asylum seekers all over the territory of your Member State to avoid their concentration in some areas like big cities or to share the costs of their reception between central, regional and local authorities?

After a positive decision on admissibility, asylum seekers are to be spread among the Laender according to a quota which shall be set in relation to the population of the Laender (currently according to the census of 2001). Other criteria like individual needs of the beneficiary, ethnic particularities, country of origin and family unification are also to be taken into account. This helps to avoid a concentration of asylum seekers in certain areas.[152]

Costs are shared according to the Basic Welfare Support Agreement between the Federation and the Laender at a ratio of 60:40.

The figures which could be gathered on the distribution of asylum seekers between the Laender are the following:

Land	Actual rate	Quota %	Target rate	Compliance with quota %	Deviation from quota
Burgenland	730	3,4554	977	74,70	-247
Carinthia	1.177	6,9639	1.970	59,76	-793
Lower Austria	6.023	19,2434	5.442	110,67	581
Upper Austria	4.718	17,1394	4.847	97,33	-129
Salzburg	1.365	6,4152	1.814	75,23	-449
Styria	3.594	14,73066	4.166	86,27	-572
Tyrol	1.474	8,3843	2.371	62,16	-897

[149] Information given by NGOs.
[150] Information given by NGOs.
[151] Report of the Tyrol Court of Audit on the refugee situation in Tyrol, January 2006, p 22 and 38.
[152] Information given by Ministry of the Interior.

Vorarlberg	914	4,3707	1.236	73,94	-322
Vienna	8.287	19,2971	5.458	151,84	2.829
Total	**28.282**		**28.281**		

Source: Report on the refugee system in Tyrol, issued by the Tyrol Court of Audit, p 16

Q.38. Does a central body representing all the actors (like NGOs) involved in reception conditions exist? Does it play a consultative role for the State authorities, a role for the actors or any other role?[153]

There is no body representing all actors, particularly not NGOs. Asylkoordination plays an important role, because it comprises some of the most important organisations and is a platform of exchange of information and ideas of these organisations and a basis for joint projects. In the Laender, NGOs or private care providers may be involved on an informal basis, depending on the government officials in charge.[154] There is an office responsible for distributing asylum seekers to the Laender (see above at Q.10.), and a Coordination Council, see below Q.39.

Q.39. **Q.39. A. Which is the body in charge of guidance, monitoring and controlling the system of reception conditions as requested by article 23 which is mandatory provision? Include in your answer which is the competent ministry (Interior, Social affairs, etc) for reception conditions?**

For the system of federal care, the Ministry of the Interior is responsible (department for basic welfare support for refugees). All the governments of the Laender have one refugee coordinator or refugee commissioner. These organs are responsible for the administration as well as the monitoring of the reception system in the Laender. In some Laender where reception conditions are organised by the governments directly, they have an immediate control function, in other Laender, where tasks have been outsourced to other institutions like NGOs or to the Fonds Soziales Wien in Vienna, the monitoring function is in fact often also to a large extent taken over by the organisations, according to their contracts with the governments. In most of the Laender, the refugee coordinators are installed in the departments of social affairs. Only in Carinthia and Vorarlberg they belong to the department for internal affairs.

In addition, a Coordination Council for the Federation and the Laender (*Bund-Länder-Koordinationsrat*; Art. 5 Basic Welfare Support Agreement) has been created, which is composed of the Federal Ministry of the Interior and the Refugee Coordinators in the Laender and whose task it is to resolve problems arising from sudden challenges, the

[153] To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.
[154] Information given by NGOs.

interpretation of the Agreement, the allocation of costs and audit, or other extraordinary incidents.

Q.39. B. Has your Member State (like the Czech Republic did recently) approved quality standards (not necessary legally binding) for housing services (for instance about the number of persons per bedroom on the basis of its size, number of accessible toilets, bathrooms, showers and washing machines per number of persons, existence of common rooms with radio, television, newspapers, books, computers, accessibility of telephone, existence of recreative rooms for children,…) to be respected in particular in accommodation centres?[155]

In practice this depends on the Land. There is eg. no catalogue of standards in Vorarlberg, where asylum seekers live mainly in private accommodation and standards are generally high.[156] There is a catalogue of standards in Salzburg, which has been issued by the Government and published on the internet. Other Laender applied (different) standard requirements when they tendered accommodation facilities after entry into force of the Basic Welfare Support Agreement. They applied rationing schemes attributing points for certain conditions (eg. for qualified staff, running water in the rooms, warm meals, the distance to a public school, the existence of television etc).[157]

The Ministry of the Interior reminded that under Art. 6 § 1 of the Basic Welfare Support Agreement accommodation has to be effected in appropriate accommodation facilities, taking into account the respect of human dignity and family unity, and **provided the following list of minimum standards for federal care facilities:**

- Persons belonging to different families should be accommodated separately. This requirement may be departed from temporarily in times of a high number of asylum seekers. In any case, nationality, ethnic group and different religious denominations must be taken into account.
- The Laender have different norms of minimum standards for accommodation facilities. In any case standard equipment must include a bed, mattress, a pillow, a blanket, sheets, a towel, a cupboard, chair and table in proper condition. The landlord is responsible for the cleaning of sheets every 14 days. Sanitary facilities must be made accessible at any time. The cleaning and heating of rooms has to be done as appropriate. In the federal care facilities, cleaning is mostly done by asylum seekers, cleaning implements are being provided.
- There are provisions concerning food, social care, clothing supply etc.
- The company „European Home Care" which was charged with care, meals and social care within the federal care facilities has an internal system of quality

[155] To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.
[156] Information given by NGOs.
[157] Asylkoordination, Report on changes in the federal care system, December 2005, p 13 ff; http://www.asyl.at/fakten_2/studie_aenderungen_bundesbetreuung.pdf

management and quality control. There are detailed and comprehensive organisational schedules and flow charts for administration, accommodation, care and meals. Of course monitoring is done by the head of the care facility and initial reception centre.

- The forms of care provision have to be adapted to particular groups of persons with special needs (eg. pregnant women, minors, mentally disabled persons, physically disabled persons, traumatised persons and victims of violence).
- Private accommodation facilities are being controlled regularly and controls are supposed to be further expanded.

Q.39. C. How is this system of guidance, control and monitoring of reception conditions organised?[158]

The Refugee Coordinators of the Laender are responsible for organising the whole care system, unless they have contracts with NGOs which provide care. They take individual decisions on granting and withdrawal of benefits and have the right to issue instructions vis à vis the management of public accommodation centres or private guesthouses or NGOs providing other benefits on the basis of a contract.

Q.39. D. Does the body in charge of guidance, control and monitoring produce reports about the level of reception conditions? If yes, how frequently and are they public?[159]

There is no information as to whether such reports exist.

The Coordination Council shall issue regular reports concerning the transposition of the Basic Welfare Support Agreement, the first report was supposed to be made on 1st May 2005. The frequency of the issuing of such reports is to be set by the Coordination Council. These reports are apparently not public, since none could be found gathered and was not made available upon request by the Ministry of the Interior.

Q.40. **Q.40. A.** What is the total number of asylum seekers covered by reception conditions for the last year for which figures are available (see article 22 obliging Member States to calculate those statistics about which we also asked the Commission to require them from Member States for mid June)?

The number given by the Ministry of the Interior for 19 May 2006 is 28.364 persons.

Q.40. B. What is the total budget of reception conditions in euro for the last year for which figures are available?[160]

[158] To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.
[159] To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

A total budget cannot be given, because the Laender calculate independently and often benefits granted (like psychological care, schooling for asylum seekers etc) are not cited under the title of care for asylum seekers. The most reliable figure is probably the amount given in the explanatory notes of the Government Bill for the Basic Welfare Support Agreement: the estimated costs of reception conditions amounted to Euro **125.675.660,00**, based on the assumption that 16 000 asylum seekers are in the care system (based on figures of 2002). – In view of the above mentioned number of asylum seekers enjoying reception conditions of course this figure is no longer up to date.

Q.40. C. What is the average cost of reception conditions in euro per asylum seeker for the last year for which figures are available?[161]

The Government Bills for a Basic Welfare Support Act for Burgenland and Upper Austria calculated € 7.300,- per person and year.

Q.40. D Are the costs of reception conditions of asylum seekers supported by the central/federal or federated government or are they shared with regional and/or local authorities?

The costs covered by the federal and local governments are laid down in the Basic Welfare Support Agreement – these are the amounts that are taken as basis when the costs of reception are shared between the Federation and the Laender after an analysis done by the Coordination Council (Koordinationsrat) on numbers of asylum seekers covered by reception conditions at a certain date. The costs incurred during the first year after an application has been made are shared between the Federation and the Laender at a ration of 60:40. If a final decision on the application has not been taken after one year, the Federation has to cover the costs incurred after that time (the reasons for this rule being that the Federation is responsible for the carrying out of the asylum procedure, and is therefore responsible if an application has not been decided within that time). The costs falling at the expense of the Laender are shared between them in proportion to their population.

However, the amounts laid down in the Basic Welfare Support Agreement are also the maximum amounts paid to NGOs in case they are the ones organising reception conditions (eg. Caritas in Vorarlberg, Salzburg, Upper Austria; Diakonie doing legal counselling in Vienna and Lower Austria). Bearing in mind the amount paid (eg. 16 Euro per day for legal counselling, 17 Euro per day for accommodation of asylum seekers per person) it is to be assumed that these NGOs cannot operate without co-financing reception conditions.

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[160] To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

[161] To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

Q.40. E. Is article 24 § 2 of the directive following which "*Member States shall allocate the necessary resources in connection with the national provisions enacted to implement this directive*" respected?[162]

According to the information given by the Ministry of the Interior, the personal and financial resources necessary to provide reception conditions to asylum seekers have been allocated. The costs of all measures are shared between the Federation and the Laender according to the Basic Welfare Support Agreement. The maximum amounts paid to NGOs which provide accommodation, care or counselling are also calculated upon these provisions, but finally accorded with them by means of contracts under private law. The competitive situation on the market thus created for NGOs granting reception conditions urges NGOs to conclude contracts on the basis of terms, under which they could not keep the high standard currently achieved. Counselling is eg. provided for by the Agreement at a ration of one counsellor per 170 asylum seekers (Art. 9 no. 9 Basic Welfare Support Agreement). The amount paid to organisations providing organised accommodation and food may amount to a maximum of 17,- Euro per person per day (Art. 9 no. 1). Apparently European Homecare tendered 12,90 Euro per day per person when it won the contract to provide accommodation, food, care and counselling in the federal care facilities.[163] It should be added that higher amount are being paid to organisations if they are providing special forms of accommodation creating higher expenses, eg. for unaccompanied minors. Care measures granted by NGOs are co-financed by them and joint projects; see also what has been said regarding psychotherapy for persons with special needs, special conditions for minors and other specially vulnerable groups (above at Q.30.B).

Q.41. **Q.41. A.** What is the total number of persons working for reception conditions? [164]

A total number cannot be given because different forms of reception conditions not only shared by the Federation and the Laender, but are often provided by NGOs on the basis of contracts with the federal entities or on their own initiative.
For the Federation, about 114 persons are working in four federal care facilities and two initial reception centres. This number does not include the personnel of European Homecare.

Q.41. B. How is the training of persons working in accommodation centres organised? Does it take into account specific needs of unaccompanied minors when relevant as well

[162] To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.
[163] see the article "Österreich: Versorgung und Unterbringung von Asylsuchenden" of September 2003 in the German journal „Migration und Bevölkerung", at:
http://www.migration-info.de/migration_und_bevoelkerung/artikel/030703.htm.
[164] To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

as the gender dimension? (see article 14 §5, 19 § 4 and also 24 §1 which are mandatory provisions)?[165]

There is no compulsory training foreseen in legislation.

The Federation obliged people in charge of social care to attend at least one seminar in the first half of 2006. It offers a series of seminars on criminal law, intercultural communication strategies, methods of de-escalation and seminars providing knowledge on specific groups of refugees (eg. Chechens who are a relatively large group in Austria).[166] The Ministry of the Interior informs that European Homecare which is responsible for providing reception conditions in the initial reception centres, has had experience in social care for many years and extensive quality management.

Apparently persons working with minors must have a special pedagogical education.[167] NGOs which run care facilities or provide social care in public facilities have multi-professional trained staff of both genders. Some operators of care facilities offer training for their staff, but generally there is no training, especially for innkeepers that run private facilities and their personnel. Regional training in the Laender is not provided.[168]

Q.41. C. Are there rules about the deontology of persons working in accommodation centres, in particular on confidentiality?[169]

There are no general rules of deontology, unless they are applied by NGOs on their staff. Public service employees have to keep information gathered confidential under the Constitution and the Data Protection Act 2000. Operators of care facilities working on the basis of a contract with the Federation must oblige their personnel to observe confidentiality according to Sect. 4 § 2 of the Federal Basic Welfare Support Agreement. Similar provisions exist in all of the Laender.[170]

10. IMPACT OF THE DIRECTIVE

Legal impact of the transposition of the directive:

Q.42. Specify if there are or not big problems with the translation of the directive in the official language of your Member State and give in case a list of the

[165] To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.
[166] Information given by Ministry of the Interior.
[167] Information given by NGOs.
[168] Information given by NGOs and ICF II-Report, p 20.
[169] To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.
[170] Burgenland Sect. 3 § 4, Carinthia Sect. 2 § 7, Lower Austria Sect. 24 § 5, Styria Sect. 6 § 2, Tyrol Sect. 3, Upper Austria Sect. 1 § 3, Vienna Sect. 4 § 5, Vorarlberg Sect. 17 § 2.

worst examples of provisions which have been badly translated? (please note that this question has in particular been added to the questionnaire concerning the new Member States)

Apart from the possible differences in meaning in the expression "zuweisen", where the English version speaks of "confinement" in Art. 7 § 3 of the Directive, no significant problems with the translation of the directive into German can be stated.

Q.43. Where there precise legal rules on reception conditions for asylum seekers before the adoption of the norms of transposition of the directive (if yes, specify what the nature of those rules was (legislation, regulation, administrative instructions,…)?

The Federal Care Provision Act was issued in 1991 (FLG 405/1991) and is still the basis of the Federal Welfare Support Act. The name and the content (notably the legal entitlement to benefits is new) have been changed at the occasion of the transposition of the Welfare Support Agreement concluded with the Laender.

Q.44. Did the legal rules applicable to reception conditions become more clear, precise, coherent or detailed with the adoption of the transposition norms (for instance do you now have after the transposition one basic text dealing with reception conditions instead of numerous different texts in the past?

The legal rules did on the one hand become more clear and precise, on the other hand the system of burden sharing between the Federation and the Laender did make the situation more complicated. The system as it stands might be considered useful and adequate for the moment to guarantee reception conditions in practice, but there are still loopholes and major inequalities in the treatment of asylum seekers).

Q.45. Did the transposition of the directive imply important changes in national law or were the changes of minor importance? In case, list the most important changes that have been introduced.

There have been significant changes in national law, which were basically made before the time frame set by the Directive. Major changes were introduced already in 2004 into the Federal Care Provision Act (FLG I 32/2004). Under the Basic Welfare Support Agreement there is now a clear distribution of responsibilities between the federal entities and a list of benefits they are obliged to guarantee. All the Laender have now, if not enacted, at least foreseen legislation to guarantee these benefits.

Some provisions are included in the Asylum Act 2005 or the Aliens Police Act, which have been completely renewed in 2005 (Aliens Law Package; Fremdenrechtspaket, see FLG I 100/2005). The new legislation made the whole system of aliens law more

restrictive, taking into account not only the present, but above all also other EG-directives in the field.

Political impact of the transposition of the directive:

Q.46. Explain briefly if there has been an important debate about the transposition of the directive (in particular in the Parliament, but possibly also in the government, between political parties, including in medias, etc; underline in case the main points which have been discussed or have created difficulties)

There has been an important debate about granting reception conditions to asylum seekers in general, which has started already before the transposition of the Directive was due. The significant rise in asylum seekers starting in the end of the 1990ies, that reached its high in 2002 (see the chart below), was not accompanied by an adequate rise in accommodation organised by the Federation and the Laender, leaving a large number of asylum seekers in homelessness and dependant on care and support from NGOs. NGOs complained every winter about high numbers of homeless asylum seekers who could not get a place in federal or Laender care.[171] Since according to the repartition of competences under the Austrian Constitution the Laender are basically responsible to take care of people in need of support, the Federation urged them to make more efforts to take asylum seekers into their care and issued an administrative directive in October 2002 prescribing that basic benefits be refused to asylum seekers coming from certain countries (eg. Nigeria, Georgia, Armenia)[172]. Often asylum seekers were dismissed from care facilities because they were accused of having lodged asylum applications for reasons which would not entitle them to the asylum status (*asylfremde Motive*). In January 2003 the High Court issued a decision stating that asylum seekers had the right to be taken into federal care if they fulfilled the criteria laid down by law.[173] In October 2003 the Minister of the Interior issued a regulation stating that care facilities could only be created with prior consent of the mayors of the municipalities in question. Due to the

[171] Eg. in 2001 UNHCR Press Release of 21 November 2001, at http://www.unhcr.at/index.php/cat/17/aid/247; in 2002 see eg. the yearly report of Caritas Vienna for the year 2002, p 27, at http://www.caritas-wien.at/div/caritas_ed_wien_jahresbericht_2002.pdf; Falter (newspaper) of 27 November 2002, under the title "Mittellos, würdelos", at http://www.falter.at/print/F2002_48_3.php; for the year 2003 see the letter of the NGO Asylkoordination of 22nd December 2003 addressed to the Federal Chancellor, at http://www.asyl.at/projekte/existenzsicherung/existenzsicherung_16.htm; Caritas Upper Austria, Press Release of 14 October 2003, at http://www.dioezese-linz.at/redaktion/index.php?action_new=Lesen&Article_ID=2123.

[172] UNHCR Press Release of 29 January 2003, see http://www.unhcr.at/index.php/cat/17/aid/547.

[173] At the time asylum seekers were not granted a right to reception conditions under the Federal Care Act, and decisions were not taken under the Administrative Procedures Act. The High Court ruled that the equality principle laid down in the Austrian Constitution was applicable coming to the said result that asylum seekers could not be excluded for other reasons than those laid down by law (see OGH 24 February 2003, 1Ob272/02k).

strong opposition of the local authorities, the creation of new care facilities for asylum seekers was severely blocked.[174]

The conclusion of the Basic Welfare Support Agreement was considered a success in the parliamentary discussion and met the approval of the three big parties in Parliament[175] in the ballot of 24 March 2003. The Greens had voted in favour of the Agreement in the Parliamentary Committee on Internal Affairs, but finally opposed the Government Bill in the ballot and criticised that the sums of money determined for the respective welfare support benefits could not suffice to meet an asylum seeker's basic needs.[176] Negotiations between the Federation and the Laender had concentrated not only on the repartition of the financial burden of reception conditions, but also on the amount of asylum seekers to be taken into the care of the Laender.

The Minister of the Interior emphasised that the number of accommodation places had significantly increased and that all asylum seekers were finally taken into federal care. He referred to the Directive underlining that Austria was one year ahead of the deadline for the implementation of the Directive and that finally a consistent care system throughout the county was created, which would allow closing the gap in accommodation mourned by NGOs.[177] However, the Minister did not take into account that the Federal Care Act was not designed to be the basis of welfare support for the future, but much would depend on the implementation of the Basic Welfare Support Agreement in the Laender. Since the Basic Welfare Support Agreement had been concluded on the basis of 16.000 asylum seekers to be taken into care, the places available in the Laender were insufficient in view of the numbers of asylum seekers which had been much higher than the calculated 16.000 already in 2001. Some Laender regularly stopped accepting newly arrived asylum seekers and Carinthia considered cancelling the Agreement, but finally refrained from doing so.[178] In October 2004 – after the Basic Welfare Support Agreement had entered into force – the situation was still precarious, particularly because the opposition in the municipality of Traiskirchen – which hosts a large initial reception centre and federal care facility – against the high numbers of asylum seekers accommodated there was rising. When numbers of asylum seekers within the care system started to go down again, the situation relaxed a little. Today – due to a rise in places of accommodation, but in particular due to falling numbers of applications for international protection – the places available in ordinary care facilities seem sufficient for the moment. However, there are no big emergency capacities available for cases of unexpected accommodation shortages. The problems in the factual implementation of reception conditions, particularly in the fields of information, social care and medical care for persons with special needs have been demonstrated in the above questions.

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[174] Asylkoordination, Report on Changes in federal care support, p 18, available at http://www.asyl.at/fakten_2/studie_aenderungen_bundesbetreuung.pdf

[175] Austrian People's Party, Austrian Social Democrat Party, Freedom Party.

[176] Mag Stoisits, 24 March 2004, Minutes of the 55th Parliamentary Session, p 102 ff, at http://www.parlament.gv.at/pd/steno/PG/DE/XXII/NRSITZ/NRSITZ_00055/SEITE_0102.html?P_PM=SEITE_0102.

[177] Minister of the Interior Dr Strasser, 24 March 2004, Minutes of the 55th Parliamentary Session, p 120 et seqq. at http://www.parlament.gv.at/pd/steno/PG/DE/XXII/NRSITZ/NRSITZ_00055/SEITE_0120.html?P_PM=SEITE_0120.

[178] Asylkoordination, Report on Changes in federal care support, p 17 f.

1990	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005
22.789	5.920	6.991	6.719	13.805	20.129	18.284	30.127	39.354	32.359	24.676	22.461

Source: http://www.unhcr.at/index.php/cat/14/aid/1760

Q.47. **Did the transposition of the directive contribute to make the internal rules stricter or more generous? In particular, did your Member State use the occasion of the transposition to abolish more favourable provisions of national law? Does your Member State still have rules more favourable than the provisions of the directive (if yes, try to give the more important examples).**

There were no provisions more favourable in legislation concerning reception conditions. However, while asylum seekers were according to the Federal Care Provision Act legally entitled to benefits under the care system, there is no such entitlement now in Laender which have failed to provide for it in their legislation.
In addition, employment legislation has changed in a way that it now requires an alien to have a right to establishment to obtain a more favourable work permit. These changes have excluded asylum seekers form obtaining such work permits. Although even under the earlier legislation, more favourable work permits were hardly ever granted to asylum seekers, the fact that they were considered "available" on the labour market opened the possibility for them to be granted access to unemployment benefits and vocational training. Apparently there are still a lot of cases before the authorities today, where interest groups of employees are trying to make sure that such benefits be granted to their clients.[179] These options have now been factually excluded.

11. ANY OTHER INTERESTING ELEMENT

Q.48. What are in your view the weaknesses and strengths of the system of reception conditions in your Member State?[180]

Weaknesses stated by NGOs lie within the fact that there are no nationwide standards for reception conditions and that the system lacks transparency. There are especially different standards in the field of training of staff of accommodation facilities, financial allowances to asylum seekers, social and legal counselling of asylum seekers and offers for vulnerable groups.[181]

[179] Information given by a member of the Upper Austrian Chamber of Labour.
[180] To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.
[181] Information given by NGOs.

Q.49. Mention any good practice in your Member State which could be promoted in other Member States[182]

The Ministry of the Interior emphasises that at least three Laender (Tyrol, Vienna and Vorarlberg) have created special accommodation facilities for single women (with or without children) or accommodate these persons in shared facilities for women or centres for women with children (which have been created not only for asylum seekers). The other Laender try for a separate accommodation of women, too. A special accommodation facility for women exists also in the initial reception centre *Ost* in Traiskirchen
As far as medical care is concerned, there is a ward in the initial reception centre as well, where four general practitioners are working. Moreover there are four specialists trained in psychiatry. Projects of NGOs provide an accommodation facility for women and one for unaccompanied minors and offer psychotherapeutic and social care there.

In general, it can be said that the projects run by NGOs (often co-financed also by the Federal or Laender Government and the European Refugee Fund) provide an indispensable care at a very high standard. This accounts for social counselling in accommodation facilities and to aliens in detention as well as to psychiatric treatment for victims of torture and other traumatised persons. Several of these projects have also been mentioned as models of good practice in the Final Report of the European Open Forum on Reception and Health Care of Asylum Seekers in Vienna, in January this year.

Q.50. Please add here any other interesting element about reception conditions in your Member State which you did not had the occasion to mention in your previous answers.

It seems that Länder did not consider to transpose the Directive, but focussed on the transposition of the Basic Welfare Support Agreement, and have tried to adapt it to their ideas of policy vis-à-vis asylum seekers eg. in the areas of withdrawal of benefits. The Laender which have always had contracts with NGOs and obviously envisaged to do so further on have not put much emphasis on the integration of basic requirements in legislation, but have decided to set standards in their contracts with care-providers.

Sources of Information:

ICF II-Report, Country profile Austria. Report done by the Asylkoordination for ICF (Information and Consultation Forum), update by January 2006
available at: http://www.asyl.at/projekte/icf2_laenderbericht.pdf

Report of the Tyrol Court of Audit on the refugee situation in Tyrol, January 2006,

[182] To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

available at:
http://www.tirol.gv.at/fileadmin/www.tirol.gv.at/landtag/landesrechnungshof/downloads/berfluechtlingswesen-in-tirol.pdf

Statistics in Asylum and Aliens affairs for the year 2005, edited by the Austrian Ministry of the Interior; available at:
http://www.bmi.gv.at/downloadarea/asyl_fremdenwesen_statistik/Jahr2005.pdf

Report 2005 on the care facility for women, by SOS Menschenrechte, 15.11.2004-15-12-2005
available at:
http://www.sos.at/Download/Jahresbericht%20Haus%20der%20Frauen%202005.pdf

Report on the Situation of fundamental rights in Austria in 2005, submitted to the EU Network on Independent Experts on Fundamental Rights (CFR-CDF) by Manfred NOWAK, Constanze PRITZ, Birgit WEYSS and Alexander LUBICH, December 15, 2005
available at: http://www.univie.ac.at/bim/php/bim/get.php?id=255

The information given in this study is to a large extent based on telephone and personal interviews, practical reports answered as well as documents and reports provided by members of Austrian NGOs, local governments, public and other institutions to who I would like to express my gratitude for providing valuable information and contributing to the completion of this report.

NATIONAL REPORT DONE BY THE ODYSSEUS NETWORK FOR THE EUROPEAN COMMISSION ON THE IMPLEMENTATION OF THE DIRECTIVE ON RECEPTION CONDITIONS FOR ASYLUM SEEKERS IN: (Belgium)

22 juin 2007

By

Sylvie SAROLEA, *Chargée de cours à l'U.C.L., Avocate au Barreau de Nivelles*

sylvie.sarolea@int.ucl.ac.be

1. NORMS OF TRANSPOSITION

Q.1. **Identify the main norm of transposition (indicate the title, date, number, date of entry into force and references of publication into the official journal) and indicate its legal nature (legislative, regulatory, administrative); indicate in your answer if this norm was only devoted to the directive or if it has been included in a more general text and indicate in that case by quoting precisely the numbers of the provisions adopted to transpose the directive.**

Une **première** loi intitulée « loi du 12 janvier 2007 sur l'accueil des demandeurs d'asile et de certaines autres catégories d'étrangers » (ci-dessous loi « accueil ») a été publiée au Moniteur belge le 7 mai 2007.

Un arrêté royal du 9 avril 2007 détermine la date d'entrée en vigueur de la loi « accueil ». Les dispositions qui ne sont pas liées à l'entrée en vigueur de la nouvelle procédure d'asile sont entrées en vigueur à dater de la publication au Moniteur belge, à savoir le 7 mai 2007 (article 1er). Par contre les dispositions liées à la nouvelle procédure d'asile entreront en vigueur le 1er juin, date d'entrée en vigueur de la nouvelle procédure d'asile (article 2).

Une **deuxième** loi intitulée « loi du 21 avril 2007 modifiant le Code judiciaire en ce qui concerne les contestations relatives à l'octroi, à la révision et au refus de l'aide matérielle » (ci-dessous loi « modifiant le Code judiciaire » a également été publiée au Moniteur belge le 7 mai 2007.

Cette loi est entrée en vigueur le 7 mai 2007 (article 4).

Il s'agit de lois adoptées par les autorités fédérales. Elles concernent uniquement la transposition de la directive « accueil ».

Elles font partie d'un ensemble de projets de lois destinés à :
- réformer la procédure d'asile,
- prévoir un mécanisme de protection subsidiaire,
- transposer la directive regroupement familial ;
- et la directive « accueil ».

Cette réforme globale justifie selon l'exposé des motifs de la loi « accueil » le retard de transposition. « *La directive devait être transposée en droit belge pour le 6 février 2005 au plus tard (article 26 de la directive). Dans un souci de clarté, on a choisi de lier le présent projet de loi à celui relatif à la réforme de la procédure d'asile, ce qui explique le dépassement du délai de transposition* » (exposé des motifs, p. 1).

La directive confirme pour partie le système appliqué avant son entrée en vigueur, à savoir l'accueil des candidats réfugiés en centres ouverts. Le projet ne concerne que ce type d'accueil et non la détention de certains candidats réfugiés en centres fermés.

Certaines dispositions de la directive sont transposées par des autres projets, mais la plupart des articles transposant la directive accueil figurent dans la loi « accueil ».

La loi « accueil » ne concerne que les mesures de transposition qui entrent dans les compétences du Ministre fédéral de l'Intégration sociale. Certaines mesures ressortent à la compétence du Ministre fédéral de l'Intérieur, de l'emploi ou des communautés et régions (scolarisation et éducation des mineurs (Communautés), formation professionnelle (Régions).

Q.2. **<u>List by order of importance by using numbers (1, 2, 3) the others norms of transposition</u> if there are more than one (indicate for each norm the title, date, number and references of publication into the official journal; include in your answer the administrative measures taken to ensure implementation of the directive and of the transposition norms like regulations, administrative circulars, special instructions,…)**

- **Put as an annex to your report a paper copy of each norm in the original language with a reference number to help the reader to find it easily;**

- **Send us as an electronic version of each norm or a weblink to the text (this will be used for the website we are building);**
- **Provide the texts of any translation of the above norms into English if they are available.**

La transposition – très - partielle a été assurée dès 2005 par un arrêté royal du 3 février 2005 modifiant l'arrêté royal du 8 octobre 1981 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers, entré en vigueur le 8 février 2005. L'article 1er de cet arrêté royal qui ne compte que trois articles supprime le délai de huit jours ouvrables qui figurait dans l'article 73 de l'arrêté royal du 8 octobre 1981 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers. Cette disposition concerne la remise aux candidats réfugiés de l'annexe 26 qui est le document attestant de l'introduction de la demande de reconnaissance de la qualité de réfugié.

Le Conseil d'Etat, dans son avis, a souligné que le projet de loi « accueil » n'assurait pas la transposition totale de la directive. « *1.3. Il découle des observations qui précédent que le projet de loi déposé devant les chambres législatives n'assurera pas la transposition complète en droit belge de la directive 2003/9/CE. Si, bien entendu, rien ne s'oppose à ce qu'une directive soit transposée en droit interne par plusieurs instruments juridiques, il convient toutefois de veiller à ne pas présenter une transposition partielle comme étant complète* ».

Le dispositif d'accueil d'application (avant l'entrée en vigueur de la loi « accueil ») est fondé sur diverses bases légales :

> - la loi du 8 juillet 1976 organique des centres publics d'action sociale ;
> - la loi-programme du 19 juillet 2001 (base légale de l'Agence FEDASIL), telle que modifiée par les lois-programmes du 22 décembre 2003 et du 27 décembre 2004) ;
> - la loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers.

Il n'est pas fort éloigné du prescrit de la directive, ce qui a sans doute rendu la transposition moins urgente que dans d'autres Etats membres. La loi « accueil » vise non seulement la transposition mais aussi une coordination des textes. L'avis de la section de législation du Conseil d'Etat souligne que le projet a pour objectif, outre la transposition de la directive accueil, d'assurer la coordination des textes et de préciser « *au regard de la directive 2003/9/CE, les dispositions de droit interne déjà actuellement en vigueur, notamment en ce qui concerne, d'une part, les diverses composantes de l'aide matérielle déjà actuellement octroyée aux*

demandeurs d'asile dans des structures d'accueil gérées par ou sous le contrôle de l'Agence créée par l'article 60 de la loi-programme du 19 juillet 2001 et, d'autre part, les droits et obligations liés à cette aide matérielle et ce, tant dans le chef du demandeur d'asile lui-même, que de l'Agence, des partenaires de l'accueil et des membres du personnel des structures d'accueil ».

Q.3. **Explain <u>which level of government</u> is competent to adopt the legal norms on reception conditions for asylum seekers (specify in particular in case of a federal or regional State, if it is the federal/central power or the components; in case, specify below when it is impossible for you to answer a question because it is about the competence of the components and it is impossible for you to gather reliable information about all of them)**

Le législateur fédéral est compétent en ce qui concerne :

- l'accueil des demandeurs d'asile, c'est à dire la détermination du mode d'accueil, en l'occurrence la création de centres ouverts où est dispensée l'aide matérielle, la réglementation de l'aide sociale financière pour les candidats réfugiés qui y ont droit ;
- la délivrance des documents de séjour ;
- l'aide médicale ;
- l'aide juridique ;
- l'aide sociale dans les centres ;
- le droit au travail de certains candidats réfugiés ;
- la tutelle sur les mineurs étrangers non accompagnés.

Les communautés (entités fédérées) sont compétentes en ce qui concerne l'aide à la jeunesse et la scolarisation des mineurs d'âge (compétences en matière d'aide à la jeunesse en vertu de l'article 5, § 1er, II, 6° de la loi spéciale de réformes institutionnelles du 8 août 1980).

Les régions sont compétentes en ce qui concerne la formation professionnelle des majeurs (articles 4 et 6, § 1er, IX de la loi spéciale de réformes institutionnelles du 8 août 1980).

En matière d'accueil, les compétences sont dévolues à une agence spécialisée, l'Agence fédérale pour l'accueil des demandeurs d'asile.

Le Ministre compétent est le Ministre qui a l'Intégration sociale dans ses attributions, et dont relève l'Agence fédérale pour l'accueil des demandeurs d'asile.

Le livre IV de la loi « accueil » définit le statut, les missions et les compétences de l'agence.

Il s'agit d' « *un organisme public doté de la personnalité juridique* ». Sa structure, son organisation et son fonctionnement devront être déterminés par arrêté royal.

L'article 56 indique que « *l'Agence a notamment pour mission d'assurer l'organisation, la gestion et le contrôle de la qualité de l'aide matérielle octroyée aux bénéficiaires de l'accueil* » et qu'elle « *peut octroyer des subventions en relation avec ses missions* ».

Elle est notamment chargée de :

- l'octroi de l'aide matérielle aux bénéficiaires de l'accueil au sein des structures d'accueil communautaires qu'elle gère ;
- le contrôle de l'exécution des conventions relatives à l'octroi de l'aide matérielle aux bénéficiaires de l'accueil avec les partenaires ;
- la désignation, la modification et la suppression du lieu obligatoire d'inscription;
- l'organisation du paiement d'une allocation journalière et de la prestation de services communautaires ;
- la transition en cas de transfert d'une structure d'accueil vers un C.P.A.S. ;
- de la coordination du retour volontaire des demandeurs d'asile et des autres étrangers ;
- de l'octroi de l'aide matérielle aux mineurs non accompagnés dans le cadre de la phase d'observation et d'orientation ;
- de l'octroi de l'aide matérielle aux mineurs séjournant avec leurs parents illégalement sur le territoire et dont l'état de besoin a été constaté par un centre public d'action sociale, lorsque les parents ne sont pas en mesure d'assumer leur devoir d'entretien ;
- l'agence est l'autorité responsable pour le Fonds européen des réfugiés.

Il est prévu, comme le fait aujourd'hui FEDASIL, que l'Agence peut conclure des conventions visant à confier à des partenaires la mission d'octroyer aux bénéficiaires de l'accueil le bénéfice de l'aide matérielle. Il s'agit notamment de la Croix-Rouge de Belgique, d'autres autorités, les pouvoirs publics et les associations (article 62).

Q.4. **Explain the <u>legal technical choices done to transpose the directive</u> (comment on the nature and level of the norms used to do the transposition: legislative, regulatory, administrative like instructions, etc). Add any other element about the technique of transposition of the**

directive which is interesting for the implementation of Community law.

La directive est transposée par des lois adoptées au niveau fédéral. L'adoption d'une loi permet aux étrangers de se prévaloir du respect de celle-ci devant les tribunaux. Néanmoins, la loi « accueil » contient beaucoup de renvois à des arrêtés royaux ultérieurs qui détermineront la portée exacte des droits garantis (voir question 6).

Q.5. **Mention if there is a general tendency to just copy the provisions of the directive into national legislation without redrafting or adaptation them to national circumstances? If yes, give some of the worst examples and explain if there is a risk that those provisions remain unapplied or will create difficulties of implementation in the future.**

Non pas nécessairement, puisqu'un système d'accueil est confirmé et des droits et obligations sont consacrés.

Q.**6.** **Have all the texts necessary to ensure the effective implementation of the new rules of transposition been adopted, prepared or at least foreseen in the future (for example a regulation completing a new law and the necessary instructions telling the administration how to apply the new rules)?**

Certains articles de la loi « accueil » réfèrent à un ou des arrêté[s] royal[aux] qui devra[ont] être adopté[s] après l'entrée en vigueur de la loi.

Cet arrêté royal [ou ces arrêtés royaux] devrai[en]t normalement déterminer :

- le délai dans lequel un centre public d'action sociale peut être désigné comme lieu obligatoire d'inscription en aide financière si une décision sur la demande d'asile n'a pas encore été prise par le Commissariat général aux réfugiés et aux apatrides ou par le Conseil du Contentieux des étrangers (article 11) ;

- l'aide et les soins médicaux qui, bien que repris à l'article 35 de la loi relative à l'assurance obligatoire soins de santé et indemnités coordonnée le 14 juillet 1994, ne sont pas assurés au bénéficiaire de

l'accueil en ce qu'ils apparaissent comme manifestement non nécessaires, et, d'autre part, l'aide et les soins médicaux relevant de la vie quotidienne et qui bien que non repris dans la nomenclature précitée sont assurés au bénéficiaire de l'accueil (article 24);

- le code de déontologie appliqué aux membres du personnel (article 50) ;

- le programme d'aide au retour volontaire proposé par les structures d'accueil (article 54) ;

- la structure, l'organisation et le fonctionnement de l'Agence fédérale pour l'accueil des demandeurs d'asile (article 55) ;

- les normes de qualité applicables aux structures d'accueil (article 17) ;

- le régime et des règles de fonctionnement au sein des structures (règlement d'ordre intérieur établi par le Ministre) (article 19) ;

- la limitation de l'accès aux structures d'accueil aux conseillers juridiques, aux représentants du H.C.R. et des ONG à des fins de sécurité (article 21) ;

- les modalités d'évaluation de la structure d'accueil désignée, au regard des besoins spécifiques du demandeur d'asile (article 22) ;

- les modalités de conclusion par Fedasil de conventions avec des établissements de soins ou des établissements spécialisés (soins de santé ou établissement de soins psychiatriques) (articles 26 et 30) ;

- les qualifications requises dans le chef des travailleurs sociaux (article 31) ;

- les montants relatifs à l'allocation journalière (article 34) ;

- les règles de fonctionnement des centres d'observation et d'orientation pour les mineurs non accompagnés (article 40) ;

- les modalités de passage de l'aide matérielle vers l'aide financière (article 43) ;

- le régime des mesures d'ordre: nature, modalités d'application et procédure et autorités habilitées à les prendre (article 44) ;

- les règles de procédure applicables aux sanctions (article 45) ;

- l'entrée en vigueur de la loi (article 74).

A l'heure actuelle, seuls cinq arrêtés royaux ont été publiés au Moniteur belge. Il s'agit :

- arrêté royal du 1er avril 2007 relatif à l'argent de poche visé à l'article 62§2 bis de la loi-programme du 19 juillet 2001(Moniteur belge, 18 avril 2007) ;

- arrêté royal du 9 avril 2007 déterminant l'aide et les soins médicaux manifestement non nécessaires qui ne sont pas assurés au bénéficiaire de l'accueil et l'aide et les soins médicaux relevant de la vie quotidienne qui sont assurés au bénéficiaire de l'accueil (Moniteur belge, 7 mai 2007) ;

- arrêté royal du 9 avril 2007 déterminant le régime et les règles de fonctionnement applicables aux centres d'observation et d'orientation pour les mineurs étrangers non accompagnés (Moniteur belge, 7 mai 2007);

- arrêté royal du 9 avril 2007 déterminant la date d'entrée en vigueur des dispositions de la loi « accueil » (Moniteur belge, 7 mai 2007) ;

- arrêté royal du 25 avril 2007 déterminant les modalités de l'évaluation de la situation individuelle du bénéficiaire de l'accueil (Moniteur belge, 10 mai 2007).

D'autres arrêtés royaux sont en préparation.

De plus, certaines dispositions qui n'entrent pas dans les attributions du Ministre fédéral de l'Intégration sociale n'ont pas encore fait l'objet d'une transposition (voyez Q.3).

2. BIBLIOGRAPHY

Q.7. Has an in-depth preparatory study been made public about the changes at the occasion of the transposition? If yes, thanks for trying to provide us a copy (please contact to answer this question adequately the body and person who was responsible for the preparation of the transposition of the directive in the public administration).

La loi « accueil » et la loi « modifiant le Code judiciaire » viennent d'être publiées au Moniteur belge ce 7 mai 2007.

Les travaux préparatoires de ces lois peuvent être consultés.

De plus, l'agence fédérale pour l'accueil des demandeurs d'asile a réalisé en 2004 une étude juridique sur l'accueil des demandeurs d'asile au regard de la directive européenne 2003/9/Conseil d'Etat (http://www.fedasil.be/home/attachment/i/2811).

Une autre étude avait été réalisée par l'European Migration Network Belgium en 2005, intitulée « Reception Systems : their Capacities and the Social Situation of Asylum Applicants within the Reception System in the EU Member States ». Cette étude concerne toutefois le système actuel et pas les projets de réforme actuellement en cours de préparation.

Q.8. Quote any recent scientific book or article published about the directive, the transposition rules or the question of reception conditions for asylum seekers in general (answer even if this literature is only available in your language and provide the complete title in your language (without translation) with all references; indicate author, title, in case name of periodical, year and place of publication).

Rien n'a encore été publié sur les nouvelles lois transposant la directive.

Q.9. Quote any interesting decision of jurisprudence based on the implementation of the new rules of transposition of the directive (indicate references of publication if any)?

Les nouvelles lois transposant la directive viennent d'être publiées au Moniteur belge. Il n'y a donc pas encore de jurisprudence relative à celle-ci.

3. GENERAL INFORMATION ABOUT THE SYSTEM OF RECEPTION CONDITIONS

The purpose of the following two questions is to help the reader to understand easily and quickly the system of reception conditions in your Member State and also to avoid that you have to repeat general elements in other parts of the questionnaire. ***Please do not write more than one or maximum two pages and do not include large historical developments.***

Q.10. Describe in general the system of reception conditions in your Member State (in particular which are the main actors in charge of reception conditions?)

L'accueil des candidats réfugiés tel que présenté par la loi « accueil » est principalement assuré dans des structures d'accueil : soit centres ouverts soit logements privatifs. Il ne doit pas masquer que de nombreux candidats réfugiés sont aussi retenus en centre fermé pendant la procédure d'asile (voyez ci-après).

La réforme de la procédure d'asile qui fond les deux phases de la recevabilité et du traitement au fond en une seule phase a des conséquences sur l'organisation de l'accueil. Tant qu'il y avait une distinction entre la procédure en recevabilité et la procédure au fond, les candidats réfugiés étaient pour l'essentiel accueillis en centres ouverts pendant la procédure de recevabilité et recevaient l'aide d'un centre public d'action sociale ou pouvaient travailler pendant la phase de l'examen au fond. La réforme vise à ce que l'accueil se fasse en centre – ouvert dans la plupart des cas mais aussi fermés dans davantage de cas qu'à l'heure actuelle - pendant toute la procédure.

L'accueil est géré par l'Agence fédérale pour l'accueil des demandeurs d'asile, plus communément appelée FEDASIL (http://www.fedasil.be/). Elle coordonne la répartition des candidats réfugiés entre différentes structures d'accueil.

Q.11. Q. 11 A. Explain if you have different types and levels of reception conditions following the different stages of the asylum

procedure (this implies that you have to give briefly the necessary explanations about the asylum procedure). Make if relevant for reception conditions a distinction between the following procedural stages: determination of the responsible Member State on the basis of the Dublin II regulation, special procedures at the border (including transit zones in airports), accelerated procedures, admissibility procedures, eligibility procedures and the different possibilities of appeals (suspensive or not) against a refusal of the asylum request. Indicate what the main differences of reception conditions are between the different stages (if necessary by detailing between the different elements of reception conditions, in particular housing) and explain what the evolution of reception conditions is following the different stages of the procedure.

La procédure d'asile a été réformée par deux lois du 15 septembre 2006 (loi du 15 septembre 2006 modifiant la loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers, *M.B.* 6 octobre 2006 et loi du 15 septembre 2006 réformant le Conseil d'Etat et créant un Conseil du contentieux des étrangers, *M.B.* 6 octobre 2006). La nouvelle procédure d'asile est entrée en vigueur le 1er juin 2007.

Avant le 1er juin 2007, la procédure d'asile comptait trois phases.

1. La détermination de l'Etat responsable (Dublin)

L'Office des étrangers, sur la base des critères communs, se prononce, dans les trois mois de l'introduction de la demande, sur la compétence des autorités belges. Si l'Etat belge est compétent, la procédure se poursuit en Belgique. Dans le cas contraire, la Belgique peut requérir de l'Etat compétent qu'il prenne en charge le candidat réfugié. Un recours peut être introduit contre la décision de l'Office des étrangers auprès du Conseil d'Etat.

2. La recevabilité

Cette phase détermine l'accès à la procédure. Elle vise à statuer sur l'entrée sur le territoire belge ou sur la régularité du séjour sur le territoire belge si l'intéressé s'y trouve déjà. Il s'agit pour l'essentiel, outre certains motifs techniques de refus d'accès, d'examiner si la demande de reconnaissance de la qualité de réfugié n'est pas manifestement non fondée.

L'autorité compétente est l'Office des étrangers. Un recours contre une décision négative de l'O.E. est ouvert auprès du Commissaire général aux réfugiés et aux apatrides, il s'agit du "recours urgent" qui comporte un effet suspensif. La décision du C.G.R.A. peut être contestée auprès du Conseil d'Etat, compétent pour la suspendre et pour l'annuler. L'introduction de ces recours ne s'accompagne toutefois d'aucun effet suspensif.

3. L'éligibilité ou l'examen au fond

L'enjeu est de répondre à la question de savoir si l'étranger est un réfugié en application des critères prévus par la Convention de Genève de 1951, au terme d'un examen approfondi de son dossier.

Cet examen approfondi est effectué en premier ressort par le C.G.R.A. Un recours suspensif est ouvert contre la décision du C.G.R.A. auprès de la Commission permanente de recours des réfugiés. La décision de la C.P.R.R. peut faire l'objet d'un recours en cassation administrative non suspensif auprès du Conseil d'Etat.

Depuis le 1er juin 2007, la procédure, simplifiée, se compose de deux phases, la recevabilité et le fond n'étant plus distingués.

Le Commissaire général pour les réfugiés et pour les apatrides (CGRA) décide de reconnaître ou non le statut de réfugié ou le statut de protection subsidiaire. Une décision négative du CGRA est susceptible d'un recours de pleine juridiction auprès d'une juridiction, le Conseil du Contentieux des Etrangers (CCE), lequel peut confirmer, réformer ou annuler la décision du CGRA, auquel cas l'affaire est renvoyée à celui-ci.

Un pourvoi en cassation auprès du Conseil d'Etat peut être introduit contre une décision du CCE, qui n'a de chance d'aboutir qu'en cas de violation des formes substantielles ou prescrites à peine de nullité.

L'Office des étrangers (OE) ne rend donc plus de décision dans le cadre des demandes d'asile. Le rôle de l'OE est limité au soutien administratif ; le demandeur d'asile se présente auprès de l'OE qui :

- relève les empreintes de l'étranger ;
- détermine si un autre pays est responsable du traitement de la demande d'asile ;
- détermine la langue de la procédure ;

- prend la déclaration de l'étranger concernant son identité, sa provenance et l'itinéraire qu'il a emprunté, et concernant les possibilités de retour vers le pays qu'il a fui ;
- fournit à l'étranger un questionnaire dans lequel il est invité à expliciter les motifs pour lesquels il introduit une demande d'asile.

La loi « accueil » pose deux principes :

1. La désignation d'un lieu obligatoire d'inscription pour quatre catégories d'étrangers. Il s'agit soit d'un centre d'accueil où est dispensée une aide en nature, soit d'un centre public d'action sociale, qui leur délivre une aide financière.

Ces quatre catégories sont (article 10):

> 1° les étrangers qui sont entrés dans le Royaume sans satisfaire aux conditions fixées à l'article 2 de la loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers et ont introduit une demande d'asile, c'est-à-dire la possession d'un passeport ou d'un titre de voyage le cas échéant revêtu d'un visa si nécessaire ;
>
> 2° les étrangers qui ont introduit une demande d'asile après l'expiration de leur autorisation de séjour (par exemple étudiants après l'expiration du permis de séjour étudiant, touristes après l'expiration du délai de validité du visa touristique) ;
>
> 3° les étrangers qui appartiennent aux catégories de personnes désignées par un arrêté royal délibéré en Conseil des Ministres dans le cadre de mesures spéciales visant la protection temporaire de personnes ;
>
> 4° les étrangers qui sont autorisés à séjourner dans le Royaume sur la base de l'article 57/30, § 1 (bénéficiaire de protection temporaire[183]), ou de l'article 57/34 (famille de l'étranger admis au séjour au titre de la protection temporaire) de la loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers.

Les demandeurs d'asile qui sont entrés régulièrement dans le Royaume ou qui ont introduit leur demande alors qu'ils étaient en séjour régulier ne sont pas soumis à cette désignation d'un lieu obligatoire d'inscription et bénéficient d'une aide d'un centre public d'action sociale de leur choix.

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183 « Sous réserve de l'application du § 2 ou de l'article 57/32, le ministre ou son délégué autorise le bénéficiaire de la protection temporaire visé à l'article 57/29 au séjour pour une durée d'un an. Cette autorisation est renouvelée, par périodes de six mois, tant qu'il n'est pas mis fin à la protection temporaire dans un des cas prévus à l'article 57/36, § 1er ».

La loi prévoit aussi que « dans des circonstances particulières, l'agence peut déroger à la désignation d'un lieu obligatoire d'inscription ». Dans la pratique, cela pourrait viser le cas où des membres de la famille sont déjà présents sur le territoire.

2. L'accueil des candidats réfugiés se fait pour principe dans un centre d'accueil, sauf des quelques hypothèses particulières déterminées par la loi et détaillées ci-dessous (article 11).

Concernant l'aide matérielle dans un centre, l'article 6, § 1, dispose que « *Le bénéfice de l'aide matérielle s'applique à tout demandeur d'asile dès l'introduction de sa demande d'asile et produit ses effets pendant toute la procédure d'asile en ce compris pendant le recours introduit devant le Conseil du Contentieux des Etrangers sur la base de l'article 39/2, § 1er, de la loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers. Le bénéfice de l'aide matérielle s'applique également pendant le recours en cassation administrative introduit devant le Conseil d'Etat sur la base de l'article 20, § 2, alinéa 3, de cette même loi* ». Il est précisé que « *le bénéfice de l'aide matérielle est maintenu durant les délais pour introduire les recours visés à l'alinéa précédent* ».

L'article 11 dispose :

> « *Aux demandeurs d'asile visés à l'article 10, 1° et 2°, une structure d'accueil est désignée comme lieu obligatoire d'inscription :*
>
> *1° tant que le Commissaire général aux réfugiés et aux apatrides ou un de ses adjoints n'ont pas pris une décision définitive sur leur demande d'asile ;*
>
> *2° tant que le Conseil du Contentieux des Etrangers n'a pas pris une décision sur le recours contre la décision du Commissaire général aux réfugiés et aux apatrides ou d'un de ses adjoints ou, en l'absence de recours, jusqu'à l'expiration du délai pour l'introduire* ».

Le candidat réfugié, à l'exclusion du bénéficiaire de la protection temporaire (les catégories visées sont les deux premières décrites ci-dessus et non les troisième et quatrième qui visent la protection temporaire), est accueilli dans une structure d'accueil pendant toute la durée de la procédure (procédure devant le Commissariat général aux réfugiés et aux apatrides et devant le Conseil du contentieux des étrangers et pendant le délai pour introduire le recours devant cette instance).

Il est cependant prévu que l'accueil dans un centre ne doit pas excéder une certaine période que les premiers projets avaient fixée à un an. La dernière version de l'article 11 substitue à cette période d'un an le principe suivant : « *Un nouveau lieu obligatoire d'inscription peut être désigné si la décision visée à l'alinéa précédent, 1° et 2°, n'est pas prise dans un délai fixé par arrêté royal délibéré en Conseil des Ministres, suite à l'évaluation de la procédure d'examen des demandes d'asile* ».

L'expiration de cette période maximale ne permettra par ailleurs pas aux candidats réfugiés qui ont reçu notification d'une décision négative du Conseil du Contentieux des étrangers avant l'expiration de ce délai de se voir désigner un centre public d'action sociale. « *Par dérogation aux alinéas précédents, la désignation visée à l'alinéa 1er est toutefois maintenue pour les demandeurs d'asile visés à l'article 10, 1° et 2° qui ont reçu notification avant l'expiration du délai visé à l'alinéa précédent d'un arrêt du Conseil du Contentieux des Etrangers contre lequel ils ont introduit un recours en cassation administrative devant le Conseil d'Etat* ».

Concernant l'aide sociale financière, l'article 8 prévoit que « *L'aide sociale est octroyée par les centres publics d'action sociale lorsque la désignation d'une structure d'accueil prend fin en application de l'article 11, § 1er, ou lorsque le bénéficiaire de l'accueil s'est vu reconnaître un statut de protection temporaire en application de l'article 10, 3° ou 4°* ».

En réalité, trois catégories d'étrangers vont se voir désigner un centre public d'action sociale :

1. Les étrangers qui sont entrés régulièrement sur le territoire et ont introduit ensuite une demande de reconnaissance de la qualité de réfugié ou les étrangers qui séjournaient régulièrement sur le territoire et ont introduit une telle demande alors que leur séjour était toujours valable.

2. La deuxième hypothèse concerne le premier cas visé par l'article 8 : les autres candidats réfugiés pour qui le délai qui devrait être déterminé par arrêté royal délibéré en conseil des Ministres au terme d'une évaluation de la procédure d'asile est dépassé. Le candidat réfugié dont le dossier est en cours de traitement au Commissariat général aux réfugiés et aux apatrides ou devant le Conseil du contentieux des étrangers devrait alors pouvoir quitter le centre et se voir désigner un centre public d'action sociale.

   L'on rappelle que le transfert vers un centre public d'action sociale n'est pas possible si avant le délai à déterminer, une décision négative a

déjà été prise par le Conseil du contentieux des étrangers et ce même si un recours en cassation administrative a été introduit devant le Conseil d'Etat.

3. Les bénéficiaires de la protection temporaire.

Q. 11. B. Indicate precisely for which stage(s) of the asylum procedure the answers on reception conditions you give below are valid.

La distinction se fait peu selon les stades de procédure mais se fera plutôt sur la base du type de protection demandée et de la longueur de la résidence en centre.

Au sein de l'aide matérielle, une distinction est faite entre le logement communautaire en centre d'accueil et le logement individuel en logements privés. Cette distinction existe déjà.

La loi « accueil » (article 11§3) a pour volonté de désigner, dès le départ et tout au long de l'accueil, une structure d'accueil qui réponde le plus possible aux besoins des demandeurs d'asile accueillis, mais toujours dans la limite des places disponibles. Dans certains cas exceptionnels, Fedasil pourra également déroger à la désignation d'une structure d'accueil au demandeur au profit d'une aide sociale financière.

Certains critères tels la connaissance d'une des langues, la situation médicale, psychologique, sociale ou familiale, ... entreront en ligne de compte pour la désignation du code 207.

De même, une évaluation continue des besoins des personnes devra être mise en place dans chaque structure, et le système de transfert d'une structure à l'autre assouplit, pour permettre de répondre aux dits besoins.

Enfin, la loi prévoit qu'à l'issue d'une période de 4 mois, le demandeur d'asile pourra demander son transfert dans une structure individuelle (article 12§1). Celui ci pourra lui être accordé (décision qui sera souverainement prise par Fedasil, en fonction de la disponibilité du réseau d'accueil et à l'exception des personnes en recours au Conseil d'Etat).

Certains étrangers seront toujours en centres d'accueil (communautaires ou individuels), d'autres parfois, d'autres jamais.

Jamais :

Les candidats réfugiés qui sont entrés régulièrement sur le territoire ou qui ont introduit leur demande d'asile alors qu'ils étaient toujours en séjour régulier et les bénéficiaires de la protection temporaire ne seront jamais accueillis en centres d'accueil mais recevront l'aide financière d'un centre public d'action sociale.

Parfois :

Les autres candidats réfugiés seront accueillis en centre d'accueil pendant toute la procédure : Dublin, Commissariat général aux réfugiés et aux apatrides, conseil du contentieux des étrangers, Conseil d'Etat.

Ils pourront quitter le centre et recevoir l'aide financière d'un centre public d'action sociale au terme d'un délai qui sera déterminé par arrêté royal délibéré en conseil des ministres après une évaluation de la procédure d'asile.

Toujours :

Les candidats réfugiés qui auront reçu une décision négative du conseil du contentieux des étrangers avant l'expiration du délai qui sera déterminé en conseil des ministres.

4. GENERAL RULES ON RECEPTION CONDITIONS

Q.**12.** **Q. 12. A. Are material reception conditions provided in kind, in money or in vouchers or in a combination of these elements (see article 13, §5 which is an optional provision)? Distinguish between the different elements (housing, food, clothes, health, transportation, pocket money,…). If reception conditions are provided in money (in general or in some cases, for instance when no places are anymore available in accommodation centres), indicate the precise amount given to the asylum seekers. Indicate in your answer what is provided in general and if there are exceptional cases. Specify in your answer if reception conditions are different from the general system of social aid for nationals or aliens and if yes, if and when (which stage of the asylum procedure) can asylum seekers have access to the general system of social aid?**

Dans les centres d'accueil, les candidats réfugiés reçoivent une aide en nature, alors que les centres publics d'action sociale donnent une aide financière.

L'article 3 de la loi « accueil » indique que « *l'accueil doit permettre à l'étranger de mener une vie conforme à la dignité humaine* ». Il est précisé que l'accueil s'entend soit de l'aide matérielle telle que définie par la loi, soit de l'aide financière telle que déterminée par la loi sur l'aide sociale (loi du 8 juillet 1976 organique des centres publics d'action sociale).

Elle définit l'aide matérielle en son article 1er : il s'agit de « *l'aide octroyée par l'Agence ou le partenaire, au sein d'une structure d'accueil, et consistant notamment en l'hébergement, les repas, l'habillement, l'accompagnement médical, social et psychologique et l'octroi d'une allocation journalière. Elle comprend également l'accès à l'aide juridique, l'accès à des services tels que l'interprétariat et des formations ainsi que l'accès à un programme de retour volontaire* ».

Aide en nature

La loi dispose que « *Le bénéficiaire de l'accueil est hébergé dans une structure d'accueil communautaire ou individuelle* » (article 16). Elle précise qu'un arrêté royal définira « *les normes auxquelles les structures d'accueil doivent répondre tant en termes qualitatifs qu'en termes d'infrastructure ainsi que les modalités de contrôle par l'Agence du respect*

de ces normes ». (article 17) La loi précise que l' « *l'aide matérielle* [doit être] *organisée dans le respect du principe de neutralité envers les convictions philosophiques et religieuses des bénéficiaires de l'accueil au sein de la structure d'accueil communautaire* » (article 20, § 2).

La nouvelle loi ne modifie pour l'essentiel pas le fonctionnement des structures d'accueil. Il est prévu qu'un arrêté royal « *détermine le régime et les règles de fonctionnement applicables aux structures d'accueil. Un règlement d'ordre intérieur établi par le Ministre en détermine les modalités d'exercice. Il est veillé à la bonne et complète compréhension de celui-ci par le bénéficiaire de l'accueil* ».

L'accueil dans les structures d'accueil se fait actuellement dans plusieurs structures[184] :

- les centres d'accueil fédéraux[185], directement gérés par l'Agence ;

  Il s'agit d'anciens bâtiments, comme des casernes ou des écoles, qui ont été adaptées à la vie en communauté, ou des logements préfabriqués. Les centres sont situés sur l'ensemble du territoire belge, en milieu urbain comme à la campagne. Leur capacité d'accueil varie entre 75 et 850 places.

- les centres d'accueil gérés par la Croix-Rouge de Belgique et les Mutualités socialistes ;

  L'Administration fédérale a conclu un accord avec la Croix-Rouge de Belgique qui gère des centres d'accueil ouverts qui sont exclusivement destinés aux demandeurs d'asile durant la phase d'examen de la recevabilité de leur demande. La Croix-Rouge possède une vingtaine de centres d'accueil en Wallonie, en Flandre et à Bruxelles.

  A côté de ces centres, les Mutualités socialistes organisent également une structure d'accueil à Erezée (le centre Belle Vue), principalement destinée à des familles.

- les logements communautaires ou privés, gérés par des O.N.G. comme le C.I.R.E. et l'O.C.I.V. ;

  Ils proposent un accueil à petite échelle dans des logements particuliers.

- les logements communautaires ou privés, appelés Initiatives Locales d'accueil organisées par les C.P.A.S.

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184 Site FEDASIL ;

185 Ils se situent à Arendonk, Arlon, Bovigny, Broechem, Charleroi, Ekeren, Florennes, Jodoigne, Kapellen, Petit-Château, Morlanwelz, Neder-over-Heembeek, Pondrôme, Rixensart, Woluwe-Saint-Pierre, Sint-Truiden, Steenokkerzeel, Sugny et Virton.

Des communes (centres publics d'action sociale) accueillent des demandeurs d'asile en accord avec Fedasil, dans des initiatives locales d'accueil (ILA).

Une ILA est la plupart du temps un logement privé meublé doté des équipements indispensables afin que les demandeurs d'asile puissent subvenir à leurs besoins quotidiens. Le CPAS assure l'accompagnement social et médical des résidents.

Tout comme dans les centres d'accueil, cette forme d'accueil est destinée aux demandeurs d'asile durant la phase de la recevabilité).

- Cuisine

Le rapport FEDASIL sur l'accueil se réfère au cahier des charges, qui n'est cependant pas encore applicable mais sert de source. Celui-ci contient plusieurs dispositions relatives à la cuisine et à l'alimentation des demandeurs d'asile.

Dans certaines structures, les demandeurs d'asile cuisinent eux-mêmes et disposent d'un équipement minimal. Un système de titres-repas nominatifs est organisé.

Dans d'autres structures, les repas sont servis dans une grande cuisine ou un réfectoire dans le respect des normes en vigueur, à savoir un arrêté royal du 4 décembre 1995 soumettant à une autorisation les lieux où des denrées alimentaires sont fabriquées ou mises dans le commerce ou sont traitées en vue de l'exportation.

Le cahier spécial des charges prévoit également que les repas doivent tenir compte de la situation spécifique des demandeurs d'asile (par exemple des convictions religieuses).

- Habillement[186]

Chaque structure d'accueil dispose d'un système assurant l'habillement des demandeurs d'asile. Les centres organisent tant la collecte et le tri que la distribution des vêtements. S'agissant des I.L.A., des contrats avec des magasins de seconde main sont parfois conclus grâce auxquels les demandeurs d'asile peuvent y choisir des vêtements deux fois par an, gratuitement ou pour un prix très bas. D'autres I.L.A. donnent une somme d'argent avec laquelle le demandeur d'asile peut acheter des vêtements.

- Allocation journalière

La loi dispose en son article 34 que « *le bénéficiaire de l'accueil résidant dans une structure d'accueil a droit à une allocation journalière* » dont le montant sera déterminé par arrêté royal. Ce montant est fixé par semaine et par personne.

[186] Voir rapport FEDASIL.

De plus, la loi prévoit que « *l'Agence ou le partenaire organise également la prestation de services communautaires par les bénéficiaires de l'accueil dans les structures communautaires* », tout en rappelant qu'ils peuvent également exercer du volontariat[187].

La loi définit le « service communautaire », comme étant « *toute prestation effectuée par le bénéficiaire de l'accueil dans la structure communautaire, au profit de la communauté des bénéficiaires de l'accueil résidant dans celle-ci ou effectuée dans le cadre d'une activité, organisée par la structure précitée ou pour laquelle celle-ci est partenaire, qui concourt à son intégration dans son environnement local et pour laquelle peut lui être versée une majoration de son allocation journalière* ».

La loi précise que cette allocation n'est pas considérée comme une rémunération dans le cadre d'un contrat de travail. En effet, les candidats réfugiés ne peuvent en principe pas travailler.

L'octroi de l'allocation journalière était déjà prévu par l'article 62 § 2*bis* de la loi-programme du 19 juillet 2001.

Un arrêté royal relatif à l'argent de poché visé à l'article 63, §2 bis de la loi-programme du 19 juillet 2001 a été pris le 1er avril 2007.

Cet arrêté royal indique que le montant hebdomadaire de l'argent de poche est fixé à :
« -3,8 euros pour chaque mineur de moins de 12 ans ou de 12 ans et plus, non scolarisé;
- 5,0 euros pour chaque mineur non accompagné accueilli durant la phase d'observation et d'orientation;
- 6,5 euros pour chaque mineur scolarisé de 12 ans ou plus;
- 6,5 euros pour chaque adulte. »

Les structures Cire et VwV combinent un système d'aide matérielle, par la mise à disposition d'un logement et par un accompagnement social, juridique et administratif permanent, et un système d'allocation financière, qui permet aux personnes de vivre de façon totalement autonome, en ce qui concerne la vie quotidienne (repas, habillement etc).

Ce système d'accueil est fondé sur des normes communes à l'ensemble des partenaires Ciré/VwV.

Aide financière

L'octroi de l'aide sociale participe des missions des centres publics d'aide sociale. Elle est réglementée par la loi 8 juillet 1976 *organique des centres publics d'aide sociale*[188], dont l'article 1er dispose que "*Toute personne a droit à l'aide sociale. Celle-ci a pour but de*

[187] loi du 3 juillet 2005 relative aux droits des volontaires.

[188] Loi 8 juillet 1976 *organique des centres publics d'aide sociale*, *M.B.*, 5 août 1976.

permettre à chacun de mener une vie conforme à la dignité humaine. Il est créé des centres publics d'aide sociale qui […] *ont pour mission d'assurer cette aide*". Le centre public d'aide sociale est chargé d'assurer aux personnes et aux familles l'aide due par la collectivité[189].

Le droit à mener une vie conforme à la dignité humaine a été élevé au rang de droit constitutionnel à l'occasion de la réforme du 17 février 1994. L'article 23 de la Constitution dispose que "*Chacun a le droit de mener une vie conforme à la dignité humaine*".

Les modes de mise en œuvre de l'aide sociale sont plus diversifiés que l'octroi d'une somme d'argent puisque l'article 1er de la loi du 8 juillet 1976 prévoit que l'aide sociale " *peut être matérielle, sociale, médicale, médico-sociale ou psychologique* ".

L'aide individuelle n'est en principe pas exclusivement financière, même si ce volet participe de l'aide matérielle au côté des avances sur prestations sociales[190], de l'aide au logement et de l'intervention dans le paiement du gaz et de l'électricité, de l'aide en nature par la fourniture de vivres, de vêtements. Elle peut également être immatérielle, consistant alors en l'affiliation aux organismes de sécurité sociale, en une aide psychologique, juridique, une guidance, par exemple budgétaire. Les centres publics d'aide sociale peuvent également aider par la "mise au travail"[191] et procéder à des avances sur pensions alimentaires[192].

S'agissant des candidats réfugiés, l'aide peut donc être diversifiée mais est principalement financière.

Au sujet des montants, le principe défendu par la majorité de la jurisprudence consiste à aligner le montant de l'aide sociale sur le revenu d'intégration sociale [193]. Il y a par

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189 Loi 8 juillet 1976, article 57.

190 Loi du 8 juillet 1976, article 99.

191 Loi du 8 juillet 1976, article 60, § 7.

192 Loi du 8 juillet 1976, articles 68 *bis* à 68 *quater*.

193 Voyez notamment Trib. trav. Bruxelles, 25 novembre 1993, J.D.J., 1994, n° 131, p. 37:

"*On ne peut affirmer en principe que l'aide sociale doit de toute façon être égale au montant du minimex, qui représenterait un minimum légal en-deçà duquel une personne ne peut vivre, il n'empêche qu'une aide financière peut être accordée par référence au montant du minimex à une personne qui ne peut se prévaloir de la loi du 7 août 1974, s'il apparaît qu'en l'espèce, l'aide ainsi fixée est indispensable pour permettre à la personne visée de mener une existence conforme à la dignité humaine. S'il y a lieu d'appliquer un barème précis, ce ne peut être qu'en référence au minimex, toute autre barémisation étant incompatible avec les principes de dignité" humaine et d'individualisation de l'aide; à défaut de barèmes, le montant de l'aide devrait être justifié par rapport aux ressources et aux besoins particuliers de l'intéressé. Aucune disposition légale et aucune considération d'équité ou d'opportunité ne justifient que l'aide financière aux candidats réfugiés soit systématiquement inférieure à celle due aux belges, au motif de la situation particulière et précaire de ces personnes*".

Contra C.T. Mons, 6ème ch., 28 juin 1994, Chron. D.S., 1995, p. 79-80: L'octroi d'une aide sociale d'un montant équivalant au *minimex* est une position jugée fort généreuse. Il est permis d'exempter des personnes qui n'ont pas droit au *minimex* des conditions d'octroi imposées par cette loi. Il n'est pas équitable d'accorder à des citoyens ou résidants n'appartenant pas aux mêmes catégories des avantages équivalents.

conséquent lieu d'accorder aux étrangers une aide équivalente à celle à laquelle pourrait prétendre un ressortissant belge dans les mêmes conditions.

Le montant de l'aide sociale étant calqué sur le montant du revenu d'intégration sociale, l'on distingue entre la personne qui vit seule, seule avec des enfants ou qui cohabite.

A l'égard des candidats réfugiés résidant dans des immeubles où sont partagées des utilités communes, une partie de la jurisprudence a tenté il y a quelques années de créer un taux intermédiaire entre le taux isolé et le taux cohabitant, dit taux "communautaire". Une telle situation implique en effet que l'intéressé n'assume pas seul toutes les charges inhérentes à son mode de vie, mais n'entraîne toutefois pas nécessairement la création d'une unité de consommation [194].

Une seconde approche, également minoritaire, juge injuste d'accorder le *minimex* à des personnes qui ne satisfont pas aux conditions pour l'obtenir, fixe le montant de l'aide sociale au regard du critère de la dignité humaine [195]. Il est alors procédé à un examen factuel de l'état de besoin et à la fixation d'un montant *ad hoc*.

La Cour du travail de Bruxelles a sanctionné la position d'un C.P.A.S. consistant à remplacer l'aide financière d'un montant équivalent au *minimex* par une série d'aides en nature et prises en charge directe de certains frais. Le C.P.A.S. justifiait sa décision par le fait que les requérants s'étaient vus notifier une décision négative dans le cadre des demandes de reconnaissance de la qualité de réfugié qu'ils avaient introduites et invoquait également certains griefs à l'encontre de la personnalité du requérant. La Cour a remarqué qu'aucun ordre de quitter le territoire n'avait été notifié, que les griefs évoqués n'étaient aucunement établis et n'avaient donné lieu à aucune poursuite et qu'en tout état de cause, ils n'étaient pas pertinents pour rejeter une demande d'asile sociale. La Cour souligne que le seul motif susceptible de justifier une telle décision serait l'incapacité de l'intéressé de gérer son budget ce qui n'était pas établi dans ce cas. La décision du C.P.A.S. a été jugée humiliante et discriminatoire, outre qu'elle procède d'un gaspillage des deniers publics, l'aide en nature allouée étant plus onéreuse que le montant de l'aide sociale [196].

Une partie de la jurisprudence [197] considère qu'en plus de l'aide sociale équivalente au *minimex*, les étrangers doivent bénéficier, lorsqu'ils ont des enfants à charge, d'une aide complémentaire dont le montant est calqué sur les allocations familiales garanties.

Jugé que l'octroi d'une aide consistant à la prise en charge du loyer, plus 150 francs par jour est satisfactoire.

194 C.T. Liège, 5ème ch., 27 mai 1994, Chron. D.S., 1995, p. 77-79.

195 Voyez notamment C.T. Mons, 28 juin 1994, Chr. D.S., 1995, p. 79; C.T. Mons, 24 mai 1994, R.G.: 12.221; C.T. Mons, 25 octobre 1994, R.G.: 12.370, cités par FUNCK, J.-F., in Actualité des missions des C.P.A.S., éd. P. JADOUL, Bruxelles, Public. Fac. Univ. Saint-Louis, 1996, p. 85.

196 C.T. Bruxelles, 30 janvier 1997, R.D.E., 1997, p. 271.

197 "*Il n'est pas contestable que la législation instituant le minimex n'a eu en vue que la situation des personnes majeures et que le droit à cette prestation n'a d'ailleurs pas été étendu au mineur d'âge, la solution pour ceux-ci se situant plus dans le sens de l'octroi d'allocations familiales; [...]*

Que l'article 27 de la Convention des droits de l'enfant stipule que "les Etats adoptent les mesures appropriées, compte tenu des conditions nationales et dans la mesure de leurs moyens, pour aider les parents et autres personnes ayant la charge de l'enfant à mettre en œuvre ce droit et offrent, en cas de besoin, une

Cette position est controversée. Certaines décisions fixent le montant alloué pour l'entretien et l'éducation des enfants mineurs en référence au montant des allocations familiales [198], d'autres le déterminent *ex aequo et bono*, entérinant la pratique administrative des C.P.A.S [199].

Q. 12. B. Can the reception conditions in kind, money or vouchers be considered as <u>sufficient</u> "to ensure a standard of living adequate for the health of applicants and capable of ensuring their subsistence" as requested by article 13, §2 of the directive (which is a mandatory provision but leaves a certain space to Member States)? In order to help to assess the respect of this rule when reception conditions are provided in money, include if necessary in your answer points of comparison with the minimum amount of social aid guaranteed for nationals in your Member State.

En ce qui concerne l'aide financière, le montant est équivalent dans la plupart des cas au revenu d'intégration versé aux nationaux et aux étrangers qui y ont accès. Une aide complémentaire peut de plus être obtenue par exemple pour constituer la garantie locative ou pour payer le premier loyer, pour se meubler. Elle n'est pas systématique or les candidats réfugiés sont par définition et pour la plupart d'entre eux des personnes qui sont isolées ou, en tout cas, qui ne bénéficient de la solidarité familiale. Le caractère insuffisant des ressources pose parfois difficulté s'agissant des familles lorsque l'aide sociale de base n'est pas majorée par une somme équivalente aux allocations familiales garanties mais seulement par une somme forfaitaire.

En ce qui concerne l'accueil en centre/structures d'accueil, l'allocation journalière ne permet pas aisément au résident de quitter le centre et de circuler, notamment pour rencontrer des services externes, tels un avocat, un service social ou de santé mentale. Les dispositions notamment relatives à l'aide juridique ne précisent rien à ce sujet. Dans la pratique actuelle, certains centres payent les tickets de transport, d'autres non, d'autres

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assistance matérielle et des programmes d'appui, notamment en ce qui concerne l'alimentation, le vêtement et le logement";

Qu'il résulte de ce qui précède que, d'une part, le montant de l'aide sociale au profit de l'enfant du candidat réfugié politique n'est pas fixé par la législation mais que, d'autre part, cette fixation doit respecter les obligations souscrites par l'Etat belge et qui partant s'imposent aux pouvoirs subordonnés, dont le Centre public d'aide sociale" (Trib. trav. Bruxelles, 18 janvier 1995, R.G.: 29.888 et 29.8994, C.P.A.S. d'Ixelles c/ URIBE GERMAN DE JESUS); *qu'il y a lieu d'accorder une aide sociale pour les enfants équivalente à celle correspondant aux allocations familiales garanties et ce même si celles-ci ne sont pas allouées par l'O.N.A.F.T.S., estimant que cette législation, même non applicable à l'espèce, précise une norme qui mutatis mutandis s'impose, compte tenu des engagements pris par la Belgique sur le plan international*" (Cour du travail, Bruxelles, 20 décembre 1995, R.G.: 30.715).

198 Voyez Trib. trav. Bruxelles, 5 mai 1994, R.D.E., 1996, n° 88, p. 247; Trib. trav. Bruxelles, 12 juillet 1995, R.D.E., 1996, n° 88, p. 246.

199 C.T. Bruxelles, 8 septembre 1994, R.D.E., 1996, n° 88, p. 245.

parfois oui mais pas systématiquement. Les demandeurs d'asile peuvent cependant effectuer des services communautaires pour lesquels ils peuvent recevoir une majoration de leur allocation journalière (ne pouvant dépasser 125 Euros par mois).

En cas de défaut de places dans les centres d'accueil, la loi (article 18) autorise un hébergement temporaire, pour une période maximale de dix jours, dans une structure d'accueil d'urgence où l'accompagnement social est limité. Un minimum est toutefois garanti c'est à dire l'octroi de « la nourriture, le logement, l'accès aux facilités sanitaires et l'accompagnement médical tel que décrit aux articles 23 à 29 », et également un « accompagnement social limité, qui comprend l'information et le soutien nécessaire aux démarches requises, notamment urgentes, dans le cadre de la procédure d'asile » (exposé des motifs de l'article 18, p. 37).

5. PROCEDURAL ASPECTS

Q.13. A. Does the national legislation specifically provide that a request for international protection is presumed to be under the Geneva Convention unless explicitly requested otherwise? (see article 2, b which is a mandatory provision)

Oui.

L'article 48/2 de la loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers indique que « peut être reconnu comme réfugié ou comme personne pouvant bénéficier de la protection subsidiaire, l'étranger qui satisfait aux conditions prévues par l'article 48/3 ou l'article 48/4 ».

L'article 48/3 de la loi du 15 décembre 1980 vise le statut de réfugié suivant la Convention de Genève du 28 juillet 1951.

L'article 48/4 de la loi du 15 décembre 1980 qui vise la protection subsidiaire dispose que « *le statut de protection subsidiaire est accordé à l'étranger qui ne peut être considéré comme un réfugié et qui ne peut pas bénéficier de l'article 9 ter [régularisation pour motifs médicaux], et à l'égard duquel il y a de sérieux motifs de croire que, s'il était renvoyé dans son pays d'origine ou, dans le cas d'un apatride, dans le pays dans lequel il avait sa résidence habituelle, il encourrait un risque réel de subir les atteintes graves visées au paragraphe 2, et qui ne peut pas ou, compte tenu de ce risque, n'est pas disposé à se prévaloir de la protection de ce pays et ce, pour autant qu'il ne soit pas concerné par les clauses d'exclusion visées à l'article 55/4* ».

La protection subsidiaire est donc « subsidiaire » par rapport à la reconnaissance de la qualité de réfugié et toute demande de protection internationale est d'abord examinée comme étant une demande de reconnaissance de la qualité de réfugié. Cet ordre d'examen est encore précisé par l'article 49/3 de la loi du 15 décembre 1980 selon lequel « *Une demande de reconnaissance du statut de réfugié ou d'octroi du statut de protection subsidiaire se fait sous la forme d'une demande d'asile. Cette demande d'asile est d'office examinée en priorité dans le cadre de la Convention de Genève, tel que déterminé à l'article 48/3, et ensuite dans le cadre de l'article 48/4* ».

Par ailleurs, l'article 2,1° de la loi « accueil » estime qu'il faut entendre par demandeur d'asile « l'étranger qui a introduit une demande d'asile, ayant pour objectif soit la reconnaissance du statut de réfugié, soit l'octroi du statut de protection subsidiaire ».

Q. 13. B. Explain if the scope of application of reception conditions is extended to other asylum seekers than refugees in the sense of the Geneva Convention, in particular to persons asking for

subsidiary protection or to other forms of protection like humanitarian statuses (see article 3, § 4 which is an optional provision)? If not, explain briefly which the differences between these special regimes and the directive are.

Dans la mesure où les demandes de protection subsidiaire sont traitées subsidiairement à la demande d'asile et dans le cadre d'une procédure unique, les centres accueilleront aussi les demandeurs de protection subsidiaire.

Y seront aussi hébergées les personnes gravement malades qui ont introduit une demande de séjour sur cette base, les personnes qui se trouvent dans l'impossibilité de quitter le territoire pour des raisons indépendantes de leur volonté – si cette impossibilité est confirmée par le Commissariat général aux réfugiés et aux apatrides ou le Conseil du contentieux des étrangers, les personnes qui ont signé un engagement de retour volontaire et les personnes dont la famille proche est encore hébergée dans le centre (voyez *infra* Q. 15).

L'aide financière est par contre directement accordée aux bénéficiaires de la protection temporaire.

L'Agence est également chargée de l'aide matérielle aux mineurs séjournant illégalement sur le territoire et dont l'état de besoin a été constaté par un C.P.A.S. lorsque les parents ne sont pas en mesure d'assumer leur devoir d'entretien.

Q. 13.C Are there specific provisions in national law for reception conditions in case of <u>diplomatic or territorial asylum</u> requests submitted through a diplomatic or consular representation (see article 3, §2 which is an optional provision)?

Non.

Q.14. Are reception conditions available as from the <u>moment</u> one asylum application is introduced? How is article 13, §1 which is mandatory legally understood? Do asylum seekers have to satisfy any other condition in order to get reception conditions?

Oui, l'article 6, § 1, indique clairement que « *le bénéfice de l'aide matérielle s'applique à tout demandeur d'asile dès l'introduction de sa demande d'asile et produit ses effets pendant toute la procédure d'asile en ce compris pendant le recours introduit devant le Conseil du Contentieux des Etrangers* […] *et pendant le recours en cassation administrative introduit devant le Conseil d'Etat* ». L'aide est maintenue pendant les

délais nécessaires à l'introduction de ces recours. Ces délais de recours sont relativement brefs suite à la réforme. Le recours devant le Conseil du Contentieux des Etrangers doit être introduit dans les quinze jours alors que le délai pour introduire un recours en cassation contre un arrêt du Conseil du Contentieux des Etrangers devant le Conseil d'Etat est de trente jours.

Q.15. Explain when reception conditions <u>end</u>, for instance after refusal of the asylum request (include in your answer the link with the right of appeal against a decision of refusal of the status, in particular the question of its suspensive effect)

<u>Principe</u>

L'aide se termine à la fin de la procédure d'asile,

- soit en cas de décision négative du Commissariat général aux réfugiés et aux apatrides si le demandeur d'asile n'a pas introduit de recours auprès du Conseil du contentieux dans le délai requis ;

- soit en cas de décision négative du Conseil du contentieux si le demandeur d'asile n'a pas introduit de recours auprès du Conseil d'Etat dans le délai requis ;

- soit en cas d'arrêt négatif du Conseil d'Etat.

<u>Exception</u>

L'article 7 de la loi « accueil » dispose que le bénéfice de l'aide matérielle est prolongé quand l'étranger résidant dans une structure d'accueil se trouve dans une des situations suivantes :

1° l'étranger dont la procédure d'asile et la procédure devant le Conseil d'Etat se sont clôturées négativement, et qui, pour des raisons médicales certifiées et étayées par une demande d'autorisation de séjour introduite sur base de l'article 9 *ter* de la loi du 15 décembre 1980 précité, ne peut donner suite à l'ordre de quitter le territoire qui lui a été notifié ;

L'article 9 *ter*[200] est une disposition proposée par la réforme qui permet à un étranger gravement malade de demander à bénéficier d'un séjour pour des raisons humanitaires.

2° l'étranger dont la procédure d'asile et la procédure devant le Conseil d'Etat se sont clôturées négativement, et qui, pour des raisons de force majeure, autres que des raisons médicales, confirmées par les autorités compétentes en matière d'asile et d'immigration, ne peut donner suite à l'ordre de quitter le territoire qui lui a été notifié ;

> Tel serait par exemple le cas d'un étranger qui ne reçoit pas de laissez-passer de ses autorités d'origine, qui a été reconnu apatride, qui vient d'un pays où il y aurait une soudaine flambée de violence (même si ce dernier devrait pouvoir bénéficier de la protection subsidiaire).

3° l'étranger dont la procédure d'asile et la procédure devant le Conseil d'Etat se sont clôturées négativement, et qui a un membre de sa famille ou une personne exerçant sur lui l'autorité parentale ou la tutelle en vertu de la loi applicable conformément à l'article 35 de la loi du 16 juillet 2004 portant le Code de droit international privé, qui entre dans le champ d'application de la présente loi ;

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200 Art. 9 ter. *§ 1er. L'étranger qui réside en Belgique et qui dispose d'un document d'identité et souffre d'une maladie dans un état tel qu'elle entraîne un risque réel pour sa vie ou son intégrité physique ou un risque réel de traitement inhumain ou dégradant lorsqu'il n'existe aucun traitement adéquat dans son pays d'origine ou dans le pays où il séjourne, peut demander l'autorisation de séjourner dans le Royaume au Ministre ou à son délégué.*

L'étranger doit transmettre tous les renseignements utiles concernant sa maladie.

L'appréciation du risque précité et des possibilités de traitement dans le pays d'origine ou dans le pays où il séjourne est effectuée par un fonctionnaire médecin qui rend un avis à ce sujet.

Il peut, si nécessaire, examiner l'étranger et demander l'avis complémentaire d'experts ».

Le membre de la famille est défini par l'article 1er de la loi comme étant :

- le conjoint ou le partenaire non marié engagé dans une relation stable ;
- les enfants mineurs non mariés, nés dans ou hors mariage ou adoptés.

4° l'étranger dont la procédure d'asile et la procédure devant le Conseil d'Etat se sont clôturées négativement et qui a signé un engagement de retour volontaire et ce, jusqu'à son départ, sauf si ce départ est reporté à cause de son seul comportement.

Ces extensions du droit à l'accueil sont justifiées par la jurisprudence de la Cour d'Arbitrage et de la Cour de cassation, suivies par les cours et tribunaux du travail.

C'est justifiable lorsque l'impossibilité de retour est limitée dans le temps (cf pratique où parfois, faire sortir les personnes des structures d'accueil pour une aide financière à charge du cpas ne rencontre pas nécessairement ses besoins).

Par contre, il faudra être attentif dans la pratique à ce que des possibilités de transfert vers des structures individuelles, voire en aide financière, puissent être accordées en fonction de la situation (par exemple, lorsque l'impossibilité de retour peut être durable et que la personne n'a pas obtenu de droit de séjour sur une autre base, telle la protection subsidiaire, ou si la situation médicale, sociale ou autre de la personne justifie qu'on lui désigne une autre structure d'accueil).

Q.16 Are there special rules or practices regarding reception conditions in case of <u>successive applications</u> for asylum introduced by the same person?

Non pas dans la loi « accueil ».

Pas contre, la loi réformant la procédure d'asile confirme la possibilité actuelle selon laquelle une nouvelle demande peut ne pas être prise en considération si elle ne repose pas sur des éléments nouveaux. Le nouvel article 51/8 de la loi du 15 décembre 1980 prévoit que « *Le Ministre ou son délégué peut décider de ne pas prendre la demande d'asile en considération lorsque l'étranger a déjà introduit auparavant la même demande d'asile auprès d'une des autorités désignées par le Roi en exécution de l'article 50, alinéa 1er, et qu'il ne fournit pas de nouveaux éléments qu'il existe, en ce qui le concerne, de sérieuses indications d'une crainte fondée de persécution au sens de la Convention de Genève, tel que définie à l'article 48/3 ou de sérieuses indications d'un risque réel d'atteintes graves tels que définis à l'article 48/4*."

Dans ce cas, aucune aide ne sera apportée même si l'étranger conteste cette décision en introduisant un recours devant le Conseil d'Etat.

Q.17[201]. <u>Information of asylum seekers about their rights and obligations in terms of reception conditions</u>, in particular about established benefits (see article 5 which is too large extend a mandatory provision; do not confuse this question with the information to be provided to asylum seekers about the asylum procedure):

Q. 17. A. Are asylum seekers informed, and if yes about what precisely?

Dans la pratique avant le 1er juin 2007, un document d'information relatif à la procédure d'asile rédigé par le Ministère de l'Intérieur (Office des étrangers) était distribué aux demandeurs d'asile lors de l'introduction de la demande d'asile. Cette brochure est disponible en une dizaine de langues (français, néerlandais, allemand, anglais, russe, albanais, serbo-croate). Elle contenait des informations relatives à la Convention de Genève, à la Convention de Dublin, aux instances d'asile, à l'inscription et à l'audition à l'Office des étrangers, à la décision de l'Office des étrangers, ainsi qu'aux associations spécialisées dans l'assistance des étrangers.

Les structures d'accueil partenaires de Fedasil (CIRE /VWV) avaient pris l'initiative de distribuer à tout nouveau résidant, une brochure sur la vie dans la structure d'accueil, et dans leur environnement urbain, social (infos pratico pratiques très diverses, tant sur la poste, que sur l'administration communale, que sur la gestion des déchets, la consommation de gaz, eau électricité etc..)

Des explications en français et en néerlandais sont également disponibles sur le site de l'Office des étrangers.

Le C.I.R.E. (coordination et initiative pour réfugiés et étrangers) publie une brochure informant les candidats réfugiés sur la procédure d'asile. Elle est téléchargeable gratuitement dans dix langues : albanais, anglais, arabe, français, néerlandais, persan , russe, serbo-croate et turc.

L'exposé des motifs indique que la « future brochure » « *contient notamment les informations relatives au droit d'accès à l'accompagnement médical – en ce compris au régime de l'aide médicale urgente -, aux conditions matérielles d'accueil, à savoir le logement, la nourriture et l'habillement, ainsi qu'au droit à une allocation journalière, au droit à la liberté de mouvement sur le territoire belge, à l'obligation scolaire à laquelle sont soumis les mineurs, aux conditions d'accès au marché du travail et à la formation professionnelle, au droit au respect de la vie privée et familiale, à l'aide juridique, au droit de communiquer avec leurs conseillers juridiques et les représentants d'organisations non gouvernementales, à l'aide psychologique ainsi qu'à la protection*

[201] To be answered with the help of UNHCR local office competent for your Member State or to be completed on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

des victimes de la traite des êtres humains et au programme de retour volontaire […] *des informations sur les organisations ou les groupes de personnes qui assurent une assistance juridique spécifique et sur les organisations susceptibles d'aider les demandeurs d'asile ou de les informer en ce qui concerne les conditions d'accueil dont ils peuvent bénéficier, y compris les soins médicaux,* […] *du régime applicable aux personnes qui ne disposent plus d'un titre de séjour valable mais qui ont droit à l'aide matérielle dans une structure d'accueil, et de ses conséquences possibles, à savoir l'éloignement du territoire belge* ».

Il précise que « *La brochure d'information précisera également que le demandeur d'asile ne bénéficiera des droits liés à l'accueil qu'au sein du lieu obligatoire d'inscription désigné, à l'exception de son droit à l'accompagnement médical. Ceci est particulièrement important pour les personnes qui, de leur propre initiative, décident de ne pas résider au sein de ce lieu et, partant, restent en dehors du système d'accueil tout en sauvegardant leur droit à l'accompagnement médical* ».

L'Agence FEDASIL a maintenant rédigé une brochure sur base de l'article 14 de la loi « accueil » qui est distribuée depuis l'entrée en vigueur de la nouvelle procédure d'asile, à savoir le 1er juin 2007. Cette brochure est distribuée lors de la désignation du « code 207 ».

Cette brochure décrit notamment les droits et obligations du bénéficiaires de l'accueil, les coordonnées des instances compétentes, des organisations pouvant prodiguer une assistance médicale, sociale et juridique). Elle contient plusieurs fiches d'information :

- fiche d'introduction ;
- fiche 1 : la désignation d'un lieu obligatoire d'inscription ;
- fiche 2 : l'hébergement ;
- fiche 3 : la protection des victimes de la traite des êtres humains ;
- fiche 4 : l'accompagnement médical et psychologique ;
- fiche 5 : l'accompagnement social et juridique ;
- fiche 6 : les allocations journalières et les services communautaires ;
- fiche 7 : formations et scolarité ;
- fiche 8 : le retour volontaire ;
- fiche 9 : fin du droit à l'aide matérielle ;
- fiche 10 : contacts.

Cette brochure est complétée par la communication du règlement d'ordre intérieur dès l'arrivée dans la structure d'accueil.

La brochure a été élaborée par l'Agence FEDASIL, en concertation avec les centres FEDASIL, les partenaires de l'accueil et le H.C.R.

Elle est remise au demandeur d'asile depuis le 1er juin 2007 et est disponible en 10 langues.

Q. 17. B. Is the information provided in <u>writing</u> or, when appropriate, orally?

Par écrit.

Q. 17. C. Is that information in general provided in a <u>language</u> understood by asylum seekers? Specify the list of languages in which it is available

Oui, « dans la mesure du possible », suivant l'article 14 de la loi « accueil ».

Actuellement, la brochure est rédigée en dix langues : français, néerlandais, anglais, russe, albanais, serbo-croate, turc, arabe, kurde (kurmandji), persan.

Q. 17. D. Is the <u>deadline</u> of maximum 15 days respected?

Oui, la loi « accueil » prévoit que dès la désignation du lieu obligatoire d'inscription (effectué dès l'introduction de la demande d'asile), « l'Agence délivre au demandeur d'asile une brochure d'information rédigée, dans la mesure du possible, dans une langue qu'il comprend et décrivant notamment ses droits et obligations tels que décrits dans la présente loi ou dans la loi du 8 juillet 1976 organique des centres publics d'action sociale» (article 14).

Dès son arrivée dans la structure d'accueil, l'étranger se voit également communiquer le règlement d'ordre intérieur. L'exposé des motifs indique « *que la brochure est toujours remise au demandeur d'asile dans un délai raisonnable n'excédant pas quinze jours puisque l'octroi du code 207 est, en pratique, concomitant à l'introduction de la demande* ».

Il est également spécifié que « *L'Agence ou le partenaire veille à ce que le bénéficiaire de l'accueil ait accès à des services d'interprétariat et de traduction sociale dans le cadre de l'exercice de ses droits et obligations décrits dans la présente loi* ». A cette fin, ils peuvent conclure des conventions avec des services ou organisations spécialisés dans l'interprétariat et la traduction sociale.

Q.18[202]. Information of asylum seekers about the existence of organisations or groups promoting their interest and defending their rights (see article 5 which is to a large extend a mandatory provision):

Q. 18. A. Is there a list of organisations dressed by the authorities and if yes is it comprehensive? Is this in particular the case about the possibilities to get legal assistance and health care?

L'article 14 de la loi "accueil" prévoit que les coordonnées des instances compétentes et des associations pouvant prodiguer une assistance médicale, sociale et juridique soient reprises dans la brochure d'information (voyez question 17).

La brochure distribuée depuis le 1er juin 2007 contient une fiche relative aux contacts d'organisations pouvant apporter de l'aide dans plusieurs domaines (essentiellement juridique).

Concernant l'accompagnement médical, il n'y a pas de coordonnée car c'est un médecin lié à la structure d'accueil qui la fournit. Celui-ci peut le cas échéant transférer le bénéficiaire de l'accueil vers un hôpital ou un service spécialisé.

Concernant l'accompagnement psychologique, la brochure explique que le médecin ou le travailleur social peut orienter le demandeur d'asile vers une institution spécialisée, sans fournir de liste.

Q. 18. B. Is the information provided to the asylum seekers, and if yes, in writing or, when appropriate, orally?

L'article 14 de la loi "accueil" prévoit une brochure écrite.

Q. 18. C. Is that information in general provided in a language understood by asylum seekers? Specify if possible the list of languages in which it is available.

Oui, « dans la mesure du possible », suivant l'article 14 de la loi « accueil ».

[202] To be answered with the help of UNHCR local office competent for your Member State or to be completed on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

Actuellement, la brochure est rédigée en dix langues : français, néerlandais, anglais, russe, albanais, serbo-croate, turc, arabe, kurde (kurmandji), persan.

Q. 18. D. How many organisations are active in that field in your Member State?

Il existe au moins une cinquantaine d'associations travaillant sur le terrain avec les candidats réfugiés (voir la liste des associations francophones sur le site du C.I.R.E. (http://www.cire.irisnet.be/assoc-membres.html et des associations néerlandophones sur le site http://www.vluchtelingenwerk.be/).

Q.19. Documentation of asylum seekers (see article 6):

Q. 19. A. What kind of document is delivered to the asylum seeker? Explain the legal value of this document (just a certification of the status as asylum seeker or also prove of identity?) (see §1 of article 6 which is a mandatory provision)

Les documents délivrés aux candidats réfugiés ont changé en raison de la réforme de la procédure d'asile qui est entrée en vigueur le 1er juin 2007.

Suivant l'arrêté royal du 8 octobre 1981 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers (qui a été modifié par un arrêté royal du 27 avril 2007, *M.B.* 21 mai 2007), lors de l'introduction de sa demande, le candidat réfugié se voit remettre, selon qu'il introduit sa demande à la frontière ou à l'intérieur du pays, un document conforme au modèle de l'Annexe 25 ou de l'Annexe 26 (articles 72 et 73 de l'arrêté royal du 8 octobre 1981). Ce document prend l'identité complète du candidat réfugié et sa photo.

Au stade Dublin, si la Belgique adresse une demande de reprise à un pays tiers, il en est fait mention sur l'annexe du candidat réfugié qui doit se représenter quelques semaines plus tard. Si l'Etat tiers accepte cette demande, le candidat réfugié se voit notifier une Annexe 25quater ou 26quater et un laissez-passer sous la forme d'une Annexe 10ter.

Le demandeur d'asile qui a introduit une demande d'asile à l'intérieur du Royaume doit se présenter dans les huit jours de sa demande auprès de son administration communale et se voit délivrer une attestation d'immatriculation, modèle A, valable trois mois à dater de sa délivrance. Il s'agit d'un document carton qui reprend l'identité du demandeur d'asile et sa photo. Ce document de séjour est prorogé jusqu'à ce qu'il ait été statué sur la demande (article 74§3 et 75§1er de l'arrêté royal du 8 octobre 1981).

Q. 19. B. Are there situations or specific cases in which another equivalent document or even no document is issued? (in particular is there an exception for "procedures to decide on the right of the applicant legally to enter the territory" as made possible by §2 of article 6)?

Les demandeurs d'asile qui ne sont pas autorisés à entrer sur le territoire belge et qui introduisent une demande d'asile à la frontière reçoivent une annexe 25 (article 72 de l'arrêté royal du 8 octobre 1981).

Q. 19. C. For how long is this document in principle valid and is it necessary to renew it after a certain period?

Lors de l'introduction de sa demande d'asile, le candidat reçoit une annexe 25/26.

Le demandeur d'asile qui a introduit une demande d'asile à l'intérieur du Royaume doit se présenter dans les huit jours de sa demande auprès de son administration communale et se voit délivrer une attestation d'immatriculation, modèle A, valable trois mois à dater de sa délivrance. Il s'agit d'un document carton qui reprend l'identité du demandeur d'asile et sa photo. Ce document de séjour est prorogé jusqu'à ce qu'il ait été statué sur la demande (article 74§3 et 75§1er de l'arrêté royal du 8 octobre 1981).

Q. 19. D. What is the deadline for the delivery of that document? Is the mandatory deadline of 3 days set by article 6, §1 respected[203]?

Le document est immédiatement délivré.

Q. 19. E. Is it possible for an asylum seeker to get a travel document for serious humanitarian reasons (see §5 of article 6 which is an optional provision)?

Le candidat réfugié ne peut en principe pas quitter le Belgique sauf autorisation expresse délivrée par les instances compétentes en matière d'asile et par le Gouvernement provincial. Il doit justifier sa demande par des motifs sérieux, d'ordre professionnel, familial, culturel, etc.

[203] To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

Il risque d'une part de ne pas répondre à une convocation dans le cadre de la procédure ni de recevoir une décision négative sur cette base. D'autre part, ne disposant généralement pas d'un certificat d'inscription au registre des étrangers, il ne bénéficie pas du droit au retour.

Q. 19. F. Is there a central system of registration of asylum seekers and is it or not separate from the registration of aliens? If yes, describe it briefly (content) and indicate in particular if it is an electronic database.

Il existe un registre d'attente qui est le pendant pour les candidats réfugiés du registre des personnes physiques reprenant les nationaux et les étrangers.

Depuis 1995, deux registres sont tenus dans chaque commune : le registre de la population et le registre d'attente. Ce dernier reprend les candidats réfugiés qui ont établi leur résidence principale (lieu de vie réel) sur le territoire de la commune concernée et qui ne sont pas inscrits à un autre titre dans les registres de la population.

Il vise par conséquent :
- les étrangers qui se déclarent réfugiés et
- qui ne disposent pas d'un droit au séjour en Belgique à un autre titre (par exemple en qualité d'étudiant ou de bénéficiaire du regroupement familial).

La tenue de ce registre repose sur l'O.E. qui enregistre la première inscription du candidat réfugié dès son arrivée en Belgique. Les modifications ultérieures sont effectuées par les communes concernées sur base des déclarations de l'intéressé qui se présente à la commune pour s'inscrire et de renseignements collectés lors d'enquêtes de police et par les instances intervenant dans le cadre de la procédure d'asile. La radiation intervient lorsque l'intéressé décède, quitte le territoire, est reconnu réfugié, dispose d'un titre de séjour à un autre titre ou "*disparaît dans la nature*".

Ce registre reprend de nombreuses informations relatives au candidat réfugié touchant essentiellement à son identité, aux différentes étapes de la procédure par lesquelles il est passé et aux décisions prises. Il contient notamment des données les plus complètes possible s'agissant de l'identité. Il mentionne la date à laquelle l'étranger a introduit sa demande de reconnaissance de la qualité de réfugié, les décisions prises dans le cadre de cette procédure et la date à laquelle elles l'ont été. Il permet ainsi aux instances habilitées à le consulter de connaître l'état de la procédure. Il indique aussi le lieu obligatoire d'inscription.

L'accès au registre d'attente est réservé à certaines autorités, dont les C.P.A.S. qui peuvent ainsi se tenir informés de l'état d'avancement des procédures en cours.

Q.20. Residence of asylum seekers[204]:

Q. 20. A. Is in principle an asylum seeker free to move on the entire territory of your Member State or only to a limited part of it and in case, which part? (see article 7, §1 which is a mandatory provision)

Le candidat réfugié qui a introduit sa demande à l'intérieur des frontières reste en principe libre pendant la procédure. Cette liberté est entravée notamment par le défaut de moyen financier puisqu'il bénéficie d'une assistance matérielle en nature dans un centre d'accueil.

Q. 20. B. About the place of residence (see §2 of article 7): explain to which extend the person is free to choose her residence and if this depends of the stage of the asylum procedure (for instance before and after admissibility); if there are constraints limiting the choice, explain which ones and their reasons (for instance processing of application, attribution of reception conditions,…).

Le candidat réfugié qui a introduit sa demande à l'intérieur des frontières reste en principe libre pendant la procédure. Cette liberté est toutefois sérieusement limitée dans la mesure où il doit en principe vivre dans un centre ouvert, en tout cas pendant une période dont la longueur sera fixée par arrêté royal. Le candidat réfugié peut cependant quitter la structure d'accueil pendant quelques jours.

Si le candidat réfugié fait choix de ne pas résider dans le centre d'accueil, il devra subvenir à ses besoins. Exception: les soins médicaux qui sont couverts, que le demandeur réside ou non dans le système d'accueil

Echappent à cette mesure d'obligation de résider dans un centre les étrangers qui, au moment où ils ont formé leur demande, étaient admis ou autorisés à l'établissement ou au séjour pour une période de plus de trois mois (exemple des étudiants ou de ceux qui bénéficient d'un droit au séjour sur base du regroupement familial).

[204] Nota bene: the case of detention is covered by other questions and should be ignored under this question.

Les candidats réfugiés qui reçoivent l'aide d'un C.P.A.S. peuvent en principe s'installer sur le territoire de la commune de leur choix, même si un C.P.A.S. de référence a été désigné et que seul ce C.P.A.S. est tenu de leur accorder une aide. Des incitants sont prévus pour tenter de faire coïncider le lieu de vie du candidat réfugié avec le C.P.A.S. désigné.

Le principe est le paiement de l'aide sociale par les C.P.A.S., moyennant remboursement à 100 % par l'Etat jusqu'au jour de l'inscription éventuelle aux registres de la population. Toutefois, le remboursement est réduit de moitié si le candidat réfugié ne réside par sur le territoire de la commune d'inscription obligatoire et si le C.P.A.S. de cette commune n'apporte pas la preuve qu'il a proposé un logement public ou privé décent et adapté aux moyens du candidat réfugié sur le territoire de sa commune. Cette mesure vise à inciter à la correspondance entre le lieu d'inscription obligatoire et la résidence habituelle et à répartir réellement la charge des C.P.A.S. Le C.P.A.S. doit prouver, au moyen d'un rapport social, l'offre d'un logement adapté et le refus de celui-ci par l'étranger. Les petites communes sont autorisées à s'associer pour pourvoir à cette offre de logement.

Le remboursement est totalement supprimé "*lorsque l'absence de mesures suffisantes prises par le C.P.A.S. en vue de favoriser l'accueil de ces étrangers sur le territoire de sa commune, a pour conséquence d'inciter ceux-ci à s'installer sur le territoire d'une autre commune*". Un arrêté royal énumère les hypothèses dans lesquelles il est considéré qu' "*il y a absence de mesures suffisantes*". Tel est le cas lorsque plus de 95 % des étrangers résidant sur le territoire d'une autre commune et si le C.P.A.S. n'a pas organisé une structure en une initiative d'accueil locale d'accueil. Cette sanction ne s'applique pas aux communes qui ne peuvent plus se voir désigner comme lieu obligatoire d'inscription parce que le quota de candidats réfugiés susceptibles d'y être accueillis est dépassé. La présomption d'absence de mesures suffisantes est réfragable.

Q. 20. C. About the <u>place of reception (meaning where the asylum seeker has to stay to benefit from reception conditions) (see § 4 of article 7)</u>: explain which are the general rules about the determination of this place (to which extend are the decisions determining the place taken individually and do they take into account the personal situation of the asylum seeker?) and to which extend the person is free to choose it and if it depends of the stage of the asylum procedure (for instance before and after admissibility); if there are constraints limiting the choice, explain which ones and their reasons (for instance attribution of reception conditions, processing of the application,…).

Lors de la désignation du centre d'accueil, il est indiqué à l'agence qu'elle doit tenir compte du nombre de places disponibles mais également de l' « adaptation » du lieu sur la base de critères tels :

- la composition familiale ;
- l'état de santé ;
- la connaissance des langues nationales ;
- la langue de la procédure (elle est déterminée en début de procédure : il s'agit soit du français ou du néerlandais si le candidat réfugié s'exprime dans cette langue et n'a pas besoin d'un interprète, soit d'une langue déterminée par l'Office des étrangers en fonction des besoins du service si l'étranger demande l'assistance d'un interprète) ;
- la vulnérabilité de la personne concernée : l'article 36 de la loi « accueil » définit les personnes vulnérables comme étant les mineurs, les mineurs non accompagnés, les femmes enceintes, les victimes de la traite des êtres humains, les personnes victimes de violences ou de torture ou les personnes âgées. Il est d'ailleurs précisé que l'agence peut conclure des conventions avec des institutions ou associations spécialisées.

La loi « accueil » prévoit que l'état de santé (notamment) du candidat réfugié peut motiver une suppression ou une modification du lieu obligatoire d'inscription (article 28).

Cette prise en compte s'effectue déjà à l'heure actuelle. Lors de la désignation du centre d'accueil ou en cours de procédure en cas de demande de changement de centre d'accueil, la cellule dispatching de FEDASIL et de la Croix rouge peuvent, dans la mesure des places disponibles envisager de désigner une petite structure d'accueil individuelle plutôt qu'une structure communautaire grand centre. Le nombre de places en petites structures est toutefois limité par rapport aux places dans les centres d'accueil de plus grande taille.

En pratique, les familles sont désignées prioritairement dans les structures individuelles.

Le rapport FEDASIL (voyez *supra*), indique qu' « *il est tenu compte de la situation familiale du demandeur d'asile lors de la désignation du lieu obligatoire d'inscription* ». L'exposé des motifs de l'article 54 de la loi du 15 décembre 1980 tel que modifié par la loi-programme du 22 décembre 2003, prévoit en effet qu' « *afin de pouvoir fournir un accueil de qualité aux demandeurs d'asile, le lieu obligatoire d'inscription doit être attribué en fonction des besoins de subsistance et du profil des demandeurs d'asile* ». Le rapport indique que « *La pratique actuelle essaie de garantir l'unité familiale, lors de la désignation du lieu obligatoire d'inscription, pour les membres de la famille liés par un lien de parenté jusqu'au deuxième degré inclus en ligne directe et collatérale* ».

Le rapport précise que « *Dans les centres communautaires, des logements spécifiques sont prévus pour les familles afin de garantir le droit au respect de la vie familiale. Ils sont regroupés au sein d'une unité de logement. Tous les centres communautaires disposent de chambres ou d'appartements spécialement conçus pour accueillir des familles. Le cahier spécial des charges prévoit des critères indicatifs pour ce type de logement (ex. surface minimum, nombre maximum de personnes par chambre, etc.…)* ».

Q. 20. D. If all asylum seekers are not placed in accommodation centres because of capacity limits, explain <u>how the persons are distributed between accommodation centres and other accommodation facilities</u> (which authority takes the decisions, on the basis of which elements, can that decision be appealed by the asylum seeker,…)[205]

Voir supra sur la description du système d'accueil (question 12).

Les travaux préparatoires indiquent que « *Le risque de saturation de la capacité d'accueil est également envisagé par cette possibilité de ne pas désigner de lieu obligatoire d'inscription. Selon l'exposé des motifs de l'article 57 ter* [de la loi organique des C.P.A.S.], « *dans des circonstances exceptionnellement graves, le ministre ou son délégué peut négliger l'obligation de désigner un centre d'accueil (…). Des circonstances particulières sont aussi des circonstances où les capacités d'accueil seraient insuffisantes et où une alternative qualitativement équivalente comprenant l'aide matérielle devra être offerte* ». *L'absence de places disponibles autorisant de ne pas désigner de lieu obligatoire d'inscription, est rencontrée quand le réseau d'accueil est saturé, en ce compris les places disponibles en structure d'accueil d'urgence, telle que visée par l'article 18 de l'avant-projet. Dans l'hypothèse où, suite à l'existence de circonstances particulières, un lieu obligatoire d'inscription n'est pas désigné par l'Agence, la compétence pour l'octroi de l'aide se détermine conformément à la règle générale visée à l'article 1, § 1 de la loi du 2 avril 1965 relative à la prise en charge des secours accordés par les centres publics d'action sociale* » (p. 30).

Q. 20. E. How can an asylum seeker ask to <u>leave temporarily</u> the place of residence or of reception or an assigned area? How is the individual AND impartial character of the decision ensured? (see §5 of article 7 which is a mandatory provision)

[205] To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

La loi prévoit que le candidat réfugié qui vit dans une structure d'accueil communautaire peut demander après quatre mois d'être transféré dans une structure plus individuelle (voyez les lieux d'accueil énumérés ci-dessus : ILA, CIRE, etc…, question 12). Il ne pourra être satisfait à cette demande que dans la mesure des places disponibles. Il ne pourra en tout état de cause pas être satisfait à cette demande si ce délai de quatre mois est atteint après la notification d'une décision négative du conseil du contentieux des étrangers, sauf si le recours en cassation administrative introduit a fait l'objet d'une ordonnance de recevabilité par le Conseil d'Etat.

Cette hypothèse ne vise pas le cas où le DA veut quitter temporairement la structure d'accueil... :

- dans les centres communautaires, ils peuvent demander des autorisation de quitter le centre, sans risquer d'être considéré comme renonçant à leur place d'accueil, et que celle ci soit affectée à un autre demandeur.
- dans les structures individuelles, ils ont évidemment le droit de s'absenter de chez eux beaucoup plus librement.

Q.21. **Q. 21. A. Do rules on <u>reduction or withdrawal of reception conditions</u> exist in internal legislation and if yes in which cases (mention in particular if there are cases not foreseen by article 16, § 1 and 2 which are optional provisions)? Distinguish in your answer between cases of reduction and withdrawal and explain which conditions can be reduced and if access to emergency health care is always ensured as requested by article 16, §4, last sentence.**

La loi accueil prévoit que différentes sanctions peuvent être prononcées à l'encontre du bénéficiaire de l'accueil (article 45).

Ces sanctions sont :

- avertissement formel avec mention dans le dossier ;
- exclusion temporaire de la participation aux activités organisées par la structure d'accueil ;
- exclusion temporaire de la possibilité d'exécuter des prestations rémunérées de services communautaires ;
- restriction de l'accès à certains services :
- obligation d'effectuer des tâches d'intérêt général ;
- transfert vers une autre structure d'accueil.

La loi prévoit cependant qu'en aucun cas la sanction ne peut avoir pour effet la suppression complète de l'aide matérielle ni la diminution d l'accès à l'accompagnement médical.

Q. 21. B. Has article 16, §2 dealing with refusal of reception conditions for unreasonably late applications for asylum been transposed by your Member State (or was this case already applicable before transposition)? Are there cases in practice[206]?

Non, pas au niveau de l'accueil; même si l'introduction tardive de la demande d'asile a une incidence au niveau de la procédure d'asile et peut être une cause de refus d'octroi de la protection.

Le projet prévoit une séparation entre l'accueil et la procédure d'asile. L'article 4 indique que « *Les décisions de l'Agence ou du partenaire sur l'octroi de l'aide matérielle ne peuvent avoir égard au non-respect par le demandeur d'asile de ses obligations procédurales dans le cadre de sa procédure d'asile, pas plus qu'elles ne peuvent avoir une influence sur le traitement de celle-ci ».*

Q. 21. C. How is it ensured that decisions of reduction or withdrawal are taken individually, objectively AND in particular impartially (for instance through and independent arbitrator) (see article 16, §4 which is a mandatory provision)?

En ce qui concerne les sanctions prises à l'égard des résidents en centres d'accueil, voyez la question 25 qui lui est spécialement dédiée.

Il est prévu que les sanctions doivent être infligées par le directeur ou le responsable de la structure d'accueil, par une décision motivée prise de manière objective et impartiale.

[206] To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

Il est garanti qu' *« en aucun cas, la mise en œuvre d'une sanction ne peut avoir pour effet la suppression complète de l'aide matérielle octroyée en vertu de la présente loi, ni la diminution de l'accès à l'accompagnement médical* ».

En ce qui concerne l'aide octroyée par les C.P.A.S, elle peut être suspendue ou supprimée si la personne ne remplit pas ou plus les conditions d'accès, tel l'état de besoin, ou si la personne a dissimulé des ressources. Ces sanctions et les procédures prévues sont celles organisées par la loi organique relative aux C.P.A.S. et ne sont pas propres aux candidats réfugiés. Elles peuvent aller de la suppression partielle ou totale de l'aide sociale à l'obligation de la rembourser, sans jamais toutefois mettre en danger le droit au respect de la dignité humaine, notamment celui de bénéficier d'un minimum pour vivre.

Q. 21. D. Is statement 14/03 adopted by the Council at the same moment as the directive respected (see the documentation pack you received at our meeting in Brussels in April)?

Q. 21. E. Are there already administrative appeal decisions or judgements on cases of reduction, withdrawal or refusal which have been taken, and if yes, what has been the outcome[207]?

La loi "accueil » est entrée, pour partie, en vigueur ce 7 mai 2007. Aucune décision de jurisprudence relative à cette loi n'a dès lors encore été rendue.

Q.22. **Q. 22. A. Appeal against a negative decision relating to the granting of benefits or based on article 7 (see article 21 which is a mandatory provision): indicate against which decision an appeal can be introduced, describe the system of appeal in general and include in particular in your answer the information given to asylum seekers about possibilities of appealing, deadline for appealing, if the appeal has or not a suspensive effect, if there are different steps (for instance first an administrative appeal and in particular if the guarantee of an appeal before a judicial body in the last instance is respected)?**

[207] To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

Un recours en révision contre toute décision infligeant une ou plusieurs des trois sanctions les plus graves prévues. Il est introduit auprès du directeur général de l'Agence, auprès de la personne désignée par le partenaire et agréée par l'Agence, ou auprès du Conseil de l'aide sociale lorsqu'il s'agit d'une structure visée à l'article 63 de la présente loi (I.L.A.).

La décision est alors confirmée, annulée ou revue dans les 30 jours à compter de l'introduction du recours en révision.

En cas de confirmation de la sanction, de révision ou d'absence de décision sur le recours en révision, le bénéficiaire de l'accueil peut introduire un recours devant le Tribunal du Travail du lieu de la structure d'accueil dans un délai de trois mois à compter de la notification de la décision du directeur général, de la personne désignée par le partenaire, ou du Conseil de l'aide sociale, ou à compter de l'expiration du délai prescrit.

Par ailleurs, l'article 580, 8°, f du Code Judiciaire (modifié par la loi du 21 avril 2007 modifiant le Code judiciaire en ce qui concerne les contestations relatives à l'octroi, à la révision et au refus de l'aide matérielle) prévoit que le Tribunal du travail connait des contestations relatives à la violation des droits garantis au bénéficiaire de l'accueil.

Q. 22. B. Explain which are the possibilities for asylum seekers to benefit from <u>legal assistance</u> when they introduce such an appeal (see article 21, §2 which is a mandatory provision but leaves space to Member States)?

L'aide juridique de première (l'aide juridique accordée sous la forme de renseignements pratiques, d'information juridique, d'un premier avis juridique ou d'un renvoi vers une instance ou une organisation spécialisées) et deuxième ligne (l'aide juridique accordée à une personne physique sous la forme d'un avis juridique circonstancié ou l'assistance juridique dans le cadre ou non d'une procédure ou l'assistance dans le cadre d'un procès) est visée aux articles 508/1 à 508/23 du Code judiciaire.

Selon l'article 1er, §1, 10° de l'arrêté royal du 18 décembre 2003, le demandeur d'asile a droit à l'aide juridique.

La loi « accueil » prévoit que l'Agence doit veiller à ce que le bénéficiaire de l'accueil ait un accès effectif à l'aide juridique (article 33).

Q.22. C. Are there already administrative appeal decisions or judgements which have been taken and if yes, which are the main important ones[208]?

Non.

Q. 22.D. Is a mechanism of <u>complain for asylum seekers about quality of receptions conditions</u> in general (even if they are not personally concerned) organised? If yes, before which authority? Isit linked to the system of guidance, control and monitoring of reception conditions (see below question n° 39)?

Le bénéficiaire de l'accueil s'adresse au directeur ou au responsable de la structure d'accueil en cas de plaintes portant sur :

- les conditions de vie au sein de la structure d'accueil
- l'application du règlement d'ordre intérieur visé à l'article 19 de la présente loi.

Si la plainte n'est pas été traitée dans un délai de 7 jours à compter de la communication de la plainte, le bénéficiaire de l'accueil peut adresser sa plainte par écrit au directeur général de l'Agence, ou à la personne désignée à cet effet par le partenaire et agréée par l'Agence. Le directeur général de l'Agence, ou la personne désignée par le partenaire, répond à cette plainte dans les 30 jours.

Le Roi détermine les règles de procédure applicables au traitement des plaintes.

6. RIGHTS AND OBLIGATIONS OF ASYLUM SEEKERS

Q.23. <u>Family unity</u> of asylum seekers: define how a family is defined in relation with article 2, (d) which is a mandatory provision and explain how housing is provided to a family (see articles 8 which is a mandatory provision but leaves space to member States and 14, §2, (a) which is a mandatory provision).

La loi « accueil » définit la famille de la manière suivante (article 2, 5°):

- le conjoint du demandeur d'asile, ou son ou sa partenaire non marié(e) engagé(e) dans une relation stable ;

[208] To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

- les enfants mineurs du couple du demandeur d'asile visé ci-dessus ou du demandeur d'asile, à condition qu'ils soient non mariés et à charge, sans discrimination selon qu'ils sont nés du mariage, hors mariage ou qu'ils ont été adoptés.

Pour que la famille soit prise en considération, il faut qu'elle ait été fondée dans le pays d'origine et que ses membres soient présents sur le territoire en raison de la demande.

La loi reprend donc le prescrit de la directive, en usant de la possibilité de reconnaître les couples non mariés.

L'article 20 définit les garanties générales qui doivent bénéficier aux demandeurs d'asile, parmi lesquelles le respect de la vie privée et familiale. « *Lors de son séjour au sein d'une structure d'accueil communautaire, le bénéficiaire de l'accueil a droit au respect de sa vie privée et familiale, au respect de ses convictions, à participer à l'organisation de la vie communautaire au sein de la structure d'accueil, à communiquer avec sa famille, son conseil, les représentants du Haut Commissariat des Nations Unies pour les réfugiés et les associations ayant pour objet l'accueil des étrangers et la défense de leurs droits* ».

Lors de la désignation du lieu obligatoire d'inscription, il est prévu que soit prise en compte la composition familiale du bénéficiaire de l'accueil (article 11). En outre, l'aide matérielle qui bénéficie au demandeur d'asile s'applique également aux membres de sa famille.

La protection de la famille est également prévue au cas où la procédure de l'un des membres de la famille est terminée mais pas celle de tous ses membres. Ainsi, l'article 7 dispose que l'aide matérielle se poursuit après une décision négative à l'égard de l'étranger dont la procédure d'asile et la procédure devant le Conseil d'Etat se sont clôturées négativement, et qui a un membre de sa famille ou une personne exerçant sur lui l'autorité parentale ou la tutelle en vertu de la loi applicable, qui entre dans le champ d'application de la présente loi.

En général les familles sont regroupées. Elles bénéficient de logements adaptés. Le rapport FEDASIL indique (p. 57) que « *La pratique actuelle essaie de garantir l'unité familiale, lors de la désignation du lieu obligatoire d'inscription, pour les membres de la famille liés par un lien de parenté jusqu'au deuxième degré inclus en ligne directe et collatérale* ». Ce rapport explique que « *Dans les centres communautaires, des logements spécifiques sont prévus pour les familles afin de garantir le droit au respect de la vie familiale. Ils sont regroupés au sein d'une unité de logement. Tous les centres communautaires disposent de chambres ou d'appartements spécialement conçus pour accueillir des familles. Le cahier spécial des charges prévoit des critères indicatifs pour ce type de logement (ex. surface minimum, nombre maximum de personnes par chambre, etc.…)* ». Certaines familles rapportent et dénoncent le fait d'être logées parfois pendant des années dans une seule pièce où vivent les parents et les enfants, parfois adolescents, ne laissant aucune intimité ni aux uns ni aux autres.

Le rapport FEDASIL précise qu' « *il est également tenu compte de l'unité familiale pour ce qui est des transferts, puisque dans la pratique, ceux-ci ont notamment lieu à la demande du demandeur d'asile pour des raisons familiales. Le regroupement de la famille est envisagé si la personne concernée a un membre de sa famille jusqu'au 2ème degré dans une autre structure d'accueil* ».

Q.24. **Q. 24. A. How is <u>housing</u> of asylum seekers organised: describe the system in general and indicate in particular what is the most frequently system used (see article 14, §1 which is a mandatory provision but leaves space for Member States; distinguish between accommodation centres, private houses and apartments, hotels places or other premises).**

Les centres d'accueil ouverts sont gérés par Fedasil (les centres d'accueil fédéraux), la Croix-Rouge de Belgique, et les Mutualités socialistes (à Erezée). Les logements particuliers (ou 'privatifs') sont, d'une part, les Initiatives locales d'accueil (ILA) organisées par les CPAS, et, d'autre part, les places d'accueil gérées par les ONG partenaires (Ciré et Vluchtelingenwerk Vlaanderen).

Ces derniers temps, les structures individuelles ont été autant sollicitées que les structures communautaires, car le réseau d'accueil est à saturation. Quoique, comme l'on assiste ces derniers temps à une baisse du taux d'occupation, et vraisemblablement en prévision de la loi « accueil », et du principe de l'accueil en deux phases qui va y être consacré (4 mois en structures communautaires, suite à quoi, possibilité de transfert vers une structure individualisée), les structures individuelles type Ciré et Vluchtelingenwerk sont de moins en moins sollicitées pour des désignations à l'origine.

Cela étant, ce type de structure (ainsi que les ILA) reste tout de même prioritaire pour les familles.

Q. 24. B. What is the total number of available <u>places</u> for asylum seekers?[209]
Distinguish in your answer between accommodation centres, private houses and apartments, hotels or other premises.

[209] To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

Au total, quelque 15.500 places d'accueil sont réparties sur l'ensemble de la Belgique (situation 2005) pour les candidats réfugiés qui sont accueillis dans les structures d'accueil et non ceux qui sont aidés par un C.P.A.S.

Selon FEDASIL (voir site), un quart des demandeurs d'asile sont hébergés dans des centres d'accueil fédéraux, un autre quart dans les centres de la Croix-Rouge, et la moitié dans des Initiatives locales d'accueil et ONG partenaires.

Extrait du site internet de FEDASIL

Capacité d'accueil, occupation et places disponibles au sein du réseau d'accueil de Fedasil au 02-05-2006

Opérateurs	**Capacité d'accueil**	**Personnes accueillies**	**Places disponibles ***
Centres Fédéraux	3824	3411	206
Centres Croix-Rouge & Rode Kruis	3293	2745	360
Centre Erezée	47	49	2
VwV & CIRE	1350	1280	24
ILA	7168	6167	469
Total	15682	13652	1061

- Certaines places d'accueil ne peuvent être utilisées (par ex.: une chambre prévue pour une famille de 6 personnes et qui abrite une famille de 4 personnes entraîne 2 places inoccupables. D'autres chambres peuvent être momentanément indisponibles si elles sont remises à neuf).

- Ces places inoccupables ne sont pas reprises dans le calcul des places disponibles. Pour cette raison, le nombre de places disponibles n'est pas égal à la capacité totale d'accueil moins le nombre de personnes accueillies.

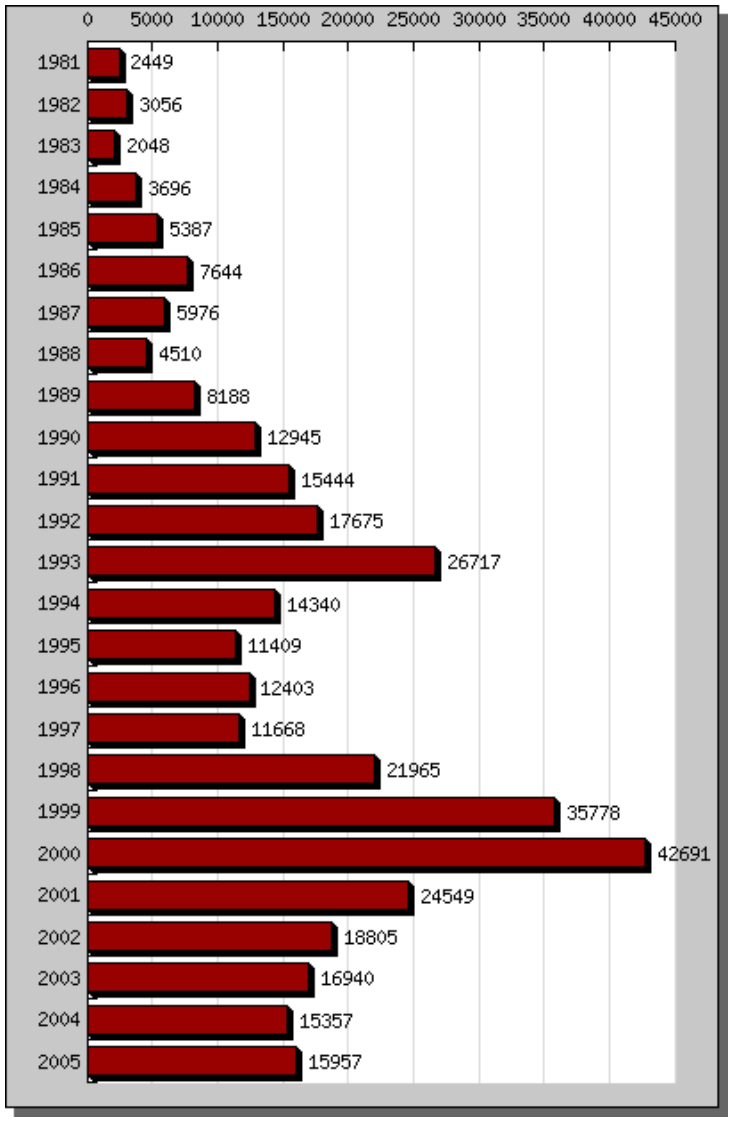
Q. 24. C. Is this number of places for asylum seekers <u>sufficient</u> in general or frequently insufficient?[210]

Actuellement, le nombre de places disponibles au regard du nombre de demandeurs d'asile est suffisant.

<u>Extrait du site internet FEDASIL, source Office des étrangers :</u>

[210] To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

Nombres de demandes d'asile en Belgique par an depuis 1981



Source: l'Office des Etrangers

Q. 24. D. Are there <u>special measures foreseen in urgent cases</u> of a high number of news arrivals of asylum seekers (outside the case of application of the directive on temporary protection)?

En cas de défaut de places dans les centres d'accueil, la loi « accueil » (article 18) autorise un hébergement temporaire, pour une période maximale de dix jours, dans une structure d'accueil d'urgence où l'accompagnement social est limité. Un minimum est toutefois garanti c'est à dire l'octroi de « *la nourriture, le logement, l'accès aux facilités sanitaires et l'accompagnement médical tel que décrit aux articles 23 à 29 »*.

Actuellement, un centre est dédié à l'aide d'urgence [211]: :Woluwe-Saint-Pierre.

Selon FEDASIL qui a réalisé une étude sur cette aide, il existe huit catégories de public-cible de cet accueil :
1°) les personnes qui à la suite de la désignation de leur lieu obligatoire d'inscription ne peuvent atteindre le lieu en question. Il s'agit notamment des demandeurs d'asile arrivant en fin d'après-midi au dispatching, désignés dans une I.L.A. et devant attendre la nuit ou le week-end pour pouvoir s'y rendre ou encore des demandeurs d'asile arrivant le soir et se voyant désigner une structure d'accueil fort éloignée ;
2°) les personnes qui ne se sont pas encore vues désigner un centre étant donné leur arrivée tardive et la fermeture de l'O.E. ;
3°) les demandeurs d'asile qui pour des raisons disciplinaires font l'objet d'un transfert, dans l'attente d'une nouvelle désignation liée à l'accord d'une structure d'accueil pour les accueillir ;
4°) des mineurs non-accompagnés pour lesquels une solution d'hébergement permanente n'a pas encore été trouvée ;
5°) les personnes inscrites dans un programme de retour volontaire dont la date de départ est fixée ;
6°) les demandeurs d'asile ayant introduit une deuxième demande d'asile et pour lesquels l'O.E. recherche le dossier avant d'enregistrer la nouvelle demande (cela prend minimum une semaine) ;
7°) les demandeurs d'asile pour lesquels un lieu d'accueil adéquat n'a pu être désigné en raison de l'état de l'offre et de la demande (ex. famille nombreuse…) ;
8°) les personnes ayant des besoins spécifiques comme les cas psychiatriques.

Selon ce rapport, la durée de l'accueil d'urgence est sensée être très courte. Cependant, la pratique démontre que le séjour perdure.

Toutes ces hypothèses ne sont pas reprises dans la loi « accueil ». Par exemple, les cas psychiatriques devront pouvoir prétendre à des conditions particulières d'hébergement, qui tiennent compte de leur état. L'accueil d'urgence n'étant pas du tout adapté à leurs besoins. L'objectif de la loi « accueil » est de ne pas faire de l'accueil d'urgence, l'accueil « fourre tout », d'en limiter les hypothèses, car l'accompagnement social y est limité au minimum.

La loi prévoit aussi en son article 11 la possibilité de ne pas désigner un lieu obligatoire d'inscription. Les travaux préparatoires indiquent que « *Le risque de saturation de la capacité d'accueil est également envisagé par cette possibilité de ne pas désigner de lieu obligatoire d'inscription. Selon l'exposé des motifs de l'article 57 ter* [de la loi organique

[211] Voir rapport FEDASIL, p. 62.

des C.P.A.S.], « *dans des circonstances exceptionnellement graves, le ministre ou son délégué peut négliger l'obligation de désigner un centre d'accueil (...). Des circonstances particulières sont aussi des circonstances où les capacités d'accueil seraient insuffisantes et où une alternative qualitativement équivalente comprenant l'aide matérielle devra être offerte* ». *L'absence de places disponibles autorisant de ne pas désigner de lieu obligatoire d'inscription, est rencontrée quand le réseau d'accueil est saturé, en ce compris les places disponibles en structure d'accueil d'urgence, telle que visée par l'article 18 de l'avant-projet. Dans l'hypothèse où, suite à l'existence de circonstances particulières, un lieu obligatoire d'inscription n'est pas désigné par l'Agence, la compétence pour l'octroi de l'aide se détermine conformément à la règle générale visée à l'article 1, § 1 de la loi du 2 avril 1965 relative à la prise en charge des secours accordés par les centres publics d'action sociale* » (p. 30).

Dans ce cas, l'aide est octroyée par le C.P.A.S. du lieu de résidence.

Q.25. **<u>Accommodation centres</u> (important note: all the following questions are about open and <u>not</u> closed centres where asylum seekers are detained which are covered by another question)**

Q. 25. A Are there <u>different categories</u> of accommodation centres, for instance depending of the stage of the procedure (admissibility and eligibility)?

La répartition entre les catégories de centres ne se fait pas selon le niveau de procédure mais selon la durée de celle-ci (possibilité de transfert vers l'aide d'un C.P.A.S. après une certaine durée de procédure, possibilité de transfert vers une structure individuelle après 4 mois) ou selon des facteurs tells que la composition familiale, l'état de santé, etc. (hébergement en grands centres ou dans des plus petites structures : I.L.A., C.I.R.E., etc.) (voir ci-dessus question 11).

Q. 25. B. Is there a legal time limit for accommodation in a centre after which the asylum seekers have access to private houses or apartments or is this limit linked to a stage of the asylum procedure?

Voir également question 11.

Au-delà d'un délai qui devra être fixé par arrêté royal après une évaluation de la nouvelle procédure d'asile, les candidats réfugiés devraient pouvoir quitter le réseau d'accueil pour se voir désigner un C.P.A.S. qui leur donnera une aide financière.

Q. 25. C. Is there a general <u>regulation about the internal functioning</u> of those centres and the rights and duties of the asylum seekers? If yes, is this general regulation applicable to public and private centres? If not, are the centres supposed to adopt an internal regulation and does a central authority have or not a kind of control about its content?

Ces règles devront être déterminées par arrêté royal.

L'article 17 de la loi « accueil » prévoit qu'un arrêté royal « *défini*[ra] *les normes auxquelles les structures d'accueil doivent répondre tant en termes qualitatifs qu'en termes d'infrastructure ainsi que les modalités de contrôle par l'Agence du respect de ces normes* ».

L'article 19 indique également qu' « *un arrêté royal détermine*[ra] *le régime et les règles de fonctionnement applicables aux structures d'accueil. Un règlement d'ordre intérieur établi par le Ministre en détermine les modalités d'exercice. Il est veillé à la bonne et complète compréhension de celui-ci par le bénéficiaire de l'accueil* ».

Un régime de traitement des plaintes est également mis en place. L'article 45 prévoit que « *Le bénéficiaire de l'accueil s'adresse au directeur ou au responsable de la structure d'accueil en cas de plaintes portant sur :*
- *les conditions de vie au sein de la structure d'accueil*
- *l'application du règlement d'ordre intérieur visé à l'article 19 de la présente loi* ».

Un délai de réaction aux plaintes est prévu. « *Si la plainte n'est pas été traitée dans un délai de 7 jours à compter de la communication de la plainte, le bénéficiaire de l'accueil peut adresser sa plainte par écrit au directeur général de l'Agence, ou à la personne désignée à cet effet par le partenaire et agréée par l'Agence. Le directeur général de l'Agence, ou la personne désignée par le partenaire, répond à cette plainte dans les 30 jours* ».

La procédure applicable aux plaintes devra être fixée par arrêté royal.

Un rapport sur les plaintes sera établi chaque année par Fedasil.

Q.25. D. Do the regulations foresee the possibility of <u>sanctions</u> against asylum seekers in case of breach of the rules? (see article 16, §3) If yes, which sanctions for which rules? Which is the competent authority to decide? How is it ensured that decisions are taken individually, objectively and in particular *impartially* (for instance through an independent arbitrator) as requested by §4 of article 21 which is mandatory provision*?* Which are the possibilities of appealing against those decisions if the system is different from the general one under question n°22? Are there already administrative appeal decisions or judgements which have been taken and if yes, which are the main important ones? [212]

<u>Principe (articles 43 et 44)</u>

La loi « accueil » prévoit un cadre autorisant de possibles sanctions.

L'article 43 de la loi dispose qu' « *Afin de garantir et, si nécessaire, de rétablir l'ordre, la sécurité et la tranquillité dans la structure d'accueil, des mesures d'ordre interne peuvent être prises. Le Roi fixe les mesures d'ordre pouvant être prises à l'encontre d'un résident, les règles de procédure applicables ainsi que l'autorité habilitée à les prendre* ».

L'article 44 prévoit que « *le bénéficiaire de l'accueil peut faire l'objet d'une sanction en cas de manquement grave au régime et règles de fonctionnement applicables aux structures d'accueil visés à l'article 19. Lors du choix de la sanction, il est tenu compte de la nature et de l'importance du manquement ainsi que des circonstances concrètes dans lesquelles il a été commis* ».

Cette disposition énumère les sanctions qui peuvent être prononcées :

« 1° l'avertissement formel avec mention dans le dossier social visé à l'article 32 ;

2° l'exclusion temporaire de la participation aux activités organisées par la structure d'accueil ;

[212] To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

3° l'exclusion temporaire de la possibilité d'exécuter des prestations rémunérées de services communautaires, telles que visées par l'article 34 ;

4° la restriction de l'accès à certains services ;

5° l'obligation d'effectuer des tâches d'intérêt général, dont la non-exécution ou l'exécution défaillante peut être considérée comme un nouveau manquement ;

6° le transfert, sans délai, du bénéficiaire de l'accueil, vers une autre structure d'accueil ».

La loi prévoit toutefois que les sanctions doivent être infligées par le directeur ou le responsable de la structure d'accueil, par une décision motivée prise de manière objective et impartiale. Elles peuvent être diminuées ou levées durant leur exécution par l'autorité qui les a infligées. C'est un arrêté royal qui devra déterminer « *les règles de procédure applicables au traitement des sanctions* ».

Il est garanti qu' *« en aucun cas, la mise en œuvre d'une sanction ne peut avoir pour effet la suppression complète de l'aide matérielle octroyée en vertu de la présente loi, ni la diminution de l'accès à l'accompagnement médical* ».

Recours (article 46)

Un recours en révision contre toute décision infligeant une ou plusieurs des trois sanctions les plus graves prévues (restriction de l'accès à certains services, obligation d'effectuer des tâches d'intérêt général et transfert). Il est introduit auprès du directeur général de l'Agence, auprès de la personne désignée par le partenaire et agréée par l'Agence, ou auprès du Conseil de l'aide sociale lorsqu'il s'agit d'une structure visée à l'article 63 de la présente loi (I.L.A.).

Ce recours est introduit par simple courrier en français, néerlandais ou anglais dans un délai de cinq jours ouvrables à compter de la notification de la décision.

La décision est alors confirmée, annulée ou revue dans les 30 jours à compter de l'introduction du recours en révision. La décision peut être suspendue pendant l'examen du recours. Les personnes concernées peuvent, si nécessaire, être entendues. La décision doit être motivée.

En cas de confirmation de la sanction, de révision ou d'absence de décision sur le recours en révision, le bénéficiaire de l'accueil peut introduire un recours devant le Tribunal du Travail du lieu de la structure d'accueil dans un délai de trois mois à compter de la notification de la décision du directeur général, de la personne désignée par le partenaire, ou du Conseil de l'aide sociale, ou à compter de l'expiration du délai prescrit.

Q. 25. E. Are asylum seekers involved in the management of these centres? If yes, how (advisory board, appointment or election of representatives)? (see article 14, §6 which is an option provision)

L'article 20 de la loi « accueil » garantit le droit du résident de participer à l'organisation de la vie communautaire au sein de la structure d'accueil. Cette participation n'est pas davantage précisée. Le rapport FEDASIL indique que certains centres communautaires disposent d'un comité des sages au sein duquel les demandeurs d'asile peuvent s'exprimer.

Q. 25. F. Do specific rules exist on work of asylum seekers inside the accommodation centres different from the general ones about employment (see below)? If yes, which ones? Can working inside accommodation centres be considered as a (mandatory) contribution of the asylum seekers to the management of the centres, is it or not paid and considered as implying access to the labour market and subject to the same rules?

La loi « accueil » prévoit que « *l'Agence ou le partenaire organise* […] *la prestation de services communautaires par les bénéficiaires de l'accueil dans les structures communautaires* », tout en rappelant qu'ils peuvent également exercer du volontariat.

Le « service communautaire » est « *toute prestation effectuée par le bénéficiaire de l'accueil dans la structure communautaire, au profit de la communauté des bénéficiaires de l'accueil résidant dans celle-ci ou effectuée dans le cadre d'une activité, organisée par la structure précitée ou pour laquelle celle-ci est partenaire, qui concourt à son intégration dans son environnement local et pour laquelle peut lui être versée une majoration de son allocation journalière* ».

La loi précise que cette allocation n'est pas considérée comme une rémunération dans le cadre d'un contrat de travail. En effet, les candidats réfugiés ne peuvent en principe pas travailler (voyez *infra*).

L'octroi de l'allocation journalière était déjà prévue par l'article 62 § 2*bis* de la loi-programme du 19 juillet 2001.

Q.26. **Q. 26. A. How can asylum seekers <u>communicate</u> with legal advisers, representatives of UNHCR and NGOs? (see article 14, §2, (b) which is a mandatory provision).**

Q. 26. B. What are the rules about <u>access</u> of legal advisers, UNHCR and NGOs regarding access to accommodation centres and other housing facilities (see article 14, §7 which is a mandatory provision)

Q. 26. C. Can the access of legal advisers, UNHCR and NGOs be <u>limited</u> for security reasons or any other reason (see article 14, §7, last sentence)?

L'article 20 de la loi « accueil » pose pour principe que **«** *lors de son séjour au sein d'une structure d'accueil communautaire, le bénéficiaire de l'accueil a droit* […] *à communiquer avec sa famille, son conseil, les représentants du Haut Commissariat des Nations Unies pour les réfugiés et les associations ayant pour objet l'accueil des étrangers et la défense de leurs droits* ».

<u>Principe</u>

L'article 21 dispose que « *les conseillers juridiques des bénéficiaires de l'accueil, les représentants du Haut Commissariat des Nations Unies pour les réfugiés et les ONG qui agissent en son nom ont accès aux structures communautaires d'accueil, en vue d'aider les bénéficiaires de l'accueil* ». « *Il est prévu, dans la structure d'accueil communautaire, un local permettant d'assurer aux entretiens qui s'y déroulent un caractère confidentiel* ».

En ce qui concerne l'assistance des avocats, l'article 33 prévoit que « *L'Agence ou le partenaire veille à ce que le bénéficiaire de l'accueil ait un accès effectif à l'aide juridique de première et de deuxième ligne, telle que visée aux articles 508/1 à 508/23 du Code judiciaire* ». Les candidats réfugiés et les demandeurs de régularisation de séjour appartiennent en effet aux catégories d'étrangers ayant droit à l'aide juridique, c'est à dire à l'assistance gratuite d'un avocat. D'une part, ils peuvent comme toute personne, sans condition de nationalité ou de séjour, bénéficier de l'aide juridique de première ligne, « *sous la forme de renseignements pratiques, d'information juridique, d'un premier avis juridique ou d'un renvoi vers une instance ou une organisation spécialisée* ». D'autre part, ils bénéficient également de la gratuité totale de l'aide juridique de deuxième ligne (avis juridique circonstancié ou assistance juridique dans une procédure).

La loi prévoit que « *l'Agence ou le partenaire peut conclure des conventions avec des associations ayant pour objet la défense des droits des étrangers ou avec les bureaux d'aide juridique* ».

<u>Limites</u>

Toutefois, un arrêté royal devra déterminer dans quelles mesures il y aura des limites à cet accès « *uniquement aux fins de sécurité des structures communautaires d'accueil et des locaux ainsi que des bénéficiaires de l'accueil* ».

Dans les faits, comme il n'existe pas de système de reconnaissance des ONG par l'Etat, excepté le HCR, via le CBAR, aucune association n'aura le droit d'accès aux centres d'accueil, sauf accord express avec le directeur du centre. Et comme, en terme de mobilité, les demandeurs d'asile sont limités, et que la loi ne leur garanti par exemple pas un billet de train chaque fois qu'ils veulent se rendre dans un service social, juridique ou médical autre que celui du centre, leurs droit en termes de communication sont à nuancer.

Dans certains centres, excentrés de la ville ou des services sociaux (par exemple dans la province de Luxembourg où il n'y a pas beaucoup de permanences sociales spécialisées, ni d'avocats -aide juridique spécialisés en droit des étrangers) cela posera certainement un problème.

Q.27. **Q. 27. A. Is a <u>medical screening</u> organised by the receiving State, is it mandatory or voluntary? Does it include HIV tests? (see article 9 which is an optional provision)**

Q. 27. B. Do the legal provisions on reception conditions ensure that asylum seekers receive <u>at least emergency care and essential treatment of illness</u> as requested by article 15 §1 which is a mandatory provision? Do they have a further access to health care?

Q. 27. C. What is the <u>practice</u> regarding access of asylum seekers to health care and how is it organised? In particular, what is the situation in accommodation centres (are doctors coming to the centres or do asylum seekers go to doctors outside)?[213]

La loi « accueil » garantit que « *le bénéficiaire de l'accueil a droit à l'accompagnement médical nécessaire pour mener une vie conforme à la dignité humaine* » (article 23). C'est l'Agence qui est compétente pour assurer cet accompagnement médical sauf en cas d'accueil dans une initiative locale d'accueil (C.P.A.S.). Un accompagnement psychologique est également prévu et garanti.

L'accompagnement médical est défini de la manière suivante. Il s'agit de « *l'aide et* [d]*es soins médicaux, que ceux-ci soient repris dans la nomenclature telle que prévue à*

[213] To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

l'article 35 de la loi relative à l'assurance obligatoire soins de santé et indemnités coordonnée le 14 juillet 1994 ou qu'ils relèvent de la vie quotidienne ».

Il est toutefois prévu qu'un arrêté royal déterminera « *d'une part, l'aide et les soins médicaux qui, bien que repris dans la nomenclature précitée, ne sont pas assurés au bénéficiaire de l'accueil en ce qu'ils apparaissent comme manifestement non nécessaires, et d'autre part, l'aide et les soins médicaux relevant de la vie quotidienne et qui bien que non repris dans la nomenclature précitée sont assurés au bénéficiaire de l'accueil* ».

Cet arrêté royal a été pris en date du 9 avril 2007 et publié au Moniteur belge le 7 mai 2007.

Les structures d'accueil, sous la responsabilité de l'agence, garantissent un « *accès effectif à un accompagnement médical* », « *sous la responsabilité d'un médecin qui conserve son indépendance professionnelle envers le directeur ou le responsable de ladite structure* ». Un dossier médical unique est tenu à jour et conservé au sein de la structure d'accueil communautaire désignée comme lieu obligatoire d'inscription, et le cas échéant transféré.

Cet accompagnement est garanti à tous les candidats réfugiés, même ceux qui ont décidé de vivre en dehors du centre, par exemple dans leur famille.

L'état de santé du candidat réfugié peut être un motif conduisant à la suppression de la désignation d'un lieu obligatoire d'inscription, en conséquence de quoi le candidat réfugié percevra l'aide du C.P.A.S. de son lieu de résidence (article 28).

Les décisions de ce médecin peuvent être contestées auprès de l'Agence.

L'exposé des motifs précise que « *qu'il appartient à ce médecin d'examiner l'opportunité d'orienter le bénéficiaire de l'accueil vers des spécialistes ou d'autres professionnels de la santé* […], *en vue d'un accompagnement de seconde ligne* ».

Il y est également précisé que « *Le droit au libre choix du médecin implique que le patient puisse s'adresser à plusieurs praticiens professionnels pour choisir celui qui le traitera finalement* ». L'exposé des motifs souligne toutefois que ce libre choix peut être restreint lorsque cette restriction est prévue par la loi. L'exposé des motifs donne les exemples de la médecine de contrôle, du traitement médical des détenus ou de

l'admission forcée de malades mentaux. Il s'en déduit que « *les bénéficiaires de l'accueil conservent le droit de consulter un autre médecin que celui qui est employé au sein de la structure d'accueil où ils résident ou qui est lié par convention avec l'Agence ou avec un partenaire. Dans ce cas, la structure d'accueil n'interviendra pas dans les frais médicaux qui seront entièrement à charge du bénéficiaire de l'accueil* ».

La loi « accueil » prévoit que « *Le bénéficiaire de l'accueil peut être soumis à un examen médical obligatoire pour des motifs de santé publique* » (article 29), repris en annexe de l'arrêté royal de 1981 (cela n'inclut pas le test HIV).

Q.28. **Q. 28. A. What is the <u>length of the period</u> determined by the concerned Member State during which asylum seekers have <u>no access</u> to the labour market? (see article 11 which is a mandatory provision)**

L'accès au marché du travail des candidats réfugiés va être modifié par les projets en cours mais rien n'est encore fixé à ce sujet. Aujourd'hui, l'accès au marché du travail dépend du stade de la procédure. En recevabilité, les candidats réfugiés ne peuvent pas travailler mais ils le peuvent au fond.

Suite à la suppression de cette distinction avec la nouvelle procédure d'asile entrée en vigueur le 1er juin 2007, un nouveau système devra être établi. Il dépendra peut-être de la longueur de la procédure et pourrait être calqué sur la sortie possible du centre d'accueil après un certain délai de procédure.

Un groupe de travail a été mis en place et un nouvel arrêté royal devrait être pris suite aux réflexions de ce groupe de travail.

Dans l'attente de ces nouvelles dispositions, le système actuellement en vigueur peut être présenté.

Cette matière est régie par la loi du 30 avril 1999 relative à l'occupation des travailleurs étrangers et par l'arrêté royal du 9 juin 1999 exécutant cette loi. Ces textes ont également été modifiés à plusieurs reprises, notamment par un arrêté royal du 6 février 2003 qui a créé le permis de travail C. Il s'agit d'un permis de travail d'une durée limitée et valable pour toutes les professions salariées. Il n'implique dès lors pas de démarches préalables de l'employeur. Le travailleur obtient le permis de travail et peut être occupé immédiatement. Il est accordé aux candidats réfugiés recevables ("*aux ressortissants étrangers autorisés à séjourner en qualité de candidat réfugié recevable par [l'O.E.], ou, en cas de recours, par le [C.G.R.A.], jusqu'à ce qu'une décision soit prise quant au bien-fondé de leur demande de reconnaissance de la qualité de réfugié par le Commissaire général aux réfugiés et aux apatrides ou, en cas de recours, par la Commission permanente de recours des réfugiés*"). Le candidat réfugié recevable peut exercer en toute légalité une activité salariée. Le permis de travail C perd sa validité au terme de la procédure d'asile et notamment en cas de décision négative de la C.P.R.R. Cela pose de

sérieuses difficultés aux étrangers qui conservent leur permis de séjour (attestation d'immatriculation - carte orange) après une telle décision, pendant le temps du traitement de la demande de régularisation (9.3.) qu'ils ont introduite.

Les autres candidats réfugiés (non encore recevables) n'ont en principe pas le droit de travailler. Dans certains cas, ils peuvent obtenir un permis de travail B, c'est à dire un permis de travail d'une durée déterminée, de maximum douze mois, et limité à l'occupation auprès d'un seul employeur. L'obtention de ce permis implique des démarches de la part d'un employeur qui doit solliciter une autorisation d'occuper un travailleur de nationalité étrangère.

Si elle lui est accordée, le travailleur étranger se verra délivrer un permis de travail B. Les conditions à réunir rendent difficile l'obtention de telles autorisations s'agissant de l'emploi d'un candidat réfugié. Il s'agit pour l'essentiel des conditions suivantes:

- L'étranger doit être en séjour régulier sur le territoire. C'est le cas lorsqu'il est encore en procédure d'asile;
- Un contrat d'emploi conforme au modèle de contrat de travail pour travailleur étranger doit être signé;
- L'étranger doit être originaire d'un pays qui a signé une convention de main-d'œuvre avec le pays d'origine (Maroc, Algérie, Tunisie, Turquie, Yougoslavie). Le non respect de cette condition aura pour conséquence une décision négative de l'administration au premier stade de la procédure. Toutefois, en degré d'appel, le Ministre de l'emploi de la région compétente peut déroger à cette condition. Cette dérogation n'est en pratique pas trop difficile à obtenir.
- L'employeur doit établir que le travailleur qu'il embauche l'est parce qu'aucun travailleur sur le marché du travail n'est disponible pour cette fonction. Cette condition est évidemment difficile à satisfaire sauf dans le cas d'un travail bien particulier et lorsque le travailleur est particulièrement qualifié ou a une qualification très spécifique.

Le refus de délivrance d'un permis de travail ou d'une autorisation d'occupation peut faire l'objet d'un recours dans un délai d'un mois devant le Ministre de l'emploi de la région compétente. La décision du Ministre est ensuite susceptible d'un recours devant le Conseil d'Etat.

Les réfugiés reconnus peuvent par contre travailler sans permis de travail (article 2, 5° de l'arrêté royal du 9 juin 1999 portant exécution de la loi du 30 avril 1999 relative à l'occupation des travailleurs étrangers).

Une circulaire du 1er juin 2007 relative à l'octroi du permis de travail C pour les demandeurs d'asile à partir du 1er juin 2007 a été publiée au Moniteur belge le 18 juin 2007.

Cette circulaire indique : « pour diverses raisons, il n'est pas possible, dans l'immédiat, d'adapter cette disposition (relative à l'octroi d'un permis de travail aux demandeurs d'asile) à la nouvelle procédure d'asile. » La circulaire précise qu'il n'est désormais plus

possible de délivrer un permis de travail C à un demandeur d'asile qui n'a pas été déclaré recevable avant le 1er juin 2007 sur base de l'ancienne procédure d'asile.

Dans l'attente d'une réforme relative au travail des demandeurs d'asile, la question de compatibilité de la législation actuelle avec l'article 11§1 de la directive 2003/9/CE se pose.

Puisqu'aucune distinction entre la recevabilité et le fond n'existe dans la nouvelle procédure d'asile qui est entrée en vigueur le 1er juin, les demandeurs d'asile qui ont introduit une demande après le 1er juin et dont la demande est en cours d'examen ne peuvent pas travailler.

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Partant, le demandeur d'asile dont la demande est pendante depuis plus d'un an ne pourra donc pas travailler. Ce cas de figure pourra cependant s'avérer fort théorique dans la mesure où la nouvelle procédure d'asile devrait permettre des décisions définitives rapides quant à l'octroi ou non du statut de réfugié.

Q. 28. B. After that period, are asylum seekers or not obliged to obtain a work permit? In case is there a limit for the administration to deliver the permits and how quick are they delivered? What is their length?

Le demandeur d'asile déclaré recevable sur base de l' « ancienne procédure » d'asile peut obtenir un permis de travail modèle C auprès de l'ORBEM, en région bruxelloise, du VDAB en région flamande et du FOREM en région wallonne. Ce permis de travail est délivré en quelques semaines.

Le demandeur d'asile qui a introduit une demande d'asile après le 1er juin 2007, sur base de la nouvelle procédure d'asile, ne peut pas obtenir de permis de travail.

Q. 28. C. After that period, what are the conditions for access of the asylum seekers to the labour market? (in particular, are there rules concerning the maximum allowed of working hours or days per week, month or year, limits in terms of type of work or of professions authorised?

Les règles applicables pour les demandeurs d'asile sur base de l' « ancienne procédure » sont les règles générales relatives au travail. Aucune restriction spécifique n'est imposée aux demandeurs d'asile concernant le nombre d'heures ou de jours de travail et le type de travail ou de profession.

Q. 28. D. What are the rules in terms of priorities between asylum seekers on the one hand and nationals, EU or EEE citizens and legally third-country nationals on the other?

Voyez question 28 A.

Aucune règle de priorité n'est accordée aux citoyens de l'Union et à ceux des Etats parties à l'accord sur l'Espace économique européen et aux ressortissants de pays tiers en séjour régulier.

Q. 28. E Do asylum seekers have access to vocational training, does this or not depend of their right to access to the labour market, and in case at which conditions? (see article 12 which is optional regarding §1 and mandatory regarding § 2)

La loi « accueil » prévoit que " *Sans préjudice du respect des règles régissant l'accès à la formation professionnelle, des cours et des formations organisés par la structure d'accueil ou par des tiers sont proposés au bénéficiaire de l'accueil* ».

Q. 28. F. Are the rules regarding access to the labour market adopted to transpose the directive more or less generous than the ones applicable previously?

Pas encore défini puisqu'aucune réforme relative au travail n'est encore intervenue.

Q.29. Are reception conditions subject to the fact that asylum seekers do not have sufficient resources? Are asylum seekers requested to contribute to reception conditions when they have personal resources (for instance if they work) or to refund the authorities if it appears that they have resources? (see article 13 §§ 3 and 4 which are optional provisions)

L'accueil dans les centres n'est pas conditionné par l'absence de ressources. Il est automatique dès l'introduction de la demande d'asile. Par contre, l'assistance des centres publics d'action sociale (pas lorsqu'ils mettent en place une initiative locale d'accueil) est conditionnée par l'état de besoin. Ainsi, un demandeur d'asile qui travaille et a des revenus suffisants n'aura pas droit à percevoir une aide sociale équivalente au revenu

d'intégration. Cela signifie évidemment qu'il soit autorisé à travailler légalement (voir question 28 *supra*).

7. SPECIAL NEEDS OF PARTICULAR CATEGORIES OF ASYLUM SEEKERS

Q.30. **Q. 30. A. Which of the different categories of persons with special needs considered in the directive are taken into account in the national legislation (see article 17, §1 which is a mandatory provision): disabled people, elderly people, pregnant women, single parents with minor children, persons who have been tortured, raped or victims of serious physical or psychological violence? Include in your answer all other categories envisaged in national law.**

Les personnes vulnérables suivantes sont prises en considération : les mineurs, les mineurs non accompagnés, les parents isolés accompagnés de mineurs, les femmes enceintes, les personnes ayant un handicap, les victimes de la traite des êtres humains, les personnes victimes de violence ou de tortures ou encore les personnes âgées (article 36 alinéa 1 de la loi « accueil »).

Le législateur belge ajoute à ces catégories les victimes de la traite des êtres humains.

Un accueil spécifique existe en Belgique pour les victimes de la traite des êtres humains, qu'elles soient ou non demandeurs d'asile.

Des directives du 13 janvier 1997 prévoient une assistance des victimes de la traite des êtres humains, au sein de trois centres spécialisés (« Payoke » pour la Région flamande, « Pag-asa » pour la Région de Bruxelles-Capitale et « Sürya » pour la Région Wallonne) qui ne sont pas seulement habilités à introduire une demande de permis de séjour, mais assurent également un accompagnement psychosocial et offrent une aide juridique aux victimes qui souhaitent défendre leurs intérêts dans le cadre de la procédure judiciaire.

L'accompagnement des victimes de la traite des êtres humains est un accompagnement spécialisé. Connaissant le phénomène de la traite, les membres du personnel des centres spécialisés y travaillant peuvent mieux l'identifier et répondre plus rapidement aux besoins des personnes accueillies. L'accompagnateur étant sensibilisé à ce phénomène, ceci permet à la victime d'en parler plus facilement. La sécurité de la victime est également garantie puisque l'adresse où réside la personne est confidentielle.

Pour répondre aux besoins spécifiques des personnes vulnérables, l'Agence ou le partenaire conclut des conventions avec des institutions ou associations spécialisées (article 36 aliéna 1de la loi « accueil »).

Q. 30. B. How is their specific situation taken into account (see articles 13, §2, second indent, 16 §4 second sentence and 17 which are mandatory provisions)?

L’Agence ou le partenaire doit veiller à ce que le suivi administratif et social soit assuré et que le bénéficie de l’aide matérielle soit garanti pour les personnes vulnérables (article 36 alinéa 2 de la loi « accueil »).

Lors de la désignation du lieu obligatoire d’inscription, l’Agence veille à ce que ce lieu soit adapté au bénéficiaire de l’accueil et dans les limites des places disponibles. L’appréciation du caractère adapté est notamment basée sur des critères comme la composition familiale, son état de santé, sa connaissance d’une des langues nationales ou de la langue de procédure (article 11 § 3 de la loi « accueil »).

Ainsi, par exemple, les personnes handicapées arrivant au dispatching de l’Agence sont désignées, dans les limites des places disponibles vers une structure d’accueil adaptée à leur handicap. En Belgique, le centre fédéral de Jodoigne, centre de plein pied, peut offrir un accueil spécifiquement adapté à cette catégorie de personnes.

Le cahier spécial des charges énumère, à titre indicatif, des critères indicatifs pour l’hébergement de ces personnes (accessibilité des espaces communs, une chambre à coucher pour deux personnes handicapées, surface minimale de la chambre,…).

Si une personne commet un manquement grave au régime et règles de fonctionnement des structures d’accueil, la législation belge prévoit un régime de sanction. En cas de sanction, le législateur belge n’a prévu aucune spécificité pour les personnes vulnérables (article 44 de la loi « accueil »).

La loi prévoit aussi que l'évaluation des besoins des personnes vulnérables doit être menée tout au long de l'accueil. Il faut que l'accueil soit toujours adapté aux besoins, qui peuvent évidemment évoluer.

Par exemple, une personne victime de traumatismes ne sera pas nécessairement identifiée comme personne vulnérable à son arrivée au dispatching. Il se peut qu'elle soit désignée dans un centre communautaire, et que quelque temps après elle présente des troubles qui justifient soit un accueil spécifique, soit un hébergement plus individuel (donc un transfert). Afin de pouvoir détecter les troubles ou les situations de vulnérabilité, et pouvoir y répondre adéquatement, il est nécessaire que toutes les structures d'accueil soient équipées et formées convenablement. Il est également nécessaire que le cadre légal ou réglementaire sur la question des transferts de structure à structure soit le plus adapté possible à cela.

La pratique actuelle des transferts permet de répondre au cas par cas à certaines situations socialement mais elle ne repose pas sur un cadre juridique ou réglementaire clair.

Trop de situations dépendent encore de la « bonne volonté » ou non, et des pratiques particulières et différentes de chaque travailleur social ou de chaque structure d'accueil.

Q. 30. C. <u>How and when are</u> the special needs of the concerned persons supposed to be legally identified (see article 17 § 2 which is a mandatory provision and clarify how it has been interpreted by transposition)?

Lors de la désignation du lieu obligatoire d'inscription, l'Agence veille à ce que ce lieu soit adapté au bénéficiaire de l'accueil et dans les limites des places disponibles. L'appréciation du caractère adapté est notamment basée sur des critères comme la composition familiale, son état de santé, sa connaissance d'une des langues nationales ou de la langue de procédure (article 11 § 3 de la loi «accueil»).

L'examen de la situation individuelle du bénéficiaire de l'accueil qui porte notamment sur les signes non détectables a priori d'une éventuelle vulnérabilité telle que présente chez les personnes ayant subi des tortures ou d'autres formes graves de violence psychologique, physique ou sexuelle est prévu par le législateur (article 22 § 2 de la loi «accueil»).

L'objectif de l'évaluation est notamment de vérifier si la structure d'accueil correspond aux besoins spécifiques du bénéficiaire de l'accueil. Si tel n'est pas le cas, le lieu obligatoire d'inscription peut être modifié (article 22§1er de la loi « accueil »).

L'examen de cette situation individuelle doit se faire dans les trente jours qui suivent la désignation du lieu obligatoire d'inscription (article 22 § 1 de la loi «accueil»). Elle se poursuivra par ailleurs tout au long du séjour en structure d'accueil (article 22§3 de la loi «accueil»).

Les modalités de ces dispositions doivent être fixées par arrêté royal (article 22§4 de la loi «accueil»).

L'arrêté royal du 25 avril 2007 détermine les modalités de l'évaluation de la situation individuelle du bénéficiaire de l'accueil.

L'évaluation doit être formulée dans un rapport écrit (article 5) (dont un formulaire-type sera déterminé par le Ministre) qui sera rédigé par le travailleur social de référence (article 4) qui aura réalisé au moins un entretien préalable (article 8). Ce rapport d'évaluation sera déposé dans le dossier social du bénéficiaire de l'accueil qui peut en demander copie (article 6). Le rapport sera validé par la personne responsable du service social au sein de la structure d'accueil (article 9) et peut par la suite être complété tout au long du séjour (article 10). Un bilan de la situation individuelle sera réalisé par le travailleur social de référence au plus tard six mois après la première évaluation (article 10).

L'état de santé d'un bénéficiaire de l'accueil sous le régime de l'aide matérielle peut justifier que le lieu obligatoire d'inscription qui lui a été désigné soit modifié ou supprimé

si son état de santé est tel qu'il serait incompatible avec un hébergement en structure d'accueil (article 28 de la loi «accueil»).

Q. 30. D. Is the <u>necessary medical and other assistance</u> provided to persons with special needs as requested by article 15, §2 which is a mandatory provision and in particular to victims of torture and violence as requested by article 20 which is a mandatory provision?

Le bénéficiaire de l'accueil a droit à l'accompagnement médical nécessaire pour mener une vie conforme à la dignité humaine (article 23 de la loi «accueil»).

L'accompagnement psychologique nécessaire est assuré au bénéficiaire de l'accueil et l'Agence ou le partenaire peut conclure, selon les modalités définies par le Roi, des conventions avec des organismes et des institutions spécialisées (article 30 de la loi «accueil»).

L'article 36 de la loi «accueil» indique que pour répondre aux besoins des personnes vulnérables, l'Agence ou le partenaire conclut des conventions avec des institutions ou associations spécialisées.

Dans la pratique, les victimes bénéficient d'une aide psychologique, octroyée par le biais de centres de guidance ou de santé mentale extérieurs aux structures d'accueil. Dès l'arrivée du demandeur d'asile dans la structure d'accueil, celui-ci se voit désigner un assistant social/travailleur social (pas d'exigence de diplôme, toute personne qui a une formation de type social -ou une expérience...- peut être engagée comme travailleur social – cf les revendications du secteur par rapport la fonction d'expert social etc...). En concertation avec l'assistant social, le médecin de la structure d'accueil peut décider d'établir un réquisitoire de soins afin que le demandeur d'asile puisse bénéficier d'un accompagnement psychologique plus spécialisé. Il est alors fait appel à des centres de santé mentale, comme par exemple « Racines Aériennes » ou « Exil », qui dispensent des programmes spécifiques d'accompagnement médico-psycho-social destinés à prévenir et soigner les conséquences des traumatismes de la guerre, de la violence organisée et de la torture.

Q.31. <u>About minors:</u>

Q. 31. A. Till which <u>age</u> are asylum seekers considered to be minor?

Une personne est considérée comme mineure jusqu'à l'âge de 18 ans (article 2, 3° de la loi «accueil»).

Concernant les mineurs étrangers non accompagnés, ils sont également considérés comme mineurs jusqu'à dix-huit ans (article 2, 4° de la loi «accueil»).

Peu importe donc la majorité dans le pays d'origine, l'âge clé en Belgique est d'office 18 ans.

Q. 31. B. How is access of minor asylum seekers to the education system ensured? Is it at school or in case inside accommodation centres and can it be considered as similar to the conditions for nationals as requested by article 10, §1?

Tout mineur est soumis à l'obligation scolaire qui se termine à la fin de l'année scolaire au cours de laquelle il atteint l'âge de dix-huit ans.

Les mineurs demandeurs d'asile ou non ont accès aux écoles belges sans discrimination. Le droit à l'instruction leur est clairement reconnu. Ils sont exemptés des droits d'inscription que les étrangers doivent généralement payer pour suivre des cours en Belgique.

L'accès au système scolaire est le même que celui des nationaux. Cependant, les Ministères de l'éducation des Communautés flamandes et françaises compétents en la matière ont mis en place depuis plusieurs années un système d'enseignement pour primo-arrivants. Les mineurs ont ainsi accès à une classe d'apprentissage intensif de la langue, de remise à niveau,… Ils peuvent aussi, dans des conditions relativement restrictives, valoriser les études qu'ils ont accomplies dans leur pays d'origine sans devoir passer par une procédure d'équivalence de diplôme qui est lourde et peut accessible à ce type de mineurs, qui ne disposent bien souvent pas d'un dossier scolaire complet, traduit et légalisé.

Des difficultés peuvent surgir au niveau du choix de la langue de l'enseignement quant le mineur est orienté vers des centres d'accueil dans la région linguistique qui ne correspond pas à sa langue.

Les mineurs placés dans un centre fermé n'ont pas accès à l'éducation alors que cet enfermement peut durer plusieurs mois.

Q. 31. C. Is access to education ensured not later than 3 months as requested by article 10, §2 (or after maximum one year if specific education for asylum seekers is provided) and till an expulsion decision is really enforced?

Le mineur de nationalité étrangère est soumis à l'obligation scolaire dans un délai de soixante jours à partir de l'inscription des personnes investies de la puissance parentale ou qui assument sa garde en droit ou en fait au registre des étrangers ou au registre de la population (l'article 1er, § 7 de la loi du 29 juin 1983 concernant l'obligation scolaire). Toutefois, dans la pratique, le délai légal de soixante jours court à partir de l'introduction de la demande d'asile et non de l'inscription des personnes visées ci-dessus au registre des étrangers ou au registre de la population qui n'a lieu qu'une fois reconnue la qualité de réfugié.

Le droit à l'instruction est quant à lui garanti à tous les mineurs à l'exception de ceux qui sont en centres fermés.

Dans la pratique, les mineurs étrangers non accompagnés qui sont accueillis dans un des deux centres d'observation et d'orientation ne sont pas immédiatement scolarisés. Ce séjour est normalement de maximum deux fois quinze jours. Dès qu'ils sont orientés vers un accueil à plus long terme, ils sont scolarisés.

Q. 31. D. Is specific education (like language classes) available for asylum seekers, in particular to facilitate their effective access to the education system of the reception Member State (see article 10, §2 which is an optional provision)?

Les élèves « primo-arrivants » (qui viennent d'arriver sur le territoire belge) sont orientés vers des classes-passerelles organisées dans les établissements scolaires financés ou subventionnés par les Communautés (minimum 1 semaine et maximum 1 an). Le passage des élèves au sein de ces classes consiste en un apprentissage intensif de la langue, une remise à niveau pour permettre une intégration optimale dans le niveau d'étude correspondant de l'enseignement en Belgique et la détermination du niveau scolaire.

Q. 31. E. Are minors in general accommodated with their parents or with the person responsible of them? (see article 14, § 3)

Le mineur est logé avec ses parents ou la personne exerçant sur lui la tutelle ou l'autorité parentale en vertu du droit belge (article 38 de la loi «accueil»).

Q. 31. F. Do minors with special needs enumerated by article 18, §2 which is a mandatory provision, have access to appropriate mental health care and qualified counselling?

Une assistance spécifique est fournie aux mineurs victimes de toute forme d'abus, de négligence, d'exploitation, de torture, de traitements cruels, inhumains et dégradants, ou de conflits armés. Ce soutien comporte des soins psychiatriques et l'accompagnement psychologique au sens large (article 39 de la loi «accueil»).

Q. 31. G. How and when is organised the representation of unaccompanied minors (guardianship, special organisation) and regularly assessed? (see article 19, §1 which is a mandatory provision)

Un système de tutelle spécifique aux mineurs étrangers non accompagnés est prévu par le chapitre 6 de la loi-programme du 24 décembre 2002 : tutelles des mineurs étrangers non accompagnés.

Toute autorité qui a connaissance de la présence d'une personne qui paraît être un mineur étranger non accompagné en avertit le service des Tutelles (article 6§1er de la loi). Le service des Tutelles est un organisme institué auprès du Service public fédéral Justice qui est chargé de mettre en place une tutelle spécifique pour les mineurs non accompagnés (article 3§1er de la loi).

Le service des Tutelles procède à l'identification du jeune et lui désigne un tuteur s'il réunit toutes les conditions (article 6§2 de la loi) (avoir moins de dix-huit ans, ne pas être accompagné d'une personne qui exerce l'autorité parentale ou la tutelle, être ressortissant d'un pays non membre de l'Espace économique européen et avoir demandé la reconnaissance de la qualité de réfugié ou être en situation de séjour illégal) (article 5 de la loi).

Le tuteur a pour mission de représenter le mineur non accompagné dans tous les actes juridiques, dans les procédures relatives au séjour et dans toutes les procédures administratives ou judiciaires (article 9§1er).

Le tuteur ainsi désigné doit rendre tous les six mois un rapport sur la situation de son pupille auprès du juge de paix du lieu de résidence du mineur. Une copie de ce rapport est transmise au service des Tutelles (article 19 § 1er).

Q. 31. H. How is placement of unaccompanied minors organised (with adult relatives, a foster family, in special accommodation centres or other suitable accommodation)? (see article 19, §2 which is mandatory provision)

Premièrement, les mineurs non accompagnés sont accueillis dans un centre d'orientation et d'observation fédéral (COO) (article 40 de la loi «accueil») pour maximum deux fois

15 jours. Il existe un centre francophone à Neder over Hembeek (50 places) et un centre néerlandophone à Steenokerzeel (46 places). Durant ce temps, l'âge du mineur est déterminé. Le cas échéant un tuteur lui est désigné et il fait le choix de la procédure relative au séjour qu'il souhaite introduire. Un profil du jeune est établi par l'équipe sociale pour déterminer les besoins spécifiques du jeune.

Un arrêté royal a été adopté le 9 avril et précise le régime d'accueil au sein des COO (arrêté royal du 9 avril 2007 déterminant le régime et les règles de fonctionnement applicables aux centres d'observation et d'orientation pour les mineurs étrangers non accompagnés, publié au Moniteur belge le 7 mai 2007)

Les COO sont des structures d'accueil communautaire dotées d'un régime spécifique en raison des particularités relatives aux mineurs étrangers non accompagnés. Il s'agit bien de centres ouverts. Des mesures sont prises afin d'assurer la sécurité des jeunes dans ces centres. La phase d'observation consiste à dresser un premier profil médical, psychologique et social du mineur ainsi que de dépister une éventuelle situation de vulnérabilité. La phase d'orientation consiste à diriger le mineur vers une prise en charge adéquate à sa sortie du centre. Le séjour dans ce centre est également mis à profit pour l'enregistrement du mineur, son identification et la désignation d'un tuteur.

Deuxièmement, le mineur non accompagné demandeur d'asile est envoyé dans une structure fédérale (267 places), dans une structure collective de la Croix-Rouge (71 places), dans une structure collective d'une Initiative Locale d'Accueil (66 places) ou dans une autre structure (famille proche, famille d'accueil,..). Les structures accueillent entre 10 et 60 jeunes.

Dans les centres d'accueil, les mineurs non accompagnés vivent dans une communauté séparée avec une équipe d'assistants sociaux et d'éducateurs spécifiques.

Les mineurs non accompagnés peuvent aussi être orientés vers des familles d'accueil. C'est souvent le cas pour les plus jeunes. Les mineurs proches de la majorité peuvent eux être orientés vers une « mise en autonomie », c'est-à-dire un logement autonome, souvent encadré par un service spécialisé, mis en place par les structures de l'aide à la jeunesse des Communautés.

Q. 31. I How is the tracing of the family members of the unaccompanied minors organised? Are measures taken to protect confidentiality of information when necessary? (see article 19, §3 which is a mandatory provision)

Avec la création du service des Tutelles, le rôle de coordination de la recherche des membres de la famille du mineur non accompagné fait spécifiquement partie des missions de son tuteur (article 11§1er du chapitre 6 de la loi du 24 décembre 2002).

Dans la pratique, le tuteur fait très souvent appel à des organismes internationaux tel le service tracing de la Croix-Rouge. Cet organisme dispose déjà d'une expérience opérationnelle du rétablissement et du maintien des liens familiaux, en étroite collaboration avec le Comité international de la Croix-Rouge et les services de recherche des autres Sociétés nationales de la Croix-Rouge ou du Croissant-Rouge.

L'Office des étrangers peut également faire des démarches pour retrouver les membres de la famille du jeune via ses homologues étrangers.

La législation belge ne prévoit aucune mesure quant à la nécessité du devoir de confidentialité dans le cadre de ces démarches.

8. EXCEPTIONAL MODALITIES OF RECEPTION CONDITIONS

Q.32. Apart from detention covered by the next question, are there exceptional modalities for reception conditions in the following cases and if yes, which ones and for how long are they applicable, knowing that they should be "as short as possible" (see article 14, §8)?

- **32. A. Persons with specific or special needs, regarding in particular the period of assessment of those needs?**

Non. L'exposé des motifs de la loi «accueil» indique : « Les autres hypothèses de réduction des modalités d'accueil prévues par la directive ne sont dès lors pas retenues, sans préjudice de l'article 44 relatif aux sanctions » (exposé des motifs du projet de loi, p. 37).

Q. 32. B. Non availability of reception conditions in certain areas

Non.

Q. 32. C. Temporarily exhaustion of normal housing capacities

Lorsque les capacités de logement normalement disponibles sont temporairement épuisées, le bénéficiaire peut être hébergé dans une structure d'accueil d'urgence où il bénéficie d'un accompagnement social limité. Le séjour dans une structure d'accueil d'urgence ne peut excéder dix jours et les besoins fondamentaux du bénéficiaire doivent y être rencontrés (notamment nourriture, logement, accès aux facilités sanitaires et accompagnement médical) (article 18 de la loi «accueil»).

Lorsque la capacité d'accueil du réseau est saturée, il existe une possibilité pour l'Agence de ne pas désigner de lieu obligatoire d'inscription (article 11 § 3 al. 4 de la loi «accueil»). L'aide sociale est alors octroyée par un centre public d'aide sociale du territoire de la commune sur lequel se trouve la personne qui a besoin d'assistance.

Q. 32. D. The asylum seeker is confined to a border post

Les modalités de l'accueil des demandeurs d'asile confinés à la frontière sont définies par l' l'arrêté royal du 2 août 2002 fixant le régime et les règles de fonctionnement applicables aux lieux situés sur le territoire belge, gérés par l'Office des étrangers, où un étranger est détenu, mis à la disposition du Gouvernement ou maintenu, en application des dispositions citées dans l'article 74/8, §1er de la loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers.

Q. 32. E. All other cases not mentioned in the directive (for instance urgent situation in case of a sudden high number of applicants outside a case of application of the directive on temporary protection).

Non. L'exposé des motifs de la loi «accueil» indique : « Les autres hypothèses de réduction des modalités d'accueil prévues par la directive ne sont dès lors pas retenues, sans préjudice de l'article 44 relatif aux sanctions » (exposé des motifs de la loi «accueil», p. 37).

Q.33. Detention of asylum seekers (we do not cover the situation of rejected asylum seekers detained for the purpose of their return) (see articles 6 §2, 7 §3, 13, §2 2nd indent and 14 §8 which implies that the directive is in principle applicable in case of detention):

Q. 33. A. In which cases or circumstances and for which reasons[214] (identity verification in particular if the persons have no or false documents, protection of public order or national security, refugee status determination, way of entry into the territory, etc) can an asylum seeker be detained during the asylum procedure till his request has been finally rejected. Quote precisely in English in your answer the legal basis for detention of asylum seekers in national law.

Les différents cas de figure dans lesquels un demandeur d'asile peut être détenu ne sont pas fixés dans la loi « accueil » mais bien dans la loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers.

Une loi a été publiée concernant la réforme de cette législation : loi du 15 septembre 2006 modifiant la loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et

[214] Please specify it article 18 §1 of the directive on asylum procedures of 1 December 2005 which specifies that *"Member States shall not hold a person in detention for the sole reason that he/she is an applicant for asylum"* is or not respected (even if has not yet to be transposed).

l'éloignement des étrangers (*M.B., 10 octobre 2006*). Les dispositions de la loi reprises dans les présentes réponses entreront en vigueur aux dates fixées par le Roi et au plus tard en novembre 2007.

Les différents cas de détention des demandeurs d'asile peuvent se résumer comme suit.

- Article 51/5 § 1er al.2 de la loi du 15 décembre 1980 (modifié par l'article 39 de la loi du 15 septembre 2006 modifiant la loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers).

Autorise la détention du demandeur d'asile pendant l'examen de l'Etat responsable de la demande d'asile si :

- l'étranger possède un titre de séjour ou un visa dont la validité est expirée délivré par un Etat lié par la réglementation européenne relative à la détermination de l'Etat responsable de la demande d'asile;
- l'étranger ne dispose pas de document d'entrée et a séjourné dans un Etat lié par la réglementation européenne relative à la détermination de l'Etat responsable de la demande d'asile;
- l'étranger ne dispose pas de document d'entrée et dont les empreintes digitales montrent qu'il a séjourné dans un Etat lié par la réglementation européenne relative à la détermination de l'Etat responsable de la demande d'asile.

- Article 52 bis de la loi du 15 décembre 1980.

Autorise la détention du demandeur d'asile ou la délivrance d'un ordre de résider en un lieu déterminé à l'égard duquel il existe de sérieuses raisons de le considérer comme un danger pour l'ordre public ou la sécurité nationale.

- Article 54§2 de la loi du 15 décembre 1980.

Autorise la mise à disposition du gouvernement du demandeur d'asile lorsque celle-ci est justifiée par des raisons exceptionnellement graves.

- Article 74/5 § 1er alinéa 1, 2° loi du 15 décembre 1980.

Autorise la détention dans un lieu situé aux frontières du demandeur d'asile qui demande l'asile à la frontière et qui n'a pas de document d'entrée sur le territoire ou dont l'identité ne peut être prouvée.

- Article 74/6 §1er bis de la loi du 15 décembre 1980 (modifié par article 74 de la loi du 15 septembre 2006 modifiant la loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers).

Enumère quinze circonstances dans lesquelles un étranger peut être détenu exceptionnellement durant l'examen de sa demande d'asile afin de garantir son éloignement effectif du territoire :

- l'étranger a été renvoyé depuis moins de 10 ans du Royaume ;
- l'étranger a séjourné plus de trois mois dans un pays tiers ;
- l'étranger a séjourné plus de trois mois dans plusieurs pays tiers ;
- l'étranger est en possession d'un titre de transport valable à destination d'un pays tiers ;
- l'étranger a présenté sa demande tardivement sans justification ;
- l'étranger s'est soustrait volontairement à une procédure entamée à la frontière ;
- l'étranger se soustrait pendant au moins 15 jours à l'obligation de présentation ;
  - l'étranger n'a pas introduit sa demande au moment où les autorités chargées du contrôle aux frontières l'interrogent sur les raisons de sa venue en Belgique ;
- l'étranger a introduit une autre demande d'asile ;
  - l'étranger refuse de communiquer son identité ou sa nationalité ou fournit de fausses informations à ce sujet ;
- l'étranger a détruit ou s'est débarrassé d'un document de voyage ou d'identité ;
  - l'étranger introduit une demande d'asile dans le but de déjouer l'exécution d'une décision d'éloignement ;
- l'étranger entrave la prise d'empreintes digitales ;
  - l'étranger a omis de déclarer qu'il avait déjà introduit une demande d'asile dans un autre pays ;
  - l'étranger refuse de déposer la déclaration relative à son identité, son origine et son itinéraire.

Q. 33. B. Has your member State adopted measures to transpose §3 of article 7 which is an optional provision? If yes, how has this provision been legally understood (is it a case of detention or an obligation to stay in and not leave a certain place?) and for which reasons can an asylum seeker be "confined" in such a place?

Cette possibilité existe déjà en droit belge avant la transposition de la directive (voyez Q. 33 A et Q.33 C).

Q. 33. C. Are there legally alternatives to detention, like obligation to report to the authorities, obligation to stay in a place, provision of a guarantor or of a financial guarantee?

La loi prévoit la possibilité d'enjoindre le candidat réfugié à résider dans un lieu déterminé s'il existe de sérieuses raisons de le considérer comme un danger pour l'ordre public ou la sécurité nationale (article 52 bis de la loi du 15 décembre 1980).

La loi prévoit également la mise à disposition du gouvernement du candidat réfugié lorsque celle-ci est justifiée par des raisons exceptionnellement graves (article 54§2 de la loi du 15 décembre 1980).

Dans la pratique, ces possibilités sont cependant peu utilisées.

Q. 33. D. Which is the <u>competent authority</u> to order the detention of an asylum seeker? Explain if different authorities are involved to first take and later confirm the decision.

L'Office des étrangers, qui dépend du Ministre de l'Intérieur est compétent pour prendre une telle décision. Il s'agit de la seule autorité compétente.

<u>Q.</u> 33.E. <u>For how long</u> and till which stage of the asylum procedure can an asylum seeker be detained?

1. **Durée maximale**

<u>Principe:</u> la durée maximale de la détention autorisée dans les hypothèses décrites ci-dessus est de **cinq mois**.

<u>Exceptions:</u>

(i) Article 51/5 de la loi du 15 décembre 1980.

Dans le cas où la Belgique examine quel pays est responsable de la demande d'asile, la détention est de un mois maximum mais peut être prorogée d'une période de un mois (modifié par article 39 de la loi du 15 septembre 2006 modifiant la loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers).

Dans le cas d'une demande d'asile pour laquelle la Belgique ne se déclare pas responsable, la détention ne peut être ordonnée qu'en vue de garantir le transfert du candidat réfugié vers le pays responsable de l'examen de sa demande d'asile : durée de un mois (modifié par article 39 de la loi du 15 septembre 2006 modifiant la loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers).

(ii) Articles 52 bis et 54 § 2 de la loi du 15 décembre 1980.

Aucune limitation dans le temps.

(iii) Article 74/5 de la loi du 15 décembre 1980.

La durée de maintien est suspendue d'office pendant le délai pour introduire un recours devant le Conseil du Contentieux des étrangers. La durée de maintien est suspendue durant un mois maximum lorsque le C.G.R.A. examine de nouveaux éléments (article 73, 2°, c de la loi du 15 septembre 2006 modifiant la loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers).

Possibilité d'étendre la durée de la détention à huit mois, lorsque des raisons touchant à l'ordre public ou à la sécurité nationale le justifient

(iv) Article 74/6 de la loi du 15 décembre 1980.

La durée de maintien est suspendue d'office pendant le délai pour introduire un recours devant le Conseil du Contentieux des étrangers. La durée de maintien est suspendue durant un mois maximum lorsque le Commissariat Général aux Réfugiés et Apatrides examine de nouveaux éléments (article 74, 3°, b de la loi du 15 septembre 2006 modifiant la loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers).

Possibilité d'étendre la durée de la détention à huit mois, lorsque des raisons touchant à l'ordre public ou à la sécurité nationale le justifient.

2. Délai primaire et la prolongation

Le délai initial de détention est le temps strictement nécessaire à l'exécution de la mesure et ne peut dépasser **deux mois**.

Une prolongation de cette détention peut toutefois être ordonnée pour une nouvelle durée de deux mois. Une dernière prolongation peut enfin intervenir afin d'atteindre le maximum de cinq mois et ne pourra être ordonnée que par le Ministre lui-même. La notification de la décision de prolongation doit intervenir avant l'expiration du délai primaire de détention.

Cette prolongation de deux mois et ensuite d'un mois est autorisée si trois conditions cumulatives sont remplies (notamment article 74/5 § 3 et article 74/6 § 2):

- les démarches en vue de l'éloignement de l'étranger doivent avoir été entreprises dans les sept jours

ouvrables après que la décision de refus de séjour est devenue exécutoire ;

- les démarches en vue de l'éloignement doivent avoir été poursuivies avec diligence;
- une possibilité d'éloigner effectivement l'étranger dans un délai raisonnable doit subsister.

Q. 33. F. In which <u>places</u> (can we call them "closed centres"?) are asylum seekers detained (places in a special closed centres reserved only to asylum seekers, together with returnees like illegal aliens or even in a normal prison, in case within separated areas or with the other detainees)? Indicate if a difference has to be made following the location of the "closed centres" at the border or on the territory? Which is the authority managing those places and is it the same as the one in charge of reception conditions?

Il existe cinq centres fermés sur le territoire belge : le centre de transit 127 de Melsbroek (qui accueille les personnes ayant introduit une demande d'asile à la frontière), le centre 127 bis à Steenokkerzeel, le centre pour illégaux de Bruges, le centre pour illégaux de Merksplas et le centre pour illégaux de Vottem. Certains de ces centres fermés accueillent ensemble des demandeurs d'asile et des personnes en attente de leur rapatriement.
Les demandeurs d'asile ne sont pas, sur base de leur statut de demandeurs d'asile, détenus dans des prisons normales.
Au total, ces centres fermés ont une capacité de 600 personnes. La durée moyenne de séjour des 4140 personnes détenues en 2000 était de 16 à 32 jours selon les centres
L'autorité chargée de la direction de ces centres est l'Office des étrangers. Il ne s'agit dès lors pas de la même autorité que celle chargée de l'accueil des demandeurs d'asile, à savoir l'Agence.

Q. 33. G. Does <u>UNHCR and NGOs have access</u> to the places of detention and under which conditions?

Oui, les membres du UNHCR et de différentes ONG ont accès aux centres de détention dans le cadre de l'exercice de leurs missions (article 44 de l'arrêté royal du 2 août 2002).

Une demande doit être introduite auprès du directeur du centre.

Q. 33. H. What <u>appeal(s)</u> can asylum seekers introduce against the fact he is detained? Is article 18 of the directive on asylum procedures of 1 December 2005 following which *"Where an applicant for asylum is held in detention, Member States shall ensure that there is a possibility of speedy judicial review"* respected (even if it has not yet to be transposed)?

Le demandeur d'asile visé par les mesures privatives de liberté peut introduire, de mois en mois, un recours contre sa détention auprès de la chambre du conseil du Tribunal correctionnel qui statue en première instance et la chambre des mises en accusation de la Cour d'appel qui statue en degré d'appel (article 71 de la loi du 15 décembre 1980).

L'article 18 de la directive du 1er décembre 2005 est dès lors respecté.

Q. 33. I. Is the <u>directive</u> on reception conditions considered to be <u>in principle applicable</u> to the places where asylum seekers are detained? In particular which information do they receive about their rights, which access do they have to legal advice and health care?

La loi « accueil » ne consacre pas en tant que tel l'application des dispositions contenues dans la directive aux centres fermés.

Le régime applicable aux centres fermés est réglé par l'arrêté royal du 2 août 2002 fixant le régime et les règles de fonctionnement applicables aux lieux situés sur le territoire belge, gérés par l'Office des étrangers, où un étranger est détenu, mis à la disposition du Gouvernement ou maintenu, en application des dispositions citées dans l'article 74/8, §1er de la loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers.

Ce texte de loi prévoit que le demandeur d'asile a droit à une assistance individuelle, médicale, psychologique et sociale (article 6). Il reçoit une brochure d'accueil contenant notamment ses droits et devoirs, les possibilités d'une assistance dans les domaines médical, psycho-social, moral, philosophique, religieux, légal (article 17).

Chaque centre dispose d'un service médical (article 52). Le demandeur d'asile peut faire appel à un avocat intervenant sur la base de l'aide juridique de seconde ligne (article 62) (assistance gratuite).

33. J. Apart from freedom of movement, what are the main differences between normal reception conditions and exceptional modalities for reception conditions in case of detention, knowing that they should be "as short as possible" (see article 14, §8)? If it is about closed centres, are the regulations of those places in line with the requirements of the directive (is article 13, §2, second indent of the directive following which "*Member States shall ensure that standards of living is met (…) in relation to the situation of persons who are in detention*" respected?).

La législation applicable actuellement aux centres fermés (arrêté royal du 2 août 2002) prévoit la protection d'un ensemble de droits fondamentaux (droit à l'information, articles 16, 17, 68 et 103), droit à l'assistance médicale (articles 13, 52, 56, 59, 61 et 68), droit à l'assistance juridique (articles 62 et 63), droit à un accompagnement individuel, administratif et psychosocial (articles 6 et 68), liberté religieuse (articles 46, 47 et 50), droit à un traitement équitable (articles 6, 7 et 97) et droit individuel de porter plainte (articles 129, 130, 131 et 132).

Dans la pratique cependant, la qualité des conditions d'accueil est très différente pour les personnes détenues en centre fermé (voir rapport du Centre pour l'égalité des chances et la lutte contre la discrimination sur leur site internet : http://www.diversiteit.be/CNTR/FR/migrations/deportation_and_detention/detention/,ain si que le rapport récent réalisé par différentes O.N.G. « Centres fermés pour étrangers : Etat des lieux », http://www.liguedh.be/web/Eve_AgendaLigue.asp#A213).

A titre d'exemples, la plupart des résidents ne sont pas en possession d'une brochure d'accueil ou d'information. Une large majorité des occupants ignorent qu'ils ont le droit de porter plainte. Ils n'ont pas toujours accès à un interprète. L'organisation d'un système de permanence pour les services médicaux pose problème dans quelques centres fermés. De nombreux résidents se plaignent du manque de suivi au niveau de leur santé mentale. Des problèmes sont observés quant à la nature et la qualité de l'assistance juridique. Même si aucun problème ne se pose au niveau de l'encadrement administratif, l'encadrement psychosocial peut quant à lui poser problème. Enfin, le respect de l'unité familiale aux demandeurs d'asile maintenus en centre fermé n'est pas garanti.

De plus, la scolarité pour les mineurs pose problème en centres fermés et ils sont enfermés avec les adultes en contradiction avec l'article 37,c de la Convention internationale des droits de l'enfant.

Concernant le délai de détention, la question se pose, eu égard à l'applicabilité de la directive aux demandeurs d'asile détenus en centres fermés, de savoir si la durée de

détention légale de deux mois (prolongeable jusqu'à huit mois) peut être considérée comme étant une période raisonnable, aussi courte que possible.

33. K. Are measures taken to avoid detention of asylum seekers with special needs (if yes, which ones?) or are special measures taken because of their needs?

Les centres de détention accueillent des personnes qui peuvent être considérées comme vulnérables Seule une attention particulière est accordée aux mineurs étrangers non accompagnés (Q.33L).

Q.33. L. Can minor asylum seekers be detained together with relatives? Can unaccompanied minor asylum seekers be detained? If yes, are there special measures which take into account that children are concerned?

Aucune disposition légale n'interdit la détention des mineurs avec leurs parents.

Concernant les mineurs étrangers non accompagnés, l'article 41 de la loi « accueil » porte sur l'inclusion d'un dispositif pour un accueil, dans un centre d'observation et d'orientation (COO) des mena qui se présentent à la frontière et à qui l'accès au territoire est refusé.

Avant, les mena qui se présentaient à la frontière sans disposer des documents requis pour l'entrée sur le territoire étaient placés dans un centre fermé jusqu'à ce que l'Office des étrangers prenne une décision quant à leur éloignement ou entrée sur le territoire, ce qui prenait souvent plusieurs semaines.

Désormais, la prise en charge du mena arrivé à la frontière et qui n'a pas accès au territoire se déroule comme suit.

S'il n'existe aucun doute sur son âge, le mineur étranger non accompagné est directement accueilli dans un centre d'observation et d'orientation (COO).

S'il existe un doute sur son âge, il est d'abord placé dans un centré fermé et le service de Tutelles procédera à la désignation d'un tuteur provisoire. Le service des Tutelles procédera à l'identification du mena et à la détermination de l'âge dans un délai de trois jours ouvrables. Après la détermination de l'âge, le mena est admis dans un centre d'observation et d'orientation (COO), placé sous la compétence du Ministre de l'Intégration sociale. Une décision quant à l'éloignement éventuel du mena devra être prise dans un délai de quinze jours maximum. A défaut d'une décision dans ce délai, l'entrée sur le territoire sera considérée comme effective.

Un arrêté royal du 9 avril 2007 détermine le régime et les règles de fonctionnement applicables aux centres d'observation et d'orientation pour les mineurs étrangers non accompagnés (voyez question 31 H).

Le 26 janvier 2006, la Cour européenne des droits de l'homme a rendu une décision positive sur la recevabilité de la requête n°13178/03 présentée par Pulchérie MUBILANZILA MAYEKA et Tabitha KANIKI MITUNGA contre la Belgique. Il s'agit du cas d'une fillette de cinq ans de nationalité congolaise, fille d'une réfugiée reconnue au Canada, ayant été maintenue dans un centre fermé pour demandeurs d'asile entre le 17 août 2002 et le 17 octobre 2002, date à laquelle elle fut refoulée dans son pays. Le 12 octobre 2006, la Cour européenne des droits de l'homme a rendu un arrêt concluant à la violation des articles 3, 8, 5§1 et 5§4 de la Convention européenne des droits de l'homme en la cause.

Q.33. M. In particular is article 10 regarding <u>access to education</u> of minors respected in those places?

S'agissant des mineurs maintenus dans un centre fermé, aucun enseignement n'est prévu actuellement. L'arrêté royal déterminant les lieux de détention pour étrangers n'aborde nullement cette question (Arrêté royal du 2 août 2002 fixant le régime et les règles de fonctionnement applicables aux lieux situés sur le territoire belge, gérés par l'Office des étrangers, où un étranger est détenu, mis à la disposition du Gouvernement ou maintenu, en application des dispositions citées dans l'article 74/8, §1er de la loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers).

Au vu de la nouvelle procédure d'asile entrant en vigueur le 1er juin 2007, une procédure d'asile accélérée est prévue pour les personnes maintenues en centres fermés. Ainsi, une décision sur le recours introduit auprès du Conseil du contentieux des étrangers contre une décision du Commissariat Général aux réfugiés et apatrides devrait être rendue dans les 15 jours (article 39/77 de la loi du 15 décembre 1980).

Cependant, aucun délai n'est imposé au Commissariat Général aux réfugiés et apatrides pour rendre une décision relative à la demande d'asile. Par ailleurs, aucune sanction n'est prévue quant au dépassement du délai imposé au Conseil du contentieux des étrangers pour statuer. La procédure d'asile pour les demandeurs d'asile détenus en centre fermé pourrait dès lors durer plus de trois mois. Durant ce délai, les enfants détenus en centres fermés ne seront pas scolarisés.

Q.33.N. <u>How many</u> asylum seekers are for the moment detained in your Member State? Which <u>proportion</u> does this represent in comparison of the total number of asylum seekers at the same moment?

A la date du 15 juin 2006, il y avait 189 demandeurs d'asile maintenus dans des centres fermés dont :

- 44 demandeurs d'asile à la frontière
- 145 demandeurs d'asile à l'intérieur du pays ou en attente de leur envoi vers l'Etat européen responsable de l'examen de leur demande d'asile selon le règlement n°343/2003 du Conseil du 18 février 2003 établissant les critères et mécanismes de détermination de l'Etat membre responsable de l'examen d'une demande d'asile présentée dans l'un des Etats membres par un ressortissant d'un pays tiers.

Douze pour cent des décisions prises par l'Office des étrangers concernant des demandes d'asile sont des décisions d'écrou.

Au cours de l'année 2005, il y avait 1863 demandeurs d'asile maintenus dont :

- 466 demandeurs d'asile à la frontière parmi lesquels 68 demandeurs en attente de leur envoi vers l'Etat européen responsable de l'examen de leur demande d'asile selon le règlement n°343/2003 du Conseil du 18 février 2003 établissant les critères et mécanismes de détermination de l'Etat membre responsable de l'examen d'une demande d'asile présentée dans l'un des Etats membres par un ressortissant d'un pays tiers.
- 1397 demandeurs d'asile à l'intérieur du pays dont 846 demandeurs en attente de leur envoi vers l'Etat européen responsable de l'examen de leur demande d'asile selon le règlement n°343/2003 du Conseil du 18 février 2003 établissant les critères et mécanismes de détermination de l'Etat membre responsable de l'examen d'une demande d'asile présentée dans l'un des Etats membres par un ressortissant d'un pays tiers.

9. ORGANISATION OF THE SYSTEM OF RECEPTION CONDITIONS

Q.34. Explain if the system of providing reception conditions is centralised or decentralised (which levels of government do provide practically reception conditions?) (do not confuse this question with question number 3 about the competence to make rules about reception conditions).

Il s'agit d'un système centralisé.

En matière d'accueil, les compétences sont dévolues à une agence spécialisée.

Le Ministre compétent est le Ministre qui a l'Intégration sociale dans ses attributions, et dont relève l'Agence fédérale pour l'accueil des demandeurs d'asile (article 2 de la loi «accueil »).

Celle-ci peut conclure des conventions avec des partenaires, c'est à dire une « *personne morale de droit public ou de droit privé chargée par l'Agence et aux frais de celle-ci, de dispenser l'aide matérielle au bénéficiaire de l'accueil conformément aux dispositions de la présente loi* » (article 2 de la loi « accueil »).

Le livre V de la loi «accueil» accueil définit le statut, les missions et les compétences de l'agence.

Il s'agit d' **«** *un organisme public doté de la personnalité juridique* » (article 55 de la loi). Sa structure, son organisation et son fonctionnement devront être déterminés par arrêté royal.

L'article 56 indique que « *l'Agence a notamment pour mission d'assurer l'organisation, la gestion et le contrôle de la qualité de l'aide matérielle octroyée aux bénéficiaires de l'accueil* » et qu'elle « *peut octroyer des subventions en relation avec ses missions* ».

Elle est notamment chargée de :

- l'octroi de l'aide matérielle aux bénéficiaires de l'accueil au sein des structures d'accueil communautaires qu'elle gère ;
- le contrôle de l'exécution des conventions relatives à l'octroi de l'aide matérielle aux bénéficiaires de l'accueil avec les partenaires ;
- la désignation, la modification et la suppression du lieu obligatoire d'inscription;
- l'organisation du paiement d'une allocation journalière et de la

prestation de services communautaires ;
- la transition en cas de transfert d'une structure d'accueil vers un C.P.A.S. ;
- de la coordination du retour volontaire des demandeurs d'asile et des autres étrangers ;
- de l'octroi de l'aide matérielle aux mineurs non accompagnés dans le cadre de la phase d'observation et d'orientation ;
- de l'octroi de l'aide matérielle aux mineurs séjournant avec leurs parents illégalement sur le territoire et dont l'état de besoin a été constaté par un centre public d'action sociale, lorsque les parents ne sont pas en mesure d'assumer leur devoir d'entretien ;
- l'agence est l'autorité responsable pour le Fonds européen des réfugiés.

Il est prévu, comme le fait aujourd'hui FEDASIL, que l'Agence peut conclure des conventions visant à confier à des partenaires la mission d'octroyer aux bénéficiaires de l'accueil le bénéfice de l'aide matérielle. Il s'agit notamment de la Croix-Rouge de Belgique, d'autres autorités, les pouvoirs publics et les associations (article 62).

Q.35. In case, are accommodation centres public or/and private (managed by NGOs? If yes, are the NGOs financially supported by the State?)[215]

L'Agence peut confier à des partenaires la mission d'octroyer aux bénéficiaires de l'accueil le bénéfice de l'aide matérielle (articles 63 et 65 de la loi «accueil»). Ces partenaires sont notamment des ONG telles la Croix Rouge de Belgique, le CIRE, Vluchtelingenwerk Vlaanderen ainsi que des Centres publics d'aide sociale.

Les centres d'accueils sont dès lors publics et privés.

Des conventions sont établies entre les ONG et les Centres publics d'action sociale concernant la prise en charge financière par l'Agence des missions d'accueil.

Q.36. In case, how many accommodation centres are there in your Member State (distinguish in your answer between public and private centres)?[216]

Tout d'abord, il existe 19 centres d'accueil fédéraux publics (Arendonk, Arlon, Bovigny, Broechem, Charleroi, Ekeren, Florennes, Jodoigne, Kappelen, Petit Chateau,

[215] To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.
[216] To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

Morlanwelz, Neder-Over-Heembeek, Pondrôme, Rixensart, Woluwe-Saint-Pierre, Sint-Truiden, Steenokkerzeel, Sugny, Virton).

Ensuite, nous avons 22 centres de la Croix-Rouge/Rode Kruis (deux entités distinctes).

Enfin, se trouvent les logements particuliers du CIRE, de Vluchtelingenwerk et Initiatives Locales d'Accueil gérées par les Centres publics d'action sociale.

Q.37. **Is there in the legislation a plan or are there rules in order to spread the asylum seekers all over the territory of your Member State to avoid their concentration in some areas like big cities or to share the costs of their reception between central, regional and local authorities?**

Oui. L'Agence désigne un lieu obligatoire d'inscription, que ce soit une structure d'accueil ou un centre public d'action sociale (article 9 à 13 de la loi «accueil»). Les demandeurs sont dès lors répartis sur l'ensemble du territoire belge.

Q.38. **Does a central body representing all the actors (like NGOs) involved in reception conditions exist? Does it play a consultative role for the State authorities, a coordination role for the actors or any other role?**[217]

Il n'y a pas d'organe centralisé mais il existe au moins une cinquantaine d'associations travaillant sur le terrain avec les candidats réfugiés. La liste des associations francophones est disponible sur le site du C.I.R.E (http://www.cire.irisnet.be/assoc-membres.html). La liste des associations néerlandophones est quant à elle disponible sur le site de Vluchtelingenwerk (http://www.vluchtelingenwerk.be/).

Toutes ces associations portent par le biais d'une action multiple vers le monde politique et l'opinion publique.

Q.39. **Q. 39 A. Which is the body in charge of guidance, monitoring and controlling the system of reception conditions as requested by article 23 which is mandatory provision? Include in your answer which is the competent ministry (Interior, Social affairs, etc) for reception conditions?**

[217] To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

L'article 56 §1er de la loi «accueil» indique : « *L'Agence a notamment pour missions d'assurer l'organisation, la gestion et le contrôle de la qualité de l'aide matérielle octroyée aux bénéficiaires de l''accueil. »*. Le deuxième paragraphe du même article précise que l'Agence exerce le contrôle de l'exécution des conventions relatives à l'octroi de l'aide matérielle aux bénéficiaires de l'accueil avec les partenaires, notamment la Croix-Rouge de Belgique, les autres autorités, les pouvoirs publics et les associations.

Le Ministre compétent pour les revendications relatives à l'accueil est le Ministre de l'Intégration sociale.

Q.39 B. Has your Member State (like the Czech Republic did recently) approved <u>quality standards</u> (not necessary legally binding) for housing services (for instance about the number of persons per bedroom on the basis of its size, number of accessible toilets, bathrooms, showers and washing machines per number of persons, existence of common rooms with radio, television, newspapers, books, computers, accessibility of telephone, existence of recreative rooms for children,…) to be respected in particular in accommodation centres?[218]

Non.

Mais la loi « accueil » prévoit la mise sur pied de "normes de qualité" des différentes structures d'accueil.

Elles existent déjà par ailleurs chez l'un ou l'autre partenaire, mais sont des initiatives limitées et propres. Il n'a a pas d'harmonisation mais volonté de le faire.

Q.39.C How is this system of guidance, control and monitoring of reception conditions <u>organised</u>?[219]

- Aide matérielle octroyée en application des dispositions de la loi «accueil».

La loi ne prévoit pas les modalités de contrôle par l'Agence du respect des normes en termes qualificatifs ou en termes d'infrastructure. Un arrêté royal peut être pris afin de définir ces modalités (article 17 de la loi «accueil»).

- Aide sociale octroyée par les Centres publics d'aide sociale.

[218] To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.
[219] To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

D'une part, un contrôle financier est exercé par le Service Public Fédéral Intégration sociale, et d'autre part, un contrôle juridictionnel exercé par les juridictions du travail.

Q. 39. D. Does the body in charge of guidance, control and monitoring produce reports about the level of reception conditions? If yes, how frequently and are they public?[220]

L'Agence rédige un rapport annuel.

Ces rapports sont publics et disponibles sur le site internet de l'Agence (www.fedasil.be).

Q.40. **Q. 40. A. What is the total number of asylum seekers covered by reception conditions for the last year for which figures are available (see article 22 obliging Member States to calculate those statistics about which we also asked the Commission to require them from Member States for mid June)?**

Début 2005, 14.178 demandeurs d'asile étaient accueillis dans l'ensemble du réseau d'accueil. Au cours de l'année 2005, 15.881 nouveaux demandeurs d'asile ont été accueillis dans le réseau. Dès lors, un peu plus de 30.000 personnes ont été accueillies dans le réseau au cours de l'année 2005. Bien sûr, compte tenu des entrées et des sorties, elles n'ont jamais été hébergées en même temps.

Q. 40. B. What is the total budget of reception conditions in euro for the last year for which figures are available?[221]

En 2005, le budget total de l'Agence (FEDASIL) s'est élevé à 238.041.764 Euros se répartissant comme suit : dotation fédérale de 223.176.000 Euros, dotation de la Loterie Nationale de 13.500.000 Euros et une contribution du Fonds européen pour les réfugiés de 1.365.764 Euros.

Il y a lieu de remarquer que ce budget n'est pas uniquement alloué aux demandeurs d'asile mais comprend également l'accueil des personnes en séjour illégal ayant des

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[221] To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

enfants mineurs en état de besoin et les personnes ne pouvant, pour des raisons médicales ou des raisons indépendantes de leur volonté, retourner dans leur pays d'origine.

Par ailleurs, il faut également prendre en considération l'aide sociale octroyée par les centres publics d'aide sociale.

Q. 40. C. What is the <u>average cost</u> of reception conditions in euro per asylum seeker for the last year for which figures are available?[222]

- Aide matérielle :

Cette donnée n'est pas disponible.

- Aide sociale octroyée par un Centre public d'aide sociale :

Personne cohabitante	417,07 Euros/mois
Personne isolée	625,60 Euros/mois
Personne avec ménage à charge	834,14 Euros/mois

Q. 40. D Are the costs of reception conditions of asylum seekers <u>supported</u> by the central/federal or federated government or are they shared with regional and/or local authorities?

Les frais de prise en charge de l'accueil des demandeurs d'asile sont assurés par le pouvoir fédéral.

Certaines structures d'accueil pour mineurs étrangers non accompagnés sont financées par les Communautés.

Q. 40. E. Is article 24 § 2 of the directive following which "*Member States <u>shall</u> allocate the necessary resources in connection with the nationals provisions enacted to implement this directive*" respected?[223]

Oui. La dotation fédérale à l'Agence pour l'année 2007 est de 241.974.300 Euros.

[222] To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.
[223] To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

L'aide matérielle est donc entièrement prise en charge par l'Agence sur base de l'article 2.44.7 de la loi du 28 décembre 2006 concernant le Budget général des dépenses pour l'année budgétaire 2007 (Monieur belge, 9 mars 2007).

Q.41. Q. 41. A. What is the <u>total number of persons working for reception conditions</u>? [224]

Fin décembre 2005, l'Agence employait 995 personnes, dont 888 emplois équivalents temps plein.

137,9 emplois équivalents temps plein desservaient le siège central et 750,8 emplois équivalents temps plein desservaient les centres d'accueils fédéraux.

Le personnel des organismes partenaires travaillant également pour l'accueil des demandeurs d'asile (tels la Croix-Rouge et les Centres publics d'action sociale) n'est pas repris dans ces données.

Q. 41. B. How is the <u>training</u> of persons working in accommodation centres organised? Does it take into account specific needs of unaccompanied minors when relevant as well as the gender dimension? (see article 14 §5, 19 § 4 and also 24 §1 which are mandatory provisions)? [225]

L'Agence ou le partenaire devra organiser un cycle de formation pluridisciplinaire et continue à destination des membres du personnel des structures d'accueil. Cette formation portera notamment sur des éléments de droit des étrangers, de pédagogie et de psychologie, l'accueil multiculturel, la déontologie, la gestion des conflits, la question du genre ou encore la prise en charge des groupes vulnérables (article 51 de la loi «accueil»).

Le personnel chargé de l'accueil des mineurs étrangers non accompagnés reçoit une formation appropriée (article 42 de la loi «accueil»).

Q. 41. C. Are there rules about the <u>deontology</u> of persons working in accommodation centres, in particular on confidentiality? [226]

[224] To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.
[225] To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.
[226] To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

En vertu de l'article 458 du Code pénal, toute personne dépositaire, par état ou par profession, des secrets qu'on lui confie s'oblige à ne pas les dévoiler, sauf lorsque la loi le lui impose.

Tous les membres du personnel des structures d'accueil sont à tout le moins tenus par une devoir de confidentialité et certains d'entre eux, par leur état ou leur profession, sont tenus au respect du secret professionnel (article 49 de la loi «accueil»).

Les membres du personnel des structures d'accueil sont soumis à un code de déontologie qui devra être arrêté par le Ministre et faisant partie du règlement de travail (article 50 de la loi «accueil»).

10. IMPACT OF THE DIRECTIVE

Legal impact of the transposition of the directive:

Q.42. Specify if there are or not big problems with the translation of the directive in the official language of your Member State and give in case a list of the worst examples of provisions which have been badly translated? (please note that this question has in particular been added to the questionnaire concerning the new Member States)

Aucun problème de traduction de la directive n'est à signaler.

Q.43. Where there precise legal rules on reception conditions for asylum seekers before the adoption of the norms of transposition of the directive (if yes, specify what the nature of those rules was (legislation, regulation, administrative instructions,…)?

La plupart des principes généraux mis en place par les lois ne constituent pas une innovation mais figuraient déjà dans des dispositions éparses (différentes lois, différents arrêtés royaux, différentes circulaires).

Q.44. Did the legal rules applicable to reception conditions become more clear, precise, coherent or detailed with the adoption of the transposition norms (for instance do you now have after the transposition one basic text dealing with reception conditions instead of numerous different texts in the past?

La loi « accueil » a pour mérite d'être clair et de centraliser en une loi nombre de dispositions relatives à l'accueil des demandeurs d'asile.

Cependant, le texte de la loi «accueil» se limite aux matières relevant des attributions du Ministre de l'Intégration sociale. D'autres dispositions de la directive relève également, mais à un autre titre, de la compétence de l'autorité fédérale (Ministre de l'Intérieur (documents à remettre aux demandeurs d'asile, modalités de séjour et de liberté de la circulation des demandeurs d'asile), Ministre de l'Emploi et du Travail (accès des demandeurs d'asile au marché du travail), Ministre de la Justice (représentation des mineurs étrangers non accompagnés), ainsi que de la compétence des communautés (scolarisation et éducation des mineurs) et des régions (formation professionnelle).

Le Conseil d'Etat, dans son avis, a souligné que le projet de loi accueil n'assurait pas la transposition totale de la directive. « *1.3. Il découle des observations qui précèdent que le projet de loi déposé devant les chambres législatives n'assurera pas la transposition complète en droit belge de la directive 2003/9/CE. Si, bien entendu, rien ne s'oppose à ce qu'une directive soit transposée en droit interne par plusieurs instruments juridiques, il convient toutefois de veiller à ne pas présenter une disposition partielle comme étant complète.* »

Q.45. Did the transposition of the directive imply important changes in national law or were the changes of minor importance? In case, list the most important changes that have been introduced.

Les dispositions d'accueil actuellement en place ne sont pas fort éloignées du prescrit de la directive.

La loi « accueil » a essentiellement visé une coordination des textes.

Les objectifs poursuivis par l'adoption de cette loi sont les suivants:

1) Élaborer un cadre législatif cohérent et clair sur la matière qui permettra de garantir l'égalité de traitement des demandeurs d'asile

Adopter des dispositions légales relatives au début et à la fin de la prise en charge, à la politique des transferts, aux droits et obligations des différentes parties (tant les résidants que les structures d'accueil), élaborer des normes de qualité communes aux différentes structures, définir et harmoniser la mission de l'accueil, le cadre normatif ainsi que le contenu de droits reconnus tels l'accompagnement social, médical, juridique et administratif, etc etc...

Ainsi, la définition des droits et obligations tant dans le chef des demandeurs d'asile que des structures d'accueil et de l'administration, l'harmonisation de certaines pratiques, qui jusque là étaient propres à telle ou telle structure, la codification et donc la définition des contenus du droit à l'accompagnement social, juridique et médical, permettront d'élever au rang de garantie légale (et donc susceptible de protection devant les tribunaux du travail) ce qui n'était avant qu'une pratique, peu transparente, et quasi jamais portée à leur sanction.

2) Offrir un accueil personnalisé aux résidants

L'objectif poursuivi, et commandé par la directive, est d'offrir aux résidants un accueil adapté à leur besoins.

Cela se concrétiserait par :

– l'identification de **groupes vulnérables** (tels les femmes isolées, les victimes de torture, les personnes malades, les mineurs, ...), dont la directive recommande qu'il leur soit garanti un accueil adapté à leurs besoins particuliers.

– la définition de **critères de désignation a priori** dans les structures d'accueil (notamment, la connaissance de la langue, présence d'une cellule familiale existante, cas médicaux, personnes vulnérables nécessitant un accueil adapté,...) . Rappelons que le transfert de compétence en matière de désignation du code 207, de l'Office des Etrangers à Fedasil, n'est toujours pas opérationnel. Cela devrait l'être pour la mise en œuvre de la loi, ce qui devrait faciliter la politique de désignation dans un lieu adapté.

– la mise sur pied d'une **phase d'acclimatation** au sein de chaque structure d'accueil, durant une période de **30** jours, dont l'objectif serait d'évaluer si le lieu désigné correspond bien aux besoins de la personne

– un **accompagnement adapté** à ces besoins et d'une évaluation continue de leur évolution

– une politique de **transfert** claire, basée sur une procédure et des critères communs à toutes les structures d'accueil, qui faciliterait la modification du lieu de désignation, notamment le passage des structures communautaires aux structures individuelles.

3) Extension du champ d'application de l'accueil à d'autres catégories de personnes

La loi sur l'accueil a la volonté d'étendre le bénéfice des conditions d'accueil à certaines catégories de demandeurs d'asile, qui bien que déboutés de la procédure d'asile, peuvent prétendre à une aide sociale. L'objectif poursuivi est de respecter la jurisprudence de la Cour d'Arbitrage et de la Cour de Cassation en matière de droit à l'aide sociale pour des personnes se trouvant dans l'impossibilité de quitter le territoire pour des raisons indépendantes de leur volonté.

Ainsi, le droit à l'accueil sera garanti aux personnes déboutées de la procédure d'asile, résidant déjà dans une structure d'accueil, qui:

> 1° pour des raisons médicales certifiées ne peut donner suite à l'ordre de quitter le territoire qui lui a été notifié;
> 2° qui pour des raisons indépendantes de sa volonté autres que des raisons médicales, ne peut donner suite à l'ordre de quitter le territoire qui lui a été notifié;
> 3° dont un membre de sa famille au premier degré entre dans le champ d'application de la loi (respect de l'unité familiale)

4° qui a signé un engagement de retour volontaire, et ce jusqu'à son départ effectif.

De même, les familles en séjour illégal avec enfants mineurs, *« bénéficiaires de l'accueil »* selon les termes de la loi, se voient garantir l'égalité de traitement avec les demandeurs d'asile, ce qui représente une avancée importante par rapport à la pratique actuelle des centres, peu transparente, qui semble offrir un accueil très divergent, et ce tant en terme d'accompagnement médical que social ou d'accès aux infrastructures, activités etc...

Cependant, le débat sur la transposition de la directive a été initié parallèlement à la réforme de la procédure d'asile.

Une des différences fondamentales introduites est que l'accueil des demandeurs d'asile en nature ne dépend plus, avec la réforme, du stade de l'examen de leur demande d'asile mais de la durée de leur demande d'asile.

Ainsi, sous la législation antérieure, le demandeur d'asile bénéficiait d'une aide matérielle lors de l'examen de sa demande au stade de la recevabilité alors que l'aide sociale délivrée par un Centre public d'aide sociale lui était octroyée lors de l'examen au fond de sa demande.

Au vu de la nouvelle législation, le demandeur d'asile bénéficiera d'une aide matérielle pendant un délai qui doit encore être déterminé par arrêté royal (article 11 de la loi «accueil»).

Le projet de loi s'était initialement fixé pour objectif principal de fixer une durée limitée à l'accueil, sans lien avec la procédure, en limitant l'accueil en aide matérielle à **un an maximum,** quel que soit l'état de la procédure d'asile:

Après **un an**, passage en aide financière à charge des CPAS - code 207, et accès au marché du travail. Au sein de cette période d'un an en aide sociale matérielle, une distinction doit encore faite entre l'accueil en structure individuelle et l'**accueil en centres communautaires:**
Au terme d'une période de **quatre mois**, le demandeur d'asile pourra demander son transfert d'une structure d'accueil communautaire à une structure individuelle, en fonction de ses besoins et de la capacité des places disponibles)

Le Conseil des Ministres a finalement décidé, étant donné les débats sur la réforme de la procédure d'asile, de **postposer la fixation de ce délai à une évaluation de nouvelle procédure d'asile .**

Le problème principal de l'accueil reste donc entier et n'est donc pas résolu.

Par ailleurs, les informations sur les droits et obligations des demandeurs d'asile sont dorénavant clairement consignées dans la loi « accueil ».

10. Political impact of the transposition of the directive:

Q.46. Explain briefly if there has been an important debate about the transposition of the directive (in particular in the Parliament, but possibly also in the government, between political parties, including in medias, etc; underline in case the main points which have been discussed or have created difficulties)

Un débat parlementaire a été entamé autour de la transposition de la directive.

Concernant les médias, le débat autour de l'accueil des demandeurs d'asile a été quelque peu éludé par l'importance du débat autour de la réforme de la procédure d'asile qui a eu lieu au même moment.

Au niveau politique, le débat sur la loi « accueil » a été « englobé » par celui sur les réformes de la procédure. La question de la fixation du délai d'un an maximal à l'accueil a été totalement éjectée, au vu des discussions et des enjeux sur la procédure. Il a été finalement décidé, en Conseil des Ministres, de ne pas fixer cette période, mais d'attendre un an, que la nouvelle procédure soit testée, avant de décider quoi que ce soit.

De sorte qu'un des principaux problèmes de l'accueil, qui est celui de la durée trop longue de séjour en centre, ne sera pas réglé. Vu qu'il n'y a actuellement aucune ouverture sur la régularisation des demandeurs d'asile en recours au Conseil d'Etat (qui constitue le public résidant depuis des années dans les centres), le problème reste entier.

Q.47. Did the transposition of the directive contribute to make the internal rules stricter or more generous? In particular, did your Member State use the occasion of the transposition to abolish more favourable provisions of national law? Does your Member State still have rules more favourable than the provisions of the directive (if yes, try to give the more important examples).

Suite au débat concernant la transposition de la directive, certaines des nouvelles dispositions légales sont plus strictes pour les demandeurs d'asile alors que d'autres sont plus généreuses.

Ainsi, sous la législation antérieure, le demandeur d'asile bénéficiait d'une aide matérielle lors de l'examen de sa demande au stade de la recevabilité alors que l'aide sociale délivrée par un Centre public d'aide sociale lui était octroyée lors de l'examen au fond de sa demande.

Au vu de la nouvelle législation, le demandeur d'asile bénéficiera d'une aide matérielle pendant un délai à déterminer par arrêté royal.

La loi «accueil » comble cependant certaines lacunes de la réglementation belge par rapport aux exigences de la directives telles évaluation des besoins spécifiques du demandeur d'asile, information relative aux droits et obligations du demandeur d'asile, formation du personnel et des structures d'accueil.

Le législateur belge a mis en place une disposition plus favorable concernant l'application des normes relatives à l'accueil des demandeurs d'asile. En effet, la définition du demandeur d'asile vise non le ressortissant de pays tiers mais de manière plus générale : « l'étranger qui a introduit une demande d'asile, ayant pour objectif soit la reconnaissance du statut de réfugié, soit l'octroi du statut de protection subsidiaire » (article 2, 1° de la loi «accueil»).

11. ANY OTHER INTERESTING ELEMENT

Q.48. What are in your view the weaknesses and strengths of the system of reception conditions in your Member State?[227]

- Points faibles

Les dispositions relatives à l'accueil des demandeurs d'asile n'ont pas été transposées aux demandeurs d'asile placés en détention.

L'accès des demandeurs d'asile au marché du travail va être modifié par les projets en cours mais rien n'est encore fixé à ce sujet.

Concernant l'application de nombres de principes relatés par la directive, des arrêtes royaux devront être pris afin d'en assurer la mise en place effective (voir Q.6). Ainsi, le délai maximum déterminé pour l'octroi de l'aide matérielle n'est pas encore défini.

- Points forts

La désignation d'un lieu obligatoire d'inscription permet aux demandeurs d'asile de se voir de suite déterminer un logement.

Le nombre de places disponibles au regard du nombre de demandeurs d'asile est suffisant.

En ce qui concerne l'aide matérielle, il existe une grande diversité de type d'accueil disponible, sur l'ensemble du territoire.

Auparavant, le contenu de l'accueil, des droits et des obligations, des voies de recours et des plaintes n'étaient inscrits que dans la pratique. Le fait d'insérer cela dans une loi l'élève au rang de droit protégé par la censure des tribunaux.

Q.49. Mention any good practice in your Member State which could be promoted in other Member States[228]

La désignation d'un lieu obligatoire d'inscription permet aux demandeurs d'asile de se voir de suite déterminer un logement.

[227] To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.
[228] To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

Le mécanisme de la Tutelle mise en place pour les mineurs étrangers non accompagnés a amélioré la prise en charge et l'encadrement de ces jeunes. Il y a dorénavant une personne qui s'occupe explicitement du bien être du mineur. La protection dont bénéficie le mineur est dès lors plus importante.

Les mineurs étrangers non accompagnés ne peuvent pas ailleurs plus être maintenus en centres fermés.

Q.50. Please add here <u>any other interesting element</u> about reception conditions in your Member State which you did not had the occasion to mention in your previous answers.

QUESTIONNAIRE FOR THE NATIONAL REPORT ON THE IMPLEMENTATION OF THE DIRECTIVE : RECEPTION CONDITIONS OF 27 JANUARY 2003

IN: BULGARIA

by
Ilareva Valeriya
Lawyer, PhD Researcher at Sofia University
valeria.ilareva@gmail.com
10 November 2007

1. NORMS OF TRANSPOSITION

Q.1. Identify the main norm of transposition (indicate the title, date, number, date of entry into force and references of publication into the official journal) and indicate its legal nature (legislative, regulatory, administrative); indicate in your answer if this norm was only devoted to the directive or if it has been included in a more general text and indicate in that case by quoting precisely the numbers of the provisions adopted to transpose the directive.

This table is about: [X] a text already adopted [ ] a text which is still a project to be adopted
TITLE: Law on Asylum and Refugees
DATE: 31 May 2002; amended on 8 April 2005; 11 April 2006; 29 June 2007
NUMBER:
DATE OF ENTRY INTO FORCE: 1 December 2002; amendments: 11 April 2005; 1 March 2007; 3 July 2007
PROVISIONS CONCERNED (for example if the norm is not devoted only to the transposition of the concerned directive): almost the whole act is relevant
REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL: Official State Gazette Issue No. 54 of 31 May 2002; amendments: OSG № 31 of 8 April 2005, OSG № 30 of 11 April 2006, OSG № 52 of 29 June 2007
LEGAL NATURE (indicate a cross in the correct box): [X] **LEGISLATIVE**: [ ] **REGULATION**: [ ] **CIRCULAR or INSTRUCTIONS:**

Q.2. List by order of importance by using numbers (1, 2, 3) the others norms of transposition if there are more than one (indicate for each norm the title, date, number and references of publication into the official journal; include

in your answer the administrative measures taken to ensure implementation of the directive and of the transposition norms like regulations, administrative circulars, special instructions,…)

TITLE: Law on Legal Aid
DATE: 4 October 2005
NUMBER:
DATE OF ENTRY INTO FORCE: 1 January 2006
PROVISIONS CONCERNED : Art.23 (4)
REFERENCES OF PUBLICATION **IN THE OFFICIAL JOURNAL**: Official State Gazette Issue No. 79 of 4 October 2005
LEGAL NATURE (indicate a cross in the right box): [X] **LEGISLATIVE** [ ] **REGULATION** [ ] **CIRCULAR OR INSTRUCTIONS**

TITLE: Law on Protection against Discrimination
DATE: 30 September 2003
NUMBER:
DATE OF ENTRY INTO FORCE: 1 January 2004
PROVISIONS CONCERNED :
REFERENCES OF PUBLICATION **IN THE OFFICIAL JOURNAL**: Official State Gazette Issue No. 86 of 30 September 2003
LEGAL NATURE (indicate a cross in the right box): [X] **LEGISLATIVE** [ ] **REGULATION** [ ] **CIRCULAR OR INSTRUCTIONS**

TITLE: Law on Health
DATE: 10 August 2004
NUMBER:
DATE OF ENTRY INTO FORCE: 1 January 2005
PROVISIONS CONCERNED : 99, 100 (2)
REFERENCES OF PUBLICATION **IN THE OFFICIAL JOURNAL**: Official State Gazette Issue No.70 from 10 August 2004
LEGAL NATURE (indicate a cross in the right box): [X] **LEGISLATIVE** [ ] **REGULATION** [ ] **CIRCULAR OR INSTRUCTIONS**

TITLE: Law on Health Insurance
DATE: 19 June 1998, but the articles in question are amended on 31 May 2002
NUMBER:
DATE OF ENTRY INTO FORCE: the amendments in question – on 1 December 2002
PROVISIONS CONCERNED : Art.33 (4), Art.34 (1.3) (2.2), Art.35, Art.37 (1) – (4), Art.40 (2.4) (2.6)
REFERENCES OF PUBLICATION **IN THE OFFICIAL JOURNAL**: the amendments in question - Official State Gazette Issue No. 54 of 31 May 2002
LEGAL NATURE (indicate a cross in the right box): [X] **LEGISLATIVE** [ ] **REGULATION** [ ] **CIRCULAR OR INSTRUCTIONS**

TITLE: Law on Child Protection
DATE: 13 June 2000
NUMBER:
DATE OF ENTRY INTO FORCE: 16 June 2000
PROVISIONS CONCERNED :
REFERENCES OF PUBLICATION **IN THE OFFICIAL JOURNAL**: Official State Gazette Issue No. 48 from 13 June 2000
LEGAL NATURE (indicate a cross in the right box): [X] **LEGISLATIVE** [ ] **REGULATION** [ ] **CIRCULAR OR INSTRUCTIONS**

TITLE: Implementing Regulation on the Law on Child Protection
DATE: 25 July 2003
NUMBER:
DATE OF ENTRY INTO FORCE: 28 July 2003
PROVISIONS CONCERNED :
REFERENCES OF PUBLICATION **IN THE OFFICIAL JOURNAL**: Official State Gazette Issue No. 66 from 25 July 2003
LEGAL NATURE (indicate a cross in the right box): [ ] **LEGISLATIVE** [X] **REGULATION** [ ] **CIRCULAR OR INSTRUCTIONS**

TITLE: Ordinance on the Conditions and the Procedure for the Issuance,

Rejection and Revocation of Work Permits for Foreigners in the Republic of Bulgaria
DATE: 16 April 2002
NUMBER:
DATE OF ENTRY INTO FORCE: 17 June 2002
PROVISIONS CONCERNED : **(for example if the norm is not devoted only to the transposition of the concerned directive)** Art. 4 (1) (10)
REFERENCES OF PUBLICATION **IN THE OFFICIAL JOURNAL**: Official State Gazette Issue No. 39 of 16 April 2002
LEGAL NATURE (indicate a cross in the right box): ☐ **LEGISLATIVE** ☒ **REGULATION** ☐ **CIRCULAR OR INSTRUCTIONS**

TITLE: Ordinance on the Procedure for Admission of Refugees at State and Municipal Schools of the Republic of Bulgaria
DATE: 27 July 2000
NUMBER: №3 from 27 July 2000
DATE OF ENTRY INTO FORCE: 11 September 2000
PROVISIONS CONCERNED :
REFERENCES OF PUBLICATION **IN THE OFFICIAL JOURNAL**: Official State Gazette Issue No. 74 from 8 September 2000
LEGAL NATURE (indicate a cross in the right box): ☐ **LEGISLATIVE** ☒ **REGULATION** ☐ **CIRCULAR OR INSTRUCTIONS**

TITLE: Ordinance on the Procedure for Temporary Detention of Foreigners, on the Organization and the Activities of the Specialized Centers for Temporary Detention of Foreigners
DATE: 29 January 2004
NUMBER: № I-13 from 29 January 2004
DATE OF ENTRY INTO FORCE: 16 February 2004
PROVISIONS CONCERNED : 10, 19, 20 (2)
REFERENCES OF PUBLICATION **IN THE OFFICIAL JOURNAL**: Official State Gazette Issue No. 12 of 13 February 2004
LEGAL NATURE (indicate a cross in the right box): ☐ **LEGISLATIVE** ☒ **REGULATION** ☐ **CIRCULAR OR INSTRUCTIONS**

TITLE: Government Decree on the Establishment of a Reception Center for Refugees in the Village of Banya, Nova Zagora Municipality, Bourgas District
DATE: 9 May 1997
NUMBER: No. 199/9 May 1997
DATE OF ENTRY INTO FORCE: 19 May 1997
PROVISIONS CONCERNED :
REFERENCES OF PUBLICATION **IN THE OFFICIAL JOURNAL**: Official State Gazette Issue No. 39 of 16 May 1997
LEGAL NATURE (indicate a cross in the right box): [ ] **LEGISLATIVE** [X] **REGULATION** [ ] **CIRCULAR OR INSTRUCTIONS**

TITLE: Government Decree on the Establishment of a Reception Center for Refugees and an Integration Center for Refugees at the State Agency for Refugees at the Council of Ministers in Sofia, "Ovcha Koupel Region", Montevideo 21 Street
DATE: 14 May 2001
NUMBER: No. 123/14 May 2001
DATE OF ENTRY INTO FORCE: 25 May 2001
PROVISIONS CONCERNED :
REFERENCES OF PUBLICATION **IN THE OFFICIAL JOURNAL**: Official State Gazette Issue No. 48 of 22 May 2001
LEGAL NATURE (indicate a cross in the right box): [ ] **LEGISLATIVE** [X] **REGULATION** [ ] **CIRCULAR OR INSTRUCTIONS**
TITLE: Rules for the Internal Order at the Reception Center for Refugees in the Village of Banya, Nova Zagora Municipality, Bourgas District
DATE: 01.11.2006
NUMBER:
DATE OF ENTRY INTO FORCE: 01.11.2006
PROVISIONS CONCERNED :
REFERENCES OF PUBLICATION **IN THE OFFICIAL JOURNAL**:
LEGAL NATURE (indicate a cross in the right box): [ ] **LEGISLATIVE** [X] **REGULATION** [ ] **CIRCULAR OR INSTRUCTIONS**

TITLE: Rules for the Internal Order at the Reception Center for Refugees at the State Agency for Refugees at the Council of Ministers in Sofia, "Ovcha Koupel Region", Montevideo 21 Street
DATE: 12.09.2005
NUMBER:
DATE OF ENTRY INTO FORCE: 12.09.2005
PROVISIONS CONCERNED :
REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL:
LEGAL NATURE (indicate a cross in the right box): ☐ **LEGISLATIVE** ☒ **REGULATION** ☐ **CIRCULAR OR INSTRUCTIONS**

TITLE: Structural Statute of the State Agency for Refugees at the Council of Ministers
DATE: 12.12.2002
NUMBER:
DATE OF ENTRY INTO FORCE: 12.12.2002
PROVISIONS CONCERNED :
REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL:
LEGAL NATURE (indicate a cross in the right box): ☐ **LEGISLATIVE** ☒ **REGULATION** ☐ **CIRCULAR OR INSTRUCTIONS**

Q.3. Explain which level of government is competent to adopt the legal norms on reception conditions for asylum seekers (specify in particular in case of a federal or regional State, if it is the federal/central power or the components; in case, specify below when it is impossible for you to answer a question because it is about the competence of the components and it is impossible for you to gather reliable information about all of them)

Q.4. Explain the legal technical choices done to transpose the directive (comment on the nature and level of the norms used to do the transposition: legislative, regulatory, administrative like instructions, etc). Add any other element about the technique of transposition of the directive which is interesting for the implementation of Community law.
The actions, taken especially for the transposition of the directive after its adoption, are the slight amendments to the Law on Asylum and Refugees in 2005 and mainly the amendments to the Law on Asylum and Refugees as of 29 June 2007.

Q.5. Mention if there is a general tendency to just copy the provisions of the directive into national legislation without redrafting or adaptation them to national circumstances? If yes, give some of the worst examples and explain if there is a risk that those provisions remain unapplied or will create difficulties of implementation in the future.
Yes, there is a tendency to just copy the provisions of the directive or even "summarize" them in brief.

Q.6. Have all the texts necessary to ensure the effective implementation of the new rules of transposition been adopted, prepared or at least foreseen in the future (for example a regulation completing a new law and the necessary instructions telling the administration how to apply the new rules)?
The amendments meant to transpose the directive have been published as late as on 29 June 2007. No regulation completing the law is envisaged. Where the standards are equated with those for nationals, reference for details can be made in relevant law for Bulgarian citizens.

2. BIBLIOGRAPHY

Q.7. Has an in-depth preparatory study been made public about the changes at the occasion of the transposition? If yes, thanks for trying to provide us a copy *(please contact to answer this question adequately the body and person who was responsible for the preparation of the transposition of the directive in the public administration).*
No such in-depth preparatory study exists.

Q.8. Quote any recent scientific book or article published about the directive, the transposition rules or the question of reception conditions for asylum seekers in general (answer even if this literature is only available in your language and provide the complete title in your language (without translation) with all references; indicate author, title, in case name of periodical, year and place of publication).
No such scientific book exists. I haven't come across an article on the issue either. It is a fact that this topic is not yet popular in Bulgaria.

Q.9. Quote any interesting decision of jurisprudence based on the implementation of the new rules of transposition of the directive (indicate references of publication if any)?
The new rules are in force since 3 July 2007. There is hardly any jurisprudence yet because the ongoing proceedings are completed under the old law.
However, there are several interesting cases which are told in the answers to Question 22.C. below.

3. GENERAL INFORMATION ABOUT THE SYSTEM OF RECEPTION CONDITIONS

The purpose of the following two questions is to help the reader to understand easily and quickly the system of reception conditions in your Member State and also to avoid that you have to repeat general elements in other parts of the questionnaire. ***Please do not write more than one or maximum two pages and do not include large historical developments.***

Q.10. Describe in general the system of reception conditions in your Member State (in particular which are the main actors in charge of reception conditions?)

The main actor in charge of reception conditions is the State Agency for Refugees under the Council of Ministers. Currently the agency does not pertain to any specific ministry of the government.
The Migration Directorate at the Ministry of the Interior in charge of the immigration detention center might also be regarded as a competent body in this regard since asylum seekers who have entered Bulgaria illegally are detained throughout the procedure on the determination of the responsible Member State on the basis of the Dublin II regulation and the accelerated procedure for examining their application.

Q.11. **Q11. A.** Explain if you have different types and levels of reception conditions following the different stages of the asylum procedure (this implies that you have to give briefly the necessary explanations about the asylum procedure). Make if relevant for reception conditions a distinction between the following procedural stages: determination of the responsible Member State on the basis of the Dublin II regulation, special procedures at the border (including transit zones in airports), accelerated procedures, admissibility procedures, eligibility procedures and the different possibilities of appeals (suspensive or not) against a refusal of the asylum request. Indicate what the main differences of reception conditions are between the different stages (if necessary by detailing between the different elements of reception conditions, in particular housing) and explain what the evolution of reception conditions is following the different stages of the procedure.

Currently in Bulgaria there are two types of status determination procedures: an accelerated one and a common one. The amendments to the Law on Asylum and Refugees as of 29 June 2007 envisage a procedure for determining the state responsible to examine the asylum application.
The accelerated procedure applies to applications that are considered to be manifestly unfounded. The common procedure is meant to examine credible asylum applications in detail.

The Law on Asylum and Refugees (LAR) does not provide explicitly for different levels of reception conditions regarding the different stages of the asylum procedure. However, differences are implied in law and exist in practice. Asylum seekers in "closed" centers do not enjoy the rights that asylum seekers in "open" centers have. Art.47, Para.2, Subpara.1 LAR provides that "*transit centers* are assigned for registration, accommodation, medical screening and for carrying out the procedure on determining the state responsible for examining the asylum application and the accelerated asylum procedure of illegal foreigners" Asylum seekers have no freedom of movement outside the transit centre. Currently the head of the State Agency for Refugees has appointed the immigration detention center in Sofia to serve as a transit center. All this means that under Bulgarian law asylum seekers who are in a procedure for determining the state responsible for examining the application for asylum and those who have entered the country illegally and are in an accelerated asylum procedure are detained and have no freedom of movement. Even before the amendments in law were made, the Specialized Centre for Temporary Accommodation of Foreigners (that is, the immigration detention center in Sofia) has served as a "transit centre".

According to Art.20, Para.2 of the *Ordinance on the Procedure for Temporary Accommodation of Foreigners, on the Organization and the Activities of the Specialized Centers for Temporary Accommodation of Foreigners*, asylum seekers who have been admitted to the common asylum procedure are released from the specialized center (i.e. the transit center).

The Specialized Center for Temporary Accommodation of Foreigners in Sofia (i.e. the immigration detention center), where in practice all asylum seekers who have entered Bulgaria illegally are detained, is designed to accommodate foreigners with deportation orders (all asylum seekers who have been caught to have entered Bulgaria illegally are issued deportation orders) and there is no differentiation in the treatment between asylum seekers and other aliens. They are accommodated in big common dormitories. An important detail that should be paid attention is that asylum seekers there are treated as persons who have breached the law and a feeling of guilt is instilled in them. This adds to the fear of being deported since the embassies are asked for cooperation in the implementation of the deportation orders (the latter are usually issued with a ruling of their preliminary execution, i.e. the appeal has no suspensive effect unless the asylum application is registered). For problems with the registration of asylum applications by the State Agency for Refugees, see the answer to question 14.

Q 11. B. Indicate precisely for which stage(s) of the asylum procedure the answers on reception conditions you give below are valid.

Generally, the answers are valid for asylum seekers who have been admitted in the common asylum procedure. There are special notes when referring to detained asylum seekers.

4. GENERAL RULES ON RECEPTION CONDITIONS

Q.12. **Q 12. A**. Are material reception conditions provided in kind, in money or in vouchers or in a combination of these elements (see article 13, §5 which is an optional provision)? Distinguish between the different elements (housing, food, clothes, health, transportation, pocket money,…). **If reception conditions are provided in money (in general or in some cases, for instance when no places are anymore available in accommodation centres), indicate the precise amount given to the asylum seekers. Indicate in your answer what is provided in general and if there are exceptional cases.** Specify in your answer if reception conditions are different from the general system of social aid for nationals or aliens and if yes, if and when (which stage of the asylum procedure) can asylum seekers have access to the general system of social aid?

The maximum scope[229] of material reception conditions in Bulgaria includes three elements:

1) Housing is provided in kind: it takes the form of accommodation at the reception center of the State Agency for Refugees.

2) Asylum seekers receive health insurance.

3) For the rest of the material reception conditions asylum seekers receive 55 levs (which equal approximately 27 Euro) per month.

Q 12. B. **Can the reception conditions in kind, money or vouchers be considered as sufficient "to ensure a standard of living adequate for the health of applicants and capable of ensuring their subsistence" as requested by article 13, §2 of the directive (which is a mandatory provision but leaves a certain space to Member States)?** In order to help to assess the respect of this rule when reception conditions are provided in money, include if necessary in your answer points of comparison with the minimum amount of social aid guaranteed for nationals in your Member State.

As it is obvious from the answer to Q.12.A., material reception conditions in Bulgaria are not sufficient for an adequate standard of living. Although the size of the monthly social assistance provided to Bulgarian citizens is not any higher, asylum-seeking is a circumstance necessary of "positive discrimination".

[229] It refers to asylum seekers who have been admitted to the common asylum procedure and therefore are not detained.

5. PROCEDURAL ASPECTS

Q.13. **Q 13. A. Does the national legislation specifically provide that a request for international protection is presumed to be under the Geneva Convention unless explicitly requested otherwise? (see article 2, b which is a mandatory provision)**

No. There is no such provision.

Q. 13. B. Explain if the scope of application of reception conditions is extended to other asylum seekers than refugees in the sense of the Geneva Convention, in particular to persons asking for subsidiary protection or to other forms of protection like humanitarian statuses (see article 3, § 4 which is an optional provision)? If not, explain briefly which the differences between these special regimes and the directive are.

Regarding the scope of application of reception conditions in Bulgaria, the term used in law is "persons who seek protection". This means that the rules apply equally to three categories of persons: the ones who apply for refugee status, the ones who apply for subsidiary protection status and the ones who apply for asylum before the President of the Republic.

Q. 13. C. Are there specific provisions in national law for reception conditions in case of diplomatic or territorial asylum requests submitted through a diplomatic or consular representation (see article 3, §2 which is an optional provision)?

No. There are no such specific provisions.

Q.14. **Are reception conditions available as from the moment one asylum application is introduced? How is article 13, §1 which is mandatory legally understood?** Do asylum seekers have to satisfy any other condition in order to get reception conditions?

Reception conditions in Bulgaria are not available from the moment one asylum application is introduced; they are available from the moment the asylum application *is registered* by the State Agency for Refugees. There is a lapse of time between the introduction of the asylum application and its registration. The Amendments to the Law on Asylum and Refugees from 29 June 2007 repealed Para 2 of Art.58 which said that the asylum procedure is initiated with the introduction of the asylum application. Art.58, Para.2 of the Law on Asylum and Refugees has not been followed in practice and the amendment has been made to adapt the law to the practice. Unfortunately this has tremendous negative consequences for asylum seekers and opens the door for corruption since the law does not state a period of time within which an asylum application shall be registered. Asylum seekers who are not detained have to go the Agency for Refugees and beg for "a date", because in the meantime they live in

the street. Those who are detained for entering illegally Bulgaria wait for months in the immigration detention center (pending deportation) until their application(s) is(are) registered (they send applications regularly in order to be paid attention; when lawyers send the application that the asylum seeker has written together with a lawyer's authorization, they receive the reply that this applications are inadmissible since should be handed out personally through the director of the detention center). There are cases when the interviewing organ of the State Agency for Refugees goes to the detention center to register/interview or "free" the asylum seeker (the latter means that the asylum application has been admitted to the common procedure), but the person has already been deported to his country of origin as an illegal immigrant.

Q.15. **Explain when reception conditions <u>end</u>, for instance after refusal of the asylum request** (include in your answer the link with the right of appeal against a decision of refusal of the status, in particular the question of its suspensive effect)

Reception conditions end after a *final* decision is reached: either an administrative or a judicial one; either one granting status or one refusing it. The appeal against the refusal of the status has suspensive effect.

Q.16 Are there special rules or practices regarding reception conditions in case of <u>successive applications</u> for asylum introduced by the same person?

Yes. According to Art.29, Para.5 of the Law on Asylum and Refugees the rights to housing and food and the right to social assistance shall not be granted to persons who have made a successive asylum application. This is a general rule; there is no individual assessment within the meaning of Art.16, Para.4 of the Directive. Even before the drafting of this provision, this has been the practice.

Q.17. I<u>nformation of asylum seekers about their rights and obligations in terms of reception conditions</u>, in particular about established benefits (see article 5 which is too a large extend a mandatory provision; do not confuse this question with the information to be provided to asylum seekers about the asylum procedure):

Q. 17. A. Are asylum seekers informed, and if yes about what precisely?

According to Art.58, para.6 of the Law on Asylum and Refugees, the applicant shall be "*guided*" as to "*the procedure for submitting the application, the procedure that will follow and his rights and obligations, as well as about organizations that provide legal and social aid to foreigners*". The grammatical interpretation of this provision leads to the conclusion that "the rights and obligations" of which the applicant

receives guidance refer to the asylum procedure and not the reception conditions. There is no legal provision concerning the reception conditions.

Q. 17. B. Is the information provided in writing or, when appropriate, orally?

Art.58, Para.6 LAR makes no reference as to whether the "guidance" shall be given in writing or orally. To some extent, it is good that "in writing" is not the only option. The latter could create practical problems leading to situations when asylum seekers are refused oral clarifications with the reply "read your brochure". There are cases when asylum seekers cannot read (for example, Chinese asylum seekers are often illiterate). However, if there is no information in writing, there are no guarantees that the obligation to provide the information has been realized.

Q.17. C. Is that information in general provided in a language understood by asylum seekers? Specify the list of languages in which it is available

Art.58, Para.6 LAR provides that the guidance shall be made in a language which the asylum seeker understands. In practice currently if you go to the reception room at the State Agency for Refugees where asylum seekers make their contact with the authorities through a front desk man, you will see that all announcements are written *only* in Bulgarian language. The front desk man speaks also in Bulgarian.

Q. 17. D. Is the deadline of maximum 15 days respected?

The new provision of Art.58, Para.6 LAR as of 29 June 2007 refers to this deadline by saying that the information shall be provided no later than 15 days from the submission of the application.

Q.18. Information of asylum seekers about the existence of organisations or groups promoting their interest and defending their rights (see article 5 which is to a large extend a mandatory provision):

Q. 18. A. Is there a list of organisations dressed by the authorities and if yes is it comprehensive? Is this in particular the case about the possibilities to get legal assistance and health care?

There is no such list.

Q. 18. B. Is the information provided to the asylum seekers, and if yes, in writing or, when appropriate, orally?

There is no information in writing. On 10 October 2007 the State Agency for Refugees submitted a written reply to the draft of the current report where it claims that such brochures are prepared at the moment. In practice the authorities sometimes give an advice orally and refer the person to the Bulgarian Helsinki Committee (for free legal aid), the Red Cross and the Caritas (for social assistance).

Q. 18. C. Is that information in general provided in a language understood by asylum seekers? Specify if possible the list of languages in which it is available.

If there is a translator available in connection with the asylum procedure, the latter can be used to translate this information as well.

Q. 18. D. How many organisations are active in that field in your Member State?

There are two organizations that provide free legal aid: the Bulgarian Helsinki Committee and the Legal Clinic for Refugees and Immigrants at Sofia University. There are three main organizations that provide social assistance: the Bulgarian Red Cross, the Council of Refugee Women and the Caritas. UNHCR has a branch office in Sofia but it does not provide direct assistance to asylum seekers; it rather enhances the capacity of the national actors to do so.

Q.19. Documentation of asylum seekers (see article 6):

Q.19. A. What kind of document is delivered to the asylum seeker? Explain the legal value of this document (just a certification of the status as asylum seeker or also prove of identity?) (see §1 of article 6 which is a mandatory provision)

According to Art.40, Para.1, Subpara.1 LAR, asylum seekers receive a "registration card". It is explicitly stated that this registration card does not certify the identity of the person. The registration card is a certification of the status as asylum seeker.

Q.19. B. Are there situations or specific cases in which another equivalent document or even no document is issued? (in particular is there an exception for "procedures to decide on the right of the applicant legally to enter the territory" as made possible by §2 of article 6)?

The law does not provide for exceptions in which another equivalent document or no document is issued.

Q.19. C. For how long is this document in principle valid and is it necessary to renew it after a certain period?

The registration card of a foreigner in a procedure for determining the state responsible to examine his asylum application is valid for 3 months.

The registration card of a foreigner in an accelerated status determination procedure is valid for 1 month.

The registration card of a foreigner in a common status determination procedure is valid for 3 months.

The law only states that the document's validity *may* be extended; there is no legal obligation for the state organ to do that.

Q.19. D. What is the deadline for the delivery of that document? Is the mandatory deadline of 3 days set by article 6, §1 respected[230]?

The law does not provide for a deadline. In practice there is a lapse of time between the submission of the asylum application, its registration and the issuance of a document. Before a document is issued, asylum seekers who are not in detention receive a small piece of paper with a date on which they should appear to receive their document. In the meantime, if policemen stop them in the street, they could consider them illegal immigrants: an order for deportation is issued and asylum seekers are detained at the immigration detention center.

Q.19. E. Is it possible for an asylum seeker to get a travel document for serious humanitarian reasons (see §5 of article 6 which is an optional provision)?

No.

Q.19. F. Is there a central system of registration of asylum seekers and is it or not separate from the registration of aliens? If yes, describe it briefly (content) and indicate in particular if it is an electronic database.

The documents are issued by the State Agency for Refugees, separately from the Ministry of the Interior. According to Art.65 LAR the data is kept in a register by the State Agency for Refugees. According to Art.54, para.2, subpara.3 of the Law on the Foreigners in the Republic of Bulgaria, the Ministry of the Interior operates with the data of asylum seekers for the purposes of fulfilling its tasks of "administrative control of foreigners". The State Agency for Refugees is obliged to provide this information to the Ministry of the Interior. Art.58 states that the State Agency for Refugees and the Ministry of the Interior exchange information as to the documents issued to asylum seekers.

Q.20. Residence of asylum seekers :

Q.20. A. Is in principle an asylum seeker free to move on the entire territory of your Member State or only to a limited part of it and in case, which part? (see article 7, §1 which is a mandatory provision)

There is no provision transposing Art.7, para.1 of the Directive. Freedom of movement is not forbidden only to asylum seekers who have been admitted in the common asylum procedure. See explanations in the answer to Q.11.A.

I wouldn't say that "the unalienable sphere of private life" of asylum seekers is not affected in the Specialized Center for Temporary

Accommodation of Foreigners since there are cameras in all facilities of the center (except for the bathrooms).

Q.20. B. About the <u>place of residence (see §2 of article 7)</u>: explain to which extend the person is free to choose her residence and if this depends of the stage of the asylum procedure (for instance before and after admissibility); if there are constraints limiting the choice, explain which ones and their reasons (for instance processing of application, attribution of reception conditions,…).

My answers to questions 20.B. and 20.C. are entwined for which I have answered after Q.20.C.

Q.20. C. About the <u>place of reception (meaning where the asylum seeker has to stay to benefit from reception conditions) (see § 4 of article 7)</u>: explain which are the general rules about the determination of this place (to which extend are the decisions determining the place taken individually and do they take into account the personal situation of the asylum seeker?) and to which extend the person is free to choose it and if it depends of the stage of the asylum procedure (for instance before and after admissibility); if there are constraints limiting the choice, explain which ones and their reasons (for instance attribution of reception conditions, processing of the application,…).

No reasons of public interest or public order are stated in law as determining the place of residence or the place of reception.

There are two reception centers for asylum seekers in Bulgaria (reception centers are not under a "special regime", i.e. asylum seekers there are not detained): one in Sofia (Bulgaria's capital) and another one in a small village in the province of Bulgaria - Banya, Nova Zagora municipality.

The law does not provide for a right of the asylum seeker to choose her place of residence or place of reception. Asylum seekers who are accommodated in a reception center and have freedom of movement cannot choose whether to be accommodated in Sofia or in Banya. Art.29 (4) LAR states that asylum seekers are accommodated in a reception center after an assessment of their "health condition, family and material status" is made and under *conditions* and order to be set by the head of the State Agency for Refugees. It is questionable whether the head of the State Agency for Refugees shall be allowed to pose additional conditions other than the ones set in law on the accommodation of asylum seekers.

According to Art.29, Para.6 LAR, throughout the common asylum procedure (as differentiated from the accelerated one) when the asylum seekers disposes of the necessary means to meet his main living needs, he *may be granted permission* to have an accommodation *on his own account* at an address which he chooses and in this case the asylum seeker does not receive financial or material assistance by the State Agency for Refugees. This provision begs the question why such permission is needed if the

asylum seeker is the one who covers his expenses. Is the accommodation a coercive one or is the assistance provided by the State Agency for Refugees obligatory?

Q.20. D. If all asylum seekers are not placed in accommodation centres because of capacity limits, explain how the persons are distributed between accommodation centres and other accommodation facilities (which authority takes the decisions, on the basis of which elements, can that decision be appealed by the asylum seeker,…)

The decision is taken by the head of the State Agency for Refugees. The only provision in this regard is Art.29, Para 4 LAR stating that asylum seekers are accommodated in a reception center after an assessment of their "health condition, family and material status" is made and under *conditions* and order to be set by the head of the State Agency for Refugees. The Rules for the Internal Order at the two reception centers do not contain distribution provisions as to which categories of asylum seekers shall be accommodated in them.

Q.20. E. How can an asylum seeker ask to leave temporarily the place of residence or of reception or an assigned area? How is the individual AND impartial character of the decision ensured? (see §5 of article 7 which is a mandatory provision)

This issue is not regulated in law. In practice there is "an evening hour" before which asylum seekers should be at the reception center or otherwise not let in. In order for an asylum seeker to spend a night outside the centre without sanctions, permission shall be obtained.

Q.21. **Q.21. A. Do rules on reduction or withdrawal of reception conditions exist in internal legislation and if yes in which cases (mention in particular if there are cases not foreseen by article 16, § 1 and 2 which are optional provisions)? Distinguish in your answer between cases of reduction and withdrawal and explain which conditions can be reduced and if access to emergency health care is always ensured as requested by article 16, §4, last sentence.**

Yes, rules on reduction and withdrawal of reception conditions exist.

According to Art.29, Para.5 LAR, the rights to accommodation and food and the right to social assistance are not recognized to an asylum seeker who does not belong to a vulnerable group and:

1. submits a successive asylum application;
2. his asylum procedure is suspended.

According to Art.14 of the Law on Asylum and Refugees, the status determination procedure shall be suspended where the alien, without good reasons:

1. fails to appear for an interview within 10 working days, after having been duly invited to do so;

2. changes his/her address without giving notice to the State Agency for Refugees or the relevant reception centre;

3. refuses to assist the officials of the State Agency for Refugees in clarifying the circumstances pertaining to his/her application.

According to Art.77, para.2 of the Law on Asylum and Refugees the procedure suspended shall be resumed, if the alien seeking protection produces evidence that objective obstacles prevented him/her from appearing or assisting the officials.

According to Art.15, para.1, subpara.7 of the Law on Asylum and Refugees, a status determination procedure shall be discontinued where the alien fails to appear before the relevant official of the State Agency for Refugees within three months after the procedure has been suspended in accordance with Article 14.

The suspension and the discontinuance of the procedure equals withdrawal of reception conditions.

Q.21. B. Has article 16, §2 dealing with refusal of reception conditions for <u>unreasonably late applications</u> for asylum been transposed by your Member State (or was this case already applicable before transposition)? Are there cases in practice?

There is no explicit provision regarding reception conditions, but the law says that in this case the application is considered to be manifestly unfounded and is examined under an accelerated procedure. The latter affects the reception conditions for the asylum seeker.

Q.21. C. How is it ensured that decisions of reduction or withdrawal are taken individually, objectively AND in particular impartially (for instance through and independent arbitrator) (see article 16, §4 which is a mandatory provision)?

This is issue is not regulated in Bulgarian law.

Q.21. D. Is statement 14/03 adopted by the Council at the same moment as the directive respected (see the document attached to our sending)?

No.

Q.21. E. Are there already administrative appeal decisions or judgements on cases of reduction, withdrawal or refusal which have been taken, and if yes, what has been the outcome?

Unfortunately asylum seekers in Bulgaria are not well-informed of their rights and do not dare to complain about the reception conditions. The asylum cases in courts concern decisions to refuse status.

There is no possibility for administrative appeal under the Law on Asylum and Refugees since the Head of the State Agency for Refugees is directly subordinate to the Council of Ministers. Under

general administrative law, acts of officials from the State Agency for Refugees (SAR) are challengeable before the Head of SAR.

Q.22. **Q.22. A. <u>Appeal</u> against a negative decision relating to the granting of benefits or based on article 7 (see article 21 which is a mandatory provision): indicate against which decision an appeal can be introduced, describe the system of appeal in general and include in particular in your answer the information given to asylum seekers about possibilities of appealing, deadline for appealing, if the appeal has or not a suspensive effect, if there are different steps (for instance first an administrative appeal and in particular if the guarantee of an appeal before a judicial body in the last instance is respected)?**

Art.21 of the Directive is not transposed in Bulgarian refugee legislation. General administrative law rules would apply that every administrative act which affects a person's rights and interests is an object of appeal. However, the lack of an explicit provision in the Law on Asylum and Refugees stipulating the right to appeal administrative acts relating to reception conditions leads to legal uncertainty in this regard.

Acts of the Head of the State Agency for Refugees can be appealed only before a judicial instance and not an administrative one.

According to general administrative law rules, individual administrative acts must include a statement as to whether they can be appealed, within what period of time and before which body. However, this is not always followed in practice by the State Agency for Refugees as is shown by a recent case of the Iraqi asylum seeker Ali who was given a decision for the discontinuance of his asylum procedure, without a translator and without the decision stating the possibility for appeal: in order for Ali to agree to sign the paper, another detainee at the immigration center was called to "translate" for him what the document was about and Ali was told that he was given protection status. A month and a half after that his lawyer managed to receive the information that Ali's asylum procedure had been discontinued and when asking Ali about receiving any paper he showed the decision with which he thought he was given status.

Q.22. B. Explain which are the possibilities for asylum seekers to benefit from <u>legal assistance</u> when they introduce such an appeal (see article 21, §2 which is a mandatory provision but leaves space to Member States)?

General rules of the Law on Legal Aid would apply stating that a public defender is assigned in cases where the person cannot afford to pay for legal services.

Q.22. C. Are there already administrative appeal decisions or judgements which have been taken and if yes, which are the main important ones?

There have been attempts to appeal in court the inaction of the State Agency for Refugees with regard to registering the asylum applications and with regard to providing reception conditions to asylum seeekrs in open centers.

Currently the Sofia City Administrative Court (a judicial court dealing with administrative law cases) looks at the case of Bedjan Poshtiban v. The State Agency for Refugees (case number 2161/2007) in which the Iranian asylum seeker claims compensation for non-pecuniary damages suffered from the inaction of the State Agency for Refugees to register his asylum application for months, namely, the threat for refoulement and the factual deprivation of freedom at the immigration detention center.

In June and August 2007 the Sofia City Administrative Court also heard the case of Zia Abdulrahman v. The State Agency for Refugees (case number 2050/2007) in which the asylum seeker appealed the inaction of the State Agency for Refugees to issue him a document certifying his status as an asylum seeker and the inaction as to giving him the 55 levs monthly aid for food. As a result of that inaction Zia had spent the last three months in desparate conditions closed in his room because he was afraid to go out for fear of being detained again as undocumented immigrant. After the first court session in June 2007, the State Agency for Refugees issued the document to Zia and paid him social aid for the last three months. As a result of that, in August Zia withdrew his claim from the court.

Q.22. D. Is a mechanism of <u>complain for asylum seekers about quality of receptions conditions</u> in general (even if they are not personally concerned) organised? If yes, before which authority? Is it linked to the system of guidance, control and monitoring of reception conditions (see below question n° 39)?

No, there is no such mechanism.

<u>6. RIGHTS AND OBLIGATIONS OF ASYLUM SEEKERS</u>

Q.23. **<u>Family unity</u> of asylum seekers: define how a family is defined in relation with article 2, (d) which is a mandatory provision and explain how housing is provided to a family (see articles 8 which is a mandatory provision but leaves space to member States and 14, §2, (a) which is a mandatory provision).**

Supplementary Art.1 (3) of LAR stipulates that "family members" are:

- the spouse or the person with which there is a proven stable and long-lasting relationship and their minor unmarried children;
- the children which are no longer minors and are not married and who are unable to make a living for health reasons;
- the parent*s* of any of the spouses who are unable to take care of themselves because of their age or illness, and have to live in one household with their children.

As far as the transposition of Art.8 and Art.14 (2) (a) of the Directive is concerned, Art.29, Para 4 LAR states that asylum seekers are accommodated after an assessment of their family status is made.

Q.24. **Q.24. A. How is housing of asylum seekers organised: describe the system in general and indicate in particular what is the most frequently system used (see article 14, §1 which is a mandatory provision but leaves space for Member States; distinguish between accommodation centres, private houses and apartments, hotels places or other premises).**

Housing is provided in kind. There are two reception centers for asylum seekers in Bulgaria: one in Sofia (Bulgaria's capital) and another one in a small village in the province of Bulgaria - Banya, Nova Zagora municipality.

The law states that asylum seekers are accommodated in a reception center after an assessment of their "health condition, family and material status" is made and under *conditions* and order to be set by the head of the State Agency for Refugees.

According to Art.29, Para.6 LAR, throughout the common asylum procedure (as differentiated from the accelerated one) when the asylum seeker disposes of the necessary means to meet his main living needs, he *may be granted permission* to have an accommodation *on his own account* at an address which he chooses and in this case the asylum seeker does not receive financial or material assistance by the State Agency for Refugees. In this regard the national law does not contain the material and procedural law guarantees as stipulated in Art.7, Para.2 ("for reasons of public interest, public order or, when necessary, for the swift processing and effective monitoring of his or her application") and Para.4 ("shall be taken individually and established by national legislation") of the Directive.

The decision on housing is taken by the head of the State Agency for Refugees. The Rules for the Internal Order at the two reception centers do not contain distribution provisions as to which categories of asylum seekers shall be accommodated in them.

Q.24. B. What is the total number of available places for asylum seekers? Distinguish in your answer between accommodation centres, private houses and apartments, hotels or other premises.

The only places where the housing expenses of asylum seekers are covered by the state are the two reception centers at the State Agency for Refugees. There is no information available regarding their capacity for places neither in the government decrees for their establishment nor in the rules for the internal order in them.

Q.24. C. Is this number of places for asylum seekers sufficient in general or frequently insufficient?

The places for asylum seekers are sufficient. It is said that the asylum seekers are obliged to live in the two reception centers of the State Agency for Refugees since with the declining number of asylum seekers in the past years the reception centers fight to justify their existence.

Q.24. D. Are there special measures foreseen in urgent cases of a high number of news arrivals of asylum seekers (outside the case of application of the directive on temporary protection)?

No.

Q.25. Accommodation centres **(important note: all the following questions are about open and not closed centres where asylum seekers are detained which are covered by another question)**

Q.25. A Are there different categories of accommodation centres, for instance depending of the stage of the procedure (admissibility and eligibility)?

As far as only open centers are concerned, no such differentiation is made since they apply only to asylum seekers who have been admitted to a common status determination procedure and to asylum seekers in an accelerated procedure who have entered the country legally.

Q.25. B. Is there a legal time limit for accommodation in a centre after which the asylum seekers have access to private houses or apartments or is this limit linked to a stage of the asylum procedure?

No.

Q.25. C. Is there a general regulation about the internal functioning of those centres and the rights and duties of the asylum seekers? If yes, is this general regulation applicable to public and private centres? If not, are the centres supposed to adopt an internal regulation and does a central authority have or not a kind of control about its content?

There is no general regulation, but each reception center has Rules for the Internal Order issued by the Head of the State Agency for Refugees.

Q.25. D. Do the regulations foresee the possibility of sanctions against asylum seekers in case of breach of the rules? (see article 16, §3) If yes, which sanctions for which rules? Which is the competent authority to decide? How is it ensured that decisions are taken individually, objectively and in particular *impartially* (for instance through an independent arbitrator) as requested by §4 of article 21 which is mandatory provision? Which are the possibilities of appealing against those decisions if the system is different from the general one under question

n°22? Are there already administrative appeal decisions or judgements which have been taken and if yes, which are the main important ones?

Yes, the Rules for the Internal Order foresee sanctions against asylum seekers in case of breach of the rules.

According to Art.5 and 6 of the Rules for the Internal Order at the Reception Center for Refugees at the State Agency for Refugees at the Council of Ministers in Sofia, as of 12 September 2005, there are the following grounds not to admit in or to expel an asylum seeker of the accommodation at the reception center:

1) Throughout the asylum procedure the asylum seeker was caught and handed over trying to cross or having crossed the Bulgarian border;

2) The asylum seeker does not fulfill his obligations under the Rules for the Internal Order;

3) After having been invited does not appear for an interview for 10 days and does not present justifying grounds for doing that;

4) The asylum seeker's application for status is a successive one.

According to Art.7 of the Rules for the Internal Order, the alien is expelled from the accommodation of the reception center following an order of the director of the reception center. The alien is given 1 hour (after the notification of the order) to leave the accommodation voluntarily; if the latter is not done, he is expelled coercively.

The above described exhausts the regulation of this issue. Under general principles of administrative law, every administrative act can be appealed.

Q.25. E. Are asylum seekers involved in the management of these centres? If yes, how (advisory board, appointment or election of representatives)? (see article 14, §6 which is an option provision)

No.

Q.25. F. Do specific rules exist on work of asylum seekers inside the accommodation centres different from the general ones about employment (see below)? If yes, which ones? Can working inside accommodation centres be considered as a (mandatory) contribution of the asylum seekers to the management of the centres, is it or not paid and considered as implying access to the labour market and subject to the same rules?

No.

Q.26. **Q.26. A. How can asylum seekers communicate with legal advisers, representatives of UNHCR and NGOs? (see article 14, §2, (b) which is a mandatory provision).**

There is no transposition of Art.14, §2, (b) of the Directive.

Asylum seekers in *open* centers who have freedom of movement can visit the offices of the respective actors.

Asylum seekers in *closed* centers can call via phone (if they have the financial means to call).

Q.26. B. What are the rules about <u>access</u> of legal advisers, UNHCR and NGOs regarding access to accommodation centres and other housing facilities (see article 14, §7 which is a mandatory provision)

There is no transposition of Art.14, §7 of the Directive.

No access is allowed to the accommodation and housing facilities themselves.

Asylum seekers in *open* centers visit **lawyers and NGOs** by going to their office or meeting with them outside the accommodation center itself. There is an office of the Bulgarian Helsinki Committee at the registration center for asylum seekers at the State Agency for Refugees.

Asylum seekers in *closed* centers can call a lawyer or an NGO via telephone. The visits by **lawyers** are realized in special counsels' rooms at the specialized center for temporary accommodation of foreigners. There are visit hours for lawyers on Monday and Wednesday from 9:30h to 12:30h and from 13:30h to 16:30h and on Friday from 9:30 to 12:30h.

As far as **NGO representatives** are concerned, the latter are not allowed to visit asylum seekers in closed centers unless there is a signed agreement to that end between the NGO and the head of the National Police Directorate at the Bulgarian Ministry of the Interior, which in practice is very difficult to achieve. For the latter rule the head of the specialized center for temporary accommodation of foreigners invokes the Rules for the Internal Order at the specialized center, but they are not published and no access to them is allowed.

Q.26. C. Can the access of legal advisers, UNHCR and NGOs be <u>limited</u> for security reasons or any other reason (see article 14, §7, last sentence)?

There is no access to the accommodation facilities themselves anyway.

Q.27. **Q.27. A. Is a <u>medical screening</u> organised by the receiving State, is it mandatory or voluntary? Does it include HIV tests? (see article 9 which is an optional provision)**

The medical screening is obligatory and is organized by the state. According to Art.29, Para.4, last sentence, of LAR, "the alien is submitted to medical screening and examinations and remains under quarantine until the results become known." There is no implementing regulation of the law and no details are known as to the type of examinations made. There are blood tests, but it is not known whether they involve HIV tests.

Q.27. B. Do the legal provisions on reception conditions ensure that asylum seekers receive <u>at least emergency care and essential treatment of illness</u> as requested by article 15 §1 which is a mandatory provision? Do they have a further access to health care?

According to the Law on Asylum and Refugees: yes. Art.29, Para.1, Subpara.4 LAR provides that asylum seekers have a right to health insurance, accessible medical care and free medical aid according to the conditions and the order laid down for Bulgarian citizens. However, this provision is not harmonized with Art.33, para.1, Subpara. 4 of the Law on Health Insurance which provides for the right to health insurance only to persons who have already received protection status.

Q.27. C. What is the practice regarding access of asylum seekers to health care and how is it organised? In particular, what is the situation in accommodation centres (are doctors coming to the centres or do asylum seekers go to doctors outside)?

By word of mouth asylum seekers come to know of doctors who agree to be GPs' of "refugees" and go to their offices.

Q.28.

Q.28. A. What is the length of the period determined by the concerned Member State during which asylum seekers have no access to the labour market? (see article 11 which is a mandatory provision)

1 year.

Q.28. B. After that period, are asylum seekers or not obliged to obtain a work permit? In case is there a limit for the administration to deliver the permits and how quick are they delivered? What is their length?

It is not yet clear how the new Art.29, Para.3 LAR as of 29 June 2007 will be applied. It stipulates that "the alien seeking asylum has a right to access the labour market if the procedure has not been completed up to one year since the submission of the asylum application for reasons that cannot be attributed to the applicant". It seems that the "access to the labour market" referred to in Art.29, para.3 LAR does not involve waiving of the requirement for a work permit under the Ordinance on the Conditions and the Procedure for the Issuance, Rejection and Revocation of Work Permits for Foreigners in the Republic of Bulgaria (16 April 2002). According to the latter, a work permit for asylum seekers is not required only within the labour activities organized in the centres of the State Agency for Refugees. This questions the "access to the labour market" of asylum seekers since a work permit to an alien is issued only under the condition that the employer proves that no Bulgarian citizen is available to do the job in question. The latter requirement is known to be "a mission impossible" to complete.

Q.28. C. After that period, what are the conditions for access of the asylum seekers to the labour market? (in particular, are there rules concerning the maximum allowed of working hours or days per week, month or year, limits in terms of type of work or of professions authorised?

There is no legal elaboration of Art.29, Para.3 LAR providing for the conditions under which the access of asylum seekers to the labour market will be realized. The general conditions for the issuance of work permits to aliens seem to apply.

Q.28. D. What are the rules in terms of priorities between asylum seekers on the one hand and nationals, EU or EEE citizens and legally third-country nationals on the other?

Under the Ordinance on the Conditions and the Procedure for the Issuance, Rejection and Revocation of Work Permits for Foreigners in the Republic of Bulgaria a work permit to an alien is issued only under the condition that the employer proves that no Bulgarian citizen is available to do the job in question.

Q.28. E. Do asylum seekers have access to vocational training, does this or not depend of their right to access to the labour market, and in case at which conditions? (see article 12 which is optional regarding §1 and mandatory regarding § 2)

According to Art.47, Para.2, Subpara.3 of the Law on Asylum and Refugees, one of the territorial units of the State Agency for Refugees are integration centres "for providing Bulgarian language training, vocational qualification and other activities indispensable for the integration of aliens seeking or who have been granted protection in the Republic of Bulgaria."
However, there is no legal elaboration as to the conditions and the order according to which vocational training of asylum seekers is realized.
Currently there is one integration center at the reception center of the State Agency for Refugees in Sofia.

Q.28. F. Are the rules regarding access to the labour market adopted to transpose the directive more or less generous than the ones applicable previously?

The only change is the provision of Art.29, Para.3 of the Law on Asylum and Refugees which application begs questions (see answers to Q.28.B and Q.28.C).

Q.29. Are reception conditions subject to the fact that asylum seekers do not have sufficient resources? Are asylum seekers requested to contribute to reception conditions when they have personal resources (for instance if they work) or to refund the authorities if it appears that they have resources? (see article 13 §§ 3 and 4 which are optional provisions)
Art. 13 §§ 3 and 4 of the Directive have not been transposed in Bulgarian legislation. No such rules exist currently.

7. SPECIAL NEEDS OF PARTICULAR CATEGORIES OF ASYLUM SEEKERS

Q.30.

Q.30.A. Which of the different categories of persons with special needs considered in the directive are taken into account in the national legislation (see article 17, §1 which is a mandatory provision): disabled people, elderly people, pregnant women, single parents with minor children, persons who have been tortured, raped or victims of serious physical or psychological violence? Include in your answer all other categories envisaged in national law.

Art.30a LAR refers to minors, pregnant women, elderly people, single parents with minor children, disabled people, persons who have been subjected to serious forms of physical, psychological oe sexual violence. However the law does not provide for a procedure for identification of these persons with special needs.

Q.30. B. How is their specific situation taken into account (see articles 13, §2, second indent, 16 §4 second sentence and 17 which are mandatory provisions)?

The reduction of reception conditions under Art.29, para.5 LAR (see answer to Q.21A above) is not applied to persons belonging to a vulnerable group. There are special rules regarding unaccompanied minors. This exhausts the provisions elaborating the declaratory character of Art.30a LAR that the specific situation of vulnerable groups is taken into account.

Q.30. C. How and when are the special needs of the concerned persons supposed to be legally identified (see article 17 § 2 which is a mandatory provision and clarify how it has been interpreted by transposition)?

There are no provisions in this regard. Article 17 § 2 of the Directive is not transposed in national legislation.

Q.30. D. Is the necessary medical and other assistance provided to persons with special needs as requested by article 15, §2 which is a mandatory provision and in particular to victims of torture and violence as requested by article 20 which is a mandatory provision?

There are no specific provisions in this regard. It is only Art30a LAR (mentioned above) which has a declaratory character.

The national reporter is aware of the case of the Afghan asylum seeker Mohammad Niazi who was subjected to torture on several occasions in prisons in Afghanistan (a medical examination certified signs of beatings with metal bars on the back of the head, breaking of the nose, breaking of the right arm, torture with electricity, cigarette burning of the skin and falanga). He was granted humanitarian protection for 1 year in Bulgaria after which it was discontinued as was done in the cases of all Afghan refugees. However Mohammad could not return to Afghanistan since he

feared individual persecution. He was detained as an undocumented immigrant pending deportation for over 17 months (from 8 November 2005 to 17 April 2007). On 17 April 2007 he was released as an asylum seeker admitted in the common asylum procedure which happened after his lawyer managed to receive by post from Afghanistan the originals of the documents proving his persecution. Before that he had only their fax copies, but the latter were not recognized as a valid proof by the State Agency for Refugees who refused to register the asylum application until receiving the originals. In spite of being released on 17 April 2007 however, on 3 July 2007 Mohammad was given a decision for the discontinuance of his RSD procedure (the reasoning being that his case was examined in the past and now he does not present any new facts, but only new evidence). He appeals the 3 July decision now.

Another example of treatment of torture survivors in Bulgaria is the case of the Chechnyan asylum seeker Said Kadzoev who was twice detained and tortured in Russia by the Federal Secirity Service: the second time he was considered to have "disappeared" for 7 months throughout which he was detained and interrogated every day with painful use of electricity, putting a gas mask on his head and stopping the air income, injecting him panick substances, squeezing his legs between metal presses, etc. After entering Bulgaria illegally at the end of October 2006, he was detained at the Special Center for Temporary Accommodation of Foreigners. He submitted his written asylum application on 1 November 2006 (and later repeatedly sent other applications), but it wasn't registered until 30 May 2007. The asylum application was registered after Said protested by shouting on 28 May 2007 as a result of which he was put in the isolator of the immigration detention center (a cell without anything in it, but a camera). After a quick interview at the isolator itself on 30 May 2007, his asylum application was rejected as manifestly unfounded, without any medical examination as to his torture claims.
Since 1 November 2006 Said is detained at the immigration detention center. Since 28 May 2007, even at the moment of writing this report – 29 August 2007 – he has been in solitary confinement in the isolator.
His lawyer appealed the decision to reject his asylum application as manifestly unfounded. The first court session in this case is on 20 September 2007.

The isolator (or "the special room with security measures" as it is called by the authorities) is used as a disciplinary punishment at the immigration detention center in Sofia. As said above at Q.11.A., there is no distinction in the treatment of asylum seekers and other undocumented immigrants at the center.

Q.31. **About minors:**

Q.31. A. Till which age are asylum seekers considered to be minor?

18 years.

Q.31. B. How is access of minor asylum seekers to the education system ensured? Is it at school or in case inside accommodation centres and can it be considered as similar to the conditions for nationals as requested by article 10, §1?

According to Art.26, para.1 of LAR minor asylum seekers have right to access to education under the conditions and the order applicable for Bulgarian citizens.

Q.31. C. Is access to education ensured not later than 3 months as requested by article 10, §2 (or after maximum one year if specific education for asylum seekers is provided) and till an expulsion decision is really enforced?

Art.10, Para.2 of the Directive is not transposed in Bulgarian legislation. The Ordinance on the Procedure for Admission of Refugees at State and Municipal Schools of the Republic of Bulgaria (27 July 2000) does not regulate these issues.

Q.31. D. Is specific education (like language classes) available for asylum seekers, in particular to facilitate their effective access to the education system of the reception Member State (see article 10, §2 which is an optional provision)?

According to Art.47, Para.2, Subpara.3 of the Law on Asylum and Refugees, one of the territorial units of the State Agency for Refugees are integration centres "for providing *Bulgarian language training*, vocational qualification and other activities indispensable for the integration of aliens seeking or who have been granted protection in the Republic of Bulgaria." This is the only regulation in law of the issue.

Q.31. E. Are minors in general accommodated with their parents or with the person responsible of them? (see article 14, § 3)

In practice, yes. Art.29, Para.7, Subpara.1 LAR provides that the first option for accommodation of *unaccompanied* minors is with their adult relatives. This could be invoked as guidance for the intention of the legislator to accommodate minors with their adult family members. However, there is no explicit provision as to minors in general. Another problem is that no explicit mention is made to people, who are not biological relatives, but have actually taken care of the child and are close to her (in case of absence of relatives).

Q.31. F. Do minors with special needs enumerated by article 18, §2 which is a mandatory provision, have access to appropriate mental health care and qualified counselling?

There is no explicit transposition of Art.18, §2 of the Directive in refugee specific legislation. The general rules on "children at risk" would apply under the Law on Child Protection. However, although similar, the definition of "a child at risk" given in the Supplementary Art.1, Para.6 of the Law on Child Protection does not fully correspond to the specific refugee-related hypothesis envisaged in Art.8, Para.2 of the Directive.

Q.31. G. How and when is organised the representation of unaccompanied minors (guardianship, special organisation) and regularly assessed? (see article 19, §1 which is a mandatory provision)

According to Art.25, Para.1 LAR unaccompanied minor asylum seekers are appointed a legal guardian. However, according to Art.25, Para.5 LAR, if no legal guardian has been appointed, unaccompanied minors are represented *during the procedure* by the Social Assistance Agency under Art.15, Para.7 of the Law on Child Protection. Art.25, Para.2 of LAR raises three important concerns. First of all, it discourages the incentive of the State Agency for Refugees to look for the appointment of a legal guardian under Para.1 by not stating under what conditions a legal guardian is not appointed. Secondly, it provides for the representation of the minor asylum seeker only during the asylum procedure, while the legal guardian is appointed in principle. Thirdly, under Art.15, Para.7 of the Law on Child Protection, the Social Assistance Agency is not obliged to assume the representation of the minor; it only has the right to do so.

The Law on Asylum and Refugees does *not* transpose the requirement of appointing the legal guardian or representative *as soon as possible*. There are no time limits to doing that. Neither does it provide for a regular assessment by the appropriate authorities.

Q.31. H. How is placement of unaccompanied minors organised (with adult relatives, a foster family, in special accommodation centres or other suitable accommodation)? (see article 19, §2 which is mandatory provision)

Art.29, Para.7 of LAR copies the text of Art.19, Para.2, first indent, of the Directive.

Q.31. I. How is the tracing of the family members of the unaccompanied minors organised? Are measures taken to

protect confidentiality of information when necessary? (see article 19, §3 which is a mandatory provision)
Art.19, Para.3 of the Directive is not transposed.

8. EXCEPTIONAL MODALITIES OF RECEPTION CONDITIONS

Q.32. **Apart from detention covered by the next question, are there exceptional modalities for reception conditions in the following cases and if yes, which ones and for how long are they applicable, knowing that they should be "as short as possible" (see article 14, §8)?**

Q.32. A. Persons with specific or special needs, regarding in particular the period of assessment of those needs?
No regulation in national legislation.

Q.32. B. Non availability of reception conditions in certain areas
No regulation in national legislation.

Q.32. C. Temporarily exhaustion of normal housing capacities
No regulation in national legislation.

Q.32. D. The asylum seeker is confined to a border post
No regulation in national legislation. However, asylum seekers are often detained at border posts and nearby police stations.

Q.32. E. All other cases not mentioned in the directive (for instance urgent situation in case of a sudden high number of applicants outside a case of application of the directive on temporary protection).
No legal regulation of the issue.

Q.33. **Detention of asylum seekers (we do not cover the situation of rejected asylum seekers detained for the purpose of their return) (see articles 6 §2, 7 §3, 13, §2 2nd indent and 14 §8 which implies that the directive is in principle applicable in case of detention):**

Q.33. A. In which cases or circumstances and for which reasons[1] (identity verification in particular if the persons have no or false documents, protection of public order or national security, refugee status determination, way of entry into the territory, etc) can an asylum seeker be detained during the asylum procedure till his request has been finally rejected. Quote precisely in English in your answer the legal basis for detention of asylum seekers in national law.

[1] Please specify if article 18 §1 of the directive on asylum procedures of 1 December 2005 following which *"Member States shall not hold a person in detention for the sole reason that he/she is an applicant for asylum"* is or not respected (even if it has not yet to be transposed).

Currently in Bulgaria immigrants who have been caught to have entered Bulgaria illegally are issued deportation orders and detained at the Special centre for temporary accommodation of foreigners with the purpose of executing the deportation. Asylum seekers write their applications for asylum at the detention centre, but stay there until they are admitted in the common asylum procedure (as differentiated from the accelerated one).

Art.47, Para.2, Subpara.1 LAR provides that "*transit centers* are assigned for registration, accommodation, medical screening and for carrying out *the procedure on determining the state responsible for examining the asylum application and the accelerated asylum procedure of illegal foreigners*" Asylum seekers have no freedom of movement outside the transit center.

According to Art.20, Para.2 of the *Ordinance on the Procedure for Temporary Detention of Foreigners, on the Organization and the Activities of the Specialized Centers for Temporary Accommodation of Foreigners*, asylum seekers who have been admitted to the common asylum procedure are released from the specialized center (i.e. the transit center).

Q.33. B. Has your member State adopted measures to transpose §3 of article 7 which is an optional provision? If yes, how has this provision been legally understood (is it a case of detention or an obligation to stay in and not leave a certain place?) and for which reasons can an asylum seeker be "confined" in such a place?

Art.7, para.3 of the Directive has no explicit transposition in Bulgarian law other than the one mentioned above in the answer to Q.33A regarding transit centers. The latter can be considered as an implicit transposition.

Q.33. C. Are there legally alternatives to detention, like obligation to report to the authorities, obligation to stay in a place, provision of a guarantor or of a financial guarantee?

Yes. According to Art.44, Para.5 of the Law on the Foreigners in the Republic of Bulgaria, when there are obstacles to the immediate execution of an order for deportation, the alien is obliged to report daily to the authorities. However, Art. 44, Para.6 of the Law stipulates that, under the discretion of the competent authorities, the alien can be "coercively accommodated" in a Specialized centre for temporary accommodation of foreigners. The latter becomes a rule in practice and all immigrants who have been caught to have entered the country illegally are detained. It is difficult to appeal that detention before court since Art.44, Para.6 leaves the issue to the discretion of the administrative organ. Lawyers of detainees argue in court that the order of "coercive accommodation" does not contain motives as to why the authorities have chosen to detain the alien rather than oblige him to report daily.

As far as the Law on Asylum and Refugees is concenrned, the alternative to the closed "transit center" are the "registration-reception

centers" under Art.47, Para.2, Subpara.2 LAR. The legal provision states that they are assigned for "registration, accommodation, medical screening, social and medical assistance and for carrying out the procedure on determining the state responsible for examining the asylum application and the status determination procedure".

The provision of a guarantor is not regulated in law, although there is an administrative practice for that. The immigrant is obliged to present a notary declaration by a guarantor as to their address and subsistence.
Unfortunately, since the institute of the guarantor is not regulated in law, but exists only as an administrative practice, the presentation of a notary declaration by a guarantor does not oblige the authorities to release the alien. Often guarantors receive a reply that they have no "legal interest" to guarantee for that alien.

Q.33. D. Which is the competent authority to order the detention of an asylum seeker? Explain if different authorities are involved to first take and later confirm the decision.
The orders for "coercive accommodation" under Art.44, para.6 of the Law on the Foreigners in the Republic of Bulgaria, are issued either by the Directors of the District Police Directorates (for example, from the border districts where the alien was caught to have entered the country illegally) or by the Director of the Migration Directorate at the Bulgarian Ministry of the Interior.

Q.33. E. For how long and till which stage of the asylum procedure can an asylum seeker be detained?
An asylum seeker can be detained until he/she is admitted in the *common* asylum procedure.
There is no legal provision that stipulates a time limit for the detention at the specialized centre for temporary accommodation of foreigners/ the transit centre. The latter situation leads to prolonged and arbitrary detention of asylum seekers for an unlimited period of time. It might take several months until an asylum application is registered and the asylum seeker admitted in a common asylum procedure.

Q.33. F. In which places (can we call them "closed centres"?) are asylum seekers detained (places in a special closed centres reserved only to asylum seekers, together with returnees like illegal aliens or even in a normal prison, in case within separated areas or with the other detainees)? Indicate if a difference has to be made following the location of the "closed centres" at the border or on the territory? Which is the authority managing those places and is it the same as the one in charge of reception conditions?
As mentioned above, asylum seekers who have been caught to have entered the country illegally are detained at the Specialized Center for Temporary Accommodation of Foreigners which is situated in the suburbs

of Sofia. The law provides for "transit centers", but no such special centers only for asylum seekers exist at the moment. In the Specialized Center for Temporary Accommodation of Foreigners asylum seekers are detained together with other undocumented immigrants or foreigners who have expulsion orders. They are accommodated in big common dormitories.
The authority managing the Specialized Center for Temporary Accommodation of Foreigners is not the State Agency for Refugees, but the Migration Directorate at the Bulgarian Ministry of the Interior.

Q.33. G. Does UNHCR and NGOs have access to the places of detention and under which conditions?
NGOs are not allowed access to the places of detention unless there is a signed agreement to that end between the NGO and the head of the National Police Directorate at the Bulgarian Ministry of the Interior, which in practice is very difficult to achieve. For the latter rule the head of the specialized center for temporary detention of foreigners invokes the Rules for the Internal Order at the specialized center, but they are not published and no access to them is allowed.
Lawyers in personal capacity have access to the detainees after presenting their card as members of the Bar.

Q.33. H. What appeal(s) can asylum seekers introduce against the fact he is detained? Is article 18 of the directive on asylum procedures of 1 December 2005 following which *"Where an applicant for asylum is held in detention, Member States shall ensure that there is a possibility of speedy judicial review"* respected (even if it has not yet to be transposed)?
As any other administrative act, the order for "coercive accommodation" can be appealed before the administrative organ that is next in the administrative hierarchy and before the court.
Usually asylum seekers do not find any sense in appealing in an administrative way, because the orders are automatically confirmed.
There are no special procedural provisions regarding the court review of detention orders. When the court is overloaded, it takes a lot of time for a court hearing to be scheduled and there are no time priority rules in this regard.

Q.33. I. Is the directive on reception conditions considered to be in principle applicable to the places where asylum seekers are detained? In particular which information do they receive about their rights, which access do they have to legal advice and health care?
The legal regulation of the Specialized Center for Temporary Accommodation of Foreigners which currently serves as a transit center for asylum seekers makes no reference to reception conditions for asylum seekers. The latter fall under the general regime of undocumented immigrants.

Q.33. J. Apart from freedom of movement, what are the main differences between normal reception conditions and exceptional modalities for reception conditions in case of detention, knowing that they should be "as short as possible" (see article 14, §8)? If it is about closed centres, are the regulations of those places in line with the requirements of the directive (is article 13, §2, second indent of the directive following which "*Member States shall ensure that standards of living is met (…) in relation to the situation of persons who are in detention*" respected?).

There are no provisions in Bulgarian legislation that guarantee reception conditions rights to asylum seekers at the Specialized Center for Temporary Accommodation of Foreigners.

It also deserves paying attention to the fact that before the asylum application of the detained asylum seeker is registered, the latter has no rights at all. As mentioned above, sometimes it takes the State Agency for Refugees months to register an asylum application (if it becomes registered at all – e.g., if the asylum seeker is not deported before that).

Q.33. K. Are measures taken to avoid detention of asylum seekers with special needs (if yes, which ones?) or are special measures taken because of their needs?

No such measures exist.

Q.33. L. Can minor asylum seekers be detained together with relatives? Can unaccompanied minor asylum seekers be detained? If yes, are there special measures which take into account that children are concerned?

Unaccompanied minor asylum seekers are detained before their asylum application is registered.

Here is a recent example: Alban Gashi, born in 1991, fleeing from Kosovo, entered Bulgaria in May 2007 and was immediately detained as an undocumented immigrant. A deportation order was issued against him. Alban did not appeal it since he didn't know its content and no legal representative or lawyer was appointed for him (although he was unaccompanied). He made his asylum application at the detention center as soon as possible, but it waited for months to be registered. In the meantime, Alban was detained under the same conditions as adult undocumented immigrants. I came to know his case at the beginning of September from other detainees. I asked Alban to write again his asylum application and accompanied him to witness its submission to the officials from the detention center. The officials severely refused to accept it with the argument that he had already submitted one. After Alban's lawyer wrote official letters to a number of authorities competent in child protection, Alban's asylum application was registered in October 2007 and he was transferred to the reception center of SAR.

There are cases in which the State Agency for Refugees waits on purpose for several months until the asylum seeker comes of age before registering his asylum application. According to the Law on Asylum and Refugees, minor asylum seekers are automatically admitted into the common asylum procedure which means that once their asylum application is registered, they should be released from the detention centre.

Q.33. M. In particular is article 10 regarding access to education of minors respected in those places?
No. In theory no minors should be detained since they are automatically admitted in the common asylum procedure.

Q.33. N. How many asylum seekers are for the moment detained in your Member State? Which proportion does this represent in comparison of the total number of asylum seekers at the same moment?
No such statistics is *made*. Asylum seekers at the Specialized centre for temporary accommodation of foreigners are rather regarded as undocumented immigrants to be deported.

9. ORGANISATION OF THE SYSTEM OF RECEPTION CONDITIONS

Q.34. Explain if the system of providing reception conditions is centralised or decentralised (which levels of government do provide practically reception conditions?) (do not confuse this question with question number 3 about the competence to make rules about reception conditions).
The system of providing reception conditions is centralised. The State Agency for Refugees at the Council of Ministers provides the reception conditions.

Q.35. In case, are accommodation centres public or/and private (managed by NGOs? If yes, are the NGOs financially supported by the State?)
At the moment they are public.

Q.36. In case, how many accommodation centres are there in your Member State (distinguish in your answer between public and private centres)?
There are two reception centres that are "open" accommodation centres. There is one specialized centre for temporary accommodation of foreigners that is a "closed" accommodation centre. There are many places all over the country for temporary "arrest' of undocumented immigrants while they are transferred to the specialized centre for temporary accommodation of foreigners in Sofia.

Q.37. Is there in the legislation a plan or are there rules in order to spread the asylum seekers all over the territory of your Member State to avoid their

concentration in some areas like big cities or to share the costs of their reception between central, regional and local authorities?
A step in this direction is made with the reception center in the village of Banya in the Bourgas district. However, there are no legal provisions regarding this spread of responsibilities.

Q.38. Does a central body representing all the actors (like NGOs) involved in reception conditions exist? Does it play a consultative role for the State authorities, a coordination role for the actors or any other role?
No.

Q.39. **Q.39. A. Which is the body in charge of guidance, monitoring and controlling the system of reception conditions as requested by article 23 which is mandatory provision? Include in your answer which is the competent ministry (Interior, Social affairs, etc) for reception conditions?**
The Head of the State Agency for Refugees at the Council of Ministers. However, it is the organ that is responsible of providing the reception conditions. Subordinate officials with competence in reception conditions are part of the structure of the State Agency for Refugees.

Q.39.B. Has your Member State (like the Czech Republic did recently) approved quality standards (not necessary legally binding) for housing services (for instance about the number of persons per bedroom on the basis of its size, number of accessible toilets, bathrooms, showers and washing machines per number of persons, existence of common rooms with radio, television, newspapers, books, computers, accessibility of telephone, existence of recreative rooms for children,…) to be respected in particular in accommodation centres?
No.

Q.39.C. **How is this system of guidance, control and monitoring of reception conditions organised?**
Since the body responsible for the provision of the reception conditions is the same body that exercises control over these activities, I wouldn't say that a system of objective monitoring, guidance and control exists.

Q.39.D. Does the body in charge of guidance, control and monitoring produce reports about the level of reception conditions? If yes, how frequently and are they public?
No.

Q.40. **Q.40. A.** What is the total number of asylum seekers covered by reception conditions for the last year for which figures are available (see article 22 obliging Member States to calculate those statistics about which

we also asked the Commission to require them from Member States for mid June)?

There is no information as to the asylum seekers *covered by reception conditions*. The statistics of the State Agency for Refugees only states that from 1.01.2006 to 31.12.2006 there were 639 asylum seekers in Bulgaria.

Q.40.B. What is the total budget of reception conditions in euro for the last year for which figures are available?
No such figures are available.

Q.40.C. What is the average cost of reception conditions in euro per asylum seeker for the last year for which figures are available?
No such figures are available.

Q.40.D Are the costs of reception conditions of asylum seekers supported by the central/federal or federated government or are they shared with regional and/or local authorities?
The costs are supported by the central government.

Q.40.E. **Is article 24 § 2 of the directive following which "*Member States shall allocate the necessary resources in connection with the national provisions enacted to implement this directive*" respected?**
I don't have information as to how much money Bulgaria has allocated to this end, but as shown in the answer to Q.12, material reception conditions in Bulgaria are not sufficient for an adequate standard of living.

Q.41. **Q.41. A.** What is the total number of persons working for reception conditions?

The total number of the permanent employees at the State Agency for Refugees is 141. It is difficult to differentiate among them the precise number of persons working in the field of reception conditions since most of them seem to have competences in this field. Here are some examples with the numbers of permanent employees at

- Administrative, legal and information service department – 15 persons;
- Finance and management department – 22 persons;
- Methodism, procedural representation and identity documents department - 14 persons
- Reception and integration of refugees department – 12 persons
- Reception centre for refugees in the Banya village – 15 persons
- Reception centre for refugees in Sofia – 33 persons;
- Integration centre – 8 persons.

The source of this information is the Structural Statute of the State Agency for Refugees.

Q.41.B. **How is the training of persons working in accommodation centres organised? Does it take into account specific needs of unaccompanied minors when relevant as well as the gender dimension? (see article 14 §5, 19 § 4 and also 24 §1 which are mandatory provisions)?**
In this regard there is no transposition in Bulgarian law.

Q.41.C. Are there rules about the deontology of persons working in accommodation centres, in particular on confidentiality?
No.

10. IMPACT OF THE DIRECTIVE

Legal impact of the transposition of the directive:

Q.42. Specify if there are or not big problems with the translation of the directive in the official language of your Member State and give in case a list of the worst examples of provisions which have been badly translated? (please note that this question has in particular been added to the questionnaire concerning the new Member States)
There are no big problems with the translation.

Q.43. Where there precise legal rules on reception conditions for asylum seekers before the adoption of the norms of transposition of the directive (if yes, specify what the nature of those rules was (legislation, regulation, administrative instructions,…)?
Yes, in legislation. They've remained almost the same.

Q.44. Did the legal rules applicable to reception conditions become more clear, precise, coherent or detailed with the adoption of the transposition norms (for instance do you now have after the transposition one basic text dealing with reception conditions instead of numerous different texts in the past?
In the majority of cases - No.

Q.45. Did the transposition of the directive imply important changes in national law or were the changes of minor importance? In case, list the most important changes that have been introduced.
So far the changes are of minor importance.

Political impact of the transposition of the directive:

Q.46. Explain briefly if there has been an important debate about the transposition of the directive (in particular in the Parliament, but possibly also in the government, between political parties, including in medias, etc; underline in case the main points which have been discussed or have created difficulties)
No, this issue is not yet topical in Bulgaria.

Q.47. **Did the transposition of the directive contribute to make the internal rules stricter or more generous? In particular, did your Member State use the occasion of the transposition to abolish more favourable provisions of national law? Does your Member State still have rules more favourable than the provisions of the directive (if yes, try to give the more important examples).**

The changes that have been introduces so far seem to make the national rules more generous (e.g., the permission to work after one year in procedure, the 15-days deadline to provide the asylum seeker with information, the provision on the right of people with special needs, etc.). However, it is too early to assess since the transposition amendments are in force since 3 July 2007.

11. ANY OTHER INTERESTING ELEMENT

Q.48. What are in your view the weaknesses and strengths of the system of reception conditions in your Member State?

Major weaknesses:

- Lack of a time limit within which the State Agency for Refugees shall be obliged to register the asylum application after its submission;
- Lack of differentiation between asylum seekers and illegal immigrants before the admission of the asylum seeker into the common procedure.

Q.49. Mention any good practice in your Member State which could be promoted in other Member States

I can't think of any.

Q.50. Please add here any other interesting element about reception conditions in your Member State which you did not had the occasion to mention in your previous answer.

QUESTIONNAIRE FOR THE NATIONAL REPORT ON THE IMPLEMENTATION OF THE DIRECTIVE : RECEPTION CONDITIONS OF 27 JANUARY 2003

IN: CYPRUS

By

PAFITIS PETER
National Co-Ordinator – ppafitis@yahoo.co.uk
2007

1. NORMS OF TRANSPOSITION

Q.1. Identify the main norm of transposition (indicate the title, date, number, date of entry into force and references of publication into the official journal) and indicate its legal nature (legislative, regulatory, administrative); indicate in your answer if this norm was only devoted to the directive or if it has been included in a more general text and indicate in that case by quoting precisely the numbers of the provisions adopted to transpose the directive.

The main norm of transposition is the Reception Conditions For Asylum Seekers Regulations of 2005. (Administrative Act Regulation 598/2005) which was published in the official Gazette , Number 4064 dated 30/12/2005 .

Q.2. List by order of importance by using numbers (1, 2, 3) the others norms of transposition if there are more than one (indicate for each norm the title, date, number and references of publication into the official journal; include in your answer the administrative measures taken to ensure implementation of the directive and of the transposition norms like regulations, administrative circulars, special instructions,…)

The other norms of transposition are : The Refugee Law 2004 , which is a statutory (legislative instrument)

Q.3. Explain which level of government is competent to adopt the legal norms on reception conditions for asylum seekers (specify in particular in case of a federal or regional State, if it is the federal/central power or the components; in case, specify below when it is impossible for you to answer a question because it is about the competence of the components

and it is impossible for you to gather reliable information about all of them)

The Council of Ministers is the competent authority for the purposes of adopting the legal norms of reception conditions . These regulations are subject to approval of The house of Representatives. Implementation of the regulations is primarily in the hands of the Migration Department, Ministry of Interior.

Q.4. Explain the legal technical choices done to transpose the directive (comment on the nature and level of the norms used to do the transposition: legislative, regulatory, administrative like instructions, etc). Add any other element about the technique of transposition of the directive which is interesting for the implementation of Community law.

The legal technical choices applied in respect of the transposition are of a legislative and regulatory nature.

Q.5. Mention if there is a general tendency to just copy the provisions of the directive into national legislation without redrafting or adaptation them to national circumstances? If yes, give some of the worst examples and explain if there is a risk that those provisions remain unapplied or will create difficulties of implementation in the future.

The tendency to simply copy the provisions of the Directive manifests itself only in those aspects of reception conditions where there would appear to be no specific policy in place in relation thereto.

Q.6. Have all the texts necessary to ensure the effective implementation of the new rules of transposition been adopted, prepared or at least foreseen in the future (for example a regulation completing a new law and the necessary instructions telling the administration how to apply the new rules)?

It would appear that all texts have now been adopted including the all-important "informational for asylum seekers".

2. BIBLIOGRAPHY

Q.7. Has an in-depth preparatory study been made public about the changes at the occasion of the transposition? If yes, thanks for trying to provide us a copy (please contact to answer this question adequately the body and person who was responsible for the preparation of the transposition of the directive in the public administration).

As far as one can reasonably assess no in-depth preparatory study as to the changes effected by the transposition, is currently available.

Q.8. Quote any recent scientific book or article published about the directive, the transposition rules or the question of reception conditions for asylum seekers in general (answer even if this literature is only available in your language and provide the complete title in your language (without translation) with all references; indicate author, title, in case name of periodical, year and place of publication).

No recent scientific book or article appears to have been published in this regard.

Q.9. Quote any interesting decision of jurisprudence based on the implementation of the new rules of transposition of the directive (indicate references of publication if any)?

There are no decisions of jurisprudence as yet, on the implementation of the new rules of transposition of the directive.

3. GENERAL INFORMATION ABOUT THE SYSTEM OF RECEPTION CONDITIONS

The purpose of the following two questions is to help the reader to understand easily and quickly the system of reception conditions in your Member State and also to avoid that you have to repeat general elements in other parts of the questionnaire.

Please do not
write more than one or maximum two pages and do not include large historical developments

Q.10. Describe in general the system of reception conditions in your Member State (in particular which are the main actors in charge of reception conditions?)

The Asylum Service of the Ministry of Interior is the main actor and central point of coordination of the system of reception conditions, since it is the actor that implements the policy of asylum, initiates and determines, as well as coordinates the asylum procedure, and finally takes final decision on the applications of the asylum seekers. Nonetheless, other state services are necessarily involved in the system of reception conditions and those are: the Police of the Ministry of Justice, the Immigration Office under the auspices of the Population and Migration Archive Department of the Ministry of Interior, the Welfare Office and the Labour Office of the Ministry of Labour and Social Insurance, the Ministry of Health.

Asylum seekers can apply for asylum in any Immigration police station at any entry point within the territory of the Cyprus Republic. After they have applied they are supposedly sent to the Welfare Office to obtain the allowance they are entitled to and to access any rights lawfully provided to them. As soon as they apply for asylum they are immediately issued with a confirmation letter with which they can have access to their rights. In some cases when asylum seekers want to access some of their rights they are asked for a residence permit, called the "pink slip", although the confirmation letter should be adequate. The Ministry of Health is responsible for the medical check of asylum seekers which is provided to them for free as part of the system of reception conditions. In essence, the medical examination is undertaken to ensure that Asylum Seekers do not suffer from any contageous disease that may be transmitted to the local population. Following the medical check the asylum seekers go to the Immigration Office to apply to the residence permit; the "pink slip" is sent to them via mail and it takes almost half a year or longer to receive it. The Asylum Service is responsible for the process of the asylum applications; the Service sends the letters to the address that the asylum seekers have submitted in their application and calls via phone to inform the asylum seekers for their personal interview. The Asylum Service is responsible for the conduct of the personal interviews of the asylum seekers. Following the personal interview the Asylum Service takes a decision on the application of the asylum seeker, taking in consideration all the facts and evidence that the asylum seeker has provided in the application and in the interview, and moreover the decision of acceptance or rejection is announced to the asylum seeker via mail. If the application is rejected the asylum seekers have thirty days to appeal to the Reviewing Authority, which will conduct the second review and thereafter issue a rejection or acceptance letter, as the case maybe. If the Reviewing Authority's letter conveys a rejection, the asylum seeker has the right of recourse by way of judicial review to the Supreme Court in seventy five days. (Although this is often done through a private lawyer, there is free legal support from one NGO's – Future Worlds - legal advisor and it is anticipated that additional legal assistance will be forthcoming from another NGO – KISA – through a joint European Refugee Fund and Governmental initiative). In this regard, it would be pertinent to note that such procedure does not have a suspensive effect. If they do not choose recourse to the Supreme Court they are supposed to receive a letter informing them that they have to leave the country in fourteen days, although this letter is not always received by the asylum seekers usually because asylum seekers change their residence (in order not to be tracked down by the Immigration Police) and

they do not inform the Asylum Service, therefore it is sent to a previous address of the applicant. Other reasons for not receiving this letter are an acute lack of co-ordination amongst relevant governmental departments and weaknesses in maintaining and accessing files/ records at the Asylum Service.

Q.11.A Explain if you have different types and levels of reception conditions following the different stages of the asylum procedure (this implies that you have to give briefly the necessary explanations about the asylum procedure). Make if relevant for reception conditions a distinction between the following procedural stages: determination of the responsible Member State on the basis of the Dublin II regulation, special procedures at the border (including transit zones in airports), accelerated procedures, admissibility procedures, eligibility procedures and the different possibilities of appeals (suspensive or not) against a refusal of the asylum request. Indicate what the main differences of reception conditions are between the different stages (if necessary by detailing between the different elements of reception conditions, in particular housing) and explain what the evolution of reception conditions is following the different stages of the procedure.

Availability of types and levels of reception conditions is not specifically dependant upon particular stages of the asylum procedure and are to be implemented in conformity with the Regulations, irrespective thereof and without differentiation. The reception conditions regime also embraces, in a like manner, applicants whose status is being determined by the member state responsible for examining eligibility under the Dublin accord. (53 (1) of the Regulations).

There are no different types and levels of reception conditions following the different stages of the asylum procedure since the reception conditions are applicable as soon as the asylum seeker submits the asylum application and with the issuing of the confirmation letter they are entitled to all the rights stipulated in the Regulations on Reception Conditions.

The asylum procedure is as follows:

Asylum seekers can apply for asylum in any Immigration police station at any selected/ designated entry points within the territory of the Cyprus Republic. As soon as they submit their application they are issued with a confirmation letter, with which they can access their rights on the reception conditions. They are sent to the Welfare Office of the Ministry of Labour and Social Insurance to apply for the public allowance they are entitled to. The Welfare Office carries out an assessment on the economic situation of the asylum seekers in two stages, the fast-track and the final research, namely, an initial accelerated assessment process for the purpose of effective emergency interim payments where necessary and a final assessment/ evaluation procedure whereby it is determined whether they are in actual need of public help in order to sustain themselves. After carrying out the initial assessment, an application is accepted, the

asylum seeker receives the emergency welfare allowance temporarily until the final assessment is conducted. They are entitled to public accommodation and welfare allowance, however due to limited capacity at the Reception Centre. Asylum seekers that reside in private accommodation receive a bigger amount of welfare allowance than those who reside at the Reception Centre.

Medical screening is compulsory and asylum seekers have free medical examinations of whose results are documented in an individual medical report which is given to the asylum seekers and the Asylum Service for the completion of the examination of the asylum application. The Ministry of Health is responsible for the medical examination of asylum seekers which is provided to them for free as part of the system of reception conditions. Following the medical check the asylum seekers go to the Immigration Office to apply for the residence permit; the "pink slip" is sent to them via mail and it takes almost half a year or more to receive it. With the residence permit they obtain a status of temporary residence and they also have the right to access the labour market. (although such access is more apparent than real in that asylum seekers are restricted to working in the farming and husbandry domain in the agricultural sector where, in any event, there are a very limited number of vacancies, hardly sufficient to cope with a multiplicity of applicants).

The Asylum Service holds files for each asylum seeker and follows the above procedures and documents them in the respective files of asylum seekers. As soon as the application is processed, (a procedure which may be delayed considerably- in some cases years) the Asylum Service calls the seeker for the individual interview, where the seeker is supposed to give more in-depth evidence about his/her case. The interview is conducted by the eligibility officers of the Asylum Service; in most cases with an interpreter been present Following the personal interview the Asylum Service conducts a full re-examination and reaches to a decision on the application of the asylum seeker, taking in consideration all the facts and evidence that the asylum seeker has provided in the application and in the interview. The decision of acceptance or rejection is announced to the asylum seeker via mail. If the application is rejected, the asylum seekers have thirty days to appeal to the Reviewing Authority, which will re-examine the case and issue a rejection or acceptance letter accordingly. If the Reviewing Authority's letter notifies the asylum seeker that his application has been rejected, he has the right of recourse (by way of judicial review) to the Supreme Court through a private lawyer (since there is no free legal support for asylum seekers) in seventy-five days. If they do not choose to refer the matter to the Supreme Court they are supposed to receive a letter informing them that they have to leave the country in fourteen days.

Q.11.B Indicate precisely for which stage(s) of the asylum procedure the answers on reception conditions you give below are valid.

In the absence of the applicability of reception conditions to distinctive procedural stages, no answer may be given to this particular question.

4. GENERAL RULES ON RECEPTION CONDITIONS

Q.12.A. Are material reception conditions provided in kind, in money or in vouchers or in a combination of these elements (see article 13, §5 which is an optional provision)? Distinguish between the different elements (housing, food, clothes, health, transportation, pocket money,…). If reception conditions are provided in money (in general or in some cases, for instance when no places are anymore available in accommodation centres), indicate the precise amount given to the asylum seekers. Indicate in your answer what is provided in general and if there are exceptional cases. **Specify in your answer if reception conditions are different from the general system of social aid for nationals or aliens and if yes, if and when (which stage of the asylum procedure) can asylum seekers have access to the general system of social aid?**

Material reception conditions are provided through the Welfare Allowance by the Welfare Office of the Ministry of Labour and Social Insurance. The Welfare Allowance is generally provided in money, except to asylum seekers that are detained in the Police Detention Centres. The basic amount given to asylum seekers that do not reside in the Reception Centre in Kofinou is around 213 Cyprus pounds (Euros 355). For asylum seekers with families an extra amount of around 106 Cyprus pounds (Euros 177) is given for dependants (including spouses) over 14 years old, and around 63 Cyprus pounds (Euros 105) for dependants under 14 years old. Payments are to be effected for each dependant. In addition, asylum seekers are entitled to 106 Cyprus pounds (Euros 177) for accommodation rental upon production of lease

agreement/receipts (although in practice rental assistance would appear to be the exception rather than the rule).

Material reception conditions are also provided through accommodation in the Reception Centre in Kofinou; however the capacity in the Centre is significantly limited to around 80 – 100 persons only and very few asylum seekers have access to the Centre, only exceptional cases of single women and families (although very exceptionally some single men have been permitted to stay, in real terms this option is not available to them) At the Centre they are provided with food, limited free transportation (a return bus ticket provided once a day to travel to any city under the control of the Republic of Cyprus), transportation of children to school, transportation to the hospital in emergency. Asylum seekers that reside at the Reception Centre in Kofinou receive 50 Cyprus pounds (Euros 83) plus 10 Cyprus pounds (Euros 17) for each dependant. Although most of their basic needs are provided in the Centre these monetary allowance is given to them to cover for the breakfast that is not provided by the Centre but also for their own personal expenses.

The asylum seekers receive the Welfare Allowance if when filling in the application they inform the officials that they are not in a position to sustain themselves and they cannot obtain food, clothing and residence without the allowance. Asylum seekers that request the Welfare Allowance are subject to the laws and conditions set under the Public Allowance Laws of 1991-2003 of the Republic. In practice, the number of applicants who received welfare allowances are minimal.

The reception centre at Kofinou does in fact provide children with clothing and accessories (satchels, bags, cases), which are required for school. However, although there is no Governmental budget allocation for providing adults' clothing, there is a sizeable stockpile of garments available by virtue of charitable donations and these are distributed accordingly.

The reception centre also provides hygienic sanitary items to meet the needs of 'asylum' occupants.

Q.12.B. Can the reception conditions in kind, money or vouchers be considered as <u>sufficient</u> "to ensure a standard of living adequate for the health of applicants and capable of ensuring their subsistence" as requested by article 13, §2 of the directive (which is a mandatory provision but leaves a certain space to Member States)? In order to help to assess the respect of this rule when reception conditions are provided in money, include if necessary in your answer points of comparison with the minimum amount of social aid guaranteed for nationals in your Member State.

As the Asylum Service claims the Welfare Allowance provided to asylum seekers is provided under the same criteria and for the same amount of money as for Cypriots. However, it is not possible to know whether the amount given to Cypriots is indeed the same given to asylum seekers. Nonetheless, even if the amount is the same it must be noted that this amount is insufficient for asylum seekers to cover all of their costs. Firstly, the fact that asylum seekers have to pay for approximately around 150 Cyprus pounds of rent including electricity and water supply (approximately 79% of the welfare allowance they receive), since they cannot be hosted to the Reception Centre in Kofinou due to its limited capacity of around 80-100 persons, suggests that the allowance is insufficient. Asylum seekers face problems since they have difficulties in paying for rent and in many occasions they have to reside in apartments with very little space as they are not in a financial position to afford otherwise. Yet they face problems in providing for their children since the amount left following payments of rent is insufficient to provide the necessary needs for their family. It must be noted that only around 350 asylum seekers out of the approximate amount of 10,000 asylum applicants receive the welfare benefit, therefore it can be assumed that the rest of asylum applicants have inadequate resources to support themselves, hence most of them, even those who receive the welfare allowance and who reside in the Reception Centre, find illegal employment (in which, in most cases they are exploited, face discrimination and violation of their human and basic rights) in the sectors of

agriculture which is inadequate to receive such a huge number of employees. It must also be noted that many women and children who apply for asylum find it difficult to work in these sectors and hence they face tremendous difficulties in covering their costs. Also it must be mentioned that usually the procedure to obtain the welfare allowance takes around 3-4 months and until then asylum seekers have difficulties in maintaining their economic sustainability.

It ought to be pointed out that whilst asylum applicants are entitled to receive the welfare benefit upon presentation of the confirmation letter, in practice, many are denied this particular benefit for the following reasons:

- ***Although relatively small in number, those detained would, under the circumstances, be precluded from applying for welfare allowance.***

- ***The fact that the procedure for obtaining the welfare allowance takes long, and the amount provided is considered inadequate discourages some asylum seekers from applying for it.***

- ***The welfare service examines each case as mentioned in question 30A and this means that it can decide that some asylum seekers may not fulfil the criteria for welfare allowance.***

- ***There is a possibility that asylum seekers are unaware of this entitlement, since they might not have been informed that they can be provided with this allowance, or they might not know how to apply for the allowance or what procedure to follow in this regard.***

- ***There have been incidents where the asylum seekers had problems in espressing themselves to the Welfare officers because of language problems, since translators are not always available in the welfare service.***

  Lack of effective communication and co-ordination between superiors and subordinates engaged in welfare services regarding the manner in which applicants were to be dealt with, have necessarily resulted in instances where this created an unfavourable climate for dealing equitably and effectively with matters in hand.

Perhaps the key underlying problem which may conceivably be regarded as the primary contributory factor in obstructing a more liberal approach with regard to payment of the welfare benefit is the state's bureaucratic 'machinery' or 'red-tape' culture which is not effectively geared towards achieving an efficient speedy and systematic process.

As is apparent from answers to Q10 and Q11, asylum seekers are issued with a confirmation letter upon application for asylum status. However, full enjoyment of reception rights (particularly welfare benefit) may take 3-4 months during which

time no help in kind or financial support is forthcoming, (refer to difficulties encountered in dealing with bureaucracy impediments at Welfare service).

5. PROCEDURAL ASPECTS

Q.13.A. Does the national legislation specifically provide that a request for international protection is presumed to be under the Geneva Convention unless explicitly requested otherwise? (see article 2, b which is a mandatory provision**)**

As to the question of whether international protection is presumed to be under the Geneva Convention, there is no express provision in the Asylum Regulations which is the norm of transposition in Cyprus. However, the Asylum Regulations do provide that they will apply to applicants who fall within the provisions of the Refugee Law 2000-2004. This inter alia provides that a "refugee" is one who, due to fear of persecution for racial or religious reasons or for reasons of nationality, membership of a particular social class, or political affiliation/ beliefs is not willing to return to the country of which he is a citizen or of which he was ordinarily resident. The Refugee Law further defines "asylum" as protection and rights which are made available to an "alien" (the latter as defined in the Aliens Immigration Law) who is recognised as a "refugee" (as defined above by the Refugee Law)

Q.13.B. Explain if the scope of application of reception conditions is extended to other asylum seekers than refugees in the sense of the Geneva Convention, in particular to persons asking for subsidiary protection or to other forms of protection like humanitarian statuses (see article 3, § 4 which is an optional provision)? If not, explain briefly which the differences between these special regimes and the directive are.

Scope of application of reception conditions is not extended to the asylum seekers other than refugees under the Geneva Convention.

Q.13.C. Are there specific provisions in national law for reception conditions in case of diplomatic or territorial asylum requests submitted through a diplomatic or consular representation (see article 3, §2 which is an optional provision)?

There are no specific provisions for reception conditions in respect of diplomatic or territorial asylum.

Q.14. **Are reception conditions available as from the moment one asylum application is introduced? How is article 13, §1 which is mandatory legally understood?** Do asylum seekers have to satisfy any other condition in order to get reception conditions?

Yes- Reception conditions are available as from the moment one asylum application is introduced. (Subject to provisions in the Regulations which allow for reduction or withdrawal of reception conditions in certain circumstances as envisaged by the Directive).

In theory the reception conditions are available as from the moment the asylum application is introduced. However, in practice the Welfare Office procedure to provide the Welfare Allowance can take really long. There are two stages in this procedure; (a) emergency help, in money, is provided to asylum seekers until all conditions are met, however the Welfare Office conducts a research, which takes long to be processed, on the conditions of the asylum seeker before the emergency help is given; (b) welfare allowance is given after the examination of all conditions is complete, yet this process can take really long time.

Q.15. **Explain when reception conditions end, for instance after refusal of the asylum request** (include in your answer the link with the right of appeal against a decision of refusal of the status, in particular the question of its suspensive effect)

S30 of the Regulations. Suggests that reception conditions end upon the negative outcome of an administrative appeal. (Or if no appeal is filed within thirty days of an administrative decision having been made). A right of recourse to the Supreme Court (by way of Judicial Review) is also available under the regulations and in accordance with Article 146 of the Constitution. However any such judicial review would (in contrast to an administrative appeal) not have a suspensory effect so that effectively all entitlements to reception conditions would thereby cease.

Q.16. Are there special rules or practices regarding reception conditions in case of successive applications for asylum introduced by the same person?

No. There is not yet an accelerated procedure for cases of successive applications for asylum.

Q.17[231]. Information of asylum seekers about their rights and obligations in terms of reception conditions, in particular about established benefits (see article 5 which is too large extend a mandatory provision; do not confuse this

question with the information to be provided to asylum seekers about the asylum procedure):

Q.17.A. Are asylum seekers informed, and if yes about what precisely?

The Regulation on the Reception Conditions of Asylum Seekers, of the Refugee Law of 2005, in article 4 (1) foresees that the Asylum Service of the Ministry of Interior (the competent authority for the asylum procedures and other relative actions) issues a leaflet (in languages that are considered understandable to the applicants) for their information regarding:

(a) their rights

(b) the provisions they are entitled to regarding the reception conditions and the ensuing procedures for their access to these provisions

(c) the organizations or groups of people that provide them with legal support and/or support regarding the reception conditions, including medical and health care, and

(d) their obligations to which they have to conform to in relation to the reception conditions.

The Asylum Service has produced an "informational leaflet for asylum seekers" which, inter alia, lays down applicants' rights as regards the following:

- ***to legally stay in Cyprus***
- ***to move freely in Cyprus***
- ***the right to work (subject to current guidelines)***
- ***to receive public assistance through social welfare***
- ***to free medical care on the same basis as for Cypriot citizens***
- ***access to education for underage asylum seekers and/or underage asylum seekers children***

The leaflet also mentions the following obligations:

- ***to follow the laws and regulations of Cyprus***
- ***not to leave Cyprus without the permission of the Director of the Civil Registry and Migration Department***
- ***to notify change of address within three days of such change to the District Immigration Office***
- ***to respond to letters sent by the asylum service failing which examination of claims will be discontinued***

Although the leaflet has been printed there would appear to be practical problems in terms of its availability and effective dissemination at strategic points, thereby

running the risk that asylum applicants would have to rely on information from their colleagues or from Governmental officers at the relevant points.

Q.17.B. Is the information provided in writing or, when appropriate, orally?

Please refer to previous answer which is self-explanatory.

Q.17.C. Is that information in general provided in a language understood by asylum seekers? Specify the list of languages in which it is available.

When information is provided orally, in many cases it is not provided in a language fully comprehended by the asylum seekers. The languages usually used for the provision of information in some police stations are English, French and Turkish. Only in extreme cases interpreters are used for providing oral information to asylum seekers. However, provided the information leaflet will be readily accessible to applicants, they will be informed in a variety of languages whereby the leaflet has been translated into French, Turkish, Farci, Urdu, Bandla, Arabic, Hindi, English, Chinese and Sinhala.

Q.17.D. Is the deadline of maximum 15 days respected?

Any kind of information is unavailable therefore the deadline is not respected. However, the Asylum Service claims that the information is provided to applicants upon the submission of the application. Sometimes information is provided in the confirmation letter given to asylum seekers upon submission of the application.

Q.18[232]. Information of asylum seekers about the existence of organisations or groups promoting their interest and defending their rights (see article 5 which is to a large extent a mandatory provision):

Q.18.A. Is there a list of organisations dressed by the authorities and if yes is it comprehensive? Is this in particular the case about the possibilities to get legal assistance and health care?

The informational leaflet provides information as to whom the asylum applicants can lodge their appeals and in this regard provides contact details of the refugee reviewing authority which is the competent body for this process. Other information covers contact details of at least two NGOs as well as the UNHCR who may provide free of charge services to asylum seekers (the two NGO'S listed are 'KISA' and 'APANEMI'. The Asylum Service will need to update this however as due to a recent development, APANEMI is no longer active. Furthermore two additional active NGO'S will be required to be added to the list to include the 'Unit for Rehabilitation of Victims of Torture' and the 'Future Worlds Centre'. However, in

[232] To be answered with the help of UNHCR local office competent for your Member State or to be completed on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

view of ineffective distribution and availability of the information leaflet, asylum seekers are left to their own devices to obtain information from their compatriots and other third parties.

Q.18.B. Is the information provided to the asylum seekers, and if yes, in writing or, when appropriate, orally?

Although written information is available to asylum seekers, this is not efficiently disseminated as indicated previously. Oral information is provided in exceptional cases and many asylum seekers rely on other applicants who may exploit the situation by asking for money in exchange for guidance and assistance.

Q.18.C. Is that information in general provided in a language understood by asylum seekers? Specify if possible the list of languages in which it is available.

Yes, information is generally provided in a language understood by asylum seekers in terms of the information leaflet text (see available languages above). However when oral information is provided there are rarely interpreters available, particularly at the welfare service where asylum seekers are required to attend from time to time.

Q.18.D. How many organisations are active in that field in your Member State?

There are only three organisations active in this field: KISA (Action for Equality, Support and Antiracism), Future Worlds, APANEMI: Women's Information and Support Centre. KISA is the most active non-governmental organization in the field of refugees, asylum seekers, and migrants and withholds more expertise from the rest of the NGOs in this field. It has been actively involved in the protection, support and assistance, as well as in the defence of the rights of refugees, asylum seekers and migrants in Cyprus. Lately it has been acting more like a pressure group in order to achieve its aims to defend the lawful rights of these groups of people. Future Worlds in a newly established non-governmental organization in this field and its main activities for the moment are legal support to asylum seekers, as well as provision of necessary information as it concerns reception conditions and other relative issues (including the Unit for the Rehabilitation of Victims of Torture). APANEMI is a small capacity NGO that provided social support to asylum seekers and provides them with any other kin of informational assistance they need. There are also other organizations/institutions/actors/individuals that are involved in this area through other means, such as through academic research, surveys, conferences, seminars, training courses, awareness campaigns and publications. Such institutions are the Mediterranean Institute of Gender Studies, the International Peace Research Institute of Oslo in Cyprus, the Intercollege Research Center.

Q.19 Documentation of asylum seekers (see article 6):

Q.19.A. **What kind of document** is delivered to the asylum seeker? Explain the legal value of this document (just a certification of the status as asylum seeker or also prove of identity?) (see §1 of article 6 which is a mandatory provision)

A confirmation letter is issued to the asylum seeker following the application, which is just a certification of status that the person has filled an application for asylum and can use that document according to the Laws and Regulations on Refugees. With the confirmation letter the asylum seeker can access his/her entitled rights as foreseen in the legislation on the reception conditions. With the confirmation letter and after the medical examination the asylum seeker obtains the alien card which has the status of identity document.

The alien card, formally referred to as the "Alien Registration Certificate" is simply an identity document which is issued by the Aliens and Immigration office of the Ministry of Justice and, constitutes proof that a foreigner (not necessarily or exclusively an asylum seeker) has applied for a particular status (e.g. asylum, employment, student, visitor etc.). This is reflected by the following text in the document itself:

"It is hereby certified that the above- named alien has been duly registered as an alien in the Register of Aliens in the category of (asylum, student etc., as the case may be)"

Q.19.B. **Are there situations or specific cases in which another equivalent document or even no document is issued? (in particular is there an exception for "procedures to decide on the right of the applicant legally to enter the territory" as made possible by §2 of article 6)?**

There is no equivalent document issued and there are no cases that no document was issued.

Q.19.C. **For how long** is this document in principle **valid** and is it necessary to renew it after a certain period?

The confirmations letter is valid until the application is examined and determined on second instance by the Asylum Service. (Section 8 of the Refugee Law- Law 6(1) of 2000, as amended, provides that the applicant is entitled to a temporary residence permit until a final decision on his application is reached. The residence permit ("pink slip") is valid for a year and each year it needs to be renewed.

The so called "Pink Slip" represents a temporary residence permit which is granted to enable the holder (not necessarily or exclusively an asylum seeker) to remain in Cyprus temporarily by applying for an extension at least one month before its expiry date. (The validity of this permit is granted in accordance with Article 8(1) and 8(2) of the Refugee Law 2000/2002 6(1).

The Alien Card, on the other hand, is valid indefinitely as this is only an identity document, which simply requires notification of any subsequent change in the holder's residential address.

Whilst the main document providing an asylum seeker with access to reception conditions is the Confirmation Letter, this constitutes a component part of the other documentary formalities (pink slip and alien card) which are requirements pertaining to aliens in general.

The confirmation letter serves as proof of the applicant's status as an asylum seeker towards any authority of the Republic until the issuance of the special temporary residence permit (pink slip) and secures the access of the holder to the rights and benefits provided by law (medical treatment, application for work, welfare benefits, public education, etc.).

Q.19.D. **What is the <u>deadline</u>** for the delivery of that document? Is the mandatory deadline of 3 days set by article 6, §1 respected[233]**?**

Section 5(1) of the Regulations requires the issuance of the confirmation letter immediately upon submission of the Asylum seeker's application. This would also appear to be the case in practice.

Q.19.E. Is it possible for an asylum seeker to get a **<u>travel document</u>** for serious humanitarian reasons (see §5 of article 6 which is an optional provision)?

According to the Regulation on the Reception conditions of 2005, article 16 foresees that the Director, following a reference from the Supervisor, issues the necessary travel documents to the applicant, only if this is necessary, every time that severe humanitarian reasons arise which prescribe the presence of the asylum seeker in another country.

Q.19.F. Is there a central system of **<u>registration</u>** of asylum seekers and is it or not separate from the registration of aliens? If yes, describe it briefly (content) and indicate in particular if it is an electronic database.

There is a different central system of registration of asylum seekers and aliens. It is an electronic database that contains the file numbers, the countries of origin of the asylum seekers, and their names, and if the applicants travelled in and out of Cyprus.

Q.20. **<u>Residence of asylum seekers[234]:</u>**

[233] To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

Q.20.A. Is in principle an asylum seeker **free to move** on the entire territory of your Member State or only to a limited part of it and in case, which part? (see article 7, §1 which is a mandatory provision)

Asylum seekers are free to move within the territory of the Cyprus Republic; not in the occupied areas.

Q.20.B. About the **place of residence (see §2 of article 7):** explain to which extend the person is free to choose her residence and if this depends of the stage of the asylum procedure (for instance before and after admissibility); if there are constraints limiting the choice, explain which ones and their reasons (for instance processing of application, attribution of reception conditions,…).

There is only one Reception Centre in Cyprus positioned in the area of Kofinou. The Centre can only accommodate 80-100 individuals, although the number of asylum seekers is approximately around 10,000. Accommodation at the centre is available only to single women and families. In very exceptional circumstances some single men have been authorised to stay at the centre. The place of residence does not depend on the asylum procedure since the State does not provide sufficient housing resources to accommodate asylum seekers. Asylum seekers seek accommodation on their own initiative. There are no restrictions as to where they may seek accommodation since the State does not have sufficient provision for accommodation. However, article 8 (1) of the Regulations on the Reception Conditions of 2005 foresees that the Minister of Interior has the power to decide upon the place of residence of the asylum seekers or to restrict the right of freedom of movement in specific areas of the Republic for reasons of public interest, and this decision is to be published in the Official Gazette of the Republic. Most asylum seekers find apartments which they rent and reside. Nonetheless, asylum seekers face acute problems in paying the rent, since as previously mentioned, the amount of public help they receive is insufficient for this purpose.

It is evident that the Kofinou Reception Centre is entirely inadequate to deal with the influx of asylum seekers and its acute imitations in terms of critical lack of capacity generates a multitude of problems which have a substantial negative impact on those who need it most. There is therefore an urgent and imperative need to look at fresh options that would serve to resolve the all-important need for emergency accommodation and adequate reception facilities.

Q.20.C. **About the place of reception (meaning where the asylum seeker has to stay to benefit from reception conditions) (see § 4 of article 7):** explain which are the general rules about the determination of this place (to which extend are the decisions determining the place taken individually and do they take into account the personal situation of the asylum seeker?) and to which

[234] Nota bene: the case of detention is covered by other questions and should be ignored under this question.

extend the person is free to choose it and if it depends of the stage of the asylum procedure (for instance before and after admissibility); if there are constraints limiting the choice, explain which ones and their reasons (for instance attribution of reception conditions, processing of the application,…).

As mentioned previously the State does not provide any other kind of accommodation except the Reception Centre in Kofinou which has limited capacity. The asylum seekers, since they have no other choice, find accommodation by themselves through renting. The Welfare Allowance is insufficient to cover all of their expenses including rent, therefore the fact that the State does not provide them with an extra amount of money for rent shows that the personal economic situation of the asylum seekers is not taken into consideration, as well as other matters of determining their personal situation. The place of residence normally does not affect the provision of benefits from reception conditions, since the asylum seekers have not many choices for accommodation.

Q.20.D. If all asylum seekers are not placed in accommodation centres because of capacity limits, explain **how the persons are distributed between accommodation centres and other accommodation facilities** (which authority takes the decisions, on the basis of which elements, can that decision be appealed by the asylum seeker,…)[235]

Asylum seekers distribute themselves to cheap renting accommodation. However, many have problems in renting accommodation because many accommodation owners ask for deposit, which asylum seekers do not have and the Welfare Service in very extreme cases pays for the deposit or part of it. It has been noted by asylum seekers that they rent a small capacity room/apartment in which many of them reside so that they divide the amount of rent.

Q.20.E. How can an asylum seeker ask to leave temporarily the place of residence or of reception or an assigned area? How is the individual AND impartial character of the decision ensured? (see §5 of article 7 which is a mandatory provision)

An asylum seeker has a general right to freedom of movement. This is a logical consequence of the fact that the vast majority are in any event living in "open" accommodation facilities (Houses, apartments, flats as opposed to the reception centre which houses a negligible number of persons who are predominantly single women and families). Temporary permission to leave their place of residence is thus not really an issue and as such, there are no regimented restrictions as to an individual's

[235] To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.
[235] Nota bene: the case of detention is covered by other questions and should be ignored under this question.
[235] To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

movements (although exceptionally, a specific area may generally be designated by ministerial order, out of bounds for reasons of public interest and may thereby preclude one's movement there).

Q.21.A. Do rules on <u>reduction or withdrawal of reception conditions</u> exist in internal legislation and if yes in which cases (mention in particular if there are cases not foreseen by article 16, § 1 and 2 which are optional provisions)? Distinguish in your answer between cases of reduction and withdrawal and explain which conditions can be reduced and if access to emergency health care is always ensured as requested by article 16, §4, last sentence.

Yes- Rules on reduction or withdrawal of reception conditions do exist under 525 (1)(a) of the Regulations. Whereby such reduction or withdrawal may be effected under circumstances: where an asylum seeker:

- ***(i) Abandons a place of residence as determined by the competent authority without informing it. –OR-***
- ***(ii) Does not appear for personal internews as arranged by the Asylum Unit of the Ministry of Interior –OR-***
- ***(iii) Does not comply with requests to provide information in the context of the relevant asylum procedure.***

And

In respect of the foregoing, the asylum seeker does not offer any reasonable explanation in relation thereto.
In Addition S25 (1) (b) of the Regulations for reduction or withdrawal of reception conditions where the asylum seeker:
-Has already lodged an application for asylum in the Republic of Cyprus
-S25 (1) (c) allows for somewhere an applicant has concealed financial resources and has thereby been "unjustly enriched" by the provision of material reception conditions.
-S25 (1) (d) provides another ground for reduction withdrawal an asylum seeker has failed to prove that his application was made as soon as reasonably practical after arrival in the Republic.

Note: The Regulations do not distinguish between cases of reduction and withdrawal and no provision is made in respect of ensuring access to emergency health care under all circumstances.

Q.21.B. Has article 16, §2 dealing with refusal of reception conditions for **<u>unreasonably late applications</u>** for asylum been transposed by your Member State (or was this case already applicable before transposition)? Are there cases in practice[236]?

This has been transposed but there is no indication as to whether there are any cases in practice.

. [236] To be answered with the help of UNHCR local office competent for your Member State or to be completed on the basis of the answers of NGOs and accommodation centres to the practical questionnaire

Q.21.C. How is it ensured that decisions of reduction or withdrawal are taken individually, objectively AND in particular impartially (for instance through and independent arbitrator) (see article 16, §4 which is a mandatory provision)?

Mechanisms are in place by virtue of an individual's rights under the constitution to challenge administrative decisions (e.g. through Judicial review).

Q.21.D. Is statement 14/03 adopted by the Council at the same moment as the directive respected (see the documentation pack you received at our meeting in Brussels in April)?

Q.21.E. Are there already administrative appeal decisions or judgements on cases of reduction, withdrawal or refusal which have been taken, and if yes, what has been the outcome[237]?

There are no administrative appeal decisions or judgements in cases of reduction, withdrawal or refusal.

Q.22.A. **Appeal** against a negative decision relating to the granting of benefits or based on article 7 (see article 21 which is a mandatory provision): indicate against which decision an appeal can be introduced, describe the system of appeal in general and include in particular in your answer the information given to asylum seekers about possibilities of appealing, deadline for appealing, if the appeal has or not a suspensive effect, if there are different steps (for instance first an administrative appeal and in particular if the guarantee of an appeal before a judicial body in the last instance is respected)?

Section 30 of the Regulations allows for an administrative appeal in respect of benefits. In any event however, the right of access to the courts for the purposes of challenging administrative decisions (e.g. by way of appeal, habeas corpus, judicial review) is entrenched per Article 146 of the Constitution. (Please refer to Question 15 regarding implications of appeals procedures).

Q.22.B. Explain which are the possibilities for asylum seekers to benefit from **legal assistance** when they introduce such an appeal (see article 21, §2 which is a mandatory provision but leaves space to Member States)?

The issue of legal assistance is not covered by the Regulations although the Asylum Unit attached to the Ministry of Interior is in the process of laying down an appropriate infrastructure for dealing with this matter utilising the resources of the European Refugee Fund. This will be done through the NGO KISA which is currently

actively in the process of setting up the necessary mechanisms and dealing with procedural issues regarding implementation.

Q.22.C. Are there already administrative appeal decisions or judgements which have been taken and if yes, which are the main important ones[238]?

Not as yet.

Q.22.D. Is a mechanism of complain for asylum seekers about quality of receptions conditions in general (even if they are not personally concerned) organised? If yes, before which authority? Is it linked to the system of guidance, control and monitoring of reception conditions (see below question n° 39)?

There would appear to be no mechanisms of complaint as such although asylum seekers can lodge complaints with the Commission of Administration (Ombudsman) which is an entity independent of Government ministries and is not linked in any way to the system of guidance, control and monitoring of reception conditions.
Asylum seekers usually approach the non-governmental organizations that are active in this field and they conduct the procedure in filling a complaint on behalf of the asylum seekers.

6. RIGHTS AND OBLIGATIONS OF ASYLUM SEEKERS

Q.23. **Family unity** of asylum seekers: define how a family is defined in relation with article 2, (d) which is a mandatory provision and explain how housing is provided to a family (see articles 8 which is a mandatory provision but leaves space to member States and 14, §2, (a) which is a mandatory provision).

Whilst "family" is not specifically defined in the regulations, there is a general provision, which stipulates that any issues of interpretation of terms not mentioned therein would be in accordance with the meaning attributed by the national Law.

In this context, this would be the meaning accorded by Article 25(4) of the Refugee Law, 2004 which essentially provides that "family" shall include the applicant's spouse, minor children, his or her dependant parents and the parents of an applicant who is himself a minor.

A very small number of families reside at the Reception Centre, and these families chose to reside at the Reception Centre because they experienced difficulties in self-sustaining by residing in private accommodation due to the high costs, inadequate sources, and in many occasions the discrimination of landlords. However, a big

number of families reside in private accommodation and they are supposedly provided with the Welfare Allowance to cover their basic costs and needs.

Q.24.A. How is **housing** of asylum seekers organised: describe the system in general and indicate in particular what is the most frequently system used (see article 14, §1 which is a mandatory provision but leaves space for Member States; distinguish between accommodation centres, private houses and apartments, hotels places or other premises).

There is no system for the organisation of housing for asylum seekers. There is only one Reception Centre which can accommodate only around 80-100 persons. The Centre accommodates desperate cases of families, women and children, and very exceptional cases of men. The rest of the asylum seekers are distributed in private accommodation which they find and pay themselves. There are many desperate cases of asylum seekers that went voluntarily to police stations and asked to be detained so that they can reside in the detention centres.

Q.24.B. What is the total number of available places for asylum seekers?[239] Distinguish in your answer between accommodation centres, private houses and apartments, hotels or other premises.

There are only 80-100 places in the Reception Centre in Kofinou. An actual number of houses and apartments that asylum seekers reside, is not available.

Q.24.C. Is this number of places for asylum seekers sufficient in general or frequently insufficient?[240]

Having in mind the number of 10,000 asylum seekers in Cyprus and the capacity of the Reception Centre in Kofinou the number of places is permanently insufficient.

Q.24.D. Are there special measures foreseen in urgent cases of a high number of news arrivals of asylum seekers (outside the case of application of the directive on temporary protection)?

No.

[239] To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.
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Q.25. Accommodation centres **(important note: all the following questions are about open and not closed centres where asylum seekers are detained which are covered by another question).**

Q.25.A. Are there different categories of accommodation centres, for instance depending of the stage of the procedure (admissibility and eligibility)?

No.

Q.25.B. Is there a legal time limit for accommodation in a centre after which the asylum seekers have access to private houses or apartments or is this limit linked to a stage of the asylum procedure?

Usually the maximum time limit for the Reception Centre is two months, since the Centre is supposedly a temporary solution for asylum seekers until they are able to find private accommodation and employment. However, due to lack of economic sources for asylum seekers, the difficulties they face in accessing the labour market, the exploitation they face in illegal employment, they find it difficult to sustain themselves, even more to find accommodation that they can afford to in order to have a normal residence in Cyprus as long as their application is being processed, which usually takes long time. Therefore those that find residence at the Reception Centre can stay there for long; there are cases that reside there for almost a year.

Q.25.C. Is there a general regulation about the internal functioning of those centres and the rights and duties of the asylum seekers? If yes, is this general regulation applicable to public and private centres? If not, are the centres supposed to adopt an internal regulation and does a central authority have or not a kind of control about its content?

The Asylum Service is responsible for the operation of the Reception Centre and it has delegated the administration of the Centre to the local authority of Kofinou. There is general regulation about the internal functioning of the Centre as it concerns the reception of asylum seekers in the Centre, the rights, obligations and duties of the asylum seekers, as they are foreseen in the Regulations for Reception Conditions in article 20. These regulations do not apply for private accommodation.

Q.25.D. Do the regulations foresee the possibility of **sanctions** against asylum seekers in case of breach of the rules? (see article 16, §3) If yes, which sanctions for which rules? Which is the competent authority to decide? How is it ensured that decisions are taken individually, objectively and in particular *impartially* (for instance through an independent arbitrator) as requested by §4 of article 21 which is mandatory provision*?* Which are the possibilities of appealing against those decisions if the system is different from the general one under question n°22? Are there already administrative appeal decisions or

judgements which have been taken and if yes, which are the main important ones? [241]

The Regulations foresee the possibility of sanctions against asylum seekers in case they breach the rules. Asylum seekers are responsible for any damage they create at the Centre, and for whose replacement there is a relative cut from the public help they would possibly receive after their departure from the Reception Centre. There is no clear provision as to which is the competent authority to decide upon the damages caused at the Centre. There are not any specified possibilities of appealing. No such administrative decisions are taken so far.

Q.25.E. Are asylum seekers involved in the **management** of these centres? If yes, how (advisory board, appointment or election of representatives)? (see article 14, §6 which is an option provision)

No they are not involved in the management of the Centre. Under the Regulations, in article 20 (3), asylum seekers are allowed to participate in the administration of the material means and the daily parameters of life in the Reception Centre through a consultation committee or through a representative consultant body of the residents, which will collaborate with the competent authorities that manage the Centre.

Q.25.F. Do specific rules exist on work of asylum seekers inside the accommodation centres different from the general ones about employment (see below)? If yes, which ones? Can working inside accommodation centres be considered as a (mandatory) contribution of the asylum seekers to the management of the centres, is it or not paid and considered as implying access to the labour market and subject to the same rules?

There are no specific rules existing on work of asylum seekers inside the Reception Centre, since they are not allowed to work in the Reception Centre or in any other sector except of the agricultural sector.

Q.26.A. How can asylum seekers **communicate** with legal advisers, representatives of UNHCR and NGOs? (see article 14, §2, (b) which is a mandatory provision).

All the information and contact details necessary for asylum seekers to contact with legal advisers, representatives of UNHCR and NGOs are to be given in the brochure that the State is producing. However, the information and contact details are given to asylum seekers by word of mouth either among themselves or from people they come into contact daily. Representatives of UNHCR have full access to the Reception Centre, the Detention Centres so that the asylum seekers can come into contact with

[241] To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

them. NGOs have access to the Reception Centre and they are usually informed about asylum seekers that need help by other asylum seekers that know about such cases.

Q.26.B. What are the rules about **access** of legal advisers, UNHCR and NGOs regarding access to accommodation centres and other housing facilities (see article 14, §7 which is a mandatory provision).

Legal advisers, UNHCR and NGOs have access to the Reception Centre at any time.

Q.26.C. Can the access of legal advisers, UNHCR and NGOs be **limited** for security reasons or any other reason (see article 14, §7, last sentence)?

Access of legal advisers, UNHCR and NGOs cannot be limited for security reasons or any other reason in the Reception Centre.

Q.27.A. Is a **medical screening** organised by the receiving State, is it mandatory or voluntary? Does it include HIV tests? (see article 9 which is an optional provision).

The medical screening, including HIV tests, is compulsory by the State and the competent authority is the Ministry of Health. Right after the submission of the application the asylum seekers are sent to a hospital to be subject of medical screening. The medical examination has to take place within three days after the submission of the application and the initial screening might be incomplete. After the conduction of the medical examination the applicant returns to the hospital for the final evaluation of his/her health and the relevant report is prepared from the competent doctor.

Q.27.B. Do the legal provisions on reception conditions ensure that asylum seekers receive **at least emergency care and essential treatment of illness** as requested by article 15 §1 which is a mandatory provision? Do they have a further access to health care?

Upon the Regulations asylum seekers and the members of their family have access to free medical and health care, which included at least emergency care and essential treatment of illness, in all the public medical institutions if they do not acquire adequate sources, by showing the confirmation letter. In practice the asylum seekers that reside at the Reception Centre have access to emergency care and essential treatment of illness. However, many asylum seekers that reside in private accommodation face problems in having access in emergency treatment, and even more problems in receiving essential treatment since many times the hospitals ask for a medical card, although the confirmation letter should be enough.

Q.27.C. What is the **practice** regarding access of asylum seekers to health care and how is it organised? In particular, what is the situation in accommodation

centres (are doctors coming to the centres or do asylum seekers go to doctors outside)?[242]

Asylum seekers that reside to the Kofinou Reception Centre have access to medical facility in Larnaca and they are taken there by taxi paid by the Centre. As for the asylum seekers that reside in private accommodation, they receive the so-called "red card» along with the confirmation letter, with which they are entitled to have access to health care. However, they do not have access for emergency treatment and in many cases asylum seekers, even those that obtain the "red card", do not even receive proper health care and treatment at the public hospitals.

Q.28.A. What is the **length of the period** determined by the concerned Member State during which asylum seekers have **no access** to the labour market? (see article 11 which is a mandatory provision)

Under the Regulations the Minister of Interior, after consultation with the Minister of Labour and Social Insurance, has the power to determine the period during which the asylum seekers do not have access to the labour market.

Asylum seekers are not now permitted access to the labour market 6 months from the date of submission of their respective asylum applications, in the light of the following decisions:

(1)Decision taken under section 12(2) of the Regulations whereby the Minister of Labour and Social Insurance (having consulted with the Minister of Interior)permits asylum seekers access to the labour market (in the sectors of agriculture and animal husbandry)after the expiration of 6 months from the date of the asylum application, subject to presenting a contract of employment duty endorsed by the Department of Labour (per Government Gazette, No 4231,of 26/10/2001, ΚΔΠ 418/2007 Para. No 418)

(2) Decision taken under S II (1) of the Regulations whereby the Minister of Interior, (having consulted with the Minister of Labour and Social Insurance) prohibits asylum seekers access to the labour market for a period of six months from the date of submission of their application for asylum (per government Gazette NO 4227 of 12/10/2007, ΚΔΠ 404/2007, Para. No 404.

In case that one year after the application has been submitted there is no initial decision by the Asylum Service, the asylum seeker has the right to access the labour market under the conditions and rules of the Allien and Migration Law. However, in practice asylum seekers find illegal employment in order to be able to sustain themselves.

Q.28.B. After that period, are asylum seekers or not obliged to obtain **a work permit?** In case is there a limit for the administration to deliver the permits and how quick are they delivered? What is their length?

Under the Regulation, article 12 foresees that since access to the labour market in allowed, the special residence issued is also a working permit.

Q.28.C. After that period, what are the **conditions** for access of the asylum seekers to the labour market? (in particular, are there rules concerning the maximum allowed of working hours or days per week, month or year, limits in terms of type of work or of professions authorised?

The only condition that is not found in the Regulations but it works in practice is that asylum seekers are only allowed to work in the agricultural sector, as the Labour Office of the Ministry of Labour and Social Insurance does not give them access to any other sector or industry.

Q.28.D. What are the rules in terms of **priorities** between asylum seekers on the one hand and nationals, EU or EEE citizens and legally third-country nationals on the other?

A priority list issued as part of an inter-ministerial decision on labour affords preferential treatment for citizens of the Cyprus Republic, then for EU citizens, legally-resident third-country nationals and then asylum seekers.

Q.28.E. Do asylum seekers have access to **vocational training,** does this or not depend of their right to access to the labour market, and in case at which conditions? (see article 12 which is optional regarding §1 and mandatory regarding § 2)

The state does not yet have the mechanism to provide vocational training to asylum seekers. Only certain private institutions provide this service but on limited capacity and limited time, and they are funded mostly under EU projects, such as EQUAL, ERF etc. Vocational training does not depend on the right of asylum seekers to access the labour market since they do not have such right. The number of asylum seekers that attend vocational training is very small and the reasons they attend is to make their social inclusion easier, as well as to make it easier for themselves to communicate with officials in Greek.

Q.28.F. Are the rules regarding access to the labour market adopted to transpose the directive **more or less** generous than the ones applicable previously?

It seems that the rules regarding the access to the labour marker adopted to transpose the directive are less generous than the ones applicable previously, since the current rules are very ambiguous and they do not help the situation of asylum seekers in accessing the labour market and finding employment that can help them to sustain

themselves and become gradually independent of the public help. The Regulation has many gaps and ambiguities as it concerns the rules on the access in the labour market and this leads the administration to take advantage of these gaps and to create a situation not favourable to asylum seekers.

Q.29. Are reception conditions subject to the fact that asylum seekers do not have sufficient resources? Are asylum seekers requested to contribute to reception conditions when they have personal resources (for instance if they work) or to refund the authorities if it appears that they have resources? (see article 13 §§ 3 and 4 which are optional provisions)

Reception conditions are not subject to the fact that asylum seekers do not have sufficient resources, however the Services of Social Welfare have the power to reject in whole or partly the application for public help if they document that the asylum seeker is employed and/or acquires adequate sources that provide to him/her and their family the basic and special needs and an appropriate healthy living standard. If the Services of Social Welfare expose that the asylum seeker obtained adequate sources for covering the material reception conditions, while he/she was provided for these conditions, then the Services of Social Welfare can claim back the relative amount from the asylum seeker, as foreseen in the Public Help and Services Law.

7. SPECIAL NEEDS OF PARTICULAR CATEGORIES OF ASYLUM SEEKERS

Q.30.A. Which of the **different categories** of persons with special needs considered in the directive are taken into account in the national legislation (see article 17, §1 which is a mandatory provision): disabled people, elderly people, pregnant women, single parents with minor children, persons who have been tortured, raped or victims of serious physical or psychological violence? Include in your answer all other categories envisaged in national law.

According to the regulations, the Welfare Office, when making the decision to grand a social allowance to asylum seekers, takes into consideration the special conditions of such categories of people, such as minors, unaccompanied minors, pregnant women, elders, single parent families with minor children and people who have been victims of torture, or rape, or other forms of psychological, or physical, or sexual violence. The authorities examine each such case according to its needs. As it concerns single women and unaccompanied minors they are usually housed in different shelters, mostly at the Reception Centre.

Q.30.B. How is their **specific situation taken into account** (see articles 13, §2, second indent, 16 §4 second sentence and 17 which are mandatory provisions)?

There are not so many such cases therefore no mechanism exists to provide them with all the necessities they seek. Currently there is no psychological support provided to asylum seekers that have been victims of any kind of violence. Minors are taken under the protection of the Director of the Welfare Office, trying to find a family for these children. As it concerns pregnant women no special treatment is provided, nor for elders and single parent families. They still have to face the daily difficulties of survival although they have special needs.

Q.30.C. **How and when are** the special needs of the concerned persons supposed to be legally identified (see article 17 § 2 which is a mandatory provision and clarify how it has been interpreted by transposition)?

The special needs of the concerned persons are supposedly to be legally identified when the Welfare Office examines a case of an asylum seeker and records their needs, but also when the medical examination is finalized and the medical report is written.

Q.30.D. Is the **necessary medical and other assistance** provided to persons with special needs as requested by article 15, §2 which is a mandatory provision and in particular to victims of torture and violence as requested by article 20 which is a mandatory provision?

The mechanisms for providing the necessary medical and other assistance to these special groups of persons have not yet been created.

Q.31. **About minors:**

Q.31.A. Till which **age** are asylum seekers considered to be minor?

Until the age of 18.

Q.31.B. How is access of minor asylum seekers to the **education system** ensured? Is it at school or in case inside accommodation centres and can it be considered as similar to the conditions for nationals as requested by article 10, §1?

Minors and unaccompanied minors have access to public education and they are subject to the same terms and conditions as nationals. However, many minors do not attend school because they do not know Greek, which is the language used in public schools, and hence they cannot participate but also comprehend the classes. There have been evident cases of racist attitudes and racial discrimination against asylum seeker's children either due to their colour, language, religion, or the fact that they are foreigners. The education offered is at schools and not at the Reception Centre.

Q.31.C. Is access to education ensured **not later than 3 months** as requested by article 10, §2 (or after maximum one year if specific education for asylum seekers is provided) and till an expulsion decision is really **enforced?**

The three-month period is ensured and it can reach the period of a year when special education is provided.

Q.31.D. Is **specific education** (like language classes) available for asylum seekers, in particular to facilitate their effective access to the education system of the reception Member State (see article 10, §2 which is an optional provision)?

There are very limited vocational trainings for asylum seekers that are mostly provided by non state actors through EU funding or other sources of funding. The state has not yet set up a mechanism for vocational training.

Q.31.E. Are minors **in general accommodated** with their parents or with the person responsible of them? (see article 14, § 3)

Yes they are accommodated with their parents or with a person responsible for them assigned by the Welfare Office.

Q.31.F. Do **minors with special needs** enumerated by article 18, §2 which is a mandatory provision, have access to appropriate mental health care and qualified counselling**?**

Supposedly under the regulations they have access.

In terms of appropriate mental health care and qualified counselling, there would appear to be no formal systematic procedure or facilities in place to cater for minors with special needs. In very limited or exceptional circumstances, where it appears that one has been the victim of psychological violence, a medical council will decide on what therapy is to be pursued, although this cannot be regarded as being part of an organised or structured approach where referrals are made to specific mental health care or counselling facilities.

Q.31.G. How and when is organised the **representation of unaccompanied minors** (guardianship, special organisation) and regularly assessed? (see article 19, §1 which is a mandatory provision)

The Welfare Office is responsible for the representation of the unaccompanied minors and has the guardianship and the special organization, and is regularly assessed.

The Welfare office is the authority responsible for unaccompanied minors and undertakes the guardianship function in this regard.

Q.31.H. How is **placement of unaccompanied** minors organised (with adult relatives, a foster family, in special accommodation centres or other suitable accommodation)? (see article 19, §2 which is mandatory provision)

The unaccompanied minors stay either with their relatives, or in a foster family, or in special Centres only for minors. The Director of the Welfare Office makes sure that brothers and sisters stay together and that only limited and necessary change is made in their housing.

There are a small number of accommodation centres for minors which are managed by the Welfare office. These facilities are not connected with or part of the Reception Centre in Kofinou.

Q.31.I. How is the **tracing of the family members** of the **unaccompanied** minors organised? Are measures taken to protect confidentiality of information when necessary? (see article 19, §3 which is a mandatory provision)

The requirement of the Directive regarding the tracing of family members of unaccompanied minors, have been transposed into national law by virtue of clause 28 (3) of the Regulations. In view of the sensitivity and confidentiality aspect of this issue, no precise information is available or can be ascertained as to how the tracing process is organised. The Asylum Service undertakes responsibility for tracing (this could conceivably be on the basis of feedback received from the welfare office) and in the event that parents may be situated in another EU member state, encrypted information would be exchanged, via the confidential on-line 'Dublin' network in an effort to locate, the minor's immediate family members. Other than this there would appear to be no other pre-determined procedures in place and any other steps to be adopted might well be undertaken on a case-by-case basis. There would appear to be a conscious effort to be discreet and to avoid disclosure where this may be prejudicial to the minors' best interests.

8. EXCEPTIONAL MODALITIES OF RECEPTION CONDITIONS

Q.32. Apart from detention covered by the next question, are there **exceptional modalities for reception conditions** in the following cases and if yes, which ones and for how long are they applicable, knowing that they should be "as short as possible" (see article 14, §8)?

Q.32.A. Persons with specific or special needs, regarding in particular the period of assessment of those needs?

Q.32.B. Non availability of reception conditions in **certain areas**

No.

Q.32.C. **Temporarily exhaustion** of normal housing capacities

No exceptional modalities.

Q.32.D. The asylum seeker is confined to a **border post**

No.

Q.32.E. **All other cases** not mentioned in the directive (for instance urgent situation in case of a sudden high number of applicants outside a case of application of the directive on temporary protection).

Q.33. **Detention of asylum seekers** (we do not cover the situation of rejected asylum seekers detained for the purpose of their return) (see articles 6 §2, 7 §3, 13, §2 2nd indent and 14 §8 which implies that the directive is in principle applicable in case of detention):

Q.33.A. In which **cases or circumstances** and for which **reasons**[243] (identity verification in particular if the persons have no or false documents, protection of public order or national security, refugee status determination, way of entry into the territory, etc) can an asylum seeker be detained during the asylum procedure till his request has been finally rejected. **Quote** precisely in English in your answer the **legal basis** for detention of asylum seekers in national law.

The detention of an asylum seeker, only as such is forbidden. The detention can only be carried out if there is a warrant from the Supreme Court and for the following instances:

1. ***For identity verification in case the person has no nationality, or in case the person destroyed his/her travel documents, or used false documents to enter the Republic with the purpose to mislead the authorities, they are supposed to be detained only for 5 days,***
2. ***For the examination of new evidence that the asylum seeker claims to have after the rejection of the case in second instance.***
3. ***For driving without a driving licence; after they serve the sentence they are kept in detention until there is a decision on the application and this can take more than one and half year.***
4. ***For working illegally***
5. ***For a traffic accident or any other offence.***
6. ***Arrested for illegal entry and applied for asylum after the arrest; this sentence is as long as 6 and maybe more months.***

The detention of a minor is forbidden.

There is no legal basis for detention of asylum seekers in the national law.

The authorities will not hold a person in detention for the sole reason the he/she is an applicant for asylum. In this sense, article 18(1) of the Directive on Asylum procedures of 1/12/2005 would appear to be respected. Asylum seekers will not be detained for illegal entry if it transpires that the purpose of such entry was to apply for asylum. Inevitably however, there may be "grey area" cases whereby a person might apply for asylum after his arrest and that prima facie circumstances indicate that there is an attempt to abuse the asylum system. In such cases, the individual concerned might be considered illegal and detained accordingly following which he would have the right to pursue the constitutional remedies available to him to reverse the detention order.

Q.33.B. Has your Member State adopted measures to transpose **§3 of article 7 which is an optional provision?** If yes, how has this provision been legally understood (is it a case of detention or an obligation to stay in and not leave a certain place?) and for which reasons can an asylum seeker be "confined" in such a place?

Yes, para 3 of Article 7 has been transposed per section 8 of the national Regulations, in the sense that the Minister of Interior may limit freedom of movement in certain areas or decide upon an asylum seekers place of residence having regard to what is in the public interest.

Q.33.C. Are there legally **alternatives** to detention, like obligation to report to the authorities, obligation to stay in a place, provision of a guarantor or of a financial guarantee?

No alternatives are available.

Q.33.D. Which is the **competent authority** to order the detention of an asylum seeker? Explain if different authorities are involved to first take and later confirm the decision.

The Supreme Court is the competent authority to order the detention of an asylum seeker if he/she has committed an offence. The Immigration Police and the Population and Migration Archive Department can request for administrative detention of the asylum seeker.

Q.33.E. **For how long** and till which stage of the asylum procedure can an asylum seeker be detained?

They are supposedly detained for only 32 days, but in reality they can be detained until their application has been rejected and a deportation order has been decided.

Q.33.F. In which **places** (can we call them "closed centres"?) are asylum seekers detained (places in a special closed centres reserved only to asylum seekers, together with returnees like illegal aliens or even in a normal prison, in case within separated areas or with the other detainees)? Indicate if a difference has to be made following the location of the "closed centres" at the border or on the territory? Which is the authority managing those places and is it the same as the one in charge of reception conditions?

They are detained in the Police Detention Centres, which are located in the Central Prisons in Nicosia in Block 10, and in local Police Detention Centres in every city. They are not closed centres and asylum seekers are detained together with illegal aliens and other criminals. The Police is managing these Centres, not the Asylum Service, and has no connection with the managing of the reception conditions.

Q.33.G. Does **UNHCR and NGOs have access** to the places of detention and under which conditions?

UNHCR has very good access to the detention places and they do not need to inform of their arrival in advance. However after the recent rebellion of the asylum seekers in the detention centres that occurred as a protest against the inhumane detention conditions, there were cases that the police officers created problems in the access of the UNHCR officers. However, the good communication of the UNHCR with the Chief of the Police allowed the UNHCR officers to have access at any time.

NGO'S are permitted access to detention centres both within the territory and in transit zones. Although certain practical problems have previously been encountered in this regard (eg bureaucratic/ procedural delays by police officers in granting access), matters now appear to have been resolved largely through the good offices and initiative of the UNHCR which has seen the implementation of a documentary system whereby a particular person's/lawyer's status as a specialist in the asylum field is verified accordingly.

Q.33.H. What **appeal(s)** can asylum seekers introduce against the fact he is detained? Is article 18 of the directive on asylum procedures of 1 December 2005 following which *"Where an applicant for asylum is held in detention, Member States shall ensure that there is a possibility of speedy judicial review"* respected (even if it has not yet to be transposed)?

Upon being detained, an asylum seeker has the right to challenge his confinement by virtue of the right of judicial review and habeus corpus which are available remedies enshrined in the Constitution of the Republic of Cyprus. The right to pursue these remedies is respected by the State in compliance with article 18 of the Directive on Asylum procedures.

Q.33.I. Is the **directive** on reception conditions considered to be **in principle applicable** to the places where asylum seekers are detained? In particular

which information do they receive about their rights, which access do they have to legal advice and health care?

No. They have restricted information about their rights and they do not have access to free legal advice; they have to call for a private lawyer. In addition in many occasions asylum seekers in detention are not allowed to have access to health care intentionally.

Q.33.J. Apart from freedom of movement, what are the **main differences** between normal reception conditions and exceptional modalities for reception conditions in case of detention, knowing that they should be "as short as possible" (see article 14, §8)? If it is about closed centres, are the regulations of those places **in line with the requirements of the directive** (is article 13, §2, second indent of the directive following which **"*Member States shall ensure that standards of living is met (…) in relation to the situation of persons who are in detention*" respected?).**

They are detained as prisoners and they do not have rights foreseen in the reception conditions. They do not even have access to daylight in the Detention Centres.

Q.33.K. Are measures taken to avoid detention of **asylum seekers with special needs** (if yes, which ones?) or are special measures taken because of their needs?

There are no such cases.

Q.33.L. Can **minor** asylum seekers be detained together with relatives? Can **unaccompanied** minor asylum seekers be detained? If yes, are there special measures which take into account that children are concerned?

Minor asylum seekers cannot be detained. The Director of the Welfare Office takes special measures for the protection of minors.

Q.33.M. In particular is article 10 regarding **access to education** of minors respected in those places?
This is not applicable as minors cannot is any event be detained.

No.

Q.33.N. **How many** asylum seekers are for the moment detained in your Member State? Which **proportion** does this represent in comparison of the total number of asylum seekers at the same moment?

The number given is a rough estimate, but also includes rejected cases and many cases of Iranians that cannot be deported and are detained. There are around 110 detainees out of 10,000 applicants for asylum.

9. ORGANISATION OF THE SYSTEM OF RECEPTION CONDITIONS

Q.34. Explain if the system of providing reception conditions is **centralised or decentralised** (which levels of government do provide practically reception conditions?) (do not confuse this question with question number 3 about the competence to make rules about reception conditions).

The system of providing reception conditions is centralized to the Asylum Service of the Ministry of Interior. However, many other Services, Departments of Ministries are involved in the reception conditions.

Q.35. In case, are accommodation centres **public or/and private** (managed by NGOs? If yes, are the NGOs financially supported by the State?)[244]

No.

Q.36. In case, **how many** accommodation centres are there in your Member State (distinguish in your answer between public and private centres)?[245]

One, which is public.

Q.37. Is there in the legislation a plan or are there rules in order to **spread the asylum seekers all over the territory** of your Member State to avoid their concentration in some areas like big cities or to share the costs of their reception between central, regional and local authorities?

No.

Q.38. Does a **central body representing all the actors** (like NGOs) involved in reception conditions exist? Does it play a consultative role for the State authorities, a coordination role for the actors or any other role?[246]

No central body representing all the actors involved in the reception conditions.

Q.39.A. Which is the **body in charge of guidance, monitoring and controlling** the system of reception conditions as requested by article 23 which is mandatory

[244] To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.
[245] To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.
[246] To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

provision? Include in your answer which is the competent ministry (Interior, Social affairs, etc) for reception conditions?

There is no body in charge of guidance, monitoring and controlling the system of reception conditions, except of the Head of the Asylum Service that is the responsible authority for asylum seekers. The Ministry of Interior is the competent ministry for reception conditions.

The orientation guidance and control given by the ministry of Interior cannot reasonably be considered as sufficient to satisfy the requirements of Article 23 of the Directive. (Currently NGO's are providing this support on an ad hoc basis and as when circumstances permit). In fact, there is no system of this nature currently in place, and this is acknowledged by the Asylum Service itself through its "short and sharp" response to Q19B of the Practical Questionnaire.

However, notwithstanding the above state of affairs, indications are that steps are being taken to implement an effective system and that a process has begun whereby crucial services pivotal to the efficacy and operational efficiency thereof might be "outsourced" to private entities which might be financed both by the state and other sources (e.g. The European Refugee Fund)

Although, as is evident from the above, no system is currently in place, there would appear to be a clear realisation that the provisions of Article 23 of the Directive must be respected and to this end, the transposition of these requirements have been effected by clause 31 of the national Regulations and, as indicated above, matters have been set in motion (albeit not as quickly as circumstances necessitate) to achieve implementation in compliance therewith.

Q.39.B. Has your Member State (like the Czech Republic did recently) approved quality standards (not necessary legally binding) for housing services (for instance about the number of persons per bedroom on the basis of its size, number of accessible toilets, bathrooms, showers and washing machines per number of persons, existence of common rooms with radio, television, newspapers, books, computers, accessibility of telephone, existence of recreative rooms for children,…) to be respected in particular in accommodation centres?[247]

No

Q.39.C. How is this system of guidance, control and monitoring of reception conditions **organised?**[248]

[247] To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.
[248] To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

Much would appear to be done on an ad hoc basis and there would appear to be room for improvement in the organisational structures of controlling and monitoring reception conditions.

Q.39.D. Does the body in charge of guidance, control and monitoring produce **reports** about the level of reception conditions? If yes, how frequently and are they public?[249]

No.

Q.40.A. What is the **total number of asylum seekers** covered by reception conditions for the last year for which figures are available (see article 22 obliging Member States to calculate those statistics about which we also asked the Commission to require them from Member States for mid June)?

10,000 asylum seekers.

The above figure represents the overall total number of asylum applicants in Cyprus and an analytical breakdown (as given by the Asylum Service of the Ministry of Interior) of the number of Asylum applicants, per country of origin, up to end May 2006, is attached hereto as an APPENDIX.

Q.40.B. What is the **total budget of reception conditions** in euro for the last year for which figures are available?[250]

The total budget for reception conditions is 420,000 Cyprus pounds. (Approximately 700000 Euros)

Q.40.C. What is the **average cost** of reception conditions in euro per asylum seeker for the last year for which figures are available?[251]

511 Euro per person per month

Q.40.D. Are the costs of reception conditions of asylum seekers **supported** by the central/federal or federated government or are they shared with regional and/or local authorities?

Only supported by the central government.

[249] To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.
[250] To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.
[251] To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

Q.40.E. Is article 24 § 2 of the directive following which "***Member States <u>shall</u> allocate the necessary resources in connection with the nationals provisions enacted to implement this directive***" **respected?**[252]

As matters stand, it would appear that insufficient resources are currently available (e.g. inadequacy of reception centre, lack of trained staff) for the effective implementation of national provisions, which have been enacted to comply with the Directive. However, there are indications that whilst the wheels of progress are somewhat slow, there is nevertheless a "thought process" in motion to alleviate existing problems through the "outsourcing" of services to private entities and securing external funding to compliment any financial contribution emanating from any governmental budget allocation.
In order to improve the lot of asylum seekers, the Asylum Service in tandem with the European Refugee Fund has launched an awareness campaign entitled "Together in Cyprus" which is geared to improving public attitudes integrating refugees into Cypriot society and improving their general wellbeing. The programme aims to improve reception services and enhancing social integration. Measures adopted include social and psychological support, provision of free legal advice, upgrading living conditions at the Kofinou Reception Centre, establishing a support and rehabilitation unit for torture victims, Greek language teaching courses, research into the areas of bottlenecks, delays and inefficiency of the asylum system in Cyprus, and creation of a unit within the asylum service examining conditions prevalent in applicants' home countries.

Q.41.A. What is the **<u>total number of persons working for reception conditions</u>**? [253]

Unable to find out or determine the total number of persons working for reception conditions, as this was not specified in response to enquiry.

[252] To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.
[252] To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.
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[252] To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.
[252] To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

Q.41.B. How is the **training** of persons working in accommodation centres organised? Does it take into account specific needs of unaccompanied minors when relevant as well as the gender dimension? (see article 14 §5, 19 § 4 and also 24 §1 which are mandatory provisions)?[254]

As regards training of persons in the reception center, no specific training is provided.

However there is a process whereby efforts are in motion to outsource training and other Services to private sector entities with funding assistance from the European Refugee Fund etc.

The UNHCR has been periodically engaged in an ongoing training exercise with officers of the Asylum Service who very recently have also attended seminars held by an NGO from Greece on the subject of "Victims of Torture".

Additionally, and following a tender process, a consultant has very recently been engaged to advise officers of the Asylum Service, with funding being made available through the transition facility of the European Commission.

As an illustration of practical remedial steps that are being undertaken it was recently announced that a Unit for the Rehabilitation and Care of Victims of Torture has been established with funding provided by the European Refugee Fund and Asylum Services of the Ministry of Interior.

Q.41.C. Are there rules about the **deontology** of persons working in accommodation centres, in particular on confidentiality?[255]

Not specified.

10. IMPACT OF THE DIRECTIVE

Legal impact of the transposition of the directive:

Q.42. Specify if there are or not big problems with the **translation** of the directive in the official language of your Member State and give in case a list of the worst examples of provisions which have been badly translated? (please note that this question has in particular been added to the questionnaire concerning the new Member States)

There would appear to be no major problems with the translation of the Directive in the official (Greek) language. In this respect, it would perhaps be prudent to point out that in order to deal with any possible ambiguities and as an avoidance of doubt measure in the interpretation process, the transposition itself was duty effected with reference to the English, French & Greek texts of the Directive.

Q.43. Where there precise legal rules on reception conditions for asylum seekers before the adoption of the norms of transposition of the directive (if yes, specify what the nature of those rules was (legislation, regulation, administrative instructions,…)?

Yes, the Refugee Law 2000 as amended which is of a "legislative " nature.

Q.44. Did the legal rules applicable to reception conditions become more clear, precise, coherent or detailed with the adoption of the transposition norms (for instance do you now have after the transposition one basic text dealing with reception conditions instead of numerous different texts in the past?

With the adoption of the transposition norm, there is on the whole greater clarity, informative detail and more precise provisions, which allow for a more systematic approach in implementation. Importantly, there is now one concise document which incorporates regulations on reception conditions and which can only facilitate more effective implementation.

However, whilst reception conditions are primarily dealt with by on specific text in the form of the Asylum Regulations, this is still to be read in conjunction with the Refugee Law for definitional and contextual purposes.

Q.45. Did the transposition of the directive imply important **changes** in national law or were the changes of minor importance? In case, list the most important changes that have been introduced.

Whilst the existing Refugee Law went some way towards catering for asylum seekers (e.g. right to apply for work permit, right to welfare benefits, right to free medical care and access to education for minors), the prevailing state of affairs, effectively, allowed only for a theoretical perspective of benefits/ entitlements and posed difficulties with regard to actual implementation as these were of somewhat general nature and allowed for a dilution of their impact (because of technicalities, procedures & conditions which impeded their applicability). This has largely been overcome by the fact that asylum seekers' applications would, (in most cases), activate immediate entitlement to the reception conditions envisaged by the Directive.

Political impact of the transposition of the directive:

Q.46. Explain briefly if there has been **an <u>important debate about the transposition</u>** of the directive (in particular in the Parliament, but possibly also in the government, between political parties, including in medias, etc; underline in case the main points which have been discussed or have created difficulties)

The consultation process regarding transposition began in September.

There were consultation procedures both at Ministerial level (culminating) in the formulation of the Regulations by the council of Ministers and at Parliamentary level as part of the endorsement approval of the Regulations by the House of Representatives. During the course of the above process, the UNHCR as well as NGO'S were afforded the opportunity to express their opinions with regard to the content, applicability impact and implications of the proposed Regulations. Media coverage did, to some extent, provoke public debate with regard to asylum seekers' access to the labour market, an issue which appears to have generated protracted discussions as between the Ministry of Interior and Ministry of Labour for the purpose of determining the nature of the regulation which would ultimately be incorporated into national law within the parameters of the Directive.

Q.47. Did the transposition of the directive contribute to make the internal rules **<u>stricter or more generous</u>?** In particular, did your Member State use the occasion of the transposition to abolish more favourable provisions of national law? Does your Member State still have rules more favourable than the provisions of the directive (if yes, try to give the more important examples).

In one sense, the transposition of the directive has made internal rules more generous, by virtue of allowing for more effecting implementation through specific mandatory provisions which to some extent, do not offer procedural or technical mechanisms which would otherwise facilitate deviations or departure therefrom.

However, in another sense, the internal rules can be said to have been made stricter, particularly in the light of S25 of the Regulations which, in conformity with the non-obligatory Article 16 of the Directive, now allows for the reduction or withdrawal of reception conditions under specified circumstances.

Moreover, under the pre-existing REFUGEE LAW, asylum seekers' were afforded the right to apply for a work permit upon receipt of a letter confirming their status as asylum applicants. This might be viewed as being a more favourable state of affairs than that envisaged by the Directive and adopted by the Regulations at national

level. (Whereby member states are at liberty to restrict access to the labour market for up to one year from the relevant application date).

11. ANY OTHER INTERESTING ELEMENT

Q.48. What are in your view the **weaknesses and strengths** of the system of reception conditions in your Member State?[256]

Whilst there is a much- improved theoretical legal framework for implementing a systematic regime as regards reception conditions, there would appear to be much room for improvement in the effective implementation of procedural and practical streamlining lining measures to cater the needs of miners, social conditions in general, access to the labour market, accommodation and the overall welfare of applicants. Stronger governmental support for NGO's would contribute positively and significantly in this regard.

Q.49. Mention any **good practice** in your Member State which could be promoted in other Member States[257]

Not available.

Q.50. Please add here **any other interesting element** about reception conditions in your Member State which you did not had the occasion to mention in your previous answers.

[256] To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.
[257] To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.
[257] To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

	Jan		Feb		March		April		May		June		July		Aug		Sep		Oct		Nov		Dec		Total	
	case	pp	case	pp	case	pp	case	pp	case	pp	case	pp	case	pp	case	pp	case	pp	case	pp	case	pp	case	pp	case	pp
Antigua and Barbuda																									0	0
Argentina																									0	0
Bahamas																									0	0
Barbados																									0	0
Belize																									0	0
Bolivia																									0	0
Brazil																									0	0
Canada																									0	0
Chile																									0	0
Colombia																									0	0
Costa Rica																									0	0
Cuba																									0	0
Dominica																									0	0
Dominican Republic																									0	0
Ecuador																									0	0
El Salvador																									0	0
Grenada																									0	0
Guatemala																									0	0
Guyana																									0	0
Haiti																									0	0
Honduras																									0	0
Jamaica																									0	0
Mexico																									0	0
Nicaragua																									0	0
Panama																									0	0
Paraguay																									0	0
Peru																									0	0
Saint Christopher and Nevis																									0	0
Saint Lucia																									0	0
Saint Vincent and the Grenadines																									0	0
Suriname																									0	0
Trinidad and Tobago																									0	0
United States of America																									0	0
Uruguay																									0	0
Venezuela																									0	0
ASIA																									0	0
Afghanistan							3	3	1	1															4	4
Armenia	4	7	1	1	2	2	1	1	3	3															11	14
Azerbaijan																									0	0
Bahrain																									0	0
Bangladesh	45	45	29	29	64	64	13	13	34	34															185	185
Bhutan																									0	0
Brunei Darussalam																									0	0
Cambodia																									0	0
China (including Hong Kong)	19	19	27	27	12	12	17	17	14	14															89	89
East Timor																									0	0
Georgia	26	29	22	23	24	27	17	21	34	36															123	136
India	13	13	18	18	15	15	9	9	31	31															86	86
Indonesia																									0	0
Iran (Islamic Republic of)	25	28	14	21	29	42	15	15	9	9															92	115
Iraq	12	12	7	7	7	9	3	4	1	1															30	33
Israel																									0	0
Japan																									0	0
Jordan	7	7	8	8	3	3	10	10	7	7															35	35
Kazakhstan	2	2																							2	2

	Jan		Feb		March		April		May		June		July		Aug		Sep		Oct		Nov		Dec		Total	
	case	pp	case	pp	case	pp	case	pp	case	pp	case	pp	case	pp	case	pp	case	pp	case	pp	case	pp	case	pp	case	pp
Korea, Democratic People's Republic of																									0	0
Korea, Republic of																									0	0
Kuwait																									0	0
Kyrgyzstan																									0	0
Lao People's Democratic Republic																									0	0
Lebanon	8	10	2	2	4	4	3	3	1	1															18	20
Malaysia																									0	0
Maldives																									0	0
Mongolia			1	1	1	1																			2	2
Myanmar																									0	0
Nepal	8	8	5	5	4	4	5	5	3	3															25	25
Oman																									0	0
Pakistan	33	33	11	11	39	40	6	7	33	33															122	124
Philippines	1	1	2	2	4	4	2	2	5	5															14	14
Qatar																									0	0
Saudi Arabia																									0	0
Singapore																									0	0
Sri Lanka	31	31	31	34	40	42	26	26	17	17															145	150
Syrian Arab Republic	66	72	44	44	121	124	103	105	99	102															433	447
Taiwan																									0	0
Tajikistan																									0	0
Thailand																									0	0
Turkmenistan																									0	0
United Arab Emirates																									0	0
Uzbekistan	2	5	5	6																					7	11
Viet Nam					1	1	1	1																	2	2
West Bank and Gaza strip	6	6	1	1	3	3	2	2	2	2															14	14
Yemen																									0	0
OCEANIA																									0	0
Australia																									0	0
Fiji																									0	0
Kiribati																									0	0
Marshall Islands																									0	0
Micronesia (Federated States of)																									0	0
Nauru																									0	0
New Zealand																									0	0
Palau																									0	0
Papua New Guinea																									0	0
Samoa																									0	0
Solomon Islands																									0	0
Tonga																									0	0
Tuvalu																									0	0
Vanuatu																									0	0
																									0	0
British overseas citizens (etc.)																									0	0
																									0	0
Stateless																									0	0
Unknown																									0	0
																									0	0
TOTAL	**371**	**400**	**271**	**285**	**465**	**497**	**273**	**285**	**374**	**385**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**1754**	**1852**

	Jan		Feb		March		April		May		June		July		Aug		Sep		Oct		Nov		Dec		Total	
	case	pp	case	pp	case	pp	case	pp	case	pp	case	pp	case	pp	case	pp	case	pp	case	pp	case	pp	case	pp	case	pp
Algeria					2	2																			2	2
Angola																									0	0
Benin																									0	0
Botswana																									0	0
Burkina Faso	1	1			1	1			1	1															3	3
Burundi																									0	0
Cameroon	4	4	3	3	11	12	3	3	11	11															32	33
Cape Verde																									0	0
Central African Republic																									0	0
Chad																									0	0
Comoros																									0	0
Congo, the Republic of the																									0	0
Congo, the Democratic Republic of the	1	1	2	2	2	2			4	4															9	9
Cote d'Ivoire																									0	0
Djibouti																									0	0
Egypt	3	3	6	6	11	12			12	12															32	33
Equatorial Guinea																									0	0
Eritrea							1	1																	1	1
Ethiopia																									0	0
Gabon																									0	0
Gambia																									0	0
Ghana	3	3	1	1			5	5	1	1															10	10
Guinea																									0	0
Guinea-Bissau																									0	0
Kenya									6	6															6	6
Lesotho																									0	0
Liberia																									0	0
Libyan Arab Jamahiriya																									0	0
Madagascar																									0	0
Malawi																									0	0
Mali																									0	0
Mauritania																									0	0
Mauritius																									0	0
Morocco	1	1	2	2	2	2			1	1															6	6
Mozambique																									0	0
Namibia																									0	0
Niger																									0	0
Nigeria					4	4	1	1																	5	5
Rwanda																									0	0
Sao Tome and Principe																									0	0
Senegal																									0	0
Seychelles																									0	0
Sierra Leone																									0	0
Somalia																									0	0
South Africa																									0	0
Sudan					1	1																			1	1
Swaziland																									0	0
Tanzania, United Republic of							1	1																	1	1
Togo																									0	0
Tunisia	1	1																							1	1
Uganda																									0	0
Western Sahara																									0	0
Zambia																									0	0
Zimbabwe																									0	0
AMERICA																									0	0

	Jan		Feb		March		April		May		June		July		Aug		Sep		Oct		Nov		Dec		Total	
	case	pp	case	pp	case	pp	case	pp	case	pp	case	pp	case	pp	case	pp	case	pp	case	pp	case	pp	case	pp	case	pp
Belgium																									0	0
Czech Republic																									0	0
Denmark																									0	0
Germany																									0	0
Estonia																									0	0
Greece																									0	0
Spain																									0	0
France																									0	0
Ireland																									0	0
Italy																									0	0
Cyprus																									0	0
Latvia									1	1															1	1
Lithuania																									0	0
Luxembourg																									0	0
Hungary																									0	0
Malta																									0	0
Netherlands																									0	0
Austria																									0	0
Poland																									0	0
Portugal																									0	0
Slovenia																									0	0
Slovak Republic																									0	0
Finland																									0	0
Sweden																									0	0
United Kingdom																									0	0
EEA (not EU)																									0	0
Iceland																									0	0
Liechtenstein																									0	0
Norway																									0	0
EFTA (not EEA)																									0	0
Switzerland																									0	0
Central and Eastern Europe																									0	0
Albania																									0	0
Belarus					2	2			1	1															3	3
Bosnia and Herzegovina			1	1																					1	1
Bulgaria	2	2	3	3	3	3	1	2	1	1															10	11
Croatia							1	1																	1	1
Moldova, Republic of	7	8	5	6	2	2	3	3	7	7															24	26
Romania	4	5	1	1	4	4	1	1	1	1															11	12
Russian Federation	6	6	7	7	14	17	8	9	11	11															46	50
the former Yugoslav Republic of Macedonia	2	3	3	3	3	3	3	3	4	6															15	18
Ukraine	15	18	5	6	24	24	8	10	6	7															58	65
Serbia and Montenegro					1	1																			1	1
Other Europe																									0	0
Andorra																									0	0
Holy See (Vatican City State)																									0	0
Monaco																									0	0
San Marino																									0	0
Turkey	13	16	4	4	5	8	1	1	12	15															35	44
AFRICA																									0	0

QUESTIONNAIRE FOR THE NATIONAL REPORT ON THE IMPLEMENTATION OF THE DIRECTIVE : RECEPTION CONDITIONS OF 27 JANUARY 2003

IN: THE CZECH REPUBLIC

by
Kosař David
JUDr.
Supreme Administrative Court, Brno, Czech Republic
david.kosar@nssoud.cz

1. NORMS OF TRANSPOSITION

Q.1. Identify the main norm of transposition (indicate the title, date, number, date of entry into force and references of publication into the official journal) and indicate its legal nature (legislative, regulatory, administrative); indicate in your answer if this norm was only devoted to the directive or if it has been included in a more general text and indicate in that case by quoting precisely the numbers of the provisions adopted to transpose the directive.

Directive 2003/9/EC laying down minimum standards for the reception of asylum seekers was transposed by Act No. 57/2005 Coll.[258] that amended Act No. 325/1999 Coll. on Asylum[259] (hereinafter the "Asylum Act"). Act No. 57/2005 Coll. was published in Issue No. 15/2005 of the Collection of Laws of the Czech Republic (pp. 354-357) on February 4, 2005 and entered into force on the date of its promulgation.[260] This mode of transposition was chosen because reception conditions need to have a formal statutory basis, and the Asylum Act already contains provisions stipulating the receptions conditions for asylum seekers and management of the reception facilities.

Act No. 57/2005 Coll. was not devoted solely to Directive 2003/9/EC but also to the transposition of Directive 2003/86/EC on the right to family reunification and EC Regulation No. 343/2003, usually referred to as the Dublin II Regulation, and to

[258] The full title of the transposition norm reads as follows: Act No. 57/2005 Coll. amending Act No. 325/1999 Coll. on Asylum and Amendment to Act No. 283/1991 Coll., on the Police of the Czech Republic, as amended (the Asylum Act), and Amendment to Act No. 359/1999 Coll. on Social and Legal Protection of Children, as amended.

[259] The full title of the Asylum Act reads as follows: Act No. 325/1999 Coll. on Asylum and Amendment to Act No. 283/1991 Coll., on the Police of the Czech Republic, as amended (the Asylum Act).

[260] Art. III of Act No. 57/2005 Coll. Interestingly enough, although Art. III of Act No. 57/2005 Coll. stipulates its entry into force on February 1, 2005, the Act itself was published in the Collection of Laws of the Czech Republic only on February 4, 2005. This "anomaly" (i.e. "pre-entry" into force) occurred probably due to the final rush to meet the transposition deadline.

implementation of the Protocol on asylum for nationals of Member States of the European Union. Since the reception conditions were mostly sufficient even prior to the adoption of Directive 2003/9/EC, the directive was transposed by the insertion of several provisions and by refining existing definitions. Although it is to some extent difficult to distil precisely the provisions adopted to transpose solely Directive 2003/9/EC, these include the following articles and paragraphs of Act No. 57/2005 Coll.: Part 1, Art. I, subsections 2, 5, 7, 9, 10, 15, 17-22, 26-29, 31-33, and Part 2, Art. II.

Q.2. List by order of importance by using numbers (1, 2, 3) the others norms of transposition if there are more than one (indicate for each norm the title, date, number and references of publication into the official journal; include in your answer the administrative measures taken to ensure implementation of the directive and of the transposition norms like regulations, administrative circulars, special instructions,…)

As mentioned above, there has been only one transposition norm. Therefore, I did not set up any order of importance. However, since the entry into force of Act No. 57/2005 Coll., the Asylum Act has been subject to five subsequent amendments, several of which dealt also with reception conditions. Indeed, Act No. 57/2005 Coll. was initially envisaged not only to transpose obligations stemming from EC legislature but also to address specific problems of the Czech asylum procedure, including reception conditions. However, after significant delays in the preparation of the draft bill and in order to meet the transposition deadline, the Asylum Act was subsequently amended in two separate statutes – the above-mentioned Act No. 57/2005 Coll. and Act. No. 350/2005 Coll.[261]

While Act No. 57/2005 Coll. was intended to transpose mandatory provisions of *inter alia* Directive 2003/9/EC and bring the Asylum Act in line with the European asylum *acquis*, Act. No. 350/2005 Coll. dealt in detail *inter alia* with material reception conditions, pocket money and contribution to the costs of reception facilities, medical screening, the rights and duties of asylum seekers, sanctions against asylum seekers, the duration of visas for asylum seekers, and in particular restrictions on access of asylum seekers to the Supreme Administrative Court.[262]

Due to a major revision of the system of the State social support benefits (linked to the subsistence minimum) and State social assistance benefits (linked to the existence

[261] The full title of this norm reads as follows: Act No. 350/2005 Coll. amending Act No. 325/1999 Coll. on Asylum and Amendment to Act No. 283/1991 Coll., on the Police of the Czech Republic, as amended (the Asylum Act), and Amendment to several other Acts. It was published in issue No. 122/2005 the Collection of Laws of the Czech Republic (pp. 6049-6057) on September 13, 2005 and entered into force on October 13, 2005.

[262] It introduced a new admissibility criterion which is very close to the institutions of "leave to appeal" or "writ a certiorari". Pursuant to Art. 104a of Act. No. 150/2002 Coll., the Code of Administrative Justice, as amended, "the Supreme Administrative Court shall dismiss a cassational complaint in cases of international protection unless the significance of the complaint extends substantially beyond the personal interests of the complainant". For the interpretation of this provision see Decision of the Supreme Administrative Court, No 1 Azs 13-2006-39, April 26, 2006, available at www.nssoud.cz.

minimum), the Amendment to Asylum Act, Act. No. 112/2006 Coll.[263] introduced a new system for the calculation of several financial allowances for applicants for international protection. Not surprisingly, it is impossible to describe this reform in detail within the confines of a brief report and therefore only significant issues will be dealt with in the responses to the questions below.

The latest significant amendment to the Asylum Act, Act No. 165/2006 Coll.,[264] was adopted in order to transpose Directive 2004/83/EC, the "Qualification Directive". Act No. 165/2006 Coll. was published in issue 56/2006 of the Collection of Laws of the Czech Republic (pp. 1994-2009) on April 28, 2006 and entered into force on September 1, 2006. In particular, Act No. 165/2006 Coll. introduced, in the Czech Republic, the subsidiary protection status (see also footnote no. 26), opted for a single procedure for requests for international protection (see below), and stipulated the rights and duties of beneficiaries of the subsidiary protection.

The new amendment to the Asylum Act (Act. No. 343/2007 Coll.) was signed by the President of the Czech Republic on December 21, 2007 (hereinafter only the "2007 Amendment"), and entered into force on the very same day. This amendment was supposed to transpose mainly the so-called Procedures Directive but due to the interconnection of the several provisions of the Procedures Directive and the Reception Conditions Directive, it also affected the issues covered by this report. However, due to the late approval of this Bill, only the most important changes will be mentioned in this report.

Unless explicitly specified otherwise, in the text below reference will be made to the wording of the "Asylum Act" as of March 1, 2007. Similarly, unless explicitly specified otherwise, the term "international protection" includes both applications for asylum as well as for subsidiary protection and the abbreviation "Art." without further specification refers to the Asylum Act.

As to norms of lower legal force, the amount of pocket money, the date it is to be paid out, and amount of the contribution to the expense of reception conditions when the asylum seekers have personal resources are specified in Decree No. 376/2005 Coll.[265] This procedure is envisaged in Art. 42 § 7 of the Asylum Act. Furthermore, the amount of the contribution to municipalities to cover their expenses associated with the existence of the asylum facility in its territory is specified in the Government decision upon the

[263] The full title of this norm reads as follows: Act No. 112/2006 Coll. amending several other Acts in connection with the adoption of the Act on Subsistence and Existential Minimum and of the Act on Assistance in Situations of Material Hardship. It was published in issue No. 37/2006 of the Collection of Laws of the Czech Republic (pp. 1329-1343) on March 31, 2006 and entered into force on January 1, 2007.
[264] The full title of this norm reads as follows: Act No. 165/2006 Coll., amending Act No. 325/1999 Coll. on Asylum and Amendment to Act No. 283/1991 Coll., on the Police of the Czech Republic, as amended (the Asylum Act), and Amendment to several other Acts.
[265] The full title of this norm reads as follows: Decree No. 376/2005 Coll., stipulating the amount of compensation for catering and accommodation services provided in asylum centres, the amount of allowances and the dates of their payment; it was promulgated on September 12, 2005 and entered into force on September 27, 2005.

amount of the contribution to be paid to municipalities in a calendar year (Art. 84 of the Asylum Act).[266] The amount of pocket money has not been changed since Decree No. 376/2005 Coll.[267]

Q.3. Explain which level of government is competent to adopt the legal norms on reception conditions for asylum seekers (specify in particular in case of a federal or regional State, if it is the federal/central power or the components; in case, specify below when it is impossible for you to answer a question because it is about the competence of the components and it is impossible for you to gather reliable information about all of them)

Since the Czech Republic is not a federal state this question is irrelevant. The only body competent to adopt the legal norms on reception conditions for asylum seekers is a Parliament (on few exceptions see Q.4).

Q.4. Explain the legal technical choices done to transpose the directive (comment on the nature and level of the norms used to do the transposition: legislative, regulatory, administrative like instructions, etc). Add any other element about the technique of transposition of the directive which is interesting for the implementation of Community law.

Since the reception conditions were already quite demanding even prior to the adoption of Directive 2003/9/EC, substantial modifications of the Asylum Act were not required. Directive 2003/9/EC was transposed (1) by the insertion of several new provisions into the Asylum Act, such as the definition of "unaccompanied minors", the obligation to endeavour to trace the members of the minor's family or the provision stating that the individual needs of asylum seekers must be taken into account, (2) by refining existing provisions such as the duty to provide information to asylum seekers in writing and in a language she may reasonably be supposed to understand, and (3) by introducing new mandatory deadlines, such as a 15 day deadline for providing information to the asylum seeker. While many of the new provisions, such as the right of an asylum seeker and his family to be accommodated or the right to contact legal advisors were already observed in practice, their explicit inclusion into the Asylum Act no doubt strengthened the position of asylum seekers.

This mode of transposition was chosen because administrative decisions on reception conditions are required to have a formal statutory basis, and most provisions stipulating the receptions conditions for asylum seekers and the management of the reception facilities were already laid down in the Asylum Act. Only specific issues such as the

[266] To date (for calendar year 2007), the Decision of the Government No. 63 from January 24, 2007 on Principles for providing contribution to the municipalities to cover the costs expended by the municipality in association with existence of the asylum facility in its territory, is applicable.
[267] Decree No. 174/2006 Coll. solely replaced the word "asylum" with the term "international protection" (as a consequence of Act No. 165/2006 Coll. that amended the Asylum Act in April 2006).

amount of pocket money are prescribed by norms of a lower legal force. Therefore, the transposition of Directive 2003/9/EC was first carried out by statute and only thereafter were new administration instructions and guidelines adopted.

Q.5. Mention if there is a general tendency to just copy the provisions of the directive into national legislation without redrafting or adaptation them to national circumstances? If yes, give some of the worst examples and explain if there is a risk that those provisions remain unapplied or will create difficulties of implementation in the future.

As mentioned above, the Asylum Act underwent a proper screening process aimed at adapting of the provisions of Directive 2003/9/EC to national circumstances. There was no pattern of mere copying the provisions of the directive into national legislation without appropriate redrafting or adaptation in this case.

Q.6. Have all the texts necessary to ensure the effective implementation of the new rules of transposition been adopted, prepared or at least foreseen in the future (for example a regulation completing a new law and the necessary instructions telling the administration how to apply the new rules)?

All texts that were necessary to ensure the effective implementation of the Directive 2003/9/EC were adopted by the transposition deadline. Since the reception conditions are regulated almost exclusively by the Asylum Act (i.e. by statute), there has not been any need of adopting other norms of lower force.

2. BIBLIOGRAPHY

Q.7. Has an in-depth preparatory study been made public about the changes at the occasion of the transposition? If yes, thanks for trying to provide us a copy *(please contact to answer this question adequately the body and person who was responsible for the preparation of the transposition of the directive in the public administration).*

In general, the Asylum Act underwent a proper screening process, and there were thorough negotiations with the UNHCR and NGOs before the transposition of Directive 2003/9/EC. The draft bill was accessible to the public and subject to intensive debate. Indeed, when the Ministry of the Interior had completed the draft bill and distributed it to the other ministries and state agencies, it was also sent to the UNHCR and NGOs for comments. Both the draft bill including explanatory memorandum and table of compatibility with EC law and the comments of UNHCR and NGOs are attached to this report.

The compatibility with EC law is ensured on several levels: (1) in the first stage of the drafting process, there are special units within the Ministry of the Interior responsible for transposition of EC Law, both at the level of the Department of Asylum and Migration

Policy of the Ministry of Interior (Section for EU and International Law) and at the level of the Ministry of Interior itself (Department of EC law); (2) in the second stage, within the Government, a draft bill is reviewed by the Department of Compatibility of the Office of the Government of the Czech Republic and by the Parliamentary Institute.

Q.8. Quote any recent scientific book or article published about the directive, the transposition rules or the question of reception conditions for asylum seekers in general (answer even if this literature is only available in your language and provide the complete title in your language (without translation) with all references; indicate author, title, in case name of periodical, year and place of publication).

There has not been any scholarly book published about Directive 2003/9/EC and there has been only one article which was devoted solely to Act No. 57/2005 Coll.:

- HRABAK J.: Azylové právo po novele. Zákon č. 57/2005 Sb. (Asylum Law following the Amendment in Act No. 57/2005 Coll.), *Právní rádce*, No. 8/2005, Praha, pp. 42-47.

However, several collections of essays, book chapters and articles deal with the European asylum *acquis* or with the Czech asylum procedure in general:

- ČEPELKA, Č, ŠTURMA, P., HONUSKOVÁ, V. (eds.): Teorie a praxe azylu a uprchlictví, Univerzita Karlova v Praze, IFEC, Praha 2006.
- JANŮ, I., ROZUMEK, M.: Azylové právo ES – Pohled a role nevládních organizací (*EU Asylum Law – Perspective and Role of Non-Governmental Organisations*). Prague: Organisations for the Assistance of Refugees, 2004, available at http://www.opu.cz or http://www.migraceonline.cz/.
- JÍLEK, D. & coll. (eds.): Společný evropský azylový systém: právní pojem pronásledování (*Common Asylum System: Definition of Persecution*), Collection of Essays from the Workshop organised on 15 June 2005 at the Faculty of Law, Masaryk University, Doplněk, Brno, 2005.
- JÍLEK, D., KLEČKOVÁ R., KOSAŘ, D., TOMISOVÁ, M. (eds.): Společný azylový systém: procedurální směrnice (*Common Asylum System: Procedures Directive*), Collection of Essays from the Workshop organised on 13 June 2006 at the Faculty of Law, Masaryk University, Doplněk, Brno, 2006.
    - See in particular
        - JURMAN, M.: Praktické problémy zastupování žadatelů o azyl (*Legal Assistance to Asylum Seekers: Practical Problems*).
        - DLABÁČKOVÁ, K.: Problematické prvky vnitrostátní legislativy z pohledu procedurální směrnice (*Problematic Elements of Domestic Legislation from the point of view of the Procedures Directive*).
- PIPKOVA, H.: Formování azylové politiky v Evropě – role soudce v azylovém řízení (The Formation of Asylum Policy in Europe – the Role of the Judge in Asylum Proceedings), *Právní zpravodaj*, No. 8/2003, Supplement Legislativa, pp. II-IV.

- PIPKOVA, H.: Aktuální problémy soudního řízení v azylových věcech (Contemporary Problems of Asylum Adjudication), *Právní rádce*, No. 11/2004, pp. 48-55.
- POŘÍZEK, P.: Komplexní analýza azylového systému v ČR včetně navržení legislativních a praktických opatření k jeho zefektivnění (Comprehensive analysis of the asylum system in the CR, including proposals for legislative measures to improve it). Brno 2004, available at http://www.soze.cz or http://www.migraceonline.cz/.
- UNHCR Prague: *Seminar "Asylum procedure in the Czech Republic.* Selected texts from the Seminar organised on 16 February 2004 at the Ministry of Justice, Prague, 2004 (bilingual text).

The most valuable sources in English are the following materials:

- Synthesis Report for Small Scale Study I: *Reception Systems, their Capacities and the Social Situation of Asylum Applicants within the Reception System in the EU Member States*, European Migration Network, 2006.
- Small Scale Study on Reception Conditions of the European Migration Network: *Reception Systems, their Capacities and the Social Situation of Asylum Applicants within the Reception System in the EU Member States – Czech Republic*
- Information and Cooperation Forum (ICF), Final Report, Frankfurt am Main, Germany, 26 February 2005, pp. 107-132.
- Cross-border Asylum Network (ICF II)
- SZCZEPANIKOVA, A.: Gender Relations in a Refugee Camp: A Case of Chechens Seeking Asylum in the Czech Republic, *Journal of Refugee Studies*, 2005, No. 18, pp. 281-298.
- Report on the State of Human Rights in the Czech Republic in 2005, Chapter 9, pp. 84-93.
- Report on the State of Human Rights in the Czech Republic in 2004, Chapter 9, pp. 62-72.
- Report on the State of Human Rights in the Czech Republic in 2003, Chapter 10, pp. 95-103.
- Report on the State of Human Rights in the Czech Republic in 2002, Chapter 11, pp. 71-75.
- The invaluable source of the materials is the Migration Online Project, which is a specialised website of the Multicultural Center Prague focusing on migration issues in the Central and Eastern Europe since 2004. See the English (http://www.migrationonline.cz/) or Czech (http://www.migraceonline.cz/) mutation of this website.

Finally, annual reports of the Refugee Facilities Administration (*Správa Uprchlických Zařízení*) provide information on budget, cooperation with municipalities and other mainly institutional issues.

Q.9. Quote any interesting decision of jurisprudence based on the implementation of the new rules of transposition of the directive (indicate references of publication if any)?

There has not been any legal challenge made before Czech courts of the reception conditions for asylum seekers. The only decision that explicitly mentions Directive 2003/9/EC was the judgment of the Supreme Administrative Court, No. 5 Azs 56/2004-56 of 19 May 2004.[268] However, in this case the applicant misinterpreted Art. 8 of Directive 2003/9/EC and submitted that he was entitled to asylum for the purpose of family reunification (Art. 13 of the Asylum Act). Furthermore, the applicant relied on the above-mentioned Art. 8 of Directive 2003/9/EC before the transposition deadline expired.

3. GENERAL INFORMATION ABOUT THE SYSTEM OF RECEPTION CONDITIONS

The purpose of the following two questions is to help the reader to understand easily and quickly the system of reception conditions in your Member State and also to avoid that you have to repeat general elements in other parts of the questionnaire. ***Please do not write more than one or maximum two pages and do not include large historical developments.***

Q.10. Describe in general the system of reception conditions in your Member State (in particular which are the main actors in charge of reception conditions?)

The Ministry of the Interior has been responsible for refugee issues since 1990.[269] Správa Uprchlických Zařízení (Refugee Facilities Administration, hereinafter the "RFA") was established on 1 January 1996 as a budgetary organisation of the Ministry of the Interior of the Czech Republic. It came into being as a result of the division of the Refugee Department, which was effected in order to separate the part of the state administration conducting asylum proceedings (Department for Asylum and Migration Policies, hereinafter the "DAMP") from that providing services to asylum applicants (RFA). The RFA operates the reception and accommodation centres for asylum seekers, integration centres for recognised refugees and facilities for administrative detention of foreign national and provides *inter alia* accommodation, catering, social, health and other services for asylum seekers and persons who are under the temporary protection of the Czech Republic's government.

The reception conditions for asylum seekers in the Czech Republic are almost exclusively laid down in the Asylum Act. Only certain issues, such as the amount of pocket money are prescribed by norms of a lower legal force. The Czech reception system is considered to be a centralised one. The RFA, which is a specialized agency of the Ministry of the Interior, so far remains responsible for management of all asylum facilities in the country.

[268] All decisions of the Supreme Administrative Court are available on its website: www.nssoud.cz.
[269] See Act No. 498/1990 Coll. on Refugees.

Although a debate has already begun on the possible involvement of NGOs in the management of certain asylum facilities, no proposal has been submitted so far.

However, there are also several other actors. The most important actor except for the RFA and DAMP is the Aliens' and Border Police. With regards of other important actors, on involvement of Ombudsman see Q.39, on the so-called OSPODs see Q.31 G, and on involvement of the Office for International Legal Protection of Children see Q.31 I.

Q.11. **Q11. A.** Explain if you have different types and levels of reception conditions following the different stages of the asylum procedure (this implies that you have to give briefly the necessary explanations about the asylum procedure). Make if relevant for reception conditions a distinction between the following procedural stages: determination of the responsible Member State on the basis of the Dublin II regulation, special procedures at the border (including transit zones in airports), accelerated procedures, admissibility procedures, eligibility procedures and the different possibilities of appeals (suspensive or not) against a refusal of the asylum request. Indicate what the main differences of reception conditions are between the different stages (if necessary by detailing between the different elements of reception conditions, in particular housing) and explain what the evolution of reception conditions is following the different stages of the procedure.

Asylum issues in the Czech Republic are regulated by the Asylum Act. Proceedings for the grant and withdrawal of asylum are within the competence of the Ministry of the Interior. After the Ministry of the Interior renders the first instance decision on an asylum application, the asylum seeker may file with the competent regional court an action against the decision of the Ministry. Unless the Asylum Act stipulates otherwise, this action has a suspensive effect. There exists an extraordinary remedy against decisions of the regional court on asylum matters, which is a cassational complaint over which the Supreme Administrative Court has jurisdiction. Both judicial instances review decisions of the Ministry of the Interior both as to points of law and fact (albeit the Supreme Administrative Court only under specific circumstances), but they are not entitled to grant asylum or subsidiary protection. Hence, the courts can either confirm the decision of the administrative body or quash the decision and remand the case for reconsideration by the Ministry of Interior (or by the Regional Court). As mentioned above (see Q.2), Act. No. 350/2005 Coll. introduced a new admissibility criterion for a cassational complaint and thus restricted the access of asylum seekers to the Supreme Administrative Court.

A procedure on international protection is conditional upon the alien making a declaration within the territory of the Czech Republic apparently manifesting her intention to seek protection (hereinafter the "Declaration") in the Czech Republic from persecution or serious harm (Art. 3 § 1 of the Asylum Act). The alien is then issued an entry visa which entitles her to remain in the territory for the period of time required to

appear at the designated reception centre (Art. 3e). The alien who made the Declaration in hospital, custody or prison is obliged to arrive at a reception centre within 24 hours from the moment of her release (Art. 4a § 1).

There are two phases of reception of asylum seekers. The first phase is carried out in one of the reception centres, i.e. either at Vyšní Lhoty or at the Prague airport (see below). These facilities are closed reception centres. In Vyšní Lhoty, the applicants are not allowed to leave the centre until primary admission procedure is completed, which takes approximately three weeks. However, in the reception centre in the transit zone of the Prague airport the asylum seekers might be required to stay beyond the completion of the admission procedure for the whole duration of the airport proceeding as stipulated by the Asylum Act (see Q.20 A). The admission procedures[270] include identification by the Aliens' and Border Police (taking photographs and fingerprints), initiation of the procedure for international protection by an administrative body (the DAMP), the issuance of a visa by the Police and a Certificate of an Applicant for International Protection by the DAMP, comprehensive medical examinations, and quarantine or other measures related to the protection of public health (Art. 46 § 1). In the reception centre in the transit zone of the airport, the applicants are not allowed to leave the centre even after the admission procedure is concluded (Art. 46 § 2). The 2007 Amendment contains *inter alia* (in general, it introduces the brand new airport procedure) highly controversial provision (Art. 46a) that under certain circumstances allows the Ministry of the Interior to confine the applicant for international protection in the reception centre until her deportation (see Q.20.A).

In the second phase, after the conclusion of the admission procedures, an asylum applicant is moved to one of the accommodation centres (sometimes also referred to as "residential centres") or can exercise her right to stay in private housing. In contrast to reception centres, asylum applicants staying at accommodation centres may come and go as they please.[271] The asylum seeker is entitled to housing in the accommodation centre throughout the whole procedure, more precisely during the first instance procedure before the DAMP and proceedings before the regional court. If the asylum seeker submits a cassational complaint to the Supreme Administrative Court against the decision of the regional court, she is issued a toleration visa and her status is governed by the Aliens Act[272] (Art. 78b § 7 of the Asylum Act). Therefore, she is not entitled to housing in the accommodation centres and is obliged to find private accommodation by herself. However, if she proves that her financial situation does not allow her to cover the expenses and that she is not able to secure accommodation, housing for her will be

[270] It should not be confused with "*admissibility* procedures". On one hand, it is true that decision on admissibility (i.e. procedural decision) is usually taken during the stay in the reception centres, it is not necessarily so. In other words, whereas *admission* procedures always take place in the reception centre, a decision on *admissibility* may be rendered also after the transfer of the asylum seeker to the accommodation centre.

[271] Although several restrictions apply; e.g. asylum seekers registered at accommodation centres are allowed to leave the centres for a maximum period of 10 days per calendar month, unless explicitly permitted to prolong this period.

[272] Act No. 326/1999 Coll. on Residence of Aliens on the Territory of the Czech Republic and Amendment to Some Acts (hereinafter the "Aliens Act").

provided by the Ministry of the Interior (Art. 78c). In practice, the applicant is usually provided with cheap accommodation in a hostel designed for that purpose. Those hostels are run by NGOs or private owners (in Litoměřice and in Brno). The asylum seeker can be also granted financial support that is equal to the subsistence minimum (see below).

Generally, both filing the action at the regional court and at the Supreme Administrative Court has a suspensive effect, including most "manifestly unfounded" cases (see below), "airport" cases and "detention" cases.[273] As for the exceptions to this rule, the filing of an action at the regional court does not have suspensive effect in the following cases: (1) an action against the decision on discontinuance of the asylum proceedings; (2) an action against the rejection of asylum application (as "manifestly unfounded") on the ground that the applicant arrives from a safe third country or a safe country of origin; (3) an action against the rejection of asylum application (as "manifestly unfounded") on the ground that the applicant holds more than one citizenship and failed to avail herself of the protection of any of the countries of which she is a citizen. However, an asylum case involving an unaccompanied minor cannot be determined to be "manifestly unfounded", and thus the accelerated procedure cannot be used (Art. 16 § 4).

The "manifestly unfounded" cases, "airport" cases and "detention" cases are generally dealt with in a specific (often accelerated) procedure; thus different conditions and time limits generally apply. The specific features and dissimilarities of these procedures will be addressed separately in response to the relevant questions. These include e.g. restriction on the freedom of movement in the airport reception centre, in Dublin cases and in the detention facilities, shorter time limits for filing actions against the first instance decisions, the fact that the "Certificate of an Applicant for International Protection" is not issued to the applicants in detention before their transfer to the accommodation centre etc.

For border procedures, see short description in Q. 32 D.

Q 11. B. Indicate precisely for which stage(s) of the asylum procedure the answers on reception conditions you give below are valid.

The answers on reception conditions given below are valid for the first and second stage of the asylum procedure (i.e. during the first instance procedure before the DAMP and proceedings before the regional court), unless explicitly specified otherwise. The modalities of reception conditions of the asylum seekers who lodged a cassational complaint are mentioned separately. Special procedures such as detention and airport procedures and Dublin cases will be dealt with separately where appropriate.

[273] However, there is a shorter time limit for filing the action at the regional court for the above-mentioned special procedures. The action must be filed within 7 days, in contrast to 15 days in "regular" cases (Art. 32 § 2).

4. GENERAL RULES ON RECEPTION CONDITIONS

Q.12. **Q 12. A**. Are material reception conditions provided in kind, in money or in vouchers or in a combination of these elements (see article 13, §5 which is an optional provision)? Distinguish between the different elements (housing, food, clothes, health, transportation, pocket money,…). **If reception conditions are provided in money (in general or in some cases, for instance when no places are anymore available in accommodation centres), indicate the precise amount given to the asylum seekers. Indicate in your answer what is provided in general and if there are exceptional cases.** Specify in your answer if reception conditions are different from the general system of social aid for nationals or aliens and if yes, if and when (which stage of the asylum procedure) can asylum seekers have access to the general system of social aid?

Material reception conditions (housing, food, clothes, hygienic items and health service) are primarily provided in kind, but depending on the circumstances there are also several benefits provided in cash. Asylum applicants have the following rights in the asylum facility in which they have their registered address: to be provided with accommodation, food and other services (hygienic items such as toothbrush, toothpaste, toilet paper, soap etc.) at no charge, and to receive pocket money (Art. 42). In general, except for restriction of freedom of movement, material reception conditions (housing, food, hygiene, social and psychological assistance, leisure time activities and pocket money) are delivered under the same conditions both in the "accommodation centres" and "reception centres". Since January 2004, asylum seekers no longer receive financial support in the form of monetary benefits (see below).

Asylum seekers accommodated both in the reception and accommodation centres are entitled to pocket money (sometimes referred to as "spending money") which amounts to 16 CZK per day and thus approximately to 480 CZK (€17) per month. An asylum seeker accommodated in these centres can perform work in the centre (e.g. cleaning, help in the kitchen, etc.), on a voluntary basis, up to 12 hours per month, in which case her pocket money will be increased up to double the regular amount. Furthermore, in the accommodation centres where no meals are provided, asylum seekers receive financial contribution to the catering which amounts to approximately 2400 CZK per month (this sum is linked to the subsistence minimum and varies slightly according to the age of the applicant and number of family members).[274] However, an applicant who receives contribution to the catering is not entitled to pocket money (and thus also not to the doubled pocket money for extra work in the asylum centre). Self-catering facilities are always provided in the centre. If the asylum seeker is *only* registered in the centre, which means that she lives in private accommodation and has only the obligation to report regularly to the DAMP in the centre, she is not entitled to any material or financial support, apart from medical service (see below).

[274] To date (31 May, 2006) adults receive 79 CZK per day, children under 6 years old, 57.50 CZK, children 6-10 years old, 64 CZK, children 10-15 years old, 76 CZK, children over 15 years old, 83 CZK. There are also extra benefits available, e.g. 26 CZK per day for diabetics.

Asylum seekers, who chose to stay outside the accommodation centre, must find private housing by themselves and report for registration at the Aliens' and Border Police. With the exception of medical care, those applicants must cover their living expenses themselves. Furthermore, they can apply for financial contribution up to the subsistence minimum mentioned above if they prove that their financial situation does not allow them to cover their housing expenses (Art. 43 § 2). Nevertheless, such financial support may be provided only for a period of 3 months (Art. 43 § 2).

Aliens holding a toleration visa, i.e. those who submitted a cassational complaint to the Supreme Administrative Court, are obliged to find their own accommodation and cover their own expenses. If they prove their financial situation does not allow them to cover the expenses and they are not able to secure their accommodation, they can be provided with a cheap accommodation and be granted financial support equal to the subsistence minimum (see also Q.11).

There is no system of vouchers, and no specific contribution to transportation (except in emergencies) or clothing expenses is provided to asylum applicants in the Czech Republic. Furthermore, after January 2004, as a result of changes to the Act on State Social Support,[275] such applicants were excluded from the group of persons entitled to state social support benefits and therefore asylum seekers had no access to the general system of social aid at any stage of the procedure. Since March 2005, the amendment to the Act on State Social Support stipulates that, of the 365 days needed to fulfil an alien's condition of stay in order to be entitled to state social support benefits, only that period will be excluded when the asylum seeker is housed in the accommodation centre. Therefore, if the alien (i.e. asylum seeker) is housed outside such a centre, she is entitled to state social support benefits after the period of 365 days expires.

As to the clothing, it is usually provided by Caritas (NGO) that maintains storerooms of old clothes in most asylum facilities and also provides clothing to the RFA on the individual request basis. In case of deficiency of certain type of clothes (e.g. baby outfit) or of a particular size of shoes (i.e. they are not available at Caritas), these are provided directly by the RFA (on the basis of Art. 42 § 2). This system of 'residuary intervention' of the RFA has been working efficiently in practice, but strictly legally speaking, it is problematic because of the lack of certainty regarding the implementation of the Directive. (See also similar problem with 'residuary intervention' in the health care provision in Q.27.C.)

Furthermore, Caritas also maintains so-called "mini-humanitarian depots" at the borders with Austria, Germany, Poland and Slovakia. These mini-depots provide basic material conditions for those, who are intercepted by the Police during their attempt to cross the borders or to asylum seekers returned back on the basis of readmission agreements. This system seems to be working well.

[275] Art. 3 § 1 of Act No. 117/1995 Coll., on State Social Support.

Q 12. B. Can the reception conditions in kind, money or vouchers be considered as <u>sufficient</u> "to ensure a standard of living adequate for the health of applicants and capable of ensuring their subsistence" as requested by article 13, §2 of the directive (which is a mandatory provision but leaves a certain space to Member States)? In order to help to assess the respect of this rule when reception conditions are provided in money, include if necessary in your answer points of comparison with the minimum amount of social aid guaranteed for nationals in your Member State.

Reception conditions can be generally considered as sufficient "to ensure a standard of living adequate for the health of applicants and capable of ensuring their subsistence" as required by Art. 13 (2) of the Directive.

All asylum applicants staying in the reception and accommodation centres are entitled to free board, housing and pocket money (Art. 42 § 1). Asylum facilities provide also other services such as social and psychological services, library privileges, leisure time activities (sports, art workrooms, etc.),[276] which was perceived as a positive example in the Report of Information and Cooperation Forum (see Q.8). Leisure time activities are provided both by the RFA and by NGOs (but usually in cooperation of both subjects) and include sport events, art workshops, libraries, IT and language classes, discotheques, visits to cinemas etc. Furthermore, these activities are not restricted only to the accommodation centres but take place also in the reception centres – i.e. in transit zone at the Prague International Airport and in Vyšní Lhoty. The services provided by the RFA in the reception and accommodation centres are further specified in Art. 81 § 1 and include basic sanitary material, food three times a day for adults and five times a day for children under 18, and provision of a bed and night table for personal belongings (all free of charge). Art. 81 § 1 further stipulates other privileges of applicants for international protection such as the right to receive parcels and money, right to receive visits, right to receive and send letters, right to uninterrupted sleep for 8 hours and right to leave the asylum facility pursuant to Art. 82.

It is up to each asylum seeker to decide individually whether she opts for being housed in the accommodation centre or privately. The number of places available in the centres is sufficient and can be increased in case of emergency (see below Q.20 D and 24 D); there seems to be no problem with availability of housing premises in the centres. Nevertheless, a reception system that encourages living in large accommodation centres also has its drawbacks. The financial support made available to those living in private accommodation is sufficient for very economical and simple living but is available only for 3 months (see subquestion A). Furthermore, not all asylum seekers are able by themselves to find private accommodation legally so as to entitle them to apply for financial support. It is notable that asylum seekers living outside asylum facilities face two constraints during the first year of the asylum proceedings: (1) they do

[276] Art. 42 § 2.

not have access to the labour market,[277] and (2) they are not entitled to the state social support benefits,[278] and therefore they have to rely on their own financial resources. Due to the restricted access to the labour market, their earning possibilities are limited, forcing them either to find unlawful employment or to return to the accommodation centre (where they become completely dependent upon the State).[279] What is more, housing an asylum seeker in an accommodation centre is more costly (see Q.40 C) for the State than if she lived outside the centres (in private), even when the State provides financial support therefor.

There are numerous kinds of social benefits for Czech citizens (such as unemployment and housing benefits, child allowances etc.). As of July 1, 2006 the minimum wage was 7.955 CZK (€282). Since January 1, 2006 the minimum social support benefit for citizens in need (subsistence minimum) has been 4,420 CZK (€157) per month. However, a new law was adopted in March 2006 which entered into force on January 1, 2007. This law introduces two benefits – the "subsistence minimum" which amounts to 3,126 CZK (€111) and the "existential minimum" which amounts to 2,020 CZK (€72) per month.[280] Therefore, in comparison with the main social benefits, the amount of pocket money (€17 per month) is more or less symbolic and limits the asylum seekers in their mobility, which is exacerbated by the fact that accommodation centres are often situated in remote areas (this problem has been mitigated by the fact that several remote centres have been closed since 2006). Furthermore, low pocket money is sometimes problematic[281] for asylum seekers with special dietary requirements (Muslims, small children, pregnant women, etc.). While it is true that they can ask for special meals and are subsequently provided with a special diet, it might be difficult to fulfil all the individual preferences[282] and due to low pocket money they cannot purchase their own food. Since the financial contribution to catering, provided in some accommodation centres instead of food, is deemed to be sufficient to purchase quality food (see above), it would be preferable to allow applicants with special dietary demands to opt for this contribution and choose their own food. This fact has been already acknowledged by the RFA and the system of self-catering will be implemented in other asylum facilities. System of self-catering has been already implemented in the following asylum facilities: Zbýšov u Brna, Havířov, Kostelec nad Orlicí and Stráž pod Ralskem.

5. PROCEDURAL ASPECTS

[277] Art. 99 letter (a) of Act No. 435/2004 Coll., on Employment; see Q.28
[278] Art. 3 § 1 of Act No. 117/1995 Coll., on State Social Support.
[279] See the Report on the State of Human Rights in the Czech Republic in 2004, § 9.6.5, pp. 67-68; and the 2003 Report, § 10.2.4, pp. 100-101.
[280] However, the new social benefits are not comparable to the former "subsistence minimum", since they do not cover the housing expenses, which will be covered separately.
[281] But reception conditions are still "sufficient" in the terms of Art. 13 (2) of the Directive.
[282] For example, during Ramadan Muslims may eat only in the evening which does not fit to the hours when catering is provided in the centres and although the RFA provides them with special "take-away food", it would be preferable, if they are allowed to buy their own food. Similarly, pregnant women would prefer to buy their own food including vitamins etc.

Q.13. **Q 13. A. Does the national legislation specifically provide that a request for international protection is presumed to be under the Geneva Convention unless explicitly requested otherwise? (see article 2, b which is a mandatory provision)**

Art. 2 § 3 of the Asylum Act stipulates that "an 'application for international protection' means the application of an alien who can be presumed to be seeking asylum or subsidiary protection in the Czech Republic". The primacy of the Geneva Convention is clearly stipulated in Art. 14a § 1 which provides that the "subsidiary protection shall be granted to the alien who does not satisfy criteria for granting asylum" but "in respect of whom substantial grounds have been shown for believing that the person concerned, if returned to his or her country of origin, or in the case of a stateless person, to his or her country of former habitual residence, would face a real risk of suffering serious harm … and is unable, or, owing to such risk, unwilling to avail himself or herself of the protection of that country". Art. 2 (b) of the Directive was therefore correctly transposed.

Q. 13. B. Explain if the scope of application of reception conditions is extended to other asylum seekers than refugees in the sense of the Geneva Convention, in particular to persons asking for subsidiary protection or to other forms of protection like humanitarian statuses (see article 3, § 4 which is an optional provision)? If not, explain briefly which the differences between these special regimes and the directive are.

Since September 2006, there is only a single procedure; apart from examining the asylum applications under the 1951 Geneva Convention, it allows for granting humanitarian asylum and subsidiary protection within the meaning of the Directive 2004/83/EC. Therefore, the scope of application of reception conditions is extended also to persons seeking subsidiary protection within the meaning of Directive 2004/83/EC.

With regards of the humanitarian asylum, the Ministry of the Interior has discretionary power to grant asylum for humanitarian reasons in a case requiring special consideration (e.g. pregnancy, serious disease) even if a ground for asylum under the Geneva Convention is not established (Art. 14 of the Asylum Act). This provision does not seem to be of diminished importance even though the subsidiary protection status[283] (introduced by Act No. 165/2006 Coll. (see above Q.2) was supposed to mitigate the problems with the so-called "Obstacles to Leave".

Q. 13. C. Are there specific provisions in national law for reception conditions in case of diplomatic or territorial asylum requests

[283] There were only so-called "Obstacles to Leave" (Art. 91 of the Asylum Act applicable before September, 1, 2006) which stipulated only basic rights for their beneficiaries. Obstacles to Leave were abolished by Act No. 165/2006 Coll. and replaced with the subsidiary protection status. However, "Obstacles to Leave" remain in the Aliens Act (Art. 179).

submitted through a diplomatic or consular representation (see article 3, §2 which is an optional provision)?

Since the Czech Republic does not provide either diplomatic or territorial asylum, this question is of no relevance.

Q.14. **Are reception conditions available as from the <u>moment</u> one asylum application is introduced? How is article 13, §1 which is mandatory legally understood?** Do asylum seekers have to satisfy any other condition in order to get reception conditions?

Yes, reception conditions are available from the moment an alien express his intention to apply for international protection. She can make the Declaration either to the Police (1) at the border crossing, (2) in the reception centre, (3) at the Regional Headquarters of the Aliens' and Border Police Service on the condition that she availed herself voluntarily, or (4) in the aliens detention centre; or to the Ministry of the Interior, if she is hospitalized in a medical facility, held in custody or imprisoned. There is no time limit for making the Declaration, except for applicants in detention centres, who must submit it within the first 7 days, i.e. within 7 days from the moment when she was informed by the Police of her opportunity to apply for international protection and of the consequences of the failure to meet this time limit (Art. 3b § 1).

After submitting the Declaration, an alien is obliged to appear at the reception centre within the validity of an entry visa issued by the Police, except when prevented by detention and airport cases, as well as objective obstacles such as hospitalisation or the execution of a prison sentence. The entry visa can be issued for a maximum period of 30 days (Art. 3d § 3). Before proceedings on granting international protection are initiated, the alien is entitled to reception conditions, i.e. for the purpose of provision of health care, accommodation, food and other services she is deemed to have the status of an asylum applicant: (1) for the period of time for which she is given leave to remain in the Czech Republic on the basis of an entry visa for a stay of up to 90 days for the purpose of filing an application for international protection (hereinafter the "Entry Visa"); (2) for a period of 5 days from the date of the Declaration, if she is not issued an Entry Visa; (3) from the date of the Declaration made during hospitalisation, custody or imprisonment until the date on which she is obligated to appear at a reception centre (Art. 3c § 1).

Q.15. **Explain when reception conditions <u>end</u>, for instance after refusal of the asylum request** (include in your answer the link with the right of appeal against a decision of refusal of the status, in particular the question of its suspensive effect)

Reception conditions end when the alien loses his status as an asylum applicant. An alien enjoys the status as an asylum applicant during the administrative procedure on a request for international protection and during judicial review of the decision of the Ministry of

the Interior, provided the action has a suspensive effect (see Q.11 on suspensive effect). However, on specific situation of asylum seekers who lodged a cassational complaint, see Q.11 A and Q.12 A.

Therefore, in most cases reception conditions end upon the refusal of the asylum request in the last instance. However, certain elements thereof are linked to a particular stage of the proceeding. For a general description, and as to the housing, see Q.11 A. During a period between rendering a negative decision and filing an action to the Regional Court, the applicant is entitled to material reception conditions (with the exception of pocket-money and financial contribution to self-catering). If she files the action within the time limit, she is entitled to the same material reception conditions (i.e. including pocket-money and financial contribution to self-catering) as apply during proceedings before the Ministry of Interior. However, if she fails to file the action by this deadline she is deprived of all material reception conditions. Similarly, the same rules apply when the negative decision of the final instance (i.e. of the Supreme Administrative Decision) is rendered. The rejected applicant who is staying on the territory with the toleration visa is issued the "exit permit visa" (*výjezdní příkaz*) pursuant to Art. 50 of the Aliens Act and is deprived of all material reception conditions until his departure from the territory of the Czech Republic.

Q.16 Are there special rules or practices regarding reception conditions in case of successive applications for asylum introduced by the same person?

Yes, there are special rules for successive applications. According to Art.10 § 3 of the Asylum Act[284] "an alien who has already applied in the Czech Republic for international protection is authorised to file an application for international protection no sooner than 2 years after the end of the previous proceedings".[285] Consequently, asylum seekers who lodged successive application are generally not entitled to the material reception conditions from the Ministry of Interior.

The two-year period shall not apply to Dublin cases, where proceedings were suspended and the Czech Republic is competent to assess the alien's new application for international protection (Art. 10 § 3 of the Asylum Act). Relevant part of Art. 10 § 4 of the Asylum Act reads as follows: "*The two-year term shall not apply if the procedure on granting of international protection commenced by filing an application for international protection has been terminated in accordance with Article 25 point a) or h) and the Czech Republic is competent to examine her new application for international protection. Furthermore the two-year term shall not apply to an application for international protection filed by an alien in whose case it has been decided in the procedure on administrative expulsion conducted in accordance with a special legal regulation that it is impossible for him/her to leave the Territory.*" (footnote omitted)

[284] This provision will most likely be subject to change during the ongoing process of transposition of the Procedures Directive.
[285] If an alien applies to a court for the review of an administrative decision, the date on which the court decision has become legally effective is deemed to be the beginning of the two-year period.

Furthermore, in all cases, the Ministry of the Interior may allow an exception to 2-year time limit in individual cases (Art. 10 § 4 of the Asylum Act). If an asylum seeker lodges a request for exception to 2-year time limit, she is accommodated in the reception centre in Vyšní Lhoty, where she waits for the decision of the Ministry of Interior. During this period she is entitled to the same material reception conditions as a regular asylum seeker.

Q.17. Information of asylum seekers about their rights and obligations in terms of reception conditions, in particular about established benefits (see article 5 which is too large extend a mandatory provision; do not confuse this question with the information to be provided to asylum seekers about the asylum procedure):

Q. 17. A. Are asylum seekers informed, and if yes about what precisely?

Yes, when they lodge their application asylum seekers are given a leaflet with detailed information on reception conditions. The leaflet is prepared by the RFA and includes: information about DAMP, Aliens' and Border Police and free legal counselling provided by NGOs; contact on social service workers and manager of the asylum facility; comprehensive list of organisations providing legal, social and psychological counselling, health care with all necessary contacts, including the above-mentioned NGOs, UNHCR and IOM; emergency phone numbers; access to laundry services and telephone; information about pocket money, catering facilities, sanitary items etc. In all the reception and accommodation centres the asylum seekers have also access to the accommodation rules, basic information about asylum facility and information on various medical tests (HIV/AIDS, tuberculosis, syphilis etc.), basic hygienic information and information about domestic violence. Other information concerning the management of the centre is placed on notice boards of the asylum centre (in the form of pictures/pictograms).[286]

Furthermore, UNHCR had designed a special information leaflet for asylum seekers at the airport, which contains basic information about the course of the airport asylum procedure, rights and obligations of asylum seekers and list of NGOs providing assistance to asylum seekers in the Czech Republic. The UNHCR information leaflet has been translated to the most frequent languages, including English, Russian, Arabic and French. As to the special leaflet prepared by UNHCR for asylum seekers in the detention centres, see Q.33 I.

[286] E.g. information on how to proceed in case of transfer, how to get hygienic parcels, how to borrow various materials, how to arrange changing of bed-sheets or how to get information on food provision. Several centres have this information available only in printed versions.

Q. 17. B. Is the information provided in writing or, when appropriate, orally?

The information is provided both in writing and orally. As mentioned above, asylum seekers are given a leaflet with detailed information when they lodge their application and they are again orally instructed (by means of an interpreter) on asylum proceedings, including their rights and duties before and during the interview. In addition, every reception and accommodation centre offers 24-hour social services providing relevant information. During the course of asylum procedure, the asylum seekers have access to information concerning their rights and obligations through the Ministry of the Interior and/or NGOs.

Q.17. C. Is that information in general provided in a language understood by asylum seekers? Specify the list of languages in which it is available

Yes, information is provided in a language understood by the asylum seeker. Information is provided in nearly all languages, except for rare African tribal languages. DAMP always try to find interpreter from particular region, so that the asylum seeker can be provided with oral instructions. Pursuant to reply from the RFA, the information *leaflets* are available in 9 languages: Russian, English, Chinese, Turkish, French, Vietnamese, Romanian, Arabic and Mongolian.

More generally, an asylum seeker is entitled to use her mother tongue, or with her consent a language in which she is able to communicate, during the entire course of a proceeding on international protection. The Ministry of the Interior thus provides asylum seekers with an interpreter for the entire course of a proceeding (Art. 22 § 1). Furthermore, if the asylum seeker is not satisfied with the assigned interpreter, she is entitled to engage an interpreter of her own choice, albeit at her expenses (Art. 22 § 2).

Q. 17. D. Is the deadline of maximum 15 days respected?

Yes, the duty to provide information within the deadline of 15 days is explicitly laid down in Art. 10 § 5 of the Asylum Act and is respected. Indeed, as mentioned above, the information leaflet is passed to the asylum seeker straight away when she submits the application. According to the NGOs, there have been problems reported as to the asylum seekers at the airport who speak rare language, and particularly due to the special procedure and short time limits for issuing the RSD decisions.

Q.18. Information of asylum seekers about the existence of organisations or groups promoting their interest and defending their rights (see article 5 which is to a large extend a mandatory provision):

Q. 18. A. Is there a list of organisations dressed by the authorities and if yes is it comprehensive? Is this in particular the case about the possibilities to get legal assistance and health care?

There are two leaflets given to the asylum seekers, one prepared by the RFA which includes information on reception conditions (see Q.17 A) and one prepared by the DAMP with information about asylum procedure. The information leaflet of the RFA includes a comprehensive list of organisations providing legal, social and psychological counselling with all necessary contacts. However, it is true that the leaflet of the RFA could in addition of the mere list of organisations provide greater detail of the range of services provided by each NGO. The leaflets provided by UNHCR to asylum seekers placed in detention centres serve as a good example of a short description of services provided by NGOs. Asylum seekers are also instructed about the provision of health care and can obtain a list of doctors providing health care on a contract basis with the Ministry of the Interior. From September 1, 2006 health care is supposed to be provided through the public health insurance system (i.e. that the costs associated with the health care will be covered by the State and the costs incurred by the health care facility will be paid from the public health insurance), and therefore health care will be provided under the same conditions as to Czech citizens. There is always a nurse on call in the centres and general practitioners visit the centres on a regular basis (see below Q.27 C). The list of the pharmacies and organisations providing health care is also available on the website of the RFA.

The RFA has finished its work on translation of information about changes in the system of health insurance concerning asylum-seekers and their access to health care that became effective as of September 1, 2006. This information is provided in the following languages: Czech, English, Vietnamese, Chinese, French, Arabic, Mongolian and Russian.

Q. 18. B. Is the information provided to the asylum seekers, and if yes, in writing or, when appropriate, orally?

Yes, the information is provided to the asylum seekers in writing and also orally if necessary. As mentioned above, every reception and accommodation centre also offers 24-hour social services providing relevant information.

Q. 18. C. Is that information in general provided in a language understood by asylum seekers? Specify if possible the list of languages in which it is available.

Yes, this obligation is met. See Q.17 C. Most information is provided at least in Czech, English, Russian, French, Chinese and Arabic. If the asylum seeker does not speak one of the relevant languages, the RFA is obliged to inform her about the content of the information "in an alternative way".

Q. 18. D. How many organisations are active in that field in your Member State?

It depends on the classification. There are 4 major organizations (OPU, PPU, SOZE, Caritas) that specialise in providing comprehensive legal, social and psychological services for asylum seekers. Furthermore, there are many others that provide services only in certain field(s) or on an *ad hoc* basis including *inter alia* material assistance, leisure time activities, crisis intervention for women etc. Overall, there are approximately 20 NGOs active in this field.[287]

Q.19. Documentation of asylum seekers (see article 6):

Q.19. A. What kind of document is delivered to the asylum seeker? Explain the legal value of this document (just a certification of the status as asylum seeker or also prove of identity?) (see §1 of article 6 which is a mandatory provision)

The asylum seeker is issued a "Certificate of an Applicant for International Protection" (hereinafter the "Certificate") by the Ministry of the Interior (Art. 57 § 1), and she is simultaneously provided with a "visa for the purpose of the procedure on international protection" (Art. 72 § 1). The Certificate serves also as a document proving the identity of its holder. The holder of a Certificate is not obligated to prove the facts entered therein in any other manner, unless a special law stipulates otherwise (Art. 57 § 3).

Q.19. B. Are there situations or specific cases in which another equivalent document or even no document is issued? (in particular is there an exception for "procedures to decide on the right of the applicant legally to enter the territory" as made possible by §2 of article 6)?

The Certificate is not issued to an asylum seeker who is in custody, imprisoned, or in the detention centre. The Ministry of the Interior is obliged to issue the Certificate no later than 3 days after the asylum applicant arrives (or is transferred) to an asylum facility (Art. 57 § 2). There is no exception for "procedures to decide on the right of the applicant to enter legally on the territory" in the Asylum Act. These procedures are briefly described in Q.32 D.

Q.19. C. For how long is this document in principle valid and is it necessary to renew it after a certain period?

[287] A comprehensive list of all actors involved in the field is available (even in English) at http://www.migrationonline.cz/contacts_i.shtml.

The Certificate is in principle valid for as long as is the visa issued for the purpose of the procedure on international protection (Art. 57 § 5). The validity of the Certificate may be repeatedly extended depending on whether the visa is renewed. A visa issued for the purpose of the procedure on international protection is in principle issued for a period of up to 90 days and must be renewed regularly (Art. 72 § 2). Asylum seekers staying outside the accommodation centres are obliged to renew their visa at the local Police Department according to their registered address (Art. 72 § 3). If the asylum seeker has not registered her address, she must renew her visa at the local Police Department according to the location of the asylum facility where she was last registered (Art. 72 § 4).

An asylum seeker is obligated to file an application for extension before the current visa expires. The visa for the purpose of the procedure on international protection expires when the decision on international protection becomes final (Art. 72 § 2). However, a different regime applies for applicants who lodged a cassational complaint. These applicants hand the Certificate in to the Ministry of the Interior and they are subsequently issued a toleration visa, either to their valid travel document (i.e. passport) or if they do not possess such document they are provided with a special document by the Police. Their status is then governed by the Aliens Act and not the Asylum Act.

Q.19. D. What is the deadline for the delivery of that document? Is the mandatory deadline of 3 days set by article 6, §1 respected[288]?

The Ministry of the Interior is obliged to issue the Certificate no later than 3 days after the asylum seeker lodges an application for international protection (Art. 57 § 1). This mandatory deadline is respected.

Q.19. E. Is it possible for an asylum seeker to get a travel document for serious humanitarian reasons (see §5 of article 6 which is an optional provision)?

No, the Czech Republic has not implemented this measure. This possibility is not envisaged in the Asylum Act; therefore, an asylum seeker is not allowed to travel to another state, even if serious humanitarian reasons arise. Any attempt to cross the borders of the Czech Republic results in the discontinuance of the procedure, the deprivation of entitlement to material reception conditions, detention and subsequent expulsion of the asylum seeker.

Q.19. F. Is there a central system of registration of asylum seekers and is it or not separate from the registration of aliens? If yes,

describe it briefly (content) and indicate in particular if it is an electronic database.

The Ministry of the Interior runs the following registers: (1) of aliens who have made the Declaration; (2) of the residence of applicants for international protection; (3) of applicants for international protection who have filed a cassational complaint; (4) of aliens born in the Czech Republic to applicants for international protection; (5) of photographs made during admission procedures in the reception centres; (6) of applicants who have applied for the financial contribution, (7) of aliens whose proceedings for the grant of international protection have been dismissed due to the inadmissibility of their application (Art. 71 § 1). Furthermore, the Police runs its own database that includes registers under subheadings (2) and (3) and also a database of visas issued and fingerprints taken. The databases exist both in print and electronic versions.

Q.20. **Residence of asylum seekers :**

Q.20. A. Is in principle an asylum seeker free to move on the entire territory of your Member State or only to a limited part of it and in case, which part? (see article 7, §1 which is a mandatory provision)

Yes, after the admission procedure in the closed reception centre, asylum seekers are in principle free to move about the territory of the Czech Republic. However, the visa issued under the Asylum Act may restrict movement to a part of the territory of the Czech Republic for the following reasons: (1) protection of state security, (2) the maintenance of public order, (3) the protection of public health, or (4) compliance with international treaties (Art. 85b § 1). When issuing the visa which restricts movement to certain part of the territory, it is necessary to ensure that the consequences of such a restrictive measure are proportional to the reasons for such measure (Art. 85b § 2). The Police are obliged to take into account, in particular, the effect of the restriction on the applicant's private and family life (Art. 85b § 2). Under no circumstances may such territorial restrictions exceed 3 months following the commencement of proceedings for international protection (Art. 85b § 2). However, this provision has not been applied *at all* (this is to clarify the position in 2006 Synthesis Report [p. 46] that suggests that "this possibility is not *very often used*") in practice;[289] it is therefore difficult to predict to which part of the territory, or within how large an area, an asylum seeker is to be restricted. From the Czech wording of the Asylum Act, it is possible to infer that the restriction should be to a *part* of the territory rather than to a particular place or facility (*a contrario* Art. 52 § 1 letter a) clause 1. of the Aliens Act which refers both to a specific place and a part of the territory).

Freedom of movement is also restricted in the reception centre during admission procedures (see also Q.20 E). In addition, special rules apply for asylum seekers in the transit zone of the international airport.[290] A new reception centre was established in the

[289] In fact, the Ministry of the Interior is seriously thinking of repealing this provision for its redundancy.
[290] To date, the Prague International Airport is the only such reception centre. But see Q.32 C.

transit zone of the Prague International Airport as of January 16, 2006. Asylum seekers may not leave the reception centre in the transit zone even after admission procedures are concluded. However, the Ministry of the Interior is obliged to transfer the asylum seeker to a different reception or accommodation centre designated by it, if (1) it does not issue a decision within 5 days of the date of commencement of the proceedings for the grant of asylum, or (2) the court does not issue a decision within 45 days of the date of filing of an action against the decision of the Ministry of the Interior (Art. 73 § 2). The maximum duration of stay is thus generally 57 days (5 days for rendering the first instance decision + 7 days for filling an action to the regional court + 45 days during the proceedings before the regional court). After this period at the latest, asylum seekers are brought to the accommodation centre. Until 2004, there were some problems reported, e.g. although the Ministry of the Interior issued a decision within the time-limit of five days (Art. 73 § 2), the applicant waited in the centre for another two weeks until the decision was delivered.[291] This problem with delays in delivering the decisions of the DAMP has been challenged before the Supreme Administrative Court which has not conclusively decided this issue so far. See also Q.32 C.

The 2007 Amendment contains highly controversial provision (Art. 46a) that under certain circumstances (Art. 46a § 1) allows the Ministry of the Interior to confine the applicant for international protection in the reception centre until her deportation (i.e. even after initial medical screening). This decision on confinement is appealable to the administrative courts (Art. 46a § 3) and is subject to regular review of the necessity of confinement (Art. 46a § 4).

Q.20. B. About the <u>place of residence (see §2 of article 7)</u>: explain to which extend the person is free to choose her residence and if this depends of the stage of the asylum procedure (for instance before and after admissibility); if there are constraints limiting the choice, explain which ones and their reasons (for instance processing of application, attribution of reception conditions,…).

After the first phase of the reception of asylum seekers (see Q.11 A), an asylum applicant is free to choose to stay in the accommodation centre or in private accommodation. However, if she opts for the accommodation centre, she is not free to choose a particular accommodation centre and is obliged to stay in the centre designated by the Ministry of the Interior (Art. 77 § 1). The only exception is for the purposes of maintaining family unity (see Q.23). There is also a possibility to return back to the accommodation centre from the private housing.

The asylum applicant may seek a change of residence by applying in writing to the Police Department that has jurisdiction *ratione loci* in the intended new place of residence. The

[291] Since under the Asylum Act the Ministry of the Interior is obliged to *issue*, and not *deliver*, the decision within 5 days. The delivery of a decision is often hindered by administrative and technical factors, which the administrative body cannot influence (e.g. lack of interpreters for a given language, etc.). See the Report on the State of Human Rights in the Czech Republic in 2004, § 9.6.2, p. 67.

application must be accompanied by a written consent of the owner of the housing facility. Within 15 days the Police must then forward the application (accompanied by its opinion) to the Ministry of the Interior (Art. 77 § 2). The Ministry of the Interior will reject the application (1) if there is a concern that the applicant will not be easily reachable for the purpose of the processing her application or (2) if the submitted documents contain any untrue statements. The opinion of social workers is also taken into account.

As to the choice of place of residence, generally there is no modification depending on the stage of the international protection procedure. Until 2005, the RFA internally divided accommodation centres into the first instance and second instance centres. The asylum seekers were transferred into the second instance centre after a negative decision in the first instance. This transfer was justified by processing of the application for asylum. In the first instance procedure a frequent contact between the RFA and the applicant is necessary and the RFA maintained permanent offices only in certain centres. The RFA can also transfer asylum seekers from its own motion, e.g. in order to prevent disputes among the seekers or in order to protect vulnerable groups such as unaccompanied women or minors.[292]

There are two major modalities as to the choice of place of residence: (1) visas which restrict movement to certain part of the territory and (2) third instance procedure. As to the visas restricted to certain part of the territory, these might be issued only for 3 months following the commencement of proceedings for international protection (see Q.20 A and Q.21 E). As to the third instance procedure, if the asylum seeker submits to the Supreme Administrative Court a cassational complaint against the decision of the regional court, she is issued a toleration visa and her status is governed by the Aliens Act (Art. 78b § 7 of the Asylum Act). Therefore, she is no longer entitled to housing in the accommodation centres and is obliged to find private accommodation herself. However, if she proves that her financial situation does not allow her to cover the expenses and that she is not able to secure the accommodation, her housing will be secured by the Ministry of the Interior (Art. 78c). In practice, the applicant is usually provided with cheap accommodation in a hostel designated for that purpose. Those hostels are run by NGOs or private owners in cooperation with the RFA (for example by Caritas in Litoměřice and Brozany nad Ohří). Most recently, the NGOs reported problems with the access to the funding from the RFA for running these hostels.

Q.20. C. About the <u>place of reception (meaning where the asylum seeker has to stay to benefit from reception conditions) (see § 4 of article 7)</u>: explain which are the general rules about the determination of this place (to which extend are the decisions determining the place taken individually and do they take into account the personal situation of the asylum seeker?) and to which extend the person is free to choose it and if it depends of the stage of the asylum procedure (for instance before and after

[292] For example, when their husband or parent leaves the territory of the Czech Republic.

admissibility); if there are constraints limiting the choice, explain which ones and their reasons (for instance attribution of reception conditions, processing of the application,…).

During the admission procedure, the asylum seekers are placed into the reception centre either in Vyšní Lhoty or in the transit zone of the Prague International Airport[293] (depending on a place of submitting asylum claim). The applicant cannot influence the decision of the Ministry of the Interior concerning his place of stay in this phase.

After the completion of admission procedure, she is transferred from the reception centre to the accommodation centre or can decide to stay in private. The applicant can choose the accommodation centre only to a very limited extent since it depends on several factors such as capacity of the centres; furthermore, until 2005 some camps were only for asylum seekers in the first or second instance etc. The decisions determining the place are taken individually and the applicants can ask for their transfer but the decision is taken in rather informal procedure and the outcome is solely within the discretion of the Ministry of the Interior.

The applicants are entitled to the material reception conditions only if they opted for housing in an accommodation centre. Applicants staying in private accommodation are only entitled to the financial contribution, and it must be remembered that they can are entitled to this contribution only during the first three months (see Q.11 A). If the asylum seekers opted for housing in private, there is a special procedure which must be followed in order to get approval from the Ministry of the Interior (see subquestion B). Put differently, the Czech Asylum Act restricts access to several reception conditions in cases where asylum seekers refuse to stay in collective reception centres because they have the possibility to accommodate themselves (the Czech Republic should be thus added to 5 states mentioned in the 2006 Synthesis Report on p. 8 and p. 48, Q.20C). As stressed in the 2006 Synthesis Report, this practice undermines the autonomy of the individuals concerned.

For the situation of applicants who lodged a cassational complaint, see also subquestion B.

Q.20. D. If all asylum seekers are not placed in accommodation centres because of capacity limits, explain <u>how the persons are distributed between accommodation centres and other accommodation facilities</u> (which authority takes the decisions, on the basis of which elements, can that decision be appealed by the asylum seeker,…)

This question is of no relevance for the Czech Republic. As a general rule, an asylum applicant is free to choose to stay either in the accommodation centre or in a private

[293] For a specific situation in case of *temporary exhaustion* of normal housing capacities in the Prague International Airport, see Q.32 C.

accommodation (see also Q.12 B). If an accommodation centre runs out of space, its capacity can be further expanded (see Q.24 D). Emergency situations are also foreseen in the quality standards approved by the Minister of the Interior in August 2005 and implemented by the RFA (see Q.39 B). Furthermore, the RFA provide no accommodation facilities other than the accommodation centres (and reception centres).

In sum, under any circumstances applicants are ensured a place to live. Several centres were taken out of service, but they can be quickly renewed, thus the number of the available spots can be increased by almost three times within few days. Pursuant to the Asylum Act, the RFA is responsible for providing accommodation at no charge to every applicant for international protection, and it is neither possible to assign them to any other type of facility nor to force them to find private housing (except for the third instance procedure, i.e. before the Supreme Administrative Court, see Q.20 B).

Q.20. E. How can an asylum seeker ask to <u>leave temporarily</u> the place of residence or of reception or an assigned area? How is the individual AND impartial character of the decision ensured? (see §5 of article 7 which is a mandatory provision)

Applicants may leave their accommodation centre as they please under the conditions mentioned below. An applicant residing in an accommodation centre (i.e. whose address is registered with the accommodation centre) can leave this centre for a period not exceeding 10 days in a calendar month (Art. 82 § 1). The Ministry of the Interior may also permit an applicant to stay outside the centre beyond the limit of 10 days per month, provided that this absence does not hinder the processing of his application (Art. 82 § 3).

The applicant is obligated to notify the Ministry of the Interior in writing that she is leaving the centre for any period exceeding 24 hours. The applicant must state the address of her temporary residence and the period of stay outside the accommodation centre. In case of an absence from the centre for a period exceeding 3 days, she must notify the Ministry at least 24 hours before her departure (Art. 82 § 2).

If the visa is restricted to a part of the territory (Art. 85b § 1), a temporary permission to leave the assigned part of the territory of the Czech Republic is not available. Furthermore, there is no right of administrative appeal in such cases. The applicant can only file a complaint under Art. 175 of the Administrative Code to local department of the Aliens' and Border Police, and in case of negative decision also to the Directorate of the Aliens' and Border Police. As to the judicial review, the outcome is unclear since there has not been any challenge of this provision before the courts. However, there is no reason in principle why a negative decision on a temporary permission to leave the assigned part of the territory of the Czech Republic should not fall under judicial review, most likely under Art. 4 § 1 letter c) of the Code of Administrative Justice (for short description of the administrative judicial review, see Q.22 A).

However, the accumulation of two facts – a limited period of these visas (they may not exceed 3 months following the commencement of proceedings for international protection) and the fact that almost no administrative court would be able to decide on a negative decision on a temporary permission within such a short period – renders the judicial review ineffective. On the other hand, the situation is to some extent mitigated by the fact that the visas restricted to a particular part of the territory so far have not been issued.

Q.21. **Q.21. A. Do rules on <u>reduction or withdrawal of reception conditions</u> exist in internal legislation and if yes in which cases (mention in particular if there are cases not foreseen by article 16, § 1 and 2 which are optional provisions)? Distinguish in your answer between cases of reduction and withdrawal and explain which conditions can be reduced and if access to emergency health care is always ensured as requested by article 16, §4, last sentence.**

The Czech Republic has not implemented this measure; therefore, there are only financial sanctions for the breach of the applicant's obligations (see Q.25 D). Access to health care is ensured on the same level (which means on the same basis as for Czech citizens) during all the stages of the procedure (i.e. including the third instance procedure before the Supreme Administrative Court).

Q.21. B. Has article 16, §2 dealing with refusal of reception conditions for <u>unreasonably late applications</u> for asylum been transposed by your Member State (or was this case already applicable before transposition)? Are there cases in practice?

No, the Czech Republic has not implemented this measure, and there was no such practice prior to the transposition of Directive 2003/9/EC. In practice, these cases might be treated as manifestly unfounded submissions (Art. 16 § 2), a fact which has no direct consequences for access to reception conditions. The only exception is in the case of a detained alien, who must make the Declaration within 7 days of the moment when she was informed by the Police of her opportunity to apply for international protection and of the consequences of her failure to meet this time limit (Art. 3b § 1). Otherwise, her right to apply expires. See also Q.14.

Q.21. C. How is it ensured that decisions of reduction or withdrawal are taken individually, objectively AND in particular impartially (for instance through and independent arbitrator) (see article 16, §4 which is a mandatory provision)?

Since the Czech Republic has not implemented Art. 16 (1) and (2) of the Directive, this question is of no relevance. Under all circumstance, judicial review would be available (see Q.22).

Q.21. D. Is statement 14/03 adopted by the Council at the same moment as the directive respected (see the document attached to our sending)?

Due to the answer to the Q.21 A, it is clear that the statement 14/03 is respected in the Czech Republic.

Q.21. E. Are there already administrative appeal decisions or judgements on cases of reduction, withdrawal or refusal which have been taken, and if yes, what has been the outcome?

Since the Czech Republic has not implemented Art. 16(1) and 16(2) of the Directive, this question is of no relevance.

Q.22. **Q.22. A.** **<u>Appeal</u> against a negative decision relating to the granting of benefits or based on article 7 (see article 21 which is a mandatory provision): indicate against which decision an appeal can be introduced, describe the system of appeal in general and include in particular in your answer the information given to asylum seekers about possibilities of appealing, deadline for appealing, if the appeal has or not a suspensive effect, if there are different steps (for instance first an administrative appeal and in particular if the guarantee of an appeal before a judicial body in the last instance is respected)?**

The applicant for international protection can file a complaint to the RFA and then to the Ministry of the Interior (Art. 175 of Administrative Code[294]), and then (or directly) appeal to the Regional Court, and finally lodge a cassational complaint to the Supreme Administrative Court. Therefore, there is no formal administrative appeal. The only way to challenging all such decisions is by way of judicial review.

On the other hand, there is no restriction on access to administrative judicial review; therefore, the guarantee of an appeal to a judicial body in the last instance is respected. As to the judicial review in general, courts of administrative justice decide *inter alia* not only on complaints against decisions of and administrative authority (Art. 4 § 1 letter a) of the Code of Administrative Justice[295]), but also on protection against the inaction of an administrative authority (Art. 4 § 1 letter b) of the CAJ) and protection against an unlawful interference of an administrative authority (Art. 4 § 1 letter c) of the CAJ),

[294] However, there are several limitations on applicability of Administrative Code to the asylum procedure. See Arts. 9 and 92b § 1 of the Asylum Act.
[295] Hereinafter only the "CAJ".

Therefore, there is no reason in principle why a negative decision relating to the granting of benefits or based on Art. 7 of the Directive should not fall under one of the abovementioned grounds (i.e. those stipulated in the CAJ) of jurisdiction of the administrative courts. The asylum seekers thus can appeal to the Regional Court pursuant to Art. 65 and the following of the CAJ and ultimately lodge a cassational complaint to the Supreme Administrative Court pursuant to Art. 103 of the CAJ. This view is also accepted by the Ministry of the Interior. Nevertheless, there has not been any case where these provisions have been challenged before the Czech courts.

However, as mentioned above (see Q.20 E), temporary permission to leave the assigned part of the territory of the Czech Republic is not available neither under Asylum Act nor under Aliens Act. It is true that this situation is to some extent mitigated by the fact that the visas restricted to a particular part of the territory so far have not been issued and by a limited period of these visas (see also Q.20 A), but for practical consequences see Q.20 E (on appeal to a judicial body in the last instance in these cases and its effectiveness, see ibid).

Q.22. B. Explain which are the possibilities for asylum seekers to benefit from legal assistance when they introduce such an appeal (see article 21, §2 which is a mandatory provision but leaves space to Member States)?

NGOs regularly provide legal assistance in these cases for free since the Ministry of the Interior reimburses the costs of this assistance incurred by NGOs even though strictly speaking Art. 21 § 1 does not stipulate obligation of the Ministry to reimburse these costs; it solely empowers the Ministry to do so. Furthermore, an applicant's right to obtain legal assistance provided on the basis of a different legal regulation (i.e. on a paid basis) is not affected thereby (Art. 21 § 2).

Q.22. C. Are there already administrative appeal decisions or judgements which have been taken and if yes, which are the main important ones?

There has so far been no legal challenges of negative decisions relating to the grant of benefits under Directive 2003/9/EC. The only case worthy of note is the so-called "electric socket" case. As to the facts, the RFA decided to gradually remove electric sockets from some buildings (because of the alleged abuse of these facilities), including from rooms used for housing asylum seekers. This measure attracted the attention of the media, of NGOs as well as of the Public Defender of Rights (hereinafter Ombudsman). The situation was also addressed by the Government Council for Human Rights, which adopted a resolution in the matter.[296] The problem was finally solved to the satisfaction of all involved actors by the

[296] Resolution of the Government Council for Human Rights of 25 January 2005. See also the Report on the State of Human Rights in the Czech Republic in 2004, § 9.6.6, p. 70.

implementation of the quality standards by the RFA and thus the electric sockets were installed in all rooms in accommodation centres which are used for housing, except for the accommodation centre in Kostelec n. Orlici, which needs reconstruction.[297] The solution was also supported by the notion of "dignified standards of living" mentioned in the Directive, which was heavily relied on during the negotiations with the Ministry of the Interior.

Q.22. D. Is a mechanism of complain for asylum seekers about quality of receptions conditions in general (even if they are not personally concerned) organised? If yes, before which authority? Is it linked to the system of guidance, control and monitoring of reception conditions (see below question n° 39)?

The applicant for international protection can file a complaint under Art. 175 of the Administrative Code (Act. No. 400/2004 Coll.). Pursuant to Art. 175 § 5 of the Administrative Code, these complaints must be handled within 60 days. This complaint may be lodged both orally or/and in writing (Art. 175 § 3 of the Administrative Code). Furthermore, special boxes for anonymous complaints are also available at each asylum facility. The complaint might be addressed to the following actors: (1) to manager of a particular facility; or (2) to the Director of the RFA.

Asylum seeker might address problem also to the Deputy Minister of the Interior, to the Minister of the Interior, NGOs and also to the Ombudsman (see Q.39 A). It is thus closely linked to the system of guidance, control and monitoring of reception conditions.

6. RIGHTS AND OBLIGATIONS OF ASYLUM SEEKERS

Q.23. Family unity of asylum seekers: define how a family is defined in relation with article 2, (d) which is a mandatory provision and explain how housing is provided to a family (see articles 8 which is a mandatory provision but leaves space to member States and 14, §2, (a) which is a mandatory provision).

The definition of family for the purposes of shared housing includes the spouse of the applicant, direct relatives (i.e. children, parents, grandchildren, grandparents etc.) or a "close persons" (Art. 44). Persons who declare that they have personal relations with each other are deemed to be "close persons" (Art. 44). Therefore, there is no distinction in treatment between married and unmarried couples. Furthermore, there is no searching inquiry as to the requirement of a "stability of the relationship". It is notable that the Asylum Act includes unmarried partners within the definition of "family members" for purpose of housing even though the Czech law relating to aliens (Aliens Act) does not treat unmarried couples in a way comparable to married couples (see in particular Art. 42a § 1 of the Aliens Act; the only exception is treatment of unmarried couples of the EU

[297] See the Report on the State of Human Rights in the Czech Republic in 2005, § 9.4.3, p. 81.

citizens, see Art. 15a § 4 of the Aliens Act). The Asylum Act thus clearly provides more favourable standard than the Directive itself.

The above-mentioned group of applicants for international protection is entitled to share accommodation in the asylum facilities. Shared accommodation is provided only with the applicant's consent and on the condition that the family persons are also seeking international protection (Art. 44). Ministry of Interior may under exceptional circumstances permit person not seeking international protection to be accommodated in asylum facility with her minor or legitimate representative, who is asylum seeker (Art. 79 § 5). Arts. 8 and 14(2) of the Directive are thus respected.

Furthermore, due to the adoption of the Same-Sex Marriage Law in 2006 (Act No. 115/2006 Coll.), the 2007 Amendment included within the definition of "family members" for the purpose of family reunification same-sex couples (proposed wording of Art. 13 § 1(a)). Therefore, it can be reasonably inferred that the notion of "close persons" in Art. 44 will include same-sex couples as well.

Q.24. **Q.24. A. How is <u>housing</u> of asylum seekers organised: describe the system in general and indicate in particular what is the most frequently system used (see article 14, §1 which is a mandatory provision but leaves space for Member States; distinguish between accommodation centres, private houses and apartments, hotels places or other premises).**

Housing takes the form of reception and accommodation centres. There are no private houses, apartments or other premises provided by the Ministry of the Interior. There are twelve asylum facilities in the Czech Republic. The RFA is responsible for the management of all asylum facilities in the country. Seven centres are owned by the state and operated by the RFA, and five are run by other legal entities, mostly municipalities, on a contract basis with the RFA and for a fee.

There are 2 reception centres and 10 accommodation centres (for further details see also Q.36). The average length of stay of applicants in the accommodation centres is approximately 6 months. The reception centre in Vyšní Lhoty is located in the north-western part of the Czech Republic, close to the border with Slovakia and Poland, as the majority of migrants enter the territory of the Czech Republic from these two countries. The second reception centre is located at the international airport in Prague. Ten accommodation centres are evenly spread across the territory of the Czech Republic; they are located in both rural and urban locations.

Act No. 57/2005 Coll. further explicitly transposed Art. 14 (1) (b) of the Directive by adding a provision to the Asylum Act that stipulates that "the asylum facilities are used for collective housing of applicants for international protection ... under conditions ensuring full respect for [their] human dignity".[298]

[298] Part I, Art. I, s. 26 of the Act No. 57/2005 Coll.

Q.24. B. What is the total number of available places for asylum seekers? Distinguish in your answer between accommodation centres, private houses and apartments, hotels or other premises.

There are 467 available places in the reception centres and 1,808 places in the accommodation centres. There are no private houses, apartments or other premises provided by the Ministry of the Interior.

Q.24. C. Is this number of places for asylum seekers sufficient in general or frequently insufficient?

The existing reception capacity has been sufficient in the past and can be extended in emergencies. Furthermore, the number of asylum seekers has decreased since 2004. A few buildings are thus currently closed (e.g. Červený Újezd in 2005) and some are being reconstructed. Nevertheless, the government does not plan to reduce significantly the number of existing facilities. (Due to the decrease, RFA has recently taken out of service only one of the centres.)

Q.24. D. Are there special measures foreseen in urgent cases of a high number of news arrivals of asylum seekers (outside the case of application of the directive on temporary protection)?

Yes, there are special measures foreseen in the quality standards approved by the Minister of the Interior in August 2005 and implemented by the RFA for all the reception and accommodation centres. In urgent cases, the number of places in the centres can be increased to 4,293 beds. In the case of a mass influx of applicants for international protection the quality standards envisage precise steps for the adaptation of the centre in two stages: (1) extended capacity; and (2) crisis capacity.

Q.25. Accommodation centres **(important note: all the following questions are about open and not closed centres where asylum seekers are detained which are covered by another question)**

Q.25. A Are there different categories of accommodation centres, for instance depending of the stage of the procedure (admissibility and eligibility)?

No, there are no different categories of accommodation centres any more. The RFA internally divided accommodation centres into the first instance and second instance centres only until 2005 (see Q.20 B). An asylum seeker is thus entitled to housing in an accommodation centre throughout the whole procedure, more precisely during the first instance procedure before the DAMP and proceedings before the regional court. If an

asylum seeker lodges a cassational complaint to the Supreme Administrative Court, she is no longer allowed to stay in the accommodation centre and is obliged to find private accommodation herself (see Q.11 A).

Q.25. B. Is there a legal time limit for accommodation in a centre after which the asylum seekers have access to private houses or apartments or is this limit linked to a stage of the asylum procedure?

No, there is no time limit upon entitlement to stay in the accommodation centre during the first (the DAMP) and second (the regional court) instance proceedings. However, a different regime applies if the applicant lodges a cassational complaint. (see above and also Q.11 A)

Q.25. C. Is there a general regulation about the internal functioning of those centres and the rights and duties of the asylum seekers? If yes, is this general regulation applicable to public and private centres? If not, are the centres supposed to adopt an internal regulation and does a central authority have or not a kind of control about its content?

Yes, there are internal rules of conduct applicable in the accommodation centres. The general rights and duties of applicants are also laid down in the Asylum Act. There are no purely private centres, and the RFA is responsible for the management of all asylum facilities in the country. Seven centres are owned by the state and operated by the RFA, and five are run by other legal entities, mostly municipalities, on a contract basis with the RFA and for a fee. The internal rules of conduct are always laid down by the RFA and they are administered centrally by the RFA. Quality Standards approved by the Minister of the Interior and implemented by the RFA are applicable to all asylum facilities in the Czech Republic.

Q.25. D. Do the regulations foresee the possibility of sanctions against asylum seekers in case of breach of the rules? (see article 16, §3) If yes, which sanctions for which rules? Which is the competent authority to decide? How is it ensured that decisions are taken individually, objectively and in particular *impartially* (for instance through an independent arbitrator) as requested by §4 of article 21 which is mandatory provision? Which are the possibilities of appealing against those decisions if the system is different from the general one under question n°22? Are there already administrative appeal decisions or judgements which have been taken and if yes, which are the main important ones?

There are no sanctions in the internal rules of conduct. The sanctions for a breach of the duties of an applicant for international protection are set forth (exclusively) in the Asylum Act.

According to the Asylum Act, the DAMP can impose a fine of up to 2000 CZK upon an applicant for international protection *inter alia* in case she: (1) on purpose intentionally damages the equipment of the centre or her Certificate; (2) does not report the loss of her Certificate; (3) fails to comply with the orders or instructions of the Police or DAMP officials in the asylum facility; (4) refuses to allow an inspection of her person or of her personal belongings; (5) leaves the centre without prior notification to the DAMP; (6) returns to the centre after the expiry of the allowed period (i.e. if she leaves the accommodation centre for more than 10 days in a month without obtaining advance permission); (7) leaves the restricted territory within which she is obliged to stay according to the regional validity of the visa; (8) stays in the asylum facility without authorisation; and (9) conceals her property and financial situation. A similar fine can be imposed also upon an alien for a breach of several duties occurring before the international protection procedure is initiated, i.e. in a period between the Declaration and the commencement of the procedure.

There is always an individual administrative procedure initiated in the case of an offence. The accused offender can defend herself and has the right to appeal to the Minister of the Interior. Decisions shall be objective and impartial. Appeals to the regional court are allowed. However, so far no judgement relating to the sanction regime has been delivered.

Q.25. E. Are asylum seekers involved in the management of these centres? If yes, how (advisory board, appointment or election of representatives)? (see article 14, §6 which is an option provision)

The Czech Republic has not implemented this measure; therefore, applicants for international protection are not involved in the management of asylum facilities. On limited contribution to the management of the centre, see subquestion F.

Q.25. F. Do specific rules exist on work of asylum seekers inside the accommodation centres different from the general ones about employment (see below)? If yes, which ones? Can working inside accommodation centres be considered as a (mandatory) contribution of the asylum seekers to the management of the centres, is it or not paid and considered as implying access to the labour market and subject to the same rules?

Yes, there are specific rules. An asylum seeker in an accommodation centre can work in the centre (e.g. cleaning, help in the kitchen, etc.), on a voluntary basis, up to 12 hours per month, in which case her pocket money will be increased up to double the regular amount (see Q.12 A). This work can be considered as a contribution to the management of the centre only to a limited extent, since it is only ancillary work. Similarly, it does not imply access to the labour market.

Q.26. **Q.26. A. How can asylum seekers communicate with legal advisers, representatives of UNHCR and NGOs? (see article 14, §2, (b) which is a mandatory provision).**

Asylum applicants have access to free legal counsel. Lawyers from different NGOs regularly visit accommodation centres and help asylum applicants with their problems. As regards the Asylum Act, an applicant is entitled to request assistance from an organisation or a private individual who is providing legal assistance to refugees (Art. 21 § 1). Furthermore, she is entitled to contact any private individual or organisation providing her with legal assistance (Art. 21 § 3). Finally, she is entitled to be in contact with the UNHCR and other organisations protecting the rights of refugees throughout her entire proceedings (Art. 38).

If such legal advisers or NGO representatives provide legal assistance for free, the Ministry of the Interior may, on the basis of a written agreement, contribute to the payment of the costs related to the provision of such assistance (Art. 21 § 1). The applicant's right to obtain legal assistance provided on the basis of a different legal regulation (i.e. on a paid basis) is not affected thereby (Art. 21 § 2).

Q.26. B. What are the rules about access of legal advisers, UNHCR and NGOs regarding access to accommodation centres and other housing facilities (see article 14, §7 which is a mandatory provision)

In practice, legal advisers, the UNHCR and NGOs have regular access both to the reception centre in Vyšní Lhoty and the accommodation centres. For reasons of security, every visitor to the centre (except for UNHCR representatives) needs a permit from the RFA. However, legal counsellors have no problem in obtaining this permit. UNHCR representatives do not need such a permit to enter asylum facilities.

There is a slightly different procedure for obtaining permission to visit the reception centre in the transit zone of the Prague International Airport. For an individual visit, it is necessary to undergo a security clearance from the special department of the Ministry of the Interior. For regular visits to the reception centre in the transit zone of the airport, it is necessary to apply to the Czech Airports Authority for a special permit.

Q.26. C. Can the access of legal advisers, UNHCR and NGOs be limited for security reasons or any other reason (see article 14, §7, last sentence)?

In general, after obtaining permission from the RFA, there is no restriction on access. Right to access to legal advisers, UNHCR and NGOs is expressly guaranteed by Art. 21 § 3.

One NGO reported that access was very rarely limited for the security reasons or in the case of quarantine or a danger of epidemic in the past. It was presumably on the ground of laws of general application. However, according to the UNHCR representative, their access to the asylum facilities was never denied. A different regime applies at the Prague International Airport (see subquestion B).

Q.27. Q.27. A. Is a medical screening organised by the receiving State, is it mandatory or voluntary? Does it include HIV tests? (see article 9 which is an optional provision)

Yes, there is a mandatory medical screening during the admission procedure in the reception centre. The medical screening includes:

- for adults: a lung x-ray, a blood test for BWR (syphilis), an inspection of stool for parasites, and a bacteriological inspection of stool;
- for pregnant women: a blood test for BWR, HIV, HBSAG, and blood type, an inspection of stool for parasites, and a bacteriological inspection of stool;
- for children up to 15: an inspection of stool for parasites, a bacteriological inspection of stool, and a MANTOUX test.

HIV tests are not mandatory except for pregnant women, who are always tested for HIV and jaundice. It was reported that HIV tests are also conducted if there are "indications of an infection" present. The HIV test can also be done at the asylum seeker's request.

Furthermore, the applicant is obligated to permit a medical screening at any stage of the procedure, if it is necessary in the interests of public health (Art. 47 § 2).

The 2007 Amendment (that is supposed to among others transpose the Procedures Directive) stipulates medical screening for reason of determining the age of unaccompanied minor in case of doubts about her age (Art. 89 § 3). If a minor refuses to undergo this treatment she will no longer be considered a minor (Art. 89 § 3 last sentence). Art. 89 § 4 provides certain safeguards against misuse of this provision and stipulates that the Ministry of the Interior must inform the applicant about the 'age screening' within 15 days after submitting a Declaration (see Q.11.A) in a language understood by the applicant. Furthermore, applicant must be informed about the consequences of the 'age screening' and also about the consequences of refusing to undergo the 'age screening' (Art. 89 § 4).

Q.27. B. Do the legal provisions on reception conditions ensure that asylum seekers receive at least emergency care and essential treatment of illness as requested by article 15 §1 which is a mandatory provision? Do they have a further access to health care?

Yes, applicants for international protection always receive emergency care and essential treatment of illness. Indeed, they also have full access to health care on the same level as the Czech nationals (see subquestion C).

Q.27. C. What is the practice regarding access of asylum seekers to health care and how is it organised? In particular, what is the situation in accommodation centres (are doctors coming to the centres or do asylum seekers go to doctors outside)?

Health care is provided in all accommodation centres. Nurses (employees of the RFA) are on call in the centres and the doctors visit the centres on a regular basis.

Until August 31, 2006, applicants living in private accommodation can seek treatment either in an asylum facility or in a health centres having a contract with the RFA. From September 1, 2006 health care is supposed to be provided on the public health insurance basis (i.e. that the costs associated with health care will be covered by the State and costs incurred by the health care facility will be paid from the public health insurance); therefore, health care will be provided under the same conditions as to Czech citizens (see also Q.18 A).

From October 2005 (the entry into force of Act No. 350/2005 Coll.) until August 2006 (prior to the entry into force of Act No. 165/2006 Coll.), there was a problem as to the payments of health care provided to asylum seekers. This problem was caused by the inconsistent interpretations of Art. 88 § 2 of the Asylum Act and Art. 7 of Act No. 48/1997 Coll., on Public Health Insurance, adopted by the Ministry of the Interior, the Ministry of Health and the Health Insurance Companies.[299] Fortunately, this issue was resolved in Act No. 165/2006 Coll.,[300] so that there should have no longer been any problems in practice.

However, after the entry into force of Act No. 165/2006 Coll. as of September 1, 2006, the problems mentioned hereinafter were reported and it seems that in practice the whole process of transition to the public health insurance has been insufficiently facilitated and may indeed lead to watering-down the existing standards. Firstly, the General Health Insurance Company was not able to manage the sudden increase of applications for

[299] For a detailed analysis, see the Report on the State of Human Rights in the Czech Republic in 2005, § 9.4.1, pp. 80-81; or the Position Paper of AEC: Problems with providing and payment for health care to asylum seekers and aliens with toleration visas, available at http://www.migraceonline.cz/clanky_f.shtml?x=1362250 (see bibliography).
[300] See Part 1, Art. XV Act No. 165/2006 Coll.

health insurance cards and instead issued only temporary cards. This problem has already been rectified in the meantime. Secondly, every participant in the public health insurance must be registered with the general practitioner. However, as certain accommodation centres are situated in rural areas or close to the small towns, the GPs are not prepared to accept all the asylum seekers and in consequence, the asylum seekers must commute. Thirdly, commuting is costly and in particular as to the amount of pocket money given to the asylum seekers. The RFA reimbursed all the incidental expenses for commuting to the general practitioner. However, since January 2007 the RFA ceased to provide these commuting expenses and similarly to the reimbursement of surcharges mentioned below, commuting expenses have been reimbursed by the NGOs from various grants so far. Fourthly, a new problem with supplementary charges arose. Prior to the amendment, the RFA always reimbursed all health care expenses (including surcharges going beyond what is provided by the public health insurance scheme) but after September 1, 2006 these surcharges must be disbursed directly by asylum seekers. For example, it was reported that the asylum seeker who suffers from cancer receives appropriate treatment but does not have enough money for expectoration pills (which were previously provided by the RFA). These surcharges have been reimbursed by the NGOs from various grants so far. And finally, although the transition to the public health insurance is acknowledged step further to foster integration of asylum seekers in the Czech society (and to prevent their seclusion), complexity of this process was underestimated. Indeed, the leaflet for asylum seekers with necessary information was drafted only in the Czech language and distributed only a few days before the end of August.

The abovementioned system of 'residuary intervention' of the NGOs (in contrast to 'residuary intervention' of the *RFA*) with regards to commuting expenses and surcharges has been working efficiently in practice so far, but strictly legally speaking, it is problematic because of the lack of certainty regarding the implementation of the Directive. More precisely, the 'residuary intervention' of the NGOs is funded from the ERF projects that do not have to be necessarily prolonged.

Q.28. **Q.28. A. What is the <u>length of the period</u> determined by the concerned Member State during which asylum seekers have <u>no access</u> to the labour market? (see article 11 which is a mandatory provision)**

Applicants for international protection have access to the labour market no sooner than 12 months after submitting the Declaration.[301] Therefore, they can obtain a work permit no earlier than one year after the Declaration is made.

From 2000 until 2002, there were no restrictions on access to the labour market for asylum seekers. However, as a result of the abuse of this system, the one-year period was introduced.

[301] Art. 99 letter (a) of Act No. 435/2004 Coll., on Employment.

Q.28. B. After that period, are asylum seekers or not obliged to obtain a work permit? In case is there a limit for the administration to deliver the permits and how quick are they delivered? What is their length?

Yes, they are obliged to obtain a work permit but they enjoy preferential treatment to other aliens (see Q.28.D). A work permit may be issued for a maximum period of one year. A work permit shall be delivered within a maximum of 30 days. This time-limit is observed by the Labour Offices. The work permit is usually issued for the period of the validity of the visa for the purpose of the asylum proceedings, i.e. 90 days. Decision on granting work permit, including its length, always depends on discretion of the Labour Office. In practice there are cases where work permits are issued beyond the length of visa for the purpose of the asylum proceedings.

Q.28. C. After that period, what are the conditions for access of the asylum seekers to the labour market? (in particular, are there rules concerning the maximum allowed of working hours or days per week, month or year, limits in terms of type of work or of professions authorised?

There are no limitations such as a maximum permitted number of working hours or days per week, month or year, and no special limitation in terms of the type of work or of professions which applicants for international protection are authorised to engage in.

An applicant must only find a job and apply for a work permit to the Labour Office. However, the filing of an application for a work permit is subject to an administrative fee of 500 CZK (€18).

Q.28. D. What are the rules in terms of priorities between asylum seekers on the one hand and nationals, EU or EEE citizens and legally third-country nationals on the other?

Applicants for international protection (among other specific groups of aliens, such as the holders of a permanent residence permit or members of the family of the member of a diplomatic mission) are entitled to preferential treatment.[302]

In general, an alien may be employed in the Czech Republic provided that the employer has obtained a special permit to recruit employees abroad, and provided that the respective aliens have been granted individual work permits. However, an employer does not need a special permit in order to employ an applicant for international protection, which means that the employer is not obliged to report vacant positions to the Labour Office, so that the situation of the labour market is not taken into account (otherwise a

[302] Art. 97 g) of Act No. 435/2004 Coll., on Employment.

position is deemed vacant only if it cannot otherwise be filled given the required qualifications or the temporary shortage in the workforce).

Due to an oversight during the adoption of Act No. 350/2005 Coll., from October 2005 (the entry into force of Act No. 350/2005 Coll.) until August 2006 (before the entry into force of Act No. 165/2006 Coll.), applicants who lodge a cassational complaint (i.e. those with a toleration visa) were deprived of this preferential treatment.

Citizens of EU/EEA countries and Swiss citizens, as well as their family members, are not considered aliens under the Employment Act, and they enjoy the same status under this Act as citizens of the Czech Republic. Therefore, an EU/EEA and Swiss citizens or their family members do not need a work permit in order to be employed in the Czech Republic.

Q.28. E. Do asylum seekers have access to vocational training, does this or not depend of their right to access to the labour market, and in case at which conditions? (see article 12 which is optional regarding §1 and mandatory regarding § 2)

No special vocational training is organised for applicants for international protection. The Czech Republic has not explicitly transposed this optional provision but Art. 109 of Act No. 435/2004 Coll., on Employment, allows the applicants for international protection to take requalification courses. However, in contrast to refugees, these requalification courses are not provided to applicants for international protection for free (*a contrario* Art. 40 of Act No. 435/2004 Coll., on Employment) and thus the access to the requalification courses is *de facto* non-existent for most of the applicants for international protection since they do not have enough funds to pay for them. Czech Republic also allows applicants for international protection who have access to the labour market to participate in vocational training funded by their *employer*. The second indent of Art. 12 of the Directive is thus respected.

In addition, several vocational training courses such as PC or language courses are regularly organised by the Consortium of NGOs assisting refugees.

Q.28. F. Are the rules regarding access to the labour market adopted to transpose the directive more or less generous than the ones applicable previously?

No, these rules were changed before the transposition of the Directive, thus were not affected thereby.

Q.29. Are reception conditions subject to the fact that asylum seekers do not have sufficient resources? Are asylum seekers requested to contribute to

reception conditions when they have personal resources (for instance if they work) or to refund the authorities if it appears that they have resources? (see article 13 §§ 3 and 4 which are optional provisions)

Yes, the reception conditions are subject to the fact that applicants for international protection do not have sufficient resources. An applicant who keeps at her disposal money in excess of the subsistence minimum (approximately 4,420 CZK, although this sum varies slightly according to the number of family members) is not entitled to pocket money and is also obliged to contribute towards covering his catering and housing expenses. The contribution for housing amounts to 130 CZK (€4.60) and for catering to 112 CZK (€4) per person per day.

An applicant is also obliged (1) to report her financial and material resources (and may be fined for the failure to do so); and (2) to allow the Police to conduct a personal inspection in order to determine her financial and material resources (and the failure to permit this search is also subject to fine).

7. SPECIAL NEEDS OF PARTICULAR CATEGORIES OF ASYLUM SEEKERS

Q.30.

Q.30.A. Which of the different categories of persons with special needs considered in the directive are taken into account in the national legislation (see article 17, §1 which is a mandatory provision): disabled people, elderly people, pregnant women, single parents with minor children, persons who have been tortured, raped or victims of serious physical or psychological violence? Include in your answer all other categories envisaged in national law.

The Asylum Act defines the following different categories of persons with special needs: "unaccompanied minors, applicants under 18, pregnant women, disabled person, persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence and other persons in individual cases".[303] Neither the Asylum Act nor other legislative acts contain a definition of "other persons in individual cases" and this term is to be decided on *ad hoc* basis. In practice, a decision as to who qualifies as "other persons with special needs" for the purpose of provision of services in the government-run asylum centres is within the discretion of the RFA which is in charge of operating these centres.

Not surprisingly (as mentioned elsewhere in this report), there has not been any challenge before the Czech courts relating to the interpretation of this term. However, courts of administrative justice decide *inter alia* not only on complaints against decisions of and administrative authority (Art. 4 § 1 letter a) of the CAJ, but also on protection against the inaction of an administrative authority (Art. 4 § 1 letter b) of the CAJ) and protection

[303] Art. 81 § 2.

against an unlawful interference of an administrative authority (Art. 4 § 1 letter c) of the CAJ), The challenge against negative decision of the RFA would perhaps fall within the third option, i.e. Art. 4 § 1 letter c) of the CAJ.

Q.30. B. How is their specific situation taken into account (see articles 13, §2, second indent, 16 §4 second sentence and 17 which are mandatory provisions)?

Applicants with special needs are placed in the protected zones of the centres. There are also special facilities for disabled persons and unaccompanied minors. Families, women and men are accommodated separately. The nationality and religion of asylum seekers is also taken into consideration. With regard to single women and mothers, attention is focused on their protection because of their vulnerability and exposure to abuse. In order to enable them to stay in an asylum facility in a dignified manner, women are accommodated in protected zones. If unaccompanied minors are under 18 years of age, they are placed in children's diagnostic institutions (see Q.31 H). They stay in accommodation centres only if an applicant who is their legal guardian accompanies them.

The system described above stems from the Internal Security Strategy project that was launched by the RFA in 2002. Its objective has been to consolidate the social and technical aspects of care for vulnerable groups into a well-functioning system. Each asylum facility has been divided into standard and protected zones. Each zone is run in a different manner. The aim of this concept of protected and standard zones is to provide each applicant with safety, differing care and protection of personal freedom.

A protected zone demands enhanced attention and guarding in order to provide maximum security. Asylum applicants who belong to vulnerable groups are accommodated there. The standard zone, where mainly single men are accommodated, demands a different approach, with respect to their adaptation. Both zones are visibly demarcated, and either a private security service or RFA employees guard the entrance. Monitoring systems surveying grounds and interior spaces are installed in the reception centres and larger accommodation centres.

As to the reception centre in the transit zone of the Prague International Airport, whenever a female asylum seeker stays there, the common corridor is divided by a lockable gate in order to allow women to be accommodated separately from men at night. The children have access to a child care room, where board games, toys, magazines and other means to spend their free-time are available. All asylum seekers have access to the day room and surgery with a regular presence of doctor and nurse, as well as to the outdoor exercise facility.

Q.30. C. How and when are the special needs of the concerned persons supposed to be legally identified (see article 17 § 2

which is a mandatory provision and clarify how it has been interpreted by transposition)?

In general, the special needs of concerned persons are usually identified during the initial interview in the reception centre, and these special needs might be written on the Certificate. Immediately after arrival at an asylum facility, asylum applicants are placed in one of the above-mentioned zones, following preliminary screening carried out by social and reception workers. Not surprisingly, it is also possible that the relevant information will only be revealed subsequently during the second interview (on the refugee status determination).

Q.30. D. Is the necessary medical and other assistance provided to persons with special needs as requested by article 15, §2 which is a mandatory provision and in particular to victims of torture and violence as requested by article 20 which is a mandatory provision?

Yes, necessary medical and other assistance is provided to persons with special needs throughout their entire procedure and is considered systematic and continual. The status of these persons is registered within the Ministry of the Interior, and special programmes are designed for them. The RFA provides them with enhanced social advice, health care, psychological assistance, prevention and individual material assistance (especially during pregnancy and motherhood). Furthermore, at each centre expert care and the assistance of doctors, psychologists and psychiatrist for traumatized persons and victims of violence is made available.

Q.31. About minors:

Q.31. A. Till which age are asylum seekers considered to be minor?

An applicant is considered to be a minor until the age of 18.

Q.31. B. How is access of minor asylum seekers to the education system ensured? Is it at school or in case inside accommodation centres and can it be considered as similar to the conditions for nationals as requested by article 10, §1?

Applicants for international protection are granted access to primary (sometimes also referred to as "basic" or "elementary" education), secondary and higher professional education under the same conditions as Czech nationals (Art. 80 § 4). The Ministry of the Interior is also obliged to provide minor applicants free of charge with necessary school materials as per teachers' requirements (Art. 89a). School attendance is compulsory for

all children under 15 years of age in the Czech Republic. The Ministry of Education, Youth and Sports is a provider of education to applicants for international protection. As to pre-school facilities, children's centres for pre-school children have been established in all asylum facilities and they are equipped as nurseries. In these centres children are taught basic hygienic habits, learn to live and work in a group as regards adapting to the new conditions in the host country and overcome the language barrier. As to secondary education, minors who attend secondary schools are not excluded therefrom for the sole reason that they have reached the age of majority.

After completing primary education, applicants attend various secondary schools and universities free of charge; the sole condition is a sufficient knowledge of the Czech language. However, this was completely true only until December, 31, 2004. With the adoption of the new Schools Act[304] which came into force on January 1, 2005, a new problem has arisen as to the scope of the access to education system for all third country nationals (including refugees and applicants for international protection). As a result of the new Schools Act, third country nationals are not granted access to pre-school facilities (such as kindergartens etc.), and also to several secondary education facilities such as art schools and conservatories, as well as to other school services (such as meal plans, accommodation, education counselling etc.) under same conditions as the Czech nationals.

The new Schools Act provides for equal access of third country nationals under same conditions as the Czech nationals to primary, secondary and higher secondary education. As concerns access to other forms of educations (such as *inter alia* pre-school, art and language schools, conservatories, that are not included in the abovementioned term "primary, secondary and higher secondary education"), the law distinguishes between the Czech and the EU citizens and their family members on the one hand and the third country nationals on the other. In practice it means that the third country nationals are not prevented from access to these types of education, but they are provided with a less favourable treatment. For example they have to pay a higher fee than the Czech citizens for the provision of school services (accommodation, catering), contribute to expenses of school facility related to their attendance of kindergarten etc. The amount of a fee depends upon decision of a headmaster of each school and varies from one school to another.[305] Taken in conjunction with the amount of pocket money granted to the asylum seekers (€17 *per month*; see Q.12 A), this practice leads to *de facto* exclusion from access to the abovementioned types of secondary education facilities (as to the pre-school facilities, the situation is even more complex; see below).

[304] Act. No. 561/2004, on Pre-School, Primary, Secondary, Higher Professional and Other Education (the Schools Act), as amended. The adoption of the new Schools Act was heavily influenced by the widely criticised placement of Roma children into special schools and alleged racial segregation. For details, see also *D.H. and Others v. the Czech Republic*, 7 February 2006, 57325/00 (the judgement is not final since it has been referred to the Grand Chamber).

[305] Indeed, it is within the discretion of each headmaster how high the contribution to expenses of the school is and whether he will charge this fee at all.

Nevertheless, it is true that the Czech Republic has an obligation to grant to minor asylum seekers access only under conditions *similar* to those for Czech nationals.[306] Furthermore, pre-school facilities are available in the asylum centres;[307] therefore, a problem arises only for applicants in private accommodation. On the other hand, there are no grounds for excluding access to secondary education for third country nationals. Indeed, the NGOs reported that, since a good knowledge of the Czech language is a prerequisite, only a few asylum seekers attend secondary school (and therefore they not present a significant burden on the state). In conclusion, this issue is complex and has attracted the broad attention of the media, the public, NGOs and also of the Government Council for Human Rights.

This criticism has been only partially successful so far. The Bill (No. 43/0) amending the Schools Act was prepared and presented to the Parliament but it has been recently rejected by the lower house of the Parliament. Most recently, the new amendment (No. 227/0) is pending before the Government. In conclusion, the situation is thus is as it was in 2006.

Q.31. C. Is access to education ensured <u>not later than 3 months</u> as requested by article 10, §2 (or after maximum one year if specific education for asylum seekers is provided) and till an expulsion decision is really <u>enforced</u>?

Yes, both conditions are fulfilled. After the admission procedures are completed (i.e. after approximately 3 weeks), minors are placed into the Czech school in the region of the respective accommodation centre. As to minors in the detention centres, see Q.33 M.

However, although both conditions (i.e. the access to education is ensured not later than 3 months running from lodging the application for international protection *and* till an expulsion decision is really enforced) are respected in practice, strictly legally speaking the Asylum Act does not explicitly lay down these limits.

Q.31. D. Is <u>specific education</u> (like language classes) available for asylum seekers, in particular to facilitate their effective access to the education system of the reception Member State (see article 10, §2 which is an optional provision)?

In larger accommodation centres, there Czech language classes are organized that last for approximately 3 months. According to a child's skills and results, she is assigned to regular classes with Czech children. The child's previous education is recognized.

[306] See the different wording in Art. 27 of Directive 2004/83/EC which stipulates "*full* access to the education system under the *same* conditions as nationals".

[307] In fact, specialized "children centres" were established in the asylum centres. These "children centres" provide comprehensive program for both pre-school and school-age children.

Unfortunately in most centres no such classes are organized, and children are assigned to schools with Czech children straight away without any facilitation. The same is true for applicants who opted for housing in private accommodation, since they have to find specific courses and pay for them.

There are also special classes in primary schools with extended Czech language courses dedicated solely for applicants for international protection.

Q.31. E. Are minors in general accommodated with their parents or with the person responsible of them? (see article 14, § 3)

Yes, minors are always accommodated together with their parents or the person responsible for them. The obligation to maintain the family unity in housing the applicants is explicitly laid down in the Asylum Act (see Q.23). Furthermore, unaccompanied minors are accommodated in a special centre, assigned a guardian, and special pedagogical workers are also engaged for them.

Q.31. F. Do minors with special needs enumerated by article 18, §2 which is a mandatory provision, have access to appropriate mental health care and qualified counselling?

Yes, they do. There are paediatricians, expert psychologists and psychiatrists, and social workers available for minors (see also Q.30 B, C and D).

Q.31. G. How and when is organised the representation of unaccompanied minors (guardianship, special organisation) and regularly assessed? (see article 19, §1 which is a mandatory provision)

In order to protect the rights of minor children seeking international protection in the Czech Republic, guardians are appointed for unaccompanied minors (Art. 89 § 1). Pursuant to Art. 89 § 2, order of persons eligible for being appointed as a guardian reads as follows: “The duties of the guardian shall be carried out by a relative of the unaccompanied minor who is staying on the Territory [of the Czech Republic]; if there is no such person or if such person cannot be appointed to act as a guardian, the duties of the guardian shall be carried out by another suitable natural or legal person and/or the municipal office in the municipality with extended competencies according to the place in which the unaccompanied minor is registered to reside [i.e. by OSPOD]”.

The court appoints a guardian without delay by way of a preliminary ruling (Art. 89 § 1). At the beginning of the procedure, unaccompanied minors used to be represented by the "asylum guardian" (Art. 92), who was competent only for the initial phase of the procedure before the appointment of the “residential guardian”. In most cases, these

guardians were NGO staff members. A second guardian ("residential guardian") was appointed to unaccompanied minors living in the asylum centre for the duration of their residence in the Czech Republic (Art. 2 of the Act on Legal and Social Protection of Children). A representative of the Organ of Social and Legal Protection of Children (hereinafter only "OSPOD")[308] usually acts on behalf of an applicant as his residential guardian. Unaccompanied minors in a detention centre were only represented by the asylum guardian. Such a minor was not appointed a residential guardian until she was released from detention and brought to the accommodation centre. However, the amendment to the Aliens Act (Art. 124 § 3 of the Aliens Act) effective as of November 2005, provides for an appointment of the so called "residential guardian" to protect the rights and interests of an unaccompanied minor in the age of 15 to 18 years (minors under 15 cannot be detained) also during her stay in detention facility. See also Q.33 E.

However, the Regional Court in Hradec Kralové held that the asylum seekers have no right to be granted the "asylum guardian"[309] (because according to a proper interpretation of Art. 92, the "asylum guardian" is available only for the asylum seeker who reached the age of majority but is unable to act in his own capacity) and therefore since 2004 only residential guardians are appointed for unaccompanied minors. Since the "residential guardians" (i.e. mostly representatives of the OSPODs[310]) are not familiar with asylum procedure, it might cause problems in practice and may even render legal guardianship (i.e. legal representation in asylum procedure) ineffective.[311] However, this problem was raised during the ongoing transposition of the Procedures Directive and the situation might be improved by the subsequent amendment to the Asylum Act.

The situation as to the guardianship has not changed since 2006.

Q.31. H. How is <u>placement</u> of <u>unaccompanied</u> minors organised (with adult relatives, a foster family, in special accommodation centres or other suitable accommodation)? (see article 19, §2 which is mandatory provision)

Unaccompanied minors are placed in a special diagnostic centre (Centre for Children – Aliens) run by the Ministry of Education, Youth and Sports. There are two such centres (in Prague and in Příbram). Unaccompanied minors are transferred to these centres immediately after the admission procedures in the reception centre or upon release from detention.

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[308] Art. 4 § 1 of Act No. 359/1999 Coll. on Social and Legal Protection of Children, as amended.

[309] Decisions of the Regional Court in Hradec Králové, No. 30 Az 89/2003, 11 February 2004; and No. 30 Az 77/2003, 20 February 2004.

[310] I.e. in many cases representatives of the municipalities.

[311] See DLABÁČKOVÁ, K.: Problematické prvky vnitrostátní legislativy z pohledu procedurální směrnice (*Problematic Elements of Domestic Legislation from the point of view of Procedures Directive*), in: JÍLEK, D., KLEČKOVÁ R., KOSAŘ, D., TOMISOVÁ, M. (eds.): Společný azylový systém: procedurální směrnice, Collection of Essays from the Workshop organised on 13 June 2006 at the Faculty of Law, Masaryk University, Doplněk, Brno, 2006.

Q.31. I. How is the tracing of the family members of the unaccompanied minors organised? Are measures taken to protect confidentiality of information when necessary? (see article 19, §3 which is a mandatory provision)

The obligation stemming from Art. 19(3) of the Directive was transposed into Art. 88b of the Asylum Act and Art. 35 § 2 letter j) of the Act on Social and Legal Protection of Children.[312] The tracing of family members is conducted under the auspices of the Office for International Legal Protection of Children, which is a special agency of the Ministry of Labour and Social Affairs. The Office is the only competent authority in the Czech Republic authorized to secure and provide legal protection to minor children. When tracing family members, Czech state organs are obliged to proceed so as not to endanger the life and freedom of the minor and her family (Art. 88b).

The confidentiality of information was buttressed by adoption of new Art. 19 § 1 in the 2007 Amendment, that explicitly incorporated the principle of confidentiality into the Asylum Act.

8. EXCEPTIONAL MODALITIES OF RECEPTION CONDITIONS

Q.32. Apart from detention covered by the next question, are there exceptional modalities for reception conditions in the following cases and if yes, which ones and for how long are they applicable, knowing that they should be "as short as possible" (see article 14, §8)?

Q.32. A. Persons with specific or special needs, regarding in particular the period of assessment of those needs?

No, this is not the case in the Czech Republic.

Q.32. B. Non availability of reception conditions in certain areas

No, this is not the case in the Czech Republic. The accommodation centres are evenly spread across the territory of the Czech Republic.

Q.32. C. Temporarily exhaustion of normal housing capacities

No, this is not the case in the Czech Republic. The number of places is sufficient and can be expanded in case of an emergency. This situation has happened only rarely (e.g. mass

[312] Act No. 359/1999 Coll. on Social and Legal Protection of Children, as amended.

influx of Chechens) or exceptionally at the reception centre in the transit zone of the Prague International Airport.

However, in response to a high number of new arrivals of asylum seekers at the Prague International Airport during summer 2006, the Minister of the Interior decided to establish a branch of the airport reception centre in the detention centre in Velké Přílepy situated approximately 40 km from Prague. Since 1 July 2006, this "new" branch has been used for accommodation of the asylum seekers who made asylum declaration in the transit zone of the Prague International Airport provided that reception centre in the transit zone of the airport runs out of the space.[313] The asylum seekers transferred to this "new" branch are subjected to the same legal regime as if they were staying at the airport reception centre, i.e. they are not entitled to leave the facility for the whole duration of the "airport" asylum proceedings (see Q.20 A), since it is presumed that they are legally staying in the Prague International Airport. The Ministry of the Interior thus creates a legal fiction of residence of the asylum seeker at the transit zone of the airport, which triggers a specific "airport procedure".

The transfer policy after 1 July 2006 is problematic not only with regards Arts. 14(8) and 14(4) of the Directive (because these transfers *to the detention centre* are not necessary; however, this provision of the Directive is not mentioned in the questionnaire) but also with regards of Art. 18(1) of the Procedures Directive. Furthermore, this transfer policy was rather *ad hoc* solution and had no legal basis in the Asylum Act. Finally, application of the so-called "airport procedure" rests on very vague grounds since the transferred asylum seekers are clearly on the territory of the Czech Republic and not "confined to the border post" as stipulated in Art. 14(8) last prong of the Directive. Therefore, a transfer in case of temporary exhaustion of housing capacities (Art. 14 (8) third prong) in the transit zone of the airport is compatible with the Directive but a "standard procedure" and not an "airport procedure" (with prolonged detention) should apply. In other words, the applicants should be transferred to the reception centre in Vyšní Lhoty and not to the detention centre. Since this is a recent phenomenon, it will be necessary to focus on its application and development in future. As of 30 April 2007, branch of the airport reception centre in Velké Přílepy was closed and its future (i.e. its possible reopening) depends upon the success of the Government Bill in the Parliament.

The new specific section on the airport procedure (§ 73) was adopted in the 2007 Amendment. This new airport procedure legalizes the transfer policy mentioned above. This procedure is very complex but in a nutshell it allows the Ministry of the Interior to confine the applicant for international protection in the airport transit centre or in the branch of the airport reception centre in the detention centre in Velké Přílepy up to 180[314] days[315] (Art. 73 § 9) and thus effectively creates from these centres detention facilities.

[313] Pursuant to statistics provided by the RFA, there have been 132 applicants transferred to special centre in Velké Přílepy in 2006.
[314] Under certain circumstances it can go even beyond 180 days (see 73 § 9 last sentence).
[315] There are certain exceptions for handicapped applicants, unaccompanied minors, or parents with handicapped or unaccompanied minors; see Art. 73 § 7.

On the other hand, new airport procedure cannot be applied to vulnerable persons and the confinement in the airport transit centre can be challenged before the courts.

The airport procedure under the proposed wording of Art. 73 is further problematic for the following two reasons: (1) in contrast to other applications, a cassational complaint does not have suspensive effect (Art. 73 § 8); and (2) applicants are deprived of pocket money (Art. 87a § 3) – **the latter being a clear violation of the Directive**.

Q.32. D. The asylum seeker is confined to a border post

Each of the countries neighbouring the Czech Republic has been declared a "safe third country" by the Czech authorities. Therefore, if an alien is intercepted at the border attempting to irregularly cross the border into the Czech Republic she is returned to the state from which she attempted to enter the Czech Republic (Slovakia or Poland in most cases). In case she has already crossed the border (illegally), she is returned within 24 hours.

As the Czech Republic is not as yet a member of the Schengen Agreement, any person entering the country is subject to border controls. If an individual does not have a valid identity card, passport and visa (for countries requiring one), she is not allowed to enter the country. If a person "voluntarily" addresses an officer at the border expressing her intention to apply for international protection, she is forwarded to one of the reception centres after the Aliens' and Border Police have been informed and the procedure is opened. This holds true for refugees entering from a "safe third country" as well.[316] On successive application, see Q.16. However, in most cases, the Police intercept potential applicants for international protection. As a result, they are either returned to the country from which they entered the Czech Republic or they are brought to a detention facility. Only on rare occasions do they stay longer than 24 hours at the border police station.

An alien travelling illegally from the Czech Republic to Germany or Austria will, pursuant to the effective readmission agreements, most probably be returned by the authorities of these countries automatically and without an examination of the individual case. Upon return to the Czech Republic the individual is detained and may apply for international protection within seven days (see Q.14). Aliens who are already illegally on the Czech territory (and are intercepted by the Police) and express their intention to apply for international protection are generally detained and may submit the application from the detention facility.

Q.32. E. All other cases not mentioned in the directive (for instance urgent situation in case of a sudden high number of applicants outside a case of application of the directive on temporary protection).

[316] Furthermore, the concept of the "safe third country" is becoming obsolete since the Czech Republic has borders only with the EU Member States.

There are no cases that are not mentioned in the Directive. In the case of the emergency situation, reception conditions in the centres are governed by the quality standards implemented by the RFA, which envisage such a situation (see Q.39 B).

Q.33. **Detention of asylum seekers (we do not cover the situation of rejected asylum seekers detained for the purpose of their return) (see articles 6 §2, 7 §3, 13, §2 2nd indent and 14 §8 which implies that the directive is in principle applicable in case of detention):**

Q.33. A. In which cases or circumstances and for which reasons[1] (identity verification in particular if the persons have no or false documents, protection of public order or national security, refugee status determination, way of entry into the territory, etc) can an asylum seeker be detained during the asylum procedure till his request has been finally rejected. Quote precisely in English in your answer the legal basis for detention of asylum seekers in national law.

Asylum seekers are not held in detention for the sole reason that they are an applicant for asylum. However, applicants for international protection are obliged to tolerate detention under the conditions laid down in the Aliens Act (Art. 85a § 3 of the Asylum Act).

The conditions for detention and the status of aliens in detention are set forth in the Aliens Act. Pursuant to Art. 124 § 1 of the Aliens Act "the Police is entitled to detain an alien [older than 15 years of age] who was delivered a notice of commencement of proceedings concerning administrative removal if there is a risk that the alien could endanger the state's security, seriously interfere with public order or frustrate or exacerbate the execution of a decision on administrative removal". Asylum seekers are thus detained only if they entered or stayed illegally in the Czech Republic and then applied for asylum at a detention centre (i.e. aliens who were detained before they lodged their application). Asylum seekers who lodged their application elsewhere (i.e. except for detention centres) can not be detained for any reason (except for criminal act).

Q.33. B. Has your member State adopted measures to transpose §3 of article 7 which is an optional provision? If yes, how has this provision been legally understood (is it a case of detention or an obligation to stay in and not leave a certain place?) and for which reasons can an asylum seeker be "confined" in such a place?

The Czech Republic decided not to implement this measure.

[1] Please specify if article 18 §1 of the directive on asylum procedures of 1 December 2005 following which *"Member States shall not hold a person in detention for the sole reason that he/she is an applicant for asylum"* is or not respected (even if it has not yet to be transposed).

Q.33. C. Are there legally alternatives to detention, like obligation to report to the authorities, obligation to stay in a place, provision of a guarantor or of a financial guarantee?

No, there are no such alternatives to detention available in the Czech Republic.

Q.33. D. Which is the competent authority to order the detention of an asylum seeker? Explain if different authorities are involved to first take and later confirm the decision.

The only authority competent to order the detention of an alien is the Police of the Czech Republic.

Q.33. E. For how long and till which stage of the asylum procedure can an asylum seeker be detained?

Asylum seekers who have reached the age of majority can be detained for a maximum period of 180 days (Art. 125 § 1 of the Aliens Act), then they are transferred to an accommodation centre. Minors under 18 can be detained for a maximum period of 90 days (Art. 125 § 2 of the Aliens Act). There is no limit in terms of the stage of asylum procedure until which an asylum seeker can be detained as long as the detention does not exceed 180 days for adults and 90 days for minors under 18. If an unaccompanied minor is detained, the Police will appoint him a "residential guardian" (Art. 125 § 3 of the Aliens Act). The residential guardian is appointed by a decision of local police department in accordance with the Administrative Code. Each minor must be informed by the Police of such guardian and its role without delay (ibid.). On guardianship, see also Q.31G.

Throughout the whole duration of detention, the Police are obliged to review if the reasons for an asylum-seeker's stay in a detention facility continue to exist. If the reasons expire, the person must be released without any unnecessary delay. Moreover, pursuant to Art. 124 § 4 of the Aliens Act the asylum seeker has a right to ask at any time a court for judicial review of the legality of her detention (Art. 200o of the Code of Civil Justice) as well as reasons justifying continuation of her detention (Art. 65 and following of the Code of Administrative Justice). As to the "speedy judicial review", see also Q.33H below.

The average period of detention in 2006 is 140 days.

Q.33. F. In which places (can we call them "closed centres"?) are asylum seekers detained (places in a special closed centres reserved only to asylum seekers, together with returnees like illegal aliens or even in a normal prison, in case within separated areas or with the other detainees)? Indicate if a difference has to be made following the

location of the "closed centres" at the border or on the territory? Which is the authority managing those places and is it the same as the one in charge of reception conditions?

There are two types of "closed centres" in broader sense. Firstly, if an asylum seeker applies for asylum in a detention centre, she is obliged to stay together with other illegal aliens. There are four detention centres for aliens ("Zařízení pro zajištění cizinců") – Velké Přílepy, Frýdek-Místek, Poštorná a Bělá-Jezová (which temporarily serves at the same time as an accommodation centre; see Q.36).

Secondly, the other form of "closed centres" is the reception centres since an asylum seeker is not allowed to leave these centres before the admission procedure is completed. Asylum seekers are not allowed to leave the reception centre in the transit zone of the Prague International Airport even after the completion of these procedures. However, the DAMP has to release the asylum seeker if it does not issue the decision within 5 days after the application was submitted or the regional court does not decide within 45 days. Another exception applies for Dublin cases. In general, Dublin applicants are not transferred to the accommodation centres, and they are not allowed to leave the reception centre, even after the completion of these procedures.

Except for reception centre in the transit zone of the Prague International Airport there are no special "closed centres" at the border or on the territory. Since January 1, 2006, as result of amendment to the Aliens Act[317] responsibility for operation of detention centres was transferred from the Aliens' and Border Police to the RFA – the authority which is also in charge of reception conditions.

Q.33. G. Does UNHCR and NGOs have access to the places of detention and under which conditions?

Yes, they do have regular access to the detention centres on the same conditions as to the reception and accommodation centres.

Q.33. H. What appeal(s) can asylum seekers introduce against the fact he is detained? Is article 18 of the directive on asylum procedures of 1 December 2005 following which *"Where an applicant for asylum is held in detention, Member States shall ensure that there is a possibility of speedy judicial review"* respected (even if it has not yet to be transposed)?

It is not necessary to implement Art. 18 of the Procedures Directive in the Czech Republic since each detainee has a right to make an appeal to the court at any stage of her detention requesting the review of legality of her detention and her release (Art. 200o of the Code of Civil Justice; and Art. 65 and following of the Code of Administrative

[317] Act No. 428/2005 Coll., Amendment to the Aliens Act and several other Acts.

Justice). The courts are obliged to deal with these cases with a priority and thus the asylum seekers have access to speedy judicial review.

Q.33. I. Is the directive on reception conditions considered to be in principle applicable to the places where asylum seekers are detained? In particular which information do they receive about their rights, which access do they have to legal advice and health care?

NO, upon explicit request to answer this question, the Ministry of the Interior replied that **the Directive is NOT considered to be in principle applicable to the detention centres**. The Ministry of the Interior based its conclusion on Art. 85a § 2 of the Asylum Act that says that the status of the aliens in the detention centre is not changed by filling application for international protection, i.e. their status is regulated by the Aliens Act. This provision of the Asylum Act is not new but until now, it has been generally assumed that the Directive was applicable to the detention centres since from the very fact that the status of applicants for international protection is regulated by the Aliens Act, it does not necessarily follow that the Directive is not applicable. Furthermore, the material reception conditions for applicants for international protection in the detention centres are roughly on the same level as in the reception centres. It is difficult to asses whether the Czech Republic has changed its position on the applicability of the Directive to the detention centres or merely follows its previous position, since the DAMP avoided answering the relevant question[318] in the Practical Questionnaire for 2006 Report.[319]

On the other hand, the Directive is still applicable to the other form of the "closed centres" - reception centres - and more specifically, also to the special reception centre at the Prague Airport (and also to the new special airport procedure envisaged in the 2007 Amendment).

However, most of the provisions of the Directive are in principle ensured also with regards to the detention centres. The Police are obliged to inform the alien immediately after detention in a language in which she is able to communicate about the availability of judicial review of her detention (Art. 126 letter b) of the Aliens Act). Judicial review is governed by Art. 200o of the Code of Civil Procedure,[320] and Art. 65 and following of the Code of Administrative Justice (see Q.33.E).

As to the access to legal advice, asylum-seekers in detention have the right to contact and communicate without any restriction with organisations and/or private persons providing legal assistance. In practice, all four detention centres established in the CR are regularly visited by the NGO workers who specialize in provision of free-of-charge legal, social and psychological assistance to asylum seekers.

[318] Q.14.E of the 2006 Practical Questionnaire

[319] But it must be acknowledged that there was not explicit question "*Is the directive on reception conditions considered to be in principle applicable to the places where asylum seekers are detained?*" in the 2006 Practical Questionnaire.

[320] Act No. 99/1963 Coll., Code of Civil Procedure, as amended.

In terms of the provision of health care, asylum seekers have access to a free health care in the extent of treatment covered from public health insurance, i.e. under the same conditions as to Czech citizens. Each detainee, including an asylum seeker is required to undergo admission-related, regular and final medical examinations and also vaccination and other preventive measures, if it is deemed necessary.

Furthermore, UNHCR prepared a special leaflet for asylum seekers in the detention centres, which contains information on the possibility to apply for asylum, on the asylum and expulsion proceedings and on access to NGOs assisting asylum seekers. These leaflets are also available in several languages, including Chinese, Arabic, Persian, Russian, French and English.

Q.33. J. Apart from freedom of movement, what are the main differences between normal reception conditions and exceptional modalities for reception conditions in case of detention, knowing that they should be "as short as possible" (see article 14, §8)? If it is about closed centres, are the regulations of those places in line with the requirements of the directive (is article 13, §2, second indent of the directive following which "*Member States shall ensure that standards of living is met (…) in relation to the situation of persons who are in detention*" respected?).

Apart from restrictions on the freedom of movement, the reception conditions are comparable and are in line with the Directive. There are only few divergences: detainees do not have access to some benefits, including a pocket money and financial contribution, there is a limited availability of free-time activities and different courses, and in well-founded cases (aggressive behaviour, violation of the internal rules of the centre) an alien can be placed in the strict regime of detention. Foreigners in detention are also expected to contribute to the costs of reception conditions (food and accommodation) when they have sufficient personal resources as specified in the Decree of the Ministry of the Interior No. 447/2005 Coll.

According to the Ministry of the Interior, measures have also been adopted to prevent self-mutilation and the assault of other detainees. More recently, the NGOs reported a significant increase of free-time activities in the detention centres.

In conclusion, standard of living in relation to the situation of persons who are in detention is met.

Q.33. K. Are measures taken to avoid detention of asylum seekers with special needs (if yes, which ones?) or are special measures taken because of their needs?

Asylum seekers with special needs who apply for asylum in a detention centres are usually promptly released to an accommodation centre and are given appropriate care as mentioned above in Q.31 E-G.

Q.33. L. Can minor asylum seekers be detained together with relatives? Can unaccompanied minor asylum seekers be detained? If yes, are there special measures which take into account that children are concerned?

Minor asylum seekers who apply for asylum in a detention centres are accommodated (they are not formally detained since they are not given the expulsion order) together with their parents or relatives. There is a specialised detention centre for families. An unaccompanied illegal alien over the age of 15 is detained in the specialized detention centre (Bělá-Jezová), where she can apply for asylum. After filling application for asylum (now for international protection) she may be released and placed in the specialized residence centre for minors mentioned in Q.31 H.

Q.33. M. In particular is article 10 regarding access to education of minors respected in those places?

Yes, access to primary education for minors in detention centres is respected. However, the education of children placed in the detention centres improved only recently, since they have been allowed access to primary education only from January 1, 2006, as result of amendment to the Aliens Act[321] and transfer of responsibility for operation of detention centres from Aliens' and Border Police to the RFA.

Pursuant to Art. 142 § 1 of the Aliens Act, the authority responsible for the detention centre must ensure access to compulsory (i.e. primary) education to minors. This education may be provided either in the detention centre or outside the detention centre (if it is not available there); in the latter case the authority responsible for the detention centre must allow minors to temporarily leave the detention centre and secure the transport to the regular primary schools (Art. 142 § 2 of the Aliens Act). All the costs of the education are covered by the State or the authority responsible for the detention centre (Art. 142 § 3 of the Aliens Act).

In practice, minors are currently placed only in one detention centre (Bělá-Jezová; see Q.36) and the education is provided in regular primary schools. According to the NGOs, there was another problem reported, since the access to secondary education in the detention centres proved to be difficult in practice. There has not been any improvement as to the access to secondary education in the detention centres since 2006.

Q.33. N. How many asylum seekers are for the moment detained in your Member State? Which proportion does this represent in comparison of the total number of asylum seekers at the same moment?

[321] Act No. 428/2005 Coll., Amendment to the Aliens Act and several other Acts.

As of July 31, 2006, there were 165 asylum seekers in the detention centres which amounts to approximately 6% of all asylum seekers (2, 662) in the first and second instance. If asylum seekers who have lodged a cassational complaint (and thus have a toleration visa) are included (plus 1746), asylum seekers in detention amount to 4% of the total number of asylum seekers. Furthermore, there are 70 (3%) asylum seekers in prison.

As of July 31, 2006, there are also 215 asylum seekers in the reception centres.[322]

As of December 31, 2006, there were 124 asylum seekers in the detention centres. As of May 25, 2007, number of asylum seekers in the detention centres further decreased to 58.

9. ORGANISATION OF THE SYSTEM OF RECEPTION CONDITIONS

Q.34. Explain if the system of providing reception conditions is centralised or decentralised (which levels of government do provide practically reception conditions?) (do not confuse this question with question number 3 about the competence to make rules about reception conditions).

The Czech Republic has a centralised system for providing reception conditions. The RFA, which is a special agency of the Ministry of the Interior, is responsible for the management of all asylum facilities in the country.

There are two types of reception facilities: (1) reception centres; and (2) accommodation centres. The reception centres are always operated by the RFA. However, in certain accommodation centres, some services are provided by municipalities or private owners on a contract basis. The detention centres are run jointly by the RFA and the Aliens' and Border Police. More precisely, as of 1 January 2006, the Police does no longer manage detention centres for foreigners. At present, all detention centres are managed by the RFA, while Foreign Police is in charge particularly of security guard and escort activities. The Ministry of Education, Youth and Sports runs two centres for unaccompanied minors. Furthermore, the NGOs run three centres for rejected asylum seekers.

Q.35. In case, are accommodation centres public or/and private (managed by NGOs? If yes, are the NGOs financially supported by the State?)

All the accommodation centres are public. As mentioned above, in certain accommodation centres there are some services provided by municipalities or private owners. Although the debate on this issue has already started, there are no accommodation centres managed by NGOs in the Czech Republic.

[322] All data rely upon figures at http://www.mvcr.cz/statistiky/2006/uprch07/pobyt_07.html.

Applicants can also opt for private housing, but they are not offered any private housing by the Ministry of the Interior.

Q.36. In case, how many accommodation centres are there in your Member State (distinguish in your answer between public and private centres)?

The RFA is responsible for the management of all asylum facilities in the country; therefore, there are no private centres. There are 12 asylum facilities for applicants for international protection. Five centres are owned by the state and operated by the RFA (Zastávka u Brna, Bělá – Jezová, Havířov, Kostelec nad Orlicí, Vyšní Lhoty), one is operated by the RFA at the premises of the Czech Airports Authority (Praha – Ruzyně) one is temporarily suspended (Červený Újezd) and five are run by other legal entities, mostly municipalities, on a contract basis with the RFA and for a fee (Seč, Stráž pod Ralskem, Bruntál, Zbýšov and Kašava).

There are 2 reception centres (Vyšní Lhoty, with a capacity of 422 beds, and Praha – Ruzyně, with 60 beds, which has been established for aliens who intend to apply for international protection in the transit area of the Prague international airport) and 10 accommodation centres (Zastávka u Brna, Bělá – Jezová, Červený Újezd, Havířov, Kostelec nad Orlicí, Seč, Stráž pod Ralskem, Bruntál, Zbýšov and Kašava). Since 2005, accommodation centre in Červený Újezd has been temporarily suspended. Furthermore, Ministry of the Interior has recently announced that due to the further decline of number of asylum seekers in the Czech Republic it is going to close down three more accommodation centres (i.e. Kašava, Seč and Bruntál) in September 2006.

Since the 2006 Report, two more accommodation centres (Bruntál and Kašava) have been temporarily suspended and further centres will follow soon due to the continuing decrease of the asylum seekers.

Q.37. Is there in the legislation a plan or are there rules in order to spread the asylum seekers all over the territory of your Member State to avoid their concentration in some areas like big cities or to share the costs of their reception between central, regional and local authorities?

There is no such legislation in force, but the RFA has an internal plan for dispersing the applicants over the territory of the Czech Republic. According to 2005 Annual Report of the RFA (pp. 8-9) both individual characteristics of asylum seekers (such as family ties, health condition and membership of a vulnerable group) and issues of public interest (ensuring social and ethnic balance in the centres and taking into account free capacity of each centre) are taken into account. As mentioned above, the accommodation centres are spread across the territory of the Czech Republic. Since they are located mostly in rural areas, there is no problem of concentration in some areas like big cities.

Q.38. Does a central body representing all the actors (like NGOs) involved in reception conditions exist? Does it play a consultative role for the State authorities, a coordination role for the actors or any other role?

There is no such centralised body, but major NGOs involved with refugee issues are joined in the Consortium of NGOs Assisting Refugees. This body does not play a consultative role for the State authorities but can be considered as playing a coordination role for the NGOs.

However, all the actors meet together from time to time on an informal basis to consult reception conditions. Furthermore, all the actors are also members of the Committee for the Rights of the Aliens, which operates within the framework of the Government Council for Human Rights. This body has a consultative role, but does not concentrate only on reception conditions of applicants for international protection since its focus is much broader (rights of all groups of aliens in the Czech Republic).

Q.39. **Q.39. A. Which is the body in charge of guidance, monitoring and controlling the system of reception conditions as requested by article 23 which is mandatory provision? Include in your answer which is the competent ministry (Interior, Social affairs, etc) for reception conditions?**

In the first instance, the RFA is in charge of guidance, monitoring and controlling the system of reception conditions and in the second instance, both the RFA and DAMP are controlled and monitored by Ministry of Interior.

Furthermore, since January 1, 2006, the Ombudsman is entitled to conduct systematic visits to all facilities where the freedom of persons is or may be restricted, which includes *inter alia* all the asylum facilities (both accommodation and reception centres, including the reception in the transit zone of the Prague International Airport).

Q.39. B. Has your Member State (like the Czech Republic did recently) approved quality standards (not necessary legally binding) for housing services (for instance about the number of persons per bedroom on the basis of its size, number of accessible toilets, bathrooms, showers and washing machines per number of persons, existence of common rooms with radio, television, newspapers, books, computers, accessibility of telephone, existence of recreative rooms for children,…) to be respected in particular in accommodation centres?

Yes, the Minister of the Interior approved such quality standards for all the asylum facilities (i.e. both the reception and accommodation centres) in August 2005. These standards (currently being implemented by the RFA) no doubt represent good practice.

They are comprehensive (16 pages long) and cover all the important aspects of life in the centres such as the locality and capacity of the centre, the number of persons per bedroom on the basis of its size, access to cultural, sports and other free time activities, the number of accessible toilets, bathrooms, self-catering facilities, showers and washing machines per number of persons, the existence of common rooms with radio, television, newspapers, books, and computers, the accessibility of telephones, the existence of recreational rooms for children etc. (see also Q.14 D).

Q.39. C. How is this system of guidance, control and monitoring of reception conditions organised?

The system of guidance, control and monitoring of the quality of reception conditions is facilitated by the fact that the provision of reception conditions is centralized and run by one body. At the first stage, the RFA conducts random visits and at the second stage, both the RFA and DAMP are controlled and monitored by Ministry of Interior. The RFA also has a system of "general" and "financial" internal controls, which are conducted twice per year.

Furthermore, the Ombudsman is entitled to control and monitor the reception conditions (see above Q.39 A).

Q.39. D. Does the body in charge of guidance, control and monitoring produce reports about the level of reception conditions? If yes, how frequently and are they public?

The annual reports on the activities of RFA and DAMP are available on the Internet. The reports of random visits conducted by the RFA are not made public. According to Act No. 349/1999 Coll. on the Public Defender of Rights, the Ombudsman informs the Chamber of Deputies of the Czech Republic, on a regular quarterly basis, on the activities of his Office. These reports are available to the public. The Ombudsman also publishes specific topic reports and an annual report of his activities.

Q.40. **Q.40. A.** What is the total number of asylum seekers covered by reception conditions for the last year for which figures are available (see article 22 obliging Member States to calculate those statistics about which we also asked the Commission to require them from Member States for mid June)?

There were 4,021 asylum seekers in the Czech Republic in 2005 (68% applications lodged in reception centre Vyšní Lhoty, 13% lodged in reception centre at the Prague International Airport, 1% in accommodation centres, and 18% in other facilities such as detention centres, hospitals or prisons) and 1,802 asylum seekers in 2006 (as of 31 July 2006). As of 31 July 2006, there are 2, 662 asylum seekers in the first and second

instance and 1,746 asylum seekers who lodged a cassational complaint. There are 566 (21%) asylum seekers in private accommodation, 215 (8%) in reception centres, 70 (3%) asylum seekers in prison, 165 (6%) in detention, 32 (1%) in hospitals and 1,614 in accommodation centres (61%).

The number of asylum seekers in the Czech Republic further decreased in 2006 since there were only 3,016 applicants for international protection.

Q.40. B. What is the total budget of reception conditions in euro for the last year for which figures are available?

Total budget of the RFA for running asylum centres in 2005 was 334,554,000 CZK (€11,665,195).[323] This 9.5 % less than in 2004 (370,085,000 CZK)[324] but expenses per day (of stay in asylum centre) increased by 28 %, i.e. from 444 CZK (€15,5) to 499 CZK (€17.4).

Total budget of the RFA in 2005 consists of: reception conditions *stricto sensu* (57%; 189,933,623 CZK, €6,622,586); wages (36%; 120,414,000 CZK, €4,198,583); and investment expenses (7%; 24,206,422 CZK, €844,027). Furthermore, the RFA provided financial contribution to the municipalities that consisted of 3,473,000 CZK (€121,096) for expenses related to the running and management of the asylum facilities and 110,000 CZK (€3,836) for expenses related to the education of minor asylum seekers.

Total estimated budget of the RFA in 2006 is 288,057,000 CZK (€) and consists of: reception conditions *stricto sensu* (46%; 131,083,000 CZK, €4,570,589); wages (47%; 136,595,000 CZK, €4,762,780); and investment expenses (7%; 20,379,000 CZK, €710,573).

The 2006 Annual Report of the RFA has not been released yet and thus more up-to-date data is not available.

Q.40. C. What is the average cost of reception conditions in euro per asylum seeker for the last year for which figures are available?

According to the Small Scale Study on Reception Conditions of the European Migration Network (see Q.8), the amount paid for an applicant per residential day is approximately 388 CZK (excepting investments and employee wages), i.e. 11.640 CZK per month (€ 412). According to the information on website of the RFA, it amounts approximately to 350 CZK per day, i.e. 10.050 CZK per month (€ 372). And finally, if we calculate the compulsory financial contribution of the applicants who have sufficient resources, it amounts to 258 CZK per day, i.e. 7.740 CZK per month (€ 274).

[323] All the following budget items (including estimations for 2006) can be found at 2005 Annual Report of the RFA.
[324] This is due to the further decrease of asylum claims in the Czech Republic in 2005.

Q.40. D Are the costs of reception conditions of asylum seekers supported by the central/federal or federated government or are they shared with regional and/or local authorities?

The Czech Republic is not a federal state, but the State contributes to municipalities to cover the costs expended by them in association with the existence of asylum facility in their territory (see also Q.2).

Q.40. E. Is article 24 § 2 of the directive following which "*Member States shall allocate the necessary resources in connection with the nationals provisions enacted to implement this directive*" respected?

Yes, this provision is respected.

Q.41. **Q.41. A.** What is the total number of persons working for reception conditions?

As of December 31, 2006, the RFA had 436 employees.

Q.41. B. How is the training of persons working in accommodation centres organised? Does it take into account specific needs of unaccompanied minors when relevant as well as the gender dimension? (see article 14 §5, 19 § 4 and also 24 §1 which are mandatory provisions)?

The RFA organises both entry and continual training.[325] It also conducts training sessions within the framework of implementing the quality standards. The specific needs of applicants including unaccompanied minors and women are taken into account during such training sessions (see division on protected zones etc.; Q.30 B).

In March 2006, the Czech Parliament adopted Act. No. 108/2006 Coll.,[326] on Social Services, that stipulates detailed rules on social workers and their qualification (see in particular Arts. 109-110 and 116-117 of this Act), including those who work in asylum and/or detention facilities (see Art. 1 § 2 of this Act), and specifies conditions of their further education and training (see in particular Art. 111 of this Act).

[325] See 2005 Annual Report of the RFA, pp. 6-7.
[326] It was published in issue No. 37/2006 of the Collection of Laws of the Czech Republic (pp. 1257-1289) on March 31, 2006 and entered into force on January 1, 2007.

Q.41. C. Are there rules about the deontology of persons working in accommodation centres, in particular on confidentiality?

Yes, these rules are laid down by the RFA. Act. No. 108/2006 Coll., on Social Services (see Q.41 B) includes rules about the deontology (see in particular Art. 2 § 2 of this Act) and expressly emphasises confidentiality of social workers (see Art. 100 of this Act).

10. IMPACT OF THE DIRECTIVE

Legal impact of the transposition of the directive:

Q.42. Specify if there are or not big problems with the translation of the directive in the official language of your Member State and give in case a list of the worst examples of provisions which have been badly translated? (please note that this question has in particular been added to the questionnaire concerning the new Member States)

No, there are not big problems with the translation of the directive in the Czech language. Translation of subsequent directives, and particularly Directive 2004/83/EC and Directive 2005/85/EC, is much worse.

Q.43. Where there precise legal rules on reception conditions for asylum seekers before the adoption of the norms of transposition of the directive (if yes, specify what the nature of those rules was (legislation, regulation, administrative instructions,…)?

Yes, there were precise rules on reception conditions for asylum seekers in the Asylum Act prior to the transposition of the Directive (see above).

Q.44. Did the legal rules applicable to reception conditions become more clear, precise, coherent or detailed with the adoption of the transposition norms (for instance do you now have after the transposition one basic text dealing with reception conditions instead of numerous different texts in the past?

There was no significant improvement as to their clarity, coherence or coverage. The reception conditions met a high standard even prior to the adoption of Directive 2003/9/EC, and all reception conditions were set forth in one basic act, i.e. the Asylum Act. Therefore the directive was transposed by the insertion of several provisions and by refining existing definitions.

Q.45. Did the transposition of the directive imply important changes in national law or were the changes of minor importance? In case, list the most important changes that have been introduced.

To some extent, the transposition of the Directive brought important changes. In particular, it strengthened and improved the position of unaccompanied minors and introduced the obligation to trace family members.

Political impact of the transposition of the directive:

Q.46. Explain briefly if there has been an important debate about the transposition of the directive (in particular in the Parliament, but possibly also in the government, between political parties, including in medias, etc; underline in case the main points which have been discussed or have created difficulties)

Transposition of the Directive was not subject to extensive debate since most of the contested issues, such as the restriction of access to the labour market, detention and/or treatment of unaccompanied minors had been already on the table. Indeed, the restriction of access to the Supreme Administrative Court for asylum seekers (Act. No. 350/2005 Coll.; see Q.2) attracted much more attention from the UNHCR, media, NGOs, academics, and judges.

Q.47. **Did the transposition of the directive contribute to make the internal rules stricter or more generous? In particular, did your Member State use the occasion of the transposition to abolish more favourable provisions of national law? Does your Member State still have rules more favourable than the provisions of the directive (if yes, try to give the more important examples).**

Most of the new provisions were already observed in practice. On the other hand, the Czech Republic implemented Art. 7(1) of the Directive that permits issuing visas with restricted territorial validity, which is a new phenomenon in the Czech Republic (notwithstanding the fact that they have not been issued so far).

11. ANY OTHER INTERESTING ELEMENT

Q.48. What are in your view the weaknesses and strengths of the system of reception conditions in your Member State?

Strengths:

- The treatment of "unaccompanied minors"
- The division of the area of asylum facilities into standard and protected zones
- The cooperation between the MOI, Aliens' and Border Police and NGOs in detention centres.

- Services provided to asylum seekers are generally of professional quality (Quality Standards approved by the Minister of the Interior and implemented by the RFA).
- The system of self-catering has been implemented in more asylum facilities

Weaknesses:

- The lack of beds and certain aspects of the treatment of asylum seekers in the Prague International Airport (see Q.32 C for details).
- The treatment of victims of torture is not as strong as in case of "unaccompanied minors".
- Judicial review of detention and expulsion orders is rather slow and thus often (albeit not always) ineffective.
- Unfortunately, when transposing the Procedures Directive the Czech legislator somehow forgot the obligations flowing from the Reception Conditions Directive. As a result, the 2007 Amendment led to worsening the reception standards and certain provisions are even in violation of the Directive (e.g. no pocket money for the applicants in the airport reception centre).
- The average period of detention is close to the upper limit and is not always "as short as possible"[327] (see Q.33 E).
- Private accommodation should be supported more, as asylum seekers accommodated in centres are often isolated and consequently lose the ability to look after themselves.
- There should be Czech language classes provided to asylum seekers to enable them to integrate into the Czech Republic. The Czech language courses have been so far provided mainly by NGOs.

Q.49. Mention any <u>good practice</u> in your Member State which could be promoted in other Member States

- The treatment of unaccompanied minors.
- The Quality Standards approved by the Minister of the Interior in August 2005 and implemented by the RFA.

Q.50. Please add here <u>any other interesting element</u> about reception conditions in your Member State which you did not had the occasion to mention in your previous answer.

- Financial contribution to the municipalities.

[327] However, this weakness is to a certain extent caused also by a slow issuing of the new travel documents by the foreign embassies.

QUESTIONNAIRE FOR THE NATIONAL REPORT ON THE IMPLEMENTATION OF THE DIRECTIVE : RECEPTION CONDITIONS OF 27 JANUARY 2003

IN: DENMARK

by
LASSEN, Nina Marie
LLM, Senior Legal Advisor with the Danish Refugee Council
Nina.Lassen@drc.dk

Date: 31 May 2006

DENMARK IS NOT BOUND BY THE DIRECTIVE

1. NORMS OF TRANSPOSITION

Q.1. Identify the main norm of transposition (indicate the title, date, number, date of entry into force and references of publication into the official journal) and indicate its legal nature (legislative, regulatory, administrative); indicate in your answer if this norm was only devoted to the directive or if it has been included in a more general text and indicate in that case by quoting precisely the numbers of the provisions adopted to transpose the directive.

Authors note: All internal guidelines and instructions and the Operator Contract with annexes are not public . They are however covered by the principle on "right of access to documents".

This table is about: [X] a text already adopted [ ] a text which is still a project to be adopted
TITLE: Bekendtgørelse af udlændingeloven (Aliens (Consolidation) Act)
DATE: 1 September 2006. This is the date of the latest Aliens Consolidation Act. The Aliens Act (Udlændingeloven) was adopted by Law no. 226 of 8 June 1983 and subsequently amended numerous times.
NUMBER: 945 (Consolidation Act)
DATE OF ENTRY INTO FORCE: The Aliens Act of 1983 entered into force on 1 October 1983. The latest amendment to the Aliens Act, which is included in the Aliens (Consolidation) Act of 1 September 2006 entered into force on 10 June 2006.
PROVISIONS CONCERNED (for example if the norm is not devoted only to the transposition of the concerned directive): Section 36 (Article7 of RD);

Section 42, section 42a, section 42b, section 42d, section 42e, section 42g, section 48a, section 56a
REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL:
LEGAL NATURE (indicate a cross in the correct box): [X] **LEGISLATIVE**: [ ] **REGULATION**: [ ] **CIRCULAR or INSTRUCTIONS:**

TITLE: Bekendtgørelse af Retsplejeloven (Administration of Justice (Consolidation Act)
DATE: 5 October 2006. This is the latest Administration of Justice Consolidation Act. The Administration of Justice Act (Retsplejeloven) was adopted by Law no. 90 of 11 April 1916 and subsequently amended numerous times
NUMBER: 1001 (Consolidation Act)
DATE OF ENTRY INTO FORCE: The Administration of Justice Act of 1916 entered into force on 1 October 1919. The Administrative of Justice (Consolidation) Act entered into force on 3 May 2007
PROVISIONS CONCERNED : 260
(for example if the norm is not devoted only to the transposition of the concerned directive)
REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL:
LEGAL NATURE (indicate a cross in the right box):
[ ] **LEGISLATIVE**
[ ] **REGULATION**
[ ] **CIRCULAR OR INSTRUCTIONS**

TITLE: Forvaltningsloven (Administrative Procedures Act)
DATE: 19 December 1985
NUMBER: Law no. 571
DATE OF ENTRY INTO FORCE: 1 January 1987
PROVISIONS CONCERNED : Section 8
(for example if the norm is not devoted only to the transposition of the concerned directive)
REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL:
LEGAL NATURE (indicate a cross in the right box):
[X] **LEGISLATIVE**
[ ] **REGULATION**
[ ] **CIRCULAR OR INSTRUCTIONS**

TITLE: Penal Code (Straffeloven)
DATE:19 December 1985
NUMBER: 573

DATE OF ENTRY INTO FORCE:
PROVISIONS CONCERNED : 152
(for example if the norm is not devoted only to the transposition of the concerned directive)
REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL:

LEGAL NATURE (indicate a cross in the right box):

[X] **LEGISLATIVE**
[ ] **REGULATION**
[ ] **CIRCULAR OR INSTRUCTIONS**

TITLE: Lovbekendtgørelse om social service (Social Services Act)
DATE: 18 January 2007
NUMBER: 58
DATE OF ENTRY INTO FORCE: 1 April 2007
PROVISIONS CONCERNED : section 11 and 12. Chapter 11. Chapter 16
(for example if the norm is not devoted only to the transposition of the concerned directive)
REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL:

LEGAL NATURE (indicate a cross in the right box):

[X] **LEGISLATIVE**
[ ] **REGULATION**
[ ] **CIRCULAR OR INSTRUCTIONS**

TITLE: Ombudsmandsloven (Ombudsman Act) – **OA.**
DATE: 12 June 1996
NUMBER: 473
DATE OF ENTRY INTO FORCE: 1 January 1997
PROVISIONS CONCERNED :
(for example if the norm is not devoted only to the transposition of the concerned directive)
REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL:

LEGAL NATURE (indicate a cross in the right box):

[X] **LEGISLATIVE**
[ ] **REGULATION**
[ ] **CIRCULAR OR INSTRUCTIONS**

Q.2. List by order of importance by using numbers (1, 2, 3) the others norms of transposition if there are more than one (indicate for each norm the title, date, number and references of publication into the official journal; include in your answer the administrative measures taken to ensure

implementation of the directive and of the transposition norms like regulations, administrative circulars, special instructions,…)

TITLE: Bekendtgørelse om undervisning og aktivering af asylansøgere m.fl. (Regulation on education and activation of asylum seekers)
DATE: 30 June 2003 (as amended 21 August 2006)
NUMBER: 622 (2003) - amendments: No. 622 (2006)
DATE OF ENTRY INTO FORCE: 12 July 2003 – amendments: 1 September 2006
PROVISIONS CONCERNED : Chapter 2
(for example if the norm is not devoted only to the transposition of the concerned directive)
REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL:

LEGAL NATURE (indicate a cross in the right box):

☐ **LEGISLATIVE**
☒ **REGULATION**
☐ **CIRCULAR OR INSTRUCTIONS**

TITLE: Bekendtgørelse om behandling af sager om repræsentanter for uledsagede mindreårige asylansøgere (Regulation on dealing with cases concerning representation of unaccompanied minor asylum seekers)
DATE:20 March 2003
NUMBER: BEK no. 193
DATE OF ENTRY INTO FORCE: 1 April 2003
PROVISIONS CONCERNED :
(for example if the norm is not devoted only to the transposition of the concerned directive)
REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL:

LEGAL NATURE (indicate a cross in the right box):

☐ **LEGISLATIVE**
☒ **REGULATION**
☐ **CIRCULAR OR INSTRUCTIONS**

TITLE: Bekendtgørelse om ophold i varetægt (Regulation on stay in probation)
DATE: 6 November 1993
NUMBER: 897
DATE OF ENTRY INTO FORCE: 1 December 2003
PROVISIONS CONCERNED :
(for example if the norm is not devoted only to the transposition of the concerned directive)
REFERENCES OF PUBLICATION

IN THE OFFICIAL JOURNAL:

LEGAL NATURE (indicate a cross in the right box):

[ ] **LEGISLATIVE**
[X] **REGULATION**
[ ] **CIRCULAR OR INSTRUCTIONS**

TITLE: Cirkulæreskrivelse til samtlige statsamter, herunder Københavns Overpræsidium, om udpegning af repræsentanter for uledsagede mindreårige asylansøgere (Circular to all county authorities regarding appointment of representatives for unaccompanied minor asylum seekers)
DATE:26 March 2003
NUMBER: CIS No. 9126
DATE OF ENTRY INTO FORCE: 26 March 2003
PROVISIONS CONCERNED :
(for example if the norm is not devoted only to the transposition of the concerned directive)
REFERENCES OF PUBLICATION
IN THE OFFICIAL JOURNAL:

LEGAL NATURE (indicate a cross in the right box):

[ ] **LEGISLATIVE**
[ ] **REGULATION**
[X] **CIRCULAR OR INSTRUCTIONS**

TITLE: Retningslinier vedrørende udstedelse af nye legitimationskort til asylansøgere (Instructions on the issuing of new identity cards to asylum seekers)
DATE:6 January 1998
NUMBER: CIS no. 10473
DATE OF ENTRY INTO FORCE: 6 January 2006
PROVISIONS CONCERNED :
(for example if the norm is not devoted only to the transposition of the concerned directive)
REFERENCES OF PUBLICATION
IN THE OFFICIAL JOURNAL:
LEGAL NATURE (indicate a cross in the right box):

[ ] **LEGISLATIVE**
[ ] **REGULATION**
[X] **CIRCULAR OR INSTRUCTIONS**

TITLE: Udlændingeservice, (interne) Retningslinier for privat indkvartering af asylansøgere m.fl. (Immigration Service, Internal guidelines on private accommodation of asylum seekers and others)
DATE: 25 January 2005
NUMBER: -
DATE OF ENTRY INTO FORCE: 25 January 2005

PROVISIONS CONCERNED :
(for example if the norm is not devoted only to the Transposition of the concerned directive)
REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL: -

LEGAL NATURE (indicate a cross in the right box):

☐ **LEGISLATIVE**
☐ **REGULATION**
☒ **CIRCULAR OR INSTRUCTIONS**

TITLE: Udlændingeservice, (interne) Retningslinier for 2-værelsespolitikken (Immigration Service internal guidelines for the two-rooms policy)
DATE: 2 April 2007
NUMBER: -
DATE OF ENTRY INTO FORCE: 2 April 2007
PROVISIONS CONCERNED :
(for example if the norm is not devoted only to the transposition of the concerned directive)
REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL: -

LEGAL NATURE (indicate a cross in the right box):

☐ **LEGISLATIVE**
☐ **REGULATION**
☒ **CIRCULAR OR INSTRUCTIONS**

TITLE: Udlændingeservice, (interne) Retningslinier for tilvejebringelse og afregning af naturalieydelser (Immigration Service internal instructions on The provision and account of benefits in kind)
DATE: 7 January 2004
NUMBER:
DATE OF ENTRY INTO FORCE: 7 January 2004
PROVISIONS CONCERNED : **(for example if the norm is not devoted only to the transposition of the concerned directive)**
REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL: N/A
LEGAL NATURE (indicate a cross in the right box): ☐ **LEGISLATIVE** ☐ **REGULATION** ☒ **CIRCULAR OR INSTRUCTIONS**

TITLE: Udlændingeservice, (intern) Vejledning for afgørelser om nedsættelse eller inddragelse af kontante

ydelser (internal Guidelines on decisions relating to reduction or withdrawal of cash allowances)
DATE: 25 August 2006
NUMBER:
DATE OF ENTRY INTO FORCE: 25 August 2006
PROVISIONS CONCERNED : **(for example if the norm is not devoted only to the transposition of the concerned directive)**
REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL:
LEGAL NATURE (indicate a cross in the right box): ☐ **LEGISLATIVE** ☐ **REGULATION** X **CIRCULAR OR INSTRUCTIONS**

TITLE: Udlændingeservice: (interne) Retningslinier for iværksættelse af sociale foranstaltninger i forhold til asylsøgere mv. (Immigration Service internal Instructions for the establishment of social measures for asylum seekers)
DATE: 11 February 2005
NUMBER:
DATE OF ENTRY INTO FORCE:
PROVISIONS CONCERNED : **(for example if the norm is not devoted only to the transposition of the concerned directive)**
REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL:
LEGAL NATURE (indicate a cross in the right box): ☐ **LEGISLATIVE** ☐ **REGULATION** X **CIRCULAR OR INSTRUCTIONS**

TITLE: Udlændingeservice, (interne)Retningslinier for bevilling til tandbehandling af voksne asylansøgere mv. (Immigration Service internal Guidelines on permission to dental treatment of adult asylum seekers, etc.)
DATE: 8 June 2005
NUMBER:
DATE OF ENTRY INTO FORCE:
PROVISIONS CONCERNED : **(for example if the norm is not devoted only to the transposition of the concerned directive)**
REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL:

LEGAL NATURE (indicate a cross in the right box): ☐ **LEGISLATIVE** ☐ **REGULATION** X **CIRCULAR OR INSTRUCTIONS**

TITLE: Udlændingestyrelsens (interne) Retningslinier for lovligt fravær med økonomi (Immigration Service internal Guidelines on legal funded absence)
DATE: 4 October 2005
NUMBER:
DATE OF ENTRY INTO FORCE: 4 October 2005
PROVISIONS CONCERNED : **(for example if the norm is not devoted only to the transposition of the concerned directive)**
REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL:
LEGAL NATURE (indicate a cross in the right box): ☐ **LEGISLATIVE** ☐ **REGULATION** X **CIRCULAR OR INSTRUCTIONS**

TITLE: Operator Contract between Immigration Service and Operator of reception conditions, Annexe 2.0.2 on social work
DATE: Contract is renewed every year. No specific date on Annexes
NUMBER:
DATE OF ENTRY INTO FORCE:
PROVISIONS CONCERNED : **(for example if the norm is not devoted only to the transposition of the concerned directive)**
REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL:
LEGAL NATURE (indicate a cross in the right box): ☐ **LEGISLATIVE** ☐ **REGULATION** X **CIRCULAR OR INSTRUCTIONS**

TITLE: Operator Contract between Immigration Service and Operator of reception conditions, Annexe 2.0.3: Sundhedsbetjening (Health care)
DATE: Contract is renewed every year. No specific date on Annexes
NUMBER:
DATE OF ENTRY INTO FORCE:
PROVISIONS CONCERNED : **(for example if the norm is not devoted only to the**

transposition of the concerned directive)
REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL:
LEGAL NATURE (indicate a cross in the right box): **LEGISLATIVE** **REGULATION** X **CIRCULAR OR INSTRUCTIONS**

TITLE: Operator Contract between Immigration Service and Operator of reception conditions, Annexe 2.0.4: Børneundervisning (Teaching of children)
DATE: Contract is renewed every year. No specific date on Annexes
NUMBER:
DATE OF ENTRY INTO FORCE:
PROVISIONS CONCERNED : **(for example if the norm is not devoted only to the transposition of the concerned directive)**
REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL:
LEGAL NATURE (indicate a cross in the right box): **LEGISLATIVE** **REGULATION** X **CIRCULAR OR INSTRUCTIONS**

TITLE: Operator Contract between Immigration Service and Operator of reception conditions , Annexe 2.0.7: Forebyggende sundhedsordninger for børn og unge (Prophylactic health care for children and adolescents)
DATE: Contract is renewed every year. No specific date on Annexes
NUMBER:
DATE OF ENTRY INTO FORCE:
PROVISIONS CONCERNED : **(for example if the norm is not devoted only to the transposition of the concerned directive)**
REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL:
LEGAL NATURE (indicate a cross in the right box): **LEGISLATIVE** **REGULATION** X **CIRCULAR OR INSTRUCTIONS**

TITLE: Operator Contract between Immigration Service and Operator of reception conditions, Annexe 2.0.9 on Transport
DATE: Contract is renewed every year. No specific date on Annexes

NUMBER:
DATE OF ENTRY INTO FORCE:
PROVISIONS CONCERNED : **(for example if the norm is not devoted only to the transposition of the concerned directive)**
REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL:
LEGAL NATURE (indicate a cross in the right box): ☐ **LEGISLATIVE** ☐ **REGULATION** X **CIRCULAR OR INSTRUCTIONS**

TITLE: Operator Contract between Immigration Service and Operator of reception conditions, Annexe 2.1.1.: Modtagefunktion, modtage/udrejsecentre (reception tasks, reception and departure centres)
DATE: Contract is renewed every year. No specific date on Annexes
NUMBER:
DATE OF ENTRY INTO FORCE:
PROVISIONS CONCERNED : 1, 2, 4 **(for example if the norm is not devoted only to the transposition of the concerned directive)**
REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL:
LEGAL NATURE (indicate a cross in the right box): ☐ **LEGISLATIVE** ☐ **REGULATION** X **CIRCULAR OR INSTRUCTIONS**

TITLE: Operator Contract between Immigration Service and Operator of reception conditions, Annexe 2.1.3 of the Operator Contract: Medicinsk modtagelse, modtage-/udrejsecentre (Medical check-up, reception/departure centre)
DATE: Contract is renewed every year. No specific date on Annexes
NUMBER:
DATE OF ENTRY INTO FORCE:
PROVISIONS CONCERNED :
(for example if the norm is not devoted only to the transposition of the concerned directive)
REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL:
LEGAL NATURE (indicate a cross in the right box):
☐ **LEGISLATIVE**
☐ **REGULATION**

X **CIRCULAR OR INSTRUCTIONS**

TITLE: Operator Contract between Immigration Service and Operator of reception conditions, Annexe 2.1.4: Indkvartering, modtage/udrejsecentre (Accommodation, reception and departure centres)
DATE: Contract is renewed every year. No specific date on Annexes
NUMBER:
DATE OF ENTRY INTO FORCE:
PROVISIONS CONCERNED :
(for example if the norm is not devoted only to the transposition of the concerned directive)
REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL:

LEGAL NATURE (indicate a cross in the right box):

LEGISLATIVE
REGULATION
CIRCULAR OR INSTRUCTIONS

TITLE: Operator Contract between Immigration Service and Operator of reception conditions, Annexe 2.1.5: Socialt netværksarbejde, modtage/udrejsecentre (Establishment of social network, reception and departure centres)
DATE: Contract is renewed every year. No specific date on Annexes
NUMBER:
DATE OF ENTRY INTO FORCE:
PROVISIONS CONCERNED :
(for example if the norm is not devoted only to the transposition of the concerned directive)
REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL:

LEGAL NATURE (indicate a cross in the right box):

LEGISLATIVE
REGULATION
X **CIRCULAR OR INSTRUCTIONS**

TITLE: Operator Contract between Immigration Service and Operator of reception conditions Annexe 2..2.1.: Socialt netværksarbejde, omsorgscenter (establishment of social network, special care centre)
DATE: Contract is renewed every year. No specific date on Annexes
NUMBER:
DATE OF ENTRY INTO FORCE:
PROVISIONS CONCERNED :

(for example if the norm is not devoted only to the transposition of the concerned directive)
REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL:

LEGAL NATURE (indicate a cross in the right box):

☐ **LEGISLATIVE**
☐ **REGULATION**
☒ **CIRCULAR OR INSTRUCTIONS**

TITLE: Operator Contract between Immigration Service and Operator of reception conditions, Annexe 2.2.2: Sundhedsbetjening, omsorgscenter (health care, special care centre)
DATE: Contract is renewed every year. No specific date on Annexes
NUMBER:
DATE OF ENTRY INTO FORCE:
PROVISIONS CONCERNED :
(for example if the norm is not devoted only to the transposition of the concerned directive)
REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL:

LEGAL NATURE (indicate a cross in the right box):

☐ **LEGISLATIVE**
☐ **REGULATION**
☒ **CIRCULAR OR INSTRUCTIONS**

TITLE: Operator Contract between Immigration Service and Operator of reception conditions, Annexe 2.3.1: Indkvartering, centre for uledsagede mindreårige (Accommodation, centres for unaccompanied minors)
DATE: Contract is renewed every year. No specific date on Annexes
NUMBER:
DATE OF ENTRY INTO FORCE:
PROVISIONS CONCERNED :
(for example if the norm is not devoted only to the transposition of the concerned directive)
REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL:

LEGAL NATURE (indicate a cross in the right box):

☐ **LEGISLATIVE**
☐ **REGULATION**
☒ **CIRCULAR OR INSTRUCTIONS**

TITLE: Operator Contract between Immigration Service and Operator of reception conditions, Annexe 2.3.2:Socialt netværksarbejde, centre for uledsagede

mindreårige (Establishment of social networks, centres for unaccompanied minors)
DATE: Contract is renewed every year. No specific date on Annexes
NUMBER:
DATE OF ENTRY INTO FORCE:
PROVISIONS CONCERNED :
(for example if the norm is not devoted only to the transposition of the concerned directive)
REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL:

LEGAL NATURE (indicate a cross in the right box):

☐ **LEGISLATIVE**
☐ **REGULATION**
☐ **CIRCULAR OR INSTRUCTIONS**

TITLE: Operator Contract between Immigration Service and Operator of reception conditions, Annexe 2.3.3: Sundhedsbetjening, centre for uledsagede mindreårige (health care, centres for unaccompanied minors)
DATE: Contract is renewed every year. No specific date on Annexes
NUMBER:
DATE OF ENTRY INTO FORCE:
PROVISIONS CONCERNED :
(for example if the norm is not devoted only to the transposition of the concerned directive)
REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL:

LEGAL NATURE (indicate a cross in the right box):

☐ **LEGISLATIVE**
☐ **REGULATION**
☒ **CIRCULAR OR INSTRUCTIONS**

TITLE: Operator Contract between Immigration Service and Operator of reception conditions, Annexe 2.3.4: Forebyggende sundhedsordninger for børn og unge, centre for uledsagede mindreårige (Prophylactic health care for children and adolescents, centres for unaccompanied minors)
DATE: Contract is renewed every year. No specific date on Annexes
NUMBER:
DATE OF ENTRY INTO FORCE:
PROVISIONS CONCERNED :
(for example if the norm is not devoted only to the transposition of the concerned directive)
REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL:

LEGAL NATURE (indicate a cross in the right box):

☐ **LEGISLATIVE**
☐ **REGULATION**
☐ **CIRCULAR OR INSTRUCTIONS**

TITLE: Justitsminiseteriets Skrivelse om indlogering af asylansøgere (Ministry of Justice Letter on Accommodation of asylum seekers)
DATE: 30 January 1985
NUMBER: 11113
DATE OF ENTRY INTO FORCE:
PROVISIONS CONCERNED :
(for example if the norm is not devoted only to the transposition of the concerned directive)
REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL:

LEGAL NATURE (indicate a cross in the right box):

☐ **LEGISLATIVE**
☐ **REGULATION**
☒ **CIRCULAR OR INSTRUCTIONS**

Q.3. Explain which level of government is competent to adopt the legal norms on reception conditions for asylum seekers (specify in particular in case of a federal or regional State, if it is the federal/central power or the components; in case, specify below when it is impossible for you to answer a question because it is about the competence of the components and it is impossible for you to gather reliable information about all of them)

As the Directive on minimum standards for the reception of asylum seekers is subject to the Danish reservation under the 1997 Protocol, it is not binding upon or applicable in Denmark and has therefore not, as such, been transposed into national legislation.

The parliament has adopted very detailed norms on the reception of asylum seekers. Most of the implementation has been delegated to the Immigration Service which is a directorate within the Ministry of Refugee, Immigration and Integration.

Q.4. Explain the legal technical choices done to transpose the directive (comment on the nature and level of the norms used to do the transposition: legislative, regulatory, administrative like instructions, etc). Add any other element about the technique of transposition of the directive which is interesting for the implementation of Community law.

Not applicable as the Directive on minimum standards for the reception of asylum seekers is subject to the Danish reservation under the 1997 Protocol. The directive is

therefore not binding upon or applicable in Denmark and has not, as such, been transposed into national legislation.

Q.5. Mention if there is a general tendency to just copy the provisions of the directive into national legislation without redrafting or adaptation them to national circumstances? If yes, give some of the worst examples and explain if there is a risk that those provisions remain unapplied or will create difficulties of implementation in the future.

N/A as directive is not binding for Denmark

Q.6. Have all the texts necessary to ensure the effective implementation of the new rules of transposition been adopted, prepared or at least foreseen in the future (for example a regulation completing a new law and the necessary instructions telling the administration how to apply the new rules)?

N/A as Directive is not binding for Denmark.

According to the government's assessment, however, the Directive would require amendment of domestic legislation, in case Denmark were to participate in this part of the EU harmonisation. Such amendments would, according to the government, concern access to the labour market and educational rights for adolescents. It seems, however, that, in addition to the abovementioned areas of non-compliance, which were acknowledged by the government, further existing Danish norms on this issue does also not fully comply with the minimum standards of the Reception Directive. Of particular concern are current norms relating to special needs (Article 17), access to rehabilitation services for minors who are victims of abuse, etc. (Article 18(2)), treatment of torture victims (Article 20) and appeals (Article 21)

2. BIBLIOGRAPHY

Q.7. Has an in-depth preparatory study been made public about the changes at the occasion of the transposition? If yes, thanks for trying to provide us a copy *(please contact to answer this question adequately the body and person who was responsible for the preparation of the transposition of the directive in the public administration).*

Not applicable as Denmark is not party to the Directive

Q.8. Quote any recent scientific book or article published about the directive, the transposition rules or the question of reception conditions for asylum seekers in general (answer even if this literature is only available in your language and provide the complete title in your language (without translation) with all references; indicate author, title, in case name of periodical, year and place of publication).

N/A

Q.9. Quote any interesting decision of jurisprudence based on the implementation of the new rules of transposition of the directive (indicate references of publication if any)?

N/A

3. GENERAL INFORMATION ABOUT THE SYSTEM OF RECEPTION CONDITIONS

The purpose of the following two questions is to help the reader to understand easily and quickly the system of reception conditions in your Member State and also to avoid that you have to repeat general elements in other parts of the questionnaire. ***Please do not write more than one or maximum two pages and do not include large historical developments.***

Q.10. Describe in general the system of reception conditions in your Member State (in particular which are the main actors in charge of reception conditions?)

The parliament has adopted very detailed norms on the reception of asylum seekers. The responsibility for reception of the majority of asylum seekers has been delegated to the Immigration Service which is a directorate within the Ministry of Refugee, Immigration and Integration.

Responsibility for reception conditions of detained asylum seekers lies with the Department of Prisons and Probation, which is a directorate within the Ministry of Justice.

Responsibility for asylum seekers confined shortly at the border or exceptionally accommodated by the police at a hostel close to the border for a short period of time awaiting a decision on entry or refusal lies with the National Commissioner (under the Ministry of Justice).

The Immigration Service has a contract with Danish Red Cross (NGO), which operates and administers most of the reception conditions of asylum seekers, i.e. housing, basic health care and education in six of the eight asylum centres for asylum seekers in Denmark. Two asylum centres are operated by municipalities in accordance with similar contracts with the Immigration Service.

Under section 42a(1) of the Aliens Act, an alien who is staying in Denmark and submits an application for asylum will normally have the expenses of his stay and necessary healthcare services defrayed by the Danish Immigration Service until the he or she is

issued with a residence permit or departs or is returned. There are a few mandatory *exceptions* to this principle, e.g. in the case of marriage to a person with residence permit in Denmark. In this case the spouse is responsible for the support of the asylum seeker (cf. section 42a(3) of the Aliens Act). Furthermore, the Immigration Service may decide that an asylum seeker, who has sufficient means of his own, will not have his or his family's expenses of the stay and necessary healthcare services defrayed (cf. section 42a(4) of the Aliens Act).

As a rule, asylum seekers must stay at an asylum centre while applying for asylum. During the waiting time they are provided with teaching, activities and health care as well as other material reception conditions.

In certain cases, however, permission to stay outside of the asylum centre can be granted. Such requests will be especially relevant for asylum seekers who have relations living in Denmark or friends with whom they would like to stay during the application process.

There are two types of private accommodations: *funded* and *unfunded*.

Funded means that the asylum seeker can still receive cash allowances while staying in Denmark outside of an asylum centre. The asylum seeker also receives payment for the cost of transport to and from meetings with immigration authorities as well as for necessary health treatment.

Unfunded means that the asylum seeker only receives payment for necessary health treatment and for the cost of transportation to and from meetings with immigration authorities.

Permission for *funded private accommodations* can be given if:

- the asylum seeker's request for asylum is being processed by the immigration authorities, and
- the asylum seeker has a compelling health or psycho-social condition
  Examples of compelling health conditions include:
  asylum seekers who have diabetes or who are on dialysis
    - asylum seekers with serious heart problems
    - asylum seekers who suffer from cancer

  Examples of psycho-social conditions include:
    - older asylum seekers who would have problems taking care of themselves at an asylum centre
    - unaccompanied asylum-seeking children who would like to stay with a relative that lives in Denmark whom the relevant municipality has authorised guardianship or given temporary guardianship in accordance with the Danish service law

Permission for *unfunded private accommodations* is generally given to asylum seekers whose application is being processed by the immigration authorities.

Q.11.

Q11. A. Explain if you have different types and levels of reception conditions following the different stages of the asylum procedure (this implies that you have to give briefly the necessary explanations about the asylum procedure). Make if relevant for reception conditions a distinction between the following procedural stages: determination of the responsible Member State on the basis of the Dublin II regulation, special procedures at the border (including transit zones in airports), accelerated procedures, admissibility procedures, eligibility procedures and the different possibilities of appeals (suspensive or not) against a refusal of the asylum request. Indicate what the main differences of reception conditions are between the different stages (if necessary by detailing between the different elements of reception conditions, in particular housing) and explain what the evolution of reception conditions is following the different stages of the procedure.

Q 11. B. Indicate precisely for which stage(s) of the asylum procedure the answers on reception conditions you give below are valid.

For the purpose of differentiation of reception conditions, the various stages of the asylum procedure are divided into the following three levels (**Phase 1, phase 2 and phase 3**):

Phase 1:
Admissibility procedures, determination of the responsible Member State on the basis of the Dublin regulation:
It is the responsibility of the National Commissioner of Police to establish the nationality and identity of the asylum seeker. The police will fingerprint and photograph the asylum seeker, as well as record an official statement from the applicant, including a statement on the route he or she travelled to Denmark. The Immigration Service will use the information to determine if the application for asylum is to be rejected and the asylum seeker referred to have his application for asylum processed in another EU country or in a so-called safe third country.

Phase 2:
Eligibility procedures – Immigration Service level:
If the Danish Immigration Service determines that an asylum application is to be examined in Denmark, the Immigration Service itself will decide hereafter whether or not the applicant will be granted asylum (first instance). The asylum seeker must fill out an official application form for asylum, in which he or she can explain in more specific terms why he or she is seeking asylum in Denmark. After that, the Danish Immigration Service will hold an interview with the applicant, assisted by an interpreter. Following the interview, the Danish Immigration Service will deliver a decision

Most cases are decided according to so-called **normal procedure**. This means that, if the asylum applicant is rejected, the case is referred to the Refugee Board (second instance), which will deliver a final decision in the case.
A minority of cases are considered **manifestly unfounded**. This occurs when the Immigration Service assesses that the applicant clearly cannot be granted asylum in Denmark. These cases are sent to the Danish Refugee Council (NGO), which will deliver a pronouncement on the case. If, upon an additional and separate interview with the applicant, the Danish Refugee Council agrees with the Immigration Service that the application is manifestly unfounded, the application will be rejected without subsequent right of appeal. If, however, the Danish Refugee Council disagrees, the Immigration Service will generally still reject the application, but the applicant maintain a right of appeal and the case be referred to the Refugee Board for a final decision.
In certain cases, asylum applications are addressed according to an **expedited version of the manifestly unfounded procedure**. This is when the asylum seeker comes from a country where, according to the most up-to-date information available to the Danish Immigration Service, it is unlikely that the applicant would risk persecution on return. In these cases, the asylum seeker does not fill out an official application form for asylum, and is quickly referred for an interview with the Danish Immigration Service. The Danish Refugee Council will hold an separate interview with the applicant and then deliver a pronouncement on the case: if this is in accordance with the findings of the Immigration Service, the application will be rejected as soon as possible. These cases are decided within a few days. If the Danish Refugee Council disagrees with the Immigration Service, the Immigration Service will generally still reject the application, but the applicant maintain a right of appeal and the case be referred to the Refugee Board for a final decision.

Eligibility procedures – Refugee Board (appeal) level:
If the Danish Immigration Service refuses to grant asylum to an asylum seeker in the first instance and the applicant granted the right of appeal (i.e. not finally rejected under the manifestly unfounded procedure) the files of the case are automatically submitted to the Refugee Board. In cases which throughout the examination in the first instance have been dealt with under the so-called normal procedure, the Board will invite the applicant for an interview and subsequently reach a final decision in the case. If the case have been sought dealt with under the manifestly unfounded procedure, the Chairman of the Board will normally review the case on basis of the written matters alone. The appeal has suspensive effect on the order to leave the country, which will normally be delivered together with the decision to reject the application in the first instance.

Phase 3:
Post-final rejection
If an asylum applicant receives a final rejection, he or she must leave Denmark immediately. A final rejection means that an applicant does not have any more avenues available to appeal the decision. Rejections delivered by the Refugee Board or by the Immigration Service in so-called 'manifestly unfounded' cases are regarded as final. If a rejected asylum seeker will not leave Denmark voluntarily, it is the responsibility of the police to ensure the applicant's departure.

SYSTEM OF RECEPTION CONDITIONS:

Reception conditions consist of a combination of: - Board and lodging; - cash allowances and allowances in kind.

Board and lodging
Asylum seekers are normally housed in asylum centres. In most centres the asylum seekers receive cash allowances to cover expenses to food, etc. In one of the reception and departure centres (Sandholm) food is provided in kind (cafeteria) instead of cash allowances.

Cash allowances:
In accordance with section 42b, cash allowances include four different allowances:
Basic allowance
The basic allowance covers expenses for food, personal hygiene items, etc. This is paid to all asylum seekers over the age of 18 who do not receive free food at their asylum centre.
Supplementary allowance
All asylum seekers over the age of 18 can receive extra money if they live up to the contract they enter into with asylum centres governing completing necessary tasks, participation job activation, and participation in courses.
Caregiver supplement and reduced caregiver supplement
All asylum seekers with children receive money to support their children. Only one supplement per child is given. The caregiver supplement is paid for a maximum of two children. If a family has more children, they can receive a reduced amount for the third and fourth children (reduced caregiver supplement). It is not possible to receive payments for more than four children.

Allowances in kind:
In accordance with the Immigration Service Instructions of 7 January 2004 on Provision of benefits in kind, the operator will normally provide the asylum seeker with a parcel containing clothes and a parcel containing sanitary items on arrival to the reception centre.

Phase 1 asylum seekers
Asylum seekers in phase 1 will be accommodated at a reception centre.

Under section 42f(1) all asylum seekers over the age of 18 "who is lodged in a reception centre, cf. section 42a(5), shall, unless particular reasons make it inappropriate, attend tuition intended to give the alien a very introductory knowledge of the Danish language and the Danish culture and society (asylum-seeker course)"

Under section 42d(1) of the Aliens Act, an asylum seeker lodged in one of the asylum centres "has a duty to assist in carrying out the tasks necessary to the running of the accommodation centre."

After 3 months from the date of the applicant's submission of an application for asylum, the asylum seeker shall, unless particular reasons make it inappropriate, attend tuition in the English language or other tuition on the same terms as an asylum seeker in phase 2, cf. section 42f(2).

Within one week of the asylum seeker's submission of his or her application for asylum, a *contract* is to be concluded between the asylum seeker and the accommodation operator on the basis of the individual alien's skills and qualifications (cf. section 42c). The contract may be revised on a continuous basis. The contract determines the scope and contents of: - (i) the tasks necessary to the running of the accommodation centre which the alien has a duty to assist in carrying out, cf. section 42d(1); (ii) the asylum-seeker course which the alien shall attend, cf. section 42f(1); (iii) tuition that the alien shall attend, cf. section 42f(2) to (4), as agreed or determined, cf. subsection (2); and (iv) activation in which the alien shall participate, cf. section 42e(1) to (3), as agreed or determined, cf. subsection (2). The contract must state what measures may be applied to the alien under the law if the alien does not comply with his contract.

Phase 2 asylum seekers
With the *exception* of asylum seekers whose cases are being handled in the *expedited* version of the manifestly unfounded procedure, asylum seekers in phase 2 will normally move to an *accommodation* centre where they normally will be entitled to stay until their application for asylum has been finally determined.

The asylum seekers shall, unless particular reasons make it inappropriate, attend tuition in the English language or other tuition, cf. section 42f(2).

Furthermore, asylum seekers in this phase also have access to a certain level of vocational training, cf. section 48e(1) – (3).

Phase 2 asylum seekers have the same duties as phase 1 asylum seekers.

Asylum seekers in all phases will have expenses for food and necessary healthcare services covered. The allowances for food and other daily necessities vary however according to the phase. Asylum seekers in phase 2 will normally be granted higher supplementary and caregiver allowances than asylum seekers in phase 1.

Cash allowances for foreigners placed on the food allowance program or whose cases are being handled according to the *expedited version* of the manifestly unfounded procedure

Asylum seekers placed on the food allowance program or whose cases are being handled according to the so-called apparently groundless expedited procedure cannot receive a supplementary allowance, only the basic allowances and a reduced caregiver allowance, if applicable. Applicants living at asylum centres where meals are served receive no cash allowances.

Children of school age (7 to 16) who are staying in Denmark and fall within section 42a(1) or (2), cf. subsection (3), shall participate in separately arranged tuition or in tuition measuring up to the general requirements under the separately arranged tuition, regardless of in which phase their application for asylum is being dealt with, cf. section 42g of the Aliens Act.

4. GENERAL RULES ON RECEPTION CONDITIONS

Q.12. **Q 12. A**. Are material reception conditions provided in kind, in money or in vouchers or in a combination of these elements (see article 13, §5 which is an optional provision)? Distinguish between the different elements (housing, food, clothes, health, transportation, pocket money,…). **If reception conditions are provided in money (in general or in some cases, for instance when no places are anymore available in accommodation centres), indicate the precise amount given to the asylum seekers. Indicate in your answer what is provided in general and if there are exceptional cases.** Specify in your answer if reception conditions are different from the general system of social aid for nationals or aliens and if yes, if and when (which stage of the asylum procedure) can asylum seekers have access to the general system of social aid?

Material conditions are normally provided in a combination of in kind provisions and cash allowances.

Housing
Most asylum seekers are housed in asylum centres at the expense of the authorities

Food and other daily necessities:
At the *Sandholm reception and departure centre*, food and other daily necessities will be provided *in kind*. This includes the provision once every two weeks of a parcel with sanitary items (worth appr. 15 Euro). Where the asylum application is not processed in the manifestly unfounded procedure, a caregiver supplement as well as a supplementary allowance will be provided. The latter will only be granted if the asylum seeker fulfils his or her contract with the asylum centre.

At all *other asylum centres*, asylum seekers are provided with *cash allowances* to cover costs of food etc.

Clothes and bed-sheets are provided in kind. The clothes packages have a value of around 1.360 DKR (180 Euro). If the application is handled in the procedure for manifestly unfounded cases the clothes will only be granted after 25 days unless the applicant does not have other clothes than what he or she is wearing.

Asylum seekers who give birth to a child after the entry into Denmark will receive a package with baby clothes worth around 2.720 DKR (360 Euro).

Under certain circumstances a package with children's clothes (worth approximately 639 DKR (85 Euro)) will be provided once every six months to asylum seekers with minor children.

Furthermore, a children's package worth 122 DKR (appr. 16 Euro) may also be given to minor asylum applicants who are accommodated with one or both parents.

In practice, the Danish Red Cross will furthermore give families with children 100 DKR (appr. 15 Euro) once every two weeks. This will allow the families to afford buying sweets or ice cream to the children.

Health
Health services are provided in kind. Asylum seekers have no direct access to the Danish health service. But an asylum seeker is entitled to free medical treatment by a doctor or in a hospital in case of urgency.

Shortly after arrival in Denmark all asylum seekers are invited to a meeting with a nurse. The meeting takes place at centre Sandholm – the reception centre for all asylum seekers in Denmark. During the meeting the nurse will ask questions about the person's physical and mental health, if he or she has been living in a refugee camp or is a victim of torture. The nurse also asks about social conditions: former jobs and education, if the person is married and has children. The nurse uses a list of questions and this list later becomes the medical journal of the asylum seeker. The journal follows the person as long as he or she stays at an asylum centre. If the nurse finds signs of a disease or if the person comes from a country with a high incidence of tuberculosis, he or she is offered a medical examination. The meeting with the nurse and an eventual medical examination is called medical screening and the purpose of this medical screening is to secure that asylum seekers who need assistance, receive the necessary help and treatment. Almost all asylum seekers accept this offer of a medical screening. For children this medical screening is obligatory. The meeting lasts approximately 30 minutes and is conducted with help from an interpreter.

All accommodation centres run health clinics with fixed opening hours. Asylum seekers who are ill can contact the nurse when the clinic is open. If an asylum seeker needs to see a doctor, the nurse will make an appointment and if needed the doctor can then refer the asylum seeker to specialists, psychologist/psychiatrist, hospital etc. If an asylum seeker suffers from acute dental problems, he is entitled to treatment. Dentist bills exceeding 3.000 DKK must be accepted by the Immigration Service. Asylum seekers are also informed about the Danish health care system, healthy lifestyle, tuberculosis, birth control, AIDS and reactions to torture and war.

If an asylum seeker needs medical treatment the nurse at the asylum centre will contact a doctor but if an asylum seeker suffers from a disease that need urgent treatment - and the

clinic is not open - he or she can contact the emergency unit at the hospital just as a Danish citizen.

Transportation

Transportation is normally provided in kind, i.e. it is either organised and provided by the operator of the asylum centre where the asylum seeker is staying or tickets (and not money) are provided (cf Annex 2.0.9. to the Operator Contract).

Supplementary allowance

In addition to the food in kind or cash allowances for food, all asylum seekers over 17 have a possibility of "earning" a so-called "supplementary allowance." All asylum seekers over 18 must make (and all asylum seekers at 17 of age have normally an option to make) an agreement – a contract – with the asylum centre that is responsible for them. The contract states which courses asylum seekers are to attend and which tasks the individual asylum seeker is to be responsible for at his/her asylum centre. This gives access to the so-called supplementary allowance. If asylum seekers do not live up to their contracts with their asylum centre, the Immigration Service can decide to reduce their cash allowances.

Food allowance programme

On 1 July 2005, the Danish government has implemented new regulations for the payment of cash allowances to asylum seekers who do not live up to the obligations required by immigration laws. The new rules are part of the government's objective of motivating asylum seekers to live up to the obligations required of them by immigration laws.

If asylum seekers do not live up to their obligations, the Immigration Service can decide to place asylum seekers and their families, if applicable, on the allowance for subsistence program.

The program is primarily intended for cases where asylum seekers have received final rejections of their applications for Danish residence permits, have not left the country by the date ordered, and who are not willing to leave the country.

For asylum seekers living at asylum centres where meals are not provided being placed on the program means that supplementary allowances earned through such activities as activation will no longer be paid. The allowance for asylum seekers with children will also be reduced. This means that applicants will only receive allowances for food (basic allowance).

Cash allowances – specific amounts

In accordance with section 42b of the Aliens Act, cash allowances include four different allowances that may be granted to asylum seekers: *Basic allowance, supplementary allowance, caregiver supplement and reduced caregiver supplement*. The supplementary allowance will only be granted if the asylum seeker fulfils his or her contract with the asylum centre.

Scale of charges to asylum seekers per day (2006) in Danish Kroner (1 Euro = 7,55 DKR):

		asylum centre providing free food (in kind)				Ordinary asylum centres			
		Basic allow.	**Care giver suppl.**	**Reduc. Care giver suppl.**	**Suppl. allow,**	**Basic allow**	**Care giver suppl.**	**Reduc. care giver suppl.**	**Suppl. Allow.**
Phase 1	Married or cohabiting	N/A	7,27	N/A	7,27	34,51	50,86	36,32	7,27
	Over 18 years	N/A	7,27	N/A	7,27	43,58	50,86	36,32	7,27
	Unaccom panied	N/A	7,27	N/A	7,27	43,58	50,86	36,32	7,27
	Below 18 years, not part of parents' family	N/A	7,27	N/A	7,27	43,58	50,86	36,32	7,27
Phase 2	Married or cohabiting	N/A	25.43	N/A	25.43	34,51z	69,01	36,32	25.43
	Over 18 years	N/A	25.43	N/A	25.43	43,58	69,01	36,32	25.43
	Unaccom panied	N/A	25.43	N/A	25.43	43,58	69,01	36,32	25.43
	Below 18 years, not part of parents' family	N/A	25.43	N/A	25.43	43,58	69,01	36,32	25.43
Phase 2 Manif. unfound. proced.	Married or cohabiting	N/A	N/A	N/A	N/A	34,51	43,58	36,32	N/A
	Over 18 years	N/A	N/A	N/A	N/A	43,58	43,58	36,32	N/A
	Unaccom panied	N/A	N/A	N/A	N/A	43,58	43,58	36,32	N/A
	Below 18 years, not part of parents' family	N/A	N/A	N/A	N/A	43,58	43,58	36,32	N/A
Phase 2 Food allow. program	Married or cohabiting	N/A	N/A	N/A	N/A	34,51	43,58	36,32	N/A
	Over 18 years	N/A	N/A	N/A	N/A	43,58	43,58	36,32	N/A
	Unaccom panied	N/A	N/A	N/A	N/A	43,58	43,58	36,32	N/A
	Below 18 years, not part of parents' family	N/A	N/A	N/A	N/A	43,58	43,58	36,32	N/A

Q 12. B. Can the reception conditions in kind, money or vouchers be considered as sufficient "to ensure a standard of living adequate for the health of applicants and capable of ensuring their subsistence" as requested by article 13, §2 of the directive (which is a mandatory provision but leaves a certain space to Member States)? In order to help to assess the respect of this rule when reception conditions are provided in money, include if necessary in your answer points of comparison with the minimum amount of social aid guaranteed for nationals in your Member State.

Reception conditions must be considered sufficient to ensure the health and the subsistence of the applicants. Legislation does however not specify this requirement, but stipulates in broader terms that "[a]n alien who is staying in Denmark and submits an application for a residence permit pursuant to section 7 will have the expenses of his stay and necessary healthcare services defrayed by the Danish Immigration Service until the alien is issued with a residence permit or the alien departs or is returned…", cf. section 42a(1).

It is however important to note that it has large social consequences and restrains the formation of the children and the access of the adults to maintain social skills if, as it is the case for most asylum seekers, for a longer period of time they do not have access to sufficient cash which would for example allow them to buy a bus ticket or a ticket for the swim bath. What is provided for in cash may not be considered to include any amount to be used as pocket money. If, for example, the asylum seeker chooses to use some of the money on, for example, buying a bus ticket enabling him/her to pay visit to friends, relatives or a place of worship, this will mean being forced to buy lower quality or less food for a period of time.

5. PROCEDURAL ASPECTS

Q.13. **Q 13. A. Does the national legislation specifically provide that a request for international protection is presumed to be under the Geneva Convention unless explicitly requested otherwise? (see article 2, b which is a mandatory provision)**

Yes. Under Section 7 (2), second sentence of the Aliens Act an application for residence permit on basis of risk of death penalty or to be subjected to torture, ill-treatment, inhuman or degrading treatment or punishment (complementary protection) is also considered an application for a residence permit under Section 7 (1), i.e. residence permit and asylum as Geneva Convention Refugee. It is not possible merely to apply for complementary protection.

Q. 13. B. Explain if the scope of application of reception conditions is extended to other asylum seekers than refugees in the sense of the

Geneva Convention, in particular to persons asking for subsidiary protection or to other forms of protection like humanitarian statuses (see article 3, § 4 which is an optional provision)? If not, explain briefly which the differences between these special regimes and the directive are.

In accordance with the section 42a(1)The scope of application of reception conditions is equally extended to applicants for residence permit on the basis of refugee status under section 7(1) and to applicants for subsidiary protection under section 7(2) of the Aliens Act.

With regard to applicants for residence permit on basis of humanitarian status under section 9b of the Aliens Act (which is however not a protection status as such), the same conditions apply as for asylum seekers as long as the application for residence permit on basis of humanitarian status is lodged prior to or at the time of the first instance decision of the application for asylum *or* has been decided upon by the authorities at the time of the delivering of the final decision on asylum at the latest. Applications for residence on basis of humanitarian status may only be submitted by aliens registered in Denmark as asylum seekers. In other cases the applicant will in terms of reception conditions be treated as a rejected asylum seeker.

Q. 13. C. Are there specific provisions in national law for reception conditions in case of diplomatic or territorial asylum requests submitted through a diplomatic or consular representation (see article 3, §2 which is an optional provision)?

No

Q.14. **Are reception conditions available as from the moment one asylum application is introduced? How is article 13, §1 which is mandatory legally understood?** Do asylum seekers have to satisfy any other condition in order to get reception conditions?

Reception conditions are without any further requirements available from the moment an application for asylum has been lodged.

If the asylum seeker is not detained or temporarily under the responsibility of the police, the responsibility lies with the Immigration Service, cf. section 42a(1), first sentence.

If there is an immediate need therefore, the police may make arrangements for the accommodation and stay of and necessary healthcare services to asylum seekers whose application is still being processed in the admissibility or Dublin Regulation procedures. In those cases, the police defrays the expences, cf. section 43(1) of the Aliens Act.

The Prison and Probation Service, which is a directorate under the Ministry of Justice, has the responsibility for the reception conditions in the cases of detained asylum seekers**,**

cf. section 776 of Administration of Justice Act and section 2 of the Regulation on remand prison.

Q.15. **Explain when reception conditions end, for instance after refusal of the asylum request** (include in your answer the link with the right of appeal against a decision of refusal of the status, in particular the question of its suspensive effect)

In accordance with section 53a(2) of the Aliens Act an appeal against refusal of asylum has suspensive effect.

Subsequent to section 42a(1), all asylum seekers staying in Denmark will have the expenses of his stay and necessary healthcare services defrayed by the Danish Immigration Service until the he or she is issued with a residence permit or, in case of rejection, departs or is returned from Denmark.

Q.16 Are there special rules or practices regarding reception conditions in case of successive applications for asylum introduced by the same person?

No

Q.17. Information of asylum seekers about their rights and obligations in terms of reception conditions, in particular about established benefits (see article 5 which is too large extend a mandatory provision; do not confuse this question with the information to be provided to asylum seekers about the asylum procedure):

Q. 17. A. Are asylum seekers informed, and if yes about what precisely?

In accordance with principles of general administrative law that the authorities have an obligation to inform about rights and duties in connection with the submission of applications, the Danish Immigration Service has issued a written guide on "An asylum Seekers Way". This guide is given to the asylum seekers when they, as is normally the case, are requested to fill in an official application form for asylum. In practice this takes place immediately after registration with the police regardless of whether the application is still being processed under the admissibility procedures/Dublin regulation or has been accepted for substantial examination of the claim.

However, the applicants whose applications are (initially) being processed in the "expedited version of the manifestly unfounded procedure" will not fill in an official application form for asylum and will therefore not be given nor informed about the guide at the authorities initiative.

The guide provides detailed information about the rights and obligations relating to reception conditions, including specific information on the established benefits as well as information about the asylum procedure.

Under the instructions contained in Annex 2.1.1 relating to reception at the reception/departure centres of the contract between the Danish Immigration Service and the operator of reception conditions (the so-called "Operator Contract"), "the operator shall inform newly arrived asylum seekers about the reception system, including a basic introduction to the health system, as well as about the accommodation system in general. Likewise, written information about the further stay shall be provided." Just as this obligation to inform is not formulated very specifically on the kind of information that is to be provided, there is also no precise deadline attached to it. The Danish Red Cross has published relatively detailed information, which is handed over to the asylum seeker as soon as she or he arrives at the reception centre and in practice always within 15 days of arrival to the centre (which will normally take place the same day as or the day after the application has been lodged). Simultaneously, the asylum seeker is informed orally. The written material does, however, not contain very specific information about the established benefits.

Q. 17. B. Is the information provided in <u>writing</u> or/and??, when appropriate, orally?

The guide "An asylum Seekers Way" which is provided by the Immigration police is in writing.

The information provided by the Danish Red Cross is in writing and will be followed-up by oral information both on an individual basis at the centre shortly thereafter and included in a three days "asylum-seeker course", which will be held later.

Q.17. C. Is that information in general provided in a <u>language</u> understood by asylum seekers? Specify the list of languages in which it is available

The guide "An Asylum Seekers Way" is available in Arabic, Azerbaijani, Albanian, Armenian, Bahdini, Bengali, Dari, English, Farsi, French, Georgian, Hindi, Kazakh, Kinyarwanda, Macedonian, Mandarin, Mongolian, Nepali, Pashto, Punjabi, Rumanian, Russian, Serbo-Croatian, Somali, Sorani, Spanish, Swahili, Tamil, Turkish, Urdu and Vietnamese.

The written material distributed by the Danish Red Cross is available in Albanian, Arabic, Armenian, Danish, Dari, English, Farsi, French, Russian, Serbo-Croatian, Somali and German.

Q. 17. D. Is the <u>deadline</u> of maximum 15 days respected?

Legislation does not state any time-limit within which the information has to be submitted to the asylum seeker.

In practice, however, the information will normally be provided within the 15 days deadline. The Guide issued by the Immigration Service is provided at the filling in of the official asylum application form, which normally takes place within a few days after the registration with the police, the latter of which takes place immediately after the lodging of the asylum application.

The Red Cross provide the written and oral information very soon upon arrival to the reception centre (which will normally take place within 24 hours of the lodging of the asylum application at the most) and always within two weeks.

Q.18. Information of asylum seekers about the existence of organisations or groups promoting their interest and defending their rights (see article 5 which is to a large extend a mandatory provision):

Q. 18. A. Is there a list of organisations dressed by the authorities and if yes is it comprehensive? Is this in particular the case about the possibilities to get legal assistance and health care?

The guide issued by the Immigration Service contains references to the relevant organisations.

The information distributed by the Danish Red Cross lists the organisations providing assistance and counselling within this field.

Q. 18. B. Is the information provided to the asylum seekers, and if yes, in writing or, when appropriate, orally?

Yes

Q. 18. C. Is that information in general provided in a language understood by asylum seekers? Specify if possible the list of languages in which it is available.

Yes

Q. 18. D. How many organisations are active in that field in your Member State?

Six

Q.19. Documentation of asylum seekers (see article 6):

Q.19. A. <u>What kind of document</u> is delivered to the asylum seeker? Explain the legal value of this document (just a certification of the status as asylum seeker or also prove of identity?) (see §1 of article 6 which is a mandatory provision)

A registration or identification card is issued to all asylum seekers who are not detained or who can not be rejected immediately at the border in accordance with the Dublin Regulation or under other provisions relating to admissibility.

In accordance with the National Commissioner's Circular no. 10473 of 6 January 1998 on the Issuing of new registration/identification cards to asylum seekers, "the card is merely proof of the fact that the person in whose name it has been issued has applied for asylum in Denmark under the identity stated at the card.

Q.19. B. Are there situations or specific cases in which <u>another equivalent document or even no document</u> is issued? (in particular is there an exception for "procedures to decide on the right of the applicant legally to enter the territory" as made possible by §2 of article 6)?

On the presumption that they have no need for it, no identity documents are issued to asylum seekers who are detained. Furthermore, where rejection at the border can take place immediately without the asylum seeker being accommodated at an asylum centre in the meantime, no document is issued.

Q.19. C. <u>For how long</u> is this document in principle <u>valid</u> and is it necessary to renew it after a certain period?

According to the National Commissioner's Circular no. 10473, the document will be issued with an expiry date, and a new card will be issued if the asylum seeker has not either been granted asylum or left the country upon rejection of his/her asylum application.

In practice, however, the card will not be issued with an expiry date anymore, but be valid as long as the asylum seeker is authorized to remain in the territory

Q.19. D. What is the <u>deadline</u> for the delivery of that document? Is the mandatory deadline of 3 days set by article 6, §1 respected[328]?

No deadline is fixed for the delivery. In practice, however, the deadline of three days is respected. Thus the card will be issued and delivered at the time of registration with the police. This registration normally takes place immediately after the lodging of the application and within 24 hours at the most.

Q.19. E. Is it possible for an asylum seeker to get a travel document for serious humanitarian reasons (see §5 of article 6 which is an optional provision)?

Yes

Q.19. F. Is there a central system of registration of asylum seekers and is it or not separate from the registration of aliens? If yes, describe it briefly (content) and indicate in particular if it is an electronic database.

Q.20. Residence of asylum seekers :

Q.20. A. Is in principle an asylum seeker free to move on the entire territory of your Member State or only to a limited part of it and in case, which part? (see article 7, §1 which is a mandatory provision)

In accordance with a fundamental internal principle, the right to freedom of movement of asylum seekers (like of citizens and other aliens present at the territory) is not limited to any part of the territory unless the person concerned is detained in accordance with the law,.

Q.20. B. About the place of residence (see §2 of article 7): explain to which extend the person is free to choose her residence and if this depends of the stage of the asylum procedure (for instance before and after admissibility); if there are constraints limiting the choice, explain which ones and their reasons (for instance processing of application, attribution of reception conditions,…).

Asylum seekers are generally *not* free to choose their place of residence at any stage of the asylum procedure, cf. section 42a(7) of the Aliens Act. The only exceptions are cases where the Immigration Service are not responsible for their maintenance, i.e. asylum seekers who resides lawfully in Denmark on other grounds, - asylum seekers who have contracted marriage with a person living in Denmark (unless particular reasons exist), - cases where the asylum seeker's place of residence is unknown, - and cases where the asylum seeker is entitled to maintenance under certain (but not any) other legislation,.

Q.20. C. About the place of reception (meaning where the asylum seeker has to stay to benefit from reception conditions) (see § 4 of article 7): explain which are the general rules about the determination of this place (to which extend are the decisions determining the place taken individually and do they take into account the personal situation of the asylum seeker?) and to which extend the person is free to choose it and if it depends of the stage of the asylum procedure (for instance before and after

admissibility); if there are constraints limiting the choice, explain which ones and their reasons (for instance attribution of reception conditions, processing of the application,…).

Under section 42a(7) of the Aliens Act, the Danish Immigration Service "may decide" that an asylum seeker who is covered by the Immigration Service's duty to support certain groups of asylum seekers, (cf. subsection (1) or (2), cf. subsection (3) of section 42a) "notwithstanding his possession of sufficient means to pay for his own stay and necessary healthcare services, must stay at a place determined by the Danish Immigration Service."

In practice the Immigration Service will always decide where the group of asylum seekers covered by this provision shall reside.

The only *exceptions* to this rule are, where (i) the asylum seeker resides lawfully in Denmark on other grounds; (ii) the asylum seeker has contracted marriage with a person living in Denmark, unless particular reasons exist; (iii) the asylum seeker's place of residence is unknown; (iv) or the asylum seeker is entitled to maintenance under certain (but not any) other legislation (section 42a(7) cf. section 42a(3)). In these cases the Immigration Service may normally not decide the place of residence of the asylum seeker. One *notable modification* to this exists where the case of an asylum seeker who is married to a person legally residing in Denmark is processed in the manifestly unfounded procedure for asylum seekers coming from countries considered to expose a minimal risk of persecution. In those cases the asylum seeker will normally not be allowed to stay with his or her spouse, cf. Immigration Service Internal directions of 25 January 2005 on Private accommodation of asylum seekers and others (Retningslinier for privat indkvartering af asylansøgere m.fl.), section 4.2 and section 5.2.

Q.20. D. If all asylum seekers are not placed in accommodation centres because of capacity limits, explain <u>how the persons are distributed between accommodation centres and other accommodation facilities</u> (which authority takes the decisions, on the basis of which elements, can that decision be appealed by the asylum seeker,…)

Capacity problems that couldn't be solved through the opening of new collective centres have never arisen.

Q.20. **E.** How can an asylum seeker ask to <u>leave temporarily</u> the place of residence or of reception or an assigned area? How is the individual AND impartial character of the decision ensured? (see §5 of article 7 which is a mandatory provision)

Under section 42a(7), 1st sentence, the Immigration Service may determine that an asylum seeker must stay at a place determined by the Danish Immigration Service. Pursuant to this provision it will also be the Immigration Service that decides whether or not permission to leave that place temporarily should be granted.

Danish norms do not fully comply with Article 7(5) of the Directive. According to Immigration Service guidelines of 4 October 2005 on "Legal funded absence", temporary permission to leave the place of residence may *only* be given if the following criteria are *all* fulfilled:

- The asylum seeker is accommodated at an asylum centre;
- Quite particular reasons speak in favour of granting permission, e.g. the applicant or the family is "tremendously psychologically affected" by a longer stay at the asylum centre and a short stay with for example relatives will relieve the person in question from the problem or sufferings. A longer stay in this context will be more than one year. The assessment of whether the asylum seeker or the asylum seeking family is "tremendously psychologically affected" will be taken by the staff at the centre or by health care personnel attached to the centre;
- The case is processed in Phase 2, i.e. the application is being examined in the eligibility procedure, or, if en phase 3, an application for humanitarian residence permit or for reopening of the asylum case has been given suspensive effect. (the application must thus not be processed under thus neither in admissibility/Dublin procedures or have been rejected and the applicant subject to an order to leave the country);
- The applicant must not be subject to an order to report to the police at specified times (cf.. section 34 of the Aliens Act);
- The applicant must not be subject to the food allowance program (cf. section 42a, (9)-(10));
- The application is not processed in the procedure for manifestly unfounded cases;
- Only short-term (one to two weeks) permissions to leave will be granted;.
- Maximum period of absence in a year is a total of two weeks. In very exceptional situations this period of time may be extended to four weeks;
- Families with children between six and 17 years of age will only in very exceptional situations be granted permission to leave outside the ordinary school holidays;
- Permission will not be granted if the asylum seeker has been summoned for interviews or meetings with the authorities;
- Normally, holidays like Christmas, Easter or Ramadan will not in themselves be valid reasons for the granting of permission to leave the centre temporarily.

Persons who have private accommodation or who live en annexes outside the centre can not be granted permission to leave temporarily. According to the Immigration Service Guidelines persons living outside the centres have no need to go to other places.

The asylum seeker will have to apply by filling in a form for this purpose. It is a fundamental principle of national administrative law that reasons are given in case of negative decisions.

It may be argued that impartiality is not sufficiently ensured under existing national norms, Thus the assessment of the centre as to whether or not particular reasons for granting temporary leave are present need not be documented by for example a medical certificate.
Furthermore, a negative decision can not be appealed.

Q.21. **Q.21. A. Do rules on <u>reduction or withdrawal of reception conditions</u> exist in internal legislation and if yes in which cases (mention in particular if there are cases not foreseen by article 16, § 1 and 2 which are optional provisions)? Distinguish in your answer between cases of reduction and withdrawal and explain which conditions can be reduced and if access to emergency health care is always ensured as requested by article 16, §4, last sentence.**

On 1 July 2005, the Danish Government implemented new regulations for the payment of cash allowances to asylum seekers who do not live op to the obligations required by the Aliens Act, the so-called **food allowances program**, cf. section 42a(9) and (10). These provisions have been followedø-up by Immigration Service Instructions of 25 August 2006 on decisions regarding reduction or withdrawal of cash allowances.
The program is primarily intended for cases where asylum seekers have received final rejections of their applications for Danish residence permits, have not left the country by the date ordered, and who are not willing to leave the country. The food allowance program may also be applied where asylum seekers are still in so-called phase 1 or 2, i.e. in the admissibility/Dublin or eligibility procedure. This, however, only rarely happens.
The specific criteria and conditions for reduction or withdrawal of reception conditions, which are of relevance when comparing with the provisions of the directive - are as follows:

- Under section 42a(9)(iii) of the Aliens Act, the Danish Immigration Service may decide that an asylum seeker who "does not comply with the decision of the Danish Immigration Service to the effect that the alien must stay at a place determined by the Danish Immigration Service" will not receive cash allowances if he is lodged at an accommodation centre with free meals, or that he or she will only receive the basic allowance and the maintenance supplement and the reduced maintenance supplement if he is lodged at an accommodation centre without free meals;
  (*cf. article 16(1)(a), first indent of the directive*)

- Under *section 42a(9)(i) and (iv)* of the Aliens Act, the Danish Immigration Service may decide that an asylum seeker who "… without reasonable cause … fails to appear for an interrogation at the Danish Immigration Service or the police, to which the alien has been summoned…" or "… does not comply with the order of the police

concerning a measure mentioned in section 34 [reporting, deposit of travel document and ticket, provision of bail, stay at an address determined by the police] …" will not receive cash allowances if he is lodged at an accommodation centre with free meals, or that he or she will only receive the basic allowance and the maintenance supplement [caregiver supplement] and the reduced maintenance supplement [reduced caregiver supplement] if he is lodged at an accommodation centre without free meals;
Under *section 42a(10)(i)),* of the Aliens Act, The Danish Immigration Service "…shall decide, unless particular reasons make it inappropriate…", that an asylum seeker will not receive cash allowances if he is lodged at an accommodation centre with free meals, or he or she will only receive the basic allowance, the maintenance supplement [caregiver supplement] and the reduced maintenance supplement [reduced caregiver supplement] if lodged at an accommodation centre without free meals, if he or she "…does not assist in procuring information for the case…"
(cf. to a certain degree article 16(1)(a), second indent of the directive)

- Under *section 42a(9)(ii)* of the Aliens Act, the Danish Immigration Service may decide that an asylum seeker who "… has exhibited violent or threatening behaviour to persons performing duties in relation to the running of an accommodation centre for aliens or to persons otherwise staying at the accommodation centre …" will not receive cash allowances if he is lodged at an accommodation centre with free meals, or that he or she will only receive the basic allowance and the maintenance supplement and the reduced maintenance supplement if lodged at an accommodation centre without free meals.
(cf. article 16(3)a of the directive)

- Under *section 42a(9)(v)* of the Aliens Act, the Danish Immigration Service may decide that an asylum seeker who "… disregards an order to perform necessary duties in relation to the running of the accommodation centre …" will not receive cash allowances if he is lodged at an accommodation centre with free meals, or that he or she will only receive the basic allowance and the maintenance supplement [caregiver supplement] and the reduced maintenance supplement [reduced caregiver supplement] if lodged at an accommodation centre without free meals.
(cf. article 16(3)b of the directive)

The provisions of section 42a(9) are facultative. According to the Immigration Service Instructions of 25 August 2006, the discretionary powers to omit applying the food allowance program in those cases are limited.
The provision in section 42a(10)(i) is obligatory. According to the preparatory works, the Immigration Service can only set aside the

rules of the program in cases with extremely extenuating circumstances. Cases such as those involving unaccompanied minors or individuals with special forms of life-threatening diseases, would qualify for an exemption. Other particular circumstances may also qualify for exemption. Children under school age, pregnancy or food related illness will not qualify for exemption.

For asylum seekers living at asylum centres where meals are not provided being placed on the program means that supplementary allowances earned through such activities as activation will no longer be paid. The allowance for asylum seekers with children will also be reduced. This means that applicants will only receive allowances for food (basic allowance).

Asylum seekers living at centres where meals are provided will receive no allowance. This also applies to families with children. For asylum seekers living at asylum centres where meals are *not* provided being placed on the program means that supplementary allowances earned through such activities as activation will no longer be paid. The allowance for asylum seekers with children will also be reduced. This means that applicants will only receive allowances for food (basic allowance).

Families with children under the age of 18 will receive a so-called child package every 14 days per child, regardless of age. The child package contains such items as fruit and a few sweets.

The Immigration Service will, on the recommendation of the operator of the asylum centre, remove asylum seekers from the food allowance program if and when they choose to co-operate. Asylum seekers removed from the program by the Service will again receive their supplementary allowances and have their caregiver allowance increased.

As mentioned above, a **contract** is to be concluded between the asylum seeker and the accommodation operator on the basis of the individual alien's skills and qualifications within a week after the submission of the asylum application, cf. the Aliens Act section 42c. If the asylum seeker does not fulfil his contract, the accommodation operator may decide to withdraw or reduce the supplementary allowance. This is regulated by the Aliens Act section 42b(11), which stipulates: "…. Unless particular reasons make it inappropriate, the accommodation operator shall decide that the supplementary allowance under subsection (8) is not payable if the alien has not complied with his contract, cf. section 42c. If an alien has not complied with his contract for one or more days of the period on which the calculation of the supplementary allowance is based, cf. subsection (8), second and sixth sentences, no supplementary allowance is payable for the number of days in which the alien has not complied with his contract, unless particular reasons make it inappropriate. If an alien has complied with his contract for less than half of the period on which the calculation of the supplementary allowance is based, cf. subsection (8), second and sixth sentences, no supplementary allowance is payable, unless particular reasons make it inappropriate."

Q.21. B. Has article 16, §2 dealing with refusal of reception conditions for <u>unreasonably late applications</u> for asylum been transposed by your Member State (or was this case already applicable before transposition)? Are there cases in practice?

No.

Q.21. C. How is it ensured that decisions of reduction or withdrawal are taken individually, objectively AND in particular impartially (for instance through and independent arbitrator) (see article 16, §4 which is a mandatory provision)?

A decision on reduction or withdrawal of benefits under *section 42a(9) or (10)(i*) is taken by the Immigration Service on the recommendation of the Immigration Service itself or of the operator of the asylum centre. The decision is taken in accordance with Immigration Service Instructions of 25 August 2006 on decisions regarding reduction or withdrawal of cash allowances. According to these, a decision on reduction or withdrawal can not be taken unless the proposal has been submitted to the applicant and he has had an opportunity to comment on it. Moreover, the recommendation should make clear whether an interpreter has been used for this or whether it has been possible to find a common language.

Under section 46(2) of the Aliens Act, decisions of the Immigration Service may be appealed to the Ministry of Refugees, Immigration and Integration.

Provisions of the Administrative Act apply to decisions made by the accommodation operator to withdraw or reduce the supplementary allowance under *section 42b(11)*, cf. section 46e, 3rd sentence. A decision of the accommodation operator may be appealed to the Immigration Service, cf. section 46e, 4th sentence.

Q.21. D. Is statement 14/03 adopted by the Council at the same moment as the directive respected (see the document attached to our sending)?

Q.21. E. Are there already administrative appeal decisions or judgements on cases of reduction, withdrawal or refusal which have been taken, and if yes, what has been the outcome?

N/A as Denmark is not bound by the Directive.

Q.22. **Q.22. A. <u>Appeal</u> against a negative decision relating to the granting of benefits or based on article 7 (see article 21 which is a mandatory provision): indicate against which decision an appeal can**

be introduced, describe the system of appeal in general and include in particular in your answer the information given to asylum seekers about possibilities of appealing, deadline for appealing, if the appeal has or not a suspensive effect, if there are different steps (for instance first an administrative appeal and in particular if the guarantee of an appeal before a judicial body in the last instance is respected)?

Negative decisions *taken by the Danish Immigration Service* may with the exceptions mentioned below be appealed to the Minister for Refugee, Immigration and Integration Affairs, cf. section 46 (2) of the Aliens Act. Exceptions to the right of appeal are: - decisions taken under section 42a(7) whereby the Immigration Service decides that an asylum seeker must stay at a place determined by the Danish Immigration Service; - decisions taken under section 42b(1) on which cash allowances a given asylum seeker is entitled to; - decisions taken under section 42b(3) and (7) on number of caregiver allowances that a given asylum seeker is entitled to; - decisions on the granting of supplementary allowances to asylum seekers who fulfil their contract with the accommodation operator, cf. section 42b(8); - decisions on the granting of supplementary allowances to minors, cf. section 42b(9); - orders to assist in carrying out the tasks necessary to the running of the accommodation centre, and orders that asylum seekers who disregards an order shall stay at a place determined by the Danish Immigration Service, cf. section 42d(2).

Negative *decisions taken by the accommodation operator* can be appealed to the Immigration Service, cf. section 46e of the Aliens Act.

The applicant is informed in writing about the above possibilities to lodge appeals against negative decisions. Appeals do not have suspensive effect.

In principle asylum seekers may, in accordance with section 63(1) of the Constitution, furthermore lodge an appeal within the ordinary judicial court system against a final negative administrative decision. In practice, however, this never (or extremely rarely) happens both because asylum seekers are normally not informed about this possibility and because free legal aid would normally not be granted. An appeal does not have suspensive effect, cf. section 63(2) of the Constitution.

In accordance with section 97 of the Ministry of Justice Regulation on remand prison, *decisions taken by the management of the prison towards detained asylum seekers,* may be appealed to the Minister of Justice. The appeal does not have suspensive effect unless the authority that has made the decision or the Minister of Justice decides so.

Q.22. B. Explain which are the possibilities for asylum seekers to benefit from <u>legal assistance</u> when they introduce such an appeal (see article 21, §2 which is a mandatory provision but leaves space to Member States)?

In accordance with a fundamental principle of administrative law as well as with section 8 of the Administrative Procedures Act and section 260 of the Administration of Justice

Act, the asylum seeker may always let himself be represented by a legal representative. There is no free legal aid in these cases.

Legal counselling may be obtained for free at the Danish Refugee Council.

Q.22. C. Are there already administrative appeal decisions or judgements which have been taken and if yes, which are the main important ones?

N/A

Q.22. D. Is a mechanism of complain for asylum seekers about quality of receptions conditions in general (even if they are not personally concerned) organised? If yes, before which authority? Is it linked to the system of guidance, control and monitoring of reception conditions (see below question n° 39)?

No

6. RIGHTS AND OBLIGATIONS OF ASYLUM SEEKERS

Q.23. Family unity of asylum seekers: define how a family is defined in relation with article 2, (d) which is a mandatory provision and explain how housing is provided to a family (see articles 8 which is a mandatory provision but leaves space to member States and 14, §2, (a) which is a mandatory provision).

According to Danish legislation on reception conditions, "… a family includes the alien, his spouse or cohabitant and his or his spouse's or his cohabitant's children under the age of 18. If a child under the age of 18 does not live together with one of or both its parents, if the child lives in marriage or cohabitation with another or if the child is itself subject to a duty of maintenance to a child under the age of 18, such child is considered as not belonging to one of or both its parents' family or families," cf. the Aliens Act section 42b(3), 6th sentence. An adopted child would be included.

Regarding the question of protection of family life and maintaining family unity, it is a principle of internal family law that spouses and minor children have the right to protection of family unity and family life and thus normally being able to live together. This principle also extends to asylum seekers. Most asylum seekers live however in an accommodation centre offering very limited possibility for a private life. They live in small rooms with a bed, a chair and a cupboard for each person. Families often live together in one room, while the asylum seekers who are single share a room with two, three or four other single persons of the same sex.

A small group of asylum seekers are allowed to stay under more private conditions while their application is being processed by the authorities. They can either live with relatives

or in an annexe, which is a small and inexpensive house/flat or a room outside the asylum centre. In most cases, this permission is given to asylum seekers who have been waiting for a long time for a decision in their application. The permission can only be given by the Immigration Service.

On basis of a government decision, the Immigration Service, on 2 April 2007, issued Directions for the two-rooms policy" covering all asylum seeking families with children. According to these guidelines an offer of accommodation in two rooms should be submitted to all families with children (defined as containing at least one adult and one child under the age of 18) before the summer of 2007.

Q.24. **Q.24. A. How is <u>housing</u> of asylum seekers organised: describe the system in general and indicate in particular what is the most frequently system used (see article 14, §1 which is a mandatory provision but leaves space for Member States; distinguish between accommodation centres, private houses and apartments, hotels places or other premises).**

In accordance with section 42a(5), first sentence of the Aliens Act, "the Danish Immigration Service provides and runs accommodation centres for aliens falling within subsection (1) or (2), cf. subsection (3)".

(Subsection (1) or (2) cf. subsection (3) of the Aliens Act prescribes the duty of support of the Danish Immigration Service towards all asylum seekers with the exception of those who have lawful residence permit in Denmark on other grounds, who have contracted marriage with a person living in Denmark (unless particular reasons exist); - whose place of residence is unknown; or who are entitled to maintenance under certain other legislation (as is for example the case with imprisoned or detained asylum seekers)

The task of running and administering the asylum centres are, in accordance with section 42a(5) second sentence, respectively section 42a(6) subcontracted to the Danish Red Cross and two municipalities.

Under section 42a(7), first sentence: The Danish Immigration Service may decide that an alien mentioned under subsection (1) or (2), cf. subsection (3), notwithstanding his possession of sufficient means to pay for his own stay and necessary healthcare services, must stay at a place determined by the Danish Immigration Service.

In practice the vast majority of asylum seekers are accommodated in asylum centres in accordance with the above mentioned provision of section 42a(7) and will remain at such centres throughout their stay in Denmark as asylum seekers.

Only a small group of asylum seekers are allowed to stay under more private conditions while their application is being processed by the authorities. They can either live with relatives or in an annexe, which is a small and inexpensive house/flat or a room outside the asylum centre. In most cases, this permission is given to asylum seekers who have

been waiting for a long time for a decision in their application. The permission can only be given by the Immigration Service and will be granted in accordance with detailed internal Immigration Service directions of 25 January 2005 on private accommodation of asylum seekers and others.

Q.24. B. What is the total number of available places for asylum seekers? Distinguish in your answer between accommodation centres, private houses and apartments, hotels or other premises.

As of 30 April 2007 there were 2.509 available places for asylum seekers at asylum centres run by the Danish Red Cross and two municipalities.

Q.24. C. Is this number of places for asylum seekers sufficient in general or frequently insufficient?

Yes

Q.24. D. Are there special measures foreseen in urgent cases of a high number of news arrivals of asylum seekers (outside the case of application of the directive on temporary protection)?

There is – at the moment – available capacity at the asylum centres. Furthermore, the Danish Red Cross has an empty asylum centre, which is prepared for emergency operation.

Q.25. Accommodation centres (important note: all the following questions are about open and not closed centres where asylum seekers are detained which are covered by another question)

Q.25. A Are there different categories of accommodation centres, for instance depending of the stage of the procedure (admissibility and eligibility)?

Accommodation centres run by the Danish Red Cross and the two local municipalities are divided into the following categories:

- Reception centres for asylum seekers in phase 1 (case dealt with under procedures regarding admissibility and determination of responsible state under the Dublin regulation);
- Residence centres, which are primarily inhabited by asylum seekers whose applications are under examination in the eligibility procedure (phase 2);
- Departure centres which are mainly for finally rejected asylum seekers (phase 3) who do not cooperate in ensuring their return to their countries of origin

- Special care centre: One asylum centre is designated particularly vulnerable asylum seekers with severe physical or psychological problems. They might be physically handicapped or victims of torture.
- Women's centre: Female asylum seekers can choose to live in an asylum centre without men. The women have very different reasons for wishing accommodation without men. Some have been raped or otherwise abused in their native country, other women come from a culture where it is difficult to accept having to share toilet and bath with foreign men. A small group of women has had problems with their husband at another asylum centre. The women's centre offers teaching and internal activation/work experience and the staff support the women in their role as a single parent for the children.
- Children centre: One asylum centre is designated unaccompanied minors.

Accommodation offered by the police:

- According to section 43 of the Aliens Act, the police may "if there is an immediate need therefore" make arrangements for the accommodation and stay of and necessary healthcare services to aliens who have submitted an application for asylum, but whose case is dealt with in entry procedures (Dublin Regulation). The police defrays the expenses therefore. In practice this provision has been applied by the police at the borders to Germany, where asylum seekers sometimes are accommodated at local hostels for a couple of weeks awaiting a decision, which is deemed likely to be rejection of entry and transfer/return to Germany under the Dublin regulation.

Q.25. B. Is there a legal time limit for accommodation in a centre after which the asylum seekers have access to private houses or apartments or is this limit linked to a stage of the asylum procedure?

Regardless of the time span, there are, with a few exceptions, in general no possibilities for accommodation in private houses or apartments during the asylum procedure.

Q.25. C. Is there a general <u>regulation about the internal functioning</u> of those centres and the rights and duties of the asylum seekers? If yes, is this general regulation applicable to public and private centres? If not, are the centres supposed to adopt an internal regulation and does a central authority have or not a kind of control about its content?

Yes. There is a general regulation applicable to both private and public centres. It is part of the so-called Operator Contract ("Operatørkontrakt") which is signed by the Immigration Service on the one side and the Danish Red Cross, respectively the municipalities on the other.

Q.25. D. Do the regulations foresee the possibility of <u>sanctions</u> against asylum seekers in case of breach of the rules? (see article 16, §3) If yes, which sanctions for which rules? Which is the competent authority to decide? How is it ensured that decisions are taken individually, objectively and in particular *impartially* (for instance through an independent arbitrator) as requested by §4 of article 21 which is mandatory provision? Which are the possibilities of appealing against those decisions if the system is different from the general one under question n°22? Are there already administrative appeal decisions or judgements which have been taken and if yes, which are the main important ones?

The Immigration Service may decide to reduce or withdraw part of the cash allowances in cases where "the alien has exhibited violent or threatening behaviour to persons performing duties in relation to the running of an accommodation centre for aliens or to persons otherwise staying at the accommodation centre;" (cf. section 42a(9)(ii) of the Aliens Act), or where "the alien disregards an order to perform necessary duties in relation to the running of the accommodation centre;" (cf. section 42a(9)(v) of the Aliens Act). The decision will be taken by the Immigration Service on the recommendation of the operator of the centre. Detailed guidelines are included in the Immigration Service instruction of 25 August 2006, Guidelines on decisions relating to reduction or withdrawal of cash allowances.

Q.25. E. Are asylum seekers involved in the <u>management</u> of these centres? If yes, how (advisory board, appointment or election of representatives)? (see article 14, §6 which is an option provision)

Under Annex 2.0.2 to the Operator Contract and in accordance with an optional provision of section 28(2) of the Regulation on education and activation of asylum seekers, it is stipulated that "the operator shall assist the asylum seekers in the establishment and the ongoing running of "residents boards", the aim of which are to ensure that the asylum seekers have a contributory influence on the normal everyday life at the individual centres.

In practice all accommodation centres run democratically elected "boards" with various particular focuses (e.g. on children, young people, adults, running of the house, etc.) where the residents of the particular centre have influence on which activities are to be undertaken at the centre.

Furthermore all asylum seekers above the age of 18, lodged in one of the accommodation centres have " … a duty to assist in carrying out the tasks necessary to the running of the accommodation centre …", cf. section 42d(1)of the Aliens Act and will sign a contract with the accommodation operator, inter alia, to this effect, cf. section 42c(3)(i). The tasks may include cleaning, light office work and repairs at building, inventory and shared facilities.

Q.25. F. Do specific rules exist on work of asylum seekers inside the accommodation centres different from the general ones about employment (see below)? If yes, which ones? Can working inside accommodation centres be considered as a (mandatory) contribution of the asylum seekers to the management of the centres, is it or not paid and considered as implying access to the labour market and subject to the same rules?

Asylum seekers are generally not permitted to undertake paid or unpaid employment.

With regard to the situation inside the asylum centres, section 42d of the Aliens Act stipulates that "(1)..an alien lodged in one of the [asylum] centres … has a duty to assist in carrying out the tasks necessary to the running of the accommodation centre. (2) The Danish Immigration Service or the accommodation operator … may order an alien to carry out the tasks mentioned in subsection (1). The Danish Immigration Service may decide that an alien who disregards an order shall stay at a place determined by the Danish Immigration Service."

Under section 42d of the Aliens Act, all asylum seekers over 18 are obliged to help with required daily tasks at their asylum centre, e.g. cleaning their own rooms, common areas, kitchen areas, and bathrooms. In addition to these tasks, asylum seekers may help with other tasks at the centre (internal activation), e.g. helping personnel with routine office work and the upkeep and reparation of buildings, furnishings, and common areas at their place of lodging. Asylum seekers who are still awaiting a decision whether their applications will be processed in Denmark may only perform internal activation tasks. If asylum seekers do not live up to their contracts with asylum centres, including the duty to undertake the above tasks at the centre, a reduction of allowances equivalent to the number of days' tasks not performed can be made

Thus, the work inside the accommodation centre is unpaid and mandatory.

It is however important to note that a direct consequence of the lack of access to work is that adult asylum seekers who stay at an asylum centre for several years loose their professional skills and their ability to keep going, thereby reducing their possibilities to maintain themselves once this will be required of them again.

Q.26. **Q.26. A. How can asylum seekers communicate with legal advisers, representatives of UNHCR and NGOs? (see article 14, §2, (b) which is a mandatory provision).**

No legislative norm for asylum seekers not detained or confined at the border. In accordance with practice, legal advisors are free to enter the asylum centres if invited by

the asylum seekers. The Danish Refugee Council and UNHCR (in practice represented by the Danish Refugee Council) are always free to enter the asylum centres.

Furthermore the asylum seekers are free to leave the asylum centres and will thus have the possibility of calling on the above persons or organisations outside the centres.

Contact details of the above and similar organisations are included in the written information which is provided to the asylum seekers on arrival.

Q.26. B. What are the rules about <u>access</u> of legal advisers, UNHCR and NGOs regarding access to accommodation centres and other housing facilities (see article 14, §7 which is a mandatory provision)

Access is not regulated in legislation. In practice, however, there is free access for legal representatives to the accommodation centres if they are invited by the asylum seekers. The Danish Refugee Council (in its function as legal adviser) and UNHCR (in practice represented by the Danish Refugee Council) are always free to enter the asylum centres.

Q.26. C. Can the access of legal advisers, UNHCR and NGOs be <u>limited</u> for security reasons or any other reason (see article 14, §7, last sentence)?

No

Q.27. **Q.27. A. Is a <u>medical screening</u> organised by the receiving State, is it mandatory or voluntary? Does it include HIV tests? (see article 9 which is an optional provision)**

In accordance with Annexe 2.1.3 of the Operator Contract, medical screening of adults is voluntary, but mandatory for children.

Shortly after arrival in Denmark all asylum seekers are invited to a meeting with a nurse. The meeting takes place at centre Sandholm – the reception centre for all asylum seekers in Denmark. During the meeting the nurse will ask questions about the person's physical and mental health, if he or she has been living in a refugee camp or is a victim of torture. The nurse also asks about social conditions: former jobs and education, if the person is married and has children. The nurse uses a list of questions and this list later becomes the medical journal of the asylum seeker. The journal follows the person as long as he or she stays at an asylum centre. If the nurse finds signs of a disease or if the person comes from a country with a high incidence of tuberculosis, he or she is offered a medical examination. The meeting with the nurse and an eventual medical examination is called medical screening and the purpose of this medical screening is to secure that asylum seekers who need assistance, receive the necessary help and treatment. Almost all asylum seekers accept this offer of a medical screening. For children this medical screening is obligatory. The meeting lasts approximately 30 minutes and is conducted with help from an interpreter. An HIV test is offered but is not obligatory.

Q.27. B. Do the legal provisions on reception conditions ensure that asylum seekers receive <u>at least emergency care and essential treatment of illness</u> as requested by article 15 §1 which is a mandatory provision? Do they have a further access to health care?

In accordance with section 42a(1) of the Aliens Act, asylum seekers are entitled to necessary health care services. According to Immigration Service Instructions of 4 May 2005 regarding health care for adult asylum seekers, this cover:

- emergency medical treatment by a medical doctor or at the casualty ward in case of acute or life threatening illness or injury. This may be initiated by the operator of the asylum centre;
- Some non-acute health care may also be initiated by the operator of the centre is case without prior consent of the Immigration Service, for example, consultations at certain specialists, introductory talks with psychologists, pain-stilling dental treatment within a budget of 3.000 DKR (appr.400 Euro) and midwife consultations.
- Other forms of necessary health care, for example hospital treatment or hospitalization, may not be initiated without the prior consent of the Immigration Service.

Q.27. C. What is the <u>practice</u> regarding access of asylum seekers to health care and how is it organised? In particular, what is the situation in accommodation centres (are doctors coming to the centres or do asylum seekers go to doctors outside)?

All asylum seekers either live at an asylum centre or, in case of private accommodation, are linked to an asylum centre. They all have to use the health care system established at the centre. General practitioners are coming to the centres.

Q.28. **Q.28. A. What is the <u>length of the period</u> determined by the concerned Member State during which asylum seekers have <u>no access</u> to the labour market? (see article 11 which is a mandatory provision)**

Asylum seekers do not have access to the labour market in Denmark. In Letter no. 11113 of 30 January 1985 on Accommodation of asylum seekers, the Ministry of Justice refers to this as "… a fundamental principle that asylum seekers are not allowed to have wage-earning or unsalaried employment during the processing of the asylum application. The required title to this is only granted if and when the asylum seeker obtains asylum."
The only exception which may (indirectly) occur in practice is if the asylum seeker either has residence- and work permit on other grounds (e.g. on basis of family reunification) or if s/he has a certain profession which is characterized by a general lack of qualified employees in Denmark and included in a so-called positive list written-up by the government.

Asylum seekers whose applications are to be processed in Denmark may participate in both internal activation as well as unpaid job training programs at a company not affiliated with the asylum centre (external activation). Applicants can also participate in unpaid humanitarian work or any other form of volunteer work.

Q.28. B. After that period, are asylum seekers or not obliged to obtain a work permit? In case is there a limit for the administration to deliver the permits and how quick are they delivered? What is their length?

Asylum seekers do not have access to the labour market in Denmark. In Letter no. 11113 of 30 January 1985 on Accommodation of asylum seekers, the Ministry of Justice refers to this as "… a fundamental principle that asylum seekers are not allowed to have wage-earning or unsalaried employment during the processing of the asylum application. The required title to this is only granted if and when the asylum seeker obtains asylum."

The only exception which may (indirectly) occur in practice is if the asylum seeker either has residence- og work permit on other grounds (e.g. on basis of family reunification) or there is a general lack of qualified employees within a certain field of work in Denmark. An asylum seeker possessing the latter specific qualifications may lodge an application for - and be granted - work and residence permit on those grounds if he has been offered a job within this field.

Q.28. C. After that period, what are the conditions for access of the asylum seekers to the labour market? (in particular, are there rules concerning the maximum allowed of working hours or days per week, month or year, limits in terms of type of work or of professions authorised?

Not applicable as no access to labour market merely on basis of being an asylum seeker.

Q.28. D. What are the rules in terms of priorities between asylum seekers on the one hand and nationals, EU or EEE citizens and legally third-country nationals on the other?

Not applicable as no access to labour market merely on basis of being an asylum seeker.

Q.28. E. Do asylum seekers have access to vocational training, does this or not depend of their right to access to the labour market, and in case at which conditions? (see article 12 which is optional regarding §1 and mandatory regarding § 2)

Asylum seekers over the age of 17 whose applications are still being processed in Denmark may participate in both internal activation as well as unpaid job training programs at a company not affiliated with the asylum centre (external activation).

Applicants can also participate in unpaid humanitarian work or any other form of volunteer work, cf. section 42e of the Aliens Act.

Courses may be designed to maintain and augment both their general skills as well as their trade or professional skills. The courses are held at or in association with the asylum centre.

Q.28. F. Are the rules regarding access to the labour market adopted to transpose the directive more or less generous than the ones applicable previously?

No

Q.29. Are reception conditions subject to the fact that asylum seekers do not have sufficient resources? Are asylum seekers requested to contribute to reception conditions when they have personal resources (for instance if they work) or to refund the authorities if it appears that they have resources? (see article 13 §§ 3 and 4 which are optional provisions)

Under section 42a(4) of the Aliens Act, the Danish Immigration Service may decide that an alien who has sufficient means of his own, will not have his or his family's expenses of the stay and necessary healthcare services defrayed. If the alien has sufficient means of his own to pay for the expenses of his or his family's stay and necessary healthcare services, the Danish Immigration Service may order him to do so. In practice this provision is rarely if ever applied.

7. SPECIAL NEEDS OF PARTICULAR CATEGORIES OF ASYLUM SEEKERS

Q.30.

Q.30.A. Which of the different categories of persons with special needs considered in the directive are taken into account in the national legislation (see article 17, §1 which is a mandatory provision): disabled people, elderly people, pregnant women, single parents with minor children, persons who have been tortured, raped or victims of serious physical or psychological violence? Include in your answer all other categories envisaged in national law.

In addition to section 42a(1) which, inter alia, stipulates the provision of necessary healthcare services to asylum seekers, the Immigration Service has issued internal Instructions for the establishment of social measures for asylum seekers on 11 February 2005. Further instructions/specifications are included in annexes to the Operator Contracts between the Immigration Service and the accommodation operators. According to the Social Services Act of 18 January 2007, the municipality authorities have an obligation to conduct supervisory authority towards and grant assistance to families, children and adolescents in general as well as to children and adults with mental or physical handicaps or particular social problems, who live within the borders of their respective municipalities. The supervisory obligation includes children and adults living at asylum centres. The

obligation to provide particular assistance takes effect when the necessary assistance goes beyond what the accommodation operators are able to provide.

Categories of persons with special needs include the categories listed in the directive.

Torture survivors may however not be identified as the asylum authorities are not under an obligation to ensure that information that have come up in this regard during the examination of the claim is forwarded to the relevant health personnel responsible for ensuring adequate reception conditions

Q.30. B. How is their <u>specific situation taken into account</u> (see articles 13, §2, second indent, 16 §4 second sentence and 17 which are mandatory provisions)?

In addition to section 42a(1) which, inter alia, stipulates the provision of necessary healthcare services to asylum seekers, the Immigration Service has issued internal Instructions for the establishment of social measures for asylum seekers on 11 February 2005. Further instructions/specifications are included in annexes to the Operator Contracts between the Immigration Service and the accommodation operators.

According to the Social Services Act of 18 January 2007, the municipality authorities have an obligation to conduct supervisory authority towards and grant assistance to families, children and adolescents in general as well as to children and adults with mental or physical handicaps or particular social problems, who live within the borders of their respective municipalities, cf. section 11 and 12 as well as chapter 11 and 16 of the Social Service Act. The supervisory obligation includes children and adults living at asylum centres. The obligation to provide particular assistance takes effect when the necessary assistance goes beyond what the accommodation operators are able to provide, cf. Instructions for the establishment of social measures for asylum seekers on 11 February 2005.

Measures to asylum seekers with particular needs, that, according to the Instructions for the establishment of social measures for asylum seekers on 11 February 2005, will normally fall within the duties of the *accommodation operators* include for example

- personal assistance to asylum seekers who are ill or physical or mentally disabled in relating to the participation in activation activities, shopping etc.;
- Support to and instructions in carrying out the necessary housework to asylum seekers who are not at all capable of carrying out those duties by themselves;
- Support to other necessary tasks like shopping and dressing if the asylum seeker is not at all capable of doing it him- or herself;
- Support to families with children in carrying out practical tasks, like dressing, feeding, cooking, etc.
- Support to children with mentally ill parents;
- Support to parents who need help in bringing up their children

- Day care activities

Measures which, according to the Instructions for the establishment of social measures for asylum seekers on 11 February 2005, will normally fall within the competence of the *municipalities*, include for example:

- home care or visiting nurse;
- Personal assistance to persons with grave psychiatric disorders who are not able to function without an specially trained assistant within the field of health;
- Family care to children
- Placement of children at institution or boarding school for maladjusted children;
- Support to children with physical or mental disabilities or sufferings in kindergarten and other day care facilities;
- Support to families where children have been subjected to disregard or abuse.

According to Immigration Service Instructions of 4 May 2005 regarding health care for adult asylum seekers, psychologist or psychiatrist treatment as well as treatment by physiotherapist may be provided to *torture survivors*. Problematic is however that *torture victims* will not necessarily be identified. When asylum seekers for example during the examination of their asylum application explain to asylum authorities about torture they have experience, there is no system ensuring that this particular situation of the applicant be evaluated by medical doctors and specialists. Normally, the asylum authorities will thus only refer an applicant to a torture examination if they consider it relevant for the examination of the merits of the case.

On arrival all asylum seekers are offered a medical check and, generally, medical or ordinary staff at the reception and accommodation centres, will pay particular attention to the psychological and physical health of vulnerable persons and seek to provide adequate counselling where possible. Rather than healing or rehabilitating, the treatment and counselling is merely sufficient to ease the situation of the particular person.

One accommodation centre is specifically designed for the reception of *single women with or without children* and, as long as there is still room, those groups of women will be accommodated here.

Furthermore, the two biggest reception/accommodation centres in Denmark (Center Sandholm and Center Avnstrup) have separate wards for families separated from those of single men, where accompanied as well as *unaccompanied women* will be accommodated. None of the other accommodation centres have similar facilities. Instead staff at those centres is instructed to pay particular attention to the vulnerability and potential exposure to abuse of single women.

Unaccompanied minors are accommodated at a centre specifically established for this purpose. The staff is specifically trained for the reception of this category of asylum seekers.

The annexes to the Operator Contracts detail some of the considerations to take into account with regard to asylum seekers with special needs:

In accordance with Annex 2.1.5 to the Operator Contract, the operator shall ensure an interdisciplinary and coordinated psycho-social approach to asylum seekers with special needs; watch closely the *children of detained parents* and do reaching-out casework vis-à-vis *pregnant women* and *parents with children at kindergarten age*.

In case of *serious physical or mental illness or disability*, the asylum seeker will either be transferred to the special care centre or alternative solutions will be introduced, cf. Annexe 2.1.3 of the Operator Contract.

According to Annexe 2.0.2 of the Operator Contract, asylum seekers with special needs, e.g. *disregarded children*, shall be identified and a holistic and coordinated effort be ensured.

Annexes 2.2.1 and 2.2.2 of the Operator Contract stipulate *extended health care and counselling of children* and *extensive care for asylum seekers lodged at a special care centre due to their serious physical or psychological or other problems*. Accordingly, the special care centres have more staff than the other asylum centres, including specialists like psychologists and physiotherapists.

Q.30. C. <u>How and when are</u> the special needs of the concerned persons supposed to be legally identified (see article 17 § 2 which is a mandatory provision and clarify how it has been interpreted by transposition)?

In connection with the initial medical screening or, later, in connection with changed and alarming behaviour, the situation of an asylum seeker or an asylum seeker family will be taken up and discussed by a specific psycho-social team.

It is however problematic that *torture victims* will often not be identified (in terms of article 17(2)) even though they may state their situation. When asylum seekers for example during the examination of their asylum application explain to asylum authorities about torture they have experience, there is no system ensuring that this particular situation of the applicant be evaluated by medical doctors and specialists. Normally, the asylum authorities will thus only refer an applicant to a torture examination if they consider it relevant for the examination of the merits of the case. If, for example, convinced without any further evidence that the applicant is a torture survivor he or she will not be sent for examination nor will the Immigration Service necessarily submit this information to the accommodation operator.

Q.30. D. Is the necessary medical and other assistance provided to persons with special needs as requested by article 15, §2 which is a mandatory provision and in particular to victims of torture and violence as requested by article 20 which is a mandatory provision?

Re. Article 15(2): Yes

Re. Article 20: Counselling easing the symptoms and effects of torture and other serious acts of violence will to a certain - limited extent - be offered to asylum seekers, but real and necessary treatment and rehabilitation for sufferings of this kind will normally not be offered to persons who do not hold a proper residence permit.

Q.31. About minors:

Q.31. A. Till which age are asylum seekers considered to be minor?

Asylum seekers below the age of 18 are considered to be minors.

Q.31. B. How is access of minor asylum seekers to the education system ensured? Is it at school or in case inside accommodation centres and can it be considered as similar to the conditions for nationals as requested by article 10, §1?

Under section 42g of the Aliens Act (asylum seeking) "children of school age …. shall participate in separately arranged tuition or in tuition measuring up to the general requirements under the separately arranged tuition." (Exempted from this provision are detained children, section 42g, cf. 42a(3)(iv)). School age is considered to be 7 to 16 years of age and this group of children has to participate in tuition similar to that of resident children (nationals and others) in Denmark.

Normally the children start their education by attending one of the six Red Cross schools. As a minimum all schools have 3 different levels. Schools with many pupils have up to ten classes. According to their age, pupils go to school between 20 and 28 hours per week. The children learn Danish, English, mathematics and practical subjects such as physical education, art, woodwork and cooking, depending on the facilities of the school. All schools have computers and it is a goal to integrate IT in all subjects. The teachers make a special effort to ensure that the children learn about the Danish society, Danish culture and the Danish language. If possible the school organizes mother tongue teaching.

In order to meet their need for professional, social and linguistic challenges, a number of the children will, at some point of their schooling, be transferred to a local school run by the municipality, cf. section 14(1)(iv) of the Regulation on education and activation of asylum seekers.

Handicapped children and maladjusted children or children who have difficulties learning are offered special teaching in cooperation with the local municipality, cf. section 7 of the Regulation on education and activation of asylum seekers

In contradiction with the directive, children who have reached the age of 17 are not granted access to the education system under similar conditions as nationals of Denmark. In accordance with section 42e, they may participate in a particular "introduction scheme" for adults and, under certain conditions in Danish or English language tuition as well as introduction to Danish culture and social conditions. Courses may be designed to maintain and augment both their general skills as well as their trade or professional skills. The courses are held at or in association with the asylum centre Asylum seekers over the age of 17 whose applications are still being processed in the Phase 1 or 2 may participate in both internal activation and in unpaid job training programs at a company not affiliated with the asylum centre (external activation). Applicants can also participate in unpaid humanitarian work or any other form of volunteer work, cf. section 42e of the Aliens Act.

Q.31. C. Is access to education ensured not later than 3 months as requested by article 10, §2 (or after maximum one year if specific education for asylum seekers is provided) and till an expulsion decision is really enforced?

Legislation does not contain a time limit. In practice, schooling will be provided within three months of the submission of the asylum application.

Q.31. D. Is specific education (like language classes) available for asylum seekers, in particular to facilitate their effective access to the education system of the reception Member State (see article 10, §2 which is an optional provision)?

Yes, cf. section 5 and 6 of the Regulation on education and activation of asylum seekers.

Q.31. E. Are minors in general accommodated with their parents or with the person responsible of them? (see article 14, § 3)

Yes – in accordance with a general principle of family law protecting the family unity and the family life.

Q.31. F. Do minors with special needs enumerated by article 18, §2 which is a mandatory provision, have access to appropriate mental health care and qualified counselling?

Real rehabilitation services are normally not offered to these groups of minors as rehabilitation is normally only offered to persons with a proper residence permit in Denmark.

Unaccompanied minors will however receive relatively much attention and possibly also some treatment/counselling in this regard as they live in a centre specifically designated for minors, where there is both more staff and the staff is specifically trained to deal with children and include a trained psychologist. *Minors who are accompanied* will, on the other hand, in practice be at risk of relative more neglect and of not being "seen" by staff at the ordinary accommodation centres.

Only in cases of neglect or abuse by the parents, rehabilitation may take place. In those cases the operator of the centre is under an obligation to inform the local municipality and in cooperation with the municipality ensure that all necessary measures are taken to help these children. Some families get the support at home; in other cases it might be necessary to place the child outside the home.

Q.31. G. How and when is organised the representation of unaccompanied minors (guardianship, special organisation) and regularly assessed? (see article 19, §1 which is a mandatory provision)

When children under 18 years of age come to Denmark and seek asylum without their parents, or other adults travelling in place of parents, they children are handled as 'unaccompanied minor asylum seekers.'

Every unaccompanied child registered as an asylum seeker in Denmark after 1 April 2003 will, in accordance with section 56a (1)-(6) of the Aliens Act, Regulation no. 193 of 20 March 2003 on The dealing with cases concerning representation of unaccompanied minor asylum seekers (Bekendtgørelse om behandling af sager om repræsentanter for uledsagede mindreårige asylansøgere), and Circular no. 9126 of 26 March 2003 to all county authorities regarding appointment of representatives for unaccompanied minor asylum seekers (Cirkulæreskrivelse til samtlige statsamter, herunder Københavns Overpræsidium, om udpegning af repræsentanter for uledsagede mindreårige asylansøgere), be appointed a personal representative to preserve the child's interests. The representative will offer support to the child during the asylum case examination: for example, by accompanying the child during the asylum interview. The representative will also support the child on a more personal level. Once the Danish Immigration Service has established that the applicant is an unaccompanied, underage individual, the Danish Immigration Service will ask the accommodation Operator to recommend a representative to the local county authority (statsamt), which will formally appoint the representative. The representative will not be affiliated with immigration authorities, and can, for example, be a relative or other private citizen.

If a child's asylum case is processed within the *manifestly unfounded procedure*, the Danish Immigration Service will appoint an attorney to represent the child, cf. section 56a(7) of the Aliens Act.

Q.31. H. How is placement of unaccompanied minors organised (with adult relatives, a foster family, in special accommodation centres or other suitable accommodation)? (see article 19, §2 which is mandatory provision)

During the processing of the application for an asylum/residence permit, the child will be accommodated in a centre run by the Danish Red Cross, designated specifically for unaccompanied minor asylum seekers and with especially trained staff. It is also possible for the unaccompanied minor to live together with close relatives living in Denmark, e.g. an aunt. It is assessed individually if private housing should be allowed. There are no specific norms stipulating the placement of children in suitable accommodation. There are however several norms regulating the placement in foster families and with relatives, as well as norms regulating the services to be provided by the accommodation operator at special accommodation centre for unaccompanied minors.

Q.31. I. How is the tracing of the family members of the unaccompanied minors organised? Are measures taken to protect confidentiality of information when necessary? (see article 19, §3 which is a mandatory provision)

Provided the minor or the appointed guardian gives their consent, the Danish Immigration Service must initiate a search for the parents as soon as possible after the arrival in Denmark, cf. section 56a(8) of the Aliens Act. It may be the Danish Red Cross or the Ministry of Foreign Affairs who perform the practical work in the search. Confidentiality is stipulated by section 27 or the Administrative Procedures Act, cf. section 152 of the Penal Code.

8. EXCEPTIONAL MODALITIES OF RECEPTION CONDITIONS

Q.32. Apart from detention covered by the next question, are there exceptional modalities for reception conditions in the following cases and if yes, which ones and for how long are they applicable, knowing that they should be "as short as possible" (see article 14, §8)?

Q.32. A. Persons with specific or special needs, regarding in particular the period of assessment of those needs?

No

Q.32. B. Non availability of reception conditions in certain areas

No (not a problem in practice as Denmark is a small country!)

Q.32. C. Temporarily exhaustion of normal housing capacities

No.

Q.32. D. The asylum seeker is confined to a border post

Asylum seekers are normally not confined to border posts, but will, if decisions on admissibility/Dublin procedure can not be taken immediately, normally be sent either to an asylum centre, which is under the responsibility of one of the accommodation operators, or to an in-country detention centre, which is under the auspices of the Prisons and Probation Service.

In exceptional cases of border confinement, the police will have the responsibility for securing the reception of the asylum seeker, cf. section 43 of the Aliens Act.

Q.32. E. <u>All other cases</u> not mentioned in the directive (for instance urgent situation in case of a sudden high number of applicants outside a case of application of the directive on temporary protection).

N/A

Q.33. <u>Detention of asylum seekers</u> (we do not cover the situation of rejected asylum seekers detained for the purpose of their return) (see articles 6 §2, 7 §3, 13, §2 2nd indent and 14 §8 which implies that the directive is in principle applicable in case of detention):

Q.33. A. In which <u>cases or circumstances</u> and for which <u>reasons</u>[1] (identity verification in particular if the persons have no or false documents, protection of public order or national security, refugee status determination, way of entry into the territory, etc) can an asylum seeker be detained during the asylum procedure till his request has been finally rejected. <u>Quote</u> precisely in English in your answer the <u>legal basis</u> for detention of asylum seekers in national law.

Danish legislation and practice is in accordance with the principle contained in Art. 18(1) of the EU Directive on asylum procedures of 1 December 2005.

In connection with entry and eligibility procedures, detention of asylum seekers may be ordered under the following circumstances:

- Asylum seekers who have applied for asylum may be deprived of their liberty upon arrival in order to ensure enforcement of a potential refusal of entry if another country is responsible for the examination the application for asylum under the Dublin regulation or under the "safe third country" (cf. section 36 (1) 1st sentence of the Danish Aliens Act). This provision may, inter alia, be used when doubts about identity and travel route;

[1] Please specify if article 18 §1 of the directive on asylum procedures of 1 December 2005 following which *"Member States shall not hold a person in detention for the sole reason that he/she is an applicant for asylum"* is or not respected (even if it has not yet to be transposed).

- Asylum seekers, whose claims are expected to or are processed under the accelerated procedure for manifestly unfounded claims, may be detained after a specific, individual assessment, provided it is required for ensuring their presence during the examination of their case (cf. section 36 (1) 3rd sentence of the Danish Aliens Act);

- Asylum seekers, who fail to comply with a decision of the Danish Immigration Service to stay at a determined place (cf. section 36(2) 1st sentence of the Aliens Act);

- Asylum seekers, who, without reasonable cause, fail to appear for an interrogation at the police or at the Danish Immigration Service to which he or she has been summoned (section 36 (2) 2nd sentence of the Danish Aliens Act);

- Asylum seekers who through their behaviour essentially obstruct the procuring of information for their case (without reasonable cause, repeatedly failing to appear for interrogations at the police or the Immigration Service to which they have been summoned, not giving or obscuring information on identity, nationality or travel route or by giving undoubted misrepresentations thereon, or by otherwise not assisting in procuring information for the case) may be detained in order to ensure efficient examination of the asylum application and return from Denmark (section 36 (4) of the Danish Aliens Act);

- Asylum seekers, who have been expelled on the basis of having committed certain crimes may be deprived of liberty to ensure efficient enforcement of the decision of expulsion (section 36 (3) of the Danish Aliens Act);

Furthermore, order of remand in custody may be decided in cases of

- Asylum seekers who have been expelled by final judgement under for certain criminal activities (cf. sections 22 to 24 of the Aliens Act), if in order to ensure efficient enforcement of the decision of expulsion

Except for those detained on basis of, inter alia, previous criminal activities, asylum seekers may only be detained if the police considers that alternative lesser measures (deposit of the passport or other travel document with the police, stay at an address determined by the police, to report to the police at specified times) are insufficient to ensure their presence.

Q.33. B. Has your member State adopted measures to transpose §3 of article 7 which is an optional provision? If yes, how has this provision been legally understood (is it a case of detention or an obligation to

stay in and not leave a certain place?) and for which reasons can an asylum seeker be "confined" in such a place?

No

Q.33. C. Are there legally <u>alternatives</u> to detention, like obligation to report to the authorities, obligation to stay in a place, provision of a guarantor or of a financial guarantee?

Except for those where previous criminal activities is part of the criteria for detention, asylum seekers may only be detained if the police considers that alternative lesser measures are insufficient to ensure their presence, cf. section 36 of the Aliens Act.

During *entry procedures*, the police may order an asylum seeker to adhere to one or more of the following alternatives to detention "provided it is found necessary for ensuring the presence of the alien concerned":

- Deposit passport or other travel documents and ticket, cf. section 34(1)(i) of the Aliens Act (commonly used);
- Provision of bail determined by the police, cf. section 34(1)(ii) of the Aliens Act;
- Stay at a specific address determined by the police, cf. section 34(1)(iii) of the Aliens Act;
- Reporting to the police at specific times , cf. section 34(1)(iv) of the Aliens Act

During *eligibility procedures*, "if deemed appropriate for ensuring the presence of the alien or his assistance in the examination of his case", the police may order the asylum seeker to:

- Report to the police at specified times, in cases where
    - The asylum seeker does not assist in providing information for the case,
    - without reasonable cause, the asylum seeker fails to appear for an interrogation at the Danish Immigration Service or the police to which he or she has been summoned;
    - the asylum seeker has exhibited violent or threatening behaviour to persons performing duties in relation to the running of an accommodation centre for aliens or to persons otherwise staying at the accommodation centre;
    - the asylum seeker does not comply with the decision of the Danish Immigration Service to the effect that the alien must stay at a place determined by the Danish Immigration Service.

Q.33. D. Which is the competent authority to order the detention of an asylum seeker? Explain if different authorities are involved to first take and later confirm the decision.

Re. detention under section 36 of the Aliens Act:
The police are the competent authority to take the initial decision on detention under section 36 of the Aliens Act.

In case the asylum seeker is not released within 3 days (72 hours) of the enforcement of the deprivation of liberty, he or she will be brought before a court of justice, which will rule on the lawfulness and the continuation of the detention (section 37(1) of the Aliens Act).

In accordance with section 37(2) 1st sentence b, the decision of the lower court may be appealed to the high court, which will rule on the lawfulness and continuation of the detention. Appeal does not have suspensive effect. Legislation provides no time limits, but in practice the ruling of the upper court will be given after a few days.

Re. Custody under section 35(2) of the Aliens Act:
The courts of justice are competent to make decision on the remand of an asylum seeker in custody under section 35(2) of the Aliens Act.

Q.33. E. For how long and till which stage of the asylum procedure can an asylum seeker be detained?

Detention of a person on grounds related to the expectation that his or her asylum case is expected to be processed in the expedited manifestly unfounded procedure (cf. section 36 (1) 3rd sentence) is limited to seven (7) days, cf. section 37(3) 4th sentence. Apart from this situation, there are no fixed limits to the duration of detention.

Detention may be applied at all stages of the procedure, however, in casu, under different provisions of the Aliens Act. For example, detention under 36 (1) 1st sentence of the Danish Aliens Act is limited to the phase where the applicant's case is still considered under entry procedures (admissibility and vis-à-vis the Dublin regulation); detention under section 36 (1) 3rd sentence of the Danish Aliens Act may only be applied for as long as the asylum seeker's case is – or is expected to be – examined under the manifestly unfounded procedure. When and if, within the seven days, it is decided to transfer the case to the so-called normal procedure, the asylum seeker shall be released (unless the continued detention can be justified under another provision of the Aliens Act).

If the court of justice in accordance with section 37(1) of the Aliens Act confirms the lawfulness and continuation of the detention decided by the police the court must determine a time-limit for continued detention. The court may extend this time-limit at a later date, but by no more than 4 weeks at a time, cf. section 37(3) 3rd sentence.

In several decisions from the Eastern High Court during 2004/2005, detention of some asylum seekers for a period of more than one year was found to be in violation with the principle of proportionality in article 5, 1, f of the European Convention on Human Rights considering the duration of the detention with the prospect of the asylum seeker eventually co-operating with the police. Following these decisions several detainees, especially Iranians, were released.

Q.33. F. In which <u>places</u> (can we call them "closed centres"?) are asylum seekers detained (places in a special closed centres reserved only to asylum seekers, together with returnees like illegal aliens or even in a normal prison, in case within separated areas or with the other detainees)? Indicate if a difference has to be made following the location of the "closed centres" at the border or on the territory? Which is the authority managing those places and is it the same as the one in charge of reception conditions?

Before 1989 detained asylum seekers were placed in ordinary prisons with criminals. In 1989, a prison solely for asylum seekers detained under the Aliens Act was build next to the asylum centre Sandholm (which mainly functions as a reception and departure centre). The purpose of building the closed centre at Sandholm was to separate asylum seekers from criminals. Quite exceptionally, the Prisons and Probation Service have a few times used one or two departments of the Sandholm prison for the housing of criminals where ordinary prisons have been overcrowded. In these cases, there has however been a structural separation between asylum seekers and criminals.

There is room for 118 asylum seekers at the Sandholm Prison.

Asylum seekers, who have served a prison sentence for criminal activities and are detained under the Aliens Act *in prolongation* of having served the prison sentence, should normally be kept in Sandholm Prison. If, however, the Sandholm Prison management assesses that this will involve a risk for disturbances in Sandholm Prison (e.g. where the asylum seeker has served a sentence for previous violence in the asylum centres or where the sentence concerned very serious criminal behaviour), the asylum seeker will be kept in an ordinary prison. Detainment will in those cases normally take place at the Western Prison ("Vestre Fængsel") in Copenhagen, which is mainly used for remand prisoners awaiting trial in court or inmates serving a short sentence.

Confinement and detention at the border may be used in connection with entry procedures, notably when a question of returning asylum seekers to either Sweden or Germany under the Dublin regulation. Confinement in police custody will normally only take place for a few hours and for 24 hours at the most. There is no legislation governing this. If an entry decision can not be taken within a few hours and it is deemed necessary to detain the asylum seeker, he or she will be transferred to Sandholm Prison or, in rare cases, to a local prison close to the border.

When detained in police custody, it is the police that are responsible for reception conditions, cf. section 43 of the Aliens Act.

The Danish Prison and Probation Service are responsible for reception conditions for detained asylum seekers in local prisons as well as in Sandholm Prison.

Q.33. G. Does UNHCR and NGOs have access to the places of detention and under which conditions?

The Danish Refugee Council has free access to visit detained asylum seekers. Thus under section 37d(1) a detained asylum seeker "may always receive visits from a representative of the Danish Refugee Council without surveillance".

The Danish Refugee Council is acting on behalf of UNHCR in those cases.

When the police detains an asylum seeker they must always ask whether the asylum seeker wants DRC to pay a visit in the detention centre. If the asylum seeker wants to meet DRC the police send a fax to DRC with information about the detained asylum seeker, cf. section 37(4) of the Aliens Act.

In practice DRC has very good relations with detention staff and nurses, social workers etc working in the detention centre. Often these persons will contact DRC if they become aware of a detained asylum seeker who might need advice from DRC.

Q.33. H. What appeal(s) can asylum seekers introduce against the fact he is detained? Is article 18 of the directive on asylum procedures of 1 December 2005 following which *"Where an applicant for asylum is held in detention, Member States shall ensure that there is a possibility of speedy judicial review"* respected (even if it has not yet to be transposed)?

If the asylum seeker is released within 72 hours and thus not have access to a court ruling on the lawfulness of the detention, he or she may lodge a complaint against the lawfulness of the police' decision to detain to the Ministry of Integration. The complaint does not suspend enforcement of any decision to refuse entry, transfer, retransfer or return the asylum seeker.

In case the asylum seeker is not released within 3 days (72 hours) of the enforcement of the deprivation of liberty, he or she will be brought before a court of justice, which will rule on the lawfulness and the continuation of the detention (section 37(1) of the Aliens Act).

In accordance with section 37(2) 1st sentence b, the decision of the lower court may be appealed to the high court who will rule on the lawfulness and continuation of the detention. Legislation does not provide any time limits ensuring a speedy judicial review

Q.33. I. Is the directive on reception conditions considered to be in principle applicable to the places where asylum seekers are detained? In particular which information do they receive about their rights, which access do they have to legal advice and health care?

Regarding non-detained asylum seekers, reception conditions as regulated by the Aliens Act and regulations and instructions issued by the Danish Immigration Service apply.

In case of detention of asylum seekers at prisons, parts of the legislation and regulation, which has been drawn up for remand in custody, apply "correspondingly", cf. section 37a of the Aliens Act. The norms which are thus to be applied correspondingly are section 758(1), first to third sentences, section 758(2), section 759, section 773 to 776 and section 778 of the Administration and Justice Act, and, notably, the Ministry of Justice Regulation No. 897 of 6 November 2003 as amended on 23 January 2007 on Stay in remand prison. With regard to solitary confinement, visits and letter control, sections 37a – 37e apply

With regard to asylum seekers in police custody, section 43 of the Aliens Act apply.

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The above norms of the Administration of Justice Act and the Regulation as well as of the Aliens Act have regard to:

- *Circumstances surrounding the arrest*;
- *Solitary confinement*. If less radical measures can not satisfy the purpose, the court may, at the request of the police, decide that an alien whose deprivation of liberty has been upheld by the court pursuant to section 37, cf. section 36, is to be partly or wholly excluded from communication with other inmates (solitary confinement), if this is required with a view to procurement of information necessary for deciding whether a permit pursuant to this Act can be issued, or whether the alien is lawfully staying in Denmark;
- *Disciplinary punishment*. In practice may be used warnings, fines, suspended punishment cell or punishment cell;
- *Work*. All asylum seekers are offered work within the prison. They can normally earn up to 5-600 DKR;
- *Alcohol*. Is forbidden;
- *Property and money*. With the exception of the possession of knives Sandholm Prison is not so restrictive as ordinary remand prisons on what sorts of personal property that can be handed over to the asylum seekers during their stay in detention. The can freely have money sent to them from outside;
- *Leisure time*. According to the norms inmates are entitled to at least one hour a day in open air (gårdtur – exercise period). In Sandholm Prison, the asylum seekers are normally entitled to be in open hour from early morning to late evening. Organised activities and exercises are scarce;
- *Health care*. Detainees are entitled to medical treatment and other health care. One general practitioner (15 hors a week) and two nurses (full time) work at Sandholm Prison. Newly arrived detained asylum seekers are offered a talk with a nurse. If they feel that they need a doctor, the asylum seekers may inform the staff of the prison, who will then

contact the doctor or nurse. Detained asylum seekers are offered the same “necessary” medical treatment as asylum seekers in general. If deemed necessary by the doctor of the institution, inmates must be treated by a specialist outside the institution. There are no on-site psychiatric or psychological consultations. If necessary patients are transferred to a psychiatrist in Vestre Prison in Copenhagen (30 km away);
- *Association with other inmates*. In practice asylum seekers associate freely with other asylum seekers accommodated in the same department of the prison;
- *Food and drink*, e.g. consumables may, according to legislation, not be brought in by relatives or others. In practice, these rules are applied more “liberally” and relatives and others may often bring in some consumables;
- *Access to telephone calls* is, according to legislation, very limited and should normally be under surveillance of the prison staff. In Sandholm Prison, practice is quite different. The detained asylum seekers can thus buy telephone cards and call to anybody without restrictions and without surveillance;
- *Visits*. Asylum seekers may receive visitors to an extent consistent with maintenance of order and security at the place where the alien is detained. With a view to procurement of information necessary for deciding whether or not a permit can be issued or whether or not the alien is lawfully staying in Denmark, or necessary for the police to make arrangements for the alien's departure, the police may oppose visits to the person deprived of liberty, or the police may demand that such visits take place under surveillance. The person deprived of liberty always has the right to receive visits from his assigned counsel without surveillance. A person deprived of liberty who has applied for asylum may always receive visits from a representative of the Danish Refugee Council without surveillance. In practice asylum seekers are permitted to receive a little more visits than remand prisoners are;
- *Letters*. Asylum seekers have a right to receive and mail letters. The police may peruse the letters before receipt or mailing. The police shall hand over or mail the letters at the earliest opportunity, unless the content may interfere with the procurement of information necessary for deciding whether or not a permit pursuant to this Act can be issued or whether or not the alien is lawfully staying in Denmark, or necessary for the police to make arrangements for the alien's departure, or is inconsistent with maintenance of order and security at the place where the alien is detained.

With regard to family life, spouses without children are only accommodated together if there are room for them in the so-called family rooms. If not, they will be accommodated in a male part and a female part respectively. They can meet during the day.

Upon arrival to the closed centre/prison, the asylum seeker will receive ”Guidelines for detainees and remand prisoners” published by the Prison and Probation Service. The guidelines contain detailed information on the reception conditions in the prison as well as on the rights and duties of the detainee. The guidelines are translated into 17 languages (which are not all equally relevant to asylum seekers), namely: Arabic, Czech, Estonian, Farsi, Finnish, French, German, Greenlandic, Italian, Latvian, Lithuanian, Polish, Russian, Serbian, Spanish, Turkish and Urdu.

With regard to legal advice, the Danish Refugee Council as well as assigned counsels have free access to visit detained asylum seekers. Under section 37d(1) a detained asylum seeker "… always has the right to receive visits from his assigned counsel without surveillance…" and "… may always receive visits from a representative of the Danish Refugee Council without surveillance".

Detained asylum seekers do not automatically receive a copy of the guidelines issued by the Immigration Service or the pamphlet with information on the counselling offered by the Danish Refugee Council (DRC). This information is given to the asylum seekers at the discretion of the staff. It is however the clear impression of the DRC that the staff at Sandholm Prison has much focus on providing the latter information to the asylum seekers and often facilitates the establishment of contact with the DRC.

Q.33. J. Apart from freedom of movement, what are the main differences between normal reception conditions and exceptional modalities for reception conditions in case of detention, knowing that they should be "as short as possible" (see article 14, §8)? If it is about closed centres, are the regulations of those places in line with the requirements of the directive (is article 13, §2, second indent of the directive following which "*Member States shall ensure that standards of living is met (…) in relation to the situation of persons who are in detention*" respected?).

Main differences are:

- *Access to work*: asylum seekers in detention have access to paid jobs, whereas asylum seekers have not. On the other hand detained asylum seekers do not have access to supplementary allowances, which are "earned" by asylum seekers in accommodation centres who fulfil their contract with the operator. Detained asylum seekers may work seven hours (and sometimes more) a day earning 13.12 DKR per hour which equals at least 100 DKR per day. In contrast a supplementary allowance is 7,27 DKR per day in Phase 1 (entry procedures) and 25,43 DKR per day in Phase 2 (eligibility procedures);
- *Family life*: Detained couples are accommodated separately unless there are available family rooms whereas couples at the asylum centres are guaranteed accommodation together. Access to private and family life for detained asylum seekers is thus much more limited.
- *Visits*: Access to meet family and friends is very limited in detention whereas it is free in and outside the asylum centres.

With regard to material reception conditions and health care provisions required to ensure their subsistence, the same standards of living are applied to detained as well as to non-detained asylum seekers and must, as such, be considered in line with article 13(2) of the directive.

Q.33. K. Are measures taken to avoid detention of asylum seekers with special needs (if yes, which ones?) or are special measures taken because of their needs?

There exist no written instructions concerning decisions to apply detention to asylum seekers with special needs. The police will in every individual case consider whether detention or whether the alternative and less restrictive measures should be applied. The police will make this consideration by including all aspects pertaining to the situation of the asylum seeker and the requirements of the authorities. For example will the health of the asylum seeker be considered. In those cases it will however often be considered that treatment is available in the prison.

Q.33. L. Can minor asylum seekers be detained together with relatives? Can unaccompanied minor asylum seekers be detained? If yes, are there special measures which take into account that children are concerned?

In principle section of 42g of the Aliens Act which stipulates education for all children who stay in Denmark as asylum seekers. With regard to detained children, this provision has, however, not been implemented. In practice very few minors are detained. In accordance with a parliamentary decision, children below 15 years of age, are only detained if together with parents and only if they are below school age as the latter is deemed less traumatising than being separated from their parents at that age. Minors between 15 and 18 years of age may be detained but this very rarely happens in practice.

Q.33. M. In particular is article 10 regarding access to education of minors respected in those places?

The general provision in section 42g of the Aliens Act on providing education to asylum seeking children excempts children in detention, cf. section 42a(1) as modified by section 42a(3)(iv). Whereas other reception conditions of detained asylum seekers are regulated either directly in the Aliens Act or by a reference of the Aliens Act to apply relevant provisions of the Administrative Justice Act correspondingly, education of detained minors is not regulated. In practice, no education of, the however few detained minors between 15 and 18 years, is organised in Sandholm Prison.

Q.33. N. How many asylum seekers are for the moment detained in your Member State? Which proportion does this represent in comparison of the total number of asylum seekers at the same moment?

Not available. Available statistics do not discern between detained asylum seekers and other aliens detained in accordance with provisions of the Aliens Act.

9. ORGANISATION OF THE SYSTEM OF RECEPTION CONDITIONS

Q.34. Explain if the system of providing reception conditions is centralised or decentralised (which levels of government do provide practically reception conditions?) (do not confuse this question with question number 3 about the competence to make rules about reception conditions).

The system is centralised, but shared between:
- The Danish Immigration Service (which is a directorate under the Ministry of Refugees, Immigration and Integration). Regarding the practical reception, the Immigration Service has contracted with the Danish Red Cross and two municipalities;
- The Department of Prisons and Probation (a directorate under the Ministry of Justice) concerning detainees;
- The National Commissioner (under the Ministry of Justice) concerning asylum seekers confined shortly at the border or accommodated at a nearby hostel.

Q.35. In case, are accommodation centres public or/and private (managed by NGOs? If yes, are the NGOs financially supported by the State?)

The accommodation centres are managed by the Danish Red Cross (NGO) and two local municipalities. They are financed by the State.

Q.36. In case, how many accommodation centres are there in your Member State (distinguish in your answer between public and private centres)?

There are eight (8) accommodation centres. Six (6) are managed by the Danish Red Cross and two (2) are managed by local municipalities.

Q.37. Is there in the legislation a plan or are there rules in order to spread the asylum seekers all over the territory of your Member State to avoid their concentration in some areas like big cities or to share the costs of their reception between central, regional and local authorities?

No.

Q.38. Does a central body representing all the actors (like NGOs) involved in reception conditions exist? Does it play a consultative role for the State authorities, a coordination role for the actors or any other role?

Q.39. **Q.39. A. Which is the body in charge of guidance, monitoring and controlling the system of reception conditions as requested by article 23 which is mandatory provision? Include in your answer which is the competent ministry (Interior, Social affairs, etc) for reception conditions?**

With regard to the reception provisions for which the Immigration Service under the Ministry of Refugees, Immigration and Integration, legislation does not regulate the question of guidance, monitoring and control of the system of reception conditions. The Immigration Service has a supervisory function towards the accommodation operators to whom the practical implementation of reception conditions is delegated and will in practice inspect the asylum centres regularly.

With regard to the reception conditions provided by the Prison and Probation Service to detained asylum seekers, the Parliamentary Ombudsman shall, in accordance with section 18 of the Ombudsman's Act of 1997, inspect Sandholm prison and other prisons holding asylum seekers systematically and regularly. The inspections are followed-up by reports and follow-up inspections. The Ministry of Justice is the competent ministry.

Q.39. B. Has your Member State (like the Czech Republic did recently) approved quality standards (not necessary legally binding) for housing services (for instance about the number of persons per bedroom on the basis of its size, number of accessible toilets, bathrooms, showers and washing machines per number of persons, existence of common rooms with radio, television, newspapers, books, computers, accessibility of telephone, existence of recreative rooms for children,…) to be respected in particular in accommodation centres?

Q.39. C. How is this system of guidance, control and monitoring of reception conditions organised?

In accordance with a key principle of administrative procedural law concerning delegation of public duties, the Immigration Service has the responsibility to monitor and control the execution of the tasks, which in accordance with section 42a(5) 2nd sentence have been delegated to the Danish Red Cross and municipalities. The Immigration Service will in practice inspect the asylum centres regularly.

With regard to the reception conditions provided to detained asylum seekers by the Prison and Probation Service (under the Ministry of Justice), the Parliamentary Commissioner for Civil and Military Administration in Denmark (the Ombudsman) shall, in accordance with section 18 of the Ombudsman's Act of 1997, inspect prisons, including Sandholm prison and other prisons holding asylum seekers, systematically. The inspections are followed-up by reports and follow-up inspections.

Q.39. **D.** Does the body in charge of guidance, control and monitoring produce reports about the level of reception conditions? If yes, how frequently and are they public?

The Ombudsman who is charge of monitoring the prisons issue reports about the level of reception conditions based on his inspections. These reports as well as follow-up reports are public and available at the website of the Ombudsman's Office.

Q.40. **Q.40. A.** What is the total number of asylum seekers covered by reception conditions for the last year for which figures are available (see article 22 obliging Member States to calculate those statistics about which we also asked the Commission to require them from Member States for mid June)?

The *average* number of asylum seekers in 2005 was 2.950. 2.465 persons were accommodated at the centres by the end of 2005. The total number of asylum seekers who where through the system that year is not available.

Q.40. B. What is the total budget of reception conditions in euro for the last year for which figures are available?

Regarding 2005:
According to the *budget* for 2005 an average of 3.585 persons were estimated to be accommodated at the centres at a price of 18.215 Euro (138.000 DKR) per person. According to the yearly *accounting* for 2005 an average of 2.950 persons were accommodated at the centres, and the average costs were 19.451 Euro (147.363 DKR) for each.

Regarding 2007:
The budget for the year 2007 an average of 2.033 persons are estimated at a price of 25.083 Euro (190.040 DKR) per person.

Q.40. C. What is the average cost of reception conditions in euro per asylum seeker for the last year for which figures are available?

Regarding 2005:
According to the *budget* for 2005 an average of 3.585 persons were estimated to be accommodated at the centres at a price of 18.215 Euro (138.000 DKR) per person. According to the yearly *accounting* for 2005 an average of 2.950 persons were accommodated at the centres, and the average costs were 19.451 Euro (147.363 DKR) for each.

Regarding 2007:
The budget for the year 2007 an average of 2.033 persons are estimated at a price of 25.083 Euro (190.040 DKR) per person.

Q.40. D Are the costs of reception conditions of asylum seekers supported by the central/federal or federated government or are they shared with regional and/or local authorities?

All costs are paid by the central government.

Q.40. E. Is article 24 § 2 of the directive following which "*Member States shall allocate the necessary resources in connection with the nationals provisions enacted to implement this directive*" respected?

N/A as Denmark is not bound by directive.

Q.41. **Q.41. A.** What is the total number of persons working for reception conditions?

Approximately 650

Q.41. B. How is the training of persons working in accommodation centres organised? Does it take into account specific needs of unaccompanied minors when relevant as well as the gender dimension? (see article 14 §5, 19 § 4 and also 24 §1 which are mandatory provisions)?

No general provisions relating to the training of persons working in accommodation centres are included in the legislation. According to the annexes of the Operator Contract as well as to the internal guidelines of the Immigration Service on reception conditions with regard to persons with special needs it is however presumed that the personnel has received training within various professions. Accordingly, Nurses, teachers, pedagogues, social workers, technicians are large groups of employees.

Q.41. C. Are there rules about the deontology of persons working in accommodation centres, in particular on confidentiality?

Staff is bound by the principle of confidentiality, cf. section 152 of the Penal Code.

10. IMPACT OF THE DIRECTIVE

Legal impact of the transposition of the directive:

Q.42. Specify if there are or not big problems with the translation of the directive in the official language of your Member State and give in case a list of the worst examples of provisions which have been badly translated? (please note that this question has in particular been added to the questionnaire concerning the new Member States)

N/A

Q.43. Where there precise legal rules on reception conditions for asylum seekers before the adoption of the norms of transposition of the directive (if yes,

specify what the nature of those rules was (legislation, regulation, administrative instructions,…)?

N/A (but, yes there were legislative, regulative as well as administrative norms prior to the adoption and entering into force of the Directive)

Q.44. Did the legal rules applicable to reception conditions become more clear, precise, coherent or detailed with the adoption of the transposition norms (for instance do you now have after the transposition one basic text dealing with reception conditions instead of numerous different texts in the past?

N/A (In any event it does not seem that the adoption of national norms after the adoption/entering into force of the directive has been influenced by the norms of the Directive)

Q.45. Did the transposition of the directive imply important changes in national law or were the changes of minor importance? In case, list the most important changes that have been introduced.

N/A (and probably very little influence of directive in Denmark. At the time of adoption of the directive, it was the view of the government that the main – if not only - differences between Danish legislation and the directive considered the right to work and the right of minors to education between the age 17 and 18. None of these fields of legislation have been amended since the adoption of the Directive.

Political impact of the transposition of the directive:

Q.46. Explain briefly if there has been an important debate about the transposition of the directive (in particular in the Parliament, but possibly also in the government, between political parties, including in medias, etc; underline in case the main points which have been discussed or have created difficulties)

N/A (see above comments to Q. 45).

Q.47. **Did the transposition of the directive contribute to make the internal rules stricter or more generous? In particular, did your Member State use the occasion of the transposition to abolish more favourable provisions of national law? Does your Member State still have rules more favourable than the provisions of the directive (if yes, try to give the more important examples).**

N/A (and probably very little influence of directive in Denmark. At the time of adoption of the directive, it was the view of the government that the main – if not only - differences between Danish legislation and the directive considered the right to work and

the right of minors to education between the age 17 and 18. None of these fields of legislation have been amended since the adoption of the Directive.

11. ANY OTHER INTERESTING ELEMENT

Q.48. What are in your view the weaknesses and strengths of the system of reception conditions in your Member State?

The strengths of the Danish system of reception is that there is a relatively well-developed social safety net and a well organised health care system.

The weaknesses are first and foremost the very long stays at the centres, which seriously affects the mental well-being of the asylum seekers; the lack of rehabilitation of torture survivors and the fact that asylum seekers do not have access to the labour market.

Q.49. Mention any good practice in your Member State which could be promoted in other Member States

Q.50. Please add here any other interesting element about reception conditions in your Member State which you did not had the occasion to mention in your previous answer.

QUESTIONNAIRE FOR THE NATIONAL REPORT ON THE IMPLEMENTATION OF THE DIRECTIVE : RECEPTION CONDITIONS OF 27 JANUARY 2003

IN: ESTONIA

Written by
Lehte Roots
Researcher in European University Institute
and Member of the Board of Estonian Refugee Council

lehte.roots@mail.ee
15.05.2007

1. NORMS OF TRANSPOSITION

Q.1. Identify the main norm of transposition (indicate the title, date, number, date of entry into force and references of publication into the official journal) and indicate its legal nature (legislative, regulatory, administrative); indicate in your answer if this norm was only devoted to the directive or if it has been included in a more general text and indicate in that case by quoting precisely the numbers of the provisions adopted to transpose the directive.

The main legal instrument to transpose the directive on minimum standards in Estonia is Act on Granting International Protection to Aliens, ratified by the parliament 14 December 2005. It was published in the State Gazette RT I 2006, 2, declared by the President of the Republic of Estonia with decision No. 968 of 23 December 2005. The Act became into force 1. July 2006. It is a legislative act. The new amendments to the Act will be in force from 10. March 2007. The Act was introduced to harmonise several EU norms and international obligations of Estonia. According to the explanation note [329] to the draft law the purpose of the draft of the Act on Granting International Protection to Aliens is to harmonise following EU directives; 2001/55/EC, 2003/9/EC, 2003/86/EC, 2004/83/EC and to regulate the temporary protection and adjust the asylum and refugee norms. It is available now in English at the page http://www.legaltext.ee/indexen.htm .

Q.2. List by order of importance by using numbers (1, 2, 3) the others norms of transposition if there are more than one (indicate for each norm the title, date, number and references of publication into the official journal; include in your answer the administrative measures taken to ensure

[329] Seletuskiri Välismaalasele rahvusvahelise kaitse andmise seaduse eelnõu juurde, http://eoigus.just.ee/?act=dok&subact=1&DOK_W=124238, 08.06.2006

implementation of the directive and of the transposition norms like regulations, administrative circulars, special instructions,…)

1. Rules and amounts of paying money for food for the asylum seekers who are placed in the CMB permises. Government regulation no 181 from 3.08.2006. Publishe RTI 11.08.2006, 37, 282. (Kodakondsus- ja Migratsiooniameti ametiruumides majutatavale varjupaigataotlejale toiduraha maksmise kord ja määrad Vabariigi Valitsuse 3. augusti 2006. a määrus nr 181)
2. Internal rules of CMB office space. Regulation no 47 of the Ministry of Interior from 7.07.2006 (Kodakondsus- ja Migratsiooniameti ametiruumide sisekorra eeskiri)
3. Forms of the asylum application, residence permit and temporary protection residence permit and extention of the residence permit. Regulation of the ministry of Interion no 67 from 21.12.2006. (Varjupaiga ja elamisloa taotluse, ajutise kaitse alusel esitatava elamisloa taotluse ning elamisloa pikendamise taotluse vormid)
4. Rules for the application, issuing, extension and declearing null and void of the residence permit, the list of evidence and data that should be provided and the registration of the residence permit on the identity card, of a person with temporary protection and his/her family member. Government Regulation no 211 from 28.09.2006 ((RT I 2006, 42, 324), enforced 8.10.2006 Amended 14.12.2006 nr 261 (RT I 2006, 57, 436) 2.01.2007 (Ajutise kaitse saaja ja tema perekonnaliikme elamisloa taotlemise, andmise ja pikendamise ning kehtetuks tunnistamise kord, elamisloa taotlemisel esitatavate tõendite ja andmete loetelu ning elamisloa andmete isikutunnistusele kandmise kord)
5. Form of the travel document and the list of data written on it. Government regulation no 48 from 14.07.2006. . RTL, 03.08.2006, 61, 1102 (Reisiloa vorm ja sellele kantavate andmete loetelu)
6. Establishiment and the rules of the state registry of persons who have recieved international protection. Government regulation no 180 from 3.08.2006. (Riikliku rahvusvahelise kaitse andmise registri asutamine ja registri pidamise põhimäärus).
7. Internal rules of the Reception Centre adopted by the Director on 27. December 2002 order no 73. Varjupaigataotlejate Vastuvõtukeskuse sisekorraeeskiri. Käskkiri nr 73. (Order 73)

8. The General Regulation of Illuka Reception Centre. Regulation of the Ministry of Social Affairs no 47 from 1st September 1998. Illuka Varjupaigataotlejate Vastuvõtukeskuse põhimääruse kinnitamine Sotsiaalministri 1. septembri 1998. a määrus nr 47. (REG 47)
9. Secondary school and gymnasium Act. Adopted 15 th September 1993, last amendments 21.12.2006 Põhikooli- ja gümnaasiumiseaduse vastu võetud 15.09.1993 (SSGA)
10. The form of the asylum applicant certificate and the list of data. 4 th August 2006 , Regulation of the Ministry of Interior nr. 52. Varjupaigataotleja tunnistuse vorm ja sellele kantavate andmete loetelu Siseministri 4 augusti 2006. a määrus nr 52

Q.3. Explain which level of government is competent to adopt the legal norms on reception conditions for asylum seekers (specify in particular in case of a federal or regional State, if it is the federal/central power or the components; in case, specify below when it is impossible for you to answer a question because it is about the competence of the components and it is impossible for you to gather reliable information about all of them)

Parliament issues Acts, Ministries and State Government issues regulations. Laws, including the Act, are adopted by the parliament and declared by the President of Estonia. Local Governments can issue regulations and rules applicable in the local level. Estonia is not a federal state.

Q.4. Explain the legal technical choices done to transpose the directive (comment on the nature and level of the norms used to do the transposition: legislative, regulatory, administrative like instructions, etc). Add any other element about the technique of transposition of the directive which is interesting for the implementation of Community law.

New legislation was introduced including acts and regulations.

Q.5. Mention if there is a general tendency to just copy the provisions of the directive into national legislation without redrafting or adaptation them to national circumstances? If yes, give some of the worst examples and explain if there is a risk that those provisions remain unapplied or will create difficulties of implementation in the future.

Estonia tends to copy the provisions from the directive although national circumstances are also taken into account. The minimum standards of reception of asylum seekers are applied since 1st July 2006. The applicants who arrived after that date are benefiting from the new legislation. There is not enough practice to assess the difficulties of the implementation.

Q.6. Have all the texts necessary to ensure the effective implementation of the new rules of transposition been adopted, prepared or at least foreseen in the future (for example a regulation completing a new law and the necessary instructions telling the administration how to apply the new rules)?

YES.

1) There is a problem of translation of the directive from English to Estonian language. Art 21 of the directive, which is about appeal procedure, is not properly translated and creates misunderstanding in the adoption of the norm.

2) The special conditions for reception of victims of torture and violence or other vulnerable groups except minors, are not mentioned in the law. At the same time it is possible for the asylum seeker to benefit from the Victim Support Act[330] which states that the victims of violence have to be protected. As there is no practice jet, with the new legislation with groups who need special treatment, it is difficult to predict, how the laws will be applied.

3) There is a problem of transposition of art 10§2 of the directive which requires that access to the education system shall not be postponed for more than three months for the date the application for the asylum was lodged by the minor or the minor's parents.

4) The new Act does not have provisions about schooling of asylum seekers, the right and obligation to go to school is regulated by another legislation see answer to the Q 31. There is no time limit how fast the schooling should be granted. Our general school system also applies to the asylum seeker. In practice children will be taken to the school ASAP. According to the Ministry of Interior children get into a school within three months.

Also the children have an obligation to go to school up to the age 16. After that age there is no obligation to go to school and to provide schooling. As we do not have practice with children over the age 16, it is difficult to predict the practice of a requirement of art 10 which says that member states shall not withdraw secondary education for the sole reason that the minor has reached the age of majority. After the age of 16 the schooling is purely voluntary.

The provisions of Article 10 §1 of the directive is translated in the Estonian language directive like that " Member states can give to minor children of asylum seekers and to asylum seekers who are minors access to the educational system under similar conditions as nationals of the host Member State…." Which makes the art 10§1 of the directive as **an option not an obligation**.

5) Article 17 is not transposed; the specific situation of disabled persons, elderly people, pregnant women, and single parents with minor children, persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence is not regulated. As above mentioned the person can rely on some provisions of the Victims Support Act. But in order to be clear it should be mentioned in the Act on Granting International Protection to Aliens.

[330] State Gazette RT 2004, 2,3

6) Article 19 §4 of the directive. The confidentiality clause is generally stated in art 13 of the Act. So the confidentiality must be followed in every step in the procedure. Although is some parts of the new act the confidentiality is not very well regulated a person can usually rely on the art 13 of the Act.

7) The training of persons, working with asylum seekers, is not very well regulated. Art 17 clause 5 of the Act says "If needed a person with relevant knowledge will participate in procedural acts that are preformed with minors." It is not clear who decides when the participation of a professional, who has had a special training, participates during the procedural acts preformed with minors? There is also no general provision which state that people working with minors in the asylum procedures have to have appropriate training. And the person with special training will participate only **during procedural acts** preformed with minors.

Article 14§5 and Article 24§1 of the directive.

It is not stated in the law that the people working with asylum seekers must have passed a special training. In practice they have had trainings organised by government and non-governmental organisations. Also please look the previous answer.

2. BIBLIOGRAPHY

Q.7. Has an in-depth preparatory study been made public about the changes at the occasion of the transposition? If yes, thanks for trying to provide us a copy *(please contact to answer this question adequately the body and person who was responsible for the preparation of the transposition of the directive in the public administration).*

No, there has no preparatory study made. There is an explanation letter explaining why it was important to design the new law.

Q.8. Quote any recent scientific book or article published about the directive, the transposition rules or the question of reception conditions for asylum seekers in general (answer even if this literature is only available in your language and provide the complete title in your language (without translation) with all references; indicate author, title, in case name of periodical, year and place of publication).

Neither scientific book nor article is published about the directive in Estonia.

Q.9. Quote any interesting decision of jurisprudence based on the implementation of the new rules of transposition of the directive (indicate references of publication if any)?

There is no decision of jurisprudence based on the implementation of the new rules of transposition of the directive as the new Act will be enforced on 1st July 2006.

3. GENERAL INFORMATION ABOUT THE SYSTEM OF RECEPTION CONDITIONS

The purpose of the following two questions is to help the reader to understand easily and quickly the system of reception conditions in your Member State and also to avoid that you have to repeat general elements in other parts of the questionnaire. ***Please do not write more than one or maximum two pages and do not include large historical developments.***

Q.10. Describe in general the system of reception conditions in your Member State (in particular which are the main actors in charge of reception conditions?)

The asylum application has to be placed to the Border Guard Administration or the Citizenship and Migration Board. Citizenship and Migration Board is the main office reviewing the asylum applications. An asylum application is an application submitted by an alien in order to be recognized as a refugee or to be recognized as a recipient of subsidiary protection and to get international protection.
The asylum application has to be placed as soon as possible. The Act also introduces new forms of protection additional to the refugee status, which are subsidiary protection and temporary protection.
Asylum applicants and applicants of residence permit on the basis of temporary protection (hereinafter applicant) shall be granted the rights and freedoms arising from the Constitution, laws and other legislation and international treaties of the Republic of Estonia, legal acts of the European Union, generally recognized norms of international law and international customary law.

After submission of an application for asylum, the person conducting the procedure without delay shall perform the following acts:

1) receipt of a formal asylum application;
2) examination of the person and his or her personal belongings;
3) deposition of personal belongings and documents;
4) identification;
5) interviewing concerning the arrival to Estonia or to the border of Estonia and the circumstances which constitute the basis for application for asylum;
6) photographing and fingerprinting of an alien who is at least 14 years of age;
7) forwarding of the data of an applicant at least 14 years of age for comparison to the central unit of Eurodac-system according to the regulation 2725/2000/EC (OJ L 316, 15.12.2000, p. 1-10), and the regulation 407/2002/EC (OJ L 062, 5.03.2002, p. 1-5) for the regulation (EC) 2725/2000
8) medical examination, if necessary;
9) DNA testing and fingerprinting of an alien less than 14 years of age, if there is no other way for identification.

The acts shall be performed even if an applicant withdraws his or her asylum application. The data that is collected within offence procedure can be used in asylum proceedings.
In the decision to fingerprint and DNA testing of an alien less than 14 years of age, the rights and interests of the alien shall be taken into consideration above all. An applicant shall be examined by a person of the same sex.
An applicant will be detained for the time of performance of the acts and he or she is required to stay in the premises assigned to him or her. If the performance of the acts continues for longer than forty-eight hours, the applicant can be detained with the permission of an administrative court. As in practice there is no primary or first reception centre the applicants are not detained.
In the case of the application submitted at the border after performance of the acts, the border guard authority shall send the applicant to the reception centre or initial reception centre and shall forward the application for asylum together with the deposited personal belongings and documents without delay to the Citizenship and Migration Board for the further proceedings.

When the application is submitted in the CMB after performance of the acts, the Citizenship and Migration Board will send the applicant to the reception centre or initial reception centre.

After the application is submitted and the person is inspected the applicant will be based on initial reception centre or reception centre subordinating to the Ministry of Social Affairs. Which is now responsible for the reception conditions like housing, money allowance etc.
The initial reception centre shall, as necessary, arrange for the following assistance to asylum applicants during asylum proceedings and in cases specified in clause 6 of §62 of this Act[331] , to applicants of residence permit on the basis of temporary protection, during temporary protection proceedings:

1) temporary accommodation;
2) food, essential clothing and other necessities and toiletries;
3) emergency care and medical examinations;
4) essential translation services;
5) information regarding their rights and duties;
6) transportation needed for the performance of acts prescribed by law;
7) provision of other essential services.

The reception centre shall, as necessary, arrange accommodation and supply of food assistance (supply of foodstuffs or provision of food), supply of essential clothing, other necessities and toiletries, and supply of money for urgent small expenses) within the limits to aliens residing in the reception centre and to aliens residing outside the reception

331 With the permission of an administrative court judge, an applicant for residence permit may be required to stay at the initial reception centre specified in §12 of the Act in the following cases: 1) the applicant for residence permit has repeatedly or seriously violated the internal procedure rules of the reception centre or the Ministry of Social Affairs; 2) the applicant's stay in the initial reception centre is necessary in the interests of the protection of national security and public order.

centre on the basis of specific clause, to the applicants during asylum procedure or temporary protection procedure.
Additionally is provided:

- emergency care and medical examinations;
- essential translation services and Estonian language instruction;
- information regarding their rights and obligations;
- transportation needed for the performance of acts prescribed by law;
- and other essential services

Person can stay in the Reception Centre until the end of the asylum procedure. When asylum is granted the person has to leave the centre, also when the final rejection decision is made the person has to leave the centre.

Q.11. **Q11. A.** Explain if you have <u>different types and levels of reception conditions following the different stages of the asylum procedure</u> (this implies that you have to give briefly the necessary explanations about the asylum procedure). Make if relevant for reception conditions a distinction between the following procedural stages: determination of the responsible Member State on the basis of the Dublin II regulation, special procedures at the border (including transit zones in airports), accelerated procedures, admissibility procedures, eligibility procedures and the different possibilities of appeals (suspensive or not) against a refusal of the asylum request. Indicate what the main differences of reception conditions are between the different stages (if necessary by detailing between the different elements of reception conditions, in particular housing) and explain what the evolution of reception conditions is following the different stages of the procedure.

Yes, there are some differences in the reception conditions. There are different categories of protection.

1) application for asylum to get the refugee status under the Geneva Convention
2) application for temporary protection
3) application for subsidiary protection.

The unaccompanied minor has special provisions under the law. (§ 17 of the AGIPA)

Asylum applicants and applicants of residence permit on the basis of temporary protection (hereinafter *applicant*) shall be granted the rights and freedoms arising from the Constitution, laws and other legislation and international treaties of the Republic of Estonia, legal acts of the European Union, generally recognized norms of international law and international customs.
An alien who files a complaint to the court, regarding the decision made on the asylum application, during the term of complaint has the same rights and duties as an asylum applicant. During the court procedure an alien has the same rights and duties as an asylum applicant, if the court has stopped the compulsory enforcement of removal order.

An applicant has the right to:

1) receive information within fifteen days after the date of submitting asylum application or application for residence permit, orally and in writing in a language which he or she understands, about his or her rights and duties and consequences for not fulfilling the duties in the asylum procedure, the residence permit procedure on the basis of temporary protection and during validity of international protection;

2) be in contact with the Office of the United Nations High Commissioner for Refugees;

3) victim support services pursuant to the procedure provided in the Victim Support Act, if necessary;

4) state legal aid pursuant to the procedure provided in the State Legal Aid Act;

5) to appeal to the court if their rights and freedoms are violated.

An asylum applicant has a right to have a representative during asylum proceedings, except upon provision of explanations or performance of other procedural acts which, arising from their nature must be carried out personally. This right is not provided for the applicant of the temporary protection. Asylum applicants may contract employment in Estonia if the Citizenship and Migration Board within one year after the date of submitting asylum application has not made a decision, independent of asylum applicants or if an asylum applicant has protested the rejection of asylum application in the court, on the condition that employment does not hinder the asylum proceeding, court proceeding or execution of a decision. This right is not provided for the applicant of the temporary protection. Also the right to work is granted, after one year of application submitted, only to the asylum applicant who applies for the refugee status or for the subsidiary protection.

Border procedure

There is a special procedure at the border.[332] The border guards have to forward the application, the personal belongings to the CMB and take the applicant to the Reception Centre or to the initial reception centre. Border guards have a right to send the applicant back from the border (accelerated procedure) in cases mentioned in § 20 1) and 2) of the Act.

The reasons are following:

1) another country can be considered the initial first country for asylum, i.e. asylum or other protection has been provided to the applicant in another country, and such protection is still accessible to the applicant;

2) the country of origin of the applicant can be considered as a safe country; and in §21 1) subsection 1) and 2) which states the cases for rejection of asylum application.

The cases when the asylum application can be rejected (non admissible) are following:

1) Another country is responsible for the review of the application for asylum. According to an international agreement or regulation 343/2003/EC of the Council of the European Union that specifies the criteria and mechanisms for designating the member state that

[332] § 16 of the Act

shall be responsible for the process of reviewing an application for asylum submitted in any member state by a third country national (EC 050, 25.02.2003, p. 1–10);

2) The applicant has arrived to Estonia through a country which can be considered as a safe country. This procedure at the border can be considered as accelerated procedure although it is not named like this.

The decisions made under above mentioned procedure can be appealed to the Administrative Court although appealing to the court will not stop the expulsion automatically.
§21 section 4 says that an alien shall be expelled from Estonia to a safe country on the basis of the decision to reject his or her application for asylum made on the basis of clauses 1) and 2) of §21. Although it is questionable how in practice a person can appeal, if he is outside of Estonia.

The appeal on an asylum decision does not have a suspensive effect. If the application is rejected the person has to submit together with the appeal on the decision another appeal to stop the enforcement of the precept to leave Estonia. If he does not appeal, the precept to leave can be enforced automatically.
§ 27 of the Act regulate the Dublin II cases. If it is clear that another state is responsible for the examination of the asylum claim, the person will be sent out without precept to leave or court order to the country where the asylum application must be examined.
Border guards are involved in the admissibility procedure and it is regulated in §20 and §21of the Act. Clearly ungrounded application is specified in §20 of the AGIPA.
Application for asylum shall be deemed to be clearly unfounded if:
1) another country can be considered the initial country for asylum, i.e. asylum or other protection has been accorded to the applicant in another country, and such protection is still accessible to the applicant;
2) the country of origin of the applicant can be considered as a safe country;
3) the applicant holds a residence permit in Estonia;
4) the applicant has been refused from giving an asylum on the basis of this Act or the application has been rejected on the basis of this Act and the applicant has not produced any new essential evidence of which the applicant was unaware during previous asylum proceedings;
5) the applicant has submitted the application for asylum under a false name or has destroyed, damaged or failed to present a document or other evidence of essential importance to the processing of his or her application for asylum, or has presented, without good reason, falsified documents or other false evidence;
6) the applicant has knowingly provided incorrect information or explanations upon the processing of his or her application for asylum, or has knowingly failed to provide information or explanations of

essential importance to the processing of his or her application for asylum;
7) the applicant has submitted the application for asylum in order to avoid the enforcement of return, expulsion or extradition procedure, provided that earlier application for asylum had been possible;
8) the applicant has knowingly ignored the duties provided in this Act, has refused or is refusing from photographing and fingerprinting or DNA-testing or fails to comply with surveillance measures;
9) the applicant's actual objective is to settle in Estonia for other reasons, including to contract employment or improve his or her living conditions;
10) the applicant is unable to provide credible evidence proving that his or her fear of persecution is well-founded;
11) the applicant's explanations are inconsistent, conflicting, improbable or lacking in circumstantial or personal details;
12) clearly the applicant cannot be considered a refugee according to the law;
13) the applicant has submitted a new application for asylum with new personal data;
14) for no good reason the applicant had not submitted an application, provided that earlier application for asylum had been possible;
15) the applicant has not followed, without good reason, the duties specified in clauses (2) 1-3), 10) of section 11 of this Act and / or clause (1) in section 23 of this Act;
16) the applicant has arrived to Estonia illegally and has not contacted the Citizenship and Migration Board and / or has not submitted the application for asylum as soon as possible;
17) the applicant poses a threat to national security or public order or has been deported from Estonia under these circumstances;
18) the application of a parent of a minor applicant has been rejected;
19) the minor applicant independently submits an application for asylum that has already been submitted by his or her legal representative.

Circumstances excluding recognition as refugee or recipient of subsidiary protection are regulated in §22.

An alien shall not be recognized as refugee if:
1) article 1 (D) of the Geneva Convention applies to him or her;
2) he or she holds a permanent residence permit in Estonia;
3) there is good reason to believe that he or she has committed crime against peace or humanity or war crime specified in international legal acts;

4) there is good reason to believe that he or she has committed serious apolitical offence before entry to Estonia;
5) there is good reason to believe that he or she is guilty of committing an act of performance that is contrary to the goals and principles of the United Nations.
A serious apolitical offence specified in clause (1) 4) of this section[333] is among other an especially brutal act of performance, that allegedly proceeded from political reasons. An alien shall not be recognized as a recipient of subsidiary protection if:
1) there is good reason to believe that he or she has committed crime against peace or humanity or war crime specified in international legal acts;
2) there is good reason to believe that he or she has committed serious crime;
3) there is good reason to believe that he or she is guilty of committing an act of performance that is contrary to the goals and principles of the United Nations;
4) there is good reason to believe that he or she poses a threat to national security or public order;
5) he or she has left the country of origin with regard to committing an act other than specified in clauses 1)-4) of this section that result in the punishment of loss of freedom.
The exclusion clauses shall be applied to an alien who in any way took part in the following acts:

- he or she has committed crime against peace or humanity or war crime specified in international legal acts
- he or she has committed serious apolitical offence before entry to Estonia;
- he or she is guilty of committing an act of performance that is contrary to the goals and principles of the United Nations
- he or she has committed serious crime or that he or she poses a threat to national security or public order

Q 11. B. Indicate precisely for which stage(s) of the asylum procedure the answers on reception conditions you give below are valid.

The applicants have to stay in the reception centre in some cases they can be placed to the initial reception centre. In practice the initial reception centre does not exists so the asylum seekers will be sent to the Illuka Reception Centre. The person can be detained in the initial reception centre for 48 hours. In practice there is no initial reception centre. The Reception Centres are responsible for providing reception conditions.
According to the §32 of the AGIPA:

[333] there is good reason to believe that he or she has committed serious apolitical offence before entry to Estonia.

An applicant may temporarily stay in the office of the Citizenship and Migration Board, if necessary for the performance of acts of the asylum proceedings.
With the permission of an administrative court judge, an applicant may be required to stay at the initial reception centre after 48 hours in following cases:
1) the identity of the applicant has not been not ascertained, including in the case where the applicant does not co-operate in the identification or hinders identification;
2) for establishing circumstances relevant to the asylum proceedings if the applicant does not co-operate in establishment of the circumstances or hinders the establishment thereof;
3) there is good reason to believe that the applicant has committed a serious criminal offence in a foreign state;
4) the applicant has repeatedly or seriously violated the internal procedure rules of the reception centre;
5) the applicant fails to comply with the surveillance measures applied with respect to him or her, or the applicant fails to perform other duties provided by this Act;
6) the applicant's stay in the initial reception centre is necessary in the interests of the protection of national security and public order.

4. GENERAL RULES ON RECEPTION CONDITIONS

Q.12. **Q 12. A**. Are material reception conditions provided in kind, in money or in vouchers or in a combination of these elements (see article 13, §5 which is an optional provision)? Distinguish between the different elements (housing, food, clothes, health, transportation, pocket money,…). **If reception conditions are provided in money (in general or in some cases, for instance when no places are anymore available in accommodation centres), indicate the precise amount given to the asylum seekers. Indicate in your answer what is provided in general and if there are exceptional cases.** Specify in your answer if reception conditions are different from the general system of social aid for nationals or aliens and if yes, if and when (which stage of the asylum procedure) can asylum seekers have access to the general system of social aid?

Monetary benefits are regulated in §36 of the AGIPA. Additionally reception centre provides housing and access to medical treatment for all asylum seekers.
The monetary benefit has to cover the minimum subsistence level of an applicant. The minimum subsistence level in Estonia is in 2007, 900 Estonian kroon (57 EUR) in a month and is not sufficient to manage. The monetary benefit paid to an applicant is the amount of subsistence limit established by the Government on the basis of the minimum consumption. The reception centre can either give food or to pay the money. Usually the money is given.

An asylum seeker who is working or has other means for survival does not get the monetary benefits or other benefits provided by the reception centre, except housing. Every second family member gets 80% of the amount that is provided to the applicant. Additionally the applicant can receive 10% of the money that is the minimum subsistence level in Estonia, for small expenses. It is 6 Euros.

The reception conditions are different from the general system of social aid for national or legally residing aliens. When the applicant gets a positive decision he or she also gets the access to the general social aid system, but in the case of and asylum seeker it is complicated, as he or she has to have a registered place of living in order to access the social aid. Social aid is provided by the local municipality. The placement of a refugee to the local municipality is organised by the Ministry of Social Affairs.

For the 57 EUR the asylum seekers have to buy food, as in practice they have to cook by themselves. In practice the hygiene products, other goods of first need are provided additionally to the money. Sometimes second hand clothes are provided by the Reception Centre. If the person is in a real need of some clothes or shoes, the individual decision will be made by the director of the reception centre and new clothes and shoes will be bought. Dishes, washing powder, blankets, sheets, towels are provided by the reception centre. The asylum seekers have to do their laundry and keep the rooms and kitchen tidy by themselves.

According to the Illuka Reception Centre General Regulation[334] art 9
The obligations of the Centre is to:

1. organise accommodation of a foreigner during the initial interview and during the accelerated procedure[335]
2. accommodate the asylum seeker during the asylum procedure
3. organise catering or provide food products of a foreigner during the initial interview and during the accelerated procedure
4. provide essential clothing and other initial necessities and hygiene products
5. provide money for miscellaneous expenses[336] and according to the asylum seekers wish, catering or to provide food products and essential clothing, will be changed to the monetary benefit. [337]
6. organise emergency aid and checking of a health conditions
7. organise necessary translation
8. organise Estonian language courses to the asylum seekers
9. inform asylum seekers about their rights and obligations
10. provide other necessary services

Q 12. B. Can the reception conditions in kind, money or vouchers be considered as <u>sufficient</u> "to ensure a standard of living adequate for the health of applicants and capable of ensuring their subsistence" as requested by article 13, §2 of the directive (which is a mandatory provision but leaves a certain space to Member States)? In order to help to assess the respect of this rule when reception conditions are provided in money, include if

[334] Illuka Varjupaigataotlejate Vastuvõtukeskuse põhimääruse kinnitamine, 1.September, 1998 regulation no 47 RT 1998, 273/274, 1134
[335] As we do not have in practice initial reception centre the persons who does not have a status of asylum seeker yet can be placed also to the reception centre.
[336] The money of missallanious expenses is 90 EEK approx 6 EUR per month.
[337] This moneytary benefit is totally 57 EUR and the practice is that the asylum seekers take money and not the food .

necessary in your answer points of comparison with the minimum amount of social aid guaranteed for nationals in your Member State.

The asylum seekers get the same amount of monetary benefit that the nationals in Estonia. Nevertheless the amount is not sufficient to manage and ensure a standard of living adequate for the health of applicants and capable of ensuring their subsistence. Also the fact, that asylum seekers do not have a social network of people who could help them as the local nationals have, should be taken account. The fixed minimum salary in Estonia is 3000 kroons (192 EUR) per month. The unemployment benefit is 64 EUR per month.

In practice there is no initial reception centre in Estonia so there is nothing to assess. Please look also at answers given to the question no 33.

Since 2007 the official minimum level of survival in Estonia is 57 EUR per month. In practice it is not normal. It is difficult to survive with 57 EUR per month in Estonia. At the same time there is no discrimination of asylum seekers in this matter, as Estonian nationals are treated in the same way.

Additionally one can hear claims that asylum seekers have in fact even better treatment as they do not need to pay for housing, they get toothpaste, shampoo, washing powder etc. from the government, which is not a case of a national in the same situation. Nationals can claim for housing benefits if their income is less than 57 EUR, but also not for the full amount to be paid by the local municipality. The amount reimbursed depends from the size of the apartment one lives etc. The application of social benefits is a complicated system and is not directly related to asylum seekers.

The reception conditions does not ensure a standard of living adequate for the health of applicant, because the provided money is not sufficient, it is not healthy to eat bread and water every day, but it can be claimed that 57 EUR in a month may ensure subsistence.

5. PROCEDURAL ASPECTS

Q.13. **Q 13. A. Does the national legislation specifically provide that a request for international protection is presumed to be under the Geneva Convention unless explicitly requested otherwise? (see article 2, b which is a mandatory provision)**

There is a distinction between asylum applicant who applies for refugee status and the person in need of other kind of international protection. Special rules apply to the temporary protection. Refugee is the one who satisfies the specific criteria under Geneva Convention. According to the Article 3 AGIPA it is enough to submit asylum application that covers the application for the refugee status and for the subsidiary protection. Article

4 of AGIPA gives a definition of a refugee that is the Geneva Convention definition of a refugee.

Q. 13. B. Explain if the scope of application of reception conditions is extended to other asylum seekers than refugees in the sense of the Geneva Convention, in particular to persons asking for subsidiary protection or to other forms of protection like humanitarian statuses (see article 3, § 4 which is an optional provision)? If not, explain briefly which the differences between these special regimes and the directive are.

The scope of application of reception conditions is extended to refugees, people in need of subsidiary protection and temporary protection.
Temporary protection is provided for one year and he or she gets the living permit. The reception conditions are mainly the same. The right for a lawyer is not explicitly written to the law in the case of temporary protection. As there is no practice it cannot be said how the law will be interpreted in that case.

Q. 13. C. Are there specific provisions in national law for reception conditions in case of diplomatic or territorial asylum requests submitted through a diplomatic or consular representation (see article 3, §2 which is an optional provision)?

Estonia does not accept diplomatic or territorial asylum request.

Q.14. **Are reception conditions available as from the moment one asylum application is introduced? How is article 13, §1 which is mandatory legally understood?** Do asylum seekers have to satisfy any other condition in order to get reception conditions?

Yes. The person has to submit the asylum application and this gives him a right for reception conditions. When a person is detained because of previous criminal or administrative offence, he has to carry the punishment to the end, before he or she can be transferred to the reception centre.

Q.15. **Explain when reception conditions end, for instance after refusal of the asylum request** (include in your answer the link with the right of appeal against a decision of refusal of the status, in particular the question of its suspensive effect)

According to the previous practice the status of an asylum seeker is maintained until all means of appeals are used and the expulsion is enforced.

Q.16 Are there special rules or practices regarding reception conditions in case of successive applications for asylum introduced by the same person?

The person who has received temporary protection has a right to submit an asylum application.[338]
Both options subsidiary protection and asylum is reviewed in the same process, so the person cannot apply for asylum again and again. If there is a negative decision on asylum and on subsidiary protection the person is subject to be returned to his country of origin or legal stay. There is a clause in the law that second asylum application will be rejected.

Q.17. Information of asylum seekers about their rights and obligations in terms of reception conditions, in particular about established benefits (see article 5 which is too large extend a mandatory provision; do not confuse this question with the information to be provided to asylum seekers about the asylum procedure):

Q. 17. A. Are asylum seekers informed, and if yes about what precisely?

Yes, an asylum seeker has a right to receive information on his or her rights and obligations and the consequences for not fulfilling the duties in the asylum procedure, the residence permit procedure on the basis of temporary protection and during validity of international protection, in the asylum procedures within 15 days in writing and in oral in the language he or she understands.

Q. 17. B. Is the information provided in writing or, when appropriate, orally?

The information is provided in writing and also orally. There might be problems with exotic languages, as there are not enough translators in Estonia to provide translations. And many languages are not covered. The asylum seeker gets a leaflet where his rights and obligations are shortly explained. For example right to a lawyer, right to contact UNHCR, obligation to stay in the reception centre, tell the truth, and obey the laws of Estonia etc. Giving false information about asylum claim and identity can be a reason for rejecting the asylum claim. There are some languages in which the leaflets are available.

Q.17. C. Is that information in general provided in a language understood by asylum seekers? Specify the list of languages in which it is available

Yes. Russian and English are the mostly used languages. Translators form abroad are used in case there are no language speakers in Estonia.

Q. 17. D. Is the deadline of maximum 15 days respected?

[338] §69 of the AGIPA

Yes, usually the deadline is respected. In cases there is no translator available the information might reach the applicant later than 15 days. If the applicant understands Russian or English, the information is available orally and in writing.

Q.18. Information of asylum seekers about the existence of organisations or groups promoting their interest and defending their rights (see article 5 which is to a large extend a mandatory provision):

Q. 18. A. Is there a list of organisations dressed by the authorities and if yes is it comprehensive? Is this in particular the case about the possibilities to get legal assistance and health care?

There is a list of NGOs and organizations on the web site of the Citizenship and Migration Board, which can assist asylum applicants. The contact details of appropriate NGOs are also provided during the initial interview and at the reception centre. There is no legal provision that they should get the information about the NGOs working in the field. The right to contact UNHCR is explicitly written in the law.
Because of low number of human rights NGOs working in Estonia in the given field, it is possible to predict that the list is comprehensive. The information concerning health care is insufficient. The health care is organised through the Reception Centre. The information about health care is given only orally. The Reception Centre has contracts with therapists from Jõhvi and Tallinn. The NGO-s do not provide health care.

Q. 18. B. Is the information provided to the asylum seekers, and if yes, in writing or, when appropriate, orally?

Information about healthcare is provided only orally, information about legal assistance possibilities orally and also in written.

Q. 18. C. Is that information in general provided in a language understood by asylum seekers? Specify if possible the list of languages in which it is available.

In general the information is available in English and Russian. If possible the translation to other languages is provided.

Q. 18. D. How many organisations are active in that field in your Member State?

In Estonia not many NGO-s are active. There is one NGO that provides legal counselling at the moment. There is one NGO designing integration plan for asylum seekers and one organization keeping records on the legislative changes in the field. The free legal counselling of asylum seekers depends if the NGO gets some funding from some projects or not. Sometimes there are periods when no NGO is providing legal counselling.

According to the law it is also possible to get free legal aid but in practice it is not effective as the lawyers do not have training on asylum law.

Q.19. Documentation of asylum seekers (see article 6):

Q.19. A. What kind of document is delivered to the asylum seeker? Explain the legal value of this document (just a certification of the status as asylum seeker or also prove of identity?) (see §1 of article 6 which is a mandatory provision)

Asylum seeker gets a document called certificate of an asylum seeker.[339] It is not a proof of identity under the law of Identity Documents Act. This creates a major problem. For example to receive post or money sent to them from the post office, to open a bank account etc. it is not possible to use these certificates for these actions. The document has a picture and a name, birthdates and the time until when it is valid. It just certifies the status of an asylum seeker and gives a right to stay in Estonia.

Q.19. B. Are there situations or specific cases in which another equivalent document or even no document is issued? (in particular is there an exception for "procedures to decide on the right of the applicant legally to enter the territory" as made possible by §2 of article 6)?

Yes, the document is not issued when the procedure of admission to the asylum procedure is going on. Which means that in the case the person is returned from the border as inadmissible case the document of an asylum seeker is not issued and the person does not have an access to the reception conditions.

Q.19. C. For how long is this document in principle valid and is it necessary to renew it after a certain period?

Valid until declared null or void or the forced return realised. AGIPA art 51 (3), art 51 (4)

Q.19. D. What is the deadline for the delivery of that document? Is the mandatory deadline of 3 days set by article 6, §1 respected[340]?

There have been cases when the deadline of the delivery of the document has been violated and person has received the document only after couple of weeks.[341] The document has to be issued within 3 days. AGIPA article 51.

[339] § 51 of the Act

[341] Arjupin, Andrei, Practical contribution to the comparative study done by the Odysseus network for the European Commission on the implementation of the Directive on reception conditions, 17.05.2006

Q.19. E. Is it possible for an asylum seeker to get a travel document for serious humanitarian reasons (see §5 of article 6 which is an optional provision)?

No travel document is provided. As the directive says Member States may provide a travel document, it shows that it is not an mandatory provision and Estonia is not issuing such documents. According to the art 67 of the Act CMB gives temporary travel permission to a person who has to be transported to another EU member state.

Q.19. F. Is there a central system of registration of asylum seekers and is it or not separate from the registration of aliens? If yes, describe it briefly (content) and indicate in particular if it is an electronic database.

Yes, there is a separate system of registration of asylum seekers and it is separate from the registration of aliens. The information what is the content of the database is not available for the public.

Q.20. Residence of asylum seekers :

Q.20. A. Is in principle an asylum seeker free to move on the entire territory of your Member State or only to a limited part of it and in case, which part? (see article 7, §1 which is a mandatory provision)

Yes, asylum seeker is free to move on the entire territory of Estonia, but they have to stay in the reception centre from 22.00-7.00 during the night. As the centre is in the remote area and there is very limited bus connection from the nearest village it practically makes impossible to go far from the centre.

Q.20. B. About the place of residence (see §2 of article 7): explain to which extend the person is free to choose her residence and if this depends of the stage of the asylum procedure (for instance before and after admissibility); if there are constraints limiting the choice, explain which ones and their reasons (for instance processing of application, attribution of reception conditions,…).

According to the general principle the asylum seekers have to stay in the Reception Centre. If it is because of the health reasons the asylum seeker can get a permission to stay in another place. Or he or she has enough money to live outside the reception centre or Estonian citizen or a person with a residence permit covers his living expenses outside of the Reception Centre.

Q.20. C. About the place of reception (meaning where the asylum seeker has to stay to benefit from reception conditions) (see § 4 of article 7): explain which are the general rules about the determination of this place (to which extend are the decisions determining the place taken individually and do they take into account the personal situation of the asylum seeker?) and to which extend the person is free to choose it and if it depends of the stage of the asylum procedure (for instance before and after admissibility); if there are constraints limiting the choice, explain which ones and their reasons (for instance attribution of reception conditions, processing of the application,…).

There is only one Reception Centre in Estonia so all asylum seekers will be placed there. In case he or she has enough money to live outside the reception centre or Estonian citizen or a person with a residence permit covers his living outside of the Reception Centre the asylum seeker can ask a permission to live outside of the Reception Centre.

Q.20. D. If all asylum seekers are not placed in accommodation centres because of capacity limits, explain how the persons are distributed between accommodation centres and other accommodation facilities (which authority takes the decisions, on the basis of which elements, can that decision be appealed by the asylum seeker,…)

Until now there have been less asylum seekers than the capacity of Estonia to accept is. There are 35 places in the reception centre. The Ministry of Social Affairs has contracts with private accommodation providers in order to place the asylum seekers in other places, in case of emergency.

Q.20. E. How can an asylum seeker ask to leave temporarily the place of residence or of reception or an assigned area? How is the individual AND impartial character of the decision ensured? (see §5 of article 7 which is a mandatory provision)

The asylum seeker is required to stay in the initial reception centre around the clock while they are required to stay in the reception centre only during night-time. The applicant has to apply to the CMB with an application to get a permission to stay outside of the reception centre. He or she must have a place to live and must have financial means to cover his expenses. She has to register herself and usually the permission is given.

Q.21. **Q.21. A. Do rules on reduction or withdrawal of reception conditions exist in internal legislation and if yes in which cases (mention in particular if there are cases not foreseen by article 16, § 1 and 2 which are optional provisions)? Distinguish in your answer**

between cases of reduction and withdrawal and explain which conditions can be reduced and if access to emergency health care is always ensured as requested by article 16, §4, last sentence.

Yes, there are provisions where the reduction or withdrawal of reception conditions can happen. They are regulated in §11 and §12 of AGIPA.
Art 11 section 4) of AGIPA says: "If an asylum applicant had at the time when he or she used the services specified in clauses (2) 1-7) of section 12 of the Act, except emergency care, enough financial resources to cover these services, he or she is required to compensate the according costs."
The initial reception centre shall, as necessary, arrange assistance to asylum applicants during asylum proceedings and in cases specified in clause 6) of AGIPA Article 62 to applicants of residence permit on the basis of temporary protection during temporary protection proceedings. The necessity is evaluated by the director of the reception centre.

The services and food that should be reimbursed and that are considered necessary according to art 12 are:
1) accommodation;
2) supply of foodstuffs or provision of food, supply of essential clothing, other necessities and toiletries, and supply of money for urgent small expenditures within the limits;
3) medical examinations;
4) essential translation services and Estonian language instruction;
5) information regarding their rights and duties;
6) transportation needed for the performance of acts prescribed by law;
7) provision of other essential services
When a person has enough financial resources to cover these services, he or she is required to compensate the according costs. The necessity is evaluated by the reception centre.

Q.21. B. Has article 16, §2 dealing with refusal of reception conditions for <u>unreasonably late applications</u> for asylum been transposed by your Member State (or was this case already applicable before transposition)? Are there cases in practice?

The asylum application has to be submitted as soon as possible. There has been no known practice were the asylum claim is rejected because of late application.

Q.21. C. How is it ensured that decisions of reduction or withdrawal are taken individually, objectively AND in particular impartially (for instance through and independent arbitrator) (see article 16, §4 which is a mandatory provision)?

When the rights of an asylum seeker are violated, the asylum seeker has a possibility to file an administrative claim, under general rules either to the Ministry of Social Affairs or to the Administrative court. It is not specified in the law who will make the decisions of withdrawal of the reception conditions. If it is related to the reception conditions in the Reception Centre the director of the Centre is responsible and can make decisions. The Centre subordinates to the Ministry of Social Affairs, which has to control the situation in the Reception Centre.

Q.21. D. Is statement 14/03 adopted by the Council at the same moment as the directive respected (see the document attached to our sending)?

Generally it should be respected. The subsidiary protection clause is introduced to the Estonian legislation, which contains the protection under European Convention of Human Rights. Refugee is not sent back to the country where his or her life is under threat.[342] The access to emergency healthcare is organised by the reception centre. There is no practice about how the access to the emergency healthcare is organised for those in the detention centres.

Q.21. E. Are there already administrative appeal decisions or judgements on cases of reduction, withdrawal or refusal which have been taken, and if yes, what has been the outcome?

No appeals or decisions yet as the law was enforced on 1st July 2006.

Q.22. **Q.22. A.** **<u>Appeal</u> against a negative decision relating to the granting of benefits or based on article 7 (see article 21 which is a mandatory provision): indicate against which decision an appeal can be introduced, describe the system of appeal in general and include in particular in your answer the information given to asylum seekers about possibilities of appealing, deadline for appealing, if the appeal has or not a suspensive effect, if there are different steps (for instance first an administrative appeal and in particular if the guarantee of an appeal before a judicial body in the last instance is respected)?**

It will be the Administrative Court or Ministry of Social Affairs in case the reception conditions are violated by the Reception Centre. All the decisions made by the Citizen and Migration Board can be appealed in the Administrative Court. If the Administrative Court agrees with the applicant the court send the case back to the CMB for a review and for making a new decision. The Administrative Court cannot grant asylum or subsidiary protection. Therefore it can be said that the appeal system does not guarantee that a person can get asylum after court decision. The case is before the judge but the judge cannot decide if the person must get international protection or not.

[342] §50

The time for appeal is written in the decision and as the decision is translated orally into the language the person understands. He or she will get the information about appealing possibilities orally at the time the decision is delivered.
On the information leaflets that are given to the asylum seekers it is not mentioned that he or she has a right to appeal also on reception conditions. The right of an appeal is more generally explained. The appeal against the refusal of protection should be placed within 10 days of the reception of the decision.

Q.22. B. Explain which are the possibilities for asylum seekers to benefit from legal assistance when they introduce such an appeal (see article 21, §2 which is a mandatory provision but leaves space to Member States)?

According to The Act on Granting International Protection to Aliens § 10 an asylum seeker has a right to legal aid guaranteed by the state pursuant to the procedure provided for in the State Legal Aid Act. According to the State Legal Aid Act in Estonia its purpose is to ensure the timely and sufficient availability of competent and reliable legal services to all persons.[343] According to the State Legal Aid Act §6 a natural person may receive state legal aid if the person is unable to pay for competent legal services due to his or her financial situation at the time the person is in need of legal aid or is able to pay for legal services only partially or in instalments or whose financial situation does not allow meeting basic subsistence needs after paying for legal services.
§10 of the State Legal Aid Act says: "An application for state legal aid in court proceedings as a party to a proceeding in civil, administrative or misdemeanour matters shall be submitted to the court conducting proceedings in the matter or the court whose jurisdiction would include conducting proceedings in the matter."
If an applicant wishes to receive state legal aid for the preparation of a statement of claim or a petition in proceedings on petition or for the preparation of an appeal in administrative court proceedings or proceedings regarding a misdemeanour matter, he or she shall submit an application to the court whose jurisdiction includes hearing the action or reviewing the petition in proceedings on petition or the appeal.
An application for state legal aid in the form of representation in pre-trial proceedings in a civil matter, in administrative proceedings or extrajudicial proceedings in a misdemeanour matter, preparation of a legal document or other legal counselling or representation shall be submitted to the county or city court of the applicant's residence or seat or of the presumed location of provision of legal services. If an applicant for state legal aid has no residence in Estonia, he or she may submit an application to the county or city court in the territorial jurisdiction of which he or she is staying.
An application for state legal aid in the form of representation in enforcement proceedings shall be submitted to the court competent to process an appeal against the activities of a bailiff conducting enforcement proceedings.

In reality it is very difficult to get the free legal help in order to submit the appeal. The problems are following:
1) the appeal has to be made already in ten days, and

[343] § 2

2) the person has to ask for the free legal advice from the court, as the judge can decide if the free legal help is needed or not.
Additionally the person has to present the legal arguments against the decision to the court together with the request for free legal counselling. All this has to be done in Estonian language. Also Estonian practicing lawyers are not trained in refugee law, there are very few who have had a chance to have a law course on refugee law.

Q.22. C. Are there already administrative appeal decisions or judgements which have been taken and if yes, which are the main important ones?

No, not yet as the new legislation became into force on 1st July 2006. And the number of asylum seekers is very low.

Q.22. D. Is a mechanism of complain for asylum seekers about quality of receptions conditions in general (even if they are not personally concerned) organised? If yes, before which authority? Is it linked to the system of guidance, control and monitoring of reception conditions (see below question n° 39)?

Ministry of Social Affairs has to monitor the work of the Reception Centre. It is also possible to appeal to Chancellor of Justice who also acts like Ombudsman in Estonia. Because Illuka reception centre is under the Ministry of Social Affairs, the asylum seekers have the right to submit a complaint regarding reception conditions to the Ministry of Social Affairs. In addition the asylum seekers always have the right to turn to the court or ask for an opinion from the Chancellor of Justice.

6. RIGHTS AND OBLIGATIONS OF ASYLUM SEEKERS

Q.23. **Family unity of asylum seekers: define how a family is defined in relation with article 2, (d) which is a mandatory provision and explain how housing is provided to a family (see articles 8 which is a mandatory provision but leaves space to member States and 14, §2, (a) which is a mandatory provision).**

Article 7 of AGIPA regulates who is considered to be a family member of an asylum seeker. It is same as stated in art (2) of the directive. Families can live together. There is one family room in the reception centre.
A family member of an asylum applicant is:

1) a spouse of the applicant;
2) an unmarried and minor child, including adopted child of the applicant;
3) an unmarried and minor child, including adopted child of the applicant and the spouse.

A family member of a refugee and a recipient of subsidiary protection is:

1) a spouse;

2) an unmarried minor child, including adopted child of the applicant and the spouse;
3) a ward and a supported unmarried minor child, including adopted child of the applicant or the spouse. In a case of shared guardianship the approval of a sharing guardian is needed;
4) an unmarried adult child of the applicant or the spouse, if due to the state of health or disability of the child he or she is unable to cope independently;
5) a parent or a grandparent under the support of the applicant or the spouse, if the country of origin does not pay any subsidy related to other family ties.

A family member of an unaccompanied minor refugee and an unaccompanied minor recipient of subsidiary protection is:
1) his or her parent;
2) his or her guardian or other family member if he or she has no parents or they cannot be found, except in case it would be in conflict with the rights and interests of a minor.

A family member of a recipient of temporary protection is:
1) his or her spouse;
2) his/her or his/her spouse's unmarried and minor child, including adopted child;
3) a close relative who is not specified in clauses 1) and 2) of this section and who lived with him and was dependent of him in the country of origin.

The family members who are specified in this act are considered family in case the family existed in the country of origin, including if marriage was contracted before the arrival to Estonia. An unmarried partner is considered not to be a family member.

Q.24. **Q.24. A. How is <u>housing</u> of asylum seekers organised: describe the system in general and indicate in particular what is the most frequently system used (see article 14, §1 which is a mandatory provision but leaves space for Member States; distinguish between accommodation centres, private houses and apartments, hotels places or other premises).**

There is only one reception centre for asylum seekers in Estonia – Illuka reception centre for asylum seekers. The centre can accommodate a maximum of 35 persons. No private housing is available at the moment. In case of mass influx the housing may be organised in private houses or apartments.

Q.24. B. What is the total number of available <u>places</u> for asylum seekers? Distinguish in your answer between accommodation centres, private houses and apartments, hotels or other premises.

35 places plus 7 places in the CMB premises.

Q.24. C. Is this number of places for asylum seekers sufficient in general or frequently insufficient?

There have been less applicants than the places available. Until now it is sufficient.

Q.24. D. Are there special measures foreseen in urgent cases of a high number of news arrivals of asylum seekers (outside the case of application of the directive on temporary protection)?

In urgent cases the accommodation is rented from private accommodation providers.

Q.25. Accommodation centres **(important note: all the following questions are about open and not closed centres where asylum seekers are detained which are covered by another question)**

Q.25. A Are there different categories of accommodation centres, for instance depending of the stage of the procedure (admissibility and eligibility)?

No. According to the law during asylum proceedings the applicant as a rule has to live in the reception centre.

Q.25. B. Is there a legal time limit for accommodation in a centre after which the asylum seekers have access to private houses or apartments or is this limit linked to a stage of the asylum procedure?

No. The limit is connected with the time of examination of the application. The applicant looses the right for accommodation upon receiving the decision on his or her asylum application. In practice, however, the Illuka reception centre permitted the applicant to stay in the reception centre until the final solution of the asylum case. Under the new Act person who gets the positive answer can stay in the Reception Centre until the local municipality is found where he or she can settle. In case the applicant refuses to go to the municipality he can stay in the reception centre only for two months after receiving the positive answer on his application.

Q.25. C. Is there a general regulation about the internal functioning of those centres and the rights and duties of the asylum seekers? If yes, is this general regulation applicable to public and private centres? If not, are the centres supposed to adopt an internal regulation and does a central authority have or not a kind of control about its content?

Illuka Reception Centre for asylum seekers has its internal procedure rules for asylum applicants. There is a Statute of the Illuka Reception Centre adopted by the regulation of

the Ministry on Social Affairs of 01 September 1998 nr 47. Also, the director of the Illuka Reception Centre has issued an internal regulation by the decision of 27 December 2002 nr 73. The general rules come from legal acts. There is only one public reception centre in Estonia.

Q.25. D. Do the regulations foresee the possibility of <u>sanctions</u> against asylum seekers in case of breach of the rules? (see article 16, §3) If yes, which sanctions for which rules? Which is the competent authority to decide? How is it ensured that decisions are taken individually, objectively and in particular *impartially* (for instance through an independent arbitrator) as requested by §4 of article 21 which is mandatory provision*?* Which are the possibilities of appealing against those decisions if the system is different from the general one under question n°22? Are there already administrative appeal decisions or judgements which have been taken and if yes, which are the main important ones?

The rules for asylum seekers include a provision called "Violation of Rules", which says: „Institutions of legal protection are notified of all violations that are in contradiction to the law or cause substantial property damage. Applicants undertake to comply with these rules by signing the relevant supplementary confirmation." - therefore the rules do not foresee any sanctions.
The rules for asylum seekers also include the following point.
"An Applicant who has been absent from the Centre for more than one day (24 hours) and whose whereabouts are unknown is declared 'wanted' and the relevant notification submitted to the (immigration) authorities. If an Applicant destroys, looses or damages the Centre's property, he/she is obliged to compensate damage caused."
In case of severe disturbance or forbidden objects/substance, the reception centre turns to police who decides the designation of punishment. As a principal rule there is a possibility to appeal to the Ministry of Social Affairs or to the court or to the Legal Chancellor although it is not explicitly written in the legislation.

Q.25. E. Are asylum seekers involved in the <u>management</u> of these centres? If yes, how (advisory board, appointment or election of representatives)? (see article 14, §6 which is an option provision)

No.

Q.25. F. Do <u>specific rules</u> exist on work of asylum seekers inside the accommodation centres different from the general ones about employment (see below)? If yes, which ones? Can working inside accommodation centres be considered as a (mandatory) contribution of the asylum seekers to the management of the centres, is it or not paid and considered as implying access to the labour market and subject to the same rules?

The internal procedure rules of Illuka Reception Centre– Rules for Asylum Applicants foresee among others the following:

- Applicants prepare their own meals; applicants are required to clean up after preparing food.
- Applicants are required to: - wash their bed linen and clean their room regularly - help and keep common rooms clean and tidy - comply with the work and time schedules of the Centre - participate in activities organized by the Centre.

There is no possibility to do real work in the reception centre. The applicants are involved in maintenance work in the reception centre on voluntary basis only.
Working is not allowed for the asylum seekers. According to the new Act after the 12 months of application submitted the asylum seeker can get a permission to work. According to Employment Services and Benefits Act § 3 an asylum seeker has the right to employment services and benefits lied down in this Act in the terms of the Act on Granting International Protection to Aliens.

Q.26. **Q.26. A. How can asylum seekers <u>communicate</u> with legal advisers, representatives of UNHCR and NGOs? (see article 14, §2, (b) which is a mandatory provision).**

The asylum seekers can contact via email or make a call, send a letter. There is internet available in the Reception Centre to asylum seekers. Although there might be a practical problem to be in contact with NGOs, UNHCR etc. As the reception centre situates very far from the cities and there is only 3 times per week the bus connection to the closest village.

Q.26. B. What are the rules about <u>access</u> of legal advisers, UNHCR and NGOs regarding access to accommodation centres and other housing facilities (see article 14, §7 which is a mandatory provision)

There are no restrictions to communicate except the financial means. They might have no money to make a call. The uncomfortable location of the Illuka Reception Centre (almost on the border with Russia, in the forest, bad transportation connection, bus is going there three times per week) plays as a certain hindrance for those, who want to visit the centre. There is no UNHCR representative in Estonia. The UNHCR regional Stockholm office covers also Estonia which makes it very difficult for the asylum seeker to contact someone from the UNHCR. There is internet connection in the Illuka reception centre.

Q.26. C. Can the access of legal advisers, UNHCR and NGOs be <u>limited</u> for security reasons or any other reason (see article 14, §7, last sentence)?

The director of the reception centre makes a decision to limit access to asylum seekers by taking into account the current situation. Therefore for security reasons access might be limited. It has not happened yet.

Q.27. **Q.27. A. Is a medical screening organised by the receiving State, is it mandatory or voluntary? Does it include HIV tests? (see article 9 which is an optional provision)**

The new law provides possibility to check the condition of health of an applicant in case it is necessary and to take examples of DNA.[344] No special provisions concerning a HIV test. Medical screening is organised by the reception centre in cases of complaints. It is free to asylum applicants. HIV test is not mandatory.

Q.27. B. Do the legal provisions on reception conditions ensure that asylum seekers receive at least emergency care and essential treatment of illness as requested by article 15 §1 which is a mandatory provision? Do they have a further access to health care?

Normally, the person that requires a medical aid is transported to the nearest doctor or sometimes the doctor visits the Reception Centre. Also the ambulance can be called. Reception Centre provides the right to medical aid only in emergency cases. The fact, what is an emergency case, is not specified. (AGIPA art 12)

Q.27. C. What is the practice regarding access of asylum seekers to health care and how is it organised? In particular, what is the situation in accommodation centres (are doctors coming to the centres or do asylum seekers go to doctors outside)?

Usually the asylum seekers go to see the doctor. There are agreements with therapists in Jõhvi (Jõhvi is the closest city to the reception centre about 50 km form the Centre) and Tallinn who are contacted in case of emergency. Medical treatment is free for the asylum seeker. The law provides only free emergency help.

Q.28. **Q.28. A. What is the length of the period determined by the concerned Member State during which asylum seekers have no access to the labour market? (see article 11 which is a mandatory provision)**

One year after submitting the asylum application the asylum seeker gets a right to work. Before that he or she is not allowed to work. The permission to work does not grant a chance to work. There is no regulation available that should be according to AGIPA art 10 [1] (5). It is in the legislative process but have not been agreed how it should be proceeded as work permit is inserted to the ID card. Asylum seekers cannot have ID card because their identity is not clear and it is not possible to issue them personal code.

[344] §15 of the Act

Therefore the access to work in not guaranteed as there is no procedure for applying for a work permit for an asylum seeker.

Q.28. B. After that period, are asylum seekers or not obliged to obtain a work permit? In case is there a limit for the administration to deliver the permits and how quick are they delivered? What is their length?

No experience yet as the law was enforced on 1st July 2006. The Act §10 section 4 says that the applicant has a right to work if the CMB after one year of submitting the application has not made a decision. Under the Alien Act all foreigners who want to work in Estonia must ask for the work permit so probably this clause will apply also for the asylum seekers who get the right to work.

Q.28. C. After that period, what are the conditions for access of the asylum seekers to the labour market? (in particular, are there rules concerning the maximum allowed of working hours or days per week, month or year, limits in terms of type of work or of professions authorised?

There is a clause in the Aliens Act that EU citizens must be offered first the job and then the third country nationals and asylum seekers can take the position.
No, there are no specific rules designed for the asylum seekers. They will be probably treated as any other third country national who wants to work in Estonia. Under these general rules there are no restrictions on time limit, they are the same for Estonian citizens. Bearing in mind that the Reception Centre is in the remote area 220 km away from the capital and 50 km away from the nearest city and there is bus connection to the nearest village where the Reception Centre situates only tree times per week and the unemployment is the highest in the region it is very unlikely that the asylum seekers who are obliged to live in that Reception Centre can find a job.

Q.28. D. What are the rules in terms of priorities between asylum seekers on the one hand and nationals, EU or EEE citizens and legally third-country nationals on the other?

Asylum seekers will be in the same position with the third country nationals. EU and EEA citizens are in priority. Only when there is no Estonian citizen or EU, EEA citizen to take the employment position the asylum seekers and third country nationals have a chance to apply for the position.

Q.28. E. Do asylum seekers have access to vocational training, does this or not depend of their right to access to the labour market, and in case at which conditions? (see article 12 which is optional regarding §1 and mandatory regarding § 2)

No access before 12 months as it depends from the right to access the labour market. The access to vocational training is not regulated by the Act. It is of course disputable if vocational training is considered as work or part of education. As it is not clearly regulated and we do not have yet practice in that, it is in fact difficult to answer. It might be reasonable to offer vocational training through NGO-s and then it should be seen as part of education. The Labour Office offers vocational training only to those who have a right to work, and in order to be able to compete in the labour market, need additional training.

Q.28. F. Are the rules regarding access to the labour market adopted to transpose the directive more or less generous than the ones applicable previously?

Yes, they are more generous. Before the directive, asylum seekers did not have a possibility to work at all.

Q.29. Are reception conditions subject to the fact that asylum seekers do not have sufficient resources? Are asylum seekers requested to contribute to reception conditions when they have personal resources (for instance if they work) or to refund the authorities if it appears that they have resources? (see article 13 §§ 3 and 4 which are optional provisions)

Yes. Asylum seekers have to contribute to their reception when they work. They do not get the financial benefits. Normally, asylum seekers are accommodated at the special reception centre and they receive money allowance only to cover small personal needs. According to the new law § 11 (4), the applicant will be obliged to cover all expenses including for accommodation in case he or she possess enough financial means.
Asylum seekers have to cover the cost of:
1) accommodation;
2) supply of foodstuffs or provision of food, supply of essential clothing, other necessities and toiletries, and supply of money for urgent small expenses within the limits set out in clause 5) of §36 of the Act to aliens residing in the reception centre and to aliens residing outside the reception centre on the basis of § 34 (2) 3) or §62 (2) 3) thereto;
3) medical examinations;
4) essential translation services and Estonian language instruction

7. SPECIAL NEEDS OF PARTICULAR CATEGORIES OF ASYLUM SEEKERS

Q.30.

Q.30.A. Which of the different categories of persons with special needs considered in the directive are taken into account in the national legislation (see article 17, §1 which is a mandatory provision): disabled people, elderly people, pregnant women, single parents with minor children, persons who have been tortured, raped or victims of

serious physical or psychological violence? Include in your answer all other categories envisaged in national law.

Only minors have special provisions in the Act no other categories of persons with special needs are considered in the directive. Art 17 of the directive is not regulated by the Act. It can be disputed if the Victims Support Act regulates also the special needs of asylum seekers.

Q.30. B. How is their specific situation taken into account (see articles 13, §2, second indent, 16 §4 second sentence and 17 which are mandatory provisions)?

As there are no special provisions regarding different categories of persons with special needs (except unaccompanied minors) the art 13 §2 and 16 §4 and 17 of the directive are not respected.

Q.30. C. How and when are the special needs of the concerned persons supposed to be legally identified (see article 17 § 2 which is a mandatory provision and clarify how it has been interpreted by transposition)?

No provisions, which means they are not identified and there are no rules regarding this. § 6 of the Act give a definition of an accompanied minor. During the first interview or at the time of applying for asylum, the age will be identified. When there is a dispute about the age, the medical expertise will be done to the person who claims to be a minor, but the doubt about his or her age has risen. In practice the special needs of asylum applicants are tried to be identified during the first interview among the asylum applicant and social worker.

Q.30. D. Is the necessary medical and other assistance provided to persons with special needs as requested by article 15, §2 which is a mandatory provision and in particular to victims of torture and violence as requested by article 20 which is a mandatory provision?

There are no provisions about the persons with special needs. In principal all asylum applicants have access to necessary medical assistance. Victims of torture and violence can seek benefit from the Victim Support Act if they are identified. There is no procedure how to identify the victims.
There have been no cases of persons who are mentally ill. There have been some doubts of some persons being mentally ill, but they were not identified.
Problems that rise from stress are treated by the normal doctor. The director of the reception centre can arrange psychologist to the reception centre or if the doctor prescribes the special treatment, the specialist will be visited. But as there is no practice

in this area it is not possible to answer the question about the treatment practice in the area of mental health care.

Q.31. **About minors:**

Q.31. A. Till which age are asylum seekers considered to be minor?

Minor is a person under age of 18. An unaccompanied minor alien is an alien under age of 18, who arrives or has arrived in Estonia without a parent or a guardian or who is left without parental care while residing in Estonia.

An unaccompanied minor can independently perform the acts specified in this Act, if he or she shall likely become an adult before the decision of the Citizenship and Migration Board with regard to the asylum application or if the unaccompanied minor is or has been married.

Q.31. B. How is access of minor asylum seekers to the education system ensured? Is it at school or in case inside accommodation centres and can it be considered as similar to the conditions for nationals as requested by article 10, §1?

All children at the age of 7-17 are obliged to go to school in Estonia. This applies also to asylum seekers. There is no schooling (except Estonian language courses) provided in the accommodation centre. The schooling is similar to the conditions for nationals. Asylum seeker child who is living in the accommodation centre has to go to the closest school which is Illuka primary school. (This is the current practice)

Art 8 from the Education Act (EV Haridusseadus), [345] and also Secondary and Gymnasium Act (Põhikooli ja Gümnaasiumiseadus)states the obligation to go to school for all the children who are between age 7-17. Schooling can be done at home. All foreigners and stateless children are obliged to go to school, except the children of representatives of the foreign states. Art § 36 of the Education Act give a right for foreigners according to the Estonian legislation and the international contracts.

Elementary school is for the forms 1-4 (age 7-10) and primary school forms 4-9. Every child who is under 17 years old is obliged to go to school. This obligation applies to all residents in Estonia including non-citizens and stateless persons and can be extended to asylum seekers. After age of 17 a child can decide if he or she wants to study in the secondary school (10-12 form) or go to work or start to study in technical college, art school, etc. After that time there is no obligation to go to school. But at the same time there is no obligation of the state too to provide schooling. Estonia does not have a practice jet with elder children. The children who went to school were placed in the primary school. Estonia has Russian speaking and Estonian speaking schools.

[345] **RT 1992, 12, 192**

The obligation to go to school is regulated also by Secondary School and Gymnasium Act (Põhikooli ja Gümnaasiumi seadus) [346]
Article 18 of the Education Act states that parents can choose the school, where to put the child, if there is free space in the school. Article 19 of the Education Act says that a school is obliged to provide learning possibilities to every child who is obliged to go to school and who lives in its service providing territory. The territory will be located by the local municipality.
No there is no bus to Illuka School every day but the usual practice was that the children were taken to the school by the reception centre. The reception centre was responsible for organizing the transportation.
The secondary school is further, in the closest city called Jõhvi, which is about 50 km from the Reception Centre.
There are no specific rules for schooling created for asylum seekers in the relevant laws. The schooling laws talk about foreigners and therefore should be applied also for the asylum seekers.

Q.31. C. Is access to education ensured not later than 3 months as requested by article 10, §2 (or after maximum one year if specific education for asylum seekers is provided) and till an expulsion decision is really enforced?

It is difficult to say, there are no special provisions in the law how quickly the schooling should be organised. In practice the children will go to school as soon as possible.

Q.31. D. Is specific education (like language classes) available for asylum seekers, in particular to facilitate their effective access to the education system of the reception Member State (see article 10, §2 which is an optional provision)?

The specific education is not regulated by the law. Probably the teachers have to give extra lessons that are decided by the teacher. Under the principle of equal treatment, if a child (national or legally residing) needs extra guidance the guidance should be provided, must apply also to asylum seekers. Estonian language classes are provided also in the Reception Centre if there are enough asylum seekers interested.

Q.31. E. Are minors in general accommodated with their parents or with the person responsible of them? (see article 14, § 3)

Minors are accommodated with their parents or with the person responsible of them. According to the law the best interests of the child principle have to be respected. What is the best interest of the child is not specified.

Q.31. F. Do minors with special needs enumerated by article 18, §2 which is a mandatory provision, have access to appropriate mental health care and qualified counselling?

[346] RT I 1993, 63, 892

There are no provisions for minors with special needs in the new Act. Minors can also benefit from the Child Protection Act and Victims Support Act.
There have been no cases of minors who are mentally ill. Problems that rise from stress are treated by the normal doctor. The director of the reception centre can arrange psychologist to the reception centre or if the doctor prescribes the special treatment the specialist will be visited. But as there is no practice in this area it is not possible to answer the question about the treatment practice in the area of mental health care.

Q.31. G. How and when is organised the representation of unaccompanied minors (guardianship, special organisation) and regularly assessed? (see article 19, §1 which is a mandatory provision)

Article 17 of AGIPA regulates the representation of an unaccompanied minor. In asylum procedure an applicant, who is an unaccompanied minor with restricted active legal capacity, shall be represented by the guardian, the guardianship authority, the head of the reception centre or a person authorized by the director of reception centre, unless otherwise provided by the law.

Q.31. H. How is placement of unaccompanied minors organised (with adult relatives, a foster family, in special accommodation centres or other suitable accommodation)? (see article 19, §2 which is mandatory provision)

Article 35 of the Act regulates the placement of an unaccompanied minor. An applicant who is an unaccompanied minor shall be placed in the reception centre or a social welfare institution for the time of the asylum proceedings, and welfare services appropriate to the age of the applicant shall be guaranteed to him or her. An applicant who is an unaccompanied minor may be placed with an adult relative or to social care family, if the host is appropriate for taking care of a minor. While placing an applicant who is an unaccompanied minor in the reception centre, social welfare institution, to an adult relative or social care family, the rights and interests of the minor shall be taken into consideration above all. Unaccompanied minor's sisters and brothers shall not be separated, if possible.
In cases specified in clause (8) of section 17[347] of this Act, the applicant who is an unaccompanied minor may be placed in the initial reception centre (detention) for the time of the examination. There is currently no initial reception centre in Estonia.

347 If the Citizenship and Migration Board has reasoned doubts as to the correctness of the information provided by the applicant in respect of his or her age, with the consent of the applicant or his or her representative the applicant's age can be established by medical examination.

Q.31. I. How is the tracing of the family members of the unaccompanied minors organised? Are measures taken to protect confidentiality of information when necessary? (see article 19, §3 which is a mandatory provision)

The Child Protection Act art 67 is regulating tracing of a family of an accompanied minor who is a fugitive. It is the obligation of a social centre to check and find the possibilities for return.
There are no special provisions about confidentiality of information regarding minors, which is forwarded to the country of origin. But the general rule of the confidentiality[348] regarding the data of the asylum seeker should be followed.

8. EXCEPTIONAL MODALITIES OF RECEPTION CONDITIONS

Q.32. Apart from detention covered by the next question, are there exceptional modalities for reception conditions in the following cases and if yes, which ones and for how long are they applicable, knowing that they should be "as short as possible" (see article 14, §8)?

These provisions are not regulated. Art 14 §8 of the directive is not regulated in Estonia.

Q.32. A. Persons with specific or special needs, regarding in particular the period of assessment of those needs?

§35 (1) of the Act prescribes that an accompanied minor can be placed either at the Reception Centre, or to the orphanage. There are no specific detention conditions for persons with special needs.

Q.32. B. Non availability of reception conditions in certain areas

Taking into account the small size of Estonia, it is very unlikely that there can be any problems with transporting asylum seekers from one area to another. All the asylum seekers have to stay in the Illuka Reception Centre as this is the only Centre. There are no special conditions for persons with special needs. There is one family room in the Reception Centre.

Q.32. C. Temporarily exhaustion of normal housing capacities

In the case of mass influx or temporarily exhaustion of normal housing capacities, alternative accommodation places are rented or bought. No specific rules designed in the law.

Q.32. D. The asylum seeker is confined to a border post

[348] §13

No specific rules. According to the §16 of the Act the border guard authority shall inform the corresponding official of the Citizenship and Migration Board without delay of the submission of an application for asylum and where necessary, involve a competent official of the Citizenship and Migration Board in the performance of the acts specified in clause 1) of §15 of the Act. It is possible to detain asylum seeker for 48 hours at the Border point.

If a basis for refusal to deny an application for asylum provided in clauses 1) and 2) of § 20 [349]and clauses 1) and 2) of §21[350] of the Act becomes evident, the alien shall be refused entry with the approval of the Citizenship and Migration Board, and he or she shall be sent back from the border without delay, informing him or her of the reasons for refusal.

The confinement is regulated by the §32 of the Act only in the initial reception centre and in the premises of CMB or Border Point. According to the §32 an applicant who has submitted an application during his or her stay in the country is required to stay in the initial reception centre but not for longer than 48 hours. An applicant may temporarily stay in the office of the Citizenship and Migration Board, if necessary for the performance of acts for the asylum proceedings.

With the permission of an administrative court judge, an applicant may be required to stay at the initial reception centre after the expiry of 48 hours in the following cases:

1) the identity of the applicant has not been not ascertained, including in the case where the applicant does not co-operate in the identification or hinders identification;

2) for establishing circumstances relevant to the asylum proceedings if the applicant does not co-operate in establishment of the circumstances or hinders the establishment thereof;

3) there is good reason to believe that the applicant has committed a serious criminal offence in a foreign state;

4) the applicant has repeatedly or seriously violated the internal procedure rules of the reception centre;

[349] Application for asylum shall be deemed to be clearly unfounded if:
1) another country can be considered the initial country for asylum, i.e. asylum or other protection has been accorded to the applicant in another country, and such protection is still accessible to the applicant;
2) the country of origin of the applicant can be considered as a safe country;

[350] Asylum proceedings are terminated by a decision to reject the application for asylum if:
1) another country is responsible for the review of the application for asylum according to an international agreement or regulation 343/2003/EC of the Council of the European Union that specifies the criteria and mechanisms for designating the member state that shall be responsible for the process of reviewing an application for asylum submitted in any member state by a third country national (EU 050, 25.02.2003, p. 1–10);
2) the applicant has arrived to Estonia through a country which can be considered as a safe country;

5) the applicant fails to comply with the surveillance measures applied with respect to him or her, or the applicant fails to perform other duties provided by this Act;
6) the applicant's stay in the initial reception centre is necessary in the interests of the protection of national security and public order.
The Citizenship and Migration Board shall submit a petition to an administrative court in order to obtain the permission specified in clause (3) of this section. An applicant who is required to stay at the initial reception centre is permitted to leave the centre with the written permission of the Citizenship and Migration Board, or in order to receive emergency medical care.

Q.32. E. <u>All other cases</u> not mentioned in the directive (for instance urgent situation in case of a sudden high number of applicants outside a case of application of the directive on temporary protection).

In mass influx cases the people can be placed in different accommodation places. Article 62 (1) of AGIPA sets out that the person who has received a temporary protection is obliged to live in the territory of Reception Centre or at the place decided by the Ministry of Social Affairs.

Q.33. <u>Detention of asylum seekers</u> (we do not cover the situation of rejected asylum seekers detained for the purpose of their return) (see articles 6 §2, 7 §3, 13, §2 2nd indent and 14 §8 which implies that the directive is in principle applicable in case of detention):

Q.33. A. In which <u>cases or circumstances</u> and for which <u>reasons</u>[1] (identity verification in particular if the persons have no or false documents, protection of public order or national security, refugee status determination, way of entry into the territory, etc) can an asylum seeker be detained during the asylum procedure till his request has been finally rejected. <u>Quote</u> precisely in English in your answer the <u>legal basis</u> for detention of asylum seekers in national law.

Article 32 and Article 33 of AGIPA regulates the detention of the asylum seeker. The law states that there is an initial reception centre, but in reality it so far does not exist. The new registration centre was opened on 26th April 2006 in the premises of CMB. It is allowed to keep a person there for 48 hours. The registration centre is not an initial reception centre but people can be kept there over weekend until they are transported to Illuka Reception Centre.

[1] Please specify if article 18 §1 of the directive on asylum procedures of 1 December 2005 following which *"Member States shall not hold a person in detention for the sole reason that he/she is an applicant for asylum"* is or not respected (even if it has not yet to be transposed).

Police, Border Guard and CMB can keep the asylum seeker in their premises for 48 hours. The extension of the detention can be asked from the Administrative Court judge. The judge can give a permission to keep the asylum seeker in detention up to 2 months. After that a new court order can be issued.
Here are the functions of the initial reception centre:
An applicant who has submitted an asylum application can be required to stay in the initial reception centre but not for longer than forty-eight hours after the submission of asylum application.
With the permission of an administrative court judge, an applicant may be required to stay at the initial reception centre in the following cases:
1) the identity of the applicant has not been not ascertained, including in the case where the applicant does not co-operate in the identification or hinders identification;
2) for establishing circumstances relevant to the asylum proceedings;
3) there is good reason to believe that the applicant has committed a serious criminal offence in a foreign state;
4) the applicant has repeatedly or seriously violated the internal procedure rules of the reception centre;
5) the applicant fails to comply with the surveillance measures applied with respect to him or her, or the applicant fails to perform other duties provided by this Act;
6) the applicant's stay in the initial reception centre is necessary in the interests of the protection of national security and public order.
The Citizenship and Migration Board shall submit an appeal to an administrative court to extend the detention of an asylum seeker.
An applicant who is required to stay at the initial reception centre is permitted to leave the centre with the written permission of the Citizenship and Migration Board, or in order to receive emergency medical care.
Article 33 of the AGIPA states that an applicant who has submitted the application for asylum during his or her stay at the expulsion centre, in prison or in jail, or in the course of execution of the expulsion procedure, shall not be placed in the initial reception centre but shall remain at the expulsion centre, in prison or in jail until the termination of the asylum proceedings. If an alien had submitted the application for asylum during his or her stay at the expulsion centre or in prison and was released from prison or jail, he or she shall be sent to the reception centre.
The articles specified in AGIPA shall not apply to an applicant with regard to whom a criminal procedure has been commenced, if it is in conflict with the principles of the Code of Criminal Procedure. The reason that a person applied for asylum is not a reason to keep a person in detention. But there can be other offences like crossing the border illegally, that is punishable.

Q.33. B. Has your member State adopted measures to transpose §3 of article 7 which is an optional provision? If yes, how has this provision been legally understood (is it a case of detention or an obligation to stay in and not leave a certain place?) and for which reasons can an asylum seeker be "confined" in such a place?

Yes, see previous answer. The asylum seekers may be held (there is currently no initial reception centre although the provisions are in the law) at the premises of the Border Guard or Citizenship and Migration Board, Illuka Reception centre, deportation centre, jail, prison. The applicant can be detained in jail or at places mentioned before then he or she is transferred to the Illuka Reception Centre or to the deportation centre (in case of manifestly ill-founded application) if the immediate deportation is not possible to conduct within 48 hours.

Q.33. C. Are there legally alternatives to detention, like obligation to report to the authorities, obligation to stay in a place, provision of a guarantor or of a financial guarantee?

No. Surveillance measures are prescribed in the Article 29 of AGIPA; however, it seems that these rules are not designed to replace detention of the applicant. There are no financial guarantee provisions regulations. The obligation to report is for every asylum seeker who does not stay in the Reception Centre. Article 29 sets the surveillance measures, which are following:

(1) For the effective and efficient, simple and rapid conduct of asylum proceedings, the Citizenship and Migration Board has the right to apply the following surveillance measures with respect to applicants:

1) residing in a determined place of residence;

2) appearing for registration at the Citizenship and Migration Board at prescribed intervals;

3) notifying the Citizenship and Migration Board of his or her absence from the place of residence for a period longer than three days.

Officials of the Citizenship and Migration Board and police officers have the right to verify the compliance of applicants with the surveillance measures at any time.

An applicant shall be informed in writing of the imposition of surveillance measures. It is difficult to say if these measures replace the detention as there is no practice at the moment the report was drafted.

Q.33. D. Which is the competent authority to order the detention of an asylum seeker? Explain if different authorities are involved to first take and later confirm the decision.

The competent authority is Citizen and Migration Board (CMB), Border Guard Office and in few cases Police. CMB and Border Guards can make a first decision to detain a person for 48 hours after that there should be a court decision.

Q.33. E. For how long and till which stage of the asylum procedure can an asylum seeker be detained?

Usually not more that 48 hours, otherwise with the court order the person can be detained longer.

Q.33. F. In which <u>places</u> (can we call them "closed centres"?) are asylum seekers detained (places in a special closed centres reserved only to asylum seekers, together with returnees like illegal aliens or even in a normal prison, in case within separated areas or with the other detainees)? Indicate if a difference has to be made following the location of the "closed centres" at the border or on the territory? Which is the authority managing those places and is it the same as the one in charge of reception conditions?

Asylum seekers can be kept in expulsion centre or in case of criminal offence together with criminals in the prison. There is no initial reception centre in Estonia yet. The law said that the person can be detained at the initial detention centre or at the premises of the CMB or border point upon lodging application for the refugee status on the period of 48 hours.[351]. The 48 hours term can be prolonged by the administrative court. The person who has submitted the asylum application being in the deportation centre, prison or jail is obliged to stay in the same place until the end of asylum proceedings.[352]
The expulsion centre is managed by the CMB (Citizen and Migration Board). Prisons are managed by the Prison Board (Vanglate Amet). Borders are controlled by the Border Guard Authority.

Q.33. G. Does <u>UNHCR and NGOs have access</u> to the places of detention and under which conditions?

Generally yes, the permission from the director of the centre has to be granted to UNHCR or NGOs.

Q.33. H. What <u>appeal(s)</u> can asylum seekers introduce against the fact he is detained? Is article 18 of the directive on asylum procedures of 1 December 2005 following which *"Where an applicant for asylum is held in detention, Member States shall ensure that there is a possibility of speedy judicial review"* respected (even if it has not yet to be transposed)?

He can appeal to the court, which is the Administrative Court. As the person can be detained after 48 hours only with the court permission it seems that the provision is respected. The new legislative Act does not cover the directive on asylum procedures of 1 December 2005.

Q.33. I. Is the <u>directive</u> on reception conditions considered to be <u>in principle applicable</u> to the places where asylum seekers are detained? In particular which information do they receive about their rights, which access do they have to legal advice and health care?

There is no practice yet. Article 32 of AGIPA states that asylum seekers who are detained should have similar rights with asylum seekers who are not detained. The Citizenship and

[351] §15(6) and §32(1) of the Act
[352] §33(1) of the Act

Migration Board shall, arrange assistance to an applicant who may temporarily stay in the office of the Citizenship and Migration Board, if necessary for the performance of acts of the asylum proceedings. Following is provided by CMB:

- temporary accommodation;
- emergency care and medical examinations
- information regarding their rights and duties;
- provision of other essential services.
- essential necessities and toiletries, and food allowance.

The translation services have to be provided by the Initial Reception centre and the Reception Centre according to the changes in art 12 of AGIPA enforced 11 March 2007. The Reception Centre has to provide also Estonian language course.

Q.33. J. Apart from freedom of movement, what are the main differences between normal reception conditions and exceptional modalities for reception conditions in case of detention, knowing that they should be "as short as possible" (see article 14, §8)? If it is about closed centres, are the regulations of those places in line with the requirements of the directive (is article 13, §2, second indent of the directive following which "*Member States shall ensure that standards of living is met (…) in relation to the situation of persons who are in detention*" respected?).

The answer depends from the place of detention. In general one can say that the regulations are not in accordance with the requirements of the directive. The law writes about the initial reception centre that is supposed to be a detention centre. In reality this centre does not exist. The asylum seekers can be kept in the CMB or Border Guard premises or in prison, jail, at the border, when the detention is needed. Look at the previous answer to the question 33 I. There was a study[353] done by Estonian Refugee Council in 2007 on the conditions of detention places where asylum seekers can potentially be held.

Q.33. K. Are measures taken to avoid detention of asylum seekers with special needs (if yes, which ones?) or are special measures taken because of their needs?

No. There are no provisions for people with special needs in the Act. Unaccompanied minors are an exception.

Q.33. L. Can minor asylum seekers be detained together with relatives? Can unaccompanied minor asylum seekers be detained? If

[353] Soon available at http://www.detention-in-europe.org/index.php?option=com_content&task=view&id=80&Itemid=107 , 08.05.2007

yes, are there special measures which take into account that children are concerned?

Probably yes. The provisions are not regulated. Asylum seekers who are minors can be detained in the initial reception centre in cases the Citizenship and Migration Board has reasonable doubt to believe that the asylum seeker is lying about his/her age. In that case with the consent of the asylum seeker or his/her representative, medical examining can be done to specify the age of the applicant. The best interests of the child have to be respected during the whole asylum procedure. In reality, there is no initial reception centre.

Q.33. M. In particular is article 10 regarding access to education of minors respected in those places?

It is not explicitly written in the Act on Granting International Protection to Aliens but the other legislation SSGA art 17 obliges all children from the age 7-16 to study in the school. The same applies to asylum seekers who are about that age.

Q.33. N. How many asylum seekers are for the moment detained in your Member State? Which proportion does this represent in comparison of the total number of asylum seekers at the same moment?

In March 2007 no asylum seeker is detained. There are altogether 6 asylum applications in proceedings in different instances in March 2007.

9. ORGANISATION OF THE SYSTEM OF RECEPTION CONDITIONS

Q.34. Explain if the system of providing reception conditions is centralised or decentralised (which levels of government do provide practically reception conditions?) (do not confuse this question with question number 3 about the competence to make rules about reception conditions).

Estonian accommodation centre is centralised. Estonia has only one centre that is under supervision of the Ministry of Social Affairs.

Q.35. In case, are accommodation centres public or/and private (managed by NGOs? If yes, are the NGOs financially supported by the State?)

Estonia has one public accommodation centre which is financed from the state budget. In addition there is a registration centre located in Tallinn which is administered by the Citizenship and Migration Board. It is used for conducting asylum proceedings but if necessary the asylum applicants can be accommodated in the registration centre as well. (As the reception centre is located far from Tallinn).

Q.36. In case, how many accommodation centres are there in your Member State (distinguish in your answer between public and private centres)?

Estonia has one public accommodation centre, Illuka Reception Centre, http://www.ivv.ee/index.php?sid=SclwQyPePe1nnn2r_&tid=tAkm-Rllr1bcEbeb-TTkTTTTTTTjT4mt1k

Q.37. Is there in the legislation a plan or are there rules in order to spread the asylum seekers all over the territory of your Member State to avoid their concentration in some areas like big cities or to share the costs of their reception between central, regional and local authorities?

There is no plan to distribute asylum seekers all over the territory. There is only one reception centre in Estonia, which is quite far from the capital in the remote area near the Russian border with limited access of public transportation.

Q.38. Does a central body representing all the actors (like NGOs) involved in reception conditions exist? Does it play a consultative role for the State authorities, a coordination role for the actors or any other role?

NGOs are not consulted in the coordination of reception conditions; the director of the reception centre participates in development of reception conditions.
When a new law is designed NGO-s are asked to provide their comments. There is no central body representing all the actors involved in reception conditions in Estonia.

Q.39. **Q.39. A. Which is the body in charge of guidance, monitoring and controlling the system of reception conditions as requested by article 23 which is mandatory provision? Include in your answer which is the competent ministry (Interior, Social affairs, etc) for reception conditions?**

Ministry of Social Affairs has to control the Reception Centre and Ministry of Interior has to control the CMB. But there are no special provisions in the law, how the control should be done.

Q.39. B. Has your Member State (like the Czech Republic did recently) approved quality standards (not necessary legally binding) for housing services (for instance about the number of persons per bedroom on the basis of its size, number of accessible toilets, bathrooms, showers and washing machines per number of persons, existence of common rooms with radio, television, newspapers, books, computers, accessibility of telephone, existence of recreative rooms for children,…) to be respected in particular in accommodation centres?

General rules for housing are respected when asylum seekers are accommodated no special rules for the Reception Centre. The asylum seekers have an access to internet. There is no creative room for children. There is one TV. The toilet and shower, washing machine, also the kitchen is for public use. The one family room has private shower and toilet. There are no books, newspapers that the asylum seekers could read. The closest library is far. The rooms are designed mostly for 4 persons. There is a phone that can be used by asylum seekers.

Q.39. C. How is this system of guidance, control and monitoring of reception conditions organised?

Officials from Ministry of Social Affairs and the Chancellor of Justice are making regular checks to the Reception Centre, but it is not specified in the new law but is a general rule. The Chancellor of Justice gives a report, at its yearly report, about the visit and monitoring activities of the reception conditions and reception centre. According to the Ministry of Interior the report of the Ministry of Social Affairs is also public.

Q.39. D. Does the body in charge of guidance, control and monitoring produce reports about the level of reception conditions? If yes, how frequently and are they public?

The monitoring by the Ministry of Social Affairs must be done twice per year. Also the Chancellor of Justice [354] is visiting once per year the Reception Centre. The report of the Legal Chancellor is public. According to the Ministry of Interior the reports produced by the Ministry of Social Affairs are also public.
The reports done by the Legal Chancellor are done after the visit and the reports can be found in the year report of the Legal Chancellor. For example Legal Chancellor has approached Estonian Refugee Council (ERC) with letters asking if the Council know some problems with the reception of asylum seekers in the Reception Centres. And ERC has given feedback, when there have been some known infringements. The Ministry of Social Affairs has not mentioned in its answers that they write a report after the monitoring procedure.

Q.40. **Q.40. A.** What is the total number of asylum seekers covered by reception conditions for the last year for which figures are available (see article 22 obliging Member States to calculate those statistics about which we also asked the Commission to require them from Member States for mid June)?

In 2005 there were 11 asylum applications in Estonia at the end of the year 2005, eight cases were under consideration that means reception conditions applied to 8 persons at the end of the year 2005. In September 2006 only five applications were on the procedure. In March 2006 six applicants lived in the Reception Centre.

[354] www.oiguskantsler.ee

Q.40. B. What is the total budget of reception conditions in euro for the last year for which figures are available?

According to the Estonian European Refugee Fund plan for the years 2005-2007, planned salary of CMB decision makers (five people) in 2005 was 1 076 010 EEK = 68798 EUR . Expenses on translators in 2005 for nine months was 21 600 EEK = 1381 EUR. Costs of the reception centre in 2005 are 1 186 265 EEK = 75848 EUR. There are also projects managed by NGOs and financed by EU funds that support the reception conditions improvements. [355]

Q.40. C. What is the average cost of reception conditions in euro per asylum seeker for the last year for which figures are available?

No direct figures available, but if we add above mentions costs and divide them by number of asylum seekers then the amount per asylum seeker is 207 625 EEK or 13 275 EUR. In reality the sum is bigger as also finances that NGOs use should be added.

Q.40. D Are the costs of reception conditions of asylum seekers supported by the central/federal or federated government or are they shared with regional and/or local authorities?

The costs for the reception of asylum seekers are financed from the state budget and from EU funds.

Q.40. E. Is article 24 § 2 of the directive following which "*Member States shall allocate the necessary resources in connection with the nationals provisions enacted to implement this directive*" respected?

At the moment it seems that the resources are sufficient as the number of asylum seekers is very low.

Q.41. **Q.41. A.** What is the total number of persons working for reception conditions?

In CMB there are 5 persons who make decisions on asylum claims. In the Reception Centre there work 2 persons and in the Ministry of Social Affairs there is one person responsible. Also couple of people in the Ministry of Interior and in the Expulsion Centre are involved.

Q.41. B. How is the training of persons working in accommodation centres organised? Does it take into account

[355] http://www.sisemin.gov.ee/atp/failid/2005_2007_a_programm.rtf ; 12.06.2006

specific needs of unaccompanied minors when relevant as well as the gender dimension? (see article 14 §5, 19 § 4 and also 24 §1 which are mandatory provisions)?

People working in the Reception Centre have received training from UNHCR, NGOs and internal training organised by the Ministry. The problem is that the people working for the reception centre have limited language skills including English. The topic of torture victims should get more attention and also the officials must be trained in that.
There are very few cases where gender issue has raised also there has been only one unaccompanied minor case in Estonia. The CMB officials though have received training on separated children.

Q.41. C. Are there rules about the deontology of persons working in accommodation centres, in particular on confidentiality?

Yes, all the people working with asylum seekers are obliged to keep in secret the personal data of the asylum seekers. AGIPA states the confidentiality requirement. Confidentiality has to be respected.

10. IMPACT OF THE DIRECTIVE

Legal impact of the transposition of the directive:

Q.42. Specify if there are or not big problems with the translation of the directive in the official language of your Member State and give in case a list of the worst examples of provisions which have been badly translated? (please note that this question has in particular been added to the questionnaire concerning the new Member States)

Yes, there is a problem with translation of the directive. Art 21 of the directive is translated not correctly into Estonian language. The article itself relates to the appeals procedure.

The Estonian version of the directive is following: *"Member states shall assure that the negative decisions relating to the granting benefits under this Directive or decisions taken under Article 7 which individually affect asylum seekers can be appealed according to the internal rules of the state. At least in the last instance, the possibility of an appeal to the court or to apply through the court for the reviewing of the case should be granted"*.

This means that the court will not review the case, but only grants a chance, that the case will be reviewed by the CMB once again. Here is the difference between the Estonian and English translation of the directive. The English version states that the judicial body should review the case and not the same institution that rejected the asylum application.

The English version of the Art 21 of the directive says: *"Member states shall ensure that negative decisions relating to the granting of benefits under this Directive or decisions taken under Article 7 which individually affect asylum seekers may be the subject of an*

appeal within the procedures laid down in the national law. At least in the last instance the possibility of an appeal or a review before a judicial body shall be granted."

In the Estonian system the Citizen and Migration Board has to review once again the negative decision made by itself when the court makes a decision that the CMB first decision was wrong. The Administrative Court, when the cases are brought before it, cannot grant asylum, but can only decide that the asylum decision was incorrect and ask CMB to make a new decision. So, the judicial body under Estonian system does not review the asylum case on the substance. It can be claimed that taking a case to the court does not have suspensive effect. To stop the expulsion separate claim has to be submitted and the court will review it to make a decision on stopping the expulsion.

It is contradictory to the principle of right to appeal before the judicial body and is contradictory to the means of the directive.

Q.43. Where there precise legal rules on reception conditions for asylum seekers before the adoption of the norms of transposition of the directive (if yes, specify what the nature of those rules was (legislation, regulation, administrative instructions,…)?

Yes, Estonia had a Refugee Act since 1997 that was based on the Refugee Convention. Only refugees under the convention could get asylum. Before joining EU there were no proper rules for the subsidiary protection or for the temporary protection.

Q.44. Did the legal rules applicable to reception conditions become more clear, precise, coherent or detailed with the adoption of the transposition norms (for instance do you now have after the transposition one basic text dealing with reception conditions instead of numerous different texts in the past?

There was legal act before (Refugees Act) and there is new now (Act on Granting International Protection to Aliens). The legal rules applicable to reception conditions became more precise with the adoption of the transposition norms. Some new elements were also added that were not before, like the possibility for employment after 12 months. At the same time there are still elements missing in the new law, that should be transposed from the directive i.e. conditions for the people with special needs. Also the appeal on the negative decisions does not have suspensive effect and the court can't make a new decision. The new decision has to be made again by CMB.

Q.45. Did the transposition of the directive imply important changes in national law or were the changes of minor importance? In case, list the most important changes that have been introduced.

Yes, the directives implied important changes in national law

1. Definitions of safe country and safe third country, country of origin is in the law
2. Asylum seeker can work after 12 months

3. New concept of temporary protection is introduced
4. New concept of subsidiary protection is introduced
5. When the application is placed on the border the border guards have to contact CMB for advice
6. Eurodac system is introduced
7. Dublin system introduced
8. Special provisions when the expulsion is not allowed
9. etc

Political impact of the transposition of the directive:

Q.46. Explain briefly if there has been an important debate about the transposition of the directive (in particular in the Parliament, but possibly also in the government, between political parties, including in medias, etc; underline in case the main points which have been discussed or have created difficulties)

There has been only small debate in the parliament. No debate in the newspapers or media.

Q.47. **Did the transposition of the directive contribute to make the internal rules stricter or more generous? In particular, did your Member State use the occasion of the transposition to abolish more favourable provisions of national law? Does your Member State still have rules more favourable than the provisions of the directive (if yes, try to give the more important examples).**

The law became more favourable. Additional protection possibilities were introduced for example subsidiary protection, temporary protection. The asylum seekers can work after one year, they couldn't before. But there are no more favourable provisions than the provisions of the directive.

11. ANY OTHER INTERESTING ELEMENT

Q.48. What are in your view the weaknesses and strengths of the system of reception conditions in your Member State?

The weaknesses of the reception conditions are the location of Illuka Reception Centre for asylum seekers (far from the capital, where asylum proceedings are conducted) and that there is no initial reception centre (detention centre) in reality.

The fact that the reception centre is so far increases the costs for transportation, also limits the access to meet the lawyers and integrate them to the society. The strengths are the small size of Estonia and good co-operation between different authorities.

Q.49. Mention any good practice in your Member State which could be promoted in other Member States

The lawyers used to stay with the applicant at the interview with the CMB. Unfortunately the practice is not any more used as there is no capacity of an NGO providing legal counselling.

Q.50. Please add here any other interesting element about reception conditions in your Member State which you did not had the occasion to mention in your previous answer.

The directive in Estonian language is different than the English version. Art 21 of the directive is translated in the way as it would fit to the Estonian system.

Minors

An applicant who is an unaccompanied minor shall be placed in the Reception Centre or a social welfare institution for the time of the asylum proceedings, and welfare services appropriate to the age of the applicant shall be guaranteed to him or her. Article 19 of the Council Directive 2003/9/EC requires also the necessary representation of unaccompanied minors, as far as possible, keeping siblings together, taking into account the best interests of the minor concerned and, in particular, his or her age and degree of maturity. Changes of residence of unaccompanied minors shall be limited to a minimum. Member States, protecting the unaccompanied minor's best interests, shall endeavour to trace the members of his or her family as soon as possible. All of the above mentioned rights of unaccompanied minors are **not regulated** in Act on Granting International Protection to Aliens, The terms concerning the presentation and accommodation of the unaccompanied minor is regulated in Child Protection Act (§ 63) and in the Act on Granting International Protection to Aliens (§ 17 and § 35). The Act on Granting International Protection § 35 (3) stipulates also the principle of the rights and interests of the minor being taken into consideration above all and an obligation, where possible, not to separate unaccompanied minors who are brothers and sisters. Child Protection Act § 31 stipulates general principle of treatment of child that includes taking into account of his or her character, age and sex. That principle applies also when dealing with minors in asylum procedures. The obligation to trace the member of his or her family is regulated in Child Protection Act § 67.

Another ground that should be reconsidered or should be regulated more precisely is § 20 (18) of Act on Granting International Protection to Aliens, "in case minor's parents' application has been rejected". It can not be forgotten that the best interests of the minor should always come first. In reality the asylum application could be connected to the interests or protection needs of the minor and the parent might lack grounds for asylum, but at the same time the child could be entitled to subsidiary protection. Minor's application can not automatically depend on his or her parents' application. Since the grounds for obviously ungrounded applications are arguable, the accelerated procedure

should be as well. Accelerated procedure has been widely criticized in Finland it is said that the legal safeguards are not sufficient considering the interests of asylum seekers.[356]

Ungrounded applications

Article 20 (17) of the Act says that obviously ungrounded application is submitted by a person who threatens security and/or public order or he has expelled from Estonia for the above mentioned reasons. Threat to peace, security and public order is a reason not to give asylum and reject the application but the Aliens Act treats it as basis for obviously ungrounded application.

Appeals

An alien who appeals the decision of the Migration Board has during court procedures the same rights and obligations as an asylum seeker if the court has stopped the compulsory execution of precept to leave.[357] The execution of precept to leave Estonia should be stopped automatically when the application has been appealed, otherwise country loses legal certainty that it doesn't violate the principle of *non- refoulment.* It is possible that the court satisfies the complaint and protection must be provided. If this person has been deported meantime, Estonia infringes the obligation to provide international protection to certain groups of people.

Part 3 of chapter 2 of Aliens Act is about residence and work permits, according to article 38, a residence permit for a refugee shall be issued with a period of validity for three years and for the person in need of subsidiary protection for one year. In Refugees Act the period was up to two years and subsidiary protection was not regulated at all.[358] The Migration Board may extend a residence permit if the circumstances due to which the residence permit was issued have not ceased to exist and no circumstance exists which constitutes the basis for revocation thereof.[359] The decision to refuse issue of a residence permit and a precept to leave Estonia issued thereby may be contested with an Administrative Court within ten days after the date of adoption of the decision. Ten days is too short period of time to appeal. Unfortunately the authors of the Aliens Act have not taken into account the recommendations made by Estonian NGOs dealing with refugees in legal matters.[360] It was strongly suggested that the time limit would be thirty days, like in Finland which has been an example in creating this particular Act.
In its second and third report on Estonia[361] ECRI expressed its concern on the wide authorities of boarder guards who are authorized to review and reject asylum claims.

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[356] The Refugee Advice Center in Finland, Asylum Procedure Diagrams, available at http://www.pakolaisneuvonta.fi/?lid=54&lang=eng last visited 19.05.2006
[357] Aliens Act, Art.3 (2)
[358] Refugees Act, , RT I 97, 19, 306 Art.15; 18.02.1997
[359] Välismaalasele Rahvusvahelise Kaitse Andmise Seadus, RTI, 05.01.2006, 2, 3 Art.39 available at https://www.riigiteataja.ee/ert/act.jsp?id=974633; 16.05.2006
[360] Recommendation made by Estonian Refugee Council and LICHR
[361] ECRI, Third Report on Estonia 2006 available at http://www.coe.int/t/e/human_rights/ecri/1-ecri/2-country-by country_approach/Estonia/Estonia_CBC_3.asp#TopOfPage ;09.05.2006 and ECRI, Second Report on Estonia 2002 available at http://www.coe.int/t/e/human_rights/ecri/5-archives/1-ecri%27s_work/5-CBC_Second_reports/PDF_CBC2-Estonia.pdf ; 09.05.2006

Border guards' decisions to reject asylum claims result the asylum seekers' immediate removal from Estonian territory without the possibility of lodging an appeal. Aliens Act provides that border guards only involve the Migration Board in the actual review of the claim when it is "necessary".[362] However, the Act does not determine their powers therefore it would be important to create a regulation to limit and specify the powers of border guards. Migration Board should review all the applications and make sure that the applicant will be heard and he or she would be able to file an appeal before an appeals court. Furthermore, border guards lack special training in this specific field and guidelines i.e. how to determine safe third country.[363]

§ 16 of the Act give specifications of acts when application for asylum is submitted at the border. According to that article the border guard authority shall immediately inform the corresponding official of the Citizenship and Migration Board of the submission of an application for asylum and where necessary, involve a competent official of the Citizenship and Migration Board in the procedure. It is not clearly stated that in case of nonadmission to the asylum procedure at the border, the Border Guards make a decision together with CMB. The grounds for rejecting application on the border are limited with grounds ratified in the article 16 (2) of the new law.

Location of the reception centre

The location of the reception centre in Illuka is about 220 km from Tallinn. The nearest town is located 50 km from the centre where also the nearest school is. The reception centre has problems with finding specially trained teachers, to teach children and Estonian language. The Migration Board, Administrative Court and all the other necessary procedures must be taken care of in Tallinn. Area, where the reception centre is located has mainly Russian speaking population and most probably by staying there and communicating with local people, one learns Russian instead of Estonian language, which might lead to integration problems and possibly not finding work in Estonia. Due to these facts the work of this centre is time demanding, inefficient and expensive and in the future, when building such reception centres, better location should be taken into consideration.

[362] Välismaalasele Rahvusvahelise Kaitse Andmise Seadus, RTI, 05.01.2006, 2, 3 Art.16 (1) available at https://www.riigiteataja.ee/ert/act.jsp?id=974633 ;16.05.2006

[363] Fact based on interview with a lawyer dealing with refugee issues in Estonia

QUESTIONNAIRE FOR THE NATIONAL REPORT ON THE IMPLEMENTATION OF THE DIRECTIVE : RECEPTION CONDITIONS OF 27 JANUARY 2003

IN: FINLAND

by
Kristina Stenman
LL.M, researcher
krstenma@abo.fi

5 June 2007

1. NORMS OF TRANSPOSITION

Q.1. Identify the main norm of transposition (indicate the title, date, number, date of entry into force and references of publication into the official journal) and indicate its legal nature (legislative, regulatory, administrative); indicate in your answer if this norm was only devoted to the directive or if it has been included in a more general text and indicate in that case by quoting precisely the numbers of the provisions adopted to transpose the directive.

Note on the technique on indications of the norms: the date is the date of publication in the offical journal (Suomen säädöskokoelma), and the number is the number of the norm in the official journal

The main norm of transposition is Laki maahanmuuttajien kotouttamisesta ja turvapaikanhakijoiden vastaanotosta (Act on the integration of immigrants and reception of asylum seekers; hereafter, Integration Act) 9.4.1999/493, as amended by Act 27.5.2005/362, and Act 29.12.2005/1215 (also amended by Act 118/2002, 1292/2002 and 649/2004). This is a legislative norm, which was enacted some years before the Directive, but still forms the basis for the transpositions, with the changes introduced in 2005.

The original Act:
http://www.finlex.fi/fi/laki/alkup/1999/19990493

The amendments based on the Directive in 2005:
http://www.finlex.fi/fi/laki/alkup/2005/20050362

Unofficial English translation of the Act from 1999:
http://www.finlex.fi/pdf/saadkaan/E9990493.PDF

Q.2. List by order of importance by using numbers (1, 2, 3) the others norms of transposition if there are more than one (indicate for each norm the title, date, number and references of publication into the official journal; include in your answer the administrative measures taken to ensure implementation of the directive and of the transposition norms like regulations, administrative circulars, special instructions,…)

- Put as an annex to your report a paper copy of each norm in the original language with a reference number to help the reader to find it easily;
- Send us as an electronic version of each norm or a weblink to the text (this will be used for the website we are building);
- Provide the texts of any translation of the above norms into English if they are available.

1. Ulkomaalaislaki (Aliens Act) 30.4.2004/301
   http://www.finlex.fi/fi/laki/alkup/2004/20040301

   English translation (unofficial ; contains changes up to Act 653/2004, July 2004) :
   http://www.finlex.fi/en/laki/kaannokset/2004/en20040301.pdf

2. Laki ulkomaalaislain muuttamiseksi – Amendment Act to the Aliens Act 8.12.2006/1158
   http://www.finlex.fi/fi/laki/alkup/2006/20061158

3. Asetus maahanmuuttajien kotouttamisesta ja turvapaikanhakijioiden vastaanotosta (Decree on the integration of immigrants and reception of asylum seekers) 22.4.1999/511, as amended by Decrees 21.2.2002/156 , 2.6.2005/372 and 20.4.2006/280
   http://www.finlex.fi/fi/laki/ajantasa/1999/19990511

4. Valtioneuvoston asetus pakolaisista ja eräistä muista maahanmuuttajista sekä turvapaikanhakijoiden vastaanoton järjestämisestä aiheutuvien kustannusten korvaamisesta (Decree on the compensation of costs for the arranging of reception of refugees and certain other immigrants and asylum seekers), 21.4.1999/512, as amended by Decree 1108/1999, 940/2001, 196/2002, 664/2004, 373/2005

5. Työministeriön asetus turvapaikanhakijoiden ja tilapäistä suojelua saavien ryhmäkodista, toimeentulotuen jakamisesta rahamääräisestä ja hyödykkeinä annettavaan osaan sekä majoituksesta perittävistä

maksuista (Ministry of Labour Decree on group homes, the dividing of the social assistance into parts constituting monetary benefits and benefits in kind, and fees charged for housing) 6.6.2005/389

http://www.finlex.fi/fi/laki/alkup/2005/20050389

6. Laki säilöön otettujen ulkomaalaisten kohtelusta ja säilöönottoyksiköstä (Act on the treatment of detained aliens and the detention unit ; hereafter Detention Act) 15.2.2002/116 , amended by act 13.6.2003/533
http://www.finlex.fi/fi/laki/ajantasa/2002/20020116 ;

7. Laki toimeentulotuesta (Act on Social Assistance) 30.12.1997/1412, amended by Acts 22.9.2000/815, 3.11.2000/923, 2.3.2001/191, 21.12.2001/1410, 28.1.2005/49

http://www.finlex.fi/fi/laki/ajantasa/1997/19971412

8. Laki ulkomaalaisrekisteristä - Act on the Register of Aliens (19.12.1997/1270)

http://www.finlex.fi/fi/laki/ajantasa/1997/19971270

9. Laki ulkomaalaisrekisteristä annetun lain muuttamisesta – Amendment Act to the Act on the Register of Aliens 8.12.2006/1159
http://www.finlex.fi/fi/laki/alkup/2006/20061159

10. Perusopetuslaki - Basic Education Act (21.8.1998/628)
http://www.finlex.fi/fi/laki/ajantasa/1998/19980628?search%5Btype%5D=pika&search%5Bpika%5D=perusopetuslak%2A

Inofficial English translation, with amendments up to Act 1136/2004:
http://www.finlex.fi/en/laki/kaannokset/1998/en19980628.pdf

Q.3. Explain which level of government is competent to adopt the legal norms on reception conditions for asylum seekers (specify in particular in case of a federal or regional State, if it is the federal/central power or the components; in case, specify below when it is impossible for you to answer a question because it is about the competence of the components and it is impossible for you to gather reliable information about all of them)

In Finland, which is a unitary state, it is primarily Parliament (eduskunta, riksdagen) which is competent to adopt the legal norms on reception conditions. The Constitution (Section 80) requires that all norms that

regulate the principles governing the rights and obligations of individuals (including foreigners) must be enacted at the hierarchical level of an Act of Parliament. The Government and individual ministries, in this case the Ministry of Labour, can issue decrees, which are legal norms, related to the reception conditions.

However, the self-governing Åland Islands exercise legislative authority in respect of matters enumerated in the Act on Self-Governance of Åland (1144/1991 – Självstyrelselag för Åland), section 18.Legislative powers in these areas are held by the Åland Parliament. Legislation can ia. be enacted in the field of education and social security and healthcare. No reception centres for asylum-seekers are located in the Åland Islands.

Q.4. Explain the legal technical choices done to transpose the directive (comment on the nature and level of the norms used to do the transposition: legislative, regulatory, administrative like instructions, etc). Add any other element about the technique of transposition of the directive which is interesting for the implementation of Community law.

In principle, the whole directive has been transposed by a legislative norm (Act of Parliament), although some specifications to the Directive have been made by Government Decree. There are also some specifications in a Ministry of Labour Decree, and in circulars issued by that Ministry.

Q.5. Mention if there is a general tendency to just copy the provisions of the directive into national legislation without redrafting or adaptation them to national circumstances? If yes, give some of the worst examples and explain if there is a risk that those provisions remain unapplied or will create difficulties of implementation in the future.

Since the main legislation concerning the remit of directive was in place already before, the transposition meant rather an adjustment and to some extent inclusion of new elements into the main instrument of transposition.

Q.6. Have all the texts necessary to ensure the effective implementation of the new rules of transposition been adopted, prepared or at least foreseen in the future (for example a regulation completing a new law and the necessary instructions telling the administration how to apply the new rules)?

Yes, for the most part. There is, however, a problem concerning the right to education for children, where clear norms on the right of children seeking asylum to access to education should be included, although this right is enshrined in the Constitution concerning primary education (9 years of school).

2. BIBLIOGRAPHY

Q.7. Has an in-depth preparatory study been made public about the changes at the occasion of the transposition? If yes, thanks for trying to provide us a copy *(please contact to answer this question adequately the body and person who was responsible for the preparation of the transposition of the directive in the public administration).*

A working group appointed by the Ministry of Labour prepared the Bill for the amendments to the Integration Act. The Government Bill 280/2004 for the amendments to the Integration Act also contains a detailed analysis of the reception conditions in relation to the Directive.

Q.8. Quote any recent scientific book or article published about the directive, the transposition rules or the question of reception conditions for asylum seekers in general (answer even if this literature is only available in your language and provide the complete title in your language (without translation) with all references; indicate author, title, in case name of periodical, year and place of publication).

There are no recent scientific books or articles relating directly to the implementation directive. There is, however, a study on reception conditions: "Muutos on pysyvä olotila. Turvapaikanhakijoiden vastaanottona järjestettävät palvelut ja niiden järjestämisestä aiheutuvat kustannukset" ("Change is a permanent state – Services provided at the reception of asylum seekers and the costs incurred") published in the series Työpoliittinen tutkimus 292/2005 (available at http://www.mol.fi/mol/fi/99_pdf/fi/06_tyoministerio/06_julkaisut/06_tutkimus/tpt292.pdf) .

There is also a Government Report on the implementation of the Integration Act to Parliament from 2003 (Government Report 5/2002; Ministry of Labour publication 317/2003; http://www.mol.fi/mol/en/99_pdf/en/90_publications/thj317.pdf), which covers much of the remit of the Directive.

Q.9. Quote any interesting decision of jurisprudence based on the implementation of the new rules of transposition of the directive (indicate references of publication if any)?

There is not yet any jurisprudence.

3. GENERAL INFORMATION ABOUT THE SYSTEM OF RECEPTION CONDITIONS

The purpose of the following two questions is to help the reader to understand easily and quickly the system of reception conditions in your Member State and also to avoid that you have to repeat general elements in other parts of the questionnaire. ***Please do not write more than one or maximum two pages and do not include large historical developments.***

Q.10. Describe in general the system of reception conditions in your Member State (in particular which are the main actors in charge of reception conditions?)

Reception of asylum seekers is centrally the responsibility of the Ministry of Labour. It has concluded contracts with administrators of reception centres, which are dispersed all over the country, in 14 municipalities, altogether 14 centres, out of which 2 are in Helsinki. 2 are maintained by the State, 10 by municipalities, and 2 by the Finnish Red Cross.

An asylum-seeker´s right to reception condition starts when an asylum application is lodged. The application is lodged at the border posts to the Frontier Guard or the police, and inside the country at local police stations. The receiving authority will be in contact with the nearest reception centre, which takes initial responsibility for the asylum-seeker. There are a few reception centres which are designated as so-called transit centres, where the intention is that asylum-seekers stay until they have had their asylum-interview. Partly, asylum-seekers are transferred there upon arrival, but also on the basis of availability of places in reception centres.

All asylum-seekers are registered in a reception centre, apart from those who are placed in detention upon arrival. In principle, detainees should within a short period be transferred to a closed reception centre, if the detention continues. He is then registered in the closed centre.

The reception centres provide housing, medical care, the services of a social worker, primary school for children, and language training and activities for the adults, and social assistance.

Housing is provided either in dormitory-like conditions or in municipal rental apartments. All services are free of charge, unless it is deemed that the asylum-seeker has own means to pay. In this case, a reasonable fee can be charged, the rate of which may not exceed the cost of producing the service. The social assistance, provided on the basis of assessed needs, is

somewhat lower of the minimum social assistance, and based on a set amount of deductions, inter alia, since housing and other services are provided to asylum-seekers.

Unaccompanied minors applying for asylum are placed in special group homes, and sometimes with adult relatives. Each child is assigned a representative as soon as possible after the arrival.

Q.11. **Q 11.A. Explain if you have <u>different types and levels of reception conditions following the different stages of the asylum procedure</u> (this implies that you have to give briefly the necessary explanations about the asylum procedure). Make if relevant for reception conditions a distinction between the following procedural stages: determination of the responsible Member State on the basis of the Dublin II regulation, special procedures at the border (including transit zones in airports), accelerated procedures, admissibility procedures, eligibility procedures and the different possibilities of appeals (suspensive or not) against a refusal of the asylum request. Indicate what the main differences of reception conditions are between the different stages (if necessary by detailing between the different elements of reception conditions, in particular housing) and explain what the evolution of reception conditions is following the different stages of the procedure.**

The reception conditions are basically uniform for all stages of the asylum procedures. However, in situations of mass influx, there are provisions in the law (Integration Act 493/1999, as amended by Act 118/2002, Section 19b) which allow for the creation of organising centres (järjestelykeskus), where asylum-seekers stay for a brief, initial period. In these, reception conditions may be provided in kind. This possibility has not been resorted to in practice.

The police runs a EURODAC check on all asylum-seekers, and if there is a EURODAC hit, the reception centre is informed. If the asylum-seeker is usually housed in a transit centre, s/he will usually remain there up to the time when it is determined in an admissibility procedure whether s/he will be transferred to another Member State.

Q.11.B Indicate precisely for which stage(s) of the asylum procedure the answers on reception conditions you give below are valid.

The answers below are valid for all the stages of the procedure, unless indicated otherwise. Reception conditions are maintained up to the point when an asylum-seeker gets a residence permit or leaves the country, i.e. also during appeals procedures.

4. GENERAL RULES ON RECEPTION CONDITIONS

Q.12. **Q.12.A. Are material reception conditions provided in kind, in money or in vouchers or in a combination of these elements (see article 13, §5 which is an optional provision)? Distinguish between the different elements (housing, food, clothes, health, transportation, pocket money,…). If reception conditions are provided in money (in general or in some cases, for instance when no places are anymore available in accommodation centres), indicate the precise amount given to the asylum seekers. Indicate in your answer what is provided in general and if there are exceptional cases.** Specify in your answer if reception conditions are different from the general system of social aid for nationals or aliens and if yes, if and when (which stage of the asylum procedure) can asylum seekers have access to the general system of social aid?

In national law, the basis for the reception conditions is in Section 19(1) of the Constitution (perustuslaki, 731/1999), which states that everyone who is not able to acquire the security that is necessary for a life in dignity has the right to necessary subsistence and care.

This right is the basis for the reception conditions. In practice, it is considered that a minimum level of subsistence, including food, emergency housing, and emergency health care is the minimum that has to be provided to any person who is in Finland. For more extensive social services and aid, as well as health care and social insurance, the basis is residence in Finland for at least one year.

The contents of reception conditions are specified in Section 19 of the Integration Act (493/1999, amended 362/2005). In this Section, it is stated that reception conditions for asylum seekers contain housing, social assistance, necessary social and health services, interpretation and other means of securing basic needs. In addition, work and study activities may be organized. Housing shall be organized so that family members can reside together. The special needs of asylum seekers due to their age, vulnerable situation or physical or mental condition must be taken into account in arranging housing and other reception conditions. In the reception, the best interest of the child must be taken into account. A child who is in need of special support, must be provided with appropriate counseling and support, and appropriate mental health care.

The reception conditions are provided as a combination of money and in kind. The reception conditions are based on that the asylum-seekers receive social assistance, from which certain deductions are made for reception conditions given in kind, on the basis of the Ministry of Labour Decree 389/2005 (Työministeriön asetus turvapaikanhakijoiden ja

tilapäistä suojelua saavien ryhmäkodista, toimeentulotuen jakamisesta rahamääräisestä ja hyödykkeinä annettavaan osaan sekä majoituksesta perittävistä maksuista).

According to the Decree, section 2, asylum seekers receive the basic part of the normal social assistance, but with a deduction of 5 % as for housing in a reception centre. According to information from the Ministry of Labour, this deduction is no longer made as of September 2006.

In addition, a deduction by 10 % for adults and 15 % for children is made for other reception conditions offered in kind.

The same deductions are made for persons who do not live in a reception centre as compensation for that they have the possibility to housing and the other reception conditions in a reception centre.

The allowance is to cover the normal living expenditures, apart from housing, that is, clothing, food, and other miscellaneous costs. Housing is provided in a reception centre. Services, which are usually made available by municipalities free of cost or at very low cost to residents are organised free of charge also for asylum-seekers, i.e. mainly social counselling and emergency health care, and mandatory activity programmes. There is usually one or two nurses and a social worker hired by the reception centre. Education is provided to children through the public school system, and language and other courses for adult asylum seekers are arranged by the reception centres.

The subsistence allowance is granted separately for each person in a household, and there is a calculated amount for different categories, i.e. adults, spouses, adult children living with parents, children aged 10-17 and children aged 0-10. A chart of the level of social assistance for asylum-seekers compared to the general social assistance is found below (table 1). Social assistance also varies slightly depending on if an asylum-seeker is housed in a municipality which by the State is designated as a category I municipality, where living costs are slightly higher, or a category II municipality, usually outside the larger cities, where living costs are slightly lower.

Q.12.B. Can the reception conditions in kind, money or vouchers be considered as <u>sufficient</u> "to ensure a standard of living adequate for the health of applicants and capable of ensuring their subsistence" as requested by article 13, §2 of the directive (which is a mandatory provision but leaves a certain space to Member States)? In order to help to assess the respect of this rule when reception conditions are provided in money, include if necessary in your answer points of

comparison with the minimum amount of social aid guaranteed for nationals in your Member State.

The reception conditions can be said to be at a minimum level to sufficiently ensure the subsistence of asylum-seekers, given that they take benefit of the housing provided in kind.

Recipient	
	EUR/month
General level of social assistance in Finland	389,37
Asylum seeker´s social assistance,-15 %	**330,96**
Asylum seeker´s social assistance reduced –20 % because of refusal to participate in work/study activities These amounts are paid by default but as social assistance is needs-based there is a right to higher payments if the beneficiary's individual needs so require.	**264,77**

Table 1. Levels of minimum social assistance as of 1.1.2007; category 1 municipality.

5. PROCEDURAL ASPECTS

Q.13.

Q. 13.A. Does the national legislation specifically provide that a request for international protection is presumed to be under the Geneva Convention unless explicitly requested otherwise? (see article 2, b which is a mandatory provision)

According to the Integration Act, section 2, para. 1, point 3, and asylum seeker is a person who has applied for international protection in accordance with the Aliens Act (ulkomaalaislaki, 301/2004). Applications for international protection under the Aliens Act include:

1. applications for asylum in accordance with Section 87 of the Aliens ´ Act;
2. applications for a residence permit due to need of protection in accordance with Article 88 of the Aliens´ Act .

In the Aliens Act, section 94, an asylum application and its scope are defined, including the presumption of an asylum application:

Section 94 – *Asylum procedure*
(1) An application based on a need for international protection which is filed with the authorities at the Finnish border or on Finnish territory is processed in the asylum procedure.
(2) An alien who refers to his or her endangered human rights is considered to be applying for asylum unless he or she specifically states otherwise.

(3) Granting the right of residence is also investigated and decided on other emerging grounds in conjunction with the asylum procedures

In principle, an application for protection is possible to lodge also only on the basis of Article 88 of the Aliens´ Act. However, the presumption in the practice of the authorities is that an application covers both an application for asylum according to Article 87 of the Aliens´ Act and an application for a residence permit due to need of protection in accordance with Article 88 of the Aliens´ Act. Applications for both statuses are dealt with uniformly in the same procedure, and reception conditions are uniform.

Q. 13.B. Explain if the scope of application of reception conditions is extended to other asylum seekers than refugees in the sense of the Geneva Convention, in particular to persons asking for subsidiary protection or to other forms of protection like humanitarian statuses (see article 3, § 4 which is an optional provision)? If not, explain briefly which the differences between these special regimes and the directive are.

Yes, reception conditions would also cover persons seeking international protection, more specifically, for those seeking a residence permit due to need of protection under Article 88 of the Aliens Act.

Q.13.C. Are there specific provisions in national law for reception conditions in case of diplomatic or territorial asylum requests submitted through a diplomatic or consular representation (see article 3, §2 which is an optional provision)?

No. The presumption in Sections 87, 88 and 94 in the Aliens Act is that international protection can only be sought at the Finnish border on Finnish territory.

Q.14. Are reception conditions available as from the moment one asylum application is introduced? How is article 13, §1 which is mandatory legally understood? Do asylum seekers have to satisfy any other condition in order to get reception conditions?

Reception conditions are available from the moment an asylum application is lodged. In some exceptional situations, it may have happened that asylum-seekers have received reception conditions, basically housing, even before their asylum application has been formally registered. This was the case in the early 1990s in some situations, when numbers of asylum-seekers unexpectedly rose quickly (although Finland has never had more than 4000 asylum-seekers in one year).

Q.15. Explain when reception conditions end, for instance after refusal of the asylum request (include in your answer the link with the right of appeal against a decision of refusal of the status, in particular the question of its suspensive effect)

According to the Integration Act, section 3, an asylum-seeker is within the scope of reception conditions until he is granted a residence permit or he has left the country. This means that reception conditions continue also after a final refusal of an asylum application, up to the point of departure from the country. Finland has adopted a system of single procedure, which means that all grounds

for an applicant's claim for international protection and other grounds for his or her residence in the country are examined in the same procedure. Under section 94(3) of the Aliens Act, the granting of the right of residence is also investigated and decided on other emerging grounds in conjunction with the asylum procedure. This means that a final refusal of an asylum application should be understood to include also the refusal of the applicant's residence in the country on other grounds. However, if it is clear that departure may be forthcoming soon, the social assistance may be paid out in amounts covering shorter periods of time, e.g. one week at a time.

Asylum seekers may also after they have been granted a residence permit receive reception conditions for asylum-seekers for a reasonable amount of time. It can take from some weeks up to some months before persons granted a status can be referred to a municipality to receive the conditions for the integration of refugees.

Q.16 **Are there special rules or practices regarding reception conditions in case of <u>successive applications</u> for asylum introduced by the same person?**

No. The Aliens Act foresees the possibility of successive applications, and reception conditions are applicable also to asylum seekers who have lodged successive applications.

Q.17 **I<u>nformation of asylum seekers about their rights and obligations in terms of reception conditions</u>, in particular about established benefits (see article 5 which is too large extend a mandatory provision; do not confuse this question with the information to be provided to asylum seekers about the asylum procedure):**

Q. 17.A. Are asylum seekers informed, and if yes about what precisely?

According to the Integration Act, section 19f, asylum seekers are to be informed as soon as possible and no later than 15 days after lodging an asylum application about the rights and obligations within the reception conditions, and about social and health services, in writing, and where appropriate, orally. The asylum seeker shall be informed as soon as possible about organisations and groups who provide legal assistance concerning reception conditions and the asylum procedures.

Q. 17.B. Is the information provided in <u>writing</u> or, when appropriate, orally?

There is a brochure concerning the reception conditions, which is available to the asylum seekers. Mainly, however, information is provided orally. The asylum seeker usually has an initial information meeting and interview with a social worker or other staff member in the reception centre within a few days after registration, where information is provided orally.

The asylum-seeker receives in writing the rules of the reception centre and is expected to sign on the rules.

Q.17.C. Is that information in general provided in a language understood by asylum seekers? Specify the list of languages in which it is available

The brochure is currently available in English, French, Arabic, Russian and Finnish. The rules for the reception centres are provided in most languages of asylum-seekers. Orally, information is as a rule presented via interpreters in a language understood by asylum seekers.

Q. 17. D. Is the deadline of maximum 15 days respected?

Yes.

Q.18. Information of asylum seekers about the existence of organisations or groups promoting their interest and defending their rights (see article 5 which is to a large extend a mandatory provision):

Q. 18. A. Is there a list of organisations dressed by the authorities and if yes is it comprehensive? Is this in particular the case about the possibilities to get legal assistance and health care?

Brochures of the Refugee Advice Centre, the NGO providing legal assistance concerning the asylum procedure is also distributed at border posts, police stations and reception centres. Information about the Refugee Advice Centre, and the contact information of the Finnish Red Cross are also included in the brochure with general information to asylum-seekers.

There is not a comprehensive list of NGOs. Often, there are local NGOs working with asylum-seekers, for which the reception centre would give contact information. These may include local Red Cross branches, local religious communities, or cultural organisations.

Q.18. B. Is the information provided to the asylum seekers, and if yes, in writing or, when appropriate, orally?

Concerning the local NGOs, information would mostly be oral.

Q. 18. C. Is that information in general provided in a language understood by asylum seekers? Specify if possible the list of languages in which it is available.

The oral information is provided via interpretation.

Q.18.D. How many organisations are active in that field in your Member State?

There are some 5-10 organisations active nationally in this field, and locally, usually some 5-10 local organisations or branches of national organisations cooperate with reception centres.

Q.19. Documentation of asylum seekers (see article 6):

Q. 19.A.What kind of document is delivered to the asylum seeker? Explain the legal value of this document (just a certification of the status as asylum seeker or also prove of identity?) (see §1 of article 6 which is a mandatory provision)

When an asylum application is lodged, the receiving authority usually seizes the travel documents of the applicant for the duration of the procedures. At this time, the applicant is issued with a certificate of the seizure of the document. However, this is not to be considered an identity document.

Section 96 (Card for an application process initiated in Finland) states as follows:

1. An alien who applies for international or temporary protection or who has entered Finland under the refugee quota may be issued with a card that shows that an application process concerning him or her has been initiated in Finland. The police or the Frontier Guard issue the card.
2. The card bears the applicant's name, date of birth, citizenship and photograph. If the applicant's identity has not been established, an entry about this is made in the card. The card is valid for a fixed term in Finland, but no longer than until a final decision on the matter has been made or the person has left the country or obtained a travel document.
3. An alien shall return the card when a final decision has been issued on his or her application or when he or she leaves the country or has obtained a travel document. When the validity of the card has expired, border check authorities, the police or the Directorate of Immigration may take possession of the card.

This provision would cover the document foreseen by the Art. 6 of the Directive. However, the issuance of such a card has not yet been put into practice.

The reception centre issues a resident card to its residents. This card has a picture of the card holder, and information about that s/he is a resident of a given reception centre. This is not, however, to be considered a proof of identity, or of the asylum seeker´s legal stay in Finland

Q.19.B. Are there situations or specific cases in which <u>another equivalent document or even no document</u> is issued? (in particular is there an exception for "procedures to decide on the right of the applicant legally to enter the territory" as made possible by §2 of article 6)?

The resident card is issued to all asylum-seekers who are registered in reception centres, but not those who are in the detention centre.

Q.19.C. <u>For how long</u> is this document in principle <u>valid</u> and is it necessary to renew it after a certain period?

The card is usually issued for 6 months at a time. The card is renewed by the reception centre, if the asylum seeker is still eligible for reception conditions at the time of expiry of the card.

Q. 19.D.What is the <u>deadline</u> for the delivery of that document? Is the mandatory deadline of 3 days set by article 6, §1 respected[364]?

Yes. The asylum-seeker needs the residence card in order to obtain his/her social assistance, and therefore, the card has to be issued quickly.

Q.19.E. Is it possible for an asylum seeker to get a <u>travel document</u> for serious humanitarian reasons (see §5 of article 6 which is an optional provision)?

The Aliens Act, section 134 , regulates the issuance of an alien´s passport. It can be issued to an alien who *is* in Finland and is unable to obtain a passport from his country of origin; the law does not require that the alien has a residence permit here. In practice,

[364] To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

however, it is extremely rare that asylum seekers would be able to receive a travel document.

Q.19.F Is there a central system of registration of asylum seekers and is it or not separate from the registration of aliens? If yes, describe it briefly (content) and indicate in particular if it is an electronic database.

Yes, there are two central systems for the registration of asylum seekers. Asylum seekers are registered in the Register on Aliens by the Directorate of Immigration, for the purposes of processing the asylum application. The Act on the Register of Aliens (1270/1997) includes provisions on the registration of foreigners (including asylum seekers) in Finland. Section 7 contains all the information which can be recorded in the Register of Aliens.

Section 3 of the Act provides that in addition to the Directorate of Immigration, the Frontier Guard and the local police, certain other authorities have access to the register (e.g. Ministry for Foreign Affairs, Ministry of Labour, Ombudsman for Minorities).

This system contains data on the asylum seeker´s identity, date of arrival, date of asylum application, family members, address in Finland and in home country, and information on the processing of the application, and other data, including eg. pending criminal cases. The border guards and local police also have access to this database.

For the purposes of the reception system, there is a special electronic database for the residents in reception centres. According to the Integration Act, section 37, the following information may be recorded and stored about asylum seekers and their family members:
1) information about identity, the client number given by the Directorate of Immigration, and information on place of birth and nationality;
2) information about language skills, training, professional capacity and work experience;
3) information about asylum applications and expulsion, necessary for the organising of reception;

1. 4) with the consent of the asylum seeker, information about his religious background and religious convictions.

Q.20. Residence of asylum seekers:

Q.20.A. Is in principle an asylum seeker free to move on the entire territory of your Member State or only to a limited part

of it and in case, which part? (see article 7, §1 which is a mandatory provision)

In principle, an asylum seeker is free to move within the entire territory of the State. Under section 9 (Freedom of movement) of the Finnish Constitution, Finnish citizens and foreigners legally resident in Finland have the right to freely move within the country and to choose their place of residence.

Only persons with the right of permanent domicile (hembygdsrätt, based on Självstyrelselag för Åland – Act on self-governance of Åland, 1144/1991, Sections 6-13) in the Åland Islands have the right to land ownership, and a free right to trading and enterprise. Permanent domicile can be acquired by Finnish citizens after five years residence in the Åland Islands.

Under section 41 of the Aliens Act, an alien residing legally in the country has the right to move freely in the country and choose his or her place of residence. Under section 40(3), an alien may reside legally in the country while his or her application is being processed until there is a final decision on the matter or an enforceable decision on his or her removal from the country.

However, an asylum seeker is obliged to inform the reception centre of changes of address and longer journeys in case the asylum-seeker is housed in and in need of reception conditions

Q.20.B. About the <u>place of residence (see §2 of article 7)</u>: explain to which extend the person is free to choose her residence and if this depends of the stage of the asylum procedure (for instance before and after admissibility); if there are constraints limiting the choice, explain which ones and their reasons (for instance processing of application, attribution of reception conditions,…).

Asylum seekers are assigned a place in a reception centre, and have limited possibilities to influence their place of reception. Initially, asylum seekers are ideally lodged fairly near one of the three offices of the Directorate of Immigration where asylum interviews are carried out (Helsinki, Lappeenranta, Kuhmo). However, they are free also to choose another place of residence, but will then have to make their own housing arrangements and cover the costs from their social assistance.

All asylum-seekers are, however, registered in a reception centre.

Q.20.C.About the <u>place of reception (meaning where the asylum seeker has to stay to benefit from reception conditions) (see § 4 of article 7)</u>: explain which are the general rules about the determination of this place (to which extent are the decisions determining the place taken individually and do they take into account the personal situation of the asylum seeker?) and to which extent the person is free to choose it and if it depends of the stage of the asylum procedure (for instance before and after admissibility); if there are constraints limiting the choice, explain which ones and their reasons (for instance attribution of reception conditions, processing of the application,…).

The place of reception is determined primarily on the basis of availability. According to the Integration Act Section 19 c, an asylum- seeker may be transferred from one reception centre to another on the basis of his or her own motivated wish, or because a transfer is needed because of the functioning of the reception centre or for the processing of an application.

Such a decision cannot, according to section 44 of the Integration Act, be appealed.

An asylum-seeker is registered in a reception centre, which is basically responsible according to the Integration Act section 19 c, subsection 2, for providing reception conditions. An asylum seeker may, according to subsection 3, arrange their own accommodation, but must inform the reception centre about his/her address in writing and show proof of the accommodation provided either by the person providing the accommodation, or through a written lease of accommodation.

Q.20.D. If all asylum seekers are not placed in accommodation centres because of capacity limits, explain <u>how the persons are distributed between accommodation centres and other accommodation facilities</u> (which authority takes the decisions, on the basis of which elements, can that decision be appealed by the asylum seeker,…)[365]

When an asylum-applicant lodges an application, the police or Border Guard refers her/him to the closest reception centre. If accommodation is not available there, the reception centre will transfer the applicant to another reception centre, firstly, on the basis of availability of space. Special considerations, e.g. family members already present in Finland, relatives, and special needs, will be taken into account also at this stage.

Q.20.E.How can an asylum seeker ask to <u>leave temporarily</u> the place of residence or of reception or an assigned area? How is

[365] To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

the individual AND impartial character of the decision ensured? (see §5 of article 7 which is a mandatory provision)

N/A. However, since asylum-seekers are obliged to participate in the work/study programmes of the reception centres, leaving the reception centre may de facto cause a reduction in the social assistance. Therefore, the asylum-seeker must obtain permission to be absent from the work/study programme for a certain period, in order for reception conditions not to be reduced (see Q. 21.A)

Q.21.

Q.21.A. Do rules on <u>reduction or withdrawal of reception conditions</u> exist in internal legislation and if yes in which cases (mention in particular if there are cases not foreseen by article 16, § 1 and 2 which are optional provisions)? Distinguish in your answer between cases of reduction and withdrawal and explain which conditions can be reduced and if access to emergency health care is always ensured as requested by article 16, §4, last sentence.

Yes. Rules on reduction or withdrawal of reception conditions exist in the Integration Act, section 22, subsection 4. It is basically only possible to withdraw a certain part of the social assistance, not other reception conditions.

There are two situations where the social assistance could be reduced: first, if an asylum seeker neglects to participate in work/study activities, and second, on the grounds of a needs assessment.

The grounds related to negligence are that a resident has repeatedly neglected to participate in the work and study programme of the reception centre. The withdrawal can be up to 20 %.

This provision is based on the Act on Social Assistance (laki toimeentulotuesta 1412/1997), section 10, subsections 1-3 where general grounds for a partial withdrawal of subsistence allowance up to 20 % are enumerated. These are related to an unjustified refusal either to accept work offered, or to participate in integration measures for immigrants, or rehabilitative work or activities. For asylum-seekers, this provisions relate to the work-study programme in the reception centre, for approximately ten hours per week. Asylum-seekers are not offered integration measures or rehabilitative work or activities.

The reductions can be made only if they do not jeopardize subsistence necessary for a dignified life and the reduction cannot otherwise be considered unreasonable. The reduction can be made at the most for two months at a time.

Also, the social assistance can be increased, reduced or withdrawn altogether on the basis of a needs assessment, in accordance with section 22.

Q.21.B.Has article 16, §2 dealing with refusal of reception conditions for unreasonably late applications for asylum been transposed by your Member State (or was this case already applicable before transposition)? Are there cases in practice[366]?

No, it has not been transposed.

Q.21.C. How is it ensured that decisions of reduction or withdrawal are taken individually, objectively AND in particular impartially (for instance through and independent arbitrator) (see article 16, §4 which is a mandatory provision)?

The decision concerning withdrawal must be made in accordance with the Act on Social Assistance, ie. the decision would be made by a qualified social worker, usually the person normally taking the decisions on the social assistance.

Q.21.D. Is statement 14/03 adopted by the Council at the same moment as the directive respected (see the documentation pack you received at our meeting in Brussels in April)?

Yes.

Q.21.E.Are there already administrative appeal decisions or judgements on cases of reduction, withdrawal or refusal which have been taken, and if yes, what has been the outcome[367]?

According to Administrative Courts, appeals have not been lodged.

Q.22. **Q.22.A. Appeal against a negative decision relating to the granting of benefits or based on article 7 (see article 21 which is a mandatory provision): indicate against which decision an appeal can be introduced, describe the system of appeal in general and include in particular in your answer the information given to asylum seekers about possibilities of appealing, deadline for appealing, if the appeal has or not a**

[366] To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.
[367] To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

suspensive effect, if there are different steps (for instance first an administrative appeal and in particular if the guarantee of an appeal before a judicial body in the last instance is respected)?

Decisions concerning the social assistance can appealed in accordance with section 24 of the Integration Act, to the local Administrative Court within whose jurisdiction the asylum seeker´s reception centre is located.

Q.22.B. Explain which are the possibilities for asylum seekers to benefit from <u>legal assistance</u> when they introduce such an appeal (see article 21, §2 which is a mandatory provision but leaves space to Member States)?

An asylum seeker may receive legal assistance for such an appeal on the basis of the general rules on legal aid laid down in the Act on Legal Aid (oikeusapulaki) 5.4.2002/257. Legal aid covered by the State can be granted to persons who need legal expertise and who due to their economic situation cannot cover the costs themselves (section 1, subsection 1). According to section 2, legal aid can be provided to any person who has a case pending in a Finnish court, or for other special reasons.

Hence, asylum-seekers would also be covered by this provision in the case of an appeal on the social assistance.

Q.22.C.Are there already administrative appeal decisions or judgements which have been taken and if yes, which are the main important ones[368]? -No.

Q.22.D. Is a mechanism of <u>complain for asylum seekers about quality of receptions conditions</u> in general (even if they are not personally concerned) organised? If yes, before which authority? Is it linked to the system of guidance, control and monitoring of reception conditions (see below question n° 39)?

Asylum-seekers may in principle launch complaints about reception conditions to the Employment and Economic Development Centres (Työvoima- ja elinkeinokeskus or TE-keskus), which make the contract for reception centres for the State. Also, complaints to the Ombudsman for Minorities are available to asylum-seekers, as well as the general system for complaints to the Ombudsman of the Parliament.

<u>6. RIGHTS AND OBLIGATIONS OF ASYLUM SEEKERS</u>

[368] To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

Q.23. **<u>Family unity</u> of asylum seekers: define how a family is defined in relation with article 2, (d) which is a mandatory provision and explain how housing is provided to a family (see articles 8 which is a mandatory provision but leaves space to member States and 14, §2, (a) which is a mandatory provision).**

Family members are defined in the Aliens´ Act, section 37, as:

(1) the spouse of a person residing in Finland, and unmarried children under 18 years of age whose parent or guardian the person residing in Finland is, are considered family members. If a person residing in Finland is a minor, his or her parent or guardian is considered a family member. A person of the same sex in a nationally registered partnership is also considered a family member.

(2) Persons living continuously in a marriage-like relationship within the same household regardless of their sex are comparable to a married couple. The requirement is that they have lived together for at least two years. This is not required if the persons have a child in their joint custody or if there is some other weighty reason for it.

However, for the purposes of reception conditions, persons living in a marriage-like relationship would not be required to formally show the length of their cohabitation in order to be counted as family members.

In the Integration Act (by Amendment Act 362/2005), Section 19, Subsection 2, it is stated that "Housing shall be organised so that family members can live together."

Q.24. A. How is <u>housing</u> of asylum seekers organised: describe the system in general and indicate in particular what is the most frequently system used (see article 14, §1 which is a mandatory provision but leaves space for Member States; distinguish between accommodation centres, private houses and apartments, hotels places or other premises).

In general, asylum-seekers are housed in reception centres, located in different parts of the country. Some of these centres are designated as transit centres for accommodation upon arrival, and located close to the offices of the Directorate of Immigration, where asylum interviews are held. Reception centres usually offer housing for single persons in double accommodation, and own rooms for families.

Q.24.B.What is the total number of available <u>places</u> for asylum seekers?[369] Distinguish in your answer between accommodation centres, private houses and apartments, hotels or other premises.

The total number of places is 1774 (figure checked on 15 May, 2007). They are divided as follows: 40 places in the closed reception centre/detention centre, 1579 in open reception centres, and 155 places in group homes for unaccompanied child asylum seekers.

Q.24.C.Is this number of places for asylum seekers <u>sufficient</u> in general or frequently insufficient?[370]

The number of places is generally sufficient.

Q.24.D.Are there <u>special measures foreseen in urgent cases</u> of a high number of news arrivals of asylum seekers (outside the case of application of the directive on temporary protection)?

Yes, there are emergency provisions in the Integration Law, and also a contingency plan for reception conditions in the case of a mass influx. The Ministry of Labour has a nation-wide contingency plan, the regional Employment and Economic Development Centres (Työvoima- ja elinkeinokeskus or TE-keskus)have a plan for their own region, and every reception centre has a local plan.

[369] To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.
[370] To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

The aim of the Ministry of Labour is that reception centres have a flexible amount of places that can be increased at short notice.

The Ministry of Labour seeks to have preparedness for emergency accommodation for 100.000 persons in cases of mass influx, and presently, some 50.000 places are identified.

Q.25. Accommodation centres **(important note: all the following questions are about open and not closed centres where asylum seekers are detained which are covered by another question)**

Q.25.A.Are there different categories of accommodation centres, for instance depending of the stage of the procedure (admissibility and eligibility)?

There are basically two different types of reception centres. Centres located near major ports of entry and/or near the offices of the Directorate of Immigration, which interviews asylum-seekers and takes the first-instance decisions, are designated as transfer centres, where asylum seekers may stay for the initial part of the procedure. This would usually cover the police interview concerning identity and travel route, and also sometimes the asylum interview carried out by the Directorate of Immigration.

Q.25.B. Is there a legal time limit for accommodation in a centre after which the asylum seekers have access to private houses or apartments or is this limit linked to a stage of the asylum procedure?

There is no general rule concerning access to private houses or apartments. This possibility is subject to availability in the municipality of the reception centre. Access to apartments has been available mainly in the reception centre in Oravainen.

Q.25.C. Is there a general regulation about the internal functioning of those centres and the rights and duties of the asylum seekers? If yes, is this general regulation applicable to public and private centres? If not, are the centres supposed to adopt an internal regulation and does a central authority have or not a kind of control about its content?

All reception centres have rules, which are based upon a template developed by the Ministry of Labour. All asylum seekers receive these rules in writing when they are registered in a reception centre.

Q.25.D.Do the regulations foresee the possibility of sanctions against asylum seekers in case of breach of the rules? (see

article 16, §3) If yes, which sanctions for which rules? Which is the competent authority to decide? How is it ensured that decisions are taken individually, objectively and in particular impartially (for instance through an independent arbitrator) as requested by §4 of article 21 which is mandatory provision? Which are the possibilities of appealing against those decisions if the system is different from the general one under question n°22? Are there already administrative appeal decisions or judgements which have been taken and if yes, which are the main important ones? [371]

There is a possibility for sanctions, namely the reduction of the social assistance, but this can only take place in the situation of neglect of participation in work/activity programmes..

Q.25.E. Are asylum seekers involved in the <u>management</u> of these centres? If yes, how (advisory board, appointment or election of representatives)? (see article 14, §6 which is an option provision)

There is no general rule concerning the involvement of asylum seekers in the management of the centres. However, in many reception centres, there are regular meetings between the staffs and the residents.

Q.25.F. Do <u>specific rules</u> exist on work of asylum seekers inside the accommodation centres different from the general ones about employment (see below)? If yes, which ones? Can working inside accommodation centres be considered as a (mandatory) contribution of the asylum seekers to the management of the centres, is it or not paid and considered as implying access to the labour market and subject to the same rules?

Yes. Asylum seekers generally are obliged to participate in educational and working programmes in the reception centres, which vary considerably in content and subject matters. Elementary language courses, workshops, computer workshops and various maintenance duties in the reception centres usually form the core of the programmes. One reception centre reported having 4 hours of mandatory work or physical activities per week, and 6 hours of language and other courses per week.

[371] To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

Q.26. **A. How can asylum seekers communicate with legal advisers, representatives of UNHCR and NGOs? (see article 14, §2, (b) which is a mandatory provision).**

Asylum seekers basically enjoy freedom of movement, and their right to private life is protected by the Constitution. Legal advisers have free access to reception centres, and in the system currently in place, the Refugee Advice Centre, an NGO, has the main responsibility to provide asylum-seekers with legal advice and assistance. However, the system for legal assistance for asylum seekers is in flux at the moment. Since 1991, the Refugee Advice Centre has been providing legal assistance to asylum-seekers on a contract basis with the Ministry of Labour. In 2004, the Ministry placed out a call for tenders for the legal services, but the process has been delayed, and presently, the Refugee Advice Centre is taking care of legal advice and assistance on the basis of hourly billing. A working group dealing with the legal advise also concluded its work in 2007, and the system for legal advise and assistance is hence under review.

Asylum seekers are allowed to travel to meet their legal adviser, and lawyers also visit reception centres.

Q.26.B. What are the rules about access of legal advisers, UNHCR and NGOs regarding access to accommodation centres and other housing facilities (see article 14, §7 which is a mandatory provision)

There is no clear legal provision providing for the access of UNHCR or legal advisers and NGOs, altough the practice is that the possibility to receive visitors is within the ambit of asylum-seekers´ right to private life, and their right according to the Aliens Act to have a legal adviser in the asylum procedure.

Most reception centres have a system of visitors announcing themselves, and this would also mean that legal advisers or NGOs would report their arrival to the staff. Otherwise, access of legal advisers UNHCR or NGOs would not be limited.

Q.26.C. Can the access of legal advisers, UNHCR and NGOs be limited for security reasons or any other reason (see article 14, §7, last sentence)?

There is no legal basis for any such restrictions. According to reception centres, it is difficult to foresee a situation where a legal adviser or UNCHR could be limited. For instance concerning religious communities, their entry to public areas or residents´ rooms is subject to the residents´ own wishes.

Q.27. **A. Is a medical screening organised by the receiving State, is it mandatory or voluntary? Does it include HIV tests? (see article 9 which is an optional provision)**

Yes, a medical screening is organized, and it includes an interview with a nurse, HIV testing and tests for some other communicable diseases, namely tuberculosis and hepatitis. The medical screening is voluntary, unless special national health concerns would warrant testing.

Mandatory testing can be introduced on the basis of the Communicable Diseases Act (tartuntatautilaki, 25.7.1986/583), Section 13. Decisions about such mandatory testing is taken by the State Provincial Office (lääninhallitus) in a particular municipality, The relevant State Provincial Office may order persons in a specific locality or workplace, institution, vehicle or other such location within the province to undergo a compulsory physical examination if necessary to prevent the spread of a generally hazardous communicable disease.

Generally hazardous communicable diseases are to be decided by Government Decree, according to Section 4, subsection 4 of the Communicable Diseases Act, as amended by Act 14.11.2003/935.

Q.27.B. Do the legal provisions on reception conditions ensure that asylum seekers receive at least emergency care and essential treatment of illness as requested by article 15 §1 which is a mandatory provision? Do they have a further access to health care?

Asylum seekers are entitled to emergency care and essential treatment of illness according to Section 19 of the Act on Integration and Section 19.1 of the Constitution. The constitutional clause creates a constitutional right of everyone to necessary care. The wording of the Act on Integration is that necessary health care shall be organized as part of the reception conditions. The exact content of the necessary health care is in part determined on a case-by-case basis, but always includes a health screening, emergency care including acute surgery, maternal health care, deliveries, and infant health care including innoculations.

Q.27.C. What is the practice regarding access of asylum seekers to health care and how is it organised? In particular, what is the situation in accommodation centres (are doctors

coming to the centres or do asylum seekers go to doctors outside)?[372]

The usual way of organising health care is that there is 1-2 nurses employed by the reception centres, and a doctor is hired on a consultation basis and comes in to examine patients at regular intervals. In emergency situations and sudden illness, asylum-seekers are entitled to use the emergency rooms of local health care stations or hospitals.

Q.28. **A. What is the length of the period determined by the concerned Member State during which asylum seekers have no access to the labour market? (see article 11 which is a mandatory provision)**

3 months after lodging of the asylum claim.

Q.28.B. After that period, are asylum seekers or not obliged to obtain a work permit? In case is there a limit for the administration to deliver the permits and how quick are they delivered? What is their length?

According to the Aliens´ Act, section 81, subsection 1, point 5, persons who have sought international protection in Finland have the right to work after 3 months´ stay in Finland. This right to work is valid until the asylum seeker has reached a final decision for his application. No specific decision concerning the right to work is issued.

Q.28.C.After that period, what are the conditions for access of the asylum seekers to the labour market? (in particular, are there rules concerning the maximum allowed of working hours or days per week, month or year, limits in terms of type of work or of professions authorised?

Asylum seekers are subject to the normal limitations in labour law eg. on working hours, regulations concerning overtime, etc. The general limitations for professions where a particular examination or competency is required, eg. particularly in the field of social welfare and health care, are also applicable to asylum-seekers.

Q.28.D. What are the rules in terms of priorities between asylum seekers on the one hand and nationals, EU or EEE citizens and legally third-country nationals on the other?

[372] To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

Asylum seekers are not subject to any prioritisation.

Q.28.E.Do asylum seekers have access to vocational training, does this or not depend of their right to access to the labour market, and in case at which conditions? (see article 12 which is optional regarding §1 and mandatory regarding § 2)

Asylum seekers may have access to vocational training, but there is local variation, and access is dependant upon the discretion of the school.

Q.28.F. Are the rules regarding access to the labour market adopted to transpose the directive more or less generous than the ones applicable previously?

They are the same as before.

Q.29. Are reception conditions subject to the fact that asylum seekers do not have sufficient resources? Are asylum seekers requested to contribute to reception conditions when they have personal resources (for instance if they work) or to refund the authorities if it appears that they have resources? (see article 13 §§ 3 and 4 which are optional provisions)

All asylum-seekers are entitled to the services included in the reception conditions, but the social assistance is based on needs assessment. Decree 389/2005 also provides for the possibility to charge an asylum-seeker who is not in need of social assistance a fee for housing of a maximum of 5 euros/day, and 0,70 euros/day for other reception conditions.

7. SPECIAL NEEDS OF PARTICULAR CATEGORIES OF ASYLUM SEEKERS

Q.30. **Q.30.A. Which of the different categories of persons with special needs considered in the directive are taken into account in the national legislation (see article 17, §1 which is a mandatory provision): disabled people, elderly people, pregnant women, single parents with minor children, persons who have been tortured, raped or victims of serious physical or psychological violence? Include in your answer all other categories envisaged in national law.**

According to section 19, subsection 3 of the Integration Act, special needs on account of age, a vulnerable situation, the physical or mental condition of the asylum seeker shall be taken into account in the housing and other provision of reception conditions.
In practical terms, this would mean that the situation of single caretakers, pregnant women, families, disabled persons, and victims of torture and ill-treatment would be taken specially into account.
For reception of unaccompanied minors, there are special provisions and procedures (see below).

Q.30.B. How is their specific situation taken into account (see articles 13, §2, second indent, 16 §4 second sentence and 17 which are mandatory provisions)?

For vulnerable groups, special care would be taken eg. in providing suitable housing for disabled persons or pregnant women, providing mental health care services to victims of torture, and also some special services eg. for disabled persons.

Q.30.C. How and when are the special needs of the concerned persons supposed to be legally identified (see article 17 § 2 which is a mandatory provision and clarify how it has been interpreted by transposition)?

The individual determination of special needs is done in the initial interview carried out by a social worker in the reception centre, and in the health screening.

Q.30.D. Is the necessary medical and other assistance provided to persons with special needs as requested by article 15, §2 which is a mandatory provision and in particular to victims of torture and violence as requested by article 20 which is a mandatory provision?

There is a Centre for the rehabilitation of torture victims (Kidutettujen kuntoutuskeskus), which has clinics in Helsinki and Oulu, which provides therapy and rehabilitation also for asylum-seekers who are victims of torture. These centres are funded mainly through the income from the national slot-machine association (Raha-automaattiyhdistys), which has a gambling monopoly in Finland, and the procedes of which are managed by the Ministry of Social Welfare and Health. The procedes are distributed by decision of the Government. It is, hence, funding totally in the control of the Government, and is provided to a large number of organisations in the field of social welfare and health. Asylum-seekers can and are referred to this centre by reception centre nurses or doctors, but due to limits in capacity, waiting periods can be long.

In many cases, victims of torture will be referred to local mental health care services, the availability of which, however, varies in different parts of the country. In some cases, asylum-seekers may also be referred to private psychiatrists or therapists.

Concerning other categories of asylum-seekers with special needs, necessary medical and other assistance, on the basis of an assessment of the acute situation, is provided. However, the issue of what is necessary health care is to a large extent made as a medical assessment by the medical staff (nurses, doctors) at the reception centres, and no detailed guidelines in this respect exist. Concerning pregnant women, access to health care, also preventive maternity care, is on an equal basis as for women residing in Finland. Similarly, natal and postnatal care for women and for their children is given equally as to residents.

For other categories, eg. elderly persons and persons with disabilities or chronic diseases, placement in reception centres is carried out so as to allow for necessary treatment and care. However, more longterm rehabilitation will often not be available.

Q.31. **About minors:**

Q.31.A. Till which age are asylum seekers considered to be minor?

Until they turn 18 years.

Q.31.B. How is access of minor asylum seekers to the education system ensured? Is it at school or in case inside accommodation centres and can it be considered as similar to the conditions for nationals as requested by article 10, §1?

Asylum seeker children in principle have access to education on the same basis as nationals. Access to free primary education (9 years) is granted in the Constitution, section 16, subsection 1. However, there have in the past been some problems relating to the access to education. The legislation is unclear on this point, since according to the Act on Primary Education (perusopetuslaki, 21.8.1998/628), Section 4, municipalities are under the obligation to provide primary education to children who are of the age for which attending schooling is compulsory,

residing **in the municipality. This would normally mean persons who have residence in a municipality based on a residence permit of at least one year.**

Further, in Section 25 of the Act on Primary Education it is stipulated that:

1. Children permanently residing in Finland shall attend compulsory schooling. Compulsory schooling shall start in the year during which the child turns seven.Compulsory schooling shall end when the basic education syllabus has been completed or ten years after the beginning of compulsory schooling.
2. If, owing to the child's disability or illness, the objectives set for basic education cannot be achieved in nine years, compulsory schooling shall begin one year earlier than provided in subsection 1 and be 11 years in duration.

Since asylum-seeker children are not considered to be residing permanently in a municipality, they are not either considered to fall under the obligation of compulsory attendance in schooling, and therefore, the municipality´s obligation to provide schooling is not clear in the law. Nor is there a clearly stipulated time in the law for when asylum-seeker children´s schooling should begin, as stipulated in Article 10(1) of the Directive.

However, in practice and in most cases, asylum seeker children have access to municipal primary schools. In most cases, asylum seeker children also continue their education in secondary education, although the unclear legislative situation also pertains to them.

The same problem pertains to primary education in the self-governing Åland Islands. The Act on Primary Education of Åland contains the same problematic provisions as the national law. However, since there are no reception centres in Åland, this issue has not materialized in this area.

Q.31.C. Is access to education ensured <u>not later than 3 months</u> as requested by article 10, §2 (or after maximum one year if specific education for asylum seekers is provided) and till an expulsion decision is really <u>enforced</u>?

Yes, in practice in most cases, although there is not clear time limit in the law for when schooling of asylum-seeker children should begin. However, in detention, there is no access to education, so if a child were to be detained for more than three months, this would raise a problem with respect to Article 10 § 2.

The issue of school for asylum-seeker children has been raised by the Ombudsman on Minorities with the European Commission.

Q.31.D. Is specific education (like language classes) available for asylum seekers, in particular to facilitate their effective access to the education system of the reception Member State (see article 10, §2 which is an optional provision)?

Children with immigrant backgrounds are usually placed in special preparatory groups when they start in Finnish schools, where they receive intense language training, and tutelage partly in their own language. Children are then moved as quickly as possible to normal classes.

Q.31.E. Are minors in general accommodated with their parents or with the person responsible of them? (see article 14, § 3)

Yes.

Q.31.F. Do minors with special needs enumerated by article 18, §2 which is a mandatory provision, have access to appropriate mental health care and qualified counselling?

Reception centres seek to refer children with special needs appropriate mental health care and qualified counselling. Mental health care services for children in Finland are scarce in many parts of the country, so access may be limited. The Integration Act , section 19, subsection 3, also clearly places an obligation to identify and address the mental health care needs of asylum seeker children

Q.31.G. How and when is organised the representation of unaccompanied minors (guardianship, special organisation) and regularly assessed? (see article 19, §1 which is a mandatory provision)

When an unaccompanied minor applies for asylum, s/he is directed to a special reception unit, a group home, for unaccompanied minors. The reception unit initiates a process with the local court for the appointment of a representative in accordance with sections 26-27 of the Integration Act, and the decision is usually taken by the court in a matter of weeks. No police hearings or interviews shall take place before a representative has been appointed.

There has, however, been instances when asylum seeker children travelling eg. with their grandparents and whose applications have is police before the appointment of a representative.

Q. 31. H. How is placement of unaccompanied minors organised (with adult relatives, a foster family, in special accommodation centres or other suitable accommodation)? (see article 19, §2 which is mandatory provision)

As a rule, unaccompanied minors are placed in special accomodation centres, group homes, which usually function as parts of some other reception centre, although usually physically separated. According to the Ministry of Labour Decree 389/2005, Section 1, the provisions in the Child Welfare Decree 583/1983, section 8, concerning the size of groups and the number of staff in child care units, is applicable to the reception of unaccompanied minors in group homes.

Section 8 of the Child Welfare Decree states that a child care unit may at the most house 8 children, and that in a group of buildings, no more than 24 children may be housed. For every unit, there should be a sufficent number of staff, but no less than 5 persons.

Q. 31.I. How is the <u>tracing of the family members</u> of the <u>unaccompanied</u> minors organised? Are measures taken to protect confidentiality of information when necessary? (see article 19, §3 which is a mandatory provision)

According to a recently adopted change in the Aliens Act, tracing of the family members of unaccompanied minors is to be carried out by the Directorate of Immigration, ie. the decision-making body (Aliens´ Act, amended by Amendment Act 1158/2006, Section 105 b). According to the provision, the Directorate shall as far as possible, in order to further the best interest of a minor asylum-seeker, trace his or her parents or other custodians without delay (subsection 1). Information concerning the persons to be traced shall be collected, treated and communicated as secret (subsection 2). This means that the information is subject to confidentiality rules, so that they can only be used by the authority in question and cannot be made public.

However, the new legislation has raised concerns, since eg. tracing is not subject to the approval of the child or his or her legal representative. It places no obligation on the authorities eg. to subject the tracing to an assessment of the security circumstances for the persons concerned.

The practical implementation of the new provisions is still being developed.

The Aliens Act was also amended to include a provision on the right for the Directorate of Immigration, the police and the Border Guard to receive information from reception centres concerning minor asylum-seekers (Section 105a §). This circumscribes the rules of confidentiality in the reception

centres, and the Bill received extensive criticism for not taking due account of unaccompanied asylum-seekers ´ need for confidential relations with their caretakers in reception centres. In practice, the new legislation has ia. meant that social workers in reception centres operated by the Finnish Red Cross no longer assist unaccompanied minors in preparing tracing requests for the International Red Cross, but this is done by the representatives of the asylum-seekers.

8. EXCEPTIONAL MODALITIES OF RECEPTION CONDITIONS

Q.32. **Apart from detention covered by the next question, are there exceptional modalities for reception conditions in the following cases and if yes, which ones and for how long are they applicable, knowing that they should be "as short as possible" (see article 14, §8)?**
Q.32.A. Persons with specific or special needs, regarding in particular the period of assessment of those needs?

Generally, unless there is a need for hospital care, housing would still be in the reception centres.

Q.32.A.Non availability of reception conditions in certain areas

Temporarily, asylum-seekers would probably be placed for a night in a hostel or hotel, but if an asylum-application is lodged in a place where there is no reception centre, s/he would normally be transferred to a reception centre immediately.

Q.32.B.Temporarily exhaustion of normal housing capacities

Each reception has contingency plans which allow for fairly flexible and rapid enlargement of the reception capacity.

Q.32.C.The asylum seeker is confined to a border post

If an asylum-seeker is confined to a border post, this would entail that a detention decision has to be made. For a limited period of time, detainees may be held in police arrest premises.

Q.32.D. All other cases not mentioned in the directive (for instance urgent situation in case of a sudden high number of applicants outside a case of application of the directive on temporary protection).

In situations of mass influx, organising centres would be opened, where reception conditions could be provided in kind for a limited period of time.

Q.33. **Detention of asylum seekers (we do not cover the situation of rejected asylum seekers detained for the purpose of their return) (see articles 6**

§2, 7 §3, 13, §2 2nd indent and 14 §8 which implies that the directive is in principle applicable in case of detention):

Q.33.A. In which cases or circumstances and for which reasons[373] (identity verification in particular if the persons have no or false documents, protection of public order or national security, refugee status determination, way of entry into the territory, etc) can an asylum seeker be detained during the asylum procedure till his request has been finally rejected. Quote precisely in English in your answer the legal basis for detention of asylum seekers in national law.

According to section 121 of the Aliens´ Act, an alien may be ordered to be held in detention if:

1) taking account of the alien's personal and other circumstances, there are reasonable grounds to believe that the alien will prevent or considerably hinder the issue of a decision concerning him or her or the enforcement of a decision on removing him or her from the country by hiding or in some other way;
2) holding an alien in detention is necessary for establishing his or her identity; or
3) taking account of the alien's personal and other circumstances, there are reasonable grounds to believe that he or she will commit an offence in Finland.

Holding an alien in detention on grounds that his or her identity is unclear requires that the alien gave unreliable information when the matter was processed or refused to give the required information, or that it otherwise appears that his or her identity cannot be considered established.

This list of criteria for detention is an exhaustive list. Hence, an asylum-seeker may not be detained solely on the ground that s/he is an asylum-seeker. Article 18 § 1 can therefore, on the basis of the law, be said to be respected.

[373] Please specify it article 18 §1 of the directive on asylum procedures of 1 December 2005 which specifies that *"Member States shall not hold a person in detention for the sole reason that he/she is an applicant for asylum"* is or not respected (even if has not yet to be transposed).

Q.33.B. Has your member State adopted measures to transpose §3 of article 7 which is an optional provision? If yes, how has this provision been legally understood (is it a case of detention or an obligation to stay in and not leave a certain place?) and for which reasons can an asylum seeker be "confined" in such a place?

No.

Q.33.C. Are there legally alternatives to detention, like obligation to report to the authorities, obligation to stay in a place, provision of a guarantor or of a financial guarantee?

There are legal alternatives in the Aliens´ Act.
According to section 118, an alien may be required to report regularly to the police or the border guards.
Section 119 enables the police or border guards to seize the travel documents of an asylum-seeker for the duration of the asylum procedure. This is done regularly.
Section 120 includes the possibility for placing a financial guarantee.

Q.33.D. Which is the competent authority to order the detention of an asylum seeker? Explain if different authorities are involved to first take and later confirm the decision.

The initial decision on detention is taken by a senior police officer (Aliens´ Act, section 125). The local court is to be informed within 24 hours of the detention. Within 4 days from the detention decision, the asylum-seeker must be brought before a Court for a hearing on the continuation of detention.

Detention must be dealt with again by the local court every 14 days.

Q.33.E. For how long and till which stage of the asylum procedure can an asylum seeker be detained?

There is no maximum period for detention in the law. In principle, detention could be prolonged for the duration of the asylum procedure, but this would only happen exceptionally in some admissibility cases or cases dealt with under accelerated procedures. However, the Aliens´ Act, sections 127-128 contain provisions concerning the release of detained aliens, stating

that a detained alien shall be released immediately when the grounds for detention stipulated in Article 121 of the Aliens Act seize to exist:

Section 127 – *Releasing detained aliens*
(1) The authorities handling the matter shall order a detained alien to be released immediately once the requirements for detention cease to exist.
(2) If the District Court has decided that the detention of the alien be continued, the authorities shall immediately notify the District Court of the place of detention of the alien's release. The notification may be made by telephone or electronically. A notification made by telephone shall be submitted without delay to the District Court in writing.

Section 128 - *Rehearing at a District Court*
If the release of an alien who has been held in detention has not been ordered, the District Court of the place of detention shall, on its own initiative, always rehear the matter concerning the detention or exceptional placement of an alien referred to in section 123 (3) no later than two weeks after the decision under which the District Court ordered continuation of the detention of the alien at the facility concerned.

Q. 33.F. In which <u>places</u> (can we call them "closed centres"?) are asylum seekers detained (places in a special closed centres reserved only to asylum seekers, together with returnees like illegal aliens or even in a normal prison, in case within separated areas or with the other detainees)? Indicate if a difference has to be made following the location of the "closed centres" at the border or on the territory? Which is the authority managing those places and is it the same as the one in charge of reception conditions?

There is one closed reception centre, or detention centre, in Finland, placed in Helsinki. Both detained asylum seekers and other detained aliens are detained in the same facility. The Act on the treatment of detained aliens and on detention facilities (Detention Act) 116/2002, regulates the treatment of detained aliens, including asylum seekers. According to the Aliens´ Act, section 123, subsection 2,detained asylum seekers shall as quickly as possible be transferred to a detention centre. There are 34 places in the detention centre, and if that was reached other detained asylum seekers would be placed in prisons.

Q. 33.G. Does <u>UNHCR and NGOs have access</u> to the places of detention and under which conditions?

Yes. According to the Detention Act, section 6, a detained alien is allowed to be in contact with his receiver in Finland, his close relative or other person near to him, the diplomatic or consular mission of his country of origin, the authority supervising the functioning of the detention centre, the Ombudsman for Minorities, a public legal adviser, an attorney or other person who has a legal degree, who is providing legal assistance to the alien, the supervisory bodies for human rights treaties, and the United Nations High Commissioner for refugees or the representative of UNHCR, and to NGOs, who give professional legal assistance and advice to asylum seekers, refugees and other aliens.

These contacts may not be supervised or limited. Visits by relatives or other private persons may be subject to security controls.

Q. 33.H. What <u>appeal(s)</u> can asylum seekers introduce against the fact he is detained? Is article 18 of the directive on asylum procedures of 1 December 2005 following which *"Where an applicant for asylum is held in detention, Member States shall ensure that there is a possibility of speedy judicial review"* respected (even if it has not yet to be transposed)?

The asylum seeker has the right to a judicial review of the detention decision, which is mandatory every 14 days. The review is carried out by the local civil Court (Aliens Act, section 128).

Q.33.I. Is the directive on reception conditions considered to be in principle applicable to the places where asylum seekers are detained? In particular which information do they receive about their rights, which access do they have to legal advice and health care?

According to the Detention Act section 1, the provisions of the Integration Act are applicable in principle. However, in the detention centre, asylum seekers receive the reception conditions in kind, eg. the food is prepared and served.

Q.33.J. Apart from freedom of movement, what are the main differences between normal reception conditions and exceptional modalities for reception conditions in case of detention, knowing that they should be "as short as possible" (see article 14, §8)? If it is about closed centres, are the regulations of those places in line with the requirements of the directive (is article 13, §2, second indent of the directive following which "*Member States shall ensure that standards of living is met (…) in relation to the situation of persons who are in detention*" respected?).

Reception conditions are in principle the same as for normal reception conditions. However, the social assistance is given in kind, including prepared meals and asylum seekers are only given pocket money, 2 euros/day. Social counselling and emergency health care is organised. Work and activity programmes are not organised in the detention centre.

Q.33.K. Are measures taken to avoid detention of asylum seekers with special needs (if yes, which ones?) or are special measures taken because of their needs?

According to the Detention Act section 11, para. 2, the special needs of minors or victims of torture, rape or other physical or sexual violence or otherwise of persons in a more vulnerable situation, shall be taken into account when organising the care of them.

Q.33.L.Can minor asylum seekers be detained together with relatives? Can unaccompanied minor asylum seekers be detained? If yes, are there special measures which take into account that children are concerned?

Yes, children can be detained, both with their relatives and if they are unaccompanied. Before they are detained, a representative of the social authorities must be heard. The place of detention is the same closed reception centre also for unaccompanied children. There are no separate or designated areas for unaccompanied children or families in the closed reception centre/detention centre.

Q.33.M. In particular is article 10 regarding access to education of minors respected in those places?

The same legal problem applies for detained minors as for other asylum seeker children. In addition, in practical terms, no education is provided for in the closed detention centre, which for detention periods of more than 3 months would raise an issue under Article 10 § 2.

The longest detention periods have been three months during the present legislation.

Q. 33.N.How many asylum seekers are for the moment detained in your Member State? Which proportion does this represent in comparison of the total number of asylum seekers at the same moment?

The closed reception unit in Metsälä reception centre has 40 places, and it is usually full. In addition there may be asylum-seekers detained for shorter periods in police stations. A figure often cited is that approximately 10 percent of asylum-seekers in Finland get detained.

9. ORGANISATION OF THE SYSTEM OF RECEPTION CONDITIONS

Q.34. Explain if the system of providing reception conditions is centralised or decentralised (which levels of government do provide practically reception conditions?) (do not confuse this question with question number 3 about the competence to make rules about reception conditions).

The system is decentralised.

Q.35. In case, are accommodation centres public or/and private (managed by NGOs? If yes, are the NGOs financially supported by the State?)

The reception centres are maintained on the basis of contracts, which also provide for full payment of the maintenance of the services. The contracting parties are the regional Labour and Enterprising Centres (Työ- ja elinkeinoelämän keskus; TE-keskus) which are the regional centres of the labour market authorities, and the entity maintaining the reception centre.

In principle, it is possible for any entity deemed appropriate to maintain a reception centre, given that the contents of reception conditions can be adequately provided.

Q.36. In case, how many accommodation centres are there in your Member State (distinguish in your answer between public and private centres)?

There are fourteen reception centres: 2 state-run centres, 2 run by the Finnish Red Cross, and 10 run by municipalities.

Q.37. Is there in the legislation a plan or are there rules in order to spread the asylum seekers all over the territory of your Member State to avoid their concentration in some areas like big cities or to share the costs of their reception between central, regional and local authorities?

There is no legal norm concerning dispersal. However, there is a general policy of dispersal, mainly governed by the wish to disperse asylum seekers in order to find them accommodation more easily if they are allowed to stay. This is judged to be easier if not all asylum-seekers are concentrated to the larger cities. All the costs of the reception are basically covered from State budget means.

Q.38. Does a central body representing all the actors (like NGOs) involved in reception conditions exist? Does it play a consultative role for the State authorities, a coordination role for the actors or any other role?

There is a consultative body, the Advisory Board on Integration and Reception of Asylum Seekers (Kotouttamisen ja turvapaikanhakijoiden vastaanoton neuvottelukunta)
, which works in connection with the Ministry of Labour, and whose mandate and working modalities are drawn up in the Integration Regulation (vastaanottoasetus).

Q.39. **Q.39.A.Which is the body in charge of guidance, monitoring and controlling the system of reception conditions as requested by article 23 which is mandatory provision? Include in your answer which is the competent ministry (Interior, Social affairs, etc) for reception conditions?**

The competent ministry for the system of reception conditions is the Ministry of Labour. In addition, the Ministry of Education (opetusministeriö) and the Central Board of Education oversees all educational matters. The Ministry of Social Welfare and Health is the ministry competent in issues on social welfare, social services and healthcare.

Regionally, the oversight is in the hands of the Employment and Economic Development Centres (Työvoima- ja elinkeinokeskus or TE-keskus.

Q. 39.B. Has your Member State (like the Czech Republic did recently) approved quality standards (not necessary legally binding) for housing services (for instance about the number of persons per bedroom on the basis of its size, number of accessible toilets, bathrooms, showers and washing machines per number of persons, existence of common rooms with radio, television, newspapers, books, computers, accessibility of telephone, existence of recreative rooms for children,…) to be respected in particular in accommodation centres?

The standards accepted for the reception centres are drawn up in the contracts with the maintainer of a reception centre, although detailed criteria are not written into the contracts. There has been work ongoing concerning the quality of reception conditions, and a handbook on quality work in reception centres has now been published.

Q. 39.C.How is this system of guidance, control and monitoring of reception conditions organised?

The regional Employment and Economic Development Centres (Työvoima- ja elinkeinokeskus or TE-keskus)draw up the contacts with the reception centres and also regionally have the responsibility for guiding, controlling and monitoring there reception conditions. When it comes to the social assistance, the responsibility is with the municipal social authorities to monitor, and for the Administrative Courts to act as appellate bodies. On the central level, the Ministry of Labour is responsible for guidance, control and monitoring. On education, it is the local boards of education who are responsible for the monitoring of the quality and resources of the schools, which are almost solely run by municipalities in Finland.

Q. 39.D. Does the body in charge of guidance, control and monitoring produce reports about the level of reception conditions? If yes, how frequently and are they public?

Yes, the Employment and Economic Development Centres and the Ministry of Labour produce annual reports, which also cover the reception conditions.

Q.40. **Q. 40.A.**What is the total number of asylum seekers covered by reception conditions for the last year for which figures are available (see article 22 obliging Member States to calculate those statistics about which we also asked the Commission to require them from Member States for mid June)?

2006: Altogether 4 638 persons were covered by reception conditions. 2324 persons applied for asylum during 2006.

Q.40.B. What is the total budget of reception conditions in euro for the last year for which figures are available?

The total figure in 2006 was 34 362 355 euros.

Q.40.C. What is the average cost of reception conditions in euro per asylum seeker for the last year for which figures are available?

The average cost in 2006 per client in a reception centre was 15 043 euros, and for unaccompanied children 47 976 euros per client.

Q.40.D. Are the costs of reception conditions of asylum seekers supported by the central/federal or federated government or are they shared with regional and/or local authorities?

The costs of the reception conditions are covered by the Government, on the basis of Decree 512/1999 (Valtioneuvoston päätös pakolaisten ja turvapaikanhakijoiden vastaanotosta aiheutuvien kustannusten korvaamisesta) as amended by Decree 1108/1999, 940/2001, 196/2002, 664/2004, 373/2005

Q.40.E. Is article 24 § 2 of the directive following which "*Member States shall allocate the necessary resources in connection with the nationals provisions enacted to implement this directive*" respected?[374]
Yes, the provision is respected.

Q.41. **Q.41.A.**What is the total number of persons working for reception conditions?

There are roughly 300 persons. Usually one reception centre has a staff of about 12 persons, whereas the reception units for unaccompanied children have a staff around 20 persons.

Q.41.B. How is the training of persons working in accommodation centres organised? Does it take into account specific needs of unaccompanied minors when relevant as well as the gender dimension? (see article 14 §5, 19 § 4 and also 24 §1 which are mandatory provisions)?[375]

[374] To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.
[375] To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

Training of staff is primarily organised as in-house training. Important parts of the staff, particularly the health care staff and social workers, have special professional training requirements.

Q.41.C: Are there rules about the deontology of persons working in accommodation centres, in particular on confidentiality?

The Integration Act, sections 41-43, deals with the possibilities for the staff of reception centres to receive information from other authorities about asylum seekers, about the possibility to provide information to other authorities (police, border guard, Directorate of Immigration) from the register of residents, and about the general rules of confidentiality of the staff. In addition, the health care and social staff are covered by confidentiality rules of their own professions.

The Aliens Act was recently amended to include a provision on the right for the Directorate of Immigration, the police and the Border Guard to receive information from reception centres concerning minor asylum-seekers (Section 105a). This circumscribes the rules of confidentiality in the reception centres, and the Bill received extensive criticism for not taking due account of unaccompanied asylum-seekers ´ need for confidential relations with their caretakers in reception centres. In practice, the new legislation has ia. meant that social workers in reception centres operated by the Finnish Red Cross no longer assist unaccompanied minors in preparing tracing requests for the International Red Cross, but this is done by the representatives of the asylum-seekers.

10. IMPACT OF THE DIRECTIVE

Legal impact of the transposition of the directive:

Q.42. Specify if there are or not big problems with the translation of the directive in the official language of your Member State and give in case a list of the worst examples of provisions which have been badly translated? (please note that this question has in particular been added to the questionnaire concerning the new Member States)

No.

Q.43. Where there precise legal rules on reception conditions for asylum seekers before the adoption of the norms of transposition of the directive (if yes, specify what the nature of those rules was (legislation, regulation, administrative instructions,…)?

Yes, there were. The Integration Act has been in force since 1998. With the Directive, some of the rules were specified more.

Q.44. Did the legal rules applicable to reception conditions become more clear, precise, coherent or detailed with the adoption of the transposition norms (for instance do you now have after the transposition one basic text dealing with reception conditions instead of numerous different texts in the past?

To some extent, rules became clearer and more detailed.

Q.45. Did the transposition of the directive imply important changes in national law or were the changes of minor importance? In case, list the most important changes that have been introduced.

The basic principles of reception have remained the same. However, the contents of reception conditions and provisions concerning information to asylum seekers were made more clear. Rules concerning charging for reception conditions were also included.

Political impact of the transposition of the directive:

Q.46. **Explain briefly if there has been an important debate about the transposition of the directive (in particular in the Parliament, but possibly also in the government, between political parties, including in medias, etc; underline in case the main points which have been discussed or have created difficulties)**

During the debate on the amendments to the Integration Act, there was debate in Parliament in certain Committees, and some critical issues were brought up such as the education of asylum-seeker children.

Unrelated to the transposition of the directive, there is an ongoing argument as to whether the responsibility for reception conditions should be transferred to the Directorate of Immigration, the central authority competent concerning the asylum procedure.

The issue of confidentiality of information obtained from uanoccompanied minor asylum seekers by staff in reception centres and the right of asylum-seekers to private life was at the centre of the debate over a Bill (31/2006) in Parliament for the amendment of the Aliens Act and the Act on the Aliens Register. The amendments, which were passed as the Amendment Act to the Aliens Act 1158/21.12.2006 and the Amendment Act to the Act on the Aliens Register 1159/21.12.2006, obliges reception centre staff to provide information deemed relevant concerning unaccompanied minors seeking asylum to the the Directorate of Immigration, the police and the Border Guard (see above, Q 31.I).

Q.47. **Did the transposition of the directive contribute to make the internal rules stricter or more generous? In particular, did your Member State use the**

occasion of the transposition to abolish more favourable provisions of national law? Does your Member State still have rules more favourable than the provisions of the directive (if yes, try to give the more important examples).

There was no particular thrust to make reception conditions less favourable than previously. On the whole, the Finnish reception conditions are closely in line with the Directive. However, the pace has been very slow to address problematic issues in terms of the implementation of the Directive, namely the legal problems related to the right to education for asylum-seeker children.

11. ANY OTHER INTERESTING ELEMENT

Q.48. What are in your view the weaknesses and strengths of the system of reception conditions in your Member State?[376]

The main **weakness** of the system is that it is designed for shorter residence, and asylum seekers may sometimes reside in reception centres for up to 3-4 years. This is passivating and difficult.

Housing conditions are also fairly uneven, ranging from own rental apartments to dormitory-like residence with several residents in a room.

Access to mental health care services is uneven.

A major **strength** is that the reception conditions are closely grounded in the Constitution and general legislation on health care, education and social assistance, and reception centres usually work at good professional level. It is also a strength that municipal schools are accessible to asylum seeker children, and the size of the reception centres is fairly managable, usually 50-150 places.

The system for the reception of unaccompanied minors has been developed significantly over the last year. However, the **weakness** of the reception of unaccompanied children is the lack of a uniform, special training system for the representatives of the children.

Q.49. Mention any good practice in your Member State which could be promoted in other Member States[377]

- Access to labour market after 3 months.

[376] To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.
[377] To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

- Equal access to maternity and infant health care services as for residents.

- Access to municipal schools for children
- There is also an ESF/Equal project involving asylum seekers, Becoming More Visible (http://www.becomingmorevisible.net/www/english/). The Becoming More Visible Project's goals are to create new possibilities for work and study for asylum seekers in Finland. Cooperative models have been set up between the Reception Centres and adult education facilities, organisations, and businesses. These models can be adapted to rural or urban locations throughout Europe.

  The reception centers of Kajaani, Tampere and Turku form the partnership with the Finnish Association of Adult Education Centres. The project is administrated by Red Cross Finland, Southwest District.

  The BMV- Project is a partner in the ASAP - Asylum Seekers´ Active Partnership, with ATLAS from Scotland, INTEGRA 2004 from Italy, IN CORPORE from Lithuania, InPower from Austria and MUR from Poland.

Q.50. Please add here any other interesting element about reception conditions in your Member State which you did not had the occasion to mention in your previous answers.

It can be mentioned that in the Programme of the new Government, which took seat in April 2007, a reform of immigration administration is foreseen, so that the reception of asylum seekers and refugees, and integration of refugees and immigrants, is to be transferred from the Ministry of Labour to the Ministry of the Interior, which has previously been responsible for the decision-making procedures under the Aliens Act. The new Government also has a special portfolio for immigration, a Minister seated in the Ministry of the Interior.

NATIONAL REPORT DONE BY THE ODYSSEUS NETWORK FOR THE EUROPEAN COMMISSION ON THE IMPLEMENTATION OF THE DIRECTIVE ON RECEPTION CONDITIONS FOR ASYLUM SEEKERS IN:

FRANCE

par

LABAYLE Henri
Professeur à l'Université de Pau

henri.labayle@univ-pau.fr

en collaboration avec Yves Pascouau
Chercheur au CDRE
Modifié le 24janvier 2008

1. NORMS OF TRANSPOSITION

Q.1. *Identify the main norm of transposition (indicate the title, date, number, date of entry into force and references of publication into the official journal) and indicate its legal nature (legislative, regulatory, administrative); indicate in your answer if this norm was only devoted to the directive or if it has been included in a more general text and indicate in that case by quoting precisely the numbers of the provisions adopted to transpose the directive.*

La directive 2003/9 n'a pas fait l'objet d'une transposition organisée de manière spécifique en droit français, par exemple au moyen d'une norme générale et unique. On notera que, pour sa partie législative, la transposition du texte est effectuée de manière implicite puisque aucun des textes législatifs procédant à cette transposition ne se réclame explicitement d'une obligation tirée de la directive 2003/9. Par ailleurs, on notera que seuls trois textes à caractère réglementaire mentionnent expressément la directive dans leurs visas et que les travaux parlementaires font rarement référence à cette directive et à ses implications. On peut donc s'interroger sur la conformité de cette pratique au regard des exigences posées par l'article 26 §2 de la directive, malgré la latitude d'action laissée aux Etats membres par cette disposition.

La vérification du respect des dispositions de la directive résulte à la fois de la superposition de textes anciens déjà existants et de l'adoption de textes plus spécifiques, parmi lesquels on soulignera l'importance de la loi relative à l'immigration et à l'intégration votée le 30 juin 2006 dont le titre V porte "dispositions relatives à l'asile" et contient des dispositions particulières à l'accueil des demandeurs d'asile.

Plusieurs lois récentes constituent donc le corpus juridique destiné spécifiquement à assurer la transposition de la directive 2003/9. Ces textes ont été codifiés par l'ordonnance 2004-1248 du 24 novembre 2004 (JO 25 novembre 2004) portant création de Code de l'entrée et du séjour des étrangers et du droit d'asile (CESEDA) et plus particulièrement par son Livre VII "Le droit d'asile", dans ses articles L-711-1 et suivants.

Ce dispositif du CESEDA est composé de :

- la loi 2003-1119 du 26 novembre 2003 relative à la maîtrise de l'immigration (JO du 27 novembre 2003);
- la loi 2003-1176 du 10 décembre 2003 modifiant la loi 52-893 du 25 juillet 1952 relative au droit d'asile (JO du 11 décembre 2003)
- la loi n° 2006-911 du 24 juillet 2006dont le titre V contient des "dispositions relatives à l'asile" (JO du 25 juillet 2006)
- la loi n° 2007-1631 du 20 novembre 2007 relative à la maîtrise de l'immigration, à l'intégration et à l'asile (JO 21 novembre 2007)

Par ailleurs, le Code de l'Action sociale et des familles réglemente le régime légal des données sociales de l'accueil des demandeurs d'asile. Cette réglementation est effectuée soit de manière générale au titre du principe de non discrimination devant la

protection sociale, soit de manière particulière pour telle ou telle catégorie précise de demandeurs, tels que les mineurs par exemple.

Enfin, au titre de la Cohésion sociale, la loi du 18 janvier 2005 comporte un chapitre intitulé "accueil et intégration des personnes immigrées ou issues de l'immigration" qui modifie le Code du travail et le code de l'action sociale et des familles. Elle répond en cela au programme 19 "*Rénover l'accueil et l'intégration des populations immigrées*" du plan de cohésion sociale de septembre 2004. Ce chapitre est bâti autour des quatre axes du programme :

- créer l'Agence nationale pour l'accueil des étrangers et les migrations (ANAEM) par fusion de l'Office des migrations internationales (OMI) et du Service social d'aide aux émigrants (SSAE);
- généraliser dès le 1er janvier 2006 le contrat d'accueil et d'intégration (CAI)
- mieux coordonner au plan local les instruments de la politique d'intégration en élaborant dans toutes les régions, sous l'autorité du représentant de l'Etat, un programme régional d'insertion des populations immigrées (PRIPI) qui acquiert un statut législatif;
- actualiser les missions du Fonds d'action et de soutien pour l'intégration et la lutte contre les discriminations (FASILD).

Q.2. *List by order of importance by using numbers (1, 2, 3) the others norms of transposition if there are more than one (indicate for each norm the title, date, number and references of publication into the official journal; include in your answer the administrative measures taken to ensure implementation of the directive and of the transposition norms like regulations, administrative circulars, special instructions,…)*

- *Put as an annex to your report a paper copy of each norm in the original language with a reference number to help the reader to find it easily;*
- *Send us as an electronic version of each norm or a weblink to the text (this will be used for the website we are building);*
- *Provide the texts of any translation of the above norms into English if they are available.*

La définition légale des conditions d'accueil des demandeurs d'asile en vertu de la directive 2003/9 est effectuée par la voie législative, en vertu d'une obligation constitutionnelle (Conseil Constitutionnel, décision 2004-496 DC, 10 juin 2004) qui oblige le législateur à intervenir en matière de transposition des règles de droit communautaire dérivé (1). De manière classique, le pouvoir réglementaire met ensuite en application ces dispositions législatives soit par voie de décrets ou d'arrêtés (2), soit par voie de circulaires et d'instructions administratives (3).

1. Les normes législatives de transposition sont constituées par :

Code de l'entrée et du séjour des étrangers en France (CESEDA)

Art. L 213–2 sur l'introduction du droit d'introduire un recours dans la décision relative à la demande d'asile
Art. L 213-9 sur la demande d'annulation de la décision de refus d'entrée sur le territoire français
Art. L.221-1 et s. , maintien en zone d'attente
Art. L551-1 et s. , rétention d'un étranger dans des locaux ne relevant pas de l'administration pénitentiaire
Art. L.721-1 et s, missions de l'OFPRA
Art. L.722-1 et s. , organisation de l'OFPRA
Art. L.723-1 et s., examen des demandes d'asile
Art. L.731-1 et s., la Commission de recours des réfugiés (depuis la loi n° 2007-1631 du 20 novembre 2007 la Commission de Recours des Réfugiés devient la Cour Nationale du Droit d'Asile)
Art. L.741-5 et s. , admission au séjour des demandeurs d'asile
Art. L.742-1 et s., durée du maintien sur le territoire français
Art. L 777-1 sur la demande d'annulation de la décision de refus d'entrée sur le territoire français
Art. L811-1 et s., la protection temporaire
Art. L821-1 et s., Dispositions relatives au transport de personnes retenues en centres de rétention ou maintenue en zone d'attente

Code de l'Action sociale et des familles
Art. L. 311-1 et L 311-2 missions des établissements et services de l'action sociale et médico-sociale
Art. L-311-9 droit des usagers des établissements et services de l'action sociale et médico-sociale
Art. L 348-1 à L 348-4 Centres d'accueil pour les demandeurs d'asile

Code du Travail
Art. L. 341-4; Dispositions spéciales à la main-d'oeuvre étrangère – travailleurs étrangers
Art. L. 351-9 partie relative aux "Garanties de ressources des travailleurs privés d'emploi" section 2 "Régimes de solidarité"
Art. L. 351-9-1 à L 351-10 bis l'allocation temporaire d'attente

Code de la Sécurité sociale
Art. L-861-1; Protection complémentaire en matière de santé – dispositions générales

Code de l'Education
Art. L. 131-1; L'obligation et la gratuité scolaires – obligation scolaire

Divers
Loi n° 91-647 du 10 juillet 1991 relative à l'aide juridique, JO 162 du 13 juillet 1991
Loi nº 99-641 du 27 juillet 1999 portant création d'une couverture maladie universelle, JO 172 du 28 juillet 1999

Loi n° 2005-32 du 18 janvier 2005 de programmation pour la cohésion sociale, JO 15 du 19 janvier 2005

2. Les normes réglementaires de transpositions sont constituées par :

Code de l'entrée et du séjour des étrangers en France (CESEDA)
Art. R. 221-1 et s., maintien en zone d'attente
Art. R. 551-1 et s., rétention d'un étranger dans des locaux ne relevant pas de l'administration pénitentiaire
Art. R. 721-1 et s, missions de l'OFPRA
Art. R. 722-1 et s., organisation de l'OFPRA
Art. R. 723-1 et s., examen des demandes d'asile
Art. R. 731-1 et s., la Commission de recours des réfugiés (depuis la loi n° 2007-1631 du 20 novembre 2007 la Commission de Recours des Réfugiés devient la Cour Nationale du Droit d'Asile)
Art. R. 741-1 et s., droit au séjour des demandeurs d'asile
Art. R. 811-1 et s., la protection temporaire
Art. R. 821-1, Dispositions relatives au transport de personnes retenues en centres de rétention ou maintenue en zone d'attente

Code de l'Action sociale et des familles
Art. R 348-1 à R 348-4 Centres d'accueil pour les demandeurs d'asile

Code du Travail
Article R-341-7; Dispositions spéciales à la main-d'oeuvre étrangère – travailleurs étrangers

Code de la Sécurité sociale
Art. R-380-1; Personnes affiliées au régime général de Sécurité sociale du fait de leur résidence en France

Divers
Décret 46-1574 modifié par le décret 2005-151 du 23 août 2005 (JORF 30 août 2005), version consolidée au 28 février 2006, disponible sur le site Legifrance (www.legifrance.gouv.fr)
Décret 95-507 du 2 mai 1995 déterminant les conditions d'accès du délégué du Haut-Commissariat des Nations Unies pour les réfugiés ou de ses représentants ainsi que des associations humanitaires à la zone d'attente et portant application de l'article 35 quater de l'ordonnance no 45-2658 du 2 novembre 1945 relative aux conditions d'entrée et de séjour des étrangers en France, version consolidée au 31 mai 2005, disponible sur le site Légifrance
Décret 2003-841 du 2 septembre 2003 relatif aux modalités de désignation et d'indemnisation des administrateurs ad hoc institués par l'article 17 de la loi n° 2002-305 du 4 mars 2002, J.O n° 204 du 4 septembre 2003
Décret 2003-1095 du 14 novembre 2003 relatif au règlement de fonctionnement institué par l'article L. 311-7 du Code de l'action sociale et des Familles, J.O n° 269 du 21 novembre 2003

Décret 2004-1215 du 17 novembre 2004 fixant certaines modalités d'application des articles 35 bis et 35 quater de l'ordonnance 45-2658 du 2 novembre 1945 relative aux conditions d'entrée et de séjour des étrangers en France, JO n° 268 du 18 novembre 2004
Décret 2004-287 du 25 mars 2004 relatif au conseil de la vie sociale et aux autres formes de participation institués à l'article L. 311-6 du code de l'action sociale et des familles, J.O n° 74 du 27 mars 2004
Décret 2004-814 du 14 août 2004 relatif à l'Office français de protection des réfugiés et apatrides et à la Commission des recours des réfugiés NOR : *MAEF0410016D,* J.O n° 191 du 18 août 2004
Décret 2005-617 du 30 mai 2005 relatif à la rétention administrative et aux zones d'attente pris en application des articles L. 111-9, L. 551-2, L. 553-6 et L. 821-5 du code de l'entrée et du séjour des étrangers et du droit d'asile, J.O n° 125 du 31 mai 2005
Décret n° 2006-1380 du 13 novembre 2006 relatif à l'allocation temporaire d'attente et modifiant le code du travail et le code de l'action sociale et des familles (parties réglementaires), NOR : SOCN0611992D, JO 15 novembre 2006
Décret n° 2006-1380 du 13 novembre 2006 fixant le montant de l'allocation temporaire d'attente NOR : SOCN0611993D, JO 15 novembre 2006
Décret n° 2007-399 du 23 mars 2007 relatif aux centres d'accueil pour demandeurs d'asile, aux dispositions financières applicables aux établissements et services sociaux et médico-sociaux, et modifiant le code de l'action sociale et des familles (partie réglementaire) NOR : SOCN0710518D, JO 24 mars 2007-10-08
Décret 2007-1300 du 31 août 2007 relatif aux conventions conclues entre les centres d'accueil pour demandeurs d'asile et l'Etat et aux relations avec les usagers, modifiant le code de l'action sociale et des familles (partie réglementaire), NOR : IMIN0762256D, JO 2 septembre 2007

3. Les normes administratives de transposition sont constituées par :

Ministère de l'Intérieur
Circulaire du 20 janvier 2004 prise pour l'application de la loi 2003-1119 du 26 novembre 2003 relative à la maîtrise de l'immigration, au séjour des étrangers en France et à la nationalité (NOR/INT/D/06/00006/C)
Circulaire relative aux modalités d'admission au séjour des ressortissants étrangers entrés en France, de manière isolée, avant l'âge de 18 ans, et ayant fait l'objet d'une mesure judiciaire de placement en structure d'accueil du 2 mai 2005, (NOR/INT/D/05/00053/C)
Circulaire du 21 janvier 2005 relative aux conditions d'examen des demandes d'agrément émanant des associations assurant la domiciliation des demandeurs d'asile organise ces dernières, (NOR/INT/D/05/00014/C)
Circulaire du 22 avril 2005 prise pour l'application de la loi n° 2003-1176 du 10 décembre 2003 modifiant la loi n° 52-893 du 25 juillet 1952 relative au droit d'asile, (NOR: INT/D/05/00051/C)
Circulaire du 14 avril 2005 prise en application du décret du 2 septembre 2003 relatif aux modalités de désignation et d'indemnisation des administrateurs ad hoc

Arrêté du 7 juin 2006 pris en application de l'article 2 du décret n° 2005-617 du 30 mai 2005 relatif à la rétention administrative et aux zones d'attente pris en application des articles L. 111-9, L. 551-2, L. 553-6 et L. 821-5 du code de l'entrée et du séjour des étrangers et du droit d'asile, J.O n° 134 du 11 juin 2006 page 8863
Arrêté du 2 mai 2006 pris en application de l'article 4 du décret n° 2005-617 du 30 mai 2005 relatif à la rétention administrative et aux zones d'attente pris en application des articles L. 111-9, L. 551-2, L. 553-6 et L. 821-5 du code de l'entrée et du séjour des étrangers et du droit d'asile, J.O n° 106 du 6 mai 2006 page 6720
Arrêté du 8 juin 2006 portant expérimentation de la régionalisation de l'admission au séjour des demandeurs d'asile dans la région Bretagne, J.O n° 134 du 11 juin 2006 page 8864
Arrêté du 8 juin 2006 portant expérimentation de la régionalisation de l'admission au séjour des demandeurs d'asile dans la région Haute-Normandie, J.O n° 134 du 11 juin 2006 page 8864
Circulaire interministérielle du 24 novembre 2006 relative à l'allocation temporaire d'attente NOR : INT/D/06/00113/C
Circulaire n° DPM/CI3/2007 du 3 mai 2007 relative aux missions des centres d'accueil pour demandeurs d'asile, aux modalités d'admission dans ces centres et de sortie et au pilotage du dispositif national d'accueil, NOR : SANN0730317C

Ministère de l'Education nationale
Circulaire en date du 6 décembre 2000 relative aux pièces justificatives pour la délivrance des titres de séjour, (NOR/INT/D/00/00277/C)
Circulaire 2002-063 du 20 mars 2002 du ministre de l'Education nationale, "modalités d'inscription et de scolarisation des élèves de nationalité étrangères des premiers et second degré", (NOR : MENEO200681C)
Circulaire 2002-100 du 25 avril 2002 du ministre de l'Education nationale organisation de la scolarité des élèves nouvellement arrivés en France sans maîtrise suffisante de la langue française ou des apprentissages, (NOR : MENE O0201119C)

Ministère des Affaires sociales
Circulaire 99-399 DPM du 8 juillet 1999 relative aux procédures d'admission dans le dispositif national d'accueil (DNA) des réfugiés et des demandeurs d'asile (NOR/MES/N/99/30331/C)
Circulaire du 16 mars 2005 relative à la prise en charge des soins urgents délivrés à des étrangers résidants en France de manière irrégulière et non bénéficiaires de l'aide médicale d'Etat;

Q.3. *Explain <u>which level of government</u> is competent to adopt the legal norms on reception conditions for asylum seekers (specify in particular in case of a federal or regional State, if it is the federal/central power or the components; in case, specify below when it is impossible for you to answer a question because it is about the competence of the components and it is impossible for you to gather reliable information about all of them)*

L'organisation administrative française distingue le traitement normatif de l'asile et son traitement administratif. Pour ce qui est du traitement normatif, la compétence normative relève des autorités centrales, selon le triple niveau (législatif, réglementaire, administratif) indiqué plus haut. Pour ce qui est du traitement administratif, susceptible de donner matière à des règles de mise en application les différents niveaux d'intervention sont :

- le ministère de l'Intérieur, qui intervient en amont (entrée sur le territoire, procédure d'admission au séjour) et en aval (éloignement des déboutés) de la procédure d'asile
- le ministère des Affaires étrangères, dont dépend l'OFPRA
- le ministère de la Justice, avec la CRR ;
- le ministère de l'Emploi et de la solidarité, à travers notamment sa direction de la population et des migrations (DPM) et l'ANAEM, agence en charge du service public d'accueil des étrangers. Ce ministère finance l'accueil des demandeurs d'asile et gère du point de vue économique et social l'immigration légale.

Depuis 2007, une réorganisation administrative est intervenue portant la création d'un nouveau ministère de l'immigration, de l'intégration, de l'identité nationale et du codéveloppement. Le Ministre de l'immigration, de l'intégration, de l'identité nationale et du codéveloppement est désormais compétent. Au titre de ses attributions, il prépare et met en œuvre la politique du gouvernement en matière d'immigration, d'asile, d'intégration des populations immigrées, de promotion de l'identité nationale et de codéveloppement. En application d'un décret n° 2007-999 du 31 mai 2007 (JO 1er juin 2007) relatif aux attributions du Ministre, il est compétent en matière d'exercice du droit d'asile et de protection subsidiaire et de prise en charge sociale des personnes intéressées. L'article 1er du décret n° 2007-1891 du 26 décembre 2007 (JO 30 décembre 2007) prévoit que l'administration centrale du ministère de l'immigration, de l'intégration, de l'identité nationale et du codéveloppement comprend le service de l'asile. Un arrêté du 26 décembre 2007 (JO du 30 décembre 2007) porte organisation interne de l'administration centrale du ministère de l'immigration, de l'intégration, de l'identité nationale et du codéveloppement. Le service chargé de l'asile comprend le département du droit d'asile et de la protection, le département de l'asile à la frontière et de l'admission au séjour et le département des réfugiés et de l'accueil des demandeurs d'asile.

Au titre de leurs compétences légales, et notamment en matière de financement de l'aide sociale, les collectivités territoriales sont susceptibles de participer à l'application de ces règles.

Q.4. *Explain the legal technical choices done to transpose the directive (comment on the nature and level of the norms used to do the transposition: legislative, regulatory, administrative like instructions, etc). Add any other element about the technique of transposition of the directive which is interesting for the implementation of Community law*.

Voir supra. La technique française de transposition des directives relève d'une obligation constitutionnelle pesant sur le législateur en vertu d'une jurisprudence constitutionnelle constante depuis le 10 juin 2004. Cette transposition donne matière à des mesures d'application relevant des techniques normatives ordinaires (actes réglementaires d'exécution de la loi, instructions administratives) et elle appelle des mesures d'exécution administratives.

Q.5. *Mention if there is a general tendency to just copy the provisions of the directive into national legislation without redrafting or adaptation them to national circumstances? If yes, give some of the worst examples and explain if there is a risk that those provisions remain unapplied or will create difficulties of implementation in the future.*

Comme indiqué précédemment, la banalisation de l'opération de transposition sans passer par l'adoption spécifique d'un texte particulier et le faible degré de contraintes découlant de la directive 2003/9 expliquent que le législateur ne se réfère quasiment jamais à la lettre de la directive sans qu'il semble, à ce stade en résulter de problèmes généraux de compatibilité au fond. En revanche, comme indiqué plus haut, la compatibilité de cette pratique avec l'article 26 de la directive est douteuse.

Q.6. *Have all the texts necessary to ensure the effective implementation of the new rules of transposition been adopted, prepared or at least foreseen in the future (for example a regulation completing a new law and the necessary instructions telling the administration how to apply the new rules)?*

Le caractère partiel et encore incomplet de l'opération de transposition explique que nombre de textes d'exécution soient encore en passe d'adoption, en particulier en raison de l'adoption très récente de la loi du 24 juillet 2006.

2. BIBLIOGRAPHY

Q.7. Has an in-depth preparatory study been made public about the changes at the occasion of the transposition? If yes, thanks for trying to provide us a copy *(please contact to answer this question adequately the body and person who was responsible for the preparation of the transposition of the directive in the public administration).*

Sans objet. La transposition "éclatée" de la directive 2003/9 ajoutée au fait qu'un certain nombre de ses prescriptions étaient déjà inscrites en droit français l'explique. Ce n'est que de manière accessoire que les débats parlementaires font allusion à la nécessité de transposer la directive 2003/9 lors des travaux législatifs de 2003, le texte de la directive 2003/9 étant aggloméré avec celui des autres directives.

Q.8. Quote any recent scientific book or article published about the directive, the transposition rules or the question of reception conditions for asylum seekers in general (answer even if this literature is only available in your language and provide the complete title in your language (without translation) with all references; indicate author, title, in case name of periodical, year and place of publication).

A.N.A.F.E. "La procédure en zone d'attente. Guide pratique et théorique", Mars 2006

BLOCQUAUX J, BURSTIN A. & GIORGI D. "Mission d'analyse et de proposition sur les conditions d'accueil des mineurs étrangers isolés en France", Inspection Générale des Affaires Sociales, Rapport n° 2005 010, Janvier 2005

BUFFET F. – N., Rapport sur le projet de loi relatif à l'immigration et l'intégration, Sénat, n° 371, 31 mai 2006

CASTAGNOS-SEN A. "Les conditions d'exercice du droit d'asile en France", Les Etudes de la Commission Nationale Consultative des Droits de l'Homme, La Documentation Française, Paris, 2006

Cour des Comptes "L'accueil des immigrants et l'intégration des populations issues de l'immigration", Rapport au président de la République suivi des réponses des administrations et organismes intéressés, Novembre 2004

DES EGAULX M. - H., Rapport d'information relatif au suivi des travaux de la mission d'évaluation et de contrôle sur l'évolution des coûts budgétaires des demandes d'asile, Assemblée nationale, n° 3012, 5 avril 2006

DES EGAULX M. – H., Rapport d'information relatif au suivi des travaux de la mission d'évaluation et de contrôle sur l'évolution des coûts budgétaires des demandes d'asile, Assemblée nationale, n° 2448, 6 juillet 2005

Inspection Générale des Finances & Inspection générale des Affaires Sociales, "Rapport d'enquête sur la situation financière des centres d'hébergements et de réinsertion sociale" (Etabli par BRASSENS B., MOURA P., SUEUR C., D'AUTUME C., BRILLAUD F, CATINCHI A.), janvier 2005

MARIANI T., Rapport sur le projet de loi relatif à l'immigration et l'intégration, Assemblée nationale, n° 3058, 26 avril 2006

Rapport au parlement "Les orientations de la politique de l'immigration", Secrétariat général du Comité interministériel de contrôle de l'immigration, quatrième rapport établi en application de l'article L. 111-10 du Code de l'entrée et du séjour des étrangers et du droit d'asile, Décembre 2007.

Q.9. Quote any interesting decision of jurisprudence based on the implementation of the new rules of transposition of the directive (indicate references of publication if any)?

3. GENERAL INFORMATION ABOUT THE SYSTEM OF RECEPTION CONDITIONS

The purpose of the following two questions is to help the reader to understand easily and quickly the system of reception conditions in your Member State and also to avoid that you have to repeat general elements in other parts of the questionnaire. ***Please do not write more than one or maximum two pages and do not include large historical developments.***

Q.10. Describe in general the system of reception conditions in your Member State (in particular which are the main actors in charge of reception conditions ?)

L'organisation constitutionnelle française distingue un domaine de la loi, réservé au législateur, et un domaine du règlement, ouvert à l'intervention du pouvoir gouvernemental d'exécution des lois, précisé par l'intervention administrative à des fins de coordination et d'interprétation. Sur cette base, le système français de réception est composé de normes législatives, de normes réglementaires et de circulaires administratives, tant en ce qui relève des compétences d'ordre public que du point de vue social.

Q.11. A. Explain if you have different types and levels of reception conditions following the different stages of the asylum procedure (this implies that you have to give briefly the necessary explanations about the asylum procedure). Make if relevant for reception conditions a distinction between the following procedural stages: determination of the responsible Member State on the basis of the Dublin II regulation, special procedures at the border (including transit zones in airports), accelerated procedures, admissibility procedures, eligibility procedures and the different possibilities of appeals (suspensive or not) against a refusal of the asylum request. Indicate what the main differences of reception conditions are between the different stages (if necessary by detailing between the different elements of reception conditions, in particular housing) and explain what the evolution of reception conditions is following the different stages of the procedure.

Il existe en droit français plusieurs types de protection : la protection principale des réfugiés est établie en vertu de l'article L-711-1 du CESEDA au titre de la Convention de Genève ou au titre du Préambule constitutionnel qui accorde l'asile à toute personne "persécutée pour son action en faveur de la liberté". La protection subsidiaire est accordée en vertu de l'article L-712-1 du CESEDA.

Ces deux régimes protecteurs sont reconnus par l'Office français de protection des Réfugiés et des Apatrides (OFPRA). Pour obtenir ce statut, un formulaire de demande d'asile doit être déposé dans le mois auprès de la préfecture, même en cas d'entrée irrégulière, et une admission provisoire au séjour (APS) est prononcée dans l'attente de la décision de l'OFPRA En cas de refus de l'OFPRA, la Commission de Recours des Réfugiés (CRR, devenue depuis la loi du 20 novembre 2007 la Cour nationale du droit d'asile) peut être saisie par le demandeur soit du refus d'accorder le statut soit du type de protection reconnue. Si

la CRR confirme la décision de l'OFPRA, obligation est faite de quitter le territoire national dans un délai nouveau, sauf nouvelle saisine de l'OFPRA faisant état d'un "élément nouveau". En cas de rejet, le Conseil d'Etat peut être saisi par la voie contentieuse mais ce recours ne suspend pas l'obligation de quitter le territoire sous délai d'un mois.

Dans le cas d'une procédure "Dublin", l'accès au territoire est refusé.

B. Indicate precisely for which stage(s) of the asylum procedure the answers on reception conditions you give below are valid.

Pour l'ensemble.

4. GENERAL RULES ON RECEPTION CONDITIONS

Q.12. A. Are material reception conditions provided in kind, in money or in vouchers or in a combination of these elements (see article 13, §5 which is an optional provision)?
Distinguish between the different elements (housing, food, clothes, health, transportation, pocket money,…). **If reception conditions are provided in money (in general or in some cases, for instance when no places are anymore available in accommodation centres), indicate the precise amount given to the asylum seekers. Indicate in your answer what is provided in general and if there are exceptional cases.** Specify in your answer if reception conditions are different from the general system of social aid for nationals or aliens and if yes, if and when (which stage of the asylum procedure) can asylum seekers have access to the general system of social aid?

L'accueil des demandeurs d'asile recouvre deux formes principales. Le demandeur bénéficie de prestations en nature, à savoir un hébergement dans un centre d'accueil pour les demandeurs d'asile ou une structure d'hébergement gérée à cette fin. Si le demandeur d'asile ne peut bénéficier d'un hébergement pris en charge au titre de l'aide sociale, faute de places disponibles, une allocation temporaire d'attente (créée par la loi de finances de 2006 en remplacement de l'allocation d'insertion versée jusqu'alors) lui est versée. En revanche, depuis la loi du 24 juillet 2006 modifiant l'article L 351-9-1 du code du travail, si le demandeur d'asile refuse une offre de prise en charge, il ne pourra bénéficier de l'allocation temporaire d'attente. Une circulaire interministérielle du 24 novembre 2006 relative à l'allocation temporaire d'attente (DPM/ACI3/2006/495) explicite ce dispositif. Ainsi, les objectifs du gouvernement visent à "favoriser l'hébergement accompagné des demandeurs d'asile dans les centres d'accueil pour demandeurs d'asile (CADA), l'allocation financière n'étant versée qu'à titre résiduel aux personnes auxquelles une offre d'hébergement n'aura pu être proposée. Ainsi, les personnes hébergées en CADA comme celles qui auront refusé une telle offre d'hébergement ne pourront bénéficier de cette allocation".
L'article L. 351-9 du Code du travail (modifié par l'article 154 de la loi de finance pour 2006) fixe les conditions d'attribution de cette allocation. Cette allocation est versée mensuellement, à terme échu, aux personnes dont la demande d'asile n'a pas fait l'objet d'une décision définitive (Art. L. 351-9-2. du Code du travail). Un décret du 13 novembre 2006 relatif à l'allocation temporaire d'attente précise notamment les conditions d'obtention de l'aide financière. Ce dispositif constitue une transposition de la directive 2003/9 dans la mesure où l'allocation d'insertion n'était préalablement versée que pour une période de 365 jours. Son montant est fixé par le décret n° 2006-1381 du 13 novembre 2006 et s'élève à 10,04 euros journaliers..

En outre, l'accès aux soins de santé est ouvert aux demandeurs d'asile.

Ces conditions matérielles d'accueil sont ouvertes aux demandeurs d'asile autorisés à entrer sur le territoire. Le problème se pose en revanche pour les demandeurs d'asile soumis à une procédure Dublin car dans ce cas l'admission sur le territoire est refusée (article L. 741-4 du CESEDA) et l'administration ne leur délivre pas d'autorisation provisoire de séjour (article 15 du décret 46-1574). A défaut d'obtention de ce document, ils ne peuvent solliciter l'allocation temporaire d'attente conformément aux règles posées par l'article L. 351-9 du Code du travail : "Peuvent bénéficier d'une allocation temporaire d'attente les ressortissants étrangers ayant atteint l'âge de dix-huit ans révolu dont le titre de séjour ou le récépissé de demande de titre de séjour mentionne qu'ils ont sollicité l'asile en France et qui ont présenté une demande tendant à bénéficier du statut de réfugié, s'ils satisfont à une condition de ressources.
"Ne peuvent prétendre à cette allocation les personnes qui proviennent soit d'un pays pour lequel le conseil d'administration de l'Office français de protection des réfugiés et apatrides a décidé la mise en œuvre des stipulations du 5 du C de l'article 1er de la convention de Genève du 28 juillet 1951 relative au statut des réfugiés, soit d'un pays considéré comme un pays d'origine sûr, au sens du 2o de l'article L. 741-4 du code de l'entrée et du séjour des étrangers et du droit d'asile".
En outre, cette catégorie de demandeurs d'asile rencontre des difficultés en pratique pour pouvoir accéder aux prestations médicales dans la mesure où certaines Caisses n'ouvrent le bénéfice des prestations médicales qu'aux demandeurs détenteurs d'une APS ou d'un récépissé de demande d'asile.

En dehors de l'accès aux soins de santé au travers de la Couverture Maladie Universelle, les demandeurs d'asile ne bénéficient pas d'un système d'aide sociale identique à celui des nationaux. Ces derniers sont notamment éligibles au Revenu Minimum d'Insertion (Revenu Minimum d'Insertion) et bénéficient d'un accès à différentes aides sociales telles que l'accès aux Habitations à Loyer Modérés (HLM) auxquelles les demandeurs d'asile ne peuvent prétendre. L'accès au système général d'aide sociale de l'Etat est ouvert aux réfugiés statutaires.

B. **Can the reception conditions in kind, money or vouchers be considered as <u>sufficient</u> "to ensure a standard of living adequate for the health of applicants and capable of ensuring their subsistence" as requested by article 13, §2 of the directive (which is a mandatory provision but leaves a certain space to Member States)?** In order to help to assess the respect of this rule when reception conditions are provided in money, include if necessary in your answer points of comparison with the minimum amount of social aid guaranteed for nationals in your Member State.

De manière générale, les demandeurs d'asile hébergés dans des centres d'accueil bénéficient de conditions d'accueil suffisantes. Concernant les demandeurs d'asile exclus du dispositif national d'accueil, la réponse doit être négative. Un décret n° 2006-1381 du 13 novembre 2006 fixe le montant de l'allocation temporaire d'attente à 10,04 euros par jour. Ramenée au mois, cette allocation atteint approximativement 300 euros. Comparativement, le montant du Revenu Minimum d'Insertion versé aux ressortissants français s'élève au 1er janvier 2006 à 433, 06

euros pour une personne seule et 649, 59 euros pour un couple. Ce montant est du reste majoré si la personne seule ou le couple ont un ou plusieurs enfants. Il existe donc un décalage très important entre le montant de l'allocation d'insertion et le Revenu Minimum d'Insertion. En conséquence, le caractère suffisant des conditions d'accueil au sens de l'article 13 de la directive est douteux. La situation a connu néanmoins une légère amélioration du fait de la substitution de l'allocation d'insertion par l'allocation temporaire d'attente qui est désormais délivrée tout au long de la procédure d'examen de la demande et non plus pour la seule période d'un an.

5. PROCEDURAL ASPECTS

Q.13. **A. Does the national legislation specifically provide that a request for international protection is presumed to be under the Geneva Convention unless explicitly requested otherwise? (see article 2, b which is a mandatory provision)**

Le CESEDA reconnaît le principe du guichet unique, quel que soit le fondement sur lequel la protection est accordée. L'article L-713-1 du CESDA résultant du vote de la loi du 10 décembre 2003 indique que "la qualité de réfugié est reconnue et le bénéfice de la protection subsidiaire est accordé par l'Office français de protection des réfugiés et apatrides" (OFPRA) dans les conditions prévues au chapitre III du titre II du présent livre.

B. Explain if the scope of application of reception conditions is extended to other asylum seekers than refugees in the sense of the Geneva Convention, in particular to persons asking for subsidiary protection or to other forms of protection like humanitarian statuses (see article 3, § 4 which is an optional provision)? If not, explain briefly which the differences between these special regimes and the directive are.

La création du guichet unique et les missions confiées à l'OFPRA par les articles L-721-2 et L-721-3 du CESEDA indiquent qu'il n'est pas fait de distinction entre les différents types de protection. Il n'est donc pas fait usage de l'article 3 §4 de la directive 2003/9.

C. Are there specific provisions in national law for reception conditions in case of diplomatic or territorial asylum requests submitted through a diplomatic or consular representation (see article 3, §2 which is an optional provision) ?

L'asile territorial avait été reconnu en France principalement après sa formalisation par l'article 36 de la loi 98-349 du 11 mai 1998 et l'article 7 du décret 98-503 du 23 juin 1998 lui donnait une portée subsidiaire au regard de l'application de la Convention de Genève.

Le CESEDA a reconnu depuis l'existence de la protection subsidiaire en reprenant expressément les termes de la réglementation communautaire. La protection subsidiaire découlant du droit français a donc vocation à jouer sous deux conditions : le demandeur de protection ne peut pas prétendre à la qualité de réfugié politique et il satisfait aux exigences de l'article L. 712-1 du CESEDA

L'article L-712-1 du CESEDA indique que le bénéfice de la protection subsidiaire est accordé à toute personne qui ne remplit pas les conditions pour se voir reconnaître la qualité de réfugié mentionnées à l'article L. 711-1 et qui établit qu'elle est exposée dans son pays à l'une des menaces graves suivantes :
a) La peine de mort ;

b) La torture ou des peines ou traitements inhumains ou dégradants ;
c) S'agissant d'un civil, une menace grave, directe et individuelle contre sa vie ou sa personne en raison d'une violence généralisée résultant d'une situation de conflit armé interne ou international.

Cette protection est un droit que l'OFPRA est tenu de reconnaître au demandeur dès lors qu'il remplit les conditions exigées.

Les clauses de refus sont fixées à l'article L-712-2 et reprennent les termes de la directive 2004/83 et de l'article 1F de la Convention de Genève.

Q.14. **Are reception conditions available as from the <u>moment</u> one asylum application is introduced? How is article 13, §1 which is mandatory legally understood ?** Do asylum seekers have to satisfy any other condition in order to get reception conditions?

Les demandeurs de protection sont pleinement admis à bénéficier des conditions matérielles d'accueil dès le dépôt de leur demande et le "Guide du demandeur d'asile" qui leur est délivré ne contient aucune restriction à ce sujet.

Q.15. **Explain when reception conditions <u>end</u>, for instance after refusal of the asylum request** (include in your answer the link with the right of appeal against a decision of refusal of the status, in particular the question of its suspensive effect)

La circulaire portant application de la loi 2003-1176 du 10 décembre 2003 modifiant la loi n° 52-893 du 25 juillet 1952 relative au droit d'asile du 22 avril 2005 (NOR: INT/D/05/00051/C) règle la question : lorsque la décision de l'OFPRA refusant l'octroi d'une protection internationale est devenue définitive, et après recours devant la CRR (devenue depuis la loi du 20 novembre 2007 la Cour nationale du droit d'asile) comme indiqué plus haut (Q.11), le demandeur d'asile débouté se voit notifier une décision de refus de séjour accompagnée d'une invitation à quitter le territoire dans le délai d'un mois. Toutefois une telle notification doit être précédée d'un examen de la situation personnelle de l'intéressé visant à apprécier si ce dernier peut prétendre à la délivrance d'un titre de séjour sur un autre fondement que l'asile. Si tel est le cas, l'intervention d'une décision définitive en matière d'asile ne fait pas obstacle à la délivrance d'une carte de séjour temporaire, voire d'une carte de résident.

Concernant les conditions matérielles d'accueil, il faut distinguer entre les personnes bénéficiant d'un hébergement en CADA et celles bénéficiaires de l'allocation temporaire d'attente.
Concernant l'hébergement en CADA, une circulaire interministérielle DPM/ACI3 n° 2007-184 relative aux modalités d'admission dans les centres d'accueil pour les demandeurs d'asile et de sortie de ces centres règle la situation de la manière suivante : "La personne ayant fait l'objet d'une décision définitive de rejet de sa demande d'asile peut se maintenir en CADA si elle en fait la demande, pour une durée maximale d'un mois à compter de la date à laquelle lui a été notifiée la

décision définitive de l'OFPRA ou de la commission des recours des réfugiés. Ce délai d'un mois correspond au délai dont dispose l'intéressé pour quitter le territoire lorsque vous avez pris à son encontre une décision de refus de renouvellement ou de retrait de son récépissé assortie d'une obligation de quitter le territoire français (OQTF).
Concernant les bénéficiaires de l'allocation temporaire d'attente, l'article L 351-9-1 du Code du travail prévoit que le versement de l'allocation prend fin au terme du mois qui suit celui de la notification de la décision définitive concernant la demande d'asile.

L'objectif affiché par la réglementation française est de réduire les délais de séjour des déboutés de l'asile et d'en assurer un traitement prioritaire. La note d'instruction interministérielle DPM/AC13 n° 2006-31 du 20 janvier 2006 relative aux procédures d'admission et aux délais de séjour dans le dispositif national d'accueil était annonciatrice à ce sujet : "le maintien en CADA, sans droit ni titre, à l'expiration de la période de prise en charge prévue par leur contrat de séjour, des personnes définitivement déboutées de leur demande d'asile constitue une cause importante de l'engorgement des CADA qui doit être vigoureusement combattue. Dès lors qu'un demandeur d'asile a été définitivement débouté, il n'a plus vocation à se maintenir en CADA. Sa sortie du centre doit donc être organisée".

De plus, il est possible de mettre fin au versement de l'allocation sociale globale (ASG) aux personnes qui resteraient indûment hébergées en CADA à l'issue du délai autorisé de maintien dans les lieux qui est de quatre semaines.

Le caractère définitif de la procédure fait désormais l'objet d'une définition réglementaire au titre de l'article R 351-6 du Code du travail qui prévoit que doit être regardée comme définitive la décision notifiée par l'OFPRA qui n'a pas été contestée dans le délai d'un mois devant la CRR (devenue depuis la loi du 20 novembre 2007 la Cour nationale du droit d'asile), et, en cas de recours, la décision de la Commission de Recours des Réfugiés.

Q.16 Are there special rules or practices regarding reception conditions in case of successive applications for asylum introduced by the same person?

Le principe de l'admission au séjour préalable au dépôt d'une demande de réexamen auprès de l'OFPRA a été maintenu par les nouvelles dispositions réglementaires en matière d'asile. L'article R 723-3 du CESEDA indique "Lorsque, à la suite d'une décision de rejet devenue définitive, la personne intéressée entend soumettre à l'office des éléments, sa demande d'examen doit être précédée d'une nouvelle demande d'admission au séjour et être présentée selon la procédure prévue à l'article R 723-1 [délai de dépôt de la demande d'asile après obtention de l'autorisation provisoire de séjour]. Le délai prévu au premier alinéa de cet article est alors limité à huit jours. Dans un délai de 96 heures suivant l'enregistrement de la demande, le directeur général de l'office décide, au vu des éléments produits, s'il y a lieu de procéder à un nouvel examen de la situation de

l'intéressé. Le silence gardé par le directeur au terme de ce délai vaut rejet de la demande".

Toutefois, des modifications de fond ont été apportées à la procédure de réexamen afin d'en éviter un usage abusif dans le but exclusif du maintien sur le territoire français. La procédure de réexamen ne s'applique pas au demandeur d'asile débouté dont il est établi avec certitude qu'il a résidé dans son pays d'origine depuis l'intervention d'une décision définitive sur une précédente demande et elle ne s'applique pas non plus à l'étranger précédemment débouté d'une demande d'asile territorial et qui souhaiterait déposer pour la première fois une demande d'asile auprès de l'OFPRA sur le fondement des nouvelles dispositions législatives introduites par la loi du 10 décembre 2003 relative à l'asile.

La procédure de réexamen concerne donc exclusivement le demandeur d'asile conventionnel débouté qui entend soumettre des éléments nouveaux à l'OFPRA. Son instruction est assurée comme celle d'une première demande d'asile. L'administration ne peut refuser de prendre en compte une demande au motif qu'elle apparaît dénuée, même manifestement, de tout fondement. En effet, l'appréciation du bien fondé de la demande de réexamen, l'existence de faits nouveaux et l'appréciation le cas échéant de la pertinence de ces éléments nouveaux relèvent de la compétence exclusive de l'OFPRA.

Le cas des demandes de réexamen est spécifiquement prévu par circulaire interministérielle DPM/ACI3 n° 2007-184 relative aux modalités d'admission dans les centres d'accueil pour les demandeurs d'asile et de sortie de ces centres : " La prise en charge en CADA est limitée à la durée de la première procédure devant l'OFPRA et, le cas échéant, devant la CRR. En conséquence, le demandeur d'asile ayant sollicité le réexamen de sa demande d'asile a vocation à quitter le CADA à l'expiration du délai précisément défini à l'article R. 348-3-I-2°, sauf si vous décidez de renouveler son titre de séjour dans les conditions définies à l'article R. 742-1 du CESEDA.".

Q.17[378]. Information of asylum seekers about their rights and obligations in terms of reception conditions, in particular about established benefits (see article 5 which is too large extend a mandatory provision; do not confuse this question with the information to be provided to asylum seekers about the asylum procedure):

A. Are asylum seekers informed, and if yes about what precisely?

L'article R 741-2, 4), 2nd alinéa du CESEDA dispose que : " l'indication des pièces à fournir par l'étranger qui sollicite son admission au séjour au titre de l'asile en application du présent article est portée à sa connaissance par les services de la préfecture. Ces derniers remettent alors à l'étranger un document d'information sur ses droits et sur les obligations qu'il doit respecter eu égard aux conditions

[378] To be answered with the help of UNHCR local office competent for your Member State or to be completed on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

d'accueil des demandeurs d'asile, ainsi que sur les organisations qui assurent une assistance juridique spécifique et celles susceptibles de l'aider ou de l'informer sur les conditions d'accueil dont il peut bénéficier, y compris les soins médicaux".

B. Is the information provided in writing or, when appropriate, orally?
Le document précité qui est délivré par la préfecture est le "guide du demandeur d'asile".

B. Is that information in general provided in a language understood by asylum seekers? Specify the list of languages in which it is available
Le document précité est disponible dans les langues suivantes : français, anglais, russe, arabe, albanais, et serbo-croate. Le site du ministère de l'intérieur ne propose que trois versions (français, anglais, russe) de ce document.

C. Is the deadline of maximum 15 days respected?
Les informations délivrées au demandeur d'asile sont données au moment du dépôt de la demande d'asile auprès des services de la préfecture.

Q.18[379]. Information of asylum seekers about the existence of organisations or groups promoting their interest and defending their rights (see article 5 which is to a large extend a mandatory provision):

A. **Is there a list of organisations dressed by the authorities and if yes is it comprehensive? Is this in particular the case about the possibilities to get legal assistance and health care?**

L'article R 741-2 du CESEDA prévoit que les services de la préfecture remettent au demandeur les informations sur les organisations qui assurent une assistance juridique spécifiques et celles susceptibles de l'aider ou de l'informer sur les conditions d'accueil dont il peut bénéficier.
Le Guide du demandeur d'asile précité qui est élaboré sous l'égide du ministère de l'Intérieur fournit une liste d'organisations et associations. Aucune précision spécifique n'est en revanche donnée dans ce document quant à la nature juridique ou médicale du soutien offert par ces organismes.

B. Is the information provided to the asylum seekers, and if yes, in writing or, when appropriate, orally?
L'information est écrite. Elle est également disponible sur Internet (www.interieur.gouv.fr).

C. Is that information in general provided in a language understood by asylum seekers? Specify if possible the list of languages in which it is available.

[379] To be answered with the help of UNHCR local office competent for your Member State or to be completed on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

Le guide du demandeur d'asile est disponible dans les langues suivantes : français, anglais, russe, arabe, albanais, et serbo-croate. Le site du ministère de l'intérieur ne propose que trois versions (français, anglais, russe) de ce document.

D. How many organisations are active in that field in your Member State ?
Pas de recensement

Q.19. Documentation of asylum seekers (see article 6):

A. What kind of document is delivered to the asylum seeker? Explain the legal value of this document (just a certification of the status as asylum seeker or also prove of identity?) (see §1 of article 6 which is a mandatory provision)

Il existe deux types de documents délivrés aux demandeurs d'asile. En premier lieu, l'article R 742-1 du CESEDA indique que dans un délai de quinze jours après avoir présenté sa demande et fourni les documents exigés par l'article R 741-2 du CESEDA, le demandeur d'asile est mis en possession d'une autorisation provisoire de séjour portant la mention : "en vue de démarches auprès de l'OFPRA", d'une validité d'un mois, pour autant qu'il ne soit pas fait application du 1° au 4° de l'article L. 741-4 du CESEDA sans préjudice du 1er alinéa de l'article L 742-6.

Ensuite, et en application de l'article R 742-2 du CESEDA : Le demandeur d'asile auquel une autorisation provisoire de séjour a été délivrée en application de l'article R. 742-1 est mis en possession d'un récépissé de la demande d'asile valant autorisation provisoire de séjour dans un délai maximal de trois jours à compter de l'expiration de la validité de l'autorisation provisoire de séjour mentionnée à l'article R. 742-1, sur présentation de la lettre de l'Office français de protection des réfugiés et apatrides l'informant de l'enregistrement de sa demande d'asile ou de la décision de procéder à un nouvel examen de cette demande. Ce récépissé porte la mention « récépissé constatant le dépôt d'une demande d'asile » et a une durée de validité de trois mois renouvelable jusqu'à la notification de la décision de l'Office français de protection des réfugiés et apatrides.

La circulaire du 22 avril 2005 (NOR: INT/D/05/00051/C) détaille précisément le jeu de ces différents documents :

- L'autorisation provisoire de séjour (APS), d'une validité d'un mois, permet au demandeur de séjourner régulièrement pendant le temps de transmission et d'enregistrement de son dossier à l'OFPRA. Ce document est délivré à partir du moment où le demandeur d'asile se présente dans les services administratifs muni d'un dossier complet au sens de l'article 14 du décret du 30 juin 1946 (informations relatives à l'état-civil, de photographies d'identité, éléments permettant d'apprécier l'opportunité de mettre en oeuvre la procédure Dublin, adresse permettant de faire parvenir au demandeur le courrier administratif relatif à la procédure et de confirmer la compétence territoriale de l'administration). Ce document n'est pas renouvelable, ce qui

oblige le demandeur à faire diligence pour déposer sa demande auprès de l'OFPRA. A l'issue de l'expiration de ce délai de un mois, une décision de refus de séjour et l'invitant à quitter le territoire au motif qu'il ne remplit pas les conditions prévues par l'article 16 du décret du 30 juin 1946 ni aucune autre condition prévue par le Code de l'entrée et du séjour des étrangers et du droit d'asile pour être admis au séjour peut être signifiée au demandeur, après examen de sa situation individuelle.

Si l'intéressé maintient sa demande d'asile ou se présente ultérieurement pour déposer une nouvelle demande d'asile, il appartient à l'administration de refuser de l'admettre provisoirement au séjour sur le fondement de l'article L-741-4-4° du code de l'entrée et du séjour des étrangers et du droit d'asile et de transmettre cette demande à l'OFPRA, accompagnée de la fiche de saisine en procédure prioritaire.

- Le récépissé de demande d'asile permet au demandeur de résider régulièrement sur le territoire pendant le temps nécessaire à l'instruction de sa demande. Il doit donc en principe être renouvelé jusqu'à ce que la décision de l'OFPRA, et le cas échéant celle de la CRR, interviennent. Il est délivré sur présentation par le demandeur de la lettre de l'OFPRA l'informant de l'enregistrement de sa demande ou sur consultation de la base de données de l'OFPRA.

- Le récépissé de la Commission des recours permet au demandeur de voir prolonger le récépissé de demande d'asile, lorsqu'un demandeur d'asile débouté par l'OFPRA forme un recours auprès de la CRR (devenue depuis la loi du 20 novembre 2007 la Cour nationale du droit d'asile). Le courrier de la Commission des recours des réfugiés informant l'intéressé de l'enregistrement de son recours est le seul document probant. En l'absence de présentation de ce document par le demandeur d'asile, et si après consultation de la base de données de l'OFPRA, il apparaît qu'il n'est pas fait mention de l'enregistrement d'un recours par la CRR, une notification de décision de refus de séjour assortie d'une invitation à quitter le territoire peut être adressée, si le délai de recours a expiré et après examen de sa situation individuelle.

B. Are there situations or specific cases in which <u>another equivalent document or even no document</u> is issued? (in particular is there an exception for "procedures to decide on the right of the applicant legally to enter the territory" as made possible by §2 of article 6)?

En application de l'article 742-1 du CESEDA, l'autorisation provisoire de séjour n'est pas délivrée lorsque le demandeur entre dans les situations relevant de l'article L. 741-4 CESEDA (ancien art. 8, 1° à 4° Loi de 1952). Dans ce cas, l'entrée en France est refusée.

L'article L-741-4 du CESEDA dispose que ;

"Sous réserve du respect des stipulations de l'article 33 de la convention de Genève du 28 juillet 1951 relative au statut des réfugiés, l'admission en France d'un étranger qui demande à bénéficier de l'asile ne peut être refusée que si :

1° - L'examen de la demande d'asile relève de la compétence d'un autre Etat en application des dispositions du règlement (CE) n° 343/2003 du Conseil du 18 février 2003 établissant les critères et mécanismes de détermination de l'Etat membre responsable de l'examen d'une demande d'asile présentée dans l'un des Etats membres par un ressortissant d'un pays tiers, ou d'engagements identiques à ceux prévus par ledit règlement avec d'autres Etats ;

2° - L'étranger qui demande à bénéficier de l'asile a la nationalité d'un pays pour lequel ont été mises en œuvre les stipulations du 5 du C de l'article 1er de la convention de Genève susmentionnée ou d'un pays considéré comme un pays d'origine sûr. Un pays est considéré comme tel s'il veille au respect des principes de la liberté, de la démocratie et de l'état de droit, ainsi que des droits de l'homme et des libertés fondamentales.

La prise en compte du caractère sûr du pays d'origine ne peut faire obstacle à l'examen individuel de chaque demande ;

3° - La présence en France de l'étranger constitue une menace grave pour l'ordre public, la sécurité publique ou la sûreté de l'Etat ;

4° - La demande d'asile repose sur une fraude délibérée ou constitue un recours abusif aux procédures d'asile ou n'est présentée qu'en vue de faire échec à une mesure d'éloignement prononcée ou imminente. Constitue, en particulier, un recours abusif aux procédures d'asile la présentation frauduleuse de plusieurs demandes d'admission au séjour au titre de l'asile sous des identités différentes. Constitue également un recours abusif aux procédures d'asile la demande d'asile présentée dans une collectivité d'outre-mer s'il apparaît qu'une même demande est en cours d'instruction dans un autre Etat membre de l'Union européenne.

Les dispositions du présent article ne font pas obstacle au droit souverain de l'Etat d'accorder l'asile à toute personne qui se trouverait néanmoins dans l'un des cas mentionnés aux 1° à 4°.

C. <u>For how long</u> is this document in principle <u>valid</u> and is it necessary to renew it after a certain period?

L'article R 742-2 du CESEDA, 2ème alinéa indique que le récépissée portant la mention "récépissé constatant le dépôt d'une demande d'asile" a une durée de validité de trois mois renouvelable jusqu'à la notification de la décision de l'OFPRA.

D. What is the deadline for the delivery of that document? Is the mandatory deadline of 3 days set by article 6, §1 respected[380]?

La réglementation française encadre strictement les délais accompagnant chaque pièce du dossier :
- L'autorisation provisoire de séjour (APS) doit être délivrée dans un délai maximal de quinze jours à compter de la production par le demandeur d'asile d'un dossier complet au sens de l'article R 742-1 du CESEDA.
- Le récépissé de demande d'asile doit être délivré au plus tard à l'expiration d'un délai de trois jours à compter de l'expiration de l'APS. Cette mesure constitue du point de vue de l'administration française une mesure de transposition de l'article 6 de la directive 2003/9/CE. Elle est censée être aménagée de manière à permettre une planification des rendez-vous si le fonctionnement propre au service administratif d'accueil le nécessite. Ce délai de trois jours ne peut être invoqué utilement à l'encontre de l'administration par un étranger qui souhaiterait se voir délivrer un récépissé sans être en mesure de justifier de l'enregistrement de sa demande d'asile par l'OFPRA. (circulaire du 22 avril 2005 N° NOR: INT/D/05/00051/C, p. 8).

Le délai de trois jours posé par la directive n'est cependant pas respecté en réalité. La combinaison des articles R 742-1 et R 742-2 conduit en pratique à additionner deux délais (quinze jours pour l'autorisation provisoire de séjour à l'expiration de laquelle le récépissé de demande d'asile valant autorisation provisoire de séjour est délivré dans les trois jours). L'article R 742-2 du CESEDA n'est donc pas conforme à l'article 6-1 de a directive car il joue sur la confusion entre demandes d'asile et autorisation provisoire de demeurer sur le territoire.

- Le récépissé auquel peut prétendre le demandeur d'asile qui dépose un recours devant la CRR (devenue depuis la loi du 20 novembre 2007 la Cour nationale du droit d'asile) doit être délivré sans délai sur présentation du document intitulé "reçu du recours" attestant de l'enregistrement du recours au greffe de la commission.

- Le récépissé de demande de carte de séjour délivré à l'étranger qui a obtenu le statut de réfugié ou le bénéfice de la protection subsidiaire doit être délivré au plus tard dans les huit jours qui suivent la présentation de l'étranger au guichet pour demander son titre de séjour, muni d'un document attestant du sens positif de la décision de l'OFPRA ou de la CRR (devenue depuis la loi du 20 novembre 2007 la Cour nationale du droit d'asile). Si l'intéressé présente ce document, mais que le sens de la décision n'a pas encore été communiqué, il appartient à l'administration de s'assurer par la consultation de la base de données de l'OFPRA de la réalité de la protection accordée (au regard du cadre du rapport et des instructions aux rapporteurs, cette dernière précision ne semble pas nécessaire).

[380] To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

E. Is it possible for an asylum seeker to get a travel document for serious humanitarian reasons (see §5 of article 6 which is an optional provision)?

La réglementation française ne prévoit pas cette possibilité.

F. Is there a central system of registration of asylum seekers and is it or not separate from the registration of aliens? If yes, describe it briefly (content) and indicate in particular if it is an electronic database.

L'article L 741-2 du CESEDA indique que "lorsqu'un étranger se trouvant à l'intérieur du territoire français demande à bénéficier de l'asile, l'examen de sa demande d'admission au séjour relève de l'autorité administrative compétente". Ainsi, la demande d'admission au séjour du demandeur d'asile relève de la compétence du préfet du département de résidence du candidat à l'asile. Une fois admis au séjour, la demande d'asile est envoyée à l'OFPRA qui est le seul organe compétent pour examiner les demandes d'asile et centralise donc toutes les demandes (art. L 713-1 CESEDA).

A titre expérimental et pour une durée de un an, quatre arrêtés du 30 décembre 2006 et du 19 avril 2007 organisent, une expérimentation de l'admission au séjour des demandeurs d'asile dans quatre régions françaises (Bretagne, Haute – Normandie, Aquitaine, Champagne-Ardenne). Selon ce schéma, les demandeurs d'asile séjournant dans ces régions devront déposer leur demande de séjour auprès des préfectures de régions et non plus des préfectures de département. Ces dernières conservant toutefois leur compétence en matière de réexamen, de renouvellement du récépissé de titre de séjour ou de demande de délivrance du titre de séjour définitif.

Q.20. Residence of asylum seekers[381]:

A. Is in principle an asylum seeker free to move on the entire territory of your Member State or only to a limited part of it and in case, which part? (see article 7, §1 which is a mandatory provision)

La détention d'un récépissé d'une demande de délivrance ou de renouvellement d'un titre de séjour, d'un récépissé d'une demande d'asile ou d'une autorisation provisoire de séjour autorise la présence de l'étranger en France sans préjuger de la décision définitive qui sera prise au regard de son droit au séjour. Sauf dans les cas expressément prévus par la loi ou les règlements, ces documents n'autorisent pas leurs titulaires à exercer une activité professionnelle (article L-311-4. alinéa 1er du CESEDA)

B. About the place of residence (see §2 of article 7): explain to which extend the person is free to choose her residence and if this depends of the stage of the asylum procedure (for instance before and after admissibility); if

[381] Nota bene: the case of detention is covered by other questions and should be ignored under this question.

there are constraints limiting the choice, explain which ones and their reasons (for instance processing of application, attribution of reception conditions,…).

Le principe est que les demandeurs d'asile qui sollicitent la délivrance d'une Autorisation Provisoire de Séjour (APS) ont pour seule obligation de faire connaître l'adresse à laquelle il est possible de leur faire parvenir toute correspondance.

L'article L 741-2, 4°) du CESEDA prévoit que lorsque le demandeur choisit de se faire domicilier auprès d'une association, celle-ci doit être agréée par les soins de l'administration. La circulaire NOR/INT/D/05/00014/C en date du 21 janvier 2005 relative aux conditions d'examen des demandes d'agrément émanant des associations assurant la domiciliation des demandeurs d'asile organise ces dernières.

Cette mesure contraint les demandeurs d'asile à produire une domiciliation associative. Ils sont libres de se faire domicilier auprès d'un parent ou d'un tiers par exemple, cette domiciliation ne faisant pas obstacle à la délivrance de l'APS.

Les demandeurs d'asile sont donc libres de choisir leur lieu de résidence (sauf cas de placement en centres de rétention administrative et zone d'attente). La condition de domiciliation pose néanmoins problème au regard de l'article 7 de la directive. La réglementation française sanctionne en effet l'absence de domiciliation du demandeur telle que l'article R 742-4 (ancien art. 17-1 du décret 46-1574) la définit : "l'étranger déjà admis à séjourner en France qui sollicite la délivrance d'un récépissé de demande d'asile au titre des dispositions du premier alinéa de l'article R 742-2 (ancien article 16 du décret 46-1574) communique, à l'appui de sa demande, l'adresse où il est possible de lui faire parvenir toute correspondance dans les conditions prévues au 4° de l'article R 741-2 (ancien article 14 du décret 46-1574)".

Du point de vue du ministère de l'Intérieur, à travers la circulaire INT/D/05/00051/C du 22 avril 2005 précitée, " le nouvel article 17-1 du décret du 30 juin 1946 modifié prévoit **que le renouvellement du récépissé de demande d'asile est subordonné à la justification par le demandeur du lieu où il a sa résidence". "**J'attire votre attention sur le fait que cette nouvelle disposition ne doit en aucun cas être interprétée comme une obligation créée à la charge du demandeur d'asile de justifier d'un domicile personnel pour obtenir le renouvellement de son récépissé. Le demandeur pourra donc vous fournir utilement une attestation d'hébergement en CADA portant l'adresse administrative de l'établissement hébergeant (sans qu'il soit besoin d'exiger l'adresse exacte du logement occupé au sein de cet établissement), un contrat de location établi en son nom, un certificat d'hébergement chez un tiers, ou toute autre pièce qui paraîtrait recevable aux fins de justificatif de résidence. Sur ce point, je vous invite à vous reporter aux dispositions contenues dans ma circulaire NOR/INT/D/00/00277/C en date du 6 décembre 2000 relative aux pièces

justificatives pour la délivrance des titres de séjour. Il résulte de ces nouvelles dispositions que vous devrez désormais notifier au demandeur d'asile qui ne remplira pas la condition de domiciliation prévue à l'article 17-1 du décret, une décision de refus de renouvellement de son récépissé. Cette décision n'interrompt pas l'examen au fond de sa demande par l'OFPRA ou la CRR (devenue depuis la loi du 20 novembre 2007 la Cour nationale du droit d'asile) et n'implique pas la mise en oeuvre de la procédure prioritaire. Le nouvel article 17-1 du décret du 30 juin 1946 modifié prévoit que le renouvellement du récépissé de demande d'asile est subordonné à la justification par le demandeur du lieu où il a sa résidence.

Sauf situation d'extrême précarité autorisant une domiciliation auprès du secteur associatif, la condition de domiciliation effective apparaît donc comme une condition supplémentaire ajoutée par la réglementation française. Il pose la question de sa compatibilité avec le principe de libre circulation de l'article 7 de la directive 2003/9.

C. About the place of reception (meaning where the asylum seeker has to stay to benefit from reception conditions) (see § 4 of article 7): explain which are the general rules about the determination of this place (to which extend are the decisions determining the place taken individually and do they take into account the personal situation of the asylum seeker?) and to which extend the person is free to choose it and if it depends of the stage of the asylum procedure (for instance before and after admissibility); if there are constraints limiting the choice, explain which ones and their reasons (for instance attribution of reception conditions, processing of the application,…).

Il n'existe pas en France d'affectation autoritaire du demandeur dans un lieu donné. Ce dernier conserve le libre choix de son lieu de résidence mais l'évolution du système tend à contraindre progressivement cette liberté de choix visant à lier lieu de résidence et obtention des prestations sociales. Comme le démontre le nouvel article L. 351-9-1 du Code du travail, les personnes mentionnées à l'article L. 351-9 dont le séjour dans un centre d'hébergement est pris en charge au titre de l'aide sociale ne peuvent bénéficier de l'allocation temporaire d'attente : "il en va de même pour les personnes mentionnées à l'article L. 351-9 qui refusent une offre de prise en charge répondant aux conditions fixées au premier alinéa du même article. Si ce refus est manifesté après que l'allocation a été préalablement accordée, le bénéfice de l'allocation est perdu au terme du mois qui suit l'expression de ce refus".

Le système d'accueil français s'organise sur une démarche dirigiste. Si le demandeur d'asile refuse l'offre de prise en charge, il ne pourra bénéficier de l'allocation temporaire d'attente. Cette dernière est seulement délivrée aux demandeurs pour lesquels l'administration n'est pas en mesure de proposer un hébergement en centre d'accueil. Cette démarche est clairement explicitée par une circulaire interministérielle du 24 novembre 2006 relative à l'allocation temporaire d'attente (DPM/ACI3/2006/495) qui indique que les objectifs du gouvernement visent à "favoriser l'hébergement accompagné des demandeurs d'asile dans les

centres d'accueil pour demandeurs d'asile (CADA), l'allocation financière n'étant versée qu'à titre résiduel aux personnes auxquelles une offre d'hébergement n'aura pu être proposée. Ainsi, les personnes hébergées en CADA comme celles qui auront refusé une telle offre d'hébergement ne pourront bénéficier de cette allocation".

Cette logique est renforcée par la consécration, par la loi du 24 juillet 2006, dans le Code de l'action sociale et des familles (CASF) de l'existence légale des centres d'accueil des demandeurs d'asile. Les nouveaux articles L 348-1 à L 348-4 du CASF organisent l'existence et les missions des CADA. Désormais, les demandeurs d'asile devront uniquement être hébergés dans les CADA, sauf décision du demandeur d'avoir recours à l'initiative privée, Ce dispositif ayant pour objet de rationaliser l'organisation de l'hébergement de cette catégorie spécifique de ressortissants de pays tiers qui était auparavant hébergée en fonction des ressources à savoir dans des centres d'hébergement et de réinsertion sociale (CHRS) voire des structures d'urgence telles que les AUDA (structures d'Accueil d'Urgence des Demandeurs d'Asile) voire même dans des hôtels. Ces structures ont été mises en place à partir de novembre 2002, à la demande de la Direction de la population et des migrations (DPM) pour désengorger temporairement les structures parisiennes d'hébergement d'urgence. Ces centres d'hébergement sont gérés par la Sonacotra.

La loi du 24 juillet 2006 participe d'une refonte de la politique française de l'hébergement des demandeurs d'asile au travers, d'une part, d'une incitation forte à recourir à ces structures et, d'autre part, de l'augmentation du nombre de places disponibles dans les CADA.

Mis à part le recours à l'initiative privée, la réforme du dispositif national d'accueil de droit commun a profondément remanié les conditions de cet accueil. Les préfets de région exercent désormais l'autorité de l'Etat sur le dispositif national d'accueil des demandeurs d'asile dans leur région pour les capacités des Centres d'accueil des demandeurs d'asile (CADA) et il a vocation à jouer un rôle essentiel dans la péréquation interdépartementale pour la répartition des places.

Une coordination générale du dispositif a été instituée à partir de 2003, consistant à gérer au mieux la répartition des demandeurs d'asile entre tous les CADA du territoire en raison de la crise du dispositif et du nombre très insuffisant de places, notamment en région parisienne. Cette mission de répartition, d'abord confiée à l'association France - Terre d'asile, a été transférée à l'Agence nationale d'accueil des étrangers et des migrations (ANAEM), lors de sa création en 2005, par la fusion de l'Office des migrations internationales et de l'organisme associatif qu'était le Service social d'aide aux émigrants. Dans le cadre de cette coordination, les demandeurs peuvent être amenés à résider en un endroit précis pour bénéficier du dispositif.

Les critères d'éligibilité et de maintien en CADA sont définis par voie administrative par le biais d'une circulaire interministérielle DPM/ACI3 n° 2007-

184 du 3 mai 2007 relative aux modalités d'admission dans les centres d'accueil pour demandeurs d'asile et de sortie de ces centres.

D. If all asylum seekers are not placed in accommodation centres because of capacity limits, explain how the persons are distributed between accommodation centres and other accommodation facilities (which authority takes the decisions, on the basis of which elements, can that decision be appealed by the asylum seeker,…)[382]

Cette question n'est pas réglée directement en droit positif. Comme décrit plus haut, le système d'accueil français repose soit sur un hébergement direct, soit sur un hébergement alternatif d'urgence, voire en hôtel, dans la mesure où les capacités matérielles et financières le permettent. Les différents rapports parlementaires critiquent cette situation d'engorgement : "la réalité de l'hébergement des demandeurs est très complexe, car les différentes catégories de population aidées sont totalement mélangées dans les dispositifs d'accueil. Dans un rapport consacré aux familles déboutées du droit d'asile, l'IGAS a essayé en 2004 d'estimer par des sondages locaux l'importance des populations concernées. D'après les éléments recueillis, on compterait 23.850 demandeurs d'asile hébergés dont 10.350 dans le dispositif dédié – CADA et accueil d'urgence des demandeurs d'asile –, le reste se répartissant dans le dispositif généraliste. S'y ajoutaient 5.400 réfugiés statutaires, dont 1.800 dans les structures dédiées, et 5.950 déboutés ou sans papiers, dont 850 dans le dispositif dédié. La situation est d'autant plus complexe et difficile à évaluer que l'on trouve dans le dispositif dédié des personnes qui ne devraient plus y être, et dans le dispositif généraliste des personnes qui pourraient avoir droit au dispositif dédié. Selon d'autres évaluations, on trouve dans les CADA 17 % de réfugiés statutaires et 7 à 8 % de déboutés. Lorsqu'un demandeur se voit accorder le statut de réfugié, il reçoit, dans les trois mois en moyenne, une carte de résident et bénéficie, s'il le souhaite, des droits sociaux communs, RMI notamment, dans un délai d'environ deux mois. S'il se trouve en CADA, il doit quitter cette structure. Néanmoins, de nombreux réfugiés statutaires demeurent dans les centres jusqu'à six mois, d'une part à cause des délais évoqués plus haut, et d'autre part, car ils se heurtent aux difficultés de l'insertion dans le monde du travail et plus encore, aux difficultés de l'accès au logement, aidé ou non".

Afin de réorganiser et de rationaliser l'accueil des demandeurs d'asile, l'accueil et l'hébergement "bénéficient aujourd'hui non seulement d'un encadrement juridique plus clair mais aussi d'un effort matériel conséquent. Entre 2004 et 2006, le nombre de places disponibles en CADA est passé de 15 470 à 19 470, un objectif de 21 000 places ayant été fixé pour l'année 2007"[383]. De sorte que selon cet

[382] To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.
[383] Rapport MARIANI sur le projet de loi relative à la maîtrise de l'immigration et à l'intégration et à l'asile, Assemblée nationale,12 septembre 2007.

objectif, les demandeurs d'asile pourront tous être hébergés dans des CADA évitant par conséquent leur placement dans des structures d'urgence ou des hôtels.

E. **How can an asylum seeker ask to leave temporarily the place of residence or of reception or an assigned area? How is the individual AND impartial character of the decision ensured? (see §5 of article 7 which is a mandatory provision)**

Le droit français ne régit pas cette situation en ce qui concerne une résidence normale.

Q.21. **A. Do rules on reduction or withdrawal of reception conditions exist in internal legislation and if yes in which cases (mention in particular if there are cases not foreseen by article 16, § 1 and 2 which are optional provisions)? Distinguish in your answer between cases of reduction and withdrawal and explain which conditions can be reduced and if access to emergency health care is always ensured as requested by article 16, §4, last sentence.**

Le nouvel article L. 351-9-1 du Code du travail prévoit le retrait de l'allocation temporaire d'attente si le demandeur d'asile refuse une offre de prise en charge dans un centre d'hébergement. Ce dispositif a pour but d'inciter les demandeurs d'asile à intégrer les structures d'accueil dédiées.

Il indique que "les personnes mentionnées à l'article L. 351-9 dont le séjour dans un centre d'hébergement est pris en charge au titre de l'aide sociale ne peuvent bénéficier de l'allocation temporaire d'attente.

"Il en va de même pour les personnes mentionnées à l'article L. 351-9 qui refusent une offre de prise en charge répondant aux conditions fixées au premier alinéa du même article. Si ce refus est manifesté après que l'allocation a été préalablement accordée, le bénéfice de l'allocation est perdu au terme du mois qui suit l'expression de ce refus"

Un article R 351-16 du Code du travail précise que le préfet communique chaque mois, à l'Agence nationale de l'accueil des étrangers et des migrations communique, et aux institutions gestionnaires chargées du service de l'allocation les listes nominatives des demandeurs d'asile ayant refusé l'offre de prise en charge.

Par ailleurs, le contrôle visant à s'assurer que la personne bénéficiaire continue à remplir les conditions d'octroi de l'allocation est régi par l'article R 351-9-1, intégré dans le Code du travail par le décret n° 2006-1380 du 15 novembre 2006. Cet article prévoit que " Pour procéder aux vérifications rendues nécessaires par la gestion de l'allocation temporaire d'attente, les organismes gestionnaires peuvent consulter, par voie électronique, les données à caractère personnel strictement nécessaires détenues par l'Office français de protection des réfugiés et apatrides. Si les conditions d'ouverture des droits à l'allocation temporaire d'attente sont

réunies, les organismes gestionnaires peuvent procéder à l'extraction de ces données et à leur enregistrement dans le système de gestion de l'allocation. L'office enregistre les extractions de données précitées, afin de limiter aux seuls dossiers concernés la transmission ultérieure des informations nécessaires aux décisions de maintien ou de suppression de l'allocation.".

Une circulaire interministérielle du 24 novembre 2006 portant sur l'allocation temporaire d'attente précise que le versement de cette dernière peut être suspendu lorsque les vérifications ne peuvent être effectuées faute de production par le demandeur des documents nécessaires ou lorsque l'allocataire cesse temporairement de remplir les conditions d'attributions. En outre, la restitution des allocations indûment perçues peut être effectuée selon une procédure amiable par un accord entre l'organisme gestionnaire (Assedic) et l'allocataire.

Concernant les CADA, une circulaire du 3 mai 2007 (DPM/CI3/2007) relative aux missions des centres d'accueil pour demandeurs d'asile, aux modalités d'amission dans ces centres et de sortie de ces centres et au pilotage du dispositif national d'accueil prévoit les cas d'exclusion des demandeurs d'asile des CADA. Ainsi, l'exclusion d'un demandeur d'asile peut être prononcée par le gestionnaire d'un CADA pour les motifs suivants :
- non respect du règlement de fonctionnement
- actes de violence à l'encontre des autres résidents ou de l'équipe du centre,
- comportements délictueux et infraction à la législation française entraînant des poursuites judiciaires,
- fausses déclarations concernant l'identité, ou la situation personnelle notamment relativement aux critères d'accès à l'aide sociale de l'Etat.
- Refus de transfert dans un autre centre
- refus par une personne ayant obtenu le statut de réfugié d'une proposition d'hébergement ou de logement.

Le retrait de certaines conditions matérielles d'accueil dans les centres d'accueil des demandeurs d'asile se déduit également du dispositif réglementaire. Cela résulte en particulier de l'article R 311-37 du Code de l'action sociale et des familles. Ce dernier indique : Dans le respect des dispositions de la charte arrêtée en application des dispositions de l'article L. 311-4, le règlement de fonctionnement énumère les règles essentielles de vie collective. A cet effet, il fixe les obligations faites aux personnes accueillies ou prises en charge pour permettre la réalisation des prestations qui leur sont nécessaires, y compris lorsqu'elles sont délivrées hors de l'établissement. Ces obligations concernent, notamment, le respect des décisions de prise en charge, des termes du contrat ou du document individuel de prise en charge, le respect des rythmes de vie collectifs, le comportement civil à l'égard des autres personnes accueillies ou prises en charge, comme des membres du personnel, le respect des biens et équipements collectifs. Elles concernent également les prescriptions d'hygiène de vie nécessaires.

Il rappelle que les faits de violence sur autrui sont susceptibles d'entraîner des procédures administratives et judiciaires.
Il rappelle également, et, en tant que de besoin, précise les obligations de l'organisme gestionnaire de l'établissement ou du service ou du lieu de vie et d'accueil en matière de protection des mineurs, les temps de sorties autorisées, ainsi que les procédures de signalement déclenchées en cas de sortie non autorisée.

Les articles 65 et 66 de la loi impliquent la sortie des CADA en fin de procédure.

B. Has article 16, §2 dealing with refusal of reception conditions for unreasonably late applications for asylum been transposed by your Member State (or was this case already applicable before transposition)? Are there cases in practice[384]?

Conformément à l'article R 723-1 1er alinéa du CESEDA (introduit par le décret 2004-814), l'encadrement des délais de dépôt de la demande est strict : "à compter de la remise de l'autorisation provisoire de séjour prévue à l'article L 742-1, l'étranger demandeur d'asile dispose d'un délai de vingt et un jours pour présenter sa demande d'asile complète à l'office". Le texte conserve le silence sur les conditions d'accueil à proprement parler mais dans la mesure où celles-ci sont liées à la régularité d'une demande, il semble que la France fasse usage implicitement de l'article 16 §2.

C. How is it ensured that decisions of reduction or withdrawal are taken individually, objectively AND in particular impartially (for instance through and independent arbitrator) (see article 16, §4 which is a mandatory provision)?

Deux réponses sont possibles. La première concerne le retrait de l'allocation temporaire d'attente. L'article R 351-9-1, intégré dans le Code du travail par le décret n° 2006-1380 du 15 novembre 2006 prévoit que " Pour procéder aux vérifications rendues nécessaires par la gestion de l'allocation temporaire d'attente, les organismes gestionnaires peuvent consulter, par voie électronique, les données à caractère personnel strictement nécessaires détenues par l'Office français de protection des réfugiés et apatrides. Si les conditions d'ouverture des droits à l'allocation temporaire d'attente sont réunies, les organismes gestionnaires peuvent procéder à l'extraction de ces données et à leur enregistrement dans le système de gestion de l'allocation. L'office enregistre les extractions de données précitées, afin de limiter aux seuls dossiers concernés la transmission ultérieure des informations nécessaires aux décisions de maintien ou de suppression de l'allocation.".
Une circulaire interministérielle du 24 novembre 2006 portant sur l'allocation temporaire d'attente précise que le versement de cette dernière peut être suspendu lorsque les vérifications ne peuvent être effectuées faute de production par le demandeur des documents nécessaires ou lorsque l'allocataire cesse

[384] To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

temporairement de remplir les conditions d'attributions. En outre, la restitution des allocations indûment perçues peut être effectuée selon une procédure amiable par un accord entre l'organisme gestionnaire (Assedic) et l'allocataire.

La seconde voie concerne les réductions de conditions matérielles d'accueil à l'intérieur des centres d'hébergement. Sur la base de l'article L 311-7 du Code de l'action sociale et des familles, dans chaque établissement et service social ou médico-social, il est élaboré un règlement de fonctionnement qui définit les droits de la personne accueillie et les obligations et devoirs nécessaires au respect des règles de vie collective au sein de l'établissement ou du service. Ce règlement de fonctionnement est établi après consultation du conseil de la vie sociale ou, le cas échéant, après mise en oeuvre d'une autre forme de participation. Les dispositions minimales devant figurer dans ce règlement ainsi que les modalités de son établissement et de sa révision sont fixées par décret en Conseil d'Etat" (décret 2003-1095 du 14 novembre 2003 relatif au règlement de fonctionnement institué par l'article L. 311-7 du code de l'action sociale et des familles).

D. Is statement 14/03 adopted by the Council at the same moment as the directive respected (see the documentation pack you received at our meeting in Brussels in April)?

Il n'est pas fait mention de cette position en droit français.

E. Are there already administrative appeal decisions or judgements on cases of reduction, withdrawal or refusal which have been taken, and if yes, what has been the outcome[385]?

Sans objet

Q.22. **A. <u>Appeal</u> against a negative decision relating to the granting of benefits or based on article 7 (see article 21 which is a mandatory provision): indicate against which decision an appeal can be introduced, describe the system of appeal in general and include in particular in your answer the information given to asylum seekers about possibilities of appealing, deadline for appealing, if the appeal has or not a suspensive effect, if there are different steps (for instance first an administrative appeal and in particular if the guarantee of an appeal before a judicial body in the last instance is respected)?**

Le jeu normal des règles de la procédure administrative non contentieuse et de des recours contentieux a vocation à s'appliquer à d'éventuelles décisions de refus (ou de retrait de l'ATA), à savoir le jeu d'une procédure de recours gracieux suivi d'une procédure contentieuse au moyen d'un recours en annulation devant le juge administratif.

[385] To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

B. Explain which are the possibilities for asylum seekers to benefit from legal assistance when they introduce such an appeal (see article 21, §2 which is a mandatory provision but leaves space to Member States)?

La loi 91-647 du 10 juillet 1991 précise les conditions d'accès des personnes à l'aide juridictionnelle. Son article 3 précise que "sont admises au bénéfice de l'aide juridictionnelle les personnes physiques de nationalité française et les ressortissants des Etats membres de la Communauté européenne.

Les personnes de nationalité étrangère résidant habituellement et régulièrement en France sont également admises au bénéfice de l'aide juridictionnelle. Toutefois, l'aide juridictionnelle peut être accordée à titre exceptionnel aux personnes ne remplissant pas les conditions fixées à l'alinéa précédent, lorsque leur situation apparaît particulièrement digne d'intérêt au regard de l'objet du litige ou des charges prévisibles du procès.

L'aide juridictionnelle est accordée sans condition de résidence aux étrangers lorsqu'ils sont mineurs, témoins assistés, inculpés, prévenus, accusés, condamnés ou parties civiles ou lorsqu'ils font l'objet de la procédure de comparution sur reconnaissance préalable de culpabilité, ainsi qu'aux personnes faisant l'objet de l'une des procédures prévues aux articles 18 bis, 22 bis, 24, 35 bis et 35 quater de l'ordonnance n° 45-2658 du 2 novembre 1945 relative aux conditions d'entrée et de séjour des étrangers en France.

Devant la Commission des recours des réfugiés, elle est accordée aux étrangers qui résident habituellement et sont entrés régulièrement en France ou qui détiennent un titre de séjour d'une durée de validité au moins égale à un an".

Cette exception formulée au dernier alinéa de l'article 3 de la loi du 10 juillet 1991, concernant la condition de "séjour régulier" pour avoir accès à l'aide juridictionnelle devant la Commission de Recours des Réfugiés (devenue depuis la loi du 20 novembre 2007 la Cour nationale du droit d'asile) pose un problème de compatibilité avec le droit communautaire. Le Sénat, à l'occasion de l'examen du projet de loi "immigration et intégration", a proposé un amendement visant à supprimer la condition de régularité de l'entrée et du séjour de sorte que les demandeurs d'asile entrés irrégulièrement sur le territoire, qui constituent le contingent le plus important de demandeurs, puissent bénéficier de l'aide juridictionnelle devant la CRR. L'article 93 de la loi du 30 juin 2006 reprend cet amendement tout en le rendant applicable au 1° décembre 2008.

C. Are there already administrative appeal decisions or judgements which have been taken and if yes, which are the main important ones[386]?

Sans objet

D. Is a mechanism of <u>complain for asylum seekers about quality of receptions conditions</u> in general (even if they are not personally concerned) organised? If yes, before which authority? Is it linked to the system of guidance, control and monitoring of reception conditions (see below question n° 39)?

Il n'existe pas de mécanisme de ce type en droit français.

[386] To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

6. RIGHTS AND OBLIGATIONS OF ASYLUM SEEKERS

Q.23. **Family unity of asylum seekers: define how a family is defined in relation with article 2, (d) which is a mandatory provision and explain how housing is provided to a family (see articles 8 which is a mandatory provision but leaves space to member States and 14, §2, (a) which is a mandatory provision).**

L'article R 741-2 du CESEDA dispose que l'étranger qui, n'étant pas déjà admis à résider en France, sollicite son admission au séjour au titre de l'asile en application de l'article L 741-1 présente à l'appui de sa demande les indications relatives à son état civil et, le cas échéant, à celui de son conjoint et de ses enfants à charge. La définition du lien familial est donc celle du mariage et la jurisprudence administrative y ajoute celle du concubinage (CE, 2 décembre 1994, *Agyepong*). Sauf cas particulier, l'ascendant n'est pas compris dans l'unité familiale pas davantage que la polygamie et la rupture du lien familial (divorce, séparation) peut conduire au retour du membre de la famille du réfugié.

Le Code de l'Action sociale et des familles prévoit dans son article L-311-9 que, "en vue d'assurer le respect du droit à une vie familiale des membres des familles accueillies dans les établissements ou services mentionnés aux 1° et 7° de l'article L. 312-1, ces établissements ou services doivent rechercher une solution évitant la séparation de ces personnes ou, si une telle solution ne peut être trouvée, établir, de concert avec les personnes accueillies, un projet propre à permettre leur réunion dans les plus brefs délais, et assurer le suivi de ce projet jusqu'à ce qu'il aboutisse. Dans ce but, chaque schéma départemental des centres d'hébergement et de réinsertion sociale évalue les besoins en accueil familial du département et prévoit les moyens pour y répondre"

Q.24. **A. How is housing of asylum seekers organised: describe the system in general and indicate in particular what is the most frequently system used (see article 14, §1 which is a mandatory provision but leaves space for Member States; distinguish between accommodation centres, private houses and apartments, hotels places or other premises).**

Le système d'accueil français offre deux possibilités aux demandeurs pendant la période d'instruction de leur demande. Soit l'hébergement dans un centre où ils sont pris en charge au titre de l'aide sociale, ou à défaut de disposer de place suffisantes le versement d'une allocation afin de faire face au coût d'hébergement. Soir, la liberté pour le demandeur d'asile de pourvoir lui – même à ses besoins sans avoir recours à l'aide sociale.

B. What is the total number of available places for asylum seekers?[387] Distinguish in your answer between accommodation centres, private houses and apartments, hotels or other premises.

Selon un rapport parlementaire de septembre 2007, le nombre de places disponibles en CADA est passé, entre 2004 et 2006, de 15 470 à 19 470, un objectif de 21 000 places ayant été fixé pour l'année 2007. Selon le rapport au Parlement de décembre 2007 relatif aux orientations de la politique d'immigration, le nombre de places en CADA fin 2007 s'élevait à 20 410.

Le ministère de l'Emploi, de la cohésion sociale et du logement estimait les besoins à 30.000 places, afin d'éviter le recours aux coûteux dispositifs d'hébergement complémentaires en HLM ou en hôtels. Les capacités étant notamment insuffisantes en région parisienne et dans la région Rhone Alpes.

C. Is this number of places for asylum seekers sufficient in general or frequently insufficient?[388]

Dans un rapport présenté en avril 2006 par la Mission d'Evaluation et de Contrôle sur l'évolution des coûts budgétaires des demandes d'asile, ce nombre est insuffisant : "l'accroissement des capacités n'a pas pour effet direct que la capacité d'accueil sera de 20.000 personnes. Pour atteindre ce résultat, il faudrait que la durée du séjour des demandeurs n'excède pas un an (le taux de rotation est aujourd'hui de 0,5%). Ramener la durée totale de la procédure à six mois, au lieu de dix-huit mois actuellement, reviendrait à tripler la capacité des CADA, qui passerait de 15.000 à 45.000 personnes. Une telle évolution conduirait à des conditions mieux gérables, et à un accueil amélioré des demandeurs". Au delà, le nombre des demandes d'asile en 2005 (59221) doit être rapproché du nombre de places disponibles dans le dispositif national d'accueil (environ 19 000 en 2006). Selon le rapport au Parlement de décembre 2007 relatif aux orientations de la politique d'immigration, le nombre de places en CADA fin 2007 s'élevait à 20 410.

En définitive, la politique française de gestion de l'accueil des demandeurs d'asile s'appuie sur une augmentation des places disponibles en CADA et l'accélération de la procédure d'examen des demandes d'asile assurant une augmentation de la rotation dans les structures d'accueil et mécaniquement une augmentation des places disponibles. A terme, la France devrait être dotée d'un nombre de places suffisantes pour accueillir les demandeurs d'asile.

[387] To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.
[388] To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

D. Are there special measures foreseen in urgent cases of a high number of news arrivals of asylum seekers (outside the case of application of the directive on temporary protection)?

La circulaire du 3 mai 2007 relative aux missions des CADA mentionne les situations d'urgence au titre des admissions prioritaires. Ainsi "Bénéficient d'une priorité d'admission en centre d'accueil pour demandeurs d'asile les catégories suivantes de demandeurs d'asile :

- les primo-arrivants en début de procédure ;
- les familles avec enfants ;
- les femmes seules ;
- les personnes rejoignant des demandeurs d'asile déjà pris en charge dans un centre d'accueil pour demandeurs d'asile (conjoint(e), ascendants directs à charge, descendants directs à charge) ;
- les jeunes majeurs isolés ;
- les jeunes déclarés majeurs à l'issue d'une expertise osseuse ;
- sur avis médical motivé, les demandeurs d'asile ayant des problèmes de santé mais dont l'état ne nécessite pas une prise en charge médicalisée ;
- les personnes ayant fait l'objet d'un signalement par le ministère des affaires étrangères ;
- les personnes prises en charge au titre de l'hébergement d'urgence ou en centre de transit.

Ces priorités d'admission ne doivent pas toutefois vous faire perdre de vue que l'objectif est d'accueillir en CADA tous les demandeurs d'asile qui en ont exprimé le souhait, ce qui exige que ne soient pas maintenues dans ces centres des personnes n'ayant plus la qualité de demandeur d'asile.

Q.25. Accommodation centres **(important note: all the following questions are about open and not closed centres where asylum seekers are detained which are covered by another question)**

A Are there different categories of accommodation centres, for instance depending of the stage of the procedure (admissibility and eligibility)?

S'agissant de l'hébergement ordinaire, deux types de structures étaient offertes aux demandeurs d'asile avant l'adoption de la loi du 24 juillet 2006 : les Centres d'accueil des demandeurs d'asile (CADA) et les Centres d'hébergement et de réinsertion sociale (CHRS). S'agissant de l'hébergement d'urgence des demandeurs d'asile, les solutions d'hébergement peuvent soient être en structures collectives (AUDA voir supra) soit être en hôtel.

Le statut juridique des Centres d'accueil est fixé par la loi du 24 juillet 2006 afin d'améliorer l'efficacité globale du dispositif d'hébergement des demandeurs d'asile tout en garantissant la qualité de la prise en charge de ces personnes. À cette fin, les CADA doivent être distingués des centres d'hébergement et de réinsertion sociale spécialisés (CHRS) dès lors que leurs missions et leurs publics sont différents. Aussi, une catégorie particulière d'établissements sociaux et médico-

sociaux est créée : les centres d'accueil pour demandeurs d'asile, création faisant l'objet des articles L. 348-1 à L. 348-4 du code de l'action sociale et des familles.

En application de l'article L 348-1 du Code de l'action sociale et des familles (créé par la loi du 24 juillet 2006) les centres d'accueil pour demandeurs d'asile ont pour mission d'assurer l'accueil, l'hébergement, l'accompagnement social et administratif des demandeurs d'asile pendant la durée de leur demande d'asile. Le principe de l'admission à l'aide sociale de l'État est conforté, s'agissant des frais d'accueil et d'hébergement des étrangers admis dans ces centres. La procédure d'admission dans ces centres est précisée : l'admission est prononcée par les gestionnaires de centres avec l'accord de l'autorité administrative compétente. Il est prévu que le retrait d'habilitation peut désormais se fonder sur le non-respect des catégories de publics à accueillir - hypothèse désormais prévue par l'article L. 313-9 du code de l'action sociale et des familles, précisant les délais de la phase de concertation préalable au retrait, dans le respect du principe et des étapes d'un dialogue contradictoire.

B. Is there a legal time limit for accommodation in a centre after which the asylum seekers have access to private houses or apartments or is this limit linked to a stage of the asylum procedure?

La liberté du demandeur d'asile de choisir son lieu d'hébergement lui laisse la possibilité de quitter un CADA pour un appartement privé. En outre, les CADA gèrent également des appartements privés dans lesquels ils logent des demandeurs d'asile, en priorité des familles.

La durée d'admission en CADA est liée, comme indiqué précédemment, à la procédure d'admission au statut, comme le rappelle la note d'instruction interministérielle DPM/ACI3 n° 2006-31 du 20 janvier 2006 précitée : " le Gouvernement poursuit ainsi un objectif de clarification du rôle du dispositif national d'accueil. Il entend à la fois en développer les capacités d'hébergement tout en veillant à ce que ce dispositif soit dédié aux publics ayant vocation à en bénéficier. C'est ainsi qu'il se fixe comme objectif que d'ici 2007 ces structures n'assurent l'hébergement que des personnes dont la demande d'asile est encore en cours d'examen par l'organisation d'une sortie la plus rapide possible après décision. Tous les autres publics, qui aujourd'hui peuvent être présents dans ces structures, auront ainsi vocation à les quitter pour être pris en charge, le cas échéant, par les dispositifs d'hébergement de droit commun".

Un décret n° 2007-399 du 23 mars 2007 formalise ce mouvement en intégrant dans le Code de l'action sociale et des familles un nouvel article R 348-3 qui indique :
"I. - Dès qu'une décision définitive, au sens du quatrième alinéa de l'article R. 351-6 du code du travail, a été prise sur une demande d'asile, le préfet, ou, à Paris, le préfet de police, en informe sans délai le gestionnaire du centre d'accueil pour

demandeurs d'asile qui héberge la personne concernée, en précisant la date à laquelle cette décision a été notifiée au demandeur.
Dès que l'information prévue à l'alinéa précédent lui est parvenue, le gestionnaire du centre communique à la personne hébergée la fin de sa prise en charge, qui intervient sous réserve de l'une des procédures suivantes :
1º Si elle en fait la demande, la personne ayant eu notification d'une décision définitive favorable est maintenue dans le centre jusqu'à ce qu'une solution d'hébergement ou de logement lui soit présentée, dans la limite d'une durée de trois mois à compter de la date de notification. Durant cette période, elle prépare avec le gestionnaire du centre les modalités de sa sortie. Le gestionnaire prend toutes mesures utiles pour lui faciliter l'accès à ses droits, au service public de l'accueil ainsi qu'à une offre d'hébergement ou de logement adaptée. A titre exceptionnel, cette période peut être prolongée, pour une durée maximale de trois mois supplémentaires avec l'accord du préfet.
2º Si elle en fait la demande, la personne ayant eu notification d'une décision définitive défavorable est maintenue dans le centre pour une durée maximale d'un mois à compter de la date de cette notification. Durant cette période, elle prépare avec le gestionnaire du centre les modalités de sa sortie.
Cette personne peut, dans le délai de quinze jours à compter de la notification, saisir l'Agence nationale de l'accueil des étrangers et des migrations en vue d'obtenir une aide pour le retour dans son pays d'origine. Si elle présente une telle demande, elle peut, à titre exceptionnel, et avec l'accord du préfet, être maintenue dans le centre pour une durée maximale d'un mois à compter de la décision de l'Agence nationale de l'accueil des étrangers et des migrations.
II. - A l'issue du délai de maintien dans le centre, le gestionnaire du centre met en oeuvre la décision de sortie après avoir recueilli l'accord du préfet".

Une circulaire du 3 mai 2007 (DPM/CI3/2007) renforce ce positionnement en signalant tout d'abord que les "priorités d'admission ne doivent pas toutefois vous faire perdre de vue que l'objectif est d'accueillir en CADA tous les demandeurs d'asile qui en ont exprimé le souhait, ce qui exige que ne soient pas maintenues dans ces centres des personnes n'ayant plus la qualité de demandeur d'asile". Ensuite, la circulaire établit de manière très précise les conditions et modalités de sortie des CADA des personnes ayant fait l'objet d'une décision définitive et n'ayant dès lors plus vocation à être hébergées dans ces structures.

C. Is there a general regulation about the internal functioning of those centres and the rights and duties of the asylum seekers? If yes, is this general regulation applicable to public and private centres? If not, are the centres supposed to adopt an internal regulation and does a central authority have or not a kind of control about its content?

L'article L-311-4 du Code de l'Action sociale et des Familles dispose que, "afin de garantir l'exercice effectif des droits mentionnés à l'article L. 311-3 et notamment de prévenir tout risque de maltraitance, lors de son accueil dans un établissement ou dans un service social ou médico-social, il est remis à la personne ou à son représentant légal un livret d'accueil auquel sont annexés :

a) Une charte des droits et libertés de la personne accueillie, arrêtée par les ministres compétents après consultation de la section sociale du Comité national de l'organisation sanitaire et sociale mentionné à l'article L. 6121-9 du code de la santé publique ;

b) Le règlement de fonctionnement défini à l'article L. 311-7.

Un contrat de séjour est conclu ou un document individuel de prise en charge est élaboré avec la participation de la personne accueillie ou de son représentant légal. Ce contrat ou document définit les objectifs et la nature de la prise en charge ou de l'accompagnement dans le respect des principes déontologiques et éthiques, des recommandations de bonnes pratiques professionnelles et du projet d'établissement. Il détaille la liste et la nature des prestations offertes ainsi que leur coût prévisionnel.

Le contenu minimal du contrat de séjour ou du document individuel de prise en charge est fixé par voie réglementaire selon les catégories d'établissements et de personnes accueillies".

D. Do the regulations foresee the possibility of <u>sanctions</u> against asylum seekers in case of breach of the rules? (see article 16, §3) If yes, which sanctions for which rules? Which is the competent authority to decide? How is it ensured that decisions are taken individually, objectively and in particular *impartially* (for instance through an independent arbitrator) as requested by §4 of article 21 which is mandatory provision*?* Which are the possibilities of appealing against those decisions if the system is different from the general one under question n°22? Are there already administrative appeal decisions or judgements which have been taken and if yes, which are the main important ones? [389]

Comme indiqué précédemment, l'article L-311-7 du Code de l'Action sociale et des Familles prévoit que "dans chaque établissement et service social ou médico-social, il est élaboré un règlement de fonctionnement qui définit les droits de la personne accueillie et les obligations et devoirs nécessaires au respect des règles de vie collective au sein de l'établissement ou du service.

Le règlement de fonctionnement est établi après consultation du conseil de la vie sociale ou, le cas échéant, après mise en oeuvre d'une autre forme de participation.

Les dispositions minimales devant figurer dans ce règlement ainsi que les modalités de son établissement et de sa révision sont fixées par décret en Conseil d'Etat"

Le décret n° 2003-1095 du 14 novembre 2003 relatif au règlement de fonctionnement institué par l'article L. 311-7 du Code de l'action sociale et des Familles consacre sa section 2 à cette problématique : le règlement de fonctionnement indique les principales modalités concrètes d'exercice des droits énoncés au code de l'action sociale et des familles, notamment de ceux mentionnés à l'article L. 311-3. Il précise, le cas échéant, les modalités d'association de la

[389] To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

famille à la vie de l'établissement ou du service (article 3); le règlement de fonctionnement fixe les modalités de rétablissement des prestations dispensées par l'établissement ou le service lorsqu'elles ont été interrompues (article 4); le règlement de fonctionnement précise l'organisation et l'affectation à usage collectif ou privé des locaux et bâtiments ainsi que les conditions générales de leur accès et de leur utilisation (article 5); le règlement de fonctionnement précise les dispositions relatives aux transferts et déplacements, aux modalités d'organisation des transports, aux conditions d'organisation de la délivrance des prestations offertes par l'établissement à l'extérieur (article 6); le règlement de fonctionnement prévoit les mesures à prendre en cas d'urgence ou de situations exceptionnelles (article 7); le règlement de fonctionnement précise les mesures relatives à la sûreté des personnes et des biens (article 8); dans le respect des dispositions de la charte arrêtée en application des dispositions de l'article L. 311-4 du code de l'action sociale et des familles, le règlement de fonctionnement énumère les règles essentielles de vie collective. A cet effet, il fixe les obligations faites aux personnes accueillies ou prises en charge pour permettre la réalisation des prestations qui leur sont nécessaires, y compris lorsqu'elles sont délivrées hors de l'établissement. Ces obligations concernent, notamment, le respect des décisions de prise en charge, des termes du contrat ou du document individuel de prise en charge, le respect des rythmes de vie collectifs, le comportement civil à l'égard des autres personnes accueillies ou prises en charge, comme des membres du personnel, le respect des biens et équipements collectifs. Elles concernent également les prescriptions d'hygiène de vie nécessaires (article 9); le règlement de fonctionnement rappelle que les faits de violence sur autrui sont susceptibles d'entraîner des procédures administratives et judiciaires~~)~~. Il rappelle également, et, en tant que de besoin, précise les obligations de l'organisme gestionnaire de l'établissement ou du service ou du lieu de vie et d'accueil en matière de protection des mineurs, les temps de sorties autorisées, ainsi que les procédures de signalement déclenchées en cas de sortie non autorisée (article 10).

E. Are asylum seekers involved in the <u>management</u> of these centres? If yes, how (advisory board, appointment or election of representatives)? (see article 14, §6 which is an option provision)

L'article L-311-6 du Code de l'Action Sociale et des familles dispose que "afin d'associer les personnes bénéficiaires des prestations au fonctionnement de l'établissement ou du service, il est institué soit un conseil de la vie sociale, soit d'autres formes de participation. Les catégories d'établissements ou de services qui doivent mettre en oeuvre obligatoirement le conseil de la vie sociale sont précisées par décret. Ce décret précise également, d'une part, la composition et les compétences de ce conseil et, d'autre part, les autres formes de participation possible".

Le décret 2004-287 du 25 mars 2004 relatif au conseil de la vie sociale et aux autres formes de participation institués à l'article L. 311-6 du code de l'action sociale et des familles, prévoit la participation des usagers.

F. Do specific rules exist on work of asylum seekers inside the accommodation centres different from the general ones about employment (see below)? If yes, which ones? Can working inside accommodation centres be considered as a (mandatory) contribution of the asylum seekers to the management of the centres, is it or not paid and considered as implying access to the labour market and subject to the same rules?

Ces règles n'existent pas.

Q.26. **A. How can asylum seekers communicate with legal advisers, representatives of UNHCR and NGOs? (see article 14, §2, (b) which is a mandatory provision).**

Cette question ne concerne ni les centres de rétention administrative, ni les zones d'attentes. Concernant les centres d'accueil, la loi de 2006 (créant un nouveau Chapitre dans le CASF) fixe les missions des CADA et elle prévoit " *Art. L. 348-2 CASF*. – I. – Les centres d'accueil pour demandeurs d'asile ont pour mission d'assurer l'accueil, l'hébergement ainsi que l'accompagnement social et administratif des demandeurs d'asile, pendant la durée d'instruction de leur demande d'asile".

Dans la mesure où les demandeurs d'asile conservent leur liberté de circulation, ils peuvent communiquer librement avec des Conseils, le HCR ou des ONG.

B. What are the rules about access of legal advisers, UNHCR and NGOs regarding access to accommodation centres and other housing facilities (see article 14, §7 which is a mandatory provision)

Les centres d'hébergement n'imposent aucune restriction de communication aux personnes qui y sont hébergées et ne comprennent aucune règle restreignant l'accès du HCR ou d'autres ONG.

C. Can the access of legal advisers, UNHCR and NGOs be limited for security reasons or any other reason (see article 14, §7, last sentence)?

Il ne semble pas que le droit français règlemente cette situation. En pratique, s'il apparaissait que le gestionnaire d'un centre d'hébergement décide de limiter l'accès pour des raisons de sécurité, les pensionnaires des centres pourraient toujours rencontrer des conseillers à l'extérieur étant donné que leur liberté de circulation ne s'en trouve pas entachée.

Q.27. **A. Is a medical screening organised by the receiving State, is it mandatory or voluntary? Does it include HIV tests? (see article 9 which is an optional provision)**

Pour les personnes hébergées en CADA est organisée une visite médicale complète en conformité aux règles déontologiques. Sur la fiche type il n'est pas

mentionné un dépistage HIV. Cette démarche appartient à la personne qui doit être sensibilisée à ce sujet.

La circulaire DPM/CI 3 n° 99-399 du 8 juillet 1999 relative aux procédures d'admission dans le dispositif national d'accueil (DNA) des réfugiés et des demandeurs d'asile, prévoyait en son annexe III, article 9, deux examens médicaux obligatoires effectués systématiquement : le premier à l'arrivée, le second à trois mois d'intervalle. Les vaccinations obligatoires pour les enfants seront réalisées.
Cette circulaire a été abrogée par la circulaire interministérielle DPM/ACI3 n° 2007-184 du 3 mai 2007, laquelle ne reprend pas en annexe les dispositions susmentionnées.

Quoi qu'il en soit, le suivi médical constitue une mission des établissements sociaux et médico-sociaux. L'article L 311-1 du Code de l'action sociale et des familles précise aux titre des missions le déploiement d'action éducatives, médico-éducatives, médicales, thérapeutiques, pédagogiques et de formation adaptées aux besoins de la personne. Ce type de mission implique obligatoirement un ou plusieurs examens médicaux.

B. Do the legal provisions on reception conditions ensure that asylum seekers receive <u>at least emergency care and essential treatment of illness</u> as requested by article 15 §1 which is a mandatory provision? Do they have a further access to health care ?

En vertu de la législation française (article 3 de la loi nº 99-641 du 27 juillet 1999, JO du 28 juillet 1999) toute personne résidant en France métropolitaine ou dans un département d'outre-mer de façon stable et régulière relève du régime général lorsqu'elle n'a droit à aucun autre titre aux prestations en nature d'un régime d'assurance maladie et maternité. Un décret en Conseil d'Etat précise la condition de résidence mentionnée au présent article

L'article L-861-1 du code de la sécurité sociale prévoit que les personnes résidant en France dans les conditions prévues par l'article L. 380-1, dont les ressources sont inférieures à un plafond déterminé par décret, révisé chaque année pour tenir compte de l'évolution des prix, ont droit à une couverture complémentaire dans les conditions définies à l'article L. 861-3. Cette révision prend effet chaque année au 1er juillet. Elle tient compte de l'évolution prévisible des prix de l'année civile en cours, le cas échéant corrigée de la différence entre le taux d'évolution retenu pour fixer le plafond de l'année précédente et le taux d'évolution des prix de cette même année. Ce plafond varie selon la composition du foyer et le nombre de personnes à charge. Un décret en Conseil d'Etat précise les conditions d'âge, de domicile et de ressources dans lesquelles une personne est considérée comme étant à charge. Les personnes mineures ayant atteint l'âge de seize ans, dont les liens avec la vie familiale sont rompus, peuvent bénéficier à titre personnel, à leur demande, sur décision de l'autorité administrative, de la protection complémentaire dans les conditions définies à l'article L. 861-3. Une action en récupération peut être exercée par l'organisme prestataire à l'encontre des parents du mineur bénéficiaire

lorsque ceux-ci disposent de ressources supérieures au plafond mentionné au premier alinéa

L'article R-380-1 du Code de la sécurité sociale indique :
" I. - Les personnes visées à l'article L. 380-1 doivent justifier qu'elles résident en France métropolitaine ou dans un département d'outre-mer de manière ininterrompue depuis plus de trois mois. Toutefois, ce délai de trois mois n'est pas opposable :
….3º Aux personnes reconnues réfugiés, admises au titre de l'asile ou ayant demandé le statut de réfugié.
II. - Les personnes de nationalité étrangère doivent en outre justifier qu'elles sont en situation régulière au regard de la législation sur le séjour des étrangers en France à la date de leur affiliation

Pour cette raison la question de la situation des personnes non autorisées à séjourner sur le territoire prévoit que tout étranger résidant en France de manière ininterrompue depuis plus de trois mois, sans remplir la condition de régularité mentionnée à l'article L. 380-1 du code de la sécurité sociale et dont les ressources ne dépassent pas le plafond mentionné à l'article L. 861-1 de ce code a droit, pour lui-même et les personnes à sa charge au sens des articles L. 161-14 et L. 313-3 de ce code, à l'aide médicale de l'Etat. En outre, toute personne qui, ne résidant pas en France, est présente sur le territoire français, et dont l'état de santé le justifie, peut, par décision individuelle prise par le ministre chargé de l'action sociale, bénéficier de l'aide médicale de l'Etat dans les conditions prévues par l'article L. 252-1. Dans ce cas, la prise en charge des dépenses mentionnées à l'article L. 251-2 peut être partielle. De même, toute personne gardée à vue sur le territoire français, qu'elle réside ou non en France, peut, si son état de santé le justifie, bénéficier de l'aide médicale de l'Etat, dans des conditions définies par décret (article L-251-1 du Code de l'Action sociale et des Familles).

Néanmoins, "les soins urgents dont l'absence mettrait en jeu le pronostic vital ou pourrait conduire à une altération grave et durable de l'état de santé de la personne ou d'un enfant à naître et qui sont dispensés par les établissements de santé à ceux des étrangers résidant en France sans remplir la condition de régularité mentionnée à l'article L. 380-1 du Code de la sécurité sociale et qui ne sont pas bénéficiaires de l'aide médicale de l'Etat en application de l'article L. 251-1 sont pris en charge dans les conditions prévues à l'article L. 251-2. Une dotation forfaitaire est versée à ce titre par l'Etat à la Caisse nationale de l'assurance maladie des travailleurs salariés (article L-254-1 CASF**)**.

La circulaire du 16 mars 2005 relative à la prise en charge des soins urgents délivrés à des étrangers résidants en France de manière irrégulière et non bénéficiaires de l'aide médicale d'Etat répète ce dispositif et elle en délimite le champ d'application.

C. What is the practice regarding access of asylum seekers to health care and how is it organised? In particular, what is the situation in accommodation centres (are doctors coming to the centres or do asylum seekers go to doctors outside)?[390]
Voir supra

Q.28. **A. What is the length of the period determined by the concerned Member State during which asylum seekers have no access to the labour market? (see article 11 which is a mandatory provision)**

L'article R 742-2 du CESEDA est dépourvu d'ambiguïté : l'accès au marché du travail ne peut être autorisé au demandeur d'asile que dans le cas où l'office, pour des raisons qui ne sont pas imputables au demandeur, n'a pas statué sur la demande d'asile dans un délai d'un an suivant l'enregistrement de la demande. Dans ce cas, le demandeur d'asile est soumis aux règles de droit commun applicables aux travailleurs étrangers pour la délivrance d'une autorisation provisoire de travail. La situation de l'emploi lui est opposable.

L'article R 742-3 du CESEDA précise que lorsqu'un recours est formé devant la commission des recours des réfugiés, le demandeur d'asile qui a obtenu le renouvellement de son récépissé dans les conditions prévues à l'alinéa précédent est soumis aux règles de droit commun applicables aux travailleurs étrangers pour la délivrance d'une autorisation provisoire de travail

B. After that period, are asylum seekers or not obliged to obtain a work permit? In case is there a limit for the administration to deliver the permits and how quick are they delivered? What is their length?

Le droit français prévoit qu'une autorisation de travail doit être délivrée.

C. After that period, what are the conditions for access of the asylum seekers to the labour market? (in particular, are there rules concerning the maximum allowed of working hours or days per week, month or year, limits in terms of type of work or of professions authorised?

L'article L- 341-4 du Code du travail indique que " un étranger ne peut exercer une activité professionnelle salariée en France sans avoir obtenu au préalable l'autorisation mentionnée à l'article L. 341-2. Cette autorisation est délivrée dans des conditions qui sont fixées par un décret en Conseil d'Etat, sous réserve des dispositions applicables en vertu des troisième et quatrième alinéas du présent article. L'autorisation de travail peut être délivrée à un étranger qui demande l'attribution de la carte de séjour temporaire sous la forme de la mention "salarié" apposée sur cette carte. Elle habilite cet étranger à exercer les activités

[390] To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

professionnelles indiquées sur cette carte dans les zones qui y sont mentionnées. L'autorisation de travail peut être délivrée à un étranger sous la forme d'une carte de résident qui lui confère le droit d'exercer sur l'ensemble du territoire de la France métropolitaine toute activité professionnelle salariée de son choix dans le cadre de la législation en vigueur.
Lorsque l'autorisation de travail est demandée en vue de la conclusion d'un contrat d'apprentissage visé à l'article L. 117-1 ou d'un contrat de professionnalisation visé à l'article L. 981-1, la situation de l'emploi ne peut être opposée à la demande d'un étranger qui a été pris en charge par les services de l'aide sociale à l'enfance mentionnés à l'article L. 221-1 du code de l'action sociale et des familles avant qu'il ait atteint l'âge de seize ans et qui l'est toujours au moment où il présente sa demande

L'article R-341-7 du Code du travail précise que "une autorisation provisoire de travail peut être délivrée à l'étranger qui ne peut prétendre ni à la carte de séjour temporaire portant la mention "salarié" ni à la carte de résident et qui est appelé à exercer chez un employeur déterminé, pendant une période dont la durée initialement prévue n'excède pas un an, une activité présentant par sa nature ou les circonstances de son exercice un caractère temporaire. Le silence gardé pendant plus de quatre mois par le préfet sur une demande d'autorisation vaut décision de rejet. La durée de validité de cette autorisation, dont les caractéristiques sont fixées par arrêté du ministre chargé des travailleurs immigrés, ne peut dépasser neuf mois. Elle est renouvelable.

D. What are the rules in terms of <u>priorities</u> between asylum seekers on the one hand and nationals, EU or EEE citizens and legally third-country nationals on the other?

Il n'existe pas de priorités en ce sens. La partie réglementaire du CESEDA (art. R 742-2 et R 742-3) pose simplement le principe selon lequel la situation du marché de l'emploi peut être opposable aux demandeurs d'asile qui ont accès à une activité salariée.

E. Do asylum seekers have access to <u>vocational training</u>, does this or not depend of their right to access to the labour market, and in case at which conditions? (see article 12 which is optional regarding §1 and mandatory regarding § 2)

Conformément à l'article L. 341-4 du Code du travail, l'accès à la formation professionnelle est ouvert aux demandeurs d'asile dans les mêmes conditions que l'accès au marché de l'emploi. Néanmoins, et afin d'assurer l'accès des mineurs à la formation professionnelle, la loi de programmation pour la cohésion sociale du 18 janvier 2005, prévoit que la situation de l'emploi ne peut être opposée à cette catégorie de ressortissants de pays tiers (Loi n° 2005-32 du 18 janvier 2005 de programmation pour la cohésion sociale)

L'article L. 341-4 du code du travail est complété par un alinéa ainsi rédigé :

"Lorsque l'autorisation de travail est demandée en vue de la conclusion d'un contrat d'apprentissage visé à l'article L. 117-1 ou d'un contrat de professionnalisation visé à l'article L. 981-1, la situation de l'emploi ne peut être opposée à la demande d'un étranger qui a été pris en charge par les services de l'aide sociale à l'enfance mentionnés à l'article L. 221-1 du code de l'action sociale et des familles avant qu'il ait atteint l'âge de seize ans et qui l'est toujours au moment où il présente sa demande".

F. Are the rules regarding access to the labour market adopted to transpose the directive more or less generous than the ones applicable previously?

La transposition de la directive au travers des dispositions réglementaires du CESEDA consacrées au droit d'asile (ancien article 16 du décret 46-1574) est plus généreuse lorsque le délai d'examen de la demande est supérieur à une année. Elle est indifférente si l'examen de la demande est inférieur à une année, puisqu'une circulaire du premier ministre du 26 septembre 1991 avait déjà supprimé le droit d'accès au marché du travail des demandeurs d'asile.

Q.29. Are reception conditions subject to the fact that asylum seekers do not have sufficient resources? Are asylum seekers requested to contribute to reception conditions when they have personal resources (for instance if they work) or to refund the authorities if it appears that they have resources? (see article 13 §§ 3 and 4 which are optional provisions)

La réponse est affirmative sur la base de la loi du 30 juin 2006. Son article L.348-2-II prévoit ainsi que "les conditions de fonctionnement et de financement des centres d'accueil pour demandeurs d'asile sont fixées par décret en Conseil d'Etat. Ce décret précise notamment les modalités selon lesquelles les personnes participent à proportion de leur ressources à leur frais d'hébergement, de restauration et d'entretien".
Le décret n° 2007-399 du 23 mars 2007 introduit un nouvel article R 348-4 dans le Code de l'action sociale et des familles qui prévoit notamment en son I "Les personnes hébergées en centre d'accueil pour demandeurs d'asile dont le niveau de ressources mensuelles est égal ou supérieur au montant du revenu minimum d'insertion défini à l'article L. 262-2 acquittent une participation financière à leurs frais d'hébergement et d'entretien. Le montant de cette participation est fixé par le préfet sur la base d'un barème établi par arrêté du ministre chargé de l'action sociale et du ministre chargé du budget. La décision est notifiée à l'intéressé par le directeur de l'établissement.
Le barème tient compte notamment :

- des ressources de la personne ou de la famille accueillie ;
- des dépenses restant à sa charge pendant la période d'accueil.

La personne accueillie acquitte directement sa contribution à l'établissement qui lui en délivre récépissé".

De même, l'allocation temporaire d'attente, à l'instar de l'allocation d'insertion préalablement accordée aux demandeurs d'asile, est attribuée en fonction de conditions de ressources. A ce titre l'article 351-9 du Code du travail énonce que "peuvent bénéficier d'une allocation temporaire d'attente les ressortissants étrangers ayant atteint l'âge de dix-huit ans révolu dont le titre de séjour ou le récépissé de demande de titre de séjour mentionne qu'ils ont sollicité l'asile en France et qui ont présenté une demande tendant à bénéficier du statut de réfugié, s'ils satisfont à une condition de ressources".

Un décret n° 2006-1380 du 13 novembre 2006 modifie l'article R 531-10 du Code du travail. Cette disposition prévoit :
"Pour bénéficier de l'allocation temporaire d'attente, la personne mentionnée à l'article L. 351-9 doit justifier de ressources mensuelles inférieures au montant du revenu minimum d'insertion défini à l'article L. 262-2 du code de l'action sociale et des familles. Les ressources prises en considération pour l'application de ce plafond comprennent, hors l'allocation temporaire d'attente, celles de l'intéressé et, le cas échéant, de son conjoint, de son concubin, ou de son partenaire lié par un pacte civil de solidarité, telles qu'elles doivent être déclarées à l'administration fiscale pour le calcul de l'impôt sur le revenu avant déduction des divers abattements. Le montant pris en compte est le douzième du total des ressources perçues pendant les douze mois précédant celui au cours duquel les ressources sont examinées. La condition relative aux ressources est appréciée le mois de la demande d'allocation, puis à échéance semestrielle.
Les ressources perçues hors du territoire national sont prises en compte comme si elles avaient été perçues sur ce territoire.
Il n'est pas tenu compte des prestations familiales.
La pension alimentaire ou la prestation compensatoire fixée par une décision de justice devenue exécutoire est déduite des ressources de celui qui la verse.
Il n'est tenu compte ni des allocations d'assurance ou de solidarité ni des rémunérations de stage ou des revenus d'activité perçus pendant la période de référence lorsqu'il est justifié que leur perception est interrompue de manière certaine à la date de la demande et que le bénéficiaire de ces ressources ne peut prétendre à un revenu de substitution.
Si le bénéficiaire peut prétendre à un revenu de substitution, un abattement de 30 % est appliqué sur la moyenne des ressources auxquelles ce revenu se substitue".

7. SPECIAL NEEDS OF PARTICULAR CATEGORIES OF ASYLUM SEEKERS

Q.30. **A. Which of the different categories of persons with special needs considered in the directive are taken into account in the national legislation (see article 17, §1 which is a mandatory provision): disabled people, elderly people, pregnant women, single parents with minor children, persons who have been tortured, raped or victims of serious physical or psychological violence? Include in your answer all other categories envisaged in national law.**

Parmi les différentes catégories énumérées, la législation française réserve seulement une place particulière au cas des mineurs non accompagnés. Le CESEDA dans son L-751-1 indique ainsi que "lorsque la demande d'asile est formée par un mineur sans représentant légal sur le territoire français, le procureur de la République, avisé par l'autorité administrative, lui désigne un administrateur *ad hoc*. Celui-ci assiste le mineur et assure sa représentation dans le cadre des procédures administratives et juridictionnelles relatives à la demande d'asile.

L'administrateur *ad hoc* nommé en application de ces dispositions est désigné par le procureur de la République compétent sur une liste de personnes morales ou physiques dont les modalités de constitution sont fixées par décret en Conseil d'Etat. Ce décret précise également les conditions de leur indemnisation. La mission de l'administrateur *ad hoc* prend fin dès le prononcé d'une mesure de tutelle.

Le statut de ces administrateurs ad hoc est précisé par le décret 2003-841 du 2 septembre 2003 relatif aux modalités de désignation et d'indemnisation des administrateurs ad hoc et la circulaire du 14 avril 2005 prise en application du décret du 2 septembre 2003 relatif aux modalités de désignation et d'indemnisation des administrateurs ad hoc. Les dispositions du décret n° 2003-841 forment désormais les article R 111-13 à R 111-24 du CESEDA.

B. How is their specific situation taken into account (see articles 13, §2, second indent, 16 §4 second sentence and 17 which are mandatory provisions) ?

Comme indiqué précédemment, la situation spécifique des mineurs non accompagnés est largement prise en considération par le droit français.

L'article L-751-1 du CESEDA dispose que lorsque la demande d'asile est formée par un mineur sans représentant légal sur le territoire français, le procureur de la République, avisé par l'autorité administrative, lui désigne un administrateur *ad hoc*. Celui-ci assiste le mineur et assure sa représentation dans le cadre des procédures administratives et juridictionnelles relatives à la demande d'asile. Comme indiqué précédemment, l'administrateur *ad hoc* nommé en application de ces dispositions est désigné par le procureur de la République compétent sur une

liste de personnes morales ou physiques dont les modalités de constitution sont fixées par décret en Conseil d'Etat. Ce décret précise également les conditions de leur indemnisation. La mission de l'administrateur *ad hoc* prend fin dès le prononcé d'une mesure de tutelle.

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En ce qui concerne leur hébergement, deux centres spécialisés accueillent en région parisienne les mineurs qui sollicitent le statut de réfugié et qui sont isolés de leurs parents, faute de quoi les structures d'accueil d'urgence relevant des collectivités territoriales sont mises à contribution (services relevant de l'aide sociale à l'enfance ou de la protection judiciaire de la jeunesse, établissements du secteur associatif habilités, organismes dépendant des conseils généraux…).

La circulaire relative aux modalités d'admission au séjour des ressortissants étrangers entrés en France, de manière isolée, avant l'âge de 18 ans, et ayant fait l'objet d'une mesure judiciaire de placement en structure d'accueil du 2 mai 2005 (NOR/INT/D/05/00053/C) attire l'attention des autorités préfectorales sur leur cas particuliers et sur les modalités de leur prise en charge au plan matériel par les services de l'aide sociale à l'enfance.

C. How and when are the special needs of the concerned persons supposed to be legally identified (see article 17 § 2 which is a mandatory provision and clarify how it has been interpreted by transposition)?

Le droit français attache une attention particulière aux mineurs non accompagnés qui relèvent donc de cette question. Leurs besoins spécifiques sont évalués à partir de l'évaluation de l'âge du demandeur d'asile (par la technique de l'examen osseux afin de déterminer l'âge de la personne). Pour les autres catégories de personnes concernées, il n'existe pas de dispositif particulier d'identification. Concernant le cas particulier des victimes de tortures, leur identification est réalisée par des associations ou des centres publics de soin. Ces personnes sont ensuite dirigées vers un centre de soin pluridisciplinaire spécifique géré par l'association Primo Levi. Il importe toutefois de noter que l'association Primo Levi est complètement indépendante des administrations du droit d'asile. En conséquence, une prise en charge au centre de soins Primo Levi n'est pas une étape obligatoire dans le parcours du demandeur d'asile.

En tout état de cause, la prise en charge est organisée légalement par les articles L 221-5 t L 751-1 du CESEDA. Il importe de noter que l'article L 221-5 qui s'applique aux zones d'attente impose une prise en charge immédiate du mineur non accompagné.

D. Is the necessary medical and other assistance provided to persons with special needs as requested by article 15, §2 which is a mandatory provision and in particular to victims of torture and violence as requested by article 20 which is a mandatory provision?

Les mineurs bénéficient d'un soutien médical. En revanche, les autres catégories de personnes vulnérables, y compris les victimes de la torture, ne bénéficient d'aucune prise en compte particulière dans le dispositif français. C'est de manière empirique que les victimes de tortures bénéficient d'un soutien médical pluridisciplinaire et spécifiquement adapté par l'intermédiaire du centre de soin géré par l'association parisienne Primo Levi.

Q.31. **About minors:**

A. Till which age are asylum seekers considered to be minor?

L'age légal de la majorité est de 18 ans.

B. How is access of minor asylum seekers to the education system ensured? Is it at school or in case inside accommodation centres and can it be considered as similar to the conditions for nationals as requested by article 10, §1?

Le Code de l'éducation ne vise pas le cas particulier des enfants de demandeurs d'asile, il ne fait pas de doute que ceux-ci sont soumis à l'obligation scolaire dès lors qu'ils se trouvent dans la tranche d'âge prévue par l'article L. 131-1, dans les mêmes conditions que n'importe quel enfant étranger. Sur cette base, l'instruction est obligatoire pour les enfants des deux sexes, français et étrangers, entre six ans et seize ans"

La circulaire 2002-063 du 20 mars 2002 du ministre de l'éducation nationale confirme cette obligation.

C. Is access to education ensured not later than 3 months as requested by article 10, §2 (or after maximum one year if specific education for asylum seekers is provided) and till an expulsion decision is really enforced?

Il n'existe pas de pilotage national et individualisé de l'accueil des mineurs étrangers dans le système éducatif français. Le rapport conjoint de l'Inspection générale de l'éducation nationale et de l'Inspection générale de l'administration de l'éducation nationale et de la recherche relatif aux modalités de scolarisation des élèves non-francophones nouvellement arrivés en France le souligne (Rapport IGAS "Mission d'analyse et de proposition sur les conditions d'accueil des mineurs étrangers en France", n° 2005 010, Janvier 2005, sp. 41.).

"En matière de scolarité, l'intégration des mineurs étrangers n'est jamais chose aisée. Si les institutions concernées ont généralement établi des conventions relatives au bilan scolaire, il n'en découle pas forcément ensuite une facilité

d'intégration dans les classes adaptées. Il est fréquent que comme pour tous les primo arrivants, le jeune arrivé trop tard dans l'année soit contraint d'attendre la rentrée suivante pour pouvoir accéder à une scolarité conforme à ses possibilités. L'insuffisance des classes adaptées est ainsi fortement mise en lumière. Présumés difficilement intégrables du fait de leur méconnaissance du français, les grands adolescents primo – arrivants pâtissent sans doute en plus d'un amalgame entre élèves difficiles et migrants. S'y ajoutent parfois les obstacles liés à l'absence de statut avec par exemple l'impossibilité d'accéder à certains stages professionnels, ce qui peut conduire à prioriser d'autres élèves dans d'éventuelles listes d'attente".

D'une manière générale, les mineurs étrangers âgés de 16 à 18 ans qui souhaitent *exercer en France suivre une formation professionnelle* rémunérée et qui, à ce titre, doivent disposer d'une carte de séjour les autorisant à travailler, peuvent se voir opposer la situation de l'emploi. Cependant, pour répondre aux besoins de formation des mineurs ou jeunes majeurs pris en charge par l'aide sociale à l'enfance nécessitant la conclusion d'un contrat d'apprentissage ou de professionnalisation, le législateur a souhaité assouplir les critères de délivrance de l'autorisation de travail requise en n'opposant pas la situation de l'emploi aux étrangers placés auprès des services de l'aide sociale à l'enfance avant l'âge de 16 ans et sous réserve qu'il justifient toujours d'un tel placement au moment de leur demande.

L'article L. 341-4 du code du travail est complété par un alinéa ainsi rédigé :
"Lorsque l'autorisation de travail est demandée en vue de la conclusion d'un contrat d'apprentissage visé à l'article L. 117-1 ou d'un contrat de professionnalisation visé à l'article L. 981-1, la situation de l'emploi ne peut être opposée à la demande d'un étranger qui a été pris en charge par les services de l'aide sociale à l'enfance mentionnés à l'article L. 221-1 du code de l'action sociale et des familles avant qu'il ait atteint l'âge de seize ans et qui l'est toujours au moment où il présente sa demande"

D. Is <u>specific education</u> (like language classes) available for asylum seekers, in particular to facilitate their effective access to the education system of the reception Member State (see article 10, §2 which is an optional provision)?

L'obligation d'accueil dans les établissements scolaires s'applique de la même façon pour les élèves nouvellement arrivés en France et pour les autres élèves. Elle relève du droit commun et de l'obligation scolaire. Concernant les classes de langues, elles n'existent cependant pas dans toutes les écoles. La circulaire du ministre de l'Education nationale 2002-100 du 25 avril 2002 détaille le mécanisme mis en place dans le système éducatif français.

Les élèves nouvellement arrivés en France et leur famille peuvent faire l'objet d'un accueil spécifique dans l'objectif d'aider à leur rapide intégration dans un cursus de réussite comportant une véritable qualification professionnelle. Dans les écoles, collèges ou lycées, l'accueil des nouveaux arrivants requiert une attention

particulière. Il convient notamment de faciliter la connaissance, pour ces élèves et leur famille, des règles de fonctionnement de l'établissement scolaire dans lequel ils sont affectés. On sera particulièrement vigilant, dans les premiers jours, à bien clarifier ce qui concerne les horaires, la demi-pension, les possibilités d'accès à différents services et les fonctions des différents professionnels de l'école ou de l'établissement. Des documents de présentation de l'établissement en langue première, accompagnés de leur traduction en français, peuvent être bienvenus. Des actions devront aider à l'accompagnement par les parents de la scolarisation de leurs enfants en leur permettant d'acquérir une bonne compréhension du système éducatif si cela s'avère nécessaire. Dans le souci de faciliter pour les familles les démarches afférentes à l'accueil et à l'affectation de leur(s) enfant(s) dans un établissement scolaire, on veillera à établir à leur intention un document d'information explicitant les procédures d'inscription et indiquant, autant que faire se peut, les personnes responsables de l'accueil, de l'évaluation linguistique et scolaire et les responsables de l'affectation, ainsi que les lieux et les adresses précises, heures et jours d'ouverture auxquels ces personnes peuvent être jointes. Ce document peut être réalisé en partenariat avec les collectivités territoriales.

Dans le cadre du regroupement familial, les procédures de pré-accueil et d'accueil organisé par l'office des migrations internationales (OMI), désormais remplacé par l'Agence nationale de l'accueil des étrangers et des migrations constituent une première occasion pour les familles, de prendre connaissance des services de l'État, de leurs règles et de leur fonctionnement. Il est donc important que conformément à la convention-cadre du 7 mars 2001 co-signée par le ministère de l'éducation nationale, le ministère de l'emploi et de la solidarité, et le fonds d'action sociale, les services de l'éducation nationale soient présents dans les comités de pilotage des plans départementaux d'accueil et lors des séances collectives de pré-accueil. L'éducation nationale pourra diffuser l'information et, le cas échéant, participer à la réalisation d'actions en lien avec des associations ou d'autres organismes de l'État (en premier lieu, le fonds d'action et de soutien pour l'intégration et la lutte contre les discriminations - FASILD) visant à renforcer chez les parents, la connaissance de la langue française et de la société d'accueil.
Dans cette intention, il est vivement souhaitable de disposer, dans un premier temps, de documents en langue d'origine présentant le système éducatif, comme le précise la convention cadre précitée qui prévoit la possibilité de recourir à des services de traduction et d'interprétariat chaque fois que nécessaire. Enfin rappelons que les parents de nationalité étrangère bénéficient des mêmes droits que les parents français (droit de vote et éligibilité aux élections de représentants de parents d'élèves dans les conseils d'école et d'administration des établissements secondaires). Pour garantir une bonne scolarisation des jeunes arrivants, deux principes doivent guider le travail mené
- faciliter l'adaptation de ces jeunes au système français d'éducation en développant des aides adaptées à leur arrivée;
- assurer dès que possible l'intégration dans le cursus ordinaire.
L'évaluation des acquis à l'arrivée est également déterminante. Tout élève nouvellement arrivé en France doit pouvoir bénéficier d'une évaluation qui mette en évidence :

- ses savoir-faire en langue française, pour déterminer s'il est un débutant complet ou s'il maîtrise des éléments du français parlé ou écrit;
- ses compétences scolaires construites dans sa langue de scolarisation antérieure et son degré de familiarité avec l'écrit scolaire (on pourra s'appuyer en particulier sur des exercices en langue première de scolarisation) ;
- ses savoirs d'expérience dans différents domaines, ainsi que ses intérêts, qui peuvent constituer des points d'appui pédagogiques importants.

Il est indispensable en effet de connaître, pour ces élèves, leur degré de familiarisation avec l'écrit quelque soit le système d'écriture et leur degré de maîtrise dans certaines disciplines (mathématiques par exemple...). Les résultats de ces évaluations permettront d'élaborer les réponses pédagogiques les mieux adaptées au profil de chacun d'entre eux. Une certaine souplesse s'impose en matière d'appréciation des années de retard, en regard des compétences mises en jeu et des efforts consentis. Un retard d'un an, voire de deux ans, chez certains élèves ne constitue pas un obstacle dans un cursus de scolarisation longue.

À l'école élémentaire, c'est dans le cadre du cycle correspondant à la classe d'âge de l'écolier arrivant que cette évaluation doit être menée, avec le concours du maître de la classe d'initiation, s'il y en une dans le groupe scolaire, l'aide du CASNAV et, si besoin, celle du réseau d'aides spécialisées aux élèves en difficulté.

Dans le second degré, en fonction du nombre d'élèves à accueillir dans un même espace en général urbanisé, les centres de formation et d'information seront mobilisés, soit de manière déconcentrée, soit au sein de cellules d'accueil qui peuvent être mises en place dans les inspections académiques. Pour les élèves de plus de 16 ans, les cellules d'accueil peuvent en outre faire appel aux coordonnateurs des missions générales d'insertion. L'équipe chargée de cette évaluation devra transmettre les résultats aux enseignants qui auront à les accueillir. L'affectation devra tenir compte, d'une part, du profil scolaire de l'élève établi par les évaluations et, d'autre part, des possibilités d'accueil adaptées, à une distance raisonnable du domicile. Le délai entre la date d'inscription de l'élève auprès des services de l'Éducation nationale et son affectation effective dans un établissement ne doit pas excéder un mois.

L'affectation des élèves et le fonctionnement des classes spécifiques est également prévu. Les élèves nouvellement arrivés sont inscrits obligatoirement dans les classes ordinaires de l'école maternelle ou élémentaire. Les élèves du CP au CM2 sont regroupés en classe d'initiation (CLIN) pour un enseignement de français langue seconde, quotidiennement et pour un temps variable (et révisable dans la durée) en fonction de leurs besoins. L'objectif est qu'ils puissent au plus vite suivre l'intégralité des enseignements dans une classe du cursus ordinaire. Pour des élèves peu ou non scolarisés antérieurement et arrivant à l'âge d'intégrer le cycle III, un maintien plus long en classe d'initiation, allant jusqu'à une année supplémentaire, peut cependant être envisagé ; un suivi durable et personnalisé s'impose si l'on veut éviter un désinvestissement progressif de ces élèves dans les apprentissages. En fin de séjour en classe d'initiation, les acquisitions des élèves doivent être évaluées par l'équipe enseignante. Ces évaluations aident à préciser les champs de compétences les mieux maîtrisés et ceux pour lesquels un suivi et un soutien spécifiques sont encore nécessaires.

Dans le second degré, il convient de distinguer deux types de classes d'accueil en fonction des niveaux scolaires des élèves nouvellement arrivés. Certains n'ont pas été scolarisés dans le pays d'origine. C'est sur la base de l'évaluation effectuée à l'arrivée de l'élève que son affectation sera décidée. L'implantation de ces classes doit répondre aux besoins constatés ; on évitera d'implanter deux ou plusieurs classes d'accueil dans le même établissement. On fera également en sorte que des classes d'accueil ne soient pas systématiquement ouvertes dans les réseaux d'éducation prioritaire. Les classes d'accueil pour élèves non scolarisés antérieurement (CLA-NSA) permettent aux élèves très peu ou pas du tout scolarisés avant leur arrivée en France et ayant l'âge de fréquenter le collège d'apprendre le français et d'acquérir les connaissances de base correspondant au cycle III de l'école élémentaire.
Quand cela est possible, on regroupera ces élèves auprès d'un enseignant qui les aidera dans un premier temps à acquérir la maîtrise du français dans ses usages fondamentaux. Dans un second temps, on se consacrera à l'enseignement des bases de l'écrit, en lecture et en écriture. L'effectif de ces classes ne doit pas dépasser quinze élèves, sauf cas exceptionnel. Il convient néanmoins d'intégrer ces élèves dans les classes ordinaires lors des cours où la maîtrise du français écrit n'est pas fondamentale (EPS, musique, arts plastiques...), et cela pour favoriser plus concrètement leur intégration dans l'établissement scolaire. Ils doivent également pouvoir participer, avec leurs camarades, à toutes les activités scolaires.
Les nouveaux arrivants âgés de plus de 16 ans, ne relevant donc pas de l'obligation scolaire, peuvent néanmoins être accueillis dans le cadre de la mission générale d'insertion de l'éducation nationale (MGIEN) qui travaille à la qualification et la préparation à l'insertion professionnelle et sociale des élèves de plus de 16 ans. Ainsi des cycles d'insertion pré-professionnels spécialisés en français langue étrangère et en alphabétisation (CIPPA FLE-ALPHA) peuvent être mis en place pour les jeunes peu ou pas scolarisés dans leur pays d'origine. Enfin, on veillera à ce que soit mis en place un projet professionnel individualisé qui permette à chaque jeune d'accéder, par la découverte des filières professionnelles existantes à une formation répondant à ses aspirations personnelles et à ses capacités du moment. Les classes d'accueil pour élèves normalement scolarisés antérieurement (CLA) dispensent un enseignement adapté au niveau des élèves en fonction des évaluations menées à l'arrivée des élèves. On veillera à ce qu'ils soient inscrits dans les classes ordinaires correspondant à leur niveau scolaire sans dépasser un écart d'âge de plus de deux ans avec l'âge de référence correspondant à ces classes ; ils doivent bénéficier d'emblée d'une part importante de l'enseignement proposé en classe ordinaire, a fortiori dans les disciplines où leurs compétences sont avérées (langue vivante, mathématiques...). Un emploi du temps individualisé doit leur permettre de suivre, le plus souvent possible, l'enseignement proposé en classe ordinaire. Au total, l'horaire scolaire doit être identique à celui des autres élèves inscrits dans les mêmes niveaux. L'effectif des classes d'accueil doit être comparable à celui des classes du cursus ordinaire de l'établissement dans lequel elles sont implantées ; toutefois leur fonctionnement souple en structure ouverte doit permettre aux enseignants de n'avoir pas plus de 15 élèves en charge à la fois.
Les liaisons entre collèges et lycées ou lycées professionnels doivent être encouragées par la mise en réseau des établissements du second degré recevant ces

jeunes. Les lycées professionnels doivent mettre en place des dispositifs afin de répondre aux besoins particuliers des élèves nouveaux arrivants qu'ils scolarisent, leur permettre l'acquisition rapide de la langue française et garantir à chacun d'entre eux une scolarisation réussie menant à un diplôme qualifiant. Les projets des classes d'accueil sont partie prenante du projet d'établissement qui définit par ailleurs les conditions d'intégration des nouveaux arrivants dans les classes ordinaires. Dans le cas où la dispersion des élèves ne permet pas leur regroupement en classe d'accueil, des enseignements spécifiques de français sont mis en place, prenant appui sur les acquisitions des élèves et les contenus de formation dispensés antérieurement. Des groupes de soutien pourront ainsi être constitués, sur le modèle de ce qui est prévu pour la constitution de groupes de remédiation pour les élèves en difficulté scolaire. En règle générale, les dispositifs qui concilient un accompagnement linguistique adapté et l'intégration optimale des élèves dans les classes ordinaire sont à encourager.

E. Are minors in general accommodated with their parents or with the person responsible of them? (see article 14, § 3)

L'article L-311-9 du Code de l'Action sociale et des Familles prévoit qu'en vue d'assurer le respect du droit à une vie familiale des membres des familles accueillies dans les établissements ou services mentionnés aux 1°, 8° et 13° de l'article L. 312-1, ces établissements ou services "doivent rechercher une solution évitant la séparation de ces personnes ou, si une telle solution ne peut être trouvée, établir, de concert avec les personnes accueillies, un projet propre à permettre leur réunion dans les plus brefs délais, et assurer le suivi de ce projet jusqu'à ce qu'il aboutisse". La loi du 24 juillet 2006 a procédé à l'introduction des centres d'accueil des demandeurs d'asile à l'article L 312-1 au 13°. En conséquence, l'article L 311-9 a été modifié pour faire application de ce dispositif aux CADA.
Dans ce but, chaque schéma départemental des centres d'hébergement et de réinsertion sociale évalue les besoins en accueil familial du département et prévoit les moyens pour y répondre.

F. Do minors with special needs enumerated by article 18, §2 which is a mandatory provision, have access to appropriate mental health care and qualified counselling?

Concernant les mineurs victimes de toute forme d'abus, le centre médical géré par l'association Primo Levi prodigue ce type de soins. En effet, l'association propose entre autres soins à caractère médicaux une prise en charge psychologique de toute personne ayant été victime de la violence politique ou de la torture dans son pays d'origine (demandeurs d'asile, réfugiés, etc.), aussi bien des adultes que des enfants ou adolescents. Cependant, et comme souligné précédemment, l'action engagée par l'association Primo Levi est indépendante vis-à-vis des administrations de l'asile. Cette action ne constitue nullement une action de service public, de sorte que l'inaction de l'administration française sur ce terrain témoigne d'un manquement au regard des dispositions obligatoires de la directive.

G. How and when is organised the <u>representation of unaccompanied minors</u> (guardianship, special organisation) and regularly assessed? (see article 19, §1 which is a mandatory provision)

Comme indiqué précédemment, la situation spécifique des mineurs non accompagnés est réglementée par l'article L-751-1 du CESEDA : "lorsque la demande d'asile est formée par un mineur sans représentant légal sur le territoire français, le procureur de la République, avisé par l'autorité administrative, lui désigne un administrateur *ad hoc*. Celui-ci assiste le mineur et assure sa représentation dans le cadre des procédures administratives et juridictionnelles relatives à la demande d'asile. L'administrateur *ad hoc* nommé en application de ces dispositions est désigné par le procureur de la République compétent sur une liste de personnes morales ou physiques dont les modalités de constitution sont fixées par décret en Conseil d'Etat. Ce décret précise également les conditions de leur indemnisation. La mission de l'administrateur *ad hoc* prend fin dès le prononcé d'une mesure de tutelle".

Les missions de l'administrateur ad hoc ont été précisées par la circulaire prise en application du décret 2003-841 du 2 septembre 2003 relatif aux modalités de désignation et d'indemnisation des administrateurs ad hoc institués par l'article 17 de la loi 2002-305 du 4 mars 2002 relative à l'autorité parentale
(NOR : JUSC0520090C). Ces missions sont doubles, d'assistance et de représentation et elles sont encadrées.
1. Une mission d'assistance : l'administrateur ad hoc se voit assisté si nécessaire d'un interprète en zone d'attente mis à sa disposition par le ministère de l'Intérieur, sous réserve de l'intervention de l'interprète dans le cadre des procédures judiciaires. Le législateur a entendu faire de l'administrateur ad hoc le référent du mineur, son accompagnateur tout au long de son maintien en zone d'attente ou de la procédure relative à la demande d'asile. A ce titre, non seulement il dispense au mineur l'information nécessaire à la compréhension de la procédure à laquelle celui-ci se trouve partie, mais encore, il lui prodigue un soutien moral, en l'absence de ses représentants légaux.
A cet égard, l'administrateur ad hoc aide le mineur à comprendre le rôle et les attributions de chacune des personnes qu'il sera amené rencontrer dans le cadre des procédures le concernant. Il facilite aussi les contacts avec d'éventuels parents en France ou à l'étranger. Il informe le mineur des risques liés à son enrôlement dans des réseaux de prostitution ou de travail clandestin et lui fournit tous les éléments utiles sur le système français de protection de l'enfance qui pourra constituer pour lui, jusqu'à sa majorité, un appui, s'il est amené à vivre sur le territoire français. Lors de la sortie du mineur de zone d'attente, l'administrateur ad hoc fait part, le cas échéant, au procureur de la République, des éléments d'information susceptibles de justifier la saisine du juge des enfants dans le cadre des dispositions de l'article 375 du Code civil. Il peut, également, informer le juge des tutelles d'éléments susceptibles de justifier l'ouverture d'une mesure de protection. Il appartiendra alors à ce juge d'apprécier si les conditions d'ouverture de la tutelle, telles qu'elles résultent des dispositions de l'article 390 du Code civil, sont remplies. L'administrateur ad hoc peut aussi rencontrer, en dehors de la zone

d'attente, les membres de la famille du mineur qui pourraient se trouver sur le territoire français, et prendre contact avec les réseaux socio-éducatifs susceptibles d'intervenir à sa sortie de la zone d'attente.
Une continuité dans l'assistance apportée au mineur, lorsque s'achèvera la mission de l'administrateur ad hoc en zone d'attente, est ainsi assurée.
Lors de l'assistance du mineur, dans le cadre d'une demande d'asile, et alors que celui-ci se trouve déjà sur le territoire français, l'administrateur ad hoc doit exercer sa mission en lien, outre les services de l'OFPRA et de la préfecture, avec les différents professionnels intervenant auprès de l'enfant (service éducatif, juge des enfants éventuellement saisi d'une procédure d'assistance éducative), dans le respect du rôle et des compétences de chacun, afin d'assurer au mieux sa mission dans l'intérêt du mineur.

2. Une mission de représentation dans les procédures administratives et juridictionnelles : la loi prévoit que l'administrateur ad hoc assure la représentation du mineur dans toutes les procédures administratives et juridictionnelles relatives à son maintien en zone d'attente, afférentes à son entrée sur le territoire et relatives à la demande d'asile.
Ces dispositions visent, notamment, à rendre effectifs les recours du mineur devant la juridiction administrative contre la décision de refus d'entrée sur le territoire national, qu'elle soit ou non formulée au titre de l'asile à la frontière; devant la juridiction judiciaire, tant en première instance qu'en appel; dans la procédure d'autorisation de prolongation du maintien en zone d'attente, devant la Commission des recours des réfugiés, contre une décision de refus de l'asile qui aurait été rendue par l'OFPRA; devant le Conseil d'Etat, juge de cassation des décisions prononcées par la Commission des recours des réfugiés.
L'administrateur ad hoc, une fois désigné, prend contact dans les meilleurs délais avec les administrations concernées. Il est destinataire de tous les actes de procédure concernant le mineur. Il est également informé par écrit des dates et heures de toutes les auditions et de toutes les notifications par le service à l'origine de la procédure. L'administrateur ad hoc étant ainsi régulièrement avisé, son absence ne constituera pas un obstacle au déroulement des procédures concernées. Si l'administrateur ad hoc est présent, il signe les actes de procédure notifiés au mineur et en prend copie. Dans le cadre des procédures juridictionnelles relatives à son maintien en zone d'attente et, en application de l'article 3 de la loi du 10 juillet 1991 relative à l'aide juridique, le mineur bénéficie obligatoirement d'un avocat désigné au titre de l'aide juridictionnelle (loi 91-647 du 10 juillet 1991 sur l'aide juridique). L'administrateur ad hoc choisit un avocat de préférence sensibilisé à la défense des intérêts des mineurs. La mission de représentation légale dont est investi l'administrateur ad hoc dans toutes les procédures administratives et juridictionnelles visées par l'article 35 quater de l'ordonnance du 2 novembre 1945 modifiée par la loi du 4 mars 2002, tient au fait que le mineur ne dispose pas de la capacité juridique. Elle est donc bien distincte de celle de l'avocat qui, investi d'un mandat de représentation de son client en justice, agit en qualité d'auxiliaire de justice. Dans le cadre du dépôt des demandes d'asile, l'administrateur ad hoc ne se substitue pas au mineur pour demander l'asile à la frontière ou sur le territoire. Cette démarche doit être personnelle et le mineur peut

toujours présenter une telle demande en l'absence de son représentant. Dans tous les cas où l'administrateur a été désigné après l'introduction de la demande d'asile, il adresse un courrier à l'OFPRA reprenant la demande à sa charge afin de la régulariser. Afin d'assurer ses différentes missions, l'administrateur ad hoc a la faculté de rencontrer le mineur au sein de la zone d'attente.

3. Le règlement intérieur établi au sein de la zone d'attente lui est opposable. Le transport des mineurs jusqu'au tribunal à l'occasion des audiences 35 quater ne relève pas de la compétence de l'administrateur ad hoc mais de l'administration. De même, ne relève pas de la mission de l'administrateur ad hoc, l'accompagnement du mineur devant le juge des enfants ou le service éducatif auprès du tribunal ou dans un lieu d'accueil dans le cadre d'une prise en charge éducative. Les frais de transport de l'administrateur ad hoc ne sont pas à la charge de l'administration. A l'occasion de la procédure juridictionnelle relative au maintien du mineur en zone d'attente, il appartiendra à l'autorité judiciaire saisie d'assurer la présence d'un interprète si nécessaire.

Enfin et par ailleurs, les services de l'aide sociale à l'enfance sont également mobilisés pour prendre en charge cette catégorie spécifique de mineurs. Des centres spéciaux ont été créés en région parisienne afin de recueillir les mineurs isolés tels que le CAOMIDA (Centre d'Accueil et d'Orientation pour MIneurs Demandeurs d'Asile), géré par France Terre d'Asile et le LAO (Lieu d'Accueil et d'Orientation) à Taverny (95) géré par la Croix Rouge. Ces structures bénéficient par rapport aux dispositifs de droit commun (CADA) de l'avantage de la spécialisation et de la constitution d'équipes adaptées aux besoins spécifiques des mineurs étrangers et isolés (voir sur ce point précis, "Mission d'analyse et de proposition sur les conditions d'accueil des mineurs étrangers en France", rapport IGAS n° 2005 010, Janvier 2005, sp. 32 et s. En particulier sur la mission du LAO en matière d'évaluation et d'orientation. De manière générale, la mission qui lui est assignée est de réaliser dans un délai prévu de deux mois une évaluation de la situation du mineur préalable à toute orientation. Cette orientation est sans exclusive a priori: il peut s'agir d'un retour au pays, d'un accueil dans la famille du mineur présente en France, d'un regroupement familial dans un autre pays, d'un placement de droit commun au sein d'un service d'aide sociale à l'enfance). En dehors de ces structures spécifiques, l'organisation est hétérogène en fonction des départements[391].

De manière générale, les enfants demandeurs d'asile bénéficient de l'application du droit commun en matière de prestation de l'aide sociale à l'enfance (ASE) à la charge des départements.

H. How is placement of unaccompanied minors organised (with adult relatives, a foster family, in special accommodation centres or other suitable accommodation)? (see article 19, §2 which is mandatory provision)

[391] voir rapport IGAS, ps. 34 et s

Voir réponse à la question précédente.

I. How is the tracing of the family members of the unaccompanied minors organised? Are measures taken to protect confidentiality of information when necessary? (see article 19, §3 which is a mandatory provision)

La recherche des membres de la famille est opérée par les services responsables de l'accueil des mineurs isolés dans la phase d'évaluation – orientation comme par l'assistance de l'administrateur ad hoc. Aucune disposition ne semble réglementer la confidentialité des informations en cause.

8. EXCEPTIONAL MODALITIES OF RECEPTION CONDITIONS

Q.32. Apart from detention covered by the next question, are there exceptional modalities for reception conditions in the following cases and if yes, which ones and for how long are they applicable, knowing that they should be "as short as possible" (see article 14, §8)?

A. Persons with specific or special needs, regarding in particular the period of assessment of those needs?

Comme indiqué précédemment, le droit français aménage des solutions particulières au sein de la catégorie des personnes vulnérables aux mineurs isolés (voir supra) en particulier en matière d'accueil

B. Non availability of reception conditions in certain areas

Il n'existe pas de CADA actuellement sur l'île de Corse[392].

C. Temporarily exhaustion of normal housing capacities

La capacité matérielle de structures d'accueil commande les conditions de cet accueil.

D. The asylum seeker is confined to a border post

Voir infra à propos des zones d'attente

E. All other cases not mentioned in the directive (for instance urgent situation in case of a sudden high number of applicants outside a case of application of the directive on temporary protection).

Les situations d'urgence relèvaient de la circulaire 99-399 DPM/CI3 du 8 juillet 1999 relative aux procédures d'admission dans le dispositif national d'accueil (DNA) des réfugiés et des demandeurs d'asile abrogée par la circulaire interministérielle du 3 mai 2007.
La circulaire de 1999 disposait à ce propos que, par suite d'arrivées importantes et excédant les possibilités d'admission laissés à l'initiative de la DDASS, l'accueil des demandeurs d'asile peut ne pas pouvoir être satisfait de manière durable sur le département. Une solution d'urgence doit être recherchée en priorité au niveau du département, et la commission nationale doit être saisie pour une entrée dans un centre du DNA au terme de cet hébergement temporaire. La DPM doit être informée de la situation et des modalités envisagées d'hébergement transitoire, auquel elle peut contribuer. Par ailleurs, elle indique également que la mise en place de dispositifs exceptionnels d'accueil destinés à faire face à des arrivées

[392] voir rapport BUFFET, p. 221

massives ne peut s'inscrire dans le cadre du fonctionnement du DNA, mais doit faire l'objet d'une saisine particulière de la DPM.

La circulaire interministérielle du 3 mai 2007 organise désormais la "ventilation" des demandeurs d'asile en fonction des places disponibles dans les structures d'accueil (CADA). Il appartient en premier lieu au préfet de département de recenser les places disponibles en CADA. Une fois analysée la situation personnelle, familiale et sociale du demandeur d'asile, les caractéristiques de sa demande d'hébergement doivent être rapprochées de l'offre d'hébergement disponible dans le département. En concertation avec les partenaires du dispositif national d'accueil, le préfet de département informe le demandeur du ou des centres susceptibles de l'accueillir et l'invite à se présenter au gestionnaire de l'un de ces centres.

Lorsque aucune place de CADA adaptée au profil du demandeur d'asile n'est disponible dans le département, il convient de rechercher une place dans le parc des CADA situés dans le ou les autres départements de la région. Le préfet compétent pour l'admission au séjour s'enquiert auprès du préfet de région des places disponibles. En accord avec le préfet de région, il informe le demandeur d'asile du ou des centres susceptibles de l'accueillir dans d'autres département de la région et l'invite à se présenter au gestionnaire d'un de ces centres (comme dans le cas d'une admission locale, c'est le préfet compétent pour l'admission au séjour qui choisit ce centre). En parallèle, il informe le préfet du département du lieu d'implantation du CADA, seul compétent pour donner son accord au gestionnaire du CADA sur la décision d'admission, ainsi que le gestionnaire retenu. La recherche de l'adéquation entre les demandes et les places disponibles au niveau régional est effectuée par le préfet de région avec le concours du représentant régional de l'Agence nationale de l'accueil des étrangers et des migrations, des préfets des départements et des services déconcentrés de l'action sanitaire et sociale, des représentants de personnes morales chargées du premier accueil des demandeurs d'asile et des gestionnaires de centres d'accueil pour demandeurs d'asile.

Lorsqu'une demande d'hébergement n'a pu être satisfaite dans un cadre régional, le préfet de région la transmet au directeur de la population et des migrations (DPM), à fin d'examen des possibilités d'admission sur l'ensemble du territoire, compte tenu des places disponibles réservées pour une péréquation nationale. Les demandes d'hébergement présentées en Ile-de-France ou dans les régions frontalières sont examinées en priorité.
Afin de permettre la mise en oeuvre effective de ce mécanisme de péréquation nationale, il vous incombe de signaler chaque semaine à l'ANAEM, selon des modalités qui vous seront précisées par le directeur de la population et des migrations dans une prochaine instruction, d'une part, les places disponibles ne pouvant être affectées localement et, d'autre part, les demandes d'hébergement ne pouvant être satisfaites localement.
La recherche de l'adéquation entre les demandes et les places disponibles est effectuée par le DPM avec le concours du directeur général de l'Agence nationale

de l'accueil des étrangers et des migrations, du préfet de la région Ile-de-France et des services déconcentrés de l'action sanitaire et sociale de cette région, des représentants de personnes morales chargées du premier accueil des demandeurs d'asile et des gestionnaires de centres d'accueil pour demandeurs d'asile.
L'ANAEM informe le préfet compétent pour l'admission au séjour des places de CADA qu'elle peut mettre à sa disposition sur le contingent national : le préfet transmet cette information au demandeur d'asile et l'invite à se présenter au gestionnaire de l'un de ces CADA. Il en informe parallèlement le préfet du département du lieu d'implantation de ce CADA, seul compétent pour donner son accord au gestionnaire du CADA sur la décision d'admission ainsi que le gestionnaire du centre retenu. La DDASS (ou à Paris, la DRASSIF) peut recevoir compétence du préfet pour accomplir ces actes, comme déjà mentionné à l'avant-dernier alinéa du § I.2.2.1.

Q.33. **Detention of asylum seekers (we do not cover the situation of rejected asylum seekers detained for the purpose of their return) (see articles 6 §2, 7 §3, 13, §2 2nd indent and 14 §8 which implies that the directive is in principle applicable in case of detention):**

B. In which cases or circumstances and for which reasons[393] (identity verification in particular if the persons have no or false documents, protection of public order or national security, refugee status determination, way of entry into the territory, etc) can an asylum seeker be detained during the asylum procedure till his request has been finally rejected. Quote precisely in English in your answer the legal basis for detention of asylum seekers in national law.

Deux hypothèses différentes sont couvertes par le droit français, le maintien du demandeur d'asile en zone d'attente ou son placement en Centre de rétention administrative.

1. Le maintien en zone d'attente constitue le premier cas de figure en vertu de l'article L-221-1 du CESEDA. L'étranger qui arrive en France par la voie ferroviaire, maritime ou aérienne et qui, soit n'est pas autorisé à entrer sur le territoire français, soit demande son admission au titre de l'asile, peut être maintenu dans une zone d'attente située dans une gare ferroviaire ouverte au trafic international figurant sur une liste définie par voie réglementaire, dans un port ou à proximité du lieu de débarquement, ou dans un aéroport, pendant le temps strictement nécessaire à son départ et, s'il est demandeur d'asile, à un examen tendant à déterminer si sa demande n'est pas manifestement infondée.
Les dispositions du présent titre s'appliquent également à l'étranger qui se trouve en transit dans une gare, un port ou un aéroport si l'entreprise de transport qui devait l'acheminer dans le pays de destination ultérieure refuse de l'embarquer ou

[393] Please specify it article 18 §1 of the directive on asylum procedures of 1 December 2005 which specifies that *"Member States shall not hold a person in detention for the sole reason that he/she is an applicant for asylum"* is or not respected (even if has not yet to be transposed).

si les autorités du pays de destination lui ont refusé l'entrée et l'ont renvoyé en France.

2. Le placement en Centre de rétention administrative est la seconde hypothèse, couverte par l'article L-551-1 du CESEDA. Le placement en rétention d'un étranger dans des locaux ne relevant pas de l'administration pénitentiaire peut être ordonné lorsque cet étranger :

- soit, devant être remis aux autorités compétentes d'un Etat membre de l'Union européenne en application des articles L. 531-1 et L. 531-2 ne peut quitter immédiatement le territoire français ;
- soit, faisant l'objet d'un arrêté d'expulsion, ne peut quitter immédiatement le territoire français ;
- soit, faisant l'objet d'un arrêté de reconduite à la frontière pris en application des articles L. 511-1 à L. 511-3 et édicté moins d'un an auparavant, ne peut quitter immédiatement le territoire français ;
- soit, faisant l'objet d'un signalement ou d'une décision d'éloignement mentionnés à l'article L. 531-3, ne peut quitter immédiatement le territoire français ;
- soit, ayant fait l'objet d'une décision de placement au titre de l'un des cas précédents, n'a pas déféré à la mesure d'éloignement dont il est l'objet dans un délai de sept jours suivant le terme du précédent placement ou, y ayant déféré, est revenu en France alors que cette mesure est toujours exécutoire.
- soit faisant l'objet d'une obligation de quitter le territoire français prise en application du I de l'article L 511-1 moins d'un an auparavant et pour laquelle le délai d'un mois pour quitter volontairement le territoire est expiré, ne peut quitter immédiatement ce territoire.

C. Has your member State adopted measures to transpose §3 of article 7 which is an optional provision? If yes, how has this provision been legally understood (is it a case of detention or an obligation to stay in and not leave a certain place?) and for which reasons can an asylum seeker be "confined" in such a place?

Les dispositions françaises relatives à la rétention des étrangers et des demandeurs d'asile, dans les zones d'attente et les centres de rétention datent du début des années quatre-vingt et elles ne sont pas le résultat d'une opération de transposition d'un acte de droit communautaire.

D. Are there legally alternatives to detention, like obligation to report to the authorities, obligation to stay in a place, provision of a guarantor or of a financial guarantee?

A titre exceptionnel, le CESEDA prévoit une alternative au placement en rétention sous forme d'assignation à résidence prononcée par le Juge de la liberté et de la détention à l'issue de la période initiale de 48 heures sur la base de l'article L-552-4 : à titre exceptionnel, le juge peut ordonner l'assignation à résidence de l'étranger lorsque celui-ci dispose de garanties de représentation effectives, après

remise à un service de police ou à une unité de gendarmerie de l'original du passeport et de tout document justificatif de son identité, en échange d'un récépissé valant justification de l'identité et sur lequel est portée la mention de la mesure d'éloignement en instance d'exécution. L'assignation à résidence concernant un étranger qui s'est préalablement soustrait à l'exécution d'une mesure de reconduite à la frontière en vigueur, d'une interdiction du territoire dont il n'a pas été relevé, ou d'une mesure d'expulsion en vigueur doit faire l'objet d'une motivation spéciale.

E. Which is the competent authority to order the detention of an asylum seeker? Explain if different authorities are involved to first take and later confirm the decision.

En ce qui concerne les Zones d'attente :
L'article R 213-3 du CESEDA prévoit que l'autorité compétente pour prendre la décision de refuser l'entrée en France à un étranger demandant l'asile est le ministre de l'Intérieur. L'article R 213-2 précise que cette décision "ne peut être prise qu'après consultation de l'Office français de protection des réfgiés et apatrides. La demande d'asile est consignée dans un procès-verbal et le demandeur se voit notifier la décision de maintien en zone d'attente. Un refus d'admission lui est ensuite remis uniquement si le ministère de l'intérieur estime que sa demande est manifestement infondée et qu'il convient en conséquence de procéder à son réacheminement. En pratique, la décision de placer la personne en zone d'attente est prise par les officiers de la PAF et la décision portant sur le caractère fondé ou manifestement infondé de la demande d'asile par le ministre de l'Intérieur.

En ce qui concerne les Centres de rétention administrative :
En vertu de l'article L-551-2 du CESEDA, la décision de placement est prise par l'autorité administrative, après l'interpellation de l'étranger et, le cas échéant, à l'expiration de sa garde à vue, ou à l'issue de sa période d'incarcération en cas de détention. Elle est écrite et motivée. Un double en est remis à l'intéressé. Le procureur de la République en est informé immédiatement. L'étranger est informé dans une langue qu'il comprend et dans les meilleurs délais que, pendant toute la période de la rétention, il peut demander l'assistance d'un interprète, d'un conseil ainsi que d'un médecin. Il est également informé qu'il peut communiquer avec son consulat et avec une personne de son choix. Un décret en Conseil d'Etat précise, en tant que de besoin, les modalités selon lesquelles s'exerce l'assistance de ces intervenants.
Lorsque l'étranger ne parle pas le français, il est fait application des dispositions de l'article L. 111-7.
L'article R 551-1 du CESEDA précise que l'autorité compétente pour ordonner le placement en rétention administrative est le préfet de département et, à Paris, le préfet de police.

F. For how long and till which stage of the asylum procedure can an asylum seeker be detained?

En ce qui concerne les Zones d'attente :
En vertu de l'article L-222-1 du CESEDA, le maintien en zone d'attente au delà de quatre jours à compter de la décision initiale peut être autorisé par le juge des libertés et de la détention pour une durée qui ne peut être supérieure à huit jours.

En ce qui concerne les Centres de rétention administrative :
Le même CESEDA dans son article L-551-3 prévoit que "à son arrivée au centre de rétention, l'étranger reçoit notification des droits qu'il est susceptible d'exercer en matière de demande d'asile. Il lui est notamment indiqué que sa demande d'asile ne sera plus recevable pendant la période de rétention si elle est formulée plus de cinq jours après cette notification".

L'article R 553-15 du CESEDA (résultant de l'article 10 du décret 2005-617 du 30 mai 2005 relatif à la rétention administrative et aux zones d'attente pris en application des articles L. 111-9, L. 551-2, L. 553-6 et L. 821-5 du Code de l'entrée et du séjour des étrangers et du droit d'asile) précise que l'étranger maintenu dans un centre de rétention qui souhaite demander l'asile présente sa demande dans le délai de cinq jours à compter de la notification qui lui a été faite de ce droit conformément à l'article L. 551-3 du code de l'entrée et du séjour des étrangers et du droit d'asile. A cette fin, l'étranger remet sa demande soit au chef du centre de rétention soit à son adjoint ou, le cas échéant, au responsable de la gestion des dossiers administratifs.
L'étranger maintenu dans un local de rétention qui souhaite demander l'asile peut remettre à tout moment sa demande au responsable du local de rétention administrative ou à son adjoint. La demande d'asile formulée en centre ou en local de rétention est présentée selon les modalités prévues au deuxième alinéa de l'article R 723-1. L'autorité dépositaire de la demande enregistre la date et l'heure de la remise du dossier de demande d'asile par l'étranger sur le registre mentionné à l'article L. 553-1 du code de l'entrée et du séjour des étrangers et du droit d'asile.
L'article R 553-16 du CESEDA précise que l'autorité dépositaire de la demande saisit sans délai par tout moyen comportant un accusé de réception, notamment par télécopie ou par voie électronique sécurisée, le directeur général de l'Office français de protection des réfugiés et apatrides du dossier de demande d'asile tel qu'il lui a été remis par l'étranger, en vue de son examen selon les modalités prévues à l'article R 723-3. L'original du dossier est transmis sans délai à l'office. Lorsque cette transmission est faite par porteur, un accusé de réception est délivré immédiatement.
L'article R 553-17 indique que si l'intéressé est retenu en centre de rétention administrative, la décision du directeur général de l'office est transmise au centre de rétention par télécopie, par voie électronique sécurisée ou par porteur au plus tard à l'échéance du délai de 96 heures prévu au deuxième alinéa de l'article R 723-3. Lorsque la décision comporte des pièces jointes, elle est transmise par voie postale accélérée. La décision du directeur général de l'office est transmise à l'intéressé par la voie administrative par le chef de centre ou son adjoint ou par le responsable de la gestion des dossiers administratifs.

Si l'intéressé est retenu en local de rétention administrative, la décision est transmise au responsable du local dans les conditions prévues à l'alinéa précédent en vue de sa notification administrative. La notification est effectuée par le responsable du local de rétention ou par son adjoint. Lorsqu'un étranger ayant déposé sa demande d'asile en local de rétention administrative est transféré en centre de rétention administrative avant que l'office ait statué, le préfet responsable de la procédure d'éloignement en informe par télécopie l'office.

G. In which <u>places</u> (can we call them "closed centres"?) are asylum seekers detained (places in a special closed centres reserved only to asylum seekers, together with returnees like illegal aliens or even in a normal prison, in case within separated areas or with the other detainees)? Indicate if a difference has to be made following the location of the "closed centres" at the border or on the territory? Which is the authority managing those places and is it the same as the one in charge of reception conditions?

Les zones d'attentes sont en général situées à proximité des lieux de débarquement d'aéroports, de ports ou, plus exceptionnellement, de gares ferroviaires. Il s'agit pour les autorités administratives de localiser les zones d'attentes au plus près de la frontière. Cette localisation permet ainsi de maintenir dans un local prévu à cet effet les personnes arrivées en France et qui ne possèdent pas les documents d'entrée et de séjour exigé. Elles sont délimitées par l'autorité administrative compétente en vertu de l'article L-221-2 du CESEDA. La liste des zones d'attente est périodiquement réactualisée[394].

Pour ce qui est de la création des centres de rétention, l'article R 553-1 du CESEDA indique que les centres de rétention administrative sont créés sur proposition du ministre de l'intérieur, par arrêté conjoint des ministres de l'intérieur, de la justice, de la défense et du ministre chargé des affaires sociales. Cet arrêté mentionne l'adresse du centre et précise d'une part si sa surveillance en est confiée à la police nationale ou à la gendarmerie nationale et d'autre part si ce centre est susceptible d'accueillir des familles.
Au terme de l'article R 553-2, "Les centres de rétention administrative sont placés sous la responsabilité du préfet territorialement compétent et, à Paris, du préfet de police, qui désigne par arrêté le chef du centre, après accord du directeur général de la police nationale ou du directeur général de la gendarmerie nationale. Cet arrêté désigne aussi, le cas échéant, dans des conditions définies par arrêté conjoint des ministres de l'intérieur, de la justice et de la défense, le responsable de la gestion hôtelière et le responsable de la gestion des dossiers administratifs des étrangers admis au centre.
Le chef de centre est responsable de l'ordre et de la sécurité du centre et de la tenue du registre mentionné à l'article L. 553-1 du code de l'entrée et du séjour des étrangers et du droit d'asile. Il a autorité sur l'ensemble des personnes qui concourent au fonctionnement du centre"

[394] Voir en annexe la liste

Les autorités chargées de la gestion des centres fermés sont la police nationale et la gendarmerie pour les Centres de rétention administratives et la police nationale ou la douane pour les zones d'attente.

Conformément à l'article R 551-3 du CESEDA, lorsqu'en raison de circonstances particulières, notamment de temps ou de lieu, des étrangers mentionnés à l'article R 551-2 ne peuvent être placés immédiatement dans un centre de rétention administrative, le préfet peut les placer dans des locaux adaptés à cette fin, dénommés « locaux de rétention administrative ».

L'article R 553-5 du CESEDA indique que ces locaux sont créés, à titre permanent ou pour une durée déterminée, par arrêté préfectoral. Une copie de cet arrêté est transmise sans délai au procureur de la République, au directeur départemental des affaires sanitaires et sociales et au président de la Commission nationale de contrôle des centres et locaux de rétention administrative et des zones d'attente.

La liste de ces centres de rétention administrative est périodiquement actualisée : voir en annexe l'arrêté du 7 juin 2006 pris en application de l'article 2 du décret 2005-617 du 30 mai 2005 relatif à la rétention administrative et aux zones d'attente pris en application des articles L. 111-9, L. 551-2, L. 553-6 et L. 821-5 du Code de l'entrée et du séjour des étrangers et du droit d'asile (JO 11 juin 2006).

H. Does UNHCR and NGOs have access to the places of detention and under which conditions?

Le décret 95-507 du 2 mai 1995 détermine les conditions d'accès du délégué du Haut-Commissariat des Nations Unies pour les réfugiés ou de ses représentants ainsi que des associations humanitaires à la zone d'attente et portant application de l'article 35 quater de l'ordonnance n° 45-2658 du 2 novembre 1945 relative aux conditions d'entrée et de séjour des étrangers en France. Ce dispositif a été intégré aux articles R 223-1 et suivant du CESEDA.

1. L'article R 223-3 prévoit que l'accès des représentants du HCR, l'accès est subordonné à un agrément individuel. Cet agrément est délivré pour une durée de trois ans par l'autorité administrative compétente (le ministre de l'Intérieur, art. R 223-4). Il est renouvelable pour la même durée. Il est matérialisé par la remise d'une carte nominative permettant d'obtenir lors de chaque visite une autorisation d'accès à la zone d'attente.
L'article R 223-6 précise que "Le délégué du Haut-Commissariat des Nations unies pour les réfugiés ou ses représentants agréés peuvent s'entretenir avec le chef des services de contrôle aux frontières et, lorsqu'ils sont présents, avec les agents de l'Office français de protection des réfugiés et apatrides et les agents de l'Agence nationale de l'accueil des étrangers et des migrations chargés de l'assistance humanitaire. Ils peuvent également s'entretenir confidentiellement avec les personnes maintenues en zone d'attente qui ont demandé leur admission sur le territoire français au titre de l'asile".
Au terme de l'article R 223-7, une réunion est organisée annuellement sur le

fonctionnement des zones d'attente, à l'initiative du ministre de l'intérieur, avec le délégué du Haut-Commissariat des Nations unies pour les réfugiés, ses représentants agréés et les services de l'Etat concernés.

2. Pour ce qui est des associations, deux régimes coexistent, un régime réglementaire et un régime conventionnel.

Le régime d'accès des associations en zones d'attente prévu par le décret du 2 mai a fait l'objet d'une codification dans le CESEDA au titre des articles R 223-8 à R 223-14.
L'article R 223-8 prévoit "L'autorité administrative compétente fixe la liste des associations habilitées à proposer des représentants en vue d'accéder à la zone d'attente dans les conditions fixées par la présente section.
L'habilitation ne peut être sollicitée que par les associations régulièrement déclarées depuis au moins cinq années et proposant par leurs statuts l'aide et l'assistance aux étrangers, la défense des droits de l'homme ou l'assistance médicale ou sociale.
Tout refus d'habilitation doit être motivé au regard notamment du nombre d'associations déjà habilitées.
L'habilitation est accordée pour une durée de trois ans et peut faire l'objet d'une convention signée entre l'autorité administrative compétente et l'association. L'habilitation et la convention sont renouvelables pour la même durée.
L'autorité administrative compétente peut retirer l'habilitation d'une association.
L'accès à la zone d'attente des représentants des associations habilitées s'effectue conformément aux stipulations de la convention.
L'attribution de l'agrément aux associations est régie par l'article R 223-9 qui précise qu'il est délivré pour une période de trois ans par le ministre de l'Intérieur. Cet agrément, qui est renouvelable, peut être accordé à dix personnes par association. Il entraîne la délivrance d'une carte nominative permettant d'obtenir lors de chaque visite une autorisation d'accès à la zone d'attente. Une même personne ne peut recevoir qu'un agrément. L'autorité administrative compétente peut retirer l'agrément délivré à un représentant d'une association. L'agrément d'un représentant d'une association est retiré sur demande de celle-ci ou lorsque l'habilitation de l'association est retirée ou a expiré.
Avant les modifications introduites par le décret de 1995, les visites étaient limitées de telle sorte que les associations ont souvent critiqué le rôle illusoire qui leur était ainsi reconnu : huit visites par an et par zone d'attente, effectuées à chaque fois pas deux représentants au plus, selon une autorisation préalable et entre huit et vingt heures. Désormais, les agréments subsistent mais les conditions de visite sont très nettement assouplies depuis l'abrogation de la disposition selon laquelle "sous réserve des nécessités de l'ordre public et de la sécurité des transports, une association habilitée peut accéder, par l'intermédiaire d'un ou de deux représentants agréés, à chaque zone d'attente, huit fois par an, entre 8 heures et 20 heures". Il résulte de cette abrogation que celles-ci peuvent effectuer autant de visites dans toutes les zones d'attente qu'elles le souhaitent, de telle sorte que toute notion de "quota" est supprimée. De même, les horaires ne sont pas limités, ce qui fait disparaître tout mécanisme d'autorisation préalable. Les associations

peuvent accéder à tout moment en zone d'attente et autant de fois qu'elles le souhaitent sans présenter une quelconque demande préalable au ministère de l'intérieur.
L'article R 223-13 porte sur les visites, il prévoit " Les représentants agréés d'une association peuvent s'entretenir avec le chef des services de contrôle aux frontières et, lorsqu'ils sont présents, avec les agents de l'Office français de protection des réfugiés et apatrides et les agents de l'Agence nationale de l'accueil des étrangers et des migrations chargés de l'assistance humanitaire.
Ils peuvent s'entretenir confidentiellement avec les personnes maintenues dans cette zone.
Pendant leur présence en zone d'attente, les représentants agréés d'une association habilitée sont accompagnés par un agent des services de contrôle aux frontières.
Les représentants de plusieurs associations habilitées ne peuvent accéder le même jour à la même zone d'attente.
Une réunion annuelle portant sur le fonctionnement de la zone d'attente est tenue à l'initiative du ministère de l'intérieur, en présence de tous les services présents en zone d'attente (police aux frontières, OFPRA, service médical…) et des présidents des associations habilitées. Elle donne lieu à un compte-rendu établi conjointement et rendu public.

Un arrêté du 30 mai 2006 dresse la liste des associations habilitées à accéder en zone d'attente.

Par ailleurs, un accès ponctuel de type conventionnel peut être également relevé. Le ministère de l'intérieur autorise les associations à jouer un rôle d'assistance des étrangers maintenus dans la zone d'attente de Roissy-Charles-de-Gaulle : la Croix-Rouge Française se voyait confier le volet humanitaire le 6 octobre 2003, l'Association nationale d'assistance aux frontières pour les étrangers (ANAFE), le volet juridique, le 5 mars 2004.

En ce qui concerne le volet humanitaire, la mission de la Croix-Rouge Française consiste notamment à rencontrer les étrangers maintenus en zone d'attente pour leur apporter un soutien psychologique et leur donner toute information utile, apporter toute aide matérielle par la fourniture de biens de première nécessité et assurer un rôle de médiateur entre les étrangers et les agents de l'État qui exercent leur mission en zone d'attente. Afin d'exercer sa mission, l'association désigne une équipe d'une vingtaine de personnes salariées qui assurent une présence continue, tous les jours et vingt-quatre heures sur vingt-quatre. Concrètement, la Croix-Rouge Française exerce sa mission dans des bureaux qui sont mis à sa disposition dans la zone d'attente pour les personnes en instance, dite « ZAPI 3 », de même que dans la zone réservée de l'aéroport, c'est-à-dire dans les aérogares, en vertu d'un badge qui est délivré sur autorisation du préfet de la Seine-Saint-Denis dans les conditions prévues par la réglementation en vigueur en matière d'accès aux différentes zones aéroportuaires. La convention, initialement prévue pour une période de six mois, a depuis lors été renouvelée expressément.

En ce qui concerne le volet juridique, la mission confiée à l'ANAFE selon la convention signée le 5 mars 2004 a pour objet de rencontrer les étrangers maintenus en zone d'attente en dehors des différentes phases administratives et judiciaires de la procédure, de leur fournir l'information et l'assistance utile sur le plan juridique afin de mieux garantir l'exercice effectif de leurs droits et de formuler des propositions tendant à améliorer les conditions de maintien en zone d'attente des étrangers et les garanties dont ces étrangers bénéficient, l'administration faisant connaître à l'association les suites qu'elle entend alors donner à ces propositions. Pour réaliser sa mission, l'ANAFE désigne une équipe de dix à quinze personnes composée de salariés ou de bénévoles qui peuvent intervenir à tout moment en zone d'attente, de jour comme de nuit, sans être toutefois astreintes à une obligation de présence, contrairement à ce qui est prévu dans la Convention unissant l'État à la Croix-Rouge française. Ces personnes disposent d'un bureau en ZAPI 3 et peuvent en outre se rendre à la zone réservée à raison de deux fois par semaine, sans être titulaires de badge mais accompagnées par un fonctionnaire de la police aux frontières et peuvent s'entretenir confidentiellement avec les étrangers qui s'y trouvent, à l'exception de ceux pour lesquels une procédure est en cours et peuvent accéder aux locaux où ces personnes sont en attente. La convention, initialement prévue pour une période de six mois, a depuis lors été renouvelée implicitement.

Le décret 2005-617 du 30 mai 2005 (JO du 30 mai 2005) ouvre formellement la possibilité qu'une convention soit signée entre le ministre de l'intérieur et une association. Les conventions sont alors passées pour une durée de trois ans et sont renouvelables pour la même durée. L'accès à la zone d'attente des représentants des associations habilitées s'effectue conformément aux stipulations de la convention. Le Groupe d'information et de soutien des immigrés (GISTI), Médecins du monde, l'Association Groupe accueil et solidarité (GAS), la Ligue des droits de l'homme et l'Association d'accueil aux médecins et personnels de santé réfugiés en France (ASPR) sont habilités pour trois ans à proposer des représentants en vue d'accéder en zone d'attente au titre de du décret n° 95-507 du 2 mai 1995 en vertu de l'arrêté du 30 mai 2006 (JO 3 juin 2006) et après un recours contentieux devant le Conseil d'Etat.

I. What <u>appeal(s)</u> can asylum seekers introduce against the fact he is detained? Is article 18 of the directive on asylum procedures of 1 December 2005 following which *"Where an applicant for asylum is held in detention, Member States shall ensure that there is a possibility of speedy judicial review"* respected (even if it has not yet to be transposed)?

De tels recours existent en droit français, qu'il s'agisse des zones d'attente ou des centres de rétention administrative, et leur jeu est détaillé par le décret 2004-1215 du 17 novembre 2004 fixant certaines modalités d'application des articles 35 bis et 35 quater de l'ordonnance n° 45-2658 du 2 novembre 1945 relative aux conditions d'entrée et de séjour des étrangers en France (JO 18 novembre 2004).

En ce qui concerne les Zones d'attente :
Le système français est d'une grande complexité, peu compréhensible pour l'étranger car il implique la double intervention éventuelle du juge administratif et du juge judiciaire, en raison d'obligations de nature constitutionnelle. Le maintien en zone d'attente constitue une atteinte à la liberté d'aller et venir, liberté individuelle dont le juge judiciaire est le garant. S'il n'est pas compétent pour intervenir en matière d'asile, le juge judiciaire est donc compétent à ce titre. Par ailleurs, le juge administratif est le juge naturel de la légalité administrative et donc de la légalité des conditions de notification des mesures de refus d'entrée sur le territoire, du maintien en zone d'attente et de son renouvellement.

- la juridiction administrative peut en premier lieu être saisie d'un recours contre la décision de refus d'entrée en France. A la suite de la condamnation de la France par la Cour européenne des droits de l'Homme prononcée le 26 avril 2007 dans l'affaire *Gebremehin* (req. 25389/05), la loi du 20 novembre 2007 a procédé à un profond remaniement des procédures en cours en ajouatnt au CESEDA un nouvel article L .213-9. Ce dernier dispose que, désormais, un recours contentieux est ouvert dès l'entrée sur le territoire français.

L'étranger qui a fait l'objet d'un refus d'entrée sur le territoire français au titre de l'asile peut, dans les quarante-huit heures suivant la notification de cette décision, en demander l'annulation, par requête motivée, au président du tribunal administratif.
Le président, ou le magistrat qu'il désigne à cette fin parmi les membres de sa juridiction ou les magistrats honoraires inscrits sur la liste mentionnée à l'article L. 222-2-1 du code de justice administrative, statue dans un délai de soixante-douze heures à compter de sa saisine.
Aucun autre recours ne peut être introduit contre la décision de refus d'entrée au titre de l'asile.
L'étranger peut demander au président du tribunal ou au magistrat désigné à cette fin le concours d'un interprète.
L'étranger est assisté de son conseil s'il en a un. Il peut demander au président ou au magistrat désigné à cette fin qu'il lui en soit désigné un d'office. L'audience se déroule sans conclusions du commissaire du Gouvernement.
Par dérogation au précédent alinéa, le président du tribunal administratif ou le magistrat désigné à cette fin peut, par ordonnance motivée, donner acte des désistements, constater qu'il n'y a pas lieu de statuer sur un recours et rejeter les recours ne relevant manifestement pas de la compétence de la juridiction administrative, entachés d'une irrecevabilité manifeste non susceptible d'être couverte en cours d'instance ou manifestement mal fondés.
L'audience se tient dans les locaux du tribunal administratif compétent. Toutefois, sauf si l'étranger dûment informé dans une langue qu'il comprend s'y oppose, celle-ci peut se tenir dans la salle d'audience de la zone d'attente et le président du tribunal ou le magistrat désigné à cette fin siéger au tribunal dont il est membre, relié à la salle d'audience, en direct, par un moyen de communication audiovisuelle qui garantit la confidentialité de la transmission.

La salle d'audience de la zone d'attente et celle du tribunal administratif sont ouvertes au public. L'étranger est assisté de son conseil s'il en a un.
La décision de refus d'entrée au titre de l'asile ne peut être exécutée avant l'expiration d'un délai de quarante-huit heures suivant sa notification ou, en cas de saisine du président du tribunal administratif, avant que ce dernier ou le magistrat désigné à cette fin n'ait statué. Le jugement du président du tribunal administratif ou du magistrat désigné par lui est susceptible d'appel dans un délai de quinze jours devant le président de la cour administrative d'appel territorialement compétente ou un magistrat désigné par ce dernier. Cet appel n'est pas suspensif.
Si le refus d'entrée au titre de l'asile est annulé, il est immédiatement mis fin au maintien en zone d'attente de l'étranger, qui est autorisé à entrer en France muni d'un visa de régularisation de huit jours. Dans ce délai, l'autorité administrative compétente lui délivre, à sa demande, une autorisation provisoire de séjour lui permettant de déposer sa demande d'asile auprès de l'Office français de protection des réfugiés et apatrides.
La décision de refus d'entrée au titre de l'asile qui n'a pas été contestée dans le délai prévu au premier alinéa ou qui n'a pas fait l'objet d'une annulation dans les conditions prévues au présent article peut être exécutée d'office par l'administration.

- le juge judiciaire intervient également à différents égards : il est juge des libertés individuelles, juge du respect des procédures et juge du maintien dans la zone d'attente.

En tant que juge des libertés, le juge judiciaire intervient pour apprécier la régularité de la privation de liberté de l'étranger, en raison du rôle que lui confie l'article 66 de la Constitution. Il est saisi par l'autorité administrative avant l'expiration d'un délai de quatre jours à compter de la notification de la décision de maintien en zone d'attente. Dès réception de la requête, le greffier avise aussitôt et par tout moyen l'autorité requérante, le procureur de la République, l'étranger et son avocat, s'il en a un, du jour et de l'heure de l'audience fixés par le juge.
L'étranger est avisé de son droit de choisir un avocat. Le juge lui en fait désigner un d'office si l'étranger le demande. La requête et les pièces qui y sont jointes sont, dès leur arrivée au greffe, mises à la disposition de l'avocat de l'étranger. Elles peuvent y être également consultées, avant l'ouverture des débats, par l'étranger lui-même, éventuellement assisté par un interprète s'il ne connaît pas suffisamment la langue française. Les droits fondamentaux, inhérents à toute mesure restrictive de liberté, tels que celui de bénéficier de l'assistance d'un interprète, d'un avocat, d'un médecin ou d'avertir toute personne de son choix, doivent être garantis dès l'arrivée aux frontières. Le juge judiciaire est également compétent pour vérifier que l'étranger interpellé est présenté dans un délai raisonnable à un agent de la police aux frontières ayant un grade suffisamment élevé afin qu'il soit procédé à la notification de la mesure de maintien en zone d'attente et des droits y afférent.

Son ordonnance est rendue immédiatement. Elle est notifiée sur place aux parties présentes à l'audience qui en accusent réception. Le magistrat fait connaître verbalement aux parties présentes le délai d'appel et les modalités selon lesquelles cette voie de recours peut être exercée, en vertu de l'article L-222-6 du CESEDA. Il les informe simultanément que seul l'appel formé par le ministère public peut être déclaré suspensif par le premier président de la cour d'appel ou son délégué. Lorsqu'une ordonnance met fin au maintien en zone d'attente ou à la rétention, ou assigne à résidence l'étranger et que le procureur de la République estime ne pas avoir à solliciter du premier président qu'il déclare l'appel suspensif, il retourne l'ordonnance au magistrat qui l'a rendue en mentionnant sur celle-ci qu'il ne s'oppose pas à sa mise à exécution. Il est alors immédiatement mis fin à la mesure de maintien. L'ordonnance est susceptible d'appel devant le premier président de la cour d'appel ou son délégué, par l'étranger, le préfet ou, à Paris, le préfet de police, dans les vingt-quatre heures de son prononcé. Le ministère public peut également interjeter appel de cette ordonnance selon les mêmes modalités, alors même qu'il a renoncé à solliciter la suspension provisoire. Toutefois, il doit former appel dans le délai de quatre heures s'il entend solliciter du premier président ou de son délégué qu'il déclare l'appel suspensif.

En tant que juge du respect des procédures, le juge des libertés et de la détention doit également vérifier qu'il a été saisi en respect des règles prévues dans le décret 2004-1215 du 17 novembre 2004 : délais, motivation de la requête, présence des pièces justificatives, des allégations de l'administration qui a saisi le juge judiciaire.

Enfin, le juge judiciaire peut être amené à autoriser le maintien en zone d'attente. Sur la base des articles L-222-1, L-222-2 et L-222-3, le maintien en zone d’attente au-delà de quatre jours à compter de la décision initiale peut être autorisé, par le juge des libertés et de la détention, pour une durée qui ne peut être supérieure à huit jours. A titre exceptionnel, le maintien en zone d’attente au-delà de douze jours peut être renouvelé, dans les conditions prévues au présent chapitre, par le juge des libertés et de la détention, pour une durée qu’il détermine et qui ne peut être supérieure à huit jours. Toutefois, lorsque l’étranger non admis à pénétrer sur le territoire français dépose une demande d’asile dans les quatre derniers jours de cette nouvelle période de maintien en zone d’attente, celle-ci est prorogée d’office de quatre jours à compter du jour de la demande. Cette décision est mentionnée sur le registre prévu à l’article L. 221-3 et portée à la connaissance du procureur de la République dans les conditions prévues au même article. Le juge des libertés et de la détention est informé immédiatement de cette prorogation. Il peut y mettre un terme. L’autorité administrative expose dans sa saisine les raisons pour lesquelles l’étranger n’a pu être rapatrié ou, s’il a demandé l’asile, admis, et le délai nécessaire pour assurer son départ de la zone d’attente. Le juge des libertés et de la détention statue par ordonnance, après audition de l’intéressé, en présence de son conseil s’il en a un, ou celui-ci dûment averti.

En toute hypothèse, cette intervention judiciaire reste d'exception, la durée moyenne du maintien en zone d'attente étant dans la plupart des cas inférieure à quatre jours.

Ce délai de huit jours est un maximum et le juge des libertés et de la détention peut décider de faire droit à la requête de l'administration mais pour une durée inférieure, en tenant notamment compte des circonstances propres à l'instruction d'une demande d'admission sur le territoire au titre de l'asile ou bien encore des possibilités réelles, notamment liées aux horaires des compagnies aériennes, pour un éventuel réacheminement.

En ce qui concerne les Centres de rétention administrative :
Les étrangers disposent ici de deux types de recours. Le premier est un recours contre la décision de placement en rétention administrative : le juge administratif est compétent pour statuer sur la légalité de l'arrêté préfectoral prononçant le placement en rétention. Le second recours, à l'issue du délai de 48 heures porte sur les décisions de prolongation de la détention adoptées par le juge des libertés c'est-à-dire le juge judiciaire.

Les recours administratifs et les recours contentieux de droit commun à l'encontre de la décision administrative de placement ont vocation à jouer normalement. Leur efficacité est clairement renforcée depuis 2000 par le jeu de la technique du référé-injonction qui permet d'obtenir soit la suspension d'une décision manifestement illégale, soit un acte que l'administration refuse de prendre. Le Conseil d'Etat vient ainsi "d'ordonner à l'administration de prendre les dispositions nécessaires pour que [la requérante] soit admise à demeurer à titre provisoire sur le territoire français jusqu'à ce qu'il ait été statué sur sa demande d'admission au statut de réfugié" (CE, 11 mai 2006, Ministre de l'Intérieur c. Issandja, req.296071).

Par ailleurs, le juge judiciaire, le juge des libertés, peut également être amené à intervenir, qu'il s'agisse de contrôler la décision de mise en rétention ou sa prolongation. Les articles L-552-1 et suivants du CESEDA indiquent ainsi : " quand un délai de quarante-huit heures s'est écoulé depuis la décision de placement en rétention, le juge des libertés et de la détention est saisi aux fins de prolongation de la rétention. Il statue par ordonnance au siège du tribunal de grande instance dans le ressort duquel se situe le lieu de placement en rétention de l'étranger, sauf exception prévue par voie réglementaire, après audition du représentant de l'administration, si celui-ci, dûment convoqué, est présent, et de l'intéressé en présence de son conseil, s'il en a un. Toutefois, si une salle d'audience attribuée au ministère de la justice lui permettant de statuer publiquement a été spécialement aménagée à proximité immédiate de ce lieu de rétention, il statue dans cette salle". On notera à cet égard les polémiques entraînées par la volonté de l'administration de "délocaliser" ces procédures près des centres de rétention (Circulaire INT/04/00006/C du 20 janvier 2004).

"Le juge rappelle à l'étranger les droits qui lui sont reconnus pendant la rétention et s'assure, d'après les mentions figurant au registre prévu à l'article L. 553-1

émargé par l'intéressé, que celui-ci a été, au moment de la notification de la décision de placement, pleinement informé de ses droits et placé en état de les faire valoir. Il l'informe des possibilités et des délais de recours contre toutes les décisions le concernant. L'intéressé est maintenu à la disposition de la justice, pendant le temps strictement nécessaire à la tenue de l'audience et au prononcé de l'ordonnance". A titre exceptionnel il peut prononcer une assignation à résidence.

Le CESEDA traite spécifiquement des voies de recours à l'encontre de ces différentes interventions du juge judiciaire en indiquant dans son article L-552-9 que **l**es ordonnances mentionnées aux sections 1 et 2 du présent chapitre sont susceptibles d'appel devant le premier président de la cour d'appel ou son délégué, qui est saisi sans forme et doit statuer dans les quarante-huit heures de sa saisine ; l'appel peut être formé par l'intéressé, le ministère public et l'autorité administrative. L'article L-552-10 précise que l'appel n'est pas suspensif. Toutefois, le ministère public peut demander au premier président de la cour d'appel ou à son délégué de déclarer son recours suspensif lorsqu'il lui apparaît que l'intéressé ne dispose pas de garanties de représentation effectives ou en cas de menace grave pour l'ordre public. Dans ce cas, l'appel, accompagné de la demande qui se réfère à l'absence de garanties de représentation effectives ou à la menace grave pour l'ordre public, est formé dans un délai de quatre heures à compter de la notification de l'ordonnance au procureur de la République et transmis au premier président de la cour d'appel ou à son délégué. Celui-ci décide, sans délai, s'il y a lieu de donner à cet appel un effet suspensif, en fonction des garanties de représentation dont dispose l'étranger ou de la menace grave pour l'ordre public, par une ordonnance motivée rendue contradictoirement qui n'est pas susceptible de recours. L'intéressé est maintenu à la disposition de la justice jusqu'à ce que cette ordonnance soit rendue et, si elle donne un effet suspensif à l'appel du ministère public, jusqu'à ce qu'il soit statué sur le fond.

J. Is the directive on reception conditions considered to be in principle applicable to the places where asylum seekers are detained? In particular which information do they receive about their rights, which access do they have to legal advice and health care?

La directive a vocation à être pleinement applicable dans l'ensemble des lieux mentionnés.

En ce qui concerne les Zones d'attente :

L'article L-221-4 du CESEDA indique que l'étranger maintenu en zone d'attente est informé, dans les meilleurs délais, qu'il peut demander l'assistance d'un interprète et d'un médecin, communiquer avec un conseil ou toute personne de son choix et quitter à tout moment la zone d'attente pour toute destination située hors de France. Ces informations lui sont communiquées dans une langue qu'il comprend, ce qui est une avancée au regard des pratiques antérieures. Mention en est faite sur le registre mentionné au deuxième alinéa de l'article L. 221-3, qui est

émargé par l'intéressé. Lorsque l'étranger ne parle pas le français, il est fait application de l'article L. 111-7.

En ce qui concerne les Centres de rétention administrative :

L'article L-553-4 du CESEDA indique que dans chaque lieu de rétention, un espace permettant aux avocats de s'entretenir confidentiellement avec les étrangers retenus est prévu. A cette fin, sauf en cas de force majeure, il est accessible en toutes circonstances sur demande de l'avocat. Un décret en Conseil d'Etat précise, en tant que de besoin, les modalités d'application du présent article

Les articles 8,9 et 10 du décret 2005-617 du 30 mai 2005 relatif à la rétention administrative et aux zones d'attente pris en application des articles L. 111-9, L. 551-2, L. 553-6 et L. 821-5 du code de l'entrée et du séjour des étrangers et du droit d'asile mentionnent l'essentiel de ces garanties. Ces dispositions ont fait l'objet d'une codification. Ainsi :
L'article R 553-7 prévoit qu'un local réservé aux avocats et permettant de préserver la confidentialité des entretiens est ménagé dans chaque lieu de rétention. Il est accessible en toutes circonstances, sauf en cas de force majeure, sur simple requête de l'avocat auprès du service en charge de l'accueil des étrangers retenus et avec l'accord de la personne intéressée.

L'article R 551-4 du CESEDA indique que dès son arrivée au lieu de rétention, chaque étranger est mis en mesure de communiquer avec toute personne de son choix, avec les autorités consulaires du pays dont il déclare avoir la nationalité et avec son avocat s'il en a un, ou, s'il n'en a pas, avec la permanence du barreau du tribunal de grande instance dans le ressort duquel se trouve le lieu de rétention. Quel que soit le lieu de rétention dans lequel l'étranger est placé, un procès-verbal de la procédure de notification des droits en rétention, signé par l'intéressé qui en reçoit un exemplaire, le fonctionnaire qui en est l'auteur et, le cas échéant, l'interprète, est établi. Ces références sont portées sur le registre mentionné à l'article L. 553-1 du code de l'entrée et du séjour des étrangers et du droit d'asile.

Au terme de l'article R 553-13, les étrangers placés ou maintenus dans un centre de rétention administrative bénéficient d'actions d'accueil, d'information, de soutien moral et psychologique et d'aide pour préparer les conditions matérielles de leur départ, qui portent notamment sur la récupération des bagages des personnes retenues, la réalisation de formalités administratives, l'achat de produits de vie courante et, le cas échéant, les liens avec le pays d'origine, et notamment la famille. Pour la conduite de ces actions, l'Etat a recours à l'Agence nationale de l'accueil des étrangers et des migrations. Une convention détermine les conditions d'affectation et d'intervention des agents de cet établissement public.

L'article R 553-14 ajoute que "Pour permettre l'exercice effectif de leurs droits par les étrangers maintenus dans un centre de rétention administrative, l'Etat passe une convention avec une association à caractère national ayant pour objet d'informer les étrangers et de les aider à exercer leurs droits. L'association assure

à cette fin dans chaque centre des prestations d'information, par l'organisation de permanences et la mise à disposition de documentation (…)". Il s'agit de la CIMADE, qui exerçait déjà ce rôle dans divers centres, et avec laquelle l'État a passé une convention. Elle peut notamment aider les étrangers en instance d'éloignement à préparer leur comparution devant le juge judiciaire, un recours contre la mesure d'éloignement, ou à obtenir l'aide juridictionnelle et un avocat ; l'étranger retenu a accès à son concours à sa demande ou à l'initiative de cette association. Les étrangers retenus bénéficient de ces prestations sans formalité dans les conditions prévues par le règlement intérieur.

Pendant la durée de leur séjour en rétention, les étrangers sont soignés gratuitement. Dans les conditions prévues par l'article R 553-3 du CESEDA, les centres de rétention administrative doivent comprendre une ou pluseirs salles dotées d'équipement médical, réservé au service médical devant permettre au personnel de santé d'y donner des consultations et d'y dispenser des soins.
Les conditions dans lesquelles le service public hospitalier intervient au bénéfice des personnes retenues, en application des articles L. 6112-1 et L. 6112-8 du code de la santé publique, sont précisées par voie de convention passée entre le préfet territorialement compétent et un établissement public hospitalier selon des modalités définies par arrêté conjoint du ministre de l'intérieur, du ministre chargé des affaires sociales et du ministre chargé de la santé. Pour les centres de rétention administrative, cet arrêté précise notamment les conditions de présence et de qualification des personnels de santé ainsi que les dispositions sanitaires applicables en dehors de leurs heures de présence au centre.

Les dispositions de l'article L-111-7 et L-111-8 du CESEDA s'appliquent en ce qui concerne la présence d'un interprète et les besoins de traduction. Lorsqu'un étranger fait l'objet d'une mesure de non-admission en France, de maintien en zone d'attente ou de placement en rétention et qu'il ne parle pas le français, il indique au début de la procédure une langue qu'il comprend. Il indique également s'il sait lire. Ces informations sont mentionnées sur la décision de non-admission, de maintien ou de placement. Ces mentions font foi sauf preuve contraire. La langue que l'étranger a déclaré comprendre est utilisée jusqu'à la fin de la procédure. Si l'étranger refuse d'indiquer une langue qu'il comprend, la langue utilisée est le français.

Lorsqu'il est prévu aux livres II et V du présent code qu'une décision ou qu'une information doit être communiquée à un étranger dans une langue qu'il comprend, cette information peut se faire soit au moyen de formulaires écrits, soit par l'intermédiaire d'un interprète. L'assistance de l'interprète est obligatoire si l'étranger ne parle pas le français et qu'il ne sait pas lire. En cas de nécessité, l'assistance de l'interprète peut se faire par l'intermédiaire de moyens de télécommunication. Dans une telle hypothèse, il ne peut être fait appel qu'à un interprète inscrit sur l'une des listes prévues à l'alinéa suivant ou à un organisme d'interprétariat et de traduction agréé par l'administration. Le nom et les coordonnées de l'interprète ainsi que le jour et la langue utilisée sont indiqués par écrit à l'étrange

Les articles R 553-11 et R 221-3 du CESEDA (anciens articles 18 et 19 du décret 2005-617 du 30 mai 2005 relatif à la rétention administrative et aux zones d'attente pris en application des articles L. 111-9, L. 551-2, L. 553-6 et L. 821-5 du code de l'entrée et du séjour des étrangers et du droit d'asile) confirment cette obligation. L'administration met un interprète à la disposition des étrangers maintenus en zone d'attente ou en centre ou en local de rétention administrative qui ne comprennent pas le français, dans le seul cadre des procédures de non-admission ou d'éloignement dont ils font l'objet. Dans les autres cas, la rétribution du prestataire est à la charge de l'étranger. Lorsque l'assistance d'un interprète se fait par téléphone ou un autre moyen de télécommunication, le nom et les coordonnées de l'interprète, ainsi que la langue utilisée, sont mentionnés par procès-verbal, dont une copie est remise à l'étranger.

On notera également que le règlement intérieur modèle, tel que publié par l'arrêté du 2 mai 2006 organise les modalités pratiques d'exercice de leurs droits par les étrangers placés en rétention (JO du 6 mai 2006).

Prévu par l'article R 553-4 du CESEDA (ancien article 4 du décret 2005-617 du 30 mai 2005), le modèle de règlement intérieur se divise en quatre titres. Le premier, relatif aux « Conditions d'accueil », organise les horaires d'« accueil » des étrangers placés en rétention, la procédure d'inscription de l'étranger concerné, les documents exigés, la procédure de notification des droits ainsi que les modalités de remise de « tout objet coupant ou contendant » et des documents susceptibles d'établir leur identité. Le second titre, relatif à la « Vie quotidienne » en centre de rétention, organise les conditions d'accès à certains locaux (sanitaires, « logements familiaux »), aux repas, aux « loisirs », règle les questions d'accès à la téléphonie et prévoit des règles de circulation des étrangers à l'intérieur du centre. Le troisième est consacré à l'accès aux services médicaux et aux agents de l'ANAEM. Enfin, le dernier titre, « Droits spécifiques et procédure juridique », organise les visites aux étrangers retenus, la permanence des associations conventionnées, l'information sur les recours aux juridictions et les « déplacements qu'ils auront à effectuer dans le cadre de la procédure d'éloignement dont ils font l'objet ».

K. Apart from freedom of movement, what are the <u>main differences</u> between normal reception conditions and exceptional modalities for reception conditions in case of detention, knowing that they should be "as short as possible" (see article 14, §8)? If it is about closed centres, are the regulations of those places <u>in line with the requirements of the directive</u> (is article 13, §2, second indent of the directive following which "*Member States <u>shall</u> ensure that standards of living is met (…) in relation to the situation of persons who are in detention*" respected?).

La première différenciation tient au caractère prioritaire du traitement de la demande d'asile par l'OFPRA. L'article R 723-3 du CESEDA prévoit : "lorsqu'il est saisi en application de la procédure prioritaire prévue au second alinéa de

l'article L 723-1, l'office statue dans un délai de quinze jours sur la demande d'asile. Ce délai est ramené à 96 heures lorsque le demandeur d'asile est placé en rétention administrative en application de l'article L 551-1" (ancien article 3 du décret 2004-814 du 14 août 2004 relatif à l'Office français de protection des réfugiés et apatrides et à la Commission des recours des réfugiés).

Un problème se pose également au niveau des interprètes. En effet, et conformément aux articles R 553-11 et R 221-3 (ancien article 18 du décret 2005-617), les interprètes sont mis à disposition pour les procédures de non admission. Pour ce qui relève de la demande d'asile, laquelle doit être obligatoirement rédigée en français, les frais de rétribution de l'interprète sont à la charge du demandeur. Ainsi, dès lors que l'étranger se trouve dans un centre fermé, il ne dispose pas de facilités de traduction telles qu'elles existent en centre d'accueil ou dans les associations de protection et de défense des demandeurs d'asile.

L. Are measures taken to avoid detention of asylum seekers with special needs (if yes, which ones?) or are special measures taken because of their needs?

Mis à part le cas des mineurs isolés, le régime juridique français ne ménage pas de mesures spéciales.

M. Can minor asylum seekers be detained together with relatives? Can unaccompanied minor asylum seekers be detained? If yes, are there special measures which take into account that children are concerned?

Juridiquement, les mineurs peuvent être amenés à intégrer une zone d'attente (art. L. 221-6 du CESEDA). Néanmoins, et en pratique, notamment à Paris, les mineurs sont logés dans des hôtels à proximité de l'aéroport. Selon les associations (ANAFE) il se pose un problème relativement à la "garde" de ses enfants qui se réalise en pratique avec le concours d'étudiants embauchés pour se faire et qui ne bénéficient d'aucune expérience à ce titre. Ils sont également sortis des zones d'attente de Roissy et dirigé vers le CAOMIDA et le LAO.
Concernant les centres de rétention administrative, les mineurs ne peuvent y être placés seuls. En revanche, lorsqu'ils accompagnent leurs parents, deux solutions sont envisageables. Les mineurs peuvent accompagner leurs parents et donc rester dans le centre de rétention. Les mineurs peuvent être pris en charge par un membre de la famille à l'extérieur du centre de rétention.

N. In particular is article 10 regarding access to education of minors respected in those places?

Aucune disposition de droit français ne prévoit d'accès à l'éducation dans les centres fermés. Ce positionnement relève notamment des brefs délais de rétention qui ne nécessitent pas la mise en œuvre de dispositifs d'éducation.

O. How many asylum seekers are for the moment detained in your Member State? Which proportion does this represent in comparison of the total number of asylum seekers at the same moment?

Selon le rapport le Mission d'évaluation des coûts, en date du 5 avril 2006, 59 221 demandes d'asile ont été présentées en France en 2005. L'OFPRA relève dans son rapport d'activité que 2 278 avis ont été rendus en 2005 dans le cadre des demandes d'asile présentées à la frontière (en zone d'attente). En ce qui concerne les demandes présentées en centre de rétention administrative, le rapport de l'OFPRA ne les cite qu'au travers de la procédure de réexamen

9. ORGANISATION OF THE SYSTEM OF RECEPTION CONDITIONS

Q.34. Explain if the system of providing reception conditions is centralised or decentralised (which levels of government do provide practically reception conditions?) (do not confuse this question with question number 3 about the competence to make rules about reception conditions).

Le dispositif français d'accueil en matière d'asile est centralisé. Le ministère de l'Emploi, de la cohésion sociale et du logement est le ministère tête de file et il a en charge notamment l'accueil, l'hébergement et l'accès aux droits sociaux des demandeurs d'asile et des réfugiés statutaires. Cette mission est assurée par le Direction de la Population et des Migrations (DPM).

Il s'y ajoute deux ministères directement concernés : le ministère de l'Intérieur, directement en charge de la police des étrangers et qui assure la coordination de l'accueil au plan régional à travers l'action des préfets et le ministère des affaires étrangères à travers les deux organismes responsables de l'instruction des demandes de protection juridique : l'Office français de protection des réfugiés et apatrides (OFPRA) et la Commission des recours des réfugiés (CRR, devenue depuis la loi du 20 novembre 2007 la Cour nationale du droit d'asile). Cette organisation est désormais modifiée par la création d'un ministère de l'immigration, de l'intégration, de l'identité nationale et du codéveloppement. Au terme de l'article 1er du décret n° 2007-999 du 31 mai 2007 relatif aux attributions du ministère de l'immigration, de l'intégration, de l'identité nationale et du codéveloppement, "Le ministre de l'immigration, de l'intégration, de l'identité nationale et du codéveloppement prépare et met en oeuivre la politique du gouvernement en matière d'immigration, d'asile, d'intégration des populations immigrées, de promotion de l'identité nationale et de codéveloppement.

Il prépare et met en oeuvre les règles relatives aux conditions d'entrée, de séjour et d'exercice d'une activité professionnelle en France des ressortissants étrangers. Il est chargé :

- en liaison avec le ministre de l'intérieur, de l'outre-mer et des collectivités territoriales, de la lutte contre l'immigration illégale et la fraude documentaire intéressant des ressortissants étrangers ;
- en liaison avec le ministre de l'intérieur, de l'outre-mer et des collectivités territoriales et le ministre du travail, des relations sociales et de la solidarité, de la lutte contre le travail illégal des étrangers ;
- conjointement avec le ministre des affaires étrangères et européennes, de la politique d'attribution des visas.

Il est compétent, dans le respect des attributions de l'Office français de protection des réfugiés et apatrides et de la Commission des recours des réfugiés, en matière d'exercice du

droit d'asile et de protection subsidiaire et de prise en charge sociale des personnes intéressées.
Il est responsable de l'accueil en France des ressortissants étrangers qui souhaitent s'y établir et est chargé de l'ensemble des questions concernant l'intégration des populations immigrées en France. Pour l'exercice de cette mission, il est associé à la définition et à la mise en oeuvre des politiques d'éducation, de culture et de communication, de formation professionnelle, d'action sociale, de la ville, d'accès aux soins, à l'emploi et au logement et de lutte contre les discriminations.
Il a la charge des naturalisations et de l'enregistrement des déclarations de nationalité à raison du mariage. Il est associé à l'exercice par le garde des sceaux, ministre de la justice, de ses attributions en matière de déclaration de nationalité et de délivrance des certificats de nationalité française.
Avec les ministres intéressés, il participe, auprès des ressortissants étrangers, à la politique d'apprentissage, de maîtrise et de diffusion de la langue française. Il est associé à la politique menée en faveur du rayonnement de la francophonie.
Il participe, en liaison avec les ministres intéressés, à la politique de la mémoire et à la promotion de la citoyenneté et des principes et valeurs de la République.
Il est chargé de la politique de codéveloppement et, en liaison avec le ministre des affaires étrangères et européennes et le ministre de l'économie, des finances et de l'emploi, participe à la définition et à la mise en oeuvre des autres politiques de coopération et d'aide au développement qui concourent au contrôle des migrations.
Dans le respect des attributions du ministre de l'économie, des finances et de l'emploi en matière de statistique, il coordonne la collecte, l'analyse et la diffusion des données relatives à l'immigration et à l'intégration des populations immigrées. Il est associé à la collecte et à l'analyse des données relatives à la population.

Un projet de loi en cours de discussion devant les assemblées parlementaire prévoit en outre de confier la tutelle de l'Office français de protection des réfugiés et des apatrides au ministère de l'immigration, de l'intégration, de l'identité nationale et du codéveloppement.

L'action sociale en direction des demandeurs d'asile comporte les volets suivants :

- Un hébergement dans le dispositif national d'accueil (DNA). Cet hébergement, mis en place et financé par la DPM, est destiné aux demandeurs d'asile dépourvus de ressources suffisantes et de logement. Les demandeurs d'asile sont alors pris en charge dans des centres d'accueil pour demandeurs d'asile (CADA). Ces centres d'hébergement sont placés sous le contrôle administratif, social et financier des directions départementales des

affaires sanitaires et sociales (DDASS). La DPM est également gestionnaire des crédits destinés à la prise en charge des demandeurs d'asile (tout au moins pour ce qui relève de leur hébergement car s'agissant de leurs dépenses de santé, celles-ci s'imputent sur les crédits de la CMU, gérée par la Sécurité sociale). Les crédits consacrés à l'hébergement des demandeurs d'asile sont gérés par la Direction de la population et des migrations (DPM) du Ministère de l'emploi, du travail et de la cohésion sociale. Ces crédits font pour l'essentiel l'objet d'une gestion déconcentrée et sont délégués aux DRASS et DDASS, exception faite des cas ou la direction signe directement des conventions avec quelques grands opérateurs comme la SONACOTRA ou l'AFTAM, spécialisés dans la gestion des foyers de travailleurs migrants mais accueillant à présent une partie de la population des demandeurs d'asile dans des centres d'accueil. Les opérateurs gérant les structures d'accueil sont au nombre de 180 au total.
- Une allocation temporaire d'attente est délivrée aux demandeurs d'aisle auxquels l'administration n'a pas été en mesure de trouver un hébergement. Elle est versée pour la durée de la procédure et son montant est de 10,04 euros journaliers. Cette extension de l'attribution temporaire de l'allocation constitue une transposition, implicite, de la directive.

- La couverture maladie des demandeurs d'asile est assurée par la Couverture Maladie universelle (CMU) de base et complémentaire, créée par la loi du 27 janvier 1999. Ces deux couvertures sont gérées par la Sécurité sociale.

Q.35. In case, are accommodation centres public or/and private (managed by NGOs? If yes, are the NGOs financially supported by the State?)[395]

Conformément à l'article L. 315-7 du CASF, les CHRS, desquels découlent les CADA, sont des établissements publics, dont la gestion est confiée à différents acteurs (SONACOTRA, FTDA, AFTAM, CIMADE, …). Le projet de loi "immigration et intégration" en conférant une existence légale aux CADA donne à ces derniers le caractère d'établissement public.

Q.36. In case, how many accommodation centres are there in your Member State (distinguish in your answer between public and private centres)?[396]

Entre 2004 et 2006, le nombre de places disponibles en CADA est passé de 15 470 à 19 470, un objectif de 21 000 places ayant été fixé pour l'année 2007"[397]

Q.37. Is there in the legislation a plan or are there rules in order to spread the asylum seekers all over the territory of your Member State to avoid their concentration in

[395] To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.
[396] To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.
[397] Rapport MARIANI sur le projet de loi relative à la maîtrise de l'immigration et à l'intégration et à l'asile, Assemblée nationale,12 septembre 2007.

some areas like big cities or to share the costs of their reception between central, regional and local authorities ?

Oui. Depuis 2004, les préfets de régions se sont vus confier une mission de péréquation interdépartementale pour la répartition des places de CADA afin d'assurer une solidarité nationale pour la répartition des demandeurs d'asile sur le territoire français, en liaison avec la Direction de la population et des migrations.

Cette mission est désormais confiée à l'Agence Nationale de l'Accueil des Etrangers et des Migrations (ANAEM), crée par la loi 2005-32 du 18 janvier 2005 de programmation pour la cohésion sociale (JO 19 janvier 2005). L'article L. 341-9 du Code du travail est rédigé comme suit :
" L'Agence nationale de l'accueil des étrangers et des migrations est un établissement public administratif de l'Etat. L'agence est chargée, sur l'ensemble du territoire, du service public de l'accueil des étrangers titulaires, pour la première fois, d'un titre les autorisant à séjourner durablement en France. Elle a également pour mission de participer à toutes actions administratives, sanitaires et sociales relatives :
« *a)* A l'entrée et au séjour d'une durée inférieure ou égale à trois mois des étrangers ;
« *b)* A l'accueil des demandeurs d'asile ;
« *c)* A l'introduction en France, au titre du regroupement familial ou en vue d'y effectuer un travail salarié, d'étrangers ressortissants de pays tiers à l'Union européenne ;
« *d)* Au contrôle médical des étrangers admis à séjourner en France pour une durée supérieure à trois mois ;
« *e)* Au retour et à la réinsertion des étrangers dans leur pays d'origine ;
« *f)* A l'emploi des Français à l'étranger.
« Pour l'exercice de ses missions, l'agence met en œuvre une action sociale spécialisée en direction des personnes immigrées.
L'agence peut, par voie de convention, associer à ses missions tout organisme privé ou public, notamment les collectivités territoriales et les organismes de droit privé à but non lucratif spécialisés dans l'aide aux migrants".

La loi du 24 juillet 2006 prévoit de renforcer la coordination du dispositif autour de l'ANAEM et du préfet de région. Dans le cadre de sa mission d'accueil des demandeurs d'asile définie à l'article L. 341-9 du Code du travail, l'Agence nationale de l'accueil des étrangers et des migrations coordonne la gestion de l'hébergement dans les centres d'accueil pour les demandeurs d'asile. À cette fin, elle conçoit, met en oeuvre et gère, dans les conditions prévues par la loi n° 78-17 du 6 janvier 1978 relative à l'informatique, aux fichiers et aux libertés, un traitement automatisé de données relatives aux capacités d'hébergement des centres d'accueil pour demandeurs d'asile, à l'utilisation de ces capacités et aux demandeurs d'asile qui y sont accueillis afin de disposer d'une information faible sur la disponibilité du système d'accueil. Les gestionnaires des centres d'accueil pour demandeurs d'asile seront tenues de déclarer, dans le cadre de ce traitement automatisé de données, les places disponibles dans les centres d'accueil à l'Agence

nationale de l'accueil des étrangers et des migrations et à l'autorité administrative compétente de l'État et de leur transmettre les informations, qu'elles tiennent à jour, concernant les personnes accueillies.

Une circulaire interministérielle du 3 mai 2007 organise précisément ce système de péréquation. Il se décompose comme suit :

I.2.2. - La désignation du CADA de destination

La seconde étape de la procédure préalable à l'admission en CADA est la désignation, par le préfet compétent pour l'admission au séjour, d'un CADA disposant d'une place adaptée au profil personnel, familial et social du demandeur d'asile et l'invitation faite au demandeur d'asile à se présenter au gestionnaire de ce CADA.

Cette seconde étape doit être préparée avec beaucoup de soin, en explorant successivement les différents niveaux de gestion du DNA.

I.2.2.1. - Les admissions locales

Il appartient au préfet compétent pour l'admission au séjour des demandeurs d'asile de recenser les places de CADA disponibles dans son département et susceptibles de correspondre à la situation personnelle, familiale et sociale du demandeur d'asile. Cette mission peut être confiée à la DDASS (ou à Paris, à la DRASSIF), qui peut s'appuyer, pour la mener à bien, sur les représentations locales de l'ANAEM, les plates-formes d'accueil des demandeurs d'asile lorsqu'elles existent ou les partenaires associatifs conventionnés.

Pour faciliter ce recensement, le demandeur d'asile qui a accepté l'offre de prise en charge en CADA doit être invité par les services de la préfecture à déposer une demande auprès de la structure que le préfet aura chargée au plan départemental de l'analyse de la situation personnelle, familiale et sociale des demandeurs d'asile. Il peut s'agir de la représentation locale de l'ANAEM, de la plate-forme d'accueil des demandeurs d'asile, s'il en existe une dans le département ou, à défaut, des partenaires associatifs conventionnés par la DDASS.

Votre attention est toutefois appelée sur le fait qu'un demandeur d'asile ayant accepté l'offre de prise en charge en CADA peut percevoir l'ATA aussi longtemps qu'il n'a pas été accueilli effectivement dans un CADA. En conséquence, vous veillerez en toute hypothèse, même si le demandeur d'asile n'a pas pris l'attache de la structure mentionnée ci-dessus, à l'informer, après analyse des renseignements qu'il vous aura

fournis lors de son admission au séjour sur sa situation personnelle et familiale, de ce qu'une place est devenue disponible dans un CADA et à l'inviter à se présenter au gestionnaire de ce CADA dans les conditions prévues au § I.3 ci-dessous.

Une fois analysée la situation personnelle, familiale et sociale du demandeur d'asile, les caractéristiques de sa demande d'hébergement doivent être rapprochées de l'offre d'hébergement disponible dans le département. A cet effet, vous êtes invités à organiser et à développer entre tous les acteurs concernés des modalités de dialogue et d'échange adaptées à une gestion locale efficace de l'hébergement et de la prise en charge sociale des demandeurs d'asile. Vous effectuerez notamment la recherche de l'adéquation entre les demandes et les places disponibles avec le concours de l'ensemble des partenaires du DNA, au premier rang desquels les gestionnaires de CADA, le représentant de l'Agence nationale de l'accueil des étrangers et des migrations (ANAEM) mais aussi les personnes morales chargées du premier accueil des demandeurs d'asile. Vous veillerez également à associer, en tant que de besoin, les associations intervenant dans ce domaine.

Votre attention est particulièrement appelée sur le fait que la commission nationale et les commissions locales prévues par les articles L. 111-3-1 et R. 345-5 du CASF ont été supprimées par le 2° du II de l'article 95 de la loi du 24 juillet 2006 et par le II de l'article 3 du décret n° 2007-399 du 23 mars 2007. Ces instances n'ont donc plus à intervenir dans la procédure d'admission d'un demandeur d'asile en CADA. En revanche, il vous appartient d'organiser de manière informelle la concertation la plus large possible dans les conditions définies à l'alinéa précédent.

A l'issue de cette concertation, il appartient au préfet d'informer le demandeur du ou des centres susceptibles de l'accueillir et de l'inviter à se présenter au gestionnaire de l'un de ces centres.

Si des places sont disponibles dans plusieurs CADA, c'est donc le préfet qui choisit la place qu'il propose au demandeur d'asile.

Prévue par le second alinéa du nouvel article R. 348-1 du CASF, cette information doublée d'une invitation doit être faite soit par envoi recommandé avec demande d'avis de réception, soit par remise en mains propres contre reçu au demandeur

d'asile à l'occasion d'un entretien organisé dans les conditions précisées au § I.3.

La compétence pour délivrer cette information doublée d'une invitation peut être déléguée par le préfet au DDASS (ou à Paris, au DRASSIF) qui peut être assisté pour les formalités pratiques par la représentation locale de l'ANAEM, les platesformes d'accueil des demandeurs d'asile ou des partenaires associatifs conventionnés par la DDASS.

Vous trouverez en annexe n° 3 à la présente circulaire la lettre type qui servira de support à cette information doublée d'une invitation.

I.2.2.2. - Les admissions après mutualisation interdépartementale

Les préfets de région exercent l'autorité de l'Etat sur le dispositif national d'accueil des demandeurs d'asile dans leur région. Sous réserve de la part nationale, le préfet de région fixe les contingents départementaux et arrête la proportion de places à réserver pour le contingent régional. Comme précédemment, les préfets de départements sont compétents pour la gestion des contingents départementaux. Le préfet de région a compétence sur la totalité du contingent régional, sous réserve du contingent réservé au mécanisme de mutualisation nationale (*cf.* tableau joint en annexe 4). Les préfets de région veilleront à assurer la fluidité du dispositif d'accueil régional, à mettre en oeuvre à l'échelle de la région une répartition équitable des personnes hébergées en concertation avec les préfets de départements.

Lorsque aucune place de CADA adaptée au profil du demandeur d'asile n'est disponible dans le département, il convient de rechercher une place adaptée dans le parc des CADA situés dans le ou les autres départements de la région.

Le préfet compétent pour l'admission au séjour s'enquiert auprès du préfet de région des places disponibles. En accord avec le préfet de région, il informe le demandeur d'asile du ou des centres susceptibles de l'accueillir dans d'autres département de la région et l'invite à se présenter au gestionnaire d'un de ces centres (comme dans le cas d'une admission locale, c'est le préfet compétent pour l'admission au séjour qui choisit ce centre). En parallèle, il informe le préfet du département du lieu d'implantation du CADA, seul compétent pour donner son accord au gestionnaire du CADA sur la décision d'admission, ainsi que le gestionnaire retenu. Le DDASS (ou à Paris, le DRASSIF) peut recevoir compétence du préfet pour

accomplir ces actes, comme déjà mentionné à l'avant-dernier alinéa du § I.2.2.1. Afin de favoriser une gestion fluide des capacités, il est souhaitable que les affectations de places dans un cadre interdépartemental aient lieu dans un délai de huit jours.

La recherche de l'adéquation entre les demandes et les places disponibles au niveau régional est effectuée par le préfet de région avec le concours du représentant régional de l'Agence nationale de l'accueil des étrangers et des migrations, des préfets des départements et des services déconcentrés de l'action sanitaire et sociale, des représentants de personnes morales chargées du premier accueil des demandeurs d'asile et des gestionnaires de centres d'accueil pour demandeurs d'asile.

I.2.2.3. - Les admissions après péréquation nationale

Lorsqu'une demande d'hébergement n'a pu être satisfaite dans un cadre régional, le préfet de région la transmet au directeur de la population et des migrations (DPM), à fin d'examen des possibilités d'admission sur l'ensemble du territoire, compte tenu des places disponibles réservées pour une péréquation nationale. Les demandes d'hébergement présentées en Ile-de-France ou dans les régions frontalières sont examinées en priorité.

Afin de permettre la mise en oeuvre effective de ce mécanisme de péréquation nationale, il vous incombe de signaler chaque semaine à l'ANAEM, selon des modalités qui vous seront précisées par le directeur de la population et des migrations dans une prochaine instruction, d'une part, les places disponibles ne pouvant être affectées localement et, d'autre part, les demandes d'hébergement ne pouvant être satisfaites localement.

La recherche de l'adéquation entre les demandes et les places disponibles est effectuée par le DPM avec le concours du directeur général de l'Agence nationale de l'accueil des étrangers et des migrations, du préfet de la région Ile-de-France et des services déconcentrés de l'action sanitaire et sociale de cette région, des représentants de personnes morales chargées du premier accueil des demandeurs d'asile et des gestionnaires de centres d'accueil pour demandeurs d'asile.

L'ANAEM informe le préfet compétent pour l'admission au séjour des places de CADA qu'elle peut mettre à sa disposition sur le contingent national : le préfet transmet cette information au demandeur d'asile et l'invite à se présenter au gestionnaire de l'un de ces CADA. Il en informe parallèlement le préfet du

département du lieu d'implantation de ce CADA, seul compétent pour donner son accord au gestionnaire du CADA sur la décision d'admission ainsi que le gestionnaire du centre retenu. La DDASS (ou à Paris, la DRASSIF) peut recevoir compétence du préfet pour accomplir ces actes, comme déjà mentionné à l'avant-dernier alinéa du § I.2.2.1.

I.2.2.4. - Cas particulier des régions dans lesquelles le préfet du département chef lieu de région est compétent pour l'admission au séjour des demandeurs d'asile de tous les départements de la région

Dans ces régions, c'est le préfet du département chef lieu de région désigné par arrêté du ministre de l'intérieur en application des dispositions du second alinéa de l'article R. 741-1 du CESEDA qui est compétent pour l'admission au séjour. C'est à lui que revient la charge, d'une part, de formuler l'offre de prise en charge en CADA et, d'autre part, d'informer le demandeur d'asile du ou des CADA susceptibles de le prendre en charge et de l'inviter à se présenter au gestionnaire de l'un de ces centres. Pour exercer cette double compétence, le préfet du département chef lieu de région organisera, selon les modalités de son choix, une concertation avec les autres préfets de département, le DRASS, les DDASS et les gestionnaires de CADA de tous les départements de la région. Si aucune place n'est disponible dans un CADA de la région, il fera jouer la péréquation nationale comme indiqué au § I.2.2.3.

Q.38. Does a central body representing all the actors (like NGOs) involved in reception conditions exist? Does it play a consultative role for the State authorities, a coordination role for the actors or any other role?[398]

Au plan consultatif, la CNCDH est consultée pour toute question relevant du champ des droits de l'homme, et donc du droit d'asile. Sa compétence relève d'un décret (84-72 du 30 janvier 1984 modifié par les décrets 93-182 du 9 février 1993, 96-791 du 11 septembre 1996 et 99-377 du 10 mai 1999) lequel énonce que "la Commission assiste de ses avis le Premier ministre et les ministres concernés sur toutes les questions de portée générale qui concernent les Droits de l'homme ou l'action humanitaire**".** Plusieurs associations intervenant dans l'aide et le soutien des réfugiés sont membres de la CNCDH.

Q.39. **A. Which is the body in charge of guidance, monitoring and controlling the system of reception conditions as requested by article 23 which is**

[398] To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

mandatory provision? Include in your answer which is the competent ministry (Interior, Social affairs, etc) for reception conditions?

Voir supra : En matière d'asile, le ministère de l'emploi, de la cohésion sociale et du logement, a en charge notamment l'accueil, l'hébergement et l'accès aux droits sociaux des demandeurs d'asile et des réfugiés statutaires. Cette mission est assurée par le Direction de la Population et des Migrations (DPM).

B. Has your Member State (like the Czech Republic did recently) approved quality standards (not necessary legally binding) for housing services (for instance about the number of persons per bedroom on the basis of its size, number of accessible toilets, bathrooms, showers and washing machines per number of persons, existence of common rooms with radio, television, newspapers, books, computers, accessibility of telephone, existence of recreative rooms for children,…) to be respected in particular in accommodation centres?[399]

Ce type de règles n'existe pas pour les centres d'accueil des demandeurs d'asile. Les centres et locaux de rétention administrative doivent répondre aux standards fixés par l'article 553-3 du CESEDA (ancien décret 2005-617 du 30 mai 2005 relatif à la rétention administrative et aux zones d'attente pris en application des articles L. 111-9, L. 551-2, L. 553-6 et L. 821-5 du code de l'entrée et du séjour des étrangers et du droit d'asile (JO 31 mai 2005). Ce dernier indique que les centres de rétention administrative, dont la capacité d'accueil ne pourra pas dépasser 140 places, offrent aux étrangers retenus des équipements de type hôtelier et des prestations de restauration collective. Ils répondent aux normes suivantes :

1° Une surface utile minimum de 10 mètres carrés par retenu comprenant les chambres et les espaces librement accessibles aux heures ouvrables ;

2° Des chambres collectives non mixtes, contenant au maximum six personnes ;

3° Des équipements sanitaires, comprenant des lavabos, douches et w.-c., en libre accès et en nombre suffisant, soit un bloc sanitaire pour 10 retenus ;

4° Un téléphone en libre accès pour cinquante retenus ;

5° Des locaux et matériels nécessaires à la restauration conformes aux normes prévues par un arrêté conjoint du ministre de l'agriculture, du ministre de la défense, du ministre chargé de la santé et du ministre chargé des petites et moyennes entreprises, du commerce et de l'artisanat ;

6° Au-delà de quarante personnes retenues, une salle de loisirs et de détente distincte du réfectoire, dont la superficie est d'au moins 50 mètres carrés, majorée de 10 mètres carrés pour quinze retenus supplémentaires ;

7° Une ou plusieurs salles dotées d'équipement médical, réservées au service médical ;

8° Un local permettant de recevoir les visites des familles et des autorités consulaires ;

[399] To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

9° Le local mentionné à l'article R. 553-7, réservé aux avocats ;
10° Un local affecté à l'organisme mentionné à l'article R. 553-13 ;
11° Un local, meublé et équipé d'un téléphone, affecté à l'association mentionnée au premier alinéa de l'article R. 553-14 ;
12° Un espace de promenade à l'air libre ;
13° Un local à bagages.
Les centres de rétention administrative susceptibles d'accueillir des familles disposent en outre de chambres spécialement équipées, et notamment de matériels de puériculture adaptés.

C. How is this system of guidance, control and monitoring of reception conditions organised?[400]

Comme indiqué plus haut, la DPM a pour mission d'organiser l'accueil et l'hébergement des demandeurs d'asile et des réfugiés. La DPM est organisée en trois sous–directions (de la démographie, des mouvements de population et des questions internationales).

La sous–direction de l'accueil et de l'intégration élabore et anime la politique d'accueil et d'intégration des personnes d'origine étrangère : lutte contre les discriminations, actions sociales et territoriales favorisant l'intégration, égal accès aux services publics et aux droits sociaux, accueil et hébergement des demandeurs d'asile, des réfugiés et des personnes accueillies à titre humanitaire, suivi des questions relatives aux conditions de logement des populations immigrées. L'action menée au titre de l'accueil et de l'hébergement des demandeurs d'asile est réalisée en liaison avec les Direction Départementale des Affaires Sanitaires et Sociales et les Direction Régionales des Affaires Sanitaires et Sociales.

D. Does the body in charge of guidance, control and monitoring produce reports about the level of reception conditions? If yes, how frequently and are they public?[401]

La Direction des populations et des migrations publie un rapport annuel lequel consacre une partie à l'accueil des demandeurs d'asile (Ces rapports ne sont pas disponibles en ligne, ils sont publiés à la Documentation française, sans que l'on puisse consulter la table des matières.

Q.40. A. What is the total number of asylum seekers covered by reception conditions for the last year for which figures are available (see article 22 obliging Member States to calculate those statistics about which we also asked the Commission to require them from Member States for mid June)?

[400] To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.
[401] To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

Le nombre de demandes d'asile enregistrées par l'OFPRA s'est élevé en 2006 à 39 315 demandes (dont 30 731 premières demandes et 8 584 demandes de réexamen) (2), ce qui représente une diminution de 33,6 % par rapport à l'année précédente. La tendance est identique pour le premier semestre 2007, puisque 14 102 premières demandes d'asile ont été adressées à l'OFPRA, ce qui marque un recul de 14 % par rapport au premier semestre 2006.[402]

Pour ce qui relève de l'hébergement en centre d'accueil, les travaux parlementaires indiquent que fin 2005, les 245 CADA présents sur le territoire français ont accueilli 16 148 personnes, parmi lesquelles seuls 9 612 demandeurs d'asile, le solde étant constitué de 3 228 réfugiés et de 3 308 déboutés. Pour l'année 2005, le nombre total de personnes ayant été hébergées en CADA s'est élevé, selon les données provisoire de l'ANAEM à 25 288 personnes pour une capacité de 17 740 places.

B. What is the total budget of reception conditions in euro for the last year for which figures are available?[403]

Selon les travaux parlementaires, le budget alloué à l'hébergement des demandeurs d'asile s'élevait en 2005 à 182 305 828 euros. Celui affecté à l'allocation d'insertion pour les demandeurs d'asile à 152 000 000 euros. Concernant les dépenses de santé, la Mission d'évaluation et de contrôle estimait que les dépenses dégagées par l'Etat en 2004 (sur la base approximative de 90 000 demandeurs d'asile en cours de procédure) s'élevaient à 204 500 000 (évaluation comprenant la CMU de base et la complémentaire). Au total, les dépenses engagées par la France au titre des conditions d'accueil des demandeurs d'asile peuvent être évalué à 538 805 828 euros (cette évaluation ne comprenant pas les crédits déconcentrés aux collectivités territoriales [environ 11 500 000 euros], qui gèrent les situations de mineurs isolés ainsi que les centres de rétentions administratives, et les aides versées aux associations (1 620 000 euros).

C. What is the average cost of reception conditions in euro per asylum seeker for the last year for which figures are available?[404]

Le coût journalier d'une place en CADA est d'environ 25 euros et plus exactement de 24, 82 euros.

[402] Rapport Mariani 2007, p. 21
[403] To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.
[404] To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

Le directeur de la DPM, lors de son audition par la MEC[405] indique : "le coût moyen d'une place en CADA est exactement de 24,82 euros par personne et par jour. Ce chiffre, qui recouvre l'hébergement, la nourriture, l'accompagnement social, le transport vers l'OFPRA, le financement des éléments de la scolarisation des enfants et les petites dépenses de la vie quotidienne, ne paraît pas exorbitant. Par comparaison, une place en CHRS revient à presque 40 euros… Le coût de l'hébergement d'urgence est quant à lui estimé à un peu moins de 17 euros. Signalons toutefois, par honnêteté, que nous avons une mauvaise appréciation des coûts de l'hébergement en urgence alors que, pour les CADA, nous les connaissons à l'euro près, même si nous sommes en train d'en revoir totalement la structure avec les organismes gestionnaires, conformément aux exigences de la LOLF".

Il n'existe pas d'évaluation disponible sur le coût moyen d'un demandeur d'asile par an. Sur le fondement des données délivrées par la Mission d'évaluation et de contrôle, il est possible d'estimer que le coût moyen d'un demandeur d'asile hébergé en CADA (hébergement et soins de santé) s'élève à 11 332 euros par an (9060 euros d'hébergement et 2 273 euros de soins). Pour un demandeur d'asile qui ne bénéficie pas d'un hébergement en centre d'accueil, le coût annuel s'élève approximativement à 5 813 euros (allocation d'insertion et soins de santé).

D Are the costs of reception conditions of asylum seekers supported by the central/federal or federated government or are they shared with regional and/or local authorities?

Le coût est principalement supporté par l'Etat et les collectivités territoriales pour certaines dépenses.

E. Is article 24 § 2 of the directive following which "*Member States shall allocate the necessary resources in connection with the nationals provisions enacted to implement this directive*" respected?[406]

Au regard de l'augmentation des dépenses allouées à l'hébergement en centre d'accueil ainsi qu'aux dépenses de santé, il peut être considéré que l'Etat français alloue les dépenses nécessaires à la mise en œuvre de la directive.

Q.41. A. What is the total number of persons working for reception conditions[407]?

Aucun recensement n'est disponible.

[405] Rapport DES EGAULX, p. 94
[406] To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.
[407] To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

B. **How is the training of persons working in accommodation centres organised? Does it take into account specific needs of unaccompanied minors when relevant as well as the gender dimension? (see article 14 §5, 19 § 4 and also 24 §1 which are mandatory provisions)?**[408]

La formation des personnels travaillant dans les centres d'accueil ne constitue pas une obligation légale. Nous ne disposons pas d'éléments de réponse à cette question au plan pratique.

C. Are there rules about the deontology of persons working in accommodation centres, in particular on confidentiality?[409]

Pas à notre connaissance.

[408] To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.
[409] To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

10. IMPACT OF THE DIRECTIVE

Legal impact of the transposition of the directive:

Q.42. Specify if there are or not big problems with the translation of the directive in the official language of your Member State and give in case a list of the worst examples of provisions which have been badly translated? (please note that this question has in particular been added to the questionnaire concerning the new Member States)

Pas de problèmes spécifiques de traduction relevés en France

Q.43. Where there precise legal rules on reception conditions for asylum seekers before the adoption of the norms of transposition of the directive (if yes, specify what the nature of those rules was (legislation, regulation, administrative instructions,…)?

Oui, comme signifié précédemment, le respect des dispositions de la directive résulte à la fois de la superposition de textes anciens et de l'adoption de textes spécifiques, le dernier d'entre eux est constitué par la loi du 30 juin 2006 dont le titre V porte "dispositions relatives à l'asile". Le droit français prenait donc déjà en compte la question relative à l'accueil matériel des demandeurs d'asile, soit par voie législative, soit par voie réglementaire.

Q.44. Did the legal rules applicable to reception conditions become more clear, precise, coherent or detailed with the adoption of the transposition norms (for instance do you now have after the transposition one basic text dealing with reception conditions instead of numerous different texts in the past?

Il ne semble pas que la directive ait eu une influence quelconque sur la clarté, la précision ou la cohérence des règles applicables. Le domaine demeure d'ailleurs toujours soumis à un éclatement très important du cadre juridique (multiplicité des règles et des domaines sollicités).

Q.45. Did the transposition of the directive imply important changes in national law or were the changes of minor importance? In case, list the most important changes that have been introduced.

Certains changements ont été induits par la directive portent notamment sur l'accès au marché du travail ou encore l'attribution d'une allocation temporaire d'attente pour toute la durée de la procédure. Si ces changements demeurent importants pour le demandeur d'asile, le mouvement de fond visant à permettre à tous les demandeurs d'accéder au dispositif national d'accueil n'a visiblement pas été initié par la directive.

Political impact of the transposition of the directive:

Q.46. Explain briefly if there has been an important debate about the transposition of the directive (in particular in the Parliament, but possibly also in the government, between political parties, including in medias, etc; underline in case the main points which have been discussed or have created difficulties)

Aucun débat de fond n'a été mené en vue de la transposition de la directive.

Q.47. Did the transposition of the directive contribute to make the internal rules stricter or more generous? In particular, did your Member State use the occasion of the transposition to abolish more favourable provisions of national law? Does your Member State still have rules more favourable than the provisions of the directive (if yes, try to give the more important examples).

Au plan de la transposition *stricto sensu*, la disposition relative à l'accès au travail des demandeurs d'asile constitue une règle positive, pour autant toutefois que la procédure dépasse le délai de une année. L'attribution de l'ATA pour toute la durée de la procédure constitue également un point positif, sans toutefois que cette modification ait été présentée comme une transposition de la directive.

11. ANY OTHER INTERESTING ELEMENT

Q.48. What are in your view the weaknesses and strengths of the system of reception conditions in your Member State?[410]

Les faiblesses :
- Le nombre limité de places en centre d'accueil
- la situation des personnes sous couvert d'une procédure Dublin pour lesquelles l'accès aux allocations ou aux soins de santé est parfois refusé (notamment en pratique) à défaut de disposer d'une APS ;
- les victimes de torture qui ne bénéficient d'aucune prise en charge particulière ;
- l'éducation des enfants dans les centres fermés qui est inexistante
- l'allocation d'insertion qui été très faible, donc insuffisante, à voir si l'ATA sera augmentée
- l'accès au marché du travail qui est très tardif
- …

Aspects positifs :
- le système général d'accueil des demandeurs d'asile en France semble correct si l'on prend notamment en compte le nombre très importants de demandes déposées (nombre de demande le plus important en Europe, voir raport OFPRA 2005)
- l'accès aux soins de santé qui sont au-delà du système requis par la directive

[410] To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

Q.49. Mention any good practice in your Member State which could be promoted in other Member States[411]

Q.50. Please add here any other interesting element about reception conditions in your Member State which you did not had the occasion to mention in your previous answers.

Deux arrêtés du 8 juin 2006 mettent en place une expérimentation de la régionalisation de l'admission au séjour des demandeurs d'asile dans les régions Bretagne et Haute-Normandie.
Le préfet du département d'Ille-et-Vilaine est désormais, à titre expérimental et pour une période de six mois prorogeable, compétent pour examiner l'ensemble des demandes d'admission au séjour formulées par les demandeurs d'asile en région Bretagne (Ille-et-Vilaine, Côtes-d'Armor, Finistère et Morbihan). En région Haute-Normandie, le préfet de Seine-Maritime est compétent dans les mêmes termes pour les demandes formulées dans son département et celui de l'Eure.
Le préfet compétent examine les pièces produites par l'étranger à l'appui de sa demande et lui délivre autorisation provisoire de séjour et récépissé. Il peut refuser l'admission au séjour si le demandeur entre dans les cas prévus à l'article L. 741-4 du code de l'entrée et du séjour des étrangers et du droit d'asile (autre État responsable, pays d'origine sûr, ordre public ou recours abusif aux procédures d'asile).
L'expérimentation n'est pas étendue aux nouvelles demandes d'étrangers ayant fait l'objet de refus définitifs ni aux demandes de renouvellement du récépissé suite à l'expiration de la validité de l'autorisation provisoire de séjour, chaque préfet de département restant compétent territorialement.

[411] To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

QUESTIONNAIRE FOR THE NATIONAL REPORT ON THE IMPLEMENTATION OF THE DIRECTIVE :
RECEPTION CONDITIONS OF 27 JANUARY 2003

IN: GERMANY

By

Kay Hailbronner, Professor, Dr. iur.,
Director of the Center for International and European Law on Immigration and Asylum

and

Markus Peek, Ass.iur., Researcher[412]
Markus.peek@uni-konstanz.de

1 October 2007

The person in the team of thematic coordination in charge of this directive that you can contact if you have a question or need help when completing this questionnaire is:
Laurence De Bauche: laurencedebauche@free.fr

1. NORMS OF TRANSPOSITION

Q.1. Identify the main norm of transposition (indicate the title, date, number, date of entry into force and references of publication into the official journal) and indicate its legal nature (legislative, regulatory, administrative); indicate in your answer if this norm was only devoted to the directive or if it has been included in a more general text and indicate in that case by quoting precisely the numbers of the provisions adopted to transpose the directive.

The German Parliament has recently adopted the Act on Transposition of several EU-Directives on immigration and asylum law. This act includes, inter alia, amendments to the Asylum Procedure Act (Asylverfahrensgesetz). Since the Federal Ministry of the Interior did not see a need for fundamental changes in German Asylum legislation in order to meet the directive's requirements, they prepared a draft which included only minor amendments to the Asylum Procedure Act[413]. The draft provided for an additional paragraph to Sec. 47 asylum procedure

[412] This report has been elaborated and drafted by the aforementioned member of the German research group and Prof. Dr. Kay Hailbronner. Please contact the indicated researcher who has worked on this report in case of any requests during the study.

[413] See Bundestagsdrucksache (Parliamentary Document) 16/5065

code, implementing Art. 5 of the Directive, and for an amendment of Sec. 63 para 1 Asylum Procedure Act stating the obligation to provide the asylum seeker with the necessary documents within three days after lodging his asylum claim (Art. 6 para 1 Directive). The relevant parts of the bill have not been modified in the parliamentary discussions. The act has entered into force on 28 August 2007. Provisions of major importance for the Directive are included in the Asylum Seekers Benefits Act. This is, however, not modified by a formal act of transposition but is considered sufficient to meet the Directive's requirements.

Q.2. List by order of importance by using numbers (1, 2, 3) the others norms of transposition if there are more than one (indicate for each norm the title, date, number and references of publication into the official journal; include in your answer the administrative measures taken to ensure implementation of the directive and of the transposition norms like regulations, administrative circulars, special instructions,…)

There are no other norms of formal transposition, see above. Texts of the relevant legislation are included.

Q.3. Explain which level of government is competent to adopt the legal norms on reception conditions for asylum seekers (specify in particular in case of a federal or regional State, if it is the federal/central power or the components; in case, specify below when it is impossible for you to answer a question because it is about the competence of the components and it is impossible for you to gather reliable information about all of them)

The asylum legislation is part of the so-called concurrent legislation (konkurrierende Gesetzgebung) in terms of Art. 72, 74 para. 1 No. 6 Grundgesetz (German Constitution), i.e. the Länder are competent for legislation as long and as far as the Federal State has not made use of its legislative competence. Since there is a comprehensive legislation on asylum procedure and reception conditions on the Federal level, the Federal level is exclusively competent for amendments to the existent legislation as well. It is however within the federal states' responsibility to set up and run the reception centres, to provide other accommodation facilities and to organise the distribution of material reception conditions. Thus, it is on them to implement the directive into practice.

Q.4. Explain the legal technical choices done to transpose the directive (comment on the nature and level of the norms used to do the transposition: legislative, regulatory, administrative like instructions, etc). Add any other element about the technique of transposition of the directive which is interesting for the implementation of Community law.

The already mentioned amendments only concern the legislation on the federal level. There are no administrative instructions on the implementation of the Asylum Procedure Act or the Asylum Seekers Benefits Act.

Q.5. Mention if there is a general tendency to just copy the provisions of the directive into national legislation without redrafting or adaptation them to national circumstances? If yes, give some of the worst examples and explain if there is a risk that those provisions remain unapplied or will create difficulties of implementation in the future.

The above mentioned amendments to the Asylum Procedure Act do not just copy the Directive's wording but create autonomous legal provisions. Since most of the concerned provisions are pre-existing law, the question is not of much relevance for the biggest part of German legislation on reception conditions. Whether the existing legislation and practice and in particular the recently adopted amendments to the asylum legislation meet the directive's requirements will be discussed in the subsequent parts.

Q.6. Have all the texts necessary to ensure the effective implementation of the new rules of transposition been adopted, prepared or at least foreseen in the future (for example a regulation completing a new law and the necessary instructions telling the administration how to apply the new rules)?

The above mentioned amendments concern only details of the directive. Further amendments are not envisaged at the moment. The question whether further texts are necessary for effective implementation depends upon a comprehensive in-depth examination of the German legislation on all levels of the federal state, which is beyond the scope of this report.

2. BIBLIOGRAPHY

Q.7. Has an in-depth preparatory study been made public about the changes at the occasion of the transposition? If yes, thanks for trying to provide us a copy *(please contact to answer this question adequately the body and person who was responsible for the preparation of the transposition of the directive in the public administration).*

According to the Federal Ministry of the Interior no such in-depth preparatory study has been carried out.

Q.8. Quote any recent scientific book or article published about the directive, the transposition rules or the question of reception conditions for asylum seekers in general (answer even if this literature is only available in your language and

provide the complete title in your language (without translation) with all references; indicate author, title, in case name of periodical, year and place of publication).

To our knowledge, only one article has been published on the directive and its future transposition into German law. It is "Mindestaufnahmebedingungen für Asylbewerber: Nivellierung auf geringem Niveau oder Fortschritt für eine gemeinsame Asylpolitik in Europa?" by Harald Meyer, published in Neue Zeitschrift für Verwaltungsrecht (New Journal on Administrative Law) No. 5 of 2004, pp. 547 – 551.
In the Zeitschrift für Ausländerrecht und Ausländerpolitik (No 5-6 of 2006, pp. 161 – 167), Hans-Georg Maaßen published an article on the draft bill of the Federal Ministry of the Interior. However, this article mentions the Directive only briefly.

Q.9. Quote any interesting decision of jurisprudence based on the implementation of the new rules of transposition of the directive (indicate references of publication if any)?
Since the existing legislation has not been largely revised to transpose the directive due to the fact that the German government considers the existing legislation by and large already sufficient to meet the directive's requirements, there are only very few decisions of jurisprudence which refer to the directive. The only relevant decisions deal with Sec. 2 para 1 of the Asylum Seekers Benefits Act. This provision stipulates that an asylum seeker does not become eligible to regular (higher) social benefits under the Social Code if he extends his stay in Germany by misusing his rights under the Asylum Procedure Act. To interpret the term "by misusing rights" (rechtsmissbräuchlich) the Bavarian Social Court of Appeal (Bayerisches Landessozialgericht) referred to Art. 16 of the directive. The court pointed out that a misuse may be taken for granted if the asylum seeker acted in a way described in Art. 16 para 1 or 2 of the directive[414].
Some other Social Courts of Appeal even concluded from Art. 16 that asylum seekers may only be barred from regular social benefits for more than three years if they acted in a way as described in Art. 16 para 1 or 2[415]. The Federal Social Court, however, found that Art. 16 of the Directive is not relevant for the interpretation of Sec. 2 para 1 of the Asylum Seekers Benefits Act. It pointed out that the denial of a higher level of social benefits is not a case of Art. 16 which concerns only the shortening or withdrawal of benefits[416].

[414] See BayLSG, decision of 8 April 2005, file-no. L 11 B 103/05 AY ER, published in Sozialhilfe- und Asylbewerberleistungsrecht (SAR) 2005, pp. 82 – 84 and BayLSG, decision of 28 June 2005, file-no. L 11 B 212/05 AY ER, published in Fürsorgerechtliche Entscheidungen der Verwaltungs- und Sozialgerichte (FEVS) 57, pp. 106 – 110.
[415] Cf. HambLSG, decision of 27 April 2006, file-no. L 4 B 84/06 ER AY, published in Informationsbrief Ausländerrecht 2006, pp. 342 – 345; not entirely clear in its conclusion: NdsLSG, decisions of 20 December 2005, file-no. L 7 AY 40/05; L 7 AY 51/05 and L 7 AY 55/05.
[416] BSG, decision of 8 February 2007, file-no. B 9b AY 1/06 R.

3. GENERAL INFORMATION ABOUT THE SYSTEM OF RECEPTION CONDITIONS

The purpose of the following two questions is to help the reader to understand easily and quickly the system of reception conditions in your Member State and also to avoid that you have to repeat general elements in other parts of the questionnaire. ***Please do not write more than one or maximum two pages and do not include large historical developments.***

Q.10. Describe in general the system of reception conditions in your Member State (in particular which are the main actors in charge of reception conditions?)

Reception conditions for asylum seekers are regulated in the Asylum Procedure Act (Asylverfahrensgesetz)[417] and in the Asylum Seekers Benefits Act (Asylbewerberleistungsgesetz)[418]. The latter act regulates what kind of reception conditions, particularly social benefits, are granted to asylum seekers. The Asylum Procedure Act deals inter alia with procedures and competences with regard to reception conditions. Both acts are federal legislation. However, the administration of the asylum procedure is divided between the federal level and the Länder. The Länder are responsible for setting up and running the reception centres. They also decide upon how to spread the asylum seekers within the particular Land and are competent for the implementation of the Asylum Seekers Benefits Act. This includes the organisation of the necessary administration.
However, it is within the competence of the Federal Office for Migration and Refugees (Bundesamt für Migration und Flüchtlinge) to handle the asylum seeker's application. Its decisions are binding in all matters related to the formal recognition of asylum status.
An alien applying for asylum is allowed to stay on the federal territory while his application is pending. His so-called Aufenthaltsgestattung (permission to stay, see Sec. 55 Asylum Procedure Act) is restricted to the district of the competent aliens office. In the first weeks after he has lodged his application, the asylum seeker is obliged to live in a reception centre. This obligation ends after three months or earlier if the asylum seeker is sent to another housing facility or if the Federal Office for Migration and Refugees decides on the application. An asylum seeker whose obligation to live in a reception centre has ended is usually obliged to take up residence in a particular accommodation centre.
Accommodation centres are usually shared accommodation facilities, such as hostels, converted apartment or office buildings, or provisional camps. Sometimes accommodation centres are in the same complex as the reception centre, but unlike the latter accommodation centres should be suitable for long-term accommodation.
As long as the asylum seeker is obliged to live in the reception centre, he is not allowed to take up an employment. Afterwards, he may be admitted to the labour market under the preconditions laid down in Sec. 61 Asylum Procedure Act, cf. *Question 28* for details.

[417] AsylVfG as announced on 27 July 1993, Federal Law Gazette I, p. 1361, last amendment through act of 19 August 2007, Federal Law Gazette I, p. 1970.
[418] AsylbLG as announced on 5 August 1997, Federal Law Gazette I, p. 2022, last amendment through act of 19 August 2007, Federal Law Gazette I, p. 1970.

The Asylum Seekers Benefits Act came into force on 1 January 1993 and excluded asylum seekers from the scope of application of the Social Code. Instead it provides for lower social benefits for aliens whose stay in Germany is only temporary. These basic social benefits shall only meet the asylum seekers vital needs and are granted to a large extent in kind or in vouchers. This includes basic supply with food, accommodation, heating, clothing etc. Additionally, a limited amount of money is granted. Health care is granted for the treatment of acute illness and pain. Other benefits may be granted if they are necessary in an individual case to ensure the asylum seeker's subsistence or health. After four years of having received benefits under the Asylum Seekers Benefits Act in Germany, asylum seekers are entitled to receive regular social benefits according to the Social Code largely in the same way as German citizens. Exceptions apply, however, if the asylum seeker extended his stay by misusing his rights. This waiting period used to be three years and has been extended to four years by the latest amendment to the Asylum Seekers Benefits Act[419].
All social benefits under the Asylum Seekers Benefits Act are financed through the federal states' budgets, whereas regular social benefits are financed by the municipalities.

Q.11. **Q11. A.** Explain if you have <u>different types and levels of reception conditions following the different stages of the asylum procedure</u> (this implies that you have to give briefly the necessary explanations about the asylum procedure). Make if relevant for reception conditions a distinction between the following procedural stages: determination of the responsible Member State on the basis of the Dublin II regulation, special procedures at the border (including transit zones in airports), accelerated procedures, admissibility procedures, eligibility procedures and the different possibilities of appeals (suspensive or not) against a refusal of the asylum request. Indicate what the main differences of reception conditions are between the different stages (if necessary by detailing between the different elements of reception conditions, in particular housing) and explain what the evolution of reception conditions is following the different stages of the procedure.

A special type of reception conditions applies to asylum seekers who arrive in Germany by air if they come from a safe country of origin or cannot identify themselves with a valid passport or passport substitute, cf. Sec 18a Asylum Procedure Act. In these cases the asylum procedure will be handled before the asylum seeker is permitted to enter the federal territory provided that adequate accommodation in the airport premises is available. Material reception conditions are nevertheless to be granted according to the Asylum Seekers Benefits Act.
Apart from this group, the reception conditions as described above remain unchanged during the asylum procedure. Only in the first weeks after application asylum seekers are obliged to live in reception centres (Aufnahmeeinrichtungen),

[419] see Federal Law Gazette I, p. 1970, 2007..

see *Question 10* above. Reception conditions end if the asylum seeker is formally recognised as refugee by the Federal Office for Migration and Refugees or if a court commits the Federal Office to do so, even if those decisions can be appealed, cf. Sec. 1 para 3 of the Asylum Seekers Benefits Act.
As mentioned above, asylum seekers become eligible to regular social benefits after four years of receiving benefits under the Asylum Seekers Benefits Act.

Q 11. B. Indicate precisely for which stage(s) of the asylum procedure the answers on reception conditions you give below are valid.

Answers are valid for all stages of asylum procedure from application until final rejection or approval. Where different rules apply, it will be indicated in the following sections.

4. GENERAL RULES ON RECEPTION CONDITIONS

Q.12. **Q 12. A**. Are material reception conditions provided in kind, in money or in vouchers or in a combination of these elements (see article 13, §5 which is an optional provision)? Distinguish between the different elements (housing, food, clothes, health, transportation, pocket money,…). **If reception conditions are provided in money (in general or in some cases, for instance when no places are anymore available in accommodation centres), indicate the precise amount given to the asylum seekers. Indicate in your answer what is provided in general and if there are exceptional cases.** Specify in your answer if reception conditions are different from the general system of social aid for nationals or aliens and if yes, if and when (which stage of the asylum procedure) can asylum seekers have access to the general system of social aid?

In 1993, the Asylum Seekers Benefits Act (Asylbewerberleistungsgesetz) has entered into force which provides for a general priority of benefits granted in kind. This includes food, housing, heating, clothes, health care, personal hygiene and household goods for daily use and consumption. If clothes cannot be provided in kind, vouchers may be granted. Household goods may be given on loan, see Sec. 3 para 1 of the Asylum Seekers Benefits Act.
Additionally, asylum seekers older than fourteen receive 40.90 Euro per month, children up to fourteen receive 20.45 Euro for personal needs (pocket money).
Asylum seekers who do not live in a reception centre anymore may receive benefits in vouchers or in money if this is necessary without prejudice to the general priority of benefits in kind[420]. Vouchers or money may be granted up to an amount of 184.07 Euro for the head of the household, for children younger than seven years in the same household up to 112.48 Euro and for older persons in the same household 158.50 Euro. These amounts do

[420] E.g. in most federal states vouchers or money are granted for food, cf. Practice Report Berlin, Q.1.C. According to Caritas, only in Bavaria and parts of Baden-Wuerttemberg food packages are handed out, cf. Practice Report Caritas Q.1.C.

not include the necessary costs for housing, heating and household effects. The benefits in money for personal needs (pocket money) are granted in addition. Sometimes, asylum seekers receive a smartcard which enables them to buy their personal needs in selected shops[421].

Asylum seekers who received benefits under the Asylum Seekers Benefits Act for 48 months become eligible to the general system of social aid according to the Social Code, vol. 12 and vol. 2.

Q 12. B. Can the reception conditions in kind, money or vouchers be considered as <u>sufficient</u> "to ensure a standard of living adequate for the health of applicants and capable of ensuring their subsistence" as requested by article 13, §2 of the directive (which is a mandatory provision but leaves a certain space to Member States)? In order to help to assess the respect of this rule when reception conditions are provided in money, include if necessary in your answer points of comparison with the minimum amount of social aid guaranteed for nationals in your Member State.

The benefits under the Asylum Seekers Benefits Act are considerably lower than the ones granted as general social aid which is currently 345 Euro for the head of the household[422] and 276 Euro for other persons older than 13 years living in the same household[423]. This does not include additional benefits for housing and heating.
The social aid benefits are considered as the minimum which is necessary to ensure the recipient's subsistence[424]. The Federal Government recently published its report on minimum needs of adults and children in 2008[425]. This report explains that an adult single needs at least 7,140 Euro per year (595 Euro per month) for his subsistence (including housing, heating, water and electric energy).
However, this applies to people who live in Germany on a permanent basis and have therefore different needs. Hence, it is considered legitimate to grant lower benefits to aliens who live in Germany only on a temporary basis. An adult head of household receives benefits which are worth 224.97 Euro per month. Benefits granted under the Asylum Seekers Benefits Act are aimed to ensure only the recipient's very basic subsistence. It is, however, not considered necessary by the legislator to ensure a living standard equivalent to the prevalent basic standard in Germany or to enable the recipient to integrate himself socially into the domestic society[426]. This perspective is widely shared in the administrative courts' jurisdiction[427],

[421] See Report of the Jesuit Refugee Service Germany, Answer A.1.
[422] Compared to 224.97 Euro for an asylum seeker (adult head of household).
[423] The amount for younger children in the same household is 207 Euro.
[424] Federal Constitutional Court, decision of 25 September 1992, BVerfGE 87, 153.
[425] see Bundestagsdrucksache (Parliamentary Document) 16/3265 of 2 November 2006.
[426] see Bundestagsdrucksache (Parliamentary Document) 12/4451, p. 6.
[427] See e.g. Federal Administrative Court of Appeal, Decision of 29 September 1998, Neue Zeitschrift für Verwaltungsrecht (NVwZ) 1999, 669; Administrative Court of Appeal of Lower Saxony, Decision of 27 June 1997,

but widely criticised by several NGOs working with refugees[428]. They have continuously objected that the lower allowances are paid over a period of then three years before asylum seekers were entitled to regular social benefits, which has been considered too long. This concern obviously aggravates with the recently adopted amendment to the Asylum Seekers Benefits Act which provides for a waiting period of now 48 months[429]. The Federal Government holds, however, that asylum seekers normally do not need the same level of social benefits unless the factual situation is such that a certain social integration took place.
It should also be mentioned that the amount of social benefits for asylum seekers has not been raised since 1993[430].
UNHCR points out that chronic diseases may be treated insufficiently because the Asylum Seekers Benefits Act only guarantees the treatment of acute illnesses[431].
The way of accommodation in the facilities may lead to a certain attitude of passiveness and disheartenment due to the complete dependency on social benefits and the lack of meaningful activity[432]. This is, however, a general problem which cannot be related to the directive's requirements with regard to health in Art. 13 para 2.
The Social Court of Appeal in the Land North Rhine-Westphalia ruled that the lower Social Benefits according to the Act on Social Benefits for Asylum Seekers are always sufficient to meet the Directive's requirements irrespective of the duration of the asylum seeker's stay[433].
The Federal States' Ministries of Interior consider the Benefits granted to asylum seekers as sufficient to meet the Directive's requirements.

5. PROCEDURAL ASPECTS

Q.13. **Q 13. A. Does the national legislation specifically provide that a request for international protection is presumed to be under the Geneva Convention unless explicitly requested otherwise? (see article 2, b which is a mandatory provision)**

Sec. 13 para 1 and 2 Asylum Procedure Act stipulates that each request for protection from political persecution is regarded as an application for asylum

Neue Zeitschrift für Verwaltungsrecht – Beilage (NVwZ-Beil.) 1997, p. 95; Administrative Court of Appeal of North Rhine-Westphalia, Decision of 28 May 2002, ZFSH/SGB 2002, p. 620.
[428] See added Practice Reports Caritas and UNHCR, Question 1.C. See also Report of the Jesuit Refugee Service Germany, Answer A.1.
[429] See Statement of UNHCR 2007 and Report of Pro Asyl, Answer A.1.
[430] The amounts are still listed in Deutsche Mark in Sec. 3 of the Act on Benefits for Asylum Seekers.
[431] This problem is also mentioned by refugee lawyers.
[432] See Practice Report Caritas and also Report of the Jesuit Refugee Service Germany, Answer A.1.
[433] See LSG NW, decision of 27 April 2006, file-no. L 20 B 10/06 AY ER, of 23 January 2006, file-no. L 20 B 15/05 AY ER and of 21 December 2005, file-no. L 20 (9) B 37/95 SO ER.

according to Art. 16a of the Grundgesetz and as a request for refugee status in terms of the Geneva Convention unless explicitly stated otherwise.

Q. 13. B. Explain if the scope of application of reception conditions is extended to other asylum seekers than refugees in the sense of the Geneva Convention, in particular to persons asking for subsidiary protection or to other forms of protection like humanitarian statuses (see article 3, § 4 which is an optional provision)? If not, explain briefly which the differences between these special regimes and the directive are.

The Asylum Seekers Benefits Act is applicable not only to asylum seekers but also to aliens holding a temporary residence permit for temporary protection purposes in terms of Directive 2001/55/EC (Sec. 24 Residence Act), for humanitarian or international law reasons (Sec. 23 para 1 Residence Act) or for other exceptional reasons (Sec. 25 para. 4 and 5 Residence Act). The same applies to aliens with tolerated status (Sec. 60a Residence Act), aliens whose obligation to leave is executable and to family members of aliens who are entitled to benefits under the Asylum Seekers Benefits Act, see Sec. 1 para 1 Asylum Seekers Benefits Act. According to the newly adopted amendments to the Asylum Seekers Benefits Act, persons holding a temporary residence permit for victims of trafficking in terms of Directive 2004/81/EC are eligible to benefits under the Asylum Seekers Benefits Act as well[434].

Q. 13. C. Are there specific provisions in national law for reception conditions in case of diplomatic or territorial asylum requests submitted through a diplomatic or consular representation (see article 3, §2 which is an optional provision)?

There are no provisions on diplomatic or territorial asylum in German law.

Q.14. **Are reception conditions available as from the moment one asylum application is introduced? How is article 13, §1 which is mandatory legally understood?** Do asylum seekers have to satisfy any other condition in order to get reception conditions?

Reception conditions, i.e. benefits under the Asylum Seekers Benefits Act, are available to all aliens holding a permission to stay (Aufenthaltsgestattung) according to Sec. 55 Asylum Procedure Act which is automatically granted as soon as the asylum seeker asks for asylum. If the asylum seeker entered Germany illegally, he is permitted to stay as soon as he lodges an asylum application with the Federal Office for Migration and Refugees (BAMF) and is thenceforth entitled to reception conditions.

[434] see act of 19 August 2007, Federal Law Gazette I, p. 1970, 2007.

Q.15. **Explain when reception conditions end, for instance after refusal of the asylum request** (include in your answer the link with the right of appeal against a decision of refusal of the status, in particular the question of its suspensive effect)

Reception conditions in terms of the Asylum Seekers Benefits Act end with the last day of the month within which the asylum seeker is recognised as refugee by the Federal Office for Migration and Refugees[435]. Reception conditions end, too, if the asylum seeker leaves the Federal Republic of Germany or if the Asylum Seekers Benefits Act becomes inapplicable for other reasons, cf. Sec. 1 para. 3 Asylum Seekers Benefits Act.
However, reception conditions do not end automatically if the application for asylum is rejected since the scope of application of the Asylum Seekers Benefits Act is relatively broad and also includes aliens who are obliged to leave the federal territory[436].

Q.16 Are there special rules or practices regarding reception conditions in case of successive applications for asylum introduced by the same person?

Successive applications will only result in a further asylum procedure and the respective application of rules on accommodation etc. if certain conditions are met (new facts etc.).

Q.17. Information of asylum seekers about their rights and obligations in terms of reception conditions, in particular about established benefits (see article 5 which is too large extend a mandatory provision; do not confuse this question with the information to be provided to asylum seekers about the asylum procedure):

Q. 17. A. Are asylum seekers informed, and if yes about what precisely?

Until recently, federal law did not stipulate an obligation for the federal states to inform the asylum seekers comprehensively about their rights and duties under the Asylum Seekers Benefits Act. However, in most cases such information was provided by the management of the accommodation facilities or by NGOs active in counselling. A comprehensive illustration of this practice cannot be given since it is in no way centrally organised and may vary considerably between different centres. Statements of UNHCR and NGOs indicate that the current practice might in many cases be unsatisfactory.
With the recent amendments to the asylum legislation, Sec. 47 para. 4 Asylum Procedure Act now includes the obligation to hand out information about rights and duties under the Asylum Seekers Benefits Act[437]. The federal states are currently preparing the necessary handouts[438].

[435] Or within which a court commits the Federal Office to do so, even if those decisions can be appealed.
[436] See Q.13.B.
[437] see Federal Law Gazette I, p. 1970, 1998.
[438] Cf. Practice Report Berlin, Q.2.A.

Q. 17. B. Is the information provided in writing or, when appropriate, orally?

Sec. 47 para. 4 Asylum Procedure Act stipulates that information should be handed out preferably in writing. This means that written information is not necessary if it must be assumed that the asylum seeker will not be able to understand it due to lacking skills in reading. In these cases information must be given orally.

Q.17. C. Is that information in general provided in a language understood by asylum seekers? Specify the list of languages in which it is available

An exhaustive answer is not possible due to the competence of the Federal States, see above. Sec. 47 para. 4 Asylum Procedure Act stipulates that information must be given in a language of which can reasonably be assumed that the asylum seeker is able to understand it[439].

According to the Ministry of the Interior of Mecklenburg-Western Pomerania, the relevant information is available in the following languages:

- Arabic
- Armenian
- English
- Farsi
- French
- Kurdish
- Punjabi
- Russian
- Serbo-Croatian
- Spanish
- Tamil and Hindi
- Thai
- Turkish
- Vietnamese

The Ministry of the Interior of Lower Saxony says it is currently preparing written information on reception conditions in English, French and the prevalent languages of the countries of origin. Earlier, the information was given only orally.
In Saxony, information is normally provided only in German, only in "exceptional situations" in the national language of the asylum seeker. This

[439] see Federal Law Gazette I, p. 1970, 1998.

practice will have to change with the recently introduced amendments to the Asylum Procedure Act.
In Baden-Württemberg information brochures for asylum seekers are available in the following languages:

- Arabic
- Albanian
- Chinese
- English
- Farsi
- French
- Punjabi
- Russian
- Serbo-Croatian
- Tamil
- Turkish
- Urdu
- Vietnamese

Q. 17. D. Is the deadline of maximum 15 days respected?

Sec. 47 para. 4 Asylum Procedure Act includes a deadline of fifteen days[440]. An answer on the practical implementation is not yet possible, see above.

Q.18. Information of asylum seekers about the existence of organisations or groups promoting their interest and defending their rights (see article 5 which is to a large extend a mandatory provision):

Q. 18. A. Is there a list of organisations dressed by the authorities and if yes is it comprehensive? Is this in particular the case about the possibilities to get legal assistance and health care?

Sec. 47 para. 4 Asylum Procedure Act includes the obligation to hand out information about possibilities to get legal assistance and about organisations which may counsel the asylum seeker with regard to accommodation and health care[441].
Until recently, federal law did not include an obligation for the federal states to hand out such a list. However, this does not hinder them to do so but to our knowledge such an official list was not set up in any federal state in the past. It remains to be seen how well the federal states cope with their new obligation under federal law.

[440] see Federal Law Gazette I, p. 1970, 1998.
[441] see Federal Law Gazette I, p. 1970, 1998.

Q. 18. B. Is the information provided to the asylum seekers, and if yes, in writing or, when appropriate, orally?

Sec. 47 para. 4 Asylum Procedure Act stipulates that information should be handed out preferably in writing. This means that written information is not necessary if it must be assumed that the asylum seeker will not be able to understand it due to lacking skills in reading. In these cases information must be given orally[442].
For the current situation as regards practical implementation an exhaustive answer is not yet possible, see above.

Q. 18. C. Is that information in general provided in a language understood by asylum seekers? Specify if possible the list of languages in which it is available.

An exhaustive answer is not yet possible, see above. Sec. 47 para. 4 Asylum Procedure Act stipulates that information must be given in a language of which can reasonably be assumed that the asylum seeker is able to understand it[443].

Q. 18. D. How many organisations are active in that field in your Member State?

It is impossible to give an exact number. The most important charity organisations are Arbeiterwohlfahrt (Workers Welfare Organisation), Rotes Kreuz (Red Cross), Caritas (Catholic Charity Organisation), Diakonie (Protestant Charity Organisation) and local refugee councils. Several other organisations provide counselling, among them amnesty international, Pro Asyl and other, often regional groups and initiatives. Which organisations are in fact most active depends to a large extent on the particular region, if it is urban or rather rural, which religious confession is predominant etc.

Q.19. Documentation of asylum seekers (see article 6):

Q.19. A. What kind of document is delivered to the asylum seeker? Explain the legal value of this document (just a certification of the status as asylum seeker or also prove of identity?) (see §1 of article 6 which is a mandatory provision)

The asylum seeker receives a certificate proving his status when he lodges his asylum application, see Sec. 63 para 1 Asylum Procedure Act. This certificate includes a photo and the asylum seeker's personal dates[444]. As long as the application is pending, the certificate serves as identification.

[442] See Federal Law Gazette I, p. 1970, 1998 and Bundestagsdrucksache (Parliamentary Document) 16/5065, p. 428.
[443] see Federal Law Gazette I, p. 1970, 1998.
[444] i.e. name, surname, nationality, place and date of birth, residence in Germany.

Q.19. B. Are there situations or specific cases in which another equivalent document or even no document is issued? (in particular is there an exception for "procedures to decide on the right of the applicant legally to enter the territory" as made possible by §2 of article 6)?

No such certificate is issued if the asylum seeker already holds a residence permit in Germany.
Asylum seekers who arrive by air and who are subject to the pre-screening procedure in the airport (see Sec 18a Asylum Procedure Act) do not receive a certificate either, since this procedure is carried out prior to entering the federal territory and a documentation is therefore obsolete, cf. Art 6 (2).

Q.19. C. For how long is this document in principle valid and is it necessary to renew it after a certain period?

As long as the asylum seeker is obliged to live in a reception centre, the certificate's validity is limited to a maximum of three months, afterwards to a maximum of six months. It must be renewed because it replaces the asylum seeker's passport for identification purposes, cf. Sec. 63 para. 2 Asylum Procedure Act.

Q.19. D. What is the deadline for the delivery of that document? Is the mandatory deadline of 3 days set by article 6, §1 respected[445]?

Until recently Sec. 63 para 1 Asylum Procedure Act did not contain a deadline for the delivery of the certificate, however, the amended version of Sec. 63 para 1 Asylum Procedure Act provides for a deadline of three days after the application is lodged[446].

Q.19. E. Is it possible for an asylum seeker to get a travel document for serious humanitarian reasons (see §5 of article 6 which is an optional provision)?

A regulation on residence (Sec. 13 para. 1 No 2 Aufenthaltsverordnung) provides for issuance of travel documents in case of emergency. The Asylum Procedure Act does not exclude travel with the permission of aliens authorities completely, however, it is limited to cases of extreme hardship.

Q.19. F. Is there a central system of registration of asylum seekers and is it or not separate from the registration of aliens? If yes, describe it briefly (content) and indicate in particular if it is an electronic database.

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[446] see Federal Law Gazette I, p. 1970, 1999.

All aliens whose stay in Germany is not only on a short-term basis are registered in the Central Aliens Register (Ausländerzentralregister - AZR). Also registered in the AZR are aliens who have lodged an asylum application. There is no separate register exclusively for asylum seekers.

The registration includes the aliens' personal dates[447] plus differing spelling of names, other names, former names, alias personalities, civil state, information on identification documents, last place of residence in country of origin, voluntary made statements about religious belief, nationalities of spouse or same-sex partner. Additionally it is registered: Information on legal status of residence, decisions on admission to the labour market, recognition as refugee (Geneva Convention) in another country, decision with regard to the alien's legal status in Germany and finally the authority which provided the information. The recently adopted amendments to the Central Aliens Register Act provide for registering photos as well[448].
The AZR is an electronic database.

Q.20. Residence of asylum seekers :

Q.20. A. Is in principle an asylum seeker free to move on the entire territory of your Member State or only to a limited part of it and in case, which part? (see article 7, §1 which is a mandatory provision)

The asylum seeker's permission to stay (Aufenthaltsgestattung) is generally restricted to the district of the competent aliens authority. Only in urgent cases, the asylum seeker will be granted permission to leave this district temporarily.
Leaving the designated district without prior authorisation (see Q.20.E) is considered an administrative offence and is subject to fines of a maximum amount of 2,500 Euro (cf. Sec. 86 Asylum Procedure Act). Repeated infringements are prosecuted as criminal actions under Sec. 85 No. 2 Asylum Procedure Act.

Q.20. B. About the place of residence (see §2 of article 7): explain to which extend the person is free to choose her residence and if this depends of the stage of the asylum procedure (for instance before and after admissibility); if there are constraints limiting the choice, explain which ones and their reasons (for instance processing of application, attribution of reception conditions,…).

During the asylum procedure, the asylum seeker is not free to choose his place of residence, but will be allocated first to a reception centre and later on to an accommodation centre. Allocation is done by quota, so there is no claim for the asylum seekers to be allocated to a specific place. Family

[447] i.e. name, surname, name of birth, spelling of names under German law, nationality, place, district, and date of birth, sex.
[448] see Federal Law Gazette I, p. 1970, 2001.

units (spouses and minor children) shall be respected, cf. Sec. 50 para. 4 Asylum Procedure Act.

Q.20. C. About the <u>place of reception (meaning where the asylum seeker has to stay to benefit from reception conditions) (see § 4 of article 7)</u>: explain which are the general rules about the determination of this place (to which extend are the decisions determining the place taken individually and do they take into account the personal situation of the asylum seeker?) and to which extend the person is free to choose it and if it depends of the stage of the asylum procedure (for instance before and after admissibility); if there are constraints limiting the choice, explain which ones and their reasons (for instance attribution of reception conditions, processing of the application,…).

Since each asylum seeker is primarily to be accommodated in the reception centre where he filed his asylum application, he may influence his place of residence to a certain extent. Only if the accommodation capacities are exhausted in the respective reception centre or if the asylum application cannot be handled by the competent branch of the Federal Office for Migration and Refugees[449], the asylum seeker will be allocated to another reception centre, cf. Sec. 46 para 1 and 2 Asylum Procedure Act.
When the obligation to live in a reception centre ends, asylum seekers are allocated within the respective federal state following schemes that are developed by the local authorities. The main goal of these restrictions to free movement and choice of residence is to speed up the asylum procedure and to ensure a fair burden sharing among the federal states and municipalities which bear the costs for reception conditions.

Q.20. D. If all asylum seekers are not placed in accommodation centres because of capacity limits, explain <u>how the persons are distributed between accommodation centres and other accommodation facilities</u> (which authority takes the decisions, on the basis of which elements, can that decision be appealed by the asylum seeker,…)

At the moment, no such situation occurs due to dropping numbers of asylum applications. If these numbers should rise again and the capacity of accommodation facilities proves to be insufficient, it is within the federal states' competence and responsibility to allocate asylum seekers to other places. Since it is upon the individual federal state to regulate the allocation, no general statement can be made. However, in the past authorities often rented hotels or set up provisional container constructions to house asylum seekers when the regular capacities were exhausted.

[449] The different branches of the Federal Office for Migration and Refugees are usually not handling applications from all countries of origin.

Q.20. E. How can an asylum seeker ask to leave temporarily the place of residence or of reception or an assigned area? How is the individual AND impartial character of the decision ensured? (see §5 of article 7 which is a mandatory provision)

In urgent cases the asylum seeker may be granted permission to leave the assigned district temporarily. As long as he is obliged to live in a reception centre such a permission may only be granted if the trip is unavoidable. This applies in particular to visits to the asylum seeker's attorney, to UNHCR and to organisations which take care of refugees. After the obligation to live in the reception centre has ended, permission may be granted under less strict conditions. If the asylum seeker has to appear in person before a court or at public authorities, he does not need a permission, but has to announce his appointment.
All decisions on leaving the assigned district may be challenged in the courts. However, the possibility to file an objection with the superior authority is excluded.

Q.21. **Q.21. A. Do rules on reduction or withdrawal of reception conditions exist in internal legislation and if yes in which cases (mention in particular if there are cases not foreseen by article 16, § 1 and 2 which are optional provisions)? Distinguish in your answer between cases of reduction and withdrawal and explain which conditions can be reduced and if access to emergency health care is always ensured as requested by article 16, §4, last sentence.**

Reception conditions must not be completely withdrawn while the asylum procedure is pending. However, benefits under the Asylum Seekers Benefits Act are reduced to the very minimum if the asylum seeker refuses to do some work (in particular within the accommodation facility) without good reasons, cf. Sec. 5 para 4 Asylum Seekers Benefits Act.
After rejection, reception conditions may be subject to reduction if the asylum seeker is considered to have entered Germany for the mere purpose of receiving social benefits or if he cannot be deported for reasons within his responsibility, cf. Sec. 1 a Asylum Seekers Benefits Act. A complete withdrawal is not possible and the remaining minimum always includes emergency health care.

Q.21. B. Has article 16, §2 dealing with refusal of reception conditions for unreasonably late applications for asylum been transposed by your Member State (or was this case already applicable before transposition)? Are there cases in practice?

Illegal immigrants and other aliens whose obligation to leave is enforceable and who do not file an asylum application are nevertheless eligible to reception conditions. However, in these cases reception conditions may be subject to reduction or withdrawal if the respective alien is considered to

have entered Germany for the mere purpose of receiving social benefits or if he cannot be deported for reasons within his responsibility, cf. Sec. 1 a Asylum Seekers Benefits Act. A complete withdrawal is not possible.
The mere fact that an asylum application was lodged unreasonably late is not a reason to refuse reception conditions.

Q.21. C. How is it ensured that decisions of reduction or withdrawal are taken individually, objectively AND in particular impartially (for instance through and independent arbitrator) (see article 16, §4 which is a mandatory provision)?

The decision on reduction of reception conditions is made by the competent aliens authority and follows the rules of the Administrative Procedures Act (Verwaltungsverfahrensgesetz). The alien must be given opportunity to express his opinion on the intended reduction. The authority has to give reasons for its decision to enable the alien to file a reasoned objection. The objection will be handled by a superior authority. Its decision on the objection may be challenged in the courts.

Q.21. D. Is statement 14/03 adopted by the Council at the same moment as the directive respected (see the document attached to our sending)?

A complete withdrawal of reception conditions is not possible in Germany. In any case, the respective alien will be provided with housing, food and other allowances which are absolutely necessary. Emergency healthcare is always guaranteed.
Statement 14/03 is respected.

Q.21. E. Are there already administrative appeal decisions or judgements on cases of reduction, withdrawal or refusal which have been taken, and if yes, what has been the outcome?

There are already several judgements on reduction decisions[450] since the respective provision has been adopted in 1998. The jurisprudence deals with preconditions for reduction of benefits and the burden of proof. Since most decisions cannot be related to asylum seekers in terms of the directive, the details of the mentioned judgements are not described.

Q.22. **Q.22. A. <u>Appeal</u> against a negative decision relating to the granting of benefits or based on article 7 (see article 21 which is a mandatory provision): indicate against which decision an appeal can be introduced, describe the**

[450] Cf. e.g. Social Court of Appeal of Baden-Wuerttemberg, Decision of 25 August 2005, published in Fürsorgerechtliche Entscheidungen der Verwaltungs- und Sozialgerichte (FEVS) 57, pp. 100 – 102; Administrative Court of Bremen, Decision of 28 July 2005 published in Sozialhilfe- und Asylbewerberleistungsrecht (SAR) 2005, pp. 117 – 120; Administrative Court of Appeal of Hesse, Decision of 4 March 2003, published in Sozialhilfe- und Asylbewerberleistungsrecht (SAR) 2003, pp. 119 – 120.

system of appeal in general and include in particular in your answer the information given to asylum seekers about possibilities of appealing, deadline for appealing, if the appeal has or not a suspensive effect, if there are different steps (for instance first an administrative appeal and in particular if the guarantee of an appeal before a judicial body in the last instance is respected)?

All decisions regarding the denial of social benefits can be appealed according to the general rules of administrative procedure.
The restriction to stay in one specific district cannot be challenged in the courts since it is implied in the permission to stay (Aufenthaltsgestattung). Asylum seekers are not entitled to a residence permit without geographical limitation, nor is there any right to being sent to one specific reception centre. However, the administrative decision to which district the asylum seeker is allocated after his obligation to live in a reception centre has ended is subject to judicial appeal. The asylum seeker has to file this appeal within two weeks after the decision has been officially announced to him. The reasons for the appeal have to be delivered within one month, cf. Sec. 74 Asylum Procedure Act. The appeal has no suspensive effect, cf. Sec. 75 Asylum Procedure Act.

Q.22. B. Explain which are the possibilities for asylum seekers to benefit from legal assistance when they introduce such an appeal (see article 21, §2 which is a mandatory provision but leaves space to Member States)?

The asylum seeker may mandate an attorney for legal assistance. According to the Act on Legal Assistance only lawyers are allowed to give legal assistance. If the asylum seeker is lacking the necessary financial means, he is entitled to financial support to consult a lawyer (Beratungshilfe) and to pay the lawyer for handling the appeal (Prozesskostenhilfe). However, the latter will only be granted if there is a reasonable chance of success. The decision on financial support for legal assistance is within the competence of the local court.

Q.22. C. Are there already administrative appeal decisions or judgements which have been taken and if yes, which are the main important ones?

No appeal decisions are known.

Q.22. D. Is a mechanism of complain for asylum seekers about quality of receptions conditions in general (even if they are not personally concerned) organised? If yes, before which authority? Is it linked to the system of guidance, control and monitoring of reception conditions (see below question n° 39)?

Like many aspects in the asylum procedure, this may vary between the federal states. Such a system of complaint need not be installed with

respect to the Asylum Procedure Act, however, the federal states are free to do so. According to UNHCR, such a system exists in Berlin[451]. In Bavaria, however, there is no such system. Asylum seeker can of course address the facilities' management or an NGO. However, this does not guarantee that they will receive a satisfactory reaction. The success of any complaint depends to a great extent on the addressee's goodwill.
If no such system of direct complains exists, the asylum seeker may always address to the superior authority and complain about the an officer's individual attitude or about an individual decision he considers inadequate or unlawful. Such a complaint does not have any legal binding for the superior authority but may initiate a monitoring process as described under *Question 39*.
If the management of accommodation centres is contracted out, the competent authorities are responsible to control the private company's (or NGO's) compliance with the agreement[452].

6. RIGHTS AND OBLIGATIONS OF ASYLUM SEEKERS

Q.23. **Family unity of asylum seekers: define how a family is defined in relation with article 2, (d) which is a mandatory provision and explain how housing is provided to a family (see articles 8 which is a mandatory provision but leaves space to member States and 14, §2, (a) which is a mandatory provision).**

Family members in terms of the Asylum Seekers Benefits Act are the asylum seeker's spouse or partner in a registered same-sex relationship, and his under age children. As a rule, family members are accommodated together. However, in singular cases parents may be allocated to different reception centres if they did not file their asylum applications together. These cases are rare and rather the consequence of lacking information.
Under age children are in any case entitled to be accommodated with their parent(s), cf. Sec. 47 para 2 Asylum Procedure Act.
Children may, however, be separated from their parents in cases of violence or abuse. They may be accommodated with other relatives or in a children's home in order to protect them from ill-treatment. Separate accommodation may also take place if the parents are not able to care for their child.

Q.24. **Q.24. A. How is housing of asylum seekers organised: describe the system in general and indicate in particular what is the most frequently system used (see article 14, §1 which is a mandatory provision but leaves space for Member States; distinguish between accommodation centres, private houses and apartments, hotels places or other premises).**

According to Sec. 44 para 2 Asylum Procedure Act it is within the Länder's responsibility to provide for the required number of

[451] Also mentioned in Practice Report Berlin, Q.7.B.
[452] Cf. Practice Report Berlin, Q.19.B.

accommodation places in reception centres. How the Länder fulfil their duty to make a sufficient number of places available is left to their discretion. Most Länder provide only one central reception centre, only Lower Saxony and Bavaria maintain two reception centres each.
With regard to other accommodation facilities the Länder are even more flexible. Usually they tend to spread the asylum seekers by quota within their territory. The local authorities provide for suitable premises which can be municipality flats, converted office or school buildings or different premises available. Often provisional premises like barracks or container constructions are used. There are neither common standards for reception centres nor for other accommodation facilities in Germany which leads to the fact that the standards may differ considerably among the different Länder and even within the same Land.

Q.24. B. What is the total number of available places for asylum seekers? Distinguish in your answer between accommodation centres, private houses and apartments, hotels or other premises.

According to official information of the Federal Office for Migration and Refugees there were 10,381 places in reception centres available on March 31, 2007, of which 4,389 were not used. This number does not contain places in other accommodation facilities than reception centres since only the capacity of reception centres must be reported to the Federal Office for Migration and Refugees. Other accommodation facilities are run by the federal states autonomously. They do not house exclusively asylum seekers but often also other foreigners without residence title. E.g. in the Bavarian district of Oberbayern (Upper Bavaria) 3,984 aliens are presently living in accommodation facilities, but only about one third of them are asylum seekers[453]. The same relation exists in the whole federal state of Bavaria: Of 12,709 persons living in accommodation facilities only 4,070 are asylum seekers[454].

Q.24. C. Is this number of places for asylum seekers sufficient in general or frequently insufficient?

This number was always sufficient in the last years since there has been a constant decline in asylum applications.

Q.24. D. Are there special measures foreseen in urgent cases of a high number of news arrivals of asylum seekers (outside the case of application of the directive on temporary protection)?

In such cases the period of accommodation in the reception centres may be shortened in order to allocate the asylum seekers sooner to smaller

[453] Cf. Practical Questionnaire Caritas, Question 6 A.
[454] Date of December 31, 2005, cf. Practical Questionnaire, Central Reception Centre Zirndorf, Bavaria.

accommodation facilities. Such facilities are more easy to set up by renting suitable premises, converting public buildings into accommodation facilities or setting up provisional premises like container structures.

Q.25. Accommodation centres **(important note: all the following questions are about open and not closed centres where asylum seekers are detained which are covered by another question)**

Q.25. A Are there different categories of accommodation centres, for instance depending of the stage of the procedure (admissibility and eligibility)?

As already stated above, it is necessary to distinguish between reception centres for the initial accommodation of asylum seekers and other accommodation facilities which have to be suitable to accommodate asylum seekers for a longer period of time after their obligation to live in a reception centre has ended.

Q.25. B. Is there a legal time limit for accommodation in a centre after which the asylum seekers have access to private houses or apartments or is this limit linked to a stage of the asylum procedure?

The obligation to live in the reception centre ends after a maximum period of three months. However, this does not mean that asylum seekers are free to choose their place of residence afterwards. They are rather allocated to other, normally smaller accommodation facilities.

Q.25. C. Is there a general regulation about the internal functioning of those centres and the rights and duties of the asylum seekers? If yes, is this general regulation applicable to public and private centres? If not, are the centres supposed to adopt an internal regulation and does a central authority have or not a kind of control about its content?

Accommodation facilities usually adopt their own internal regulations autonomously or such an internal regulation is given by the municipality or the state district for several facilities in their area of responsibility.

Q.25. D. Do the regulations foresee the possibility of sanctions against asylum seekers in case of breach of the rules? (see article 16, §3) If yes, which sanctions for which rules? Which is the competent authority to decide? How is it ensured that decisions are taken individually, objectively and in particular *impartially* (for instance through an independent arbitrator) as requested by §4 of article 21 which is mandatory provision*?* Which are the possibilities of appealing against those decisions if the system is different from the general one under question n°22? Are there already administrative appeal decisions or

judgements which have been taken and if yes, which are the main important ones?

A comprehensive answer is not possible since there might be hundreds of different regulations in accommodation facilities. Two examples are attached to this report. They both include the possibility of sanctions in case of breach of internal rules. The most important sanction is to ban the respective asylum seeker from the accommodation centre and to allocate him to another facility. Practice Reports indicate that the forced allocation to another accommodation facility which is of lower standard or rather isolated sometimes serves as a sanction[455]. The Ministry of Interior of Thuringia mentions that asylum seekers may be assigned to temporary work obligations within the facility (e.g. courtyard sweeping, cleaning of shared rooms etc.) as a consequence of infringements.
Practice Reports of NGOs suggest that additional and sometimes subtle sanctions without a specific legal basis other than internal house rules are imposed in individual accommodation facilities[456]. However, it is impossible to assess within the scope of this study how frequent such sanctions occur and of what nature they are.
Federal law includes the provision that asylum seekers lose part of their benefits under the Asylum Seekers Benefits Act if they decline a working opportunity offered to them, cf. Question 25.E for details.

Q.25. E. Are asylum seekers involved in the management of these centres? If yes, how (advisory board, appointment or election of representatives)? (see article 14, §6 which is an option provision)

To our knowledge, there is no reception centre in which asylum seekers are involved in management. This is, however, the case in some accommodation facilities. We know that the accommodation centres in Parchim (Mecklenburg – Western Pomerania) and Salzwedel (Saxony-Anhalt) have established local advisory boards in which the occupants are represented. This might also be the case in other accommodation facilities. A comprehensive answer is, however, not possible since such advisory boards are established on the basis of internal regulations which are set by the respective management or municipality.

Q.25. F. Do specific rules exist on work of asylum seekers inside the accommodation centres different from the general ones about employment (see below)? If yes, which ones? Can working inside accommodation centres be considered as a (mandatory) contribution of the asylum seekers

[455] Cf. Practice Report of Attorney Detlef Otto, Answer A.3, report of Pro Asyl, Answer A.3 and Report of the Jesuit Refugee Service Germany, Answer A.3.
[456] Cf. Practice Report of Pro Asyl, Answer A.3.

to the management of the centres, is it or not paid and considered as implying access to the labour market and subject to the same rules?

Generally asylum seekers do not have access to the labour market. After one year of residence in Germany with a stay permit, an asylum seeker may be permitted to take up an employment, cf. Question 28.
Independently of that, asylum seekers shall be offered work opportunities in the reception centres and similar facilities. These work opportunities cannot be regarded as part of the labour market since asylum seekers must not compete with regular workers and thus may only be offered work which would not be done otherwise.
Asylum seekers who are able to work and not employed otherwise are obliged to accept such a work offer. If an asylum seeker refuses to take up work unfoundedly, he loses his eligibility to social benefits which will be reduced to the very minimum, cf. Sec 5 Asylum Seekers Benefits Act.

The work is paid with 1.05 Euro per hour.

The work opportunities may be regarded as contributions to the management of the centre in a wider sense. This may comprise gardening on the grounds of the premises, cleaning of shared facilities etc.

Q.26. **Q.26. A. How can asylum seekers <u>communicate</u> with legal advisers, representatives of UNHCR and NGOs? (see article 14, §2, (b) which is a mandatory provision).**

The asylum seeker's right to address the UNHCR is guaranteed in Sec. 9 para. 1 Asylum Procedure Act. There are, however, no statutory rules on communication with legal advisers or NGOs. Since there are no closed centres (except the transit accommodation facilities at the airports), asylum seekers may visit legal advisers or NGOs in their offices. If these offices are outside the aliens authorities district, the asylum seeker will be granted a permission to leave the district for meeting them, cf. Sec. 57 para 2 and Sec. 58 para. 2 Asylum Procedure Act.

Asylum seekers confined to airport transit zones must be given opportunity to contact a lawyer, cf. Sec. 18a para. 1 Asylum Procedure Act.

Q.26. B. What are the rules about <u>access</u> of legal advisers, UNHCR and NGOs regarding access to accommodation centres and other housing facilities (see article 14, §7 which is a mandatory provision)

There are no statutory rules on access for NGOs and legal advisers on the Federal level, whereas access is guaranteed for UNHCR representatives in Sec. 9 para. 1 Asylum Procedure Act in its recently amended version[457]. Permissions to enter are usually granted by the individual centre or accommodation facility. According to the Practice Reports there are generally no restrictions for UNHCR and legal advisers to enter the

[457] Cf. Federal Law Gazette I, p. 1970, 1996.

accommodation centres. UNHCR reports difficulties for some NGOs to get permission to enter some accommodation centres. The same observation is made by Pro Asyl[458]. Since the decision on access is within the responsibility of the reception centre's or accommodation facility's management, no general statement can be made but the Practice Reports do not indicate that any serious conflicts occur.

Q.26. C. Can the access of legal advisers, UNHCR and NGOs be limited for security reasons or any other reason (see article 14, §7, last sentence)?

Since the decision on access is within the responsibility of the reception centre's or accommodation facility's management, no general statement can be made. Usually internal rules of the respective accommodation facility stipulate that access of people not living in the centre may be denied for security reasons.

Q.27. **Q.27. A. Is a medical screening organised by the receiving State, is it mandatory or voluntary? Does it include HIV tests? (see article 9 which is an optional provision)**

Asylum seekers who are obliged to live in a reception centre or a shared accommodation facility are subject to a mandatory medical screening, cf. Sec. 62 Asylum Procedure Act. The scope of this screening may vary in the different federal states so no general statement on HIV tests can be made. The screening does include an HIV test in the federal states of Saxony and Bavaria, whereas in Berlin, Thuringia and Lower Saxony no HIV test is carried out. In Mecklenburg-Western Pomerania and Baden-Württemberg, voluntary HIV tests are offered.

Q.27. B. Do the legal provisions on reception conditions ensure that asylum seekers receive at least emergency care and essential treatment of illness as requested by article 15 §1 which is a mandatory provision? Do they have a further access to health care?

Reception conditions must not be completely withdrawn but may be reduced to the absolute minimum that is necessary for a person to live and preserve his human dignity, cf. Sec. 1a Asylum Seekers Benefits Act. This includes emergency health care and essential treatment of acute illnesses. However, Sec. 1a is not applicable as long as the asylum procedure is not completed and the foreigner obliged to leave the Federal Territory. Sec. 5 para. 4 Asylum Seekers Benefits Act, providing for a complete withdrawal of benefits, has to be interpreted in a way that the above mentioned absolute minimum of benefits is preserved.

[458] Cf. Practice Report, Answer A.4.

Regular health care benefits for asylum seekers include additionally dental prostheses if the treatment cannot be postponed, care for expectant mothers and women in childbed, and preventive medical checkups including necessary vaccinations.
This standard is still lower than that for residents, though, which may lead to difficulties for persons with chronic diseases if these diseases are not considered acute illnesses. The treatment of chronic diseases is usually restricted to pain relieving measures[459].

Q.27. C. What is the practice regarding access of asylum seekers to health care and how is it organised? In particular, what is the situation in accommodation centres (are doctors coming to the centres or do asylum seekers go to doctors outside)?

There is no common practice in all federal states. In some reception centres and accommodation facilities a health service is in attendance. In other cases, asylum seekers have to visit a doctor outside the centre. Since asylum seekers are not part of the general health insurance scheme, they have to apply with the competent authority for a certificate of coverage to receive medical counselling. To avoid this often bureaucratic and time-consuming procedure, many asylum seekers tend to call an emergency doctor instead, who is obliged to help patients who do not have a certificate and may hand in his bill afterwards.

Q.28. **Q.28. A. What is the length of the period determined by the concerned Member State during which asylum seekers have no access to the labour market? (see article 11 which is a mandatory provision)**

One year after application, cf. Sec. 61 para. 2 Asylum Procedures Law

Q.28. B. After that period, are asylum seekers or not obliged to obtain a work permit? In case is there a limit for the administration to deliver the permits and how quick are they delivered? What is their length?

A work permit is mandatory to take up an employment, it may be issued by the aliens authority and requires the Federal Agency for Labour's approval.

Q.28. C. After that period, what are the conditions for access of the asylum seekers to the labour market? (in particular, are there rules concerning the maximum allowed of working hours or days per week, month or year, limits in terms of type of work or of professions authorised?

When the asylum seeker has held a permit to stay for at least one year, he may be admitted to the labour market if he has a job offer. The permission

[459] cf. Social Court of Appeal of Baden-Württemberg, decision of 11 January 2007, file-no L 7 AY 6025/06 PKH-B

may include restrictions in terms of working time, employer, type of work, area, etc. These are the general rules under the Residence Act and no special provisions for asylum seekers.

Q.28. D. What are the rules in terms of priorities between asylum seekers on the one hand and nationals, EU or EEE citizens and legally third-country nationals on the other?

A work permit may be issued if the vacancy cannot be filled with a German national, an EU citizen or a third country national who holds a residence permit which grants him full access to the labour market or who is otherwise privileged with regard to access to the labour market.

Q.28. E. Do asylum seekers have access to vocational training, does this or not depend of their right to access to the labour market, and in case at which conditions? (see article 12 which is optional regarding §1 and mandatory regarding § 2)

In Germany, vocational training is generally done on the job, i.e. persons in vocational training are employed and receive at the same theoretical education. Hence, an asylum seeker has access to vocational training only if he is employed. That requires, again, a work permit.

Q.28. F. Are the rules regarding access to the labour market adopted to transpose the directive more or less generous than the ones applicable previously?

There have been no changes in national legislation on labour market access due to the Directive.

Q.29. Are reception conditions subject to the fact that asylum seekers do not have sufficient resources? Are asylum seekers requested to contribute to reception conditions when they have personal resources (for instance if they work) or to refund the authorities if it appears that they have resources? (see article 13 §§ 3 and 4 which are optional provisions)

If asylum seekers have financial resources or receive an income, they are not entitled to benefits as long and as far as they are able to provide for themselves and their family members who live in the same household. If the respective asylum seeker is accommodated in a reception centre or another public accommodation facility or if he receives other benefits in kind, he is obliged to refund the authorities for these services, cf. Sec. 7 Asylum Seekers Benefits Act. Asylum seekers must not reject reception conditions (in particular housing) in these cases but are obliged to live in the accommodation facility which may be rather expensive.

25 per cent of the income an asylum seeker receives from employment is not taken into account when calculating the asylum seekers ability to contribute to reception conditions.
A compensation for non-pecuniary damage must not be treated as income but left to the asylum seeker's disposal[460].

7. SPECIAL NEEDS OF PARTICULAR CATEGORIES OF ASYLUM SEEKERS

Q.30.

Q.30.A. Which of the <u>different categories</u> of persons with special needs considered in the directive are taken into account in the national legislation (see article 17, §1 which is a mandatory provision): disabled people, elderly people, pregnant women, single parents with minor children, persons who have been tortured, raped or victims of serious physical or psychological violence? Include in your answer all other categories envisaged in national law.

Legal Provisions:

- **Pregnant women and women in childbed are entitled to special medical care and midwife support, cf. Sec. 4 para. 2 Asylum Seekers Benefits Act.**

- **For other persons with special needs additional benefits may be granted if this is necessary in the individual case. Additional benefits may in particular be granted if a child requires more clothes due to growth periods or if parents of a new born child lack basic equipment for the bringing up[461]. Additional benefits may also be granted to ill or disabled people to meet their additional needs in terms of food or clothing, cf. Sec. 6 para. 1 Asylum Seekers Benefits Act. This legal provision does not define groups of persons with special needs as the directive does. Benefits are granted on a discretionary basis. The practice of granting or rejecting applications for additional social benefits is thus formed to a large extent by the courts.**

- **Sec. 6 para. 2 Asylum Seekers Benefits Act mentions persons with special needs, e.g. unaccompanied minors and persons who have suffered torture, rape or other forms of serious psychological, physical or sexual violence, however, this provision does not apply to asylum seekers but only to persons enjoying temporary**

[460] Federal Constitutional Court, decision of 11 July 2006, file-no. 1 BvR 293/05, published in Informationsbrief Ausländerrecht 2007, pp. 19 – 21; an explicit rule is now included in Sec. 5 para. 7 Asylum Seekers Benefits Act, Federal Law Gazette I, p. 1970, 2007.
[461] Cf. Practice Report Caritas, Question 1.C on diapers.

protection according to Directive 2001/55/EC. This wording is problematic as it may lead to a restrictive interpretation of Sec. 6 para. 1 Asylum Seekers Benefits Act by interpreting para. 2 as an exclusive entitlement of persons under temporary protection whereas victims of violence and other persons with special needs are not entitled to specific treatment or aid.

However, the provision of Sec. 6 must be interpreted as a whole in the light of Directive 2003/9/EC. The correct interpretation of para. 1 leads therefore to the conclusion that persons who have special needs (e.g. because of suffered torture, rape or other kinds of serious violence, or because of their age) have to be granted adequate treatment or aid, which is equivalent to the treatment provided for in para. 2. This interpretation is, however, controversial. As yet no court decisions are known on the interpretation of this provision. Therefore, it remains to be seen if the practical implementation will meet the directive's requirements.

Q.30. B. How is their specific situation taken into account (see articles 13, §2, second indent, 16 §4 second sentence and 17 which are mandatory provisions)?

Some examples:

Administrative Court of Munich: A multiple disabled child is entitled to visit an integrative kindergarten if this is necessary to meet the child's special needs[462].
Social Court of Frankfurt: Costs for assisted living must be borne by the government if the ending of the assistance would constitute a serious threat to the asylum seeker's health. The mental health must be regarded equivalent to the physical health[463].
Higher Administrative Court of Lower Saxony: Psychological Treatment must be paid in serious cases, however, in the respective case an entitlement was denied as the alleged post-traumatic stress disorder of the asylum seeker was not acknowledged by the court[464].
Administrative Court of Gera: Implantation of hip joint prosthesis is not considered necessary even if the asylum seeker's hip joint is irrevocably destroyed as long as a pain relieving treatment is possible and enables the asylum seeker to live free of pain[465].

[462] Administrative Court of Munich, Decision of 26 June 2002, file-no. M 18 K 01/4925.
[463] Social Court of Frankfurt, Decision of 16 January 2006, file-no. S 20 AY 1/06 ER.
[464] Higher Administrative Court of Lower Saxony, Decision of 6 July 2004, file-no.12 ME 209/04.
[465] Administrative Court of Gera, Decision of 7 August 2003, file-no. 6 K 1849/01 GE.

Q.30. C. How and when are the special needs of the concerned persons supposed to be legally identified (see article 17 § 2 which is a mandatory provision and clarify how it has been interpreted by transposition)?

There is no legal provision which stipulates that a general screening has to take place to identify people with special needs as presupposed by the directive. It is argued that this could lead to an insufficient treatment of persons whose needs are not obvious, e.g. traumatised persons[466]. Persons with special needs are granted the necessary help if they identify themselves or if the responsible authority obtains knowledge through other asylum seekers, social workers or an NGO.

Q.30. D. Is the necessary medical and other assistance provided to persons with special needs as requested by article 15, §2 which is a mandatory provision and in particular to victims of torture and violence as requested by article 20 which is a mandatory provision?

Even if victims of torture, rape or other forms of serious psychological, physical or sexual violence receive the necessary medical and psychological treatment (see above), Practice Reports indicate that sufficient treatment is not always provided. This applies in particular to psychological treatment for traumatised persons which is carried out to some extent by NGOs. Due to capacity problems, in some cases traumatised persons have to wait quite long before they receive psychological counselling and treatment[467].
Many accommodation facilities are not suitable for wheelchairs. Since the individual allocation of asylum seekers lies within the competence of the federal states, no exhaustive answer is possible to what extent physically handicapped persons are allocated to suitable facilities or accommodated in private housing facilities. Practice Reports indicate deficiencies in some federal states[468].

Q.31. About minors:

Q.31. A. Till which age are asylum seekers considered to be minor?

In general, 18 years, cf. Sec. 12 para. 2 Asylum Procedure Act. However, in terms of social benefits asylum seekers from the age of 14 are entitled to the full amount of social benefits. With regard to the asylum procedure, minors of 16 years and older have the legal capacity to act.

Q.31. B. How is access of minor asylum seekers to the education system ensured? Is it at school or in case inside accommodation centres and

[466] Cf. Practice Report Pro Asyl, Answer A.7.
[467] Cf. Practice Reports UNHCR and Caritas.
[468] Cf. Practice Report Pro Asyl, Answer A.7.

can it be considered as similar to the conditions for nationals as requested by article 10, §1?

Asylum seekers of school age are offered access to public schools if they stay more than three months in Germany. Most federal states consider it mandatory for asylum seekers at school age to attend school[469]. In some cases, classes are taught not in public schools but directly in the accommodation facilities. We know about such a practice in one accommodation facility in Lower Saxony. This separate schooling applies, however, only for children who lack the necessary language or literacy skills to visit a public school[470]. Mandatory education ends when a minor turns sixteen. Children of asylum seekers generally attend public schools outside the accommodation facilities. However, since education is within the competence of the federal states, no comprehensive answer on the details can be given.

Q.31. C. Is access to education ensured <u>not later than 3 months</u> as requested by article 10, §2 (or after maximum one year if specific education for asylum seekers is provided) and till an expulsion decision is really <u>enforced</u>?

Only a cursory view is possible, since legislation varies between the federal states. For children at school age, i.e. 6-16 years, access to school is generally ensured[471]. There may be transitory classes to help the children of asylum seekers to integrate themselves more easily and to learn German. Some problems seem to occur in federal states in which no mandatory education exists for children of asylum seekers[472]. Newly arrived minors of 16 and older are not subject to mandatory education and may therefore face serious difficulties to attend a school. The obligation to visit school starts as soon as the asylum seeker moves from the reception centre to another accommodation facility. According to Sec. 47 para 1 Asylum Procedure Act, the stay in the reception centres is limited to three months. Thus, Art. 10 para 2 of the directive is respected.

Q.31. D. Is <u>specific education</u> (like language classes) available for asylum seekers, in particular to facilitate their effective access to the education system of the reception Member State (see article 10, §2 which is an optional provision)?

[469] Except Baden-Württemberg, Hesse and Saarland. Saxony has recently adopted compulsory education for minor asylum seekers at school age.
[470] Cf. Practice Report Pro Asyl, Answer A. 8 and Letter of the Ministry of the Interior of Lower Saxony of 20 April 2007.
[471] Occasional problems occur with regard to transport and costs for materials, cf. Practice Report Pro Asyl, Answer A.8.
[472] Cf. to Practice Report UNHCR, Question 12.A.

This again depends to a high degree on the legislation in the specific federal state and on the commitment of NGOs and other private initiatives, so no general statement can be given. Especially in bigger cities transitory classes are often offered to facilitate the children's transition into the regular school system. However, there is no general provision on the federal level stipulating such courses.

Q.31. E. Are minors in general accommodated with their parents or with the person responsible of them? (see article 14, § 3)

Sec. 47 para. 2 Asylum Procedure Act stipulates that minor children shall be accommodated with their parents even if they are no asylum seekers themselves. If children do not arrive together with their parents, it may take some time to allocate them to the same place. Cf. Question 23 for further details.

Q.31. F. Do minors with special needs enumerated by article 18, §2 which is a mandatory provision, have access to appropriate mental health care and qualified counselling?

Minors may receive mental health care and counselling according to Sec. 6 para. 1 Asylum Seekers Benefits Act. This provision is not designed exclusively for minors but mentions the special needs of children. Nevertheless, minors as enumerated in Art. 18 para. 2 of the Directive fall under this provision. Sec. 6 para. 1 is not very clear in its wording and gives rise to some questions concerning its scope of application, especially when comparing it with its second paragraph. An interpretation that is conform with the requirements of the Directive is though possible and necessary (cf. Q.30.A).

Q.31. G. How and when is organised the representation of unaccompanied minors (guardianship, special organisation) and regularly assessed? (see article 19, §1 which is a mandatory provision)

The Youth Welfare Office takes care of the unaccompanied minor and arranges the appointment of a guardian, which is within the competence of the Guardianship Court, see Sec. 42 para. 3 Social Code Vol. 8. After the Guardianship Court has considered the parental custody of the minor as suspended, it will appoint a guardian to represent the minor in general matters. In some federal states, a lawyer is appointed for the representation as far as the asylum procedure is concerned, while the Youth Welfare Office represents the minor in all other affairs[473]. Minors sixteen and older are legally able

[473] The latter guardianship may be appointed for all minors irrespective their age. Cf. Helga Jockenhövel-Schiecke, Schutz für unbegleitete Flüchtlingskinder, in: Zeitschrift für Ausländerrecht (ZAR) 1998, pp. 165 – 175; Roland

to run their asylum procedure on their own, however, they are still minors with regard to almost all other aspects of daily life. A guardian is therefore necessary to represent these minors outside the asylum procedure.
As soon as a minor who is younger than sixteen[474] claims asylum at an airport and is initially refused entry (cf. Sec. 18a Asylum Procedure Act), the Border authority is obliged to refer to the guardianship court, which will instantly appoint a guardian for the asylum procedure since the minor is legally not capable to file a valid asylum application on his own.

Q.31. H. How is placement of unaccompanied minors organised (with adult relatives, a foster family, in special accommodation centres or other suitable accommodation)? (see article 19, §2 which is mandatory provision)

Unaccompanied minors (younger than 16) are to be accommodated in Child and Youth Welfare facilities if no persons who are in custody for the child live in Germany, Sec. 42 para. 3 Social Code Vol. 8. I f relatives live in Germany it is also possible to accommodate the minor with them if the accommodation is considered suitable to meet a child's needs. Asylum seekers of sixteen years and older are usually accommodated in the regular reception centres and other accommodation facilities[475]. The exact policy may vary among the federal states. E.g., Lower Saxony states that minors of 16 and 17 years are accommodated in Youth and Welfare facilities if the competent Youth Welfare Authority finds special needs.

Q.31. I. How is the tracing of the family members of the unaccompanied minors organised? Are measures taken to protect confidentiality of information when necessary? (see article 19, §3 which is a mandatory provision)

Unaccompanied minors are accommodated in a centre of youth welfare. Initially they are subject to a screening procedure carried out by the youth welfare authority. The minors are interviewed by social workers to find out about their background, their current situation and their needs. A translator is involved, if necessary. The interviewer tries to find out details about the minors' families and relatives, be it in Germany, be it in their country of origin or be it in some third country. If the minor delivers any information, the authorities try to identify and localise the mentioned family members or relatives with the help of organisations like International Social Service,

Fritz, Gemeinschaftskommentar AsylVfG (Commentary on the Asylum Procedures Act), § 18a, Rn. 40 (Sec. 18a, No. 40).
[474] Minors of sixteen years and older are capable to act in the asylum procedure, cf. Sec. 12 para 1 Asylum Procedures Act.
[475] Erich Peter, Unbegleitete Minderjährige im Lichte des Zuwanderungsgesetzes und der EU-Asylrechtsharmonisierung, in: Zeitschrift für Ausländerrecht (ZAR) 2005, pp. 11 – 18.

familie international Frankfurt e.V., or the search service of German Red Cross. For this end, personal data which is stored in the AZR (Central Aliens Register) may be transmitted to these organisations, Sec. 25 of the Central Aliens Register Act. The organisations have to prove that they are tracing family members for humanitarian or social reasons and are listed at the Aliens Register Authority, Sec. 12 of the Implementation Regulation to the Aliens Register Act. The organisations are not allowed to transmit the data to third persons without the authorisation of the Register Authority and may use the data only for tracing purposes, Sec. 25 para. 3 of the Aliens Register Act.
Due to scarce information given by the minors or the problem to identify themselves, the tracing of relatives often fails.

8. EXCEPTIONAL MODALITIES OF RECEPTION CONDITIONS

Q.32. Apart from detention covered by the next question, are there exceptional modalities for reception conditions in the following cases and if yes, which ones and for how long are they applicable, knowing that they should be "as short as possible" (see article 14, §8)?

Q.32. A. Persons with specific or special needs, regarding in particular the period of assessment of those needs?

There are no exceptional modalities during the period of assessment which shall be carried out as fast as possible. During this period, the concerned persons receive the regular reception conditions. However, in many cases, in particular with regard to handicapped people, people with illnesses, children[476] and elderly people, special needs are quite obvious, so extra benefits may be granted on the spot.

Q.32. B. Non availability of reception conditions in certain areas

Not applicable

Q.32. C. Temporarily exhaustion of normal housing capacities

Not relevant

Q.32. D. The asylum seeker is confined to a border post

Asylum seekers who arrive in Germany by air and come from a safe country of origin or cannot identify themselves with a valid passport or

[476] The assessment of a child's age is in practice often carried out by mere estimate, cf. Erich Peter, Unbegleitete Minderjährige im Lichte des Zuwanderungsgesetzes und der EU-Asylrechtsharmonisierung, in: Zeitschrift für Ausländerrecht (ZAR) 2005, pp. 11 – 18.

passport substitute are subject to a specific airport procedure, see Sec 18 a Asylum Procedure Act. In these cases the asylum procedure will be handled before the asylum seeker is permitted to enter the federal territory provided that adequate accommodation on the airport premises is available or that it is impossible only due to clinical treatment. Material reception conditions are nevertheless to be granted according to the Asylum Seekers Benefits Act. The asylum seeker must be admitted to the federal territory

- if the Federal Office for Migration and Refugees announces that it is unable to make a short-term decision
- if the Federal Office does not decide within two days after the asylum application has been filed

if the court which is handling a motion for an injunction against the Federal Office's decision has not decided within 14 days after the injunction has been applied for.

Q.32. E. <u>All other cases</u> not mentioned in the directive (for instance urgent situation in case of a sudden high number of applicants outside a case of application of the directive on temporary protection).

Not relevant

Q.33. <u>Detention of asylum seekers</u> (we do not cover the situation of rejected asylum seekers detained for the purpose of their return) (see articles 6 §2, 7 §3, 13, §2 2nd indent and 14 §8 which implies that the directive is in principle applicable in case of detention):

Q.33. A. In which <u>cases or circumstances</u> and for which <u>reasons</u>[1] (identity verification in particular if the persons have no or false documents, protection of public order or national security, refugee status determination, way of entry into the territory, etc) can an asylum seeker be detained during the asylum procedure till his request has been finally rejected. <u>Quote</u> precisely in English in your answer the <u>legal basis</u> for detention of asylum seekers in national law.

It is generally not possible to detain asylum seekers except for reasons of criminal investigations (custody) or a conviction in a criminal court. However, in extreme cases of non-cooperation, coercive detention may be ordered by a court following the general rules of administrative execution. This detention is not a sanction but a means of coercion.
In terms of detention as a penal sanction it must be noted that the Asylum Procedure Act contains provisions as to offences punishable with imprisonment. These asylum-related offences are:

[1] Please specify if article 18 §1 of the directive on asylum procedures of 1 December 2005 following which *"Member States shall not hold a person in detention for the sole reason that he/she is an applicant for asylum"* is or not respected (even if it has not yet to be transposed).

- Non-compliance with allocation orders, Sec. 85 No. 1 in relation with Sec. 50 para. 6 Asylum Procedure Act
- Acting contrary to movement restrictions repeatedly, Sec. 85 No. 2 in relation with Sec. 56 para. 1 or 2 Asylum Procedure Act
- Unauthorised work, Sec. 85 No. 3 in relation with Sec. 60 para. 1 Asylum Procedure Act[477]
- Non-compliance with an executable accommodation order, Sec. 85 No. 4 in relation with Sec. 60 para. 2 Asylum Procedure Act

The maximum period of imprisonment as penal sanction for one of the above-mentioned offences is one year.
The so-called airport procedure (Flughafenverfahren) according to Sec. 18a Asylum Procedure Act was not considered a case of detention by the German Constitutional Court[478]. The court pointed out that the asylum seeker is not obliged to stay within the airport premises but free to leave by air. However, it may be argued that the reasons for this rulings[479] cannot be transferred upon the application of the directive. Nevertheless, it must be kept in mind that the airport procedure takes place before the asylum seeker is granted access to the territory of the Federal Republic of Germany.
The following answers must therefore be read with some caution as the airport procedure is not a typical form of detention as the questions seem to suggest.

Q.33. B. Has your member State adopted measures to transpose §3 of article 7 which is an optional provision? If yes, how has this provision been legally understood (is it a case of detention or an obligation to stay in and not leave a certain place?) and for which reasons can an asylum seeker be "confined" in such a place?

Art. 7 para. 3 of the Directive is not understood as a case of detention. However, restrictions on free movement are based on this provision. Even if asylum seekers are free to leave the reception centre or any other accommodation facility they are obliged to stay within the district of the aliens authority in charge. These restrictions apply to all asylum seekers and are considered necessary for reasons of effectiveness of the asylum procedure and of burden-sharing among the federal states and municipalities.

Q.33. C. Are there legally alternatives to detention, like obligation to report to the authorities, obligation to stay in a place, provision of a guarantor or of a financial guarantee?

[477] Not applicable at the moment due to changes in the system of granting access to the labour market. The prohibition to work is no longer imposed by an obligation, but can be deducted from the Residence Act.
[478] Judgement of 14 May 1996, File-No. 2 BvR 1516/93, BVerfGE 94, pp. 166 – 240.
[479] The question to answer by the Constitutional Court was if the airport procedure was a case of habeas corpus.

As far as the airport procedure is concerned, no.

Q.33. D. Which is the competent authority to order the detention of an asylum seeker? Explain if different authorities are involved to first take and later confirm the decision.

The airport procedure is the obligatory procedure for all asylum seekers flying into a German airport if they come from a safe country of origin or do not carry any valid documents. The decision if these preconditions are met is on the border authorities and may be appealed to the administrative court within three days.

Q.33. E. For how long and till which stage of the asylum procedure can an asylum seeker be detained?

For the airport procedure only: *The asylum seeker must be admitted to the Federal Territory if the Federal Office for Migration and Refugees announces that it is unable to decide on the asylum application within short term or if it does not decide within two days after application.*

If there is a negative decision by the Federal Office within two days, the asylum seeker has the opportunity to appeal against it within three days. If the administrative court does not decide on the asylum seekers appeal within 14 days, he must be admitted to the Federal territory. Altogether the airport procedure will not exceed 19 days, this period may however be some days longer as far as unaccompanied minors under 16 years are concerned as a guardian has to be appointed first.

Q.33. F. In which places (can we call them "closed centres"?) are asylum seekers detained (places in a special closed centres reserved only to asylum seekers, together with returnees like illegal aliens or even in a normal prison, in case within separated areas or with the other detainees)? Indicate if a difference has to be made following the location of the "closed centres" at the border or on the territory? Which is the authority managing those places and is it the same as the one in charge of reception conditions?

For the airport procedure only: During the airport procedure the asylum seeker is accommodated within the airport premises if it offers suitable facilities. If suitable facilities are not available at the airport, the asylum seeker is sent to a reception centre and is subject to the regular asylum procedure.

Q.33. G. Does UNHCR and NGOs have access to the places of detention and under which conditions?

For the airport procedure only: According to UNHCR, access to the transit areas is granted without restrictions to their representatives. This unproblematic practice is now safeguarded by a new provision in the Asylum Procedure Act[480].

[480] Sec. 9 para. 1 Asylum Procedure Act, see Federal Law Gazette I, p. 1970, 1996.

For NGOs, the situation seems to be diverse: Some NGOs, in particular the airport social services of the churches have unlimited access, sometimes they even have an office in the transit area. However, for some NGOs, in particular smaller ones, it seems to be more difficult to get access. Regarding this, is must however be kept in mind that it seems to be unavoidable to introduce certain restrictions to the access to the transit area in the airport. Transit areas are necessarily restricted areas for security reasons and an unrestricted access can therefore not possibly be granted.
The access of asylum seekers to adequate counselling by UNHCR and NGOs is safeguarded by the current practice.

Q.33. H. What appeal(s) can asylum seekers introduce against the fact he is detained? Is article 18 of the directive on asylum procedures of 1 December 2005 following which *"Where an applicant for asylum is held in detention, Member States shall ensure that there is a possibility of speedy judicial review"* respected (even if it has not yet to be transposed)?

See above (D)

Q.33. I. Is the directive on reception conditions considered to be in principle applicable to the places where asylum seekers are detained? In particular which information do they receive about their rights, which access do they have to legal advice and health care?

For the airport procedure only: The asylum seeker in the airport procedure must be given opportunity to contact a person of his choice to give him legal assistance (Sec. 18a para 2 Asylum Procedure Act). Furthermore, the provisions of the Asylum Seekers Benefits Act are in principle applicable to asylum seekers being subject to the airport procedure (Sec. 1 para 1 No.2 Asylum Seekers Benefits Act).

Q.33. J. Apart from freedom of movement, what are the main differences between normal reception conditions and exceptional modalities for reception conditions in case of detention, knowing that they should be "as short as possible" (see article 14, §8)? If it is about closed centres, are the regulations of those places in line with the requirements of the directive (is article 13, §2, second indent of the directive following which "*Member States shall ensure that standards of living is met (…) in relation to the situation of persons who are in detention*" respected?).

See above.

Q.33. K. Are measures taken to avoid detention of asylum seekers with special needs (if yes, which ones?) or are special measures taken because of their needs?

For the airport procedure only: Sec. 18a Asylum Procedure Act does not distinguish between different groups of asylum seekers. However, special needs

are met, as far as described in this report, by the provisions of the Asylum Seekers Benefits Act, which is applicable, see above.

Q.33. L. Can minor asylum seekers be detained together with relatives? Can unaccompanied minor asylum seekers be detained? If yes, are there special measures which take into account that children are concerned?

For the airport procedure only: Sec. 18a Asylum Procedure Act does not distinguish between different groups of asylum seekers. This means that no distinction is made between minors and adults in the airport procedure, a fact which is widely criticised by NGOs, as accommodation within the airport premises may effect hardships especially for unaccompanied minors[481].

Q.33. M. In particular is article 10 regarding access to education of minors respected in those places?

Not applicable as the airport procedure is strictly limited in time, see above.

Q.33. N. How many asylum seekers are for the moment detained in your Member State? Which proportion does this represent in comparison of the total number of asylum seekers at the same moment?

For the airport procedure only: In 2006, 601 persons were subject to the airport procedure. 313 of them were admitted to the Federal Republic after the Federal Office for Migration and Refugees had announced that it is unable to decide on their case within short term. After five years of continuously decreasing numbers of asylum seekers in the airport procedure, the numbers in 2006 were considerably higher than in 2005.

9. ORGANISATION OF THE SYSTEM OF RECEPTION CONDITIONS

Q.34. Explain if the system of providing reception conditions is centralised or decentralised (which levels of government do provide practically reception conditions?) (do not confuse this question with question number 3 about the competence to make rules about reception conditions).

In Germany, the system of reception conditions is decentralised. Reception centres are set up, maintained and managed under authority of the Länder. The same applies to other accommodation facilities. In some of the federal states the municipalities are in charge to organize reception facilities for asylum seekers who are not obliged to live in a reception centre anymore.

Costs for reception conditions are borne by the federal states. As far as municipalities are in charge for delivering reception conditions, they are refunded by the respective federal state.

[481] Cf. Helga Jockenhövel-Schiecke, Schutz für unbegleitete Flüchtlingskinder: Rechtsgrundlagen und gegenwärtige Praxis, Zeitschrift für Ausländerrecht und Ausländerpolitik (ZAR) 1998, pp. 165 – 175.

Q.35. In case, are accommodation centres public or/and private (managed by NGOs? If yes, are the NGOs financially supported by the State?)

This question cannot be answered in the same way for all federal states. E.g. in Bavaria all accommodation centres are managed by public authorities. In other federal states, accommodation centres are in part or completely managed by NGOs or private companies. The span of involved private organisations is very wide: In Berlin and Bremen the reception centres are managed by the Arbeiterwohlfahrt (Workers' Welfare), a charitable organisation whereas in Brandenburg the reception centre is managed by a private security company. These private organisations have in common that they deliver their services on the basis of a contract with the respective federal state.

Q.36. In case, how many accommodation centres are there in your Member State (distinguish in your answer between public and private centres)?

There are 18 reception centres in Germany (Date: March 31, 2007). It is, however, not possible to quantify the number of other accommodation facilities or provide details about the nature of their organisational structure as they are not centrally registered.

Q.37. Is there in the legislation a plan or are there rules in order to spread the asylum seekers all over the territory of your Member State to avoid their concentration in some areas like big cities or to share the costs of their reception between central, regional and local authorities?

Such a key exists in Sec. 45 Asylum Procedure Act. This so-called Königssteiner Schlüssel (Königstein Key) regulates the allocation of asylum seekers among the federal states to achieve a fair burden sharing. This key takes into account the population and the tax income of the different federal states. The federal states usually use a similar key to allocate the asylum seekers to several accommodation facilities within their territory.

Q.38. Does a central body representing all the actors (like NGOs) involved in reception conditions exist? Does it play a consultative role for the State authorities, a coordination role for the actors or any other role?

There is an advisory board at the Federal Office for Migration and Refugees consisting of experts from science, charitable and other non-governmental organisations, administrative courts, administrative bodies and lawyers. This board plays a consultative role. However, it is no central body which represents all NGOs as suggested in the question.

Q.39. **Q.39. A. Which is the body in charge of guidance, monitoring and controlling the system of reception conditions as requested by article 23 which**

is mandatory provision? Include in your answer which is the competent ministry (Interior, Social affairs, etc) for reception conditions?

Since the administration of reception conditions is organized by the federal states, there may be different structures of guidance, monitoring and controlling. In Bavaria, there is a commissioner for the reception of refugees who is directly responsible to the Ministry of Labour, Social Affairs, Family and Women. This commissioner is in charge to coordinate the reception centres and is authorised to give them orders. The highest monitoring authority is the ministry in charge which is in the case of Bavaria the Ministry of Labour, Social Affairs, Family and Women[482]. In Saxonia no such commissioner exists and the highest monitoring authority is the Ministry of the Interior[483]. In Hamburg it is the Office for Social and Family Affairs[484]. In Hesse the Ministry for Women, Labour and Social Affairs is the highest monitoring body[485]. In Berlin a special body, called "Begleitende Heimverwaltung" is responsible for the monitoring of privately managed accommodation facilities[486].

Q.39. B. Has your Member State (like the Czech Republic did recently) approved quality standards (not necessary legally binding) for housing services (for instance about the number of persons per bedroom on the basis of its size, number of accessible toilets, bathrooms, showers and washing machines per number of persons, existence of common rooms with radio, television, newspapers, books, computers, accessibility of telephone, existence of recreative rooms for children,…) to be respected in particular in accommodation centres?

There are no such standards on the federal level. Federal states are competent to organize the system of accommodation facilities. Therefore standards can be defined by them. An exhaustive overview is not possible, to our knowledge not all federal states have adopted quality standards. Mecklenburg-Western Pomerania has adopted a regulation on minimum standards for shared accommodation facilities[487]. It stipulates that not more than six persons shall be allocated to one bedroom and that a minimum of 6 m² shall be available per person. It further stipulates the minimum equipment with furniture and kitchenware and standards for washrooms and shared kitchens. If housing to children is provided, accommodation facilities must be equipped with a playroom and provide room for schoolchildren to do homework.

[482] Cf. Regulation on the Implementation of Asylum (DV Asyl) of 4 June 2002.
[483] Cf. Sec. 2 of the Saxonian Act on the Reception of Refugees of 13 February 2003.
[484] Cf. Order on the Implementation of the Act on Benefits for Asylum Seekers of 31 January 1994.
[485] Cf. Sec. 6 of the Regulation on the Implementation of the Act on Benefits for Asylum Seekers of 16 November 1993.
[486] Cf. Practice Report Berlin, Q.19.B.
[487] See attachment

Q.39. C. How is this system of guidance, control and monitoring of reception conditions organised?

There is a system of monitoring which is more or less the same for all administrative structures. According to this system, the administrative level ranking higher in the hierarchy is authorised to control the lower level in terms of legality and expediency of administrative acting. The highest ranking level in this hierarchy is usually the competent ministry. Additionally, there is a monitoring system with regard to the proper performance of duties by the officers which is structured alongside the same hierarchy but is dominated by the Ministry of the Interior of the concerned federal state.
There is, however, no specific monitoring system with regard to the quality of reception conditions.

Q.39. **D.** Does the body in charge of guidance, control and monitoring produce reports about the level of reception conditions? If yes, how frequently and are they public?

No.

Q.40. **Q.40. A.** What is the total number of asylum seekers covered by reception conditions for the last year for which figures are available (see article 22 obliging Member States to calculate those statistics about which we also asked the Commission to require them from Member States for mid June)?

In 2006, 193'562 persons received benefits under the Asylum Seekers Benefits Act (date: 31 Dec 2006)[488]. **However, not all these persons were asylum seekers, neither do all asylum seekers receive benefits under the Asylum Seekers Benefits Act** since they may have sufficient funds to maintain themselves, receive a working income or are entitled to regular social aid after 36 months of permitted stay in Germany. This becomes clear when comparing these numbers with the total number of asylum seekers in Germany: On December 31, 2006, only 8,835 asylum applications were pending with the Federal Office for Migration and Refugees plus 40,221 pending actions in the courts. 21,029 new asylum applications were lodged in 2006, compared with 28,914 in 2005[489].

Q.40. B. What is the total budget of reception conditions in euro for the last year for which figures are available?

[488] Source : Federal Office for Statistics.
[489] Source: Federal Office for Migration and Refugees.

In 2006, 1.17 billion Euro have been spent on benefits under the Asylum Seekers Benefits Act[490]. **However, this number has to be read with the same reservations as above.**

Q.40. C. What is the average cost of reception conditions in euro per asylum seeker for the last year for which figures are available?

The average cost for reception conditions can hardly be determined since they depend on too many factors: the type of accommodation facility, if single men/women or families are concerned, if unaccompanied minors are concerned, the stage of the asylum procedure etc.

Q.40. D Are the costs of reception conditions of asylum seekers supported by the central/federal or federated government or are they shared with regional and/or local authorities?

Reception conditions are financed from the budgets of the federal states (Länder).

Q.40. E. Is article 24 § 2 of the directive following which "*Member States shall allocate the necessary resources in connection with the nationals provisions enacted to implement this directive*" respected?

This question is difficult to answer since the funding may differ between the federal states. As far as reception conditions are provided by the federal states, one can assume that they are soundly financed. There are enough accommodation facilities to house all asylum seekers and no problems occur with regard to social benefits granted by the federal states directly.
However, it is difficult to assess the allocation of the necessary funding when reception conditions are provided by private organisations. State funding for NGOs providing counselling and psychological help was reduced in the last years, mostly due to the fact that numbers of asylum seekers were on a constant decline. These shortenings have nevertheless caused a reduction of services offered by these organisations. Thus, especially the counselling of persons with special needs may in some cases be insufficient as Practice Reports indicate.
NGOs also criticise that the number of qualified personnel is insufficient in some accommodation facilities.

Q.41. **Q.41. A.** What is the total number of persons working for reception conditions?

No figures available, due to federal structures and cooperation with NGOs and private companies.

[490] Source : Federal Office for Statistics.

Q.41. B. How is the training of persons working in accommodation centres organised? Does it take into account specific needs of unaccompanied minors when relevant as well as the gender dimension? (see article 14 §5, 19 § 4 and also 24 §1 which are mandatory provisions)?

Reception centres and accommodation facilities are run by the federal states, thus, hiring and training of personnel is within their responsibility, too. In federal states where accommodation facilities are run by private organisations or companies the training of personnel is sometimes not regulated at all (so in Saxony). A general statement can therefore not be made. Practice Reports indicate that personnel is trained in education seminars[491] at regular intervals. The federal state of Mecklenburg-Western Pomerania has adopted guidelines for running accommodation centres which include requirements for the qualification of the personnel. Lower Saxony says it employs skilled social workers who are, due to their special training, qualified to meet the special needs of male and female asylum seekers[492]. Similar information is provided by the Federal State of Baden-Württemberg. NGO statements suggest that the staffing with qualified personnel is insufficient in some facilities[493].
NGOs working with refugees train their personnel within their own responsibility[494].
Unaccompanied minors are accommodated in special facilities where adequately trained personnel is employed.

Q.41. C. Are there rules about the deontology of persons working in accommodation centres, in particular on confidentiality?

Personnel working in the public sector are obliged not to disclose confidential information. The violation of this public duty is considered a criminal offence. Most NGOs have a similar policy. Violations may lead to instant dismissal.

10. IMPACT OF THE DIRECTIVE

Legal impact of the transposition of the directive:

Q.42. Specify if there are or not big problems with the translation of the directive in the official language of your Member State and give in case a list of the worst examples of provisions which have been badly translated? (please note that this

[491] Cf. Practice Report Bavaria Question 21.
[492] Cf. Practice Report Lower Saxony, Answer A.9.
[493] Cf. Practice Report Pro Asyl, Answer A.9.
[494] Cf. Practice Report Caritas Question 21.

question has in particular been added to the questionnaire concerning the new Member States)

The word reception conditions as such causes some difficulties. In German, it is translated as "Aufnahmebedingungen", which is correct as far as the total situation is concerned but can hardly be used for individual benefits or services.

Q.43. Where there precise legal rules on reception conditions for asylum seekers before the adoption of the norms of transposition of the directive (if yes, specify what the nature of those rules was (legislation, regulation, administrative instructions,…)?

Yes, there were precise legal rules before, mainly in the Act on Social Benefits for Asylum Seekers. Thus, the Directive did not lead to major changes in the legislation.

Q.44. Did the legal rules applicable to reception conditions become more clear, precise, coherent or detailed with the adoption of the transposition norms (for instance do you now have after the transposition one basic text dealing with reception conditions instead of numerous different texts in the past?

see above.

Q.45. Did the transposition of the directive imply important changes in national law or were the changes of minor importance? In case, list the most important changes that have been introduced.

There have been no fundamental changes in national legislation due to the directive. As mentioned above, some amendments to the existing legislation have recently been adopted by parliament[495].

Political impact of the transposition of the directive:

Q.46. Explain briefly if there has been an important debate about the transposition of the directive (in particular in the Parliament, but possibly also in the government, between political parties, including in medias, etc; underline in case the main points which have been discussed or have created difficulties)

There was no such debate since the government did not see the need for any major changes in national legislation. According to UNHCR some discussion took place among practitioners, however, this discussion did not lead to a wider debate. Even in academic circles, the directive and potentially necessary amendments to national law were not widely discussed. This is also the reason why not much has been published on this subject.

[495] see Federal Law Gazette I, p. 1970.

Q.47. **Did the transposition of the directive contribute to make the internal rules stricter or more generous? In particular, did your Member State use the occasion of the transposition to abolish more favourable provisions of national law? Does your Member State still have rules more favourable than the provisions of the directive (if yes, try to give the more important examples).**

The recently adopted Act on Transposition of Several EU Directives in the Field of Immigration and Asylum did not lead to considerable changes in the system of reception conditions. The information of asylum seekers about their rights especially with regard to reception conditions will presumably improve. Reports from the Federal States indicate that information sheets in different languages are at least under preparation.
In general, the standard of reception conditions has remained unchanged. The Directive thus has neither led to a lowering of standards nor to the establishment of more favourable rules (apart from the information issue).

11. ANY OTHER INTERESTING ELEMENT

Q.48. What are in your view the weaknesses and strengths of the system of reception conditions in your Member State?

One clear weakness is the system to assess the age of minors who do not have any documents showing their age. Since there is no legal basis for an X-ray examination of the carpal bone, which would deliver reliable results, the assessment is done by mere estimate. Since reception conditions are different dependent on the age of the asylum seeker, this practice needs to be improved.
The problem used to occur for all groups of aliens, however, the recently adopted Act on Transposition of Several EU Directives in the Field of Immigration and Asylum introduced such a legal basis in the Residence Act[496]. This provision is not applicable to asylum seekers, though, as the Asylum Procedure Act includes in Sec. 16 a special provision on identification measures which still lacks an authorisation for X-ray examination.

Q.49. Mention any good practice in your Member State which could be promoted in other Member States

The decentralised accommodation of asylum seekers helps to establish relatively small units in which internal tensions can be reduced more easily. Individual needs of asylum seekers may be identified easier and the work of local charity organisations is facilitated. These are rather atmospheric factors but they may help to avoid unnecessary hardships for asylum seekers. On the other hand this system makes it more difficult to establish and monitor common standards.

[496] Sec. 49 para. 6, see Federal Law Gazette I, p. 1970, 1980.

Q.50. Please add here any other interesting element about reception conditions in your Member State which you did not had the occasion to mention in your previous answer.

QUESTIONNAIRE FOR THE NATIONAL REPORT ON THE IMPLEMENTATION OF THE DIRECTIVE

:

RECEPTION CONDITIONS OF 27 JANUARY 2003

IN: GREECE

by

Chrysafidis (surname) Agis (name)

International and European Law Attorney

apchrys@yahoo.com

8/11/2007

1. NORMS OF TRANSPOSITION

Q.1. Identify the main norm of transposition (indicate the title, date, number, date of entry into force and references of publication into the official journal) and indicate its legal nature (legislative, regulatory, administrative); indicate in your answer if this norm was only devoted to the directive or if it has been included in a more general text and indicate in that case by quoting precisely the numbers of the provisions adopted to transpose the directive.

LAW: Presidential Decree (PD) 220/2007 (*OJHR 251/13-11-07)*: "Adaptation of the Greek legislation to the provisions of Directive 2003/9/EU of the Council of January 27, 2003, about the minimum requirements for reception of asylum applicants in Member States (EEL 31/6.2.2003)". This law whas just been enacted and communicated to us today 21/11/2007.

The Greek legislative system on asylum is basically based on laws (hereinafter indicated as: Acts) and a number of Presidential Decrees that delineate the conditions of application of these laws.

A Presidential Decree is a legislative instrument but does nor go through a regular parliamentary vote. It is agreed upon by the various Ministries involved and is enacted directly after it is sanctioned by the President of the Republic.

Q.2. List by order of importance by using numbers (1, 2, 3) the others norms of transposition if there are more than one (indicate for each norm the title, date, number and references of publication into the official journal; include in your answer the administrative measures taken to ensure implementation of the directive and of the transposition norms like regulations, administrative circulars, special instructions,…)

N/A

Q.3. Explain which level of government is competent to adopt the legal norms on reception conditions for asylum seekers (specify in particular in case of a federal or regional State, if it is the federal/central power or the components; in case, specify below when it is impossible for you to answer a question because it is about the competence of the components and it is impossible for you to gather reliable information about all of them)

In Greece it is the Executive that adopts legal norms on reception conditions through Presidential Decrees (by direct transposition of European Directives into national law).

There is only one level of government competent to adopt legal norms on reception conditions and this is the central government of the Greek State.
The two main Ministries involved are the Ministry of Public Order (MPO) handling the processing of asylum applications and part of reception conditions relative to detention or "closed centres" and the Ministry of Health and Social Solidarity (MHSS) handling reception conditions relative to the funding of reception centres. The MPO is in charge of the legal framework on refugees and is responsible for the publication of the PD in the Official Journal of the Hellenic Republic (OJHR) (final provision of the PD).

Even though the MPO cooperates with the Ministry of Foreign Affairs in matters of Asylum practice, the former is the sole administrative branch directly competent for the administration of asylum applications.
Other Ministries involved are the Ministries of Labour, the Ministry of Education, the Ministry of Interior, the Ministry of Justice and the Ministry of Finance.
The Ministry of Interior, Public Administration and Decentralisation (IPAD) is responsible for issues of nationality, regular migration and integration of migrants. It is the responsibility of the ministry of Public Order (PO) to exercise control over the legality of migrants, to pass and implement decisions on administrative expulsion, to examine the asylum demands and to provide the Ministry of IPAD with data on nationality issues. Following the September 2007 national elections and the re-election of the National Democracy Party the two Ministries of Public Order and the Ministry of Interior have now merged into one Ministry.

Q.4. Explain the legal technical choices done to transpose the directive (comment on the nature and level of the norms used to do the transposition: legislative, regulatory, administrative like instructions, etc). Add any other element about the technique of transposition of the directive which is interesting for the implementation of Community law.

The basic instruments used for the transposition of the Directive were the Greek version of the Directive in conjunction with the above mentioned legislative instruments and in particular:

a) art. 4 of Act 1338/1983 (Application of Community Law) as amended by articles 6 par. 4 of Act 1440/1984, 7 of Act 1775/1988, 31 of Act 2076/1992, 19 of Act 2367/1995, 22 of Act 2789/2000 and 48 of Act 3427/2005;

b) art. 24 of Act 1975/1991 as replaced by art. 1of Act 2452/1996;

c) art. 90 of the Code of Legislation for the Government and for Government Instruments (PD 63/2005) as well as art.1, par. 4 of Act 2469/1997;

d) The Common Decision by the Prime Minister and the Minister of Economy and Finances ("Determination of Competences of Deputy Ministers of Economy and Finances") 37930/DIOE 1264/14.10.2005;

e) The opinion of the Council of State, following a proposal by the Ministers of Interior, Public Administration and Decentralization, Economy and Finances, External Affairs, Education, Employment and Social Affairs, Health and Welfare and Public Order.

Q.5. Mention if there is a general tendency to just copy the provisions of the directive into national legislation without redrafting or adaptation them to national circumstances? If yes, give some of the worst examples and explain if there is a risk that those provisions remain unapplied or will create difficulties of implementation in the future.

In general there is such a tendency but where national practice has exceeded minimum standards the provisions have been re-drafted and expanded upon. There are only a couple of examples of direct copying of provisions which would run the risk of remaining unapplied: for example, Art. 17.1 of the Directive, on Provisions for Persons with Special Needs requiring the Member State to make provisions in the national legislation for these persons, has been transposed by PD art. 17 in such a way as to pass in very general terms this responsibility down to lower local authorities.

Q.6. Have all the texts necessary to ensure the effective implementation of the new rules of transposition been adopted, prepared or at least foreseen in the future (for example a regulation completing a new law and the necessary instructions telling the administration how to apply the new rules)?

Please see answer to Q1 above.

2. BIBLIOGRAPHY

Q.7. Has an in-depth preparatory study been made public about the changes at the occasion of the transposition? If yes, thanks for trying to provide us a copy *(please contact to answer this question adequately the body and person who was responsible for the preparation of the transposition of the directive in the public administration).*

If any study of that kind has been prepared, it has not been made public.

Q.8. Quote any recent scientific book or article published about the directive, the transposition rules or the question of reception conditions for asylum seekers in general (answer even if this literature is only available in your language and provide the complete title in your language (without translation) with all references; indicate author, title, in case name of periodical, year and place of publication).

There have been certain relevant articles on the status of refugees and asylum seekers which are mentioned in the bibliography to the present report, but, to our knowledge, not any specific study on the Directive on Reception Conditions in Greece.

Q.9. Quote any interesting decision of jurisprudence based on the implementation of the new rules of transposition of the directive (indicate references of publication if any)?

There are no such decisions available, because transposition has not yet taken place.

3. GENERAL INFORMATION ABOUT THE SYSTEM OF RECEPTION CONDITIONS

The purpose of the following two questions is to help the reader to understand easily and quickly the system of reception conditions in your Member State and also to avoid that you have to repeat general elements in other parts of the questionnaire. ***Please do not write more than one or maximum two pages and do not include large historical developments.***

Q.10. Describe in general the system of reception conditions in your Member State (in particular which are the main actors in charge of reception conditions?)

Note: The answer to this question relates to the current status of asylum-seekers, but not to the PD.

The MHSS, as the main funding and supervisory state authority in charge of reception centres and the NGOs dealing with the basic administration of those centres can be considered as the main actors in charge of reception conditions.

The MPO, through the police authorities, is charged with receiving the claim (orally or in writing, but always in the physical presence of the claimant) and supplies the asylum seeker with written information, in the form of a booklet, mentioning the procedure and the rights of the claimant as well as the refugee assisting organizations.

In Athens, where the number of refugee claims as compared to the available

manpower for processing them is disproportionately high, the MPO is supposed to provide "in-service" notes or "white notes" with the applicant's name and photograph and the date of the scheduled first interview for consideration of the claim by a member of the police department.

Regardless of the decision following the interview (a negative decision is appealable before the Secretary General of the MPO, whose decision is based on the advice of an Appeals Board which hears the claimant's representation and which consists of officials from the MPO, the Ministry of Foreign Affairs, a representative from the Athens Bar Association and a representative from the UNHCR) a claimant is issued following the interview a "pink card" with the applicant's name, address and photograph and a description of the rights and obligations of an asylum applicant, such as the right to free medical care by the National Health System and the right to work. This is a 6-month duration (renewable) document that serves as the applicant's only identification while his case is being processed.
The applicant can then apply for a work permit, which is subject to the applicant not residing in a reception centre and a preliminary search of the market having resulted in a profession in which there is no express interest by a Greek citizen, a EU citizen, an expatriate Greek or a recognized refugee. This latter requirement is almost never applied in practice, as asylum applicants do not apply for a specific profession and the manual employment which is usually available to them does not belong to any "sought after" professions of the Greek market.

Though there seem to be administrative guidelines (an internal memo from the MHSS) according to which holders of the "in-service note" have access to the health system, other information gives a different picture on the conduct of the authorities. It seems that the authorities do not provide "in-service notes" but instead they return to applicants a copy of their application, stamped by the Ministry of Public Order. This document is not covered by the MHSS memo but is being accepted by hospital authorities in emergency health needs. Moreover, according to our information from UNHCR Greece, the authorities now try to practically make documents such as the "in-service notes" or "pink cards" redundant, by increasingly applying the accelerated procedure to all applications, treating them as abusive, while they issue invariably negative decisions within a relatively short (compared to the previous delays of up to one year, under the regular procedure) period of time (2-3 weeks).
In addition to the MPO and the MHSS, other important actors in the reception of asylum seekers are the UNHCR (which undertakes monitoring of legislation, procedure and reception conditions, is informed about the outcome of all asylum cases, is represented on the Appeals Committee, finances the training of school teachers and publishes yearly reports and recommendations on the improvement of asylum conditions in Greece) and a number of Greek NGOs.

Such NGOs are:

The Greek Council for Refugees, which runs social and benefit programmes for asylum seekers for whom a positive application outcome is expected, offers legal representation to refugee seekers, supplies interpreters and runs training programs for police staff;

The Greek Red Cross, which administers the Lavrio reception center;

The International Social Services, which runs social assistance and education programmes in the Lavrio reception centre;

The following Non Governmental Organizations asylum seekers with different kinds of aid according to their specific scope and activity programmes:

Solidarity of the Church of Greece;
Social Work Foundation;
Amnesty International;
Medical Rehabilitation Centre for the Victims of Torture;
Doctors Without Frontiers (Medecins sans Frontiers);
Doctors of the World (Medecins du Monde);
Centre for Support of Repatriated Immigrants (INTO-HELLAS);
Network of Social Support for Refugees and Immigrants;
ARSIS , Social Organization for the Support of Youth (Athens);
ARSIS , Social Organization for Youth' Support (Thessaloniki);
PRAKSIS;
Voluntary Work Athens;
ELINAS Greek Institute for Solidarity ad Cooperation;
Medical Intervention (MedIn);
Marangopoulos Foundation for Human Rights;
CARITAS;
KENTRO ZOIS;
KLIMAKA;
Social Solidarity;
Mother Tereza;
Ecumenical Refugee Programme;

also, The International Organization of Migration (IOM)

Q.11. A. Explain if you have different types and levels of reception conditions following the different stages of the asylum procedure (this implies that you have to give briefly the necessary explanations about the asylum procedure). Make if relevant for reception conditions a distinction between the following procedural stages: determination of the responsible Member State on the basis of the Dublin II regulation, special procedures at the border (including transit zones in airports), accelerated procedures, admissibility procedures, eligibility procedures and the different possibilities of appeals (suspensive or not) against a refusal of the asylum request. Indicate what the main differences of reception conditions are between the different stages (if necessary by detailing between the different elements of reception conditions, in particular housing) and explain what the evolution of reception conditions is following the different stages of the procedure.

Note: The answer to this question relates to the general status of asylum-seekers under the current law, but not to the draft PD.

The asylum procedure in Greece (PD 61/1999)

An asylum application may be lodged by an alien at any time after his/her entry to Greece or at the border, to any public authority, orally or in writing.

The two procedures for examination of asylum applications are: Accelerated Procedure (when the persecution claim is manifestly unsubstantiated, fraudulent or abusive of the asylum procedure, when submitted at a seaport or airport point of entry or when applicants arrive from a safe third country where they run no risk of persecution) and the Regular Procedure.

Accelerated Procedure

Asylum seekers who apply at the border are held pending the outcome of the accelerated procedure, which may take from one to fifteen days, depending on whether an appeal is filed or not.

Where the alien's application is submitted upon arrival at an airport, the applicant waits in the international zone (an area which extends from the point of embarkation and disembarkation to the point of passport control and which includes the transit area) or in other special areas within or outside the airport ("surveillance areas"), designated by ministerial decision for the accommodation of asylum seekers, while his application is examined.

Surveillance areas are under the responsibility of the port authorities and are guarded by the police. Men and women are usually separated, food is provided and washing facilities are made available.

NGOs , in cooperation with UNHCR, have access to the asylum seekers in the surveillance areas and may provide assistance and counselling.

In ports of entry without a surveillance area (such as a seaport) the police are responsible for providing applicants with accommodation, food and washing facilities.

In cases of abusive or manifestly unfounded claims or claims by travelers arriving from safe third countries, the "Regular Accelerated Procedure" applies.

In case the application is lodged at an airport the application is considered the same day through an interview conducted by the police security department of the airport and the supporting documents are dispatched within ten days to the Minister of Public Order[497].

If the application is rejected there is a right of appeal to the Secretary General of the Ministry of Public Order. The appeal must be lodged within ten days from the date of service of the decision of rejection. The Secretary General of the Minister of Public Order must pronounce on the appeal within thirty days from the lodging of the appeal.

For applications submitted in the transit zone of the international area of an airport the "Super-Accelerated Procedure" or "On-the-Spot" Procedure is used and more restrictive rules apply: the supporting documents are dispatched within 24 hours to the Minister of Public Order where a decision is taken within 15 days by the Head of Police, Security and Order Division of the Ministry, according to recommendations made by the Department of State Security of the Ministry. During this period, the applicant is detained in a specially modified area of the airport and if a final decision is not reached within the 15-day period they are released in the Greek territory.

[497] When an application is considered manifestly unfounded but has not been lodged at a seaport or an airport the supporting documents for an accelerated procedure are also submitted to the Ministry within ten days.

If the application is rejected there is a right of appeal to the Secretary General of the Ministry of Public Order. The applicant must lodge his/her appeal, which has a suspensive effect, within five days from communication of a negative decision. The Ministry of Public Order must pronounce its decision on the appeal within fifteen days.

In practice, the Greek authorities have been unable to implement the Accelerated Procedure within the prescribed time limits since the advisory Appeals Board which hears all appeals to first instance negative decisions, whether abusive or not and independently of the procedure (Regular or Accelerated), meets only once every week and examines on the average fifteen cases per week.

Dublin II Cases

Asylum applicants subject to the Dublin II regulation are only kept two days in the surveillance areas where they are finger-printed and photographed, following which they are released to the Greek territory pending the arrangements with the state which is supposed to examine their application, during which period they benefit from reception conditions.

Regular Procedure

Upon expressing their wish to seek asylum at the Athens Aliens Police Department the applicants are supposed to receive a “white note” or “in-service note” with their name, photograph and date on which their application was submitted and the date of the examination of their application (interview) and with the indication: “the alien mentioned here-above has appeared today before our department [the Aliens Department of Athens-Asylum Office] to apply for political asylum and the starting date for the examination procedure of his application is set for [date]”).

In practice though, the asylum seeker deposits an application form, copy of which is returned to him stamped by the authorities - this substitutes the “white note” - This receipt does not constitute any proof of status but only confirms that a **request** for **examination** of a claim has been made. In theory, the police must interview an asylum seeker within three months from submission of his claim (Presidential Decree 61/1999) but in practice this appointment is postponed several times, resulting often in delays of over one year, partly due to lack of trained personnel and interpreters.

During this period the applicant is protected from readmission (refoulement) but does not enjoy the social rights and benefits enjoyed by refugee claimants whose examination of application has already begun.

This practice leaves asylum seekers without an asylum seeker's status, which would allow them to seek accommodation or take up work and without any means of subsistence for periods usually exceeding one whole year.
However, according to written information the authors of this report have received from the MPO, holders of the "in-service note" benefit immediately from free health services, they can immediately be accommodated in reception centres (subject to space availability) and they receive the right to immediate employment in order to cover their basic needs (as long as they do not benefit from reception centre accommodation)[498].
Following the interview, the file and interview records are transmitted to the Ministry of Public Order where after further evaluation a decision is issued by the Secretary General of the Ministry of Public Order following the recommendation of the Ministry's Department of Internal Security.
The decision must be reasoned and mention the deadline for an appeal (which is thirty days from the serving of the decision) and the consequences, if no action is taken within this period. However, in practice such decisions are invariably in "form type" and do not contain reasons for the decision based on the merits of the particular case, simply mentioning that the applicant was found ineligible under all of the criteria justifying the granting of refugee status.

An appeal is heard by the Appeals Board, a six-member consultative committee[499], and has suspensive effect. The Minister must pronounce within ninety days upon the opinion provided by the Appeals Board, but this opinion is not binding on the Minister and there has been a practice (denounced by the Greek Ombudsman and the NGOs) whereby the Minister issues negative decisions in spite of unanimous positive opinions by the Appeals Committee..

If the appeal is rejected the Minister considers whether the applicant may remain in the country under the humanitarian regime or be requested to leave the country within a three month period.

Once an appeal is rejected an asylum seeker loses his "pink card" and all the social benefits that it bestows upon him.

A request for annulment of the second instance (appeal) decision may be filed with the Council of State (the supreme administrative court of the country) within sixty days following notification of the negative decision by the MPO and does not have suspensive effect. In spite of the Greek Constitution's guarantees of a right to a fair trial and to an appeal for annulment before the Council of State of any administrative act (Art. 20, para. 1 and Art. 95 of the Greek Constitution), which includes an appeal against the rejection of an asylum request, the suspension of an expulsion is at the discretion of the Council of State and the exercise of that remedy does not suspend the decision of the administration to expel the applicant.

[498] Letter of 18/10/2006 by Mr. D. Panopoulos, Director General of the Aliens Department , MPO
[499] The Appeals Board consists of: a) the Legal Adviser of the Minister of Public Order as chairman, b) an employee of the diplomatic branch of the Ministry of Foreign Affairs, c) a legal adviser of the Ministry of Foreign Affairs, d) a senior officer of the Greek Police, e) a representative of the Athens Bar Association and f) the legal adviser of the UNHCR office in Athens

Applicants who are dealt with under the Regular Process are required to stay at a place of residence chosen by them or assigned by the authorities for the whole period of examination of their claim and although there is no direct control as such, they must report any change of address to the police. Failure to do so will result in interruption of the asylum procedure by order of the Secretary General of the MPO and loss of any social privileges, unless, within three months time, the applicant can justify his absence due to *force majeure*.

If a residence has been assigned to the applicant by the police the applicant needs a police authorization prior to changing this residence. On the alternative, an applicant may choose to stay in a residence of his own choice, provided that he notifies the police authorities of any changes thereafter.

The interruption of the asylum procedure and loss of social privileges was a usual occurrence in Dublin II cases where an applicant, exasperated by the long waiting periods in the Greek refugee application system, sought to enter another EU state and claim asylum there but was subsequently returned by this state's authorities to Greece, by application of the Dublin II regulation. In such a case, Greek authorities considered the applicant as having abandoned his place of residence without notifying the authorities and interrupted the asylum procedure. The asylum seekers then found themselves in limbo, not being able to claim refugee status in any EU country and being completely deprived of social benefits.
On this practice, we were informed by the MPO that in a letter of 14/6/2006 the Minister of Public Order of Greece notified the European Commission that this practice was no longer followed. Instead, the asylum application procedure of a refugee applicant returned to Greece through Dublin II was resumed at the point it was interrupted.

The accumulated delays in processing regular asylum applications sometimes exceed three years, while the accelerated procedure, including both first and second instance decisions can last up to three or four months.

Q 11. B. Indicate precisely for which stage(s) of the asylum procedure the answers on reception conditions you give below are valid.

4. GENERAL RULES ON RECEPTION CONDITIONS

Q.12. A. Are material reception conditions provided in kind, in money or in vouchers or in a combination of these elements (see article 13, §5 which is an optional provision)? Distinguish between the different elements (housing, food, clothes, health, transportation, pocket money,…). **If reception conditions are provided in money (in general or in some cases, for instance when no places are anymore available in accommodation centres), indicate the precise amount given to the asylum seekers. Indicate in your answer what is provided in general and if there are exceptional cases.** Specify in your answer if reception conditions are different from the general system of social aid for nationals or

aliens and if yes, if and when (which stage of the asylum procedure) can asylum seekers have access to the general system of social aid?

Practice: In Greece there are no legal provisions offering asylum seekers a right to social assistance, either in currency or by vouchers.
An asylum seeker holding a valid asylum seeker's document ("pink card") and not staying at a Temporary Residence Center (refugee shelter) has access to temporary employment in the private sector, provided that the particular employment is of no interest to Greek nationals, other EU citizens or recognized refugees (the Community preferences are abolished by the draft PD; please see below answers to the relevant questions).
Social assistance, such as a minimum income guarantee, is also unavailable to the native Greek population (unless they are insured, disabled or elderly) and the general relief of poverty is left to private charity and to NGOs' social programmes for the most vulnerable groups in society.
However, Reception Centres provide material reception conditions "in kind" (food, clothes and shoes, personal hygiene products etc.), according to their budgetary means. Certain reception centres cover the necessary needs of asylum applicants, providing adequate number of beds, clothing, nourishment and proper conditions of hygiene, while others do not.
A 2004 UNHCR report on these conditions is available at www.unhcr.gr.

PD: PD art. 12. 5 mentions a "stipend" covering the asylum applicant's daily expenses to be made available according to provisions of Law 57/1973 and according to administrative decisions that are occasionally issued on this subject, but there is no specific mention of the amount an asylum seeker is to be awarded for his daily expenses.

Q 12. B. Can the reception conditions in kind, money or vouchers be considered as sufficient "to ensure a standard of living adequate for the health of applicants and capable of ensuring their subsistence" as requested by article 13, §2 of the directive (which is a mandatory provision but leaves a certain space to Member States)? In order to help to assess the respect of this rule when reception conditions are provided in money, include if necessary in your answer points of comparison with the minimum amount of social aid guaranteed for nationals in your Member State.

To our opinion, not. In the opinion of the Greek Council of Refugees housing and food, when provided in reception centres, ensure a standard of living adequate for the health and the subsistence of the applicants.

Furthermore, in view of the current situation as outlined in answers to Questions 10 and 11 above and Question 14 below and the lack of explicit provisions in the PD for alleviation of the long delays before an applicant can start enjoying reception conditions, it is obvious that the current and perhaps the future (PD) situations are in violation of articles 13.2 and 13.2 of the Directive. Art. 5.1 of the PD provides for issuance of a document, called "certificate of an applicant for refugee status", to be supplied to the asylum applicant within three days from submission of an asylum application and after the results of finger-printing, but there is no mention to the effect that this document confers reception rights and that is any different from

the current “in-service note”. Furthermore, this “certificate” is not provided to those applying at the border or while an asylum applicant is in detention. This “certificate” is not an identity document.

5. PROCEDURAL ASPECTS

Q.13. A. Does the national legislation specifically provide that a request for international protection is presumed to be under the Geneva Convention unless explicitly requested otherwise? (see article 2b which is a mandatory provision)

Practice: No such provision exists in the national legislation

PD: PD art. 1b (Definitions) provides for such a presumption. An individual may explicitly request protection on humanitarian grounds. If no such request is made explicitly this is done automatically after a request is rejected as not fulfilling the criteria of the Geneva Convention.

Q. 13. B. Explain if the scope of application of reception conditions is extended to other asylum seekers than refugees in the sense of the Geneva Convention, in particular to persons asking for subsidiary protection or to other forms of protection like humanitarian statuses (see article 3, § 4 which is an optional provision)? If not, explain briefly which the differences between these special regimes and the directive are.

PD: PD art. 1b defines as asylum applicants all those who seek international protection, unless an application for subsidiary protection (which includes cases in which the individual is threatened with death penalty, torture, inhuman or degrading treatment or punishment, or is going to find himself in the midst of generalized violence in the country of origin, or if his return is not possible for objective reasons beyond his control, or when he is unwilling to avail himself to the protection of the country of origin) is filed explicitly as such from the start.
Art. 22 of the draft PD provides for extension of the provisions of the Directive to humanitarian cases, according to Law 2452/1996 (*OJHR A -283*).

Q. 13. C. Are there specific provisions in national law for reception conditions in case of diplomatic or territorial asylum requests submitted through a diplomatic or consular representation (see article 3, §2 which is an optional provision)?

Practice: There can be no diplomatic asylum requests in Greek diplomatic missions outside Greece. The only acceptable asylum requests must be filed on Greek territory.

PD: PD art. 2 covers all applicants of third countries as well as their families who request international protection while on Greek territory but it excludes applications submitted through diplomatic or consular representations outside the Greek territory as well as cases covered by PD 80/2006 on Temporary Protection through Mass Influx of Displaced Aliens.

Q.14. Are reception conditions available as from the moment one asylum application is introduced? How is article 13, §1 which is mandatory legally understood? Do asylum seekers have to satisfy any other condition in order to get reception conditions?

Practice: Reception conditions are only introduced from the moment the applicant goes through the first interview and receives his "pink card", which has a six month duration, is renewable and provides him with social benefits (such as residence at a reception centre, free medical and health care and the possibility to apply for a work permit), but **not from the moment he files his application** (when he receives the "white note" or "in-service note" scheduling his interview and gets finger-printed). However, vulnerable cases (elderly, unaccompanied minors, pregnant women, families with minors) are accommodated immediately (subject to availability of spaces) to reception centres, through the intervention of NGOs.

Health coverage can be provided earlier than the first interview, because even though formally the applicant will only be entitled to medical and hospital services after he obtains his "pink card", the MHSS has circulated a memo directing health service providers to accept patients who only possess an "in-service note".

PD: Art. 5.1 of the PD provides for a certificate ("deltio") attesting to the status of the claimant, to be provided after the results of finger-printing and in any event not later than three (3) days following submission of the application. This certificate, which is not provided in case an application has been submitted at the border or while an asylum seeker is detained, has a six month duration, is renewable and does not constitute an identification document. There is no mention however to the effect that this document confers reception rights **immediately after an applicant expresses his wish to seek international protection** and that it replaces the current "in-service note". In other words, it is not clarified whether the moment "an application is submitted" is considered the first contact of the applicant with the authorities or the date of the first interview.

Q.15. Explain when reception conditions end, for instance after refusal of the asylum request (include in your answer the link with the right of appeal against a decision of refusal of the status, in particular the question of its suspensive effect)

Practice: As described above, reception conditions end at the moment of the rejection of an applicant's appeal before the Appeal Committee.

Once an appeal is rejected an asylum seeker loses his "pink card" and all the social benefits that it bestows upon him.

A request for annulment of the second instance (appeal) decision may be filed with the Council of State (the supreme administrative court of the country) within sixty days following notification of the negative decision by the Minister of Public Order and does not have a suspensive effect by itself.

In spite of the Greek Constitution's guarantees of a right to a fair trial and to an appeal for annulment before the Council of State of any administrative act, which includes an appeal against the rejection of an asylum request, the suspension of an expulsion is at the discretion of the Council of State. In case the Council of State suspends deportation until final judgment the refugee seeker continues to enjoy his social benefits.

PD: PD art. 5.1 stipulates that the applicant's certificate of asylum seeker must be returned to the authorities after a final decision on the application has been rendered. Therefore the status of asylum-seekers is terminated by a final negative decision on their application, at which point they are no longer entitled to reception conditions. However, it is not mentioned whether a final negative decision refers to a decision by the Council of State.

Q.16 Are there special rules or practices regarding reception conditions in case of successive applications for asylum introduced by the same person?

PD: PD art. 15.1 par. c allows for limitation or revocation of reception conditions when an applicant has already submitted a previous application for international protection in Greece.

Q.17. Information of asylum seekers about their rights and obligations in terms of reception conditions, in particular about established benefits (see article 5 which is too large extend a mandatory provision; do not confuse this question with the information to be provided to asylum seekers about the asylum procedure):

Q. 17. A. Are asylum seekers informed, and if yes about what precisely?

Practice:

Section 1(6) of the Presidential Decree No. 61/1999 requires authorities to inform asylum seekers about the asylum procedure in a language which they understand. In practice, this mainly means that the authorities hand out a information booklet produced by the International Social Service. This booklet explains the asylum procedure, asylum seekers' rights and obligations, and how to access free legal assistance provided by NGOs and their contact details.

The booklet is currently available in Greek, English, Albanian, Arabic, French, Kurdish, Russian, Serbo-Croatian, Turkish and Farsi. Information material produced by other NGOs is normally only available to asylum seekers if they contact that particular NGO.
The current perception is that asylum seekers are generally not that well informed as it often depends on the asylum seeker's initiative to find out how to access services available.

Under the current practice, translators' languages available for communication with asylum-seekers are English, Arabic, Turkish, French and sometimes Farsi (information provided by the NGO "CARITAS Athens").

PD: PD art 3 provides for immediate (following the application for asylum), or within 15 days at the latest[500], information of the applicant through a document in a language understood by the applicant of the examination procedure, the rights, benefits and obligations as well as the consequences of non-compliance. The document mentions the functions of the UNHCR in Greece and organizations that provide legal counselling as well as the available reception conditions, including medical care. If the applicant does not understand any of the languages of the document or if he/she is illiterate, there is oral information through the use of an interpreter and a relative report is prepared and kept in the applicant's file.

Q. 17. B. Is the information provided in writing or, when appropriate, orally?

Please see answer to Q17 A above

Q.17. C. Is that information in general provided in a language understood by asylum seekers? Specify the list of languages in which it is available

Please see answer to Q17 A above

Q. 17. D. Is the deadline of maximum 15 days respected?

Please see answer to Q17 A above

Q.18. Information of asylum seekers about the existence of organisations or groups promoting their interest and defending their rights (see article 5 which is to a large extend a mandatory provision):

Q. 18. A. Is there a list of organisations dressed by the authorities and if yes is it comprehensive? Is this in particular the case about the possibilities to get legal assistance and health care?

Please see answer to Q17 A above

[500] Based on the current practice of the authorities, the Greek Council for Refugees expects the deadline of 15 days for the information of the asylum-seeker not to be respected in many cases, due to delays by the administration.

There is presently no such an official list regarding legal assistance) dressed by the authorities, although in several local police authorities such information on organizations promoting refugee rights, albeit not exhaustive, is provided orally and some times in writing.
The MPO[501] has informed the authors of this report that in the detention areas there are posted information notices, in various languages, which describe asylum seekers' rights and there is also information (it is not mentioned if this is in writing) about the organizations that cater to refugee matters.

UNHCR helps refer asylum seekers on to the Greek Council for Refugees. Many of them learn about their services through friends, other asylum seekers or other service providers. The Police also refer them on to the Greek Council for Refugees, although this does not happen systematically

Asylum seekers staying at one of the reception or accommodation centres usually have better and quicker access to information about legal assistance services available to them. Most of the NGOs involved in providing assistance to asylum seekers have produced information material about the asylum procedure and legal assistance services available.

Q. 18. B. Is the information provided to the asylum seekers, and if yes, in writing or, when appropriate, orally?

Please see answer to Q17 A above

Q. 18. C. Is that information in general provided in a language understood by asylum seekers? Specify if possible the list of languages in which it is available.

Please see answer to Q17 A above

Q. 18. D. How many organisations are active in that field in your Member State?

Please see answer to Q10 above.

There are currently in Greece about twenty five (25) such organizations active in the asylum field.

Q.19. Documentation of asylum seekers (see article 6):

Q.19. A. What kind of document is delivered to the asylum seeker? Explain the legal value of this document (just a certification of the status as asylum seeker or also prove of identity?) (see §1 of article 6 which is a mandatory provision)

[501] Letter of 18/10/2006 by Mr. D. Panopoulos, Director General of the Aliens Department , MPO

Practice: The “in-service note” is followed by the “pink card” which is provided to asylum applicants and carries the name, address and a photograph of the applicant, is of a 6-month duration, renewable and it is the only proof of status and identity that an asylum seeker has in Greece while his application is being processed.

PD: PD art. 5.1 provides for a document to the asylum applicant, which certifies that he/she has applied for international protection and is allowed to remain in Greek territory during consideration of the application and to circulate freely in all or part of the Greek territory. This document includes a photograph of the applicant and has a 6- month duration, renewable until final decision on the application.

Q.19. B. Are there situations or specific cases in which another equivalent document or even no document is issued? (in particular is there an exception for “procedures to decide on the right of the applicant legally to enter the territory” as made possible by §2 of article 6)?

Practice: As mentioned above, the “in-service note” is the preliminary document, prior to issuance of a “pink card”, while the stamped copy of the application which is usually provided instead of an “in-service note” as a receipt of application deposit, has no formal value.

PD: PD art 5.2 excludes provision of the aforementioned document in cases the applicant is in detention or while an application which has submitted at the border is being processed (according to the provisions of PD 61/1999).

Q.19. C. For how long is this document in principle valid and is it necessary to renew it after a certain period?

Please see answer to Q 19 A above

Q.19. D. What is the deadline for the delivery of that document? Is the mandatory deadline of 3 days set by article 6, §1 respected[1]?

Practice: Please see answers above, regarding the various delays for the issuance of those documents

PD: PD art. 5.1 provides for a deadline of 3 days following submission of an application and immediately after the finger-printing results become available. It is not clarified however whether the moment “an application is submitted” is considered the first contact of the applicant with the authorities or the date of the first interview.

Q.19. E. Is it possible for an asylum seeker to get a travel document for serious humanitarian reasons (see §5 of article 6 which is an optional provision)?

PD: PD art. 5.4 provides for such occasions.

Q.19. F. Is there a central system of registration of asylum seekers and is it or not separate from the registration of aliens? If yes, describe it briefly (content) and indicate in particular if it is an electronic database.

Practice: The MPO (Asylum Department) is supposed to provide EUROSTAT with detailed reports on the registered asylum seekers every three months.

PD: PD art. 16.3 provides for updating of the UNHCR and the EC by the MHSS with the number of persons to whom reception conditions are provided, their country of origin, their gender and age and generally all pertinent statistics as well as full information regarding the types of documents provided to the applicants and covered by PD art. 5 (such as finger-printing results, refugee applicant document and travel document)

Q.20. Residence of asylum seekers :

Q.20. A. Is in principle an asylum seeker free to move on the entire territory of your Member State or only to a limited part of it and in case, which part? (see article 7, §1 which is a mandatory provision)

Practice: An asylum seeker is free to move on the entire territory, as long as the change of address notifications mentioned above are respected. He or she is also free to choose the place of residence and that does not affect the reception conditions (again, if an applicant chooses to stay at a reception centre he/she cannot ask for a work permit and vice versa).

PD: PD art 6.1 mentions that applicants may move freely within the Greek territory OR within the area assigned to them by the Central Authority (Aliens Department of the Central Headquarters of the Greek Police) and to choose their place of residence, under the obligation of Informing the authorities in charge of examining their application (Greek Police Services) of their current residence.

Q.20. B. About the place of residence (see §2 of article 7): explain to which extent the person is free to choose her residence and if this depends of the stage of the asylum procedure (for instance before and after admissibility); if there are constraints limiting the choice, explain which ones and their reasons (for instance processing of application, attribution of reception conditions,…).

Practice: Choice of residence does not depend on the stage of the asylum procedure. The authorities may decide on the residence of the asylum seekers in a certain place, if there are reasons of public interest or public order. A recent attempt by the police authorities to impose a place of residence to an applicant, under the threat of discontinuing the application process, have been struck down by a decision of the Council of State (please see below).

PD: The authorities may decide on the residence of the asylum seekers in a certain place, if there are reasons of public interest, public order, or when it is necessary for the swift and effective processing of the application (PD art. 6. par. 5).
The Central Authority (Alien Department of the Central Headquarters of the Greek Police) may refuse reception conditions (including accommodation in reception centres) in case the applicant abandons the place of residence determined by the Authority without permission (PD art. 15, par 1a).

Q.20. C. About the place of reception (meaning where the asylum seeker has to stay to benefit from reception conditions) (see § 4 of article 7): explain which are the general rules about the determination of this place (to which extend are the decisions determining the place taken individually and do they take into account the personal situation of the asylum seeker?) and to which extend the person is free to choose it and if it depends of the stage of the asylum procedure (for instance before and after admissibility); if there are constraints limiting the choice, explain which ones and their reasons (for instance attribution of reception conditions, processing of the application,…).

Practice: Please see answers to Q A and B above. The current practice does not allow applicants to remain for over 3 months at a reception centre (please see answer to Q 25 B below), although certain reception centres allow applicants to remain longer. The usual practice is to encourage reception centres residents to acquire the financial means through their employment, so as to relocate.

PD: PD art. 13.2 stipulates that the accommodation in reception centres cannot exceed the period of one (1) year, following which every possible assistance is provided to applicants in order to secure their own place of residence.
However, following final rejection of an application for asylum and the issuance of an expulsion order, applicants must vacate the reception centre within a period that may not exceed 30 days (PD art. 13.9).
PD art. 13.3 mentions that every possible effort will be made so that families are lodged together and minors stay with their parents or with the adult relative in charge of their custody and care.

Q.20. D. If all asylum seekers are not placed in accommodation centres because of capacity limits, explain how the persons are distributed between accommodation centres and other accommodation facilities (which authority takes the decisions, on the basis of which elements, can that decision be appealed by the asylum seeker,…)

The MHSS informs the Central Authority (Aliens Department of the Central Headquarters of the Greek Police) of the availability of spaces in reception centres and other accommodation facilities suitable for lodging of the applicants and decisions are taken accordingly.
Decisions by the Central Authority (PD art. 7.3) are based on the principle of preservation of the family unity and adequacy of social services.

There is no mechanism of appeal against such decisions of the Central Authority.

Q.20. E. How can an asylum seeker ask to leave temporarily the place of residence or of reception or an assigned area? How is the individual AND impartial character of the decision ensured? (see §5 of article 7 which is a mandatory provision)

PD. art 6.6 stipulates that the Central Authority may in exceptional circumstances grant applicants permission to temporarily leave their place of residence or assigned geographical territory and the refusal of such a permission must be adequately justified. Such a permission is not required when the applicant's absence is necessary for appearance before courts or public authorities.

Q.21 A. Do rules on reduction or withdrawal of reception conditions exist in internal legislation and if yes in which cases (mention in particular if there are cases not foreseen by article 16, § 1 and 2 which are optional provisions)? Distinguish in your answer between cases of reduction and withdrawal and explain which conditions can be reduced and if access to emergency health care is always ensured as requested by article 16, §4, last sentence.

PD: PD. art. 12. 3 provides for withdrawal of all or part of reception conditions if it is established that applicants have concealed financial resources and have therefore unduly benefited from material reception conditions.

Furthermore, PD art 15 provides for withdrawal or limitation of reception conditions in case applicants abandon their place of residence without notifying the authorities or obtaining permission (when this is required), do not provide required information, do not appear to a personal interview regarding examination of their application, have already applied for international protection in Greece, have not applied for asylum immediately when this is practically possible after entering the Greek territory or violate regulations of the reception centre they reside in.

In any case, the access to emergency health care is always insured (draft PD art. 15.7)

Q.21. B. Has article 16, §2 dealing with refusal of reception conditions for unreasonably late applications for asylum been transposed by your Member State (or was this case already applicable before transposition)? Are there cases in practice?

Practice: There are no reported cases of refusal of reception conditions for unreasonably late application.

PD: The PD provides for refusal of reception conditions in such a case (art. 15 par. 3).

Q.21. C. How is it ensured that decisions of reduction or withdrawal are taken individually, objectively AND in particular impartially (for instance through and independent arbitrator) (see article 16, §4 which is a mandatory provision)?

PD: PD art 15.7 stipulates that such decisions are taken individually and they are "specifically reasoned". There is no particular mention of a mechanism insuring objectivity and impartiality (through the use of an independent arbitrator). There is no mentioning of the condition of proportionality.

Q.21. D. Is statement 14/03 adopted by the Council at the same moment as the directive respected (see the document attached to our sending)?

Only the provision of emergency healthcare is mentioned in PD art. 15.7.

Q.21. E. Are there already administrative appeal decisions or judgements on cases of reduction, withdrawal or refusal which have been taken, and if yes, what has been the outcome?

There is no information on such cases.

Q.22. A. Appeal against a negative decision relating to the granting of benefits or based on article 7 (see article 21 which is a mandatory provision): indicate against which decision an appeal can be introduced, describe the system of appeal in general and include in particular in your answer the information given to asylum seekers about possibilities of appealing, deadline for appealing, if the appeal has or not a suspensive effect, if there are different steps (for instance first an administrative appeal and in particular if the guarantee of an appeal before a judicial body in the last instance is respected)?

Practice: There is no mechanism for such cases.

PD: The decision of a director of a reception centre on expulsion of a resident is appealable within 5 days from communication of the decision before the MHSS (PD art. 15.5). Furthermore, if benefits are withdrawn or limited due to disappearance of an applicant, if the applicant is subsequently located or appears in his/her own volition before the authorities, a sufficiently reasoned decision is issued by the Central Authority on whether these benefits will be restored (PD art. 15.2).

PD art. 22 provides for recourse against a decision withdrawing or limiting reception conditions before the Supervisor of the Security Department of the Headquarters of the Greek Police, lodged within 5 days from communication of the decision. The appeal has suspensive effect and a negative decision can be appealed through a Petition to Annul before Greek administrative courts according to Act 3068/2002.

Q.22. B. Explain which are the possibilities for asylum seekers to benefit from legal assistance when they introduce such an appeal (see article 21, §2 which is a mandatory provision but leaves space to Member States)?

Practice: In general, applicants can benefit from free legal assistance for any claim regarding their status (not necessarily for such an appeal) through the services of various NGOs.
UNHCR helps refer asylum seekers on to the Greek Council for Refugees. Many of them learn about their services through friends, other asylum seekers or other service providers. The Police also refer them on to the Greek Council for Refugees, although this does not happen systematically.
Asylum seekers staying at one of the reception or accommodation centres usually have better and quicker access to information about legal assistance services available to them. Most of the NGOs involved in providing assistance to asylum seekers have produced information material about the asylum procedure and legal assistance services available.

The Greek Council for Refugees' (GCR) Legal Unit provides legal aid to asylum seekers, and facilitates, if possible, the asylum procedure. Its lawyers, accompanied by interpreters of the GCR, visit the detention centres in the Athens area on a daily basis in order to maintain contact with detained asylum seekers and to facilitate their access to the asylum procedure. Applicants may also receive legal counselling at any stage of the asylum procedure from one of the Legal Aid Network (LAN) lawyers throughout the country.
Furthermore, the Athens Bar assigns refugee cases to specializing lawyers.
The Athens Bar Association has also established a legal aid network for those aliens who are unable to pay for their legal expenses. However, this system, which is not state supported but financed from the Bar's own resources, cannot deal with all of the requests for legal assistance submitted to the Bar Association. Furthermore, there is currently not enough funding available to the Bar Association to pay lawyers.
Asylum seekers may also receive legal assistance and legal information from other NGOs, such as the Greek section of Amnesty International, the Ecumenical Refugee Programme, the International Social Service, the Hellenic Red Cross, the Refugee Association, the Medical Rehabilitation Centre for Torture Victims, Social Solidarity (in Thessaloniki) and the Network for Support of Migrants (a network of Immigration and Asylum lawyers).

PD: There are no provisions in the PD for legal assistance

Q.22. C. Are there already administrative appeal decisions or judgements which have been taken and if yes, which are the main important ones?

There is no information on such cases

Q.22. D. Is a mechanism of complain for asylum seekers about quality of receptions conditions in general (even if they are not personally concerned) organised? If yes, before which authority? Is

it linked to the system of guidance, control and monitoring of reception conditions (see below question n° 39)?

Practice: There is no formal mechanism for complaints.

PD: PD art. 21 provides for a mechanism of complaints about decisions regarding reception conditions.

6. RIGHTS AND OBLIGATIONS OF ASYLUM SEEKERS

Q.23. Family unity of asylum seekers: define how a family is defined in relation with article 2, (d) which is a mandatory provision and explain how housing is provided to a family (see articles 8 which is a mandatory provision but leaves space to member States and 14, §2, (a) which is a mandatory provision).

Current practice and the PD cover fully the family unity (PD art 1 par.d transposes art. 2 of the Directive and it even adds parents and dependent adult children who because of physical or mental incapacity cannot apply individually).

The measures taken in current practice provide for detention and for reception centres accommodation of family members, preserving family unity. Furthermore, the relevant provisions of the PD (PD art 13.3 transposes Directive art. 14.2 and PD art. 7 transposes Directive art. 8) cover adequately the aspects of family unity.

Q.24. A. How is housing of asylum seekers organised: describe the system in general and indicate in particular what is the most frequently system used (see article 14, §1 which is a mandatory provision but leaves space for Member States; distinguish between accommodation centres, private houses and apartments, hotels places or other premises).

Practice: The only housing facilities currently available to asylum seekers as part of reception conditions, are reception centres.

PD: PD art. 13 is dedicated to the conditions of accommodation in reception centres..

Q.24. B. What is the total number of available places for asylum seekers? Distinguish in your answer between accommodation centres, private houses and apartments, hotels or other premises.

There are currently 770 places available in reception centres (85 of which are reserved for unaccompanied minors).

Q.24. C. Is this number of places for asylum seekers sufficient in general or frequently insufficient?

According to the opinion of the UNHCR and NGOs, this number is currently insufficient.

Furthermore, there is a great number of asylum applicants who choose (in spite of all difficulties that this may entail) to live outside reception centres because they prefer to remain in urban centres, since most reception centres are situated in remote areas with extremely difficult access to the city.

Q.24. D. Are there special measures foreseen in urgent cases of a high number of news arrivals of asylum seekers (outside the case of application of the directive on temporary protection)?
There are no such special measures.

Q.25 Accommodation centres **(important note: all the following questions are about open and not closed centres where asylum seekers are detained which are covered by another question)**

Q.25. A. Are there different categories of accommodation centres, for instance depending of the stage of the procedure (admissibility and eligibility)?

There are no different categories of accommodation (reception) centres according to the stage of the procedure.

Q.25. B. Is there a legal time limit for accommodation in a centre after which the asylum seekers have access to private houses or apartments or is this limit linked to a stage of the asylum procedure?

Practice: There is a general practice (not based on any law or ministerial decision) whereby the usual period of stay is 3 months (extended by another 3 months for vulnerable cases) but administrations of reception centres exercise their own discretion on that matter, all the while trying to introduce their guests to the labour market, thereby making them financially autonomous and securing private housing for them.

For the Lavrio centre the relevant PD stipulates that an asylum seeker must leave the centre within 30 days after the decision is communicated to him. In practice, this period may well exceed one year, as mentioned above. However, the general effort is to discourage asylum

seekers' institutionalization by integrating them in the society while awaiting the decision on their application.

PD: PD art. 13.2 actually limits the period of residence at a reception centre to one (1) year.

Q.25. C. Is there a general regulation about the internal functioning of those centres and the rights and duties of the asylum seekers? If yes, is this general regulation applicable to public and private centres? If not, are the centres supposed to adopt an internal regulation and does a central authority have or not a kind of control about its content?

Practice: There is no such a general regulation or an obligation on the centres to adopt one but the MHSS, as the supervising authority, could intervene if provisions of a certain centre's internal regulation were found to be contrary to legislation or accepted norms of practice.

Certain reception centres have developed their own rules on internal functioning using as standard the provisions of PD 299/1999 on Lavrio reception centre on internal functioning. The rules on Lavrio are quite complete. The reception centre of Thessaloniki run by Social Solidarity, operates on a complete set of by-laws using the Lavrio rules as standard.

PD: PD art13.1 simply mentions that in each reception centre must be run "according to its Internal Regulation".

Q.25. D. Do the regulations foresee the possibility of sanctions against asylum seekers in case of breach of the rules? (see article 16, §3) If yes, which sanctions for which rules? Which is the competent authority to decide? How is it ensured that decisions are taken individually, objectively and in particular *impartially* (for instance through an independent arbitrator) as requested by §4 of article 21 which is mandatory provision? Which are the possibilities of appealing against those decisions if the system is different from the general one under question n°22? Are there already administrative appeal decisions or judgements which have been taken and if yes, which are the main important ones?

Practice: Presidential Decree 266/1999 on the Lavrio Reception Center provides for sanctions against asylum seekers who do not comply with their obligations. Art. 5 provides that the asylum seeker is first warned by the Director of the centre and if he persists in his behaviour after this warning, his asylum application is examined by priority. The aim of this peculiar "sanction" is that a final decision on the application claim is reached as soon as possible, since after the issue of the final decision the asylum seeker will have to leave the centre.

PD: PD art. 15 par. 4 provides for consequences or even expulsion of an asylum applicant from a reception centre, following motivated decision by the Director of the centre, due to violations of the centre's regulations.

Such decision is appealable (please see answer to Q 22 A above).

Q.25. E. Are asylum seekers involved in the management of these centres? If yes, how (advisory board, appointment or election of representatives)? (see article 14, §6 which is an option provision)

Asylum seekers are not involved in the management of the centres but organize themselves in volunteer teams that perform certain tasks for their fellow residents and they can be engaged in paying assignments (by the centre's administration) as translators etc.
Fees are covered by the NGOs funds for these programs, who instead of paying outside professionals they hire the services of the guests.

Q.25. F. Do specific rules exist on work of asylum seekers inside the accommodation centres different from the general ones about employment (see below)? If yes, which ones? Can working inside accommodation centres be considered as a (mandatory) contribution of the asylum seekers to the management of the centres, is it or not paid and considered as implying access to the labour market and subject to the same rules?

No such rules exist, work inside a centre is on a volunteer basis or it is paid according to outside market conditions.

In some centers (for e.g. those run by the Hellenic Red Cross) the guests have on their own initiative decided to organize in teams that offer services to all fellow residents, such as picking up children from school, doing additional cleaning etc. This is done on an entirely voluntary basis.

Q.26. Q.26. A. How can asylum seekers communicate with legal advisers, representatives of UNHCR and NGOs? (see article 14, §2, (b) which is a mandatory provision).

Practice: Legal advisers, UNHCR and NGO representatives can actually communicate with asylum seekers once an initial contact is made at the initiative of the former, since there is no systematic provision of information and encouragement on the part of the authorities (please see answer to Q 22 B above).

PD: PD art. 13.5 provides for the possibility of applicants' communication with legal advisers, representatives of UNHCR and NGOs but does not specify how this communication is to be established.

Q.26. B. What are the rules about access of legal advisers, UNHCR and NGOs regarding access to accommodation centres and other housing facilities (see article 14, §7 which is a mandatory provision)

Practice: There are no problems in the access of NGO representatives and legal advisers to reception centres but such problems have been reported in detention or "closed" centres.

PD: PD art. 13.7 provides for full access of legal advisors and UNHCR to reception or detention centres, but NOT to NGO representatives. This is clearly a derogation from art. 14.7 of the directive.

Q.26. C. Can the access of legal advisers, UNHCR and NGOs be limited for security reasons or any other reason (see article 14, §7, last sentence)?

Practice: No restriction of access of UNHCR representatives is possible under the asylum legislation currently in force. As far as access of other persons is concerned, this cannot be limited unless there is specific and temporary police order under the general provisions of Greek legislation (e.g. in case of crimes). However, deviations from this exist at times (please see above answer to Q 26. b)

PD: Yes it can (PD art. 13.7) on grounds relating to the security of the centres and facilities and of the asylum seekers, as per art. 14.7 of the Directive.

Q.27. Q.27. A. Is a medical screening organised by the receiving State, is it mandatory or voluntary? Does it include HIV tests? (see article 9 which is an optional provision)

Practice: There is currently a practice of medical screening of all illegal entrants whenever a mass arrival of aliens occurs in border areas. Asylum seekers who are accepted in reception centres where there is no regular presence of a doctor or nurse are also requested to go through medical screening before they enter a reception centre. In large reception centres where a doctor is present there is also medical screening as soon as they arrive in the centre. If the asylum seeker refuses to be medically screened (which is very rare) and there are signs that his health condition is poor, the responsible of the centre can refuse his access, but in most cases he will try to convince the asylum seeker to be screened. HIV tests are not currently included in the medical screening.

PD: PD art. 8 stipulates that such medical screening can take place only when there are serious indications regarding the possibility of danger to public health due to epidemics or communicable diseases.

Q.27. B. Do the legal provisions on reception conditions ensure that asylum seekers receive at least emergency care and essential treatment of illness as requested by article 15 §1 which is a mandatory provision? Do they have a further access to health care?

Practice: Asylum seekers receive full medical care in hospitals and health centres (please see below answer to Q 27 C)

PD: PD 14 provides for the necessary medical and health coverage that includes laboratory and medical examinations in public hospitals or medical centres, provision of pharmaceutical medication following a doctor's prescription and hospital care in public hospitals

Q.27. C. What is the practice regarding access of asylum seekers to health care and how is it organised? In particular, what is the situation in accommodation centres (are doctors coming to the centres or do asylum seekers go to doctors outside)?

Asylum seekers who are in possession of the refugee applicant document ("pink card") have currently access to free medical care in public hospitals.
Apparently, through an internal memo the MHSS has instructed that these services be available to holders of an "in-service note" as well.
In practice, when an asylum seeker presents the refugee applicant document, he/she is treated free of charge as medical authorities will never attempt to verify whether he/she has sufficient resources to cover medical expenses.
The situation in accommodation centres varies. In Lavrio, a doctor is present on a daily basis whereas in Sperhiada, there is no resident doctor but only a nurse who visits the camp on a daily basis. In smaller camps and reception centres, as in Thessaloniki, there are no doctors present. However, the fact that the specific camp is situated within the city of Thessaloniki gives easy access to resident asylum seekers to public hospitals. The situation is the same in the rest of the camps in rural areas.

Q.28. A. What is the length of the period determined by the concerned Member State during which asylum seekers have no access to the labour market? (see article 11 which is a mandatory provision)

Practice: According to the Presidential Decree No. 189/1998, asylum seekers can be granted a temporary work permit which is valid while their application is under determination procedure.

In practice it is very difficult for asylum seekers to find employment which has legal status and which offers access to social security insurance. In most cases, the work permit is requested in order that applicants can work as self-employed street vendors.

An asylum seeker holding a valid asylum seeker's document ("pink card") and not staying at a Temporary Residence Center has access to temporary employment in the private sector, provided that the particular employment is of no interest to Greek nationals, other EU citizens or recognized refugees. The length of period that limits the applicant's access to legal employment depends on when the initial interview will take place (as mentioned above, this usually takes more than one year).

The time required for issuance of a work permit is minimal (it can take place immediately or in the worst cases within a few days' delay, following an application and medical test results for transmissible diseases).

PD: PD art. 10 stipulates that asylum-seekers have immediate access to the labour market. In case they reside in a reception centre they must report their gainful employment to the Director of the reception centre.

Q.28. B. After that period, are asylum seekers or not obliged to obtain a work permit? In case is there a limit for the administration to deliver the permits and how quick are they delivered? What is their length?

Please see answer to Q 28 A above.

Work permits are of a six month duration, renewable at the same time as the refugee applicant document ("pink card").

Q.28. C. After that period, what are the conditions for access of the asylum seekers to the labour market? (in particular, are there rules concerning the maximum allowed of working hours or days per week, month or year, limits in terms of type of work or of professions authorised?

Please see answers to Q 28 A and B above.
No limitations on maximum work hours exist.

Q.28. D. What are the rules in terms of priorities between asylum seekers on the one hand and nationals, EU or EEE citizens and legally third-country nationals on the other?

Please see answers to Q 28 A and B above

Q.28. E. Do asylum seekers have access to vocational training, does this or not depend of their right to access to the labour market, and in case at which conditions? (see article 12 which is optional regarding §1 and mandatory regarding § 2)

Practice: Article 3 of PD 189/1998 provides that only recognized refugees may register with the training units of the Manpower Employment Agency on criteria which also apply to Greek citizens. In spite of a gap in the legislation, in practice, asylum-seekers also take part in vocational training programmes.

PD: PD art. 11 provides for full access of asylum applicants to vocational training programmes of private or public organizations under the same terms and conditions as for Greek nationals.

Q.28. F. Are the rules regarding access to the labour market adopted to transpose the directive more or less generous than the ones applicable previously?

It would appear that the rules after adoption of the PD are more generous than before.

Q.29. Are reception conditions subject to the fact that asylum seekers do not have sufficient resources? Are asylum seekers requested to contribute to reception conditions when they have personal resources (for instance if they work) or to refund the authorities if it appears that they have resources? (see article 13 §§ 3 and 4 which are optional provisions)

Practice: An asylum seeker who stays in a reception centre has no right to employment and, inversely, one who has access to the labour market has no right to reside in a reception centre because he is supposed to earn enough income to afford the costs of lodging and other needs (which is a complete fallacy).

PD: PD art. 12.3 and 12.4 stipulate that provision of part or the total of material reception conditions, including medical and health care, is subject to the asylum applicant not possessing sufficient resources, which is to be established by the authorities in charge of reception. If such resources are proven to exist the asylum applicant's benefits may be reduced to the extent that the needs of the applicants are covered by these resources. Asylum-seekers must contribute to the partial or total coverage of the material costs of reception and medical care.

7. SPECIAL NEEDS OF PARTICULAR CATEGORIES OF ASYLUM SEEKERS

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Q.30.A. Which of the different categories of persons with special needs considered in the directive are taken into account in the national legislation (see article 17, §1 which is a mandatory provision): disabled people, elderly people, pregnant women, single parents with minor children, persons who have been tortured, raped or victims of serious physical or psychological violence? Include in your answer all other categories envisaged in national law.

PD: PD art. 17 describes as vulnerable persons minors, disabled people, elderly people, pregnant women, single parents with minor children and persons who have been subject to torture, rape or other serious forms of psychological, physical or sexual violence.

Q.30. B. How is their specific situation taken into account (see articles 13, §2, second indent, 16 §4 second sentence and 17 which are mandatory provisions)?

PD: PD art.12.2 provides for subsidies toward disabled asylum applicants (with over 67% of incapacity) who do not reside in reception centres during the period of examination of their

application, while PD art. 12.1 specifically mentions the provision for all basic needs of disabled applicants and of applicants in detention.

PD art. 14.3 provides for specialized medical and hospital care for asylum applicants with special needs, such as torture victims and minors, while PD art. 15.7 makes special mention of individuals of the vulnerable category with regard to decisions on refusal, limitation or withdrawal of reception conditions.

Furthermore, there are special provisions for minors, unaccompanied minors and torture and violence victims in PD art.18, 19 and 20 respectively.

Q.30. C. How and when are the special needs of the concerned persons supposed to be legally identified (see article 17 § 2 which is a mandatory provision and clarify how it has been interpreted by transposition)?

PD: PD art. 17 only mentions that the “appropriate authorities” and organizations of local government will identify, after individual evaluation of the applicants, those belonging to vulnerable groups and they will provide for their special treatment.

Q.30. D. Is the necessary medical and other assistance provided to persons with special needs as requested by article 15, §2 which is a mandatory provision and in particular to victims of torture and violence as requested by article 20 which is a mandatory provision?

Please see answer to Q 30 b re: PD art. 14.2

Q.31. About minors:

Q.31. A. Till which age are asylum seekers considered to be minor?

Practice: The current practice for minor refugee applicants is based on provisions for treatment of minors in general, since there is no specific legislation referring to minor refugee applicants. The only relevant provision in Greek legislation on asylum is that of Article 1, para. 4 of PD 61/1999 and this simply provides for the appointment of the Public Prosecutor for Juveniles as the Special Provisional Guardian of a juvenile asylum-seeker until a final judgment is delivered on the relevant asylum application.
According to Greek Civil Law, children are considered to be unaccompanied if they reside in the country without their natural parents or without a legal guardian. The Greek Police do not consider minors to be unaccompanied when there is a relative in the country willing to look after the minor.
Article 1(4) of Presidential Decree No. 61/1999 sets out that when asylum applications are submitted by unaccompanied minors, the police authority must submit a request for the Public Prosecutor for Minors or the local First Instance Public Prosecutor to act as a temporary guardian for the minor until the asylum application is decided. Alternatively, the police official conducting the interviews may consider that the minor is mature enough to apply for asylum on their own if they are between 14 and 18 years old.

There are no specific provisions for the processing of asylum claims submitted by unaccompanied minors. However, they are normally considered as vulnerable and their cases examined as a priority.

PD: PD art. 2f (Definitions) defines as an unaccompanied minor asylum seeker any individual under 18 years of age who has entered the Greek territory unaccompanied by an adult responsible for his/her care or who has been left unaccompanied after his/her entry into Greek territory.

Q.31. B. How is access of minor asylum seekers to the education system ensured? Is it at school or in case inside accommodation centres and can it be considered as similar to the conditions for nationals as requested by article 10, §1?

Practice: All aliens resident in Greece have a right of access to all levels of education. As regards language teaching to refugee and asylum-seeking minors and adults, juveniles children have direct access to primary and secondary education in Greece.

PD: PD art. 9.1 provides for full access of minor children of asylum applicants, as well as of minor applicants, to the Greek educational system, identical to the conditions for Greek nationals.

Q.31. C. Is access to education ensured not later than 3 months as requested by article 10, §2 (or after maximum one year if specific education for asylum seekers is provided) and till an expulsion decision is really enforced?

PD: Yes (PD art. 9.2)

Q.31. D. Is specific education (like language classes) available for asylum seekers, in particular to facilitate their effective access to the education system of the reception Member State (see article 10, §2 which is an optional provision)?

Practice: Three “intercultural centres” of the Greek Council for Refugees in Athens and education centres run by the Athens Voluntary Work and by Social Work Foundation offer free language classes for refugee and asylum seeker children.

At the Lavrio Centre, the applicants are offered social support, educational programmes including Greek language tuition, mother tongue tuition for children (Kurdish and Farsi), English language tuition for children and adults, legal assistance and counselling.

Furthermore, selected schools in areas of Athens and Thessaloniki with a high percentage of foreign student intake, the Centre for Intercultural Education in Athens

University, as well as Aristotelio University in Thessaloniki, run special courses for all foreign children, funded by the Ministry of Education. Language courses are also offered as part of vocational training programmes.

The Greek Council for Refugees has established the centre 'Pyksida' ('Compass') which organises various programmes of integration of asylum applicants and refugees into the local society.

The Hellenic Red Cross has established the Multi-Functional Centre of Social Support and Integration of Refugees in Academia Platonos, Athens. The centre offers services and programmes of social support and social integration to refugees, regardless of nationality and residence.

Since December 2002, a programme funded by the European Social Fund called 'New Beginning' provides asylum seekers and refugees with Greek language tuition and various training seminars to facilitate their integration into the labour market and social life. The Greek Council for Refugees has participated in the implementation of this programme offering logistic, social and legal support to the participants.
Regarding people with special needs, such as unaccompanied minors in particular, a noteworthy reception centre for unaccompanied minor asylum seekers has been operating at Anogia, in Crete since January 2001. This centre is managed and staffed by the Hellenic Youth Foundation, a public organisation under the auspices of the Ministry of Education. Minors are given the opportunity to learn Greek and English and also to gain vocational training.

PD: Yes (PD art. 9.2)

Q.31. E. Are minors in general accommodated with their parents or with the person responsible of them? (see article 14, § 3)

Practice: Yes

PD: Yes (PD art. 13.3 and 19.2 a)

Q.31. F. Do minors with special needs enumerated by article 18, §2 which is a mandatory provision, have access to appropriate mental health care and qualified counselling?

Practice: Rehabilitation services for minors with special needs are currently available in the same facilities that serve adults. Torture victims are offered rehabilitation at the Medical Rehabilitation Centre for Victims of Torture, mentally ill asylum seekers are referred for diagnosis and treatment to various mental health Institutions and disabled asylum seekers are referred to the Medical Rehabilitation Centre for the Disabled

PD: draft PD art. 18.2 mentions that the authorities in charge of reception will assure that minors with special needs will have access to units of social care for the purpose of receiving appropriate psychological help and specialized care.

Q.31. G. How and when is organised the representation of unaccompanied minors (guardianship, special organisation) and regularly assessed? (see article 19, §1 which is a mandatory provision)

Practice: Please see answer to Q 31 A above

PD: PD art 19. 1 provides for immediate representation of unaccompanied minors by an appointed guardian, through intervention of the Public Prosecutor for Minors. No regular assessment process is mentioned.

Q.31. H. How is placement of unaccompanied minors organised (with adult relatives, a foster family, in special accommodation centres or other suitable accommodation)? (see article 19, §2 which is mandatory provision)

Practice: The placement of unaccompanied minors takes place through the intervention of NGOs.**,** with adult relatives or in special reception centres.

PD: PD art. 19.2 par a provides for satisfaction of the placement needs of a minor through adult relatives, foster families or in other accommodation centres with special provisions for minors.

Q.31. I. How is the tracing of the family members of the unaccompanied minors organised? Are measures taken to protect confidentiality of information when necessary? (see article 19, §3 which is a mandatory provision)

Practice: The tracing of the family members of the unaccompanied minors is organized by NGOs and especially the Hellenic Red Cross.

PD: PD art. 19. 2c and art. 19.3 provide for the tracing, in the soonest possible interval, of members of the minor's family and for the training and confidentiality duties of the personnel handling cases of unaccompanied minors.

8. EXCEPTIONAL MODALITIES OF RECEPTION CONDITIONS

Q.32. Apart from detention covered by the next question, are there exceptional modalities for reception conditions in the following cases and if yes, which ones and for how long are they applicable, knowing that they should be "as short as possible" (see article 14, §8)?

Q.32. A. Persons with specific or special needs, regarding in particular the period of assessment of those needs?

No

Q.32. B. Non availability of reception conditions in certain areas

No

Q.32. C. Temporarily exhaustion of normal housing capacities

In some cases of "emergency" asylum seekers have been accommodated in hotels in Athens. The expenses were covered by the MHSS. This solution might be adopted if normal housing capacities are temporarily exhausted.

Q.32. D. The asylum seeker is confined to a border post

Illegal entrants who are apprehended at a border crossing are temporarily kept in border posts (in facilities without fundamental living conditions, such as converted storage areas) and then transferred to the "closed centres" of the area.

Q.32. E. All other cases not mentioned in the directive (for instance urgent situation in case of a sudden high number of applicants outside a case of application of the directive on temporary protection).

No

Q.33. Detention of asylum seekers (we do not cover the situation of rejected asylum seekers detained for the purpose of their return) (see articles 6 §2, 7 §3, 13, §2 2nd indent and 14 §8 which implies that the directive is in principle applicable in case of detention):

Q.33. A. In which cases or circumstances and for which reasons[1] (identity verification in particular if the persons have no or false documents, protection of public order or national security, refugee status determination, way of entry into the territory, etc) can an asylum seeker be detained during the asylum procedure till his request has been finally rejected. Quote precisely in English in your answer the legal basis for detention of asylum seekers in national law.

This is a very complex issue, which is not dealt with by the draft PD. Here, we will present the general structure and principles of the system, which is regulated by other legal texts.

Individuals are not arrested or detained in Greece for the sole purpose of being asylum seekers. In many cases the police arrest aliens, who later apply for asylum, for illegal entry (registered asylum seekers cannot be arrested and detained as illegal entrants).
Individuals who present themselves at a border crossing and ask for asylum, or individuals who have crossed the border and present themselves inland to the authorities on their own volition and claim refugee status are not arrested and detained. (Presidential Decree 61/1999). This has been confirmed in writing to the authors of this report by the MPO[502].

If illegal aliens are arrested in-land, they are detained for up to three months, until they are expelled or tried for illegal entry in the country(Art. 83, para. 2 and 76, para. 3 Act 3386/2005).

Asylum seekers who were arrested as illegal entrants prior to lodging a claim for asylum are usually detained in special detention centres (“closed centres”) or at police stations, and some rejected asylum seekers subject to a deportation order are detained in mainstream prisons. In May 2001, the UN Committee Against Torture criticised Greece for its use of harsh detention conditions for asylum seekers, particularly for those held in police stations, which lack adequate facilities, and in prisons, which are severely overcrowded.

Currently, about 90 percent of people who claim asylum in Greece arrive illegally. Since illegal entrants are liable to be detained, those individuals who only lodge a claim for asylum after an arrest for illegal entry can be detained for the duration of the asylum determination procedure, although if their deportation is not ordered by a court, they cannot be detained for more than three months (see below).

The decision on administrative detention is issued immediately and the decision on administrative expulsion-deportation is issued within three days (“decision of administrative deportation”, Art. 76, para. 3 Act 3386/2005).
If the asylum seeker applies for asylum before the decision on administrative expulsion has been issued, then he is released. If however he decides to apply for refugee status (while in detention) after the decision on his expulsion has been issued the deportation (expulsion) order will then be suspended but detention will continue until a final decision on the asylum application or until the expiry of three months, at which point the applicant will be released from detention.
According to a Ministerial Decision of 1992 (the conformity of which has been questioned in relation to the Constitution) and the new Aliens Act (Article 44(3)), asylum seekers who have applied for asylum after being arrested for an illegal stay in Greece and who are detained by an order of the police authorities ("decision of administrative detention") because a deportation order ("a decision of administrative deportation") has been issued against them, should remain detained until a final decision on their asylum application has been made or until their detention exceeds the three month maximum length of detention.

[502] Letter of 18/10/2006 by Mr. D. Panopoulos, Director General of the Aliens Department , MPO

If the alien lodges an asylum application after the issuance of the deportation and detention order, his/her deportation and/or any measure of return will be suspended, but his/her detention would continue.
After three months expire, the asylum seeker must be released from detention.
If during the three-month period of detention a positive decision on his/her asylum application is reached, he/she must immediately be released from detention and cannot be deported as a refugee (other than under the cessation and withdrawal grounds provided for by the Geneva Convention).
If during the three-month period of detention a final negative decision on his/her asylum application has been reached, the authorities have until the expiration of the three-month deadline to attempt to deport him/her, after which he/she must be released.

According to the provisions of Article 44 of the Aliens Act, an appeal ("objection") against the decision of administrative detention may be lodged by the asylum seeker before the President of the First Instance Administrative Court in the area of his detention.
If the President considers that the asylum seeker is not a threat to public order and that there is no strong likelihood of him/her absconding, he/she will immediately be released.
In practice, many asylum seekers in administrative detention have been released through this procedure, after having claimed that they do not pose a threat to public order since their only offence was illegal entry, and that there is no strong likelihood of absconding.
There are, however, exceptions if an asylum seeker's detention has been ordered by a court.

According to the Ministerial Decision of 1992, if an asylum seeker is detained after a court (and not the police authorities) ordered his deportation, there is no precise time limit to his detention. There are general limits, however, provided for by the Greek Constitution on "lawful conditions for arrest and detention".
When the deportation ordered by a court is impossible or cannot take place in due time for reasons related to 1) international embargo, 2) violations of article 3 of the European Convention on Human Rights and/or of article 3 of the UN Convention Against Torture etc., or 3) other material obstacles to the deportation, an appeal ("objections") against the deportation order can be submitted before the competent judicial authority.
Furthermore, Ministerial Decision No. 137954/16-10-2000 provides that the initiative for the release of the detainee should be taken by the Public Prosecutor in all cases where the deportation ordered by a court cannot take place.
In practice, the majority of foreigners in detention are unaware of their legal situation and legal rights. They receive no information about when they will be deported.
The European Court of Human Rights in a recent decision held that Greece lacks the necessary mechanisms to allow detainees to challenge the legality of their detention prior to deportation.
Another problem is that although lawyers have access to detainees, there are bureaucratic hurdles to accessing the centres and visits are often therefore very time-consuming.
In addition, NGOs in the region state that there are a significant number of cases in which asylum seekers are unlawfully being held beyond the three-month maximum detention period.

The European Court of Human Rights has decided in two cases that the detention conditions of illegal immigrants in Greece are in violation of Art. 3 of the European Convention on Human

Rights (Kaja v. Greece, application no. 32927/03, Judgment of 27 July 2006; Dougoz v. Greece, application no. 40907/98, Judgment of 6 March 2001).

Please see also the answer to Q 11.

Q.33. B. Has your member State adopted measures to transpose §3 of article 7 which is an optional provision? If yes, how has this provision been legally understood (is it a case of detention or an obligation to stay in and not leave a certain place?) and for which reasons can an asylum seeker be "confined" in such a place?

Practice: In a recent decision of the Council of State (Application 700/2006 against the Minister of Public Order) the administrative decision of assigning a specific reception centre as residence to a refugee claimant, as pre-condition for continuation of processing of his claim, was deemed unlawful since it did not even invoke reasons of public order

PD: PD art. 6.5 stipulates that the Central Authority in collaboration with the MHSS may decide on the residence of asylum applicants in a certain area for reasons of public interest, public order or, when necessary, for the swift and effective monitoring of his/her application. However, this is not a case of confinement.

Q.33. C. Are there legally alternatives to detention, like obligation to report to the authorities, obligation to stay in a place, provision of a guarantor or of a financial guarantee?

There are no alternatives to detention (such as guarantors or financial guarantees) once an illegal alien is apprehended and arrested for illegal entry/stay.

Asylum-seekers are offered a place in a residence centre or choose their own lodging during the regular procedure.

Q.33. D. Which is the competent authority to order the detention of an asylum seeker? Explain if different authorities are involved to first take and later confirm the decision.

The decision on administrative detention of an arrested illegal alien in view of trial or of expulsion is taken by the Police Director or the Police Director on Immigration Matters (Act 3386/2005, art. 76, par.2 and 3, Art. 83, para. 2 of the same Act).

Q.33. E. For how long and till which stage of the asylum procedure can an asylum seeker be detained?

Please see answer to Question 33 A above.

Q.33. F. In which places (can we call them "closed centres"?) are asylum seekers detained (places in a special closed centres reserved only to asylum seekers, together with returnees like

illegal aliens or even in a normal prison, in case within separated areas or with the other detainees)? Indicate if a difference has to be made following the location of the "closed centres" at the border or on the territory? Which is the authority managing those places and is it the same as the one in charge of reception conditions?

Aliens who claim refugee status upon arrival in the Greek territory are not supposed to be arrested and detained and this is the case for aliens who appear on their own volition to the Greek authorities at the border or inland and claim asylum.

However, aliens who arrive at a port of entry (airport or sea port) and claim refugee status can be detained for a maximum of 15 days while their application is processed through the Accelerated Procedure.

Arrested illegal aliens against whom an expulsion order is issued (this includes individuals arrested at border crossings or illegal aliens who have been arrested inland and later claim refugee status or even arrested illegal aliens who never claim refugee status) are initially detained in police station detention areas and then sent to two types of "closed detention centres":

1.In normal "detention facilities" for illegal aliens, established and run by the MPO.
There are 7 such facilities, in the Aliens Administration of Attiki of 384 places capacity, the New Detention Centre of the Ellinikon Airport of 123 places capacity, the Old Detention Centre of the Hellinikon Airport of 40 places capacity, the Detention Centre of Amigdaleza of 105 places capacity, the Detention Centre of Aspropirgos of 145 places capacity, the Detention Centre of Amarousion of 38 places capacity and the Aliens Administration of Pireus of 56 places capacity. There is also a detention facility in the island of Kos (detention cells of the police sub-directorate) of a 25 places capacity (when more, they are moved to a hotel), with very bad detention conditions and minimum information to detainees.
These facilities are for short term stay and do not have catering or leisure facilities.

2. In "special reception facilities", which are in effect closed detention centres preserved exclusively for illegal entrants.
These centres are set up by the Ministry of Interior (while reception centres for asylum-seekers are under the authority of the MHSS) and are administered by police authorities (MPO).
There are 7 such facilities, in Vrisika and Dikea of Orestiada of 150 and 450 places capacity respectively (for aliens who enter through the Evros river natural border from Turkey), in Peplos (also for aliens who enter through the Evros river natural border from Turkey), Ferres, Soufli and Tychero of Alexandroupoli of 70 places capacity (reported problems there involve lack of sufficient interpretation services, reports of re-activation of the Greece/Turkey readmission agreement and deportations, problems of access of NGO lawyers), in Vena of Rodopi of 400 places capacity, in Pagani of Lesbos (Mytiline) of 350 places capacity (a relatively new detention facility, one of the "best practice" examples), in Mesinidi of Chios of 40 places capacity, in Vathi of Samos of 120 places capacity and in Tavros of Attiki of 680 places capacity.

These centres do not fulfill conditions for long term stay and have been deemed as unsuitable for their purpose by the Ombudsman. Currently, there are two new centres under construction, one in the village of Filakio of Orestiada to cover the Evros area (capacity of 350 places) and one in the island of Samos. The current facilities in the island of Samos are significantly sub-standard (an old cigarette factory in the centre of town) with insufficient legal counselling to detainees, lack of cooperation with the local hospital for initial and regular medical screening and limited access of detainees to free space (the foreyard).

Illegal aliens who do not claim asylum or asylum seekers whose applications have been rejected and they have not respected the delay for departure from Greece (and they are later apprehended and arrested) are first kept in police station detention areas, along with other inmates and then transferred to those centres, pending deportation.

The only differences among various detention centres at the border and in the territory are with regard to accommodation facilities (certain closed centres, such as in Mersinidi of Chios, are better equipped than others).

It must be mentioned that aliens arriving by sea to the island of Kos are detained in the detention cells of the police station (police sub-directorate) when they do not exceed the number of 25. Any additional detainees are transferred to a hotel. There are numerous problems regarding prolonged periods in bad detention conditions, minimal information to detainees and asylum seekers and refusal by the police to transfer detainees to rented by the Sub-Perfect premises (in the area of Psalidi).

Q.33. G. Does UNHCR and NGOs have access to the places of detention and under which conditions?

According to current legislation only UNHCR representatives have full access to places of detention. NGO representatives are being regularly faced with difficulties in gaining access to asylum seekers in detention.

Q.33. H. What appeal(s) can asylum seekers introduce against the fact he is detained? Is article 18 of the directive on asylum procedures of 1 December 2005 following which *"Where an applicant for asylum is held in detention, Member States shall ensure that there is a possibility of speedy judicial review"* respected (even if it has not yet to be transposed)?

There is no automatic judicial review for detainees.

According to article 73, par. 3 Immigration Law 3386/2005, an appeal ("objection") against the decision of administrative detention may be lodged by asylum seekers before the President of the First Instance Administrative Court. Asylum seekers will be released if they do not pose a threat to public order and if their only offence is illegal entry.

Q.33. I. Is the directive on reception conditions considered to be in principle applicable to the places where asylum seekers are detained? In particular which information do they receive about their rights, which access do they have to legal advice and health care?

There are no relevant provisions in the PD. It is understood that the current conditions in cases of detainees who are illegal aliens (as outlined in parts of this report regarding detention) will continue to apply.

Q.33. J. Apart from freedom of movement, what are the main differences between normal reception conditions and exceptional modalities for reception conditions in case of detention, knowing that they should be "as short as possible" (see article 14, §8)? If it is about closed centres, are the regulations of those places in line with the requirements of the directive (is article 13, §2, second indent of the directive following which "*Member States shall ensure that standards of living is met (…) in relation to the situation of persons who are in detention*" respected?).

It cannot be said that exceptional modalities in reception involving detention in "closed centres" are in compliance with art. 14.8 and art. 13.2 of the Directive, as the detention periods are neither short nor are the standards of living of the detainees comparable to those in reception centres.

Reception centres provide support personnel, language courses, social counselling and many other services not available in detention centres.

Q.33. K. Are measures taken to avoid detention of asylum seekers with special needs (if yes, which ones?) or are special measures taken because of their needs?

There are no special measures foreseen in the draft PD, other than the general "special treatment" mentioned in art. 17

Q.33. L. Can minor asylum seekers be detained together with relatives? Can unaccompanied minor asylum seekers be detained? If yes, are there special measures which take into account that children are concerned?

Minor asylum seekers are detained together with their relatives and they are accommodated together with their relatives in reception centres.

Unaccompanied minors are detained in some detention centres separately and in some together with adults, for a period of between 7 to 10 days (and some times even longer) which is the shortest period required for identification, referral to reception centres that cater to minors (in collaboration with NGOs) and for informing the Prosecutor for Minors (or the Prosecutor of the First Instance Administrative Court) so that a legal guardian can be assigned to the minor. The information of the MPO mentions that in detention areas lacking specially modified areas for

unaccompanied minors there are always measures taken to guarantee that unaccompanied minors are kept separately from adults.[503]

In the area of Attiki unaccompanied minors who are arrested for illegal entry are kept in special areas of police detention centres for a very short period and then they are sent to the Aliens Administration of Attiki where they are lodged separately from adults.

Q.33. M. In particular is article 10 regarding access to education of minors respected in those places?

PD art. 9.2 provides for education of minors whose access to the education system is impeded due to special reasons (such as detention), through special arrangements.

Q.33. N. How many asylum seekers are for the moment detained in your Member State? Which proportion does this represent in comparison of the total number of asylum seekers at the same moment?

According to the MPO, there can be at any time up to 1, 000 illegal aliens detained in all detention centres of Greece. An approximate 5-10% of this number decide to apply for asylum after an expulsion order is issued.

The MPO had no statistics on the actual number of detainees who applied for asylum.

According to the MPO, the majority of these applications is abusive, as a means of avoiding expulsion, since most well-founded asylum applications are deposited immediately after arrival in the Greek territory. According to our information from NGOs this is not always the case, especially in mass arrivals in the Greek islands, where lack of interpreters and the psychological state of refugee applicants prevents them from immediately applying for asylum.

9. ORGANISATION OF THE SYSTEM OF RECEPTION CONDITIONS

Q.34. Explain if the system of providing reception conditions is centralised or decentralised (which levels of government do provide practically reception conditions?) (do not confuse this question with question number 3 about the competence to make rules about reception conditions).

The system of providing reception conditions is quite centralised. The funding and supervisory functions belong exclusively to the MHSS.

Q.35. In case, are accommodation centres public or/and private (managed by NGOs? If yes, are the NGOs financially supported by the State?)

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Accommodation or reception centres are private (either owned or rented by NGOs) with the exception of the Lavrio centre which is the only public owned reception centre. They are run by NGOs with financial support from the State (which is either exclusively State funds or it also includes ERF funding)

Q.36. In case, how many accommodation centres are there in your Member State (distinguish in your answer between public and private centres)?

There are currently ten such centres (table provided by UNHCR Athens, updated to April 2006).

Area / Centre	Responsible agency	Maximum capacity	Types of beneficiaries	Main Functions
Lavrion (Eastern Attica)	Hellenic Red Cross	320	Mixed	Reception and accommodation of general groups of asylum seekers according to specified order of priority
Sperhiada (Prefecture of Fthiotida-near the city of Elassona)	Hellenic Red Cross	110	Families	Provision of accommodation to asylum seekers and their families
Anogia (Crete)	National Youth Foundation	25	Unaccompanied children	Provision of accommodation to unaccompanied minor asylum seekers
Iolaos (Athens)	Greek Council for Refugees	11	Psychiatric cases	Provision of specialized medical treatment for asylum seekers with mental and psychiatric
Aspropyrgos (Western Attica)	Hellenic Institute of Solidarity (ELINAS)	130	Mixed	Provision of accommodation to all asylum seekers
Thessaloniki	Social Solidarity	90	70 places for families and 20 for unaccompanied children	Provision of accommodation to all asylum seekers
Ios (Athens)	Voluntary Work Athens	25	3 four or five-member families and 10 single men	Provision of accommodation to asylum seekers and their families

Housing project “STEGI”	PRAKSIS	20	Mixed	Provision of accommodation to all asylum seekers
Makrinitsa (Pilion)	ARSIS	30 (with the possibility of including another 5)	Unaccompanied children	Provision of accommodation to unaccompanied minor asylum seekers
Athens	ARSIS	10	Unaccompanied children	Provision of accommodation to unaccompanied minor asylum seekers

Unaccompanied minors seeking asylum can also be accommodated in various State-run Centres of Child Care operating under the authority of the Ministry of Health and Social Solidarity.

Furthermore, a programme of emergency assistance run by the Greek Council for Refugees (NGO) provides accommodation in hotels for asylum seekers transferred from other centres to Athens for specific reasons (e.g. medical treatment).

Q.37. Is there in the legislation a plan or are there rules in order to spread the asylum seekers all over the territory of your Member State to avoid their concentration in some areas like big cities or to share the costs of their reception between central, regional and local authorities?

No such rules exist.

Q.38. Does a central body representing all the actors (like NGOs) involved in reception conditions exist? Does it play a consultative role for the State authorities, a coordination role for the actors or any other role?

No such body exists.

Q.39. A. Which is the body in charge of guidance, monitoring and controlling the system of reception conditions as requested by article 23 which is mandatory provision? Include in your answer which is the competent ministry (Interior, Social affairs, etc) for reception conditions?

Reception centres are supervised by the Ministry of Health and Social Solidarity of the central State.

PD art. 16 provides for a system of guidance, monitoring and control of the system of reception conditions by the MHSS, whereby the MHSS is in charge of the human resources in the peripheral services of health and welfare in terms of training, funding and collaboration with the

appropriate authorities for the realization and monitoring of reception conditions. The appropriate authorities, which are not specifically enumerated in the PD, are supposed to review on an annual basis the application of the provisions of the PD and to submit the relevant reports.

Whether the MHSS and the appropriate authorities will discharge of their duties in an effective manner according to the provisions of the PD remains to be seen.

Q.39. B. Has your Member State (like the Czech Republic did recently) approved quality standards (not necessary legally binding) for housing services (for instance about the number of persons per bedroom on the basis of its size, number of accessible toilets, bathrooms, showers and washing machines per number of persons, existence of common rooms with radio, television, newspapers, books, computers, accessibility of telephone, existence of recreative rooms for children,…) to be respected in particular in accommodation centres?

No such standards exist.

Q.39. C. How is this system of guidance, control and monitoring of reception conditions organised?

Under the current practice, representatives of the Department of Awareness and Social Solidarity of the MHSS pay visits to reception centres every three months, in addition to the regular visits of the Body of Inspectors of Health and Welfare.
Furthermore, UNHCR and the Ombudsman also visit reception centres and provide their observations to the government

Q.39. D. Does the body in charge of guidance, control and monitoring produce reports about the level of reception conditions? If yes, how frequently and are they public?

Practice: Under the current practice, the administrations of all reception centres prepare reports every three months and they forward them to the MHSS (Department of Awareness and Social Solidarity).
These reports are for internal use only and they do not become public.

PD: Relevant, albeit more general, is PD art. 16 par.2, which provides for the obligation of competent authorities to submit reports on the implementation of the PD.

Q.40. Q.40. A. What is the total number of asylum seekers covered by reception conditions for the last year for which figures are available (see article 22 obliging Member States to calculate those statistics about which we also asked the Commission to require them from Member States for mid June)?

According to a July 2006 report provided by the MHSS to the European Commission the total number of asylum applicants who were accommodated in reception centres in 2005 till May 2006 was 1,109.

However, there are no figures available regarding the rest of asylum applicants who were covered by reception conditions but were accommodated in lodgings of their own choice.

UNHCR reports that the total number of asylum applications for 2005 was 9,050.

Q.40. B. What is the total budget of reception conditions in euro for the last year for which figures are available?

The total budget for reception conditions in 2005 was 2,561,896.07 euro (1,949,501 euro from the MHSS and 612,395.07 from the ERF).

Q.40. C. What is the average cost of reception conditions in euro per asylum seeker for the last year for which figures are available?

According to MHSS figures for 2005 the average cost for Lavrio reception centre was 3.5 euro per asylum seeker per diem (or 1277.5 euro per year), while for the other reception centres it was 5.5 euro per asylum seeker per diem (or 2005.5 euro per year).

Q.40. D Are the costs of reception conditions of asylum seekers supported by the central/federal or federated government or are they shared with regional and/or local authorities?

Some reception centres (Lavrio, Sperhiada) are financed exclusively through the state (central government) budget while others are co-financed by the state and the European Refugee Fund (ERF). There are no other actors financing reception conditions for refugees.

Q.40. E. Is article 24 § 2 of the directive following which "*Member States shall allocate the necessary resources in connection with the nationals provisions enacted to implement this directive*" respected?

Please see answer to Q 39 A above.

According to PD art. 16.1 par. c the MHSS provides the necessary resources in connection with the material reception conditions.

Q.41. Q.41. A. What is the total number of persons working for reception conditions?

The total number of persons working on reception conditions (excluding professionals such as doctors and social workers, who do not provide full-time services to reception centres) is 113 (108 employees in the reception centres and 5 employees at the MHSS). This number does not include the numerous NGO workers who provide assistance to refugee applicants.

Q.41. B. How is the training of persons working in accommodation centres organised? Does it take into account specific needs of unaccompanied minors when relevant as well as the gender dimension? (see article 14 §5, 19 § 4 and also 24 §1 which are mandatory provisions)?

PD: According to PD art. 13.6 the personnel of reception centres will be properly trained through seminars organized by the UNHCR and the MHSS or other specialized organizations.

Q.41. C. Are there rules about the deontology of persons working in accommodation centres, in particular on confidentiality?

There are no such special rules, besides the deontology rules of individual professions (social workers, doctors etc.), which include the client confidentiality principle and the provision of article 2 par 12 of PD 61/1999 whereby declarations made by a refugee claimant in the course of the application procedure are of confidential nature and treated according to the principle of "sensitive data" of the Greek law.

However, the reception centre of Thessaloniki run by Social Solidarity, operates on a complete set of by-laws that covers matters of deontology with particular emphasis on confidentiality.

10. IMPACT OF THE DIRECTIVE

Legal impact of the transposition of the directive:

Q.42. Specify if there are or not big problems with the translation of the directive in the official language of your Member State and give in case a list of the worst examples of provisions which have been badly translated? (please note that this question has in particular been added to the questionnaire concerning the new Member States)

There was no problem with the translation of the directive.

Q.43. Where there precise legal rules on reception conditions for asylum seekers before the adoption of the norms of transposition of the directive (if yes, specify what the nature of those rules was (legislation, regulation, administrative instructions,…)?

No such rules existed in a single legal instrument, The system has been very fragmented.

Q.44. Did the legal rules applicable to reception conditions become more clear, precise, coherent or detailed with the adoption of the transposition norms (for instance do you now have after the transposition one basic text dealing with reception conditions instead of numerous different texts in the past?

Definitely yes

Q.45. Did the transposition of the directive imply important changes in national law or were the changes of minor importance? In case, list the most important changes that have been introduced.

No such important changes have been detected.

Political impact of the transposition of the directive:

Q.46. Explain briefly if there has been an important debate about the transposition of the directive (in particular in the Parliament, but possibly also in the government, between political parties, including in medias, etc; underline in case the main points which have been discussed or have created difficulties)

No such debate has yet taken place and one is not anticipated since the transposition of the Receptions Directive will take place by Presidential Decree.

Q.47. Did the transposition of the directive contribute to make the internal rules stricter or more generous? In particular, did your Member State use the occasion of the transposition to abolish more favourable provisions of national law? Does your Member State still have rules more favourable than the provisions of the directive (if yes, try to give the more important examples).

The most interesting example of a more generous rule than that of the Directive concerns the immediate access of asylum-seekers to the labour market of Greece.

It can be said that, overall, transposition of the Directive will make internal rules clearer. The PD includes the more generous provisions among those proposed by the Directive.

11. ANY OTHER INTERESTING ELEMENT

Q.48. What are in your view the weaknesses and strengths of the system of reception conditions in your Member State?

Weaknesses (under the current system, excluding the draft PD):

Human rights organizations have raised their concern that in practice border authorities do not differentiate between undocumented asylum seekers and irregular migrants who attempt to enter Greece by land and in the process of returning those individuals back to the country they entered from they deny asylum seekers access to the asylum procedure.

As a result, most asylum seekers enter Greece illegally and the vast majority of applications are made in-country.

In theory, the police must interview an asylum seeker within three months from submission of his claim (Presidential Decree 61/1999) but in practice this appointment is postponed several times, resulting often in delays of over one year. During this period the applicant is protected from readmission (refoulement) but does not enjoy the social rights and benefits enjoyed by refugee claimants whose examination of application has already begun, especially the right to work. This unfair practice leaves asylum seekers without an asylum seeker's status, which would allow them to seek accommodation or take up work and without any means of subsistence for periods exceeding one year.

The provision of art 4 par 1a of PD 189/1998 prohibiting asylum seekers from receiving a work permit if they reside in a reception centre is counter-productive to the policy of integration of asylum seekers to the society, it encourages institutionalization and it deprives individuals from obtaining necessary means of subsistence through their personal labour. It also deprives individuals from a sense of self-worth thus contributing further to their isolation and compounding the psychological traumas of their refugee experience.

The isolation of many reception centres (e.g. Aspropyrgos, Sperhiada, Makrinitsa) due to lack of transportation services results in asylum seekers' restricted access to education, medical services, recreational activities and their integration in the local communities.

Consultation on employment issues is not actively promoted in the reception centres and the informal job placement assistance only results in temporary or part-time employment.

There is no systematic legal counselling programme other than the legal support provided by the legal department of the Greek Council for Refugees (NGO) which only covers basic needs of asylum seekers.

In most centres there is no preventive medical treatment and when a medical problem arises asylum seekers are referred to nearby clinics or hospitals.

Greek language lessons are offered in most centres but there are no educational provisions for vocational training or cultural awareness. Children's access to primary education in Greek schools is delayed due to legal or bureaucratic issues (eg. Lavrion) while in other occasions enrolment is limited since children prefer to seek work in order to cover fundamental needs.

The lack of professional translators presents one more problem, while psychosocial support for the social integration of asylum seekers is lacking as centres do not benefit from the services of social workers and psychologists (trained in asylum issues).

A general problem closely related with the transposition and implementation of the Directive is the insufficiency of infrastructure and capacities with respect to reception conditions. Despite the formal transposition measures that are envisaged by the PD, the truth is that the infrastructure, including reception centres, is insufficient, and the response to the public order authorities to the

presence of asylum-seekers is some times inappropriate (see for instance, the 2005 Human Rights Report on Greece by the US Department of State http://www.state.gov/g/drl/rls/hrrpt/2005/61651.htm)

There is a serious problem in that Greece does not apply at all the Directive to places where asylum seekers are detained. Please refer to the recent report of the European Parliament:

The European Parliament sharply criticised conditions in Greek detention facilities in a report adopted by the European Parliament's Committee on Civil Liberties, Justice and Home Affairs (LIBE) on 17 July, 2007.
The report comprises observations and findings of a LIBE Delegation that visited detention centres on the Greek island of Samos and in Athens on 14-15 June (See article in ECRAN Weekly Update of 25 June 2007). MEPs found inhumane detention conditions in over-crowded, unhygienic and seriously understaffed facilities, which in their view “represent a complete disregard for the obligations established by the Reception and Procedures directives”. Especially alarming was the regular detention of unaccompanied minors in solitary confinement as well as different detention periods for different nationalities. Further concerns were raised about the availability of medical services, interpretation and legal assistance.

The MEPs met the relevant Greek Ministers as well as representatives of Greek NGOs to discuss the situation of asylum seekers and irregular migrants held in detention.

During a meeting with the Greek Ombudsman, Mr Giorgios KAMINIS and his deputy, Mr Andreas TAKIS (14.06.2007), the ombudsman said that legislation foresees that an asylum seeker can only be kept in a detention centre by way of exception. However, the trend is the other way around. More specifically the Ombudsman identified the following problems with regard to the protection of persons seeking asylum:

- Issues of erroneous interpretation of the existing framework such as the Geneva Convention on the Status of Refugees.
- The expulsion and detention of asylum seekers (statutory measures for the expulsion and detention of irregular migrants are applied to those seeking asylum as well).
- The failure of the police to safeguard the exercise of the right of appeal and judicial protection of asylum seekers.
- The preconditions for discontinuing the examination of an asylum application.
- The lack of effective access to asylum procedures in harbours, airport transit zones and foreign flagged ships calling at Greek ports.
- The inability or unwillingness of the police to apply the regulations relating to the procedures for granting political asylum, even when these have been clarified via circulars.
- People applying for asylum while already being in detention in a closed centre are in general not moved to the open centre, but instead remain in detention in the closed centre.

Strengths:

Strength of the system under the PD is the unconditional recognition of the right of asylum-seekers to work, and the right to free medical care by the National Health System.

The establishment of independent state-funded administrative bodies such as the Ombudsman's Office [504]and the National Committee for Human Rights (NCHR)[505] according to similar European models, with the task to control state authorities' conduct toward Greek citizens and aliens residing in Greece, have been positive developments in refugee protection and the relationship between the state and individuals' human rights.

Q.49. Mention any good practice in your Member State which could be promoted in other Member States

The right to free medical care by the National Health System. (and the right to work immediately according to the PD).

Q.50. Please add here any other interesting element about reception conditions in your Member State which you did not had the occasion to mention in your previous answer.

BIBLIOGRAPHY

Amnesty Interational, Report (2005), Out of the Spotlight: The rights of foreigners and minorities are still a grey area, under *Greecehttp://www.amnestyusa.org/countries/greece/document.do?id=ENGEUR250162005*

European Council on Refugees and Exiles, *Legal Conditions*, *Greece - Legal and Social Conditions for Asylum Seekers and Refugees* - The European Council on Refugees and Exiles' Position Papers 2003

European Council on Refugees and Exiles, ELENA (European Legal Network on Asylum) *Summary Report on the Application of Dublin II Regulation in Europe* March 2006.

European Parliament: Report from the LIBE Committee Delegation on the Visit to Greece (Samos and Athens) (July 2007)

Greek Ombudsman Report (Summary of Mediation) on "Problems in the Acceptance and Examination of Asylum Applications by the Athens Aliens Administration" June 2005

Greek Ombudsman "Report of Examination (Autopsy) in Detention Facilities for Economic Migrants and Refugees in Kos Island" September 2001

Greek Ombudsman "Communication to the MPO regarding the Access of Lawyers in Detention Facilities for Illegal Aliens" November 2002

[504] Act 2477/1997
[505] Act 2667/1998

Greek Ombudsman “Communication to the MPO regarding Acces of NGOs to Detention Facilities for Aliens” November 2002

Lazaratos, P., *The Right to a Hearing in the Administrative Procedure*, Ant. N. Sakkoulas, Athens 1992, 280-2 (in Greek)

Papadimitriou, P., Papageorgiou, I., “The New “Dubliners”: Implementation of European Council Regulation 343/2003 (Dublin II) by the Greek authorities”*, Journal of Refugee Studies*, September 2005; 18:299-318

Sitaropoulos, N., “Modern Greek Asylum Policy and Practice in the Context of the Relevant European Developments”*, Journal of Refugee Studies*, 2000 13(1):105-117

Skordas A., “The New Refugee Legislation in Greece”, *International Journal of Refugee Law* 11(1999) p.678-701

Skordas A., Sitaropoulos N., “Why Greece is not a safe host country for refugees”, *International Journal of Refugee Law*, vol. 16, 2004, 25-52

Stavropoulou, M., (1999) “Detention of Asylum Seekers and the Law” *Eleftherotypia* (daily newspaper) 13 January: 1999

UNHCR Note on Detention Conditions for Third Country Nationals in Greece (February 2006)

UNHCR Position on Important Aspects of Refugee Protection in Greece (February 2006)

UNHCR Country Operations Plan for Greece (2006)

Greece National Commission For Human Rights: “The Status of Protection of the Social Rights of Refugees and Asylum Seekers in Greece: Relevant Issues and Proposals” (June 2006)

TABLE OF AUTHORITIES

Statutes

Legislative Decree 3989/1959 on the Accession of the Geneva Convention 1951, *Official Journal of the Kingdom of Greece* (OJ) A, 201/26.09.1959

Emergency Law 389/1968 introducing the NW York Protocol 1967, (*OJ)* A, 125/4.06.1968

Act on Aliens 1975/1991, *Official Journal of the Hellenic Republic (OJHR)* A, 184/04.12.1991

Act 2452 on the Regulation of matters concerning refugees, *OJHR* A*, 283/31.12.1996*

Act 2646/1998 on the National System of Social Welfare, *OJHR* A, 236/20.10.1998

Act 1996/1991 Introducing the Dublin Convention of 1990, *OJHR* A, 196/16.12.1991

Act 2713/1999 on the Department of Internal Affairs of the Greek Police, *OJHR* A, 89/30.04.1999

Act 2514/1997 on the accession to the Schengen Agreement and Convention, *OJHR*, A 140/27.06.1997

Act 2910/2001 on the Admission and Residence of Aliens, *OJHR* A, 91/02.05.2001

Act 3013/2002 on the Upgrading of Civil Protection, *OJHR* A, 102/01.05.2002

Act 2477/1997 on the establishment of the Ombudsman's Office, *OJHR* A, 59/18.04.1997

Act 2667/1998 on the establishment of the National Committee for Human Rights, *OJHR* A, 281/18.12.1998

Presidential Decree 220/2007 on Adaptation of the Greek legislation to the provisions of Directive 2003/9/EU of the Council of January 27, 2003, about the minimum requirements for reception of asylum applicants in Member States (EEL 31/6.2.2003), *OJHR A,* 251/13.11.07

Presidential Decree 83/1993 on Procedures for the Recognition of Refugee Status, *OJHR* A, 36/19.03.1993

Presidential Decree 189/1998 on Procedures for granting work permits to refugees, asylum seekers and temporary residents on humanitarian reasons, *OJHR* A, 140/25.06.1998

Presidential Decree 61/1999 on Procedures for Recognition of UNHCR refugee status

Presidential Decree 266/1999 on the Operation of the Lavrion Reception Center for refugees and the rights for social protection of recognized refugees and persons under humanitarian status

QUESTIONNAIRE FOR THE NATIONAL REPORT ON THE IMPLEMENTATION OF THE DIRECTIVE :
RECEPTION CONDITIONS OF 27 JANUARY 2003

IN: Hungary
by
Boldizsár Nagy
nagyboldi@ajk.elte.hu

This report is a substantively revised text of the 2006 report as the new legislation has been adopted in the course of 2007. Since the most recent piece of substantive legislation, the government decree containing the implementing rules of the Asylum Act only was published in mid-November 2007 the report could not be produced earlier. As the new system will only enter into force in 2008 no practical experience with the new system exists yet.

The reporter would like to thank all of those who helped to present his previous report and again to Ms Ágnes Ambrus and Julia Mink, who made substantive efforts to get the update ready

Abbreviations:

AA = Asylum Act of 2007
GD = The Government Decree 301/2007 implementing the AA.
AESTCN = Act on Entry and Stay of Third Country nationals of 2007
RD = Reception Conditions Directive

1. NORMS OF TRANSPOSITION

Q.1. Identify the main norm of transposition (indicate the title, date, number, date of entry into force and references of publication into the official journal) and indicate its legal nature (legislative, regulatory, administrative); indicate in your answer if this norm was only devoted to the directive or if it has been included in a more general text and indicate in that case by quoting precisely the numbers of the provisions adopted to transpose the directive.

TITLE: Act on Asylum
DATE: 29 06 2007
NUMBER: No. LXXX of 2007
DATE OF ENTRY INTO FORCE:1 January 2008
REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL: 2007/1 Magyar Közlöny 5 January 2007

TITLE: Government Decree 301/2007. (XI.9.) on the implementation of Act LXXX of 2007 on Asylum
DATE: 9 November 2007

NUMBER: No. 301/2007
DATE OF ENTRY INTO FORCE 1 January 2008
REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL: Magyar Közlöny, 2007/151, 9 November 2007.

Q.2. List by order of importance by using numbers (1, 2, 3) the others norms of transposition if there are more than one (indicate for each norm the title, date, number and references of publication into the official journal; include in your answer the administrative measures taken to ensure implementation of the directive and of the transposition norms like regulations, administrative circulars, special instructions,…)

1.

TITLE: Act II of 2007 on the entry and stay of third country nationals
DATE: 18 December 2006
NUMBER: No. II of 2007
DATE OF ENTRY INTO FORCE: 1 July 2007
REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL: 2007/1 Magyar Közlöny 5 January 2007

2.

TITLE: Government Decree 114/2007. (V. 24.) on the implementation of Act II of 2007 on the entry and stay of third country nationals
DATE: 24 May 2007
NUMBER: No. 114/2007
DATE OF ENTRY INTO FORCE 1 July 2007
REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL: 2007/65 Magyar Közlöny 24 May 2007

TITLE: Decree of the Minister for Justice and Law Enforcement, 27/2007 (V.31) on the execution of detention ordered in the aliens policing procedure
DATE: 31 May 2007
NUMBER: 27/2007 (V.31) IRM rendelet
DATE OF ENTRY INTO FORCE: 1 July 2007
REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL: 2007/67 Magyar Közlöny31 May 2007.

TITLE: Act XXXI. of 1997 on the protection of children and management of public guardianship
DATE: 5 August 1997
NUMBER: No. XXXI of 1997
DATE OF ENTRY INTO FORCE: 1 November 1997
REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL: 1997/39 Magyar Közlöny, 5 August 1997.

3.

TITLE: Act LXXIX of 1993 on general education

DATE: 3 August 1993
NUMBER: No. LXXIX of 1993
DATE OF ENTRY INTO FORCE: 3 August 1993**.**
REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL: 1993/ 107 Magyar Közlöny, 3 August 1993

Q.3. Explain which level of government is competent to adopt the legal norms on reception conditions for asylum seekers (specify in particular in case of a federal or regional State, if it is the federal/central power or the components; in case, specify below when it is impossible for you to answer a question because it is about the competence of the components and it is impossible for you to gather reliable information about all of them)

Hungary is a unitary state. The competence to regulate matters affecting individual rights of natural persons primarily rests with the Parliament which adopts Acts.[506] Acts may empower the government to adopt Decrees implementing the Acts, and the Government, in turn may entitle the Ministers to adopt decrees implementing the Decrees of the Government. In the asylum context the competent Minister until June 2006 was the Minister for the Interior.

Following the elections of April 2006 a new governmental structure was adopted by the elected Parliament. The Government was approved on 9 June 2006. Act LV. of 2 June 2006 on the listing of the ministries changes the former administrative structure. The former Ministry of the Interior is re-named as Ministry of Local Administration and Regional Development, loosing competence in all police and asylum matters, whereas the former Ministry of Justice's competences are extended to include control over Police, Border Guards, as well as over aliens-policing and asylum. Accordingly the designation is also new: Ministry of Justice and Law Enforcement.

Q.4. Explain the legal technical choices done to transpose the directive (comment on the nature and level of the norms used to do the transposition: legislative, regulatory, administrative like instructions, etc). Add any other element about the technique of transposition of the directive which is interesting for the implementation of Community law.

Two levels were chosen. Parliament adopted the Asylum Act No. LXXX of 2007 (henceforth: AA) comprehensively transposing the EU acquis (including the procedures directive), Government adopted the rules implementing decree Government Decree 301/2007. (XI.9.) on the implementation of Act LXXX of 2007 on Asylum (henceforth GD)

Q.5. Mention if there is a general tendency to just copy the provisions of the directive into national legislation without redrafting or adaptation them to national circumstances? If yes, give some of the worst examples and explain if there is a

[506] According to the Hungarian tradition Acts are numbered by Roman numbers, decrees by Arabic numbers.

risk that those provisions remain unapplied or will create difficulties of implementation in the future.

The transposition has been a careful and well-controlled and documented process.

Q.6. Have all the texts necessary to ensure the effective implementation of the new rules of transposition been adopted, prepared or at least foreseen in the future (for example a regulation completing a new law and the necessary instructions telling the administration how to apply the new rules)?

They have been adopted.

2. BIBLIOGRAPHY

Q.7. Has an in-depth preparatory study been made public about the changes at the occasion of the transposition? If yes, thanks for trying to provide us a copy *(please contact to answer this question adequately the body and person who was responsible for the preparation of the transposition of the directive in the public administration).*

There is a version of the AA which contains detailed footnotes showing the correspondence between the Act and the elements of the EU acquis. Unfortunately it is not in the public domain, but the author of this report had the benefit of consulting it.

Q.8. Quote any recent scientific book or article published about the directive, the transposition rules or the question of reception conditions for asylum seekers in general (answer even if this literature is only available in your language and provide the complete title in your language (without translation) with all references; indicate author, title, in case name of periodical, year and place of publication).

As the rules only appeared in July and November 2007, no academic reflection is available yet.

Q.9. Quote any interesting decision of jurisprudence based on the implementation of the new rules of transposition of the directive (indicate references of publication if any)?

As the rules only appeared in July and November 2007, no jurisprudence on the new rules is available yet.

3. GENERAL INFORMATION ABOUT THE SYSTEM OF RECEPTION CONDITIONS

The purpose of the following two questions is to help the reader to understand easily and quickly the system of reception conditions in your Member State and also to avoid that you have to repeat

general elements in other parts of the questionnaire. ***Please do not write more than one or maximum two pages and do not include large historical developments.***

Q.10. Describe in general the system of reception conditions in your Member State (in particular which are the main actors in charge of reception conditions?)

In reality the reception conditions of the asylum seeker depend largely on the circumstances in which she applied for asylum.

The ideal-type asylum seeker, who voluntarily and early on communicates her intention of seeking the protection of Hungary as a rule will receive accommodation and subsistence in one of the open reception centers operated by the refugee directorate of the Office of Immigration and Nationality of the Ministry of Justice and Law Enforcement (henceforth: OIN[507]) (located in towns of Bicske, Békéscsaba and Debrecen.) The exception is if the asylum seeker has accommodation provided by other actors (family, friends, churches etc.) Practically there have been hardly any such cases until recently, but in the very few instances the asylum seeker is entitled to stay there. According to most recent data the number of such (mostly Chinese and Vietnamese) applicants is rising, but the widespread perception is that these are applicants who already lived and worked in Budapest and exploit the refugee status determination procedure to legalise their stay.

Most of the asylum seekers in reality are apprehended while violating aliens law, either trying to cross the border without the necessary prerequisites or stopped as persons without a right to stay or work. In their case the aliens police procedure aimed at sanctioning the violation starts first. During the aliens police procedure the persons may express their need for protection and apply for refugee status. (§ 62 (7) GD) Alternatively in the process threatening with expulsion they may reveal that the return to their country of origin would entail a threat of inhuman or degrading treatment or punishment or a breach of any other norm which must not even indirectly (by refoulement) be violated. If this happens the aliens police procedure or – more frequently – the implementation of the already adopted expulsion order - is suspended. If the persons applied for refugee status the determination procedure – in front of another branch of the OIN – is started. If the person claims the threat of torture, inhuman or degrading treatment or death penalty (without applying for refugee status) then that will be investigated by the aliens policing authority. In fact the latter scrutiny is an *ex officio* obligation of the expelling authority, even without a claim being made by the "illegal foreigner". (§ 51 of the Act II of 2007 on the entry and stay of third country nationals henceforth: AESTCN)

According to the new system applicable from 1 January 2008 (henceforth 2008 system) detention of the asylum seeker is limited to the duration of the so-called "preliminary assessment procedure" which is limited to 15 days. (§ 55 (3) AA) At the end of that , the refugee authority shall designate at the request of the person concerned, a private residence as his/her place of residence. If no such request is articulated, the refugee authority shall designate a reception centre or another accommodation facility maintained on the basis of a contract as the place of residence.

[507] For the present structure check: www.bmbah.hu

Q.11. **Q11. A.** Explain if you have different types and levels of reception conditions following the different stages of the asylum procedure (this implies that you have to give briefly the necessary explanations about the asylum procedure). Make if relevant for reception conditions a distinction between the following procedural stages: determination of the responsible Member State on the basis of the Dublin II regulation, special procedures at the border (including transit zones in airports), accelerated procedures, admissibility procedures, eligibility procedures and the different possibilities of appeals (suspensive or not) against a refusal of the asylum request. Indicate what the main differences of reception conditions are between the different stages (if necessary by detailing between the different elements of reception conditions, in particular housing) and explain what the evolution of reception conditions is following the different stages of the procedure.

In general reception conditions do not depend on the "stages" of the procedure.

However, the 2008 system mentions a "reception centre for the accommodation of those under preliminary assessment procedure"(GD § 64 (3)), which has not been identified yet. Probably it will be one of the existing reception centres offering the same services and conditions as the others.

There is one more factor which in principle could (and in the past did) influence the actual reception conditions. This is the so-called airport procedure (AA § 72, and GD § 97.) Asylum seekers arriving without papers or with falsified documents (in general not meeting entry conditions at the international airport) may be subjected to the airport procedure, which has to be completed in eight days. In case of an airport procedure the OIN's refugee directorate is informed about the presence of the asylum seeker and the interview is conducted before admittance to Hungary. Entry may be denied and if so, then during the airport procedure the asylum seeker is accommodated at the so-called transit centre where other persons without the right to enter or awaiting removal stay. However, if the in-merit procedure follows the preliminary assessment procedure (i.e. no Dublin rule is applied and the application is not ineligible) then the asylum seeker is admitted to the country.

Supprimé : - if accelerated –

Mis en forme : Surlignage

Q 11. B. Indicate precisely for which stage(s) of the asylum procedure the answers on reception conditions you give below are valid.

4. GENERAL RULES ON RECEPTION CONDITIONS

Q.12. **Q 12. A**. Are material reception conditions provided in kind, in money or in vouchers or in a combination of these elements (see article 13, §5 which is an optional provision)? Distinguish between the different elements (housing, food, clothes, health, transportation, pocket money,…). **If reception conditions are provided in money (in general or in some cases, for instance when no places are anymore available in accommodation centres), indicate the precise**

amount given to the asylum seekers. Indicate in your answer what is provided in general and if there are exceptional cases. Specify in your answer if reception conditions are different from the general system of social aid for nationals or aliens and if yes, if and when (which stage of the asylum procedure) can asylum seekers have access to the general system of social aid?

In general material reception conditions are only provided if the applicant has no means to sustain herself.

Material conditions are provided in kind. Neither vouchers, nor money is used, except for the monthly allowance of the applicant and for the reimbursement of justified travel costs (e.g. attending the court hearing) or the travel costs of voluntarily returning home. Travel on train in second class is free by the force of Government Decree 85/2007 (IV.25.) if the asylum seeker already has a residence permit and a justification document from the refugee authority. (The humanitarian residence permit must be issued within three days from submission of the application. In that three days he/she may travel once free of charge) The monthly allowance is due in the second month after the start of the in-merit procedure. Its sum is 25% of the old age pension minimum. As the old age pension minimum on 31 December 2007 is 27 130 HUF (approximately 110 euros) the monthly allowance amounts to 25-30 euros. (Depending on the HUF/euro exchange rate). This is a remarkable change to the previous 8pre 2008) system in which minors under the age of 14 were not entitled to the monthly allowance.

In fact recently in all reception centers self-catering units were created in order to change material reception into self-maintenance. These cooking kitchens are often used, but the basic care remained the full board provision. As no money is earmarked for self catering, those who want to use this opportunity must do it from their own wealth or income.

Supprimé : One travel on a long distance coach is also free, but only with a special certificate of OIN. (same decree, § 10 82).)

Supprimé : from the third month" of staying at the reception centre, and is provided to asylum seekers above the age of 14.

Supprimé : The experience of the Southern Slav wars has an imprint on GD 25/1998: it envisages that camps and other accommodation may operate on the basis of contracts. Should that occur they are supposed to provide the same in kind provision as the presently operative reception centers.

Supprimé : (§7 (3))¶

Q 12. B. Can the reception conditions in kind, money or vouchers be considered as <u>sufficient</u> "to ensure a standard of living adequate for the health of applicants and capable of ensuring their subsistence" as requested by article 13, §2 of the directive (which is a mandatory provision but leaves a certain space to Member States)? In order to help to assess the respect of this rule when reception conditions are provided in money, include if necessary in your answer points of comparison with the minimum amount of social aid guaranteed for nationals in your Member State.

Opinions on the appropriate answer to this question would show a certain spread. Observers would fully agree that basic needs are met, subsistence in any condition is guaranteed, shelter, food, medical care, education - according to the domestic rules in force – is assured.

Life in the open reception centers normally offers an adequate standard of living, however when it comes to details, shortcomings show themselves. (Limited social assistance, limited leisure activity offers, difficulties for groups with special needs.)

5. PROCEDURAL ASPECTS

Q.13. **Q 13. A. Does the national legislation specifically provide that a request for international protection is presumed to be under the Geneva Convention unless explicitly requested otherwise? (see article 2, b which is a mandatory provision)**

Yes, as the refugee authority is obliged to investigate if the person is a Geneva Convention refugee even if the person has only applied for subsidiary protection status. (AA§ 58 and commentary thereto)

Q. 13. B. Explain if the scope of application of reception conditions is extended to other asylum seekers than refugees in the sense of the Geneva Convention, in particular to persons asking for subsidiary protection or to other forms of protection like humanitarian statuses (see article 3, § 4 which is an optional provision)? If not, explain briefly which the differences between these special regimes and the directive are.

They are extended to all individual applicants.

Q. 13. C. Are there specific provisions in national law for reception conditions in case of diplomatic or territorial asylum requests submitted through a diplomatic or consular representation (see article 3, §2 which is an optional provision)?

There are no such rules as there is no possibility to apply at representations.

Q.14. **Are reception conditions available as from the moment one asylum application is introduced? How is article 13, §1 which is mandatory legally understood?** Do asylum seekers have to satisfy any other condition in order to get reception conditions?

Yes, asylum seekers get the reception conditions from the moment of application except for the monthly allowance (Pocket money) (GD § 16 and 17 (3)) As to the conditions see response to Q 21 A.

Q.15. **Explain when reception conditions end, for instance after refusal of the asylum request** (include in your answer the link with the right of appeal against a decision of refusal of the status, in particular the question of its suspensive effect)

Reception conditions only end when the judicial review leads to the reaffirmation of the refusal of status. (But bear in mind that there is no appeal against the administrative decision, so the whole process only consists of one administrative and one judicial phase.) see AA § 27

Q.16 Are there special rules or practices regarding reception conditions in case of successive applications for asylum introduced by the same person?

Yes. According to AA§30 (1) g) reception conditions may be revoked or denied if the applicant "repeatedly submits an application for recognition on unchanged factual grounds". According to GD § 35 essentially all conditions may be revoked or denied, except the health care and the reception conditions grated to persons with special needs. Exempt is also the language training provided to children above five years of age serving their school participation.

Q.17. Information of asylum seekers about their rights and obligations in terms of reception conditions, in particular about established benefits (see article 5 which is too large extend a mandatory provision; do not confuse this question with the information to be provided to asylum seekers about the asylum procedure):

Q. 17. A. Are asylum seekers informed, and if yes about what precisely?

Yes, about the full set of provisions and benefits they are entitled to in accordance with the AA and the GD, of all the obligations they must fulfil relating to reception conditions and of organisations providing specific support or legal assistance throughout reception.

Q. 17. B. Is the information provided in writing or, when appropriate, orally?

It is provided in writing

Q.17. C. Is that information in general provided in a language understood by asylum seekers? Specify the list of languages in which it is available

It must be. GD § 17 (4). No practice exists yet, based on the 2008 system

Q. 17. D. Is the deadline of maximum 15 days respected?

Yes. The refugee authority must decide on granting or denying the reception conditions by the end of the preliminary assessment procedure. (Until that moment they are automatically granted) In principle the preliminary assessment procedure must not last longer than 15 days – so the RD requirement is met.

Q.18. Information of asylum seekers about the existence of organisations or groups promoting their interest and defending their rights (see article 5 which is to a large extend a mandatory provision):

Q. 18. A. Is there a list of organisations dressed by the authorities and if yes is it comprehensive? Is this in particular the case about the possibilities to get legal assistance and health care?

Assumedly there will be since according to § 17 (4) the information provided in writing must include "organisations providing specific support or legal assistance throughout the reception period**"**

Q. 18. B. Is the information provided to the asylum seekers, and if yes, in writing or, when appropriate, orally?

In writing. (see responses above)

Q. 18. C. Is that information in general provided in a language understood by asylum seekers? Specify if possible the list of languages in which it is available.

Yes. see response to Q 17/A

Q. 18. D. How many organisations are active in that field in your Member State?

The major players are:

Hungarian Helsinki Committee Refugee Program (www.helsinki.hu) It provides free legal counselling and representation in the refugee status determination procedures. HHC is also instrumental in running refugee legal clinics – a special cooperation of law students, lawyers and academia.

Menedek Association for Migrants (www.menedek.hu) engaged in individual social counselling, occasionally providing that service on behalf of OIN on contractual basis and running community programs (clubs for women, children);

Cordelia Foundation for the Rehabilitation of Torture Victims (www.cordelia.hu) offers psychological treatment and rehabilitation.

There are approximately half a dozen other NGO-s which are involved in refugee-related activities, including sports, culture, intercultural education, community development. some of their activities may involve applicants.

Q.19. Documentation of asylum seekers (see article 6):

Q.19. A. What kind of document is delivered to the asylum seeker? Explain the legal value of this document (just a certification of the status as asylum seeker or also prove of identity?) (see §1 of article 6 which is a mandatory provision)

According to AA § 5 (1) a) (1) "A person seeking recognition shall be entitled to stay in the territory of the Republic of Hungary under the conditions set forth in the present Act and to a permit authorising stay in the territory of the Republic of Hungary as defined in separate legal rule;". The 2007 Act on the entry and stay of third country nationals expands on this in its § 29 (1) c which, then, in turn is implemented by §§ 70 (2) and 71 () of the Government Decree 114/2007 implementing the AESTCN. Their combined effect is

that the asylum seeker receives a so called "humanitarian residence permit" entitling for a stay for a year.

Q.19. B. Are there situations or specific cases in which another equivalent document or even no document is issued? (in particular is there an exception for "procedures to decide on the right of the applicant legally to enter the territory" as made possible by §2 of article 6)?

No

Q.19. C. For how long is this document in principle valid and is it necessary to renew it after a certain period?

The document is valid for a year. AESTCN, § 29 (2) a).

Q.19. D. What is the deadline for the delivery of that document? Is the mandatory deadline of 3 days set by article 6, §1 respected[508]?

Yes, 114/2007 Government Decree, § 70 (2)

Q.19. E. Is it possible for an asylum seeker to get a travel document for serious humanitarian reasons (see §5 of article 6 which is an optional provision)?

There is no rule on how applicants could get access to a travel document.

Q.19. F. Is there a central system of registration of asylum seekers and is it or not separate from the registration of aliens? If yes, describe it briefly (content) and indicate in particular if it is an electronic database.

There is a central digital registration, separate from the aliens' registration. This is how the AA describes it:

"Chapter X
DATA MANAGEMENT
81. §
The refugee authority shall manage the personal details of refugees, beneficiaries of subsidiary and temporary protection and persons seeking recognition (hereinafter collectively referred to as "persons coming under the effect of the present Act") and the data related to their residence, the provisions and benefits which they are entitled to as well as any changes therein in the refugee records for the purpose of

a) establishment of the existence of the legal status of refugee, beneficiaries of subsidiary or temporary protection and providing the benefits which are attached thereto,
b) establishment of the entitlement to the provisions and benefits determined in the present Act and in separate legal rule,
c) identification,
d) prevention of parallel procedures and
e) establishment of the multiple submission of applications.

82. §

For the purposes of the present Chapter, the following details of the persons coming under the effect of the present Act shall qualify as natural identification data:
a) surname(s) and first name(s);
b) surname(s) and first name(s) at birth;
c) former surname(s) and first name(s);
d) pseudonym(s);
e) place and date of birth;
f) sex;
g) mother's surname(s) and first name(s);
h) current and former nationality, nationalities or stateless status;
i) in case of refugee or beneficiary of subsidiary protection, the personal identifier.

83. §

(1) The refugee records shall contain the following details of a person coming under the effect of the present Act:
a) natural identification data;
b) facial image;
c) fingerprints of persons older than fourteen years of age;
d) if the applicant is an unaccompanied minor, this fact,
e) if the applicant was taken over in the Dublin procedure, this fact and the date of the take-over,
f) the date of submission of the application for recognition as refugee or beneficiary of subsidiary or temporary protection as well as the date of the withdrawal of such application,
g) the fact and the date of recognition as refugee or beneficiary of subsidiary or temporary protection, the name of the authority or court issuing the recognition decision as well as the number of persons covered by the decision,
h) the fact, reason and date of rejecting the application for recognition, the discontinuation of the procedure and the revocation of the recognition; the deadline to comply with the obligation to leave the country, the name of the authority or court that made the decision, and the number of persons covered by the decision,
i) the fact and reason of the hand-over of the applicant in Dublin procedure, the dates of the resolution providing for the hand-over as well as of the actual hand-over, and the number of persons covered by the resolution,
j) marital status, occupation, education;
k) place of residence, place of stay and accommodation;

l) name of country of origin;
m) from among data relating to racial or ethnic affiliation, membership of particular social group, religion or political convictions, those which the person referred to in the reasoning part of his/her application;
n) data of identification and travel documents (identification mark and number of document, term of validity, date of issuance, name of issuing authority, place of issuance);
o) natural identification data of family members arriving together with him/her and the legal title of residence in Hungary;
p) data relating to his/her income and pecuniary situation which were contained in his/her declaration, the document supplied by him/her or in the data supplied by the tax authority and/or the agency fulfilling social security responsibilities."

Q.20. **Residence of asylum seekers :**

Q.20. A. Is in principle an asylum seeker free to move on the entire territory of your Member State or only to a limited part of it and in case, which part? (see article 7, §1 which is a mandatory provision)

According to §48 (2) of the AA during the preliminary assessment procedure (the first 15 days) "[t]he applicant may only leave the reception centre in particularly justified cases, with the permission of the refugee authority, provided that his/her absence does not prevent the performance of the relevant procedural acts" After the preliminary assessment procedure asylum seekers are free to move, (AA 5§ (1) a) If they live in the reception centre they can be away from 8 a.m. till 22. p.m. without notice. If they indicate the intention to be absent for a longer period it is also their right, but absence must be approved by the reception centre and the request has to be submitted three days before departure. No limitations whatsoever apply in terms of the part of the country to be visited.

Supprimé : around if they are not in detention

Q.20. B. About the place of residence (see §2 of article 7): explain to which extend the person is free to choose her residence and if this depends of the stage of the asylum procedure (for instance before and after admissibility); if there are constraints limiting the choice, explain which ones and their reasons (for instance processing of application, attribution of reception conditions,…).

During the preliminary assessment procedure applicants must live in the reception centre (unless in detention) Thereafter asylum seekers may stay outside the reception centers, but their place of residence has to be designated/approved by the refugee authority AA § 56. According to the GD (§ 32 (4) and (5) unaccompanied minors are to be accommodated in the appropriate child protection institution, in a reception centre which guarantees their separate accommodation or with a relative who does not qualify as a close family member, but undertakes in writing to accommodate the minor and take care of and provide for the minor

Q.20. C. About the <u>place of reception (meaning where the asylum seeker has to stay to benefit from reception conditions) (see § 4 of article 7)</u>: explain which are the general rules about the determination of this place (to which extend are the decisions determining the place taken individually and do they take into account the personal situation of the asylum seeker?) and to which extend the person is free to choose it and if it depends of the stage of the asylum procedure (for instance before and after admissibility); if there are constraints limiting the choice, explain which ones and their reasons (for instance attribution of reception conditions, processing of the application,…).

Beyond the idea that the preliminary assessment period be spent in a centre (to be designated) there are no rules on the placement, it depends on the availability of places and other non-normative conditions. (E.g. are buildings being renovated or not.) There was only one exceptional period in which asylum seekers of a certain national background were collected at an ad hoc centre designed for that specific group. (Afghans after September 11 2001)

Material conditions are only available of the applicant lives regularly in the centre. (GD § 20 (1)

Occasionally -as a sanction – asylum seekers are transferred from one reception centre to the other.

Q.20. D. If all asylum seekers are not placed in accommodation centres because of capacity limits, explain <u>how the persons are distributed between accommodation centres and other accommodation facilities</u> (which authority takes the decisions, on the basis of which elements, can that decision be appealed by the asylum seeker,…)

There is no current practice on this issue. Back in the early 1990s ad hoc reception centers had been set up in former military barracks, etc.
The 2008 system envisages that beyond the actual reception centres other "accommodation or camps operated on a contract basis" may also (legally) qualify as reception centres. GD § 12 (4). That, probably, is a measure of precaution for inflows exceeding the normal capacity limits. (Note the term: „camp"!)

Q.20. E. How can an asylum seeker ask to <u>leave temporarily</u> the place of residence or of reception or an assigned area? How is the individual AND impartial character of the decision ensured? (see §5 of article 7 which is a mandatory provision)

According to § 48 (2) AA, during the preliminary assessment procedure the applicant can only leave the centre with the express consent of the refugee authority in particularly justified cases. Thereafter temporary (daily) leave is free.

Q.21. **Q.21. A. Do rules on <u>reduction or withdrawal of reception conditions</u> exist in internal legislation and if yes in which cases (mention in particular if there are cases not foreseen by article 16, § 1 and 2 which are optional provisions)? Distinguish in your answer between cases of reduction and withdrawal and explain which conditions can be reduced and if access to emergency health care is always ensured as requested by article 16, §4, last sentence.**

Yes, they do exist. The AA contains a separate subsection, entitled " *Revocation and Denial of Conditions of Reception"*

30. §

"(1) Except as set out in subsection (2)-(3), the conditions of reception provided for a person seeking recognition may be revoked or denied if the person seeking recognition
a) repeatedly or grossly violates his/her obligation of cooperation;
b) leaves the accommodation facility designated for him/her for a period of more than twenty-four hours without the permission of the refugee authority;
c) repeatedly or grossly violates the rules of conduct which govern at the designated accommodation facility;
d) has departed from the designated accommodation facility for an unknown destination and a period of fifteen days has elapsed since his/her departure;
e) issues an untrue declaration with respect to his/her property and/or income in the interest of acquiring entitlement to the material conditions of reception or refuses to issue a declaration;
f) manifests seriously violent behaviour because of which criminal or minor offence procedure is initiated against him/her;
g) repeatedly submits an application for recognition on unchanged factual grounds.
(2) The conditions of reception shall not be revoked or denied in case of persons requiring special treatment.
(3) The emergency health care services shall be provided even in the event of the revocation or denial of the conditions of reception referred to in subsection (1).
(4)..."

The implementing GD further specifies the permissive rule ("may be revoked or denied")

"Article 35

(1) Regarding provisions and benefits listed in Article 15, pursuant to Article 30 (1) of the Act the following may be withdrawn or refused:
a) accommodation and care at the reception centre, except for language education for minors older than five years with a view to facilitate participation in public education,
b) monthly expense allowance and
c) travel allowance.

(2) Accommodation and care at a reception centre may not be withdrawn from or refused to an asylum seeker in need when lodging his or her application for asylum for the first time."

From the context of these rules follows that health care can not be denied or reduced and in general those who are undergoing their first procedure (i.e. it is not a repeat application) *and* need the provision of accommodation and care at the centre can not be removed from the centre.

Q.21. B. Has article 16, §2 dealing with refusal of reception conditions for unreasonably late applications for asylum been transposed by your Member State (or was this case already applicable before transposition)? Are there cases in practice?

Not. In fact the 2008 system removed the accelerated procedure from the regulations. Late submission is mentioned in the AA § 59 h), but even in that case the full in-merit procedure has to be conducted. The commentary to the act confirms this.

Q.21. C. How is it ensured that decisions of reduction or withdrawal are taken individually, objectively AND in particular impartially (for instance through and independent arbitrator) (see article 16, §4 which is a mandatory provision)?

The AA in § 30 sates:
"...
4) The refugee authority shall decide on the revocation or denial of the conditions of reception in an order. The revocation or denial set forth in the order shall be proportionate to the breach of obligation referred to in subsection (1).
(5) After its decision regarding the revocation or denial of the conditions of reception becomes final and absolute, the refugee authority shall - upon request by the applicant or ex officio - regularly review the necessity of the maintenance of such revocation or denial."

The implementing GD expressly refers back to the RD language when it states in § 36 (6):

"Decisions regarding the withdrawal or refusal of reception conditions or the restitution or granting thereof shall be based on the individual assessment of the situation of the asylum seeker concerned"

Q.21. D. Is statement 14/03 adopted by the Council at the same moment as the directive respected (see the document attached to our sending)?

Yes, it is.

Q.21. E. Are there already administrative appeal decisions or judgements on cases of reduction, withdrawal or refusal which have been taken, and if yes, what has been the outcome?

Not yet under the 2008 system

Q.22. **Q.22. A. <u>Appeal</u> against a negative decision relating to the granting of benefits or based on article 7 (see article 21 which is a mandatory provision): indicate against which decision an appeal can be introduced, describe the system of appeal in general and include in particular in your answer the information given to asylum seekers about possibilities of appealing, deadline for appealing, if the appeal has or not a suspensive effect, if there are different steps (for instance first an administrative appeal and in particular if the guarantee of an appeal before a judicial body in the last instance is respected)?**

This might be a weak spot in the 2008 system. According to § 31 there is no separate appeal against an order withdrawing or denying conditions of reception. That order may only be challenged in the judicial review request against a decision not to start the in-merit procedure, the substantive decision on recognition or the decision on terminating the procedure.
If the asylum seeker is in detention at the time of submitting her application, the preliminary assessment procedure is conducted while the person is detained. However, at the end of the maximum 15 days procedure if the application is eligible for substantive investigation (in-merit procedure) detention ends as the aliens policing authority must terminate it by force of law. AA § 55 (3).
During the detention period the rules of aliens policing apply,. Any detention, longer than 72 hours must be approved by the court, whether the detained submits a complaint requesting that or not. §§ 57 and 58 of the AESTCN and §§ 126-129 of GD 114/2007 implementing the AETCN.

Q.22. B. Explain which are the possibilities for asylum seekers to benefit from <u>legal assistance</u> when they introduce such an appeal (see article 21, §2 which is a mandatory provision but leaves space to Member States)?

Asylum seekers who request the judicial review of the detention decision may hire a lawyer. The Hungarian Helsinki Committee, a leading NGO does maintain a network of lawyers who personally or through students assistants working in a legal clinic regularly visit detention facilities and make their services available free of charge.
This practice has been confirmed by AA § 68 which ensures that applicants may appoint representatives and that applicants arrested or detained must be accessible to NG

Q.22. C. Are there already administrative appeal decisions or judgements which have been taken and if yes, which are the main important ones?

There are none.

Q.22. D. Is a mechanism of complain for asylum seekers about quality of receptions conditions in general (even if they are not personally concerned) organised? If yes, before which authority? Is it linked to the system of guidance, control and monitoring of reception conditions (see below question n° 39)?

There is no such system of "general complaint" by the non-affected persons, representatives of groups. Individual complaints can be submitted to the head of the reception centre. Against that decision a further complaint or request may be lodged with the general Director of the OIN. This might change when the detailed rules on the reception centres will be adopted (replacing the earlier Decree of the Minister.)

6. RIGHTS AND OBLIGATIONS OF ASYLUM SEEKERS

Q.23. **Family unity of asylum seekers: define how a family is defined in relation with article 2, (d) which is a mandatory provision and explain how housing is provided to a family (see articles 8 which is a mandatory provision but leaves space to member States and 14, §2, (a) which is a mandatory provision).**

The AA in the section determining the meaning of certain expressions (§ 2) defines "family member". According to § 2 i) it refers to foreigner's spouse, minor child (including adopted and foster child) and parent(s) if the person seeking recognition is a minor.

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The Hungarian definition of the family follows that of the RD inasmuch it does not include the child of the spouse (who is not the child of the applicant). Unmarried couples in a stable relationship do not qualify as family according to the text of the rule.

The AA of 2007 has a new provision clearly enunciating the principle of family unity (AA § 4 (2)). Further, § 7 of the AA again stresses the unity of the family, stating that "for the purpose of maintaining family unity, upon application, the family members of a foreigner recognised as a refugee ... shall be recognised as refugees. ... If a child is born in the territory of the Republic of Hungary to a foreigner recognised as a refugee, upon application, the child shall be recognised as refugee." § 13 (2) repeats this rule mutatis mutandis in connection with the beneficiaries of subsidiary protection, but sets as a requirement that the family member's application be submitted together with the primary applicant or at least before the primary applicant is recognised as a beneficiary of subsidiary protection.

Q.24. **Q.24. A. How is housing of asylum seekers organised: describe the system in general and indicate in particular what is the most frequently system used (see article 14, §1 which is a mandatory provision but leaves**

space for Member States; distinguish between accommodation centres, private houses and apartments, hotels places or other premises).

Housing is practically exclusively organised in open reception centers, except for those who are detained. It is rare (but on the rise) that an asylum seeker would stay on her own costs outside of the centers. Three such centers exist: in Békéscsaba, in Bicske and in Debrecen. Asylum seekers are entitled to stay there during the administrative and the court phase (if any) of their status determination procedure.

The 2008 system is clear on this task § 12 of the GD declares the following :

"(1) Providing conditions for the subsistence of asylum seekers, refugees and beneficiaries of subsidiary or temporary protection and facilitating their social inclusion is a state competence.
(2) Tasks pursuant to paragraph (1) above shall be performed directly by the refugee authority or through the notary of the competent municipality or, in the capital city, of the competent district (hereinafter referred to as notary) where the reception centre or other suitable accommodation (hereinafter referred to as reception centre) is situated.
(3) A reception centre is a facility operated by the refugee authority in order to accommodate and care for asylum seekers, refugees and beneficiaries of subsidiary or temporary protection. "

§ 21 (6) of the GD prescribes that -even if the family members have different status - accomodate together the family members unless they otherwise request.

Separated children (unaccompanied minors) are accommodated by a specific home run by the Hungarian Red Cross in Nagykanizsa.

Q.24. B. What is the total number of available places for asylum seekers? Distinguish in your answer between accommodation centres, private houses and apartments, hotels or other premises.

The number of places depends on the stage of renovations. According to information from OIN on 31 December 2005 the capacity of Békéscsaba was 350, Bicske 100 and Debrecen 1395 places. The home for separated children accommodates 20 such persons. The capacity of Bicske was limited by deputy the director's instruction.

Q.24. C. Is this number of places for asylum seekers sufficient in general or frequently insufficient?

In general the number of places is sufficient. New arrivals were below 2500 for the last years. (2004: 1600, 2005: 1609, 2006: 2109, 2007 January –September: 1975). The same reception capacity could handle much larger numbers in the late nineties. (1999: 11 499, 2000: 7 801). When comparing the past with recent years a qualification has to be added: since the late nineties the time spent in the reception centers has dramatically increased. In the years with greater numbers a significant portion of the asylum seekers disappeared from the centers within weeks.

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Q.24. D. Are there special measures foreseen in urgent cases of a high number of news arrivals of asylum seekers (outside the case of application of the directive on temporary protection)?

There are no publicly known plans. It is assumed that in the frame of national defence planning contingency plans for large scale influxes are elaborated, but no hard evidence is available.

Q.25. Accommodation centres **(important note: all the following questions are about open and not closed centres where asylum seekers are detained which are covered by another question)**

Q.25. A Are there different categories of accommodation centres, for instance depending of the stage of the procedure (admissibility and eligibility)?

The 2008 system envisages that there will be an accommodation centre for those under the preliminary assessment (i.e. eligibility) procedure (0 GD 81 (1), but details have not been revealed yet. Unaccompanied minors are also housed in a separate institution.

Q.25. B. Is there a legal time limit for accommodation in a centre after which the asylum seekers have access to private houses or apartments or is this limit linked to a stage of the asylum procedure?

No. There is no time limit. Accommodation in private houses is not on offer. Asylum seekers stay in the reception centre until the final (court) decision is taken.

With the approval of the refugee authority they may move out, at their own cost.

(Recognised refugees have to leave the reception centre 6 months or maximum a year after recognition, except for very special cases who may stay longer.)

Q.25. C. Is there a general regulation about the internal functioning of those centres and the rights and duties of the asylum seekers? If yes, is this general regulation applicable to public and private centres? If not, are the centres supposed to adopt an internal regulation and does a central authority have or not a kind of control about its content?

At the moment Annex to the Decree of the Minister of the Interior No 24/2001 (XI.21) on the organisational structure of refugee affairs and the responsibilities of refugee reception centres contains the House Rules which are applicable at each reception centre. It is expected that it will be re-drafted in the close future.

Q.25. D. Do the regulations foresee the possibility of sanctions against asylum seekers in case of breach of the rules? (see article 16, §3) If yes, which sanctions for which rules? Which is the competent authority to decide? How is it ensured that decisions are taken individually, objectively and in particular *impartially* (for instance through an independent arbitrator) as requested by §4 of article 21 which is mandatory provision*?* Which are the possibilities of appealing against those decisions if the system is different from the general one under question n°22? Are there already administrative appeal decisions or judgements which have been taken and if yes, which are the main important ones?

See the response to Question 21

Q.25. E. Are asylum seekers involved in the management of these centres? If yes, how (advisory board, appointment or election of representatives)? (see article 14, §6 which is an option provision)

There is no formal rule on this. According to observers no efforts are made by OIN to achieve participation. OIN notes that in their experience those asylum seekers staying for a longer period in a reception centre become informal mediators and sometimes spokespersons of others. On the other hand, the nationality breakdown of the asylum seekers accommodated in the Hungarian centers shows a great variety and the different nationality appear to be reluctant to co-operate with each other in order to forma common advocacy group

Q.25. F. Do specific rules exist on work of asylum seekers inside the accommodation centres different from the general ones about employment (see below)? If yes, which ones? Can working inside accommodation centres be considered as a (mandatory) contribution of the asylum seekers to the management of the centres, is it or not paid and considered as implying access to the labour market and subject to the same rules?

According to point 5 of the House Rules the asylum seeker must participate in the cleaning of her own room and in "keeping the immediate vicinity of the building tidy." Otherwise there is no obligation to work.

The specific rule on work is that asylum seekers may take up paid employment within the reception centre without a work permit (which - in the first year - they can not do outside.) The amount of paid work is limited in 40 hours per *month* (See: GD § 21(4))

Q.26. **Q.26. A. How can asylum seekers communicate with legal advisers, representatives of UNHCR and NGOs? (see article 14, §2, (b) which is a mandatory provision).**

See response to Q 26 B

Q.26. B. What are the rules about access of legal advisers, UNHCR and NGOs regarding access to accommodation centres and other housing facilities (see article 14, §7 which is a mandatory provision)

The AA includes detailed rules on access of the abovementioned persons to the centres. § 5 d) states that the applicant is entitled to "enter into and maintain contact with the United Nations High Commissioner for Refugees and other international or non-governmental organisations during the term of the asylum procedure.". §§ 37-38 elaborate:
"... (3) The person seeking recognition shall be given the opportunity to use legal aid at his/her own expense or, if in need, free of charge as set forth in the Act on Legal Assistance, or to accept the free legal aid of a registered non-governmental organisation engaged in legal protection.
(4) The person providing legal assistance authorized by the person seeking recognition
a) may attend the personal interview of the person seeking recognition;
b) may view the documents generated in the course of the refugee procedure and may make copies thereof;
c) may enter the premises of the institution serving to accommodate the person seeking recognition or, if the person seeking recognition is in detention, may enter the premises of the detention facility, for the purpose of maintaining contact with the person seeking recognition.
38. §
The representative of the United Nations High Commissioner for Refugees may take part in the refugee procedure. As part of this,
a) with the consent of the person seeking recognition,
aa) may attend the personal interview of the person seeking recognition;
ab) may view the documents generated in the course of the refugee procedure and may make copies thereof;
ac) shall be informed by the refugee authority of the progress of the refugee procedure and the decisions adopted, including any court decisions;
b) may present his/her opinion related to the application for recognition in any phase of the refugee procedure;
c) may enter the premises of the institutions serving to accommodate the person seeking recognition or, if the person seeking recognition is in detention, may enter the premises of the detention facility."

Q.26. C. Can the access of legal advisers, UNHCR and NGOs be limited for security reasons or any other reason (see article 14, §7, last sentence)?

See response to Q 26 B

Q.27. **Q.27. A. Is a medical screening organised by the receiving State, is it mandatory or voluntary? Does it include HIV tests? (see article 9 which is an optional provision)**

Rules on medical screening change with the 2008 system. The earlier compulsory screening and quarantine is replaced with a flexible system, in which starts from § 5 (2) d) of the AA. It provides that the applicant must "subject him/herself to health tests, medical treatment prescribed as mandatory by law or required by the relevant health authority and to subject him/herself to the

replacement of any missing vaccinations prescribed as mandatory by law and required by the relevant health authority in the case of the danger of disease." GD § 63 provides the details. According to para. (1) the subregional chief medical officer has to be notified, with a view to have the those medical screenings ordered, "which are corresponding to the epidemic situation". Afterwards, once already in the centre the local general practitioner is supposed to notice if the applicant suffers from any illness necessitating her/his separation. (subpara (2)).

Q.27. B. Do the legal provisions on reception conditions ensure that asylum seekers receive at least emergency care and essential treatment of illness as requested by article 15 §1 which is a mandatory provision? Do they have a further access to health care?

The GD contains detailed rules developing the earlier system. According to § 26
" If the applicant ...is not covered by the social security system, he shall be entitled to the following health care services free of charge in the case of illness:
a) examinations and curative treatments falling within the sphere of basic health care;
b) examinations and curative treatments within the framework of outpatient health care in the case of emergency, , as well as the medicine and bandage used in the course of health care;
c) inpatient hospital care in the case of emergency, and curative treatment in the hospital according to the prescriptions of the physician, including surgical operations and the therapeutic materials and prosthetic instruments used in the course of such operations, as well as therapeutic care, and the medicine, bandage and meals necessary for the treatment;
d) after outpatient health care or inpatient hospital treatment, until the stabilization of the person's health condition
da) the examinations and curative treatment required;
db) medicine which cannot be replaced with any other medicine and which does not fall within the types of medicine referred to in paragraph h) and any medical instruments necessary for the application thereof;
e) other medical instruments not included in point db but ordered by the physician and their repair
f) emergency dental treatment and dental preservation treatment provided the lowest category treatment is utilised
g) prenatal and obstetric care, including interventions aimed at interrupting pregnancy in line with the law on the protection of the life of the foetus.
h) medicine and bandage which can be prescribed free of charge for those "entitled to public health care" or which can be ordered with a 90% or 100% social security subsidy on the basis of a "health care provision";
i) ambulance service in the case of the care/maintenance mentioned in paragraphs b) c) and da of d) if, due to the condition of the patient, transportation of the patient cannot be solved in any other manner.
j) the compulsory immunization linked to a given "

Supprimé : including emergency dental treatment

Supprimé : dressing material

Supprimé : dressing materials

Supprimé : following care/maintenance as indicated in paragraphs b) and c),

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The AA in § 29 (2) ensures that the persons with special needs enjoy more:
"persons requiring special treatment ... shall be entitled to health care provisions suited to their particular needs, free of charge, in case of need."

This is confirmed and elaborated by § 34 of the GD: "a person who has special needs – when in need – shall be entitled to use health care services justified by their condition free of charge, including rehabilitation, education for the mentally handicapped, psychological care and clinical psychiatry, as well as psychotherapy"

Q.27. C. What is the practice regarding access of asylum seekers to health care and how is it organised? In particular, what is the situation in accommodation centres (are doctors coming to the centres or do asylum seekers go to doctors outside)?

Nurses are available 24 hours, doctors and paediatricians come to the centre (twice a week) and have office hours, so do psychiatrists and non-verbal therapists of the Cordelia Foundation providing psychological care for psychiatric patients (torture victims, etc.) .

For specialized treatment asylum seekers have to attend the local special treatment centers. In case of hospitalisation need they are brought to the public hospitals.

Q.28. **Q.28. A. What is the length of the period determined by the concerned Member State during which asylum seekers have no access to the labour market? (see article 11 which is a mandatory provision)**

It is 1 year. (AA § 5 (1) c)) As indicated above asylum seekers are allowed to work within the reception centre from the submission of the application.

Q.28. B. After that period, are asylum seekers or not obliged to obtain a work permit? In case is there a limit for the administration to deliver the permits and how quick are they delivered? What is their length?

After the expiry of the year asylum seekers are obliged to obtain a work permit according to the general rules applicable to foreigners. Those are detailed in Decree No. 8/1999 (XI.10) of the Minister for Social and family Affairs, implementing Act No IV. of 1991 on the promotion of employment and on unemployment benefits.

Work permits are supposed to be delivered in ten days.

Their duration coincides with the length of the offer or has a maximum of one year, whichever is shorter.

Q.28. C. After that period, what are the conditions for access of the asylum seekers to the labour market? (in particular, are there rules concerning the maximum allowed of working hours or days per week, month or year, limits in terms of type of work or of professions authorised?

There are no such limits (except for the jobs reserved for Hungarian nationals, naturally.) Asylum seekers are free to take up employment as any foreigner who is not an EEA national.

Q.28. D. What are the rules in terms of priorities between asylum seekers on the one hand and nationals, EU or EEE citizens and legally third-country nationals on the other?

Asylum seekers qualify as legally resident third country nationals. EEA nationals have priority before them.

Q.28. E. Do asylum seekers have access to vocational training, does this or not depend of their right to access to the labour market, and in case at which conditions? (see article 12 which is optional regarding §1 and mandatory regarding § 2)

There are no direct rules dealing with that issue. Occasionally OIN itself or the NGO Menedék organize ad hoc vocational training courses. In the past trainings as carpet waiver, ceramist and social worker have been offered. GD § 14 (2) only envisages subcontracting for vocational training and re-training for the benefit of recognised refugees and beneficiaries of subsidiary protection which may be interpreted on the basis of an *a contrario* reasoning that the legislator does not intend to provide that opportunity to applicants.

Q.28. F. Are the rules regarding access to the labour market adopted to transpose the directive more or less generous than the ones applicable previously?

One of the few transpositional rules adopted in 2004 was the insertion of the 1 year deadline into the prohibition of employment. (§ 48 of Act No XXIX of 2004, amending § 16 (2) of the 1997 AA) (Before that prohibition was unlimited) Accordingly the rules became more generous.

Q.29. Are reception conditions subject to the fact that asylum seekers do not have sufficient resources? Are asylum seekers requested to contribute to reception conditions when they have personal resources (for instance if they work) or to refund the authorities if it appears that they have resources? (see article 13 §§ 3 and 4 which are optional provisions)

Yes, the provision of the conditions - except for the accommodation and the food provided in the reception centre - is subject to the asylum seekers own resources. (Wealth and/or income). According to § 18 of the GD they are free from contributing if the average income per head of the applicants constituting one household does not exceed the minimum monthly wage. In 2007 this is 65.500 HUF which is approximately 225 euros.

Supprimé : of old age pension

The applicant has to make a formal statement concerning her wealth and income when applying. (GD §17 (1).) That statement is subject to renewal upon request of the refugee authority. The

statement ends with a declaration in which the applicant takes note of the fact that she is obliged to pay for the services if her income exceeds the above mentioned limit. According to OIN the occurrence of the existence of own resources is 1 to 1000 among the applicants.

7. SPECIAL NEEDS OF PARTICULAR CATEGORIES OF ASYLUM SEEKERS

Q.30.

Q.30.A. Which of the different categories of persons with special needs considered in the directive are taken into account in the national legislation (see article 17, §1 which is a mandatory provision): disabled people, elderly people, pregnant women, single parents with minor children, persons who have been tortured, raped or victims of serious physical or psychological violence? Include in your answer all other categories envisaged in national law.

The text essentially is literally incorporated into the new AA.

AA § 2 k :
"person requiring special treatment: a vulnerable person, in particular, a minor, unaccompanied minor, elderly or disabled person, pregnant woman, single parent raising a minor child and a person who has undergone torture, rape or any other grave form of psychological, physical or sexual violence and has special needs because of his/her individual situation".

AA § 19 (2) reinforces the general principle of § 17 RD when it declares:

"persons requiring special treatment shall be entitled to health care provisions suited to their state of health, as determined in a separate legal rule, free of charge in case of need."

GD § 3 (1) makes it a duty of the authority to find out if the person is in a special situation (is a vulnerable person) or not. The same article envisages the involvement of expert doctors or psychologists in case of doubt. The expert involvement requires the consent of the affected person.

Q.30. B. How is their specific situation taken into account (see articles 13, §2, second indent, 16 §4 second sentence and 17 which are mandatory provisions)?

RD 13 (2) is reflected in § 28 of the AA in general terms (calling for material conditions satisfying the health needs and basic needs of the applicant.)

§ 30 (2) of the AA sets a serious barrier: reception conditions must not be denied or revoked in respect of persons "requiring special treatment" – meaning persons with special needs.
The GD devotes a separate subsection to persons with special needs (§§ 32-34) In essence it guarantees, that the
- vulnerable person be accommodated in a personal accommodation (not a common space)

- family unity be maintained,
- needs and best interest of the unaccompanied minor be taken into account,
- psychological treatment and rehabilitation be available free of charge.

Q.30. C. How and when are the special needs of the concerned persons supposed to be legally identified (see article 17 § 2 which is a mandatory provision and clarify how it has been interpreted by transposition)?

As already mentioned under response to § 30 A, GD § 3 (1) makes it a duty of the authority to find out if the person is in a special situation (is a vulnerable person) or not. The same article envisages the involvement of expert doctors or psychologists in case of doubt. The expert involvement requires the consent of the affected person. The obligation of the authority is phrased in general terms (”in the course of the application of the provisions of [the AA] and of the [GD]”), so no specific time limit is set.

Q.30. D. Is the necessary medical and other assistance provided to persons with special needs as requested by article 15, §2 which is a mandatory provision and in particular to victims of torture and violence as requested by article 20 which is a mandatory provision?

Yes it is, see responses to Q. 30 A and B.

Q.31. About minors:

Q.31. A. Till which age are asylum seekers considered to be minor?

Till the age of 18. According to AA § 2 f) ”unaccompanied minor is a foreigner under 18 years of age, who has entered the territory of the Republic of Hungary not accompanied by an adult person responsible for her/him on the basis of law or tradition, or who remains without supervision following entry, until s/he gets under the attendance/supervision of such a person”

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Q.31. B. How is access of minor asylum seekers to the education system ensured? Is it at school or in case inside accommodation centres and can it be considered as similar to the conditions for nationals as requested by article 10, §1?

According to the Act on Public education (Act No LXXIX of 1993), unaccompanied minors, and children of asylum seekers have access to the educational system, until the age of the educational obligation, which at present is 18 years. (§ 110 of the Act).

They must attend an educational institution after one year of stay in Hungary. However, they may start attending the educational institution earlier “upon the request of the parent” (§ 110 (3) a))

Attendance occurs on the same conditions as that of the Hungarian nationals (paragraph (4) of the same section), which means that education and services provided at the school are free of charge.

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Q.31. C. Is access to education ensured not later than 3 months as requested by article 10, §2 (or after maximum one year if specific education for asylum seekers is provided) and till an expulsion decision is really enforced?

If the parent so wishes access is ensured legally (from the first day). The 2008 system made it unequivocal in AA § 94 (5) which states that the right to send the child to school starts "from the submission of the application for recognition". However, if the parent does not intend to send the child to school, at present she can withhold her for a full year. Education does last until expulsion is enforced.

Q.31. D. Is specific education (like language classes) available for asylum seekers, in particular to facilitate their effective access to the education system of the reception Member State (see article 10, §2 which is an optional provision)?

According to § 21 (2) of the GD minors who have passed their fifth birthday must be provided with language education with a view to their participation in the public education.

Q.31. E. Are minors in general accommodated with their parents or with the person responsible of them? (see article 14, § 3)

Yes, they are. Unaccompanied minors under the age of eighteen years who make an application for asylum shall be placed in reception centres with special provisions for minors.
Unaccompanied minors may be placed with adult relatives if the latter undertake in writing to house, care and provide for the minor and from their personal relationship with the minor it becomes obvious that such an arrangement shall be in the best interest of the unaccompanied minor asylum seeker. Accommodation designated for an unaccompanied minor may only be changed in exceptional cases while taking into consideration the best interests of the minor.[509]
(7) When placing unaccompanied minors, family unity shall be maintained by keeping siblings together, taking into account their age and degree of maturity.

Q.31. F. Do minors with special needs enumerated by article 18, §2 which is a mandatory provision, have access to appropriate mental health care and qualified counselling?

[509] Provision drawn up pursuant to Article 19 (2) of the reception directive.
"Article 19 (2): Changes of residence of unaccompanied minors shall be limited to a minimum."

According to GD § 33 (3)) in the course of reception the interests of minors who make an application for asylum shall be taken into account. The paragraph expressly states that during the placement in the reception centre clothing, food, mentalhygenic and health care, general care and education and accommodation must "correspond to the child's age, health condition and other needs" and "must be conducive to her/his physical, intellectual, emotional and moral development". See also response to Question 30 A. and B.

Q.31. G. How and when is organised the representation of unaccompanied minors (guardianship, special organisation) and regularly assessed? (see article 19, §1 which is a mandatory provision)

"If the person seeking recognition is an unaccompanied minor, the refugee authority shall, without delay, provide for the appointment of a guardian serving to represent the minor" –states § 35 (6) of the AA.

In practice there is a difference among guardians in the perception of their role. Some limit it to participation in the refugee status determination procedure, others undertake to represent the minor's interests in other contexts of the everyday life.

Q.31. H. How is placement of unaccompanied minors organised (with adult relatives, a foster family, in special accommodation centres or other suitable accommodation)? (see article 19, §2 which is mandatory provision)

.GD § 33 contains the relevant rules. They can be summarised in the following way: Unaccompanied minors under the age of eighteen years who make an application for asylum shall be placed in reception centres with special provisions for minors. Unaccompanied minors may be placed with adult relatives if the latter undertake in writing to house, care and provide for the minor and from their personal relationship with the minor it becomes obvious that such an arrangement shall be in the best interest of the unaccompanied minor asylum seeker. Accommodation designated for an unaccompanied minor may only be changed in exceptional cases while taking into consideration the best interests of the minor. When placing unaccompanied minors, family unity shall be maintained by keeping siblings together, taking into account their age and degree of maturity.

Q.31. I. How is the tracing of the family members of the unaccompanied minors organised? Are measures taken to protect confidentiality of information when necessary? (see article 19, §3 which is a mandatory provision)

According to § 4 of the GD it is the responsibility of the refugee authority to trace person responsible for the minor unless there are reasons to believe on the basis of the information available for the refugee authority that there is a conflict of interest between the minor and the

adult responsible for her/him, or - with a view to the best interest of the child - tracing of the adult is not called for.

The authority may turn to refugee authorities of other EU member states, or rely on the assistance of UNHCR, ICRC, Red Cross and Red Crescent societies and other international organisations dealing with support of persons in need of international protection. (GD § 4 (3)

8. EXCEPTIONAL MODALITIES OF RECEPTION CONDITIONS

Q.32. Apart from detention covered by the next question, are there exceptional modalities for reception conditions in the following cases and if yes, which ones and for how long are they applicable, knowing that they should be "as short as possible" (see article 14, §8)?

Q.32. A. Persons with specific or special needs, regarding in particular the period of assessment of those needs?

Apart from free health care provided under the general provisions of Act on Asylum and its implementing government decree applicants having special needs are entitled, in particular, to rehabilitation, psychological health care and psychotherapeutic treatment. These persons shall also be accommodated separately, if it is justified by their personal circumstances, though the unity of the family shall be maintained in case of this separate accommodation as well (§ 32, § 33, paras. 1-2, § 34, GD). The Refugee Authority is to examine ex officio whether the specific rules related to persons having special needs are applicable or not. This assessment may comprise medical examination with the assistance of a doctor or psychological expert. Nevertheless, no medical examination can take place without the consent of the person concerned who is to be duly informed on the scope, method, purpose, significance of the medical examination. If the person concerned fails to consent to the medical examination, the specific rules are not applicable (Article 3, GD.).

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Moreover, minors are entitled to special care and attention with respect to the provision of reception conditions, encompassing accommodation, education, health care, mental hygienic care etc, which shall be compatible with the interest of the child, while it shall also promote his or her physical, emotional, mental and moral development, furthermore, it shall respond to needs of his or her age, state of health (§ 33, para. 3., GD)

Unaccompanied minors are to be accommodated in special accommodation facilities or with relatives if it serves the interest of the child. Their place of accommodation can only be altered exceptionally and the unity of the family shall be ensured by the joint, identical placement of brothers and sisters. The Refugee Authority is also to take measures in order to find the responsible person for the supervision of the unaccompanied minor (§ 4; § 33, paras. 4-5. GD).

Q.32. B. Non availability of reception conditions in certain areas

No.

Q.32. C. Temporarily exhaustion of normal housing capacities

No.

Q.32. D. The asylum seeker is confined to a border post

Yes, that is possible, but not practiced in the so-called border procedure (See response to Question 11) Those who directly apply for recognition with the Border Guards may spend hours or a day in custody before transfer to a reception centre.

Q.32. E. All other cases not mentioned in the directive (for instance urgent situation in case of a sudden high number of applicants outside a case of application of the directive on temporary protection).

No

Q.33. **Detention of asylum seekers (we do not cover the situation of rejected asylum seekers detained for the purpose of their return) (see §s 6 §2, 7 §3, 13, §2 2nd indent and 14 §8 which implies that the directive is in principle applicable in case of detention):**

Q.33. A. In which cases or circumstances and for which reasons[1] (identity verification in particular if the persons have no or false documents, protection of public order or national security, refugee status determination, way of entry into the territory, etc) can an asylum seeker be detained during the asylum procedure till his request has been finally rejected. Quote precisely in English in your answer the legal basis for detention of asylum seekers in national law.

The regulation of the possible grounds for asylum seekers has changed considerably on account of the entry into force of the new AESTCN and the adoption of AA. The existing main grounds may be summarized as follows:

A) As *lex generalis*, the applicable rules are contained in **AESTCN**, which renders possible the detention of foreigners violating alien policing rules in the following cases:

1. Under § 54 of AESTCN The alien policing authority of OIN or the Border Guards may impose alien policing detention upon the foreigner "In order to secure the expulsion of a third-country national" if the person in question is "hiding from the authorities or is obstructing the enforcement of the expulsion in some other way"; or "he/she has refused to leave the country, or, based on other substantiated reasons, is allegedly delaying or preventing the enforcement of expulsion"; "he/she has seriously or repeatedly violated the code of conduct of the place of compulsory confinement"; "he/she has failed to report as ordered, by means of which to forestall conclusion of the pending immigration proceeding"; or "he/she is released from imprisonment as sentenced for a deliberate crime".

The alien policing authority may order detention for a maximum duration of seventy-two hours, which may be extended by the court of jurisdiction, until the departure of the third-country national or the court may extend the foreigner's detention "for a maximum duration of thirty days at a time". The alien policing detention shall cease immediately "when the conditions for carrying out the expulsion are secured"; or "when it becomes evident that the expulsion cannot be executed"; or "after six months from the date when ordered".

2. Under § 55 of AESTCN the alien policing authority of OIN or the Border Guards may order the "detention of the third-country national prior to expulsion in order to secure the conclusion of the immigration proceedings pending, if his/her identity or the legal

[1] Please specify if article 18 §1 of the directive on asylum procedures of 1 December 2005 following which *"Member States shall not hold a person in detention for the sole reason that he/she is an applicant for asylum"* is or not respected (even if it has not yet to be transposed).

grounds of his/her residence is not conclusively established". The detention prior to expulsion may be ordered for a maximum duration of seventy-two hours by the alien policing authority and then may be extended the court heaving jurisdiction "until the third-country national's identity or the legal grounds of his/her residence is conclusively established, or for maximum thirty days".

3. While formerly only unaccompanied minors were exempted from alien policing measures as of the new AESTCN, minors are explicitly exempted from such measures, nevertheless, the alien policing authority may order their confinement in a designated place. As to families: the alien policing authority may also order, instead of detention, the confinement of a third-country national in a designated place, if the third-country national in question: "should be placed under detention, in consequence of which his/her minor child residing in the territory of the Republic of Hungary would be left unattended if he/she was to be detained". (§ 56 (1) and 62 (1), AESTCN)

4. Any detention measure shall be immediately terminated if when its grounds "no longer exist" (§ 56 (2), AESTCN).

Thus, in comparison to former rules,

a) **There are no obligatory cases of expulsion.**
b) **The maximum length of alien policing detention was reduced from one year to 6 months AESTCN.**
c) **The rules on court intervention altered significantly, since now the court is required to review detention first 72 hours (not five days) after its ordering and afterwards judicial review is to occur every 30 days.**
d) **The detention for refusal (return to another country on the basis of readmission agreement) was abolished.**

As to alien policing detention measures, it shall also be noted, however, that in the case of former short-time alien policing detention measures (e.g. detention for refusal) there had already been a practice of "early release" of asylum seekers (see below, point A).

B) Nevertheless, as lex specialis, the **AA** basically seems to curtail considerably the applicability of alien policing norms on detention in the case of asylum seekers. The AA renders possible the detention of asylum seekers only during the preliminary assessment of the asylum application which may not exceed 15 days, and this time limit can not be extended (see § 47 (2) and § 55 (3)). Although § 55 (3) prescribes that the detention of the asylum seeker shall be terminated by the alien policing authority, after the Refugee Authority made a decision on referring the case to the in merit phase of the procedure, „*at the initiative of the refugee authority*" it is expected that upon such referral this initiative follows automatically. Nevertheless, the practice attached to these provisions still remains to be seen.

It shall be noted, however, that in the case of former short-time alien policing detention measures (e.g. detention for refusal) there had already been a practice of "early release" of asylum seekers (see above, point A). The explanation for this was the fact that after the submission of the asylum application it became evident that due to the average length of such procedure, the purpose of the

short-time detention was manifestly impossible to be attained within the maximum possible period of detention, especially that measures taken in view of returning, refusal or expulsion had to be suspended during the asylum procedure. As the maximum period of alien policing detention dropped from one year to 6 months, a situation similar to the former short – time detention measures emerges. Since "any third-country national whose application for refugee status is pending may be turned back or expelled only if his application is refused by final and executable decision of the refugee authority" it seems to be evident that if the case is referred to the in-merit procedure by the Refugee Authority, expulsion (which is the purpose of alien policing detention) can not be implemented within the 6 month time limit.

The AA also specifies that the material conditions of reception shall also be provided to persons seeking recognition while detained. It remains to be seen how this would be implemented in practice.

It follows that asylum seekers may not be held in detention for the sole reason of being an asylum applicant.

RELEVANT LEGAL ACTS:

A) Act LXXX of 2007 on Asylum (AA)

28. §

(1) The refugee authority shall provide for the availability of the material conditions of reception suited to the state of health and satisfying the basic needs of the person seeking recognition.
(2) The material conditions of reception shall also be provided to persons seeking recognition while detained.

Preliminary Assessment Procedure

47. §

(1) The refugee authority shall subject an application for recognition as a refugee or as a beneficiary of subsidiary protection (in the present Chapter hereinafter referred to as the "application") to a preliminary assessment following its submission.
(2) The preliminary assessment procedure shall be completed within fifteen days. The time limit for administration may not be extended.

55. §

(1) If the refugee authority establishes the admissibility of an application, it shall refer the application to the in-merit procedure.

(2) No legal remedy shall lie against a resolution referring the application to the in-merit procedure.
(3) If the refugee authority refers the application to the in-merit procedure and the applicant is in alien policing detention, the alien police authority shall, at the initiative of the refugee authority, terminate his/her detention.

B) Act II of 2007
on the Admission and Right of Residence of Third-Country Nationals

Article 51.

(1) Third-country nationals may not be turned back or expelled to the territory of a country that fails to satisfy the criteria of safe country of origin or safe third country regarding the person in question, in particular where the third-country national would be threatened with persecution on account of his/her race, religion, nationality, membership of a particular social group or political conviction, nor to the territory of a state or to the frontier of a territory where there is substantial reason to believe that the returned or expelled third-country national would be subjected to the death penalty, torture or any other form of cruel, inhuman or degrading treatment or punishment (non-refoulement).

(2) Any third-country national whose application for refugee status is pending may be turned back or expelled only if his application is refused by a final and executable decision of the refugee authority.

Detention
Article 54.

(1) In order to secure the expulsion of a third-country national the aliens policing authority shall have powers to detain the person in question if:

a) he/she is hiding from the authorities or is obstructing the enforcement of the expulsion in some other way;

b) he/she has refused to leave the country, or, there are substantive reasons to believe that he/she delays or prevents the enforcement of expulsion;

c) he/she has seriously or repeatedly violated the code of conduct of the place of compulsory confinement;

d) he/she has failed to report as ordered, by means of which to forestall conclusion of the pending aliens policing proceeding;

e) he/she is released from imprisonment as sentenced for a deliberate crime.

(2) Aliens policing detention shall be ordered by way of a formal resolution, and shall be carried out when communicated.

(3) Aliens policing detention may be ordered for a maximum duration of seventy-two hours, and it may be extended by the court of jurisdiction by reference to the place of detention until the third-country national's departure, or for maximum thirty days.

(4) Aliens policing detention shall be terminated immediately:

a) when the conditions for carrying out the expulsion are secured;

b) when it becomes evident that the expulsion cannot be executed; or

c) after six months from the date when ordered.

(5) In the application of Paragraph c) of Subsection (4), the duration of detention in preparation of expulsion shall be included in the duration of detention.

(6) In connection with the termination of detention under Paragraphs b) and c) of Subsection (4), aliens policing authority ordering the detention shall designate a compulsory place of residence for the third-country national affected.

Article 55.

(1) The aliens policing authority may order the detention in preparation of expulsion of the third-country national in order to secure the conclusion of the pending aliens policing procedure, if his/her identity or the legal grounds of his/her residence is not clarified.

(2) Detention in preparation of expulsion shall be ordered by way of a formal resolution, and shall be carried out when communicated.

(3) Detention in preparation of expulsion may be ordered for a maximum duration of seventy-two hours, and it may be extended by the court of jurisdiction by reference to the place of detention until the third-country national's identity or the legal grounds of his/her residence is clarified, or for maximum thirty days.

Article 56.

(1) The detention of a third-country national who is a minor under aliens policing laws or in preparation of expulsion (hereinafter referred to collectively as "detention") may not be ordered.

(2) Detention shall be terminated immediately when the grounds therefore no longer exist.

Article 62.

(1) The aliens policing authority shall have powers to order the stay of a third-country national in a designated place, if the third-country national in question:

a) cannot be returned or expelled due to commitments of the Republic of Hungary conferred upon it in international treaties and conventions;

b) is a minor who would be subject to detention;

c) would be subject to detention, in consequence of which his/her minor child residing in the territory of the Republic of Hungary would be left unattended if he/she was to be detained;

d) is released from detention, however, there are still grounds for his/her detention;

e) has a residence permit granted on humanitarian grounds;

f) has been expelled, and is lacking adequate financial resources to support himself and/or does not have adequate dwelling.

Q.33. B. Has your member State adopted measures to transpose §3 of article 7 which is an optional provision? If yes, how has this provision been legally understood (is it a case of detention or an obligation to stay in and not leave a certain place?) and for which reasons can an asylum seeker be "confined" in such a place?

Supprimé : Although there was no formal transposition of that rule yet, some Hungarian rules in force "resemble" its meaning.¶

The person seeking asylum is obliged to stay "at the accommodation facility designated by the refugee authority for him/her according to the present Act and observe the rules of conduct governing residence at the designated accommodation facility" (§ 5 (2) a) of AA, Under § 48 of AA, the refugee authority designates a reception centre for the place of accommodation of the asylum seeker "until the decision closing the preliminary assessment procedure or the one on the delivery or acceptance of the foreigner" based on the Dublin procedure becomes final "unless the applicant is under the effect of a measure restricting personal freedom or under the effect of punishment". This placement implies a restriction on the freedom of movement of the applicant as "The applicant may only leave the reception centre in particularly justified cases, with the permission of the refugee authority, provided that his/her absence does not prevent the performance of the relevant procedural acts" (§ 48 (2), AA).

Q.33. C. Are there legally alternatives to detention, like obligation to report to the authorities, obligation to stay in a place, provision of a guarantor or of a financial guarantee?

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As already indicated, detention need not be experienced by the applicant. It only occurs when an alien policing rule had been violated. (Exception: border procedure and the 12-24 hours before the applicant is directed to the reception centre after contacting an authority, whether Police or Border Guards.)

In the case of minors and families the confinement of the asylum seeker to a designated place may be seen as an alternative measure to detention. (§ 62(1), AESTCN). The rules of alien policing expulsion also indicate the existence of reporting obligations – though not much practice has been attached to this in the case of asylum seekers so far (§ 54 (1) point d), AESTCN). See also comments on Q 33A.

Q.33. D. Which is the competent authority to order the detention of an asylum seeker? Explain if different authorities are involved to first take and later confirm the decision.

As indicated under subquestion A the aliens police authority of OIN or the Border Guards (also having aliens policing powers) may order detention. (In case of foreign criminals the court may also order expulsion which leads to detention). Both of them order detention as a consequence of violating the rules of entry, stay or departure. Merely the fact that someone is an asylum seeker may not serve as a ground for detention if the identity of the asylum seeker is not in doubt.

After 72 hours the local courts have to confirm (extend) detention, which may be prolonged by 30 days on each occasion. The maximum period of detention is 6 months. Nevertheless, the new rule introduced by AA will only make possible the detention of asylum seekers for 15 days. See also comments on Q 33A..

Q.33. E. For how long and till which stage of the asylum procedure can an asylum seeker be detained?

Under AA Asylum seekers may only be detained during the preliminary assessment of their application for a maximum period of 15 days. See also comments on Q 33A.

Q.33. F. In which places (can we call them "closed centres"?) are asylum seekers detained (places in a special closed centres reserved only to asylum seekers, together with returnees like illegal aliens or even in a normal prison, in case within separated areas or with the other detainees)? Indicate if a difference has to be made following the location of the "closed centres" at the border or on the territory? Which is the authority managing those places and is it the same as the one in charge of reception conditions?

Detention takes place in seven specific detention facilities, of the Border Guards, spread all over the country (Budapest, Győr, Kiskunhalas, Orosháza, Nyírbátor, Szombathely). In these only persons awaiting expulsion or the implementation of return agreements (plus Dublin II) are to be found. In special cases (release from previous criminal punishment) a further institution (a genuine prison) may be involved: for men Nagyfa National Prison, and for women: Pálháza National Prison. According to reports the latter practically never accommodates asylum seekers, whereas the prison in Nagyfa does.

Q.33. G. Does UNHCR and NGOs have access to the places of detention and under which conditions?

Under § 38 of AA point c states the representative of UNHCR "may enter the premises of the institutions serving to accommodate the person seeking recognition or, if the person seeking recognition is in detention, may enter the premises of the detention facility." NGOs also have access on permission or on the basis of long term cooperation contract – like that of the Hungarian Helsinki Committee and the Border Guards enabling lawyers of the HHC accessing the detained persons.

Q.33. H. What appeal(s) can asylum seekers introduce against the fact he is detained? Is article 18 of the directive on asylum procedures of 1 December 2005 following which *"Where an applicant for asylum is held in detention, Member States shall ensure that there is a possibility of speedy judicial review"* respected (even if it has not yet to be transposed)?

For automatic judicial review, please see comments on 33 A. Otherwise, under § 57 of AESTCN the detained third country national "lodge a complaint - as a form of remedy, on the grounds of an infringement of the law - against the resolution ordering his/her detention within seventy-two hours from the time when ordered" to the local court having jurisdiction.

Q.33. I. Is the directive on reception conditions considered to be in principle applicable to the places where asylum seekers are detained? In particular which information do they receive about their rights, which access do they have to legal advice and health care?

See comments on Q33A. Under § 28 (2)AA, the "material conditions of reception shall also be provided to persons seeking recognition while detained".

Q.33. J. Apart from freedom of movement, what are the main differences between normal reception conditions and exceptional modalities for reception conditions in case of detention, knowing that they should be "as short as possible" (see article 14, §8)? If it is about closed centres, are the regulations of those places in line with the requirements of the directive (is article 13, §2, second indent of the directive following which "*Member States shall ensure that standards of living is met (…) in relation to the situation of persons who are in detention*" respected?).

See comments on Q33A. Under § 28 (2)AA, the "material conditions of reception shall also be provided to persons seeking recognition while detained".

The level of control is much more intensive. The telephone conversations may be overheard – for security reasons – correspondence checked if suspicion emerges, visits from the outside of other than lawyers, authority representatives or embassy employees and international organisations' delegations may be limited. The Decree of the Minister for Justice and Law Enforcement, 27/2007 (V.31) on the execution of detention ordered in the aliens policing procedure goes into details, the need to provide heating. It also states that food must have 10 900 joule energy and pregnant mothers must get at least half a litre of milk per day. In practice payphones are only accessible when the asylum seeker is escorted to them.

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Q.33. K. Are measures taken to avoid detention of asylum seekers with special needs (if yes, which ones?) or are special measures taken because of their needs?

Minors can not be detained (§ 56 AESTCN) and for persons who should be placed under detention, in consequence of which his/her minor child residing in the territory of the Republic of Hungary would be left unattended if he/she was to be detained" a confinement to a designated place instead of detention may be ordered (§ 62 AESTCN). See also comments on Q 33A.

Q.33. L. Can minor asylum seekers be detained together with relatives? Can unaccompanied minor asylum seekers be detained? If yes, are there special measures which take into account that children are concerned?

Minor asylum seekers are explicitly exempted form detention (§ 56, 62, AESTCN).

Q.33. M. In particular is article 10 regarding access to education of minors respected in those places?

Minor asylum seekers are explicitly exempted form detention (§§ 56, and 62, AESTCN).

Q.33. N. How many asylum seekers are for the moment detained in your Member State? Which proportion does this represent in comparison of the total number of asylum seekers at the same moment?

The number of persons in detention varied between 58 and 268 between January and October 2007. They constituted 1/2 - 1/5 of those living in reception centers.

9. ORGANISATION OF THE SYSTEM OF RECEPTION CONDITIONS

Respondent's warning: the whole system of reception is being overhauled but the new scheme is not formulated yet. It is expected to be created (at least "on paper") by 1 January 2008 when the 2008 system will enter into force.

Q.34. Explain if the system of providing reception conditions is centralised or decentralised (which levels of government do provide practically reception conditions?) (do not confuse this question with question number 3 about the competence to make rules about reception conditions).

The system is centralised, it is OIN which runs reception centers. (Any NGO participating in providing reception conditions concludes a contract with the central office of OIN.

Q.35. In case, are accommodation centres public or/and private (managed by NGOs? If yes, are the NGOs financially supported by the State?)

Except for the very small home for unaccompanied children which is run by a Hungarian NGO (the Hungarian Red Cross) all accommodation centers (in fact: reception centers) are public, run by OIN.

Q.36. In case, how many accommodation centres are there in your Member State (distinguish in your answer between public and private centres)?

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As mentioned earlier at the moment there are three reception centers (Békéscsaba, Bicske, Debrecen) and a home for unaccompanied children. (Nagykanizsa).

Q.37. Is there in the legislation a plan or are there rules in order to spread the asylum seekers all over the territory of your Member State to avoid their concentration in some areas like big cities or to share the costs of their reception between central, regional and local authorities?

There are no such plans. In fact rumour sometimes refers to closing one of the three centers as the number of applicants is a fraction of that of the late nineties. In preparatory works to the amendment/redrafting of the AA the idea was also raised to attribute a specific profile to one of the centers (reserving it to eligibility procedures, e.g.) That intention is now expressed in the new rules, but no implementing regulation exists. What was consequent in the past and is predictable in the future is that asylum seekers are not received in Budapest, the capital, where one fifth of the population lives.

Q.38. Does a central body representing all the actors (like NGOs) involved in reception conditions exist? Does it play a consultative role for the State authorities, a coordination role for the actors or any other role?

There is no such body. The three most important actors mentioned in response to Subquestion 18 D act as "de-facto" umbrella organisations which are usually - but not always – involved in dialogue with the state agencies about conditions. Frequently they take public positions on existing practice or desired changes. E.g. Menedék issued a widely publicised statement shortly before the transposition deadline of the RD was to expire, listing points where harmonisation had not been achieved. The Hungarian Helsinki Committee, Menedék and OIN have jointly produced the report on transposition which went to the European Parliament as part of a comparative report.

Asylum seekers do not maintain stable NGO-s engaged in policy dialogue or in controlling the everyday operation of the centers.

To repeat the main point: there is no central body in which government, NGO-s, churches and municipalities would participate together and discuss reception conditions related matters.

UNHCR noted that it organises twice a year a half day long operational partners' meeting which brings together OIN, relevant ministries and NGOs (and naturally UNHCR itself) and is an informal forum for discussing current issues.

Q.39. **Q.39. A. Which is the body in charge of guidance, monitoring and controlling the system of reception conditions as requested by article 23 which is mandatory provision? Include in your answer which is the competent ministry (Interior, Social affairs, etc) for reception conditions?**

The body in charge is Office for Immigration and Nationality, which in turn is an organisation under the supervision of the Ministry of Justice and Law Enforcement..

Q.39. B. Has your Member State (like the Czech Republic did recently) approved quality standards (not necessary legally binding) for housing services (for instance about the number of persons per bedroom on the basis of its size, number of accessible toilets, bathrooms, showers and washing machines per number of persons, existence of common rooms with radio, television, newspapers, books, computers, accessibility of telephone, existence of recreative rooms for children,…) to be respected in particular in accommodation centres?

Not really. § 21 (1) of the AA Decree fixes the basic requirement of guaranteeing three meals per day, utensils, hygienic tools and clothes. Genuine quality standards may come in the rules on reception centers.

Q.39. C. How is this system of guidance, control and monitoring of reception conditions organised?

Guidance, control and monitoring is the duty of OIN (§ 1 of the Decree of the Minister of the Interior No 24/2001 (XI.21) on the organisational structure of refugee affairs and the responsibilities of refugee reception centres). The general director of OIN is the employer of the directors of the reception centers and exercises direct bureaucratic and personal control over them through the head of the refugee affairs directorate. An organigram is available at: http://www.bmbah.hu/szervezeti_egysegek.php . The Department of Reception and Refugee Integration, supervises directly the professional
operation of the reception centers and of the unaccompanied minors home. The financial supervision is run by the Directorate of Finances of the OIN.

Q.39. D. Does the body in charge of guidance, control and monitoring produce reports about the level of reception conditions? If yes, how frequently and are they public?

OIN does not produce reports for the general public, nor for Parliament. The reception centers have an obligation to report on a monthly bases. The Directorate of Refugee Affairs completes a report about the operation of all the centers twice a year. These reports are not made public, but according to OIN can be requested. Each year the OIN sends a full report about activities and

figures connected to the field of asylum, reception and integration, including costs, budgets etc. to UNHCR but neither that, nor UNHCR's country report is in the public domain.[510]

Assumedly there are also reports on spending ERF money on reception conditions.

It is noteworthy that the Committee on Human Rights, Minorities, Civil and Religious Matters of the Hungarian Parliament recurrently organizes hearings at which leaders of the OIN report about their activities. The Committee occasionally relocates to one of the affected institutions and proceeds with the hearing there. Another institution which may serve as a source of knowledge about certain aspects of the reception conditions granted or withheld is the Office of the Parliamentary Commissioner of Human Rights

Q.40. **Q.40. A.** What is the total number of asylum seekers covered by reception conditions for the last year for which figures are available (see article 22 obliging Member States to calculate those statistics about which we also asked the Commission to require them from Member States for mid June)?

The monthly average in 2006 was 470 without those in detention. (The average of those in detention was around 76).

Q.40. B. What is the total budget of reception conditions in euro for the last year for which figures are available?

No such data is available at the moment.

Q.40. C. What is the average cost of reception conditions in euro per asylum seeker for the last year for which figures are available?

No such data is available at the moment.

Q.40. D Are the costs of reception conditions of asylum seekers supported by the central/federal or federated government or are they shared with regional and/or local authorities?

Costs are born by the central government. health care costs are immediately born by the health care system (also governmental) and then reimbursed by OIN.

Q.40. E. **Is article 24 § 2 of the directive following which "*Member States shall allocate the necessary resources in connection with the nationals provisions enacted to implement this directive*" respected?**

[510] The author of this report occasionally was not seen as a member of the general public, but as an insider...

Naturally this is by definition subject to debate. This reporter would believe that in a European context a cautious "yes" would be appropriate. More criticism would go for issue areas not covered by this report, namely integration of persons in need of international protection.

Q.41. **Q.41. A.** What is the total number of persons working for reception conditions?

At the end of 2005 it was 82 in the three centers altogether. Many tasks are contracted out for external service providers

Q.41. B. How is the training of persons working in accommodation centres organised? Does it take into account specific needs of unaccompanied minors when relevant as well as the gender dimension? (see article 14 §5, 19 § 4 and also 24 §1 which are mandatory provisions)?

In OIN's budget there is no separate budget line for training. The directorate of refugee affairs of OIN organizes frequent (every 2-3 month) meeting for social workers.. EU funded projects also offer training. Country of origin information training is given on specific countries (upon the request of the centers) during the meeting of social workers. Special training modules are and will be offered to workers of the unaccompanied minors home.

Q.41. C. Are there rules about the deontology of persons working in accommodation centres, in particular on confidentiality?

Social workers get training in ethical questions during their professional education. The professional association of social workers has adopted an ethical codex in April 2005, which enjoys very wide support in the profession and has been adopted for the workers of the reception centers too. Other staff working at the centre - to this reporters knowledge – do not get a specific training. Nevertheless all the staff is expected to obey the general rules on data protection which are quite strict in Hungary.

10. IMPACT OF THE DIRECTIVE

Legal impact of the transposition of the directive:

Q.42. Specify if there are or not big problems with the translation of the directive in the official language of your Member State and give in case a list of the worst examples of provisions which have been badly translated? (please note that this question has in particular been added to the questionnaire concerning the new Member States)

As with practically all the EU acquis, especially those which have been adopted around or after accession, there are major problems with the Hungarian text version.

Below comes a small table summarising salient differences.

Text in RD	Hungarian	Hungarian re-translated (back) to English	German
§ 8 to maintain as far as possible family unity	a család egységét adott formájában, amíg lehetséges, fenntartsák	to maintain *as long as* possible	so weit wie möglich zu wahren
§ 9 medical screening	orvosi vizsgálatát	medical examination	medizinishce Untersuchung
§ 13 (2)persons who have special needs in accordance with article 17	"különleges igényeket támasztó személyek" (§ 13 (2)	persons rasing special demands	besonders bedürftigte Personen
14 (8) specific needs of the applicant	"A kérelmező egyedi szükségletei" (§ 14 (8))	the individual/specific needs of the applicant	spezifische bedürfnisse des Asylbewerbers
§ 15 (2) applicants who have special needs	"különleges elbánást igénylő kérelmezők"	applicants requiring special treatment	Asylbewerbern mit besonderen Bedürfnissen
§ 17 "vulnerable persons"	"kiszolgáltatott személyek"	"persons at mercy /defenceless persons"	besonders schutzbedürftigen Personen
§ 8 and 14(1) housing	8: elhelyezés 14 szállás	8 placement/lodging 14 accommodation	8 Unterkunft 14 Unterbringung
§ 18 best interest of the child	"elsődlegesen a gyemek érdekeit"	primarily/foremost the interests of the child	das Wohl des Kindes
§ 21 last instance	"végső szakban"	final stage	letzten Instanz
§ 23 ensure that appropriate guidance, monitoring and control of the level of reception conditions are established	"gondoskodnak megfelelő vezetés, ellenőrzés és irányítás kialakításáról a befogadási feltételek szintjén."	[does not really make sense, approximately sg. like] provide for the establishment of appropriate guidance, control and governing *at the level of reception conditions* [sic]	gewährleisten..eine geeignete Lenkung, Überwachung und Steuerung des Niveaus der Aufnahmebedingungen.
§ 24 shall allocate the necessary resources in connection with the national provisions enacted to implement this Directive	ezen irányelv végrehajtására hozott nemzeti rendelkezéseknek megfelelően osztják el a szükséges erőforrásokat	shall distribute the necessary resources according to the national provisions enacted to implement this Directive	stellen die ressourcen bereit, die im Zusammenhang mit den nationalen Durchführungsvorschriften zu dieser richtlinie erforderlich sind

As this table shows, translation difficulties may stem from the difference between two other language versions, but sometimes it is sheer misinterpretation of the original.

Q.43. Where there precise legal rules on reception conditions for asylum seekers before the adoption of the norms of transposition of the directive (if yes, specify what the nature of those rules was (legislation, regulation, administrative instructions,…)?

Before the 2008 system there was a complete set of rules, the AA of 1997 its implementing Government decree and several decrees of the Minister of the Interior.

Q.44. Did the legal rules applicable to reception conditions become more clear, precise, coherent or detailed with the adoption of the transposition norms (for instance do you now have after the transposition one basic text dealing with reception conditions instead of numerous different texts in the past?

The 2008 system is more detailed than the rules in force between 2004 and 2008 were. Especially persons with special needs are in a better position. Also appeal rights on the revocation of benefits are more clear.

Q.45. Did the transposition of the directive imply important changes in national law or were the changes of minor importance? In case, list the most important changes that have been introduced.

The most important changes introduced relate to access to the labour market the formal procedure regulating the revocation of benefits and the legal appeals going beyond mere complaint. Persons with specific needs have already benefited (in practice) from the existence of the directive.

Political impact of the transposition of the directive:

Q.46. Explain briefly if there has been an important debate about the transposition of the directive (in particular in the Parliament, but possibly also in the government, between political parties, including in medias, etc; underline in case the main points which have been discussed or have created difficulties)

The media does not take note of the issue of transposition as an EU obligation. There is no social discourse about "us" and "them" and the issues of fairness in distributing resources between the asylum seekers and the rest. The small numbers of asylum seekers explain this low visibility of the theme.

The general debate in Parliament on the whole AA lasted for approximately for 90 minutes and none of the lead contributions by the opposition challeged the proposal's rules on reception conditions (except for calling for compulsory medical screening).

In the small NGO community dealing with asylum seekers and refugees, and among other stakeholders (primarily UNHCR) naturally transposition is a deliberated issue. Gap analyses and reports have been produced, informal exchange of views is constant, but is not elevated to the public policy debate level.

The website of the Ministry of Justice and Law Enforcement does not include a single contribution to the draft Government Decree (as it was) which was made available on that site for public comment.

Q.47. **Did the transposition of the directive contribute to make the internal rules stricter or more generous? In particular, did your Member State use the occasion of the transposition to abolish more favourable provisions of national law? Does your Member State still have rules more favourable than the provisions of the directive (if yes, try to give the more important examples).**

On balance the rules emanating are more generous. However in this reporter's judgment the most important were and will be three impacts:

- a continuous sensitisation to persons with special needs;
- the limitation of discretion exercised by the authorities. In general that discretion may have been used in favour of the applicant, but with the transposition of the directive the applicant will be entitled to resist in the few cases when it is not. (Think of access to schooling, e.g.)
- The dramatic curtailment from 1 January 2008 of the detention period from 12 months to 15 days

11. ANY OTHER INTERESTING ELEMENT

Q.48. What are in your view the weaknesses and strengths of the system of reception conditions in your Member State?

The strength of the system is a still living tradition of hospitality going back to the early formative periods of the system in 1989-1993, when asylum seekers from Romania and Yugoslavia sought refuge in Hungary. A firm desire to meet international (not only EU) requirements still prevails, UNHCR is a potent actor in the setting of standards.

It is a strength of the system that it guarantees access to services related to basic needs. (Shelter, clothing, food, health).

A major strength is the absolute limit on detention (15 days) amounting to a prohibition of detention during the in-merit procedure.

Weaknesses there are, also.

The state is reluctant to go beyond the minimum. and tries to retreat even from the most basic duties, leaving it to project financing, relying on ERF and independent funds. (social work, interpretation, legal aid, mental health of traumatised persons.)

Q.49. Mention any good practice in your Member State which could be promoted in other Member States

The absolute limit on detention (15 days) amounting to a prohibition of detention during the in-merit procedure

The compulsory language education for those above five years of age.

The guaranteed access to psychological assistance in case of persons with special needs, free of charge.

The extension of the reception conditions to those only qualifying for subsidiary protection.

The protected environments for single female asylum seekers and mothers with children are really appreciated by the affected persons and by the competent stakeholders

Access to internet appears to be very useful.

The active involvement of NGO-s in preparation of integration and the wide rights of human rights organisations in gaining access to asylum seekers.

Q.50. Please add here any other interesting element about reception conditions in your Member State which you did not had the occasion to mention in your previous answer.

The 2008 system is still not clearly visible. The above description is based on the analyses of the legal rules. Some of them (on reception centres) are still missing (on 6 December! 2007)

QUESTIONNAIRE FOR THE NATIONAL REPORT ON THE IMPLEMENTATION OF THE DIRECTIVE :
RECEPTION CONDITIONS OF 27 JANUARY 2003

IN: IRELAND

by
Mullally, Siobhán, Dr. (Supervisor),
Co-Director, Centre for Criminal Justice and Human Rights,
Faculty of Law, University College Cork
s.mullally@ucc.ie

Thornton, Liam (Researcher),
Part-Time Assistant Lecturer, Law of the European Union
PhD Candidate, University College Cork
l.thornton@mars.ucc.ie

11 NOVEMBER 2007

1. NORMS OF TRANSPOSITION

Q.1. **Identify the main norm of transposition (indicate the title, date, number, date of entry into force and references of publication into the official journal) and indicate its legal nature (legislative, regulatory, administrative); indicate in your answer if this norm was only devoted to the directive or if it has been included in a more general text and indicate in that case by quoting precisely the numbers of the provisions adopted to transpose the directive.**

Article 1 of the Protocol on the position of the United Kingdom and Ireland, annexed to then Treaty on European Union and to the Treaty establishing the European Community, Ireland may 'opt in' to measures establishing a Common European Asylum System.
Preamble 20 of the Reception Directive stated that Ireland is not participating in the Directive.

The main norms of reference for reception conditions for asylum seekers are as follows :

Department of Social and Family Affairs (DSFA) Ministerial Circular 04/00

DSFA Ministerial Circular 05/00

DSFA Ministerial Circular 02/03.

Internal Practice

Refugee Act 1996

Child Care Act 1991

Social Welfare (Consolidation) Act, 2005 (mentioned for comparative analysis only)

Q.2. **List by order of importance by using numbers (1, 2, 3) the others norms of transposition if there are more than one (indicate for each norm the title, date, number and references of publication into the official journal; include in your answer the administrative measures taken to ensure implementation of the directive and of the transposition norms like regulations, administrative circulars, special instructions,…)**

Ministerial Circular 04/00
Ministerial Circular 05/00
Ministerial Circular 02/03.
Internal Practice
Refugee Act 1996
Child Care Act 1991
Social Welfare (Consolidation) Act, 2005 (mentioned for comparative analysis only)

Q.3. **Explain which level of government is competent to adopt the legal norms on reception conditions for asylum seekers (specify in particular in case of a federal or regional State, if it is the federal/central power or the components; in case, specify below when it is impossible for you to answer a question because it is about the competence of the components and it is impossible for you to gather reliable information about all of them)**

As has been noted above Ireland is not bound by the minimum standards which the Reception Conditions Directive lays down.

The Department of Justice, Equality and Law Reform, and in particular the Reception and Integration Agency, located within the department, is the body which is responsible for forming 'legal' norms on reception conditions for asylum seekers. However, Circulars were issued by the Department of Social and Family Affairs (DSFA). Within the National Parliament, it was usually the Minister for Justice, Equality and Law Reform who answered questions relating to the reception of asylum seekers and not the Minister for Social and Family Affairs.
.

Q.4. **Explain the legal technical choices done to transpose the directive (comment on the nature and level of the norms used to do the transposition: legislative, regulatory, administrative like instructions, etc). Add any other element about the technique of transposition of the directive which is interesting for the implementation of Community law.**

Not applicable.

Q.5. **Mention if there is a general tendency to just copy the provisions of the directive into national legislation without redrafting or adaptation them to national circumstances? If yes, give some of the worst examples and explain if there is a risk that those provisions remain unapplied or will create difficulties of implementation in the future.**

Not applicable.

Q.6. **Have all the texts necessary to ensure the effective implementation of the new rules of transposition been adopted, prepared or at least foreseen in the future (for example a regulation completing a new law and the necessary instructions telling the administration how to apply the new rules)?**

Not applicable.

2. BIBLIOGRAPHY

Q.7. Has an in-depth preparatory study been made public about the changes at the occasion of the transposition? If yes, thanks for trying to provide us a copy *(please contact to answer this question adequately the body and person who was responsible for the preparation of the transposition of the directive in the public administration).*

Not applicable.

Q.8. Quote any recent scientific book or article published about the directive, the transposition rules or the question of reception conditions for asylum seekers in general (answer even if this literature is only available in your language and provide the complete title in your language (without translation) with all references; indicate author, title, in case name of periodical, year and place of publication).

Not applicable

Q.9. Quote any interesting decision of jurisprudence based on the implementation of the new rules of transposition of the directive (indicate references of publication if any)?

Not applicable

3. GENERAL INFORMATION ABOUT THE SYSTEM OF RECEPTION CONDITIONS

The purpose of the following two questions is to help the reader to understand easily and quickly the system of reception conditions in your Member State and also to avoid that you have to repeat

general elements in other parts of the questionnaire. ***Please do not write more than one or maximum two pages and do not include large historical developments.***

Q.10. Describe in general the system of reception conditions in your Member State (in particular which are the main actors in charge of reception conditions?)

This system is known as 'direct provision' and has been in place since 10 April 2000. Asylum seekers are entitled to bed and board accommodation in reception centres and to €19.10 per week per adult and €9.60 per week per dependent child. This system is under the auspices of the Reception and Integration Agency (RIA). The RIA is located within DJELR. The RIA place the asylum seekers in the centres, while the payment is made by the Health Services Executive (HSE). The HSE provides an asylum seeker with two exceptional needs payments of €100 per year, as well as Back to Education Allowance if the asylee has child attending dependents.

Q.11. **Q11. A.** Explain if you have different types and levels of reception conditions following the different stages of the asylum procedure (this implies that you have to give briefly the necessary explanations about the asylum procedure). Make if relevant for reception conditions a distinction between the following procedural stages: determination of the responsible Member State on the basis of the Dublin II regulation, special procedures at the border (including transit zones in airports), accelerated procedures, admissibility procedures, eligibility procedures and the different possibilities of appeals (suspensive or not) against a refusal of the asylum request. Indicate what the main differences of reception conditions are between the different stages (if necessary by detailing between the different elements of reception conditions, in particular housing) and explain what the evolution of reception conditions is following the different stages of the procedure.

There is no differentiation in the level of support for asylum seekers at the different stages of the status determination process. However, as explained above, depending on the date that asylum seekers entered the determination process, his/her social aid rights may be different.

Q 11. B. Indicate precisely for which stage(s) of the asylum procedure the answers on reception conditions you give below are valid.

The reception conditions are the same for all asylum seekers throughout the refugee status determination procedure.

4. GENERAL RULES ON RECEPTION CONDITIONS

Q.12. **Q 12. A**. Are material reception conditions provided in kind, in money or in vouchers or in a combination of these elements (see article 13, §5 which is an

optional provision)? Distinguish between the different elements (housing, food, clothes, health, transportation, pocket money,…). **If reception conditions are provided in money (in general or in some cases, for instance when no places are anymore available in accommodation centres), indicate the precise amount given to the asylum seekers. Indicate in your answer what is provided in general and if there are exceptional cases.** Specify in your answer if reception conditions are different from the general system of social aid for nationals or aliens and if yes, if and when (which stage of the asylum procedure) can asylum seekers have access to the general system of social aid?

Reception conditions for asylum seekers use a mixture of provision in kind and monetary support. Given the different social aid rights which asylum seekers may have due to the date of their application for refugee status, three different systems of support shall be considered.

Pre April 10 2000

Those who applied for asylum pre April 10 2000 were entitled to receive Supplementary Welfare Allowance and all the additional benefits that went with this. Some asylum seekers were entitled to the other social aid payments, by satisfaction of non-discriminatory nationality/residence criteria i.e. old age (non-contributory) pension, widow/widowers (non-contributory) pension, orphan's (non-contributory) pension, one parent family payment, carers allowance, disability allowance, then they would not be entitled to Supplementary Welfare Allowance, which is a residual social aid payment. Child benefit was available to all those with children. The current amounts of all these payments are listed below. Generally most persons who applied for asylum before April 10 2000 have had their claims determined.

Post April 2000

With the introduction of direct provision accommodation, Ministerial Circular 04/00 stated that the cash needs of those within direct provision accommodation centres, where bed and board are provided would be €19.10 per adult and €9.60 per dependent child. Asylum seekers were also entitled to two exceptional needs payments of €100 every six months. Even asylum seekers who received this payment, and direct provision accommodation may have been entitled to child benefit (if s/he had a child/children) or the other social aid payments (listed above). While not prohibited from applying for supplementary welfare allowance, there were general refusals from the Health Services Executive to make any other payment. Those asylum seekers coming within Circular 05/00 exception status continued to receive rent supplement and supplementary welfare allowance and/or social aid payments. Generally most persons who applied for asylum between April 10 2000 and May 1st 2003 have had their claims determined. Children of asylum seekers could also apply for back to school allowance for their children.

Post May 2003

Section 13 of the Social Welfare (Miscellaneous Provisions) Act 2003 prohibited payment of rent allowance to any asylum seeker, other than those who were in receipt of that payment. All asylum applicants after this date were catered for

exclusively within the direct provision system. Applicants could still possible (but improbably) receive Supplementary Welfare Allowance, and if they satisfied the non-discriminatory requirements for entitlement social aid, they could still receive this payment. Those who had been in receipt of rent supplement prior to May 1st 2003 would still be entitled to it. Generally those persons who applied for asylum post May 1st 2003 have had their claims determined, however there may be a number of applicants for whom this is not the case, hence the relevance of the historical background.

Post May 2004

Section 17 of the Social Welfare (Miscellaneous Provisions) Act 2004 introduced a habitual residence requirement for all persons within the state for entitlement to all social aid payments (excluding exceptional and urgent needs payments). It would be very unlikely that asylum seekers who applied for asylum after May 1st 2004 would be entitled to supplementary welfare allowance, child benefit or any of the social aid payments (outlined above). It would be very difficult to prove habitual residence when asylees may be in the country for a relatively short time. Those who received the social aid payments prior to May 1st 2004 may still be in receipt of them if their refugee claim has not been exhausted. Asylum seekers who applied post May 2004 (and many before this time, especially young single men and single women without children/disability etc) are within a system of social aid that is separate to the social aid system of citizens and legal aliens. Only if an asylee was granted refugee status, or exceptional leave to remain in the country, would s/he be entitled to enter the mainstream social welfare system. All asylum seekers receive two €100 exceptional needs payments per year. Those on SWA are usually entitled to other benefits such as supplementary rent allowance and mortgage interest payment, a heat allowance and/or a special dietary allowance (for medical purposes). Those who qualify for SWA also receive Back to School Clothing and Footwear Allowance. Asylum seekers with school going children will receive this allowance of €120 for each child between the ages of 2-11 and for those aged 12-17, €190 per child.

Direct Provision Stipend €19.10 per adult/€9.60 per dependent child
***Supplementary welfare Allowance €165.80/€110 per dependent adult*
***Old age (non-contributory) pension €182(max.)/€120.30 per dependent adult*
**Widow/widowers (non-contributory) pension €165.80/€182 (if over 66)*
***Orphan's (non-contributory) pension €138*
***One parent family payment €165.80/€182 (if over 66)*
***Carers allowance €180/€270 (if more than one person)*
***Disability allowance €165.80*
**Child Benefit 1st & 2nd child €150, 3rd & subsequent children €185*
Back to School Educational Allowance €180 (Children between 2-11)
(Once off payment per year) €285 (Children between 12-17)

All payments are made weekly, except child benefit which is a monthly payment.

**** May not be paid to all asylum seekers***

*****May not be paid to all asylum seekers and rate differs if there is some other income source, rate given here is maximum allowable payment with no other income, dependent child rates excluded.***

Q 12. B. Can the reception conditions in kind, money or vouchers be considered as <u>sufficient</u> "to ensure a standard of living adequate for the health of applicants and capable of ensuring their subsistence" as requested by article 13, §2 of the directive (which is a mandatory provision but leaves a certain space to Member States)? In order to help to assess the respect of this rule when reception conditions are provided in money, include if necessary in your answer points of comparison with the minimum amount of social aid guaranteed for nationals in your Member State.

Reception conditions could not be described as 'sufficient' given that currently the vast majority of asylum seekers are within the direct provision system, are entitled to bed and board and not entitled to any other benefit other than €19.10 per week per adult, €9.60 per week per child, two exceptional needs payments of €100 per year. Asylum seekers with school-going children are entitled to Back to Education Allowance. In comparison with Irish nationals, the level of support is quite low. The Free Legal Advice Centres Report(of 2003) notes that single Irish nationals who receive bed and board, and as a guideline figure receive €65 per week (in 2003). This compares unfavourably to the monetary support which a single asylum seeker receives.

<u>5. PROCEDURAL ASPECTS</u>

Q.13. **Q 13. A. Does the national legislation specifically provide that a request for international protection is <u>presumed</u> to be under the Geneva Convention unless explicitly requested otherwise? (see article 2, b which is a mandatory provision)**

Under national legislation all applications for international protection are presumed to be made under the Geneva Convention.

Q. 13. B. Explain if the <u>scope of application</u> of reception conditions is extended to other asylum seekers than refugees in the sense of the Geneva Convention, in particular to persons asking for subsidiary protection or to other forms of protection like humanitarian statuses (see article 3, § 4 which is an optional provision)? If not, explain briefly which the differences between these special regimes and the directive are.

There is no differentiation of social aid provision between those who claim different forms of state protection.

Q. 13. C. Are there specific provisions in national law for reception conditions in case of diplomatic or territorial asylum requests submitted through a diplomatic or consular representation (see article 3, §2 which is an optional provision)?

No.

Q.14. **Are reception conditions available as from the moment one asylum application is introduced? How is article 13, §1 which is mandatory legally understood?** Do asylum seekers have to satisfy any other condition in order to get reception conditions?

All asylum seekers appear to be obliged to accept accommodation provided by the Reception and Integration Agency and post May 2003 cannot claim rent supplement. Although not a party to the reception directive, Ireland would be compliant with article 13, §1.

Q.15. **Explain when reception conditions end, for instance after refusal of the asylum request** (include in your answer the link with the right of appeal against a decision of refusal of the status, in particular the question of its suspensive effect).

The reception conditions will end if the asylum seeker (whose claim has failed) is deported from the country. There is no suspensive effect of reception conditions if an asylum seeker appeals findings of the refugee status determination bodies. Even where the refugee claim is rejected, if an asylum seeker makes an application for subsidiary protection or humanitarian leave to remain, s/he will continue to be supported within the asylum reception framework.

Q.16 Are there special rules or practices regarding reception conditions in case of successive applications for asylum introduced by the same person?

Although there are special rules on procedures to be followed in relation to determination of successive applications, it appears from national practice that reception supports will remain.

Q.17. Information of asylum seekers about their rights and obligations in terms of reception conditions, in particular about established benefits (see article 5 which is too large extend a mandatory provision; do not confuse this question with the information to be provided to asylum seekers about the asylum procedure):

Q. 17. A. Are asylum seekers informed, and if yes about what precisely?

Upon making an asylum application, the individual will receive immediately information in writing (which will also be explained to them orally) on their reception conditions and their obligations while in the country. Upon arrival in the accommodation centre there will be information on local support groups and information on the availability of legal advice from the Refugee Legal Service (RLS).

Q. 17. B. Is the information provided in writing or, when appropriate, orally?

Information is provided in writing and is also communicated orally to the asylum seekers.

Q.17. C. Is that information in general provided in a language understood by asylum seekers? Specify the list of languages in which it is available

There is no legislative requirement to provide this information in a language understood by asylum seekers. The Reception and Integration Agency provides written information in the following languages, Albanian, Arabic, Croatian, Czech, French, Farsi, Polish, Romanian, Russian, Serb-Croat.

Q. 17. D. Is the deadline of maximum 15 days respected?

Yes.

Q.18. Information of asylum seekers about the existence of organisations or groups promoting their interest and defending their rights (see article 5 which is to a large extend a mandatory provision):

Q. 18. A. Is there a list of organisations dressed by the authorities and if yes is it comprehensive? Is this in particular the case about the possibilities to get legal assistance and health care?

The lists of information given to an asylum seeker differs depending on the area that they are going to be accomodated in. The lists produced by the Reception and Integration Agency *appear to contain adequate information on local community and health services avalible to asylum seekers. Information on obtaining legal assistance would have been given at the port of entry. Further information on local groups is provided within the local hostels where the asylum seekers are accomodated.*

Q. 18. B. Is the information provided to the asylum seekers, and if yes, in writing or, when appropriate, orally?

*The information is provided in writing and may be given orally by the staff of the reception centre***.**

Q. 18. C. Is that information in general provided in a language understood by asylum seekers? Specify if possible the list of languages in which it is available.

There is no legislative requirement to provide this information in a language understood by asylum seekers. The Reception and Integration Agency provides written information in the following languages, Albanian, Arabic, Croatian, Czech, French, Farsi, Polish, Romanian, Russian, Serb-Croat. Detailed information on local organisations within a regional area may not be available in all those languages.

Q. 18. D. How many organisations are active in that field in your Member State?

There are 160 organisations (estimate) active in the asylum and refugee community work field.

Q.19. Documentation of asylum seekers (see article 6):

Q.19. A. What kind of document is delivered to the asylum seeker? Explain the legal value of this document (just a certification of the status as asylum seeker or also prove of identity?) (see §1 of article 6 which is a mandatory provision)

Asylum seekers are issued with a Temporary Residence Certificate which is evidence of a person's application for asylum status, but is not evidence of identity. However the Temporary Residence Certificate Card may be identity for the purposes of registering to vote in local elections and a form of identification when receiving a ballot card under Regulation 3 of the Electoral (Amendment) Regulations 2004 (Statutory Instrument No. 175 of 2004). This docukment is issued immediatley upon registration as an asylum seeker.

Q.19. B. Are there situations or specific cases in which another equivalent document or even no document is issued? (in particular is there an exception for "procedures to decide on the right of the applicant legally to enter the territory" as made possible by §2 of article 6)?

Only upon entry into the State and application for asylum will an individual be issued with a document. However, if there is an issue with regard to the identity of the asylum seeker, s/he may be detained wherein although s/he will be admitted to the asylum process, s/he will not get a Temporary Residence Certificate.

Q.19. C. For how long is this document in principle valid and is it necessary to renew it after a certain period?

The document is valid throughout the length of the refugee status determination process and until the person is granted refugee status, subsidiary status, leave to remain or leaves/is removed from the country.

Q.19. D. What is the deadline for the delivery of that document? Is the mandatory deadline of 3 days set by article 6, §1 respected[511]?

The document is given upon the acceptance of the application for refugee status.

Q.19. E. Is it possible for an asylum seeker to get a travel document for serious humanitarian reasons (see §5 of article 6 which is an optional provision)?

Yes. It is for the Minister for Justice, Equality and Law Reform under section 9(4)(a) of the Refugee Act 1996 (as amended) to give permission for a travel document to be issued to allow an asylum seeker leave the country.

Q.19. F. Is there a central system of registration of asylum seekers and is it or not separate from the registration of aliens? If yes, describe it briefly (content) and indicate in particular if it is an electronic database.

There is a central register for asylum seekers maintained by the Office of the Refugee Applications Commissioner. After registration the asylum seeker will receive a registration number in the form of 69/xxx/xx.

Q.20. Residence of asylum seekers :

Q.20. A. Is in principle an asylum seeker free to move on the entire territory of your Member State or only to a limited part of it and in case, which part? (see article 7, §1 which is a mandatory provision)

In principle noting prevents an asylum seeker from moving freely around the country. However, the asylum seeker is obliged to reside at the accommodation centre. In general, if an asylee is to be absent over night, s/he must inform the owner of the hostel, and may not be absent for more than three consecutive nights without informing the hostel/Reception and Integration Agency. If absent for more than three nights without permission, his/her bed is presumed to be abandoned.

Q.20. B. About the place of residence (see §2 of article 7): explain to which extend the person is free to choose her residence and if this depends of the stage of the asylum procedure (for instance before and after admissibility); if there are constraints limiting the choice, explain which ones and their reasons (for instance processing of application, attribution of reception conditions,…).

The asylum seeker is not entitled to choose his/her residence at any stage of the asylum process. All asylum applicants are (for the most part) dispersed outside the Dublin area and are obliged to stay and remain in the accommodation which the Reception and Integration Agency (RIA) has provided.

Q.20. C. About the place of reception (meaning where the asylum seeker has to stay to benefit from reception conditions) (see § 4 of article 7): explain which are the general rules about the determination of this place (to which extend are the decisions determining the place taken individually and do they take into account the personal situation of the asylum seeker?) and to which extend the person is free to choose it and if it depends of the stage of the asylum procedure (for instance before and after admissibility); if there are constraints limiting the choice, explain which ones and their reasons (for instance attribution of reception conditions, processing of the application,…).

An asylum seeker is not free to choose either the place or type of reception centre which s/he may be sent to. The Reception and Integration Agency decides where each asylee (and any dependents) may be sent to. An asylum seeker may request to be moved to a different reception

centre, however it is for the Reception and Integration Agency in their absolute discretion to accede to this request. Ministerial Circular 04/03 states that direct provision caters for the needs of all asylum seekers including those who are pregnant and those with a disability. If an asylum seeker does not remain in the accomodation centre, then s/he will lose all social support.

Q.20. D. If all asylum seekers are not placed in accommodation centres because of capacity limits, explain <u>how the persons are distributed between accommodation centres and other accommodation facilities</u> (which authority takes the decisions, on the basis of which elements, can that decision be appealed by the asylum seeker,…)

All asylum seekers are currently placed in direct provision accommodation centres. No issues of formal appeals arise at all under the Irish system for reception of asylum seekers.

Q.20. E. How can an asylum seeker ask to <u>leave temporarily</u> the place of residence or of reception or an assigned area? How is the individual AND impartial character of the decision ensured? (see §5 of article 7 which is a mandatory provision)

An asylum seeker may inform the hostel owner that s/he intends to leave the hostel overnight and if absent for more than three consecutive nights without informing the hostel owner/Reception and Integration Agency, then his/her/the family's bed(s) are presumed to be abandoned. UNHCR has expressed concern about the lack of any standard rules and/or information on who the asylum seeker should ask for a leave of absence and feel the system is on a very ad hoc basis.

If an asylum seeker is obliged under the Refugee Act, 1996 (as amended) to stay in a certain place, then only permission from the immigration officer or a judge of the District Court must be received before the asylum seeker can leave the accommodation/area.

Q.21. **Q.21. A. Do rules on <u>reduction or withdrawal of reception conditions</u> exist in internal legislation and if yes in which cases (mention in particular if there are cases not foreseen by article 16, § 1 and 2 which are optional provisions)? Distinguish in your answer between cases of reduction and withdrawal and explain which conditions can be reduced and if access to emergency health care is always ensured as requested by article 16, §4, last sentence.**

There are no legislative rules for the reduction or withdrawal of reception conditions. These rules exist in practice. If an asylum seeker is absent from his accommodation without permission, then the Reception and Integration Agency may withdraw the right of the asylum seeker to reside within the accommodation centre. Internal appeals mechanisms exist if the asylum seeker seeks to re-enter the accommodation centre. The decisions are usually taken on an individual basis, however this may have detrimental impacts on a family unit who leaves the hostel, where support may be refused for children and partners who were pressurised (or made) leave by their spouse. If an individual seeks to re-enter the accommodation centre and to receive payments, these will usually be restored once an explanation is given for the absence. However, it must be noted that

there are no legislative rules which guide this process whatsoever. There have been a number of cases where upon re-entering the accommodation centre, the supplementary welfare allowance is refused. A number of individual cases which have been highlighted by an Irish Non-Governmental Organisation, NASC, The Irish Immigration Support Centre, of families who have been refused any monetary assistance for periods between 6 months and 1 year, even after a written apology/explanation for absence or breach of conditions (i.e. working while legislatively barred from doing so). A lack of fair procedures and natural justice seems to be inherent within this system. A right to free health care cannot be removed.

Q.21. B. Has article 16, §2 dealing with refusal of reception conditions for <u>unreasonably late applications</u> for asylum been transposed by your Member State (or was this case already applicable before transposition)? Are there cases in practice?

There does not appear to be any rules which refuse reception conditions to asylum seekers where there application is deemed to be made later than was 'reasonably practicable.'

Q.21. C. How is it ensured that decisions of reduction or withdrawal are taken individually, objectively AND in particular impartially (for instance through and independent arbitrator) (see article 16, §4 which is a mandatory provision)?

There are some issues surrounding the individual nature of the withdrawal of support. Family units are treated as one and therefore a breach of residence or violation of a conditions for support (i.e. entering employment) by the principle beneficiary will impact harsly on dependents. Standard form letters are often issued asking a person to explain the reason for breaching such conditions. The Reception and Integration Agency is responsible for the withdrawl of the accomodation, and there appears to be no formal and independent structure in place to assess the accurency of any withdrawl. However, it also appears that once an explaination is provided, accomodation is restored. The withdrawal of the supplementary welfare allowance can be made by a superintendent Community Welfare Officer at the HSE. Once again standard form letters are sent to the individual requestion an explaination. Usually, payment is restored after an explaination is provided, however this is very much ad hoc and may not be reflective of the national picture. Indeed a number of cases which have come to the attention of NASC, the Irish Immigrant Support Centre, of families who have been refused any monetary assistance for periods between 6 months and 1 year, even after a written apology/explanation for absence or breach of conditions (i.e. working while legislatively barred from doing so). A lack of fair procedures and natural justice seems to be inherent within this system. The Irish Refugee Council has noted that 'house rules' exist, and UNHCR have expressed their concern about the seemingly ad hoc nature of application of these rules and the different application of these rules from hostel to hostel.

Q.21. D. Is statement 14/03 adopted by the Council at the same moment as the directive respected (see the document attached to our sending)?

Q.21. E. Are there already administrative appeal decisions or judgements on cases of reduction, withdrawal or refusal which have been taken, and if yes, what has been the outcome?

While the Reception and Integration Agency and the Health Services executive have made decisions on reducing/withdrawing/restoring reception conditions, there is no formal published decision on these issues. There have been no cases taken to the High Court in relation to the reducation/withdrawal or restoration of benefits.

Q.22. **Q.22. A. <u>Appeal</u> against a negative decision relating to the granting of benefits or based on article 7 (see article 21 which is a mandatory provision): indicate against which decision an appeal can be introduced, describe the system of appeal in general and include in particular in your answer the information given to asylum seekers about possibilities of appealing, deadline for appealing, if the appeal has or not a suspensive effect, if there are different steps (for instance first an administrative appeal and in particular if the guarantee of an appeal before a judicial body in the last instance is respected)?**

In relation to article 7 and the right to move freely, an asylum seeker whose movements are restricted may re-apply to the District Court judge who imposed such restrictions to have them lifted/amended etc. If the judge refuses this, the the applicant may appeal by way of judicial review to the High Court.

In relation to appealing the removal of accomodation and/or supplementary welfare allowance : The Reception and Integration Agency is responsible for the withdrawl of the accomodation, and there appears to be no formal and independent structure in place to assess the accurency of any withdrawl. However, it also appears that once an explaination id provided, accomodation is restored. The withdrawal of the supplementary welfare allowance can be made by a superintendent Community Welfare Officer at the HSE. Once again standard form letters are sent to the individual requestion an explaination. Usually, payment is restored after an explaination is provided, however this is very much ad hoc and may not be reflective of the national picture. Indeed a number of cases which have come to the attention of NASC, the Irish Immigrant Support Centre, of families who have been refused any monetary assistance for periods between 6 months and 1 year, even after a written apology/explanation for absence or breach of conditions (i.e. working while legislatively barred from doing so). A lack of fair procedures and natural justice seems to be inherent within this system.

Q.22. B. Explain which are the possibilities for asylum seekers to benefit from <u>legal assistance</u> when they introduce such an appeal (see article 21, §2 which is a mandatory provision but leaves space to Member States)?

The ability for the asylum seeker to engage in legal assistance is very limited. The asylum seeker is entitled to legal aid under the Civil Legal Aid Act, 1997 (as there is no citizenship, residence requirement), however with waiting times of over eight weeks to first consultation the adequacy

of such a system must be questioned. Furthermore the practice of the Legal Aid Board is to generally refuse asylum seekers any legal advice.

Q.22. C. Are there already administrative appeal decisions or judgements which have been taken and if yes, which are the main important ones?

While the Reception and Integration Agency and the Health Services executive have made decisions on reducing/withdrawing/restoring reception conditions, there is no formal published decision on these issues. There have been no cases taken to the High Court in relation to the reducation/withdrawal or restoration of benefits.

Q.22. D. Is a mechanism of complain for asylum seekers about quality of receptions conditions in general (even if they are not personally concerned) organised? If yes, before which authority? Is it linked to the system of guidance, control and monitoring of reception conditions (see below question n° 39)?

A new complaints procedure document was adopted in July 2007- Direct Provision Reception and Accommodation Centre Services, Rules and Procedures*. Where an asylee is not recieving the services which the accommodation centre is obliged to provide, if informal resolution is not possible, she may bring a formal complaint before the Reception and Integration Agency. The Agency can recommend remedial action if the complaint is upheld.*

In relation to the level and adequacy of the cash payments, in general, no recourse is avalible for asylees to argue that they should be increased given that they generally will not have habitual residence status. However UNHCR have stated that asylum seekers have expressed their concerns on the complaints mechanism, in particular complaintants may simply be moved (without choice) to another reception centre.

6. RIGHTS AND OBLIGATIONS OF ASYLUM SEEKERS

Q.23. **Family unity of asylum seekers: define how a family is defined in relation with article 2, (d) which is a mandatory provision and explain how housing is provided to a family (see articles 8 which is a mandatory provision but leaves space to member States and 14, §2, (a) which is a mandatory provision).**

Family members are defined in line with article 2(d) of the Reception Conditions directive. While prior to 2003 asylum seeking families were sometimes catered for in private housing, now all asylum seekers are within direct provision accommodation centres.

Q.24. **Q.24. A. How is housing of asylum seekers organised: describe the system in general and indicate in particular what is the most frequently system used (see article 14, §1 which is a mandatory provision but leaves**

space for Member States; distinguish between accommodation centres, private houses and apartments, hotels places or other premises).

*There are **forty nine** direct provision accommodation centres in total. Forty two of these are private and seven are State owned. These centres are hotels, hostels, guesthouses, former convents, former nursing homes, mobile home sites and apartments.*

Q.24. B. What is the total number of available places for asylum seekers? Distinguish in your answer between accommodation centres, private houses and apartments, hotels or other premises.

It is not possible to answer this question.

Q.24. C. Is this number of places for asylum seekers sufficient in general or frequently insufficient?

The number of places appears to be sufficient as in the last 12 months a number of accommodation centres have been shut due to a lack of demand.

Q.24. D. Are there special measures foreseen in urgent cases of a high number of news arrivals of asylum seekers (outside the case of application of the directive on temporary protection)?

The Reception and Integration Agency has access to 500 extra beds should the need arise.

Q.25. Accommodation centres **(important note: all the following questions are about open and not closed centres where asylum seekers are detained which are covered by another question)**

Q.25. A Are there different categories of accommodation centres, for instance depending of the stage of the procedure (admissibility and eligibility)?

No.

Q.25. B. Is there a legal time limit for accommodation in a centre after which the asylum seekers have access to private houses or apartments or is this limit linked to a stage of the asylum procedure?

No.

Q.25. C. Is there a general regulation about the internal functioning of those centres and the rights and duties of the asylum seekers? If yes, is this general regulation applicable to public and private centres? If not, are the centres supposed to adopt an internal regulation and does a central authority have or not a kind of control about its content?

The Accomodation Procurement Unit within the Reception and Integration Agency sets criteria for initial determination of suitability of accommodation. There is on-site assessment of suitability of accommodation and inspections of accommodation centres to ensure adherence to contractual obligations in relation to health, safety and minimum standards within the accomodation centre.

The rights and duties of asylum seekers are communicated to them when they first make their asylum claim and are also set out in the 'House Rules' in the document Direct Provision Reception and Accommodation Centre Services, Rules and Procedures . *Each accommodation centre is obliged to provide the asylum seeker with the following benefits and services, including* inter alia : *safe and hospitable accommodation, treating of applicants with dignity and respect , provision of breakfast, lunch and dinner and infant formula and baby foods, to cater for special dietary requirements , to provide a packed lunch for school-going children, to provide a person with tea and coffee making facilities. Furthermore, the Centre is to provide a person with laundry facilities, hygiene products, room cleaning, bed linen and towels, to provide free or at a nominal charge leisure facilities and to treat all complaints seriously and impartially.*

There are 23 general 'House Rules' including the obligation to adhere to the rules within Direct Provision Reception and Accommodation Centre Services, Rules and Procedures. *Duties include moving to a new room when requested, to treat all persons with dignity and respect, to respect property of others, to keep the bedroom clean and tidy, not to store food or cook food in the centre, not to consume alcohol or illegal drugs on the premises, not to engage in criminal activity, to ensure that their children attend school, to inform management of absences, to notify the manager if you are moving out of the centre permanently, to take care of children and to protect your children.*

Where a complaint is made that the asylum seeker is failing to abide by the House Rules, there is first to be an attempt to resolve the matter informally at the accommodation centre. If this is not successful, then a formal procedure will be initiated. If the offending behaviour persists, then the Manager of the accommodation centre is to contact the Reception and Integration Agency. The asylee will be given a chance to respond to the accusations. If a decision is taken to transfer the asylum seeker, she will have two working days to make further representations to the Reception and Integration Agency. In circumstances of 'extreme gravity' the Reception and Integration Agency reserves the right to expel an asylee from the direct provision system. In circumstances of extreme gravity

Q.25. D. Do the regulations foresee the possibility of <u>sanctions</u> against asylum seekers in case of breach of the rules? (see article 16, §3) If yes, which sanctions for which rules? Which is the competent authority to decide? How is it ensured that decisions are taken individually, objectively and in particular *impartially* (for instance through an independent arbitrator) as requested by §4 of article 21 which is mandatory provision*?* Which are the possibilities of appealing against those decisions if the system is different from the general one under question n°22? Are there already administrative appeal decisions or

judgements which have been taken and if yes, which are the main important ones?

The system for sanctions for breach of rules is outlined in the house rules above. As stated above, possibilities for appeals are limited to internal reviews; with the only option for an independent review being to the Irish High Court by way of judicial review.

Q.25. E. Are asylum seekers involved in the management of these centres? If yes, how (advisory board, appointment or election of representatives)? (see article 14, §6 which is an option provision)

No.

Q.25. F. Do specific rules exist on work of asylum seekers inside the accommodation centres different from the general ones about employment (see below)? If yes, which ones? Can working inside accommodation centres be considered as a (mandatory) contribution of the asylum seekers to the management of the centres, is it or not paid and considered as implying access to the labour market and subject to the same rules?

No. Asylum seekers do not work inside the accommodation centres. There is a general obligation to keep their personal spaces clean and tidy.

Q.26. Q.26. A. How can asylum seekers communicate with legal advisers, representatives of UNHCR and NGOs? (see article 14, §2, (b) which is a mandatory provision).

Asylum seekers are free to contact their legal representatives, UNHCR and NGOs.

Q.26. B. What are the rules about access of legal advisers, UNHCR and NGOs regarding access to accommodation centres and other housing facilities (see article 14, §7 which is a mandatory provision)

UNHCR and legal advisers can have access to the accommodation centre for the purpose of assisting asylum seekers. There is no legal entitlement for NGOs to access these accommodation centres.

Q.26. C. Can the access of legal advisers, UNHCR and NGOs be limited for security reasons or any other reason (see article 14, §7, last sentence)?

There are no legal limitations in place which purport to prevent access to the UNHCR and/or a legal representative to the accommodation centre for the purpose of assisting asylum seekers.

Q.27. Q.27. A. Is a medical screening organised by the receiving State, is it mandatory or voluntary? Does it include HIV tests? (see article 9 which is an optional provision)

Medical screening is organised by Ireland. This screening is voluntary and includes a HIV test.

Q.27. B. Do the legal provisions on reception conditions ensure that asylum seekers receive at least emergency care and essential treatment of illness as requested by article 15 §1 which is a mandatory provision? Do they have a further access to health care?

Asylum seekers are entitled to receive all types of medical care as that of a citizen/legal resident within the country. Asylum seekers have a medical card which gives them the right to free medical care including the provision of free proscription drugs.

Q.27. C. What is the practice regarding access of asylum seekers to health care and how is it organised? In particular, what is the situation in accommodation centres (are doctors coming to the centres or do asylum seekers go to doctors outside)?

Asylum seekers receive a medical card which entitles them to visit a General Practitioner or a hospital free of charge. Prescription drugs are also free of charge. Asylum seekers must visit doctors in the locality in which the accommodation centre is based.

Q.28. **Q.28. A. What is the length of the period determined by the concerned Member State during which asylum seekers have no access to the labour market? (see article 11 which is a mandatory provision)**

Under section 9(4)(b) of the Refugee Act 1996 (as amended) an asylum seeker is legislatively barred from entering employment at any time during his/her refugee claim.

Q.28. B. After that period, are asylum seekers or not obliged to obtain a work permit? In case is there a limit for the administration to deliver the permits and how quick are they delivered? What is their length?

Under section 9(4)(b) of the Refugee Act 1996 (as amended) an asylum seeker is legislatively barred from entering employment at any time during his/her refugee claim.

Q.28. C. After that period, what are the conditions for access of the asylum seekers to the labour market? (in particular, are there rules concerning the maximum allowed of working hours or days per week, month or year, limits in terms of type of work or of professions authorised?

Under section 9(4)(b) of the Refugee Act 1996 (as amended) an asylum seeker is legislatively barred from entering employment at any time during his/her refugee claim.

Q.28. D. What are the rules in terms of priorities between asylum seekers on the one hand and nationals, EU or EEE citizens and legally third-country nationals on the other?

Under section 9(4)(b) of the Refugee Act 1996 (as amended) an asylum seeker is legislatively barred from entering employment at any time during his/her refugee claim.

Q.28. E. Do asylum seekers have access to vocational training, does this or not depend of their right to access to the labour market, and in case at which conditions? (see article 12 which is optional regarding §1 and mandatory regarding § 2)

Asylum seekers are barred from entering vocational training in Ireland.

Q.28. F. Are the rules regarding access to the labour market adopted to transpose the directive more or less generous than the ones applicable previously?

The rules within the Directive on 'employment' under article 11 are generally more favourable than Irish law. Irish law has always adopted this restrictive approach towards labour and vocational training for asylum seekers.

Q.29. Are reception conditions subject to the fact that asylum seekers do not have sufficient resources? Are asylum seekers requested to contribute to reception conditions when they have personal resources (for instance if they work) or to refund the authorities if it appears that they have resources? (see article 13 §§ 3 and 4 which are optional provisions)

Reception conditions are not subject to the fact that asylum seekers do not have sufficient resources. Asylum seekers are not requested to contribute to their reception conditions.

7. SPECIAL NEEDS OF PARTICULAR CATEGORIES OF ASYLUM SEEKERS

Q.30.

Q.30.A. Which of the different categories of persons with special needs considered in the directive are taken into account in the national legislation (see article 17, §1 which is a mandatory provision): disabled people, elderly people, pregnant women, single parents with minor children, persons who have been tortured, raped or victims of serious physical or psychological violence? Include in your answer all other categories envisaged in national law.

Prior to May 1st 2003 asylum seekers with special needs, illness, families, nursing mothers were allowed to seek private rented accommodation. However after this date, in Ministerial Circular 04/03 it was stated that the needs of all asylum seekers are now catered for within the direct provision system. There is no system in place other than direct provision for the special needs of particular categories of asylum seekers.

Q.30. B. How is their specific situation taken into account (see articles 13, §2, second indent, 16 §4 second sentence and 17 which are mandatory provisions)?

Since 2003, the the needs of all asylum seekers are now catered for within the direct provision system. There is no system in place other than direct provision for the special needs of particular categories of asylum seekers.

Q.30. C. How and when are the special needs of the concerned persons supposed to be legally identified (see article 17 § 2 which is a mandatory provision and clarify how it has been interpreted by transposition)?

There are no legal measures regarding the identification of special needs in asylum applicants.

Q.30. D. Is the necessary medical and other assistance provided to persons with special needs as requested by article 15, §2 which is a mandatory provision and in particular to victims of torture and violence as requested by article 20 which is a mandatory provision?

Minors, the disabled, elderly people, pregnant women, single parents with minor children and persons who have been subjected to torture, rape or other serious forms of psychological, physical and sexual violence are entitled to free medical and if needed psychiatric care on the public health service.

Q.31. About minors:

Q.31. A. Till which age are asylum seekers considered to be minor?

An asylum seeker is considered a minor until s/he is 18 years of age.

Q.31. B. How is access of minor asylum seekers to the education system ensured? Is it at school or in case inside accommodation centres and can it be considered as similar to the conditions for nationals as requested by article 10, §1?

All minors are legal obliged to attend school from the ages of 6 to 16. Asylum seekers are educated along with Irish nationals and other residents.

Q.31. C. Is access to education ensured not later than 3 months as requested by article 10, §2 (or after maximum one year if specific education for asylum seekers is provided) and till an expulsion decision is really enforced?

Access to education is compulsory from the time the minor arrives in the accommodation centre until such time as an expulsion decision is enforced.

Q.31. D. Is specific education (like language classes) available for asylum seekers, in particular to facilitate their effective access to the education system of the reception Member State (see article 10, §2 which is an optional provision)?

Asylum seekers are educated alongside Irish nationals and other residents. Language support provision may be, depending on the number of non-English speaking foreign nationals in the school, provided.

Q.31. E. Are minors in general accommodated with their parents or with the person responsible of them? (see article 14, § 3)

Yes

Q.31. F. Do minors with special needs enumerated by article 18, §2 which is a mandatory provision, have access to appropriate mental health care and qualified counselling?

Yes

Q.31. G. How and when is organised the representation of unaccompanied minors (guardianship, special organisation) and regularly assessed? (see article 19, §1 which is a mandatory provision)

If a minor arrives within the State and s/he appears to be unaccompanied, the State body, the Health Services Executive is responsible for the care of the child, including making an asylum claim on behalf of the child. The Health Services Executive may place the child with family members, within asylum child specific accommodation, within a foster family or possibly within a general child residential unit. In general, most unaccompanied minors will be placed either with relatives or within an unaccompanied minor's hostel. The Irish Refugee Council has expressed concerns about the system of supervision of unaccompanied minors, where no/little support is available after 5 p.m. on weekdays and over the whole weekend. When placed within child accommodation centres, questions have been raised about the qualifications of staff and the disparity of care in public centres and those run by private enterprise.

Q.31. H. How is placement of unaccompanied minors organised (with adult relatives, a foster family, in special accommodation centres or other suitable accommodation)? (see article 19, §2 which is mandatory provision)

The minor may be placed with adult relatives, a foster family, within residential care, or possibly within a child reception hostel by the Health Services Executive. The decision is to be taken on the basis of the 'best interests of the child' principle.

Q.31. I. How is the tracing of the family members of the unaccompanied minors organised? Are measures taken to protect confidentiality of information when necessary? (see article 19, §3 which is a mandatory provision)

The Irish Red Cross handles family tracing. However it has limited resources, it has no interpreter facilities and no 'detailed child-centred tracing methodology in place'. Tracing is to be avoided if it would be contrary to the best interests of the child or jeopardise the fundamental rights of those being traced. UNHCR has in some ways criticised the methodology of the tracing. The application must be made on behalf of the child and the child is not interviewed directly.

8. EXCEPTIONAL MODALITIES OF RECEPTION CONDITIONS

Q.32. **Apart from detention covered by the next question, are there exceptional modalities for reception conditions in the following cases and if yes, which ones and for how long are they applicable, knowing that they should be "as short as possible" (see article 14, §8)?**

Q.32. A. Persons with specific or special needs, regarding in particular the period of assessment of those needs?

No

Q.32. B. Non availability of reception conditions in certain areas

No

Q.32. C. Temporarily exhaustion of normal housing capacities

No

Q.32. D. The asylum seeker is confined to a border post

No

Q.32. E. All other cases not mentioned in the directive (for instance urgent situation in case of a sudden high number of applicants outside a case of application of the directive on temporary protection).

No

Q.33. **Detention of asylum seekers (we do not cover the situation of rejected asylum seekers detained for the purpose of their return) (see articles 6 §2, 7 §3, 13, §2 2nd indent and 14 §8 which implies that the directive is in principle applicable in case of detention):**

Q.33. A. In which cases or circumstances and for which reasons[1] (identity verification in particular if the persons have no or false documents, protection of public order or national security, refugee status determination, way of entry into the territory, etc) can an asylum seeker be detained during the asylum procedure till his request has been finally rejected. Quote precisely in English in your answer the legal basis for detention of asylum seekers in national law.

[1] Please specify if article 18 §1 of the directive on asylum procedures of 1 December 2005 following which *"Member States shall not hold a person in detention for the sole reason that he/she is an applicant for asylum"* is or not respected (even if it has not yet to be transposed).

Under section 9(8) of the Refugee Act 1996 (as amended) if an immigration officer of a member of the Irish Police Force (An Garda Siochána) suspects an asylum seeker poses a threat to national security or public order in the State; has committed a serious non-political crime outside the State; has not made reasonable efforts to establish his or her true identity; intends to avoid removal from the State in the event of his or her application for asylum is transferred under the Dublin Convention; intends to leave the Irish State and enter another state without lawful authority; without reasonable cause destroyed his/her identity or travel documents or is in possession of forged identity documents, s/he may be detained. This detention may be authorised for a period of 21 days and must be re-instituted every 21 days.

Q.33. B. Has your member State adopted measures to transpose §3 of article 7 which is an optional provision? If yes, how has this provision been legally understood (is it a case of detention or an obligation to stay in and not leave a certain place?) and for which reasons can an asylum seeker be "confined" in such a place?

Ireland is not a party to the Reception Conditions Directive however under section 9(10a)(b)(ii) of the Refugee Act, 1996 (as amended) instead of committing an asylum seeker to a place of detention, a District Court judge may impose a number of conditions on the asylum seeker including that s/he remain in a particular district/place, that s/he reports to the Irish Police Force (An Garda Siochána) at regular intervals, surrender any passport or travel document which s/he may be in possession of. Ireland respects article 18(1) of the Asylum Procedures Directive.

Q.33. C. Are there legally alternatives to detention, like obligation to report to the authorities, obligation to stay in a place, provision of a guarantor or of a financial guarantee?

Under section 9(10a) (b) (ii) of the Refugee Act, 1996 (as amended) instead of committing an asylum seeker to a place of detention, a District Court judge may impose a number of conditions on the asylum seeker including that s/he remain in a particular district/place, that s/he reports to the Irish Police Force (An Garda Siochána) at regular intervals, surrender any passport or travel document which s/he may be in possession of.

Q.33. D. Which is the competent authority to order the detention of an asylum seeker? Explain if different authorities are involved to first take and later confirm the decision.

An immigration officer or a member of the Irish Police Force (An Garda Siochána) are competent to detain an applicant, however he must be brought before a judge of the District Court as soon as is practicable and the District Court judge will review the decision of the immigration officer or member of An Garda Siochána.

Q.33. E. For how long and till which stage of the asylum procedure can an asylum seeker be detained?

Each period of detention can last no more than 21 days and may be ended at any time during that period if an immigration officer or member of the Irish Police Force (An Garda Siochána) who is of the opinion that section 9(8) does not apply (or no longer applies) may bring the asylee before the District Court and if the judge is of the opinion that article 9(8) does not apply (no longer applies) then the asylum seeker will be released from detention. It may be the case that the asylum seeker can be detained for the whole refugee status determination procedure.

Q.33. F. In which <u>places</u> (can we call them "closed centres"?) are asylum seekers detained (places in a special closed centres reserved only to asylum seekers, together with returnees like illegal aliens or even in a normal prison, in case within separated areas or with the other detainees)? Indicate if a difference has to be made following the location of the "closed centres" at the border or on the territory? Which is the authority managing those places and is it the same as the one in charge of reception conditions?

Asylum seekers are detained in prisons within the State, usually (but not always) segregated from other detainees. There are no 'closed centres' at the border of the territory.

Q.33. G. Does <u>UNHCR and NGOs have access</u> to the places of detention and under which conditions?

The UNHCR can request and will be granted access to the places of detention to visit an asylum seeker (or asylum seekers) in detention. NGOs have no right of access.

Q.33. H. What <u>appeal(s)</u> can asylum seekers introduce against the fact he is detained? Is article 18 of the directive on asylum procedures of 1 December 2005 following which *"Where an applicant for asylum is held in detention, Member States shall ensure that there is a possibility of speedy judicial review"* respected (even if it has not yet to be transposed)?

Article 18(1) of the Procedures Directive is respected. If an asylum seeker believes his detention is unwarranted, and then he may appeal to the High Court to have the decision of the District Court judicially reviewed, alternatively the asylum seeker could initiate haebus corpus proceedings.

Q.33. I. Is the <u>directive</u> on reception conditions considered to be <u>in principle applicable</u> to the places where asylum seekers are detained? In particular which information do they receive about their rights, which access do they have to legal advice and health care?

The Reception Conditions Directive is not applicable within Ireland. Asylum seekers in detention would not be entitled to the supplementary welfare allowance payment however would have access to their legal representative and also to health care.

Q.33. J. Apart from freedom of movement, what are the <u>main differences</u> between normal reception conditions and exceptional modalities for reception conditions in case of detention, knowing that they should be "as short as

possible" (see article 14, §8)? If it is about closed centres, are the regulations of those places in line with the requirements of the directive (is article 13, §2, second indent of the directive following which "*Member States shall ensure that standards of living is met (…) in relation to the situation of persons who are in detention*" respected?).

There are no exceptional modalities of reception conditions within Ireland.

Q.33. K. Are measures taken to avoid detention of asylum seekers with special needs (if yes, which ones?) or are special measures taken because of their needs?

There is no legislation within Ireland which states an obligation to avoid detention of asylum seekers with special needs.

Q.33. L. Can minor asylum seekers be detained together with relatives? Can unaccompanied minor asylum seekers be detained? If yes, are there special measures which take into account that children are concerned?

Minor asylum seekers cannot be detained. Unaccompanied minors cannot be detained.

Q.33. M. In particular is article 10 regarding access to education of minors respected in those places?

Minor asylum seekers cannot be detained. Unaccompanied minors cannot be detained.

Q.33. N. How many asylum seekers are for the moment detained in your Member State? Which proportion does this represent in comparison of the total number of asylum seekers at the same moment?

There are no national figures available to answer this question. UNHCR is not aware of any such figures and believes that people who seek asylum would simply be classed as immigrant detainees who violated immigration law.

9. ORGANISATION OF THE SYSTEM OF RECEPTION CONDITIONS

Q.34. Explain if the system of providing reception conditions is centralised or decentralised (which levels of government do provide practically reception conditions?) (do not confuse this question with question number 3 about the competence to make rules about reception conditions).

The system for providing support is centralised. The Reception and Integration Agency is located within the Department of Justice, Equality and Law Reform and is responsible for sourcing and providing direct provision (bed and board) accommodation to asylum seekers. Asylum seekers receive their monetary allowance from the Health Services Executive. There may still be a small

number of asylum seekers in receipt of social assistance payments from the Department of Social and Family Affairs, or who are in private rented accommodation and receiving rent supplement from the Health Services Executive.

Q.35. In case, are accommodation centres public or/and private (managed by NGOs? If yes, are the NGOs financially supported by the State?)

Centres are both publicly and privately managed. NGOs do not manage any accommodation centres in the State.

Q.36. In case, how many accommodation centres are there in your Member State (distinguish in your answer between public and private centres)?

There are forty-nine accommodation centres in Ireland. There are forty two privately run accommodation centres and seven State owned and run centres.

Q.37. Is there in the legislation a plan or are there rules in order to spread the asylum seekers all over the territory of your Member State to avoid their concentration in some areas like big cities or to share the costs of their reception between central, regional and local authorities?

There is general governmental policy to disperse asylum seekers away from the capital, Dublin, into regional centres. The central government bears the cost of reception conditions.

Q.38. Does a central body representing all the actors (like NGOs) involved in reception conditions exist? Does it play a consultative role for the State authorities, a coordination role for the actors or any other role?

No.

Q.39. **Q.39. A. Which is the body in charge of guidance, monitoring and controlling the system of reception conditions as requested by article 23 which is mandatory provision? Include in your answer which is the competent ministry (Interior, Social affairs, etc) for reception conditions?**

The competent body in charge of guidance, monitoring and controlling the system of reception conditions is the Reception and Integration Agency (RIA), in particluar the Operations Unit, located within the Depratment of Justice, Equality and Law Reform.

Q.39. B. Has your Member State (like the Czech Republic did recently) approved quality standards (not necessary legally binding) for housing services (for instance about the number of persons per bedroom on the basis of its size, number of accessible toilets, bathrooms, showers and washing machines per number of persons, existence of common rooms with radio, television, newspapers, books, computers, accessibility of telephone, existence of recreative rooms for children,…) to be respected in particular in accommodation centres?

There are no publicly available quality standards which apply to these accommodation centres. However, Direct Provision Reception and Accommodation Centre Services, Rules and Procedures *suggest that certain minimum standards must be observed at the all accommodation centres.*

Q.39. C. How is this system of guidance, control and monitoring of reception conditions organised?

According to the Reception and Integration Agency they have a full system for the guidance, control and monitoring of reception conditions, with inspections taking place at accommodation centres to ensure consistency and standards.

Q.39. **D.** Does the body in charge of guidance, control and monitoring produce reports about the level of reception conditions? If yes, how frequently and are they public?

No there are no public reports on level of reception centres.

Q.40. **Q.40. A.** What is the total number of asylum seekers covered by reception conditions for the last year for which figures are available (see article 22 obliging Member States to calculate those statistics about which we also asked the Commission to require them from Member States for mid June)?

The final figures available are from 2005, where there were 6,785 people accommodated in direct provision.

Q.40. B. What is the total budget of reception conditions in euro for the last year for which figures are available?

The Reception and Integration Agency's costs for 2004-2006 are as follows:

2004: €83.63 million
2005: €84.38 million
2006: €78.728 million

Normal 'set-up' costs are borne by the commercial operator. This figure does not include the stipend payment which asylum seekers receive. This figure does not quantify the free medical treatment which asylum seekers are entitled to.

Q.40. C. What is the average cost of reception conditions in euro per asylum seeker for the last year for which figures are available?

The average cost of reception conditions per asylum seeker is difficult to ascertain as no figures exist which give us a total figure for the stipend payments which asylum seekers receive, or quantify in a monetary figure the medical treatment which asylees are entitled to.

Q.40. D Are the costs of reception conditions of asylum seekers supported by the central/federal or federated government or are they shared with regional and/or local authorities?

The cost is fully borne by the central Irish government.

Q.40. E. Is article 24 § 2 of the directive following which "*Member States shall allocate the necessary resources in connection with the nationals provisions enacted to implement this directive*" respected?

Ireland is not a party to the Reception Conditions directive.

Q.41. **Q.41. A.** What is the total number of persons working for reception conditions?

Within the Reception and Integration Agency there are 65 staff working directly within this agency. The Reception and Integration Agency does not keep definitive records on the numbers of persons employed at direct provision accommodation centres. However, the Reception and Integration Agency reckon this is around 1300-1500 persons work within these accommodation centres.

Q.41. B. How is the training of persons working in accommodation centres organised? Does it take into account specific needs of unaccompanied minors when relevant as well as the gender dimension? (see article 14 §5, 19 § 4 and also 24 §1 which are mandatory provisions)?

From a freedom of information request, the Reception and Integration Agency has provided the following comments on training of persons working within accommodation centres:

"The Staff of the Reception and Integration Agency have access to Training Programmes organised through the Training Unit of the Department of Justice, Equality and Law Reform. In addition the RIA has undertaken a programme of training for the Agency staff and for staff at accommodation centres. The first sessions of training were undertaken as part of a programme of seminars in late 2006 and early 2007. More comprehensive training sessions in relation to conflict resolution and anger management have been undertaken in 2007 for staff of the Agency. It is envisaged that training will be expanded on a regional basis to centre staff in 2007."

Q.41. C. Are there rules about the deontology of persons working in accommodation centres, in particular on confidentiality?

The Reception and Integration Agency has in place a "Code of Practice for persons working in accommodation centres." *This Code of Practice states that behaviour or language which discriminates on the grounds of age, disability, family status, gender, marital status, political*

belief, race, religion, sexual orientation and social status is prohibited. Bullying and harassment, derogatory remarks, destructive criticism, embarrassment, humiliation, favouritism racism, sarcasm and sexual innuendo and harassment are unacceptable. There are then general guidelines which persons working in accommodation services must observe:

- *There should be a high standard of personal practice, which relates to safety of asylees, adhering to Child Protection Guidelines and documentation of unusual events. Those working in accommodation centres must not abuse, harm, exploit, abuse trust, discriminate or form inappropriate relationships with asylum seekers (who are described as 'service users' in the Code of Practice);*
- *Those working in accommodation centres should respect the rights, dignity and worth of every human being and promote the interests of service users. This includes respect for privacy and respecting to the greatest extent possible the views of asylees;*
- *Must strive to establish and maintain the trust and confidence of the service users. This includes* inter alia *being honest and trustworthy, respecting confidentiality and being reliable and dependent.*
- *Promote the independence of the service users;*
- *Respect the rights of service users while ensuring their behaviour does not harm themselves or other people;*
- *Being accountable for quality of their work.*

In relation to punishment for breaches of these guidelines, this is to be dealt with by the management of the accommodation centre.

10. IMPACT OF THE DIRECTIVE

Legal impact of the transposition of the directive:

Q.42. Specify if there are or not big problems with the translation of the directive in the official language of your Member State and give in case a list of the worst examples of provisions which have been badly translated? (please note that this question has in particular been added to the questionnaire concerning the new Member States)

Ireland is not a party to the Reception Conditions Directive.

Q.43. Where there precise legal rules on reception conditions for asylum seekers before the adoption of the norms of transposition of the directive (if yes, specify what the nature of those rules was (legislation, regulation, administrative instructions,…)?

Ireland is not a party to the Reception Conditions Directive.

Q.44. Did the legal rules applicable to reception conditions become more clear, precise, coherent or detailed with the adoption of the transposition norms (for instance do you now have after the transposition one basic text dealing with reception conditions instead of numerous different texts in the past?

Ireland is not a party to the Reception Conditions Directive.

Q.45. Did the transposition of the directive imply important changes in national law or were the changes of minor importance? In case, list the most important changes that have been introduced.

Ireland is not a party to the Reception Conditions Directive.

Political impact of the transposition of the directive:

Q.46. Explain briefly if there has been an important debate about the transposition of the directive (in particular in the Parliament, but possibly also in the government, between political parties, including in medias, etc; underline in case the main points which have been discussed or have created difficulties)

Ireland is not a party to the Reception Conditions Directive.

Q.47. **Did the transposition of the directive contribute to make the internal rules stricter or more generous? In particular, did your Member State use the occasion of the transposition to abolish more favourable provisions of national law? Does your Member State still have rules more favourable than the provisions of the directive (if yes, try to give the more important examples).**

Ireland is not a party to the Reception Conditions Directive.

11. ANY OTHER INTERESTING ELEMENT

Q.48. What are in your view the weaknesses and strengths of the system of reception conditions in your Member State?

Strengths:

The main strength of the direct provision system is having an organisation which can co-ordinate policy regarding the reception of asylum seekers.

Weaknesses :

Unfourtunately, there are many more weaknesses than strengths in the current reception system for asylum seekers. The major weakness with the system within Ireland is the fact that there is no legislative right for asylum seekers to be entitled to such support. When support is withdrawn, an Ad Hoc appeals system is in place to internally review such decisions. The Reception and Integration Agency is located within the Department of Justice, Equality and Law Reform. The question must be posed as to why this agency is not located within the Ministry for Social and Family Affairs which is the central authority which administers traditional social welfare payments. The reception system may be seen as a tool to control immigration and this may reflect the fact that it is a more penal system than the traditional welfare state.

Asylum seekers are legislatively barred from seeking or entering work at means that throughout the refugee determination process, asylum seekers are wholly dependent on the State. Some

asylum seekers have been within the direct provision system since the year 2000. Although many of their claims have been dismissed, they may be going through the humanitarian leave to remain process which can take an exceptionally long period of time. The level of cash payment to asylum seekers (€19.10 per adult and €9.60 per each dependent child) has remained the same since the year 2000 and has not increased in line with general inflation. This level of payment is not sufficent to leave with dignity within Ireland.

The lack of a human rights based approach to the reception of asylum seekers, wherein their basic and fundamental needs are seen as lesser than that of the host population does not bode well with Ireland's committments under international human rights law, in particular the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD). Indeed the supervisory expert body for ICERD have expressed concerns that the policy of dispersal and direct provision could violate article 3 of the Race Convention relating to segregated racial practices.

Q.49. Mention any good practice in your Member State which could be promoted in other Member States

All asylum seekers are entitled to free medical care. There are no limitations or restrictions on the type of care that an asylum seeker can receive and it is the same as that an Irish citizen would be entitled to receive under the free medical schemes.

Q.50. Please add here any other interesting element about reception conditions in your Member State which you did not had the occasion to mention in your previous answer.

The reception conditions of unaccompanied minors within the State are of some concern. Unaccompanied minors are defined by Irish law as those under the age of 18 years and who do not have anybody to care for them. They are taking into the care of the Health Services Executive (HSE) and the Child Care Act, 1991 then applies. From 1999 to 2005 there were 4,197 unaccompanied minors who presented themselves to the HSE, around half of these remained in HSE care and were, for the most part, put in hostel care. The Irish Refugee Council has deemed the care of unaccompanied minors in hostels to be inappropriate. The report entitled 'Making Separate Children Visible' while noting the positive attributes of the state run child only hostels, was in sharp contrast to the private hostels. The report also noted the lack of an out of hour's service by the HSE to these children. In contrast Irish children who were in the care of the HSE would not be in such a facility but more likely would be placed with a foster family or in residential care.

QUESTIONNAIRE FOR THE NATIONAL REPORT ON THE IMPLEMENTATION OF THE DIRECTIVE :
RECEPTION CONDITIONS OF 27 JANUARY 2003

Update 07/11/2007

IN: ITALY
by

DI PASCALE ALESSIA	*FAVILLI CHIARA*
Doctor, Researcher European Union Law – Law Faculty, University of Milan;	Doctor, Lecturer European Union Law – Law Faculty, University of Florence; Teacher International and European Union Law, Law Faculty, University of Florence

1. NORMS OF TRANSPOSITION

Q.1. Identify the main norm of transposition (indicate the title, date, number, date of entry into force and references of publication into the official journal) and indicate its legal nature (legislative, regulatory, administrative); indicate in your answer if this norm was only devoted to the directive or if it has been included in a more general text and indicate in that case by quoting precisely the numbers of the provisions adopted to transpose the directive.

Decreto legislativo 30 maggio 2005, n. 140 "Attuazione della direttiva 2003/9/CE che stabilisce norme minime relative all'accoglienza dei richiedenti asilo negli Stati membri" in GU n. 168 del 21.7.2005. Date of entry into force 20 October 2005 (art. 15)
http://www.interno.it/legislazione/pages/pagina.php?idlegislazione=714
Legislative Act concerning only the implementation of the directive and adopted by the Government after Parliament delegation (art. 67 Italian Constitution);
Annex I

Q.2. List by order of importance by using numbers (1, 2, 3) the others norms of transposition if there are more than one (indicate for each norm the title, date, number and references of publication into the official journal; include in your answer the administrative measures taken to ensure implementation of the directive and of the transposition norms like regulations, administrative circulars, special instructions,…)

1. Law: *Decreto legislativo 30 maggio 2005, n. 140 "Attuazione della direttiva 2003/9/CE che stabilisce norme minime relative all'accoglienza dei richiedenti asilo negli Stati membri" in GU n. 168 del 21.7.2005.* Date of entry into force 20 October 2005 (art. 15)
http://www.interno.it/legislazione/pages/pagina.php?idlegislazione=714
Legislative Act concerning only the implementation of the directive and adopted by the Government after Parliament delegation (art. 67 Italian Constitution);

2. Administrative circular: *Circolare Ministero interno prot. n. DCS/1/2005 del 17.10.2005 – Oggetto*: *Modalità di accertamento dei posti in accoglienza per i richiedenti asilo ai sensi dell'art. 6, comma 1, del decreto legislativo 30.5.2005, n. 140, recante "Attuazione della direttiva 2003/9/CE che stabilisce norme minime relative all'accoglienza dei richiedenti asilo negli Stati membri"*

http://www.asgi.it/content/documents/dl05102500.circolare.posti.in.accoglienza.doc

3. Administrative circular: *Circolare Ministero dell'interno prot. n. 400/C/2005/1170/P/15.1.12 del 22.10.2005* – Oggetto: *Decreto legislativo 30.5.2005, n. 140 – "Attuazione della direttiva 2003/9/CE che stabilisce norme minime relative all'accoglienza dei richiedenti asilo"*

http://www.asgi.it/content/documents/dl05110900.circ.int.221005.doc

4. Ministerial Decree: *DECRETO DEL MINISTERO DELL'INTERNO 28 novembre 2005 (in Gazz. Uff., 5 dicembre 2005, n. 283) - Linee guida, formulario delle domande e criteri per la verifica della corretta gestione del contributo erogato dal Fondo per le politiche e i servizi dell'asilo e loro armonizzazione alle disposizioni del decreto legislativo del 30 maggio 2005, n. 140. Misure e modalità del contributo economico a favore del richiedente asilo che non rientra nei casi previsti dagli articoli 1-bis e 1-ter del decreto-legge 30 dicembre 1989, n. 416, convertito, con modificazioni, dalla legge 28 febbraio 1990, n. 39, così come introdotto dall'articolo 32 della legge 30 luglio 2002, n. 189.*
http://www.interno.it/legislazione/pages/articolo.php?idarticolo=702

5. Administrative Circular: *Circolare del 27 novembre 2002 sulle Convenzioni tipo e "linee guida" per la gestione di Centri di Permanenza Temporanea e Assistenza (CPT) e di Centri di Identificazione (CId, già centri d'accoglienza)*
http://www.interno.it/stampa.php?sezione=1&id=21698

6. *Regolamento attuazione 303/2004*
http://www.interno.it/stampa.php?sezione=6&id=631

English Version http://www.interno.it/assets/files/7/20050420122845_10-113-232-21.pdf

A. Leaflet: http://www.interno.it/assets/files/10/20051021105725.pdf

B. Verbale declaration of asymul seekers under Geneva Convention
http://www.interno.it/assets/files/7/20050420163440_10-113-232-28.pdf

7. L. 1990 no. 39, as changed by Artt. 31-32 L. 2002 no. 189: *Norme urgenti in materia di asilo politico, di ingresso e soggiorno dei cittadini extracomunitari e di regolarizzazione dei cittadini extracomunitari ed apolidi già presenti nel territorio dello stato*

http://www.welfare.gov.it/Sociale/immigrazione+ed+integrazione/norme/leggi/1989-12-30DLn.416+.htm

8. Circular 26 May 2006: Provvedimento di determinazione della capacità ricettiva massima del Sistema di protezione per richiedenti asilo e rifugiati

http://www.serviziocentrale.it/pdf/Circolari/Provvedimentocapacitaricettivamassima.pdf

9. Circular 11 April 2007: Direttiva in favore dei minori stranieri non accompagnati richiedenti asilo

www.asgi.it/content/documents/dl07050205.minori.stranieri.non.accompagnati.19.marzo.2007.pdf

Q.3. Explain which level of government is competent to adopt the legal norms on reception conditions for asylum seekers (specify in particular in case of a federal or regional State, if it is the federal/central power or the components; in case, specify below when it is impossible for you to answer a question because it is about the competence of the components and it is impossible for you to gather reliable information about all of them)

In Italy the competence to adopt legal norms on reception conditions for asylum seekers is of the central Government according to Art. 117, 2nd par. lett. a) of the Italian Const., that confers to the central Government the exclusive competence on asylum and the legal status of third country nationals. Regional authorities have competence on subjects connected with the reception such as the social services and the services related to migration such as mediation, housing, integration. At the moment this regards mainly the services organisation although there is a wide difference among regions in the standard of social services. The Constitution states that the Government shall fix the "essential levels of social protection" that will establish the minimum standard to be granted in the whole country. After a lot of

debates the negotiations between central Government and Regions on this crucial point is at a standstill.

Q.4. Explain the legal technical choices done to transpose the directive (comment on the nature and level of the norms used to do the transposition: legislative, regulatory, administrative like instructions, etc). Add any other element about the technique of transposition of the directive which is interesting for the implementation of Community law.

Since 1989 Italy adopts each year a law, named *Legge comunitaria* (*European Law*) in order to implement European law such as Directives, Decisions or ECJ Decisions. The "*Legge comunitaria*" can: provide directly the norms necessary to conform to the European law (this can happen when only small changes are sufficient); delegate the Government to adopt the norms with an act having the force of law or with a regulation (this is possible when there is already a law but there is not a reserve of law in the Constitution); consider sufficient an implementation through administrative acts. The *Legge comunitaria* has at least two annexes listing the Directives that the Government is delegated to implement. The difference between the two annexes is that only for one of them is requested the opinion by the competent Parliament commissions before the official adoption of the Legislative Decrees.
Directive 2003/9/EC has been implemented with the most common techniques, the delegation to the Government to adopt an act having the same force of Law (Art. 67 Italian Constitution). This topic is covered by a reserve of law stated by art. 10, 2nd and 3rd par., Italian Constitution. Directive 2003/9/EC was listed in Annex A of L. 31 October 2003, n. 306 *recante disposizioni per l'adempimento di obblighi derivanti dall'appartenenza dell'Italia alle Comunità europee – legge comunitaria 2003*, so that the opinion of the Parliament was not necessary to adopt the decree (Art. 1, par. 3, L .106/2003).
The Parliament participation in this process of transposition is very modest. This is aggravated by two factors: the draft of the *Legge comunitaria* is written by the Government and there has not been any act by the Parliament on the Proposal directive. We can affirm that the Parliament has been completely absent from the entire process of adoption and transposition of the Directive.

Q.5. Mention if there is a general tendency to just copy the provisions of the directive into national legislation without redrafting or adaptation them to national circumstances? If yes, give some of the worst examples and explain if there is a risk that those provisions remain unapplied or will create difficulties of implementation in the future.

Although there is not a wide debate on the implementation of the Directive the implementation is not generally only a copy of the Directives, except for the definitions. The Government legislative officials are charged to propose a draft that is generally not so much changed. That draft is written taking account the national law and trying to change it the minimum as possible.

Q.6. Have all the texts necessary to ensure the effective implementation of the new rules of transposition been adopted, prepared or at least foreseen in the future (for example a regulation completing a new law and the necessary instructions telling the administration how to apply the new rules)?

Italy has adopted all the legislative acts and the administrative circulars necessary to implement the European Directive and to enable the administration to apply the norms (see annex II-III-IV)

2. BIBLIOGRAPHY

Q.7. Has an in-depth preparatory study been made public about the changes at the occasion of the transposition? If yes, thanks for trying to provide us a copy *(please contact to answer this question adequately the body and person who was responsible for the preparation of the transposition of the directive in the public administration).*

As already mentioned there has not been an in-depth preparatory study and there has not any public document related to the changes adopted with the directive transposition. *(please contact to answer this question adequately the body and person who was responsible for the preparation of the transposition of the directive in the public administration).*

Q.8. Quote any recent scientific book or article published about the directive, the transposition rules or the question of reception conditions for asylum seekers in general (answer even if this literature is only available in your language and provide the complete title in your language (without translation) with all references; indicate author, title, in case name of periodical, year and place of publication).

Amnesty International, Invisibili, Minori migranti detenuti all'arrivo in Italia, 2006, EGA

Censis, Primo rapporto annuale sul Sistema di protezione per richidenti asilo e rifugiati (Anno 2005), 2006, Edizioni Anci Servizi.

D. Consoli e G. Schiavone, *Analisi della procedura semplificata, della procedura ordinaria e delle collegate misure di trattenimento dei richiedenti asilo*, in *Diritto, Immigrazione e cittadinanza*, 2005, 2, pp. 13-27

ICS - Consorzio italiano di solidarietà, *La protezione negata – Primo rapporto sul diritto di asilo in Italia*, Milano, 2005

ICS – Consorzio italiano di solidarietà, *Il diritto di asilo in Italia nel 2005*, Torino, 2006.

A. E. Matarazzo, *Accoglienza e concessione del diritto di asilo - Osservazioni su materie di notevole spessore per una visione europea e internazionale dei fenomeni, scongiurando il rischio dell'adozione di provvedimenti «emotivi»*, in *Lo Stato civile italiano*, 2005, fasc. 12, pagg. 953

N. Morandi, *La normativa comunitaria sul diritto di asilo*, in *Diritto, immigrazione e cittadinanza*, 2005, 1, pp. 51-67

Rapporto della Commissione presieduta dall'Ambasciatore De Mistura, available on the web site of the Ministry of Interior: www.interno.it/news/articolo.php?idarticolo=23602

M.A. Quiroz Vitale, *Richiedenti asilo, Centri di prima accoglienza e politiche pubbliche dell'immigrazione. Alcuni dati sulla realtà milanese*, in B.M. Bigotta, F.A. Cappelletti, *Il Diritto di asilo*, Padova, 2006

M. Sideri, *I richiedenti asilo e l'accesso al mercato del lavoro in Italia tra legislazione internazionale, progetti di riforma e prassi quotidiana*, in Diritto delle relazioni industriali, 2005, pp. 862 ss.

S. Sonnino, S. Masiello, *Politiche europee sull'asilo e i rifugiati*, in *Gli stranieri*, 2005, pp. 113

G. Vitale, *La nuova procedura di riconoscimento dello status di rifugiato: dall'audizione avanti la Commissione territoriale all'impugnativa giurisdizionale*, in *Diritto, Immigrazione e cittadinanza*, 2005, 4, pp. 47-65

L. Zagato, a cura di, *Verso una disciplina comune europea del diritto di asilo*, of next publication

Q.9. Quote any interesting decision of jurisprudence based on the implementation of the new rules of transposition of the directive (indicate references of publication if any)?

There is not at the moment any decision of jurisprudence based on the implementation of the new rules of transposition of the directive

3. GENERAL INFORMATION ABOUT THE SYSTEM OF RECEPTION CONDITIONS

The purpose of the following two questions is to help the reader to understand easily and quickly the system of reception conditions in your Member State and also to avoid that you have to repeat general elements in other parts of the questionnaire. ***Please do not write more than one or maximum two pages and do not include large historical developments.***

Q.10. Describe in general the system of reception conditions in your Member State (in particular which are the main actors in charge of reception conditions?)

L. 189/2002 (named Bossi-Fini) has provided three different ways of granting reception to asylum seekers: 1. the National reception system (*SPRAS*); 2. the reception in the Centre of Identification; 3. the reception in the Centre of Temporary stay.

1. The first one is the reception in centres set up by local authorities through a system modelled on the positive experience tested with the *Programma Nazionale Asilo (PNA)*. Art. 32 L. 189/2002 has now named the scheme "*Sistema di protezione per richiedenti asilo e rifugiati*" (SPRAS – System of protection of asylum seekers and refugees) and has created the *Fondo nazionale per le politiche e i servizi dell'asilo* (also with the European Refugee Fund) to support the activities. The administrative body is located in Rome and is named Servizio centrale http://www.serviziocentrale.it/.

The basic idea of the System is the active role of local networks leading by the municipalities. The System is run by ANCI (National Association of Italian Municipalities, www.anci.it) who has signed an agreement with the Interior ministry on 24th July 2003. A subcontract has been signed by ANCI and IOM concerning the activities aiming to find a durable solution for refugees (integration, repatriation or resettlement).

Each year the municipalities who want to be funded must present a project of reception that will be evaluated by the *Servizio centrale*. With these projects have been offered about 2000 places.

NGOs do not have an official role at national level but are involved in the local networks.

The local office of the Government, *Prefettura*, is the *pivot* of the system: it is in charge of admitting the asylum applicant in the reception system and of finding, through the Central system, the available places in one of the centres of the country.

2. The second one is the new one and now most used. The reception in a Centre of identification is granted to those asylum seekers under these conditions: doubts on identity; illegal entry;

3. The last one is for those who after been addressed of a deportation order and detained in a Centre of temporary stay ask for the recognition of the refugee status.

Q.11. A. Explain if you have different types and levels of reception conditions following the different stages of the asylum procedure (this implies that you have to give briefly the necessary explanations about the asylum procedure). Make if relevant for reception conditions a distinction between the following procedural stages: determination of the responsible Member State on the basis of the Dublin II regulation, special procedures at the border (including transit zones in airports), accelerated procedures, admissibility procedures, eligibility procedures and the different possibilities of appeals (suspensive or not) against a refusal tof the asylum request. Indicate what the main differences of reception conditions are between the different stages (if necessary by detailing between the different elements of reception conditions, in particular housing) and explain what the evolution of reception conditions is following the different stages of the procedure.

L. 189/2002 has settled a new procedure to recognise the Refugee status in Italy. That procedure has entered into force on the 21 April 2005 after the entry into force of the Regulation DPR 2004 n. 303.

There are two different procedures for which there are different reception conditions: the standard procedure and the fast one.

In the standard procedure the Police gives the asylum seeker a permit of stay for Asylum application (*per richiesta di asilo*) and a leaflet with the information about the assistance provided by the SPRAS and the modalities to apply for in order to grant assistance. In this case the Local Office of the Government, named *Prefettura*, will decide on the admissibility after an evaluation of the needs of the asylum seekers and will provide a place in one of the centre in the country through the Central service. Also in this case the applicant may be detained in an Identification Centre in order to: verify her/his identity; verify the grounds of the application if not immediately available; awaiting the end of the procedure to be admitted in the territory.

After three days the applicant receives a certificate with his name and after twenty days a permit of stay for asylum application lasting three months and renewable until the procedure ends.

In the accelerated procedure the asylum seeker is always detained in a Centre of identification (*Centro di identificazione*) or in a Centre of temporary stay (*Centro di permanenza temporanea CPT*). The former has been created with L. 189/2002 in order to detain the asylum seekers for the time necessary to identify him/her and not just to examine the application but only when the asylum seeker: has used false documents and has not declared it to the police; has avoided or trying to avoid border controls; has been stopped after illegally entering or residence in Italy. Once the detention is not necessary anymore the asylum seeker must be released and given a permit of stay until the Local commission has not decided on her/his application. The detention can last maximum for twenty days plus ten days in case of a new exam of the rejection of the application. Although the asylum seekers can not leave the centre without loosing their legal status, the law does not consider that detention as a deprivation of personal freedom and so does not ask the intervention of the judge as requested by Art. 13 and 16 Const.

In case of detention in the *CPT* (when he/she has an expulsion decree or when is entered and or has stayed in the territory illegally) the asylum seeker must be detained until the application is decided. In this cases the asylum seeker is detained with the other foreigners waiting for the deportation (while the Identification centres are devoted only to asylum seekers).

The praxis shows that the majority of asylum seekers is detained in one of these two centres. This is relevant regarding the reception conditions because in all the cases of the accelerated procedure and detention the reception is granted directly in the Centres. Only when the asylum seeker has left the centre and (if) has got a permit of stay for Asylum application (*richiesta di asilo*) she/he can be admitted to the national reception system (SPRAR).

The main difference among the three types of reception conditions is that of freedom of movement: in the SPRAR system, asylum seekers are in principle free to move; in the Identification centres they are free to move only during the day, while in the CPT they are forbidden to move with strict controls by police. Moreover, in this last case their conditions are not different from that of the other foreigners.

Q11. B. ***Indicate precisely for which stage(s) of the asylum procedure the answers on reception conditions you give below are valid.***

According to art. 5 d.lgs. 150/2004 the reception starts since the presentation of the application. Some assistance can be granted also before the enrolment of the application according to *D.L.* 451/1995 (L. 29.12.1995 n. 563 known as *L. Puglia*) and Regulation of Application Decree 233/1996.
The reception can be granted until the application is not decided (see here under Q15).

4. GENERAL RULES ON RECEPTION CONDITIONS

Q.12.

Q 12 A. Are material reception conditions provided in kind, in money or in vouchers or in a combination of these elements (see article 13, §5 which is an optional provision)? Distinguish between the different elements (housing, food, clothes, health, transportation, pocket money,…). **If reception conditions are provided in money (in general or in some cases, for instance when no places are anymore available in accommodation centres), indicate the precise amount given to the asylum seekers. Indicate in your answer what is provided in general and if there are exceptional cases.** Specify in your answer if reception conditions are different from the general system of social aid for nationals or aliens and if yes, if and when (which stage of the asylum procedure) can asylum seekers have access to the general system of social aid?

Generally the assistance is given in kind through a centre of the SPRAS, a centre of identification or a centre of temporary stay (as far as they are detained in these centres they get accommodation, food and clothes as the other foreigners awaiting for deportation).
In the SPRAS or in the Centre of identification the asylum seeker is given accommodation, food, clothes, hygienic products or vouchers to buy them. There is also a sort of pocket money for the daily minor expenses. As far as the SPRAS it is not possible to describe in the detail the modalities of reception because every local network plans a project for which ask for funding: what is common is the provision of accommodation (single buildings or apartments), food (in the same building or through vouchers), clothes (in kind or through vouchers) and generally the pocket money.
When the asylum seeker is sent to a centre of identification located far from the *Prefettura* where he has applied for the assistance, he is given a ticket to reach that centre.
As far as the assistance in the reception centres (apart from common services such as accommodation, food, clothes) the material assistance can change by region to region and by city to city. Each city council indeed, presents projects of reception different from that of the other cities.
In case there is no available place the applicant can receive monetary assistance: Euro 27,89 per day for a maximum of 35 days, equivalent to maximum Euro 976,15, but it does not happen often.
In order to have access to the reception measures it is necessary not to possess an amount higher than that considered in the decree of the Interior Office in order to obtain the Tourist visa. This means not more than 5226,78 Euro for a period of 6 months.

Q 12. B. Can the reception conditions in kind, money or vouchers be considered as sufficient "to ensure a standard of living adequate for the health of applicants and capable of ensuring their subsistence" as requested by article 13, §2 of the directive (which is a mandatory provision but leaves a certain space to Member States)? In order to help to assess the respect of this rule when reception conditions are provided in money, include if necessary in your answer points of comparison with the minimum amount of social aid guaranteed for nationals in your Member State.

The assistance given by the SPRAS can considered sufficient as stated the common agreement by NGOs (see the questionnaire sent by Italian NGOs and the report edited by ICS, listed in the bibliography). As far as Identification centres or Centre of temporary stay there is no particular issues raised about the delivery of food, clothes or other material assistance. However the CPT are centres of detention a lot of which with problems of overcrowding and general bad conditions of stay as condemned by several NGOs: while we are writing a Ministerial commission headed by the UN official Staffan de Mistura is in charge of conducting a special inquiry to verify and report about the conditions in the centres (http://www.interno.it/news/articolo.php?idarticolo=22693). According to ICS, during the 2005 NGOs have not been able to enter in the Identification centres.

As far as the reception offered in money, we must compare the 976,15 Euro with the minimum amount of social aid fixed in 381,72 Euro per month (foreigners can benefit of that amount only when they have a long stay permit or when they are recognised as refugee). The amount of E 976,15 is adequate only if the procedure ends shortly days and if she/he has the chance to be hosted for free. In a lot of regions and in particular in the big cities the rent rates are very high also for one room. After that period the asylum seeker finds her/himself without any social assistance and without the chance to work. If the asylum seeker can not eventually find a place in a centre of reception he risks not to have the minimum amount to live. This sort of reception is a residual option that seems applied hardly ever (see the answers given by Parodi Danilo from the Genova Municipality, Q1.B).

5. PROCEDURAL ASPECTS

Q.13. Q 13. A. Does the national legislation specifically provide that a request for international protection is presumed to be under the Geneva Convention unless explicitly requested otherwise? (see article 2, b which is a mandatory provision)

Art. 1, *D.lgs.* 2005/140 contains the rules on reception conditions of asylum seekers.

Q 13. B. Explain if the scope of application of reception conditions is extended to other asylum seekers than refugees in the sense of the Geneva Convention, in particular to persons asking for subsidiary protection or to other forms of protection like humanitarian statuses (see article 3, § 4 which is an optional provision)? If not, explain briefly which the differences between these special regimes and the directive are.

Art. 1, par. 2, expressly excludes the application in case of temporary measures (*D.Lgs*. 2003 n. 85 that has implemented Directive 2001/55/EC). According to Art. 2 devoted to definitions, the asylum seeker is only the foreigner who applies for the recognition of the refugee status as defined by the Geneva Convention.
For the other forms of protection there is not a specific reception system. In Italy the right of asylum is recognised by Art. 10, 3rd par. Const., with a definition very much broader than that of Art. 1 of Geneva. However that Constitution Article has not been

implemented with a secondary law so that the only legislative framework has been for years that of the Geneva Convention. Since 1997 national Tribunals recognise direct effect to Art. 10 so that it is possible to apply for asylum appealing to a Court (with a lot of differences between courts). The applicant will receive a permit of stay for "jurisdictional grounds" but it does not allow to work. Besides with Law 189/2002 and Art. 15 of Regulation 2004 n. 303, the Local commission can deny the refugee status but ask the Police to issue a permit of stay on humanitarian grounds (Art. 5, par. 6, L. 286/1998) because there are other risks included the breach of Art. 3 ECHR (for the first time expressly mentioned in a legal act concerning foreigner). Those who will get a permit of stay will be able to work.

Q 13. C. Are there specific provisions in national law for reception conditions in case of diplomatic or territorial asylum requests submitted through a diplomatic or consular representation (see article 3, §2 which is an optional provision)?

Italian Law does not recognise expressly the diplomatic or territorial asylum requests submitted through a diplomatic or consular representation (article 3, §2). It is not excluded that a sort of protection should be given in exceptional circumstances but not being a rule of general international law Italy is not bound to recognise it or to accept those requests.

Q.14. Are reception conditions available as from the moment one asylum application is introduced? How is article 13, §1 which is mandatory legally understood? Do asylum seekers have to satisfy any other condition in order to get reception conditions?

Art. 5, par. 1, *D.Lgs.* 2005 n. 140 states that the asylum seeker who is not detained in a centre of identification or in Centre of Temporary Stay, gets the assistance since he gets the Permit of Stay. This is released in 20 days since the application is enrolled. But the following par. 5 specifies that the access to the reception measures is allowed since the moment of the application's enrolment. More over some additional measures and forms of relief can be provided also before according to *L.* 1995 n. 563 (known as L. Puglia providing the use of armed forces in activities of sea border controls in the Puglia Region).
The asylum seeker who is sent in a Centre of identification or in a CPT will benefit of the reception measures inside the centres and since he starts to stay there.
In order to benefit of the reception measures, the asylum seeker must show the lack of sufficient means for her/his life and that of her/his family. The amount under which the protection is granted is established with the reference to a period of maximum six months and taking as measure the amount requested to get the permit of stay for tourism (Art. 13, par. 3 Directive).
The reception is granted only if the application is presented within eight days since the entry in Italy or, in case of application enrolled during a legal stay for other days, within 8 days since the starting of the persecution. The respect of this temporal condition can be showed with any means included the applicant declaration: the reception can be revoked if the police can demonstrate that the declaration is false (Art. 16, § 2, Directive). This condition appears quite strict and too rigid: it is applicable to all the asylum seekers automatically without the possibility for the authority to take into account the personal situation and so adopting reasonable decisions proportionate to the specific case.

Q.15. Explain when reception conditions <u>end</u>, for instance after refusal of the asylum request (include in your answer the link with the right of appeal against a decision of refusal of the status, in particular the question of its suspensive effect)

According to Art. 5, par. 6, the reception assistance ends with the communication of the decision on the Asylum application. According to Art. 11 if the procedure is not finished in six months since the enrolment of the application, the permit of stay is renewed for other six months and the asylum seeker is allowed to work.
In case of rejection the applicant can appeal but must leave the territory and the recourse has not an automatically suspensive effect. However the applicant can ask the *Prefetto* to be authorised to stay in Italy until the end of the jurisdictional recourse. In this case the asylum seeker will benefit of reception measures according to Art. 5, par. 7, which states that the asylum seeker "is admitted to the reception system only until is not allowed to work". This is a puzzling rule: it is not clear why the asylum seeker must apply again for the reception instead than going on with the measures already allowed. Moreover, and more critical, it is the provision of the reception's end when he is allowed to work. According to Art. 11, § 1, after six months the asylum seeker is allowed to work. Art. 5, § 7, together with Art. 11, § 1, risks to be interpreted as an automatic lost of the reception measures when the asylum seeker is allowed to work. This is a point of contrast with the directive that at Art. 16, § 5, states that the receptions conditions will not be withdrawn or diminished before a negative decision is taken while Art. 11 States shall allow asylum seekers to work after maximum one year since the application's enrolment without saying anything about the cessation of reception measures.
It is necessary to interpret *D.Lgs*. 2005 n. 140 in conformity with the Directive and this can be done using its Art.11, § 4, that expressly states that the asylum seeker while working can continue to benefit of the reception conditions but contributing to the costs. This rule must be applied also at those who have appealed a negative decision and are authorised by a Court to stay in Italy. Otherwise the asylum seeker who does not work, despite been allowed and able, risks not to benefit of the reception measures while still in the territory awaiting for the final decision.
According to the law the reception measures end also in case of a positive decision: the problem here is that the refugee is not still able to provide for himself also considering the drastic reduction of the procedures length. Indeed with the new procedures the majority of the application are decided in very short terms. Also in case of standard procedures when the asylum seeker is detained in a Centre of identification the procedure tends to end in thirty days maximum.

This means that also in case of a positive decision it is unlikely that the refugee will be able to find a positive way of integration without personal resources. It is so very important to have strategy of integration of these people and guaranteeing measures also after the positive decision.

Q.16 Are there special rules or practices regarding reception conditions in case of successive applications for asylum introduced by the same person?

Art. 12, par. 1, lett. c), states that the reception measures are revoked in case of previous presentation of an asylum application in Italy. The reception assistance ends with the communication of the decision. The applicant can appeal against this decision to the Regional Administrative Tribunal. The law does not rule expressly about the decision to accord the assistance but by analogy we have to infer that the reception measures are not granted since the beginning in case of a successive application.

Q.17. Information of asylum seekers about their rights and obligations in terms of reception conditions, in particular about established benefits (see article 5 which is too large extend a mandatory provision; do not confuse this question with the information to be provided to asylum seekers about the asylum procedure):

Q 17. A. Are asylum seekers informed, and if yes about what precisely?

According to Art. 3 D.lgs. *2005, n. 140, the applicant is informed about the Health services and reception conditions and the way to ask for them (lett. e); the reference of UNHCR and NGOs and the way to enrol the minors in the school, the access to the reception measures provided by the local authorities, the way to access the training courses lasting not more than the permit of stay.*

This leaflet of 7 pages contains also information about the asylum procedure and only a paragraph, the third, contains the information on reception assistance together with the conditions of detention. Despite what provided by the Decree in the leaflet there are not information on enrolment of minors in school. At p. 5 there is written that once in the centre the asylum seeker can ask the NGOs or UNHCR in order to apply to attend Italian language course, legal assistance and other useful information.

Q 17. B. Is the information provided in writing or, when appropriate, orally?

The information are written, giving the applicant a leaflet already mentioned in the Regulation 2004 n. 303, Art. 2, par. 6.

Q 17. C. Is that information in general provided in a language understood by asylum seekers? Specify the list of languages in which it is available

The leaflet is available in Italian, English, French, Spanish and Arab (Art. 6 and 4 Regulation 2004 n. 303).

Q 17. D. Is the deadline of maximum 15 days respected?

According to Art. 3 *D.Lgs.* 2005 n. 140 the police must give the leaflet in 15 days after the presentation of the asylum application. Circular of 22.10.2005 states that it is recommended to give the leaflet when the application form is filled-in. This is very important because with the new and fast procedures it is not reasonable and risks to be useless to give the information about reception conditions after 15 days.

Q. 18. Information of asylum seekers about the existence of organisations or groups promoting their interest and defending their rights (see article 5 which is to a large extend a mandatory provision):

Q.18. A. Is there a list of organisations dressed by the authorities and if yes is it comprehensive? Is this in particular the case about the possibilities to get legal assistance and health care?

According to Art. 3, par. 6, lett. d), the leaflet aforementioned contains the address and the telephone numbers of UNHCR and the main NGOs specialised on asylum assistance. So at p. 4 of the leaflet there is written the address and telephone number of UNHCR in Rome; an annex contains the address and telephone numbers of relevant national organizations. There is also the number of the Central service in Rome.
In the electronic version of the leaflet there is not the NGOs list.

Q. 18.B. Is the information provided to the asylum seekers, and if yes, in writing or, when appropriate, orally?

The information is written contained in the leaflet. There is no indication in the decree about the opportunity to give information orally, for example in cases of people who are not able to read or write or who speaks languages different from those in which the leaflet is written (see next point).

Q.18.C. Is that information in general provided in a language understood by asylum seekers? Specify if possible the list of languages in which it is available.

Art. 5 Decree 150/2004 refers to Art. 4 Regulation 303/2004 which states that the information are given in a language understood by the asylum seeker or, if not possible, in Italian, English, French, Spanish and Arab according to the preference expressed by the applicant.

Q.18.D. How many organisations are active in that field in your Member State?

Many organisations work in the field of asylum: some (about ten) are represented in all the territory or play an active role at national level (in particular those located in Rome); others are active only at local level where can play relevant role in the reception being involved in the projects presented by the municipalities. It is impossible to say how many because in each city there can be an NGO working only at that level. Anyway the main NGOs are: CARITAS, ICS, ARCI, CIR, Comunità di Sant'Egidio, Evangelic Churches.

Q.19. Documentation of asylum seekers (see article 6):

Q.19. A. What kind of document is delivered to the asylum seeker? Explain the legal value of this document (just a certification of the status as asylum seeker or also prove of identity?) (see §1 of article 6 which is a mandatory provision)

The police delivers a document with the applicant's name that certifies he has applied for asylum. Art. 4, par. 3, expressly states that the document does note prove the identity but only that the person has asked for asylum. In twenty days the asylum seeker who is not detained will receive also a permit of stay for asylum application (*per richiesta di asilo*). Also the applicant detained will receive the permit of stay if he is released before the end of the procedure.

Q.19. B. Are there situations or specific cases in which another equivalent document or even no document is issued? (in particular is there an exception for "procedures to decide on the right of the applicant legally to enter the territory" as made possible by §2 of article 6)?

In case of detention the asylum seeker will get a document with her/his name and the specification of the condition of detention. Also this document does not prove the identity of the asylum seeker.
There is nothing about the faculty of States of conferring the applicant a travelling document in case of serious humanitarian reasons for which the applicant must be in another States (see Art. 6, par. 5, of the Directive).

Q.19. C. For how long is this document in principle valid and is it necessary to renew it after a certain period?

There is not a formally expiry date of this document but, for those asylum seeker who are not detained, it will be substituted by the permit of stay for asylum application.

Q.19. D. What is the deadline for the delivery of that document? Is the mandatory deadline of 3 days set by article 6, §1 respected?

According to Art. 4, par. 1, the document is delivered in three days since the presentation of the request. Not all the Police Offices are able to deliver the document on time because of their organisation and staff not sufficient to deal with all the applications.

Q. 19. E. Is it *possible* for an asylum seeker to get a travel document for serious humanitarian reasons (see §5 of article 6 which is an optional provision)?

There is not a specific norm and it is very unlikely that the police will deliver such a travel document. Anyway in case of very long procedure it is not excluded that the administration will allow it.

Q.19.F. Is there a central system of registration of asylum seekers and is it or not separate from the registration of aliens? If yes, describe it briefly (content) and indicate in particular if it is an electronic database.

The system of registration of asylum seekers is separated from that of aliens. The data concern in particular the permit of stay issued by the Ministry of the Interior who is in charge of holding the permits of stay through the local police offices.
There is also the database related to the asylum seekers hosted in the reception centres or in the Centre of identification or of temporary stay.
NGOs have repeatedly denounced the lack of an efficient database collecting the applications, the rejections and the approval of the asylum requests.

Q.20. Residence of asylum seekers:

Q.20.A. Is in principle an asylum seeker free to move on the entire territory of your Member State or only to a limited part of it and in case, which part? (see article 7, §1 which is a mandatory provision)

In principle the asylum seeker who is not detained is free to move in the entire territory. In order to have an hearing in front of the Commission all the communication are addressed to the declared address so it is very important for the asylum seeker to communicate any change of domicile.
Those who benefit of the reception measures through the *SPRAR* have to establish their effective residence in the centre where there is the available post. An exception, but limited to residual cases, is when the applicant receives an amount of money until there is not any available post in the centre. When located in a centre, also the competence of the local Commission that must decide on the application can change: if in principle it is the Commission competent for the regions where the application is lodged; in case of transferral to a centre in another region also the competence of the Commission will change.
Therefore the only way to benefit of the reception measures is to stay and have the residence in the centre, that is the hypothesis foreseen by Art. 7, §4, if the Directive.

Q.20.B. About the place of residence (see §2 of article 7): explain to which extend the person is free to choose her residence and if this depends of the stage of the asylum procedure (for instance before and after admissibility); if there are constraints limiting the choice, explain which ones and their reasons (for instance processing of application, attribution of reception conditions,…).

Those who are not detained and who are not hosted in a centre of reception must communicate their address. There are not specific limitation. They can change also the domicile but they must inform the police of that change, because every communication is done to the declared address.

Q.20.C.About the <u>place of reception (meaning where the asylum seeker has to stay to benefit from reception conditions) (see § 4 of article 7)</u>: explain which are the general rules about the determination of this place (to which extend are the decisions determining the place taken individually and do they take into account the personal situation of the asylum seeker?) and to which extend the person is free to choose it and if it depends of the stage of the asylum procedure (for instance before and after admissibility); if there are constraints limiting the choice, explain which ones and their reasons (for instance attribution of reception conditions, processing of the application,…).

The procedure is managed principally by the *Prefettura* that must ask to the National service located in Rome the availability of places in the reception centres.

The asylum seeker who applies for reception conditions is sent to the centre where there is an available post taking account of personal conditions such as family members, pregnant women or disability. These special conditions, if present, have to be indicated by the *Prefettura* when ask to the Central Service the place's availability. In case it is not possible to place the person in one of the local centre managed by the local authority the asylum seeker can be sent to a centre of identification or in a structure set up by L. 563/1995 providing accommodation in case of emergency, for the time necessary to find a post in a centre of reception.
The decision is taken by the Central service and does not involve the applicant.
The reception is offered in the structure and is conditioned to the effective residence of the asylum seeker in that structure except when it is transferred to another after a reasoned decision taken by the *Prefettura*. The address of the centre is communicated to the police and to the Local commission because every communication of the procedure will be sent to that address.

Q.20.D. If all asylum seekers are not placed in accommodation centres because of capacity limits, explain <u>how the persons are distributed between accommodation centres and other accommodation facilities</u> (which authority takes the decisions, on the basis of which elements, can that decision be appealed by the asylum seeker,…)

The *Prefettura* sends a written request by fax to the Central service of the Protection system for asylum seekers and refugees. The same request is sent to the Interior Ministry because.
The Central service will inform the *Prefettura* about the available post in one of the accommodation centres. In the negative option the Interior ministry will provide for a post in a Governmental structure, such as a Centre of Identification or a Centre built by the *L.* 1995 n. 563, known as *Legge Puglia*. Then the *Prefettura* will confirm the reservation of the post and will inform the asylum seeker also giving him the travel ticket to reach the centre.
For logistic reasons for all the 2005 the reception has been granted only in the Governmental structures. The decision about the allocation of the asylum seekers can not be appealed.

In case of there are not places available the *Prefettura* gives the asylum seeker an amount of 790 Euro until there is not a post in a centre and there is the mandatory condition to communicate the domicile chosen to the *Prefettura*.

Q.20.E. How can an asylum seeker ask to leave temporarily the place of residence or of reception or an assigned area? How is the individual AND impartial character of the decision ensured? (see §5 of article 7 which is a mandatory provision)

According to Circular 22.10.2005 the reception in a centre of the System of protection is conditioned to the effective stay of the person in that centre. The transferral in another centre can be ordered by the *Prefettura* only for reasoned grounds such as the family reunion.
According to Art. 9, par. 2, *Reg*. 2004 n. 303 in case of residence in a Centre of identification the *Prefettura* Official can allow the asylum seeker to leave temporarily the centre for personal reasons of health, family or related with the asylum procedure. The leaving must always be compatible with the fixed time of the accelerated procedure. There is not any element to affirm that it is an impartial decision except that it must be reasoned and communicated to the applicant.
In case of detention in CPT the asylum seeker can not leave the centre.
In case of residence in an accommodation centre the applicant can temporarily leave under approval of the director.

Q.21. Q.21.A. Do rules on reduction or withdrawal of reception conditions exist in internal legislation and if yes in which cases (mention in particular if there are cases not foreseen by article 16, § 1 and 2 which are optional provisions)? Distinguish in your answer between cases of reduction and withdrawal and explain which conditions can be reduced and if access to emergency health care is always ensured as requested by article 16, §4, last sentence.

D.Lgs. 2005, n. 140 does not state anything about reduction but Art. 12 concerns the withdrawal of reception conditions in the following cases:
a) lack of presentation to the centre or leaving it without previous communication to the Prefettura; b) lack of presentation to the hearing to the Local Commission; previous application of asylum in Italy; c) proof to have economic means to have assistance (in this case the applicant must also refund the director of the centre for the expenses in the period he has been hosted); d) serious violation of the centre rules or violent attitudes.
Some remarks can be done on these rules that result not in conformity with the Directive.
In case of lett. a) the reception conditions can be renewed if the applicant is found or back and the lack pf presentation is due to reasons of force major or accidental event, while the Directive states that there will be a reasoned decision based on the reasons of the absence.

Lett. c) results stricter than Art. 16, § 1, lett. b): this states that the applicant has concealed the financial resources while the Italian law does not take into account the voluntary intention to conceal the financial means.
Lett. d) is contrary to the Directive that allows in the case of breach of the centre rules or violent attitude only sanctions and not the withdrawal of the reception measures.
The decision to withdraw the reception conditions can be appealed to the Regional Administrative Tribunal.
The access to the emergency health care is granted in Italy to everybody included illegal migrants who can have access to urgency measures without the risk to be signalled to the Police (Art. 35, par. 3 D.lgs. 286/1998). Those who are not enrolled in the National Health System should pay unless they lack economic means.

Q.21.B. Has article 16, §2 dealing with refusal of reception conditions for unreasonably late applications for asylum been transposed by your Member State (or was this case already applicable before transposition)? Are there cases in practice?

As already mentioned the reception conditions are rejected if the asylum application is presented later than 8 days since the entry in the territory. The fixed time without the possibility to take in account the specific conditions of each person is too rigid compared to what allowed by Art. 16, par. 2, such as to have presented the application as soon as reasonably possible.

Q.21.C. How is it ensured that decisions of reduction or withdrawal are taken individually, objectively AND in particular impartially (for instance through and independent arbitrator) (see article 16, §4 which is a mandatory provision)?

All the decisions are taken by the *Prefettura*. Like all the administrative acts they must be reasoned and according to Art. 12 Reg. 140/2005 they are taken considering facts related to the person in question but the Articles does not leave sufficient discretion to the authority to take into account all the personal situation but seems to be too automatic.
It is evident that the *Prefettura*, that is the local office of the Government, can not be intended as an impartial body. This is also aggravated by the fact that the person is not herd before the measure is taken: for example in the case of violation of the centre rules and violent attitude, Art. 12, par. 3, states that the director of the centre must send to the *Prefettura* a report within three days since the events took place without any involvement of the person.
The person can appeal against the withdrawal of the measures to the competent Regional Administrative Tribunal.

Q.21.D. Is statement 14/03 adopted by the Council at the same moment as the directive respected (see the documentation pack you received at our meeting in Brussels in April)?

NO

Q.21.E. Are there already administrative appeal decisions or judgements on cases of reduction, withdrawal or refusal which have been taken, and if yes, what has been the outcome?

As far as we are concerned there have not been any decision or judgement on withdrawal or refusal of reception measures.

Q.22. **Q.22.A. Appeal against a negative decision relating to the granting of benefits or based on article 7 (see article 21 which is a mandatory provision): indicate against which decision an appeal can be introduced, describe the system of appeal in general and include in particular in your answer the information given to asylum seekers about possibilities of appealing, deadline for appealing, if the appeal has or not a suspensive effect, if there are different steps (for instance first an administrative appeal and in particular if the guarantee of an appeal before a judicial body in the last instance is respected)?**

The asylum seeker can appeal against the rejection of the application in 30 days since the notification of the decision. The competent court is the Regional Administrative Tribunal (see the *Corte di Cassazione* 26 April 2006). The recourse has not a suspensive effect but the judge can authorise the applicant to stay in the territory until the end of the procedure. For this reason circular 22.10.2005 states that the reception measures last until the rejection of the authorisation to stay in the territory the reception measures last maximum 6 months since the presentation of the application. After this period the asylum seeker is authorised to work (Art. 11 d.lgs. 303/2004). While working the asylum seeker can stay in the centre but paying a contribution.

Q.22.B. Explain which are the possibilities for asylum seekers to benefit from legal assistance when they introduce such an appeal (see article 21, §2 which is a mandatory provision but leaves space to Member States)?

The asylum seeker can benefit from legal assistance. They are informed of the NGOs who can help them also in this regard with the leaflet above mentioned. When they are in the Centre of Identification they can contact the NGOs who are allowed to go there. Also in case of reception in a Centre of reception they are able to talk and ask for assistance through the NGOs working in the centre.

The legal assistance is free for those who lack of economic means: there is a law that provides the reimbursement for lawyer who assist people in these cases.

Q.22.C. Are there already administrative appeal decisions or judgements which have been taken and if yes, which are the main important ones?

As far as we are concerned there have not been any decision or judgement on withdrawal or refusal of reception measures.

Q.22.D. Is a mechanism of complain for asylum seekers about quality of receptions conditions in general (even if they are not personally concerned) organised? If yes, before which authority? Is it linked to the system of guidance, control and monitoring of reception conditions (see below question n° 39)?

There is not a mechanism of complain about quality of receptions conditions.
According to circular 27 November 2002 (see point 4 under Q.2) the reception centres must respect a minimum standard and have to be run following common guidelines. In case there is a breach of those rules the contracts with the subjects managing the centres, or a service within the centres, can be revoked.
The *Prefettura* is the authority in charge of doing the periodic checks in the centres.

6. RIGHTS AND OBLIGATIONS OF ASYLUM SEEKERS

Q.23. Family unity of asylum seekers: define how a family is defined in relation with article 2, (d) which is a mandatory provision and explain how housing is provided to a family (see articles 8 which is a mandatory provision but leaves space to member States and 14, §2, (a) which is a mandatory provision).

In relation to the definition of member of the applicant's family, Legislative Decree 140/2005 recalls the definition contained in article 29 of the Single Text on Immigration law. Such definition has changed further to the implementation of the directive on family reunification. Presently, the following categories fall within the scope of application the Decree: 1) the spouse; 2) minor age children, also of the spouse or born outside wedlock, not married, provided that the other parent, where existing has given his/her consent; dependant children older than 18 years, if they are permanently unable to fulfil their fundamental needs because of their healthy status; dependant parents that o not have an adequate family support in their country of origin or provenance.
It is important to note that the above mentioned members of the family must be on the territory of the State at the time when the application for asylum is filed.
Pursuant to section 9 of Legislative Decree 2005/140, asylum seekers must be accommodated in a centre which ensures the protection of life and of the family unit, when possible.

Q.24. Q.24.A. How is housing of asylum seekers organised: describe the system in general and indicate in particular what is the most frequently system used (see article 14, §1 which is a mandatory provision but leaves space for Member States; distinguish between accommodation centres, private houses and apartments, hotels places or other premises).

Accommodation may take place in collective accommodation centres or in private apartments spread all over the national territory. As a general matter, all accommodation structures (centres or apartments) must comply with some minimum common requirements regarding the structure, organisation and management.

Although Legislative Decree 140/2005 does not define in details such requirements, they are described in the Guidelines ("Manuale Operativo per l'attivazione e la gestione di servizi di accoglienza e integrazione per richidenti asilo, rifugiati e beneficiari di protezione umanitaria") issued by the Central Service of the Protection System for asylum seekers and refugees. (Please refer to question 39 below). This document expressly states that such centres must comply with applicable laws and regulations concerning town planning, housing, fire prevention, health and safety matters.

Q.24.B. What is the total number of available places for asylum seekers?[512] Distinguish in your answer between accommodation centres, private houses and apartments, hotels or other premises.

For 2007, 2350 places for asylum seekers will be available. Out of this number, 350 places are destined to persons with special needs. No distinction between the types of accommodation is available.
It must also be taken into consideration that three identification centres have been set up:
1) Sicily, Salina Grande (Trapani) – 210 places;
2) Calabria, Crotone – 300 places out of the 1322 places available in the multifunctional centre which also hosts an accommodation centre and a centre of temporary stay /CPT;
3) Puglia, Borgo Mezzanotte (Foggia) – 200 places.
In addition three other centers are used as identification centers even if they do not have such juridical status (they are located in Caltanissetta, Cassibile and Bari Palese)
The UNHCR estimates that approximately 2000 places are available in all these identification centres for asylum seekers.

Q.24.C. Is this number of places for asylum seekers sufficient in general or frequently insufficient?

The number of places for asylum seekers is not considered sufficient to meet their needs. In order to evaluate if these places may be considered sufficient, it must be taken into consideration that in 2005 approximately 10.000 asylum applications were filed.
In addition, as pointed out by ICS in their 2006 report, there are thousands of applications that were filed in recent years under the previous procedure and that are still pending. Taking into account such people, the estimated needs of accommodation amounts to approximately 20.000 places.

Q.24.D. Are there special measures foreseen in urgent cases of a high number of news arrivals of asylum seekers (outside the case of application of the directive on temporary protection)?

In case of special need, the Ministry of Interior may commandeer the propriety of structures, lease areas and premises may build, restructure or maintain premises and in general may undertake all necessary actions in order to create up adequate structures.

[512] To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

Q.25. Accommodation centres **(important note: all the following questions are about open and not closed centres where asylum seekers are detained which are covered by another question)**

Q.25.A. Are there different categories of accommodation centres, for instance depending of the stage of the procedure (admissibility and eligibility)?

The law provides for different categories of centres in relation to different situations:
1) **Accommodation centres** ("Centri di accoglienza"). Asylum seekers who do not have sufficient means that can ensure an appropriate quality of life in relation to health and to his/her own support and of the members of his/her family, are entitled to request accommodation measures. Such measures apply also to the members of the family.
2) **Identification centres** ("Centri di identificazione"). These centres have been established by section 1-bis of Law decree n. 416/1989. As a general rule, the applicant may not be retained only for the purpose of examining his/her application. However, he/she may be retained for the time strictly necessary to check the authorization to stay on the territory of the State and some specific requirements (Please refer to question 33 for a more detailed description of such relevant requirements);
As mentioned under point 24 B, three identification centres have been set up. Based upon the information contained in the ICS 2006 report, it results that only the centre in Borgo Mezzanone is open during the day, whereas the others are closed and asylum seekers are not allowed to go out.. In the centre located in Salina Grande asylum seekers would be allowed to go out provided that they are so authorised.
In the two other centres that have been set up without a specific status (Bari palese and Cassibile) asylum seekers are not allowed to go out in any case.

Q.25.B. Is there a legal time limit for accommodation in a centre after which the asylum seekers have access to private houses or apartments or is this limit linked to a stage of the asylum procedure?

There is a time limit for the stay in the centres. Such limit depends on the type of measure which is applied.
In relation to accommodation centres, such measure terminates at the time when the decision on the asylum application is adopted and notified.

Q.25.C. Is there a general regulation about the internal functioning of those centres and the rights and duties of the asylum seekers? If yes, is this general regulation applicable to public and private centres? If not, are the centres supposed to adopt an internal regulation and does a central authority have or not a kind of control about its content?

The law expressly provides for the adoption of a regulation in relation to identification centres.
In relation to accommodation centres, there is not a specific provision. The need of establishing an internal regulation may be argued by the provision which states that accommodation can be revoked in case of breach or the centre's internal regulation.

Moreover, the Manuale Operativo contains a sample regulation to be adopted within accommodation centres.

Q.25.D. Do the regulations foresee the possibility of sanctions against asylum seekers in case of breach of the rules? (see article 16, §3) If yes, which sanctions for which rules? Which is the competent authority to decide? How is it ensured that decisions are taken individually, objectively and in particular *impartially* (for instance through an independent arbitrator) as requested by §4 of article 21 which is mandatory provision*?* Which are the possibilities of appealing against those decisions if the system is different from the general one under question n°22? Are there already administrative appeal decisions or judgements which have been taken and if yes, which are the main important ones?

The competent government authority ("Prefetto") of the place where the centre is located may issue a motivated decision of revocation of the accommodation measures in the event that:

a) The applicant has not showed at the accommodation centre or he/she has left such centre, with a prior motivated notice addressed to the competent authority ("Prefettura" – local competent Government office);

Under these circumstances the manager of the centre must promptly inform the competent authority ("Prefettura") that the applicant didn't show off or left the centre. If the applicant is found or voluntary shows off to the police or the centre, the Prefetto may decide to re-establish the accommodation measures. It has to be pointed out that such re-establishment is granted only in the event that the hearing was not attended or the centre was left for a cause of force majeure or accident (caso fortuito)

b) The applicant has not attended the hearing before the competent body for the exam of his/her application, despite the circumstance that the notice of such hearing was communicated to the accommodation centre;

c) The applicant had already applied for asylum in Italy.

d) It is assessed that the applicant already has adequate means of support. In case of revocation, the applicant must reimburse the costs incurred by the centre;

e) The applicant has seriously and repeatedly breached the rules of the accommodation centre or has had serious violent behaviours. Within three days from occurrence, the manager of the centre must send a report on the facts which may imply the revocation to the competent authority ("Prefettura").

It is possible to lodge an appeal before the administrative regional Court ("TAR") against the measure of revocation.

Q.25.E. Are asylum seekers involved in the management of these centres? If yes, how (advisory board, appointment or election of representatives)? (see article 14, §6 which is an option provision)

Asylum seekers are not usually involved in the management of accommodation or detention centres.

Q.25.F. Do specific rules exist on work of asylum seekers inside the accommodation centres different from the general ones about employment (see

below)? If yes, which ones? Can working inside accommodation centres be considered as a (mandatory) contribution of the asylum seekers to the management of the centres, is it or not paid and considered as implying access to the labour market and subject to the same rules?

There are not specific rules on work of asylum seekers in the centres.

Q.26. **Q.26.A. How can asylum seekers communicate with legal advisers, representatives of UNHCR and NGOs? (see article 14, §2, (b) which is a mandatory provision).**

Pursuant to section 9, para. 1, sub b), of Legislative Decree 2005/140, accommodation centres must ensure the possibility of communicating with members of the family, legal advisers, UNCHR and NGOs. In particular, lawyers and representatives of the UNHCR and NGOs, provided that they have acquired a proven experience in Italy for at least three years in this field, may have access to the centres in order to provide assistance to asylum seekers.
Pursuant to article 1-bis, para. 3, of Law Decree 1989, no. 416, as well as the enactment regulation, UNHCR, legal representatives and NGOs authorised by the Ministry of Interior should be given access to identification centres. (Please refer to question 33.G).
However, as indicated by the UNHCR, representatives of the above organisations were not given access to some identification centres (in particular in Puglia and Sicily). Access denial is usually grounded by the competent authority on security reasons.

Q.26.B. What are the rules about access of legal advisers, UNHCR and NGOs regarding access to accommodation centres and other housing facilities (see article 14, §7 which is a mandatory provision).

There are not specific rules. Access of UNHCR and NGOs' representatives is organised with each coordinator of the accommodation centre.

Q.26.C. Can the access of legal advisers, UNHCR and NGOs be limited for security reasons or any other reason (see article 14, §7, last sentence)?

This is not specifically regulated.

Q.27. **Q.27.A. Is a medical screening organised by the receiving State, is it mandatory or voluntary? Does it include HIV tests? (see article 9 which is an optional provision)**

The law does not provide for a medical screening. The UNHCR points out that medical screening is undertaken upon arrival of newcomers in identification centres.

Q.27.B. Do the legal provisions on reception conditions ensure that asylum seekers receive at least emergency care and essential treatment of illness as requested by article 15 §1 which is a mandatory provision? Do they have a further access to health care?

Applicants are entitled to receive emergency care and essential treatments, also on a continuous basis for illness and accidents, which are provided by the National Health System. It is established that essential medical assistance of a generic nature, for at least 4 hours per day, must be provided in the centres that accommodate more than 100 applicants.
In addition to emergency and essential treatments, applicants for asylum and the members of their family are registered, by the manager of the centre, in the National Health System.

Q.27.C. What is the practice regarding access of asylum seekers to health care and how is it organised? In particular, what is the situation in accommodation centres (are doctors coming to the centres or do asylum seekers go to doctors outside)?

Based upon the information we received from the UNHCR, it results that medical facilities are available in all identification and temporary Stay centres for emergency care and essential treatment of illness. In case of serious pathologies, individuals are taken out to the closest public hospital.

Q.28. **Q.28.A. What is the length of the period determined by the concerned Member State during which asylum seekers have no access to the labour market? (see article 11 which is a mandatory provision)**

The length of the period during which asylum seekers have no access to the labour market is six months following the filing of the application.

Q.28.B. After that period, are asylum seekers or not obliged to obtain a work permit? In case is there a limit for the administration to deliver the permits and how quick are they delivered? What is their length?

In the event that the decision concerning the application for asylum is not adopted within a deadline of six months following the application and such delay is not attributable to the applicant, the relevant permit for the application for asylum is renewed for six months and the applicant is entitled (and not obliged) to carry out a work activity. Such renewed permit of stay allows the asylum seeker to carry out a work activity until termination of the procedure of review of the asylum seeker's application.
In this respect, it must be pointed out that delay is attributable to the applicant, in particular in the following circumstances:
A) Presentation of false documents and certificates concerning his/her identity or nationality or somehow related to the elements provided in the application;
B) Refusal to provide information which are necessary to ascertain his/her identity or nationality;
C) Failure to attend the hearing before the competent authority, although the notice to attend the hearing was communicated to the accommodation centre or at his/her domicile, for a reason not due to force majeure.
There are not data available as to the length of the procedure to deliver the renewed permit of stay.

Q.28.C. After that period, what are the conditions for access of the asylum seekers to the labour market? (in particular, are there rules concerning the maximum allowed of working hours or days per week, month or year, limits in terms of type of work or of professions authorised?

This is not regulated by the law**.**

Q.28.D. What are the rules in terms of priorities between asylum seekers on the one hand and nationals, EU or EEE citizens and legally third-country nationals on the other?

This is not regulated by the law

Q.28.E. Do asylum seekers have access to vocational training, does this or not depend of their right to access to the labour market, and in case at which conditions? (see article 12 which is optional regarding §1 and mandatory regarding § 2)

Asylum seekers are entitled to access vocational training, in particular to courses which are organised by the accommodation centre where the applicant is accommodated.

Q.28.F. Are the rules regarding access to the labour market adopted to transpose the directive more or less generous than the ones applicable previously?

The rules adopted further to the implementation of the Directive are more favourable than the previous ones. In particular, under previous legislation asylum seekers were not allowed to work, since such right was acknowledged only after the recognition of the refugee status. After the new law has been enacted asylum seekers are entitled to work in the event that a decision has not been issued by the competent authority after the expiration of a six-month term upon the filing of their application.

Q.29. Are reception conditions subject to the fact that asylum seekers do not have sufficient resources? Are asylum seekers requested to contribute to reception conditions when they have personal resources (for instance if they work) or to refund the authorities if it appears that they have resources? (see article 13 §§ 3 and 4 which are optional provisions)

Accommodation in an accommodation centre is subject to the circumstance that the asylum seeker does not have sufficient resources. As a consequence if they have sufficient resources they must take care of themselves autonomously.
In the event that they carry out a work activity after the elapsing of the six months deadline, they may still benefit from accommodation, provided that they contribute to the relevant expenses. The manager of the centre shall determine the entity and the modalities of collection of such contribution, taking into account the revenue of the asylum seeker

and the costs associated to accommodation. Such contribution is not considered as a compensation for the service rendered but is used for the payment of the accommodation expenses of the asylum seeker who has paid the contribution.
In case it is assessed that the asylum seeker who has requested and obtained accommodation measures has, however, sufficient resources he/she shall reimburse the costs incurred by the centre.

7. SPECIAL NEEDS OF PARTICULAR CATEGORIES OF ASYLUM SEEKERS

Q.30. **Q.30.A. Which of the different categories of persons with special needs considered in the directive are taken into account in the national legislation (see article 17, §1 which is a mandatory provision): disabled people, elderly people, pregnant women, single parents with minor children, persons who have been tortured, raped or victims of serious physical or psychological violence? Include in your answer all other categories envisaged in national law.**

Pursuant to article 8 of Legislative Decree 140/05, the specific needs of applicants and the members of their family must be taken into account for reception. In particular, the following categories are considered: minors, disabled, pregnant women, single parents with minor children, persons for whom it has been assessed that they have been subject to tortures, rapes and other forms of serious psychological, physical or sexual violence.

Q.30.B. How is their specific situation taken into account (see articles 13, §2, second indent, 16 §4 second sentence and 17 which are mandatory provisions)?

The law provides that special services of reception must be set up in favour of applicants with special needs that must take into account assistance measures which are required in order to deal with their needs. As mentioned above, 350 places are destined to people with special needs.
However, as stressed by the UNHCR, the identification and follow-up of vulnerable cases is an area that needs particular attention. In fact, although psyco-social support should be available in the centres, this is not always the practice.

Q.30.C. How and when are the special needs of the concerned persons supposed to be legally identified (see article 17 § 2 which is a mandatory provision and clarify how it has been interpreted by transposition)?

According to the law, the responsible in charge with centre must set up services guaranteeing a quality of life and health of asylum seekers, taking into account the needs of persons with special needs. The information that we received from NGO's report there are not specific rules that clarify how and when such needs have to be assessed.

Q.30.D. Is the necessary medical and other assistance provided to persons with special needs as requested by article 15, §2 which is a

mandatory provision and in particular to victims of torture and violence as requested by article 20 which is a mandatory provision?

The necessary medical and other assistance is provided on condition that the coordinator of the accommodation centre has established a formal agreement with the local health authority (ASL). It has to be noted that such formal agreement is not mandatory.
It has been pointed out by some NGO's that in practice the kind of assistance which is provided depends on the persons in charge of the centre and in some cases access to such assistance may be difficult.

Q.31. About minors:

Q.31.A. Till which age are asylum seekers considered to be minor?

The definition of minors applies until the age of 18 years.

Q.31.B. How is access of minor asylum seekers to the education system ensured? Is it at school or in case inside accommodation centres and can it be considered as similar to the conditions for nationals as requested by article 10, §1?

According to the information we received from NGO's, minors have usually immediate access to the education and they may attend public schools with Italian students.
As pointed out by the UNHCR, when families are kept in identification centres, children do not have access to education outside the centre. Although retention in identification centres should not last longer than 20 days, it may happen that families are retained for a longer period, with children not attending schools

Q.31.C. Is access to education ensured not later than 3 months as requested by article 10, §2 (or after maximum one year if specific education for asylum seekers is provided) and till an expulsion decision is really enforced?

Except for the period in the centre of identification, minors are subject to the school obligation, pursuant to section 38 of the Single Text on immigration. A problem may arise in relation to unaccompanied minors, since the guardianship may require more than 3 months to be authorised**.**

Q.31.D. Is specific education (like language classes) available for asylum seekers, in particular to facilitate their effective access to the education system of the reception Member State (see article 10, §2 which is an optional provision)?

Minor children are provided with special support, such as language classes. In principle asylum seekers have access to language classes. In practice the situation may be different in each project. Some NGO's have reported that the local municipality tries to facilitate access of foreign students to the education system through specific actions. In other cases, there are specific actions.

Q.31.E. Are minors in general accommodated with their parents or with the person responsible of them? (see article 14, § 3)

Minors are in general accommodated with their parents.

Q.31.F. Do minors with special needs enumerated by article 18, §2 which is a mandatory provision, have access to appropriate mental health care and qualified counselling?

In general, minors with special needs have access to mental health care and qualified counselling.

Q.31.G. How and when is organised the representation of unaccompanied minors (guardianship, special organisation) and regularly assessed? (see article 19, §1 which is a mandatory provision)

A specific circular on unaccompanied minors asylum seekers has been adopted by the Ministry of Interior in April 2007. It has clarified the modalities to provide assistance to such minors. All public official involved (Border police, accommodation centres, questure) must ensure that unaccompanied minors have actual access to the asylum procedure and may submit an application, providing timely and complete information on the relevant rules. The Questura must involve the social assistance services of the Municipality where the minor is located and shall promptly inform the Juvenile Court ("Tribunale per i Minorenni") that shall appoint a guardian in accordance with applicable provisions contained in the Civil Code, as well as adopt the measures concerning accommodation of the minor. The authority must also inform the Committee for foreign minors at the Ministry of Labour. The appointed guardian must confirm the application for asylum and take immediate contact with the Questura. Pending the appointment of the guardian, assistance and accommodation of the unaccompanied minor is provided by the Comune where he/she is located.
The application is examined by the Commission for acknowledgement of the refugee status that will interview the minor together with the guardian. In case the application is rejected, the minor may ledge an appeal through his/her guardian.

Q.31.H. How is placement of unaccompanied minors organised (with adult relatives, a foster family, in special accommodation centres or other suitable accommodation)? (see article 19, §2 which is mandatory provision)

Pursuant to the recently adopted circular, the Municipality where the minor is located must immediately inform the SPRAR so that he/she can be inserted in the system. The aim of this circular is to ensure that unaccompanied minors are quickly placed in an accommodation centres belonging to the SPRAR.
Placement of unaccompanied minors is organised in compliance with the decision issued by the Juvenile Court ("Tribunale per i minorenni"). The concerned local entities may

implement specific programs destined to unaccompanied minors, accessing the resources of the National Fund for asylum policies and services.
Unaccompanied children should not be retained in closed identification centres. If they happen to be transferred upon arrival to such centres, they should be transferred to a special centre as soon as they are identified. However, as pointed out by the UNHCR, there have been some cases where unaccompanied minors were retained for several weeks in identification centres.

Q.31.I. How is the tracing of the family members of the unaccompanied minors organised? Are measures taken to protect confidentiality of information when necessary? (see article 19, §3 which is a mandatory provision)

Taking into account resources available in the national Fund for asylum policies and services, and with the prior advice of the Committee for minors, the Ministry of Interior may enter into specific agreements with the International Organisation for Migration (IOM) as well as the Italian Red Cross, in order to implement programs aimed at tracing the family members of unaccompanied minors. The law requires that such programs are performed in the interest of minors and with the obligation of confidentiality, in order to protect safety of the asylum seeker.

8. EXCEPTIONAL MODALITIES OF RECEPTION CONDITIONS

Q.32. Apart from detention covered by the next question, are there exceptional modalities for reception conditions in the following cases and if yes, which ones and for how long are they applicable, knowing that they should be "as short as possible" (see article 14, §8)?

Q.32.A. Persons with specific or special needs, regarding in particular the period of assessment of those needs?

In the period of assessment of the special needs, asylum seekers are hosted in the place is available at that moment as resulting from the National Central Service

Q.32.B. Non availability of reception conditions in certain areas

refer to point E below.

Q.32.C. Temporarily exhaustion of normal housing capacities

Please refer to point E below.

Q.32.D. The asylum seeker is confined to a border post

The law does not provides for the possibility to confine asylum seekers to a border post. According to the infoemation we received from the UNHCR, it happened that undocumented asylum seekers have been confined for shorts periods in the international transit zone of the

airports, until they were admitted to the territory as asylum seekers. Information centres for asylum seekers and refugees, in Milano Malpensa and Roma Fiumicino, intervene and provide assistance to asylum seekers.

Q.32.E. <u>All other cases</u> not mentioned in the directive (for instance urgent situation in case of a sudden high number of applicants outside a case of application of the directive on temporary protection).

In the event that there are no places available in accommodation or identification centres, the local competent authority ("Prefettura") grants a monetary contribution. Such financial aid is limited to the time strictly necessary to obtain availability of a place within an accommodation centre. The contribution is subject to the condition that the asylum seeker informs that competent authority of his/her domicile.
As pointed out by the UNHCR, in case of sudden high number of applicants, as it is the case during the summer period with increase of arrivals by sea, accommodation is provided in closed reception centres in Puglia (Bari) and Sicily (Cassibile).

Q.33. <u>Detention of asylum seekers</u> (we do not cover the situation of rejected asylum seekers detained for the purpose of their return) (see articles 6 §2, 7 §3, 13, §2 2nd indent and 14 §8 which implies that the directive is in principle applicable in case of detention):

Q.33.A. In which <u>cases or circumstances</u> and for which <u>reasons</u>[513] (identity verification in particular if the persons have no or false documents, protection of public order or national security, refugee status determination, way of entry into the territory, etc) can an asylum seeker be detained during the asylum procedure till his request has been finally rejected. <u>Quote</u> precisely in English in your answer the <u>legal basis</u> for detention of asylum seekers in national law.

It is important to clarify that the law does not provide that asylum seekers may be detained in prisons during the asylum procedure, but he/she may be **retained** in identification centres or in centres of temporary stay and assistance (these latter are the centres where illegal immigrants subject to an expulsion order are retained).
Pursuant to section 1-bis of Law Decree 30 December 1989, no. 416, as subsequently converted into law no. 39 of 1990, the asylum seeker cannot be retained only for the purpose of examining the asylum application which has been filed.
He/she **may** however be retained for the time strictly necessary to the definition of authorizations to stay on the territory of the State pursuant to the Single Text on immigration law contained in the Legislative Decree of 25 July 1998, no. 286 in the following cases:

[513] Please specify it article 18 §1 of the directive on asylum procedures of 1 December 2005 which specifies that *"Member States shall not hold a person in detention for the sole reason that he/she is an applicant for asylum"* is or not respected (even if has not yet to be transposed).

a. to check or assess the nationality or the identity of the asylum seeker, if she/he does not have travel or identification documents, or if he/she has presented false documents upon arrival in the State;
b. to check the elements upon which his asylum application is grounded, in the events that such elements are not immediately available;
c. if the procedure concerning the acknowledgement of the right of being admitted on the territory of the State is pending.

Asylum seeker **must** be retained in the following cases:

a. Following presentation of an asylum application filed by a foreigner who has been stopped after avoiding or trying to avoid border controls of immediately after, or, in any event, in conditions of irregular stay;
b. Following presentation of an asylum application by a foreigner who has already received an expulsion or refoulement measure.

NGOs point out that although retention in identification centres should take place only under the relevant circumstances listed above, this happens very often. This point is confirmed in the report drafted by the Commission presided by the UN Ambassador, Mr. De Mistura. This Commission was appointed last year by the Ministry of Interior in order to better assess the actual conditions inside identification centres and temporary stay centres. The results were presented early this year and highlight that "although retention of asylum seekers in identification centres (and the application of the simplified procedure) had been conceived as a residual practice to be applied only under very precise circumstances, it has happened that retention has been increasingly applied as a general practice".

Q.33.B. Has your member State adopted measures to transpose §3 of article 7 which is an optional provision? If yes, how has this provision been legally understood (is it a case of detention or an obligation to stay in and not leave a certain place?) and for which reasons can an asylum seeker be "confined" in such a place?

This provision has not been specifically transposed. However, it must be noted that asylum seekers may be retained in accommodation centres or centres of temporary stay and assistance under specific circumstances. (Please refer to questions 25 and 33 for description of such circumstances).

Q.33.C. Are there legally alternatives to detention, like obligation to report to the authorities, obligation to stay in a place, provision of a guarantor or of a financial guarantee?

There are not legal alternatives to detention.

Q.33.D. Which is the competent authority to order the detention of an asylum seeker? Explain if different authorities are involved to first take and later confirm the decision.

Retention is decided by the local police authority ("Questura"). It is the authority with which the asylum seeker must file his/her application for asylum.

Q.33.E. For how long and till which stage of the asylum procedure can an asylum seeker be detained?

The length of the retention period depends on the ground for the retention measure.
In the cases enumerated under point 33, A, 1, the law requires that the maximum length within the centre of the foreigner must be indicated in the retention measure but this can not be longer than 20 days.
In the cases enumerated under point 33, A, 2, (mandatory detention) a special simplified procedure has been established in order to examine the asylum application.
In case a), within two days upon reception of the application, the competent local police authority who has issued a retention measure must send the required documentation to the competent Refugee Commission that, within 15 days upon reception of the documentation, must proceed to the hearing. The decision on the application must be adopted within three days.
In case b), the competent local police authority issues a retention measure in a temporary accommodation centre pursuant to section 14 of the single text. In the event the foreigner is already retained in one of these centres, the police authority must requires a judicial measure extending such retention period for another thirty days in order to carry out the simplified procedure.

Q.33.F. In which places (can we call them "closed centres"?) are asylum seekers detained (places in a special closed centres reserved only to asylum seekers, together with returnees like illegal aliens or even in a normal prison, in case within separated areas or with the other detainees)? Indicate if a difference has to be made following the location of the "closed centres" at the border or on the territory? Which is the authority managing those places and is it the same as the one in charge of reception conditions?

In the cases listed under question 33, A, 1 a), b), c) and 2 a), asylum seekers are retained in an identification centre. Identification centres are reserved only to asylum seekers. Under 33, A, 2 b) they are detained in a temporary accommodation centre established, under the Single Text on immigration law, together with illegal immigrants.
Identification centres are in principle similar to accommodation centres. However, asylum seekers may go out only provided that they are authorized to do so. They are usually authorized to go out between 8 a.m. and 8 p.m., except for those who fall within the scope of application of articles 1-bis, para. 1, point a) [i.e. to check or assess the nationality or the identity of the asylum seeker, if she/he does not have travel or identification documents, or if he/she has presented false documents upon arrival in the State] and para. 2, point a) [following presentation of an asylum application filed by a foreigner who has been stopped after avoiding or trying to avoid border controls of immediately after, or, in any event, in conditions of irregular stay]. In these latter cases, the asylum seeker may be authorised to go out from the centre only for serious and proved health and family reasons or for reasons pertaining to the exam of the asylum application.
The Prefetto may appoint to manage the centre, through specific agreements, public or private entities that operate within the area of assistance to asylum seekers and immigrants, or within the area of social assistance.

Q.33.G. Does UNHCR and NGOs have access to the places of detention and under which conditions?

Article 1-bis, para. 3, of Law Decree 1989, no. 416, expressly states that UNCHR representatives are authorized to access the centre. Such access shall also be ensured in favour of lawyers and associations who act in favour of refugees with a consolidated experience within this sector.
The enactment regulation has established in this respect that the representatives of the associations and organizations for the protection of refugees, provided that they have acquired proven and adequate experience for at least three years within this sector, may be authorised by the competent Prefetto, to access specific areas of the centres for the visits, during working hours. The Prefetto grants the authorization, warning on the need of taking account of confidentiality and safety of asylum seekers.
In practice NGOs point out that access to detention places is extremely difficult.

Q.33.H. What appeal(s) can asylum seekers introduce against the fact he is detained? Is article 18 of the directive on asylum procedures of 1 December 2005 following which *"Where an applicant for asylum is held in detention, Member States shall ensure that there is a possibility of speedy judicial review"* respected (even if it has not yet to be transposed)?

As mentioned above, in the event that the asylum seeker is mandatory detained, a simplified procedure is applied in order to ensure a speedy judicial review.
However, while detention in a CPT must be validated by a judicial authority (including the extension of the 30 days maximum detention term up to 60 days), no specific measure to lodge an appeal against admission to the simplified procedure and consequent transfer to an identification centre is provided for by the law.

Q.33.I Is the directive on reception conditions considered to be in principle applicable to the places where asylum seekers are detained? In particular which information do they receive about their rights, which access do they have to legal advice and health care?

On these issues the conclusions contained in the report of the Commission presided by Mr. De Mistura provide relevant information.

- Except for the centre located in Foggia – Borgo Mezzanone, asylum seekers are in fact retained within structures, with a scarce possibility of going out during the day as it is confirmed by the limited numbers of authorizations granted.
- The circumstance that in the same area there are centres with very different purposes provokes a certain assimilation. In the event that polyfunctional structures are present, there is the concrete risk of a practical assimilation of identification centres with centres of temporary stay;

- Information to asylum seekers on their rights and legal assistance is in fact extremely limited in such centres. It appears that asylum seekers retained in such centres receive a lower assistance than asylum seekers who are inserted in the SPRAR.
- Only a very limited number of asylum seekers who leave the centres of identification (because they are acknowledged as refugees or benefit from another humanitarian protection) ae inserted in the SPRAR in order to benefit from social integration patterns.

As a matter of fact, Decree of the President of the Republic of 16 September 2004, no. 303, has introduced specific regulations concerning identification centres before the adoption of Legislative Decree 140/2005. Asylum seekers retained in such centres should benefit from several rights similar to those that contained in the legislative Decree.
The competent police authority issues in favour of the applicant who is detained in the centre a personal statement attesting his position as asylum seeker. Together with this statement the asylum seeker is informed of the possibility: 1) to contact the UNHCR in every phase of the procedure; and 2) of the rules contained in the DPR in relation to visits and stay in the centre.
The asylum seeker detained in the centre is entitled to health assistance. In the centres that accommodate more than 100 asylum seekers must ensure health services of first assistance for at least 4 hours per day.
The law also requires that the centre provides a service of legal information in the matter of acknowledgement of the refugee status.

Q.33.J. Apart from freedom of movement, what are the main differences between normal reception conditions and exceptional modalities for reception conditions in case of detention, knowing that they should be "as short as possible" (see article 14, §8)? If it is about closed centres, are the regulations of those places in line with the requirements of the directive (is article 13, §2, second indent of the directive following which "*Member States shall ensure that standards of living is met (…) in relation to the situation of persons who are in detention*" respected?).

In compliance with the instructions received by the Prefettura, local competent authority, the manager of the centre must set up services in order to ensure a quality of life that dignity and health of asylum seekers.
The UNHCR has pointed out that in practice, as the period of stay in identification centres should in principle be very short (20 days), there are in general very little activities to facilitate orientation and future integration.

Q.33.K. Are measures taken to avoid detention of asylum seekers with special needs (if yes, which ones?) or are special measures taken because of their needs?

The Decree of the President of the Republic 303/2004 requires that services are provided taking into account the needs of families, including spouses and first degree relatives, such as minors, disables, old people, pregnant women, persons who in their country of origin where subject to discriminations, abuses and sexual exploitation. Disabled and pregnant women are generally given priority to find appropriate places for them.

Amnesty International points out that the needs of pregnant women are often not adequately addressed. In many cases there is not a translator when they undergo a medical examination and immediately after the birth they are often carried back again to the retention centre.

Q.33.L. Can minor asylum seekers be detained together with relatives? Can unaccompanied minor asylum seekers be detained? If yes, are there special measures which take into account that children are concerned?

Minors are usually detained with their parents. In principle, unaccompanied minors can never be detained.

Amnesty International highlights that there is a general lack of official figures on the number of minors detained in retention centres upon arrival at the border. They indicate that they received indications about 900 minors detained in the period 2002-2005. Moreover, although pursuant to the law unaccompanied minors can never be detained and the other minors can be detained with their family for a maximum of 20 days, in practice these provisions are often not complied with. They also indicate that detention of families is applied as a general practice and not on a case by case basis, without providing the concerned persons with a written and motivated decision along with the information on the modalities of appeal. In many case such detention measures would not be validated by the Court, as required by the law. As a general remark, minors would be subject to an inadequate treatment in such centres, thus breaching the rules contained in the directive that require to take appropriate measures in relation to this vulnerable group (no separation from adults, body searches and seizures during the identification process, long waits during such processes, provision of inadequate legal information etc.)

Q.33.M. In particular is article 10 regarding access to education of minors respected in those places?

Access to education for minors is not provided in identification centres. It must be taken into account that the detention period should not last for more than 25 days.

Q.33.N. How many asylum seekers are for the moment detained in your Member State? Which proportion does this represent in comparison of the total number of asylum seekers at the same moment?

These figures are not available. UNHCR has pointed out that a vast majority of asylum seekers are admitted to the simplified procedure and retained in identification centres. ICS in his 2006 report has estimated that approximately 62% the asylum seekers who have filed an application in 12 months (from 21 April 2005 up to 27 April 2006) have been retained either in an identification centre or in a CPT.

9. ORGANISATION OF THE SYSTEM OF RECEPTION CONDITIONS

Q.34. Explain if the system of providing reception conditions is centralised or decentralised (which levels of government do provide practically reception conditions?) (do not confuse this question with question number 3 about the competence to make rules about reception conditions).

Local and regional government entities (city councils, province etc) provide practically reception conditions. In order to optimize the protection system for asylum seekers, refugees and foreigners with a humanitarian permit of stay, to facilitate coordination, at national level, of services of territorial accommodation, the Ministry of Interior has created, with the involvement of the association of Italian city councils (ANCI) and the UNHCR, a central system ("Servizio Centrale") of information, promotion, consultation, monitoring and technical support of local entities that provide reception conditions. The central system is managed by the ANCI.
The National Commission for the right of asylum (hereinafter referred to as the "National Commission") has been established by Law Decree of 30 December 1989, no. 416, as amended by legislative Decree of 2003. The National Commission is set up within the Department for civil freedoms and immigration of the Ministry of Interior. The National Commission is chaired by a Prefetto (government authority) and is composed by an officer of the Presidency of the Council of Ministers, a diplomatic officer, an officer of the Department for civil freedoms and immigration and an officer of the Department of public safety. A representative of the UNHCR in Italy takes part to the meetings. Where necessary, sections with the same composition may be established.
The National Commission has duties of address and coordination of territorial commissions, of training and updating of members of the same commissions, of collection of statistical data as well as decision powers concerning revocation of the status of refugee.
The Decree of the President of the Republic 303/2004 has specified that the National Commissions's duties are:

- the creation of the documentation centre on the social-political-economical situation of the countries of origin of the asylum seekers;
- the definition of guidelines for the evaluation of the asylum applications;
- the collaboration with the Ministry of foreign affairs, and in particular Italian permanent representations with international organisations in the area of asylum and human rights;
- the collaboration with similar entities of member states of the European Union;
- organisation of training and updating courses for the members of the Territorial commissions,
- the creation and the updating of a electronic database containing useful information for the monitoring of asylum applications;
- the monitoring of asylum seekers flows also for the purpose of proposing the creation of new territorial commissions;
- the provision, where necessary, of information to the Prime Minister for the adoption of measures of temporary protection.

Q.35. In case, are accommodation centres public or/and private (managed by NGOs? If yes, are the NGOs financially supported by the State?)[514]

[514] To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

Accommodation centres can be managed by NGOs following a convention entered into with the local municipal body (Comune). The State finances 80% of the total amount required for the accommodation of asylum seekers.

Q.36. In case, how many accommodation centres are there in your Member State (distinguish in your answer between public and private centres)?[515]

In 2006, 102 projects have been activated by local and regional government entities. As it has been pointed out by NGO's, the projects are usually managed together by local NGO's and municipalities, although the level of cooperation may be different in each project.

Q.37. Is there in the legislation a plan or are there rules in order to spread the asylum seekers all over the territory of your Member State to avoid their concentration in some areas like big cities or to share the costs of their reception between central, regional and local authorities?

The law only provides that asylum seekers are spread all over the territory of Italy.
The new system aims at building and managing an accommodation system spread all over the country, avoiding concentration in big cities or in arrival areas. The 102 which have been activated in 2006 are effectively spread all over Italy.

Q.38. Does a central body representing all the actors (like NGOs) involved in reception conditions exist? Does it play a consultative role for the State authorities, a coordination role for the actors or any other role?[516]

According to law 39/90, article 1-sexies, there is a central body named "Servizio Centrale" (Central Service) which coordinates the actors involved in the reception system. NGOs are not represented in the Servizio Centrale.

Q.39. **Q.39.A. Which is the body in charge of guidance, monitoring and controlling the system of reception conditions as requested by article 23 which is mandatory provision? Include in your answer which is the competent ministry (Interior, Social affairs, etc) for reception conditions?**

The Central System carries out functions of coordination on the functioning of the national system, ensuring the necessary technical support, and supervises management of the projects.

Q.39.B. Has your Member State (like the Czech Republic did recently) approved quality standards (not necessary legally binding) for housing services (for instance about the number of persons per bedroom on the basis of its size, number of accessible toilets, bathrooms, showers and washing machines per number of persons, existence of common rooms

[515] To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.
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with radio, television, newspapers, books, computers, accessibility of telephone, existence of recreative rooms for children,…) to be respected in particular in accommodation centres?[517]

The Central Service has approved an operational handbook ("Manuale Operativo") for the setting up and management of accommodation and integration services for asylum seekers, refugees and foreigners benefiting from humanitarian protection. The purpose of the document is to provide the operators with a useful instrument for the realisation of the projects, helping them in programming the activities of social and legal assistance as well as integration.
The handbook contains a comprehensive set of guidelines describing in details structural and organisational requirements of accommodation centres (both for collective centres and private apartments) and the type of assistance to be provided to asylum seekers within the centres.
In practice, the handbook indicates how and where the centres should be located (living areas easily connected through means of transport), hygienic-sanitarian features, subdivision and size of spaces, personnel skills, management team, material reception conditions etc.

Q.39.C. How is this system of guidance, control and monitoring of reception conditions organised?[518]

As mentioned above (please refer to answer no. 34), the Ministry of Interior, with the involvement of the association of Italian city councils (ANCI) and the UNHCR, has set up a central system of information, promotion, consultation, monitoring and technical support of local entities that provide reception conditions. The central system is managed by the ANCI. In particular, such Central System has been charged with the following tasks:

- Monitoring the presence on the territory of asylum seekers, refugees and foreigners with a humanitarian permit of stay;
- Establishing a database of the interventions carried out at local level in favour of asylum seekers and refugees;
- Promoting the diffusion of information on interventions;
- Providing technical assistance to local authorities;
- Promoting and carrying out, together with the Ministry of foreign affairs, of repatriation programs though the international Organisation for migrations or other national or international entities, in the humanitarian field.

In October 2003, ANCI entered into an agreement with the IOM that brought to the creation of the SID ("*Sistemi di intervento decentrati e in rete").* SID is aimed at setting up accommodation and integration systems in favour of asylum seekers, refugees and vulnerable persons, as well as cooperation interventions.

Q.39.D. Does the body in charge of guidance, control and monitoring produce reports about the level of reception conditions? If yes, how frequently and are they public?[519]

[517] To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.
[518] To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.
[519] To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

In order to analyse the evolution of the system of reception of asylum seekers in Italy, to understand the problems and highlight good practices, the Association of Italian City Councils (ANCI) has started to collaborate with the CENSIS (Italian Institute of statistics) for the purpose of drafting an annual Report on the Reception System for Asylum Seekers. The fist report will be available starting from October 2006. Some figures have been anticipated at the end of June.

Q.40. **Q.40. A.** What is the total number of asylum seekers covered by reception conditions for the last year for which figures are available (see article 22 obliging Member States to calculate those statistics about which we also asked the Commission to require them from Member States for mid June)?

Based upon the figures which have been anticipated at the end of June and that will be contained in the first annual report issued by the ANCI, it results that the total number of asylum seekers covered by reception conditions in 2005 amounted to 4.654. In the first quarter of the year 2006 (January-April 2006) the number amounts to 3.344.

Q.40. B. What is the total budget of reception conditions in euro for the last year for which figures are available?

Activities and interventions in favour of asylum seekers are financed through a National Fund for asylum policies and services, instituted within the Ministry of Interior. This Fund includes:
- Government budget in favour of asylum seekers and refuges;
- Financial contribution from the European Fund for refugees;
- Financial contributions and gifts of private entities, associations and organisations, also at the international level, and made by other entities of the European Union.

Pursuant to article 13 of legislative Decree 140/05, the government budget amounted in 2004 to Euro 5,16 million. In 2005 such amount was increased of Euro 8.865.500 and in 2006 of Euro 17.731.000.
Based upon the 2006 ICS report, it results that the total budget granted to the SPRAR in 2005 amounted to Euro 14.970.354. Out of this amount only Euro 10.604.732 were destined to ensure the activity of the accommodation centres. The residual amount was destined to cover the following costs: 1) activity of the central system of protection; 2) assisted repatriation; 3) contributions of first assistance.

Q.40.C. What is the average cost of reception conditions in euro per asylum seeker for the last year for which figures are available?

Official figures are not available. However, based upon the calculation that has been performed by ICS in their 2006 report, taking into account the funds allocated to accommodation of asylum seekers and the number of asylum seekers who have benefited from such accommodation, it results that in 2005 the average cost per person amounted to approximately 19 Euro.
As ICS points out such amount is all inclusive since it refers to the costs for housing and food, as well as for all the services that are supplied to the asylum seeker and to his/her family.

Q.40.D. Are the costs of reception conditions of asylum seekers supported by the central/federal or federated government or are they shared with regional and/or local authorities?

The approved projects of local government authorities are financed through the National Fund for Refugees.

Q.40. E. Is article 24 § 2 of the directive following which "*Member States shall allocate the necessary resources in connection with the nationals provisions enacted to implement this directive*" respected?[520]

Legislative Decree of 30.5.2005 that has enacted the directive contains a specific provision in relation to financial resources. In particular, the amount of such financial resources has been remarkably increased in comparison to prior legislation.
However, the amount of financial resources available is not sufficient to cover the requests of asylum seekers. In fact, in 2005 the financial resources made available through the Fund for Refugees have allowed to finance 81 local government entities for a total of approximately 2.200 places, but the applications filed by asylum seekers amounted to 8.000.

Q.41. **Q.41. A.** What is the total number of persons working for reception conditions?

These figures are currently not available.

Q.41.B. How is the training of persons working in accommodation centres organised? Does it take into account specific needs of unaccompanied minors when relevant as well as the gender dimension? (see article 14 §5, 19 § 4 and also 24 §1 which are mandatory provisions)?

Although the law expressly requires that persons working in accommodation centres must receive appropriate training, it is not specified how such training must be provided. Based upon the information we received from NGO's it appears that training is supplied occasionally and often the responsible in charge of the centres act as mentors for the personnel working in the centres. At the central level, training is not sufficiently provided.

Q.41.C. Are there rules about the deontology of persons working in accommodation centres, in particular on confidentiality?

No there not specific rules on deontology, although the operational handbook sets forth some criteria that should be followed by operators who work in accommodation centres.

10. IMPACT OF THE DIRECTIVE

[520] To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

Legal impact of the transposition of the directive:

Q.42. Specify if there are or not big problems with the translation of the directive in the official language of your Member State and give in case a list of the worst examples of provisions which have been badly translated? (please note that this question has in particular been added to the questionnaire concerning the new Member States)

The translation into Italian has not raised any problems so far.

Q.43. Where there precise legal rules on reception conditions for asylum seekers before the adoption of the norms of transposition of the directive (if yes, specify what the nature of those rules was (legislation, regulation, administrative instructions,…)?

Law 189/2002 reforming partially the Immigration Law 286/1998 contains two Articles on recognition and reception of refugees. Art. 32, in particular, has for the first time foresees at a legislative level the *Sistema di protezione per richiedenti asilo e rifugiati.* Until then there were only projects funded by European and national funds and ruled by administrative acts.
Art. 32 does not state anything about conditions or standard of reception and also the Regulation of application 2004 n. 303 that, as stated in Art. 21, par. 2, entered into force on 20 April 2005, concerns the procedures rather than reception conditions.
Eventually Legislative Decree 2004/303 has been the first law on reception conditions.

Q.44. Did the legal rules applicable to reception conditions become more clear, precise, coherent or detailed with the adoption of the transposition norms (for instance do you now have after the transposition one basic text dealing with reception conditions instead of numerous different texts in the past?

Having a legislative text concerning only reception conditions has definitely improved the clarity and coherence of the provisions: now we have the law setting the standard and rules on reception with two Administrative circulars dealing with the details of application, the institution of Fund to finance the activities.

The Commission presided by Mr. De Mistura has emphasized that the link between the system implemented by Legislative Decree 140/05 and the legislation concerning identification centres appear in general very confused. Current provisions bring to inconsistent interpretations and favour the spread of different practices all over the territory, cause uncertainty and as a consequence affect the good functioning of the system.

Q.45. Did the transposition of the directive imply important changes in national law or were the changes of minor importance? In case, list the most important changes that have been introduced.

The main changes in national law can be summarised in the following:

The clear statement of duties upon the administration such as information and standard of assistance;
The limitation of the discretion such as in the case of revocation of the measures and of the freedom of circulation;
The new role given to the *Prefettura*, that plays a very active a crucial role in all the phases of the reception measures since the admission until the revocation.

Political impact of the transposition of the directive:

Q.46. Explain briefly if there has been an important debate about the transposition of the directive (in particular in the Parliament, but possibly also in the government, between political parties, including in medias, etc; underline in case the main points which have been discussed or have created difficulties)

As mentioned at the beginning the standard system of transposition of Directives does not ease the debate and the involvement of Parliament on each Directive. Between political parties there has not been any debate at all and so also in media. Only some NGOs have tried to shed lights on the Directive and its transposition but reaching only those very much involved on the subject.

Q.47. **Did the transposition of the directive contribute to make the internal rules stricter or more generous? In particular, did your Member State use the occasion of the transposition to abolish more favourable provisions of national law? Does your Member State still have rules more favourable than the provisions of the directive (if yes, try to give the more important examples).**

The transposition of the directive has not lowered the level of protection existing before also because, as above stated, there was not before a legislative system and a clear definition of standard. However it is important to stress that the level was already lowered by the reform of the asylum procedure, in particular the provision of a simplified procedure with the detention of asylum seekers in Centre of Identifications or Centre of temporary stay, where asylum seekers can stay with aliens awaiting for deportation. The mix between the new rules on asylum procedure and reception conditions bring to see in complex the level of protection lowered. The reason is not the reception of Directive 2003/9/CE but, considering the relevant changes of rules on procedures, the impact of the Directive's transposition is minimum.

11. ANY OTHER INTERESTING ELEMENT

Q.48. What are in your view the weaknesses and strengths of the system of reception conditions in your Member State?

One of the main problems of the management of the system in Italy is the structural lack of data on the matter of asylum (a similar consideration can formulate about immigration). This reflects on the lack of analyses, reports and evaluation of policies. It is also very difficult to give opinion about the reception system due to the differences that there are in Italy among the different projects realised by the local networks.
Another point of weakness of the system of reception conditions is that with the effect of the new asylum procedures only a large minority of asylum seekers will be able to benefit of them because almost all the asylum seekers will be detained either in a Centre of Identification or in a Centre of Temporary Stay.
The strength is the network of NGOs and local authorities that in last years have worked together granting reception at a local level with some interesting experience.

Q.49. Mention any good practice in your Member State which could be promoted in other Member States

In November 2006, within the framework of the project EQUAL IntegRARsi, the NGO ARCI has started an experimental innovative initiative in favour of asylum seekers. ARCI has set up a call center where asylum seekers and refugees can address their questions on the asylum procedure, on the status of refugee and more in general on every issue that may be related to their position. This initiative is aimed at providing correct and appropriate information to the concerned persons. This initiative also involve local authorities. (Additional information may be found on the website: www.arci.it/news.php?id=7292)

It is important to note that IntegRARsi (the framework) involves the Association of Italian municipalities (ANCI), the IOM and the main NGOs that work in favour of refugees

Q.50. Please add here any other interesting element about reception conditions in your Member State which you did not had the occasion to mention in your previous answers.

QUESTIONNAIRE FOR THE NATIONAL REPORT ON THE IMPLEMENTATION OF THE DIRECTIVE :
RECEPTION CONDITIONS OF 27 JANUARY 2003

IN: THE REPUBLIC OF LATVIA

by
Gromovs Juris
Mag.iur., dr.cand.iur, Lecture of the University of Latvia,
jurisgromovs@yahoo.com
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1. NORMS OF TRANSPOSITION

Q.1. Identify the main norm of transposition (indicate the title, date, number, date of entry into force and references of publication into the official journal) and indicate its legal nature (legislative, regulatory, administrative); indicate in your answer if this norm was only devoted to the directive or if it has been included in a more general text and indicate in that case by quoting precisely the numbers of the provisions adopted to transpose the directive.

The provisions of Directive were transposed by the Asylum Law, which was adopted by the Parliament of Latvia on 7 March 2002 (published in The Official Journal, 48 (2623), 27.03.2002.) and it came into force on 1 September 2002. This Law was subsequently amended on 2 February 2005 (The Official Journal, 18 (3176), 02.02.2005), on 7 June 2006 (came into force on 10 July 2006, The Official Journal, 98 (3466), 27.06.2006) and on 25 October 2007 (came into force on 21 November 2007, The Official Journal, 179 (3755), 07.11.2007.). It contains the special informative reference to the EU Directives, that indicates that "This Law includes legal norms arising from Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers".

Technically speaking, most of the provisions of the Asylum Law related to the reception of the asylum seekers were already in compliance with the requirements of the Directive upon its entry into force. Therefore only Para.1 and 2, Article 3 of the Asylum Law were changed in order to ensure compliance with Articles 9 and 15 of the Directive.

Q.2. List by order of importance by using numbers (1, 2, 3) the others norms of transposition if there are more than one (indicate for each norm the title, date, number and references of publication into the official journal; include in your answer the administrative measures taken to ensure implementation of the directive and of the transposition norms like regulations, administrative circulars, special instructions,…)

The provisions of the Asylum Law related to the reception of asylum seekers were implemented by a number of the by-laws – the Regulations of the Cabinet of Ministers of the

Republic of Latvia (The Government). It is not possible to number them in order of the importance since they have an equal force and cover the different aspects of the reception (e.g. expenses for acquisition of food, medical examination):

1. The Regulations of the Cabinet of Ministers of 8 February 2005 No 119 "On the amount of expenses for acquisition of food, as well as hygiene and first necessity goods for the asylum seeker and the procedure of cover of these expenses", The Official Journal, 27 (3185) 17.02.2005,

2. The Regulations of the Cabinet of Ministers of 3 September 2002 No 406 "On the asylum seeker's personal identity document and the procedure of its issue" (published in the Official Journal 127 (2702) 06.09.2002.,amended by the Regulations of the Cabinet of Ministers of 8 February 2005 Nr.112 « Amendments to the Regulations of the Cabinet of Ministers of 3 September 2002 No 406 "On the asylum seeker's personal identity document and the procedure of its issue" (The Official Journal, 24 (3182) 11.02.2005),
3. The Regulations of the Cabinet of Ministers of 14 June 2005 No 413 "Procedure of person's medical and laboratory examination, compulsory and enforced isolation and treatment in the cases of contagious infectious diseases" (The Official Journal, 96 (3254) 17.06.2005.),
4. The Regulations of the Cabinet of Ministers of 9 August 2005 No 586 "On order in which the education is ensured for the minors-children of the asylum seekers or to the minors- asylum seekers", (The Official Journal, 126 (3284) 11.08.2005),

5. The Regulations of the Cabinet of Ministers of 19 December 2006 No 1046 «Procedure of organisation and financing of the medical care», (The Official Journal, 208, 30.12.2006.)

6. The Regulations of the Cabinet of Ministers of 20 January 2004 No 44 "Regulations on he work permits for the foreigners (The Official Journal, 12 (2960) 23.01.2004.), subsequently amended by the Regulations of the Cabinet of Ministers of 22 April 2004 No 396 (The Official Journal, 68 (3016) 30.04.2004, by the Regulations of the Cabinet of Ministers of 13 September 2005 No 700 (The Official Journal, 147 (3305) 15.09.2005) and by the Regulations of the Cabinet of Ministers of 12 December 2006 No 998 (The Official Journal, 200 (3568) 15.12.2006).

In relation to the issues of the state ensured legal aid for asylum seekers:
7. The State Ensured Legal Aid Law (The Official Journal, 52 (3210) 01.04.2005).

8. The Regulations of the Cabinet of Ministers of 6 November 2006 Nr.920 "Regulations on types of the state ensured legal aid, maximum number of hours, order and amount of the payments" (The Official Journal, 181 (3549) 10.11.2006)

The issue of the tracing of families of unaccompanied minor is regulated by:
10. the Law on the Protection of the Rights of the Child (The Official Journal, 199/200 (1260/1261), 08.07.1998.)

The issue of education of the asylum seekers:

11. The Education Law (The Official Journal, 343/344 (1404/1405), 17.11.1998.))

12 The Amendments to the General Education Law (The Official Journal, 99 (3257) 28.06.2005.)

13. The Draft Amendments to the Education Law

The issue of management of the reception centres and the examination of the different complaints of the asylum seekers:
14. The Administrative Procedure Law (The Official Journal, 97 (2672), 28.06.2002.)
15. the State Administration Structure Law (The Official Journal, 94 (2669) 21.06.2002)

Appointment of the guardian for the minor asylum seeker:
16. Law On Orphan's Courts (The Official Journal, 107 (3475) 07.07.2006)

In addition 2 (two) administrative acts cover some practical issues of the work of the only reception centre in Latvia- the issues of the internal order of the reception centre are regulated by the Regulations of the Office of Citizenship and Migration Affairs «On the Internal Order of the Asylum seekers' Reception Centre «Mucenieki»» (The Official Journal, 116 (2881), 22.08.2003.) and by the Order of the Head of the Office of Citizenship and Migration Affairs of 24 July 2003 No 16/08 « On the approval of the Statute of the Asylum seekers' Reception Centre «Mucenieki and of the description of the positions» (not published).

2 Draft Laws in the area of asylum also are currently in the legislative procedure:

1) The Draft Law On the Asylum in the Republic of Latvia.
2) The Draft Amendments to the Asylum Law (the Draft Law of 29.03.2007 nr.VSS-494).

Q.3. Explain which level of government is competent to adopt the legal norms on reception conditions for asylum seekers (specify in particular in case of a federal or regional State, if it is the federal/central power or the components; in case, specify below when it is impossible for you to answer a question because it is about the competence of the components and it is impossible for you to gather reliable information about all of them)

According to the Constitution the Republic of Latvia is a parliamentary republic. All the major legislative instruments of the asylum policy are adopted in the form of laws. In its turn the Cabinet of Ministers (the Government) is the highest executive body, which may issue the legislative acts in the field of asylum because such a right is specially delegated to it by the Asylum Law.

Q.4. Explain the legal technical choices done to transpose the directive (comment on the nature and level of the norms used to do the transposition: legislative, regulatory, administrative like instructions, etc). Add any other element about the

technique of transposition of the directive which is interesting for the implementation of Community law.

Mainly the legislative norms (laws and by-laws) were used in order to transpose the directive. In addition 2 administrative acts were issued as well in order to cover some practical issues of the work of the only reception centre in Latvia- the issues of the internal order of the reception centre are regulated by the Regulations of the Office of Citizenship and Migration Affairs «On the Internal Order of the Asylum seekers' Reception Centre «Mucenieki»» (The Official Journal, 116 (2881), 22.08.2003.) and by the Order of the Head of the Office of Citizenship and Migration Affairs of 24 July 2003 No 16/08 « On the approval of the Statute of the Asylum seekers' Reception Centre «Mucenieki and of the description of the positions» (not published).

In accordance with Para 1 and 2, Section 15 of the Administrative Procedure Law in administrative proceedings, institutions and courts shall apply external regulatory enactments, the legal norms of international law and the European Union (Community), as well as the general principles of law.

Institutions and courts shall observe the following hierarchy of the legal force of external regulatory enactments:

1) the Constitution (*Satversme*);
2) laws, and the Governmental regulations adopted in accordance with Article 81 of the Constitution (*Satversme*);
3) the Governmental regulations; and
4) binding regulations of local governments.

Q.5. Mention if there is a general tendency to just copy the provisions of the directive into national legislation without redrafting or adaptation them to national circumstances? If yes, give some of the worst examples and explain if there is a risk that those provisions remain unapplied or will create difficulties of implementation in the future.

In general the methodology of the transposition of the directives in Latvia is flexible and depends very much on the goals, actual content and specifics of the directive in question. In case of the transposition of directive nr.2003/9 it is clear, that its provisions were redrafted and adapted to the circumstances of Latvia, since this directive provides for the variety of choices and at some points contains rather general provisions, that need to be made more clear in the national legal acts (e.g. requirement to have certain procedural provisions in place can not be "copied", but requires the detailed regulation of the subject-matter).

Q.6. Have all the texts necessary to ensure the effective implementation of the new rules of transposition been adopted, prepared or at least foreseen in the future (for example a regulation completing a new law and the necessary instructions telling the administration how to apply the new rules)?

Practically all the legal texts necessary to ensure the effective implementation of the new rules of the transposition were adopted. However based on the analysis of the asylum legislation of Latvia, which is currently in force, it could be also concluded that the legal provisions in relation to the asylum seekers with the special needs and the procedure of their identification, although some work is done by the responsible state institutions in practice.

2 Draft Laws in the area of asylum also are currently in the legislative procedure:

1) The Draft Law On the Asylum in the Republic of Latvia, which is currently being examined before its submission to the Government, will replace the current legal regulation of the asylum system - the above-mentioned Asylum Law and all by-laws issued on its basis. When the Draft Law will be adopted in Parliament in the 2nd reading, the development of 5 by-laws (Regulations of the Cabinet of Ministers) for its implementation will start. The Draft Law does not bring any fundamental changes to the existing system of the reception of the asylum seekers. Moreover the existing governmental by-laws covering the issue of the reception will be in force for a maximum of 6 months since the adoption of the Law On the Asylum in the Republic of Latvia. After that they will be replaced by the new by-laws.
2) The Draft Amendments to the Asylum Law (the Draft Law of 29.03.2007 nr.VSS-494) – This Law will change only the way of the appointment of the guardian for an unaccompanied minor. This legal regulation will be in force until the replacement by the above-mentioned future Law On the Asylum in the Republic of Latvia.

2. BIBLIOGRAPHY

Q.7. Has an in-depth preparatory study been made public about the changes at the occasion of the transposition? If yes, thanks for trying to provide us a copy *(please contact to answer this question adequately the body and person who was responsible for the preparation of the transposition of the directive in the public administration).*

No in –depth special preparatory studies were made in relation to the Asylum Law in force or to the Draft Law On the Asylum in the Republic of Latvia.

Q.8. Quote any recent scientific book or article published about the directive, the transposition rules or the question of reception conditions for asylum seekers in general (answer even if this literature is only available in your language and provide the complete title in your language (without translation) with all references; indicate author, title, in case name of periodical, year and place of publication).

- H.Battjes, K.M.De Vries, The Report on Asylum in the EU Member States: Reception of Asylum Seekers and examination of the Asylum Applications, Vrije University of Amsterdam, November 2005,
- J.Gromovs, D.Paegle, Rokasgrāmata darbam ar patvēruma meklētājiem, International Organisation for Migration, Rīga, 2006.

Q.9. Quote any interesting decision of jurisprudence based on the implementation of the new rules of transposition of the directive (indicate references of publication if any)?

For the moment no case-law of the Latvian courts exists on the issues related to the transposition of Directive.

3. GENERAL INFORMATION ABOUT THE SYSTEM OF RECEPTION CONDITIONS

The purpose of the following two questions is to help the reader to understand easily and quickly the system of reception conditions in your Member State and also to avoid that you have to repeat general elements in other parts of the questionnaire. ***Please do not write more than one or maximum two pages and do not include large historical developments.***

Q.10. Describe in general the system of reception conditions in your Member State (in particular which are the main actors in charge of reception conditions?)

The procedure of granting the asylum involves the following institutions are involved:

a) Institutions under the Ministry of Interior:

- The Refugee Affairs Department of the Office of Citizenship and Migration Affairs (referred further in the text as the Refugee Affairs Department). It is the first instance for the examination of the asylum seekers' applications.
- The Asylum seekers' reception centre 'Mucenieki' of the Office of Citizenship and Migration Affairs (referred further in the text as the reception centre).
- State Border Guard (person must submit an application for asylum to the State Border Guard at the border control point or its territorial office and after r the application is submitted, officials of the State Border Guard will interview the asylum seeker.)

b) Since 10 July 2006 (entry into force of the amendments to the Asylum Law of 7 July 2006) the district administrative court and the regional administrative court were granted the function of the examination of appeals of the asylum seekers.

Section 13 of the Asylum Law provides for that the State Border Guard shall interview an asylum seeker who has submitted an application and the information obtained as a result of the interviews shall be submitted to the Refugee Affairs Department of the of the Office of Citizenship and Migration Affairs together with the application not later than within three days of the day of submission of the application if there is a reason to believe that any of the following conditions exist:

1) the application is obviously unfounded – does not, according to its substance, conform to the criteria referred by the Asylum Law – or the application obviously lacks credibility – the narrative of the asylum seeker is contradictory, inconsistent or impossible according to substance;

2) the application of an asylum seeker for the granting of refugee status is being examined in another country.

3) the asylum seeker has obtained refugee status in another country and may avail himself or herself of its protection without justified fear of persecution referred to in the Asylum Law;

4) an asylum seeker has the citizenship of a country where the threat referred to in the Asylum Law does not exist;

5) an asylum seeker has submitted an application without a justified explanation in order to prevent expected deportation although he or she has had the opportunity to submit an application earlier; or

6) the asylum seeker, before arriving in the Republic of Latvia, has resided in a country where the following conditions exist:

a) the country has ratified the 28 July 1951 Convention Relating to the Status of Refugees and the 31 January 1967 Protocol Relating to the Status of Refugees:

b) in that country the asylum seeker is not in danger of the death penalty or corporal punishment, torture, or inhumane or degrading treatment; and

c) in that country the asylum seeker could have asked for and received protection.

The Refugee Affairs Department shall examine the received interview materials within two working days of the day of receipt thereof. If the Department considers that the application conforms to the conditions specified above, it shall take a decision to refuse the granting of refugee or alternative status.

The asylum seeker or his or her authorised person may appeal a decision of the Department to the Board within one working day. The Board shall examine such complaint within two working days of the day of receipt thereof. During the period of claim examination the person shall be considered to be an asylum seeker.

If the State Border Guard, the Department or the Board does not comply with the time periods in the Asylum Law for well-founded reasons or if the Board recognises that the application is justified, the application shall be examined in accordance with the procedures prescribed by Section 16, Paragraph two the Asylum Law (The procedure for the examination of applications if submitted by persons located in the Republic of Latvia - The Department shall examine the application and the materials obtained as a result of interviews, and not later than within three months of the day of submission of the application take a decision to grant or to refuse the granting of refugee or alternative status. The State Secretary of the Ministry of the Interior or his or her authorised person may for substantiated reasons extend the time period for examination of an application up to twelve months.)

In accordance with the above-mentioned Amendments to the Asylum Law of 7 July 2006, since 10 July 2006 the functions of the examination of appeals will be transferred to the district administrative court and the regional administrative court. In accordance with Section of the Amendments to the Asylum Law of 7 July 2006 the new Section 19.[1] was included into the Asylum Law, that provides for the following:

The decision of the Refugee Affairs Department on refusal to grant refugee or alternative status made in accordance with the procedure at the border, abridged or the usual procedure, may be appealed in the District administrative court in accordance with the relevant provisions of the Asylum Law and the Administrative Procedure Law. In this case application to the court shall be submitted to the Refugee Affairs Department and the Department shall annex the necessary documents and evidences, which it has in its possession, to it and shall transfer it without its translation to the court during 1 working day. No payment of state fees is required from an asylum seeker in case of the submission of the application to the court.

The Section 19.[2] of the Asylum Law provides for the following procedure of the examination of the application of an asylum seeker in the administrative courts:

1) the case, which proceedings were initiated based on the appeal against the negative decision of the Refugee Affairs Department made in the course of the usual procedure (Section 18 of the Asylum Law) the court shall examine within 3 months,

2) the case, which proceedings were initiated based on the appeal against the negative decision of the Refugee Affairs Department made in the course of the procedure at the border and based on the following reasons provided for in Para.1, Section 13 of the Asylum Law:

- the application is obviously unfounded – does not, according to its substance, conform to the criteria referred by the Asylum Law – or the application obviously lacks credibility – the narrative of the asylum seeker is contradictory, inconsistent or impossible according to substance;
- the application of an asylum seeker for the granting of refugee status is being examined in another country.
- the asylum seeker has obtained refugee status in another country and may avail himself or herself of its protection without justified fear of persecution referred to in the Asylum Law;
- an asylum seeker has the citizenship of a country where the threat referred to in the Asylum Law does not exist;
- an asylum seeker has submitted an application without a justified explanation in order to prevent expected deportation although he or she has had the opportunity to submit an application earlier; or
- the asylum seeker, before arriving in the Republic of Latvia, has resided in a country where the following conditions exist:

a) the country has ratified the 28 July 1951 Convention Relating to the Status of Refugees and the 31 January 1967 Protocol Relating to the Status of Refugees:

b) in that country the asylum seeker is not in danger of the death penalty or corporal punishment, torture, or inhumane or degrading treatment; and

c) in that country the asylum seeker could have asked for and received protection.

(Section 18 of the Asylum Law) the court shall examine within 3 months, or if the negative decision was adopted by the Refugee Affairs Department in the abridged procedure, the case shall be examined within 3 working days since the day, when the decision was made to accept the application and to initiate the case. The court shall assess the compliance of the negative decision of the Refugee Affairs Department with Para 1, Section 13 and Section 19 of the Asylum Law. If for the objective sizing up of the situation the additional evidence will be needed, the court may decide to examine the case within 3 months.

The appeal on the negative decision on the application submitted at the border or considered in the abridged procedure, shall be examined by the court in the written procedure. The appeal on the negative decision on the application submitted considered in the usual procedure, may be considered by court in the written procedure if the court recognizes that there is enough evidence to adjudicate.

The District administrative court's decision shall be final and not subject to appeal. It comes into force upon its announce and it shall be immediately communicated to the asylum seeker, explaining him/her the substance of the decision in a language, which he/she understands or which he/she should understand. The court's decisions adopted in the course of the proceedings for the examination of the application or of the initiated case are not subject to appeal. A person shall be considered to be an asylum seeker during the course of the examination of the application (the case).

If an application is submitted to adjudicate the matters *de novo* in connection with the newly-discovered facts the Regional administrative court shall examine the case within 20 working days since the day when the application has been received. The decision of the Regional administrative court shall be immediately communicated to the asylum seeker, explaining

him/her the substance of the decision in a language, which he/she understands or which he/she should understand.

Concerning the reception centres Para.1-3, Section 20 of the Asylum Law provides for the following provisions:
During examination of the application the asylum seeker shall be accommodated at the accommodation (direct translation of the Latvian legal term used for the equivalent of the term « reception ») centre for asylum seekers where necessary living conditions are provided. The asylum seeker may be transferred from one accommodation centre for asylum seekers to another. An asylum seeker shall not be accommodated at an accommodation centre for asylum seekers unless he or she has a legal basis to reside in the Republic of Latvia. The Accommodation centres for asylum seekers are organisational units of the Office of Citizenship and Migration Affairs.

The only public asylum seekers reception centre in Latvia was established at the end of 1998 (official opening ceremony was held on 17 February, 1999.) This public centre was established in a place in Ropazu municipality called "Mucenieki" near capital of Latvia. The establishment of the centre was supported by the United States government, UNHCR and the Swedish government. The total expenses of the building renovation and development of external communications networks were over 840 000 LVL (approximately 1 200 000 EUR by the today's currency exchange rate). Since its establishment, the Centre has been financed from the state budget. Latvia. At the centre 200 inhabitants can be housed.

It is planned to establish the second public centre near the city of Daugavpils in the future. The Decision about the start of the works for the future construction of this second public centre was adopted by the Government on 8 August 2006. However for the moment the capacity of the only centre allows to cope with the number of asylum seekers successfully (83 asylum seekers stayed in the reception centre since 1998, 1 asylum seeker stayed on 1 May, 2007).

The Draft Law On the Asylum in the Republic of Latvia will not change the above-mentioned reception system:

Section 9 of the Draft Law On the Asylum in the Republic of Latvia provides for the general regulation of the reception system:
"(1) During the asylum procedure, an asylum seeker shall be accommodated in an accommodation centre for asylum seekers where household conditions are ensured. An unaccompanied minor shall be ensured the household conditions necessary for his or her physical and mental development. An asylum seeker may be moved from one accommodation centre for asylum seekers to another centre.
(2) Accommodation centres for asylum seekers are units of the Office [of the Citizenship and Migration Affairs].
(3) Asylum seeker shall not be placed in an accommodation centre for asylum seekers while he or she has legal basis to reside in the Republic of Latvia. In case of change of residence, the asylum seeker shall inform the [Refugee Affairs] Department about his or her new residence address.
(4) The Cabinet of Ministers shall provide an amount of expenses stipulated for purchase of food, hygiene and essential articles of an asylum seeker, who is accommodated in the accommodation centre for asylum seekers or at the border control point, or in the territorial unit of the State Border Guard, as well as a procedure for payment for the same."

Section 10 of the Draft Law On the Asylum in the Republic of Latvia regulates specifically the issues of the reception of an asylum seeker during his/her detention at the border or in the territorial unit of the State Border Guard

"(1) The State Border Guard shall be entitled to detain an asylum seeker for a period not more than 10 days in case, if:

1) identity of the asylum seeker has not been established;

2) there is basis to deem that the asylum seeker tries to use the asylum procedure maliciously;

3) there is basis for the competent state authorities, including the State Border Guard to deem that the asylum seeker will not have legal basis to reside in the Republic of Latvia in accordance with the provisions of this Law;

4) there is basis for the competent state authorities, including the State Border Guard to deem that an asylum seeker causes the threat to the interests of the State security and public policy and security of the Republic of Latvia.

(2) The State Border Guard shall detain an asylum seeker and a judge shall make a decision about detention of an asylum seeker in accordance with the procedure provided for in the Immigration Law.

(3) The detention period may be prolonged, however total period of detention must not exceed the period of the asylum procedure.

(4) During detention, an asylum seeker shall be accommodated in special premises in a border checkpoint or territorial unit of the State Border Guard, separately from persons who are under suspicion for committing a criminal offence."

Q11. A. Explain if you have <u>different types and levels of reception conditions following the different stages of the asylum procedure</u> (this implies that you have to give briefly the necessary explanations about the asylum procedure). Make if relevant for reception conditions a distinction between the following procedural stages: determination of the responsible Member State on the basis of the Dublin II regulation, special procedures at the border (including transit zones in airports), accelerated procedures, admissibility procedures, eligibility procedures and the different possibilities of appeals (suspensive or not) against a refusal of the asylum request. Indicate what the main differences of reception conditions are between the different stages (if necessary by detailing between the different elements of reception conditions, in particular housing) and explain what the evolution of reception conditions is following the different stages of the procedure.

A-B Neither the current Asylum Law in force nor the Draft Law On the Asylum in the Republic of Latvia does not provide for the different types and levels of reception conditions following the different stages of the asylum procedure. The provision of the reception Directive transposed by the Sections of the Asylum Law are equally applied to all the categories of applicants seeking for refugee status or alternative status, including those, who are in the Dublin procedure. There are some minor differences – those asylum seekers, who stay at the border control or detained in the detention centre receive the benefits in kind (food, as well as hygiene and first necessity goods), which value is equivalent to the sum of financial allowances per day prescribed by the governmental Regulations.

Those asylum seekers, who reside legally in Latvia are not receiving benefits, because in accordance with the general migration legislation they normally shall have the necessary financial means for their stay upon arrival or have a sponsor. However if legal stay in the country expired, they are entitled to receive all the benefits prescribed in the Asylum Law.

The separate procedure is provided both by the Asylum Law and the Draft Law On the Asylum in the Republic of Latvia for the persons, who have received the temporary protection:
Section 44 of the Asylum Law provides for that the Government shall issue an order to grant temporary protection to a group of persons, determining their total number, the time period of residence, and accommodation procedures in the Republic of Latvia, and the necessary financing, as well as the procedures according to which persons who has been granted temporary protection shall cross the State border of the Republic of Latvia.
Para 3, Section 45 of the Draft Law on Asylum in the Republic of Latvia provides for the following:
„On the basis of a decision of the Council of the European Union, the Cabinet of Ministers shall issue an order about granting the temporary protection to a group of persons by indicating a total number, procedure of accommodation in the Republic of Latvia, necessary state funding for the reception of this group, as well as procedure, in which a person granted temporary protection, may cross the national border of the Republic of Latvia."

Q 11. B. Indicate precisely for which stage(s) of the asylum procedure the answers on reception conditions you give below are valid.

Please see above answer on Q 11.A.

4. GENERAL RULES ON RECEPTION CONDITIONS

Q.12. **Q 12. A**. Are material reception conditions provided in <u>kind, in money or in vouchers or in a combination of these elements</u> (see article 13, §5 which is an optional provision)? Distinguish between the different elements (housing, food, clothes, health, transportation, pocket money,…). **If reception conditions are provided in money (in general or in some cases, for instance when no places are anymore available in accommodation centres), indicate the precise amount given to the asylum seekers. Indicate in your answer what is provided in general and if there are exceptional cases.** Specify in your answer if reception conditions are different from the general system of social aid for nationals or aliens and if yes, if and when (which stage of the asylum procedure) can asylum seekers have access to the general system of social aid?

Para 1, Section 20 of the Asylum Law provides for that the amount of expenses provided for the maintenance of an asylum seeker, as well as the purchase of hygiene and basic necessities, and the procedures for covering such expenses shall be determined by the Government.

On 8 February 2005 the Regulations No 119 'On the amount of expenses for acquisition of food, as well as hygiene and first necessity goods for the asylum seeker and the procedure of cover of these expenses' were adopted by the Government. They contain the informative reference to the

EU Directives, that indicates that "These Regulations includes legal norms arising from Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers". However there are no relevant differences from the previous Regulations No. 390 of 27 August 2002 "Amount of Expenditure for Food of Asylum Seekers and Procedures for Covering Such Expenditure". The Regulations nr.119 provides for, that the asylum seeker receives money for both food and hygiene and first necessity goods.

the amount of expenditure for acquisition of food, as well as hygiene and first necessity goods per 24 hours is the following:

- 1,50 LVL (2,14 EUR) – if a person is accommodated in the asylum seekers' reception centre,
- 1,80 LVL (2,57 EUR) – if a person is accommodated at a territorial unit of the State Border Guard or at a border control point.

An asylum seeker is provided with the food, as well as hygiene and first necessity goods in accordance with the amount of money specified for in the above-mentioned Regulations if an asylum seeker:

- is accommodated at a territorial unit of the State Border Guard or at a border control point in premises intended for this purpose;

- is at the asylum seekers' reception centre during the time period between the payments of expenditure for the food, as well as hygiene and first necessity goods;

- has not reached 18 years of age and have arrived in the Republic of Latvia not accompanied by parents.

The expenditure the food, as well as hygiene and first necessity goods shall be paid in cash to asylum seekers who reside in asylum seekers' reception centre in the form of a prepayment once a week for seven days. In order to receive money, asylum seekers shall present a valid personal identity document of an asylum seeker.

If an asylum seeker has not reached 18 years of age and resides in the asylum seekers' reception centre together with the members of his or her family, his or her expenditure in cash shall be received by a family member who has reached legal age. If an asylum seeker has left the reception centre without the permission of the administration of the centre and has been absent for more than 48 hours, the head of the reception centre for asylum seekers has the right to take a decision not to pay expenditure for food to him or her for the time period of his or her absence.

The asylum seekers have to bear the costs of public transport if they want to travel for their personal needs. However if an asylum seeker is ill and he/she needs the medical assistance, the transport is provided either by the medical institution or by the reception centre free of charge.

The clothing for the asylum seekers is provided by the reception centre. The clothes are donated from the different sources but mainly by the Red Cross.

Para.4., Section 9 of the Draft Law On the Asylum in the Republic of Latvia provides for the following:

"(4) The Cabinet of Ministers shall provide an amount of expenses stipulated for purchase of food, hygiene and essential articles of an asylum seeker, who is accommodated in the accommodation centre for asylum seekers or at the border control point, or in the territorial unit of the State Border Guard, as well as a procedure for payment for the same." There is no legal regulation in the Draft Law of the exact amounts of expenses. Therefore the Cabinet of Ministers' Regulations will define this amount. As mentioned above, when the Draft Law will be adopted in Parliament in the 2nd reading, the development of the by-laws for its implementation will start.

Therefore the existing Regulations No 119 covering the issue of the reception will be in force for a maximum of 6 months since the adoption of the new Law On the Asylum in the Republic of Latvia. After that they will be replaced by the new by-law.

Q 12. B. Can the reception conditions in kind, money or vouchers be considered as <u>sufficient</u> "to ensure a standard of living adequate for the health of applicants and capable of ensuring their subsistence" as requested by article 13, §2 of the directive (which is a mandatory provision but leaves a certain space to Member States)? In order to help to assess the respect of this rule when reception conditions are provided in money, include if necessary in your answer points of comparison with the minimum amount of social aid guaranteed for nationals in your Member State.

The Law on State Social Allowances and the relevant governmental Regulations of Latvia provide for, that the following persons are entitled to receive state social benefits – the citizens of Latvia, non-citizens, foreign citizens and stateless persons, who have received personal ID number and who are permanent residents of Latvia. The state social benefits are not granted to persons who have received a temporary residence permit. The state social benefit is not granted to persons who are completely state supported.
Persons are entitled to receive the state social security benefit:

- In case of disability or statutory age – those above-mentioned persons who have continuously lived in Latvia for the last 12 months before claiming the benefit, but in total – no less than 60 months;
- In case of a loss of supporter – those above-mentioned persons who have lost supporter, if their former supporter has lived in Latvia for at least 60 months before the day of claiming the benefit in total and for last 12 months - continuously.

The state social security benefit is granted to a person who is not entitled to receive state pension (except pension for a disabled person in case of losing supporter) or insurance compensation in connection with accident at work or occupational disease, if this person:

- is not employed or self-employed (not regarded as employee or self-employed person according to the Law on State Social Insurance) and has exceeded the old age pension age by 5 years that is defined by Law on State Pensions to person in order to get rights to old-age pension ;
- has obtained the status of a disabled person and has exceeded 18 years of age. These persons are entitled to receive the state social security benefit for determined disability period;
- is still under age but has lost one or both parents and has not entered into marriage. Joint state social security benefit is granted to these persons if it is granted for three or more children that can not be less than 50% of state social security benefit amount per each child in accordance with procedures specified by the Cabinet of Ministers. State social security benefits for these persons are granted for the period until they come of age. The benefit will continue to be paid if the person after coming of age continues studies in a comprehensive or vocational education institution and is not older than 20 years of age, or

is a student of the day department of a higher education institution (full-time day department) and is not older than 24 years of age.

If a person receives pension from other state that does not reach an amount of state social security benefit then the granted state social security benefit is reduced to the sum that corresponds to amount of granted pension by other state. A person who receives pension from other state that is equal to amount of state social security benefit or exceeds it, the state social security benefit shall not be granted. If a benefit receiver leaves Republic of Latvia in order to reside in a foreign country, the state social security benefit shall be terminated paying a benefit for the next two months before leave.

An amount of the state social security benefit:

- in general case – 45 LVL (64,28 EUR) per month;
- for disabled since childhood – 50 LVL (71,42 EUR)) per month.

Therefore from the perspective of the amount of the state social security benefit, that could be granted to the citizens of Latvia, non-citizens, foreign citizens and stateless persons, who have received personal ID number and who are permanent residents of Latvia, the asylum seekers are entitled the equivalent amount of the assistance. In addition they are granted housing which is free of charge. As it was indicated by the administration of the asylum seekers' reception centre in addition to the cash, upon arrival to the centre an asylum seeker receives also the bedclothes and the kitchen-ware. They can use the kitchen, laundry, TV room and the nursery room in the centre.

5. PROCEDURAL ASPECTS

Q.13. **Q 13. A. Does the national legislation specifically provide that a request for international protection is presumed to be under the Geneva Convention unless explicitly requested otherwise? (see article 2, b which is a mandatory provision)**

Yes, Latvia's national legislation specifically provides that a request for international protection is in first place presumed to be under the Geneva Convention. Section 3 of the Asylum Law provides for that a person shall be considered to be an asylum seeker if he or she, in accordance with procedures prescribed by this Law, has submitted an application for granting of refugee or alternative status. Application, from the moment of its submission to the taking of a final decision, shall be examined in accordance with the procedures and time periods prescribed by this Law. Para. 2, Section 18 of the Asylum Law provides for that in examining an application, the Refugee Affairs Department shall first decide on the granting of refugee status to an asylum seeker in conformity with the provisions of this Law. If the conditions of Section 23 of the Asylum Law (the refugee status criteria) do not apply to the asylum seeker, the Refugee Affairs Department shall take a decision on the granting of alternative status in accordance with the procedures prescribed by the Asylum Law.

The situation will not change with the entry into force of the Draft Law On the Asylum in the Republic of Latvia. Para.1., Section 17 of the Draft Law on Asylum in the Republic of Latvia provides for identical provisions: "By examining an application, the [Refugee Affairs] Department shall at first make a decision about granting refugee status to an asylum seeker in

accordance with the provisions of this Law. In case, if the provisions of Para.1, Section 30 of this Law (the refugee status criteria) do not apply to the asylum seeker, the Department shall make a decision about granting alternative status (national term for the subsidiary protection) in accordance with the procedure provided for in this Law."

Q. 13. B. Explain if the scope of application of reception conditions is extended to other asylum seekers than refugees in the sense of the Geneva Convention, in particular to persons asking for subsidiary protection or to other forms of protection like humanitarian statuses (see article 3, § 4 which is an optional provision)? If not, explain briefly which the differences between these special regimes and the directive are.

In accordance with Section 3 of the Asylum Law a person shall be considered to be an asylum seeker if he or she, in accordance with procedures prescribed by this Law, has submitted an application for granting of refugee or alternative status. As mentioned the Asylum Law specifies the common provisions for reception of both categories of the asylum seekers. The Draft Law on Asylum in the Republic of Latvia has the identical provisions.

In relation to the reception in cases of the temporary protection Para 2, Section 44 of the Asylum Law provides for that the Government shall issue an order to grant temporary protection to a group of persons, determining their total number, the time period of residence, and accommodation procedures in the Republic of Latvia, and the necessary financing, as well as the procedures according to which persons who has been granted temporary protection shall cross the State border of the Republic of Latvia. Also the Draft Law on Asylum in the Republic of Latvia Para 3, Section 45 of the Draft Law on Asylum in the Republic of Latvia provides for the following: „On the basis of a decision of the Council of the European Union, the Cabinet of Ministers shall issue an order about granting the temporary protection to a group of persons by indicating a total number, procedure of accommodation in the Republic of Latvia, necessary state funding for the reception of this group, as well as procedure, in which a person granted temporary protection, may cross the national border of the Republic of Latvia."

Q. 13. C. Are there specific provisions in national law for reception conditions in case of diplomatic or territorial asylum requests submitted through a diplomatic or consular representation (see article 3, §2 which is an optional provision)?

No, there are no specific provisions in the current legislation of Latvia for reception conditions in case of diplomatic or territorial asylum requests submitted through a diplomatic or consular representation. The Draft Law on Asylum in the Republic of Latvia also will not introduce such provisions.

Q.14. **Are reception conditions available as from the moment one asylum application is introduced? How is article 13, §1 which is mandatory legally understood?** Do asylum seekers have to satisfy any other condition in order to get reception conditions?

Yes, reception conditions available as from the moment one asylum application is submitted. No other conditions need to be satisfied in order to get the reception conditions.

Q.15. **Explain when reception conditions end, for instance after refusal of the asylum request** (include in your answer the link with the right of appeal against a decision of refusal of the status, in particular the question of its suspensive effect)

In accordance with Section 3 of the Asylum Law a person shall be considered to be an asylum seeker if he or she, in accordance with procedures prescribed by this Law, has submitted an application for granting of refugee or alternative status (hereinafter – application). Applications, from the moment of their submission to the taking of a final decision, shall be examined in accordance with the procedures and time periods prescribed by this Law. Para 1, Section 20 of the Asylum Law provides for that during examination of the application the asylum seeker shall be accommodated at the accommodation centre for asylum seekers where necessary living conditions are provided. During examination of the appeal the person shall be considered to be an asylum seeker (Para 3, Section 13 and Para 3, Section 19 of the Asylum Law). Therefore the reception conditions end only after the final negative decision on an asylum seekers' application or its appeal comes into force.

Section 1 of the Draft Law On the Asylum in the Republic of Latvia provides for that an asylum seeker is a person who, in accordance with the procedure provided for in this Law, has submitted an application on granting refugee or alternative status in the Republic of Latvia.Para.1, Section 9 of the Draft Law On the Asylum in the Republic of Latvia provides for the general regulation of the reception system: **"**(1) During the asylum procedure, an asylum seeker shall be accommodated in an accommodation centre for asylum seekers where household conditions are ensured. An unaccompanied minor shall be ensured the household conditions necessary for his or her physical and mental development. An asylum seeker may be moved from one accommodation centre for asylum seekers to another centre."

Para.3, Section 12 of the Draft Law On the Asylum in the Republic of Latvia provides for that "an asylum seeker or his or her authorised representative may appeal a decision made by the Department in the Administrative District Court in cases and in accordance with the procedure provided for in this Law. During examination of an application (case), the person shall be deemed an asylum seeker, with the exception of the case stated in Section 19, Paragraph two of this Law."

Section 19 regulates the issues of the examination of a case in which the final decision was already made. Para.1.-2 of Section 19 of the Draft Law On the Asylum in the Republic of Latvia provides for the following:

"(1) In case, if after the final decision has been made in an action, the Department has established new facts or if the asylum seeker has submitted a repeated application to the Department, which contains new information related to granting refugee or alternative status, the Department shall make decision about acceptance of the application for examination or disregarding the application. If the repeated application contains sufficient information to make a previously mentioned decision, interview may also not be held.
(2) Decision made by the Department about acceptance of the application for examination or disregarding the application may be appealed in accordance with the procedure provided for in Section 14, Paragraphs three and four of this Law. Provisions of Section 3, Paragraph two of this Law shall no apply to an asylum seeker during reviewing of a complaint."

This means, that in accordance with the future Law On the Asylum in the Republic of Latvia during examination of an application, the person shall be deemed an asylum seeker, with the exception of the case when, based on Para.1, Section 19, the complaint of a person concerning the rejection of the repeated application is submitted. In case of such complaint a person shall not be deemed an asylum seeker and this complaint will not have a suspensive effect.

Q.16 Are there special rules or practices regarding reception conditions in case of successive applications for asylum introduced by the same person?

No, currently there no such special rules in the Asylum Law.
Please see answer on Q.15 on the provisions of the Draft Law On the Asylum in the Republic of Latvia related to the exception based on Para.1., Section 19 of the Draft Law.

Q.17. Information of asylum seekers about their rights and obligations in terms of reception conditions, in particular about established benefits (see article 5 which is too large extend a mandatory provision; do not confuse this question with the information to be provided to asylum seekers about the asylum procedure):

Q. 17. A. Are asylum seekers informed, and if yes about what precisely?

In accordance with the Regulations of the Office of Citizenship and Migration Affairs «On the Internal Order of the Asylum seekers' Reception Centre «Mucenieki»» an asylum seeker shall be informed about his obligations and duties within 15 days.

Q. 17. B. Is the information provided in writing or, when appropriate, orally?

He/she receives a booklet, that contains the most important information. He/she is also explained the duties and obligations orally if there is a common communication language.

Q.17. C. Is that information in general provided in a language understood by asylum seekers? Specify the list of languages in which it is available

Section 10 of the Asylum Law provides for, that an asylum seeker has the right to receive all information on the asylum procedure and his or her rights and duties in the course of the asylum procedure. The asylum seeker has the right to receive such information in a language he or she understands or should understand.

Information is available in Russian, English and Arabic.

Clauses 1, 2, 5, Para.1., Section 11 of the Draft Law On the Asylum in the Republic of Latvia provide for the following language and information -related rights:

"(1) An asylum seeker shall have the following rights:

1) to submit an application and give explanations during interview in a language he or she should understand and on which he or she is able to communicate. If necessary, the State Border Guard shall invite an interpreter the service of whom shall be covered from the State funds.

2) to receive information about the asylum procedure, his or her rights and obligations during the said procedure, as well as possible consequences if he or she does not fulfil his or her obligations and does not co-operate with institutions involved in the asylum procedure, from the State Border Guard and the [Refugee Affairs] Department. An asylum seeker shall have the right to receive such information in a language he or she should understand and on which he or she is able to communicate.;

5) to receive information about a decision made by the Department and the procedure of appealing thereof in a language he or she should understand, with the exception of cases, if the asylum seeker is represented by an authorised persons or he or she receives free-of-charge legal aid."

The Draft Law establishes more favourite treatment of the asylum seeker, since in relation languages it provides for that "language he or she should understand and on which he or she is able to communicate".

Q. 17. D. Is the deadline of maximum 15 days respected?

Yes, please see answer on point A.

Q.18. Information of asylum seekers about the existence of organisations or groups promoting their interest and defending their rights (see article 5 which is to a large extend a mandatory provision):

Q. 18. A. Is there a list of organisations dressed by the authorities and if yes is it comprehensive? Is this in particular the case about the possibilities to get legal assistance and health care?

Q. 18. B. Is the information provided to the asylum seekers, and if yes, in writing or, when appropriate, orally?

Q. 18. C. Is that information in general provided in a language understood by asylum seekers? Specify if possible the list of languages in which it is available.

Q. 18. D. How many organisations are active in that field in your Member State?

A,B,C,D - For the moment there are no NGOs or similar organisations or groups promoting interests of the asylum seekers and defending their rights in Latvia. The booklet mentioned in answer to Q.17, which is provided to each asylum seeker upon arrival to the reception centre provides for the contact information of 2 institutions – Latvian Red Cross and the International Organisation (the nearest UNHCR Regional Office is in Stockholm), but these institutions are not state designated. Information is available in Russian, English and Arabic.

Q.19. Documentation of asylum seekers (see article 6):

Q.19. A. What kind of document is delivered to the asylum seeker? Explain the legal value of this document (just a certification of the status as asylum seeker or also prove of identity?) (see §1 of article 6 which is a mandatory provision)

In accordance with Section 21 of the Asylum Law an asylum seeker shall hand his or her personal identity and travelling documents over to the State Border Guard until a final decision is taken on granting or refusal to grant refugee or alternative status, except the case where an asylum seeker has another legal basis to reside in the Republic of Latvia. An asylum seeker in the Republic of Latvia shall be issued an asylum seeker personal identity document, the form and issue procedures of which shall be determined by the Government. The asylum seeker personal identity document gives the right to stay at the accommodation centre for asylum seekers. An asylum seeker has the right to reside also outside the accommodation centre for asylum seekers with a permit issued each time by the administration of the accommodation centre for asylum seekers regarding which an entry shall be made in the personal identity document of asylum seeker.

Section 2 of the Regulations of the Cabinet of Ministers of 3 September 2002 No 406 "On the asylum seeker's personal identity document and the procedure of its issue" provides for that the documents shall be issued to asylum seeker irrespective of his/her age for a time period until the taking of the final decision regarding the granting of refugee status or alternative status, or a decision regarding a refusal to grant the relevant status. Section 7 of the Regulations specify, that the document shall be issued to an asylum seeker within three (3) days of the receipt of an application.

Section 8 of the Draft Law On the Asylum in the Republic of Latvia provides for the following
"(1) An asylum seeker shall deliver his or her identity documents and travel documents to the State Border Guard until a final decision has been made about granting refugee or alternative status or a rejection to grant the same, with the exception of a case when asylum seeker has another legal basis to stay in the Republic of Latvia.

(2) Identity document of asylum seeker shall be issued to an asylum seeker in the Republic of Latvia and a form and procedure of issuance of such document shall be provided by the Cabinet of Ministers.
(3) Identity document of asylum seeker entitles to stay in an accommodation centre for asylum seekers." No detailed provisions are regulated in the Draft Law, since they will be the subject of the governmental by-laws.

Q.19. B. Are there situations or specific cases in which <u>another equivalent document or even no document</u> is issued? (in particular is there an exception for "procedures to decide on the right of the applicant legally to enter the territory" as made possible by §2 of article 6)?

Section 2 of the Regulations of the Cabinet of Ministers of 3 September 2002 No 406 "On the asylum seeker's personal identity document and the procedure of its issue" provides for the document may not be issued if an asylum seeker is detained, as well as at the time when the application, which was submitted at the border control point before entry into the Republic of Latvia or in connection with the procedure, where it is being decided whether an applicant has a right to entry into the Republic of Latvia.
Section 8 of the Draft Law On the Asylum in the Republic of Latvia provides for the following
"(1) An asylum seeker shall deliver his or her identity documents and travel documents to the State Border Guard until a final decision has been made about granting refugee or alternative status or a rejection to grant the same, with the exception of a case when asylum seeker has another legal basis to stay in the Republic of Latvia.
(2) Identity document of asylum seeker shall be issued to an asylum seeker in the Republic of Latvia and a form and procedure of issuance of such document shall be provided by the Cabinet of Ministers.
(3) Identity document of asylum seeker entitles to stay in an accommodation centre for asylum seekers." No detailed provisions are regulated in the Draft Law, since they will be the subject of the governmental by-laws.

Q.19. C. <u>For how long</u> is this document in principle <u>valid</u> and is it necessary to renew it after a certain period?

In accordance with Section 21 of the Asylum Law an asylum seeker shall hand his or her personal identity and travelling documents over to the State Border Guard until a final decision is taken on granting or refusal to grant refugee or alternative status, except the case where an asylum seeker has another legal basis to reside in the Republic of Latvia. An asylum seeker in the Republic of Latvia shall be issued an asylum seeker personal identity document, the form and issue procedures of which shall be determined by the Government.
Section 2 of the Regulations of the Cabinet of Ministers of 3 September 2002 No 406 "On the asylum seeker's personal identity document and the procedure of its issue" provides for that if the time period for the examination of the application of an asylum seeker regarding the granting of refugee or alternative status is extended, but the term of validity of the previously issued

document expires prior to the date when the decision is notified, the State Border Guard shall issue a new document.

As mentioned above Section 8 of the Draft Law On the Asylum in the Republic of Latvia provides for the following

"(1) An asylum seeker shall deliver his or her identity documents and travel documents to the State Border Guard until a final decision has been made about granting refugee or alternative status or a rejection to grant the same, with the exception of a case when asylum seeker has another legal basis to stay in the Republic of Latvia.

(2) Identity document of asylum seeker shall be issued to an asylum seeker in the Republic of Latvia and a form and procedure of issuance of such document shall be provided by the Cabinet of Ministers.

(3) Identity document of asylum seeker entitles to stay in an accommodation centre for asylum seekers." No detailed provisions are regulated in the Draft Law, since they will be the subject of the governmental by-laws.

Q.19. D. What is the deadline for the delivery of that document? Is the mandatory deadline of 3 days set by article 6, §1 respected[521]?

Section 7 of the Regulations of the Cabinet of Ministers of 3 September 2002 No 406 "On the asylum seeker's personal identity document and the procedure of its issue" provides for that the document shall be issued to an asylum seeker within three (3) days from the receipt of an application.

No detailed provisions are provided in the Draft Law On the Asylum in the Republic of Latvia, since they will be the subject of the governmental by-laws.

Q.19. E. Is it possible for an asylum seeker to get a travel document for serious humanitarian reasons (see §5 of article 6 which is an optional provision)?

Such possibility is not provided by the Latvia's legislation in force.

Q.19. F. Is there a central system of registration of asylum seekers and is it or not separate from the registration of aliens? If yes, describe it briefly (content) and indicate in particular if it is an electronic database.

The Refugee Affairs Department maintains and operates the local electronic data base for the registration of the asylum seekers. It is planned to further improve it in the future.

Q.20. Residence of asylum seekers :

Q.20. A. Is in principle an asylum seeker free to move on the entire territory of your Member State or only to a limited part of it and in case, which part? (see article 7, §1 which is a mandatory provision)

Q.20. B. About the <u>place of residence (see §2 of article 7)</u>: explain to which extend the person is free to choose her residence and if this depends of the stage of the asylum procedure (for instance before and after admissibility); if there are constraints limiting the choice, explain which ones and their reasons (for instance processing of application, attribution of reception conditions,…).

Q.20. C. About the <u>place of reception (meaning where the asylum seeker has to stay to benefit from reception conditions) (see § 4 of article 7)</u>: explain which are the general rules about the determination of this place (to which extend are the decisions determining the place taken individually and do they take into account the personal situation of the asylum seeker?) and to which extend the person is free to choose it and if it depends of the stage of the asylum procedure (for instance before and after admissibility); if there are constraints limiting the choice, explain which ones and their reasons (for instance attribution of reception conditions, processing of the application,…).

Q.20. D. If all asylum seekers are not placed in accommodation centres because of capacity limits, explain <u>how the persons are distributed between accommodation centres and other accommodation facilities</u> (which authority takes the decisions, on the basis of which elements, can that decision be appealed by the asylum seeker,…)

A-D Section 20 of the Asylum Law provides for that during examination of the application the asylum seeker shall be accommodated at the accommodation centre for asylum seekers where necessary living conditions are provided. The asylum seeker may be transferred from one accommodation centre for asylum seekers to another. An asylum seeker shall not be accommodated at the reception centre unless he or she has a legal basis to reside in the Republic of Latvia. Para. 1, Section 20 of the Asylum Law provides for that an asylum seeker may be transferred from one reception centre to another. However no practice exists- the only reception centre exists and as with the number of asylum seekers up to date it even does not work in full capacity.

Para 3, Section 21 of the Asylum Law provides for, that an asylum seeker has the right to reside also outside the reception centre with a permit issued each time by the administration of the centre for asylum seekers regarding which an entry shall be made in the personal identity document of an asylum seeker (the duration of stay outside the reception centre is indicated in the permit). There are no any additional requirements or restrictions concerning such a residence outside the centre.

Section 9 of the Draft Law On the Asylum in the Republic of Latvia does not provide for the radical changes in the current system. It however does not make anymore the residence outside the reception centre subject to any conditionality (like in the current Asylum Law – a permit shall be given by the administration of the reception centre to the asylum seeker). It provides for the following conditions:

"(1) During the asylum procedure, an asylum seeker shall be accommodated in an accommodation centre for asylum seekers where household conditions are ensured. An

unaccompanied minor shall be ensured the household conditions necessary for his or her physical and mental development. An asylum seeker may be moved from one accommodation centre for asylum seekers to another centre.
(2) Accommodation centres for asylum seekers are units of the Office [of the Citizenship and Migration Affairs].
(3) Asylum seeker shall not be placed in an accommodation centre for asylum seekers while he or she has legal basis to reside in the Republic of Latvia. In case of change of residence, the asylum seeker shall inform the [Refugee Affairs] Department about his or her new residence address.
(4) The Cabinet of Ministers shall provide an amount of expenses stipulated for purchase of food, hygiene and essential articles of an asylum seeker, who is accommodated in the accommodation centre for asylum seekers or at the border control point, or in the territorial unit of the State Border Guard, as well as a procedure for payment for the same."
Clause 5, Para.2. Section 11 of the Draft Law provides for the following:
"during his or her stay in an accommodation centre for asylum seekers, observe internal regulations of such a centre. The Cabinet of Ministers shall approve internal regulations of an accommodation centre for asylum seekers." The draft internal regulations with the suggested title "On the internal order of the accommodation centre for the asylum seekers "Mucenieki" will be elaborated when the Draft Law will be adopted in 2nd reading in the Parliament.

Q.20. E. How can an asylum seeker ask to <u>leave temporarily</u> the place of residence or of reception or an assigned area? How is the individual AND impartial character of the decision ensured? (see §5 of article 7 which is a mandatory provision)

Section 20 of the Asylum Law provides for that an asylum seeker shall not be accommodated at the reception centre unless he or she has a legal basis to reside in the Republic of Latvia. Therefore those asylum seekers, who reside legally may choose the place of residence themselves.

Those asylum seekers who do not have any other legal basis to stay in Latvia (e.g. residence permit, studies, stay as a spouse of Latvian citizen etc.), shall stay in the reception centre. In this case Para 3, Section 21 of the Asylum Law provides for, that these asylum seekers have the right to reside also outside the reception centre with a permit issued each time by the administration of the centre for asylum seekers regarding which an entry shall be made in the personal identity document of an asylum seeker..
Section 9 of the Draft Law On the Asylum in the Republic of Latvia does not provide for the radical changes in the current system. It however does not make anymore the residence outside the reception centre subject to any conditionality (like in the current Asylum Law – a permit shall be given by the administration of the reception centre to the asylum seeker). It provides for the following conditions:
"(1) During the asylum procedure, an asylum seeker shall be accommodated in an accommodation centre for asylum seekers where household conditions are ensured. An unaccompanied minor shall be ensured the household conditions necessary for his or her physical and mental development. An asylum seeker may be moved from one accommodation centre for asylum seekers to another centre.

(2) Accommodation centres for asylum seekers are units of the Office [of the Citizenship and Migration Affairs].
(3) Asylum seeker shall not be placed in an accommodation centre for asylum seekers while he or she has legal basis to reside in the Republic of Latvia. In case of change of residence, the asylum seeker shall inform the [Refugee Affairs] Department about his or her new residence address.
(4) The Cabinet of Ministers shall provide an amount of expenses stipulated for purchase of food, hygiene and essential articles of an asylum seeker, who is accommodated in the accommodation centre for asylum seekers or at the border control point, or in the territorial unit of the State Border Guard, as well as a procedure for payment for the same."
Clause 5, Para.2. Section 11 of the Draft Law provides for the following:
"during his or her stay in an accommodation centre for asylum seekers, observe internal regulations of such a centre. The Cabinet of Ministers shall approve internal regulations of an accommodation centre for asylum seekers." The draft internal regulations with the suggested title "On the internal order of the accommodation centre for the asylum seekers "Mucenieki" will be elaborated when the Draft Law will be adopted in 2nd reading in the Parliament.

Both in case of the complaints under the current Asylum Law and in case of the future new Law On the Asylum in the Republic of Latvia the complaints on any decisions of the administration of the reception centre may be appealed, by submission of the complaint the Office of Citizenship and Migration Affairs, the Ministry of Interior and later – to the administrative court. The procedure of examination of any complaints is governed by the Administrative Procedure Law.

Q.21. **Q.21. A. Do rules on <u>reduction or withdrawal of reception conditions</u> exist in internal legislation and if yes in which cases (mention in particular if there are cases not foreseen by article 16, § 1 and 2 which are optional provisions)? Distinguish in your answer between cases of reduction and withdrawal and explain which conditions can be reduced and if access to emergency health care is always ensured as requested by article 16, §4, last sentence.**

Section 6 of the Regulations of the Cabinet of Ministers of 8 February 2005 No 119 "On the amount of expenses for acquisition of food, as well as hygiene and first necessity goods for the asylum seeker and the procedure of cover of these expenses" provide for that if an asylum seeker has left the reception centre without the permission of the administration of the centre and has been absent for more than 48 hours, the head of the reception centre for asylum seekers has the right to take a decision not to pay expenditure for food to him or her for the time period of his or her absence. No other reductions or withdrawals are possible in accordance with the legislation.

The Draft Law On the Asylum in the Republic of Latvia does not provide for the regulation of the issue of reductions or withdrawals, since it will be subject of the governmental by-law.

Q.21. B. Has article 16, §2 dealing with refusal of reception conditions for <u>unreasonably late applications</u> for asylum been transposed by your

Member State (or was this case already applicable before transposition)? Are there cases in practice?

No, this Article was not transposed and therefore there is no practice as well.

Q.21. C. How is it ensured that decisions of reduction or withdrawal are taken individually, objectively AND in particular impartially (for instance through and independent arbitrator) (see article 16, §4 which is a mandatory provision)?

The complaints on any decisions of the administration of the reception centre may be appealed, by submission of the complaint the Office of Citizenship and Migration Affairs, the Ministry of Interior and later – to the administrative court. The procedure of examination of any complaints is governed by the Administrative Procedure Law.

Section 7 of the State Administration Structure Law provides for that the Government shall implement subordination in the organisation of state administration (institutional subordination) and in the performance of the functions of state administration (functional subordination). The Government shall implement subordination through the intermediation of an particular Minister. The Ministers shall implement subordination directly or through the intermediation of an institution of direct administration, its unit or official. Subordination shall be implemented in the form of control or supervision.

The Ministry of Interior exercises the control over the Office of Citizenship and Migration Affairs in the form of the supervision. The supervision means the rights of higher institutions or officials to examine the lawfulness of decisions taken by lower institutions or officials and to revoke unlawful decisions, as well as to issue an order to take a decision in case of unlawful failure to act.

That means that any decision of the head of the reception centre can be:

- firstly appealed by an asylum seeker by means of the submission of the appeal to the Head of the Office of Citizenship and Migration Affairs.
- If an asylum seeker is not satisfied with the results of these appeal, he/she may submit the repeated appeal to the Ministry of Interior which, as it was mentioned above, exercises the control over the Office of Citizenship and Migration Affairs in the form of the supervision.

If an asylum seeker is not satisfied with the Ministry's action in his/her case, he/she may submit a complaint to the Administrative court. All the terms and procedures for the examination of such a complaint are laid down in the Administrative Procedure Law as the special law that regulates any actions concerning the decisions of the state institutions and bodies.

The legal regulation will remain the same after the entry into force of the Draft Law On the Asylum in the Republic of Latvia.

Q.21. D. Is statement 14/03 adopted by the Council at the same moment as the directive respected (see the document attached to our sending)?

Yes, this principle is respected.

Q.21. E. Are there already administrative appeal decisions or judgements on cases of reduction, withdrawal or refusal which have been taken, and if yes, what has been the outcome?

No judicial or administrative case law exists for the moment.

Q.22. **Q.22. A.** **<u>Appeal</u> against a negative decision relating to the granting of benefits or based on article 7 (see article 21 which is a mandatory provision): indicate against which decision an appeal can be introduced, describe the system of appeal in general and include in particular in your answer the information given to asylum seekers about possibilities of appealing, deadline for appealing, if the appeal has or not a suspensive effect, if there are different steps (for instance first an administrative appeal and in particular if the guarantee of an appeal before a judicial body in the last instance is respected)?**

Q.22. B. **Explain which are the possibilities for asylum seekers to benefit from <u>legal assistance</u> when they introduce such an appeal (see article 21, §2 which is a mandatory provision but leaves space to Member States)?**

Q.22. C. Are there already administrative appeal decisions or judgements which have been taken and if yes, which are the main important ones?

Q.22. D. Is a mechanism of <u>complain for asylum seekers about quality of receptions conditions</u> in general (even if they are not personally concerned) organised? If yes, before which authority? Is it linked to the system of guidance, control and monitoring of reception conditions (see below question n° 39)?

A-D The complaints on any decisions of the administration of the reception centre or on the issues related to the quality of the reception conditions may be appealed or complained of, by submission of the complaint the Office of Citizenship and Migration Affairs, the Ministry of Interior and later – to the administrative court.

As it was mentioned above Section 7 of the State Administration Structure Law provides for that the Government shall implement subordination in the organisation of state administration (institutional subordination) and in the performance of the functions of state administration (functional subordination). The Government shall implement subordination through the intermediation of a particular Minister. The Ministers shall implement subordination directly or through the intermediation of an institution of direct administration, its unit or official. Subordination shall be implemented in the form of control or supervision.

The Ministry of Interrior exercises the control over the Office of Citizenship and Migration Affairs in the form of the supervision. The supervision means the rights of higher institutions or officials to examine the lawfulness of decisions taken by lower institutions or officials and to revoke unlawful decisions, as well as to issue an order to take a decision in case of unlawful failure to act.

That means that any decision of the head of the reception centre can be:

1) firstly appealed by an asylum seeker by means of the submission of the appeal to the Head of the Office of Citizenship and Migration Affairs.
2) If an asylum seeker is not satisfied with the results of these appeal, he/she may submit the repeated appeal to the Ministry of Interrior which, as it was mentioned above, exercises the control over the Office of Citizenship and Migration Affairs in the form of the supervision.
3) If an asylum seeker is not satisfied with the Ministry's action in his/her case, he/she may submit a complaint to the Administrative court. All the terms and procedures for the examination of such a complaint are laid down in the Administrative Procedure Law as the special law that regulates any actions concerning the decisions of the state institutions and bodies (please see the attachment for the full text of translation of this law in English).

The complaint of an asylum seeker on the quality of the reception conditions shall follow the above-mentioned legal procedure provided by the Administrative Procedure Law as well. Therefore from the legal point of view the mechanism for the complaint of the asylum seekers about quality of receptions conditions does exist. However as it was already mentioned no judicial or administrative case law exists for the moment for such appeals and/or complaints.

From legal point of view for the asylum seekers can benefit from legal assistance when they submit such an appeal. However they probably would need to finance such an appeal from their own financial means, or if a lawyer agrees himself/herself – they can be represented *pro bono* by him/her (there were such cases in Latvia in the past). Para 4, Section 10 the Asylum Law indicates an asylum seeker's right to invite another person to provide legal assistance, however it does not state that this is the state-paid legal assistance. Only if an asylum seeker is an unaccompanied minor, he/she has the right to receive legal assistance free of charge during the asylum procedure (Para 6, Section 10 of the Asylum Law). The State Ensured Legal Aid Law provides that since 1 January 2007 there is the state-guaranteed financial support for the certain types of the legal aid for the asylum seekers.

Therefore it can be concluded that the asylum seekers may complain about any decision or the reception conditions of the reception centre to the Office of Citizenship and Migration Affairs (later – to appeal to the Ministry of Interior, but those held in the detention centre for illegal migrants operated by the State Border Guard – to the Ministry of Interior) and finally – to the Administrative court.. The special system of guidance, control and monitoring of reception conditions that would differ for the overall system of guidance, control and monitoring of work of the different bodies of the Ministry of Interior, has not been introduced in the legislation.

The legal regulation of the complaints related to the benefits will remain the same after the entry into force of the Draft Law On the Asylum in the Republic of Latvia.

6. RIGHTS AND OBLIGATIONS OF ASYLUM SEEKERS

Q.23. **Family unity of asylum seekers: define how a family is defined in relation with article 2, (d) which is a mandatory provision and explain how housing is provided to a family (see articles 8 which is a mandatory provision but leaves space to member States and 14, §2, (a) which is a mandatory provision).**

There is no provision in the current Asylum Law, which persons shall be considered a s a "family of the asylum seeker". However Section 29 of the Asylum Law indicates, that in relation to the refugees, that a person's spouse and his or her minor unmarried children (also adopted), as well as dependent disabled children (also adopted) of legal age, shall be considered to be family.

In practice, depending on the size of the family, the reception centre provides for one or two connected rooms for the family members to be accommodated together. There are rooms with living space about 30 square meters with toilet facilities, that are suitable for families.

Section 1 of the Draft Law on Asylum in the Republic of Latvia provides for the following definition of the refugee family "Family members - the spouse of the refugee or the person granted the subsidiary (alternative) protection; the minor children, who are not married and are dependent, without distinction as to whether they were born in or out of wedlock or adopted, if such family existed already in the country of origin." Para.2. Section 22 of the Draft Law on Asylum in the Republic of Latvia provides for the following: "Information mentioned in Paragraph one of this Section, inter alia, shall be the explanations and documents of an asylum seeker, which are in his or her disposal with regard to his or her age, former activities, including data of his or her family members, father and mother, brothers and sisters, [his or her] identity, nationality, country and place of former residence, previous applications for asylum, travel routes, identity documents and travel documents and reasons why an application is submitted." The wording suggests that the Draft Law on Asylum in the Republic of Latvia considers as a family of an asylum seeker the following persons - the spouse of the refugee or the person granted the subsidiary (alternative) protection; the minor children, who are not married and are dependent, without distinction as to whether they were born in or out of wedlock or adopted, if such family existed already in the country of origin.

Q.24. **Q.24. A. How is housing of asylum seekers organised: describe the system in general and indicate in particular what is the most frequently system used (see article 14, §1 which is a mandatory provision but leaves space for Member States; distinguish between accommodation centres, private houses and apartments, hotels places or other premises).**

Q.24. B. What is the total number of available places for asylum seekers? Distinguish in your answer between accommodation centres, private houses and apartments, hotels or other premises.

Q.24. C. Is this number of places for asylum seekers sufficient in general or frequently insufficient?

There is only public asylum seekers reception centre in Latvia for the moment. There are no any other forms of reception of the asylum seekers. At the centre 200 inhabitants can be housed. It is planned to establish the second public centre near the city of Daugavpils in the future. However for the moment the capacity of the only centre allows to cope with the number of asylum seekers successfully (83 asylum seekers stayed in the reception centre since 1998, 1 asylum seekers stayed on 1 May, 2007.). Therefore it can be concluded that the reception capacity is more than sufficient for the moment.

Q.24. D. Are there special measures foreseen in urgent cases of a high number of news arrivals of asylum seekers (outside the case of application of the directive on temporary protection)?

No special measures are provided by the legislation. No cases exist in practice so far as well.

Q.25. Accommodation centres **(important note: all the following questions are about open and not closed centres where asylum seekers are detained which are covered by another question)**

Q.25. A Are there different categories of accommodation centres, for instance depending of the stage of the procedure (admissibility and eligibility)?

No, the only public asylum seekers reception centre in Latvia exists for the moment.

Q.25. B. Is there a legal time limit for accommodation in a centre after which the asylum seekers have access to private houses or apartments or is this limit linked to a stage of the asylum procedure?

No, there is no such time limit and there are no alternative accommodation possibilities provided. Those asylum seekers, who reside legally in Latvia may choose freely their place of residence themselves.

Q.25. C. Is there a general regulation about the internal functioning of those centres and the rights and duties of the asylum seekers? If yes, is this general regulation applicable to public and private centres? If not, are the centres supposed to adopt an internal regulation and does a central authority have or not a kind of control about its content?

2 administrative acts cover some practical issues of the internal functioning of the only existing public reception centre in Latvia- the issues of the internal order of the reception centre are

regulated by the Regulations of the Office of Citizenship and Migration Affairs «On the Internal Order of the Asylum seekers' Reception Centre «Mucenieki»» and by the Order of the Head of the Office of Citizenship and Migration Affairs of 24 July 2003 No 16/08 « On the approval of the Statute of the Asylum seekers' Reception Centre "Mucenieki" and of the description of the positions».
After the entry into force of the Draft Law on Asylum in the Republic of Latvia these acts will be readopted, but no drafts were elaborated so far.

Q.25. D. Do the regulations foresee the possibility of <u>sanctions</u> against asylum seekers in case of breach of the rules? (see article 16, §3) If yes, which sanctions for which rules? Which is the competent authority to decide? How is it ensured that decisions are taken individually, objectively and in particular *impartially* (for instance through an independent arbitrator) as requested by §4 of article 21 which is mandatory provision*?* Which are the possibilities of appealing against those decisions if the system is different from the general one under question n°22? Are there already administrative appeal decisions or judgements which have been taken and if yes, which are the main important ones?

Section 6 of the Regulations of the Cabinet of Ministers of 8 February 2005 No 119 "On the amount of expenses for acquisition of food, as well as hygiene and first necessity goods for the asylum seeker and the procedure of cover of these expenses" provide for that if an asylum seeker has left the reception centre without the permission of the administration of the centre and has been absent for more than 48 hours, the head of the reception centre for asylum seekers has the right to take a decision not to pay expenditure for food to him or her for the time period of his or her absence. However if an asylum seeker has committed an administrative misdemeanour or a criminal offence, the administrative or the criminal liability may arise.

The complaints on any decisions of the administration of the reception centre may be appealed, by submission of the complaint the Office of Citizenship and Migration Affairs, the Ministry of Interior and later – to the administrative court. The procedure of examination of any complaints is governed by the Administrative Procedure Law. No judicial or administrative case law exists for the moment.

The Draft Law on Asylum in the Republic of Latvia does not provide for any regulation of the subject matter, because this regulation will be adopted by the Cabinet of Ministers. Clause 5, Para.2, Section 11 of the Draft Law on Asylum in the Republic of Latvia provide for the following: "An asylum seeker shall have the following obligations:

5) during his or her stay in an accommodation centre for asylum seekers, observe internal regulations of such a centre. The Cabinet of Ministers shall approve internal regulations of an accommodation centre for asylum seekers." No draft Regulations exist so far.

Q.25. E. Are asylum seekers involved in the <u>management</u> of these centres? If yes, how (advisory board, appointment or election of representatives)? (see article 14, §6 which is an option provision)

The asylum seekers are not involved in the management of the centre.

Q.25. F. Do specific rules exist on work of asylum seekers inside the accommodation centres different from the general ones about employment (see below)? If yes, which ones? Can working inside accommodation centres be considered as a (mandatory) contribution of the asylum seekers to the management of the centres, is it or not paid and considered as implying access to the labour market and subject to the same rules?

There are no specific rules on work of asylum seekers inside the accommodation centres. There is duty of an asylum seeker to do his/her room and in accordance with the established schedule – the places of the common use – kitchen and the toilet facilities. The asylum seekers do not receive the payments for the activities.

Q.26. Q.26. A. How can asylum seekers communicate with legal advisers, representatives of UNHCR and NGOs? (see article 14, §2, (b) which is a mandatory provision).

In accordance with Para 1, Section 6 of the Asylum Law a person, who has submitted an application have the right to apply to the United Nations High Commissioner for Refugees or his or her authorised persons or institutions. Para 4, Section 10 of the Asylum Law provides for that an asylum seeker has the right to invite another person to provide legal assistance. Para 6, Section 12 of the Asylum Law provides for that a minor who is not accompanied by parents has the right to receive legal assistance free of charge during the asylum procedure.

Clauses 2-5,7, Para.1, Section 11 of the Draft Law on Asylum in the Republic of Latvia provide for the following:
(1) An asylum seeker shall have the following rights:
2) to receive information about the asylum procedure, his or her rights and obligations during the said procedure, as well as possible consequences if he or she does not fulfil his or her obligations and does not co-operate with institutions involved in the asylum procedure, from the State Border Guard and the [Refugee Affairs] Department. An asylum seeker shall have the right to receive such information in a language he or she should understand and on which he or she is able to communicate.;
3) to invite a person for receiving legal aid, at his or her own expense. If an asylum seeker does not have the sufficient [financial] resources, he/she shall be entitled to receive free-of-charge legal aid to the extent and in accordance with the procedure provided in the State Ensured Legal Aid Law;
4) to acquaint him or herself with the application- related documents, with the exception of a case, if disclosure of such information or sources might be detrimental the state security of the Republic of Latvia, security of the organisations or safety of persons giving such information, or safety of persons to whom such information refers, or if the interests of the investigations, that are performed by competent authorities related to examination of the application. or international relations might be compromised;
5) to receive information about a decision made by the Department and the procedure of appealing thereof in a language he or she should understand, with the exception of cases, if the

asylum seeker is represented by an authorised persons or he or she receives free-of-charge legal aid,
7) to communicate with the United Nations High Commissioner for Refugees."
If a minor is not accompanied by parents and wishes to submit a submission himself or herself, his or her rights and lawful interests shall be represented during the asylum procedure by the representative appointed by the Orphan's Court. However please see the chapter related to the unaccompanied minors for the full description of the proposed draft regulation of the representation of an unaccompanied minor in the asylum procedure.
Please see also the answers for parts B and C of this question.

Q.26. B. What are the rules about access of legal advisers, UNHCR and NGOs regarding access to accommodation centres and other housing facilities (see article 14, §7 which is a mandatory provision)

The representatives of UNHCR and NGOs may visit the reception centre, also the asylum seekers may visit their offices. There is no legislation that would provide for the restrictions to the access. The same applies to the legal representatives – they shall just inform the administration that they wish visit an asylum seeker and on the preferable date/time prior to their visit.

Q.26. C. Can the access of legal advisers, UNHCR and NGOs be limited for security reasons or any other reason (see article 14, §7, last sentence)?

There is no legislation that would provide for the limitation of the access.

Q.27. Q.27. A. Is a medical screening organised by the receiving State, is it mandatory or voluntary? Does it include HIV tests? (see article 9 which is an optional provision)

Para 8, Section 10 of the Asylum Law provides for, that an asylum seeker has a duty in the interests of public health to undergo a medical examination. The Regulations of the Cabinet of Ministers of 14 June 2005 No 413 "Procedure of person's medical and laboratory examination, compulsory and enforced isolation and treatment in the cases of contagious infectious diseases" provides for the following requirements :

- Section 23.2 provides for that a compulsory lungs' x-ray to diagnose tuberculosis is to be applied to asylum seekers stationed in the reception centres,
- Section 24.6 states that a compulsory medical examination, to diagnose if there are no lice in the clothes and hair of the person, should be carried out for asylum seekers upon the reception in the reception centre.

The HIV test is not included in the compulsory examination.
Clause 4, Para.2, Section 11 of the Draft Law on Asylum in the Republic of Latvia provide for the following:
" An asylum seeker shall have the following obligations:
4) take medical examination for the interests of public health."

Q.27. B. Do the legal provisions on reception conditions ensure that asylum seekers receive at least emergency care and essential treatment of illness as requested by article 15 §1 which is a mandatory provision? Do they have a further access to health care?

Para 5, Section 10 of the Asylum Law provides for, that an asylum seeker has the right to receive emergency medical assistance and primary health care from State resources.

Section 17.3.2. of the Regulations of the Cabinet of Ministers of 19 December 2006 No 1046 «Procedure of organisation and financing of the medical care» provides for, that the Ministry of the Interior covers payments for the following medical care services to following persons: asylum seekers, as well as foreigners detained according to the procedure stated in the Immigration law – for the health care services which are necessary during [their reception] and in the place of their reception and according to the legislation are guaranteed to these persons (except emergency medical assistance, child-birth assistance and cases stated in the Law of Epidemiological Security, as well as medicine necessary for the cure of tuberculosis, that are covered by state budget assets for medical care). If the health of these persons is insured, expenses for the medical care are to be covered by the insurer.

Currently the Ministry of Interior covers all payments for the medical care of asylum seekers. Refugees and persons who are granted alternative status have the personal identity number and access to the Latvian medical care system. If the asylum seekers do not have the personal identity number, it is possible to register them as short-term patients.

The Draft Law on Asylum in the Republic of Latvia does not change the existing system. Clause 6, Para.1, Section 11 of the Draft Law on Asylum in the Republic of Latvia provide for the right of an asylum seeker "to receive the emergency medical aid and the primary health care covered by the state funds".

Q.27. C. What is the practice regarding access of asylum seekers to health care and how is it organised? In particular, what is the situation in accommodation centres (are doctors coming to the centres or do asylum seekers go to doctors outside)?

For the moment in case of the health problems an asylum seeker is delivered for the medical assistance to the health protection institutions outside the reception centre (it shall be taken into account that the centre is located near the capital of Latvia, that means – close to the best medical facilities). However the reception centre has also its own room for medical assistance, and if the number of asylum seekers will increase it will hire its own medical specialist.

Q.28. **Q.28. A. What is the length of the period determined by the concerned Member State during which asylum seekers have no access to the labour market? (see article 11 which is a mandatory provision)**

1 (one) year. Section 28.[1] of the Regulations of the Cabinet of Ministers of 20 January 2004 No 44 "Regulations on the work permits for the foreigners" provides for that if an asylum seeker has not received the decision of the Refugees Affairs Department about the granting of the refugee or alternative status within one year from the submission of the application for the refugee or alternative status and it has not happened because of the fault of the asylum seeker, the Office of Citizenship and Migration Affairs shall issue a working permit to the asylum seeker (without affirmation of the employer's application in the affiliate of the agency), on the basis of the asylum seeker's personal identity document until the final decision on the granting of the refugee or alternative status.

Q.28. B. After that period, are asylum seekers or not obliged to obtain a work permit? In case is there a limit for the administration to deliver the permits and how quick are they delivered? What is their length?

Please see answer for Q.28 A.

Q.28. C. After that period, what are the conditions for access of the asylum seekers to the labour market? (in particular, are there rules concerning the maximum allowed of working hours or days per week, month or year, limits in terms of type of work or of professions authorised?

Q.28. D. What are the rules in terms of priorities between asylum seekers on the one hand and nationals, EU or EEE citizens and legally third-country nationals on the other?

C-D. There are no such priorities as the Regulations of the Cabinet of Ministers of 20 January 2004 No 44 "Regulations on the work permits for the foreigners" do not distinguish between different types of the foreigners. In fact any other category of foreigners needs to prolong his/her work permit after it expires, but an asylum seeker receives it for the indefinite period- till the closure of his/her case.

Q.28. E. Do asylum seekers have access to vocational training, does this or not depend of their right to access to the labour market, and in case at which conditions? (see article 12 which is optional regarding §1 and mandatory regarding § 2)

There are no special provisions on the vocational trainings for the asylum seekers and no practice so far as well.

Q.28. F. Are the rules regarding access to the labour market adopted to transpose the directive more or less generous than the ones applicable previously?

There was no access of the asylum seekers to the labour market previously at all, therefore the rules shall be considered more generous.

Q.29. Are reception conditions subject to the fact that asylum seekers do not have sufficient resources? Are asylum seekers requested to contribute to reception conditions when they have personal resources (for instance if they work) or to refund the authorities if it appears that they have resources? (see article 13 §§ 3 and 4 which are optional provisions)

Upon arrival an asylum seeker submits the declaration about his financial situation. In practice they indicate that they have no such means. There are no legal provisions concerning the contribution or the refund and therefore no such practice as well.

7. SPECIAL NEEDS OF PARTICULAR CATEGORIES OF ASYLUM SEEKERS

Q.30.

Q.30.A. Which of the different categories of persons with special needs considered in the directive are taken into account in the national legislation (see article 17, §1 which is a mandatory provision): disabled people, elderly people, pregnant women, single parents with minor children, persons who have been tortured, raped or victims of serious physical or psychological violence? Include in your answer all other categories envisaged in national law.

Q.30. B. How is their specific situation taken into account (see articles 13, §2, second indent, 16 §4 second sentence and 17 which are mandatory provisions)?

Q.30. C. How and when are the special needs of the concerned persons supposed to be legally identified (see article 17 § 2 which is a mandatory provision and clarify how it has been interpreted by transposition)?

Q.30. D. Is the necessary medical and other assistance provided to persons with special needs as requested by article 15, §2 which is a mandatory provision and in particular to victims of torture and violence as requested by article 20 which is a mandatory provision?

A-D Neither current legislation of Latvia in force nor the Draft Law do not specify any provisions in relation to the asylum seekers with the special needs and the procedure of their identification.

So far there was no any experience in work with the persons who have been tortured, raped or victims of serious physical or psychological violence. It is possible that in this case the assistance of the psychologist would be ensured, keeping at the same time all the guarantees provided in the legislation for asylum seekers. Para 5, Section 10 of the Asylum Law provides for, that an asylum seeker has the right to receive emergency medical assistance and primary health care from State resources. Section 17.3.2. of the Regulations of the Cabinet of Ministers of 19 December 2006 No 1046 «Procedure of organisation and financing of the medical care» provides for, that the Ministry of the Interior covers payments for the following medical care services to following persons: asylum seekers, as well as foreigners detained according to the procedure stated in the Immigration law – for the health care services which are necessary during and in the place of their stay and according to the legislation are granted for these persons (except emergency medical assistance, child-birth assistance and cases stated in the Law of Epidemiological Security, as well as medicine necessary for the cure of tuberculosis, that are covered by state budget assets for medical care). If the health of these persons is insured, expenses for the medical care are to be covered by the insurer. The Ministry of Interior covers all payments for the medical care of asylum seekers. Refugees and persons who are granted alternative status have the personal identity number and access to the Latvian medical care

system. If the asylum seekers do not have the personal identity number, it is possible to register them as short-term patients.

As the administration of the reception centre indicated in its reply, the reception centre is equipped for the disabled persons – there is a ramp and special equipment (wheelchair and other remedies). It is also planned to establish a separate facilities for minors and women. There is an experience in work with the families, that had infants. Taking into account the number of the asylum seekers each person with the special needs it are enough resources to ensure the satisfaction of these groups of the asylum seekers. The special identification of the persons is not performed, but the staff of the centre rely on their experience and on the individual wishes expressed by the asylum seekers.

Q.31. **About minors:**

Q.31. A. Till which age are asylum seekers considered to be minor?

Section 11 of the Asylum Law provides for, that a minor is a person who has not attained the age of 18 years. Section 1 of the Draft Law on Asylum in the Republic of Latvia contains the identical regulation.

Q.31. B. How is access of minor asylum seekers to the education system ensured? Is it at school or in case inside accommodation centres and can it be considered as similar to the conditions for nationals as requested by article 10, §1?

Q.31. C. Is access to education ensured not later than 3 months as requested by article 10, §2 (or after maximum one year if specific education for asylum seekers is provided) and till an expulsion decision is really enforced?

Q.31. D. Is specific education (like language classes) available for asylum seekers, in particular to facilitate their effective access to the education system of the reception Member State (see article 10, §2 which is an optional provision)?

B-D. Para. 2, Section 3 of the Law on the Protection of the Rights of the Child provides for that "The State shall ensure the rights and freedoms of all children without any discrimination – irrespective of race, nationality, gender, language, political party alliance, political or religious convictions, national, ethnic or social origin, place of residence in the State, property or health status, birth or other circumstances of the child, or of his or her parents, guardians, or family members.", as well as in the Section 18: "Guarantees for the rights of the child shall be as determined by the Constitution, this Law and other laws and regulatory enactments, as well as international agreements binding on Latvia." The legislative acts of Latvia provide for the principle of equality of all the children, so it concerns also the minor asylum seekers.

In accordance with Para 7, Section 11 of the Asylum Law the minor children of an asylum seeker or minor asylum seekers shall be ensured the acquisition of education in conformity with the laws in force, the Government shall determine the procedures by which education shall be ensured.

Para.6., Section 7 of the Draft Law provides for the similar:
"(6) Minor asylum seekers shall be ensured with opportunities to gain the education, in accordance with the procedure provided for by the normative acts regulating the area of education. The Cabinet of Ministers shall approve the procedure in accordance with which the education shall be ensured."

Para. 4, Section 32 of the Amendments to General Education Law provides for that such institutions as the reception centres, in which students aged up to 18 years permanently reside shall ensure the possibility for the acquisition of the basic education programme. It shall be mentioned that in accordance with the practice established the reception centre proposes the asylum seekers the elementary courses of Latvian language.

The Regulations of the Cabinet of Ministers of 9 August 2005 No 586 "On order in which the education is ensured for the minors-children of the asylum seekers or to the minors- asylum seekers" prescribe the necessary procedures by which education is to be ensured. They provide for that the basic and secondary education shall be ensured for asylum seekers. The education shall be ensured for asylum seekers in accordance with the procedures specified in the Regulations until the day of the granting or a refusal to grant refugee status or alternative status. The commencement of the acquisition of education shall be ensured for an asylum seeker within a period of 3 (three months) from the day when the minor or his or her parents submitted an application for the granting of refugee status or alternative status in accordance with the procedures specified in the Asylum Law. If the asylum seeker needs special education, the commencement of the acquisition thereof shall be ensured within a period of (1) one year. The reception centre for asylum seekers shall inform the Ministry of Education and Science regarding an asylum seeker for whom education shall be ensured not later than 1 (one) month after the placement of the asylum seeker in the centre. If the asylum seeker has a lawful basis for residing in the Republic of Latvia, the accommodation centre for asylum seekers shall inform the Ministry of Education and Science within a period of 1 (one) month from the day when an application regarding the granting of refugee status or alternative status was submitted. In the case referred to in Section 14 of the Asylum Law, a structural unit of the State Border Guard shall inform the Ministry of Education and Science within a period of one month from the day when the asylum seeker or his or her parents submitted an application regarding the granting of refugee status or alternative status.
The accredited educational institutions that implement licensed general education programmes at the relevant educational level and that are located near an accommodation centre for asylum seekers or, in accordance with Section 14 of the Asylum Law, near a structural unit of the State Border Guard shall ensure education. If an asylum seeker is detained in accordance with Section 14 of the Asylum Law, the acquisition of education shall be ensured on the premises of the structural unit of the State Border Guard. The Ministry of Education and Science shall determine, after co-ordination with the founder of an educational institution, the educational institutions that shall provide educational services to asylum seekers. Co-ordination with the founder shall not be necessary if a State educational institution provides educational services. The Ministry of Education and Science shall develop the necessary samples of subject programmes and methodological recommendations for the ensuring of educational opportunities for asylum seekers. The remuneration of teachers and services of the development and publication of teaching aids for the ensuring of education of asylum seekers shall be financed from the resources included in the basic budget of the Ministry of Education and Science for the current year. In order to receive a government grant for the provision of educational services to asylum seekers,

an educational institution shall enter into an agreement with the Ministry of Education and Science, including in the agreement the remuneration of teachers in accordance with the regulatory enactments regarding the work remuneration of teachers. The opportunity to acquire secondary education shall also be ensured after an asylum seeker has attained legal age (18 years).

In order to enrol an asylum seeker in an educational institution, the parents or an authorised representative of a minor person (if the minor person is not accompanied by his or her parents) shall submit to an accommodation centre for asylum seekers or, in the case referred to in Section 14 of the Asylum Law, to a structural unit of the State Border Guard a submission that is addressed to the head of the educational institution and a copy of a document certifying the status of the person, presenting the original. The head of the accommodation centre for asylum seekers or the structural unit of the State Border Guard shall send the submission and the copies of documents attached thereto to the head of the educational institution. If the submission regarding the enrolment of the asylum seeker in the educational institution is not submitted by the parents, such submission shall be submitted by the head of the accommodation centre for asylum seekers or the structural unit of the State Border Guard. The originals or copies of documents certifying the previously acquired education (if applicable) and a photograph of an asylum seeker shall be attached to a submission. If such documents do not exist, the parents or an authorised person of a minor person (if the minor person is not accompanied by parents) shall indicate the education previously acquired by the asylum seeker in the submission to the head of an educational institution. In evaluating the submitted documents and the study achievements of an asylum seeker (if necessary, teachers of subjects or other experts shall be invited), the head of an educational institution shall take a decision regarding the admission of the asylum seeker to a specific grade and shall inform the parents or the legal representative of a minor person (if the minor person is not accompanied by parents) regarding such admission. If necessary, the Academic Information Centre shall perform an expert-examination of education documents in accordance with the procedures specified in Section 11.[1] of the Education Law. Within a period of 1 (one month) after the taking of the decision, an educational institution shall develop an individual lesson plan for an asylum seeker, based on methodological recommendations and samples of subject programmes developed by the Ministry of Education and Science, for an adaptation period that shall not be longer than one school year. An educational institution shall co-ordinate a developed lesson plan with the founder of the educational institution and submit such plan for approval to the Ministry of Education and Science. Co-ordination with the founder shall not be necessary if educational services are provided by a State educational institution. Asylum seekers shall be ensured with the acquisition of the native language during the basic education stage in accordance with possibilities.

The children-asylum seekers living in the reception centre firstly have the introductory courses in Latvian language (provided by the centre) and then they study in the usual local school together with the other children living in the district where the centre is located.

Q.31. E. Are minors <u>in general</u> <u>accommodated</u> with their parents or with the person responsible of them? (see article 14, § 3)

Yes, minors in general are accommodated with their parents or with the person responsible of them.

Q.31. F. Do minors with special needs enumerated by article 18, §2 which is a mandatory provision, have access to appropriate mental health care and qualified counselling?

There were no such cases so far. In the absence of the special legal provisions for asylum seekers if such case would arise the overall system described in answer for Q.30 would apply.

Q.31. G. How and when is organised the representation of unaccompanied minors (guardianship, special organisation) and regularly assessed? (see article 19, §1 which is a mandatory provision)

Q.31. H. How is placement of unaccompanied minors organised (with adult relatives, a foster family, in special accommodation centres or other suitable accommodation)? (see article 19, §2 which is mandatory provision)

G-H

It shall be firstly mentioned that since the moment of the establishment of the asylum system in Latvia (1 January 1998) Latvia has had only 5 unaccompanied minors in the asylum procedure. Therefore hardly any significant practice, judicial or administrative case law can be use to illustrate the subject.

The situation in the area of guardianship for the unaccompanied minors has rapidly changed during 2006. Until 10 July 2006 the Board of Appeals for Asylum Seekers' Affairs was responsible for the appointment of the guardians before the termination of this state institution. Then the Office of Citizenship and Migration Affairs had the obligation to provide the representatives for the unaccompanied minor asylum seekers. The supervision of their activities was carried out by the Ministry of Justice. But Section 7 of the Amendments to the Asylum Law adopted on 7 June 2006 (came into force on 10 July 2006, the Official Journal, 98 (3466), 27.06.2006) provided for Para. 3, Section 11 of the Asylum Law to be amended and to be read as the following:

"If a minor is not accompanied by parents and wishes to submit a submission himself or herself, his or her rights and lawful interests shall be represented during the asylum procedure by the representative appointed by the Orphan's Court. The duties of the representative and his/her appointment procedure, the procedure of the granting and payment of the reward and the amount of the reward for the representative, as well as requirements for the representative shall be defined by the Cabinet of Ministers. Section 19 of the Amendments to the Asylum Law provides for the adding of new points 6 and 7 to the transitional provisions of the Asylum Law, that provides for the obligation of the Cabinet of Ministers to adopt the Regulations on the above-mentioned procedures related to the representative of the minor asylum seeker till 30 November 2006. In its turn the Office of Citizenship and Migration Affairs has the obligation to provide the representatives for the minor asylum seekers till 31 December 2006."

However it was decided by the responsible ministries not to introduce a special new legal procedure and system of guardians for the unaccompanied minors. Instead of the special governmental by-law, that would introduce the specific regulation of the guardianship, it was decided to amend the existing custody and guardianship system. The Amendments to the Asylum Law adopted on October 25, 2007 (entered into force on November 21, 2007) provide for the following changes to the Section 11 of the current Asylum Law:

"Para.3, Section 11 of the Asylum Law to be read as follows:

“(3) If a minor is not accompanied by parents and wishes to submit an application himself or herself, he or she shall be represented in personal and economic relationships during the asylum procedure by the orphan’s court or a guardian appointed by the orphan’s court, or by the head of the child care institution.” These Amendments will regulate the issue until the new Law On the Asylum in the Republic of Latvia will not be adopted and come into force.

Since January 1, 2007 and until November 21, 2007, when the above-mentioned Amendments to the Asylum Law entered into force, the whole procedure of the appointment of a guardian for an unaccompanied minor was regulated in accordance with the Law On Orphan’s Courts. Section 27 of this Law provided for the following:
“(1) If an Orphan's court detects that an orphan or a child who is left without parental care, or another person lacking capacity to act who is not a citizen of Latvia or a non-citizen of Latvia, lives or resides in the territory of the operation thereof, such Orphan’s court shall inform a competent guardianship or trusteeship authority of the State, in which the child or another person lacking capacity to act is a citizen, or a guardianship or trusteeship authority of the previous country of domicile without delay and shall request to evaluate the necessity to establish guardianship or trusteeship and to appoint a guardian or a trustee.
(2) An Orphan's court shall take a decision regarding the taking over of a foreign guardianship or trusteeship case, if a competent foreign guardianship or trusteeship authority has appointed a guardian or a trustee and has requested to take over the guardianship or trusteeship case.
(3) An Orphan’s court shall inform the guardianship or trusteeship authority of the citizenship state or the previous country of domicile of a child or another person lacking capacity to act regarding the taking over of a guardianship or trusteeship case.
(4) If an Orphan's court detects faults, deficiencies, abuse in the behaviour of a guardian or threats to life or health of a child, it shall take a decision regarding the suspension of the guardian from the fulfillment of the duties of a guardian and the appointment of an interim guardian or the placement of the child into a foster family or an institution of long-term social care and social rehabilitation and inform the foreign guardianship authority thereof without delay.
(5) If an Orphan's court detects faults, deficiencies, abuse or actions that harm the interests of a person lacking capacity to act, it shall take a decision regarding the suspension of the trustee from the fulfillment of the duties of a trustee and the appointment of an interim trustee and inform the foreign trusteeship authority thereof without delay.”

Until November 21, 2007 the practical solution was that, in accordance with his/her wish a minor asylum seeker may be accommodated together with his relatives. In case if guardian has been appointed, has guardian is accommodated in the room separate (next room) from unaccompanied minor in the reception centre.

Para.1.1., Article 20 of the Asylum Law inserted by the Amendments to the Asylum Law adopted on October 25, 2007 (entered into force on November 21, 2007) provides for the following, “Decision on the placing of the unaccompanied [by parents] minor in the reception centre for the asylum seekers, with guardian or in the child-care institution shall be taken by the orphan 's court, finding out the opinion of the [Refugee Affairs] Department. The decision shall be adopted, taking into account the interests of the [minor] person and his/her opinion in accordance with this person's age and maturity, and following such conditions:

1) an unaccompanied minor shall be placed together with the adult relatives,
2) children of one family shall not be separated except the cases when it is done in the interests of the children,
3) place of residence of the an unaccompanied minor shall be changed only in cases when it is in compliance with this person's interests."

The transitional period provides for, that until January 1, 2009, the orphan's court while taking the decision on the placing of the unaccompanied [by parents] minor, places the unaccompanied minor with the guardian or in the reception centre for the asylum seekers.

Section 7 of the Draft Law On the Asylum in the Republic of Latvia provides for the following:

"(1) Unaccompanied minor shall submit an application in accordance with the procedure provided for in Section 6, Paragraph one of this Law. His or her rights and legal interests during the asylum procedure shall be represented by a representative appointed by the orphan's court. The Cabinet of Ministers shall determine obligations of a representative, the procedure of appointment, the procedure of granting and payment of the remuneration, the amount of the remuneration.

(2) A capacitated citizen of Latvia, non-citizen of Latvia, a citizen of the member state of the European Union, member state of the European Economic Area or of Swiss Confederation, or a citizen of the third country, who is entitled to stay in the territory of Latvia for at least 2 years, if he or she has achieved the age of 25 years, speaks the state language, has at least the basic education.

(3) The following person cannot be a representative:
1) whose child care or custody rights have been removed;
2) who has been sentenced for committing an intentional crime;
3) who has been released from criminal liability, sentence or serving the sentence for committing an intentional crime;
4) who has been held criminally liable for committing an intentional crime against a person, but the criminal proceedings have been terminated due to the limitation period, settlement, clemency or amnesty;
5) who is the convicted, the accused or a suspect in criminal proceedings for committing an intentional crime;
6) who has violated the normative acts regulating the protection of child's rights;
7) who is under trusteeship;
8) who was recognised by the psychiatrist, the expert in narcotics or the family doctor as a person not capable to fulfill the obligation of the representative due to the health reasons.

(4) in order to apply for the status of representative, a person shall produce the personal identification documents and the documents certifying the education, the documents certifying the rights of foreigner or stateless person to stay in the Republic of Latvia to the orphan's court, in which territory the registered place of living of a candidate [is located], and to submit [to the same court], :
1) an application;
2) opinions of the family doctor, with which records of the patients a person is registered and who is in the health care for at least 6 months, of the psychiatrist and of the expert in narcotics regarding the health condition of a person.

(5) The employee specially trained for that task conducts the interview with the unaccompanied minor and prepares the decision on this person.

(6) Minor asylum seekers shall be ensured with opportunities to gain the education, in accordance with the procedure provided for by the normative acts regulating the area of education. The Cabinet of Ministers shall approve the procedure in accordance with which the education shall be ensured."

Q.31. I. How is the tracing of the family members of the unaccompanied minors organised? Are measures taken to protect confidentiality of information when necessary? (see article 19, §3 which is a mandatory provision)

In principle the legislation does not prescribe the provisions for the trace of the parents of minor asylum seekers, but only for the trace of the parents of a minor refugee or a minor person, who was granted the alternative status (subsidiary protection).

Para. 2-3, Section 74 of the Law on the Protection of the Rights of the Child provides for that the Custody Court together with the social assistance institutions of the self-government and the migration authorities carries out measures in order to find the parents of a minor refugee or a minor person, who was granted the alternative status (subsidiary protection) and to find out what possibilities exist for the child to return into the family. If it is not possible to find the parents, the child shall be granted the same care as any other minor, which does not have the care of his/her parents.

Section 29 of the Asylum Law indicates in relation to the refugees indicates that a minor refugee who is not married has the right to take in his or her mother and father (also adopters) who have arrived from a foreign country.

Section 38 of the Draft Law On the Asylum in the Republic of Latvia provides for the following:
"(1) A refugee and a person who has obtained alternative status are entitled to unite with family members who are abroad. A person who has obtained alternative status has the said right if he or she has stayed in the Republic of Latvia at least two years from granting of status.
(2) A minor refugee who has not concluded marriage and has not been accompanied by his or her parents shall be entitled to receive his or her mother and father who arrive from abroad.
(3 The Cabinet of Ministers shall provide procedure in accordance with which unification of a family, as stated in Paragraphs one and two of this Section, is performed."

8. EXCEPTIONAL MODALITIES OF RECEPTION CONDITIONS

Q.32. Apart from detention covered by the next question, are there exceptional modalities for reception conditions in the following cases and if yes, which ones and for how long are they applicable, knowing that they should be "as short as possible" (see article 14, §8)?

Q.32. A. Persons with specific or special needs, regarding in particular the period of assessment of those needs?

Q.32. B. Non availability of reception conditions in certain areas

Q.32. C. Temporarily exhaustion of normal housing capacities

Q.32. D. The asylum seeker is confined to a border post

Q.32. E. All other cases not mentioned in the directive (for instance urgent situation in case of a sudden high number of applicants outside a case of application of the directive on temporary protection).

A-E – There are no specific modalities of reception conditions provided by Latvia's legislation or practice.

Q.33. Detention of asylum seekers (we do not cover the situation of rejected asylum seekers detained for the purpose of their return) (see articles 6 §2, 7 §3, 13, §2 2nd indent and 14 §8 which implies that the directive is in principle applicable in case of detention):

Q.33. A. In which cases or circumstances and for which reasons[1] (identity verification in particular if the persons have no or false documents, protection of public order or national security, refugee status determination, way of entry into the territory, etc) can an asylum seeker be detained during the asylum procedure till his request has been finally rejected. Quote precisely in English in your answer the legal basis for detention of asylum seekers in national law.

Q.33. B. Has your member State adopted measures to transpose §3 of article 7 which is an optional provision? If yes, how has this provision been legally understood (is it a case of detention or an obligation to stay in and not leave a certain place?) and for which reasons can an asylum seeker be "confined" in such a place?

A-B In accordance with Section 14 of the Asylum Law :

(1) The State Border Guard has the right to detain an asylum seeker up to 10 days if:

1) the identity of the asylum seeker has not been ascertained;

2) there is a reason to believe that the asylum seeker will endeavour to misuse the asylum procedure;

3) there is reason to believe that the asylum seeker will not have, in accordance with the provisions of this Law, a legal basis to reside in the Republic of Latvia; or

3) it is necessary in the interests of State security and public order.

[1] Please specify if article 18 §1 of the directive on asylum procedures of 1 December 2005 following which *"Member States shall not hold a person in detention for the sole reason that he/she is an applicant for asylum"* is or not respected (even if it has not yet to be transposed).

(2) The State Border Guard shall detain an asylum seeker and a judge shall take a decision regarding the detention according to the procedures specified in the Immigration Law.
(3) The State Border Guard may present a submission regarding the extension of the time period of detention repeatedly, however, the total detention time period may not exceed the time period for the examination of an application.
(4) During detention an asylum seeker shall be accommodated in premises provided for this purpose separately from persons who are held on suspicion of committing a criminal offence:

1) at the border control point or at the State Border Guard territorial structural unit if an application in accordance with the procedures prescribed by Section 13 of this Law is being examined; and

2) at the State Border Guard territorial structural unit if an application has been submitted to the State Border Guard territorial structural unit.

Section 10 of the Draft Law On the Asylum in the Republic of Latvia provides for the almost identical regulation:
(1) The State Border Guard shall be entitled to detain an asylum seeker for a period not more than 10 days in case, if:
1) identity of the asylum seeker has not been established;
2) there is basis to deem that the asylum seeker tries to use the asylum procedure maliciously;
3) there is basis for the competent state authorities, including the State Border Guard to deem that the asylum seeker will not have legal basis to reside in the Republic of Latvia in accordance with the provisions of this Law;
4) there is basis for the competent state authorities, including the State Border Guard to deem that an asylum seeker causes the threat to the interests of the State security and public policy and security of the Republic of Latvia.
(2) The State Border Guard shall detain an asylum seeker and a judge shall make a decision about detention of an asylum seeker in accordance with the procedure provided for in the Immigration Law.
(3) The detention period may be prolonged, however total period of detention must not exceed the period of the asylum procedure.
(4) During detention, an asylum seeker shall be accommodated in special premises in a border checkpoint or territorial unit of the State Border Guard, separately from persons who are under suspicion for committing a criminal offence.

Article 18 §1 of the Directive on asylum procedures of 1 December 2005 is respected.

Q.33. C. Are there legally <u>alternatives</u> to detention, like obligation to report to the authorities, obligation to stay in a place, provision of a guarantor or of a financial guarantee?

There are no such alternatives.

Q.33. D. Which is the <u>competent authority</u> to order the detention of an asylum seeker? Explain if different authorities are involved to first take and later confirm the decision.

The State Border Guard has the right to order the detention of an asylum seeker. In case of the prolongation of the duration of the detention the court shall decide on this issue (Section 14 of the Asylum Law and Section 10 of the Draft Law On the Asylum in the Republic of Latvia). Please see the answer for A-B for details.

Q.33. E. For how long and till which stage of the asylum procedure can an asylum seeker be detained?

Please see the answer for A-B for details (Section 14 of the Asylum Law and Section 10 of the Draft Law On the Asylum in the Republic of Latvia).

Q.33. F. In which places (can we call them "closed centres"?) are asylum seekers detained (places in a special closed centres reserved only to asylum seekers, together with returnees like illegal aliens or even in a normal prison, in case within separated areas or with the other detainees)? Indicate if a difference has to be made following the location of the "closed centres" at the border or on the territory? Which is the authority managing those places and is it the same as the one in charge of reception conditions?

In accordance with Para.4, Section 14 of the Asylum Law during detention an asylum seeker shall be accommodated in premises provided for this purpose separately from persons who are held on suspicion of committing a criminal offence:

1) at the border control point or at the State Border Guard territorial structural unit if an application in accordance with the procedures prescribed by Section 13 of this Law is being examined; and

2) at the State Border Guard territorial structural unit if an application has been submitted to the State Border Guard territorial structural unit.

In practice if the asylum seekers are detained inside the country they are being placed into the detention centre for illegal migrants "Olaine". This detention centre is managed by the State Border Guard.

Para.4, Section 10 of the Draft Law On the Asylum in the Republic of Latvia provides for the almost identical regulation:

"4) During detention, an asylum seeker shall be accommodated in special premises in a border checkpoint or territorial unit of the State Border Guard, separately from persons who are under suspicion for committing a criminal offence."

Q.33. G. Does UNHCR and NGOs have access to the places of detention and under which conditions?

Yes, they have. The Asylum Law does not provide for any conditionalities for the UNHCR or NGOs to visit the asylum seekers in detention.

Q.33. H. What appeal(s) can asylum seekers introduce against the fact he is detained? Is article 18 of the directive on asylum procedures of 1 December 2005 following which *"Where an applicant for asylum is held in detention,*

***Member States shall ensure that there is a possibility of speedy judicial review"* respected (even if it has not yet to be transposed)?**

In accordance with Section 14 of the Asylum Law :

(1) The State Border Guard has the right to detain an asylum seeker up to 10 days if:

1) the identity of the asylum seeker has not been ascertained;

2) there is a reason to believe that the asylum seeker will endeavour to misuse the asylum procedure;

3) there is reason to believe that the asylum seeker will not have, in accordance with the provisions of this Law, a legal basis to reside in the Republic of Latvia; or

3) it is necessary in the interests of State security and public order.

(2) The State Border Guard shall detain an asylum seeker and a judge shall take a decision regarding the detention according to the procedures specified in the Immigration Law.

(3) The State Border Guard may present a submission regarding the extension of the time period of detention repeatedly, however, the total detention time period may not exceed the time period for the examination of an application.

(4) During detention an asylum seeker shall be accommodated in premises provided for this purpose separately from persons who are held on suspicion of committing a criminal offence:

1) at the border control point or at the State Border Guard territorial structural unit if an application in accordance with the procedures prescribed by Section 13 of this Law is being examined; and

2) at the State Border Guard territorial structural unit if an application has been submitted to the State Border Guard territorial structural unit.

Section 10 of the Draft Law On the Asylum in the Republic of Latvia provides for the almost identical regulation:

"(1) The State Border Guard shall be entitled to detain an asylum seeker for a period not more than 10 days in case, if:

1) identity of the asylum seeker has not been established;

2) there is basis to deem that the asylum seeker tries to use the asylum procedure maliciously;

3) there is basis for the competent state authorities, including the State Border Guard to deem that the asylum seeker will not have legal basis to reside in the Republic of Latvia in accordance with the provisions of this Law;

4) there is basis for the competent state authorities, including the State Border Guard to deem that an asylum seeker causes the threat to the interests of the State security and public policy and security of the Republic of Latvia.

(2) The State Border Guard shall detain an asylum seeker and a judge shall make a decision about detention of an asylum seeker in accordance with the procedure provided for in the Immigration Law.

(3) The detention period may be prolonged, however total period of detention must not exceed the period of the asylum procedure.

(4) During detention, an asylum seeker shall be accommodated in special premises in a border checkpoint or territorial unit of the State Border Guard, separately from persons who are under suspicion for committing a criminal offence."

As mentioned above, the judicial examination of the detention shall take place according to the procedures specified in the Immigration Law. Para 6-8, Section 55 of the Immigration Law

provides for that both initial decision on detention (made on the basis of the above-mentioned automatic submission of the materials by the State Border Guard) and the decision on prolongation of the duration of the detention may be appealed against within 48 hours since the reception of the copy of the judicial decision. The decision on the appeal made by the court is final and not subject to the further appeals. The submission of the appeal is not basis for the release of the person from detention.

Q.33. I. Is the directive on reception conditions considered to be in principle applicable to the places where asylum seekers are detained? In particular which information do they receive about their rights, which access do they have to legal advice and health care?

Yes, directive is applicable, including the information about the asylum seekers' rights.

Q.33. J. Apart from freedom of movement, what are the main differences between normal reception conditions and exceptional modalities for reception conditions in case of detention, knowing that they should be "as short as possible" (see article 14, §8)? If it is about closed centres, are the regulations of those places in line with the requirements of the directive (is article 13, §2, second indent of the directive following which "*Member States shall ensure that standards of living is met (…) in relation to the situation of persons who are in detention*" respected?).

There is no additional information in my responsibility concerning such differences.

Q.33. K. Are measures taken to avoid detention of asylum seekers with special needs (if yes, which ones?) or are special measures taken because of their needs?

Yes, in practice people with special needs (e.g. mothers with small children) are sent for the accommodation in the reception centre.

Q.33. L. Can minor asylum seekers be detained together with relatives? Can unaccompanied minor asylum seekers be detained? If yes, are there special measures which take into account that children are concerned?

Yes, minors can be detained together with their relatives. The unaccompanied minors can be detained as well. The Law on the Protection of the Rights of the Child shall be taken into account by the authorities. In case of complaints they may also complain to the State Inspection for Protection of Children's Rights, which main tasks will be to supervise and control implementation of the legal standards of child protection.

Q.33. M. In particular is article 10 regarding access to education of minors respected in those places?

Yes. In accordance with Para 7, Section 11 of the Asylum Law the minor children of an asylum seeker or minor asylum seekers shall be ensured the acquisition of education in conformity with the laws in force, the Government shall determine the procedures by which education shall be ensured. Para. 4, Section 32 of the General Education Law provides for that such institutions as the detention places similarly to the reception centres, in which students aged up to 18 years

permanently reside shall ensure the possibility for the acquisition of the basic education programme.

Before the implementation of the directive there were a few cases where the detained minors attended the local school near the detention centre. Now the legal procedure is established and therefore the responsibility for such education was shifted from the Ministry of Interior to the Ministry of Education and Science. In 2006 in accordance with the data provided by the Ministry of Education and Science in its letter of 24 August 2006 indicated that for that moment, in accordance with its data, there are no minor children of the asylum seekers or minor asylum seekers that would acquire the education in the detention or in the reception centre. The situation changed a little in 2nd half of 2006 – 1st half of 2007 - the Ministry of Education and Science in its letter of 9 May 2007 indicated that on 1 April 2007 3 former minor asylum seekers from Somalia, who were granted the alternative status (subsidiary protection) in the Republic of Latvia, study in one of the Latvian schools. No minor asylum seekers are studying in Latvia for the moment. In the same letter the Ministry indicated that in 2007 the budgetary line was provided in the state budget for the development of the programmes of the educatory courses and methodological recommendations for work with the asylum seekers in the Republic of Latvia.

Finally it shall be added the Ministry of Education and Science in its letter of 9 May 2007 indicated that it has drafted Amendments to the Education Law, which will replace the current Article 3 and will make the implementation of Article 27 of Directive clearer.

The Draft new Section 3 of the Education Law will be read as follows:

"The equal right to acquire education, regardless of their property or social status, race, nationality, gender, religious or political convictions, state of health, occupation or place of residence shall belong to:

1) citizen of Latvia,
2) non-citizen of Latvia,
3) citizen of the European Union Member States, State of European Economic Area or Swiss Confederation, who resides in the Republic of Latvia,
4) citizen of the third country, who has a valid residence permit,
5) minor child of the asylum seeker, the refugee or the person, who was granted the alternative status,
6) minor asylum seeker, refugee or person, who was granted the alternative status."

Q.33. N. How many asylum seekers are for the moment detained in your Member State? Which proportion does this represent in comparison of the total number of asylum seekers at the same moment?

On 1 May 2007 5 asylum seekers were detained. In total the applications of 8 asylum seekers are in the procedure of the examination for the moment.

9. ORGANISATION OF THE SYSTEM OF RECEPTION CONDITIONS

Q.34. Explain if the system of providing reception conditions is centralised or decentralised (which levels of government do provide practically reception conditions?) (do not confuse this question with question number 3 about the competence to make rules about reception conditions).

Provision of the reception conditions is centralised. The Office of Citizenship and Migration Affairs is a supervisory body of the Ministry of Interior of Republic of Latvia responsible for the operation of the reception centre.

Q.35. In case, are accommodation centres public or/and private (managed by NGOs? If yes, are the NGOs financially supported by the State?)

The only existing reception centre "Mucenieki" is public one and is managed by the Office of Citizenship and Migration Affairs.

Q.36. In case, how many accommodation centres are there in your Member State (distinguish in your answer between public and private centres)?

There is one asylum seekers reception centre in Latvia. It is planned to establish the second public centre near the city of Daugavpils in the future. However for the moment the capacity of the only centre allows to cope with the number of asylum seekers successfully.

Q.37. Is there in the legislation a plan or are there rules in order to spread the asylum seekers all over the territory of your Member State to avoid their concentration in some areas like big cities or to share the costs of their reception between central, regional and local authorities?

There is no such plan. Taking into account the number of the asylum seekers - 83 asylum seekers stayed in the centre since 1998, 1 asylum seeker stayed on 1 May 2007, such a plan is not necessary for the moment.

Q.38. Does a central body representing all the actors (like NGOs) involved in reception conditions exist? Does it play a consultative role for the State authorities, a coordination role for the actors or any other role?

No such body exists.

Q.39. **Q.39. A. Which is the body in charge of guidance, monitoring and controlling the system of reception conditions as requested by article 23 which is mandatory provision? Include in your answer which is the competent ministry (Interior, Social affairs, etc) for reception conditions?**

The Office of Citizenship and Migration Affairs is body under the supervision of the Ministry of Interior of Republic of Latvia responsible for the operation of the reception centre. The special system of guidance, control and monitoring of reception conditions that would differ for the overall system of guidance, control and monitoring of work of the different bodies of the Ministry of Interior, has not been introduced.

Section 7 of the State Administration Structure Law provides for that the Government shall implement subordination in the organisation of state administration (institutional subordination) and in the performance of the functions of state administration (functional

subordination). The Government shall implement subordination through the intermediation of an particular Minister. The Ministers shall implement subordination directly or through the intermediation of an institution of direct administration, its unit or official. The subordination shall be implemented in the form of control or supervision.

The Ministry of Interior exercise the control over the Office of Citizenship and Migration Affairs in the form of the supervision. The supervision means the rights of higher institutions or officials to examine the lawfulness of decisions taken by lower institutions or officials and to revoke unlawful decisions, as well as to issue an order to take a decision in case of unlawful failure to act. Therefore taking into account the above-mentioned law and the fact that there is only 1 public reception centre with the average 8-10 asylum seekers staying there per year this system could be considered as the sufficient one for the moment.

Q.39. B. Has your Member State (like the Czech Republic did recently) approved quality standards (not necessary legally binding) for housing services (for instance about the number of persons per bedroom on the basis of its size, number of accessible toilets, bathrooms, showers and washing machines per number of persons, existence of common rooms with radio, television, newspapers, books, computers, accessibility of telephone, existence of recreative rooms for children,…) to be respected in particular in accommodation centres?

No, there are no quality standards approved for housing services.

Q.39. C. How is this system of guidance, control and monitoring of reception conditions organised?

Q.39. D. Does the body in charge of guidance, control and monitoring produce reports about the level of reception conditions? If yes, how frequently and are they public?

Answer on Q.C-D. The Office of Citizenship and Migration Affairs is a supervisory body of the Ministry of Interior of Republic of Latvia responsible for the operation of the reception centre. The special system of guidance, control and monitoring of reception conditions that would differ for the overall system of guidance, control and monitoring of work of the different bodies of the Ministry of Interior, has not been introduced. Therefore there are no special reports about the level of reception conditions.

Q.40. **Q.40. A.** What is the total number of asylum seekers covered by reception conditions for the last year for which figures are available (see article 22 obliging Member States to calculate those statistics about which we also asked the Commission to require them from Member States for mid June)?

In total 83 asylum seekers stayed in the centre since 1998 till 1 May, 2007, currently-on 1 May 2007 1 asylum seeker stays in the centre.

In accordance with the information provided by the Refugee Affairs Department of the Office of Citizenship and Migration Affairs, the reception conditions following from the Directive were provided in 2005-2007 to the following numbers of the asylum seekers:

In 2005

Country	In total	Male	Female
Iraq	6	4	2
Belarus	1	1	0
In total	7	5	2

Division by ages

Age	In total	Male	Female
0-4	2	2	0
5-9	1	1	0
10-14	1	0	1
40-44	2	1	1
50-54	1	1	0
In total	**7**	**5**	**2**

In 2006

Country	In total	Male	Female
Tchechnya	4	3	1
Afganistan	1	1	0
Belarus	1	1	0
Kyrgizstan	1	1	0
Georgia	1	1	0
Nationality not identified	7	5	2
In total	**15**	**12**	**3**

Division by ages

Age	In total	Male	Female
5-9	2	2	0
15-19	4	3	1
20-24	1	0	1
25-29	6	5	1
35-39	2	2	0
In total	**15**	**12**	**3**

In first 4 months of 2007 (on 1 May, 2007)

Country	In total	Male	Female
Tchechnya	1	1	0
Armenia	1	1	0
Belarus	1	1	0
Kazakhstan	1	1	0
Ukrain	1	1	0
Iraq	1	1	0
Mongolia	2	1	1
In total	**8**	**7**	**1**

Division by ages

Age	In total	Male	Female
25-29	1	1	0
30-34	1	0	1
35-39	1	1	0
40-44	2	2	0
45-49	1	1	0
60-64	1	1	0
90-94	1	1	0
In total	**8**	**7**	**1**

Q.40. B. What is the total budget of reception conditions in euro for the last year for which figures are available?

In 2005, 2006 and 2007 the annual total budget for the reception system was of the same amount - LVL 87 723 (EUR 125 318, 56).

Q.40. C. What is the average cost of reception conditions in euro per asylum seeker for the last year for which figures are available?

It is not possible to provide the average cost since the budget for the reception does not provide for such a detailed calculation. However please take into account that in 2007 LVL 87 723 (EUR 125 318, 56) are available for the reception centre, where 200 inhabitants can be house and only 1 asylum seekers stayed or continue staying in this centre on 1 May 2007.

Q.40. D Are the costs of reception conditions of asylum seekers supported by the central/federal or federated government or are they shared with regional and/or local authorities?

All the costs are covered from the state budget without involvement of the local self-government.

Q.40. E. Is article 24 § 2 of the directive following which "*Member States shall allocate the necessary resources in connection with the nationals provisions enacted to implement this directive*" respected?

Yes, Article 24 § 2 of the directive is respected.

Q.41. **Q.41. A.** What is the total number of persons working for reception conditions?

There are 5 workers in the reception centre and 5 – in the Refugee Affairs Department of the of the Office of Citizenship and Migration Affairs.

Q.41. B. How is the training of persons working in accommodation centres organised? Does it take into account specific needs of unaccompanied minors when relevant as well as the gender dimension? (see article 14 §5, 19 § 4 and also 24 §1 which are mandatory provisions)?

At average per year 3 study visits of the workers of the reception centre to the other EU Member States take place.

Q.41. C. Are there rules about the deontology of persons working in accommodation centres, in particular on confidentiality?

In accordance with the Section 7 of the Asylum Law all the employees of Latvia's institutions involved in asylum procedures do not have the right to disclose information on asylum seekers, except in the cases listed in the Asylum Law. An employee guilty of disclosure of information shall be held liable in accordance with procedures prescribed by law. Information on an asylum seeker may be disclosed if the person concerned has given written consent for disclosure or if law enforcement institutions in accordance with procedures prescribed by law have requested the information. Information regarding asylum seekers shall not be provided to his or her state of citizenship or if the asylum seeker is a stateless person – to his or her previous country of domicile.
Section 5 of the Draft Law On the Asylum in the Republic of Latvia provides for the almost identical regulation:
(1) Staff of institutions involved in the asylum procedure shall not be entitled to disclose any information about an asylum seeker including the fact of submitted application, with the exception of the cases stated in Paragraph two of this Section. Employee who is guilty for disclosure of such information shall be held subject of disciplinary, administrative and criminal liability.
(2) Information about an asylum seeker may be disclosed only if the relevant person has given his or her written consent or if such information has been requested by competent law enforcement institutions or foreign institutions, if compliant with the international obligations of the Republic of Latvia.
(3) By gathering information about a person, competent authorities shall not obtain information from persecutors stated in Section 24 of this Law, in such a way in order the persecutors would

get informed directly about a fact that the particular person is an asylum seeker, refugee or person who has obtained alternative status, as well as, if such a way would harm the health of the person and his or her dependants or freedom and safety of his or her family members who currently reside in the country of origin.

The issues of the deontology are covered by the general legal acts on the conduct of the civil servants and state employees. There are no specific legal acts, that would target the staff of the reception centre.

10. IMPACT OF THE DIRECTIVE

Legal impact of the transposition of the directive:

Q.42. Specify if there are or not big problems with the translation of the directive in the official language of your Member State and give in case a list of the worst examples of provisions which have been badly translated? (please note that this question has in particular been added to the questionnaire concerning the new Member States)

No, there were no such problems encountered so far.

Q.43. Where there precise legal rules on reception conditions for asylum seekers before the adoption of the norms of transposition of the directive (if yes, specify what the nature of those rules was (legislation, regulation, administrative instructions,…)?

Yes, since the reception of the asylum seekers was regulated by the same Asylum Law that was later amended to transpose the provisions of the Directive, and by the governmental regulations issued on the basis of the delegation provided for by the Asylum Law. In addition 2 (two) administrative acts cover some practical issues of the work of the only reception centre in Latvia- the issues of the internal order of the reception centre are regulated by the Regulations of the Office of Citizenship and Migration Affairs «On the Internal Order of the Asylum seekers' Reception Centre «Mucenieki»» and by the Order of the Head of the Office of Citizenship and Migration Affairs of 24 July 2003 No 16/08 « On the approval of the Statute of the Asylum seekers' Reception Centre «Mucenieki and of the description of the positions».
The current Asylum La will be replaced by the future Law On the Asylum in the Republic of Latvia.

Q.44. Did the legal rules applicable to reception conditions become more clear, precise, coherent or detailed with the adoption of the transposition norms (for instance do you now have after the transposition one basic text dealing with reception conditions instead of numerous different texts in the past?

The legal regulation on some issues, e.g. like expenses for hygiene and first necessity goods, education of minors-asylum seekers etc., become more precise. The number of the legislative acts regulating the reception issues has not decreased, since the number of the governmental

regulations, covering the different issues of the reception increased – e.g. The Regulations of the Cabinet of Ministers of 9 August 2005 No 586 "On order in which the education is ensured for the minors-children of the asylum seekers or to the minors-asylum seekers"(The Official Journal, 126 (3284) 11.08.2005), the Regulations of the Cabinet of Ministers of 19 December 2006 No 1046 «Procedure of organisation and financing of the medical care», (The Official Journal, 208, 30.12.2006.) and the Amendments to the Regulations of the Cabinet of Ministers of 20 January 2004 No 44 "Regulations on the work permits for the foreigners" (The Official Journal, 147 (3305) 15.09.2005) and other legal acts were adopted or the existing ones were amended (pleased see the complete list in the beginning of the questionnaire and in the bibliography).

Q.45. Did the transposition of the directive imply important changes in national law or were the changes of minor importance? In case, list the most important changes that have been introduced.

Technically speaking, most of the provisions of the Asylum Law related to the reception of the asylum seekers were already in compliance with the requirements of the Directive upon its entry into force. Therefore only Para.1 and 2, Article 3 of the Asylum Law were changed in order to ensure compliance with Articles 9 and 15 of the Directive and a few governmental regulations were adopted or amended:

At the same time the substantial new issues were introduced or made more precise:

- order in which the education is ensured for the minors-children of the asylum seekers or to the minors-asylum seekers was approved,
- regulations on the work permits for the foreigners were introduced,
- procedure of organisation and financing of the medical care for asylum seekers was made more precise,
- the amount of expenses for acquisition of hygiene and first necessity goods for the asylum seeker and the procedure of cover of these expenses was defined at the level of the governmental regulations.
- the current text of Draft Law on Asylum in the Republic of Latvia does not change for the substantial change of the existing reception system in the future with only one exception. In accordance with the future Law On the Asylum in the Republic of Latvia during examination of an application, the person shall be deemed an asylum seeker, with the exception of the case when, based on Para.1, Section 19[522], the complaint of a person concerning the rejection of the repeated application is submitted. In case of such complaint a person shall not be deemed an asylum seeker and this complaint will not have a suspensive effect. The current Asylum Law does not provide for such an exception.

[522] Section 19 regulates the issues of the examination of a case in which the final decision was already made. Para.1.-2 of Section 19 of the Draft Law On the Asylum in the Republic of Latvia provides for the following:
" (1) In case, if after the final decision has been made in an action, the Department has established new facts or if the asylum seeker has submitted a repeated application to the Department, which contains new information related to granting refugee or alternative status, the Department shall make decision about acceptance of the application for examination or disregarding the application. If the repeated application contains sufficient information to make a previously mentioned decision, interview may also not be held."

Political impact of the transposition of the directive:

Q.46. Explain briefly if there has been an important debate about the transposition of the directive (in particular in the Parliament, but possibly also in the government, between political parties, including in medias, etc; underline in case the main points which have been discussed or have created difficulties)

There were no such important debates, that probably may be explained by the overall very low number of the asylum seekers and refugees in Latvia (in comparison with the other EU Member States). Since January 1998 till May 2007 10 persons were granted the refugee status and 18 persons were granted the alternative protection in Latvia.

Q.47. **Did the transposition of the directive contribute to make the internal rules stricter or more generous? In particular, did your Member State use the occasion of the transposition to abolish more favourable provisions of national law? Does your Member State still have rules more favourable than the provisions of the directive (if yes, try to give the more important examples).**

It is hard to evaluate whether transposition of the directive contribute to make the internal rules stricter or more generous. However Latvia still maintain certain elements of the reception conditions, that are more favourable than the Directive allows:

- There are no provisions for refusal of reception conditions for unreasonably late applications,
- In relation to the reductions or withdrawals of the reception conditions Section 6 of the Regulations of the Cabinet of Ministers of 8 February 2005 No 119 "On the amount of expenses for acquisition of food, as well as hygiene and first necessity goods for the asylum seeker and the procedure of cover of these expenses" provide for that if an asylum seeker has left the reception centre without the permission of the administration of the centre and has been absent for more than 48 hours, the head of the reception centre for asylum seekers has the right to take a decision not to pay expenditure for food to him or her for the time period of his or her absence. No other reductions or withdrawals are possible in accordance with the current asylum legislation,
- Asylum seekers are not requested to refund the spent financial means for the reception conditions by the authorities if it appears that they have resources,
- The Draft Law on Asylum in the Republic of Latvia does not practically change the existing system.

11. ANY OTHER INTERESTING ELEMENT

Q.48. What are in your view the weaknesses and strengths of the system of reception conditions in your Member State?

The strengths:

- good co-operation between the authorities involved in the reception process- the State Border Guard and the Office of Citizenship and Migration Affairs,
- well –equipped reception centre,
- good theoretical knowledge of the reception standards and best practices by the staff of the reception centre, that is being regularly improved by means of communication with the colleagues from another EU Member States.

The weaknesses:

- the reception system is established, however few issues are not yet tested by practice (e.g. employment of the asylum seekers and the overall system of education of the asylum seekers),
- there is no compulsory mechanism that would require an asylum seeker to observe the rules of the internal order of the reception centre,
- in case of the sudden large increase in numbers of the asylum seekers, the problem may arise concerning hiring the specially qualified staff.

Q.49. Mention any good practice in your Member State which could be promoted in other Member States

The application of the provisions of the reception Directive transposed by the Sections of the Asylum Law and of the Draft Law on Asylum in the Republic of Latvia to those asylum seekers, who are in the Dublin procedure, can be considered as the good practice.

Q.50. Please add here any other interesting element about reception conditions in your Member State which you did not had the occasion to mention in your previous answer.

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QUESTIONNAIRE FOR THE NATIONAL REPORT ON THE IMPLEMENTATION OF THE DIRECTIVE :
RECEPTION CONDITIONS OF 27 JANUARY 2003

IN: LITHUANIA

by
Lyra Jakulevičienė
Associate Professor, Mykolas Romeris University
adriai@takas.lt

12 November 2007

ABREVIATIONS

EFR – European Refugee Fund
FRC – Foreigners' Registration Centre
LRC – Lithuanian Red Cross
MOH – Ministry of Health of the Republic of Lithuania
MOI – Ministry of Interior of the Republic of Lithuania
MSSL – Ministry of Social Security and Labour of the Republic of Lithuania
NGO – non governmental organisation
RRC – Refugee Reception Centre
RSD - refugee status determination
SBGS – State Border Guard Service
SGBV - sexual and gender based violence

1. NORMS OF TRANSPOSITION

Q.1. 1. NORMS OF TRANSPOSITION

Q.1. Identify the main norm of transposition (indicate the title, date, number, date of entry into force and references of publication into the official journal) and indicate its legal nature (legislative, regulatory, administrative); indicate in your answer if this norm was only devoted to the directive or if it has been included in a more general text and indicate in that case by quoting precisely the numbers of the provisions adopted to transpose the directive.

A.1. There is no particular legislative act that has been adopted with the sole purpose of transposing the Directive. The following legal acts contain provisions transposing the Directive:
1) Law on Legal Status of Aliens No. IX-2206 of 29 April 2004 as amended on 28 November 2006 (hereafter – Aliens' Law)[523]. It entered into force on 30 April 2004. The following provisions are relevant for transposition of the Directive: Articles 2(21-22), 2(30-31), 32, 67(3), 68, 71, 73(2), 75, 76(2-3),78, 79, 81(3), 84(7-8), 91(2-3), 112-119, 122-123, 136-140, 142.

[523] Published in „State News" No. 73-2539, 2004.

2) Government Resolution of the Republic of Lithuania No. 103 of 29 January 2001 on Approval of Order and Conditions for Temporary Accommodation of Aliens in the Foreigners' Registration Centre, as amended on 8 April 2003 by the Government Resolution No. 417 (hereafter – Order on Accommodation of Aliens at FRC).[524] The following provisions are relevant for transposition of the Directive: Paragraphs 2.2-2.3, 4.2., 4.5, 9-16, 17.15-17.16, 18, 22-23, 29-30, 35, 40. This document was repealed on 4 October 2007 and replaced by the Order of the Minister of Interior on Approval of the Order and Conditions for Temporary Accommodation of Aliens in the Foreigners Registration Centre No. 1V-340 of 4 October 2007 (hereafter – Order on Accommodation of Aliens at FRC)[525].
3) Order of the Minister of Social Security and Labour No. 20 of 13 February 2002 on Approval of the Order on Conditions and Order of Accommodation of Foreigners in the Refugee Reception Centre, Organisation of Foreigners' Occupancy and Application of Disciplinary Measures, Implementation of Foreigner's Right to Receive Monthly Allowance for Minor Expenses and Compensation for Use of Public Transport (hereafter-Order on Accommodation of Foreigners at RRC).[526] It entered into force on 21 February 2002.

Q.2. List by order of importance by using numbers (1, 2, 3) the others norms of transposition if there are more than one (indicate for each norm the title, date, number and references of publication into the official journal; include in your answer the administrative measures taken to ensure implementation of the directive and of the transposition norms like regulations, administrative circulars, special instructions,…)

A.2.

1. Law on Health Insurance No. I-1343 of 21 May 1996 (new version of the law of 1 January 2003).[527]
2. Order of the Head of the State Border Protection Service at the Ministry of Interior No. 4-719 of 29 December 2005 on Approval of the Statute of the Foreigners' Registration Centre to the State Border Protection Service at the Ministry of Interior.[528]
3. Order of the Minister of Social Security and Labour on Approval of the Statute of the Refugee Reception Centre No. A1-234 of 18 August 2005.[529]
4. Order of the Minister of Social Security and Labour and the Minister of Interior No. 1V-31/A1-28 of 2 February 2005 on Approval of the Order on Accommodation of Unaccompanied Minor Asylum Seekers in the Refugee Reception Centre.[530]
5. Order of the Minister of Interior No. 1V-361 of 15 November 2004 on Approval of Order for Examination of Foreigners' Applications for Asylum, Adoption of Decisions and the Implementation thereof as amended on 4 May 2007.[531]

[524] Published in « State News » No. 11-322, 2001 and No. 35-1472, 2003.
[525] Published in "State News" No. 105-4326, 11/10/2007.
[526] Published in „State News" No. 17-702, 2002.
[527] Published in „State News" No. 123-5512, 21 December 2002.
[528] Published in « State News » No. 3-88, 10 January 2006.
[529] Published in « State News » No. 102-3795, 23 August 2005.
[530] Published in Lithuanian at : « State News » No. 20-641, 11 February 2005.
[531] Published in Lithuanian at : « State News » No. 168-6196, 20 February 2004.

6. Order of the Minister of Health No. V-836 of 28 October 2005 on Hygiene Provisions and Rules in the Foreigners Registration Center.[532]

Q.3. Explain which level of government is competent to adopt the legal norms on reception conditions for asylum seekers (specify in particular in case of a federal or regional State, if it is the federal/central power or the components; in case, specify below when it is impossible for you to answer a question because it is about the competence of the components and it is impossible for you to gather reliable information about all of them)

A.3. Ministry of Social Security and Labour (MSSL) and Ministry of Interior (MOI) of the Republic of Lithuania are two institutions in the Government that are competent for reception related legislation (orders, circulars, etc.).

Q.4. Explain the legal technical choices done to transpose the directive (comment on the nature and level of the norms used to do the transposition: legislative, regulatory, administrative like instructions, etc). Add any other element about the technique of transposition of the directive which is interesting for the implementation of Community law.

A.4. The directive is transposed through the legislation mainly (Aliens' Law and Orders on accommodation of foreigners in reception centres).

Q.5. Mention if there is a general tendency to just copy the provisions of the directive into national legislation without redrafting or adaptation them to national circumstances? If yes, give some of the worst examples and explain if there is a risk that those provisions remain unapplied or will create difficulties of implementation in the future.

A.5. There is no general tendency to just copy the provisions of the directive according to the author of this Report.

Q.6. Have all the texts necessary to ensure the effective implementation of the new rules of transposition been adopted, prepared or at least foreseen in the future (for example a regulation completing a new law and the necessary instructions telling the administration how to apply the new rules)?

A.6. According to the Government plans, no further legislation is envisaged for the transposition of the Directive. However, certain articles of the directive still need transposition, in particular as concerns ensuring access to employment, treatment appropriate to the needs of vulnerable persons in the FRC and mechanisms for identification of these persons, access to reception conditions for persons staying outside the accommodation centres, as well as establishment of a system for monitoring the implementation of the directive.

[532] Published in Lithuanian at: „State News" No. 135-4863, 2005.

2. BIBLIOGRAPHY

Q.7. Has an in-depth preparatory study been made public about the changes at the occasion of the transposition? If yes, thanks for trying to provide us a copy *(please contact to answer this question adequately the body and person who was responsible for the preparation of the transposition of the directive in the public administration).*

A.7. No in-depth preparatory study has been made public about the changes at the occasion of the transposition. The Ministry of Interior (Migration Department) has only carried out a short comparative analysis of Lithuanian legislation and provisions of the Directive. However the so called table of conformity is not publicly available.

Q.8. Quote any recent scientific book or article published about the directive, the transposition rules or the question of reception conditions for asylum seekers in general (answer even if this literature is only available in your language and provide the complete title in your language (without translation) with all references; indicate author, title, in case name of periodical, year and place of publication).

A.8. To the knowledge of the author of this Report, no such scientific book or article about the Directive or reception conditions for asylum seekers has been published recently. The author has written herself about the Directive in a very short manner in a recent monograph "Refugee Law" (Vysockienė, Lyra, Pabėgėlių teisė, Baltijos kopija, Vilnius, 2005), as well as in short within the research paper "Main Constrains in Implementing the EU Asylum Acquis in Lithuania" (Jurisprudencija, No. 4(82), Vilnius, 2006, pp. 32-39). Material of international conference that took place on 10 June 2005 in the Parliament of Lithuania ("Refugee Protection: International Standards and its Implementation in Lithuania") are available at: http://www3.lrs.lt/pls/inter/w5_show?p_r=158&p_d=43760&p_k=1

Q.9. Quote any interesting decision of jurisprudence based on the implementation of the new rules of transposition of the directive (indicate references of publication if any)?

A.9. No jurisprudence is yet available on application of reception conditions in Lithuania. However, there has been one case in 2005 when refusal to provide reception conditions at the Foreigners' Registration Centre to a Chechen asylum seeker were appealed to the Ombudsmen. No outcome of this complaint is available to the author of this Report.

3. GENERAL INFORMATION ABOUT THE SYSTEM OF RECEPTION CONDITIONS

The purpose of the following two questions is to help the reader to understand easily and quickly the system of reception conditions in your Member State and also to avoid that you have to repeat general elements in other parts of the questionnaire. ***Please do not write more than one or maximum two pages and do not include large historical developments.***

Q.10. Describe in general the system of reception conditions in your Member State (in particular which are the main actors in charge of reception conditions?)

A.10. There are two main bodies responsible for reception conditions of asylum seekers in Lithuania: the Ministry of Social Security and Labour and the Ministry of Interior of the Republic of Lithuania. These bodies supervise the institutional setup of reception and are responsible for adoption of legislative acts in this field. The institutional setup for reception of asylum seekers includes two reception centres, which are subordinate under different government institutions. Article 79 of the Aliens' Law regulates the functions of the both centres. Foreigners' Registration Centre, located some 50 kilometres away from the capital, belongs to the State Border Protection Service under the MOI. It is designed to accommodate asylum seekers from the moment of their arrival to Lithuania until departure. Also, it is used for accommodation and detention of foreigners, who arrive to Lithuania illegally. The maximum capacity of this centre is 200 asylum seekers and 300 illegal migrants. The Centre was established in 1996 and until 2001 was used as detention centre for illegal migrants. The Centre was reorganised in 2001 and since then two internal regimes are applied there:

a) detention regime (for foreigners who entered/stayed in the country illegally, rejected asylum seekers and asylum seekers detained on the basis of court decision);

b) open regime (for asylum seekers (except unaccompanied minors), whose applications are examined in substance (up to 3 months, but period could be extended for addition 3 months). Article 79(4) provides that "The Foreigners' Registration Centre is an agency intended for keeping the aliens detained on the grounds specified in this Law and for accommodating the asylum applicants, carrying out investigation as regards personal identity of aliens detained or accommodated at the Centre, the circumstances of their entry into the Republic of Lithuania, managing record-keeping of aliens, carrying out expulsion of aliens from the Republic of Lithuania. The Foreigners' Registration Centre shall be set up, re-organised and liquidated by the Minister of the Interior ». According to the authorities,[533] the Centre does not meet the requirements for reception of refugees. In particular, this concerns persons with special needs (e.g. female and children). The following issues are mentioned as those in need of improvement in the Centre: development of social infrastructure, especially accommodation premises, services of a psychologist, professional staff who could work with persons with special

[533] Multinanual Programme for European Refugee Fund in Lithuania (2005), approved by the Order No. A1-110 of the Minister of Social Security and Labour of 14 April 2006, paragraph ii. The same is mentioned in the ERF programme for 2007, approved by the Order No. A1-107 of the Minister of Social Security and Labour of 18 April 2007, paragraph ii and v.

needs (children, female, and trauma victims), kindergartens, vocational training, and Lithuanian language courses.

Another body – Refugee Reception Centre under the MSSL, located some 120 kilometres from the capital, was previously used to accommodate asylum seekers for the second stage of the asylum procedure, when substantial examination of the claim was taking place. However since 2004 the Centre has been used for:

- accommodation of unaccompanied minors asylum seekers from their entry to Lithuania until departure or transfer to the municipality (should a legal status is granted in Lithuania);
- accommodation of persons granted asylum in order to implement social integration measures during the initial phase of the integration period.

The Centre was established in 1996 with the support of UNHCR and meets high standards of housing according to the author if this Report. The capacity of the Centre is 200 persons, but in emergency situations up to 300 persons could be housed there. Article 79(5) of the Aliens' Law provides that « The Refugee Reception Centre is a budgetary agency providing social services, intended for accommodating aliens who have been granted asylum in the Republic of Lithuania and unaccompanied minor aliens as well as for implementing social integration of the aliens who have been granted asylum. The Refugee Reception Centre shall be set up, re-organised and liquidated by the Minister of Social Security and Labour ».

The FRC is not a social establishment, thus social services are mainly provided by non-governmental organisations (hereafter - NGOs) operating in the centre under special projects (e.g. Caritas, Lithuanian Red Cross), funded by UNHCR and other donors/programmes (e.g. ERF). On the contrary, the RRC is a social establishment thus involves a number of social services provided by the centre itself, while the activities of NGOs are supplementary there.

Both centres mentioned above are government-run ones and there are no private reception centres for asylum seekers in the country. Most of the asylum seekers are accommodated in the reception centres during the asylum procedure; however the legislation envisages a possibility to stay in private (with relatives, friends, etc.) under certain conditions. The authorisation for that is granted by the Migration Department to the MOI (hereafter-Migration Department). In practice, a few asylum seekers stay outside the centres.

Asylum seekers enjoy reception conditions from the moment of arrival until a final decision on their asylum application is reached (however some reception conditions are also provided beyond final decision pending deportation from the country in case of a negative decision). Reception conditions do not differ depending on nature of asylum application (refugee status or complementary protection) and generally include: accommodation and food, primary health care (free of charge, guaranteed by the state), coverage of transportation costs related to examination of asylum claim, legal counselling and legal assistance (free of charge, guaranteed by the state), secondary education (for minors), interpretation services (free of charge, guaranteed by the state), notary services (free of charge, guaranteed by the state), monetary compensation for the use of public transport and monthly allowance for minor expenses. The rights of asylum seekers,

including those related to reception are stated in Article 71(1) of the Aliens' Law. It reads as follows:

"During the processing of an asylum applicant's application for asylum in the Republic of Lithuania the applicant shall have the following rights:

1) to be accommodated at the Foreigners' Registration Centre or Refugee Reception Centre and to use the services provided by them;

2) to manage and have notarised documents relating to the processing of the application for asylum;

3) to make use of legal assistance guaranteed by the state;

4) to receive compensation for the use of means of public transport where the use is linked to the processing of the application for asylum;

5) to make use of the interpreter's services free of charge;

6) to receive free immediate medical aid and social services at the Foreigners' Registration Centre or Refugee Reception Centre;

7) to receive a monthly monetary allowance in the manner laid down by the Minister of Social Security;

8) to apply to and meet representatives of the Office of the UNHCR;

9) other rights that are guaranteed under international treaties, laws and other legal acts of the Republic of Lithuania ».

It further provides that « asylum applicants who are minors shall have the right to study at schools of general education and vocational schools » (Art. 71(2)).

However, the Aliens' Law also states the obligations of asylum seekers pending status determination. The obligations include the duty to:

1) observe the requirements of the Constitution, laws and other legal acts of the Republic of Lithuania;

2) fulfil the duties prescribed for the asylum applicant by the decisions of the Migration Department and the court;

3) allow the performance of health screening;

4) during the processing of the asylum application submit all the available documents and realistic full explanation of the motives of the application for asylum, the asylum applicant's personality as well as the circumstances of his entry and stay in the Republic of Lithuania;

5) declare to the Foreigners' Registration Centre, Refugee Reception Centre or territorial police agency in writing in free format the resources and assets owned in the Republic of Lithuania within three days from the granting of temporary territorial asylum and the resources received pending the examination of the application for asylum in the Republic of Lithuania within one day from the receipt thereof.

Q.11. A. Explain if you have <u>different types and levels of reception conditions following the different stages of the asylum procedure</u> (this implies that you have to give briefly the necessary explanations about the asylum procedure). Make if relevant for reception conditions a distinction between the following procedural stages: determination of the responsible Member State on the basis of the Dublin II regulation, special procedures at the border (including transit zones in airports), accelerated procedures, admissibility procedures, eligibility procedures and the different possibilities of appeals (suspense or not) against a refusal of the asylum

request. Indicate what the main differences of reception conditions are between the different stages (if necessary by detailing between the different elements of reception conditions, in particular housing) and explain what the evolution of reception conditions is following the different stages of the procedure.

A.11. A. There are no particular differences in applying reception conditions following different stages of the asylum procedure, except that in practice some reception conditions are difficult to guarantee in some places (e.g. at the border or local migration services). However, substantial problems exist for those asylum seekers who arrived to the country legally and are staying in private. According to the legislation, they are not eligible for reception conditions (e.g. monthly allowance) and in practice social authorities refuse access to reception conditions for such persons (e.g. in one case of an asylum seeker from Belarus in spring 2006 the payment of monthly allowance was refused with the motivation that it is paid only to asylum seekers in the reception centres).

The stages of the asylum procedure as they relate to reception conditions are described below:

a) Dublin procedures

If a decision is taken that another EU Member State is responsible for examination of the asylum application, asylum seeker is granted temporary territorial asylum, accommodated in the FRC and issued a registration document. All reception conditions will apply to such a person. This situation lasts until the asylum seeker is transferred to another Member State (Art. 73(2) of the Aliens' Law). Temporary territorial asylum is also granted to an asylum seeker who is returned under the Dublin procedure from another Member State (Art. 76(2) of the Aliens' Law), thus the same regular reception conditions apply.

b) border procedures

Border procedures may be applied before granting of temporary territorial asylum in case of: application of a safe third country of safe country of origin notion or in case of manifestly unfounded claims. Such procedure may take place within 48 hours from submission of asylum application (it may be extended for additional 24 hours in case of a manifestly unfounded claim and application of a safe country of origin notion) (Art. 76(3) of the Aliens' Law). All reception conditions will apply except that in practice there are no proper conditions to accommodate asylum seekers at the border or keep them for a longer period of time and provide with adequate services.

c) accelerated procedures

In case of manifestly unfounded claims' procedure the application shall be examined within 48 hours from the moment of having determined it as manifestly unfounded. The procedure may be extended to 7 days (Art. 81(3) of the Aliens' Law). During accelerated procedures the same reception conditions apply.

d) regular procedures

These procedures last up to three months and may be extended for the same period of time. Usually, the procedure takes approximately the time indicated in the laws and delays are rare due to a small number of asylum seekers.

e) appeals' procedures

During appeals' procedures reception conditions apply under the same rules as during the rest of asylum procedure.

B. Indicate precisely for which stage(s) of the asylum procedure the answers on reception conditions you give below are valid.

B. If not specifically indicated, the reception conditions explained below relate to the whole asylum procedure, i.e. from the moment of submission of the asylum application until the final decision is taken.

4. GENERAL RULES ON RECEPTION CONDITIONS

Q.12. A. Are material reception conditions provided in kind, in money or in vouchers or in a combination of these elements (see article 13, §5 which is an optional provision)? Distinguish between the different elements (housing, food, clothes, health, transportation, pocket money,…). If reception conditions are provided in money (in general or in some cases, for instance when no places are anymore available in accommodation centres), indicate the precise amount given to the asylum seekers. Indicate in your answer what is provided in general and if there are exceptional cases. Specify in your answer if reception conditions are different from the general system of social aid for nationals or aliens and if yes, if and when (which stage of the asylum procedure) can asylum seekers have access to the general system of social aid?

A.12. A. Material reception conditions are provided in a combination of in kind and money assistance. In kind assistance covers housing, health care, clothes and food. Money is given to compensate for travel expenses that are directly related to the examination of asylum claim (e.g. visit to the migration authorities for interview, etc.), as well as some pocket money is being issued. Asylum seekers are provided with 25 Litas (approximately 7 Euro) as a monthly allowance for minor expenses. Combined assistance in money and in kind is provided with regard to food, which according to the Order on Accommodation of Foreigners at the RRC may be (paragraph 10.5):

- served centrally in the canteen of the reception centre or,
- paid as food allowance or,
- covered through provision of food stuff in the value corresponding to the amount assigned for nutrition.

The inhabitants of the Centre shall be provided with conditions to make their own food individually in self-service kitchens established in the Centre (paragraph 10.6 of the Order). The asylum seekers in this Centre are also provided (depending on possibilities) with clothes and footwear, as well as bedding clothes and personal hygiene items (paragraphs 10.7-10.8 of the Order).

The Order on Accommodation of Foreigners in the FRC provides that adult persons are being provided with food three times per day and children – four times

per day in accordance with the standard physiological norms established by the Government (paragraph 42). Also, whenever possibility exists, inhabitants of the Centre may be provided with footwear and clothes (paragraph 43). It happens sometimes in practice that such possibilities do not exist, thus NGOs providing assistance (Lithuanian Red Cross and Caritas) have to complement, but their resources are very limited. There are conditions created in the Centre for various occupational activity, e.g. library, sports' competitions, cultural events and learn about healthy life (paragraph 46). Inhabitants of the Centre are responsible for the maintenance of the living space and the territory of the Centre (paragraph 47).

Reception conditions are different from those applicable to the nationals. Allowances paid to asylum seekers fall out of the general system of social aid, as there are specific rules established for asylum seekers (Para 7 of Art. 7(1) of the Aliens' Law specify that pending examination of their claim asylum seekers have the right to receive monthly financial allowance in accordance with the order determined by the Minister of Social Security and Labour). Asylum seekers can have access to the general system of social aid throughout the period of asylum procedure only as concerns the minimum health care system which is used equally for all.

B. Can the reception conditions in kind, money or vouchers be considered as sufficient "to ensure a standard of living adequate for the health of applicants and capable of ensuring their subsistence" as requested by article 13, §2 of the directive (which is a mandatory provision but leaves a certain space to Member States)? In order to help to assess the respect of this rule when reception conditions are provided in money, include if necessary in your answer points of comparison with the minimum amount of social aid guaranteed for nationals in your Member State.

A.12. B. The nutrition system is centralised in the Foreigners Registration Centre, it does not always secure religious or cultural dietary requirements. Very limited amount is assigned to nutrition – 4 Litas per day (1.2 Euro). The medical unit, located in the Foreigners Registration Centre, provides only necessary health care services, while access to the hospitals and services of specialists is available only in emergency cases. Neither psychological, nor mental health services are practically available in the Centre. The amount of 25 Litas (approx. 7 Euro) is really modest, thus asylum seekers sometimes are not able to satisfy their basic needs (e.g., proper food, health care, clothing, and school necessities).
Minimum amount of social aid provided monthly to nationals in Lithuania is 90% of state supported income (which is 205 Lt/month (approx. 60 Euro). The average amount paid to an asylum seeker is 25 Lt/month ((approx. 7 Euro).

5. PROCEDURAL ASPECTS

Q.13. **A. Does the national legislation specifically provide that a request for international protection is presumed to be under the Geneva Convention unless explicitly requested otherwise? (see article 2, b which is a mandatory provision)**

A.13. A. National legislation (paragraph 2(9) of the Order on Examination of Asylum Claims) provides that the request for asylum shall be considered a request in any form to grant refugee status or complementary protection. Thus it covers both forms of protection.

B. Explain if the scope of application of reception conditions is extended to other asylum seekers than refugees in the sense of the Geneva Convention, in particular to persons asking for subsidiary protection or to other forms of protection like humanitarian statuses (see article 3, § 4 which is an optional provision)? If not, explain briefly which the differences between these special regimes and the directive are.

A.13. B. No differences exist, because there is a single asylum procedure and the same reception rules apply to all asylum seekers.

C. Are there specific provisions in national law for reception conditions in case of diplomatic or territorial asylum requests submitted through a diplomatic or consular representation (see article 3, §2 which is an optional provision)?

A.13. C. There are no provisions in national legislation dealing with requests submitted through a diplomatic or consular representation. Lithuanian legislation does not envisage submission of asylum application at its diplomatic or consular representation.

Q.14. **Are reception conditions available as from the moment once asylum application is introduced? How is article 13, §1 which is mandatory legally understood?** Do asylum seekers have to satisfy any other condition in order to get reception conditions?

A.14. Reception conditions are available from the moment of submission of the asylum application. Asylum seekers do not have to satisfy any other condition in order to get reception conditions.

Q.15. **Explain when reception conditions end, for instance after refusal of the asylum request** (include in your answer the link with the right of appeal against a decision of refusal of the status, in particular the question of its suspense effect)

A.15. Asylum seekers' specific reception conditions end with the adoption of a final decision. However, some reception conditions end with expulsion or departure of the foreigner from the country (e.g. accommodation at the FRC, primary health

care). There is a right of appeal against a negative decision on asylum, if adopted under regular procedure it has suspense effect. Reception conditions will apply to the same extent during the appeals' procedure.

Q.16 Are there special rules or practices regarding reception conditions in case of successive applications for asylum introduced by the same person?

A.16. No special rules exist for reception conditions in case of successive applications.

Q.17[534]. Information of asylum seekers about their rights and obligations in terms of reception conditions, in particular about established benefits (see article 5 which is too large extend a mandatory provision; do not confuse this question with the information to be provided to asylum seekers about the asylum procedure):

A. Are asylum seekers informed, and if yes about what precisely?

A.17. A. Leaflets are available for asylum seekers about reception conditions in the FRC and RRC.

B. Is the information provided in writing or, when appropriate, orally?

A.17. B. Information is provided in writing in the form of informational leaflets. Also, they are informed about their rights and obligations in an oral form by the staff of reception centres. Asylum seekers should sign upon the receipt of such information. The Order on Accommodation in the FRC provides that a person, who is being accommodated in the Centre, shall be informed (confirmed by the personal signature) in a language understood by him about the internal rules of the Centre, his rights and obligations (paragraph 16). Order on Accommodation in the RRC provides the same (paragraph 4). Asylum seekers have even to sign the agreement concerning use and maintenance of material goods that are entrusted to them.

C. Is that information in general provided in a language understood by asylum seekers? Specify the list of languages in which it is available

A.17. C. The rules require it to be provided in a language understood by the asylum seeker. But in practice unofficial interpreters from the asylum seekers themselves are being used in the FRC in order to communicate this information to an asylum seeker. According to the information provided by the administration of the FRC, information is provided in Russian, Chechen, English, French, Pashto, Dari and Arabic languages.

D. Is the deadline of maximum 15 days respected?

[534] To be answered with the help of UNHCR local office competent for your Member State or to be completed on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

A.17. D. The deadline is respected, because an asylum seeker is informed upon arrival to either of the centres.

Q.18[535]. Information of asylum seekers about the existence of organisations or groups promoting their interest and defending their rights (see article 5 which is to a large extend a mandatory provision):

A. **Is there a list of organisations dressed by the authorities and if yes is it comprehensive? Is this in particular the case about the possibilities to get legal assistance and health care?**

A.18. A. The brochure prepared by the Migration Department in addition to state institutions provides addresses and telephones of Lithuanian Red Cross, UNHCR and IOM. No other lists are available.

B. Is the information provided to the asylum seekers, and if yes, in writing or, when appropriate, orally?

A.18. B. Leaflets issued by the Migration Department are available at the centres, but not clear if the officials regularly hand out these leaflets to asylum seekers. The lawyers of the LRC inform asylum seekers about this during the first meeting.

C. Is that information in general provided in a language understood by asylum seekers? Specify if possible the list of languages in which it is available.

A.18. C. The brochure prepared by the Migration Department is available in Lithuanian, English and Russian.

D. How many organisations are active in that field in your Member State?

A.18. D. Lithuanian Red Cross provides legal and social assistance, Caritas provides social assistance. No other organisations are active.

Q.19. Documentation of asylum seekers (see article 6):

A. What kind of document is delivered to the asylum seeker? Explain the legal value of this document (just a certification of the status as asylum seeker or also prove of identity?) (see §1 of article 6 which is a mandatory provision)

A.19. A. The legislation provides (Art. 2(30) of the Aliens' Law) that an asylum seeker should be provided with a registration card (certificate), which means "a document certifying the status of the asylum applicant or, in the cases where the identity of the asylum applicant has been established in the manner laid down by the Minister of the Interior, his identity and his right to temporary refuge in the

[535] To be answered with the help of UNHCR local office competent for your Member State or to be completed on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

territory of the Republic of Lithuania ». According to the Order on Examination of Asylum Applications such registration document shall be issued within 48 hours from the moment of granting temporary territorial asylum (paragraph 103). All documents of an asylum seeker are being deposited in the personal file pending the examination of asylum application. If the applicant is granted subsidiary protection, identity documents are returned to him. Thus this document replaces identity documents. The document should contain information on whether the identity of the person is established. The registration card is issued to asylum seekers irrespective of age. The validity of the document is 3 months from the moment of issuance of Migration Department decision on temporary territorial asylum. The data in the document are entered on the basis of data from the identity documents of the applicant and in the absence of those, on the basis of data obtained during asylum interview (paragraph 106).

B. Are there situations or specific cases in which another equivalent document or even no document is issued? (in particular is there an exception for "procedures to decide on the right of the applicant legally to enter the territory" as made possible by §2 of article 6)?

A.19. B. Such procedures for deciding on the right of the applicant legally enter the territory exist. During this procedure that may take up to 48 hours (with a possibility of 24 hours extension) no document may be issued.

C. For how long is this document in principle valid and is it necessary to renew it after a certain period?

A.19. C. Up to 3 months from the date of Migration Department's decision on temporary territorial asylum. May be renewed if (paragraph 108 of the Order on Examination of Asylum Claims):
a) not suitable for use;
b) has been lost;
c) expired.
Renewed document may be valid for up to 3 months from the Migration Department's decision to extend temporary territorial asylum (paragraph 110).

D. What is the deadline for the delivery of that document? Is the mandatory deadline of 3 days set by article 6, §1 respected[536]?

A.19. D. 48 hours. The deadline is usually respected.

E. Is it possible for an asylum seeker to get a travel document for serious humanitarian reasons (see §5 of article 6 which is an optional provision)?

[536] To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

A.19. E. Only Laisser-passer in case of transfer of an asylum seeker to another Member State under the Dublin procedure, which is meant for single travel to another EU MS (Art. 75(1) of the Aliens' Law).

F. Is there a central system of registration of asylum seekers and is it or not separate from the registration of aliens? If yes, describe it briefly (content) and indicate in particular if it is an electronic database.

A.19. F. Yes, the central system of registration of asylum seekers exists. It is part of the Aliens' Register, which is available electronically. The managing authority of the Register is the Ministry of Interior. The following data is included in the Register about the foreigner when it is related to asylum procedures: personal code (if the foreigner was assigned it), name, surname, citizenship, gender, date of birth and place of birth, place of residence, country of origin, family status, data of submission of asylum application, motives of asylum application, situation of asylum seeker in third countries, belonging to a particular clan (only with the consent of the person), religion (only with the consent of the person), place of residence in the country of origin, mother tongue and other languages known by the foreigner, education, profession, address of last place of residence, data about last workplace, available personal documents, date of crossing state border, date of departure from the country of origin, travel route, all decisions related to the asylum procedure, including court decisions and other information (paragraph 18 of the Statute of the Aliens' Register, approved by the Government Resolution No. 1049 of 4 September 2000).

Q.20. Residence of asylum seekers[537]:

A. Is in principle an asylum seeker free to move on the entire territory of your Member State or only to a limited part of it and in case, which part? (see article 7, §1 which is a mandatory provision)

A.20. A. According to Art. 112 of the Aliens' Law the freedom of movement of foreigners may be restricted on account of state security, public order, health of the population, prevention of criminality or protection of other persons' rights and freedoms. The asylum seeker is in principle free to move on the entire territory of the country, except the border areas where a special regime applies. Asylum seekers are either accommodated at the reception centres or detained there. In the later case asylum seekers' freedom of movement is restricted. Also, asylum seekers accommodated in the Foreigners' Registration Centre without the restrictions on the freedom of movement have to follow the order for leaving the centre and returning to it. This order may be considered as practically restricting the freedom of movement, because asylum seekers can leave the centre only for 24 hours (paragraph 18.3 of the Oder on Accommodation of Aliens in the FRC). Leaving for longer period is not possible. Therefore if an asylum seeker wishes to visit his relatives staying in another part of the country, this becomes not possible due to

[537] Nota bene: the case of detention is covered by other questions and should be ignored under this question.

the very short time limit for leaving the centre. Those who are detained cannot leave.

B. About the <u>place of residence (see §2 of article 7)</u>: explain to which extend the person is free to choose her residence and if this depends of the stage of the asylum procedure (for instance before and after admissibility); if there are constraints limiting the choice, explain which ones and their reasons (for instance processing of application, attribution of reception conditions,…).

A.20. B. The person is not free to choose the place of residence irrespective of illegal or legal entry to the country. This is being decided by the Migration Department. Migration Department takes a decision on accommodation of asylum seeker in cases of legal entry after an asylum application has been submitted and after it has been ascertained that Lithuania is the responsible country for the examination of asylum claim. Migration Department would not take a decision on accommodation, if an asylum seeker is detained or an alternative measure to detention is assigned by the court's decision (Art. 79(1) of the Aliens' Law). The Department also takes decision on accommodation, if a court does not find detention grounds in a particular case. In other words, all irregularly coming asylum seekers are first brought to the court, which has 3 options:
1) To issue detention order (accommodation in the FRC under detention regime);
2) To apply alternative measure to detention (accommodation in the FRC under open regime);
In fact, by taking one of the above decisions the court also solves the accommodation issue.
3) To reject the detention request if no detention grounds have been found.
In the last case, the Migration Department takes the decision on accommodation. Return under Dublin is considered in practice as legal entry. Thus, Migration Department also takes the decision on accommodation as concerns this category of asylum seekers.
Furthermore, if a person arrived to Lithuania legally, Migration Department may decide not to accommodate such a person in the FRC, but to allow him stay in the place of the person's choice, if the asylum seeker so requests (Art. 79(2) of the Aliens' Law). The constrain relating to stay in private may be lack of social services for asylum seekers that are concentrated in reception centres. Asylum seekers staying outside the reception centres do not have access to social services and in this respect their treatment is discriminatory.

C. About the <u>place of reception (meaning where the asylum seeker has to stay to benefit from reception conditions) (see § 4 of article 7)</u>: explain which are the general rules about the determination of this place (to which extend are the decisions determining the place taken individually and do they take into account the personal situation of the asylum seeker?) and to which extend the person is free to choose it and if it depends of the stage of the asylum procedure (for instance before and after admissibility); if there are constraints limiting the choice,

explain which ones and their reasons (for instance attribution of reception conditions, processing of the application,…).

A.20. C. The place of residence is the same with that of reception in case of stay in the reception centres. While taking the decision on accommodation the Migration Department does not deal with the issue of reception conditions. Decision to allow staying in the place of the asylum seekers' choice does not take into consideration whether reception conditions exist there or not, because it is based on the wish of an asylum seeker to stay there. In practice, there are serious constrains accessing almost all services, while some services are at all not available (e.g. monthly allowance) for those asylum seekers that stay outside the reception centres. Decisions on the place of stay of asylum seekers are taken individually.

D. If all asylum seekers are not placed in accommodation centres because of capacity limits, explain how the persons are distributed between accommodation centres and other accommodation facilities (which authority takes the decisions, on the basis of which elements, can that decision be appealed by the asylum seeker,…)[538]

A.20. D. There have been no situations in practice so far that the capacities of the reception centres have been exceeded, because the number of asylum seekers is rather small. The legislation does not also envisage the situations on how to deal with the number of asylum seekers who are in excess of the reception capacities.

E. How can an asylum seeker ask to leave temporarily the place of residence or of reception or an assigned area? How is the individual AND impartial character of the decision ensured? (see §5 of article 7 which is a mandatory provision)

A.20. E. There is an internal order established by the FRC, which requires that before leaving the centre the asylum seeker needs to inform the head of the centre or a person authorised by him. The person may leave the centre only for a very short period of time and needs to report every 24 hours (which means that they have to physically return to the centre and only after that they are allowed to leave the Centre for another 24 hours). Asylum seekers who are detained may not leave the territory of the centre (paragraph 18.3 of the Order on Accommodation of Aliens' in the FRC).

Q.21. A. Do rules on reduction or withdrawal of reception conditions exist in internal legislation and if yes in which cases (mention in particular if there are cases not foreseen by article 16, § 1 and 2 which are optional provisions)? Distinguish in your answer between cases of reduction and withdrawal and explain which conditions can be reduced and if access to emergency health care is always ensured as requested by article 16, §4, last sentence.

[538] To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

A.21. A. The rules on reduction and withdrawal of reception conditions exist in internal legislation. It is regulated by the Aliens' Law and the Order on Accommodation of Asylum Seekers in the RRC. Art. 84(7) of the Aliens' Law provides that: "Suspension of examination of an asylum application shall entail suspension of provision of services and assistance for the asylum applicant in implementing the rights indicated in paragraphs 1 and 2 of Article 71 of this Law (reception conditions; authors' remark). Provision of services and assistance shall be resumed after the disappearance of circumstances on the grounds of which it was suspended ». The Law further provides that « Decisions to suspend and to resume the provision of services and assistance to the asylum applicant in implementing the rights indicated in paragraphs 1 and 2 of Article 71 of this Law shall be taken according to the procedure established by the Minister of Social Security and Labour » (Art. 84(8)). The Order on Accommodation of Asylum Seekers in the RRC provides that the money allowance may be reduced up to 75% for a period of up to 3 months or terminated if the person constantly violates the internal rules of the centre and fails to comply with the duties (the duties include: complying with internal rules and laws, allowing the doctor to inspect the state of health, submit all documents and actively participate in the status determination procedure, manage household and clean the territory of the centre, do not interfere with the rights and lawful interests of other inhabitants of the centre), as well as for unauthorised leave from the centre without the permission of the administration for more than 3 days (paragraph 20 of the Order). Also, the Order on Implementation of the Right to Receive Monthly Subsistence Allowance provides in Paragraph 4 the same rule for reduction of monthly allowance up to 75% or its' withdrawal for a period of up to 3 months if an asylum seeker fails to comply with the duties that are imposed on him; as well as for the violation of internal rules of reception centres; unauthorised leave from the reception centres for a longer period than 3 days.

In addition, there is a possibility to request the asylum seeker to refund the related reception expenses of the state if it transpires that he had sufficient means for reception at the time when these basic needs were being covered for him (Art. 71(5) of the Aliens' Law).

Access to emergency health care is ensured despite the withdrawal of reception conditions.

B. Has article 16, §2 dealing with refusal of reception conditions for <u>unreasonably late applications</u> for asylum been transposed by your Member State (or was this case already applicable before transposition)? Are there cases in practice[539]?

A.21. B. Such provision does not exist in Lithuanian legislation.

[539] To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

C. How is it ensured that decisions of reduction or withdrawal are taken individually, objectively AND in particular impartially (for instance through and independent arbitrator) (see article 16, §4 which is a mandatory provision)?

A.21. C. The only guarantee for that the decisions of reduction or withdrawal are taken individually, objectively and impartially is the possibility to appeal against such a decision to the founder of the Refugee Reception Centre (in this case the MSSL). Decisions to suspend and renew provision of reception conditions are adopted in accordance with the order of the MSSL (Art. 84(8) of the Aliens' Law). The right of appeal is provided in Paragraph 22 of the Order on Accommodation in the RRC. No other guarantees exist because the decision is taken by the director of the centre. The Foreigners' Registration Centre also applies sanctions on the basis of the decision by the director of the Centre (Section VI of the Order on Accommodation of Aliens' in the FRC). It may be appealed to the founder of the Centre (SBGS).

D. Is statement 14/03 adopted by the Council at the same moment as the directive respected (see the documentation pack you received at our meeting in Brussels in April)?

A.21. D. The statement is generally respected, but some concerns exists in relation to the treatment of vulnerable persons and their accommodation in the Foreigners' Registration Centre, which is not a social establishment and lacks the features or a reception centre as such. Refer to A.30(B) below for more details.

E. Are there already administrative appeal decisions or judgements on cases of reduction, withdrawal or refusal which have been taken, and if yes, what has been the outcome[540]?

A.21. E. No such administrative appeals have been submitted yet and thus judgements are also not available on reduction, withdrawal or refusal of reception conditions. On one occasion, petition against refusal to provide reception conditions to a Chechen national by the FRC was submitted to the Ombudsmen. The outcomes of the petition are not known to the author of this Report. If the examination of an appeal is suspended (e.g. due to absence from the centre), the services provided in relation to reception conditions, is also suspended. It is renewed when circumstances giving rise to suspension cease to exist (Art. 84(7) of the Aliens' Law). Decisions to suspend or renew provision of reception conditions are adopted in accordance with the order of the MSSL (Art. 84(8) of the Aliens' Law). Paragraphs 18-22 of the Order on Accommodation of Aliens at the RRC regulates these measures.

[540] To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

Q.22. **A. <u>Appeal</u> against a negative decision relating to the granting of benefits or based on article 7 (see article 21 which is a mandatory provision): indicate against which decision an appeal can be introduced, describe the system of appeal in general and include in particular in your answer the information given to asylum seekers about possibilities of appealing, deadline for appealing, if the appeal has or not a suspense effect, if there are different steps (for instance first an administrative appeal and in particular if the guarantee of an appeal before a judicial body in the last instance is respected)?**

A.22. A. The Aliens' Law envisages that all decisions taken under this Law may be appealed in accordance with the procedure determined by the laws of Lithuania, unless provided differently in the Law (Art. 136). There is a possibility to appeal to the administrative court against any decision taken on this basis of this Law, including as concerns reception conditions. Also, with regard to decisions taken by the Head of the RRC on reduction or withdrawal of monthly subsistence allowance, such decisions may be appealed to the founder or the centre, the MSSL. The MSSL decision could further be appealed to the administrative court under the general procedure described in the laws.
Foreigners Registration Centre is in the sphere of authority of the State Border Guard Service under the Ministry of Interior. Thus generally asylum seekers might complain to the Head of the State Border Guard Service or to the Minister of Interior. The information on appeals is provided to asylum seekers usually through information leaflets that are available in the reception centres and also through the counselling by lawyers who regularly visit the centres.

B. Explain which are the possibilities for asylum seekers to benefit from <u>legal assistance</u> when they introduce such an appeal (see article 21, §2 which is a mandatory provision but leaves space to Member States)?

A.22. B. All asylum seekers have access to legal assistance, which is provided by the Lithuanian Red Cross lawyers and paid by the state. Legal counselling is regularly provided in the reception centres by the LRC lawyers, assistance in preparing and submitting the appeal may be provided, as well as representation in administrative institutions and the courts.

C. Are there already administrative appeal decisions or judgements which have been taken and if yes, which are the main important ones?

A.22. C. No such administrative appeals decisions or judgements have been submitted or adopted so far.

D. Is a mechanism of <u>complain for asylum seekers about quality of receptions conditions</u> in general (even if they are not personally concerned) organised? If yes, before which authority? Is it linked to the system of guidance, control and monitoring of reception conditions (see below question n° 39)?

A.22. D. Asylum seekers can write complains to the management of the centres, to the founder institutions of the centres (e.g. MSSL for the RRC and the Head of SBGS for the FRC). However no special procedure for submitting complains exists. Asylum seekers can also complain through UNHCR, the representative of which can always take it up with the administration of the centres or higher authority. Appeals against decisions taken should be submitted within a period of 14 days from the receipt of the decision that is appealed (Art. 138 of the Aliens' Law). Suspension of decision once appeal is submitted is envisaged only by adoption of a separate court's decision (Art. 139(3) of the Aliens' Law).

6. RIGHTS AND OBLIGATIONS OF ASYLUM SEEKERS

Q.23. **Family unity of asylum seekers: define how a family is defined in relation with article 2, (d) which is a mandatory provision and explain how housing is provided to a family (see articles 8 which is a mandatory provision but leaves space to member States and 14, §2, (a) which is a mandatory provision).**

A.23. Family members of the asylum seeker are defined in Article 2(22) of the Aliens' Law, which reads as follows: "family members of an asylum applicant means the spouse of the asylum applicant or the person who has concluded with him registered partnership agreement, the children of the couple or of one of them (adopted children irrespective of whether they have been adopted as defined under the laws of the Republic of Lithuania) below the age of 18 years, on condition that they are unmarried as well as the father, mother or guardian of the minor asylum applicant, in so far as the family already existed in the country of origin and during the examination of the asylum application the family members are present in the territory of Lithuania. » In accordance with the Order on Accommodation of Foreigners in the FRC, whenever possible, the members of the same family are accommodated together in a separate premise (paragraph 4.4).

Q.24. **A. How is housing of asylum seekers organised: describe the system in general and indicate in particular what is the most frequently system used (see article 14, §1 which is a mandatory provision but leaves space for Member States; distinguish between accommodation centres, private houses and apartments, hotels places or other premises).**

A.24. A. Asylum seekers can be housed (accommodated) in the following places on the territory of Lithuania:

- Border control posts until decision authorising entry to the territory is being taken (within first 48 hours from the submission of asylum application). However, the border control posts are not equipped to house asylum seekers or provide any other reception conditions. The same situation is at local migration services. This situation is among the primary priorities of the Government, which established in the Multi-annual Programme for European Refugee Fund (ERF) that it needs to be urgently improved.

- Foreigners' Registration Centre (not a social establishment, but the place where asylum seekers, illegal migrants are housed and also detained. Different regimes of housing are applied in this centre: within the territory of the centre asylum seekers are housed separately from all other foreigners, while detained asylum seekers are housed separately from other asylum seekers and also from other detained foreigners). This centre accommodates all asylum seekers (except unaccompanied minors) for the whole period of the asylum procedure. The capacity of the centre is 500 persons (this includes 200 asylum seekers), but not all of it is used to house the asylum seekers. However, according to the UNHCR assessment, the realistic figure is only 100 asylum seekers as a maximum number that can be appropriately accommodated in the FRC. At times, when around 100 asylum seekers were accommodated in the FRC, the number of persons per room was reaching 10-12, families were separated and no space for separation of children with infectious diseases was available.
- Refugee Reception Centre (it is a social establishment, which hosts only those asylum seekers who are unaccompanied minors). The maximum capacity of the centre is 200 persons (300 persons in emergency situations).
- Private accommodation (this housing is used if an asylum seeker has entered the country legally and is willing to stay in private, in this case he may be allowed to stay in private by the decision of the Migration Department on accommodation).

B. What is the total number of available places for asylum seekers?[541] Distinguish in your answer between accommodation centres, private houses and apartments, hotels or other premises.

A.24. B. The total number of available places in state run centres is about 400 persons in normal circumstances (500 in emergency situations). There are no privately owned reception centres, thus no other number can be provided.

C. Is this number of places for asylum seekers sufficient in general or frequently insufficient?[542]

A.24. C. Given the current numbers of asylum seekers arriving annually to Lithuania, the present reception capacities can be considered sufficient, as the maximum capacity of the centres is never filled.

D. Are there special measures foreseen in urgent cases of a high number of news arrivals of asylum seekers (outside the case of application of the directive on temporary protection)?

[541] To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.
[542] To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

A.24. D. No such special measures are foreseen in urgent cases of a high number of new arrivals of asylum seekers.

Q.25. Accommodation centres **(important note: all the following questions are about open and not closed centres where asylum seekers are detained which are covered by another question)**

A. Are there different categories of accommodation centres, for instance depending of the stage of the procedure (admissibility and eligibility)?

A.25. A. No differentiation is made as concerns accommodation during the asylum procedure except the accommodation at border control posts in case of illegal arrival pending authorised admission to the territory (which is to be taken within the 48 hours from the submission of an asylum application). All asylum seekers (except unaccompanied minors) are accommodated in the Foreigners' Registration Centre for the whole period of the asylum procedure. Different treatment is only for asylum seekers who arrived to the country legally – they are allowed to stay in private if they wish so.

B. Is there a legal time limit for accommodation in a centre after which the asylum seekers have access to private houses or apartments or is this limit linked to a stage of the asylum procedure?

A.25. B. No such time limit exists.

C. Is there a general regulation about the internal functioning of those centres and the rights and duties of the asylum seekers? If yes, is this general regulation applicable to public and private centres? If not, are the centres supposed to adopt an internal regulation and does a central authority have or not a kind of control about its content?

A.25. C. Regulation about internal functioning of both reception centres exists. It is regulated by the Statutes of the centres, as well as the Orders on accommodation of asylum seekers in these centres (refer to A.1-2 above). These regulations are applicable only to public centres, while private centres do not exist. The supervising authority or the government adopts the regulations. The Foreigners' Registration Centre in addition adopted the internal rules on order and conditions for temporary accommodation of foreigners in the FRC, approved by the Head of the Centre on 14 January 2004. The author of this Report did not have access to this document.

D. Do the regulations foresee the possibility of sanctions against asylum seekers in case of breach of the rules? (see article 16, §3) If yes, which sanctions for which rules? Which is the competent authority to decide? How is it ensured that decisions are taken individually, objectively and in particular *impartially* (for instance through an independent

arbitrator) as requested by §4 of article 21 which is mandatory provision*?* Which are the possibilities of appealing against those decisions if the system is different from the general one under question n°22? Are there already administrative appeal decisions or judgements which have been taken and if yes, which are the main important ones? [543]

A.25. D. The regulations do foresee the possibility of sanctions against asylum seekers for breach of the rules. Apart from the financial sanctions (reducing or withdrawing reception conditions: monthly subsistence allowance), mentioned above under A.21(A), other sanctions also exist. In accordance with the Order on Accommodation of Foreigners in the FRC, the following sanctions can be applied (paragraphs 25-26):

- Sanctions for violation of laws of Lithuania in accordance with the procedure established by the laws;
- Sanctions for violation of the internal order in the centre may include: assigning repeatedly as a person who maintains order to clean the living premises and the territory; removal from the centre – in case of constant violation of established requirements and persistent violation of internal order; isolation from other persons for a period of up to 24 hours or sending if needed to a special establishment, if the person becomes dangerous due to mental or infectious disease or intoxication with alcohol or narcotics/psychotropic substances. The new Order of 4 October 2007 introduced a possibility to reduce or withdraw the financial allowances paid for minor expenses to asylum seekers.

A protocol is written on violation of the order and a decision on application of sanctions is taken on this basis. The protocol is written and decision on sanction is made up by the Head of the Centre or a person authorised by him. The protocol on violation along with the explanation by the staff of the centre is enclosed to the personal file of the applicant. All the sanctions are registered in the special journal of the centre. If there are grounds, the Head of the Centre or a person authorised by him may repeal or change the decision on sanctions, e.g. in case of illness and other cases unspecified in the Order (paragraphs 28-30 of the Order). The person may appeal the decision on sanctions to the head of State Border Guard Service (paragraph 17.15 of the Order). No appeals have been submitted, thus no administrative decisions or judgements exist.

In accordance with the Order on Accommodation of Asylum Seekers in the RRC, the following sanctions can be applied for violation of the laws of Lithuania and the internal order of the centre:

- Written warning;
- Reduction or withdrawal of monthly subsistence allowance (as described under A. 21(A) above.

In case of violation of an internal order in the centre, the responsible staff member of the centre writes up the protocol on violation, familiarises the person with this

[543] To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

protocol and he writes up his explanation. Sanctions are imposed on the basis of the protocol by the Director of the Centre. Decisions on sanctions are in written form and are registered in the centre (paragraph 21 of the Order). The person may appeal the decision on sanctions to the founder of the centre (MSSL) (paragraph 22 of the Order). No appeals have been submitted, thus no administrative decisions or judgements exist.

E. Are asylum seekers involved in the management of these centres? If yes, how (advisory board, appointment or election of representatives)? (see article 14, §6 which is an option provision)

A.25. E. Asylum seekers are not involved in the management of the centres.

F. Do specific rules exist on work of asylum seekers inside the accommodation centres different from the general ones about employment (see below)? If yes, which ones? Can working inside accommodation centres be considered as a (mandatory) contribution of the asylum seekers to the management of the centres, is it or not paid and considered as implying access to the labour market and subject to the same rules?

A.25. F. According to the rules of the Centres, asylum seekers have the obligation to maintain the living premises and the territory of the centre, but this is not considered a work, which would be paid for.

Q.26. A. How can asylum seekers communicate with legal advisers, representatives of UNHCR and NGOs? (see article 14, §2, (b) which is a mandatory provision).

A.26. A. According to legislation asylum seekers have a right to communicate with legal advisers and UNHCR. Lawyers of the Lithuanian Red Cross who provide legal counselling are regularly visiting the reception centres and meet with the asylum seekers. UNHCR representative also visits the centres and has unhindered access to all premises in the centre, thus also to asylum seekers. Asylum seekers may also communicate with the legal advisers and UNHCR by mail. No special provision of access by NGOs is provided by the laws, but in practice staff of the LRC and Caritas have access to asylum seekers (though such access is granted on ad hoc basis by the administration, except the implementation of social and legal projects that are going on).

B. What are the rules about access of legal advisers, UNHCR and NGOs regarding access to accommodation centres and other housing facilities (see article 14, §7 which is a mandatory provision).

A.26. B. No special rules exist except that it is provided by legislation that asylum seekers have such a right to meet with lawyers and UNHCR and that UNHCR should have unlimited access to asylum seekers, including those in places of

detention and transit zones of airports and sea ports where asylum seekers are kept (the later provision in Art. 91(3) of the Aliens' Law). The RRC should provide access to NGOs, providing assistance to refugees, to contact the unaccompanied minor asylum seeker in the centre and implement social educational and assistance projects (paragraph 8 of the Order on Accommodation of Unaccompanied Minor Asylum Seekers).

C. Can the access of legal advisers, UNHCR and NGOs be limited for security reasons or any other reason (see article 14, §7, last sentence)?

A.26. C. No such restrictions are provided by the laws or applied in practice.

Q.27. A. Is a medical screening organised by the receiving State, is it mandatory or voluntary? Does it include HIV tests? (see article 9 which is an optional provision)

A.27. A. There is medical screening organised by the reception centres upon arrival of the person to the centre. It is the duty of the asylum seeker to allow the performance of health screening under the laws (paragraph 3 of Art. 71(3) of the Aliens' Law). Thus it is mandatory. The screening is performed by the doctor of the centres.

It includes screening from:

- Open form of tuberculosis;
- Sexually transmitted diseases;
- Intestine infections;
- Carriers of infectious diseases.

Paragraph 3 of the Order on Accommodation of Foreigners in the RRC provides that the foreigner upon arrival to the Centre shall submit a certificate from the medical file issued by the FRC. Persons who arrived on their own to the Centre shall allow the doctor to inspect their medical condition.

No HIV tests are envisaged in the legislation. However, as reported by the administration of the FRC, such tests are performed in practice.

B. Do the legal provisions on reception conditions ensure that asylum seekers receive at least emergency care and essential treatment of illness as requested by article 15 §1 which is a mandatory provision? Do they have a further access to health care?

A.27. B. A right to such emergency care and essential treatment is provided by the legislation. Paragraph 1(6) of Article 71 of the Aliens' Law states that an asylum seeker has a right to receive free immediate medical aid and social services at the Foreigners' Registration Centre or Refugee Reception Centre. Also, the Order on Accommodation of Foreigners at the FRC provides that « persons accommodated in the centre are ensured primary health care and immediate medical aid, including a possibility of immunisation in accordance with the National Immunisation Programme (paragraph 31). The Order of the Minister of Health Care No. V-836 on approval of hygiene norms and rules for the Foreigners' Registration Centre of

28 October 2005 regulates the health care services in the centre. According to the Order, health care specialists provide out-patient health care services and if it is not sufficient for treatment, the inhabitants of the Centre are transferred to health care institutions for consultations or in-patient treatment. For such a transfer prescription of the Head of Medical Unit of the Centre or his deputy is required (paragraph 43).
The Order on Accommodation of Asylum Seekers in the RRC also provides for the right of an asylum seeker to make use of health care services in accordance with the order determined by the Ministry of Health of Lithuania (paragraph 10.11.1). Even though such order has not been adopted, the Law on Health Insurance No. I-1343 of 21 May 1996 (new version of the law of 3 December 2002) provides for access to health care services to asylum seekers (Art. 6(5)), but mentions that "the health care [of such persons] is covered from the state budget in accordance with the order established by the Government […]". Unaccompanied minors are explicitly included thus have no problems accessing the services. However, in practice there are access problems for asylum seekers in the FRC to further health care beyond emergency health care.

C. What is the practice regarding access of asylum seekers to health care and how is it organised? In particular, what is the situation in accommodation centres (are doctors coming to the centres or do asylum seekers go to doctors outside)?

A.27. C. In practice, as long as there is no serious danger to the person, in the Centre he is provided with the very basic medicine only. Asylum seekers mostly rely on the doctors who are available in the centres.
According to the Order on Accommodation of Foreigners in the FRC, the health care in the centre is organised in the following way:

- primary health care is delivered by the doctor or other staff of the centre (paragraph 33);
- immediate medical aid is delivered by the health care bodies in accordance with the laws of Lithuania (paragraph 34);
- patients and persons with suspected dangerous or particularly dangerous infectious diseases are hospitalised or/and isolated, examined and treated in accordance with the laws regulating the treatment of these diseases (paragraph 35) ;
- persons, who arrived from the territories contaminated by particularly dangerous infectious diseases, may be taken under quarantine (paragraph 36);
- torture and violence victims, minors, single women and the elderly are entitled to the assistance of the psychologist (paragraph19).

Similarly, the health care services are organised in the RRC.

Q.28. **A. What is the length of the period determined by the concerned Member State during which asylum seekers have no access to the labour market? (see article 11 which is a mandatory provision)**

A.28. A. No such period is provided by the legislation, because Lithuania does not allow asylum seekers to work during the period of the asylum procedure. In practice, procedure for a few asylum seekers takes longer than one year (e.g. in case of return of the case from appeal to the first instance), while no right of employment exists.

B. After that period, are asylum seekers or not obliged to obtain a work permit? In case is there a limit for the administration to deliver the permits and how quick are they delivered? What is their length?

A.28. B. Question not applicable, because no right to work is provided to asylum seekers in Lithuania.

C. After that period, what are the conditions for access of the asylum seekers to the labour market? (in particular, are there rules concerning the maximum allowed of working hours or days per week, month or year, limits in terms of type of work or of professions authorised?

A.28. C. Question not applicable, because no right to work is provided to asylum seekers in Lithuania.

D. What are the rules in terms of priorities between asylum seekers on the one hand and nationals, EU or EEE citizens and legally third-country nationals on the other?

A.28. D. Question not applicable, because no right to work is provided to asylum seekers in Lithuania.

E. Do asylum seekers have access to vocational training, does this or not depend of their right to access to the labour market, and in case at which conditions? (see article 12 which is optional regarding §1 and mandatory regarding § 2)

A.28. E. Access to vocational training is not ensured as a rule. Also, it does not depend on their right to access to the labour market, but even if it would, asylum seekers are not allowed to work. The Order on Accommodation of Asylum Seekers in the RRC provides that the courses on professional orientation and re-qualification are organised for the inhabitants of the centre whenever possible (paragraph 17 of the Order). However, asylum seekers have a possibility to attend free of charge I category Lithuanian language courses – 96 hours (II category language courses are also available, but not free of charge) (paragraphs 16.1-16.2 of the Order). Given that RRC accommodates only asylum seeking unaccompanied minors, these services are not accessible for the absolute majority of asylum seekers (who stay in the FRC).

F. Are the rules regarding access to the labour market adopted to transpose the directive more or less generous than the ones applicable previously?

A.28. F. Question not applicable, because no right to work is provided to asylum seekers in Lithuania.

Q.29. Are reception conditions subject to the fact that asylum seekers do not have sufficient resources? Are asylum seekers requested to contribute to reception conditions when they have personal resources (for instance if they work) or to refund the authorities if it appears that they have resources? (see article 13 §§ 3 and 4 which are optional provisions)

A.29. Reception conditions in Lithuania are based on the presumption that an asylum seeker does not have sufficient resources. However, the asylum seeker is requested to declare to the FRC, RRC or territorial police authority in writing in free format the resources and assets owned in the Republic of Lithuania within three days from the granting of temporary territorial asylum and the resources received pending the examination of the application for asylum in the Republic of Lithuania within one day from the receipt thereof (Paragraph 3(5) of Article 71 of the Aliens' Law). If it is discovered that the asylum seeker had sufficient means for ensuring the implementation of his rights at the time when these basic needs were being covered for him, he must refund the related expenses of the state (Art. 71(5) of the Aliens' Law).

7. SPECIAL NEEDS OF PARTICULAR CATEGORIES OF ASYLUM SEEKERS

Q.30. A. Which of the different categories of persons with special needs considered in the directive are taken into account in the national legislation (see article 17, §1 which is a mandatory provision): disabled people, elderly people, pregnant women, single parents with minor children, persons who have been tortured, raped or victims of serious physical or psychological violence? Include in your answer all other categories envisaged in national law.

A.30. A. The legislation takes into consideration the following persons with special needs: torture and violence victims, minors, single women and the elderly. However, in practice their needs are not always met.

B. How is their specific situation taken into account (see articles 13, §2, second indent, 16 §4 second sentence and 17 which are mandatory provisions)?

A.30. B. Their situation is taken into account when examining the claim (e.g. specialised asylum personnel needs to be provided, interview should involve a doctor or psychiatrist, etc.). However when providing reception conditions serious concerns exist. Even though these persons are entitled to the assistance of the psychologist while they stay at the Foreigners' Registration Centre (paragraph 19 of the Order on Accommodation of Foreigners at the FRC), the Foreigners

Registration Centre definitely lacks the character of a social institution, neither social nor psychological staff have been employed in the Centre. Once accommodated, asylum seekers with special needs particularly women, children, elderly, the traumatised and the disabled find themselves in a very poor social environment, which is rather traumatizing because they are surrounded by the uniformed border guards next to the detained irregular migrants. Furthermore, as concerns the requirement of second indent of Art. 14(2) of the Directive, no serious prevention measures are being taken against assault in the FRC. The living quarters of women are place in the third floor of the building where many single men are accommodated and no staff is available during the night. The situation is rather different in the RRC, where different living conditions (open centre) exist, as well as very competent psychologist is available.

C. How and when are the special needs of the concerned persons supposed to be legally identified (see article 17 § 2 which is a mandatory provision and clarify how it has been interpreted by transposition)?

A.30. C. Once an asylum seeker arrives to the FRC, he is directed for medical inspection. The doctor is questioning the asylum seeker about his health history. If there are special needs, it is being marked in the history of the person. Other special needs are usually identified during the first interview of the asylum seeker. The Order on Examination of Asylum Claims mentions that the staff working with an asylum seeker having identified any of the special needs should resort to assistance of the specialists (doctor, psychologist, etc.). However, it should be noted, that The Order on Examination of Asylum Claims mostly addresses the refugee status determination (RSD) issues. Thus, the above provision applies to the asylum officers for the RSD purposes only. In the area of material reception conditions or mental health, no real needs assessment mechanism exists.

D. Is the necessary medical and other assistance provided to persons with special needs as requested by article 15, §2 which is a mandatory provision and in particular to victims of torture and violence as requested by article 20 which is a mandatory provision?

A.30. D. Medical assistance to these persons is provided on the same basis as for all other asylum seekers, but in addition they are entitled to the assistance of the psychologist (paragraph 19 of the Order on Accommodation of Foreigners at the FRC). However in practice, no psychologist is employed within the structure of the FRC. Psychological services are available only under the NGO projects funded by the ERF. According to UNHCR, detention-like environment in the FRC furthermore re-traumatises vulnerable asylum seekers.

Q.31. About minors:

A. Till which age are asylum seekers considered to be minor?

A.31. A. A minor in accordance with Lithuanian legislation is a person below the age of 18 years.

B. How is access of minor asylum seekers to the education system ensured? Is it at school or in case inside accommodation centres and can it be considered as similar to the conditions for nationals as requested by article 10, §1?

A.31. B. Access to education system is ensured for minors. For instance, paragraph 2 of Article 32(2) of the Aliens' Law that deals with unaccompanied minors provides that unaccompanied minor aliens, regardless of the lawfulness of their stay in the territory of the Republic of Lithuania, shall have the rights to study at general education schools and vocational schools according to the procedure laid down by the Minister of Education and Science. A more general provision for all minors who are asylum seekers is in Article 71(2) of the Aliens' Law, ensuring the right to study at schools of general education and vocational schools.
Such access to education system may only be restricted in practice, if the family member to whom the minor belongs is detained and there is no easy leave from the FRC. Minors have access to local schools outside the centres. It can be considered similar to the conditions for nationals, except that it might be more difficult to study for children of asylum seekers as they do not know the local language.

C. Is access to education ensured not later than 3 months as requested by article 10, §2 (or after maximum one year if specific education for asylum seekers is provided) and till an expulsion decision is really enforced?

A.31. C. There is no time limit for access to education provided by the national law.

D. Is specific education (like language classes) available for asylum seekers, in particular to facilitate their effective access to the education system of the reception Member State (see article 10, §2 which is an optional provision)?

A.31. D. The Order on Accommodation of Asylum Seekers in the RRC provides that the courses on professional orientation and re-qualification are organised for the inhabitants of the centre whenever possible (paragraph 17 of the Order). In addition, asylum seekers have a possibility to attend free of charge I category Lithuanian language courses – 96 hours (II category language courses are also available, but not free of charge) (paragraphs 16.1-16.2 of the Order), organised in the centre. Given that RRC accommodates only asylum seeking unaccompanied minors, these services are not accessible for the absolute majority of other asylum seekers (who stay in the FRC).

E. Are minors in general accommodated with their parents or with the person responsible of them? (see article 14, § 3)

A.31. E. Minors in general are accommodated with their parents or with the person responsible for them in case of absence of parents. Unaccompanied minors may be accommodated in the place indicated by the guardian or other legal representative (paragraph 3 of the Order on Accommodation of Unaccompanied Minor Asylum Seekers). Every minor is given access to social workers and, if needed, to a psychologist (paragraph 9 of the Order). 4). The problem exists because of definition of unaccompanied minor - representation by custom is not recognized in Lithuania.

F. Do minors with special needs enumerated by article 18, §2 which is a mandatory provision, have access to appropriate mental health care and qualified counselling?

A.31. F. Minors with special needs should have access only to the psychologist (paragraph 19 of the Order on Accommodation of Foreigners at the FRC), who is not available in practice. In accordance with the Order on Accommodation of Unaccompanied Minors, they should be provided with access to social worker and if needed – to services of the psychologist in the RRC. The RRC shall ensure the access of NGOs, providing assistance to refugees, to the minors in the Centre in order to implement social education and assistance projects (paragraph 8 of the Order on Accommodation of Unaccompanied minors).

G. How and when is organised the representation of unaccompanied minors (guardianship, special organisation) and regularly assessed? (see article 19, §1 which is a mandatory provision)

A.31. G. Unaccompanied minors regardless of the lawfulness of their stay in Lithuania shall be taken into temporary guardianship/curator ship for the period of the stay in Lithuania. Temporary guardianship shall be assigned to the minor immediately upon submission of the asylum application (Art. 67(3) of the Aliens' Law). The temporary guardian/curator of an unaccompanied minor alien shall represent the interests of the unaccompanied minor alien (Art. 32(1) of the Aliens' Law). Such representation is not being regularly assessed. If unaccompanied minor is accommodated in the RRC, the centre will be assigned as a temporary guardianship institution for the minor (paragraph 8 of the Order on Accommodation of Unaccompanied minors). In practice, problems exists in implementing these provisions to unaccompanied minors who have not yet formalised their asylum application, because responsible institutions refuse to take care of them if they are not asylum seekers. However, special assistance should be provided to them, because in practice the migration authorities have concerns that minors are not able to formulate their asylum applications.

H. How is placement of unaccompanied minors organised (with adult relatives, a foster family, in special accommodation centres or other suitable accommodation)? (see article 19, §2 which is mandatory provision)

A.31. H. Unaccompanied minors are accommodated in the Refugee Reception Centre and they do not need to stay in the FRC, unless for 48 hours of initial stay before they are transferred to the RRC. Also, they may be allowed to stay with the person who takes care for the child. If there are adult relatives, they would be allowed to stay together in the RRC. According to information of the RRC (16 April 2007), unaccompanied minors are accommodated in the RRC in separate premises, equipped to meet their specific needs.

I. How is the tracing of the family members of the unaccompanied minors organised? Are measures taken to protect confidentiality of information when necessary? (see article 19, §3 which is a mandatory provision)

A.31. I. Having received information about an unaccompanied minor alien, the Migration Department must together with non-governmental organisations and the temporary guardian/curator of the minor alien immediately organise search for the minor's family members (Art. 32(3) of the Aliens' Law). Article 32(3) of the Aliens' Law envisages that the Migration Department having received information about unaccompanied minor, must together with the NGOs and international organisations and the temporary guardian of the minor organise family tracing without delay. Lithuanian Red Cross is the competent organisation for tracing of family members in and outside Lithuania. National rules on confidentiality apply also in tracing procedures.

8. EXCEPTIONAL MODALITIES OF RECEPTION CONDITIONS

Q.32. **Apart from detention covered by the next question, are there exceptional modalities for reception conditions in the following cases and if yes, which ones and for how long are they applicable, knowing that they should be "as short as possible" (see article 14, §8)?**

A. Persons with specific or special needs, regarding in particular the period of assessment of those needs?

A.32. A. There are no provisions concerning exceptional modalities for reception conditions.

B. Non availability of reception conditions in certain areas

A.32. B. Reception conditions are lacking at border control posts and local migration services, thus if an asylum seeker is not detained, efforts are taken to transfer him as soon as possible to the FRC.

C. Temporarily exhaustion of normal housing capacities

A.32. C. There are no provisions concerning exceptional modalities for reception conditions.

D. The asylum seeker is confined to a border post

A.32. D. Reception conditions are lacking at border control posts and local migration services, thus if an asylum seeker is not detained, efforts are taken to transfer him as soon as possible to the FRC.

E. All other cases not mentioned in the directive (for instance urgent situation in case of a sudden high number of applicants outside a case of application of the directive on temporary protection).

A.32. E. There are no provisions concerning exceptional modalities for reception conditions.

Q.33. **Detention of asylum seekers (we do not cover the situation of rejected asylum seekers detained for the purpose of their return) (see articles 6 §2, 7 §3, 13, §2 2nd indent and 14 §8 which implies that the directive is in principle applicable in case of detention):**

P. In which cases or circumstances and for which reasons[544] (identity verification in particular if the persons have no or false documents, protection of public order or national

[544] Please specify it article 18 §1 of the directive on asylum procedures of 1 December 2005 which specifies that *"Member States shall not hold a person in detention for the sole reason that he/she is an applicant for asylum"* is or not respected (even if has not yet to be transposed).

security, refugee status determination, way of entry into the territory, etc) can an asylum seeker be detained during the asylum procedure till his request has been finally rejected. Quote precisely in English in your answer the legal basis for detention of asylum seekers in national law.

A.33. A. Lithuanian legislation does not distinguish between detention of asylum seekers and detention of all other foreigners (e.g. those arriving illegally), except one provision that asylum seekers cannot be detained on the mere ground of illegal entry/stay in the country (Art. 113(2) of the Aliens Law). The Aliens' Law (Art. 113) states the following grounds on which foreigners (including asylum seekers) can be detained:

- in order to prevent the alien from entering into the Republic of Lithuania without a permit;
- if the alien has illegally entered into or stays in the Republic of Lithuania;
- when it is attempted to return the alien to the country from where he has come if the alien has been refused entry into the Republic of Lithuania;
- when the alien is suspected of using forged documents;
- if a decision on the expulsion of the alien from the Republic of Lithuania has been taken;
- in order to stop the spread of dangerous and especially dangerous communicable diseases;
- when the alien's stay in the Republic of Lithuania constitutes a threat to public security, public policy or public health.

The Law further stipulates that the foreigners are detained by court order (for more than 48 hours) at the Foreigners' Registration Centre (Art. 114(1-2)). As concerns minors, they may be detained only as a last resort, when the alien's best interests are the main consideration (Art. 114(3)). There is no provision in the laws stating that the asylum seeker should not be detained for the sole reason of being an applicant for asylum. In practice, the situation of detention differs depending on the courts in the regions. Some courts interpret the provision on detention narrowly, while some less experienced with asylum seekers authorise detention regularly. Particular concern exists also with initial detention for 48 hours, because in practice asylum seekers approaching local migration services having entered the country illegally are usually detained (including families with children) and kept in regular police custodies with all other persons arrested for a variety of reasons.

Q. Has your member State adopted measures to transpose §3 of article 7 which is an optional provision? If yes, how has this provision been legally understood (is it a case of detention or an obligation to stay in and not leave a certain place?) and for which reasons can an asylum seeker be "confined" in such a place?

A.33. B. According to the author of this Report, the provision is unlikely understood as detention, but as a restriction on the freedom of movement, which in accordance with Lithuanian legislation may be applied to asylum seekers on the same grounds

as for other foreigners only in the interests of state security or public policy, or public health or morals, for crime prevention purposes or seeking to protect the rights and freedoms of other persons (Art. 112 of the Aliens' Law). At the same time, it can be mentioned that no discussions have taken place in the country so far as concerns the application of this provision.

R. Are there legally <u>alternatives</u> to detention, like obligation to report to the authorities, obligation to stay in a place, provision of a guarantor or of a financial guarantee?

A.33. C. There are alternatives to detention provided in the Aliens' Law. Alternatives are applied by the court when in view of the fact that the alien's identity has been established, he constitutes no threat to public security and public policy, provides assistance to the court in determining the alien's legal status in the Republic of Lithuania as well as other circumstances (Art. 115(1) of the Aliens' Law). In the event of failure to implement the measures alternative to detention imposed by the order of the court the territorial police authority shall apply to the court with a motion to detain the alien (Art. 115(3)). When taking a decision to impose a measure alternative to detention, the deadline for its application must be set (Art. 115(4)). The following alternatives could be mentioned (Art. 115(2) of the Aliens' Law):

- requiring that the alien regularly at the fixed time report at the appropriate territorial police authority;
- requiring that the alien communicate his whereabouts at the fixed time by communication means to the appropriate territorial police authority;
- entrusting the care of an unaccompanied minor alien to a relevant social agency;
- entrusting the care of the alien, pending the resolution of the issue of his detention, to a citizen of the Republic of Lithuania or an alien legally resident in the Republic of Lithuania who is related to the alien, provided that the person undertakes to take care of and to support the alien;
- accommodating the alien at the Foreigners' Registration Centre without subjecting him to restriction of freedom of movement. According to the Law, such measure can only be applied to asylum seekers and not to other foreigners (supplement to the Aliens Law of 28 November 2006).

The Order on Examination of the Asylum Claims mentions that a person who is granted temporary territorial asylum and who has arrived to Lithuania legally, may be allowed by a decision of the Migration Department to stay in the place of his choice, if the asylum seeker so wishes, indicates the data about the place of living and the legal ground for residence in that particular place (paragraph 24).

S. Which is the <u>competent authority</u> to order the detention of an asylum seeker? Explain if different authorities are involved to first take and later confirm the decision.

A.33. D. The competent authority to order the detention of an asylum seeker is police or any other law enforcement institution, but only for the period of up to 48

hours. Ordering detention over 48 hours is an exclusive jurisdiction of the court (general competence court in the district).

T. For how long and till which stage of the asylum procedure can an asylum seeker be detained?

A.33. E. There is no time limit and differentiation depending on the stage of the asylum procedure that would be stated in the law. The time limit is set by the court in each individual case. There is also a possibility to reconsider the decision to detain an asylum seeker. Article 118(1) of the Aliens' Law provides that upon the disappearance of the grounds for the alien's detention the alien shall be entitled to, whereas the institution which initiated the alien's detention shall immediately apply to the regional court of the locality of his residence with a request for reconsideration of the decision to detain the alien. The court shall within 10 days from the date of acceptance of the application reconsider the decision concerning detention and shall pass one of the following decisions:

- to uphold the decision to detain;
- to reverse the decision to detain;
- to quash the decision to detain.

Also, detention may be terminated upon the disappearance of the grounds for detention. Asylum seeker shall then be immediately released based on the effective court's decision. The same applies if the alien's detention period expires - he must be immediately released from the place of detention (Art. 119 of the Aliens' Law).

U. In which places (can we call them "closed centres"?) are asylum seekers detained (places in a special closed centres reserved only to asylum seekers, together with returnees like illegal aliens or even in a normal prison, in case within separated areas or with the other detainees)? Indicate if a difference has to be made following the location of the "closed centres" at the border or on the territory? Which is the authority managing those places and is it the same as the one in charge of reception conditions?

A.33. F. Asylum seekers are detained in the Foreigners' Registration Centre, which is a closed centre under the State Border Guard Service supervision and which also serves as a reception centre with the less restricted area for asylum seekers who are not detained. Detained asylum seekers are separated from other asylum seekers and also other detained foreigners. There are no other special detention centres at the border areas or elsewhere. But if there is a need to detain an asylum seeker temporarily (mainly within first 48 hours) once apprehended at the border or on the territory of the state, police custodies may be used for this purpose, before he is transferred to the FRC. In practice, because of lack of accommodation facilities at the border, the border authorities take effort to perform such transfer at earliest time possible.

V. Does <u>UNHCR and NGOs have access</u> to the places of detention and under which conditions?

A.33. G. UNHCR has access to all places of detention, including also regular prisons (e.g. in case the asylum seeker whose application is being examined has committed a crime and is isolated in pre-trial detention), transit zones of airports and sea ports. This right of UNHCR flows from Article 91(3) of the Aliens' Law. It reads as follows: "Representatives of the Office of the UNHCR shall be allowed to immediately contact the asylum applicants. The Office of the UNHCR shall be entitled to receive information connected with the asylum applications » (paragraph 2). Further on, it reads that « Representatives of the Office of the UNHCR shall be granted access to places of detention and transit zones of airports and sea ports where asylum applicants are kept » (paragraph 3 of Art. 91 of the Aliens' Law). Also, Order of the Head of State Border Guard Service to the MOI on Approval of the Statute of the FRC envisages in paragraph 7.19 that the centre ensures the conditions for detained and accommodated foreigners to make use of legal assistance guaranteed by the state and for asylum seekers possibility to contact and meet with the representatives of UNHCR in Lithuania. NGOs do not as a rule have access to detained asylum seekers, unless they provide legal assistance/legally represent the person (in case of the Lithuanian Red Cross) or provide social assistance under the agreement with the body running the place.

W. What <u>appeal(s)</u> can asylum seekers introduce against the fact he is detained? Is article 18 of the directive on asylum procedures of 1 December 2005 following which *"Where an applicant for asylum is held in detention, Member States shall ensure that there is a possibility of speedy judicial review"* respected (even if it has not yet to be transposed)?

A.33. H. Appeal against detention of an asylum seeker may be submitted to the Supreme Administrative Court of Lithuania, according to the procedure established by the Law on Administrative Proceedings (Art. 117(1) of the Aliens' Law) against the district court's decision to detain him or to extend the detention period or to apply measures alternative to detention. The appeal may be submitted through the Foreigners' Registration Centre. The FRC shall transfer the appeal to the Supreme Administrative Court of Lithuania. Decision shall be taken within 10 days from the date of acceptance of the appeal by the court. This time limit may be considered to comply with the requirement for a speedy judicial review. However in practice, the process sometimes takes even up to 3 months. Therefore, another procedure is usually resorted to by the lawyers representing asylum seekers to ensure speedy review of detention. This procedure is provided in Article 118 of the Aliens' Law (review of detention decision) and works very well in practice, as reported by the lawyers.

X. Is the <u>directive</u> on reception conditions considered to be <u>in principle applicable</u> to the places where asylum seekers are detained? In particular which information do they receive

about their rights, which access do they have to legal advice and health care?

A.33. I. The directive is applicable in places of detention of asylum seekers (specially designed for that, not in case of regular prisons where asylum seeker may be detained in case of commission of a crime in the asylum country). Detained asylum seekers receive information about their rights and obligations, as well as internal rules of the centre upon the placement in the centre and have to sign upon receiving such information (Paragraph 16 of the Order on Accommodation of Aliens in the FRC). They have access to legal advice and health care on the same conditions as all other asylum seekers who are staying in the FRC and are not detained. However, some constrains may exists as concerns access to this right when asylum seekers are temporary (for 48 hours) placed in the police custodies, where legal assistance may not be available, as well as information on the asylum procedures and contacts of lawyers.

Y. Apart from freedom of movement, what are the main differences between normal reception conditions and exceptional modalities for reception conditions in case of detention, knowing that they should be "as short as possible" (see article 14, §8)? If it is about closed centres, are the regulations of those places in line with the requirements of the directive (is article 13, §2, second indent of the directive following which "*Member States shall ensure that standards of living is met (…) in relation to the situation of persons who are in detention*" respected?).

A.33. J. Apart from the freedom of movement there are not many differences in the situation of detained asylum seekers in comparison with those who are not detained. They may have limited chances of education (in case of minors to go to regular school), access to lawyers and social workers, etc. However, the same standards of treatment as concerns reception conditions are provided to them. In case of detention at the border control post, there might be limited possibilities to provide food, legal and social counselling, services of an interpreter, because these places are not specifically equipped to accommodate asylum seekers who are detained. In police custodies, there might be limited possibilities of separating detained asylum seekers from other persons suspected in having committed a crime. If detained at the border or at police custodies, asylum seekers are kept not in places specially arranged for asylum seekers, but in common wards where people suspected of crimes are being kept temporarily.

Z. Are measures taken to avoid detention of asylum seekers with special needs (if yes, which ones?) or are special measures taken because of their needs?

A.33. K. Article 114(3) of the Aliens' Law provides that minors may be detained only as a last resort. However, no provisions or special guarantees/measures exist

in the legislation as concerns other vulnerable asylum seekers with special needs. The court may assign an alternative to detention in their case.

AA. Can minor asylum seekers be detained together with relatives? Can unaccompanied minor asylum seekers be detained? If yes, are there special measures which take into account that children are concerned?

A.33. L. Minor asylum seekers may be detained together with relatives, but in this case the best interest of the child principle would be applied to determine what is better for the minor. In practice, the authorities avoid separating the minors from their parents who are detained. Unaccompanied minors may be detained only as a last resort, when no other (alternative) measures may be taken. However, the practice of courts differs and a few minors were ordered detention.

BB. In particular is article 10 regarding access to education of minors respected in those places?

A.33. M. Access to education for minors who are detained is constrained, even if they enjoy the right to education as a general rule under legislation. They are not allowed to leave the centre while detained. Some schooling possibilities are available within the accommodation centre.

CC. How many asylum seekers are for the moment detained in your Member State? Which proportion does this represent in comparison of the total number of asylum seekers at the same moment?

A.33. N. In 2005 less than 10% of asylum seekers were kept in detention (6 of them were detained in the FRC) out of a total of 146 asylum seekers accommodated in the Centre during the year. No updated statistics is available to the author of this Report.

9. ORGANISATION OF THE SYSTEM OF RECEPTION CONDITIONS

Q.34. Explain if the system of providing reception conditions is centralised or decentralised (which levels of government do provide practically reception conditions?) (do not confuse this question with question number 3 about the competence to make rules about reception conditions).

A.34. The system of reception is centralised. The central government and not municipal government is responsible for provision of reception conditions.

Q.35. In case, are accommodation centres public or/and private (managed by NGOs? If yes, are the NGOs financially supported by the State?)[545]

A.35. There are no private reception centres in Lithuania, as well as public reception centres that would be run by NGOs.

Q.36. In case, how many accommodation centres are there in your Member State (distinguish in your answer between public and private centres)?[546]

A.36. Two accommodation centres exist in Lithuania, both of them are public centres. But only one centre (the FRC) is used to accommodate all asylum seekers pending the final decision on asylum claim. While another centre (RRC) is used for accommodation of unaccompanied minors' asylum seekers only.

Q.37. Is there in the legislation a plan or are there rules in order to spread the asylum seekers all over the territory of your Member State to avoid their concentration in some areas like big cities or to share the costs of their reception between central, regional and local authorities?

A.37. There are no such plans, because the current number of asylum seekers is not big and the capacities of the existing reception centres are hardly filled. Thus dispersal of asylum seekers in various places would have security and economical implications, therefore unlikely to be pursued by the authorities.

Q.38. Does a central body representing all the actors (like NGOs) involved in reception conditions exist? Does it play a consultative role for the State authorities, a coordination role for the actors or any other role?[547]

A.38. There is no central body representing all the actors.

Q.39. **A. Which is the body in charge of guidance, monitoring and controlling the system of reception conditions as requested by article 23 which is mandatory provision? Include in your answer which is the competent ministry (Interior, Social affairs, etc) for reception conditions?**

A.39. A. There is no single body responsible for supervision, as two ministries: the Ministry of Interior and the Ministry of Social Security and Labour carry out the responsibility for supervision of the system of reception conditions. The Department of Supervision of Social Services to the MSSL is directly responsible for supervision of the reception conditions in the Refugee Reception Centre. However there is no special monitoring system in place.

[545] To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.
[546] To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.
[547] To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

B. Has your Member State (like the Czech Republic did recently) approved quality standards (not necessary legally binding) for housing services (for instance about the number of persons per bedroom on the basis of its size, number of accessible toilets, bathrooms, showers and washing machines per number of persons, existence of common rooms with radio, television, newspapers, books, computers, accessibility of telephone, existence of recreative rooms for children,…) to be respected in particular in accommodation centres?[548]

A.39. B. Such normatives exist in both reception centres. For instance, on 28 October 2005 the Minister of Health Care approved the normatives for hygiene in the FRC, which regulate all quality standards mentioned above. There is also a Government Resolution on approval of physiologic nutrition norms for persons accommodated in the Foreigners Registration Centre.[549] This Resolution was implemented by the Order of the Minister of Interior No. 1V-229 of 24 June 2003 on approval of the average norms of nutrition for persons accommodated in the FRC.

C. How is this system of guidance, control and monitoring of reception conditions organised?

A.39. C. No such system exists in practice. There is a regular supervision/guidance system that is usually applied between the Ministry/another government institution and the body that it is attached to it (in this case – reception centres). This relationship is realised through the Ministry approving essential by-laws for the operation of the centre, as well as planning budgets, performing audits, as necessary and general guidance. But this is not something established particularly for reception conditions' monitoring.

D. Does the body in charge of guidance, control and monitoring produce reports about the level of reception conditions? If yes, how frequently and are they public?[550]

A.39. D. No such analytical reporting system exists in practice. Only statistics is collected and available to the public through internet.

Q.40. A. What is the total number of asylum seekers covered by reception conditions for the last year for which figures are available (see article 22 obliging

[548] To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.
[549] Resolution of the Government of the Republic of Lithuania No. 418 of 8 April 2003 on Approval of physiologic nutrition norms for persons accommodated in the Foreigners Registration Centre, published in "State News" No. 35-1473, 11 04 2003.
[550] To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

Member States to calculate those statistics about which we also asked the Commission to require them from Member States for mid June)?

A.40. A. The total number of asylum seekers covered by reception conditions in the centres for 2005 was 154. By 1 May 2006, 26 of these persons were staying in the Foreigners' Registration Centre, including 1 of them in detention. During the year, a total of 146 asylum seekers were accommodated in the FRC (6 of them in detention regime). Approx. 105 foreigners were staying in the FRC on 14 May 2007, out of whom 62 were asylum seekers. Table 2. below presents the breakdown according to country of origin, age and gender. No detailed updated statistics for 2006 is yet available. The breakdown of this number according to country of origin, gender and age is provided in the Table 1. below:

Table 1. Asylum seekers accommodated in the FRC during 2005

Country of origin	Male	Female	Children	Total number
Afghanistan	7	-	1	8
Algeria	1	-	-	1
Azerbaijan	1	-	-	1
Belarus	4	-	-	4
Egypt	1	-	-	1
Georgia	3	-	2	5
Iraq	-	1	2	3
Cameroon	2	-	-	2
Kyrgyzstan	2	1	-	3
Lebanon	1	-	-	1
Liberia	2	-	-	2
Nigeria	6	3	-	9
Pakistan	6	-	-	6
Russia	41	24	32	97
Syria	1	-	-	1
Somalia	1	-	-	1
Togo	1	-	-	1
TOTAL	80	29	37	146

Table 2. Asylum seekers accommodated in the FRC as of 14 May 2007

Country of origin	Male	Female	Children	Total number
Angola	1	-	-	1
Armenia	1	-	-	1
Belarus	1	-	-	1
Ghana	1	-	-	1
Georgia	5	1	-	6
Cameroon	-	1	-	1
Liberia	2	0	-	2
Nepal	1	0	-	1
Nigeria	5	2	1	8
Pakistan	3	-	-	3
Russia	15	7	14	36
Ukraine	1	-	-	1
TOTAL	36	11	15	62

6 asylum seekers (minors) stayed in the Refugee Reception Centre in 2005. The following Table 3. provides a breakdown of numbers according to country of origin of asylum seekers.

Table 3. Asylum seekers accommodated in the RRC during 2005

Country of origin	Children
Afghanistan	1
Nigeria	1
Pakistan	1
Russia	1
Stateless	2
TOTAL	6

As of 14 May 2007, 63 foreigners were living in the Refugee Reception Centre, of whom 7 were unaccompanied minors.
According to the information of the Migration Department, no asylum seekers were allowed to stay in private during 2005. No updated statistics for 2006 is yet available.

B. What is the total budget of reception conditions in euro for the last year for which figures are available?[551]

A.40. B. There are no numbers available as to the total budget specifically for reception conditions, thus only the data on expenses for accommodation of asylum seekers in the reception centres could be presented. Furthermore, the financial data was only available for 2004 for the FRC. Total budget for reception of foreigners in the Foreigners' Registration Centre in 2004 was 850,295 Euro, fully covered from the state budget. Asylum seekers' reception constituted 323,538 Euro. It covered health care, nutrition, heating and electricity costs, monthly allowances, etc. The budget for reception at the Refugee Reception Centre in 2004 (also fully funded from the state budget) was 469,156 Euro. In 2005, the budget of the RRC was approximately 481,159 Euro. In 2006, the total budget of the RRC was approximately 480,435 Euro (this covered both reception at the Centre and also integration conditions).

C. What is the average cost of reception conditions in euro per asylum seeker for the last year for which figures are available?[552]

A.40. C. No such calculations are available. However, for instance reception of one unaccompanied minor in the RRC costs approximately 437 Euros.

D Are the costs of reception conditions of asylum seekers supported by the central/federal or federated government or are they shared with regional and/or local authorities?

[551] To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.
[552] To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

A.40. D. The costs of reception conditions of asylum seekers are supported by the central government.

E. Is article 24 § 2 of the directive following which "*Member States shall allocate the necessary resources in connection with the nationals provisions enacted to implement this directive*" respected?

A.40. E. Yes, this article is implemented in practice.

Q.41. A. What is the total number of persons working for reception conditions?

A.41. A. The total number of persons in both reception centres working on reception conditions is not clear. As the FRC accommodates and serves also illegal migrants and no special social staff is at all available, it is difficult to distinguish the exact number of those related to reception. 29 persons work in the RRC, which also serves persons who were granted asylum. In the RRC, 8 persons work with unaccompanied minors (information of the Centre of 16 April 2007). 2 lawyers of the Lithuanian Red Cross are providing legal assistance and 2 social workers from LRC and Caritas are providing social assistance.

B. **How is the training of persons working in accommodation centres organised? Does it take into account specific needs of unaccompanied minors when relevant as well as the gender dimension? (see article 14 §5, 19 § 4 and also 24 §1 which are mandatory provisions)?**

A.41. B. The national legislation requires the persons dealing with unaccompanied minors to have knowledge about their special needs. A few years ago, all relevant asylum and border guard officials, as well as reception staff received substantial training on treatment of unaccompanied minors. Trainers of training have been prepared within institutions. According to the information of the RRC (16 April 2007), the staff of the Centre participated in 16 trainings related to a variety of issues (including on guardianship and custody of children, gender issues, provision of psychological support to children, social work and others) in 2006-2007.

C. Are there rules about the deontology of persons working in accommodation centres, in particular on confidentiality?

A.41. C. In accordance with the laws, the file of an asylum seeker is made secret. The principle of confidentiality is stated in Article 68(2) of the Aliens' Law and is binding upon all institutions and officials involved in the asylum procedure. Furthermore, confidentiality is ensured in the RRC by the provisions of the Code of Ethics of Employees of the Centre, approved by the Director of the Centre on 29 April 2004 (No. 42-V) (information of the RRC of 16 April 2007, the author of this Report had no access to this document).

10. IMPACT OF THE DIRECTIVE

Legal impact of the transposition of the directive:

Q.42. Specify if there are or not big problems with the translation of the directive in the official language of your Member State and give in case a list of the worst examples of provisions which have been badly translated? (please note that this question has in particular been added to the questionnaire concerning the new Member States)

A.42. There are no particularly serious translation problems of the directive.

Q.43. Where there precise legal rules on reception conditions for asylum seekers before the adoption of the norms of transposition of the directive (if yes, specify what the nature of those rules was (legislation, regulation, administrative instructions,…)?

A.43. The reception conditions have been regulated previously by the Law on Refugee Status (2002 version) and orders on accommodation of asylum seekers in the reception centres. Also, the provisions of the directive have been taken into account by the drafters of new national legislation (e.g. when revising the Aliens' Law in 2004) as part of Lithuania's accession to the EU obligations to align its' national legislation, institutions and administrative practice with the EU *acquis* on asylum. Thus a number of reception standards were already incorporated in the legislation before the official transposition.

Q.44. Did the legal rules applicable to reception conditions become more clear, precise, coherent or detailed with the adoption of the transposition norms (for instance do you now have after the transposition one basic text dealing with reception conditions instead of numerous different texts in the past?

A.44. The legal rules did not change much and there is no one basic text dealing with transposition of reception conditions.

Q.45. Did the transposition of the directive imply important changes in national law or were the changes of minor importance? In case, list the most important changes that have been introduced.

A.45. The reception norms had a significant influence for introduction of free legal aid for asylum seekers paid by the state. At the moment, it reflects more favourable conditions than those stated in the directive. It also impacted on introduction of good access to education and facilitated better access to health care system.

Political impact of the transposition of the directive:

Q.46. Explain briefly if there has been an important debate about the transposition of the directive (in particular in the Parliament, but possibly also in the government,

between political parties, including in medias, etc; underline in case the main points which have been discussed or have created difficulties)

A.46. According to the information available to the author of this Report, no important debate about the transposition of the directive has taken place in Lithuania in 2005-2006. However, in the end of 2006, the Social Affairs and Labour Committee of the Parliament of Lithuania has started examination of the reception conditions of asylum seekers in the Foreigners Registration Centre, prompted by letters of concern from UNHCR. The members of this Committee paid a visit to the FRC on 21 March 2007. As a result of this visit, the discussion was organised in the Parliament, while the Committee decided to approach the Government for allocation of additional budget for the FRC in 2008 in order to meet the implementation of certain reception requirements in the Centre (e.g. concerning new working places for social workers and psychologists).

Q.47. Did the transposition of the directive contribute to make the internal rules stricter or more generous? In particular, did your Member State use the occasion of the transposition to abolish more favourable provisions of national law? Does your Member State still have rules more favourable than the provisions of the directive (if yes, try to give the more important examples).

A.47. More favourable rules exist as concerns free legal aid for asylum seekers. The rules were made stricter due to transposition as concerns asylum seekers' contribution to their reception conditions.

11. ANY OTHER INTERESTING ELEMENT

Q.48. What are in your view the weaknesses and strengths of the system of reception conditions in your Member State?[553]

A.48. The strengths of the system of reception conditions in Lithuania according to the opinion of the author of this Report is that the system allows a combination of both central accommodation of the asylum seekers and also staying in private; also that proper legal assistance and counselling is provided during all stages of the asylum procedure, etc.

Also, several aspects are considered as strengths of the system by the NGOs (Lithuanian Red Cross), including:

- 28 October 2005 Minister of Health Security Order on Hygiene Provisions and Rules in the Foreigners Registration Centre[554] might be regarded as a positive development, because it establishes detailed hygiene requirements

[553] To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

[554] 28 October 2005 Minister of Health Security Order No. V-836 on Hygiene Provisions and Rules in the Foreigners Registration Center, published in State News No. 135-4863, 2005.

for the premises, the distribution of hygiene items to foreigners, the nutrition and the health assistance systems in the Centre.

- The flexibility of the authorities who allow NGOs to fill in the social gaps in the system. For instance, in 2005-2007 the Lithuanian Red Cross has been implementing the social assistance project to asylum seekers in the Foreigners Registration Centre funded by the European Refugee Fund and the Ministry of Internal Affairs, which aimed to fill the gap of social assistance and help to satisfy basic social, medical and psychological needs of asylum seekers.[555]

As concerns weaknesses, little integration of social services into the general system exists, as well as access problems to the health care beyond emergency health care; non-availability of reception conditions at the border and local migration services; discrimination of asylum seekers, who entered legally and stay in private (basically no access to reception conditions); extensive decision making powers vested to the administration of the reception centres and little independent control; treatment of vulnerable individuals is problematic; hosting of asylum seekers in the FRC for the whole period of the procedure (except unaccompanied minors), which is not a social establishment (previous reception system, which existed until 2004, whereby asylum seekers stayed in the FRC only for the first stage of the asylum procedure and were then transferred to the RRC, which is a social establishment, was much better in view of the author of this Report).
In addition, the main aspect considered as weaknesses of the system by the NGOs (Lithuanian Red Cross) is that the Foreigners Registration Centre is granted with a status of the only accommodation facility for all asylum seekers except for unaccompanied minors. This, in view of the Red Cross, is problematic in view of the requirements of the Directive due to the following reasons:

1. The FRC definitely lacks the character of a social institution; neither social nor psychological staff has been employed in the Centre.
2. Once accommodated in the Centre, asylum seekers with special needs particularly women, children, elderly, the traumatised and the disabled find themselves in a very poor social environment surrounded by the uniformed border guards next to the detained irregular migrants.
3. The nutrition system is centralised in the FRC, it does not always secure religious or cultural dietary requirements.
4. The medical unit, located in the FRC, provides only necessary health care services, while access to the hospitals and services of specialists is available only in emergency cases. Neither psychological, nor mental health services are available in the Centre.
5. The amount of 25 Litas (approx. 7 Euro) is really modest, thus asylum seekers sometimes are not able to satisfy their

[555] Description of the Project at www.redcross.lt

basic needs (e.g., proper food, health care, clothing, and school necessities).

Also, the existing system is not encouraging housing in private, as a result of which asylum seekers are frequently forced to live in the FRC because of financial reasons (7 Euro pocket money is clearly not sufficient to survive outside the Centre).

Q.49. Mention any good practice in your Member State which could be promoted in other Member States[556]

A.49. Provision of legal assistance during all stages of the asylum procedure; housing of unaccompanied minors.

Q.50. Please add here any other interesting element about reception conditions in your Member State which you did not had the occasion to mention in your previous answers.

A.50. Four issues could be mentioned here:

1) DNA Testing for family reunification purposes.

Article 122 of the Aliens' Law provides in paragraph 3 that the expenses related to the performance of the DNA test (in connection with the issuance of residence permit on family reunification grounds to confirm kinship) shall be covered by the alien except for the asylum applicants whose DNA test expenses shall be covered by the Republic of Lithuania.

2) Age Determination Test.

Article 123(1) of the Aliens' Law provides that if there are reasonable grounds to doubt the alien's age, the Migration Department may oblige the alien who is applying for the issue of a residence permit or for the granting of asylum to undergo an age determination test. Paragraph 5 of the Article provides that the expenses related to the performance of the age determination test shall be covered by the alien except for the asylum applicants whose test expenses shall be covered by the Republic of Lithuania.

3) Asylum statistics.

The number of asylum applications submitted in 2006 was 459, while in 2005 there were 410 (in comparison, 458 asylum applications submitted in 2004). 3 unaccompanied minors submitted applications during 2006 (in comparison with 9 in 2005 and 11 in 2004). 12 persons were granted refugee status in 2006 (while 15 were recognised in 2005, constituting 4% of all decisions) and 385 persons were granted subsidiary protection (in comparison with 328 in 2005, 85% of all decisions).

[556] To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

4) Reception at the Foreigner Registration Centre.

According to UNHCR, the MOI, including the Border Guards Service, (to which the FRC (in fact, the only real reception facility) belongs) lacks ownership of the reception function, while the Social Ministry is reluctant to consider asylum seekers as clients of social assistance system. The staff of the FRC is not properly trained to deal with special needs of asylum seekers, in particular as concerns vulnerable groups. Social infrastructure of the FRC is extremely poor and potentially productive for SGBV attacks. With this background, trained staff, social infrastructure and expertise of the RRC are not used to address the clear gaps in the reception process.

QUESTIONNAIRE FOR THE NATIONAL REPORT ON THE IMPLEMENTATION OF THE DIRECTIVE :
RECEPTION CONDITIONS OF 27 JANUARY 2003

IN: GRAND DUCHY OF LUXEMBOURG

by
Olivier LANG
Avocat à la Cour
olivier.lang@barreau.lu

10 October 2007

1. NORMS OF TRANSPOSITION

Q.1. Identify the main norm of transposition (indicate the title, date, number, date of entry into force and references of publication into the official journal) and indicate its legal nature (legislative, regulatory, administrative); indicate in your answer if this norm was only devoted to the directive or if it has been included in a more general text and indicate in that case by quoting precisely the numbers of the provisions adopted to transpose the directive.

La loi du 5 mai 2006 relative au droit d'asile et à des formes complémentaires de protection, publiée le 9 mai 2006 au Mémorial A, journal officiel luxembourgeois (A 2006, N°78, p.1401), et entrée en vigueur le 13 mai 2006, est la principale norme de transposition (ci-après, *la loi du 5 mai 2006*) (**annexe 1**).

Selon l'exposé des motifs de la loi, celle-ci a deux finalités, la première est de doter l'Etat luxembourgeois des moyens de participer à la mise en œuvre de la première phase du régime d'asile européen commun engagée par le Conseil européen de Tempere des 15 et 16 octobre 1999, la deuxième est d'accélérer la procédure d'examen des demandes de protection internationale.

Ainsi, outre la transposition dans l'ordre juridique luxembourgeois de la directive 2003/9/CE du 27 janvier 2003, cette loi a encore pour vocation de transposer les trois autres directives « asile » ;

- la directive 2004/83/CE du 29 avril 2004 concernant les normes minimales relatives aux conditions que doivent remplir les ressortissants des pays tiers ou les apatrides pour pouvoir prétendre au statut de réfugié ou les personnes qui, pour d'autres raisons, ont besoin d'une protection internationale, et relative au contenu de ces statuts,
- la directive 2001/55/CE du 20 juillet 2001 relative à des normes minimales pour l'octroi d'une protection temporaire en cas d'afflux massif de personnes déplacées et à des mesures tendant à assurer un équilibre entre les efforts consentis par les Etats membres pour accueillir ces personnes et supporter les conséquences de cet accueil.
- la directive relative à des normes minimales concernant la procédure d'octroi et de retrait du statut de réfugié dans les Etats membres,

La loi a 74 articles répartis sur 4 chapitres. Outre les dispositions du chapitre 1er (*Objet, définitions et compétence*), on en trouve neuf dans le chapitre 2 (*de la procédure relative à l'examen d'une demande de protection internationale*), qui abordent la transposition.

Q.2. List by order of importance by using numbers (1, 2, 3) the others norms of transposition if there are more than one (indicate for each norm the title, date, number and references of publication into the official journal; include in your answer the administrative measures taken to ensure implementation of the directive and of the transposition norms like regulations, administrative circulars, special instructions,…)

1. Le *règlement grand-ducal du 21 juillet 2006 déterminant les conditions dans lesquelles les demandeurs de protection internationale ont accès à la formation prévue à l'article 14 de la loi 5 mai 2006 relative au droit d'asile et à des formes complémentaires de protection* (ci-après, *le règlement formation*) (**annexe 2**).

2. Le Règlement grand-ducal du 1er septembre 2006 fixant les conditions et les modalités d'octroi d'une aide sociale aux demandeurs de protection internationale. (**annexe 3**).

3. Des circulaires et/ou directives internes au Ministère des Affaires Etrangères et de l'Immigration, au Ministère de la Famille et de l'Intégration et au Ministère de l'Éducation nationale et de la Formation professionnelle. Depuis l'entrée en vigueur de la nouvelle législation, le rapporteur a connaissance de deux de ces circulaires. La première est celle du Ministère des Affaires Etrangères et de l'Immigration, élaborée le 14 juillet 2006 et concernant l'octroi d'une autorisation d'occupation temporaire (**annexe 11**). La deuxième est une note de la Commissaire du Gouvernement aux étrangers du 11 juillet 2006 (**annexe 13**) concernant l'aide sociale à apporter aux personnes détentrices d'une autorisation d'occupation temporaire et qui disposent d'un revenu.

Q.3. Explain which level of government is competent to adopt the legal norms on reception conditions for asylum seekers (specify in particular in case of a federal or regional State, if it is the federal/central power or the components; in case, specify below when it is impossible for you to answer a question because it is about the competence of the components and it is impossible for you to gather reliable information about all of them)

Les normes sont adoptées au niveau national et sont applicables sur tout le territoire. La Chambre des Députés a adopté la loi qui a été promulguée et sanctionnée par le Grand-Duc, avant d'être publiée le 9 mai 2006 au Mémorial, journal officiel du Grand-Duché de Luxembourg.

L'article 36 de la Constitution prévoit que *Le Grand-Duc prend les règlements et arrêtés nécessaires pour l'exécution des lois* (les deux prédits règlements).

L'article 9 du *règlement aide sociale* prévoit que le Ministre de la Famille et de l'Intégration est chargé de l'exécution de ce règlement, alors que l'article 11 du *règlement formation* dispose que le Ministre de l'Éducation nationale et de la Formation professionnelle est chargé de l'exécution de ce dernier. Ce sont ces deux ministères qui ont par ailleurs préparé les deux règlements.

Q.4. Explain the legal technical choices done to transpose the directive (comment on the nature and level of the norms used to do the transposition: legislative, regulatory, administrative like instructions, etc). Add any other element about the technique of transposition of the directive which is interesting for the implementation of Community law.

L'Etat luxembourgeois s'est doté de *la loi du 5 mai 2006* pour transposer dans un premier temps les principes arrêtés par la directive. Pour ceux de ces principes qui nécessitaient une réglementation plus précise et technique d'exécution, le législateur a laissé le soin au Grand-Duc de prendre les règlements nécessaires à cette fin. Ainsi, l'article 6 (7) de la loi la loi du 5 mai 2006 dispose que l'attestation qui est en principe remise au demandeur au moment de la présentation de sa demande « *(…) confère le droit à une aide sociale suivant des modalités à fixer par règlement grand-ducal* » et l'article 14 (9) de la prédite loi prévoit que « *les demandeurs ont accès à la formation selon les conditions à fixer par règlement grand-ducal qui sera pris sur avis du Conseil d'Etat.* »

Toute autre question qui nécessiterait une réglementation plus précise d'exécution que celle se trouvant dans la loi ou même dans les règlements, sera en principe abordée par le biais de directives ou circulaires internes écrites ou orales au sein des Ministères chargés de l'exécution de la loi et des règlements. Le rapporteur n'a connaissance que d'une seule circulaire en ce sens (**annexe 11**) et rappelle que la loi et les règlements d'exécution sont très récents.

Q.5. Mention if there is a general tendency to just copy the provisions of the directive into national legislation without redrafting or adaptation them to national circumstances? If yes, give some of the worst examples and explain if there is a risk that those provisions remain unapplied or will create difficulties of implementation in the future.

Alors que la *loi du 5 mai 2006* n'aborde pas exclusivement les normes minimales d'accueil mais s'inscrit dans une refonte générale du droit d'asile au Luxembourg, il était difficile de procéder dans ce texte par simple copie des dispositions de la directive. L*a loi du 5 mai 2006* se veut cohérente, même si certaines de ses dispositions ne concernant pas le sujet du présent rapport, sont le fruit d'un recopiage textuel des autres directives transposées.

Cependant, cette même remarque ne peut être faite en ce qui concerne le *règlement aide social* qui est quant à lui pour partie le fruit d'une presque parfaite copie des dispositions concernées de la directive. Cette méthode de transposition crée sans aucun doute des situations qui seront difficilement résolubles. Ainsi, par exemple, l'article 16. (1) a) de la directive étant transposé quasiment mot à mot à l'article 4. (4) c) du règlement, il y est fait état de l'hypothèse d'une autorisation à demander à l'autorité compétente pour pouvoir quitter le lieu de résidence. Le règlement reprend que le fait de quitter le lieu de résidence sans cette autorisation peut avoir pour

conséquence la limitation ou le retrait de l'aide sociale mais ne définit à aucun endroit *l'autorité compétente* à qui cette autorisation devrait être demandée, ni même n'envisage les hypothèses dans lesquelles cette autorisation devrait être demandée.

Q.6. Have all the texts necessary to ensure the effective implementation of the new rules of transposition been adopted, prepared or at least foreseen in the future (for example a regulation completing a new law and the necessary instructions telling the administration how to apply the new rules)?

Il subsiste quelques lacunes dans les textes de transposition pour que cette dernière réponde parfaitement aux exigences de la directive mais nous verrons qu'en pratique, à part deux exceptions (l'absence de réglementation quant à la recherche des membres de la famille du mineur non accompagné de l'article 19 § 3 de la directive et l'absence de disposition quant à la formation appropriée des personnes travaillant dans les centres d'hébergement de l'article 14 § 5 de la directive), le recours à des normes juridiques luxembourgeoises préexistantes plus générales ainsi que la garantie de recours juridictionnels efficaces, devraient permettre d'atteindre les objectifs fixés par la directive.

D'ores et déjà, il convient de préciser dans ce contexte que si aucune disposition spécifique de transposition n'a été élaborée dans ces trois domaines précis, la pratique au Luxembourg répond aux exigences désormais formelles de la directive.

Il est à relever que l'absence d'une réglementation du contenu de la formation des personnes travaillant dans les centres d'hébergement prive dans certains cas les demandeurs de certains centres d'un encadrement et d'un suivi socio-éducatifs appropriés.

Il reste également des vides qui sont prévus d'être rapidement comblés. Particulièrement, le Luxembourg construit actuellement un centre de rétention pour étrangers en situation irrégulière et pour demandeurs d'asile faisant l'objet d'une mesure de placement en structure fermée et la réglementation à venir des conditions des rétention, devra également permettre de se conformer aux exigences de la directive, en particulier à celles tenant aux conditions minimales d'accueil des demandeurs placés en structure fermée.

2. BIBLIOGRAPHY

Q.7. Has an in-depth preparatory study been made public about the changes at the occasion of the transposition? If yes, thanks for trying to provide us a copy *(please contact to answer this question adequately the body and person who was responsible for the preparation of the transposition of the directive in the public administration).*

Il n'y a pas eu de réelle étude approfondie mais beaucoup d'institutions ont eu à se prononcer sur le projet de loi (qui est à l'origine de la loi du 5 mai 2006) ou se sont autosaisies de la question par le biais d'avis, parfois assez fouillés qui ont tous été publiés dans les documents parlementaires (documents parlementaires 5437).

Par ailleurs, trois présentations PowerPoint intitulées : *La nouvelle loi d'asile en quelques mots* ont été réalisées par le SESOPI –Centre Intercommunautaire (**annexe 4**). Elles ont été présentées lors d'un débat au festival de l'Immigration, dans un centre d'accueil pour demandeurs d'asile et dans une ONG travaillant avec les demandeurs d'asile.

Q.8. Quote any recent scientific book or article published about the directive, the transposition rules or the question of reception conditions for asylum seekers in general (answer even if this literature is only available in your language and provide the complete title in your language (without translation) with all references; indicate author, title, in case name of periodical, year and place of publication).

Il n'y a pas eu de publication scientifique proprement dite, sous forme d'ouvrage ou d'article.
Un guide pratique du citoyen a été publié fin 2005 par le *CLAE Comité de Liaison et des Associations d'Etrangers services asbl*. Ce guide traite dans trois chapitres (*Demandeurs d'asile : quels statuts ?*, *La demande d'asile*, *Asile : droits et aides*) de la problématique de l'asile[557]. Il tient compte des principaux changements de la nouvelle loi alors que celle-ci n'avait pas encore été adoptée. Il n'aborde cependant pas encore la transposition opérée par les règlements *aide social et formation*.

La préparation et l'adoption de la loi *du 5 mai 2006* ont par ailleurs suscité beaucoup de réactions qui se sont matérialisées par le biais d'articles de presse, fruits de communiqués ou d'échos de conférences.

On peut citer en particulier :
Le communiqué de presse LFR (Collectif**réfugiés**luxembourg-lëtzebuerger**flüchtling**srot) intitulé *dialogue et rétention* du 5 avril 2005, publié dans les journaux *Zeitung* du 6 avril 2005 et *Luxemburger Wort* du 23 avril 2005 ;
Le communiqué de presse LFR intitulé *Trouver des alternatives à la rétention*, publié dans les journaux *La voix du Luxembourg* du 18 novembre 2005, page 3, et *Luxemburger Wort* du 15 octobre 2005, page 5 ;
Le communiqué de presse LFR intitulé *Pour une procédure et un accueil respectueux de la dignité humaine*, publié au Zeitung du 14 octobre 2005, page 3.

Les échos de la conférence de presse du LFR du 15 mars 2005 ; *Avis du LFR sur le projet de loi relatif au droit d'asile* in : *Zeitung* du 16 mars 2005, page 2, *La Voix du Luxembourg*, page 5, *Luxemburger Wort* page 3, Q page 5, J page 4.

Les échos de la conférence de presse organisée par la Commission consultative des droits de l'Homme par la presse lors du 1er et 2ème vote parlementaire :
- "Menschenrechte sind gefährdet" : par Raymond Klein dans "Woxx", le 22 04 2005.
- "Kleines Ja und grosses Aber für die Asylgesetzgebnung" par Dani Schumacher dans le "Luxemburger Wort" du 21 04 2005.

[557] CLAE services asbl : *Bonjour Luxembourg. Guide Pratique du Citoyen*. CLAE Services, Luxembourg, 2005

- "Umstrittene Asylpolitik" d' Alex Fohl dans le "Tageblatt" du 21 04 2005,
- "Liberté mal ordonnée" de Sophie Kieffer dans la "Voix du Lxembourg" du 21 04 2005.
- "Question de dignité et de justice" par Cédric Evard dans le "Jeudi" du 21 04 2005.
- "Innovatives Aslyrecht mit Schuss" dans le "Journal" du 21 04 2005.
- "Des demandeurs d'asile à protéger" par Jérôme Quiqueret dans le "Quotidien" du 21 04 2005.
- "Asylgesetz kontra Menschenrechte" dans "Zeitung vum Letzebuerger Vollek" du 21 04 2005.

On peut également citer deux autres articles davantage analytiques :
Josée Hansen : *Réforme du droit d'asile. Difficile partage du travail*, publié au Lëtzebuerger Land du 9 septembre 2005, page 5
Josée Hansen : *Réforme du droit d'asile. C'est pas un métier*, publié Lëtzebuerger Land du 4 novembre 2005, page 5

Q.9. Quote any interesting decision of jurisprudence based on the implementation of the new rules of transposition of the directive (indicate references of publication if any)?

Les normes de transpositions concernant les conditions d'accueil sont trop récentes pour qu'une jurisprudence ait à l'heure actuelle pu se dessiner.

3. GENERAL INFORMATION ABOUT THE SYSTEM OF RECEPTION CONDITIONS

The purpose of the following two questions is to help the reader to understand easily and quickly the system of reception conditions in your Member State and also to avoid that you have to repeat general elements in other parts of the questionnaire. ***Please do not write more than one or maximum two pages and do not include large historical developments.***

Q.10. Describe in general the system of reception conditions in your Member State (in particular which are the main actors in charge of reception conditions?)

La personne qui dépose au Luxembourg une demande en octroi d'un statut de protection internationale se verra attribuer dans les 3 jours de sa demande par les services du Ministère des Affaires Etrangères et de l'Immigration une pièce (article 6(5) de la *loi du 5 mai 2006)* attestant de sa demande et lui conférant *le droit à une aide sociale suivant des modalités à fixer par règlement grand-ducal* (article 6. (7) de la *loi du 5 mai 2006*), à condition qu'elle ne dispose pas des moyens suffisants à sa subsistance (article 2 du *règlement aide sociale*).
- Muni de cette attestation, le demandeur de protection internationale présentera sa demande d'aide sociale au Ministre ayant le Commissariat du Gouvernement aux étrangers dans ses attributions (Ministre de la Famille et de l'Intégration), la simple détention de cette attestation ouvrant droit à l'aide sociale (article 2, & 4 du r*èglement aide sociale*).

Si l'attestation ne peut être délivrée au demandeur immédiatement, dès la présentation de sa demande, les services de police judiciaire (premières autorités luxembourgeoises avec lesquelles le demandeur d'asile sera en contact et à qui il présentera en fait sa demande de protection internationale), délivrent au demandeur une convocation qui *tient lieu provisoirement et pendant*

une durée limitée de trois jours maximum de pièce donnant droit à l'aide sociale (article 6 (5) de la loi du 5 mai 2006).

L'article 3 & 4 du *règlement aide social* dispose que « *le droit à l'aide sociale prend effet à partir de la remise de l'attestation, respectivement de la convocation, visée aux articles 6, 22 et 62 de la loi (précitée) du 5 mai 2006*) »

Ainsi, le demandeur de protection internationale pourra, dès l'accomplissement des modalités pratiques de l'enregistrement de sa demande, avoir droit à l'aide sociale telle que prévue par le *règlement aide sociale*.

Le demandeur de protection internationale devra par ailleurs être *informé des avantages dont il peut bénéficier et des obligations qu'il doit respecter eu égard aux conditions d'accueil* et se verra remettre *une liste des organisations susceptibles de l'aider pendant son séjour au Luxembourg* au moment où il présentera sa demande d'aide sociale au Ministre de la Famille (article 3, § 2 et 4 du *règlement aide sociale*. D'un point de vue pratique, le Ministre des Affaires Etrangères et de l'Immigration et le Ministre de la Famille remettent au demandeur une information écrite conjointe sur ses droits et obligations relatifs à la procédure d'asile, d'une part et, d'autre part, sur ceux relatifs à l'aide sociale.

Le droit à la formation naîtra variablement en fonction des prévision du r*èglement formation* soit immédiatement dès l'instant où le demandeur est en possession de l'attestation de l'article 6 de la *loi du 5 mai 2006* (article 2 du règlement *formation*), soit à partir du neuvième mois qui suit ce dépôt, selon des exceptions tenant à l'âge (majeur/mineur) du demandeur et à la nature de la formation (le *règlement formation* (article 1er) prévoit quatre types de formations). La Ministre de l'Education nationale et de la formation professionnelle est chargée de l'exécution du *règlement formation*.

Le droit au travail (pour les adultes) ne naît qu'à compter du neuvième mois qui suit le dépôt de la demande de protection internationale (article 14 (1) de la *loi du 5 mai 2006*).

Q.11. **Q11. A.** Explain if you have <u>different types and levels of reception conditions following the different stages of the asylum procedure</u> (this implies that you have to give briefly the necessary explanations about the asylum procedure). Make if relevant for reception conditions a distinction between the following procedural stages: determination of the responsible Member State on the basis of the Dublin II regulation, special procedures at the border (including transit zones in airports), accelerated procedures, admissibility procedures, eligibility procedures and the different possibilities of appeals (suspensive or not) against a refusal of the asylum request. Indicate what the main differences of reception conditions are between the different stages (if necessary by detailing between the different elements of reception conditions, in particular housing) and explain what the evolution of reception conditions is following the different stages of the procedure.

L'article 6 (5), 2ème § de la loi du 5 mai 2006 prévoit que l'attestation donnant droit à l'aide sociale ne sera pas délivrée au demandeur faisant l'objet d'une mesure de rétention

administrative, ni à celui qui aura déposé une nouvelle demande de protection internationale (cf. Q.11B et Q.16) Mises à part ces deux exceptions, aucun texte ne prévoit de différence quant à la nature, la qualité ou la quantité des prestations de conditions d'accueil en fonction du stade de la procédure d'examen de la demande d'asile.

Q 11. B. Indicate precisely for which stage(s) of the asylum procedure the answers on reception conditions you give below are valid.

Dès qu'un demandeur de protection internationale est en possession de l'attestation prévue à l'article 6 de la *loi du 5 mai 2006*, il devra pouvoir bénéficier des conditions d'accueil.

Aux termes de l'article 3, 5ème § du *règlement aide sociale*, « *le droit à l'aide sociale prend fin :*
- *en cas de restitution de l'attestation au ministre ayant l'asile dans ses attributions,*
- *en cas d'expiration de la validité de l'attestation,*
- *dès l'obtention d'une autorisation de séjour,*
- *dès l'obtention d'un permis de travail* »
- dès *l'obtention du statut de réfugié ou du statut conféré par la protection subsidiaire*.

Pratiquement, la restitution de l'attestation au ministre des Affaires Etrangères et de l'Immigration (1ère hypothèse), sera exigée par l'autorité du Ministère chargée de la prolonger lorsqu'une décision définitive rejetant la demande de protection internationale sera intervenue.

Ni la loi ni le règlement ne prévoient de distinction quant à la nature même de l'aide sociale qui diffèrerait en fonction des différentes procédures ou stades de procédure selon lesquelles la demande de protection est analysée.

Dans le cadre d'une procédure d'examen d'une demande de protection internationale qui suit le cours « normal » prévu par la loi du 5 mai 2006, après avoir entendu le demandeur et lorsqu'il s'estimera en possession de tous les éléments exigés par cette même loi, le Ministre des Affaires Etrangères et de l'Immigration statuera sur le bien-fondé de cette demande. En cas de décision négative, et dans le délai d'un mois qui suivra la notification de cette décision, le demandeur pourra soit saisir à nouveau le Ministre d'un recours gracieux, soit[558] saisir le Tribunal administratif d'un recours au fond (*de pleine juridiction* où le Tribunal substituera sa décision à celle du Ministre).
Le délai d'un mois pendant lequel le demandeur de protection international pourra déposer son recours devant le Tribunal administratif étant suspensif, tout comme le recours en tant que tel introduit dans le délai (article 19 (3) de *la loi du 5 mai 2006*), le demandeur devra toujours pouvoir être en possession de l'attestation lui donnant droit aux conditions d'accueil pendant ces délais.
En cas de décision négative du Tribunal, le demandeur pourra encore saisir comme dernière voie de recours la Cour administrative qui statuera comme juge de l'annulation (article 19 (4) de la *loi du 5 mai 2006*) dans le délai d'un mois qui suivra la notification du jugement. Le prédit article prévoyant que le délai d'appel et l'appel introduit dans le délai on un effet suspensif, le

[558] L'article 19.(2) de la loi du 5 mai 2006 prévoit expressément que les recours gracieux n'interrompent pas les délais de recours.

demandeur devra toujours être en possession de l'attestation lui donnant droit aux conditions d'accueil pendant ces délais.

Les deux seules exceptions prévues par la loi du 5 mai 2006 au principe du droit à la délivrance immédiate de l'attestation donnant droit aux conditions d'accueil sont, aux termes de son article 6. (5) § 2, lorsque le demandeur fait l'objet d'une mesure de placement (rétention) ou lorsqu'il dépose une nouvelle demande de protection internationale « *tant que cette nouvelle demande n'a pas été déclarée recevable* ». Il est à noter qu'il est cependant très improbable qu'une telle décision de recevabilité soit prise à un moment ou un autre par le Ministre compétent, alors qu'aucune obligation n'existe en ce sens dans la loi (cf. la réponse sous la question 16).

L'article 15 de *la loi du 5 mai 2006* dispose que « *(1) Si, en vertu d'engagements internationaux auxquels le Luxembourg est partie, un autre pays est responsable de l'examen de la demande, le ministre surseoit à statuer sur la demande jusqu'à la décision du pays responsable sur la prise respectivement reprise en charge.*
(2) Lorsque le pays responsable accepte la prise en charge, le ministre se déclare incompétent pour l'examen de la demande de protection internationale par une décision motivée qui est communiquée par écrit au demandeur. Les informations relatives au droit de recours sont expressément mentionnées dans la décision. Le demandeur est transféré vers le pays responsable de l'examen de sa demande. »

Pendant la phase de détermination de l'Etat compétent dans le cadre de l'application de *DUBLIN II*, le demandeur a accès aux conditions d'accueil. Nous relèverons particulièrement qu'entre le moment où le Luxembourg constatera qu'un autre Etat est compétent et celui où cet Etat acceptera la prise/reprise en charge du demandeur, le Ministre surseoira à statuer, laissant ainsi la possibilité au demandeur de rester en possession de son attestation et de profiter des conditions d'accueil pendant ce temps. Il est cependant nécessaire de relever que si cette disposition se veut généreuse, le Luxembourg n'a pas étendu cette générosité jusqu'au jour de l'éloignement effectif du demandeur vers l'Etat membre compétent.
La loi n'octroie par ailleurs aucun effet suspensif à l'exercice des voies de recours contre une décision d'incompétence.

Si la demande de protection internationale est examinée selon la procédure accélérée organisée par l'article 20 de *la loi du 5 mai 2006*, le demandeur devra pouvoir être en possession de l'attestation dès la présentation de la demande et ainsi avoir accès à l'aide sociale pendant toute la procédure, alors que la loi ne prévoit aucune exception dans ce contexte. Cependant, si le demandeur fait, dans le cadre de cette procédure, l'objet d'une mesure de rétention (Il existe 13 cas d'ouverture de cette procédure accélérée et le demandeur pourra faire l'objet d'une mesure de placement dans 7 de ces cas), il n'aura pas droit à l'attestation, conformément aux termes de l'article 6 (5) §2.
Contre une décision prise dans le cadre de la procédure accélérée, le demandeur pourra toujours présenter un recours gracieux au Ministre comme dans le cadre de la « procédure normale » et il est à noter que si les délais de recours ainsi que le recours devant le Tribunal administratif introduit dans le délai, sont suspensifs (article 20 (4) de la loi du 5 mai 2006) et permettent donc la prolongation de l'attestation, la loi exclut formellement tout appel contre la décision du Tribunal administratif prise sur recours contre la décision du Ministre (article 20 (4) *in fine* de la

loi du 5 mai 2006).Dans le cadre de la procédure accélérée, le droit à l'aide social se terminera pour le demandeur avec la décision du Tribunal.

4. GENERAL RULES ON RECEPTION CONDITIONS

Q.12. **Q 12. A**. Are material reception conditions provided in kind, in money or in vouchers or in a combination of these elements (see article 13, §5 which is an optional provision)? Distinguish between the different elements (housing, food, clothes, health, transportation, pocket money,…). **If reception conditions are provided in money (in general or in some cases, for instance when no places are anymore available in accommodation centres), indicate the precise amount given to the asylum seekers. Indicate in your answer what is provided in general and if there are exceptional cases.** Specify in your answer if reception conditions are different from the general system of social aid for nationals or aliens and if yes, if and when (which stage of the asylum procedure) can asylum seekers have access to the general system of social aid?

L'article 1er du *règlement aide sociale* dispose que l'aide sociale comporte les prestations suivantes :

- l'hébergement, assorti d'une pension complète ou bien d'une fourniture de repas respectivement de denrées alimentaires,
- l'allocation mensuelle,
- les soins médicaux d'urgence,
- la prise en charge des cotisations à titre de l'assurance volontaire prévue par l'article 2 du code des assurances sociales pour la durée de maintien de l'aide sociale,
- les moyens de transport publics du réseau du Grand- Duché de Luxembourg,
- la guidance sociale,
- l'encadrement des mineurs non- accompagnés,
- les soins et suivis psychologiques gratuits pour les personnes en ayant besoin, notamment les victimes de traumatismes ;
- les conseils en matière sexuelle et reproductive.
- des aides ponctuelles en cas de besoin

L'allocation mensuelle est déterminée en fonction de la composition de ménage, de l'âge de ses membres et du type d'hébergement (article 5 du *règlement aide sociale*).

- En cas d'hébergement en pension complète avec fourniture de repas ou de denrées alimentaires, le bénéficiaire touche une allocation mensuelle en espèces de :

107,9.- € par personne adulte
26,9.- € par enfant âgé de 2 à11 ans
48,45.-€ par adolescent âgé de 12 à 18 ans
133,5.-€ par enfant âgé moins de 2 ans
86,3.- € par mineur non accompagné âgé de 16 à 18 ans

- Lorsque la fourniture de repas n'est pas possible, le bénéficiaire de l'aide sociale touche une allocation mensuelle de :

294.- € par personne adulte
534,15.- € par ménage de deux personnes

214,3.-€ par adulte supplémentaire
174,45.-€ par adolescent âgé de 12 à 18 ans
133,5.-€ par enfant âgé de moins de 12 ans
294.- € par mineur non accompagné âgé de 16 à 18 ans
L'allocation mensuelle peut être remplacée en partie par des bons d'achats.
Le bénéficiaire de l'aide mensuelle a également droit à un titre de transport gratuit par année et aux aides ponctuelles en cas de besoin.

Il est à noter que le règlement prévoit encore que les montants ci-dessus correspondent au nombre 652,16 de l'indice pondéré du coût de la vie au 1er octobre 2005 et sont adaptés suivant les modalités applicables aux traitements et pensions des fonctionnaires de l'Etat.

On relèvera qu'en pratique, le Commissariat du Gouvernement aux Etrangers n'attribue en principe pas de logement sans fourniture de repas et que les demandeurs sont systématiquement logés et nourris. Les exceptions concernent essentiellement les personnes connaissant des problèmes de santé et qui ont de ce fait besoin d'une alimentation bien spécifique. Dans cette hypothèse, ils sont en général placés dans des structures collectives possédant une cuisine dans laquelle ils prépareront leurs repas avec la nourriture qu'ils auront achetée avec l'allocation mensuelle.

L'hébergement est en toute hypothèse systématiquement fourni et il n'existe, à la connaissance du rapporteur, pas de situation où un demandeur recevrait une aide sociale globale exclusivement en argent, censée couvrir et les besoins de logement et ceux de nourriture.(Il est à noter que le règlement aide social ne prévoit d'ailleurs pas une telle situation qui se révèlerait illégale)

Selon les informations du 25 mai 2007 de Madame la Commissaire du Gouvernement aux étrangers, l'hébergement est attribué en fonction de la composition du ménage et des disponibilités du moment en tenant compte dans la mesure du possible des besoins spécifiques comme par exemple ceux de personnes à mobilité réduite.

Aucune disposition formelle ne prévoit cependant le droit à l'habillement, et donc l'accès à l'une des composantes des conditions d'accueil au sens de la définition de l'article 2 j). de la directive.
Depuis peu, il a pu être constaté que malgré l'absence de réglementation en ce sens, l'habillement est cependant fourni en pratique aux demandeurs de la manière suivante :
- dans une première phase, à leur arrivée, ils reçoivent du Commissariat du Gouvernement aux Etrangers, en plus de l'allocation mensuelle, un montant forfaitaire par famille ou individu de 100.-€ en liquide qui est censé couvrir leurs besoins en vêtements pendant six mois.
Ensuite, tous les six mois, à la demande expresse du demandeur, il pourra encore recevoir la somme de 50.- € s'il est adulte et celle de 100.-€ pour chaque enfant, à la discrétion du Ministre (!)
Les ONGs interviennent également et organisent la collecte et la distribution de vêtements.

Au titre des aides ponctuelles prévues au dixième tiret de l'article 1er du *règlement aide sociale*, Madame la Commissaire du Gouvernement aux étrangers explique le 25 mai 2007 que ces aides sont en espèces ou en nature et accordées sur proposition d'une assistante sociale, d'une éducatrice graduée ou de l'infirmière diplômée qui font partie du personnel du commissariat du

Gouvernement aux étrangers, en cas, par exemple, de grossesse, naissance, rentrée scolaire, décès, invalidité, maladie grave ou chronique.

A titre de comparaison, les résidents luxembourgeois, les ressortissants européens, ainsi que tout autre étranger personne autorisée à résider au Luxembourg depuis plus de 5 ans ont droit, en cas de ressources mensuelles inférieures à 1.070,92.-€, à un revenu minimum qui est ainsi fixé:

- 1.070,92.-€ pour une personne seule,
- 1.606,41.-€ pour une communauté domestique composée de deux adultes,
- 306,39.-€ pour chaque adulte supplémentaire vivant dans la communauté domestique
- 97,44.-€ pour chaque enfant ayant droit à des allocations familiales qui vit dans la communauté domestique.

Comme pour l'allocation mensuelle, ces montants sont indexés et correspondent au nombre 652,16 de l'indice pondéré du coût de la vie actuel et sont adaptés suivant les modalités applicables aux traitements et pensions des fonctionnaires de l'Etat.

Par ailleurs, il existe au Luxembourg des foyers d'accueil pour personnes sans abris mais aucune législation afférente n'existe dans ce domaine. Ces foyers sont conventionnés avec le Ministère de la Famille et de l'Intégration qui fixe les modalités et les conditions d'accueil. Ainsi, d'un point de vue pratique, ces foyers accueillent à titre provisoire les Luxembourgeois majeurs dans le besoin mais il arrive qu'en fonction de la situation, certaines personnes se trouvant dans des situations critiques y restent à plus ou moins long terme. Elles y reçoivent notamment un soutien et une aide pour la stabilisation de leur état de santé et pour l'accès au travail. Tout étranger en possession d'une autorisation de séjour et dans le besoin sera en général accepté d'urgence dans un de ces foyers pour une nuit en semaine et 3 jours pendant le week-end.

Il est à noter qu'actuellement, beaucoup de demandeurs de protection internationale déboutés et sans aucun titre de séjour au Luxembourg, continuent à résider dans les foyers d'accueil pour demandeurs de protection internationale et continuent à bénéficier des conditions d'accueil.

Q 12. B. Can the reception conditions in kind, money or vouchers be considered as <u>sufficient</u> "to ensure a standard of living adequate for the health of applicants and capable of ensuring their subsistence" as requested by article 13, §2 of the directive (which is a mandatory provision but leaves a certain space to Member States)? In order to help to assess the respect of this rule when reception conditions are provided in money, include if necessary in your answer points of comparison with the minimum amount of social aid guaranteed for nationals in your Member State.

Les conditions d'accueil pour les demandeurs de protection internationale peuvent être qualifiées d'acceptables, alors qu'elles leur permettent de survivre le temps de la procédure. On regrettera cependant le délai de 9 mois pendant lequel les demandeurs n'ont pas accès au marché du travail ainsi que la grande différence existant entre le montant de l'allocation mensuelle et celui du revenu minimum garanti pour Luxembourgeois ou résidants autorisés pour lesquels l'Etat a su

faire preuve de générosité. Le système de l'affiliation à la sécurité sociale (identique à celui des résidents) garantit aux demandeurs une prise en charge de leurs soins de santé. Seulement, et alors que comme les résidents, les demandeurs doivent avancer le paiement de certaines prestations de médecins, en cas de grand problème médical, l'avance pour le paiement des factures peut poser des difficultés. Par l'intermédiaire des assistants sociaux du Commissariat du Gouvernement aux Etrangers, le Ministre de la Famille a cependant la possibilité d'intervenir par le moyen d'une aide ponctuelle dont la décision d'octroi ou de refus, échappe cependant à tout contrôle. En pratique, aucune dérive n'a pour l'heure été constatée, alors que le Commissariat du Gouvernement aux Etrangers reste très attentif aux demandeurs connaissant de graves problèmes de santé.

5. PROCEDURAL ASPECTS

Q.13. **Q 13. A. Does the national legislation specifically provide that a request for international protection is presumed to be under the Geneva Convention unless explicitly requested otherwise? (see article 2, b which is a mandatory provision)**

L'article 2 (g) de la loi définit la « «demande de protection internationale», (comme étant) *la demande de protection présentée par un ressortissant d'un pays tiers ou un apatride, qui peut être comprise comme visant à obtenir le statut de réfugié ou le statut conféré par la protection subsidiaire, le demandeur ne sollicitant pas explicitement un autre type de protection hors du champ d'application de la présente loi et pouvant faire l'objet d'une demande séparée* »,
l'article 2 (c) de la Loi définit le « «réfugié», (comme étant) *tout ressortissant d'un pays tiers qui, parce qu'il craint avec raison d'être persécuté du fait de sa race, de sa religion, de sa nationalité, de ses opinions politiques ou de son appartenance à un certain groupe social, se trouve hors du pays dont il a la nationalité et qui ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de ce pays ou tout apatride qui, se trouvant pour les raisons susmentionnées hors du pays dans lequel il avait sa résidence habituelle, ne peut ou, du fait de cette crainte, ne veut y retourner et qui n'entre pas dans le champ d'application de l'article 34* »
et
l'article 2 (e) de la Loi définit la « «personne pouvant bénéficier de la protection subsidiaire», (comme étant) *tout ressortissant d'un pays tiers ou tout apatride qui ne peut être considéré comme un réfugié, mais pour lequel il y a des motifs sérieux et avérés de croire que la personne concernée, si elle était renvoyée dans son pays d'origine ou, dans le cas d'un apatride, dans le pays dans lequel il avait sa résidence habituelle, courrait un risque réel de subir les atteintes graves définies à l'article 37, l'article 39, paragraphes (1) et (2), n'étant pas applicable à cette personne, et cette personne ne pouvant pas ou, compte tenu de ce risque, n'étant pas disposée à se prévaloir de la protection de ce pays* » et

La combinaison de ces trois dispositions légales nous permet d'affirmer qu'un ressortissant de pays tiers qui présentera une demande de protection internationale au Luxembourg, verra sa demande analysée dans un premier temps au regard des critères de qualification du statut de réfugié et, au cas ou il ne répond pas à ces critères, selon ceux du statut dela protection subsidiaire.

Q. 13. B. Explain if the scope of application of reception conditions is extended to other asylum seekers than refugees in the sense of the Geneva Convention, in particular to persons asking for subsidiary protection or to other forms of protection like humanitarian statuses (see article 3, § 4 which is an optional provision)? If not, explain briefly which the differences between these special regimes and the directive are.

Nous avons vu que le la loi luxembourgeoise définit la demande de protection internationale *comme étant celle qui peut être comprise comme visant à obtenir le statut de réfugié ou le statut conféré par la protection subsidiaire* (article 2 g)). Les conditions d'accueil sont par la suite systématiquement abordées dans le cadre d'une demande de protection internationale sans autre précision ni restriction, de telle sorte que le champ d'application des conditions d'accueil au Luxembourg s'étend aux personnes sollicitant le statut de la protection subsidiaire.

Il n'existe au Luxembourg pas de statut humanitaire légal ni, par la force des choses, de procédure légale le concernant.

Les demandeurs de protection internationale déboutés pour lesquels l'exécution de l'éloignement vers leurs pays d'origine est impossible en raison de circonstances de fait, **peuvent, à la discrétion du ministre des Affaires étrangères et de l'Immigration**, obtenir un statut de tolérance (article 22 (2) à (11) de *la loi du 5 mai 2006*). Ce statut est temporaire et renouvelable tant que les circonstances de fait sont données. Ce statut leur donne droit aux mêmes prestations que les demandeurs de protection internationale reçoivent dans le cadre des conditions d'accueil.

En pratique, Madame la Commissaire du Gouvernement aux étrangers précise encore que les bénéficiaires de protection internationale en attente de devenir indépendants, reçoivent encore certaines prestations, tout comme les déboutés en attente d'un retour volontaire, et les déboutés en possession d'une « autorisation de séjour provisoire » en attente de trouver un logement et un emploi.

La *loi du 5 mai 2006* prévoit encore que le champ d'application des conditions d'accueil, couvre les personnes dont le statut de protection temporaire a été reconnu.

Q. 13. C. Are there specific provisions in national law for reception conditions in case of diplomatic or territorial asylum requests submitted through a diplomatic or consular representation (see article 3, §2 which is an optional provision)?

A la connaissance du rapporteur, il n'existe pas de telles règles.

Q.14. **Are reception conditions available as from the moment one asylum application is introduced? How is article 13, §1 which is mandatory legally understood?** Do asylum seekers have to satisfy any other condition in order to get reception conditions?

Les conditions d'accueil sont théoriquement applicables dès le dépôt de la demande de protection internationale à partir de l'instant où le demandeur est en possession de l'attestation ou de la convocation **(cf. les réponses aux questions 10 et 11).**

Q.15. **Explain when reception conditions end, for instance after refusal of the asylum request** (include in your answer the link with the right of appeal against a decision of refusal of the status, in particular the question of its suspensive effect)

Aux termes de l'article 3, 5ème § du *règlement aide sociale*, « *le droit à l'aide sociale prend fin :*

- *en cas de restitution de l'attestation au ministre ayant l'asile dans ses attributions,*
- *en cas d'expiration de la validité de l'attestation,*
- *dès l'obtention d'une autorisation de séjour,*
- *dès l'obtention d'un permis de travail* »
- dès *l'obtention du statut de réfugié ou du statut conféré par la protection subsidiaire*.

(cf. réponses à la question 11)

Au Luxembourg, un demandeur définitivement débouté pourra en pratique encore bénéficier, à la discrétion du Ministre compétent, de la totalité ou d'une partie seulement des conditions d'accueil jusqu'à son éloignement du territoire. Cette pratique s'est instaurée parallèlement à la notion légale de statut de tolérance consacrée par l'article 22 de la loi du 5 mai 2006[559].

[559] **Art. 22.** (1) Si le statut de réfugié est refusé au titre des articles 19 et 20 qui précèdent, le demandeur sera éloigné du territoire.
(2) Si l'exécution matérielle de l'éloignement s'avère impossible en raison de circonstances de fait, le ministre peut décider de tolérer l'intéressé provisoirement sur le territoire jusqu'au moment où ces circonstances de fait auront cessé.
(3) Une attestation de tolérance est remise à l'intéressé. Elle précise sa durée de validité qui ne sera prorogée que si la pièce a été visée par l'administration communale du lieu de séjour de l'intéressé, visa qui comprendra l'indication de l'adresse de l'intéressé. L'administration communale du lieu de séjour de l'intéressé a l'obligation de viser l'attestation. L'attestation ne donne pas droit à la délivrance d'un certificat de résidence. Par dérogation, l'attestation tient lieu de certificat de résidence pour les formalités requises en vue de la célébration du mariage suivant les dispositions du code civil.
(4) L'attestation confère le droit à une aide sociale suivant les modalités à fixer par le règlement grand-ducal prévu à l'article 6 (7) qui précède.
(5) Le ministre délivre, sous réserve des paragraphes qui suivent, une autorisation d'occupation temporaire pour la période de validité de l'attestation. L'autorisation d'occupation temporaire est valable pour un employeur déterminé et pour une seule profession.
(6) L'octroi et le renouvellement de l'autorisation d'occupation temporaire peuvent être refusés pour des raisons inhérentes à la situation, à l'évolution ou à l'organisation du marché de l'emploi, compte tenu de la priorité à l'embauche dont bénéficient les citoyens de l'Union européenne, les citoyens des Etats liés par l'accord sur l'Espace économique européen, les ressortissants de pays tiers en vertu d'accords spécifiques ainsi que les ressortissants de pays tiers en séjour régulier qui bénéficient d'allocations de chômage.
(7) A l'appui de la demande en obtention d'une autorisation d'occupation temporaire, le bénéficiaire de la tolérance doit présenter à l'Administration de l'emploi une copie certifiée conforme de l'attestation visée au paragraphe (3) qui précède.
(8) Le bénéfice de l'autorisation d'occupation temporaire ne donne pas droit à un permis de séjour.
(9) L'autorisation d'occupation temporaire perd sa validité soit à l'échéance de son terme, soit au moment de la résiliation de la relation de travail par une des parties au contrat de travail, soit au moment où l'exécution matérielle de l'éloignement devient possible.

Q.16 Are there special rules or practices regarding reception conditions in case of successive applications for asylum introduced by the same person?

La *loi du 5 mai 2006* prévoit expressément que lorsqu'un demandeur dépose une nouvelle demande de protection internationale après qu'une première demande ait été définitivement rejetée, l'attestation ne lui sera plus délivrée « *tant que cette nouvelle demande n'a pas été déclarée recevable* » (article 6. (5) § 2).

Il est à noter qu'il est très illusoire de penser qu'avec la pratique, et selon les prévisions de *la loi du 5 mai 2006*, une telle décision déclarant une nouvelle demande recevable puisse être à un moment prise, indistinctement d'une décision au fond qui elle interviendrait après le temps d'un nouvel examen de la demande. En effet, l'article 23 de la loi du 5 mai 2006 qui traite de la question d'une nouvelle demande de protection internationale, ne prévoit nullement la possibilité pour le Ministre des Affaires Etrangères et de l'Immigration, de prendre une telle décision de recevabilité ni d'obligation dans son chef de la prendre dans un certain délai, éventuellement avant une décision au fond, alors que cet article n'aborde que les seules conditions dans lesquelles le Ministre pourra déclarer la nouvelle demande irrecevable ou fondée. Ainsi, le demandeur de protection internationale qui aura présenté une nouvelle demande risque fort de se voir dépourvu de toute condition d'accueil, à défaut d'être en possession de l'attestation nécessaire à cet effet, à moins que le Ministre ne consente très vite à statuer sur l'éventuel caractère recevable de sa nouvelle demande.[560]

En plus, l'article 4. (4) c, dernier tiret du *règlement aide sociale* dispose que « *le Ministre* (de la Famille et de l'Intégration) *peut limiter ou retirer le bénéfice de l'aide sociale dans les cas suivants :*
(...) – lorsqu'un demandeur d'asile (...) a déjà introduit une demande dans le même Etat membre. »

A noter qu'il ne s'agit dans cette dernière hypothèse que d'une possibilité qui est laissée à la seule appréciation du Ministre, qui, si cette hypothèse est réalisée, a le choix entre soit ne rien faire, soit limiter, soit retirer le bénéfice de l'aide social.

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(10) L'autorisation d'occupation temporaire est retirée lorsque son bénéficiaire travaille dans une autre profession que celle autorisée. Elle est retirée lorsque son bénéficiaire a eu recours, dans une intention frauduleuse, à des pratiques malhonnêtes ou à des déclarations inexactes pour l'obtenir.
(11) Le contrat de travail prend automatiquement fin lorsque l'autorisation d'occupation temporaire perd sa validité ou est retirée.

[560] Article 23 (1) de la loi du 5 mai 2006 : « Le ministre considérera comme irrecevable la nouvelle demande d'une personne à laquelle la protection internationale a été définitivement refusée ou d'une personne qui a explicitement ou implicitement retiré sa demande de protection internationale, à moins que des éléments ou des faits nouveaux apparaissent ou sont présentés par le demandeur et qu'ils augmentent de manière significative la probabilité que le demandeur remplisse les conditions requises pour prétendre au statut de réfugié ou au statut conféré par la protection subsidiaire, à condition que le demandeur concerné a été, sans faute de sa part, dans l'incapacité de les faire valoir au cours de la précédente procédure, y compris durant la phase contentieuse.

A noter cependant également que théoriquement, dans l'hypothèse où une nouvelle demande est présentée, même si le Ministre des Affaires Etrangères et de l'Immigration prenait une décision de recevabilité, le Ministre de la Famille et de l'Intégration pourrait malgré tout décider de suspendre ou limiter l'aide sociale.

Q.17. Information of asylum seekers about their rights and obligations in terms of reception conditions, in particular about established benefits (see article 5 which is too large extend a mandatory provision; do not confuse this question with the information to be provided to asylum seekers about the asylum procedure):

Q. 17. A. Are asylum seekers informed, and if yes about what precisely?

Le Ministère des Affaires Etrangères et de l'Immigration et le Ministère de la Famille et de l'intégration distribuent un écrit commun qui informe de manière détaillée le demandeur de protection internationale, d'une part, *du contenu de la procédure de protection internationale, de ses droits et obligations pendant cette procédure et des conséquences possibles en cas de non-respect de ses obligations et de non-coopération avec le ministre* (article 6 (3) de *la loi du 5 mai 2006*) et, d'autre part, ***des avantages dont il peut bénéficier et des obligations qu'il doit respecter eu égard aux conditions d'accueil, y compris l'accès à l'enseignement et à la formation, l'accès au soins médicaux et l'accès au marché de l'emploi*** (article 3, § 2 du *règlement aide social*).

Cette brochure d'information est disponible en douze langues (français, anglais, allemand, espagnol, portugais, serbe, albanais, russe, chinois, turc, arabe et farsi) et est distribuée à chaque nouveau demandeur. Les chapitres de cette brochure sont :

- Dépôt de la demande de protection internationale (la définition du statut, l'enregistrement de la demande, l'aide sociale, les mineurs non accompagnés, l'autorisation d'occupation temporaire)
- Instruction de la demande (l'audition, la prise de décision)
- Contenu de la protection internationale
- Perte de la protection internationale
- Retour dans le pays d'origine

Q. 17. B. Is the information provided in writing or, when appropriate, orally?

Cf. Q.17 A.

Madame la Commissaire du Gouvernement aux étrangers explique encore que chaque demandeur de protection internationale se voit attribuer un assistant social pour la durée de la procédure, chargé d'informer le demandeur sur ses droits et obligations pendant la procédure « lors de son arrivée ».

Avant l'entrée en vigueur de la loi, les demandeurs étaient informés par écrit de leur droit d'être assistés gratuitement par un avocat et par un interprète[561]. Cette information était donnée le jour de l'enregistrement de la demande. Ensuite les assistants sociaux du Commissariat du Gouvernement aux Etrangers leur expliquaient oralement le contenu de l'aide sociale.

Pour pallier aux insuffisances de cette information orale, L*'Association de Soutien aux Travailleurs Immigrés* (ASTI) avait édité et distribué, il y a quelques années, un guide d'information qui contenait des chapitres sur le Luxembourg en général, et des explications spécifiques sur la procédure d'asile et l'aide sociale à laquelle avaient droit les demandeurs pendant la procédure. Ce guide a été rédigé en français, anglais, allemand, albanais, russe et yougoslave.

Il est encore intéressant de signaler qu'un guide spécial sur l'accès aux soins de santé (en français et en anglais) a été élaboré par Médecins sans frontières en collaboration avec la Croix Rouge, la Caritas Luxembourg et l'ASTI (**annexes 5 et 6**). Il était prévu qu'il soit distribué par les assistants sociaux du Commissariat du Gouvernement aux Etrangers automatiquement à chaque nouveau demandeur d'asile. Malheureusement ceci n'a jamais été mis en pratique et ce sont les ONGs qui le distribuent dans le cadre de leurs activités.

Q.17. C. Is that information in general provided in a <u>language</u> understood by asylum seekers? Specify the list of languages in which it is available

Le règlement aide social ne prévoit pas spécifiquement la langue dans laquelle les informations seront données, en pratique, elles sont données par écrit en douze langues (français, anglais, allemand, espagnol, portugais, serbe, albanais, russe, chinois, turc, arabe et farsi)).

Q. 17. D. Is the <u>deadline</u> of maximum 15 days respected?

Selon le système qui vient d'être décrit, le délai de 15 jours sera respecté, alors que l'information sera donnée au demandeur au moment de la présentation de sa demande.

Q.18. I<u>nformation of asylum seekers about the existence of organisations or groups promoting their interest and defending their rights (see article 5 which is to a large extend a mandatory provision)</u>:

[561] Article 5 de la loi **<u>abrogée</u>** du 3 *avril 1996 portant création d'une procédure relative à l'examen d'une demande d'asile* disposait que « *Le demandeur d'asile est informé de son droit de se faire assister à titre gratuit d'un interprète et de son droit de choisir un avocat inscrit au tableau de l'un des barreaux établi au Grand-Duché de Luxembourg ou de se faire désigner un avocat par le bâtonnier de l'ordre des avocats. Le fait que ladite information a été donnée au demandeur d'asile devra ressortir du dossier.* »

Q. 18. A. Is there a list of organisations dressed by the authorities and if yes is it comprehensive? Is this in particular the case about the possibilities to get legal assistance and health care?

L'article 3, § 3 du *règlement aide social* prévoit que « *une liste des organisations susceptibles de l'aider* (le demandeur de protection internationale) *pendant son séjour au Luxembourg lui sera remise.* »

La brochure d'information évoquée sous la question 17 A contient à sa dernière page la liste des ONGs actives dans le domaine des réfugiés.

Les informations relatives à l'assistance juridique apparaissent dans la brochure évoquées sous la question 17 A, l'article 7 (1) de la loi du 5 mai 2006 disposant que « *le demandeur est informé de son droit de se faire assister à titre gratuit d'un interprète qui maîtrise une langue dont il est raisonnable de supposer qu'il la comprend et de son droit de choisir un avocat inscrit au tableau de l'un des barreaux établis au Grand-Duché de Luxembourg ou de se faire désigner un avocat par le bâtonnier de l'ordre des avocats.* » et l'article 7(2) précisant que « *le fait que ladite information a été donnée au demandeur doit ressortir du dossier.* »

Les informations relatives aux soins de santé apparaissent également dans la brochure, comme l'article 3, § 2 du *règlement aide social* le prévoit (cf. question 17. A).

Q. 18. B. Is the information provided to the asylum seekers, and if yes, in writing or, when appropriate, orally?

Cf. supra

Q. 18. C. Is that information in general provided in a language understood by asylum seekers? Specify if possible the list of languages in which it is available.

cf. Q. 17 B

Q. 18. D. How many organisations are active in that field in your Member State?

Le Collectif**réfugiés**luxembourg-lëtzebuerger**flüchtling**srot (LFR) est une plate forme qui réunit 14 ONG oeuvrant dans le domaine des réfugiés.

Les ONG les plus actives qui travaillent directement avec le public cible sont : L*'Association de Soutien aux Travailleurs Immigrés* (ASTI), la Caritas Luxembourg, le *Comité de Liaison et des Associations d'Etrangers services asbl* (CLAE), la Croix Rouge, Amnesty International et l'ACAT (Action des Chrétiens pour l'abolition de la torture) qui fournissent beaucoup de

documents sur les pays de provenance des demandeurs et sur des sujets spécifiques à l'asile au Luxembourg.

La brochure évoquée sous les questions précédentes donnent le coordonnées de neuf ONGs (*ACAT, ALLIANZ PROTESTANISCHER KIRCHEN LUXEMBURG, ASTM, CENTRE CULTUREL ISLAMIQUE DU G.D. DE UXEMBOURG, PAX CHRISTI, A.I, ASTI, CARITAS, CLAE ET CROIX ROUGE*.)

Q.19. <u>Documentation of asylum seekers (see article 6):</u>

Q.19. A. <u>What kind of document</u> is delivered to the asylum seeker? Explain the legal value of this document (just a certification of the status as asylum seeker or also prove of identity?) (see §1 of article 6 which is a mandatory provision)

Le document délivré au demandeur de protection internationale est le même qui lui donne droit à l'aide sociale (cf. questions 10 et 11). Aux termes de l'article 6 (5) de la loi du *5 mai 2006*, cette attestation a pour principale vocation d'attester l'enregistrement de la demande de protection internationale. Par ailleurs, l'article 6 (6) de *la loi du 5 mai 2006* prévoit que « *l'attestation ne donne pas droit à la délivrance d'un certificat de résidence. Par dérogation, l'attestation tient lieu de certificat de résidence pour les formalités requises en vue de la célébration du mariage suivant les dispositions du Code civil*. »
La loi ne prévoit pas que l'attestation tienne lieu de document d'identité de telle sorte qu'il faut en déduire que si le demandeur de protection international ait à prouver son identité dans le cadre d'une quelconque procédure, il pourra lui être opposé que l'attestation n'a pas cette vocation.

Par contre, l'article 6 (11) de *la loi du 5 mai 2006* dispose que « *sauf exception accordée par le ministre, le demandeur a l'obligation de demeurer sur le territoire. Sans préjudice de l'article 10 de la présente loi* (placement du demandeur dans un centre de rétention)*, **il a le droit d'y circuler librement pendant l'instruction de sa demande de protection internationale par le ministre. Ce droit ne constitue pas un permis de séjour conformément à la législation concernant l'entrée et le séjour des étrangers.*** ».

Ainsi si le document ne constitue pas en tant que tel un quelconque titre de séjour, il donne au demandeur un droit de demeurer sur tout le territoire au sens de l'article 6, § 1 de la directive.

En pratique, si ce document ne peut valoir document d'identité du demandeur (sauf pour la procédure un vue du mariage), il certifiera cependant de son statut de demandeur.

Q.19. B. Are there situations or specific cases in which <u>another equivalent document or even no document</u> is issued? (in particular is there an exception for "procedures to decide on the right of the applicant legally to enter the territory" as made possible by §2 of article 6)?

L'article 6 (5) § 2 de la loi du 5 mai 2006 dispose que « *l'attestation n'est pas délivrée au demandeur faisant l'objet d'une mesure de placement arrêtée par le ministre conformément à l'article 10 de la présente loi, ainsi qu'à la personne qui dépose une nouvelle demande de protection internationale conformément à l'article 23 de la présente loi tant que cette nouvelle demande n'a pas été déclarée recevable.* »

(**cf. la remarque sous la question 16. quant à l'absence d'obligation dans le chef du Ministre de prendre une telle décision de recevabilité dans un certain délai**[562]).

Q.19. C. For how long is this document in principle valid and is it necessary to renew it after a certain period?

Il n'existe pas de prévisions spécifiques quant à une durée de validité de principe de l'attestation. L'article 6 (5) § 2 de *la loi du 5 mai 2006* prévoit que « *l'attestation précise sa durée de validité qui ne sera prorogée que si elle a été visée par l'administration communale du lieu de séjour du demandeur. L'administration communale du lieu de séjour du demandeur a l'obligation de viser l'attestation. Le demandeur a l'obligation de se présenter auprès du ministre en vue de la prolongation de l'attestation au plus tard au jour de l'expiration de sa durée de validité.* » Ainsi, tant que le demandeur sera en cours de procédure et qu'il répondra aux prévisions de la loi la concernant, la validité de son attestation devra être régulièrement prolongée par le Ministre des Affaires étrangères et de l'immigration à chaque jour auquel il aura convoqué le demandeur à cette fin, pour une période dont il déterminera l'échéance et à laquelle le demandeur devra se présenter au plus tard devant le Ministre.

Q.19. D. What is the deadline for the delivery of that document? Is the mandatory deadline of 3 days set by article 6, §1 respected[563]**?**

L'article 6 (5) de la loi du 5 mai 2006 prévoit que « *une pièce attestant l'enregistrement de la demande de protection internationale est remise dans les trois jours après le dépôt de la demande au demandeur. Si cette pièce ne peut être remise immédiatement, la convocation établie par le service de la police judiciaire tient lieu provisoirement et pendant une durée limitée de trois jours maximum de pièce donnant droit à l'aide sociale immédiate.* »

L'attestation prévue par l'article 6 (5) de la loi devra être remise dans un délai maximum de trois jours.

[562] Il est à noter qu'il est très illusoire de penser qu'avec la pratique, et selon les prévisions de *la loi du 5 mai 2006*, une telle décision déclarant une nouvelle demande recevable puisse être à un moment prise, indistinctement d'une décision au fond qui elle interviendrait après le temps d'un nouvel examen de la demande. En effet, l'article 23 de la loi du 5 mai 2006 qui traite de la question d'une nouvelle demande de protection internationale, ne prévoit nullement la possibilité pour le Ministre des Affaires Etrangères et de l'Immigration, de prendre une telle décision de recevabilité ni d'obligation dans son chef de la prendre dans un certain délai, éventuellement avant une décision au fond, alors que cet article n'aborde que les seules conditions dans lesquelles le Ministre pourra déclarer la nouvelle demande irrecevable ou fondée.

Il est à noter qu'au cas où l'attestation ne peut être remise au demandeur immédiatement au moment de la présentation de sa demande, la convocation (dont il a déjà été fait état sous la question 10) ne tient lieu que de pièce donnant droit à l'aide social et, à défaut de prévision légale en ce sens, n'a pas d'autre valeur juridique.

Q.19. E. Is it possible for an asylum seeker to get a travel document for serious humanitarian reasons (see §5 of article 6 which is an optional provision)?

La loi du 5 mai 2006 ne réserve pas la possibilité au Ministre des Affaires Etrangères et de l'Immigration de délivrer au demandeur un document de voyage pour des raisons humanitaires graves. L'article 6. (11), première phrase, de la loi dispose cependant que « *sauf exception accordée par le ministre, le demandeur a l'obligation de demeurer sur le territoire. (...)*» Ainsi, le Ministre aura la possibilité d'accorder une telle autorisation exceptionnelle selon des motifs dont l'appréciation relèvera de son pouvoir discrétionnaire.

Q.19. F. Is there a central system of registration of asylum seekers and is it or not separate from the registration of aliens? If yes, describe it briefly (content) and indicate in particular if it is an electronic database.

Il existe un fichier central électronique regroupant les identités de tous les demandeurs d'asile du nom de MJDA, géré par le Centre Informatique de l'Etat, distinct de celui des étrangers.

Q.20. Residence of asylum seekers :

Q.20. A. Is in principle an asylum seeker free to move on the entire territory of your Member State or only to a limited part of it and in case, which part? (see article 7, §1 which is a mandatory provision)

En principe, le demandeur d'asile est autorisé à circuler sans restriction sur tout le territoire (article 6. (11), deuxième phrase, de la *loi du 5 mai 2006*. *Le règlement aide social* (article 1er) prévoit même que les moyens de transports publics sur tout le territoire du Grand-Duché de Luxembourg sont une des composantes de l'aide sociale dont le demandeur doit bénéficier

Q.20. B. About the place of residence (see §2 of article 7): explain to which extend the person is free to choose her residence and if this depends of the stage of the asylum procedure (for instance before and after admissibility); if there are constraints limiting the choice, explain which ones and their reasons (for instance processing of application, attribution of reception conditions,…).

Il n'existe aucune disposition écrite prévoyant la possibilité pour un demandeur de choisir son lieu de résidence. D'expérience, le rapporteur peut cependant dire qu'en pratique, lorsque un

demandeur manifeste expressément et formellement sa volonté de choisir un hébergement particulier (ce sera toujours plus facile par l'intermédiaire de son conseil qui s'adresse directement par écrit au Commissaire du Gouvernement aux Etrangers) et que cette volonté se veut conforme à la finalité des conditions d'accueil, le Commissaire de Gouvernement aux Etrangers fait preuve de bonne volonté pour attribuer parmi les logements disponibles, celui le plus adapté à la situation particulière du demandeur.

En pratique, les demandeurs connaissant des problèmes de santé seront généralement orientés vers un centre près de Luxembourg-Ville et les femmes célibataires ou seules avec enfants vers un centre géré par une ONGs.

On relèvera cependant dans ce contexte l'existence de problèmes ponctuels qui se sont révélés pour avoir échappé à la vigilance hiérarchique du ministère et où certains demandeurs étaient orientés vers tel ou tel foyer (voire dans un camping) dans un but non dissimulé de sanction, en dehors de toute prévision légale ou règlementaire. A titre d'exemple, il est arrivé qu'en se basant sur son lieu de provenance et sa situation familiale (hommes célibataires), certains demandeurs ont été dans un premier temps orientés vers un foyer (entre-temps fermé pour cause d'insalubrité), avec instructions précises au gestionnaire du centre, de loger le demandeur dans la cuisine du centre. Ces situations sont cependant exceptionnelles et ne sont le fait que d'une seule personne.

Il n'existe pas non plus de critères écrits concernant la nature du logement à attribuer en fonction du stade de la procédure d'examen de sa demande.

Dans le contexte de l'article 7. § 2 de la directive, il nous paraît encore important de reproduire l'article 6, paragraphes (8) et (10) de la loi du 5 mai 2006 qui dispose que :
« (8) Le demandeur a l'obligation d'élire domicile au pays pour les besoins de la procédure d'asile. Il a l'obligation de communiquer le domicile élu au ministre dans les cinq jours suivant le dépôt de sa demande de protection internationale. Toute modification du domicile élu doit être communiquée au ministre contre récépissé. A défaut d'élection de domicile, le demandeur est réputé avoir élu domicile au ministère. Lorsque le demandeur fait l'objet d'une
mesure de placement conformément à l'article 10 de la présente loi, il est réputé avoir élu domicile au lieu où il est placé.
(9) (…)
(10) Lorsque le demandeur est réputé avoir élu domicile au ministère conformément au paragraphe (8) du présent article, le ministre procède à une notification par affichage public. A cette fin, le ministre procède à l'affichage d'un avis au ministère pendant une durée de trente jours. L'affichage de l'avis par le ministre est constaté par le service de police judiciaire. L'avis mentionne la date de l'affichage et la nature de l'acte à notifier. Il indique en outre l'endroit où le demandeur peut se faire remettre l'acte. La notification est réputée valablement faite trente jours après le premier jour de l'affichage public.

Q.20. C. About the place of reception (meaning where the asylum seeker has to stay to benefit from reception conditions) (see § 4 of article 7): explain which are the general rules about the determination of this place (to which extend are the decisions determining the place taken

individually and do they take into account the personal situation of the asylum seeker?) and to which extend the person is free to choose it and if it depends of the stage of the asylum procedure (for instance before and after admissibility); if there are constraints limiting the choice, explain which ones and their reasons (for instance attribution of reception conditions, processing of the application,…).

La détermination du lieu de résidence est à la discrétion du Ministre de la Famille et de l'Intégration. Ces décisions sont prises en son nom par les assistants sociaux du CGE, au cas par cas et les directives ou circulaires orales et/ou écrites, internes au Ministère et dont le rapporteur n'a pas connaissance du contenu, prennent en considération la situation individuelle du demandeur.
Madame la Commissaire du Gouvernement aux étrangers explique que 90% des *primo arrivant* sont logés dans un foyer d'accueil géré par la Croix-Rouge luxembourgeoise.

Q.20. D. If all asylum seekers are not placed in accommodation centres because of capacity limits, explain <u>how the persons are distributed between accommodation centres and other accommodation facilities</u> (which authority takes the decisions, on the basis of which elements, can that decision be appealed by the asylum seeker,…)

L'article 6 (1), avant dernière phrase, du règlement aide sociale dispose que « *lorsque les capacités de logement normalement disponibles sont temporairement épuisées, le bénéficiaire de l'aide sociale peut être logé dans une structure d'accueil d'urgence.* »

D'un point de vue pratique, la situation ne s'est présentée qu'avec l'afflux massif de demandeurs d'asile qui fuyaient la guerre du Kosovo. A cette époque, les structures d'Etat ayant été rapidement saturées, certains demandeurs de sexe masculin célibataires ont été logés dans des campings.

Ces décisions sont prises par le Ministre de la Famille et elles ne sont pas susceptibles de recours spéciaux. Cependant, elles constituent des décisions administratives qui devront pouvoir faire l'objet d'un recours de droit commun devant les juridictions administratives.

Par ailleurs, dans certaines situations et selon les circonstances, une telle décision pourrait également théoriquement constituer une décision de limitation du bénéfice de l'aide sociale au sens du *règlement aide sociale*. Dans ce cas, le *règlement aide social* prévoit une procédure précise que le Ministre est tenu de respecter, avant même la prise de décision (cf. infra).

Q.20. E. How can an asylum seeker ask to <u>leave temporarily</u> the place of residence or of reception or an assigned area? How is the individual AND impartial character of the decision ensured? (see §5 of article 7 which is a mandatory provision)

La législation luxembourgeoise ne prévoit pas d'obligation pour le demandeur de solliciter une autorisation pour quitter temporairement le lieu de résidence. Il n'y a donc pas non plus de critère ni de procédure prévus à cet effet.
Nous rappelons à cet endroit que le principe reste la liberté de circulation du demandeur sur tout le territoire luxembourgeois.
Nous rappellerons également que *le règlement aide social* étant en partie le fruit d'un recopiage de la directive, il reprend à son article 4. (4) c), premier tiret, la possibilité de limiter ou supprimer l'aide sociale au cas où un demandeur « *abandonne le lieu de résidence fixé par l'autorité compétente sans en avoir informé ladite autorité ou si une autorisation est nécessaire à cet effet, sans l'avoir obtenue* »
Des problèmes d'interprétation et d'application de ce texte combiné, ne manqueront vraisemblablement pas de se présenter dans la pratique lorsqu'un demandeur quittera temporairement son lieu de résidence sans, pour le moins, avoir informé l'autorité qui le lui avait assigné.

Q.21. **Q.21. A. Do rules on reduction or withdrawal of reception conditions exist in internal legislation and if yes in which cases (mention in particular if there are cases not foreseen by article 16, § 1 and 2 which are optional provisions)? Distinguish in your answer between cases of reduction and withdrawal and explain which conditions can be reduced and if access to emergency health care is always ensured as requested by article 16, §4, last sentence.**

Le Ministre de la Famille et de l'Intégration a la possibilité de limiter ou de retirer le bénéfice de l'aide sociale dans les hypothèses suivantes, sans distinction selon qu'il s'agit d'une limitation ou d'un retrait (article 4. (4) du *règlement aide sociale*) :

« *a. Lorsque le bénéficiaire de l'aide a dissimulé ses ressources financières et a indûment bénéficié de l'aide sociale (...).*

b. Lorsque le bénéficiaire de l'aide sociale ou un membre de sa famille qui l'accompagne s'est à plusieurs reprises comporté de manière violente ou menaçante envers les personnes assurant l'encadrement des bénéficiaires de l'aide sociale ou bien envers des personnes exerçant des activités de gestion dans un centre d'hébergement ou envers d'autres personnes hébergées dans les centres.

c. Lorsqu'un demandeur
- abandonne le lieu de résidence fixé par l'autorité compétente sans en avoir informé ladite autorité ou si une autorisation est nécessaire à cet effet, sans l'avoir obtenue, ou
- ne respecte pas l'obligation de se présenter aux autorités, ne répond pas aux demandes d'information ou ne se rend pas aux entretiens personnels concernant la procédure de protection internationale dans un délai raisonnable, ou
- a déjà introduit une demande dans le même Etat membre (...).

d. lorsque le bénéficiaire de l'aide sociale ou un membre de sa famille qui l'accompagne a commis un manquement grave aux règlements des logements. »

Le *règlement aide sociale* prévoit cette possibilité de retrait ou de limitation sans préciser la nature de l'aide sociale à retirer ou à limiter.
Il est à noter que les hypothèses prévues sous les points b. et d. ne sont pas énumérées par la directive comme cause justifiant le retrait ou la limitation de l'aide sociale. Il est encore à noter que la limitation ou le retrait de l'aide sociale ne sont, dans toutes ces hypothèses que des possibilités qui sont laissées à la seule appréciation du Ministre (sous le contrôle des juridictions administratives), qui, si une de celles-ci se réalise, a le choix entre soit ne rien faire, soit limiter, soit retirer le bénéfice de l'aide social.

L'article 4. (6) *in fine* du *règlement aide sociale* prévoit formellement que « *L'accès aux soins médicaux d'urgence reste assuré en toutes circonstances.* »

Q.21. B. Has article 16, §2 dealing with refusal of reception conditions for unreasonably late applications for asylum been transposed by your Member State (or was this case already applicable before transposition)? Are there cases in practice?

Cet article n'a pas été transposé en droit interne luxembourgeois. Il est à noter que la situation de fait prévue par l'article 16 § 2 de la directive, est abordée à l'article 20 h) de *la loi du 5 mai 2006* en ce qu'une demande tardive peut être sanctionnée par l'examen de la demande de protection internationale sous le régime de la procédure accélérée.

Q.21. C. How is it ensured that decisions of reduction or withdrawal are taken individually, objectively AND in particular impartially (for instance through and independent arbitrator) (see article 16, §4 which is a mandatory provision)?

Afin d'assurer au bénéficiaire de l'aide sociale qu'une décision de limitation ou de retrait de l'aide sociale sera prise individuellement, objectivement et impartialement, *le règlement aide social* prévoit une procédure spéciale préalable (article 4. (5) du *règlement aide sociale*) dans le cadre de laquelle le Ministre est tenu d'informer le demandeur de son intention de limiter ou de retirer l'aide sociale (*sauf s'il y a péril en la demeure*).
Cette procédure impose que la possibilité soit donnée au demandeur de présenter ses observations dans un délai de 8 jours qui suit l'envoi de la lettre du Ministre l'informant de ses intentions (à son domicile élu, **cf. la reproduction de l'article 6, § (8) et (10) de *la loi du 5 mai 2006* sous la question 20. B**).
Finalement, au cas où de telles décisions sont prises, l'article 4. (6) du règlement aide social impose que « *les décisions portant limitation ou retrait du bénéfice de l'aide sociale doivent être motivées et sont fondées sur la situation particulière de la personne concernée, compte tenu du principe de proportionnalité et prennent en considération le comportement individuel de cette dernière.* »

Par ailleurs, comme toute décision administrative, de telles décisions peuvent par la suite être soumises au contrôle des Juridiction de l'Ordre administratif qui statueront dans le cadre d'un recours en annulation (voir également la réponse sous la question 22. A)

Q.21. D. Is statement 14/03 adopted by the Council at the same moment as the directive respected (see the document attached to our sending)?

En ce qui concerne l'article 16. § 2 de la directive, abordé par le rapport 14/03 du Conseil, nous pouvons dire que les invitations du Conseil sont respectées, alors que l'Etat luxembourgeois n'a pas transposé la possibilité que lui laisse le prédit article de refuser l'aide sociale en cas de demande tardive.

En ce qui concerne l'article 16 § 4, la réponse doit être plus nuancée, alors que l'article 4 (6) du *règlement aide sociale* dispose que « *les décisions portant limitation ou retrait du bénéfice de l'aide sociale doivent être motivées et sont fondées sur la situation particulière de la personne concernée, compte tenu du principe de proportionnalité et prennent en considération le comportement individuel de cette dernière. L'accès aux soins médicaux d'urgence reste assuré en toutes circonstances* ». Ainsi, l'Etat luxembourgeois n'a pas repris la circonstance explicitement prévue par la directive imposant la prise en considération spécifique de la personne concernée en sa qualité de personne vulnérable, mais nous pouvons facilement imaginer que tant le ministre compétent que, le cas échéant, les juridictions administratives, prendront en considération cette particularité en appliquant les prévisions du règlement qui imposent que de telles décisions soient fondées *sur la situation particulière de la personne concernée, compte tenu du principe de proportionnalité*.

En ce qui concerne l'article 16 § 4 *in fine* de la directive, les recommandations du Conseil sont respectées.

Q.21. E. Are there already administrative appeal decisions or judgements on cases of reduction, withdrawal or refusal which have been taken, and if yes, what has been the outcome?

A la connaissance du rapporteur, il n'existe à l'heure actuelle pas de telles décisions.

Q.22. **Q.22. A.** **<u>Appeal</u> against a negative decision relating to the granting of benefits or based on article 7 (see article 21 which is a mandatory provision): indicate against which decision an appeal can be introduced, describe the system of appeal in general and include in particular in your answer the information given to asylum seekers about possibilities of appealing, deadline for appealing, if the appeal has or not a suspensive effect, if there are different steps (for instance first an administrative appeal and in particular if the guarantee of an appeal before a judicial body in the last instance is respected)?**

Le principe général est que toute décision administrative doit pouvoir faire l'objet d'un recours, sauf disposition contraire de la loi. Ainsi, à défaut de disposition légales contraires ou spéciales, les décisions négatives concernant l'octroi des avantages ou celles basées sur l'article 7 de la directive peuvent faire l'objet d'un recours administratif gracieux (facultatif) et d'un recours juridictionnel devant les Juridictions de l'Ordre Administratif.

Dans le délai de trois mois qui suit la notification de la décision négative, la personne concernée (ou toute autre personne ayant un intérêt direct et actuel) peut demander au Ministre qui a pris la décision de la revoir. Si le Ministre confirme sa première décision, un nouveau délai de trois mois commence à courir au jour de la notification de la nouvelle décision pendant lequel la personne concernée pourra saisir le Tribunal administratif d'un recours en annulation. Contre la décision du Tribunal, la personne concernée peut relever appel dans un délai de 40 jours. Les délais ne sont pas suspensifs. En ce qui concerne les informations quant aux voies et délais de recours, celles-ci doivent apparaître dans la décision, à défaut de quoi, aucun délai de forclusion ne pourra être opposé au demandeur, même si son recours intervient après les trois mois qui ont suivi la notification de la décision attaquée.

Il est à noter que le recours administratif gracieux n'est que facultatif et qu'au cas où la personne concernée choisit de saisir directement le Tribunal administratif, elle devra le faire dans le délai de 3 mois qui suit la notification de la décision (voir également la réponse sous la question 21. C).

Q.22. B. Explain which are the possibilities for asylum seekers to benefit from <u>legal assistance</u> when they introduce such an appeal (see article 21, §2 which is a mandatory provision but leaves space to Member States)?

L'article 7 de la loi du 5 mai 2006 dispose qu'au moment du dépôt de sa demande, « *le demandeurs est informé de son droit de se faire assister à titre gratuit d'un interprète qui maîtrise une langue dont il est raisonnable de supposer qu'il la comprend et de son droit de choisir un avocat inscrit au tableau de l'un des barreaux établis au Grand-Duché de Luxembourg ou de se faire désigner un avocat par le bâtonnier de l'ordre des avocats.* »

Par ailleurs, l'article 2 (1) de la loi du 10 août 1995 dispose que « *le bénéfice de l'assistance judiciaire peut également être accordé à tout autre ressortissant étranger dont les ressources sont insuffisantes, pour les procédures en matière de droit d'asile, d'accès au territoire, de séjour, d'établissement et d'éloignement des étrangers.* »

Ainsi, pratiquement, le demandeur d'asile sera informé de son droit d'être assisté d'un avocat dans le cadre de la procédure en examen de sa demande dès le dépôt de celle-ci et devra donc pouvoir également bénéficier de cette assistance pour les recours à introduire contre les décisions négatives concernant l'octroi des avantages ou celles basées sur l'article 7 de la directive.

Il est à noter que la représentation par le ministère d'avocat est obligatoire devant les Juridictions de l'Ordre Administratif.

Q.22. C. Are there already administrative appeal decisions or judgements which have been taken and if yes, which are the main important ones?

A la connaissance du rapporteur, il n'existe à l'heure actuelle aucun jugement ou décision concernant l'octroi des avantages ou basés sur l'article 7 de la directive.

Q.22. D. Is a mechanism of <u>complain for asylum seekers about quality of receptions conditions</u> in general (even if they are not personally concerned) organised? If yes, before which authority? Is it linked to the system of guidance, control and monitoring of reception conditions (see below question n° 39)?

La législation luxembourgeoise ne prévoit aucun mécanisme spécifique de plainte pour les demandeurs d'asile sur la qualité des conditions d'accueil en général. Cependant, au cas où un demandeur aurait une telle plainte à formuler, il pourra toujours s'adresser au Ministre de la Famille et de l'Intégration en lui demandant de prendre une décision en réponse à cette plainte. Cette décision sera susceptible de recours au même titre que toute décision administrative.

Il est à noter qu'au cas où le Ministre saisi ne répondrait pas à une telle plainte, son silence pendant plus de trois mois équivaudrait à une décision négative mais qu'aucun délai ne court pour attaquer celle-ci, à défaut de décision matérielle formelle.

6. RIGHTS AND OBLIGATIONS OF ASYLUM SEEKERS

Q.23. **<u>Family unity</u> of asylum seekers: define how a family is defined in relation with article 2, (d) which is a mandatory provision and explain how housing is provided to a family (see articles 8 which is a mandatory provision but leaves space to member States and 14, §2, (a) which is a mandatory provision).**

L'article 2 (e) de *la loi du 5 mai 2006* dispose qu' « *aux fins de la présente loi, on entend par :* (…) «*membres de la famille», dans la mesure où la famille était déjà fondée dans le pays d'origine, les membres ci-après de la famille du bénéficiaire du statut de réfugié ou du statut conféré par la protection subsidiaire qui sont présents au Luxembourg en raison de la demande de protection internationale:*
a) le conjoint du bénéficiaire du statut de protection internationale ou son (sa) partenaire non marié(e) engagé(e) dans une communauté de vie reconnue par le pays d'origine de l'un des partenaires;
b) les enfants du couple visé au premier tiret ou du bénéficiaire du statut de réfugié ou du statut conféré par la protection subsidiaire, à condition qu'ils soient non mariés et à sa charge sans tenir compte du fait qu'ils sont légitimes, nés hors mariage ou adoptés; »

Si la définition semble reprendre celle de l'article 2 (d) de la directive en l'adaptant au droit national luxembourgeois, force est cependant de constater que la famille n'est ici définie qu'en tant que famille d'une personne bénéficiaire du statut de réfugié politique ou du statut conféré par

la protection subsidiaire, à l'exclusion de la famille d'un demandeur d'asile ou de celle d'un demandeur dudit statut !

Ainsi, force est de constater que la famille du demandeur d'asile n'est pas définie par la législation luxembourgeoise, malgré le fait que cette notion soit reprise à plusieurs endroits dans les différents textes applicables à la matière. On peut supposer qu'il s'agit là d'une malheureuse omission ou confusion, alors que l'exposé des motifs de la loi nous informe que « *cet article* (l'article 2 de la loi du 5 mai 2006) *donne les définitions de certains termes utilisés dans le projet de loi. Ces définitions sont toutes reprises des directives à transposer.* » (documents parlementaires n° 5437 du 10 février 2005 (**dans annexe 10 « projet de loi, arrêté grand-ducal de dépôt »**) et que la même définition devra être «transposée » dans la pratique à la famille d'un demandeur d'asile.

Par ailleurs, l'article 6 § 1 *in fine* du règlement *aide sociale* dispose que « *le ministre prend les mesures appropriées pour préserver dans la mesure du possible l'unité de la famille qui est présente sur le territoire du pays.* » et en pratique, nous avons pu observer qu'en pratique, les demandeurs appartenant à la même famille sont logés ensembles.

Q.24. **Q.24. A. How is housing of asylum seekers organised: describe the system in general and indicate in particular what is the most frequently system used (see article 14, §1 which is a mandatory provision but leaves space for Member States; distinguish between accommodation centres, private houses and apartments, hotels places or other premises).**

L'article 1er du *règlement aide social* dispose que « *L'aide sociale comporte les prestations suivantes : - l'hébergement, assorti d'une pension complète ou bien d'une fourniture de repas respectivement de denrées alimentaires.* »

Par ailleurs, l'article 6 (1) du prédit règlement dispose que « *le bénéficiaire de l'aide sociale est logé dans une des structures d'hébergement suivantes :*

(a) centres d'hébergement publics,
(b) centres d'hébergement privés,
(c) *hôtels, auberges privées ou autres locaux adaptés.* »

En pratique, le système de logement le plus fréquemment utilisé est celui du logement en centre d'hébergement (publics ou privés). Il a été constaté que certains demandeurs de sexe masculin pouvaient être provisoirement logés dans des campings !

Q.24. B. What is the total number of available places for asylum seekers? Distinguish in your answer between accommodation centres, private houses and apartments, hotels or other premises.

Les nombres de places sont approximatifs et il est important de relever qu'au jour de la rédaction du présent rapport, elles ne sont pas toutes occupées. Les chiffres qui suivent ont été

communiqués par les ONGs actives dans le domaine des conditions d'accueil des demandeurs de protection internationale.

- Centres d'accueil publics: 1150 places,
- Hôtels/pensions privés : 850 places,
- Centres d'accueil gérés par des ONGs (Croix-Rouge, Caritas) : 370 places.

Le gouvernement fait quant à lui état d'un nombre de places ainsi réparties pour le mois d'août 2006 :

- Centres d'accueil publics: 955,
- Hôtels/pensions privés : 371,
- Centres d'accueil gérés par des ONGs (Croix-Rouge, Caritas) : 301

Q.24. C. Is this number of places for asylum seekers sufficient in general or frequently insufficient?

Etant donné que le nombre de demandeurs d'asile est actuellement décroissant, les places sont momentanément suffisantes (contrairement à la situation en 1999 ou 2003/2004).

Q.24. D. Are there special measures foreseen in urgent cases of a high number of news arrivals of asylum seekers (outside the case of application of the directive on temporary protection)?

A part la législation fruit de la transposition de la directive protection subsidiaire, l'article 6, § 2 du *règlement aide social* prévoit encore que « *lorsque les capacités de logements normalement disponibles sont temporairement épuisées, le bénéficiaire de l'aide sociale peut être logé dans une structure d'accueil d'urgence* » sans autre précision.

Q.25. Accommodation centres **(important note: all the following questions are about open and not closed centres where asylum seekers are detained which are covered by another question)**

Q.25. A Are there different categories of accommodation centres, for instance depending of the stage of the procedure (admissibility and eligibility)?

Il n'existe aucun lien légal entre un quelconque stade de la procédure et une catégorie spécifique de centre de logements. Les demandeurs y sont placés selon l'appréciation discrétionnaire du Ministre de la Famille et de l'Intégration.
Madame la Commissaire du Gouvernement aux étrangers explique que 90% des *primo arrivant* sont logés dans un foyer d'accueil géré par la Croix-Rouge luxembourgeoise

Q.25. B. Is there a legal time limit for accommodation in a centre after which the asylum seekers have access to private houses or apartments or is this limit linked to a stage of the asylum procedure?

Aucune règle en ce sens n'est prévue.
Pendant toute la procédure d'asile les demandeurs sont hébergés dans des structures collectives mises à disposition par l'Etat ou par les ONGs.
Si le demandeur d'asile dispose de moyens propres ou est accueilli par un membre de sa famille résidant légalement au Luxembourg, il pourra, en pratique, se loger dans un appartement privé. Actuellement il n'existe que très peu de demandeurs d'asile logeant dans des appartements privés.

Q.25. C. Is there a general regulation about the internal functioning of those centres and the rights and duties of the asylum seekers? If yes, is this general regulation applicable to public and private centres? If not, are the centres supposed to adopt an internal regulation and does a central authority have or not a kind of control about its content?

Le jour où ils se présentent au Ministère de la Famille pour la première fois après avoir déposé leur demande d'asile auprès du Ministre des Affaires Etrangères et de l'Immigration, ils signent un règlement d'ordre interne qui est valable pour toutes les catégories d'hébergements ne disposant pas d'un règlement propre. Les centres d'accueil gérés par les ONGs ont un règlement interne qui peut varier légèrement de celui du Ministère.

Q.25. D. Do the regulations foresee the possibility of sanctions against asylum seekers in case of breach of the rules? (see article 16, §3) If yes, which sanctions for which rules? Which is the competent authority to decide? How is it ensured that decisions are taken individually, objectively and in particular *impartially* (for instance through an independent arbitrator) as requested by §4 of article 21 which is mandatory provision*?* Which are the possibilities of appealing against those decisions if the system is different from the general one under question n°22? Are there already administrative appeal decisions or judgements which have been taken and if yes, which are the main important ones?

L'article 4 (4) d) du *règlement aide sociale* dispose que « *le Ministre* (de la Famille et de l'Intégration) *peut limiter ou retirer le bénéfice de l'aide sociale dans les cas suivants :(…)*
d) lorsque le bénéficiaire de l'aide sociale ou un membre de sa famille qui l'accompagne a commis un manquement grave au règlement des logements. »

Ainsi, seule « l'incrimination » des manquements graves au règlement des logements est prévue par un texte et les sanctions alternatives de ces manquements sont les deux seules prévues dans le règlement, la limitation ou le retrait de l'aide sociale. « Les manquements graves au règlements des logements » ne sont pas, au sens de la directive, des situations prévues pour justifier ces

sanctions. Avant de prendre ces sanctions, le Ministre devra suivre la procédure de l'article 4 (5) et (6) du *règlement aide social* (**voir réponse sous la question 21. C**). Par la suite, une telle décision devra pouvoir faire l'objet de recours administratif et/ou juridictionnels de droit commun (**voir la réponse sous la question 22**)

En pratique et avant l'entrée en vigueur du *règlement aide sociale*, une des sanctions très fréquente était le transfert du bénéficiaire de l'aide sociale dans un autre logement moins favorable (p.ex. plus loin de la capitale ou dans un camping). Désormais, le règlement précité dispose en son article 6 (3) que « *le Ministre veille à ce que le bénéficiaire de l'aide sociale ne soit transféré d'un logement à un autre que lorsque cela est nécessaire. (...)* » et nous pouvons légitimement espérer qu'une telle sanction disparaisse avec l'application du prédit règlement.

Q.25. E. Are asylum seekers involved in the <u>management</u> of these centres? If yes, how (advisory board, appointment or election of representatives)? (see article 14, §6 which is an option provision)

En général les demandeurs d'asile ne sont pas impliqués dans la gestion des centres
Il n'existe aucune prévision légale ou règlementaire en ce sens. Cependant des réunions de résidents ou bien avec des représentants de résidents peuvent se tenir et se font sporadiquement et de manière irrégulière.

En pratique, il a pu être constaté que dans les centres publics gérés directement par le Commissariat du Gouvernement aux Etrangers et dans les centres gérés par les ONGs, les demandeurs pouvaient être impliqués à divers degré dans la gestion des centres.

Q.25. F. Do <u>specific rules</u> exist on work of asylum seekers inside the accommodation centres different from the general ones about employment (see below)? If yes, which ones? Can working inside accommodation centres be considered as a (mandatory) contribution of the asylum seekers to the management of the centres, is it or not paid and considered as implying access to the labour market and subject to the same rules?

Il n'est pas prévu que les demandeurs d'asile puissent spécifiquement travailler au sein des centres d'accueil. La participation non rémunérée au nettoyage des lieux commun est cependant exigée.

Q.26. **Q.26. A. How can asylum seekers <u>communicate</u> with legal advisers, representatives of UNHCR and NGOs? (see article 14, §2, (b) which is a mandatory provision).**

L'article 6 (2) b) dispose que « *les gestionnaires des centres d'hébergement veillent à ce que (...):*
b) le bénéficiaire de l'aide social ait la possibilité de communiquer avec sa famille, ses conseils juridiques, les représentants du Haut-Commssariat des Nations-unies pour les Réfugiés

(UNHCR) et les organisations non gouvernementales reconnues. » Aucune modalité pratique n'est cependant abordée et il est à relever que l'Etat n'assure pas formellement cette garantie dont l'accomplissement est délégué aux gestionnaires des centres, sans autre précision.

Q.26. B. What are the rules about <u>access</u> of legal advisers, UNHCR and NGOs regarding access to accommodation centres and other housing facilities (see article 14, §7 which is a mandatory provision)

Les représentants du l'UNHCR et des ONGs ont un accès facilité aux centres d'accueil pour demandeurs d'asile. Avant l'entrée en vigueur de la loi du 5 mai 2006, cette pratique relevait d'un état de fait non règlementé que l'article 13 a) de la prédite loi consacre désormais « *le Haut Commissariat des Nations Unies pour les réfugiés (HCR), les membres du Comité luxembourgeois des droits de l'enfant (ORK) ainsi que toute organisation disposant d'un agrément sont autorisés:*

a) à avoir accès aux demandeurs »

Il est à noter que l'article 13 (2) de la prédite loi prévoit que « *L'agrément peut être délivré aux organisations qui*
a) justifient d'une activité d'information et de soutien régulière et durable au profit des demandeurs de protection internationale;
b) remplissent les conditions d'honorabilité, tant dans le chef des membres des organes dirigeants de l'organisation, que dans le chef des personnes physiques chargées de ces missions;
c) s'engagent à garantir aux demandeurs la protection de leur vie privée et le respect de leurs convictions philosophiques et religieuses. »

Q.26. C. Can the access of legal advisers, UNHCR and NGOs be <u>limited</u> for security reasons or any other reason (see article 14, §7, last sentence)?

De telles limitations n'ont pas été constatées à ce jour et aucune disposition dans l'ordre juridique luxembourgeois n'existe quant à ce point.

Q.27. Q.27. A. Is a <u>medical screening</u> organised by the receiving State, is it mandatory or voluntary? Does it include HIV tests? (see article 9 which is an optional provision)

Lorsqu'une personne dépose sa demande de protection internationale, elle est soumise, dans le cadre de la médecine préventive, à un examen de dépistage de la tuberculose pulmonaire effectué par la Ligue luxembourgeoise de prévention et d'action médico-sociale. Le test HIV n'est pas pratiqué mais il peut être effectué à la demande de l'intéressé, gratuitement et anonymement.

Q.27. B. Do the legal provisions on reception conditions ensure that asylum seekers receive <u>at least emergency care and essential treatment</u>

<u>of illness</u> as requested by article 15 §1 which is a mandatory provision? Do they have a further access to health care?

L'article 4 (6) *in fine* du *règlement aide sociale* dispose que « *L'accès aux soins médicaux d'urgence reste assuré en toutes circonstances* »

Q.27. C. What is the <u>practice</u> regarding access of asylum seekers to health care and how is it organised? In particular, what is the situation in accommodation centres (are doctors coming to the centres or do asylum seekers go to doctors outside)?

L'article 1er, 3ème et 4ème tiret dispose que « *l'aide sociale comporte les prestations suivantes : (...)*
- les soins médicaux d'urgence,
- la prise en charge des cotisations à titre de l'assurance volontaire prévue par l'article 2 du code des assurances sociales pour la durée de maintien de l'aide sociale (...) »

La pratique est décrite dans le *Guide d'accès aux soins médicaux pour demandeurs d'asile, déboutés du droit d'asile et clandestins au Luxembourg* (**annexes 5 et 6**). Ainsi, pendant les trois premiers mois qui suivent la présentation de la demande :
« *L'accès aux soins est gratuit et organisé sous forme de bons, valables pendant un mois et renouvelables jusqu'à trois mois. Un bon « général » est distribué au demandeur d'asile lors du premier entretien avec le CGE (Commissariat du Gouvernement aux Etrangers) pendant la première semaine d'arrivée. Le bon général couvre le demandeur ainsi que sa famille.*
Avec ce bon général, il peut accéder, selon ses besoins, aux prestations suivantes:
- consultations chez le médecin généraliste ou spécialiste ;
- fourniture de médicaments à la pharmacie suivant prescription médicale ;
- analyses médicales suivant prescription médicale ;
- consultations chez le dentiste dans le cadre d'une urgence directe, c'est à dire pour algies (douleurs physiques) et infections.
En ce qui concerne certains soins médicaux, il faut faire une demande auprès du CGE pour recevoir un « bon spécial ». Il existe deux sortes de bons spéciaux qui couvrent en principe la totalité des frais selon les dispositions tarifaires2 de la Caisse de Maladie.
a) bon spécial pour hospitalisation
b) bon spécial pour appareillage médical: concerne la fourniture de lunettes et d'autres appareillages médicaux.

Pour tout montant dépassant les dispositions tarifaires de la Caisse de Maladie, le demandeur d'asile devra payer lui-même les frais restants. »

A partir du quatrième mois, et pendant toute la durée de la procédure, le demandeur est couvert par l'assurance maladie facultative auprès de la Caisse de maladie des Ouvriers dont le Commissariat du Gouvernement aux Etrangers paye les cotisations.

En pratique, et selon le *Guide d'accès aux soins médicaux pour demandeurs d'asile, déboutés du droit d'asile et clandestins au Luxembourg* (**annexes 5 et 6**) :

« *A partir du quatrième mois, la couverture médicale du demandeur d'asile est effective sous le système de l'assurance-maladie facultative luxembourgeoise. En effet, le CGE a effectué dès le premier contact avec le demandeur d'asile les démarches nécessaires pour l'affiliation du demandeur d'asile et de sa famille auprès de la Caisse de Maladie des Ouvriers (CMO) et paie les cotisations mensuelles pendant toute la durée de la procédure d'asile.*
Après l'affiliation effective à la Caisse de Maladie (après trois mois de stage, période durant laquelle la CMO ne rembourse pas les frais occasionnés), la personne reçoit une carte avec un numéro de matricule.
Celle-ci est à garder sur soi en permanence et est à présenter lors de chaque consultation médicale. Lors d'une visite médicale, l'assuré devra payer la totalité de la facture; il se dirige ensuite vers la CMO pour se faire rembourser la participation tarifaire de la Caisse de Maladie.
Le montant du remboursement varie selon les soins mais il y a toujours une partie personnelle à payer par le demandeur d'asile (environ 20% mais fortement variable). Pour se faire rembourser, il faut présenter la facture acquittée du médecin ou la facture avec une preuve de paiement (ex: copie du versement ou du virement bancaire) au bureau de la CMO du lieu de résidence ou au siège social, soit par courrier, soit en se présentant au guichet. La durée de traitement des remboursements est d'environ deux semaines. (…)

En ce qui concerne les frais de médicaments prescrits, il ne faut payer que la partie personnelle en pharmacie, c'est à dire celle qui n'est pas remboursée par la Caisse de Maladie. Cette partie personnelle peut fortement varier selon le médicament prescrit, il vaut donc mieux en parler au médecin qui peut souvent prescrire des médicaments nettement moins chers (génériques). »

Q.28. **Q.28. A. What is the <u>length of the period</u> determined by the concerned Member State during which asylum seekers have <u>no access</u> to the labour market? (see article 11 which is a mandatory provision)**

L'article 14 (1), première phrase dispose que « *Les demandeurs n'ont pas accès au marché de l'emploi pendant une durée de neuf mois après le dépôt de leur demande de protection internationale.* »

Q.28. B. After that period, are asylum seekers or not obliged to obtain <u>a work permit</u>? In case is there a limit for the administration to deliver the permits and how quick are they delivered? What is their length?

La deuxième phrase du prédit article prévoit que « *Toute demande de permis de travail présentée par un demandeur est irrecevable* » en ce sens que l'autorisation d'occupation temporaire dont les conditions de délivrance sont décrites dans les développements qui suivent, qui sera délivrée au demandeur, ne peut être considérée comme « un permis de travail », la délivrance d'un tel permis tel qu'il est prévu pour les étrangers en situation régulière, étant ainsi implicitement mais sûrement interdite par la loi.

Q.28. C. After that period, what are the <u>conditions</u> for access of the asylum seekers to the labour market? (in particular, are there rules

concerning the maximum allowed of working hours or days per week, month or year, limits in terms of type of work or of professions authorised?

Après cette période de neuf mois, le demandeur obtient une occupation d'occupation temporaire selon les conditions suivantes [564] :

- l'absence de décision ministérielle à la demande d'asile dans le délai précité, à condition que ce retard ne puisse être imputé au demandeur,
- la possession, dans le chef du demandeur de l'attestation lui donnant droit à l'aide sociale,
- la nécessité de faire la demande d'occupation temporaire.

Il est encore à relever que l'autorisation d'occupation temporaire, une fois délivrée, est limitée à un employeur déterminé et pour une seule profession.

Q.28. D. What are the rules in terms of <u>priorities</u> between asylum seekers on the one hand and nationals, EU or EEE citizens and legally third-country nationals on the other?

L'article 14 (3) de la loi du 5 mai 2006 prévoit que *« l'octroi et le renouvellement de l'autorisation d'occupation temporaire peuvent être refusés pour des raisons inhérentes à la situation, à l'évolution ou à l'organisation du marché de l'emploi, compte tenu de la priorité à l'embauche dont bénéficient les citoyens de l'Union européenne, les citoyens des Etats liés par l'accord sur l'Espace économique européen, les ressortissants de pays tiers en vertu d'accords spécifiques ainsi que les ressortissants de pays tiers en séjour régulier qui bénéficient d'allocations de chômage.* »

[564] Article 14 de la *loi du 5 mai* 2006 : « *(1)* (…).
(2) Lorsque le ministre n'a pas pris de décision sur la demande de protection internationale neuf mois après la présentation de celle-ci et que ce retard ne peut être imputé au demandeur, le ministre délivre, sous réserve des paragraphes qui suivent, une autorisation d'occupation temporaire pour une période de six mois renouvelable. L'autorisation d'occupation temporaire est valable pour un employeur déterminé et pour une seule profession. (3) (…)
(4) A l'appui de la demande en obtention d'une autorisation d'occupation temporaire, le demandeur doit présenter à l'Administration de l'emploi une copie certifiée conforme de l'attestation visée à l'article 6 (5) qui précède.
(5) Le bénéfice de l'autorisation d'occupation temporaire ne donne pas droit à un permis de séjour.
(6) L'autorisation d'occupation temporaire perd sa validité soit à l'échéance de son terme, soit au moment de la résiliation de la relation de travail par une des parties au contrat de travail, soit au moment où la demande de protection internationale est définitivement rejetée.
(7) L'autorisation d'occupation temporaire est retirée lorsque son bénéficiaire travaille dans une autre profession que celle autorisée. Elle est retirée lorsque son bénéficiaire a eu recours, dans une intention frauduleuse, à des pratiques malhonnêtes ou à des déclarations inexactes pour l'obtenir.
(8) Le contrat de travail prend automatiquement fin lorsque l'autorisation d'occupation temporaire perd sa validité ou est retirée.
(...) »

Q.28. E. Do asylum seekers have access to <u>vocational training</u>, does this or not depend of their right to access to the labour market, and in case at which conditions? (see article 12 which is optional regarding §1 and mandatory regarding § 2)

L'article 14 (9) de la loi du 5 mai 2006 dispose que : « *Les demandeurs ont accès à la formation selon les conditions à fixer par règlement grand-ducal qui sera pris sur avis du Conseil d'Etat.* »

Le règlement formation dispose en son article premier que : « *Par formation au sens du paragraphe (9) de l'article 14 on comprend :*

1) la formation des adultes organisée par le ministre ayant l'Éducation nationale et la Formation professionnelle dans ses attributions, désigné ci-après par « le ministre », sur base de la loi du 19 juillet 1991 portant création d'un Service de la Formation des Adultes et donnant un statut légal au Centre de Langues Luxembourg [565] *;*

2) les cours de formation professionnelle organisés dans le cadre de la loi modifiée du 4 septembre 1990 portant réforme de l'enseignement secondaire technique et de la formation professionnelle continue, régime professionnel[566] *;*

3) les cours de formation professionnelle continue organisés conformément aux articles 46 et 47 (1) et (4) de la loi modifiée du 4 septembre 1990 portant réforme de l'enseignement secondaire technique et de la formation professionnelle continue, à l'exclusion des cours organisés à l'intention des demandeurs d'emploi indemnisé ou non[567] *;*

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[565] Article 1er de la loi modifiée du 19 juillet 1991 : « *Il est créé un Service de la formation des adultes placé sous l'autorité du ministre de l'Education nationale, dénommé ci-après «le ministre».Ce service a pour mission:*
a. de coordonner la formation offerte aux adultes en cours du soir par l'enseignement secondaire, l'enseignement secondaire technique,l'Institut supérieur de technologie et le Centre universitaire ainsi que la formation offerte par le Centre de langues dont question aux articles 10 à 19;
b. d'organiser un régime adultes ouvrant au moyen de cours du soir l'accès aux diplômes et certificats délivrés par l'enseignement du jour;
c, d'assurer l'instruction de base des adultes résidant au Luxembourg qui en expriment le désir;
d. d'organiser des cours d'intérêt général dans les domaines dits de formation générale et de promotion sociale, soit directement, soit par l'intermédiaire d'organismes dont question à l'alinéa e);
e. d'établir et de gérer les contrats conventionnant des cours pour adultes organisés par des communes ou des associations sans but lucratif suivant les critères de l'article 2 ci-dessous;
f. de définir les programmes des cours d'intérêt général et des cours conventionnés pour adultes;
g. de gérer, ensemble avec les directeurs des établissements scolaires respectifs, la mise à disposition de locaux à des tiers;
h. de diffuser les informations sur les cours dont question dans le présent article et de conseiller les intéressés;
i. d'entretenir des relations suivies avec les services de la formation des adultes d'autres pays. »

[566] Article 7 de la loi modifiée du 4 septembre 1991 : « *Les études du cycle moyen ont pour objet l'apprentissage d'un métier ou d'une profession ainsi que la préparation aux études du cycle supérieur. Les programmes d'études des classes du cycle moyen comportent obligatoirement des branches de formation générale ainsi que des branches de formation professionnelle théorique et pratique.* »

[567] Articles 46 de la loi modifiée du 4 septembre 1990 : « *La formation professionnelle continue a pour objectifs*
- d'aider les personnes titulaires d'une qualification professionnelle à adapter celle-ci à l'évolution du progrès technologique et aux besoins de l'économie, à la compléter ou à l'élargir;

4) *l'apprentissage pour adultes organisé conformément au règlement grand-ducal modifié du 17 juin 2000 portant organisation de l'apprentissage pour adultes.* »

L'accès à la formation prévue au point 1) est autorisé pour tout demandeur dès le dépôt de la demande d'asile (article 2 du *règlement formation*),

Les demandeurs mineurs ont par ailleurs accès aux cours de formation professionnelle (apprentissage) prévus au point 2) à condition d'être en possession d'une attestation de dépôt d'une demande de protection internationale valable (article 3 du règlement formation).

Les demandeurs mineurs pourront encore avoir accès aux cours de formation professionnelle continue prévus au point 3), y compris les stages en entreprise, « *aussi longtemps qu'une mesure d'éloignement n'est pas exécutée contre eux* » (.article 6 du règlement formation)

En ce qui concerne les majeurs, ceux-ci ont accès aux cours prévus au point 3) du règlement formation « *dès le dépôt de leur demande de protection internationale jusqu'au moment où la demande de protection internationale est définitivement rejetée* » et n'auront accès à l'apprentissage pour adultes prévu au point 4) ainsi qu'aux stages en entreprise, qu'après l'écoulement du délai de neuf mois prévu pour l'obtention de l'autorisation d'occupation temporaire (article 8 du *règlement formation*). Il est à noter que pour l'apprentissage, (point 2), « *l'accès reste acquis aux demandeurs mineurs qui en cours d'apprentissage deviennent majeurs.* » (article 3 in fine du *règlement formation*).

Il est encore à noter qu'outre les conditions qui viennent d'être décrites, l'article 12 du règlement formation prévoit que « *L'admission aux différents cours professionnels concomitants prévus aux points 2) 3) et 4) de l'article 1er du présent règlement se fait en fonction des connaissances linguistiques dont dispose le candidat.*
Le ministre peut organiser des tests de contrôle des connaissances des candidats en question.
Si les connaissances linguistiques s'avèrent insuffisantes, une mise à niveau de celles-ci doit précéder la formation professionnelle.
Le cas échéant, la même procédure s'applique aux connaissances en mathématiques. **»**

Enfin, il est important de relever que l'article 10 du *règlement formation* prévoit que « *les indemnités et primes d'apprentissage touchées sur la base d'un contrat d'apprentissage* ***ne sont pas cumulables avec d'autres aides financières accordées par le ministre ayant la Famille et l'Intégration dans ses attributions*** **».** Ainsi, le demandeur qui pourra bénéficier d'un apprentissage rémunéré, ne pourra plus prétendre pendant cet apprentissage à l'aide sociale pour demandeur de protection internationale.

- d'offrir aux personnes exerçant une activité professionnelle, soit salariée, soit indépendante, ou à des chômeurs l'occasion de se préparer aux diplômes et aux certificats visés par la présente loi et d'obtenir une qualification professionnelle dans un système de formation accélérée;
- d'appuyer et de compléter, sur proposition des chambres professionnelles concernées, l'apprentissage pratique dispensé en entreprise. »
Article 47 (1) et (4) de la loi modifiée du 4 septembre 1990 : « *La formation professionnelle continue au sens de l'article précédent peut être organisée par 1. le ministre de l'Education nationale; (...) 4. les associations privées agréées individuellement à cet effet par le ministre.*»

Q.28. F. Are the rules regarding access to the labour market adopted to transpose the directive more or less generous than the ones applicable previously?

Avant la transposition de la directive dans l'ordre juridique luxembourgeois, les demandeurs d'asile n'avaient pas accès au marché du travail au Luxembourg.

Il est à noter que l'article 14 de la loi du 5 mai 2006 ne prévoit pas formellement que l'accès n'est pas refusé pendant les procédure de recours ou que l'accès reste acquis en cas de recours avec effet suspensif. La rédaction du prédit article « *Lorsque le ministre n'a pas pris de décision sur la demande de protection internationale neuf mois après la présentation de celle-ci* (…)*, le ministre délivre (...) une autorisation d'occupation temporaire*(…) » pourrait même amener à conclure qu'une fois que le Ministre aura pris une décision négative avant l'expiration du délai de neuf mois, aucune obligation de délivrer l'autorisation pendant les délais suspensifs de recours et pendant l'exercice des recours suspensifs jusqu'à la décision définitive, ne pourrait lui être imposée. La loi transposant cette disposition étant très récente, aucune jurisprudence n'a pu à l'heure actuelle se développer quant à ce point. La note interne au Ministère des Affaires Etrangères du 14 juillet 2006 (annexe 11), relative à l'octroi d'une autorisation d'occupation temporaire, précise cependant que « *la demande* (en occupation temporaire) *peut être introduite tant que la décision du ministre n'est pas coulée en force de chose jugée* » ce qui peut raisonnablement laisser présager que l'accès au marché de l'emploi ne pourra être refusé au demandeur pour le seul motif qu'il existerait une décision de refus du ministre, et ce malgré le fait que les délais de recours ne soient pas épuisés ou qu'une voie de recours ait été introduite.

Q.29. Are reception conditions subject to the fact that asylum seekers do not have sufficient resources? Are asylum seekers requested to contribute to reception conditions when they have personal resources (for instance if they work) or to refund the authorities if it appears that they have resources? (see article 13 §§ 3 and 4 which are optional provisions)

L'article 2 du règlement aide sociale prévoit que « l'aide sociale est accordée à toute personne détentrice de l'attestation ou de la convocation visée aux articles 6, (…) de la loi relative au droit d'asile et à des formes complémentaires de protection, à condition de ne pas disposer de moyens d'existence suffisants à sa subsistance.

L'article 4 in fine du règlement aide social prévoit que « *Le droit à l'aide sociale est revu dès l'obtention d'une autorisation d'occupation temporaire.*»

L'article 10 du règlement formation prévoit par ailleurs que « *les indemnités et primes d'apprentissage touchées sur la base d'un contrat d'apprentissage* ***ne sont pas cumulables avec d'autres aides financières accordées par le ministre ayant la Famille et l'Intégration dans ses attributions*** », de telle sorte que le demandeur qui pourra bénéficier d'un apprentissage rémunéré, ne pourra plus prétendre pendant cet apprentissage à l'aide sociale pour demandeur de protection internationale.

Ainsi, en pratique, Madame la Commissaire du Gouvernement aux étrangers, par accord donné par Madame la Ministre de la Famille et de l'Intégration, a arrêté selon une note du 11 juillet 2006 (**annexe 13**) les modalités de retenues et d'adaptations de certaines conditions d'accueil des demandeurs de protection internationale qui bénéficient d'une autorisation d'occupation temporaire et qui ont un revenu. Ces modalités varient en fonction de la composition du ménage et de son revenu.

Enfin, l'article 4 (4) a) 2ème § du règlement aide social dispose que « *Les aides indûment touchées, suite à une fausse déclaration ou suite à l'omission par le bénéficiaire de l'aide sociale de déclarer le changement intervenu dans la composition de son ménage, respectivement suite à l'allégation de faits inexacts, seront récupérées à charge du bénéficiaire.* » Pour rappel, le fait de dissimuler ses ressources dans le chef d'un demandeur, entraîne, aux termes de l'article 4 (4) a) 1er §, la possibilité pour le Ministre de limiter ou retirer le bénéfice de l'aide social.

7. SPECIAL NEEDS OF PARTICULAR CATEGORIES OF ASYLUM SEEKERS

Q.30.

Q.30.A. Which of the different categories of persons with special needs considered in the directive are taken into account in the national legislation (see article 17, §1 which is a mandatory provision): disabled people, elderly people, pregnant women, single parents with minor children, persons who have been tortured, raped or victims of serious physical or psychological violence? Include in your answer all other categories envisaged in national law.

Les personnes vulnérables prises en considération dans la législation nationales sont :

- les mineurs non accompagnés (articles 2 i) et 12 de la loi du 5 mai 2006, articles 1er 7ème tiret, 2 et 7 du *règlement aide social*
- les mineurs (article 4 (1) du règlement aide sociale),
- les handicapés (article 4 (1) du règlement aide sociale),
- les personnes âgées (article 4 (1) du règlement aide sociale),
- les femmes enceintes (article 4 (1) du règlement aide sociale),
- les parents isolés accompagnés de mineurs (article 4 (1) du règlement aide sociale),
- les personnes qui ont subi des tortures, des viols ou d'autres formes graves de violence psychologique, physique ou sexuelle dont les besoins particuliers ont été constatés après une évaluation individuelle de leur situation (articles 1er, 8ème tiret et 4 (1) du règlement aide sociale).

Q.30. B. How is their specific situation taken into account (see articles 13, §2, second indent, 16 §4 second sentence and 17 which are mandatory provisions)?

Par rapport aux prévisions de l'article 13, § 2, le *règlement aide sociale* pose le principe général selon lequel « *l'aide sociale est déterminée en fonction de la composition du ménage, de l'âge de ses membres, ainsi que des revenus dont dispose le ménage. Elle tient compte des besoins particuliers des personnes vulnérables, telles les mineurs, les mineurs non accompagnés, les handicapés, les personnes âgées, les femmes enceintes, les parents isolés accompagnés de mineurs et les personnes qui ont subi des tortures, des viols ou d'autres formes graves de violence psychologique, physique ou sexuelle* (…) » (article 4 (1)).

En pratique, Madame la Commissaire du Gouvernement aux étrangers précise que *les soins et suivis psychologiques pour des personnes ayant des besoins spécifiques, sont traités par le Commissariat du Gouvernement aux étrangers*, *comme les soins de santé, sur prescription médicale*.

Nous avons par ailleurs déjà vu que la transposition en droit national de l'article 16 § 4 de la directive n'était pas formellement conforme (voir réponse sous la question 21. D. et l'article 4 (6) du *règlement aide sociale*) à celui-ci, alors que la disposition nationale ne prévoit pas explicitement la prise en considération de la qualité de personne vulnérable en cas de retrait ou limitation de l'aide sociale. Nous avons cependant également déjà vu qu'au cas où une telle situation serait soumise au contrôle des juridictions administratives luxembourgeoises, ces dernières devront apprécier la qualité de personne vulnérable pour toiser la question.

Avant l'entrée en vigueur du règlement aide social, il n'existait aucune disposition qui prévoyait explicitement la prise en compte particulière de la qualité de personne vulnérable, mais la pratique leur donnait la possibilité de bénéficier, à leur demande, de la guidance sociale offerte par les assistants sociaux du Commissariat du Gouvernement aux Etrangers. Pratiquement, certaines associations (comme le service réfugié de la CARITAS) ont toujours considéré les personnes vulnérables comme leur public cible et se sont toujours efforcées d'essayer de trouver des solutions adéquates pour chaque cas individuel.

Q.30. C. How and when are the special needs of the concerned persons supposed to be legally identified (see article 17 § 2 which is a mandatory provision and clarify how it has been interpreted by transposition)?

Pour la prise en considération de la qualité de personne vulnérable dans le cadre de la détermination de l'aide sociale, l'article 4 (1) *in fine* du *règlement aide sociale* prévoit que les besoins particuliers de ces personnes seront constatés « *après une évaluation individuelle de leur situation* ». L'article 4 (2) du règlement aide sociale dispose par ailleurs que « *le bénéficiaire de l'aide sociale est tenu d'informer le Commissariat du Gouvernement aux étrangers en charge de l'instruction du dossier d'aide sociale de la composition de son ménage, de la présence de personnes ayant des besoins particuliers, (...)* ». Le règlement ne prévoit cependant aucune procédure selon laquelle une éventuelle personne vulnérable, sera identifiée pour la prise en compte de ses besoins particuliers.

On peut penser que la pratique en cours avant l'entrée en vigueur du règlement aide sociale, sera poursuivie et que les associations continueront à identifier et orienter vers les services du

Commissariat du Gouvernement aux Etrangers, les personnes vulnérables, voire à les prendre elles-mêmes en charge pour assurer, par exemple, un service de traduction et d'encadrement des mineurs non accompagnés.

Q.30. D. Is the necessary medical and other assistance provided to persons with special needs as requested by article 15, §2 which is a mandatory provision and in particular to victims of torture and violence as requested by article 20 which is a mandatory provision?

Le règlement aide sociale prend spécifiquement en compte les victimes de tortures et de violences, alors qu'il précise dans son article 1er, 8ème tiret que l'aide sociale comporte « *les soins et suivis psychologiques gratuits pour les personnes en ayant besoin, notamment les victimes de traumatismes.* ». Avant l'entrée en vigueur du règlement aide social, une telle prise en charge n'était pas prévue mais pas non plus exclue de la pratique.

En pratique, Madame la Commissaire du Gouvernement aux étrangers précise que *les soins et suivis psychologiques pour des personnes ayant des besoins spécifiques, sont traités par le Commissariat du Gouvernement aux étrangers*, *comme les soins de santé, sur prescription médicale*.

Q.31. About minors:

Q.31. A. Till which age are asylum seekers considered to be minor?

La législation luxembourgeoise prévoit que la majorité est acquise à l'âge de 18 ans.

Q.31. B. How is access of minor asylum seekers to the education system ensured? Is it at school or in case inside accommodation centres and can it be considered as similar to the conditions for nationals as requested by article 10, §1?

A part la disposition générale de l'article 1er , 7ème tiret du *règlement aide sociale*, qui prévoit l'encadrement du mineur non accompagné, il n'existe aucune disposition spéciale prévoyant l'accès des demandeurs mineurs à un quelconque système d'éducation, de telle manière qu'ils sont soumis à l'obligation générale de droit commun prévue à l'article 1er de la loi scolaire et qui dispose que « *Tout enfant qui, au cours de l'année civile, atteindra l'âge de six ans révolus, recevra pendant neuf années consécutives l'instruction dans les matières prévues à l'article 23 de la présente loi.*
(…)
Les dispositions du présent titre sont applicables aux enfants d'habitants du Grand-Duché qui ne possèdent pas la nationalité luxembourgeoise. »[568]

[568] Loi du 5 août 1963 portant réforme de l'éducation préscolaire et de l'enseignement primaire, (Mém. A 1963 p. 749).

Par ailleurs, le commentaire de l'article 1er, 7ème tiret du *règlement aide sociale* (mineurs non accompagnés) par l'autorité auteur de celui-ci, nous renseigne sur le fait que ledit encadrement comprend « *une éducation appropriée, dans le respect de sa personne, de son histoire et de ses particularités culturelles et religieuses* », ainsi que « *l'obligation de garantir au mineur une formation scolaire et professionnelle adéquate* », sans qu'une quelconque force obligatoire ne puisse toutefois être tirée de ce commentaire.

Des classes d'accueil linguistique pour les enfants étrangers sont ouvertes auprès de certaines écoles primaires et quelques lycées. Pour tous les problèmes liés à la scolarité des jeunes, on peut s'adresser au Service pour scolarisation des enfants étrangers du Ministère de l'Education Nationale qui dispose également de médiateurs culturels.

Q.31. C. Is access to education ensured not later than 3 months as requested by article 10, §2 (or after maximum one year if specific education for asylum seekers is provided) and till an expulsion decision is really enforced?

Il n'existe aucune disposition en ce sens mais la pratique assurait jusqu'à présent le respect du délai de trois mois ainsi que l'assurance de suivre les cours jusqu'à l'exécution matérielle d'une mesure d'éloignement, respectivement d'expulsion. Il importe cependant de relever qu'il est arrivé par le passé que les autorités de police se rendent directement à l'école, voire dans les classes des demandeurs mineurs déboutés afin d'exécuter la mesure d'éloignement.

Q.31. D. Is specific education (like language classes) available for asylum seekers, in particular to facilitate their effective access to the education system of the reception Member State (see article 10, §2 which is an optional provision)?

Il n'existe aucune disposition en ce sens mais pour les mineurs qui ne maîtrisent aucune des langues véhiculaires du Luxembourg et qui arrivent dans le pays au milieu de l'année scolaire, certaines associations ont mis des structures à disposition de ceux-ci, des classe de transition où ils obtiennent des connaissances de base en français, en mathématiques, en éducation civique et qui les aide ensuite à intégrer les cours linguistiques officiels ou à continuer leur scolarité normale.

Q.31. E. Are minors in general accommodated with their parents or with the person responsible of them? (see article 14, § 3)

En ce qui concerne les mineurs accompagnés, si aucune disposition spéciale n'existe en ce sens, la pratique a toujours voulu que les enfants mineurs soient hébergés ensembles avec leurs parents ou membres de la famille proche.

Q.31. F. Do minors with special needs enumerated by article 18, §2 which is a mandatory provision, have access to appropriate mental health care and qualified counselling?

A part l'article 1er, 7ème et 8ème tiret du *règlement aide sociale* qui dispose que l'aide sociale comporte « l'encadrement des mineurs » (sans autres précisions) et « les soins et suivis psychologiques gratuits pour les personnes en ayant besoin, notamment les victimes de traumatismes » (sans précisions quant aux mineurs non accompagnés qui seraient bénéficiaires de cette prestation), il n'existe aucune disposition spéciale en ce sens.

Cependant, le commentaire de ces dispositions par l'autorité compétente auteur de celles-ci, nous renseigne, alors qu'il y est précisé que l'encadrement du mineur non accompagné comprend « *une aide psychologique qui réponde aux difficultés éventuelles liées au vécu de séparation et de traumatisme* », sans qu'une quelconque force obligatoire ne puisse toutefois être tirée de ce commentaire.

La prise en charge psychologique des mineurs non accompagnés n'était pas plus prévue ni organisée sous l'empire de l'ancien texte. Avec l'arrivée massive de demandeurs du Kosovo à la fin des années 1990, l'Etat a cependant pris conscience de l'importance d'une telle prise en charge et le Commissariat du Gouvernement aux Etrangers du ministère de la Famille a depuis engagé une infirmière qui reçoit et écoute les demandeurs (mineurs ou pas) qui en émettent le vœu. L'infirmière orientera encore éventuellement la personne concernée vers un médecin spécialiste.

Il convient de relever que si l'Etat ne semble à l'heure actuelle pas encore avoir mis en place les structures nécessaires pour la prise en charge spécifique des demandeurs mineurs non accompagnés qui ont été victimes de traumatismes, certaines associations, dont le Service Réfugié de la Caritas se sont saisies du problème.

Ainsi, ce service a toujours été à l'écoute des personnes traumatisées (mineures ou pas) et a mis en place une formation de traducteurs de langue russe, albanaise, serbo-croate, arabe et française dans le domaine de la santé mentale. L'association a ainsi recours à leurs services tant pour la simple écoute des demandeurs, que pour leur suivi psychologique, voire psychiatrique. Ce suivi est en pratique assuré par une équipe de professionnels, impliqués dans, ou intéressés par, la cause des réfugiés.

Nous relèverons encore que cette prise en charge n'est pas spécifique pour les demandeurs mineurs non accompagnés.

Il a pu encore être constaté que depuis quelques mois, en pratique, le Commissariat du Gouvernement aux Etrangers place systématiquement les demandeurs mineurs non accompagnés dans les foyers d'accueil gérés par les ONGs (Caritas et Croix Rouge) qui disposent de personnels éducatifs et où la détection et la prise en charge des traumatismes seront ainsi plus aisées et efficientes que dans un autre centre.

Madame la Commissaire du Gouvernement aux étrangers précise qu'en pratique, la situation est assez difficile et qu'elle est liée à la situation générale au Luxembourg, de trouver des places dans

le système des foyers et structures ayant pour objet le suivi socio-pédagogique et l'hébergement des mineurs, indépendamment de leur nationalité.

Q.31. G. How and when is organised the representation of unaccompanied minors (guardianship, special organisation) and regularly assessed? (see article 19, §1 which is a mandatory provision)

L'article 12 de la loi du 5 mai 2006 dispose qu' « *un demandeur mineur non accompagné se voit désigner, dès que possible un tuteur qui l'assiste dans le cadre de l'examen de sa demande. (...)* ». Ainsi, la disposition précitée ne prévoit pas explicitement la représentation juridique du mineur mais uniquement son assistance par un « tuteur » dans le cadre de l'examen de sa demande. L'utilisation du terme tuteur peut laisser cependant supposer qu'une tutelle soit ouverte selon les règles du code civil luxembourgeois[569] ou selon les règles de la loi nationale du mineur, si celle-ci prévoit un régime comparable à celui de la tutelle. La pratique qui existait avant l'entré en vigueur du *règlement aide social* consistait à tendre vers une telle situation.

Par ailleurs, l'article 1er, 7ème tiret du *règlement aide social* dispose que l'aide sociale comporte « *l'encadrement des mineurs non accompagnés.* » et le commentaire de cette disposition par l'autorité compétente auteur de celle-ci nous éclaire, en ce qu'il précise que cet encadrement comprend « *le souci d'attribuer au mineur un tuteur qui assume la responsabilité parentale, ainsi qu'un conseil juridique qui les assiste pendant la procédure d'asile et au-delà* », sans qu'une quelconque force obligatoire ne puisse toutefois être tirée de ce commentaire. En pratique, un tuteur sera désigné le plus rapidement possible à un demandeur si sa minorité n'est pas mise en doute.

Q.31. H. How is placement of unaccompanied minors organised (with adult relatives, a foster family, in special accommodation centres or other suitable accommodation)? (see article 19, §2 which is mandatory provision)

L'article 7 du *règlement aide sociale* fait la distinction entre mineurs non accompagnés de moins de 16 ans et mineurs de plus de 16 ans. Ainsi ; « *les mineurs non accompagnés âgés de moins de 16 ans sont hébergés :*

a) auprès de membres adultes de leur famille,
b) au sein d'une famille d'accueil,
c) dans un centre spécialisé dans l'accueil des mineurs,
d) dans d'autres lieux d'hébergement convenant pour les mineurs.

Les mineurs non-accompagnés âgés de 16 ans ou plus peuvent être placés dans des centres d'hébergement pour demandeurs d'asile adultes. »

[569] Article 390 du code civil : « *La tutelle s'ouvre lorsque le père et la mère sont tous deux décédés ou se trouvent dans l'un des cas prévus à l'article 376. (...)* »
Article 376 du code civil : « *Perd l'exercice de l'autorité parentale ou en est provisoirement privé celui des père et mère qui se trouve dans l'un des cas suivants:*
1° s'il est hors d'état de manifester sa volonté, en raison de son incapacité, de son absence, de son éloignement ou de toute autre cause ; (...) »

Cette nouvelle disposition devrait permettre d'améliorer des situations de fait qui existaient il n'y pas si longtemps et dans lesquelles il a pu être constaté que des demandeurs mineurs étaient logés indistinctement ensembles avec des demandeurs majeurs, dans les centres d'accueil.

L'article 7 précité devrait venir institutionnaliser la nouvelle pratique observée depuis quelques mois et qui tend à placer les mineurs non accompagnés dans les foyers d'accueil gérés par les ONGs Caritas et Croix Rouge qui disposent de personnels éducatifs spécialisés. Ainsi, les demandeurs âgés entre 13 et 15 sont placés dans un centre géré par la Croix-Rouge et les demandeurs âgés entre 16 et 18 ans dans un centre géré par la Caritas, les deux centres étant situés à proximité de Luxembourg-Ville. Il a pu également être observé que dans des situations exceptionnelles, de très jeunes demandeurs non accompagnés ont été placés dans des centres spéciaux pour mineurs (maison d'enfants) où du personnel spécialisé est constamment présent mais n'est cependant pas spécifiquement formé en matière de protection internationale.

Q.31. I. How is the tracing of the family members of the unaccompanied minors organised? Are measures taken to protect confidentiality of information when necessary? (see article 19, §3 which is a mandatory provision)

Aucune disposition de transposition n'existe en ce sens en droit luxembourgeois. Cependant, en pratique, le Commissariat du Gouvernement aux Etrangers vient de conclure avec la Croix Rouge un accord de collaboration le 24 juillet 2006 au terme duquel la Croix-Rouge est notamment chargée de transmettre les messages des demandeurs d'asile vers leurs familles et inversement. Cette transmission se fera par l'intermédiaire de l'Agence centrale de recherches du Comité international de la Croix Rouge.

Sans plus de précision, les autorités compétentes nous informent également que la Croix-Rouge intervient dans la recherche des parents des mineurs non accompagnés.

8. EXCEPTIONAL MODALITIES OF RECEPTION CONDITIONS

Q.32. Apart from detention covered by the next question, are there exceptional modalities for reception conditions in the following cases and if yes, which ones and for how long are they applicable, knowing that they should be "as short as possible" (see article 14, §8)?

Q.32. A. Persons with specific or special needs, regarding in particular the period of assessment of those needs?

Aucune modalité exceptionnelle en ce sens.

Q.32. B. Non availability of reception conditions in certain areas

Aucune modalité exceptionnelle en ce sens.

Q.32. C. <u>Temporarily exhaustion</u> of normal housing capacities

L'article 6 (1), 2ème § du *règlement aide social*, prévoit que « *lorsque les capacités de logement normalement disponibles sont temporairement épuisées le bénéficiaire de l'aide sociale peut être logé dans une structure d'accueil d'urgence.* »

Dans le passé, lors de l'afflux massif des demandeurs de protections (guerre au Kosovo), les structures d'Etat ayant été rapidement saturées, certains demandeurs de protection ont été logés dans des campings..

Q.32. D. The asylum seeker is confined to a <u>border post</u>

Aucune modalité exceptionnelle en ce sens.

Q.32. E. <u>All other cases</u> not mentioned in the directive (for instance urgent situation in case of a sudden high number of applicants outside a case of application of the directive on temporary protection).

Aucune modalité exceptionnelle en ce sens.

Q.33. <u>Detention of asylum seekers</u> (we do not cover the situation of rejected asylum seekers detained for the purpose of their return) (see articles 6 §2, 7 §3, 13, §2 2nd indent and 14 §8 which implies that the directive is in principle applicable in case of detention):

Q.33. A. In which <u>cases or circumstances</u> and for which <u>reasons</u>[1] (identity verification in particular if the persons have no or false documents, protection of public order or national security, refugee status determination, way of entry into the territory, etc) can an asylum seeker be detained during the asylum procedure till his request has been finally rejected. <u>Quote</u> precisely in English in your answer the <u>legal basis</u> for detention of asylum seekers in national law.

L'article 18 § 1er de la directive procédure a toujours été respecté, avant et après la transposition.

La base légale de la détention des demandeurs d'asile, est article 10 de *la loi du 5 mai 2006 relative au droit d'asile et à des formes complémentaires de protection.*

[1] Please specify if article 18 §1 of the directive on asylum procedures of 1 December 2005 following which *"Member States shall not hold a person in detention for the sole reason that he/she is an applicant for asylum"* is or not respected (even if it has not yet to be transposed).

Avant l'entrée en vigueur de *la loi du 5 mai 2006*, les seuls cas de placement en structure fermée de demandeurs d'asile qui ont pu être constatés en pratique étaient ceux des demandeurs célibataires pour lesquels le Luxembourg n'était pas compétent pour examiner la demande et en attendant leur transfert vers l'Etat responsable.

Depuis le 5 mai 2006, un demandeur de protection internationale peut désormais être théoriquement placé dans une structure fermée dans les cas suivants :

- lorsque la *demande de protection internationale a été déposée dans le but de prévenir un éloignement de la personne concernée alors que celle-ci se trouve en séjour irrégulier au Luxembourg* (article 10 (1) a) de *la loi du 5 mai 2006*),
- lorsque *le demandeur refuse de coopérer avec les autorités dans l'établissement de son identité ou de son itinéraire de voyage* (article 10 (1) b) de *la loi du 5 mai 2006*),
- lorsque *le placement s'avère nécessaire afin de ne pas compromettre le transfert du demandeur vers le pays qui, en vertu d'engagements internationaux auxquels le Luxembourg est partie, est considéré comme responsable de l'examen de la demande* (article 10 (1) d) de *la loi du 5 mai 2006*),
- lorsque *le demandeur a induit en erreur les autorités en présentant de fausses indications ou de faux documents ou en dissimulant des informations ou documents concernant son identité ou sa nationalité qui auraient pu influencer la décision dans un sens défavorable* (article 10. (1) c) combiné à l'article 20. (1) d) de *la loi du 5 mai 2006*),
- *lorsque le demandeur a introduit une autre demande de protection internationale mentionnant d'autres données personnelles* (article 10. (1) c) combiné à l'article 20. (1) e) de *la loi du 5 mai 2006*)
- lorsque *le demandeur n'a produit aucune information permettant d'établir, avec une certitude suffisante, son identité ou sa nationalité, ou s'il est probable que, de mauvaise foi, il a procédé à la destruction ou s'est défait de pièces d'identité ou de documents de voyage qui auraient aidé à établir son identité ou sa nationalité* (article 10. (1) c) combiné à l'article 20. (1) f) de *la loi du 5 mai 2006*),
- lorsque *le demandeur ne dépose une demande qu'afin de retarder ou d'empêcher l'exécution d'une décision antérieure ou imminente qui entraînerait son éloignement du territoire* (article 10. (1) c) combiné à l'article 20. (1) i) de *la loi du 5 mai 2006*)
- lorsque *le demandeur est entré ou a prolongé son séjour illégalement sur le territoire du Grand-Duché et, sans motif valable, ne s'est pas présenté aux autorités et/ou introduit sa demande de protection internationale dans les délais les plus brefs compte tenu des circonstances de son entrée sur le territoire* (article 10. (1) c) combiné à l'article 20. (1) k) de *la loi du 5 mai 2006*),
- lorsque *le demandeur constitue un danger pour la sécurité nationale ou constitue un danger pour l'ordre public* (article 10. (1) c) combiné à l'article 20. (1) l) de *la loi du 5 mai 2006*),
- lorsque *le demandeur refuse de se conformer à l'obligation de donner ses empreintes digitales* (article 10. (1) c) combiné à l'article 20. (1) m) de *la loi du 5 mai 2006*).

Il est à noter que dans les sept dernières hypothèses, la demande sera encore traitée sous le régime de la procédure accélérée.

En pratique et depuis l'entrée en vigueur de la loi, le ministre compétent restreint ses décisions de placement en structure fermée aux seuls cas de demandeurs majeurs, célibataires, de sexe masculin et pour lesquels le Luxembourg n'est pas compétent pour analyser la demande dans l'attente de leur transfert.

Q.33. B. Has your member State adopted measures to transpose §3 of article 7 which is an optional provision? If yes, how has this provision been legally understood (is it a case of detention or an obligation to stay in and not leave a certain place?) and for which reasons can an asylum seeker be "confined" in such a place?

Le Grand-Duché de Luxembourg a sans aucun doute transposé l'article 7, § 3 de la directive en prévoyant dans la loi dix cas et situations dans lesquels le Ministre des Affaires Etrangères peut décider de placer le demandeur dans une structure fermée. Sans le moindre doute également, l'obligation que l'Etat fait au demandeur dans ces dix situations de demeurer dans un lieu déterminé, a été légalement comprise comme un cas de *détention* (même si le terme n'est jamais employé), alors que la voie utilisée pour obliger de *demeurer dans un lieu déterminé* est le placement dans une structure fermée.

Q.33. C. Are there legally alternatives to detention, like obligation to report to the authorities, obligation to stay in a place, provision of a guarantor or of a financial guarantee?

Il n'existe aucune alternative légale aux dix cas dans lesquels le demandeur peut être placé dans une structure fermée.

Q.33. D. Which is the competent authority to order the detention of an asylum seeker? Explain if different authorities are involved to first take and later confirm the decision.

Le Ministre des Affaires Etrangères et de l'Immigration est l'autorité compétente pour ordonner le placement d'un demandeur d'asile en structure fermée (**voir la réponse sous la question 33. H**)

Q.33. E. For how long and till which stage of the asylum procedure can an asylum seeker be detained?

La mesure de placement est ordonnée aux termes de l'article 10 (1), première phrase, pour une durée maximale de trois mois. La loi n'établit aucun lien entre la durée de placement et le stade de la procédure d'examen de la demande.

La décision de placement ne peut être prorogée que dans la seule hypothèse où elle a été initialement ordonnée lorsque *le demandeur n'a produit aucune information permettant d'établir,*

avec une certitude suffisante, son identité ou sa nationalité, ou s'il est probable que, de mauvaise foi, il a procédé à la destruction ou s'est défait de pièces d'identité ou de documents de voyage qui auraient aidé à établir son identité ou sa nationalité (article 10. (2) c) combiné à l'article 20. (1) f) de *la loi du 5 mai 2006*). Dans cette situation, le Ministre pourra proroger la mesure chaque fois pour une durée de trios mois sans que la durée totale ne puisse excéder douze mois.

Par ailleurs, l'article 10 (3) dispose que « *lorsque la demande de protection internationale est formulée au cours d'une mesure de placement en vertu de la législation sur l'entrée et le séjour des étrangers, la durée du placement en vertu de la présente loi court à partir du jour du dépôt de la demande de protection internationale* »

Q.33. F. In which places (can we call them "closed centres"?) are asylum seekers detained (places in a special closed centres reserved only to asylum seekers, together with returnees like illegal aliens or even in a normal prison, in case within separated areas or with the other detainees)? Indicate if a difference has to be made following the location of the "closed centres" at the border or on the territory? Which is the authority managing those places and is it the same as the one in charge of reception conditions?

Le Luxembourg ne dispose pas de centre de rétention aux frontières.

En ce qui concerne la structure fermée dans laquelle le demandeur peut être placé, **la situation actuelle est extrêmement floue**, alors qu'avant la loi du 5 mai 2006, aucune disposition ne traitait formellement du sujet et seuls les célibataires dont l'examen de la demande ne pouvait être fait par le Luxembourg étaient en pratique susceptibles de faire l'objet d'une telle mesure (situation actuellement prévue à l'article 10 (1) d)).

Ces personnes étaient placées dans un bloc spécial du centre pénitentiaire (au troisième étage d'un bâtiment à trois étages dont les deux autres étaient peuplés de détenus de droit commun), ensembles avec les étrangers en situation irrégulière qui faisaient l'objet d'une mesure de placement en attendant leur éloignement ou leur expulsion du territoire.

Même en ce qui concerne les étrangers en situation irrégulière placés, il n'existait pas de texte spécifique justifiant ce placement au sein même du centre pénitentiaire (réservé aux détenus préventifs et condamnés) de telle sorte que le r*èglement grand-ducal du 20 septembre 2002 créant un Centre de séjour provisoire pour étrangers en situation irrégulière*, est venu légitimer cette situation.

Le règlement grand-ducal du 20 septembre 2002 n'a cependant pas été modifié après l'adoption de la loi du 5 mai 2006 relative au droit d'asile et à des formes complémentaires de protection qui a institué pour la première fois le principe du placement du demandeur de protection internationale en structure fermée et il n'est actuellement pas prévu que le Centre de Séjour pour Etrangers en situation irrégulière reçoive des demandeurs de protection internationale, mais seuls des étrangers en situation irrégulière faisant l'objet d'une mesure de placement

Le Luxembourg vient par ailleurs de voter la loi du 24 août 2007 relative à la construction d'un Centre de Rétention. L'article 1er de la loi dipose que « Le Gouvernement est autorisé à procéder à la construction d'un centre de rétention qui est destiné à servir (…) de structure fermée au sens de l'article 10 de la loi du 5 mai 2006 relative au droit d'asile et à des formes complémentaires de protection. » La construction a débuté au cours de l'été 2007.

Nous pouvons donc légitimement nous attendre à ce qu'une réglementation transposant toutes les exigences de la directive, accompagne en temps utile cette réalisation.

Actuellement, le Ministre de la Justice est l'autorité responsable de la gestion du centre de séjour au sein du Centre pénitentiaire de Luxembourg et n'est pas le même que celui en charge des conditions d'accueil.

Q.33. G. Does UNHCR and NGOs have access to the places of detention and under which conditions?

L'article 13 (a) de la loi du 5 mai 2006 prévoit explicitement la situation, alors qu'il dispose que « *Le Haut Commissariat des Nations Unies pour les réfugiés (HCR), les membres du Comité luxembourgeois des droits de l'enfant (ORK) ainsi que toute organisation disposant d'un agrément sont autorisés:*
a) à avoir accès aux demandeurs, y compris ceux qui sont placés dans une structure fermée conformément à l'article 10 qui précède (…) »

Suite à la pression exercée par les ONGs, une permanence bihebdomadaire vient d'être établie (février 2007), en accord avec le ministre des Affaires étrangères et de l'Immigration, pendant laquelle les associations membres du Collectif Réfugiés sont autorisées à avoir des entretiens individuels avec les retenus et peuvent également organiser des activités récréatives en groupe.

Q.33. H. What appeal(s) can asylum seekers introduce against the fact he is detained? Is article 18 of the directive on asylum procedures of 1 December 2005 following which *"Where an applicant for asylum is held in detention, Member States shall ensure that there is a possibility of speedy judicial review"* respected (even if it has not yet to be transposed)?

Les demandeurs d'asile placés en structure fermée disposent d'un recours devant le tribunal administratif, qui statue comme juge du fond.

L'article 15 (9) de *la loi du 28 mars 1972 concernant 1. l'entrée et le séjour des étrangers, 2. le contrôle médical des étrangers, 3. l'emploi de la main d'oeuvre étrangère*[570] auquel l'article 10 (4) renvoie[571], prévoit que le tribunal administratif statue d'urgence et en tout cas dans les dix

[570] Memorial A 1972, N°24, p. 817
[571] Article 10 (4) de la loi du 5 mai 2006 : « *Les paragraphes (3), (4), (5), (6), (8) et (9) de l'article 15 de la loi modifiée du 28 mars 1972 concernant 1. l'entrée et le séjour des étrangers; 2. le contrôle médical des étrangers; 3. l'emploi de la main-d'oeuvre étrangère sont applicables.* »

jours de l'introduction de la requête. Contre la décision du tribunal administratif, le demandeur placé pourra relever appel devant la Cour administrative dans un délai de trois jours. La Cour administrative statue d'urgence et en tout cas dans les dix jours de l'introduction de la requête.

Alors qu'avant la loi du 5 mai 2006, aucun texte législatif ne prévoyait la possibilité de placer un demandeur d'asile dans une structure fermée, à fortiori, aucun texte ne pouvait prévoir l'exercice d'une voie de recours rapide contre une telle décision. En tout état de cause, l'article 18 de la directive procédure fut respecté dès l'apparition légale dans l'ordre juridique luxembourgeois du principe de placement d'un demandeur d'asile en structure fermée.

Q.33. I. Is the directive on reception conditions considered to be in principle applicable to the places where asylum seekers are detained? In particular which information do they receive about their rights, which access do they have to legal advice and health care?

Ni la loi du 5 mai 2006, ni le *règlement aide sociale,* ne prévoit expressément qu'un demandeur de protection internationale a un droit d'accès de principe aux conditions d'accueil. C'est la délivrance de l'attestation prévue par l'article 6 (5) de la loi du 5 mai 2006 au demandeur et la possession dans son chef de celle-ci le long de la procédure d'examen de sa demande, qui lui confère le droit à l'aide sociale (art. 6(7) de la loi, voir Q. 10).

Cette attestation tient en pratique également lieu de « titre de circulation » du demandeur sur le territoire, l'article 6 (5), § 2 de la loi du 5 août 2006, prévoit qu'elle n'est pas délivrée au demandeur qui fait l'objet d'une mesure de placement.

Il n'est donc pas possible de dire que les dispositions de la directive sont applicables dans la structure fermée où les demandeurs sont retenus, puisque le législateur considère ainsi que c'est la possession de cette attestation qui donne droit à l'aide sociale et non la qualité de demandeur de protection internationale. Il est à noter que la loi n'exclut par ailleurs pas formellement l'accès aux conditions d'accueil dans la structure fermée.

Rappelons qu'aux termes de l'article 1er du *règlement formation,* l'aide sociale comporte les prestations suivantes :

- l'hébergement, assorti d'une pension complète ou bien d'une fourniture de repas respectivement de denrées alimentaires,
- l'allocation mensuelle,
- les soins médicaux d'urgence,
- la prise en charge des cotisations à titre de l'assurance volontaire prévue par l'article 2 du code des assurances sociales pour la durée de maintien de l'aide sociale,
- les moyens de transport publics du réseau du Grand- Duché de Luxembourg,
- la guidance sociale,
- l'encadrement des mineurs non- accompagnés,
- les soins et suivis psychologiques gratuits pour les personnes en ayant besoin,

notamment les victimes de traumatismes ;
- les conseils en matière sexuelle et reproductive.
- des aides ponctuelles en cas de besoin,

En pratique, le demandeur ne recevra plus d'allocation mensuelle, et la situation reste floue en ce qui concerne l'accès aux autres conditions d'accueil. La pratique qui existait avant l'entrée en vigueur de la nouvelle loi et qui consistait à limiter les décisions de placement en structure fermée aux seuls cas de demandeurs majeurs, célibataires, de sexe masculin et pour lesquels le Luxembourg n'est pas compétent pour analyser la demande, et qui semble persister, ne permet pas une observation aisée (en raison du très faible nombre de demandeurs actuellement placés) en ce qui concerne l'accès aux conditions d'accueil des demandeurs placés.

Par ailleurs, l'article 15 (3) de *la loi du 28 mars 1972 concernant 1. l'entrée et le séjour des étrangers, 2. le contrôle médical des étrangers, 3. l'emploi de la main d'œuvre étrangère*, prévoit que la notification de la décision de placement est effectuée par un membre de la gendarmerie qui a la qualité d'officier de police judiciaire et que cette notification est faite par écrit et contre récépissé, dans la langue que l'étranger comprend, « *sauf les cas d'impossibilité matérielle dûment constatés.* »

L'article 15 (4) de la prédite loi prévoit que « *pour la défense de ses intérêts, l'étranger retenu a le droit de se faire assister à titre gratuit d'un interprète* », l'article 15 (5) précise qu'il « *est immédiatement informé, par écrit et contre récépissé dans une langue qu'il comprend, sauf les cas d'impossibilité matérielle dûment constatés, de son droit de prévenir sa famille ou toute personne de son choix. Un téléphone est mis à sa disposition à cet effet.* » et finalement, l'article 15 (6) exige qu'il soit « *immédiatement informé, par écrit et contre récépissé, dans une langue qu'il comprend, sauf les cas d'impossibilité matérielle dûment constatés, de son droit de se faire examiner par un médecin et de choisir un avocat à la Cour d'un des barreaux établis au Grand-Duché ou de se faire désigner un avocat par le bâtonnier de l'ordre des avocats de Luxembourg.* »

Q.33. J. Apart from freedom of movement, what are the <u>main differences</u> between normal reception conditions and exceptional modalities for reception conditions in case of detention, knowing that they should be "as short as possible" (see article 14, §8)? If it is about closed centres, are the regulations of those places <u>in line with the requirements of the directive</u> (is article 13, §2, second indent of the directive following which "*Member States <u>shall</u> ensure that standards of living is met (…) in relation to the situation of persons who are in detention*" respected?).

Démuni de son attestation, le demandeur ne peut prétendre à avoir accès aux conditions d'accueil dans la structure fermée où il a été placé. Il bénéficie cependant de conditions en terme de nourriture, d'hygiène et de santé qui sont satisfaisantes et sont les mêmes auxquelles les étrangers, non demandeurs d'asile avec lesquels ils son placés, ont accès.

A défaut d'existence à l'heure actuelle d'un centre de rétention spécifique approprié pour étrangers, l'ensemble de cette population se trouve actuellement au centre pénitentiaire de Luxembourg, dans la même structure que les détenus de droit commun préventifs et condamnés.
Le 20 septembre 2002, un règlement grand-ducal (*créant un Centre de séjour provisoire pour étrangers en situation irrégulière, et modifiant le règlement grand-ducal modifié du 24 mars 1989 concernant l'administration et le régime interne des établissements pénitentiaires.*[572]) a tenté de légitimer cette situation de fait en se limitant à l'adoption des dispositions suivantes :

> ***Art. 1er.*** *Il est créé au Centre pénitentiaire de Luxembourg une section spéciale pour les retenus appelée «Centre de séjour provisoire pour étrangers en situation irrégulière».*
> ***Art. 2.*** *Sont désignés par le mot «retenus» tous les étrangers qui subissent une mesure privative de liberté sur base de l'article 15 de la loi modifiée du 28 mars 1972 concernant l'entrée et le séjour des étrangers, le contrôle médical des étrangers et l'emploi de la main-d'oeuvre étrangère.*[573]
> ***Art. 3.*** *Durant leur séjour au centre, les retenus sont strictement séparés des autres détenus.*
> ***Art. 4.*** *Les retenus sont soumis à un régime spécial adapté à leur situation spécifique:*
> *1) au plus tard le premier jour ouvrable après leur admission, les retenus sont informés sur leur situation administrative ainsi que sur leurs droits et devoirs;*
> *2) les retenus sont examinés par un médecin dans les 24 heures de leur admission au centre et aussi souvent qu'un examen médical est nécessaire ultérieurement;*
> *3) les retenus ne peuvent être soumis à aucune obligation de travail en prison;*
> *4) sur demande écrite, le retenu peut être autorisé par le directeur à participer à des activités avec des détenus s'il est établi que ces activités sont dans l'intérêt du retenu;*

L'article 2 du règlement grand-ducal précité prévoit cependant seulement que les retenus sont des étrangers en situation irrégulière faisant l'objet d'une mesure de placement et aucune disposition légale ou règlementaire ne désigne ce centre comme pouvant recevoir les demandeurs de protection internationale contre lesquels une décision de placement a été prise aux termes de l'article 10 de la loi du 5 mai 2006. Malgré cette situation de fait, il convient de relever que les demandeurs de protection internationale qui font malgré tout l'objet d'une mesure de placement dans cette structure fermée, se voient garantir un niveau de vie adéquat pour leur santé ainsi que leur subsistance. En effet, l'article 5 du règlement grand-ducal du 20 septembre 2002 dispose que « *pour toutes les questions non réglées par le présent règlement grand-ducal, le règlement grand-ducal modifié du 24 mars 1989 concernant l'administration et le régime interne des établissements pénitentiaires est applicable.* ». L'article 251 du prédit règlement grand-ducal du 24 mars 1989 dispose que « *les détenus reçoivent aux heures usuelles des repas ayant une valeur nutritive suffisante au maintien de leur santé et de leurs forces* » et son article 262 prévoit quant à lui que « *les détenus malades bénéficient gratuitement des soins qui leur sont nécessaires ainsi que la fourniture de produits et spécialités pharmaceutique prescrits par le médecin de l'établissement.* »

Pratiquement, les retenus (étrangers en situation irrégulière et demandeurs de protection internationale) n'ont pas accès à beaucoup d'activités et sont *de facto* moins bien traités que les

[572] Mémorial A n°116 du 15 octobre 2002, page 2836.
[573] À noter que le demandeur d'asile placé en structure fermée l'est sur base d'une autre disposition légale, l'article 10 de la loi du 5 mai 2006 et qu'à ce jour, le règlement grand-ducal n'a pas été modifié en ce sens,

détenus de droit commun, étant donné que ces deux populations ne peuvent être mêlées et que la quasi-totalité de la réglementation du centre pénitentiaire concerne les détenus. Le suivi socio psychologique a été très longtemps nettement insuffisant voire inexistant. Le manque de personnel qualifié et la charge de travail supplémentaire qu'a entraîné la création du Centre de séjour au sein du centre pénitentiaire, ont cruellement pesé sur ce problème.
En janvier 2006, un incendie s'est déclaré au *Centre de séjour provisoire pour étrangers en situation irrégulière* qui a fait un mort. Suite à cet incendie, la situation de certains retenus s'est empirée en ce qu'ils ont été enfermés 23 heures sur 24 et n'ont pu avoir accès au téléphone pendant des semaines.

La situation s'est actuellement assouplie mais n'est toujours pas satisfaisante, à défaut de bâtiment et de règlementations appropriée aux étrangers placés en rétention.

Q.33. K. Are measures taken to avoid detention of asylum seekers with special needs (if yes, which ones?) or are special measures taken because of their needs?

La pratique nous a permis de constater à la date de rédaction des présentes, qu'autant avant l'entrée en vigueur de la loi du 5 mai 2006, qu'après celle-ci, seuls des demandeurs célibataires, on fait l'objet d'une mesure de placement. Nous pouvons raisonnablement estimer qu'un demandeur vulnérable ne fera pas l'objet d'une telle mesure même s'il n'existe aucun texte spécifique en ce sens.

Q.33. L. Can minor asylum seekers be detained together with relatives? Can unaccompanied minor asylum seekers be detained? If yes, are there special measures which take into account that children are concerned?

Aucun texte n'interdirait la réalisation de ces hypothèses. A noter que dans le passé, en l'absence de structure appropriée, des étrangers (pas nécessairement demandeurs de protection internationale) mineurs ont fait l'objet de mesure de rétention administrative et se sont ainsi vus placés seuls au centre de séjour pour étrangers avec d'autres retenus majeurs (aucun nouvel autre cas ne semble s'être produit depuis.)

Q.33. M. In particular is article 10 regarding access to education of minors respected in those places?

Aucune prévision légale en ce sens n'existe et la pratique constatée jusqu'à ce jour ne nous a pas permis de conclure par l'affirmative ou la négative.

Q.33. N. How many asylum seekers are for the moment detained in your Member State? Which proportion does this represent in comparison of the total number of asylum seekers at the same moment?

Au jour de la rédaction du présent rapport, un seul demandeur d'asile (de sexe mâle, célibataire) était placé au Centre de Séjour provisoire pour Etrangers en situation irrégulière.

9. ORGANISATION OF THE SYSTEM OF RECEPTION CONDITIONS

Q.34. Explain if the system of providing reception conditions is centralised or decentralised (which levels of government do provide practically reception conditions?) (do not confuse this question with question number 3 about the competence to make rules about reception conditions).

Le système est centralisé. Le Commissariat du Gouvernement aux Etrangers qui dépend du Ministère de la Famille et de l'Intégration est responsable des prestations des conditions d'accueil.

Q.35. In case, are accommodation centres public or/and private (managed by NGOs? If yes, are the NGOs financially supported by the State?)

La plupart des centres d'accueil sont gérés directement par le Ministère de la Famille. Ceux qui sont gérés par des ONGs sont soutenus financièrement par l'Etat.

Q.36. In case, how many accommodation centres are there in your Member State (distinguish in your answer between public and private centres)?

- 22 centres d'accueil publics
- 20 hôtels/pensions/campings privés
- 4 centres d'accueil gérés par les ONGs (CARITAS et Croix Rouge)

Q.37. Is there in the legislation a plan or are there rules in order to spread the asylum seekers all over the territory of your Member State to avoid their concentration in some areas like big cities or to share the costs of their reception between central, regional and local authorities?

S'il n'existe aucun plan ou disposition écrite en ce sens, la pratique nous enseigne que les demandeurs sont répartis sur tout le territoire du Grand-Duché de Luxembourg, mais de manière très inégale selon les quantons et les communes.

Une question parlementaire a été posée en ce sens le 7 mars 2006 (**annexe 8**) et la réponse de la Ministre de la Famille et de l'Intégration du 19 avril 2006 (**annexe 9**) laisse présager de l'intervention prochaine d'une réglementation de répartition des demandeurs sur tout le territoire, contraignante pour les communes.

Q.38. Does a central body representing all the actors (like NGOs) involved in reception conditions exist? Does it play a consultative role for the State authorities, a coordination role for the actors or any other role?

Il n'existe pas de telle institution qui réunirait tous les acteurs impliqués dans la mise en œuvre des conditions d'accueil. Les associations oeuvrant pour la cause des demandeurs d'asile se sont cependant regroupées dans un collectif, le Collectif**réfugiés**luxembourg-lëtzebuerger**flüchtling**srot (*LFR* ou *Collectif Réfugiés*) afin de pouvoir peser le plus efficacement possible dans ce domaine.

Le Collectif prend régulièrement position par voie de communiqués de presse sur les questions relatives aux conditions d'accueil.

Le collectif a été particulièrement actif lors des discussions et travaux préparatoires de *la loi du 5 mai 2006*.

Q.39. **Q.39. A. Which is the body in charge of guidance, monitoring and controlling the system of reception conditions as requested by article 23 which is mandatory provision? Include in your answer which is the competent ministry (Interior, Social affairs, etc) for reception conditions?**

A l'heure actuelle, aucun texte ne désigne formellement de corps spécifiquement en charge de la surveillance, du contrôle et de l'orientation de l'ensemble des conditions d'accueil définies par la directive.

Ces tâches relèvent cependant en partie des compétences du **ministre de la Famille et de la Solidarité** et de son **Commissariat du Gouvernement aux Etrangers**.

Le Commissariat du Gouvernement aux Etrangers, fut crée auprès du ministère de la Famille et de la Solidarité par la loi du 27 juillet 1993 concernant l'intégration des étrangers au Grand-Duché de Luxembourg ainsi que l'action sociale en faveur des étrangers (annexe 12).

La mission du Commissariat est « *d'apporter son appui et d'organiser toutes les autres actions prévues par la présente loi en faveur des immigrants et des personnes étrangères s'établissant au Grand-Duché de Luxembourg.* » (article 1er de la loi).

L'article 2 de cette loi dispose que « *L'appui à porter aux personnes visées à l'article 1er consiste notamment à :*
***a)** s'occuper, en cas de besoin, du **logement et de l'hébergement** des étrangers ;*
b) aider les étrangers à s'adapter à la vie sociale, économique et culturelle de la collectivité luxembourgeoise moyennant, notamment, l'aide matérielle et psychosociale, l'information, la formation, l'orientation, le regroupement familial et le soutien de l'organisation des loisirs ;
c) intervenir, en cas de besoin, dans l'organisation du voyage et de l'accueil des étrangers et de leur famille et aider, le cas échéant, les étrangers lors de leur rapatriement ;
d) encourager et appuyer au profit des étrangers les initiatives et les activités sociales ;

e) encourager et soutenir les initiatives et activités destinées à promouvoir l'échange interculturel entre Luxembourgeois et étrangers y compris par des recherches sociologiques sur l'immigration et l'intégration des étrangers ;
f) encourager les étrangers à participer à la vie sociale ;
g) offrir une formation d'intégration sociale. »

L'article 14, deuxième alinéa de la loi précise que « *Les aides indiquées à l'article 2, sub a) consistent à (...) gérer ou collaborer avec d'autres organismes à la création et la gestion (...) de centres d'accueil réservés au logement provisoire des demandeurs d'asile* »

Le Commissariat du Gouvernement aux Etrangers est encore chargé « *d'organiser et de coordonner, en étroite collaboration avec les autres instances concernées, les mesures spécifiées aux articles 2 et 14 de la présente loi* » et « *d'assurer la surveillance de l'application des dispositions des articles 5 à 11 et 14 à 17 de la présente loi* » (article 27 a et j) de la loi.

Le ministre de la Famille oriente, surveille et contrôle à fortiori le niveau du **logement** des demandeurs d'asile en ce que l'article 5 de la même loi dispose que « *nul ne peut, à titre principal ou accessoire, ouvrir, faire fonctionner ou gérer ni un foyer d'accueil hébergeant, même temporairement, des travailleurs étrangers ni un centre d'accueil réservé au logement provisoire des demandeurs d'asile, s'il n'est en possession d'un* ***agrément délivré par le ministre de la Famille et de la Solidarité****.* ».

On relèvera encore que l'article 10 in fine de la loi précise qu'« *En cas de risque imminent pour la santé physique ou morale d'un usager d'un service,* ***le commissaire du Gouvernement*** *prend l'initiative afin que toute mesure appropriée soit prise par l'autorité compétente en vue de la protection de l'usager concerné.* »

L'article 15 alinéa 2 de la loi prévoit encore que « *chaque foyer d'accueil et chaque centre d'accueil est doté d'un règlement d'ordre intérieur proposé par le commissaire du Gouvernement, le cas échéant, après consultation des usagers, et approuvé par le ministre.* »

Q.39. B. Has your Member State (like the Czech Republic did recently) approved quality standards (not necessary legally binding) for housing services (for instance about the number of persons per bedroom on the basis of its size, number of accessible toilets, bathrooms, showers and washing machines per number of persons, existence of common rooms with radio, television, newspapers, books, computers, accessibility of telephone, existence of recreative rooms for children,…) to be respected in particular in accommodation centres?

Il n'existe pas de tels critères qui seraient officiellement publiés mais la Commissaire du Gouvernement aux Etrangers nous informe que : "*A l'heure actuelle, il existe des critères de rémunérations de prestations minimales que doivent remplir les pensions de famille. Ces critères déterminent les conditions minimales en termes de restauration et de logis que doivent obligatoirement remplir les différentes pensions. Au cas où les prestations offertes aux*

demandeurs d'asile dépassent le minimum requis, la rémunération à fournir par le locataire sera d'autant plus importante.
Cette grille des critères a été élaborée par le Service de Logement du CGE, mais n'a pas encore été définitivement adoptée."

Q.39. C. How is this system of guidance, control and monitoring of reception conditions organised?

voir la réponse sous Q.39 A

Q.39. **D.** Does the body in charge of guidance, control and monitoring produce reports about the level of reception conditions? If yes, how frequently and are they public?

L'article 27 m) de la loi du 27 juillet 1993 concernant l'intégration des étrangers au Grand-Duché de Luxembourg prévoit que le Commissaire du Gouvernement est chargé « *de soumettre au ministre* (de la Famille et de l'Intégration) *un rapport annuel comprenant un bilan de l'année passée, l'inventaire des services existants et les statistiques y relatives ainsi que les propositions d'activités futures.* » qui devrait, à défaut de précision, concerner l'ensemble des dispositions de la loi et donc celles touchant à l'hébergement des demandeurs d'asile.

Q.40. **Q.40. A.** What is the total number of asylum seekers covered by reception conditions for the last year for which figures are available (see article 22 obliging Member States to calculate those statistics about which we also asked the Commission to require them from Member States for mid June)?

Selon Madame la Commissaire du Gouvernement aux étrangers, au premier janvier 2007, 1934 personnes étaient couvertes par les conditions d'accueil au Luxembourg.

Il convient cependant de préciser que toutes ces personnes ne sont pas des demandeurs de protection internationale, alors que ce nombre couvre toutes les personnes qui bénéficient d'aides sociales (bénéficiaires du statut de tolérance, bénéficiaires de protection internationale en attente de devenir indépendants, déboutés en attente d'un retour volontaire et déboutés en possession d'une « autorisation de séjour provisoire » en attente de trouver un logement et un emploi)

Q.40. B. What is the total budget of reception conditions in euro for the last year for which figures are available?

Le budget total pour couvrir les conditions d'accueil et les aides sociales au bénéfice des personnes énumérées sous la question 40.A, était de 14.483.723,27.-€ pour l'année 2006.

Q.40. C. What is the average cost of reception conditions in euro per asylum seeker for the last year for which figures are available?

Alors que le montant du budget communiqué par le Commissariat du Gouvernement aux étrangers ne couvre pas les seules conditions d'accueil destinées aux demandeurs de protection internationale, il n'a pas été possible de calculer le coût moyen par demandeur de protection internationale.

Q.40. D Are the costs of reception conditions of asylum seekers supported by the central/federal or federated government or are they shared with regional and/or local authorities?

Le budget de l'Etat finance le coût intégral de l'accueil et de l'entretien des demandeurs d'asile.

Q.40. E. Is article 24 § 2 of the directive following which "*Member States shall allocate the necessary resources in connection with the nationals provisions enacted to implement this directive*" respected?

Il est actuellement trop tôt pour se prononcer, les nouvelles législations et règlementions de transposition étant trop récentes pour permettre d'avoir une approche efficace de la question. Il semble que les dispositions nationales prises à ce jour aux fins de la transposition de la directive (sans aborder la question des disposition de la directive qui n'ont pas été transposées, cf. Q.6), sont mises en œuvre avec l'aide de ressources mises à disposition par l'Etat qui paraissent suffisantes. On relèvera cependant, que la seule présence d'un gestionnaire et/ou de gardes de sécurité dans certains centres d'hébergement est insuffisante et ne permet pas d'offrir aux demandeurs logés dans ces centres un encadrement socio-éducatif approprié.

Q.41. **Q.41. A.** What is the total number of persons working for reception conditions?

Au 25 mai 2007, selon les informations du Commissariat du Gouvernement aux étrangers, il y a vingt-quatre personnes qui travaillent au sein du Commissariat du Gouvernement aux étrangers. Ce sont des fonctionnaires, des employés et des ouvriers (onze travailleurs sociaux et de santé, dont quatre à mi-temps, deux employés administratifs en charge du volet accueil administratif et aides financières, huit personnes, dont deux à mi-temps, pour le volet hébergement et deux ouvriers, cinq personnes, dont deux à mi-temps pour le service comptabilité

Q.41. B. How is the training of persons working in accommodation centres organised? Does it take into account specific needs of unaccompanied minors when relevant as well as the gender dimension? (see article 14 §5, 19 § 4 and also 24 §1 which are mandatory provisions)?

Seul l'article 7 *in fine* du *règlement aide sociale* prévoit que « *le personnel chargé* de mineurs non accompagnés *a une formation appropriée concernant leurs besoins et est tenu par le devoir de confidentialité prévu en ce qui concerne les informations dont il a connaissance du fait de son travail* », rien n'étant prévu pour la formation de personnes travaillant de manière spécifique dans les centres d'accueil.

En pratique une formation en "gestion de conflit et d'agressivité" de quelques membres du personnel des centres a récemment été organisée. Selon les informations données par le Commissariat du Gouvernement aux étrangers, le cahier des charges à la base des soumissions gardiennages des centre d'accueil, exige que les agents de surveillance de la société engagés dans les différents foyers, reçoivent une formation en gestion des conflits interculturels. De manière plus générale, ces agents auraient suivi des formations en premiers secours, sécurité et hygiène alimentaire. Les assistants sociaux et éducateurs ont reçu une formation sociale de par leurs études de base. Enfin, d'après le Commissariat du Gouvernement aux Etrangers, tous les agents du Commissariat ont également suivi une formation en gestion des conflits interculturels, qui serait prévue d'être complétée périodiquement.

Q.41. C. Are there rules about the deontology of persons working in accommodation centres, in particular on confidentiality?

Seul l'article 7 *in fine* du *règlement aide sociale* prévoit que « le personnel chargé de mineurs non accompagnés a une formation appropriée concernant leurs besoins et est tenu par le devoir de confidentialité prévu en ce qui concerne les informations dont il a connaissance du fait de son travail. »

Par ailleurs, d'après les informations de la Commissaire du Gouvernement aux Etrangers,, le cahier des charges à la base de la soumission gardiennage du Ministère de la Famille et de l'Intégration, impose aux sociétés d'exiger cette obligation de confidentialité de leurs agents, obligation qui est reprise dans le contrat conclu avec la société à laquelle le marché est adjugé.

Aucune réglementation plus précise et exhaustive n'existe à l'heure actuelle.

10. IMPACT OF THE DIRECTIVE

Legal impact of the transposition of the directive:

Q.42. Specify if there are or not big problems with the translation of the directive in the official language of your Member State and give in case a list of the worst examples of provisions which have been badly translated? (please note that this question has in particular been added to the questionnaire concerning the new Member States)

Il n'existe aucun problème de traduction, alors qu'une des langues officielles administratives est le Français.

Q.43. Where there precise legal rules on reception conditions for asylum seekers before the adoption of the norms of transposition of the directive (if yes, specify what the nature of those rules was (legislation, regulation, administrative instructions,…)?

Avant la transposition de la directive, *la loi du 3 avril 1996 portant création d'une procédure relative à l'examen d'une demande d'asile*[574] règlementait la matière. Son article 11 disposait que « *Il est délivré au demandeur d'asile une attestation tenant lieu de pièce d'identité et lui conférant le droit à une aide sociale suivant des modalités à fixer par règlement grand-ducal.*» Avant l'adoption du *règlement aide social* en exécution de *la loi du 5 mai 2006*, le *règlement grand-ducal du 4 juillet 2002 fixant les conditions et les modalités d'octroi d'une aide sociale aux demandeurs d'asile* était applicable à la matière[575].

Q.44. Did the legal rules applicable to reception conditions become more clear, precise, coherent or detailed with the adoption of the transposition norms (for instance do you now have after the transposition one basic text dealing with reception conditions instead of numerous different texts in the past?

Les règles applicables aux conditions d'accueil avant l'entrée en vigueur de la loi du 5 mai 2006 formaient déjà, avant la transposition de la directive, un ensemble cohérent, alors qu'elles étaient rassemblées dans un seul et unique texte qui avait pour seule finalité de les règlementer (*règlement grand-ducal du 4 juillet 2002*).

Suite à la transposition, l'introduction dans la nouvelle réglementation de la notion de personnes vulnérables et la prise en compte de leurs besoins spécifiques, l'intérêt porté aux mineurs et leurs besoins particuliers, l'obligation d'informer les demandeurs, rendent la nouvelle réglementation plus complète et détaillée que la précédente.

Le droit pour les demandeurs d'accès au marché du travail aux termes du neuvième mois, est également apparu avec la loi du 5 mai 2006.

Q.45. Did the transposition of the directive imply important changes in national law or were the changes of minor importance? In case, list the most important changes that have been introduced.

Le changement le plus important qui est intervenu à l'occasion de la transposition en droit luxembourgeois de la directive, est l'ouverture du marché de l'emploi aux demandeurs de protection internationale.

Les changements créés par la transposition sont sinon assez minimes. On relèvera cependant, le rajout dans la législation du principe de l'encadrement des mineurs non accompagnés, des soins et suivis psychologiques gratuits pour les personnes en ayant besoin et des conseils en matière sexuelle et reproductive à titre de composante supplémentaire de l'aide sociale. Le *règlement aide social* innove encore en posant le principe de l'obligation d'information des demandeurs quant aux avantages dont ils peuvent bénéficier et aux obligations à leur charge.

[574] Memorial A 1996, N°30, p. 1025
[575] Memorial A 2002, N°84, p. 1736

Political impact of the transposition of the directive:

Q.46. Explain briefly if there has been an important debate about the transposition of the directive (in particular in the Parliament, but possibly also in the government, between political parties, including in medias, etc; underline in case the main points which have been discussed or have created difficulties)

La nouvelle loi d'asile a fait l'objet d'une procédure d'approbation émaillée régulièrement lors des avis émis par les différentes instances qui ont eu de larges échos dans la presse. La procédure d'approbation a d'abord été marquée par deux oppositions formelles du Conseil d'Etat , puis une troisième.
Le fait que la Chambre des Députés n'a pas tenu compte des remarques du Conseil d'Etat a rendu nécessaire une deuxième lecture du projet de loi devant la Chambre des Députés. Il a aussi contribué à un débat public assez critique.
La Commission parlementaire chargée d'examiner le projet de loi a consulté bon nombre d'organisations (**annexe 10**).

Les points du débat les plus discutés et critiqués étaient les suivants :

La durée de rétention maximale des demandeurs qui, dans un cas de figure peut s'étendre sur un an, qui a fait l'objet de nombreuses critiques (**voir la réponse sous la question 33. E**)
.
Par ailleurs, le fait que le demandeur placé le soit au Centre Pénitentiaire, est régulièrement critiqué, (notamment par l'*ECRI* dans son troisième rapport sur le Luxembourg du 16 décembre 2005 et par le Procureur Général d'Etat dans le rapport d'activités du ministère de la Justice 2005) et beaucoup plaident, dans l'attente de la construction d'un centre de rétention autonome en-dehors du Centre Pénitentiaire, pour une solution à courte échéance.

Il convient de mentionner le fait que le *LFR* a adopté, sur demande du gouvernement, un avis sur la rétention des demandeurs d'asile le 13 janvier 2005. Il a été reçu par le Ministre délégué à l'Immigration à cet effet, qui a promis d'associer les ONGs dans l'élaboration du concept.

Les autres points les plus vivement discutés étaient :

- L'accès au marché de l'emploi des demandeurs d'asile suite à la transposition de la directive accueil,
- La suppression du double degré de juridiction (également objet d'une opposition formelle du Conseil d'Etat)
- Les deux projets de règlements grand-ducaux (*formation et aide sociale*) n'ont quasiment pas été discutés ou fait l'objet d'un débat public. Le *LFR* a néanmoins élaboré deux avis sur ces projets. Il faut aussi soulever le fait que lors du deuxième débat parlementaire sur le projet de loi asile, la motion introduite par rapport au projet de *règlement formation* et demandant l'extension du contrat d'apprentissage jusqu'à la mesure d'éloignement effective, a été rejetée.

Un débat public sur la loi du 5 mai 2006 a été organisé par le *Comité de Liaison et des Associations d'Etrangers* (*CLAE*) lors du Festival de l'Immigration en mars 2006 avec la participation du Ministre délégué à l'Immigration, du UNHCR et du *LFR.*

Dans le cadre du débat public, il convient aussi de signaler une pétition lancée via Internet le 14 février 2006 intitulée « *Pour une autre loi sur le droit d'asile* » contre certaines dispositions du projet. Cette pétition récoltait 1214 signatures - dont celles de plusieurs personnalités de la société civile - elle a été remise le 4 avril 2006 au président de la Chambres des Députés. Il faut aussi citer des piquets de manifestation et journées de sensibilisation du comité d'action migrations.

Les nombreuses critiques expliquent sans doute l'approbation d'une motion parlementaire lors de la deuxième lecture du projet de loi dans laquelle la Chambre des députés invite le gouvernement :
A se donner les moyens pour mettre en œuvre de la façon la plus efficace et la plus humaine la nouvelle loi et à procéder à une évaluation de la loi au bout de deux années suivant sa mise en vigueur, tenant compte des évolutions européennes en matière d'harmonisation des politiques d'asile et d'immigration tout comme des enseignements tirés de la mise en oeuvre de la loi (compte rendu de la Chambre des Députés 5 avril 2006).

A côté du débat entourant la nouvelle loi d'asile, la problématique de l'hébergement des demandeurs d'asile a suscité l'intervention de l'*ECRI* dans son troisième rapport sur le Luxembourg du 16 décembre 2005 (pp 16-18).

Outre l'accès au marché du travail, les conditions d'accueil ont cependant à peine été abordées dans ces débats. L'élaboration du *règlement grand-ducal aide sociale* s'est faite assez confidentiellement et il n'y a pas eu de véritables débats publics la concernant. Les projets de règlements grand-ducaux ont cependant été modifiés suite aux avis de la Chambre de Travail et de la Chambre des Employés privés pour *le règlement formation* et à l'avis de l'UNHCR pour le *règlement aide sociale*.

Q.47. Did the transposition of the directive contribute to make the internal rules <u>stricter or more generous</u>? In particular, did your Member State use the occasion of the transposition to abolish more favourable provisions of national law? Does your Member State still have rules more favourable than the provisions of the directive (if yes, try to give the more important examples).

L'ouverture du marché du travail au bénéfice des demandeurs est l'effet le plus positif de la transposition.

Il est à noter qu'avant la transposition, aucun texte ne prévoyait la possibilité de détenir des demandeurs d'asile, pratique qui se serait révélée illégale avant l'entrée en vigueur de la loi du 5 mai 2006 et que celle-ci consacre désormais.

Le Luxembourg était déjà doté d'une réglementation assez solide quant aux conditions d'accueil à offrir aux demandeurs d'asile et la nouvelle réglementation ne supprime aucun « acquis d'aide sociale ». *Le règlement aide social* est une norme de transposition qui se veut presque parfaite, mis à part les lacunes rencontrées, et il ne faut pas perdre de vue que l'effectivité de ses dispositions innovatrices restent encore à constater dans la pratique.

Le *règlement aide sociale* contient une série de nouveautés positives et la transposition de la directive semble susceptible d'améliorer globalement l'accueil des demandeurs. Les avancées ont notamment trait aux personnes vulnérables et aux informations à donner aux demandeurs.

On peut encore relever que depuis que le Luxembourg s'est doté pour la première fois d'une réglementation en la matière en 2002, il a su jouer de sa petite taille en offrant aux demandeurs d'asile la gratuité des transports publics sur tout le territoire, ce qui est incontestablement une prévision plus favorable pour ne pas exister dans la directive.

Cette mise à disposition des transports publics sert incontestablement à la réalisation effective du droit de liberté de circulation du demandeur sur tout le territoire.

11. ANY OTHER INTERESTING ELEMENT

Q.48. What are in your view the weaknesses and strengths of the system of reception conditions in your Member State?

La plus grande faiblesse juridique est l'inexistence d'une règlementation sur le lieu exact de la structure fermée dans laquelle le demandeur peut être placé ainsi que son accès aux conditions d'accueil. L'absence de réglementation spécifique relative à la formation du personnel travaillant dans les centres d'hébergements en est une autre.

En plus, d'un point de vue pratique, à part un foyer accueillant 220 demandeurs où une permanence journalière de 4 heures est assurée alternativement par deux éducatrices graduées et une assistante sociale du Commissariat du Gouvernement aux Etrangers, seuls les centres d'accueil gérés par des ONGs prévoient un encadrement social sur place. De manière générale, dans les structures d'accueil publiques, les assistants sociaux du Ministère de la Famille essaient d'assurer une permanence ponctuelle (1 fois toute les 3 semaines).

Globalement, les conditions d'accueil des demandeurs d'asile s'améliorent depuis 2003 où elles étaient plus qu'insuffisantes. Cette situation s'expliquait par l'arrivée massive de demandeurs à cette période, qui, combinée à une certaine désorganisation dans les centres, y avait favorisé la création de problèmes d'hygiène et de discipline. La situation s'est améliorée en 2004 avec la signature de Conventions entre l'Etat et les ONGs (Cartias et Croix-Rouge) pour la gestion de quelques centres. En 2005, la situation s'est encore améliorée avec la baisse du nombre de demandes d'asile. Le problème dû à l'absence de réglementation spécifique relative à la formation appropriée du personnel des centres, reste cependant à l'heure actuelle préoccupant.

L'accent de la part du Commissariat de Gouvernement aux Etrangers est souvent plus mis sur le contrôle plutôt que l'encadrement. De nombreux foyers d'accueil publics sont surveillés par une firme de gardiennage (pour protéger les résidents et les structures).

Les points forts se situent surtout au niveau de l'accès aux soins médicaux efficace par le biais du paiement des cotisations de sécurité sociale des demandeurs. Le Commissariat du Gouvernement aux Etrangers organise encore une consultation médicale pour soins de santé mentale dans un foyer géré par la Croix-Rouge.

La petite taille du pays permet une organisation de l'aide sociale assez bien structurée, beaucoup de structures d'aide sont accessibles aux demandeurs même si elles ne sont pas spécifiquement conçues pour eux. Ainsi, seules quelques rares institutions spécialisées peuvent apporter des réponses adéquates.

Q.49. Mention any good practice in your Member State which could be promoted in other Member States

- La gratuité des transports publics,
- La procédure spéciale, protectrice des droits des bénéficiaires des conditions d'accueil, prévue à l'article 4 (5) du règlement aide sociale en cas de limitation ou de retrait des conditions d'accueil (Question 21 C).

Q.50. Please add here any other interesting element about reception conditions in your Member State which you did not had the occasion to mention in your previous answer.

QUESTIONNAIRE FOR THE NATIONAL REPORT ON THE IMPLEMENTATION OF THE DIRECTIVE :
RECEPTION CONDITIONS OF 27 JANUARY 2003

IN: Malta
by
Dr Katrine Camilleri LL.D.
Lawyer
katrinecamilleri@yahoo.com
22/08/07

1. NORMS OF TRANSPOSITION

Q.1. Identify the main norm of transposition (indicate the title, date, number, date of entry into force and references of publication into the official journal) and indicate its legal nature (legislative, regulatory, administrative); indicate in your answer if this norm was only devoted to the directive or if it has been included in a more general text and indicate in that case by quoting precisely the numbers of the provisions adopted to transpose the directive.

Title: Reception of Asylum Seekers (Minimum Standards) Regulations, 2005
Date: 2005
Number: L.N. 320 of 2005
Date of entry into force: 22nd November, 2005

This norm was devoted exclusively to the transposition of the Directive

Q.2. List by order of importance by using numbers (1, 2, 3) the others norms of transposition if there are more than one (indicate for each norm the title, date, number and references of publication into the official journal; include in your answer the administrative measures taken to ensure implementation of the directive and of the transposition norms like regulations, administrative circulars, special instructions,…)

Title: Refugees Act, 2000
Date: 1st October, 2001
Number: Act XX of 2000, Chapter 420 of the Laws of Malta

Q.3. Explain which level of government is competent to adopt the legal norms on reception conditions for asylum seekers (specify in particular in case of a federal or regional State, if it is the federal/central power or the components; in case, specify below when it is impossible for you to answer a question because it is

about the competence of the components and it is impossible for you to gather reliable information about all of them)

In Malta there is only a central government, which is responsible for adopting legal norms relating to reception conditions for asylum seekers.

Q.4. Explain the legal technical choices done to transpose the directive (comment on the nature and level of the norms used to do the transposition: legislative, regulatory, administrative like instructions, etc). Add any other element about the technique of transposition of the directive which is interesting for the implementation of Community law.

Nature of norms of transposition: Regulation

The said regulations are considered as 'subsidiary legislation' enacted by virtue of the powers conferred by the parent act, in this case in terms of article 19 of the Refugees Act, 2000.

Q.5. Mention if there is a general tendency to just copy the provisions of the directive into national legislation without redrafting or adaptation them to national circumstances? If yes, give some of the worst examples and explain if there is a risk that those provisions remain unapplied or will create difficulties of implementation in the future.

The vast majority of the provisions of the Directive were simply copied into national legislation; in a few instances, changes were made to adapt the provisions of the Directive to national circumstances.

Q.6. Have all the texts necessary to ensure the effective implementation of the new rules of transposition been adopted, prepared or at least foreseen in the future (for example a regulation completing a new law and the necessary instructions telling the administration how to apply the new rules)?

Although, by and large, the necessary legislative framework is in place, the provisions of the Directive are not all effectively implemented. Possibly, more input is needed at the level of instructions to the administration regarding the implementation of the new rules.

2. BIBLIOGRAPHY

Q.7. Has an in-depth preparatory study been made public about the changes at the occasion of the transposition? If yes, thanks for trying to provide us a copy *(please contact to answer this question adequately the body and person who was responsible for the preparation of the transposition of the directive in the public administration).*

As far as could be ascertained no such study was ever carried out and, if it was, it was never made public.
[awaiting confirmation of this statement from the responsible authority].

Q.8. Quote any recent scientific book or article published about the directive, the transposition rules or the question of reception conditions for asylum seekers in general (answer even if this literature is only available in your language and provide the complete title in your language (without translation) with all references; indicate author, title, in case name of periodical, year and place of publication).

No scientific books or articles about the Directive, the transposition rules or reception conditions for asylum seekers have been published, either recently or in the past.

[A final year law student wrote a dissertation on the Reception Directive, some months prior to its transposition into national law – would you be interested in this publication?].

The following reports, mostly regarding the detention of asylum seekers in Malta (listed in order of date of publication, with the most recent first), may be of interest:

1	**Report by the LIBE Committee delegation on its visit to the administrative detention centres in Malta**	PV\613713EN	Brussels 30 March 2006
2	**Follow-up report on Malta (2003-2005): Assessment of the progress made in implementing the recommendations of the Council of Europe Commissioner for Human Rights**	CommDH(2006) 14	Strasbourg 29 March 2006
3	**Report to the Maltese Government on the visit to Malta carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 18 to 22 January 2004**	CPT/Inf (2005) 15	Strasbourg 25 August 2005
4	**The Maltese Government's response to the report on the visit to Malta carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 18 to 22 January 2004**	CPT/Inf (2005) 16.	Strasbourg 25 August 2005
5	**Report by Mr Alvaro Gil-Robles, Commissioner for Human Rights, on his visit to Malta, 20-21 October 2003**	CommDH (2004)4	Strasbourg 12 February 2004
6	**Locking up foreigners, deterring refugees: controlling migratory flows in Malta –** Report on an international fact-finding mission of the International Federation for Human Rights (FIDH) from 21-26 February 2004	No 403/2	September 2004
7	**Report to the Maltese Government on the visit to Malta carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 13 to 18 May 2001**	CPT/Inf (2002) 16	Strasbourg 27 August 2002

Q.9. Quote any interesting decision of jurisprudence based on the implementation of the new rules of transposition of the directive (indicate references of publication if any)?

There have not been any decisions of the local courts concerning the implementation of the rules of transposition of the directive.

3. GENERAL INFORMATION ABOUT THE SYSTEM OF RECEPTION CONDITIONS

The purpose of the following two questions is to help the reader to understand easily and quickly the system of reception conditions in your Member State and also to avoid that you have to repeat general elements in other parts of the questionnaire. ***Please do not write more than one or maximum two pages and do not include large historical developments.***

[This outline does include some broad historical developments – I apologize, but I though they might be useful to enable you understand why the system for provision fo reception conditions developed in the way it did]

Q.10. Describe in general the system of reception conditions in your Member State (in particular which are the main actors in charge of reception conditions?)

In Malta the reception of asylum seekers is regulated by national law (*i.e. the Refugees Act, 2000, the Reception of Asylum Seekers (Minimum Standards) Regulations, 2005 and, to some extent, the Immigration Act, 1972*) and government policy. Policy in this area is formulated largely by the Ministry for Justice and Home Affairs and the Ministry for the Family and Social Solidarity.

Malta signed the 1951 Geneva Convention and the 1967 Protocol in 1971, however, prior to the enactment of the Refugees Act there was no national legislation in place for the recognition and protection of refugees and the reception of asylum seekers. There was no state authority mandated to conduct refugee status determination; asylum seekers and persons granted protection were provided with state medical care and access to primary and secondary education on a purely discretionary basis and accommodation was largely catered for by NGOs. The undisputed leader in this field was the Malta Emigrants' Commission, a Commission of the Diocesan Church, which, over the years, hosted large numbers of asylum seekers and people granted protection practically single-handedly, providing lodging and other basic necessities.

With the enactment of the Refugees Act and the removal of the geographic limitation to Malta's obligations under the Convention, national structures for determination of applications for refugee status were put in place. However, initially, reception (particularly accommodation) of asylum seekers in the community was still provided primarily by NGOs.

From 2002, Malta experienced a sharp increase in the number of undocumented migrants arriving by boat, usually from Libya. The new arrivals were detained, in terms of the Immigration Act, which stipulates that all immigrants refused admission into Malta or issued with a removal order shall detained until they can be removed from Maltese territory. The vast majority of the arrivals applied for asylum after they were placed in custody, however, then, as now, this did not mean automatic release from detention. Asylum seekers would be released from detention only if and when they were granted some form of protection (refugee status or humanitarian protection).

This new reality placed a huge strain on the arrangements in place for accommodation and reception of irregular immigrants and/or asylum seekers.

It was more than just the sheer number of arrivals that posed a challenge to the existing system. The fact that they were an essentially 'mixed' caseload with different protection needs on various levels (i.e. both on the level of refugee protection and on the level of protection/assistance required as a result of vulnerability) and the fact that most were undocumented served to further complicate matters. In to previous years, there were rarely more than 100 immigrants, mostly adult males, in detention at any given time. Now there were hundreds of immigrants in detention at any given time. They would spend months, rather than days or weeks, in detention, and now the population was not made up only of men, but included families, women and minor children.

In response to this phenomenon, policies, institutions and structures were established, within the legal framework established by asylum and immigration law, to deal with the pressing needs created by the new reality on the ground.

On the policy level changes were made in the sense that detention did not remain indefinite – a cut-off point was initially established at 18 months (see government policy document published in January 2005), which was later reduced to 12 months in the case of asylum seekers. The only exceptions to this policy are those considered to be in a particularly vulnerable situation; they are released from detention in terms of government policy, once their vulnerability is established, medical clearance is obtained and accommodation in the community is found.

On a more practical level, a new service, the Detention Service (DS), was set up to run detention centres and open centres were created to house immigrants released from detention, whatever their status.

It was in this context that the Reception of Asylum Seekers (Minimum Standards) Regulations came into force in November 2005.

Regulation 11(1) of the Reception of Asylum Seekers (Minimum Standards) Regulations, 2005, places the responsibility for ensuring that material reception conditions, established by law and policy, are available to applicants (asylum seekers) upon "the authorities responsible for the management of reception centres".

The term “reception centre” is not defined in the said regulations, however it is usually used in much the same manner as the term “accommodation centre”, which is defined in Regulation 2 as “any place used for collective housing of asylum seekers”.

As was explained, in Malta, there are two kinds of facilities used for collective housing of asylum seekers: closed reception centres (or detention centres) and open centres.

Detention centres are managed by the Detention Service (DS), which is directly accountable to the Minister for Justice and Home Affairs. The DS is headed by an officer in the Armed Forces of Malta and is staffed by a mixture of civilian and military personnel. The civilian personnel are mostly ex-members of the security forces.

Today, most Open Centres are managed by the Organization for the Integration and Welfare of Asylum Seekers (OIWAS), a government agency recently established by the Ministry for the Family and Social Solidarity. Some are managed/administered by NGOs, however today this is done in terms of an agreement with OIWAS (still being negotiated in some cases), on behalf of the MFSS, which funds most if not all the costs of running these centres.

None of these facilities are used exclusively for the accommodation of asylum seekers. All detention centres house persons at different stages of the asylum procedures, including rejected asylum seekers, and immigrants who never applied for protection. The population of most Open Centres too consists of a mixture of different categories of immigrants including: persons granted some form of protection (refuge status or humanitarian protection); asylum seekers released from detention, either after the lapse of 12 months or on grounds of vulnerability; and rejected asylum seekers. OIWAS estimate that some 40% of the population of Open Centres are rejected asylum seekers.

It should be noted however, that, as a rule, all of them house only asylum seekers who were apprehended by the immigration authorities because of their irregular migration status and placed in detention. Asylum seekers who are not detained do not fall within the remit of OIWAS, and although a couple of individuals within this category are provided with accommodation in Open Centres, this is on a case-by-case basis usually for humanitarian reasons.

In practice this means that asylum seekers who were never detained (in practice a relatively small number of people) are effectively provided with very little by way of material reception conditions.

Q.11. **Q11. A.** Explain if you have different types and levels of reception conditions following the different stages of the asylum procedure (this implies that you have to give briefly the necessary explanations about the asylum procedure). Make if relevant for reception conditions a distinction between the following procedural stages: determination of the responsible Member State on the basis of the Dublin II regulation, special procedures at the border (including transit zones in airports), accelerated procedures, admissibility procedures, eligibility procedures and the different possibilities of appeals (suspensive or not) against a

refusal of the asylum request. Indicate what the main differences of reception conditions are between the different stages (if necessary by detailing between the different elements of reception conditions, in particular housing) and explain what the evolution of reception conditions is following the different stages of the procedure.

National RSD procedures are relatively uncomplicated. Asylum seekers apply to the Office of the Refugee Commission, established by the Refugees Act to examine and determine asylum applications at first instance. Each application is examined on its merits following an in-depth interview with the asylum seeker concerned.

The only exceptions are applications that are either inadmissible (article 18A) or invalid (article 8 (2A) and (B)).

Article 8(2A) of the said Act stipulates that applications presented more than two months after asylum seeker's arrival in Malta are not valid, however the Refugee Commissioner has the discretion to consider such applications valid 'for special and exceptional reasons to be stated in his decision'. Where the Refugee Commissioner considers a late application valid, it is examined under the normal procedure.

Moreover, in terms of article 18A an application made by a person who has been granted refugee status by a Member State other than Malta, or who has been recognised as a refugee in a country which is not a member state and can obtain effective protection there, or who is a national or citizen of or has a right of residence in any safe country of origin listed in the Schedule to the Act is inadmissible. Asylum seekers who are informed by the immigration authorities that their application is inadmissible may ask the Refugee Commission to reconsider their case. No appeal is possible from a decision to confirm the initial decision regarding the inadmissibility of an application.

In practice, asylum applications presented by so-called 'boat people' are examined in chronological order, according to the date of their arrival in Malta. Applications presented by other categories of asylum seekers are likely to be examined more speedily, but the procedure followed is essentially the same. As a rule all asylum applications, whether presented at the border or within the territory of the state, go through the ordinary procedure.

Article 18 of the Refugees Act provides for the possibility of accelerated procedures for manifestly unfounded applications, but this procedure has rarely, if ever/never been used. It is, in fact, doubtful whether the said procedure would in fact be faster/ more efficient than the ordinary procedure.

Asylum seekers whose application is rejected may appeal to the Refugee Appeals Board.

All appeals have a suspensive effect, in the sense that, in terms of article 10 of the Refugees Act, asylum seekers cannot be removed from Malta until their application is finally determined.

On paper the rights of asylum seekers remain unchanged throughout the asylum procedure however, in practice there are significant variations in the treatment received by different categories of asylum seekers. One determining factor is whether or not an asylum seeker is detained for breaching the Immigration Act. Another is whether or not an asylum seeker falls within current government policy on entitlement to accommodation in an Open Centre, as many benefits, including financial assistance, are only available to asylum seekers who are residing in such a centre. As was previously stated, in terms of current policy, as a rule only immigrants released from detention are entitled to accommodation in Open Centres and this is usually for a four month period, which may be (and usually is) extended for up to one year and, in some cases, even beyond that date.

Q 11. B. Indicate precisely for which stage(s) of the asylum procedure the answers on reception conditions you give below are valid.

4. GENERAL RULES ON RECEPTION CONDITIONS

Q.12. **Q 12. A**. Are material reception conditions provided in kind, in money or in vouchers or in a combination of these elements (see article 13, §5 which is an optional provision)? Distinguish between the different elements (housing, food, clothes, health, transportation, pocket money,…). **If reception conditions are provided in money (in general or in some cases, for instance when no places are anymore available in accommodation centres), indicate the precise amount given to the asylum seekers. Indicate in your answer what is provided in general and if there are exceptional cases.** Specify in your answer if reception conditions are different from the general system of social aid for nationals or aliens and if yes, if and when (which stage of the asylum procedure) can asylum seekers have access to the general system of social aid?

It is worth noting at the outset, that art 13 §5 has not been transposed into national legislation.

In practice, material reception conditions are provided both in money and in kind, but different rules are applicable to particular categories of asylum seekers as was explained in Q11.

Asylum seekers in detention are provided with material reception conditions in kind, including basic accommodation, healthcare, food and basic necessities such as soap, toothpaste, etc.

Asylum seekers living in open centres are provided with material reception conditions partly in kind, i.e. accommodation, and partly in the form of a financial contribution, which may be described as an allowance for daily living. Until December 2006 asylum seekers at open Centres were provided exclusively with material reception conditions in kind, i.e. food rather than financial assistance and accommodation. This arrangement created problems, particularly for people who did not work, as they did not have money to pay for transportation and other daily necessities.

In January 2007 a new system was introduced. Now, residents who do not work are provided with a financial allowance, instead of the pre-cooked food previously provided. In addition, all residents at Open Centres must register regularly. Residents who do not work must register three times a week in order to receive their allowance. The allowance provided to asylum seekers who do not work amounts to Lm1.75 i.e. some €4 per day. The daily rate is just slightly more than the minimum wage for one hour, which amounts to Lm1.50 i.e. some €3.50.

Residents who work regularly do not receive the daily allowance and are required to pay a small contribution (Lm0.50 per day/Lm3.50 per week, i.e. €1.17 per day/€8.19 per week) towards the costs of their accommodation.

As a rule, financial assistance is only provided for as long as asylum seekers are resident in Open Centres; once they leave they are no longer entitled to any form of financial assistance, even if they are unemployed. Moreover, most asylum seekers would not qualify for social assistance or contributory benefits, as social assistance is given only to Maltese nationals and recognised refugees and in order to qualify for contributory benefits one would need to have made at least 50 national insurance contributions, of which 20 must have been paid or credited in the previous 2 years.

Although legally the entitlements of all asylum seekers are the same, in practice asylum seekers living in the community who are not resident in Open Centres receive very limited support from the state by way of material reception conditions. They are not provided with accommodation and they are not entitled to any form of financial assistance.

Q 12. B. Can the reception conditions in kind, money or vouchers be considered as <u>sufficient</u> "to ensure a standard of living adequate for the health of applicants and capable of ensuring their subsistence" as requested by article 13, §2 of the directive (which is a mandatory provision but leaves a certain space to Member States)? In order to help to assess the respect of this rule when reception conditions are provided in money, include if necessary in your answer points of comparison with the minimum amount of social aid guaranteed for nationals in your Member State.

Even if an asylum seeker were to receive the full spectrum of material reception conditions currently provided by the state, it would still ensure provision of only the most basic necessities for daily living.

First and foremost, the financial assistance provided is very limited. As was previously mentioned the daily allowance of Lm1.75 (€4) is equivalent to slightly less than the minimum wage for one hour. In comparison, the daily rate of social assistance provided to an adult Maltese national is some Lm6 (€14) per day.

In addition, the accommodation provided in the larger centres (i.e. Hal Far Appogg, Hal Far Sliem Tent Centre and Marsa Open Centre) is extremely basic, although that provided in the

smaller centres, accommodating families with minor children and unaccompanied minors, is significantly better.

Asylum seekers living in the community who are not resident in an Open Centre are far more disadvantaged, and are definitely not provided with material reception conditions sufficient "to ensure a standard of living adequate for the health of applicants and capable of ensuring their subsistence".

Asylum seekers in detention are provided with the basic requirements for daily living, including shelter, food, medical care, etc, however they are deprived of their liberty for prolonged periods and held in very poor conditions (see reports of independent monitors listed above in Q8).

5. PROCEDURAL ASPECTS

Q.13. **Q 13. A. Does the national legislation specifically provide that a request for international protection is presumed to be under the Geneva Convention unless explicitly requested otherwise? (see article 2, b which is a mandatory provision)**

Regulation 2, which transposes article 2(b), defines "application" as "an application for refugee status made under article 8 of the [Refugees] Act", which is in fact an application for protection in terms of the Geneva Convention, with the possibility of being granted a subsidiary form of protection in certain specific circumstances should the application for refugee status be rejected.

National law is therefore effectively saying that, in terms of these regulations, an application for international protection can only be an application for asylum in terms of the Geneva Convention.

In practice, at present the Qualification Directive has not been transposed into national legislation. National asylum law contains a single application procedure and does not provide for the possibility of applying specifically for subsidiary or humanitarian protection as opposed to refugee status.

There is one other form of protection from forced removal currently available in national law, but, in my view, this does not qualify as a form of international protection. This is the protection afforded by article 3 of the European Convention on Human Rights and/or the corresponding article 36 of the Constitution of Malta, whereby a foreign national may ask the First Hall of the Civil Court acting in its Constitutional Jurisdiction to prohibit his/her forced removal to a country where he/she will face treatment contrary to the said legal provisions.

Q. 13. B. Explain if the scope of application of reception conditions is extended to other asylum seekers than refugees in the sense of the Geneva Convention, in particular to persons asking for subsidiary protection or to other forms of protection like humanitarian statuses (see article 3, § 4 which is an optional provision)? If not, explain briefly which the differences between these special regimes and the directive are.

As was explained in the answer to the previous question, at present national law only provides for the possibility of applying for refugee status.

In theory, all who apply for refugee status are entitled to the provision of material reception conditions; in practice, apart from a few individual cases, asylum seekers who are never detained are not provided with reception conditions as specified in the Directive (see Q11A). In the few individual cases mentioned above, assistance is granted on humanitarian grounds. Beneficiaries also include individuals who are not applying for Convention refugee status *per se*.

Q. 13. C. Are there specific provisions in national law for reception conditions in case of diplomatic or territorial asylum requests submitted through a diplomatic or consular representation (see article 3, §2 which is an optional provision)?

Regulation 3(2) provides that these regulations do not apply in the case of requests for diplomatic or territorial asylum submitted to representations of Malta abroad.

There is no specific provision in national law for reception conditions in case of diplomatic or territorial asylum requests.

Q.14. **Are reception conditions available as from the moment one asylum application is introduced? How is article 13, §1 which is mandatory legally understood?** Do asylum seekers have to satisfy any other condition in order to get reception conditions?

In practice, reception conditions are not always available from the moment an asylum application is introduced.

Where an asylum seeker is in detention, as was explained earlier, basic reception conditions – i.e. accommodation, food, toiletries and medical care – are provided within the centre, both to asylum seekers and to every other detained immigrant.

Once asylum seekers are released from detention (after 12 months, if their application is pending, or earlier if they are considered to be in a particularly vulnerable situation) they are provided with a wider range of benefits, including accommodation (some centres, particularly the smaller ones, offer better conditions than the other larger centres), financial assistance, access to the labour market, free primary and secondary education in state-run institutions and free medical care.

Asylum seekers who are never detained, i.e. asylum seekers who arrive in Malta legally or who manage apply for asylum before they are apprehended by the immigration authorities for illegal entry or stay, are provided with very little by way of reception conditions throughout the whole of the procedure. As was explained earlier, they are not provided with accommodation or material or financial assistance. They would, however, be entitled to access to the labour market after 12

months, education free of charge in state run educational institutions up to the compulsory school age limit (i.e. 16 years of age) and state medical care also without charge.

Q.15. **Explain when reception conditions end, for instance after refusal of the asylum request** (include in your answer the link with the right of appeal against a decision of refusal of the status, in particular the question of its suspensive effect)

Regulation 3(1) states that the regulations regarding reception conditions "shall apply to all third country nationals and stateless persons who make an application for asylum in Malta as long as they are allowed to remain in Malta as asylum seekers".

Although not explicitly stated it is therefore clear that, in terms of law, reception conditions, when granted, are guaranteed only until the final rejection of an asylum application. This provided they have not been withdrawn or reduced in terms of regulation 13(1).

In practice however, there is very little difference between the reception conditions granted to asylum seekers upon release from detention and the conditions offered to other categories of migrants released from detention, including rejected asylum seekers. They are housed in the same centres, provided with this form of 'sheltered' accommodation for the same length of time, provided with medical care and provided with a slightly smaller daily allowance (Lm1.50 (€3.50) rather than Lm1.75 (€4) per day).

On the other hand, as was previously stated, asylum seekers who are never detained are provided with significantly less in terms of reception conditions.

Q.16 Are there special rules or practices regarding reception conditions in case of successive applications for asylum introduced by the same person?

At this stage national law does not provide for the possibility of successive applications.

Q.17. Information of asylum seekers about their rights and obligations in terms of reception conditions, in particular about established benefits (see article 5 which is too large extend a mandatory provision; do not confuse this question with the information to be provided to asylum seekers about the asylum procedure):

Regulation 4(1) and (2) transposes the provisions of article 5 of the Directive into national legislation, placing the obligation to provide such information upon the Principal Immigration Officer (PIO) – i.e. the Police Commissioner. The Immigration Department within the Security Branch of the Malta Police Force carries out most of the tasks and functions if the PIO in terms of the Immigration Act and other national laws.

Q. 17. A. Are asylum seekers informed, and if yes about what precisely?

From the information obtained from various sources, both governmental and non-governmental, it appears that there is no structure in place to ensure that all asylum seekers are provided with such information in a timely, consistent, organised and systematic manner.

As a rule, the immigration authorities do not provide asylum seekers with specific information regarding the benefits to which they are entitled or the obligations with which they must comply relating to reception conditions. Nor do they provide information on organizations or groups of persons providing legal assistance or other services.

It should be stated, however, that given the way the system the system works in practice the immigration authorities are not the best placed to provide asylum seekers with information regarding conditions of reception. Although it is true that the Refugees Act envisages a situation where an asylum seeker's first point of contact would be an immigration officer (see article 8 of the Refugees Act), in practice this is not the case. Most asylum seekers apply for refugee status while they are in detention or, if they are in the community, by going directly to the Office of the Refugee Commissioner. It would therefore be far more workable in practice to have information provided by other agencies which have more direct and regular contact with asylum seekers (as in fact already happens where information is provided – see below).

In practice, some categories of asylum seekers are provided with an amount of information, but it is not complete or comprehensive. There is no one single publicly available document containing a full description of all the benefits to which asylum seekers are entitled, their obligations in this regard, information on how they can access their rights, on who takes decisions in each case, and on how and when they can appeal from a decision which aggrieves them.

Asylum seekers who are never detained are not provided with any form of information about the reception conditions available to them, which are admittedly very limited.

The following is an indication of the information that is provided to another category of asylum seekers – asylum seekers who are or were in detention:

1. Upon being placed in detention, all immigrants refused admission into Malta or issued with a removal order are given a pamphlet by the immigration police, entitled "Your entitlements, responsibilities and obligations while in detention" (electronic copy attached for your information).

   At that point the immigrants/detainees concerned would not have applied for refugee status.

   In fact, this pamphlet, published by the Ministry of Justice and Home Affairs, is not specifically geared towards asylum seekers but rather towards immigration detainees. However, it does give basic information about the asylum procedure in addition to information about the entitlements and obligations of persons held in immigration detention.

The focus of this document is mostly on internal rules of behaviour and entitlements within the centres, and it contains only very generic information on detainees' legal rights in terms of asylum and immigration law and policy.

Moreover, the pamphlet simply informs detainees of their right to contact non-governmental organizations, but does not contain a list of such organizations, a description of the services they provide or their contact details. Having said this, in practice, immigration officials and/or detention service personnel often provide asylum seekers with such information (i.e. regarding NGOs and how they can be contacted) on a case-by case basis in an informal manner.

The pamphlet is published in English, Maltese, Arabic and French. There are no arrangements in place to provide the information contained therein in other languages/formats. It seems that, where a detainee cannot read one of these languages, fellow detainees read the leaflet and/or translate it into a language the detainee can understand.

2. Upon release from detention, i.e. usually months after an asylum application is lodged, asylum seekers are provided with the following information:

    - A letter, which is given to each asylum seeker by the immigration police upon release from detention, requiring him/her to inform the PIO of any change of address. This requirement is however linked to the RSD procedures and therefore only indirectly to the provision of reception conditions.

      The letter is only provided in English.

    - An 'Integration and Service Agreement', which is usually signed either immediately before release or upon placement in an Open Centre. This agreement is made up of two parts: the first applies to residents in all Open Centres and the second contains rules which are specific to the particular centre where the asylum seeker is placed.

      From the information obtained it appears that the agreement contains information regarding the financial allowance provided, the resident's reporting duties, the basic rules applicable within Open Centres and the sanctions that will apply in case of serious breaches. It does not contain information about the possibility of appeal from a negative decision regarding reception conditions, comprehensive information about asylum seekers' rights and how to access them or information about NGOs.

      The Service Agreement is available in English and in Tigrinya; where necessary it is explained verbally through an interpreter.

      In most centres there are social workers and care staff who would be available to respond to requests for information. However in the larger centres, where there are hundreds of residents, it is naturally far more difficult to reach all the residents.

- The Refugee Service Area within Appogg, which has now been replaced by OIWAS, had published an information leaflet for asylum seekers as part of the EQUAL project. This booklet contained practical information about life in Malta and information about NGOs and other agencies working in the field. However it appears that this booklet is no longer available and no further copies are being published.

- In one particular centre, the Tent Village, asylum seekers are provided with an information leaflet published by staff at the said centre [*once I have a copy of this publication I will send it*].

- A Customer Care service is available at the Central Office of OIWAS in Floriana; OIWAS staff is available on 2 or 3 mornings a week to meet asylum seekers and other immigrants living in the community to respond to requests for information.

In addition NGOs have undertaken a number of initiatives in this area:

1. The MEC also provides a daily service at their office in Valletta, where they respond to requests for information, help asylum seekers to complete the necessary formalities to apply or jobs, obtain work permits, etc.

2. JRS Malta published a booklet, 'Asylum in Malta: what you should know', with funding obtained from ERFII. This booklet is published in English and French and is distributed free of charge to asylum seekers in detention. This booklet however, focuses mostly on the asylum procedure, rather than on reception conditions per se, with some information about asylum seekers' rights in terms of immigration law and policy. It is currently being translated into Somali and Tigrinya.

Q. 17. B. Is the information provided in <u>writing</u> or, when appropriate, orally?

See above.

Q.17. C. Is that information in general provided in a <u>language</u> understood by asylum seekers? Specify the list of languages in which it is available

See above.

Q. 17. D. Is the <u>deadline</u> of maximum 15 days respected?

See above.

Q.18. Information of asylum seekers about the existence of organisations or groups promoting their interest and defending their rights (see article 5 which is to a large extend a mandatory provision):

Q. 18. A. Is there a list of organisations dressed by the authorities and if yes is it comprehensive? Is this in particular the case about the possibilities to get legal assistance and health care?

No, there is no such list. See above for details of the information that is actually provided.

Q. 18. B. Is the information provided to the asylum seekers, and if yes, in writing or, when appropriate, orally?

No the information is not provided in writing, but, as was mentioned earlier, immigration officials or detention service staff who come in contact with asylum seekers often provide such information in an informal manner. The problem with this arrangement is that there is no guarantee that such information is provided to all asylum seekers in a consistent and systematic manner.

Q. 18. C. Is that information in general provided in a language understood by asylum seekers? Specify if possible the list of languages in which it is available.

See above.

Q. 18. D. How many organisations are active in that field in your Member State?

The following organizations (15 in all, including 2 government agencies, 2 international organizations and 11 NGOs) are active in the field, providing services and/or information:

Government agencies:
OIWAS – Organization for the Integration and Welfare of Asylum Seekers – the unit within MFSS responsible for the implementation of the said Ministry's integration and welfare remit in closed and open centres and providing input on the level of policy-making within the Ministry. In practice, in addition to working on policy, the organization is responsible for the administration and management of open centres, provision of social work and other welfare services in closed and open centres, and the assessment and release of vulnerable asylum seekers from detention.
DS – Detention Service – the organization responsible for the administration and management of detention centres

NGOs
Suret il-Bniedem – funded by the government to run one of the largest Open Centres (Marsa)

Red Cross – offers humanitarian assistance and support to asylum seekers, mostly in the community
Malta Emigrants' Commission – provides accommodation in the community for people released from detention (usually with status or asylum seekers), advice about rights, assistance accessing the labour market and assistance with other formalities
JRS Malta – offers information, legal assistance, social work support and pastoral care to asylum seekers and immigrants in detention
Peace Lab – provides accommodation in the community for people released from detention
Salesians of Don Bosco (Kairos) – provide accommodation in their hostels for a number of unaccompanied minors and asylum seekers and provide humanitarian and social support to refugees and asylum seekers in the community
MDM – Medecins du Monde – currently in Malta on a 6 month mission that ends at the beginning of September – providing medical care to asylum seekers in Open Centres and organizing community education campaigns on health and related issues. Also working on capacity building of local NGOs to provide such information in the longer-term
Integra Foundation – provides information and support to asylum seekers in the community

NGOs – religious organizations:
Legion of Mary
Jehovah Witnesses
Pastor Ahmed Bugre of the >>> Church
All of these organizations provide pastoral care for immigrants in detention and in the community

International organizations:
UNHCR
IOM

Q.19. Documentation of asylum seekers (see article 6):

Q.19. A. What kind of document is delivered to the asylum seeker? Explain the legal value of this document (just a certification of the status as asylum seeker or also prove of identity?) (see §1 of article 6 which is a mandatory provision)

Article 6(1) is transposed into national legislation through the provisions of regulation 5(1), which states that 'the [Refugee] Commissioner shall ensure that, within three days after an application is lodged, an applicant is provided with a document issued in his own name, certifying his status as an asylum seeker or testifying that he is allowed to stay in Malta while his application is pending or being examined'.

In fact, the Refugee Commissioner provides asylum seekers living in the community with a 1-page document certifying that they have applied for refugee status in Malta and that their application is being examined by the competent authorities [*awaiting a copy – will forward it as soon as I have it*].

This document is simply a certification of status as an asylum seeker; it is not intended to, and in fact cannot, serve as a means of identification, as it does not contain a photograph. Asylum seekers would however need to use this document for various purposes, including applying for a visa extension/regularisation of stay and to obtain free medical treatment.

Where asylum seekers are not in possession of a passport they are issued with a document by the immigration authorities, known as an immigration certificate. This document is not issued only to asylum seekers, but rather to all undocumented migrants who have a permit to stay in Malta, even temporarily, for whatever reason. Visa extensions granted by the Central Immigration Office are recorded on this document – this is in fact the main purpose for which this document is issued.

The immigration certificate makes no reference to immigration or asylum status. It contains a photograph of the holder and the personal details, including name, age, nationality and occupation, all of which are provided by the individual concerned; as such, it does not constitute an official proof of identity.

Q.19. B. Are there situations or specific cases in which another equivalent document or even no document is issued? (in particular is there an exception for "procedures to decide on the right of the applicant legally to enter the territory" as made possible by §2 of article 6)?

Regulation 5(2) reproduces the text of article 6(2) almost verbatim so such a situation in legally possible.

Asylum applications are rarely examined at the border, but when they are the asylum seeker concerned is effectively deprived of his/her liberty and is not provided with a document. The same applies to asylum seekers in detention.

Moreover, although, like article 6(2), regulation 5(2) refers to 'a procedure on the right of the applicant to legally enter the territory of Malta', the meaning of this is not really clear, as neither our asylum nor immigration law provide for such an eventuality. Whatever the case, presumably, if an asylum seeker has been refused admission into national territory, he/she would be detained in terms of the Immigration Act and would therefore not be issued with a document.

Although the regulations stipulate that in "specific cases" applicants may be provided with "other evidence equivalent to the document referred to sub-regulation (1)", the said regulations do not specify what these specific cases are and in practice the only documents issued are those mentioned in Q19A.

Q.19. C. For how long is this document in principle valid and is it necessary to renew it after a certain period?

This document is will be renewed automatically for as long as the asylum procedure is still pending.

Q.19. D. What is the deadline for the delivery of that document? Is the mandatory deadline of 3 days set by article 6, §1 respected[576]?

Asylum seekers in the community who are never detained and who refer themselves spontaneously to the Office of the Refugee Commissioner to apply for refugee status the document described in Q19A is issued as soon as the person applies for refugee status.

Asylum seekers released from detention to await the outcome of their application in the community are provided with the said document as soon as they present themselves at the Office of the Refugee Commissioner upon release from detention.

Q.19. E. Is it possible for an asylum seeker to get a travel document for serious humanitarian reasons (see §5 of article 6 which is an optional provision)?

It is legally possible, as subregulation 5(4) essentially reproduces the text of Article 6(5), and it has happened in practice.

Q.19. F. Is there a central system of registration of asylum seekers and is it or not separate from the registration of aliens? If yes, describe it briefly (content) and indicate in particular if it is an electronic database.

To date there is no central database of asylum seekers. The Office of the Refugee Commissioner keeps records of all applications for asylum. The immigration authorities too keep their own records which would include information about whether or not the immigrant concerned applied for asylum. MFSS have their own database of immigrants living in Open Centres.

Q.20. Residence of asylum seekers:

Q.20. A. Is in principle an asylum seeker free to move on the entire territory of your Member State or only to a limited part of it and in case, which part? (see article 7, §1 which is a mandatory provision)

Article 7(1) has not been transposed into national legislation.

In practice, to date, unless asylum seekers are in detention or otherwise deprived of their liberty, they are free to move in any part of Maltese national territory.

Q.20. B. About the <u>place of residence (see §2 of article 7)</u>: explain to which extend the person is free to choose her residence and if this depends of the stage of the asylum procedure (for instance before and after admissibility); if there are constraints limiting the choice, explain which ones and their reasons (for instance processing of application, attribution of reception conditions,…).

Regulation 6(1) allows the PIO to decide on the residence of the asylum seeker, for reasons of public interest, public order or, where necessary, for the swift processing and effective monitoring of his/her asylum application.

Section 10(2)(b) of the parent Act, i.e. the Refugees Act, 2000, too dictates that, unless an asylum seeker is in custody, he/she shall reside and remain in the places which may be indicated by the Minister.

In practice, however, unless they are in detention, asylum seekers are usually free to reside wherever they please.

Asylum seekers who are never detained have no choice but to find their own accommodation, with little or no support from the Minister or any other governmental agency.

Asylum seekers, who spend some time in detention, are allocated a place in an Open Centre upon release, where they may stay for up to one year. However they may move into independent accommodation anywhere in Malta at any point, should they wish to do so. It should be stated however that the decision to leave the Open Centre usually implies the forfeiture of the daily allowance provided by the government.

Q.20. C. About the <u>place of reception (meaning where the asylum seeker has to stay to benefit from reception conditions) (see § 4 of article 7)</u>: explain which are the general rules about the determination of this place (to which extend are the decisions determining the place taken individually and do they take into account the personal situation of the asylum seeker?) and to which extend the person is free to choose it and if it depends of the stage of the asylum procedure (for instance before and after admissibility); if there are constraints limiting the choice, explain which ones and their reasons (for instance attribution of reception conditions, processing of the application,…).

Regarding asylum seekers who are never detained see answer to previous question.

Asylum seekers who are being released from detention cannot choose the Open Centre where they will reside; as a rule the decision is taken by OIWAS. Decisions regarding placement are dictated by the availability of spaces in Open Centres, however the individual circumstances of the asylum seeker are also taken into consideration. As a rule family unity is respected. Unaccompanied minors are accommodated in purpose-made facilities where conditions are better

than in the larger centres. Pregnant women and families with minor children too are usually accommodated in Open Centres with specific provision for the accommodation of family units. Efforts are also made to accommodate asylum seekers with physical or mental health problems in more appropriate facilities.

As was previously stated, asylum seekers are free to move into independent accommodation in the community at any point and this will not affect their asylum application, although they are expected to inform the authorities of their change of address. It will however mean that they lose the financial assistance provided to residents at Open Centres.

Q.20. D. If all asylum seekers are not placed in accommodation centres because of capacity limits, explain how the persons are distributed between accommodation centres and other accommodation facilities (which authority takes the decisions, on the basis of which elements, can that decision be appealed by the asylum seeker,…)

As a rule asylum seekers are accommodated in Open Centres. Where this accommodation is inappropriate for some reason or where there is no space available, OIWAS will consider other alternatives, such as placement in hostels for homeless people.

There is no formal procedure in place for appealing decisions regarding placement in one accommodation facility as opposed to another, however residents can ask for transfer to another centre or may approach one of the 2 NGOs running their own centres and request placement there.

Q.20. E. How can an asylum seeker ask to leave temporarily the place of residence or of reception or an assigned area? How is the individual AND impartial character of the decision ensured? (see §5 of article 7 which is a mandatory provision)

Article 7(5) is transposed almost word for word into national legislation.

In practice, unless they are in detention, asylum seekers are free to leave their place of residence without the necessity of recourse to the PIO in order to request permission. They are however obliged to inform the PIO of their change of address if they decide to relocate their place of residence.

Asylum seekers in detention are not informed of their right ask for temporary permission to leave the place to which they are confined. Although this article has been transposed, to date it has never been used.

Q.21. **Q.21. A. Do rules on reduction or withdrawal of reception conditions exist in internal legislation and if yes in which cases (mention in particular if there are cases not foreseen by article 16, § 1 and 2 which are optional**

provisions)? Distinguish in your answer between cases of reduction and withdrawal and explain which conditions can be reduced and if access to emergency health care is always ensured as requested by article 16, §4, last sentence.

Almost all of article 16(1) has been transposed into national legislation. Regulation 13 empowers the authority responsible for the management of reception centres to reduce or withdraw reception condition in the cases outline in article 16 of the Directive.

Apart from this regulation, there are no other publicly available generally-applicable rules, regulating the reduction or withdrawal of reception conditions, either for asylum seekers in detention or for asylum seekers in the community. However, the Integration and Service Agreement, which is signed by every asylum seeker living in an open reception centre, includes the rules regarding residence in Open Centres.

In the case of asylum seekers who were never detained, this provision makes little or no sense as they are granted little by way of reception conditions. Reducing reception conditions for this category of asylum seekers would effectively mean denying them access to either education or healthcare.

With asylum seekers in detention centres, which are at times called closed reception centres, to date there has never been an issue of withdrawal or reduction of reception conditions, and in practice it is very difficult to imagine what could be reduced.

The situation is somewhat different for asylum seekers residing in Open Centres. Serious breaches of the rules contained in the service agreement could lead to the reduction or withdrawal of reception conditions. In severe cases, e.g. cases of serious violence, the service agreement may be terminated. This effectively means that reception conditions are reduced and the individual concerned is no longer provided with either accommodation or the daily allowance.

This also happens where the asylum seeker chooses to move to independent accommodation in the community; in such cases as a rule the asylum seeker forfeits his/her allowance. In addition, where asylum seekers are regularly employed, reception conditions are reduced in the sense that they are no longer provided with the daily allowance. Where the authorities discover that an asylum seeker has concealed the fact that he/she is employed so as not to lose the daily allowance, he/she may be asked for a refund.

Decisions regarding reduction or withdrawal of reception conditions involving asylum seekers residing in Open Centres are taken by OIWAS.

The provision in article 16(4), imposing an obligation on Member States to ensure access to emergency healthcare in all circumstances, has not been included in the corresponding regulation in national law. However, as far as could be ascertained, access to medical care for asylum seekers has never been reduced or withdrawn in practice. The medical care provided includes treatment and goes beyond emergency medical care.

Q.21. B. Has article 16, §2 dealing with refusal of reception conditions for unreasonably late applications for asylum been transposed by your Member State (or was this case already applicable before transposition)? Are there cases in practice?

This article has been transposed to some extent, in that regulation 13(2) provides that, where an asylum seeker fails to demonstrate that his/her asylum claim was made in accordance with the provisions of the Refugees Act, the authorities responsible for the management of reception centres may refuse reception conditions.

Article 8(2A) of the said Act provides that applications made two months after the asylum seeker's arrival in Malta are invalid. Sub-article (2B) however, allows the Refugee Commissioner to consider such applications valid, for "special and exceptional reasons" to be stated in his decision.

In practice, according to OIWAS, there have never been any cases where asylum seekers were refused reception conditions on this ground.

It should be noted however that, as a rule, applications made more than 2 months after arrival are either made by asylum seekers living in the community, who would be granted very little by way of reception conditions anyway, or by immigrants apprehended by the immigration authorities for illegally staying in Malta. The latter would normally remain in detention until their application is finally determined, unless they are released before for reasons of vulnerability or after the lapse of 12 months. All asylum seekers released from detention would automatically be provided with accommodation in an Open Centre.

Q.21. C. How is it ensured that decisions of reduction or withdrawal are taken individually, objectively AND in particular impartially (for instance through and independent arbitrator) (see article 16, §4 which is a mandatory provision)?

In spite of the provisions of article 16(4) which, with the exception of the provision guaranteeing access to emergency healthcare, are transposed in regulation 13(4), there is no mechanism in place to ensure that such decisions are taken objectively or impartially.

In all cases decisions are taken by OIWAS, the authority responsible for the management of the open centres. This agency stated that the fact that decisions are taken by professionals ensures that they are taken objectively and impartially. Whether this is a sufficient guarantee is, however, open to question, particularly in cases where reception conditions are being reduced because of misbehaviour or non-compliance on the part of the resident in an OIWAS Open Centre, as in such cases the agency plays the role of judge and prosecutor, so to speak.

OIWAS stated that, although decisions regarding the withdrawal or reduction of reception conditions are not always given in writing, the decision and the reasons are usually explained to the individual concerned.

Q.21. D. Is statement 14/03 adopted by the Council at the same moment as the directive respected (see the document attached to our sending)?

[*check*]

Q.21. E. Are there already administrative appeal decisions or judgements on cases of reduction, withdrawal or refusal which have been taken, and if yes, what has been the outcome?

To date such decisions have never been challenged. It should be stated that, as pointed out in Q.17A above and Q22A below, asylum seekers are not informed of the possibility to appeal from such decisions to the Immigration Appeals Board, in terms of regulation 16.

Q.22. **Q.22. A. <u>Appeal</u> against a negative decision relating to the granting of benefits or based on article 7 (see article 21 which is a mandatory provision): indicate against which decision an appeal can be introduced, describe the system of appeal in general and include in particular in your answer the information given to asylum seekers about possibilities of appealing, deadline for appealing, if the appeal has or not a suspensive effect, if there are different steps (for instance first an administrative appeal and in particular if the guarantee of an appeal before a judicial body in the last instance is respected)?**

Regulation 16 deals with the possibility of appeal from <u>any decision</u> taken in pursuance of the provisions of the said regulations.

The Directive requires the possibility of an appeal or review before a judicial body at least in the last instance; national law provides the possibility of appeal to the Immigration Appeals Board.

This Board, set up by article 25A of the Immigration Act, is made up of three persons: a lawyer, who shall preside, a person versed in immigration matters and another person, each of whom shall be appointed by the President acting on the advice of the Minister (JHA).

It was originally intended to hear and determine appeals against removal orders, but in recent years, not least as a result of the transposition of the various EU Directives on immigration into national law, the remit of the Board has been considerably extended. It would appear however that the resources allocated to the Board to carry out its functions have not expanded at the same rate as its mandate.

NGOs working in the area of immigration and asylum complained of long delays in the processing of applications and reported that as a rule the Board's decisions generally upheld decisions taken by administrative officials in terms of government policy.

It should be stated that the exact nature of this tribunal is not clear. It would appear that it is an administrative tribunal, however, in its response to the 2004 CPT report (see pages 11 and 12) the

government of Malta stated that it is 'in disagreement with the mistaken assertion namely that the Immigration Appeals Board is merely an administrative body. It is not. In actual fact it is a judicial body, not forming part of the Court structure but an independent and impartial adjudicating authority within the meaning of article 6 of the European Convention on Human Rights.' However, it then goes on to state that the Board is subject 'not only to the provisions of the Constitution (art 39) and the Convention (art 6) but also to the rules of judicial review of administrative action which are contained in article 469A of the Code of Organization and Civil Procedure'.

This is somewhat contradictory, as article 469A allows judicial review of the actions or decisions taken by administrative and not by judicial bodies. In fact article 469A(2) defines an administrative authority as: 'the Government of Malta, including its Ministries and departments, local authorities and any body corporate established by law'.

In addition, it should be stated that procedures in terms of article 469A do not constitute an appeal on the merits of a decision but a review of the procedure followed in reaching the decision. Appeals on points of law too are excluded in terms of article 25A(8) of the Immigration Act, which states that: 'The decisions of the Board shall be final except with respect to points of law decided by the Board regarding decisions affecting persons as are mentioned in Part III [*relating to citizens of Member States of the EU*], from which an appeal shall lie within ten days to the Court of Appeal (Inferior Jurisdiction).'

Regarding the procedure followed to hear and determine appeals, article 25A(7) of the Immigration Act provides that appeals to the Board have to be filed within days from the date of the decision subject to appeal. Given that asylum seekers are not always notified with the decision in writing, as well as the fact that they are not informed that they can appeal, in practice it is almost impossible for them to meet this deadline. In fact, from the information we could gather (the Board does not publish statistics nor are its decisions published) there have not been any cases of appeals against negative decisions in terms of these regulations.

It is not clear whether appeals to the Board have a suspensive effect; the law is silent in this regard, however, in its response to the 2004 CPT report cited earlier, the government states that appeals to the Immigration Appeals Board have a suspensive effect (page 14).

Moreover, the meaning of the terms 'without prejudice to the principles of public policy and public interest' in the circumstances is far from clear.

Q.22. B. Explain which are the possibilities for asylum seekers to benefit from legal assistance when they introduce such an appeal (see article 21, §2 which is a mandatory provision but leaves space to Member States)?

Article 21(2) is not transposed into national legislation and the regulations on reception do not contain any provision ensuring access to legal assistance.

Moreover whether or not they are in fact entitled to legal aid is open to question. Article 911(1) refers to the right to sue or defend with the benefit of legal aid in proceedings before: 'any court mentioned in articles 3 and 4 [*the superior and inferior courst of civil jurisdiction*] and before any other adjudicating authority where the benefit of legal aid is by law granted'.

Neither the Immigration Act nor the Reception Regulations grant applicants the right to legal aid to make an appeal before the Board. The Refugees Act only grants applicants the right to legal aid for the purposes of an appeal before the Refugee Appeals Board, i.e. at appeal stage of the RSD procedure.

It should be stated that national structures for the provision of legal aid are somewhat overburdened and also completely inaccessible to asylum seekers in detention. Moreover, asylum seekers are not provided with information on their entitlement to legal aid, if indeed it exists, and the procedures they must follow to obtain such assistance.

Q.22. C. Are there already administrative appeal decisions or judgements which have been taken and if yes, which are the main important ones?

As was previously indicated there are no such decisions to date.

Q.22. D. Is a mechanism of complain for asylum seekers about quality of receptions conditions in general (even if they are not personally concerned) organised? If yes, before which authority? Is it linked to the system of guidance, control and monitoring of reception conditions (see below question n° 39)?

There is no mechanism in place to receive formal complaints; OIWAS maintains however, that asylum seekers may complain informally to the management of the Open Centres or through the Customer Care service.

6. RIGHTS AND OBLIGATIONS OF ASYLUM SEEKERS

Q.23. Family unity of asylum seekers: define how a family is defined in relation with article 2, (d) which is a mandatory provision and explain how housing is provided to a family (see articles 8 which is a mandatory provision but leaves space to member States and 14, §2, (a) which is a mandatory provision).

The definition of the term "family members" contained in regulation 2 does not include unmarried partners in a stable relationship. It would, however, include the children born of such a relationship, in terms of paragraph (b) of the definition, provided they are unmarried and dependent.

This is in line with our immigration law, which mentions spouses not unmarried partners in a stable relationship. It should be stated however that, in practice, although there is no written policy in this regard, each case involving unmarried partners is currently seen on its own merits by the immigration authorities who give weight to such relationships in their decisions.

Where provision of reception conditions to asylum seekers is concerned, as a rule family unity is respected and, where accommodation is provided, partners are usually housed together.

With asylum seekers in detention, if they declare that they are married upon apprehension by the immigration authorities, family members are usually detained together. They would normally also be released together. The situation becomes somewhat more complicated when people declare that they are a family at a later stage or when relationships are established in detention. However each case is normally examined on its merits by OIWAS staff.

Concerns have been raised regarding the quality of accommodation provided for families in detention, particularly the level of protection provided for children and women and respect for privacy. With accommodation in the community, that provided to families with children is generally better than that provided to couples without children, who must often share a room (or a tent) with other couples.

With asylum seekers who were never detained there is usually no question of provision of accommodation or other receptions conditions, so family composition is rarely an issue in this regard.

Q.24. **Q.24. A. How is housing of asylum seekers organised: describe the system in general and indicate in particular what is the most frequently system used (see article 14, §1 which is a mandatory provision but leaves space for Member States; distinguish between accommodation centres, private houses and apartments, hotels places or other premises).**

State provision of housing for asylum seekers usually consists of accommodation in either Closed or Open Centres. As was previously stated, with few exceptions, asylum seekers who are never detained are not accommodated in these centres as they do not fall within the remit of OIWAS. Alternatives to accommodation in these facilities are considered only when there is no space in these centres or when placement in these centres is not indicated for a valid reason in a particular case.

Q.24. B. What is the total number of available places for asylum seekers? Distinguish in your answer between accommodation centres, private houses and apartments, hotels or other premises.

As was explained earlier, neither the Closed nor the Open Centres accommodate only asylum seekers. Both Closed and Open Centres can accommodate between 1800 and 2000 people.

Q.24. C. Is this number of places for asylum seekers sufficient in general or frequently insufficient?

In practice there have been cases when release from detention was delayed due to lack of accommodation in the community.

Q.24. D. Are there special measures foreseen in urgent cases of a high number of news arrivals of asylum seekers (outside the case of application of the directive on temporary protection)?

No there are no such measures.

It should be stated that the structures in place for the reception of asylum seeker are already labouring under the considerable strain generated by the relatively large numbers of asylum seekers arriving by boat from Libya. Since 2002 Malta has received some 1400-1800 arrivals by boat each year, with the exception of 2003 when there were some 5-600 arrivals.

Since the start of this influx, new structures, such as the Detention Service and the whole Open Centre system, were created to deal with this new reality. Should the number of arrivals increase significantly once again it is not clear whether existing structures will be able to cope and/or what will happen as a result.

Q.25. Accommodation centres **(important note: all the following questions are about open and not closed centres where asylum seekers are detained which are covered by another question)**

Q.25. A Are there different categories of accommodation centres, for instance depending of the stage of the procedure (admissibility and eligibility)?

There is only one category of open accommodation centres, most of which house people at all stages of the asylum procedure, including rejected asylum seekers.

Q.25. B. Is there a legal time limit for accommodation in a centre after which the asylum seekers have access to private houses or apartments or is this limit linked to a stage of the asylum procedure?

The only accommodation in the community offered to asylum seekers is in collective accommodation centres.

There is no legal time limit for accommodation in these centres.

In the centres administered directly by OIWAS, as a rule, in terms of the new policy introduced since January 2007, residents are initially granted permission to stay for a period of 4 months,

which may be extended for up to one year, after which time asylum seekers must find their own accommodation in the community. In practice this rule is not always strictly applied, particularly in the case of residents in the larger centres where individual follow-up is more difficult.

Up to now, this new policy does not apply in all the centres belonging to NGOs, however, as collaboration between OIWAS and these NGOs becomes more formalised, policies and procedures may become more standardised and will start to apply across the board.

As was stated earlier, however, asylum seekers may move into independent accommodation whenever they wish.

Q.25. C. Is there a general regulation about the internal functioning of those centres and the rights and duties of the asylum seekers? If yes, is this general regulation applicable to public and private centres? If not, are the centres supposed to adopt an internal regulation and does a central authority have or not a kind of control about its content?

There are rules, found in the first part of the service agreement (rf Q17 above), which should apply across the board and others which are particular to the individual centres. To date, apart from the core content which is applicable to all, individual centres, particularly those managed by NGOs, are free to adopt internal rules and regulations for the running of the centre.

Q.25. D. Do the regulations foresee the possibility of sanctions against asylum seekers in case of breach of the rules? (see article 16, §3) If yes, which sanctions for which rules? Which is the competent authority to decide? How is it ensured that decisions are taken individually, objectively and in particular *impartially* (for instance through an independent arbitrator) as requested by §4 of article 21 which is mandatory provision*?* Which are the possibilities of appealing against those decisions if the system is different from the general one under question n°22? Are there already administrative appeal decisions or judgements which have been taken and if yes, which are the main important ones?

(See answer to previous question and Q17 above)

All open centres have internal rules to ensure the smooth running of the centre and, in all cases, there is the possibility of imposing sanctions for serious breaches of the rules. Most of these rules are written in the service agreement which the asylum seeker signs upon placement in an Open Centre.

In case of seriously violent behaviour or repeated abuse of alcohol or drugs, the sanction is often termination of the service user agreement. This effectively means that all material reception conditions are withdrawn, as termination implies not only the loss of one's place in an open centre but also the loss of the daily allowance provided by the state.

Decisions regarding the imposition of sanctions are normally taken by the authorities managing the centre, i.e. either by the staff at the centre or by OIWAS, depending on the circumstances of the case. There are no publicly available procedural rules in this regard, and there is no established procedure in place to ensure that both sides are heard or that decisions are taken objectively or impartially.

Asylum seekers may appeal from such decisions to the Immigration Appeals Board, in terms of regulation 16, the regulation regarding appeals from negative decisions taken in terms of the Reception Regulations. However, they are not informed of their right to do so or of the procedure that must be followed. In fact, to date their have been no appeals from such decisions.

However, according to OIWAS some asylum seekers contest the decision informally, through the Customer Care Service provided by OIWAS.

Q.25. E. Are asylum seekers involved in the management of these centres? If yes, how (advisory board, appointment or election of representatives)? (see article 14, §6 which is an option provision)

Article 14(6) of the Directive is not transposed into national legislation; asylum seekers are not usually formally involved in the running of the centres, however they usually assist in the day-to-day running of the centres.

Q.25. F. Do specific rules exist on work of asylum seekers inside the accommodation centres different from the general ones about employment (see below)? If yes, which ones? Can working inside accommodation centres be considered as a (mandatory) contribution of the asylum seekers to the management of the centres, is it or not paid and considered as implying access to the labour market and subject to the same rules?

No there are no specific rules in this regard. To date it is not possible for asylum seekers to work inside accommodation centres.

Q.26. **Q.26. A. How can asylum seekers communicate with legal advisers, representatives of UNHCR and NGOs? (see article 14, §2, (b) which is a mandatory provision).**

Article 14(2)(b) is transposed verbatim in regulation 12(2)(b).

Asylum seekers are provided with possibility to contact their lawyers, UNHCR or NGOs, in the sense that they are not prevented from doing so.

It is naturally far easier for asylum seekers in Open Centres to establish contact as they are free to move within national territory and may therefore easily travel to the offices of the agency they want to contact in order to obtain the assistance they require.

Although asylum seekers in detention are not prohibited from establishing contact, in practice they face several very real difficulties when trying to do so. Often, even if they have access to a telephone (which is not always the case) they do not have money to make the call. In some centres, e.g. Ta' Kandja which is run by the police, staff facilitate the contact if requested to do so, but this is not true with all centres, particularly where the population is very large.

Q.26. B. What are the rules about access of legal advisers, UNHCR and NGOs regarding access to accommodation centres and other housing facilities (see article 14, §7 which is a mandatory provision)

As was previously stated, for asylum seekers in the community it is quite easy to visit the offices of the agencies they wish to approach in order to request assistance.

Regarding access to the centres, OIWAS rules provide that '*bona fide* visitors' may be granted permission to enter the centres. Lawyers and NGO personnel wishing to visit should show their accreditation and/or CV when requesting permission to visit, and NGOs wishing to work within the centres should submit a description of the project they wish to undertake.

As a rule, lawyers, UNHCR and NGOs are granted permission to visit the Open Centres in order to provide assistance.

Regarding NGO and UNHCR access to closed centres see below.

Q.26. C. Can the access of legal advisers, UNHCR and NGOs be limited for security reasons or any other reason (see article 14, §7, last sentence)?

Yes, regulation 12(5) allows the authorities responsible for the management of reception centres to "impose such limits as they may deem appropriate on grounds relating to the security of the centres and facilities and of the asylum seekers".

In practice, while access of certain categories of persons, including journalists, may be limited to protect residents, access by NGOs, UNHCR or lawyers is normally less restricted.

Regarding access to closed centres see below.

Q.27. Q.27. A. Is a medical screening organised by the receiving State, is it mandatory or voluntary? Does it include HIV tests? (see article 9 which is an optional provision)

Article 9 is transposed into national legislation by means of regulation 8, which stipulates that the Director General Health may require medical screening for applicants on public health grounds.

Persons arriving by boat in an irregular manner are required to undergo mandatory medical screening, which consists of testing for active TB, upon arrival in Malta and prior to release from detention.

Asylum seekers who are not detained are not required to undergo medical screening.

Asylum seekers (and other immigrants) are not routinely tested for HIV – they may however request to be tested of their own free will.

Pregnant women in categories considered to be at high risk of HIV infection, which would include persons coming from countries with a very high incidence of HIV infection, are advised to undergo an HIV test. This as in such cases treatment could significantly reduce the risk of transmission of the infection to the unborn child.

Q.27. B. Do the legal provisions on reception conditions ensure that asylum seekers receive at least emergency care and essential treatment of illness as requested by article 15 §1 which is a mandatory provision? Do they have a further access to health care?

The regulations dealing with the reception of asylum seekers do not expressly stipulate that asylum seekers are entitled to emergency medical care and essential treatment of illness – neither article 15 nor the latter part of article 16(4) are included in the said regulations.

However, it should be stated that in terms of article 10 of the Refugees Act asylum seekers are entitled to receive state medical care and services free of charge.

In practice asylum seekers are granted such treatment as a matter of course – in fact it is true to say that the main issue in the area of healthcare provision is not about entitlement but about access to medical care.

Q.27. C. What is the practice regarding access of asylum seekers to health care and how is it organised? In particular, what is the situation in accommodation centres (are doctors coming to the centres or do asylum seekers go to doctors outside)?

The system of healthcare provision in open and closed centres has always worked differently, so each will be tackled separately.

Until very recently asylum seekers in open centres, like all other asylum seekers living in the community, had to go to the local health centres (primary healthcare clinics situated in various towns and villages in Malta) or to the general hospital to obtain medical care.

In addition to the strain which this arrangement placed on the existing service, it also created problems of access.

While in theory their situation was identical to that of the Maltese population, many NGOs reported that in practice this was not the case and many immigrants/asylum seekers faced problems obtaining the treatment they required although they were entitled to it. The reasons for this were varied and included:

- lack of proper translation facilities which made medical diagnosis and treatment very difficult;
- lack of intercultural awareness and understanding of the situation of asylum seekers among members of the medical profession (particularly true in cases involving cultural practices such as FGM or the treatment of conditions which result from past trauma, e.g. PTSD);
- lack of trained personnel, particularly cultural mediators, who could help to bridge this gap;
- lack of information, follow-up and support (including social work support) to enable asylum seekers to obtain the services/treatment they require;
- prejudice on the part of healthcare professional/medical personnel who at times fail to take asylum seekers' concerns seriously (e.g. refusing to send an ambulance to the open centre);
- diffidence and reluctance to approach the system on the part of asylum seekers as a result of these difficulties.

One area which proved particularly problematic was the area of mental health, as persons with mental health problems are less likely to recognise the symptoms and, even if they did, many immigrants would be unlikely to refer themselves for treatment because of the stigma associated with such conditions.

Since March 2007 a doctor and nurse from Medecins du Monde have been providing a 20-hour in-house medical service in the larger open centres. According to an article carried in the Times of Malta on July 23, 2007, the results are very positive, as visits to the health centres have reduced and the ambulance service to the centres has dropped by half. Moreover, residents are better able to access medical care.

With regard to asylum seekers in detention, there has always been an in-house medical service in place. Since March/April 2007 this service has been considerably improved and now a doctor and nurse are present in the two larger centres (which house between 6-800 people) on a daily basis for 4-5 hours. Previously the service consisted of one doctor who would visit the centre daily for an hour or two each time seeing a maximum of 10-12 patients each time.

NGOs reported that although the current service is still insufficient to meet existing needs, given the very large population within the centres, it is a huge improvement on the previous system and a step in the right direction.

The said NGOs reported that in their view, the main problems in the area of healthcare are related to access to the system, i.e. getting to see the doctor and obtaining specialised follow-up care, which is provided on an out-patient basis at the general hospital. Detainees often complain that although they requested to see the doctor they were not allowed to do so. Moreover, detainees prescribed medication or referred for follow-up care often remain without the treatment they

require. One reason for this is lack of resources, including lack of transportation or sufficient personnel to provide an escort.

It is worth noting, in addition, that detainees are taken to hospital on military trucks or jeeps, or else in a closed van with a cage inside, accompanied by military or detention service personnel. Moreover detainees are taken to hospital in handcuffs.

Q.28. **Q.28. A. What is the length of the period determined by the concerned Member State during which asylum seekers have no access to the labour market? (see article 11 which is a mandatory provision)**

Asylum seekers are entitled to access the labour market if their case has not yet been finally determined within 12 months.

It should be stated that Regulation 10, like article 11 of the directive, which deals with asylum seekers' access to the labour market, refers to cases where there is no decision at first instance within 12 months. However in practice it has been extended to cases where cases have not been finally determined after 12 months.

Moreover, both government personnel and NGOs working in the field reported that, in practice, asylum seekers released from detention before the lapse of 12 months are often granted permission to work.

Q.28. B. After that period, are asylum seekers or not obliged to obtain a work permit? In case is there a limit for the administration to deliver the permits and how quick are they delivered? What is their length?

In terms of Maltese policy it is not the asylum seeker but the prospective employer who applies for a permit to employ the asylum seeker. A fee of Lm25, i.e. €60, must be paid for each work permit application.

There is no administrative or legal time limit for the issue of a work permit – NGOs working with asylum seekers in the community stated that as a rule permits take weeks to be issued and have at times taken months.

Q.28. C. After that period, what are the conditions for access of the asylum seekers to the labour market? (in particular, are there rules concerning the maximum allowed of working hours or days per week, month or year, limits in terms of type of work or of professions authorised?

Asylum seekers may undertake employment, but may not work as self-employed persons.

Most asylum seekers find work in the construction and hospitality industries, as well as doing seasonal jobs such as sorting potatoes for export or grape-picking. However, this is due not to official restrictions on employment, but to the fact that there is a demand for immigrant labour in these sectors.

Q.28. D. What are the rules in terms of priorities between asylum seekers on the one hand and nationals, EU or EEE citizens and legally third-country nationals on the other?

[*to check***]**

Q.28. E. Do asylum seekers have access to vocational training, does this or not depend of their right to access to the labour market, and in case at which conditions? (see article 12 which is optional regarding §1 and mandatory regarding § 2)

[*to check***]**

Q.28. F. Are the rules regarding access to the labour market adopted to transpose the directive more or less generous than the ones applicable previously?

They are more generous, as previously asylum seekers could not work legally at any stage of the procedures.

Q.29. Are reception conditions subject to the fact that asylum seekers do not have sufficient resources? Are asylum seekers requested to contribute to reception conditions when they have personal resources (for instance if they work) or to refund the authorities if it appears that they have resources? (see article 13 §§ 3 and 4 which are optional provisions)

Both article 13(3) and (4) have been transposed into national legislation, so in theory both are possible.

In practice, to date this provision only applies to asylum seekers living in open centres. Once they start working regularly (as opposed to occasional or daily labour – there must be a measure of stability) they are asked to pay a small contribution (Lm0.50 - €1.17) towards the costs of their accommodation. They also stop receiving their daily allowance.

Asylum seekers in detention cannot work.

Asylum seekers living in independent accommodation in the community are never provided with accommodation or a daily allowance at state expense.

As was explained earlier, asylum seekers or other immigrants who fraudulently conceal income or assets to receive state benefits may be asked to refund monies received.

7. SPECIAL NEEDS OF PARTICULAR CATEGORIES OF ASYLUM SEEKERS

Q.30.

Q.30.A. Which of the different categories of persons with special needs considered in the directive are taken into account in the national legislation (see article 17, §1 which is a mandatory provision): disabled people, elderly people, pregnant women, single parents with minor children, persons who have been tortured, raped or victims of serious physical or psychological violence? Include in your answer all other categories envisaged in national law.

Regulation 14(1) which transposes article 17(1) of the Directive mentions "the specific situation of vulnerable persons which shall include minors, unaccompanied minors and pregnant women, found to have special needs after an individual evaluation of their situation".

This is the only list of vulnerable persons in this or any other national law.

However, government policy on immigration includes a somewhat wider list. It should be noted however, that the list in the policy document is not linked to reception conditions *per se* but to release from detention.

It should be stated that both the list in the regulations regarding reception and that in the government policy document appear to be indicative rather than exhaustive (Regulation 14(1): "which shall include…"), however, the fact that the legislator chose to mention only those categories and omit the others cannot but be noted.

Q.30. B. How is their specific situation taken into account (see articles 13, §2, second indent, 16 §4 second sentence and 17 which are mandatory provisions)?

Regarding the transposition of these articles, or parts thereof, into national law, it should be noted that:

- Article 13(2) is transposed verbatim in regulation 11(2);
- Article 16(4) is partly transposed in regulation 13(4), which, in addition to omitting any reference to provision of emergency healthcare in all circumstances (see however Q27B), only directs national authorities taking decisions on reduction and withdrawal to take the specific situation of "persons covered by regulation 15" (i.e. unaccompanied minors only, not all vulnerable persons) into account;

- Article 17(1) is partly transposed in regulation 14(1), however, as was previously noted (rf Q30A) our law only makes specific mention of minors, unaccompanied minors and pregnant women.

In practice, there is no system in place to address the special needs of vulnerable asylum seekers who are never detained. With other asylum seekers (i.e. those who are detained at some point), the special needs of vulnerable persons are taken into account in two areas.

The first is that of release from detention; government policy on detention states that vulnerable people shall not be detained. It does allow however that…

In practice, as a rule, all are detained upon apprehension by the immigration authorities for illegal entry or stay. Vulnerable persons are then released from detention after their vulnerability is determined through an individual evaluation of their personal circumstances (undertaken by OIWAS), medical clearance is obtained and accommodation is found in the community (again placement is made by OIWAS).

The procedure for assessment and release of vulnerable persons is not written – the following is a description of the practice on the ground provided by various actors (both governmental and non-governmental) working in the field.

Identification of vulnerable persons is usually carried out by the immigration authorities on arrival, the staff at the detention centres, and NGO personnel or staff of other agencies visiting the centres. All persons identified are referred to OIWAS, the government agency responsible for conducting an assessment of vulnerability.

There are no fixed timelines within which assessment and release should take place – in fact this procedure may take weeks or even months. In practice, the length of time a vulnerable person spends in detention will depend on a number of things, including the point at which the individual is identified, availability of accommodation in the community and the nature of the condition giving rise to vulnerability.

With certain categories of people whose vulnerability is immediately obvious, such as pregnant women or minors, identification and assessment are relatively straightforward. Moreover, once they are identified and their vulnerability is ascertained they are released from detention more or less automatically.

In cases where vulnerability is less obvious and may be disputed, such as persons suffering from medical conditions, certain kinds of disability, mental health problems, or trauma and torture, identification and assessment are more difficult in practice and release may take longer to obtain. NGOs reported that the criteria used to assess such cases are not always clear. Moreover, even once vulnerability is ascertained by OIWAS, the government agency responsible for such assessment, release is not automatic but has to be ordered by the Principal Immigration Officer on a case-by-case basis. According to NGOs working in the field, once an immigrant is found to be vulnerable the PIO usually orders release, however, having to go through an additional step in the process means that release may take longer to obtain.

To date, the greatest difficulties have been faced by asylum seekers suffering from psychological and mental health problems and victims of trauma and torture. It is true that some cases have been fast-tracked and release ordered: e.g. in July 2006 seven survivors of a shipwreck who had lost close relatives, e.g. children, parents, siblings or wives, in the tragedy were released from detention almost immediately and in May 2007 the sole survivor of a shipwreck was released from detention. However, many others are never identified and even when they are, release is not always ordered.

While vulnerable asylum seekers are in detention, no special provision is made for them.

The second area where special provision is made for vulnerable asylum seekers is that of accommodation in the community.

As was mentioned earlier, there are special purpose-made facilities in place to accommodate certain categories of vulnerable asylum seekers – i.e. unaccompanied minors (Dar is-Sliem and Dar Liedna), pregnant women and families with minor children (Dar Liedna (upper floors), Dar Qawsalla and part of Hal Far Open Centre).

There are no special facilities available to accommodate other categories of vulnerable persons, such as persons suffering from disability or physical or mental health problems. They are therefore either accommodated within facilities for asylum seekers run by NGOs or within mainstream facilities, but placement in these centres is not always easy as resources are very limited.

It should be stated however that, as a rule, only immigrants (including asylum seekers) released from detention are accommodated in these residential facilities.

Q.30. C. How and when are the special needs of the concerned persons supposed to be legally identified (see article 17 § 2 which is a mandatory provision and clarify how it has been interpreted by transposition)?

Article 17(2) is included in sub-regulation 14(1), which states that: "In the implementation of the provisions relating to material reception conditions and healthcare, account shall be taken of the specific situation of vulnerable persons which shall include minors, unaccompanied minors and pregnant women, found to have special needs of after an individual evaluation of their situation".

As was explained in the answer to the previous question, the mechanism in place for identification and assessment of vulnerable persons is specifically linked to release from detention and not to special provision in the area of material reception conditions and healthcare across the board. The needs of vulnerable asylum seekers who are never detained would not be assessed through this procedure.

Q.30. D. Is the necessary medical and other assistance provided to persons with special needs as requested by article 15, §2 which is a

mandatory provision and in particular to victims of torture and violence as requested by article 20 which is a mandatory provision?

Neither article 15(2) nor article 20 are specifically transposed into national legislation, however, as was previously stated, the Refugees Act entitles all asylum seekers to free medical treatment, which, as a rule, they can obtain.

One possible area of treatment which is not specifically covered by national legislation is that of psychological support. It seems that asylum seekers would qualify for such treatment from government agencies free of charge. However, there are problems relating to limited resources (there are very long waiting lists for such services) and cultural issues.

Q.31. **About minors:**

Q.31. A. Till which age are asylum seekers considered to be minor?

They are considered to be minors until the age of 18.

Q.31. B. How is access of minor asylum seekers to the education system ensured? Is it at school or in case inside accommodation centres and can it be considered as similar to the conditions for nationals as requested by article 10, §1?

Minor asylum seekers have free access to the state educational system. They attend local state schools under the same conditions as Maltese nationals. This applies to all asylum seekers living in the community.

Today, education is not provided while minors are in detention – in 2002 and 2003 when there were a large number of minors in detention for months on end (up to 21 months in some cases) minors used to attend school wile they were in detention. This was prior to the introduction of the current policy on release of vulnerable persons. Today minors are usually placed in school once they are released from detention.

Q.31. C. Is access to education ensured not later than 3 months as requested by article 10, §2 (or after maximum one year if specific education for asylum seekers is provided) and till an expulsion decision is really enforced?

Minor asylum seekers or children of asylum seekers who are never detained may access the education system as soon as the necessary medical checks have been carried out.

With minor asylum seekers or children of asylum seekers who are detained, as was previously stated access to education is usually provided once the minor is released from detention. In some cases this took longer than 3 months – the applicable time limit given that no specific education is provided.

It seems that as a rule education continues to be provided even after a negative decision is given.

Q.31. D. Is specific education (like language classes) available for asylum seekers, in particular to facilitate their effective access to the education system of the reception Member State (see article 10, §2 which is an optional provision)?

No there is no specific education available.

Q.31. E. Are minors in general accommodated with their parents or with the person responsible of them? (see article 14, § 3)

With asylum seekers who are never detained, as a rule accompanied minors live with their parents or the adult who is responsible for them. In practice the relationship would only questioned in exceptional circumstances (e.g. where there are issues of abuse), given that there is no issue of entitlement to release or any other benefit.

Minor asylum seekers in detention are usually accommodated with their parents if they arrive together. They are also considered for release as a family unit. Where they arrive separately family unity is normally respected once the existence of a parent-child relationship is established. Parents arriving after their children have been released from detention are normally released to live with their family.

Where the accompanying adult is not a parent the minor is normally considered as unaccompanied, even if the adult is an older sibling or aunt/uncle. While this could make sense in some cases, e.g. where the accompanying adult is just one or two years older than the minor, in other cases, e.g. where the accompanying adult is an aunt or a sibling who is considerably older, the situation is different. However, OIWAS maintain that they cannot entrust the minor to the care of a relative other than a parent unless there is a court order entrusting the child to his/her care.

This effectively means that the family unit is divided, as the minor is released while the accompanying adult remains in detention.

Given that the adult remains in detention, with only limited access to information about their rights, legal assistance or other services, often they do not even know that they can challenge such a decision. As a rule, OIWAS do not inform the accompanying adult of his/her right to apply to the court for authorisation to act as legal guardian or of the procedure that must be followed. Moreover, given that they are in detention it is very difficult for them to obtain legal assistance, although they would be entitled to legal aid in terms of the COCP.

Q.31. F. Do minors with special needs enumerated by article 18, §2 which is a mandatory provision, have access to appropriate mental health care and qualified counselling?

Article 18(2) has not been transposed into national legislation.

The needs of minors who are not detained only come to the attention of the authorities in exceptional cases, as they are not assessed as a matter of routine and such assistance/care/treatment is not systematically provided. Whether or not they will get the attention they require will depend on whether or not their needs are identified.

In detention minors are not provided with any form of special services/care/support. Once they are identified and released they are accommodated in specialised facilities where they will have the support of a residential social worker. This will help to identify those who need specialised care and to facilitate access to such care, including mental healthcare if this is necessary.

It should be stated that, in practice, in individual cases where psychological care was indicated, the Advisory Board (see 31G below) has authorised access to private care, in order to avoid long waiting lists for government services.

Q.31. G. How and when is organised the representation of unaccompanied minors (guardianship, special organisation) and regularly assessed? (see article 19, §1 which is a mandatory provision)

Article 19(1) has not bee specifically transposed into national legislation, however, article 12 of the Refugees Act provides that: 'Any child or young person below the age of eighteen years falling within the scope of this Act who is found under circumstances which clearly indicate that he is a child or young person in need of care, shall be allowed to apply for asylum, and for the purposes of this Act, shall be assisted in terms of the Children and Young Persons (Care Orders) Act, as if he were a child or young person under such Act.'

This effectively means that any child found to be an unaccompanied minor will be placed under the care of the Minister for the Family and Social Solidarity, by means of a care order issues in terms of the Children and Young Persons (Care Orders) Act (Chapter 285 of the Laws of Malta).

Upon the issue of a care order the minor is released from detention, placed in a facility for unaccompanied minors and a curator is appointed.

It has become standard practice to appoint the residential social worker employed at the facility where the asylum seeker resides as a curator. This effectively means that each social worker could be curator for between 20 and 30 unaccompanied minors at any given time. The main function of the curator is to assist the minor during his/her interview with the Office of Refugee Commissioner. In all other matters it is the Minister who is responsible for the welfare and care of the minor.

Major decisions regarding unaccompanied minors, as with all children in care, are taken by the Advisory Board, which is appointed by the Minister to advise her on matters relating to children in care. In terms of Section 11 of the Care Orders Act, it is 'the duty of the Board to advise the Minister on the best methods of dealing with every child or young person committed to or taken

into his care in accordance with this Act, to exercise general supervision over such children or young persons and, in general, to promote their welfare.' In practice, when taking decisions, the Board relies heavily on recommendations of the professionals involved in the case, which, in the circumstances is more than understandable.

There is no mechanism specifically set up to assess the representation/guardianship provided, either in the law or in practice. To some extent, the Advisory Board could fulfil this role, but it is not clear whether it has been specifically charged with doing so.

Q.31. H. How is placement of unaccompanied minors organised (with adult relatives, a foster family, in special accommodation centres or other suitable accommodation)? (see article 19, §2 which is mandatory provision)

Article 19(2) is only very partially transposed into national legislation – regulation 15 simply states that "An unaccompanied minor aged 16years or over may be placed in accommodation centres for adult asylum seekers".

Unaccompanied minor asylum seekers who are identified from among asylum seekers in detention, are always released from detention and placed in specialised facilities set up for the purpose. In practice most unaccompanied minor asylum seekers come from within this category. As was indicated in Q31E unaccompanied minor asylum seekers are not normally placed with adults who are not their parents.

In the rare cases where there are unaccompanied minors who are not apprehended on arrival and placed in detention (usually these are not asylum seekers), they are placed in care facilities as soon as they are identified.

If unaccompanied minors are very young, they are usually placed in mainstream residential facilities for children in care rather than in facilities for unaccompanied minor asylum seekers. In the latter facilities, as the average age of the residents is usually older (15-18), they are not equipped to care for younger children.

Q.31. I. How is the tracing of the family members of the unaccompanied minors organised? Are measures taken to protect confidentiality of information when necessary? (see article 19, §3 which is a mandatory provision)

Article 19(3) is not transposed into national legislation.

From what we could gather tracing of family is only undertaken at the minor's request and, very often, on his/her own initiative.

Regarding the issue of confidentiality of information regarding asylum seekers in general, article 8(3) of the Refugees Act provides that: 'All information concerning applications for refugee status shall remain confidential. Under no circumstance shall any information concerning such applications be disclosed to the authorities of the country of origin of the applicant, nor shall any information be requested from such authorities regarding the applicant.'

It is doubtful whether this provision provides the level of protection required by article 19(3), however it goes some way towards ensuring confidentiality of information regarding all asylum seekers, including minors.

8. EXCEPTIONAL MODALITIES OF RECEPTION CONDITIONS

Q.32. Apart from detention covered by the next question, are there exceptional modalities for reception conditions in the following cases and if yes, which ones and for how long are they applicable, knowing that they should be "as short as possible" (see article 14, §8)?

There are no exceptional modalities for reception conditions, apart from detention.

Q.32. A. Persons with specific or special needs, regarding in particular the period of assessment of those needs?

Q.32. B. Non availability of reception conditions in certain areas

Q.32. C. Temporarily exhaustion of normal housing capacities

Q.32. D. The asylum seeker is confined to a border post

Asylum seekers are not normally confined to border posts.

Q.32. E. All other cases not mentioned in the directive (for instance urgent situation in case of a sudden high number of applicants outside a case of application of the directive on temporary protection).

Q.33. Detention of asylum seekers (we do not cover the situation of rejected asylum seekers detained for the purpose of their return) (see articles 6 §2, 7 §3, 13, §2 2nd indent and 14 §8 which implies that the directive is in principle applicable in case of detention):

Q.33. A. In which cases or circumstances and for which reasons[1] (identity verification in particular if the persons have no or false documents, protection of public order or national security, refugee status determination, way of entry into the territory, etc) can an asylum seeker be detained during the asylum procedure till his request has been finally rejected. Quote precisely in English in your answer the legal basis for detention of asylum seekers in national law.

Asylum seekers who enter Malta legally are not detained. Asylum seekers with irregular migration status may be detained in terms of the Immigration Act (Chapter 217 of the Laws of Malta).

It is important to note that immigration status is not the sole factor that determines whether or not an asylum seeker will be detained throughout the duration of the asylum procedure. Asylum seekers with irregular migration status who manage to apply for refugee status before they are apprehended by the immigration authorities are not detained as a rule. Those who apply for refugee status after having been placed in custody (with few exceptions, see below), however, remain in detention throughout the procedure for the determination of their asylum application.

Maltese law does not contain specific provisions regulating detention of asylum seekers *per se*.

The Refugees Act makes no mention of detention, however, Article 11 of the said Act, indicates that asylum seekers may be detained for breaching immigration regulations, when it states that:
'(1) Notwithstanding the provisions of any other law to the contrary, and notwithstanding any deportation or removal order, a person declared to be a refugee shall be entitled -

(a) to remain in Malta, and to be granted personal documents, including a residence permit; and if in custody in virtue only of a deportation or removal order, to be immediately released;'

The Immigration Act provides that all immigrants refused admission into Malta or issued with a removal order, in terms of the said Act, shall be placed in custody until they can be removed from national territory.

Article 10 of the Immigration Act, which deals with detention of persons refused admission into Malta, provides that:
'(1) Where leave to land is refused to any person arriving in Malta on an aircraft, such person may be placed temporarily on land and detained in some place approved by the Minister and notified by notice in the Gazette until the departure of such aircraft is imminent.
(2) Where leave to land is refused to any person arriving inMalta by any other means, such person at his own request may,with the leave of the Principal Immigration Officer, be placed temporarily on shore and detained in some place approved by the Minister and notified by notice in the Gazette....

[1] Please specify if article 18 §1 of the directive on asylum procedures of 1 December 2005 following which *"Member States shall not hold a person in detention for the sole reason that he/she is an applicant for asylum"* is or not respected (even if it has not yet to be transposed).

(3) Any person, while he is detained under sub-article (1) or (2), shall be deemed to be in legal custody and not to have landed.'

Article 14 of the same Act regulates the detention of persons issued with a removal order:
'(1) If any person is considered by the Principal Immigration Officer to be liable to removal as a prohibited immigrant under any of the provisions of article 5, the said Officer may issue a removal order against such person...
(2) Upon such order being made, such person against whom such order is made, shall be detained in custody until he is removed from Malta.'

As was previously stated, those who apply for asylum after they have been placed in custody remain in detention.

Detention lasts as long as it takes for an asylum application to be determined. Where an application for asylum is still pending after 12 months, the asylum seeker is released from detention to await the final outcome of his/her asylum application in the community. The only exceptions are vulnerable asylum seekers; these are released to live in the community once their vulnerability is determined, medical clearance is obtained and accommodation is found in the community (refer Q30).

Q.33. B. Has your member State adopted measures to transpose §3 of article 7 which is an optional provision? If yes, how has this provision been legally understood (is it a case of detention or an obligation to stay in and not leave a certain place?) and for which reasons can an asylum seeker be "confined" in such a place?

Article 7(3) is transposed into national legislation through regulation 6(2), which allows the Principal Immigration Officer to order that an applicant be confined to a particular place in accordance with Maltese law, "for legal reasons or reasons of public order".

In practice, the only asylum seekers confined to a particular place are those who are detained. Technically it is not detention *per se* that is ordered by the PIO; as was previously explained, in terms of the Immigration Act, detention is the automatic consequence of a removal order (issued by the PIO) or of a refusal to grant admission to national territory.

Q.33. C. Are there legally alternatives to detention, like obligation to report to the authorities, obligation to stay in a place, provision of a guarantor or of a financial guarantee?

The law provides for only one alternative to detention, which may be described as an obligation to report to the autorities.

Article 25A(9) of the Immigration Act provides that the Immigration Appeals Board shall have 'jurisdiction to hear and determine applications made by persons in custody in virtue only of a deportation or removal order to be released from custody pending the determination of any

application under the Refugees Act or otherwise pending their deportation in accordance with the following subarticles of this article.'

The said article goes on to limit the circumstances in which the Board may grant release, and states that:
'(13) It shall be a condition of any release under subarticles (9) to (12) that the person so released shall periodically (and in no case less often than once every week) report to the immigration authorities at such intervals as the Board may determine.'
See Q33H for more information regarding the efficacy of this remedy.

In practice, there are alternatives to detention for vulnerable asylum seekers and for asylum seekers released from detention to await the outcome of their asylum application in the community (i.e. in those cases where an application is still pending after 12 months).

Q.33. D. Which is the competent authority to order the detention of an asylum seeker? Explain if different authorities are involved to first take and later confirm the decision.

Prohibited immigrants are detained by virtue of a removal order issued by the Principal Immigration Officer or as a result of a refusal to grant admission into national territory (see Q33A&C). National law does not provide for the automatic review or even for the need to confirm the detention of an immigrant.

Q.33. E. For how long and till which stage of the asylum procedure can an asylum seeker be detained?

Persons who apply for asylum after they have been placed in custody remain in detention throughout the duration of the procedures for the determination of their asylum application. The only exceptions are vulnerable asylum seekers and asylum seekers whose application is still pending after 12 months.

This 12 month time limit on detention of asylum seekers is not fixed by law, nor is it clearly established by government policy.

Until December 2003, detention was indefinite. From December 2003 the government started releasing groups of immigrants who had been in detention for more or less 18 months, regardless of the status of their application for protection. By January 2005 the 18-month time limit was clearly established, and was included in the government policy document on detention.

In mid-2005 the government changed existing policy on release, and started releasing asylum seekers whose application was still pending after 12 months. This change was apparently introduced as a result of the application of article 11(2) and (3) of the Reception Directive (Regulation 10(2) and (3)) regulating asylum seekers' access to the labour market. In practice, this provision has been interpreted to mean that all asylum seekers whose application is still

pending, whether at first or second instance, will be released from detention as they must be allowed access to the labour market.

It is true that not all asylum seekers spend the maximum duration of 12 months in detention; some are released before if their application is determined and they are granted some form of protection. The government has in fact maintained that asylum seekers who are granted some form of protection usually spend an average of 5 or 6 months in detention.

To put this declaration in context, it should be explained that the vast majority of asylum seekers granted protection get it at first instance. Very few appeals are accepted - no statistics are available, but NGOs say that only 2 out of the thousands of appeals filed have been accepted to date.

In practice, some asylum seekers have spent less than 5 months in detention, but many others have spent far more.

Asylum seekers are interviewed in chronological order, according to the date of their arrival in Malta. As a rule, asylum seekers who arrive by boat later in the year are likely to spend longer in detention than those who arrive earlier as the backlog of cases pending before the Refugee Commissioner's Office would have increased by then.

During the last 12 months, due to staff shortages at the Office of the Refugee Commissioner, asylum applications were processed far more slowly than usual. In fact, many asylum seekers who are currently being released after 12 months in detention have not even been called for their initial interview with this office.

Q.33. F. In which <u>places</u> (can we call them "closed centres"?) are asylum seekers detained (places in a special closed centres reserved only to asylum seekers, together with returnees like illegal aliens or even in a normal prison, in case within separated areas or with the other detainees)? Indicate if a difference has to be made following the location of the "closed centres" at the border or on the territory? Which is the authority managing those places and is it the same as the one in charge of reception conditions?

Asylum seekers are detained in detention centres with other immigrants, including rejected asylum seekers and immigrants who did not apply for asylum. They are not placed in prison unless they have committed a criminal offence. All detention centres house immigrants at different stages of the asylum procedure, from new arrivals to those whose application has been rejected.

Detention centres are managed by the Detention Service, within the Ministry for Justice and Home Affairs. Open reception centres, on the other hand, are managed by OIWAS, a social welfare agency within the Ministry for the Family and Social Solidarity.

Q.33. G. Does UNHCR and NGOs have access to the places of detention and under which conditions?

Both UNHCR and NGOs are allowed access to detention centres once a permit has been obtained from the police authorities.

UNHCR and NGO personnel are allowed to enter inside the facilities where detainees are housed. The only area NGOs are not allowed to enter is that used for seclusion of detainees.

Q.33. H. What appeal(s) can asylum seekers introduce against the fact he is detained? Is article 18 of the directive on asylum procedures of 1 December 2005 following which *"Where an applicant for asylum is held in detention, Member States shall ensure that there is a possibility of speedy judicial review"* respected (even if it has not yet to be transposed)?

There is no automatic review of the administrative decision to detain, however, at least on paper, the law provides a number of remedies for a detained asylum seeker to obtain release from detention and/or to challenge his/her detention.

Problems however arise in practice due to:

- the scope of these remedies and the manner in which the law is applied by the courts/tribunals concerned (there is a tendency to apply the law rather restrictively);
- the level of accessibility of these remedies, particularly for asylum seekers in detention;
- the difficulties faced by detained asylum seekers when seeking to obtain legal assistance and/or legal aid; and
- the length of time some of these procedures take.

This has raised concerns that, in fact, asylum seekers do not have the possibility of a 'speedy judicial review' of their detention.

The following is an outline of existing legal remedies:

Appeal against a removal order

Article 14(1) of the Immigration Act allows any immigrant against whom a removal order is issued to appeal to the Immigration Appeals Board, within 3 working days from the date when the order is issued (Article 25A(7) of the same Act). Upon a request by the appellant, the Immigration Appeals Board has the authority to grant provisional release pending the final determination of an appeal from a removal order, subject to the conditions it deems fit, in terms of Art 25A(6).

This procedure does not really qualify as a 'judicial review' of detention – it is a review of the merits of the administrative decision to issue a removal order, with the possibility of temporary release pending the final outcome of the appeal.

No statistics on appeals filed are publicly available, but it seems that in practice few immigrants appeal from removal orders issued against them and very few of the appeals filed are upheld.

Naturally, in those cases where the Board accepts the appeal and revokes the removal order, the immigrant concerned will be released as the legal grounds for detention no longer exist.

Application to the Immigration Appeals Board

Article 25A(9) & (10) provide that any immigrant who is detained in terms of the Immigration Act may apply to the Board for release from custody if he/she believes that his/her detention is unreasonable either because of its duration, or because there is no reasonable possibility of removal within a reasonable time. Anyone released by virtue of this provision will be obliged to report to the immigration authorities at least once a week.

The law itself restricts the scope of this remedy, stating that the Board may refuse to authorise the release of a rejected asylum seeker who fails to cooperate with the immigration authorities' attempts to repatriate him/her.

In addition, article 25A(11) further restricts the Board's discretion stating that the Board shall not grant release:

" (a) when the identity of the applicant including his nationality has yet to be verified, in particular where the applicant has destroyed his travel or identification documents or used fraudulent documents in order to mislead the authorities;

(b) when elements on which any claim by applicant under the Refugees Act is based, have to be determined, where the determination thereof cannot be achieved in the absence of detention;

(c) where the release of the applicant could pose a threat to public security or public order."

Article 25(11)(a) was been used as the reason to justify the continued detention of Somali asylum seekers who had been in detention for 9-10 months simply awiting their initial interview with the Office of the Refugee Commissioner. As they arrived in Malta undocumented and had no proof of their Somali nationality (which is usually established through their asylum interview) the Board rejected their application for release. The applicants concerned were later released after the lapse of 12 months without having been interviewed.

The law provides for the possibility of re-arrest where the Principal Immigration Officer is satisfied that: "there exists a reasonable prospect of deportation" or that such person is not co-operating with legitimate attempts to remove him "to his country of origin or to another country which has accepted to receive him"

The following are some of the concerns raised regarding this remedy:

- It is questionable whether this remedy qualifies as a 'judicial' review – as it would appear that the Immigration Appeals Board is not a judicial but an administrative tribunal (vide concerns raised above in Q22A);

- It is most definitely not speedy – applications usually take weeks if not months to be decided;

- The scope of this remedy - in addition to the restrictions built into the legal provisions establishing this remedy (highlighted above), there is the fact that the Board is not directed to examine the 'lawfulness' but the 'reasonableness' of detention. There is no

clear definition regarding what qualifies as 'reasonable'. A review of the Board's decisions in such cases to date seems to indicate that the Board considers current government policy to be 'reasonable'. In practice release has only been granted in very few cases where there were serious reasons which, in the Board's view, justified a deviation from standard practice in the individual case, e.g. a medical condition. But then again, the Board does not order the release of every asylum seeker with a medical condition, even if it is serious chronic illness.

- It is largely inaccessible to most detained asylum seekers.

  One reason for this is the fact that they face huge difficulties obtaining legal assistance to be able to make the application. It is not clear whether they are entitled to legal aid (free legal assistance) to make the application – in fact, in my view, they are not.

  Article 911(1) of the Code of Organization and Civil Procedure (Chapter 12 of the Laws of Malta) provides that one may be granted legal aid to sue or defend: '...in any court mentioned in articles 3 and 4 (*i.e. the superior and inferior courts of civil jurisdiction, including the Constitutional Court*) and before any other adjudicating authority where the benefit of legal aid is by law granted'. Neither the Immigration Act nor any other law provides that detainees are entitled to legal aid for the purposes of making an application to the Board.

  In practice, even if they are entitled to legal aid, it is virtually impossible for them to obtain such assistance through the normal channels, as this involves visiting the office of the legal aid lawyer at the law courts (impossible for one who is detained)or making an application to the First Hall of the Civil Court (impossible without the assistance of a lawyer). In fact, in the case of appeals from decisions of the Refugee Commissioner, a special legal aid service was set up to cater for asylum seekers, many of whom are in detention, as the 'normal' procedure did not work in this context. It is very difficult for detainees to obtain the services of a private lawyer, as they cannot afford to pay. There is one NGO (JRS Malta) offering free legal services to detainees, but in general NGOs lack sufficient resources to provide a meaningful service to all detainees in the circumstances;

  The issue of inaccessibility is also due to the manner in which the Immigration Appeals Board functions: e.g. it has no registry or office where one can file applications or follow up on cases and asylum seekers are not provided with information or instructions explaining where one should go to file an application or what procedures should be followed when doing so. In practice, it is therefore practically impossible for a detained asylum seeker to make use of it.

In a recent case, Tafarra Besabe Berhe vs Commissioner of Police in his capacity as Principal Immigration Officer and the Minister for Justice and Home Affairs, the the First Hall of the Civil Court presided by Judge J.R. Micallef delivered a preliminary judgement dealing with the adequacy of this remedy.

The case concerns an Eritrean asylum seeker who is challenging the lawfulness of his 7-month detention in terms of Articles 3 and 5 of the European Convention on Human Rights (articles 34 and 36 of the Constituion of Malta). The government argued that applicant should not have resorted to a Constutional application, which is considered an exceptional remedy, but should have used the remedy contemplated in article 25A, which is an ordinary remedy first. Applicant argued that article 25A cannot be considered an adequate remedy in the circumstances. The Court upheld applicant's claims in a preliminary judgement delivered on Thursday June 20, 2007, wherein it stated that considering the nature of the applicant's claims, the jurisdiction of the Board which is limited to ordering release rather than examining the lawfulness or the conditions of detention, the limited resources of the Board, the Court:
'agrees with the applicant's submissions and considers that the remedy mentioned by the defendants cannot give, even in the best hypothesis, a remedy that is adequate, effective and certain as demanded by law in cases where a person's liberty is denied, even for a limited time.'

Application to the Magistrates Court
Section 409(A) of the Criminal Code allows anyone (immigrant or not) who is detained under the authority of the police or of any other public authority not in connection with any offence with which he is charged or accused before a court to challenge the lawfulness of his/her detention by means of an application to the Court of Magistrates, which shall have the same powers as that court has as a court of criminal inquiry demanding his release from custody.

This remedy definitely qualifies as speedy as the law lays down strict timelines within which the respondent must be notified and the application appointed for hearing.

However, the scope of this remedy is quite narrow. In two cases filed by immigrants, (an asylum seeker, Karim Barboush, and a rejected asylum seeker, Kinfe Asmelash) who had been detained for 14 and 12 months respectively, the court held that it could only look at whether the detention was authorised in terms of the Immigration Act. It could not examine the lawfulness of detention in the light of the provisions of the ECHR or look at whether or not detention was necessary. Such analysis can only be carried out by the Constitutional court following an application by the victim in terms of the Constitution or the ECHR.

The issue of access to legal aid mentioned above applies also in regard to this remedy.

Constitutional application
Any immigrant who believes that his detention is in violation of Art 5 of the European Convention of Human Rights (or indeed any other article of the Constitution of Malta or the ECHR) may file an application to the First Hall of the Civil Court (Constitutional Jurisdiction).

Although this remedy definitely constitutes a judicial review of detention, the European Court of Human Rights has stated that it cannot be considered to satisfy the ECHR requirement of 'speediness' (see Kadem v Malta [Application number 55263/00 [2003]- application in terms of article 5(4) – January 9, 2003] and Sabeur Ben Ali v Malta [Application number 35892/97 [2000]- application in terms of article 5(3) & (4) – June 29, 2000]).

Once again the accessibility of this remedy is questionable, not because of entitlement to legal aid which results clearly from the provisions of the law, but rather because of the practical difficulties faced by detained asylum seekers when seeking to obtain legal aid.

Q.33. I. Is the directive on reception conditions considered to be in principle applicable to the places where asylum seekers are detained? In particular which information do they receive about their rights, which access do they have to legal advice and health care?

In practice asylum seekers in detention receive little information about their rights. On arrival in Malta they are given a copy of a pamphlet, entitled 'Your Entitlements, Responsibilities and Obligations while in Detention', published by the MJHA in English, French and Arabic. This booklet gives a brief outline of the asylum procedure, informs asylum seekers that they can apply to the Board to challenge the reasonableness of their detention, and outlines their rights and obligations while in detention. It does not go beyond simply informing asylum seekers that they have rights – i.e. it provides them with no practical information about how they might access them.

JRS Malta also published a booklet focused on the asylum procedure, as part of a project funded by ERFII 2005. So far it is available in English and French. It is currently being translated into Tigrinya and Somali.

The main problem with written publications is that many asylum seekers – particularly, but not only, women – are illiterate and have absolutely no formal education. It is particularly difficult for these people to understand the mechanisms in place to examine asylum application or challenge detention as often they do not even understand the very concept of procedure. In such cases only repeated provision of oral information in a language they can understand and regular availability to answer questions will fill the information vacuum.

JRS does provide a basic information service, but it is very limited in comparison to the overwhelming needs on the ground.

Regarding access to legal assistance – as was previously stated asylum seekers in detention find it very hard to obtain legal assistance from private sources, for financial and other reasons. Legal aid is only available in very specific circumstances and, with the exception of that provided to asylum seekers at appeal stage of the procedures in terms of the Refugees Act, which is tailor-made to meet the needs of detained asylum seekers, it is practically impossible for detained asylum seekers to obtain legal aid through the normal channels.

Regarding access to medical treatment, see Q27C above.

Q.33. J. Apart from freedom of movement, what are the main differences between normal reception conditions and exceptional modalities for reception conditions in case of detention, knowing that they should be "as short as possible" (see article 14, §8)? If it is about closed centres, are the regulations

of those places in line with the requirements of the directive (is article 13, §2, second indent of the directive following which "*Member States shall ensure that standards of living is met (…) in relation to the situation of persons who are in detention*" respected?).

Refer also to Q33E.

Asylum seekers are deprived of their liberty for months on end in very poor conditions – few of the facilities currently being used to detain asylum seekers were ever intended for use as detention centres, some where not even intended for human habitation. Two of the buildings were originally intended as warehouses, for military use, and in another compound detainees are housed in tents. Even in the one facility which was designed and built for use as a detention centre conditions are far from ideal. These facilities are therefore particularly inappropriate to house so many people for such long periods.

All of the centres are overcrowded, particularly during the summer months when there are many new arrivals. There is a lack of privacy both in the bathrooms and in the sleeping quarters, which is made up mostly of dormitories full of bunk beds divided into smaller sections by means of makeshift partitions, usually bedsheets. Most of the showers have no doors or curtains and the toilet doors do not lock.

The one centre which houses both males and females, i.e. where families and single women are detained, the situation is much the same. Here too the sleeping quarters house both males, females (including single females) and children, often in the same room, and sanitary facilities are shared.

In addition to the physical conditions in which they are detained, detainees have nothing to do all day. There is little internal recreational space. Most centres have a yard; in some cases the detainees have unlimited access to open air, in other cases access is from sunrise to sunset, in other cases for one hour daily and in one centre for an hour twice a week.

Apart from the handful of detainees who are allowed to help with odd jobs around the centre or in the barracks, none of the detainees have any opportunity to engage in constructive or meaningful activities to pass the time. The only thing they can do is watch television – in most cases one TV set is shared between over a 100 people – read a book, if they manage to get one, or play board games.

The conditions in Malta's detention centres have been documented in numerous reports, some of which are listed in Q8 above.

From all accounts, it is difficult to describe the conditions within the centres as providing an adequate standard of living in line with the requirements of the Reception Directive.

In addition, NGOs working in detention also raised the following concerns:

- Detainees are almost totally isolated, making it very difficult for them to obtain information about their rights, or to exercise them effectively even if they know about them.

- In addition, detainees face major difficulties when seeking to access basic services, including healthcare, legal assistance and social work services. There are very few social workers working within the centres – currently there is 1 employed by an NGO and 2 employed by the state to work in detention. The latter are however more involved in assessing vulnerability than in providing social work follow up in individual cases. Regarding access to medical care rf Q27C and regarding access to legal assistance rf Q33H.

- Moreover, the staff at the centres is made up almost exclusively of people from a military/police background. The ratio of staff to detainees is relatively small, when one considers the size of the detainee population. As a result, within the centres, the focus is often far more on security than on welfare. Detainees wear handcuffs every time they leave the facility, even to go to the hospital.

- Although the situation varies within different centres, communication between detainees in staff is often poor as a result of various problems, including language barriers, inability to cope with the overwhelming demands, fear and mistrust.

- The staff working at the centres receives some training, but concerns were expressed regarding the adequacy of the training provided and the level of support that staff receive. A report on the psychological health of Detention Service staff that was tabled in Parliament points to high levels of stress, insecurity and even fear.

- The rules regarding the administration of discipline within the centres are far from clear and questionable forms of punishment, such as seclusion for days in a small, dark cell and deprivation of access to open air, are often used.

Q.33. K. Are measures taken to avoid detention of asylum seekers with special needs (if yes, which ones?) or are special measures taken because of their needs?

Refer to the answer provided to Q30A and B.

While they are in detention no special measures are in place to meet the needs of asylum seekers with special needs.

Q.33. L. Can minor asylum seekers be detained together with relatives? Can unaccompanied minor asylum seekers be detained? If yes, are there special measures which take into account that children are concerned?

Both accompanied and unaccompanied minor asylum seekers may be detained if they are apprehended by the immigration authorities for breaching immigration laws. They are released from detention once their situation is assessed and they are found to be vulnerable in terms of government policy. Until this procedure is carried out they are detained.

Regarding accommodation with relatives refer to the answer to Q31E.

Unaccompanied minor asylum seekers who arrive in an irregular manner, usually by boat, are usually placed in detention on arrival – as are all other such arrivals, whether vulnerable or otherwise. They remain in detention until they are identified and age assessment procedures are carried out by the Age Assessment Team (AAT) within OIWAS. This process may take some time, particularly is the individual concerned is referred for a Further Age Verification Test, usually an X-ray of the bones of the wrist.

There are no special measures for children while they are detained – they are detained with adults, in a centre where the daily regime is actually stricter than that in other centres. They have access to the open air only twice weekly and spend the rest of the time in cramped facilities consisting mostly of sleeping quarters. No activities are organised for them.

Q.33. M. In particular is article 10 regarding access to education of minors respected in those places?

As was stated in the answer to Q31B, as a rule minors in detention do not go to school; they are placed in school as soon as they are released from detention.

In terms of government policy children are released from detention as soon as medical clearance is obtained and accommodation is found in the community. In some cases this process is completed within days but, according to NGOs working in the centres, it has on occasion taken months (up to 6 months in some cases during 2006).

Q.33. N. How many asylum seekers are for the moment detained in your Member State? Which proportion does this represent in comparison of the total number of asylum seekers at the same moment?

The authorities concerned informed us that it is very difficult to accurately establish the number of asylum seekers in detention.

[*We are awaiting further information regarding this point and will pass it on as soon as we have it*.]

9. ORGANISATION OF THE SYSTEM OF RECEPTION CONDITIONS

Q.34. Explain if the system of providing reception conditions is centralised or decentralised (which levels of government do provide practically reception

conditions?) (do not confuse this question with question number 3 about the competence to make rules about reception conditions).

The system, such as it is, is more or less centralised. By and large reception conditions are provided by two main institutions (the Detention Service for asylum seekers and other immigrants in detention within the MJHA and OIWAS for asylum seekers and other immigrants in the community within the MFSS). Both are set up by and answerable to the central government.

The NGOs providing accommodation do this in collaboration with OIWAS and the MFSS.

Q.35. In case, are accommodation centres public or/and private (managed by NGOs? If yes, are the NGOs financially supported by the State?

Some accommodation centres are public, owned and managed by OIWAS or, in one case, by an agency contracted to run it on their behalf, and others are owned and managed by NGOs in collaboration with OIWAS. The relationship between OIWAS and the NGOs concerned is regulated by means of an agreement between them.

NGOs who are running Open Centres receive state-funding to do so – most of the costs of running these centres are paid by the government.

Q.36. In case, how many accommodation centres are there in your Member State (distinguish in your answer between public and private centres)?

There are the following accommodation centres:
Public
Hal Far Open Centre – managed by OIWAS
Hal Far Sliem Tent Centre – managed by OIWAS
Marsa Open Centre – managed by Suret il-Bniedem Foundation (an NGO)
Dar Liedna – managed by OIWAS
Dar Qawsalla – managed by OIWAS
Dar is-Sliem – managed by OIWAS

Private
Peace Lab – owned and managed by the NGO of the same name
Dar ir-Refugjati, Balzan – church owned and managed by the Malta Emigrants Commission

Malta Emigrants Commission also have a number of smaller houses which are used to accommodate refugees/asylum seekers - these usually house smaller numbers of persons than the Open Centres. These premises are located in Msida, Sta Venera, Floriana, Valletta and Guardamangia.

Q.37. Is there in the legislation a plan or are there rules in order to spread the asylum seekers all over the territory of your Member State to avoid their concentration in some areas like big cities or to share the costs of their reception between central, regional and local authorities?

There is no such plan, however it should be stated that with a territory the size of Malta (122 square miles) such plans are somewhat unnecessary.

Local councils do exist, but they are mostly involved in issues concerning their locality and not in matters such as the reception and care of asylum seekers.

Q.38. Does a central body representing all the actors (like NGOs) involved in reception conditions exist? Does it play a consultative role for the State authorities, a coordination role for the actors or any other role?

The Inter-Ministerial Committee on Irregular Immigration brings together the ministries directly involved in the reception of irregular immigrants and asylum seekers, however NGOs and other agencies such as UNHCR, are not represented on this committee.

There are two regular meetings convened and chaired by OIWAS staff:

- the Committee of Open Centre Managers, which brings together all NGOs involved in the running of Open Centres and OIWAS. This group meets periodically to discuss issues relating to the management of Open Centres. Its members were involved in discussions regarding the setting up of the new system (registration and financial assistance) in Open Centres.
- the NGO Forum, which meets once a month and brings together all the NGOs working in the field at different levels, a representative of the MJHA, IOM and UNHCR. This group has no decision-making powers at all; it is primarily a forum to share information and cannot be described as advisory or consultative.

The Detention Service is not directly represented at any of the meetings convened by OIWAS.

Q.39. **Q.39. A. Which is the body in charge of guidance, monitoring and controlling the system of reception conditions as requested by article 23 which is mandatory provision? Include in your answer which is the competent ministry (Interior, Social affairs, etc) for reception conditions?**

Article 23 has not been transposed into national legislation.

Apart from the agencies responsible for providing material reception conditions themselves, there is no independent body mandated to provide monitoring, guidance and control.

The Ministry responsible for reception conditions of asylum seekers in the community is the Ministry for the Family and Social Solidarity (MFSS) and the that responsible for asylum seekers in detention is the Ministry of Justice and Home Affairs (MJHA).

Q.39. B. Has your Member State (like the Czech Republic did recently) approved quality standards (not necessary legally binding) for housing services (for instance about the number of persons per bedroom on the basis of its size, number of accessible toilets, bathrooms, showers and washing machines per number of persons, existence of common rooms with radio, television, newspapers, books, computers, accessibility of telephone, existence of recreative rooms for children,…) to be respected in particular in accommodation centres?

There are no such standards.

Q.39. C. How is this system of guidance, control and monitoring of reception conditions organised?

Not applicable.

Q.39. D. Does the body in charge of guidance, control and monitoring produce reports about the level of reception conditions? If yes, how frequently and are they public?

Not applicable – there are no such reports.

Q.40. **Q.40. A.** What is the total number of asylum seekers covered by reception conditions for the last year for which figures are available (see article 22 obliging Member States to calculate those statistics about which we also asked the Commission to require them from Member States for mid June)?

All statistics available so far include asylum seekers and irregular immigrants, and not asylum seekers only. It is therefore not possible to answer this question accurately.

Q.40. B. What is the total budget of reception conditions in euro for the last year for which figures are available?

There is no budget allocation specifically for reception of asylum seekers.

Q.40. C. What is the average cost of reception conditions in euro per asylum seeker for the last year for which figures are available?

I was unable to obtain this information – as was stated in answer to Q40A all available statistics include the cost of detaining/housing both asylum seekers and other irregular immigrants.

Q.40. D Are the costs of reception conditions of asylum seekers supported by the central/federal or federated government or are they shared with regional and/or local authorities?

All costs are supported by the central government.

Q.40. E. Is article 24 § 2 of the directive following which "*Member States shall allocate the necessary resources in connection with the nationals provisions enacted to implement this directive*" respected?

Article 24(2) of the Directive is not transposed into national legislation.

The budget allocation for immigration and related issues has been substantially increased in recent years in an attempt to address this issue.

However, in view of the enormous needs created by the large numbers of undocumented migrants arriving by boat each year since 2002, the resources allocated are not enough to meet more than the most basic needs of these persons.

The situation is made worse by the fact that, in practice, there is little or no distinction between asylum seekers and other immigrants.

Q.41. **Q.41. A.** What is the total number of persons working for reception conditions?

Within the OIWAS/Open Centre system there are approximately 80 people, excluding volunteers.

Q.41. B. How is the training of persons working in accommodation centres organised? Does it take into account specific needs of unaccompanied minors when relevant as well as the gender dimension? (see article 14 §5, 19 § 4 and also 24 §1 which are mandatory provisions)?

Articles 14(5), 19(4) and 24(1) are not transposed into national legislation.

Detention Service staff receive initial training, which consists of a series of lectures delivered by professionals from various disciplines, UNHCR and NGO staff.

OIWAS informed us that their staff too receives training in order to be able to carry out their work.

There is a project due to start in September 2007, funded by ERFII 2007, which will provide monthly training sessions for DS staff and other personnel working in the area of reception. This project is being run by JRS Malta, UNHCR and the Malta Red Cross.

Q.41. C. Are there rules about the deontology of persons working in accommodation centres, in particular on confidentiality?

10. IMPACT OF THE DIRECTIVE

Legal impact of the transposition of the directive:

Q.42. Specify if there are or not big problems with the translation of the directive in the official language of your Member State and give in case a list of the worst examples of provisions which have been badly translated? (please note that this question has in particular been added to the questionnaire concerning the new Member States)

English is one of the official languages of the Maltese state and all laws are available in English and in Maltese. There are no major problems with the Maltese translation.

Q.43. Where there precise legal rules on reception conditions for asylum seekers before the adoption of the norms of transposition of the directive (if yes, specify what the nature of those rules was (legislation, regulation, administrative instructions,…)?

There were no legal rules on reception of asylum seekers prior to the transposition of the Directive.

Q.44. Did the legal rules applicable to reception conditions become more clear, precise, coherent or detailed with the adoption of the transposition norms (for instance do you now have after the transposition one basic text dealing with reception conditions instead of numerous different texts in the past?

The rules are definitely clearer, as now they are written down. However, work still needs to be done to ensure that these rules are fully implemented and that all asylum seekers are provided with adequate reception conditions.

Q.45. Did the transposition of the directive imply important changes in national law or were the changes of minor importance? In case, list the most important changes that have been introduced.

Prior to the transposition of the Directive there was only one article in the Refugees Act regulating the treatment of asylum seekers, aside from the provisions governing the asylum procedure and procedural rights (article 8) and protection from refoulement (article 9). This article states simply that:

'(1) Notwithstanding the provisions of any other law to the contrary, an asylum seeker shall not be removed from Malta before his application is finally determined in accordance with this Act and such applicant shall be allowed to enter or remain in Malta pending a final decision of his application. He shall also have access to state education and training in Malta and to receive state medical care and services.
(2) An asylum seeker -
(a) shall not seek to enter employment or carry on business unless with the consent of the Minister;
(b) shall, unless he is in custody, reside and remain in the places which may be indicated by the Minister;
(c) shall report at specified intervals to the immigration authorities as indicated by the Minister:
Provided that if any such applicant is in breach of any of the provisions of paragraphs (a), (b), (c) he shall be guilty of an offence and shall be liable on conviction to imprisonment for a term of not more than six months.
(3) If the applicant leaves Malta voluntarily, his application will be deemed to be withdrawn, unless his departure from Malta is authorised by the Minister.'

The tranposition of the Reception Directive therefore introduced major changes into national law in this area, by clarifying and, to some extent, broadening state responsibility with respect to reception of asylum seekers.

Political impact of the transposition of the directive:

Q.46. Explain briefly if there has been an important debate about the transposition of the directive (in particular in the Parliament, but possibly also in the government, between political parties, including in medias, etc; underline in case the main points which have been discussed or have created difficulties)

The directive was introduced by means of regulations, a process which involves far less public and parliamentary scrutiny.

Q.47. **Did the transposition of the directive contribute to make the internal rules stricter or more generous? In particular, did your Member State use the occasion of the transposition to abolish more favourable provisions of national law? Does your Member State still have rules more favourable than the provisions of the directive (if yes, try to give the more important examples).**

See reply to Q45.

11. ANY OTHER INTERESTING ELEMENT

Q.48. What are in your view the weaknesses and strengths of the system of reception conditions in your Member State?

In my view, however I should state that the answer to this question is a totally personal opinion, many of the weaknesses of the current system are due to the fact that it was developed more as a response to the arrival of large numbers of undocumented migrants arriving by boat than as a system for the reception of asylum seekers *stricto sensu*.

The very real needs generated by such relatively large, but very mixed flows of people, clearly demanded some sort of immediate practical response from the authorities; inevitably, the real or perceived nature of the problem on the ground shaped the government's response to the issue.

Some of the weaknesses inherent in the system as a result are the following:

- an almost exclusive focus on the needs of irregular immigrants as opposed to asylum seekers *per se*, i.e. immigrants in detention or who spent some time in detention – most of whom arrive by boat;
- a resulting almost total lack of provision of material and other reception conditions for asylum seekers who arrive regularly, admittedly a rather small proportion of the asylum seeking population;
- blurring of the distinction between asylum seekers and irregular immigrants in many areas, which has led to a dilution of the protection that should be provided to asylum seekers, particularly in the area of socio-economic rights, and also, in some cases, more favourable treatment being granted to rejected asylum seekers/ irregular immigrants than to asylum seekers.

Another major drawback of the system is the continued use of prolonged detention in the case of asylum seekers who apply for asylum after they have been apprehended by the immigration authorities for breaches of immigration regulations.

Q.49. Mention any good practice in your Member State which could be promoted in other Member States

One good practice is the entitlement to access more than basic healthcare for asylum seekers (aside from practical problems of access).

Another is the acceptance that vulnerable people should not be detained (aside from practical problems of identification and release).

On a practical level, the introduction of a customer care service is also a good practice, as it makes it easier for asylum seekers to access information that would not otherwise be readily available.

Q.50. Please add here any other interesting element about reception conditions in your Member State which you did not had the occasion to mention in your previous answer.

QUESTIONNAIRE FOR THE NATIONAL REPORT ON THE IMPLEMENTATION OF THE DIRECTIVE :

RECEPTION CONDITIONS OF 27 JANUARY 2003

IN: THE NETHERLANDS

16/05/07
by

Karina Franssen, junior researcher at the Faculty of Law, Radboud University Nijmegen (k.franssen@jur.ru.nl)

Folke Larsson, junior researcher at the Faculty of Law, Radboud University Nijmegen (f.larsson@jur.ru.nl)

Lieneke Slingenberg, junior researcher at the Faculty of Law, Free University Amsterdam (c.slingenberg@rechten.vu.nl)

1. NORMS OF TRANSPOSITION

Q.1. Identify the main norm of transposition (indicate the title, date, number, date of entry into force and references of publication into the official journal) and indicate its legal nature (legislative, regulatory, administrative); indicate in your answer if this norm was only devoted to the directive or if it has been included in a more general text and indicate in that case by quoting precisely the numbers of the provisions adopted to transpose the directive.

Main norm of transposition
Regulation on the provisions for asylum seekers and other categories of aliens 2005 (Regeling verstrekkingen asielzoekers en andere categorieën vreemdelingen 2005)(Rva 2005), 26 January 2005, Nr. 5332253/05/DVB Directie Vreemdelingenbeleid, published in the Government Gazette of 3 februari 2005, no. 24, p. 17.

Legal nature
The Rva 2005 is a legally binding regulatory measure issued by the Minister for Alien Affairs and Integration. Regulatory measures are orders of a general nature from the central government and issued by a Minister. In contrast with the procedure regarding the coming about of acts, orders and decrees, the Minister will neither ask the Council of State for advice nor involve the Parliament in the procedure. Moreover, the regulatory measure will not be published in the official Bulletin of Acts, Orders and Decrees, but in the Government Gazette.

According to the explanatory memorandum to the Rva 2005, which forms a part of the Rva 2005, the Rva 2005 is not only issued because of the transposition of the Reception Conditions Directive. It holds a complete revision of the Rva 1997 which has expired with the coming into force of the Rva 2005. The Rva 2005 is also issued to carry out national policy reforms (return policy, policy regarding unaccompanied minors, etc.) and a clarification of the existing policy. Thus at the same time a few changes in the Rva are made in relation with the transposition of Directive 2001/55/EC on temporary protection for asylum seekers.

Transposing table (as laid down in the explanatory memorandum to the Rva 2005)

Reception Conditions Directive	***Rva 2005***
Article 2, under b	*Article 1, under c*
Article 2, under c	*Article 1, under d*
Article 2, under d	*Article 1, under f*
Article 2, under h	*Article 1, under e* *Article 9 par. 1* *Article 1, under h*
Article 2, under j	*Article 3 par. 2, under a*
Article 2, under l	*Article 2 par. 3 and 4*
Article 3 par. 1	*Article 10 under c juncto article 19, under e; article 13*
Article 5	*Article 3 par. 3, under d; article 11 par. 3*
Article 7 par. 4	*Article 9 par. 2*
Article 8	*Article 3 par. 1 and 2*
Article 9	*Article 9 par. 1*
Article 13 par. 1	*Articles 14 and 15*
Article 13 par. 1 and 2	*Article 2 par. 1*
Article 13 par. 1, 2 and 5	*Article 20*
Article 13 par. 3	*Article 15*
Article 13 par. 4	*Article 1, under h*
Article 13 par. 5	*Article 3 par. 3, under d; article 11 par. 3*
Article 14 par. 1	*Article 10 under c and d*
Article 14 par 2, under a	*Article 9 par. 6-8*
Article 14 par. 2, under b, 2nd alinea	*Article 11 par. 1*
Article 14 par. 2, under b and par. 7	*Article 4 par. 1*
Article 14 par. 4	*Article 9 par. 1, under e; article 16 par. 1*
Article 14 par. 8	*Article 4 par. 2, article 7 par. 1, under i and j; article 10, under c; article 11 par. 1; article 13 par.1; article 19, under e*
Article 15	*Article 7 par. 1, under k; article 10, under a and b; article 21*
Article 16 par. 1, under a	*Article 10, under c and d*
Article 16 par. 1, under b	*Article 7 par. 1, under b*
Article 16 par. 3	*Article 9 par. 4*
Article 16 par. 5	*Article 9 par. 4*
Article 17 par. 1	*Article 3 par. 2, under b; article 6; article 11 par. 3-5*
Article 18 par. 2	*Article 9 par. 4*
Article 19 par. 2	
Article 20	

Q.2. List by order of importance by using numbers (1, 2, 3) the others norms of transposition if there are more than one (indicate for each norm the title, date, number and references of publication into the official journal; include in your answer the administrative measures taken to ensure implementation of the directive and of the transposition norms like regulations, administrative circulars, special instructions,…)

*The Rva 2005 is the main, if not the sole, **formal** norm of transposition. Maybe some internal regulations of the Central Agency for the Reception of Asylum Seekers (Centraal Orgaan opvang asielzoekers)(COA), which is the main agency responsible for the reception of asylum seekers (see below), have been changed after the date of adoption of the directive as well, but these internal rules are unpublished.*

There are however some norms with regard of reception of asylum seekers adopted before the date of adoption of the directive (transposition ensured otherwise):

1. *Article 11 and article 45 in conjunction with article 62 of the Aliens Act 2000 (Vreemdelingenwet 2000[577]) with regard to the (end of the) right of asylum seekers to reception conditions;*
2. *Article 9 of the Aliens Act 2000 in conjunction with article 4.21 Aliens Decree 2000 (vreemdelingenbesluit 2000[578]) and article 3.3 Aliens Regulation 2000 (Voorschrift vreemdelingen 2000[579]) with regard to documentation of asylum seekers;*
3. *Article 6 and 59 of the Aliens Act 2000 with regard to (the grounds of) detention of asylum seekers;*
4. *The Central Agency for the Reception of Asylum Seekers Act (Wet centraal orgaan opvang asielzoekers[580]) with regard to the organisation, the financing and the competent agency for the reception of asylum seekers;*
5. *Article 8 (2) of the Aliens Employment Act (Wet arbeid vreemdelingen, Wav[581]) in conjunction with article 2A of the Implementing order aliens employment act (Besluit uitvoering wet arbeid vreemdelingen[582]) and paragraph 22 of the Implementing rules (Uitvoeringsregels wet arbeid vreemdelingen behorende bij het delegatie- en uitvoeringsbesluit wet arbeid vreemdelingen[583]) with regard to the access of asylum seekers to the labour market;*

[577] Act of 23 November 2000, published in the official Bulletin of Acts, Orders and Decrees of 2000, no. 495 (has been amended since).
[578] Order of 23 November 2000, published in the official Bulletin of Acts, Orders and Decrees of 2000, no. 497 (has been amended since).
[579] Regulatory measure of 18 December 2000, published in the Government Gazette of 2001, no. 10 (has been amended since).
[580] Act of 19 May 1994, published in the official Bulletin of Acts, Orders and Decrees of 1994, no. 422 (has been amended since).
[581] Act of 21 December 1994, published in the official Bulletin of Acts, Orders and Decrees of 1994, no. 959 (has been amended since).
[582] Order of 23 August 1995, published in the official Bulletin of Acts, Orders and Decrees of 1995, no. 406 (has been amended since).
[583] Regulatory measure of 23 August 1995, published in the Government Gazette of 1995, no. 168 (has been amended since).

6. *The Compulsory Education Law (Leerplichtwet[584]) with regard to the access of minor asylum seekers to the education system;*
7. *The General Administrative Law Act (Algemene wet bestuursrecht[585]) with regard to the requirement that decisions are taken individually, objectively and impartially and with regard to the right of appeal;*
8. *The Legal Aid Act (Wet op de rechtsbijstand[586]) with regard to the right of asylum seekers to state-funded legal aid.*
9. *Article 15 of the Passport Law (Paspoortwet[587]) in conjunction with the Amended policy rules regarding the provision of laissez passers on the basis of the Passport Law* (*Gerectificeerde beleidsregels verstrekking laissez passers op grond van de Paspoortwet[588]) with regard to travel documents for asylum seekers;*
10. *The Penitentiary Principles Act (Penitentiaire Beginselenwet[589]) and chapter 6 of the Management of Regional Police forces Decree (Besluit beheer regionale politiekorpsen[590]) with regard of the rights and duties of asylum seekers in detention centres and police cells (in case of detention on the basis of article 59 Aliens Act 2000);*
11. *The Border Accommodation Regime Decree (Reglement regime grenslogies[591]) and the house rules border accommodation (unpublished) with regard to the rights and duties of asylum seekers in border detention centres (in case of detention on the basis of article 6 Aliens Act 2000);*
12. *House rules application centre and house rules temporary emergency reception (unpublished) with regard to the rights and duties of asylum seekers in these centres;*
13. *Paragraph 23, part C of the Aliens Circular 2000 (Vreemdelingencirculaire 2000, Vc 2000[592]); the Regulation on personal contribution by asylum applicants with income or possessions (regeling eigen bijdrage asielzoekers met inkomen en vermogen, Reba[593]); the Rules on the Withholding of provisions (Reglement onthoudingen verstrekkingen) (unpublished) and COA Complaints Regulation for residents and other persons (klachtenregeling voor bewoners en derden[594]) contain a closer elaboration of (some articles of) the Rva 2005.*

[584] Act of 30 May 1968, published in the official Bulletin of Acts, Orders and Decrees of 1968, no. 303 (has been amended since).
[585] Act of 4 June 1992, published in the official Bulletin of Acts, Orders and Decrees of 1992, no. 315 (has been amended since).
[586] Act of 23 December 1993, published in the official Bulletin of Acts, Orders and Decrees of 1993, no. 775 (has been amended since).
[587] Statute law of 26 September 1991, published in the official Bulletin of Acts, Orders and Decrees of 1991, no. 498 (has been amended since).
[588] Regulatory measure of 29 October 2001, published in the Government Gazette of 2001, no. 213 (has been amended since).
[589] Act of 18 June 1998, published in the official Bulletin of Acts, Orders and Decrees of 1998, no. 430 (has been amended since).
[590] Order of 28 March 1994, published in the official Bulletin of Acts, Orders and Decrees of 1994, no. 224 (has been amended since).
[591] Order of 14 January 1993, published in the official Bulletin of Acts, Orders and Decrees of 1993, no. 45 (has been amended since).
[592] Regulatory measure of 2 March 2001, published in the Government Gazette of 2001, no. 64 (has been amended since).
[593] Regulatory measure of 31 August 1998, published in the Government Gazette of 1998, no. 166 (has been amended since).
[594] Regulatory measure of 12 December 2002, published in the Government Gazette of 2003, no. 20.

Q.3. Explain which level of government is competent to adopt the legal norms on reception conditions for asylum seekers (specify in particular in case of a federal or regional State, if it is the federal/central power or the components; in case, specify below when it is impossible for you to answer a question because it is about the competence of the components and it is impossible for you to gather reliable information about all of them)

The state secretary of justice (under the responsibility of the Minister of justice). From 22 July 2002 until 22 February 2007, the minister for Alien Affairs and Integration was the competent minister for the reception of asylum seekers. Since 22 February 2007, the portfolio for Alien Affairs and Integration no longer exists.

Q.4. Explain the legal technical choices done to transpose the directive (comment on the nature and level of the norms used to do the transposition: legislative, regulatory, administrative like instructions, etc). Add any other element about the technique of transposition of the directive which is interesting for the implementation of Community law.

Article 11(2)(b) of the Aliens Act mentions that asylum seekers who are lawfully resident in the Netherlands awaiting a final decision on their asylum application may claim facilities and benefits if these are granted by or pursuant to the Act on the Central Agency for the Reception of Asylum Seekers (Wet Centraal Orgaan opvang asielzoekers)(Wet COA). The Wet COA contains rules concerning the establishment of COA, an autonomous administrative body ('zelfstandig bestuursorgaan') entrusted with the material and immaterial reception of asylum seekers. It does not contain any provision with respect to the content of the material and immaterial reception of asylum seekers. It only holds rules about the organization of COA. Pursuant to article 12 of the Wet COA, the Minister for Alien Affairs and Integration is competent to take further regulatory measures regarding the provisions for asylum seekers. She has used this competence by formulating the Rva 2005. Also in the past detailed rules on reception of and provisions for asylum seekers were included in a regulatory measure, the Rva 1994 and the Rva 1997.

Also with regard to the access of asylum seekers to the labour market, the substantive rules are not laid down in the act (Aliens Employment Act), but in 'lower' legislation (administrative decree). On the basis of article 8, paragraph 2 Aliens Employment Act, rules can be laid down, by or pursuant to an administrative decree, concerning the access to the labour market of asylum seekers whose entrance into the Netherlands has not been refused. The administrative decree in which these rules are laid down is the Implementing order aliens employment act (Besluit uitvoering wet arbeid vreemdelingen). The implementing rules (Uitvoeringsregels wet arbeid vreemdelingen behorende bij het delegatie- en uitvoeringsbesluit wet arbeid vreemdelingen) contain a more detailed eleboration of the rules laid down in the administrative decree.

With regard to the reception of asylum seekers in emergency temporary reception and application centres, which forms the first stage of the asylum procedure, the rules with regard to the material and immaterial reception are only laid down in unpublished house rules.[595] *However, a large number of asylum seekers in the Netherlands is only entitled to reception conditions during this first stage of the procedure (see below).*

Q.5. Mention if there is a general tendency to just copy the provisions of the directive into national legislation without redrafting or adaptation them to national circumstances? If yes, give some of the worst examples and explain if there is a risk that those provisions remain unapplied or will create difficulties of implementation in the future.

In our opinion there has been no general tendency to just indiscriminately copy the provisions of the directive into national legislation without adaptation to national circumstances. There are however provisions in the Rva 2005 which have been literally taken over from the Directive (e.g. article 9, par. 6-9, of the Rva 2005 literally copies article 14(2)(b) and 7 of the Directive). Since these provisions contain rights for the asylum seeker (right of communicating with relatives, legal advisers and representatives of UNHCR) which were not laid down in the Rva 1997, from the point of view of the asylum seeker this is very desirable.

Q.6. Have all the texts necessary to ensure the effective implementation of the new rules of transposition been adopted, prepared or at least foreseen in the future (for example a regulation completing a new law and the necessary instructions telling the administration how to apply the new rules)?

Yes.

2. BIBLIOGRAPHY

Q.7. Has an in-depth preparatory study been made public about the changes at the occasion of the transposition? If yes, thanks for trying to provide us a copy *(please contact to answer this question adequately the body and person who was responsible for the preparation of the transposition of the directive in the public administration).*

No.

Q.8. Quote any recent scientific book or article published about the directive, the transposition rules or the question of reception conditions for asylum seekers in general (answer even if this literature is only available in your language and provide the complete title in your language (without translation) with all references; indicate author, title, in case name of periodical, year and place of publication).

[595] *For asylum seekers who are detained during this stage of the asylum procedure, rules with regard to their rights and duties are laid down in the Border Accommodation Regime Regulations (Reglement regime grenslogies).*

- Ariane den Uyl, 'Politieke overeenstemming over minimumnormen voor de opvang van asielzoekers' (Political agreement on minimum standards for the reception of asylum seekers), NAV 2002/9, p. 580-585
- Ariane den Uyl, 'Wet- en regelgeving: Opvangrichtlijn geïmplementeerd: nieuwe Rva', (Legislation: Reception Conditions Directive implemented: new Rva), Nieuwsbrief Asiel- en Vluchtelingenrecht (NAV) 2005/3, p. 132.
- H.T. Masmeyer, Opvang van asielzoekers (Reception of asylum seekers), Den Haag: Sdu Publishers 2005
- ECRE (November 2005): The EC Directive on the Reception of Asylum Seekers: Are asylum seekers in Europe receiving material support and access to employment in accordance with European legislation?
- T. Groenewegen, 'Kronieken: Opvang van asielzoekers' (Column: Reception of asylum seekers), NAV 2006/1, p. 17-21
- H.T. Masmeyer, 'Opvang van asielzoekers, deel I en II (reception of asylum seekers, parts I and II)', Journaal vreemdelingenrecht 2006/7
- T. Groenewegen, 'Kronieken: Opvang van asielzoekers' (Column: Reception of asylum seekers), NAV 2007/2, p. 106-109
- W. Lozowski and A. den Uijl,'Tekst en Commentaar Wet COA e.a.' (Text and Commentary on the Act on the Central Agency for the Reception of Asylum Seekers a.o.), Den Haag: Sdu Publishers 2006.
- F. Larsson, 'Commentaar Europees Migratierecht: de Opvangrichtlijn' (Commentary European Migration Law: the Reception Conditions Directive), Den Haag: SDU Publishers (loose-leaf book)(forthcoming)

Q.9. Quote any interesting <u>decision of jurisprudence</u> based on the implementation of the new rules of transposition of the directive (indicate references of publication if any)?

Important case law:

A recent judgment of 9 February 2007 (AWB 06/39427 and AWB 06/39426) of the district court of Haarlem concerned the case of an applicant who argued that the Directive was applicable to him, because he could be regarded as a stateless person who is found not be a refugee as defined in Article 3(4) of the Directive and that according to Article 11(2) of the Directive he is entitled to a residence permit for the purpose of employment. The defendant however stated that the Directive was not applicable to the applicant due to the fact that he could neither be regarded as a third-country national nor as a stateless person, because a declaration of the Slovak authorities of 13 June 2006 showed that the applicant was a Slovak citizen. The district court decided that it is clear from the wording of Article 3(1) of the Directive that the Directive is only applicable in case an asylum application has been filed. Because the applicant has not denied that he didn't ask for asylum, the Directive is not applicable to him. Moreover, Article 3(4) of the Directive indeed contains the possibility for Member States to apply the Directive in connection with procedures for deciding on applications for kinds of protection other than that emanating from the Geneva Convention for third-country nationals or stateless persons who are found not to be refugees, but in that case the Netherlands should have

declared the Directive applicable to other procedures which has not been shown.

In a judgement of 14 June 2006 (AWB 06/26452, not published), the District Court of Den Bosch decided that, since the Directive does not contain provisions about the way asylum applications should be submitted, member states are free to organise the submission of asylum applications according to their own preference. The practice in the Netherlands (which holds that asylum seekers who want to submit a second asylum application have to make an appointment for that purpose, and are only entitled to reception conditions after that appointment) does not violate Directive 2003/9/EC.

In a judgment of 4 May 2006 (200600347/1) the Council of State decided that according to article 2(c) juncto article 3(1) of Directive 2003/9/EC, the Directive did not apply to the appellants concerned because a final decision on their asylum requests had already been reached.

A judgment of 20 January 2006 (Jurisprudentie Vreemdelingenrecht (JV) 2006/142 m.nt. HBA) concerned a request for a preliminary injunction. The District Court of Haarlem held that the fact that the Minister for Alien Affairs and Integration did not provide reception conditions to an asylum seeker who filed a repeated asylum request according to article 4(2) of the Rva 2005, was not contrary to articles 16(1)(a), 16 (4) or 17 of the Reception Conditions Directive. Neither does article 16(5) of the Reception Conditions Directive compel the Minister to provide reception conditions until a final decision on the repeated asylum request has been reached.

In an earlier case the applicability of the Reception Conditions Directive was also invoked. A judgment of 27 January 2003 (LJN: AF3393) concerned the case of a family who, due to the closing of a reception centre at Ameland (one of the West Frisian Islands) where they were staying, had to be transferred to a reception centre on the mainland (Kollum). They objected to this relocation stating that the reception conditions in the reception centre in Kollum were in breach of the Reception Conditions Directive. The District Court of Leeuwarden however concluded that aside from the fact that the deadline for transposition of the Directive had not yet been reached, the statement was insufficiently motivated.

3. GENERAL INFORMATION ABOUT THE SYSTEM OF RECEPTION CONDITIONS

The purpose of the following two questions is to help the reader to understand easily and quickly the system of reception conditions in your Member State and also to avoid that you have to repeat general elements in other parts of the questionnaire. ***Please do not write more than one or maximum two pages and do not include large historical developments.***

Q.10. Describe in general the system of reception conditions in your Member State (in particular which are the main actors in charge of reception conditions?)

Reception of asylum seekers

The Central Agency for the Reception of Asylum Seekers (Centraal Orgaan opvang asielzoekers)(COA) is the main actor in charge of reception conditions for asylum seekers in the Netherlands. This governmental agency is an autonomous administrative body ('zelfstandig bestuursorgaan'), working under the (political) responsibility of the State Secretary for Justice. Its budget is provided by the Department of Justice.

COA's tasks include the reception of asylum seekers, providing basic assistance and information to asylum seekers, securing access to care for asylum seekers, the payment of the weekly allowances to asylum seekers, the acquirement, maintenance and closure of reception facilities and the maintenance of security in these facilities.
Traditionally, COA was responsible for the organization of the first health care for asylum seekers. This responsibility is, however, gradually transferred to a (fully) government-funded medical foundation. Since 2000, the regional Community Health Services ('GGD') are responsible for the provision of health care to asylum seekers. In order to carry out these tasks, foundations for Community Health Services for Asylum Applicants ('Medische Opvang van Asielzoekers')(MOA) have been created. These are funded by COA. However, COA will change the health care system for asylum seekers in future. For this reason, COA has terminated its present contract with the MOA as of 1 January 2009. The purpose of this change is to create a more efficient health care system; to create more clarity in the division of responsabilities; and to carry out the governmental opinion that health care for asylum seekers is regular health care.[596]

The Immigration and Naturalization Service (IND), the body that investigates whether or not an asylum seeker qualifies for an asylum residence permit, is also responsible for the reception of asylum seekers in application centres, in which asylum seekers stay during the first days of the asylum procedure (see below).

Apart from the fact that quite a few asylum seekers are placed in detention and the system hereunder will not be applicable to unaccompanied minors, the following main forms of reception of asylum seekers exist:

[596] *Kamerstukken II,* 2006/07, 29 689, 19 637 and 29 484, no. 130.

1. *Temporary Emergency Reception (TNV)*
2. *Application Centre (AC)*
3. *Regular reception in:*
    a. *Centre for orientation and integration*
    b. *Centre for return*
4. *Administrative registration and other arrangements.*

1. *The TNV is used to house asylum seekers who have not been admitted to the asylum procedure yet. The Dutch asylum procedure starts in the Application Centres. At the AC in Ter Apel it usually takes several weeks (2-3) until an asylum seeker is given the opportunity to submit his claim. During the waiting period asylum seekers stay in the TNV, situated near the Application Centre in ter Apel. Housing is in mobile homes. <u>During this stage of the procedure, the Rva 2005 is not applied. In fact there are no legal norms for the reception of asylum seekers during this stage.</u>*

2. *As explained above, in order to request asylum, an asylum seeker must submit an official application at an Application Centre (AC) where he will also be housed. For what period of time the asylum seeker will be housed in an AC depends on the review by the IND whether an asylum request can be dealt with quickly (in cases when extensive research is not needed) or not. In the first situation the asylum request will be dealt with within 48 'processing' hours (= 3-5 working days). This procedure is the so-called accelerated asylum determination procedure. The asylum seeker will stay in the AC until a final decision is made. <u>During this stage of the procedure the Rva 2005 is not applied.</u> Also during this stage there are no legal norms for the reception of asylum seekers. When it appears impossible to reach a decision within 48 hours, because more research is needed, the asylum seeker will be referred to one of the centres described below (under 3).*

3. *This is the main category of reception to which <u>the Rva 2005 is applicable.</u> In January 2005 a new reception model was implemented. This model distinguishes three phases of reception: orientation (before first decision), integration (after positive decision), return (after first negative decision). Accordingly, the phase of the asylum procedure determines in which type of centre the asylum seeker is staying. Therefore the standard facilities are divided in reception centres for orientation and integration and reception centres for return.*

Some of the centres are newly built facilities, others old buildings, like monasteries and schools, which are converted for reception purposes. Not only big buildings, also regular houses are used for reception.

Following protests about accommodation in tents for temporary emergency reception at the time of significant arrivals, COA developed minimum standards for privacy, hygiene and space to move. According to COA, the existing reception centres meet minimum quality standards. Due to the decrease in the number of asylum-seekers, COA in recent years has closed a number of reception centres and laid off many staff. There are concerns that COA will no longer be prepared for a large influx should there be a major refugee crisis in the future.

a. Centres for orientation and integration, orientation stage

These centres house asylum seekers who have not yet received a decision and those who received a positive decision.

b. Centres for return

After the first negative decision the asylum seeker is transferred to a centre for return. When an asylum seeker receives a definite refusal of his asylum claim, he automatically loses his right to reception facilities. Only in exceptional cases reception may be provided.

c. Centres for orientation and integration, integration stage

After the asylum seeker received an asylum permit, he is entitled to private housing in a municipality. However, this process may take several months. Nowadays it is on average six months, but for the last years it has been on average nine to eleven months.

4. In exceptional circumstances the asylum seeker may stay outside one of the available reception centres (administrative registration). This form of housing is allowed if lodging is available at a Dutch first degree family member, or a spouse or partner lawfully residing in appropriate housing. It may also be allowed if continued reception in a centre is harmful or inhumane, because of severe medical reasons. In that case a family member must be available to assist and take care of the asylum seeker outside the reception centre. In all of these cases the municipality must allow the housing of the asylum seeker. If this form of housing is allowed, the asylum seeker concerned will be registered in the nearest reception centre. This is where he may receive his weekly financial allowance (pocket money, allowance for clothing and allowance for food). By means of this registration he has been also insured against medical expenses and against the financial impact of third party liability.

Another form of the small-scale reception are the 'central reception houses' (COW) or the small-scale central reception units (KCO). These are ordinary houses rented by COA. Rva 2005 applies to asylum seekers who stay in these reception houses / units. However, as from 2005, there is no new influx of asylum seekers in these small-scale reception centres anymore.

Q.11. Q.11.A. Explain if you have <u>different types and levels of reception conditions following the different stages of the asylum procedure</u> (this implies that you have to give briefly the necessary explanations about the asylum procedure). Make if relevant for reception conditions a distinction between the following procedural stages: determination of the responsible Member State on the basis of the Dublin II regulation, special procedures at the border (including transit zones in airports), accelerated procedures, admissibility procedures, eligibility procedures and the different possibilities of appeals (suspensive or not) against a refusal of the asylum request. Indicate what the main differences

of reception conditions are between the different stages (if necessary by detailing between the different elements of reception conditions, in particular housing) and explain what the evolution of reception conditions is following the different stages of the procedure.

There are differences in treatment according to the stage of the asylum procedure. Before asylum seekers are officially admitted to the asylum procedure they stay at a TNV. Accomodation and reception conditions are very basic (bed, bath, bread). When asylum seekers are admitted to the asylum procedure and their asylum claim is being processed through the accelerated 48-hours asylum determination procedure (AC-procedure) they are also only entitled to basic facilities, like accomodation in AC's run by the IND and emergency health care. There are no legal norms with regard to the reception of asylum seekers during this stage.

Asylum seekers whose claims are not rejected within 48 hours under the accelerated procedure are referred to regular reception centres run by COA. The phase of the asylum procedures determines whether an asylum seeker has to stay in a centre for orientation and integration or in a reception centre for return.

a. Centres for orientation and integration, orientation stage

These centres house asylum seekers who have not yet received a decision and those who received a positive decision.

During the orientation stage all activities and messages focus on a temporary stay in the Netherlands. The following information and facilities will be available to the applicant:
- intake focused on the informing the asylum seeker on the daily routine, rules and regulations in the centre;
- interviews with the asylum seeker to develop a ' realistic' perspective of the future, meaning that the asylum seeker will be regularly confronted with the notion that most asylum applications are rejected;
- information sessions to transfer basic knowledge of Dutch language, necessary for temporary stay;
- general information aimed at direct environment of the centre;
- introduction to the Self Study Centre.
Recreational activities are available, only limited outside the centre.

b. Centres for return

After the first negative decision the asylum seeker is transferred to a centre for return. In this centre all facilities are aimed at 'voluntary' return to the country of origin. The push and pull factors of return are to be discussed with the asylum-seeker. Information is provided on the role of IOM, the situation in the country of origin, specific possibilities of return, consequences of illegal stay in the Netherlands. Another aim of this phase is the elimination of possible obstacles for return.
Further access to Dutch language courses is denied.

When an asylum seeker receives a definite refusal of his asylum claim, he automatically loses his right to reception facilities. Only in exceptional cases reception may be provided.

c. Centres for orientation and integration, integration stage

After the asylum seeker receives an asylum permit, he is entitled to private housing in a municipality. However, this process may take several months. Nowadays it is on average six months, but for the last years it has been on average nine to eleven months.

To make this period useful, COA is allowed to offer holders of an asylum status facilities to prepare themselves on the' integration exam'. Since 2007 aliens have to pass an exam to obtain a definite permit. This is also the case for holders of an asylum status who get for the first five years a revocable permit.The holders of an asylum permit have the possibility to learn Dutch and orientation on the Dutch society. Since January 2007, the possibility to prepare for the integration exam is based on article 9a Rva 2005. In the year before COA did a pilot project to set up this 'pre-integration programme' In the Rva 2005 it is stated that following the programme may not be the reason to delay moving to regalar housing. The programme is also on a voluntary base and free of charge for the asylum seekers with an asylum permit.

Q.11.B.Indicate precisely for which stage(s) of the asylum procedure the answers on reception conditions you give below are valid.

The Rva 2005, which is the main norm of transposition of the Reception Conditions Directive, is only applicable to asylum seekers who stay at reception centres for orientation and integration and reception centres for return, runned by COA. The Rva 2005 is not applicable during the first stage of the asylum procedure, when asylum seekers stay in temporary emergency reception and application centres. Moreover, the Rva 2005 is not applicable to asylum seekers who are placed in detention and to asylum seekers whose application has been rejected at an application centre. In 2005, 37% of the asylum applications were rejected at application centres. In 2006, 29% of the asylum applications were rejected at application centres.[597] *This means that the Rva 2005 is not applicable to a large group of asylum seekers present in the Netherlands.*

4. GENERAL RULES ON RECEPTION CONDITIONS

Q.12. Q.12.A. Are material reception conditions provided in kind, in money or in vouchers or in a combination of these elements (see article 13, §5 which is an optional provision)? Distinguish between the different elements (housing, food, clothes, health, transportation, pocket money,…). **If reception conditions are provided in money (in general or in some cases, for instance when no places are anymore available in accommodation centres), indicate the precise amount given to the asylum seekers. Indicate in your answer what is provided in general and if there are exceptional cases.** Specify in your answer if reception conditions are different from the general system of social aid for nationals or aliens and if yes, if and when (which stage of the

[597] Annex to *Kamerstukken II,* 2006/07, 19 637, nr. 1134, p. 32.

asylum procedure) can asylum seekers have access to the general system of social aid?

Asylum seekers do not have access to the general system of social aid in the Netherlands. The Reformed Social Assistance Act (Wet Werk en Bijstand) which was put into operation on 1 January 2004 is not applicable to them.

Housing:	*in kind (but only in reception centres except for 'administrative registration': see answer Q10);*
Health care:	*in kind (at the same level as for Dutch citizens with the exception of IVF-treatment, gender alteration surgery and only emergency dental care for adults (see Q27(B)).*
Clothing:	*money / vouchers: one-off allowance of € 36,30 and weekly allowance which can (partly) be used for the purchase of clothes (see below).*
Food:	*in kind and/or in money (see below), but almost none of the remaining reception centres provide all food in kind*

According to article 14 of the Rva 2005 an asylum seeker is entitled to the following financial allowances (to be used for food, clothing and other personal expenses):

▪ ***In case no meals are provided by COA:***

	Total allowance (per week)
Child (0-11)	*€ 33,75*
Child (12-17)	*€ 40,41*
Adults	*€ 52,61*
Unaccompanied Minors	*€ 49,33*
Single parent bonus	*€ 27,14*

▪ ***In case dinner is provided by COA:***

	Total allowance (per week)
Child (0-11)	*€ 12,37*
Child (12-17)	*€ 15,39*
Adults	*€ 30,87*
Unaccompanied Minors	*€ 27,43*
Single parent bonus	*€ 21,54*

▪ ***In case all meals are provided by COA:***

	Total allowance (per week)
Child (0-11)	*€ 3,75*
Child (12-17)	*€ 5,62*
Adults	*€ 16,38*
Unaccompanied Minors	*€ 13,11*
Single parent bonus	*€ 10,77*

Exceptional costs: *(since 2003 to a large extent) in money; according to article 17 of the Rva 2005 an asylum seeker can be refunded for extraordinary costs (e.g. traveling expenses, school costs, medical costs, (legal) dues and costs related to a countercheck).*

Asylum seekers qualify for the following compensation (outlines):*

- *one-off allowance for the purchase of cooking utensils: € 108,93*
- *one-off allowance for the purchase of plates and cutlery: € 10,73*
- *yearly school costs for children of school age (in August): € 34,03 (price level 2005)*
- *in case of the birth of a child: € 114,89*
- *in case of a funeral: € 2800*

** based on information provided by the Dutch Council for Refugees*

Q.12.B. **Can the reception conditions in kind, money or vouchers be considered as <u>sufficient</u> "to ensure a standard of living adequate for the health of applicants and capable of ensuring their subsistence" as requested by article 13, §2 of the directive (which is a mandatory provision but leaves a certain space to Member States)?** In order to help to assess the respect of this rule when reception conditions are provided in money, include if necessary in your answer points of comparison with the minimum amount of social aid guaranteed for nationals in your Member State.

There has been debate (in parliament) on the initiative of the Dutch Council for Refugees that the weekly financial allowance and in particular the food allowance are inadequeate with regard to health food and that this will be in breach of the criterion mentioned in article 13(2) of the Directive, namely that material reception conditions have to ensure a standard of living adequate for the health of applicants and capable of ensuring their existence (Handelingen der Tweede Kamer, 8 februari 2005, vergaderjaar 2004-2005, nr. 47, p. 3006-3014).

Also the Community Health Service (GGD) has expressed its concerns. In September 2004 the GGD declared in a letter to the Minister for Alien Affairs and Integration and to the parliament that the allowance for food was not sufficient.

In the Rva 2005 the financial allowance had been raised with € 1,- as compared with the amount granted in 1997. This allowance did not come up to the standards established for the costs of a sound nutritional diet per person by the Netherlands Nutrition Centre and NIBUD, the National Institute for Budget Information, financial an information and advising bureau on consumer matters.

According to NIBUD the food allowance should be (2004/2005):

Child (0-11)	*€ 23,80*
Child (12-17)	*€ 33,75*
Adults	*€ 34,02*
Unaccompanied Minors	*€ 35,07*

These amounts are based on the costs of a two-person household. NIBUD indicates that for single persons the costs are 4% higher, for three-person households they are 17% lower per person and for four-person households, 26% lower per person.

In the past, the Rva 2005 stated that asylum seekers were entitled to the following allowances:

▪ ***In case no meals are provided by COA:***

	Food allowance (per week)	*Pocket money* (per week)*	*Total allowance (per week)*
Child (0-11)	*€ 4,63*	*€ 3,63*	*€ 8,26*
Child (12-17)	*€ 6,90*	*€ 5,45*	*€ 12,35*
Adults	*€ 24,16*	*€ 15,88*	*€ 40,04*
Unaccompanied Minors	*€20,06*	*€ 12,71*	*€ 32,77*
Single parent bonus	*€ 15,88*	*€ 10,44*	*€ 26,32*

When these amounts are compared to those of the NIBUD, this clearly shows that according to the NIBUD, asylum seekers received too little money to provide for a responsible diet. In particular, the amount for children was much too low. Even if parents spent their entire child

supplement on food (which means no diapers, toothpaste, public transportation tickets or toys), it was still not enough.

During the debate in parliament a motion in order to raise the food allowance was adopted. This induced the Minister to re-examine the level of the allowances. In a letter of 22 November 2005 (5371296/05/DVB) the Minister indicated that she intended to raise the level of the food allowances to the NIBUD standard with regard to all age-groups (including unaccompanied minors) in phases within a period of 4 years, because there was not enough money to raise all the allowances at once.

However, after the adoption of another motion in parliament, the minister indicated that she would assess the level of the food allowances to the NIBUD standard as from 1 January 2007.

The new levels of the allowances are now officially laid down in a decision taken by the Minister of 23 January 2007 to alter the Rva 2005 (Stcrt. 30 January 2007, no. 21, p. 36). See answer Q12A.

Finally, it is important to note that the whole discussion about the allowances of asylum seekers has been focused on the food allowance. The part of the allowance which is for other expenses (pocket money: € 16,38 for adults) and the one-off allowance for cloting (€ 36,30) have only been raised marginally since 1997, although prices have gone up considerably.

As compared to the minimum amount of social aid guaranteed for nationals in the Netherlands, it might be relevant to compare the amount of financial assistance of asylum seekers to the amount of social aid of people staying in (mental) institutions or nursing homes. These people receive accommodation, food, heating etc. in kind and are therefore entitled to a lower amount of social assistance than people living outside these institutions.[598] According to the Dutch social assistance act (Wet Werk en Bijstand), people living in institutions are entitled to a monthly payment of €276,46[599], which is € 9,09 per day, whereas (adult) asylum seekers receive an allowance of € 2,34 per day (in case all meals are provided by COA).

[598] Explenatory memorandum to the Reformed Social Assistance Act (*Wet werk en bijstand*), *Kamerstukken II,* 2002/03, 28 870, no. 3, p. 51-52.
[599] Article 23 Reformed Social Assistance Act (*Wet werk en bijstand*). For people living in institutions, the amount has been raised with € 51 per month (article 23, paragraph 2). This is meant for the payment of health care insurance (*Kamerstukken II,* 2005/06, 30 314, nr. 11). Since asylum seekers do not have to pay for their health care insurance, this amount has not been taken into account.

5. PROCEDURAL ASPECTS

Q.13. **Q. 13. A. Does the national legislation specifically provide that a request for international protection is presumed to be under the Geneva Convention unless explicitly requested otherwise? (see article 2, b which is a mandatory provision)**

According to Article 29 of the Aliens Act 2000 people who apply for asylum in the Netherlands can be awarded a temporary asylum residence permit on one of the following six grounds:

a. on the basis of the 1951 Geneva Convention relating to the Status of Refugees;
b. on the basis of article 3 of the European Convention on Human Rights (ECHR);
c. for compelling humanitarian reasons relating to their individual circumstances, for instance in the light of traumatic experiences;
d. if return to their country of origin would place them at grave risk because of the general situation there, for instance because it is at war
e. if the applicant belongs, as husband, wife or minor child, to the family of the alien as referred to at (a) to (d), has the same nationality as the alien and has either entered the Netherlands at the same time as the alien or has entered it within three months of the date on which the alien referred to at (a) to (d) was granted a temporary asylum residence permit;
f. if the applicant is, as a partner or a child who is of age, dependent on the alien as referred to at (a) to (d) and can for that reason be considered as belonging to the family of this alien, has the same nationality as the alien and has either entered the Netherlands at the same time as the alien or has entered it within three months of the date on which the alien referred to at (a) to (d) was granted a temporary asylum residence permit.

Asylum can thus be granted to people who are refugees according to the definition in article 1A of the Geneva Convention, but also to people who request for international protection on another ground. Notwithstanding the different grounds, the Aliens Act leaves only one asylum permit to be obtained. All holders of this asylum permit get the same rights.

Q.13.B. Explain if the scope of application of reception conditions is extended to other asylum seekers than refugees in the sense of the Geneva Convention, in particular to persons asking for subsidiary protection or to other forms of protection like humanitarian statuses (see article 3, § 4 which is an optional provision)? If not, explain briefly which the differences between these special regimes and the directive are.

The scope of application of reception conditions is extended to people who apply for refugee status in the sense of the Refugee Convention, but also to people who apply for a residence permit on the other grounds mentioned in the previous question (b-f).

Q.13.C. Are there specific provisions in national law for reception conditions in case of diplomatic or territorial asylum requests submitted through a diplomatic or consular representation (see article 3, §2 which is an optional provision)?

No. There are however specific rules regarding so-called 'resettled refugees' (article 3(l) junco article 1(i) of Rva 2005). These refugees are refugees who, at the request of UNHCR, are invited by the Dutch government to resettle in the Netherlands (resettlement policy). These refugees will receive a revocable asylum residence permit shortly after arrival in the Netherlands and will be entitled to reception conditions in a reception centre offered by COA.

The resettlement programme of the Netherlands has been in operation since 1984 (in principle: 500 places a year or 1500 in 3 years). In 2004 resettlement missions were revived after a period in which individual file submissions were insufficient to meet the quota. In consultation with the UNHCR, the Netherlands will determine which area-specific population groups are to be invited. The Government intends to organise approximately four resettlement missions per year. In January 2005 a first group of 57 resettled refugees from Congo, Sudan and Burundi arrived at Amsterdam Schiphol Airport (Press Release Ministry of Justice, 24 January 2005).

During the course of December 2005 a small number of refugees who claimed asylum in Malta were accepted and resettled in the Netherlands (Press Release Maltese Ministry of Justice and Home Affairs of 21 March 2006). In total, a number of 452 refugees were selected for resettlement in 2005.

Q.14. Are reception conditions available as from the moment one asylum application is introduced? How is article 13, §1 which is mandatory legally understood? Do asylum seekers have to satisfy any other condition in order to get reception conditions?

Asylum seekers who want to apply for asylum in the Netherlands must report to an Application Centre (AC) of the IND. There are two application centres in the Netherlands: AC Ter Apel and AC Schiphol Airport (Amsterdam). Asylum seekers who are referred to AC Ter Apel in order to file their asylum application have to make an appointment to submit the official application. Usually this takes several weeks (2-3). During this waiting period asylum seekers stay at a Temporary Reception Centre (TNV). The TNV is run by COA, but the Rva 2005 is not applicable to people staying at the TNV. Asylum seekers staying in a TNV do not get a financial allowance. Housing is in caravans or mobile homes.

Asylum seekers arriving from a non-Schengen country at Schiphol Airport will be admitted to the asylum procedure immediately after the Border Police hands them over to the immigration authorities (which should take place within six hours after they reported their wish to submit an asylum claim). There is no waiting period for this group, as they will be held in the closed AC Schiphol directly after the registration at the IND.

Although the TNV and AC are thus in fact (temporary) material reception conditions, the main norm of transposition, the Rva 2005 is not applied to asylum seekers who stay in a TNV or AC. A stay in a TNV may last for several weeks. In the AC the formal asylum application is filed. The stay in the AC lasts for 48 'processing' hours (= 4-5 working days).

Q.15. **Explain when reception conditions <u>end</u>, for instance after refusal of the asylum request** (include in your answer the link with the right of appeal against a decision of refusal of the status, in particular the question of its suspensive effect)

The refusal of an asylum application has as an 'automatic' consequence that the asylum seeker is no longer lawfully resident in the Netherlands (article 45(1)(a) of the Aliens Act). He will be granted 4 weeks in order to leave the Netherlands voluntarily, failing which the alien may be expelled. In general also reception conditions end 4 weeks after refusal of the asylum application (article 45(1)(c) juncto article 62(1) of the Aliens Act 2000). When an asylum seeker receives a negative decision within 48 hours in the so-called accelerated asylum determination procedure (AC-procedure) his right to reception ends immediately.

The asylum seeker can appeal against the negative asylum decision to an administrative court. However, the rejected asylum seeker cannot lodge an appeal against the ending of the reception facilities itself (see answers Q21A and C and Q22A and C). When the negative decision has been taken within the accelerated 48 hours procedure this appeal has to be lodged within one week and does not have suspensive effect. When the negative decision has not been taken in the accelerated procedure (but in the ordinary procedure) the appeal has to be lodged within four weeks. This appeal has suspensive effect: the asylum seeker is allowed to remain in the Netherlands and has a right to reception facilities while awaiting the outcome of the appeal (article 5(1)(a) of the Rva 2005).

When the administrative court decides that an appeal is unfounded, the asylum seeker can lodge a further appeal to the Administrative Jurisdiction Division of the Council of State, which is the highest court in administrative matters. He must lodge this appeal again within four weeks (one week with regard to the 48 hours procedure). The appeal has no suspensive effect. This means that the asylum seeker may not officially await the Council of State's judgment in the Netherlands, and has no right to reception facilities. In that case, a preliminary injunction ('voorlopige voorziening') has to be requested. According to policy rules the asylum seeker is allowed to await the outcome of this first preliminary injunction. During this period he has a right to reception facilities (article 5(1)(b) of the Rva 2005).

Besides, article 7 and 8 of the Rva 2005 enumerate in total 14 situations in which the entitlement to reception conditions provided by COA ends. As mentioned above, first of all the entitlement to reception facilities ends when lawful residence ends. Reception facilities will also end when an asylum seeker has obtained a residence permit and, according to COA, a suitable living

accommodation is available. Further, reception can end by way of sanction (e.g. when an asylum seeker has failed to comply with his duty to report to the Aliens Police for two consecutive weeks or if after a transfer to a new reception facility, the applicant does not arrive there within 48 hours).

Q.16 Are there special rules or practices regarding reception conditions in case of successive applications for asylum introduced by the same person?

Yes. Before 1 January 2006, asylum seekers who filed a repeated asylum request in principle had no right to reception conditions (except in cases of humanitarian need), even though they were lawfully resident in the Netherlands (article 4 of the Rva 2005). Since 1 January 2006 this has been changed: asylum seekers who file a repeated asylum request which is not being rejected within the accelerated 48 hours asylum procedure have a right to reception conditions (decision by the Minister of 7 September 2006 to alter the Rva 2005, Stcrt. 12 September 2006, no. 177, p. 7).

Q.17[600]. Information of asylum seekers about their rights and obligations in terms of reception conditions, in particular about established benefits (see article 5 which is to a large extent a mandatory provision; do not confuse this question with the information to be provided to asylum seekers about the asylum procedure):

Q.17.A. Are they informed in writing or, when appropriate, orally?

According to article 2(3) and (4) of the Rva 2005 COA informs asylum *seekers in writing about their rights and obligations in terms of reception conditions and about legal assistance and reception facilities. According to information provided by COA, asylum seekers will also be informed orally (interpreters are used when needed). In addition, a local group of the Dutch Council for Refugees is present in each centre and will give additional information about the rights of asylum seekers. This is done orally and if necessary with an interpreter.*

Q.17.B. Is that information in general provided in a language understood by the asylum seeker? Specify the list of languages in which it is available.

Article 2(4) of the Rva 2005 explicitly states that the information will be provided in a language understood by the asylum seeker. According to information of COA this information is available in 13 languages: Dutch, Arabic, Chinese, English, Farsi, French, Croatian, Nepalese, Portuguese, Russian, Somalian, Spanish, Turkish. For 'resettled refugees' (answer Q13C) the information is also available in Amharic.

[600] To be answered with the help of UNHCR local office competent for your Member State or to be completed on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

Q.17.C. Is the deadline of maximum 15 days respected?

Article 2(3) of the Rva 2005 mentions a deadline of maximum 10 days. According to information given by COA asylum seekers will in practice be informed within 5 working days after arrival in a reception centre. Also the Dutch Council for Refugees has the same opinion. It indicates that COA starts with giving information as soon as the asylum seeker arrives in the centre which is 24 hours after the AC-procedure (which takes 48 'processing' hours or 4-5 working days).

Article 5 of the directive states that member states shall inform asylum seekers within a reasonable time not exceeding fifteen days after they have lodged their application for asylum. However, in the Netherlands, asylum seekers sometimes have to wait for several weeks before they can officially lodge their asylum application (see Q. 10).

Q.18[601]. Information of asylum seekers about the existence of organisations or groups promoting their interest and defending their rights (see article 5 which is to a large extend a mandatory provision):

Q.18.A. **Is there a list of organisations dressed by the authorities and if yes is it comprehensive? Is this in particular the case about the possibilities to get legal assistance and health care?**

When the asylum seeker stays in the TNV he is given the opportunity to speak with one of the staff members of the Dutch Council for Refugees. Upon arrival in the AC (where his asylum procedure starts) he will also be referred to the Dutch Council for Refugees which is present in the AC, because it is partly responsible for giving information about the asylum procedure and the available legal assistance. Legal assistance and medical care are also available in the AC. Staff members of the Dutch Council for Refugees and nurses will also walk around in the waiting area. In this way it is easy for the asylum seekers to get into contact with them. In the AC there are also leaflets of the IOM. The Dutch Council for Refugees refers people to IOM when they want to know more about the possibilities to repatriate.

At the moment an asylum seeker is referred to an orientation and integration centre run by COA, he will receive information in which a list of organisations with which COA cooperates is mentioned. Organisations that provide legal assistance and health care are included. Other organisations which are mentioned are: Immigration and Naturalization Service (IND), Aliens Police, PreNed Security (PreNed Beveiliging), Asylum Seekers' Legal Aid Foundation (Stichting Rechtsbijstand Asiel) (SRA), (VVN), Community Health Services for Asylum seekers (Medische Opvang Asielzoekers) (MOA), International Organization for Migration (IOM), Red Cross/Tracing, Nidos Foundation (guardianship institution for unaccompanied minors).

[601] To be answered with the help of UNHCR local office competent for your Member State or to be completed on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

Q.18.B Is this done in writing or, when appropriate, orally?

Asylum seekers staying in the TNV and AC will mostly be informed orally by the Dutch Council for Refugees, but there are also leaflets of the Dutch Council for Refugees in different languages.

According to article 2(3) and (4) of the Rva 2005, COA informs asylum seekers in writing about legal assistance and reception facilities. According to information provided by COA asylum seekers will also be informed orally (interpreters are used when needed).

Q.18.C. Is that information in general provided in a language understood by the asylum seeker? Specify if possible the list of languages in which it is available.

The leaflet of the Dutch Council for Refugees (see previous answer) is available in 33 languages.

Article 2(4) of the Rva 2005 literally states that the information will be provided in a language understood by the asylum seeker. With regard to the list of languages: see answer Q.17B.

Q.18.D. How many organisations are active in that field in your Member State?

According to COA there are nine organisations with which COA cooperates (see answer Q18(A)).

The Dutch Council for Refugees is present in each reception centre and almost all municipalities to assist asylum seekers and refugees. The Dutch Council for Refugees has 24 regional and 170 local departments with approximately 450 paid staff and 7,200 volunteers. Apart from the Dutch Council for Refugees the Red Cross has some (buddy-) projects for unaccompanied minors and many religious groups and churches support asylum seekers in individual cases. In many municipalities there are groups of people, often church related and sometimes officially organised (with even financial support of the municipality) who support (rejected) asylum seekers who are not allowed to stay in reception centres. There are approximately 100 of these groups which accommodate about 2,000 (rejected) asylum seekers. On estimation 70% of these people are still waiting for a final decision in an asylum procedure or a procedure on other grounds (like medical, family or humanitarian reasons).

Q.19. Documentation of asylum seekers (see article 6):

Q.19.A. What kind of document is delivered to the asylum seeker? Explain the legal value of this document (just a certification of the status as asylum seeker or also prove of identity?) (see §1 of article 6 which is a mandatory provision)

According to article 9 of the Aliens Act the Minister shall supply an alien who is lawfully resident in the Netherlands with a document or written

statement evidencing the lawful residence.

Asylum seekers who are lawfully resident in the Netherlands pending a decision on an asylum application or pending a decision on appeal, receive a so-called W-document. This document does not only evidence the lawful residence of the asylum seeker, but also mentions his identity and nationality (article 4.21 Aliens Decree in conjunction with article 3.3. Aliens Regulation). It is however not a valid travel document (C3/13.3 Aliens Circular).

Q.19.B. Are there situations or specific cases in which <u>another equivalent document or even no document</u> is issued? (in particular is there an exception for "procedures to decide on the right of the applicant legally to enter the territory" as made possible by §2 of article 6)?

See answer under C.

Q.19.C. <u>For how long</u> is this document in principle <u>valid</u> and is it necessary to renew it after a certain period?

Although Article 9 Aliens Act states that the asylum seeker who is lawfully residing in the Netherlands on the basis of Article 8 Aliens Act (e.g. pending a decision on the asylum application or pending a decision on appeal) is entitled to a document, in practice the W-document will be issued for only one year. When the validity ends it is in principle the IND which is responsible for issuing a new document if the asylum seeker is still entitled to such a document. According to information provided by the Dutch Council for Refugees this automatic extension unfortunately does not occur in a standard way which means that the asylum seeker himself has to apply for extension of the validity of his W-document. This can imply a waiting period of 6-8 weeks. During this waiting period it is possible for the asylum seeker to ask the IND for a declaration or a letter on the ground of article 9 Aliens Act evidencing his or her lawful residence.

Q.19.D. What is the <u>deadline</u> for the delivery of that document? Is the mandatory deadline of 3 days set by article 6, §1 respected[602]?

With respect to the W-document, paragraph C3/13.3 of the Aliens Circular does not explicitly mention a deadline. It only indicates that at the beginning of the reception by COA the chief of the local police has to provide the asylum seeker with a W-document. It is rather doubtful whether the mandatory deadline of three days which is not foreseen by law is respected in practice As mentioned above, it will only be produced at the moment the asylum request is not rejected within the AC-procedure and the asylum seeker is sent to a reception centre run by COA. However, in practice, it seems that as soon as an asylum

[602] To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

seeker reports to an AC because he or she wants to file an asylum application, the Aliens Police draws up a form that shows that the asylum seeker has reported. On this form the personal data of the asylum seeker (like name, place of birth, country of origin, nationality, sex, marital state and spoken language) are included as well as a passport photo. With this document an asylum seeker can identify himself during his stay at the TNV and in the AC.

With regard to the so-called 'resettled' refugees (see answer Q13C) the procedure is as follows: they have to formally ask for asylum at Schiphol airport in a short procedure, but do not receive a W-document. According to the Dutch Council for Refugees, they usually have to wait several weeks or longer for their identification document as holder of an asylum status.

Q.19.E. Is it possible for an asylum seeker to get a travel document for serious humanitarian reasons (see §5 of article 6 which is an optional provision)?

Yes. In case of serious humanitarian reasons the Minister of Foreign Affairs can issue a laissez-passer to an asylum seeker who has no passport and is lawfully resident in the Netherlands (article 15 (2) of the Passport Law juncto Amended policy rules regarding the provision of laissez passers on the ground of the Passport Law, Government Gazette, 2 November 2001, nr. 213, p. 6). In order for the Minister of Foreign Affairs to issue such a laissez passer a humanitarian exigency has to be demonstrated. Such a humanitarian exigency arises for example because of family circumstances in case of serious illness of the applicant, the spouse or close relatives (parents, children, brothers/sisters, grand parents) in a foreign country (not being the country of origin) or when the asylum seeker wants to attend a funeral of his or her spouse or of a close relative in a foreign country (not being his country of origin).

Q.19.F. Is there a central system of registration of asylum seekers and is it or not separate from the registration of aliens? If yes, describe it briefly (content) and indicate in particular if it is an electronic database.

In the so-called Basisvoorziening Vreemdelingen (BVV)(Basic Facility Aliens) personal data are registered of all aliens who are to be found in the different administrations of IND, COA, etc. The aliens registration system of the IND is called VAS (Vreemdelingen Administratie Systeem). The data in the VAS originate from the IND and are based on information from the interviews held with the asylum seekers. The VAS and the BVV are both electorinic databases. Thus, the data of asylum seekers are not registered separately from the data of other aliens.

Q.20. **Residence of asylum seekers[603]:**

Q.20.A. Is in principle an asylum seeker free to move on the entire territory of your Member State or only to a limited part of it and in case, which part? (see article 7, §1 which is a mandatory provision)

As mentioned earlier, asylum seekers will often first be sent to a TNV when they report at an AC in order to file an asylum application. The asylum seeker is however not legally obliged to stay at the TNV.

For some time there has been debate on whether the stay in an AC had to be considered as deprivation of liberty. The Appeal Court of the Hague ruled on 31 October 2002 that accommodation in an AC must be considered as deprivation of liberty (00/68 KG, NAV 2002/291). In reaction to this judgment the Minister for Alien Affairs and Integration decided that asylum seekers are allowed to leave the ACs when their availability is not necessary for the investigation into the allowability of the application (TBV 2002/52, 2 December 2002). At present this means that the asylum seeker has to remain at the AC during working hours from 7:30 am to 6:00 pm (paragraph C3/12.2.5 of the Aliens Circular).

An asylum seeker who arrives in the Netherlands through Schiphol Airport (Amsterdam) or one of the seaports and who has been refused entry (which is more or less standard if the asylum seeker does not arrive from a Schengen country) is required to stay in a space or place designated by a border control officer (article 6 of the Aliens Act). When he declares that he wants to file an asylum application he will be transferred to the AC Schiphol which is a closed location,secured against unauthorised departure (see Q32D).

When asylum seekers stay in an ordinary reception centre run by COA they can leave this centre and/or municipality where the centre is located as long as they notify the authorities and keep reporting at the agreed times.

Q.20.B. About the place of residence (see §2 of article 7): explain to which extend the person is free to choose her residence and if this depends of the stage of the asylum procedure (for instance before and after admissibility); if there are constraints limiting the choice, explain which ones and their reasons (for instance processing of application, attribution of reception conditions,…).

According to article 11 of the Rva 2005 COA is entrusted with the placement of asylum seekers and is also entitled to relocate asylum seekers. Asylum seekers are thus not free to choose the centre in which they want to stay. Moreover asylum seekers have to report to the designated reception facility within 24 hours of being notified in the application centre or within 48 hours after a transfer from one reception centre to another reception centre, or else they run the risk

[603] Nota bene: the case of detention is covered by other questions and should be ignored under this question.

that they will be no longer entitled to reception conditions from COA (article 2(5) and 7(1)(i) of the Rva 2005).

Asylum seekers do however have the possibility not to be housed by COA (see under C). In that case there is no formal rule saying that the asylum seeker is not allowed to choose his place of residence.

Q.20.C. About the <u>place of reception (meaning where the asylum seeker has to stay to benefit from reception conditions) (see § 4 of article 7)</u>: explain which are the general rules about the determination of this place (to which extend are the decisions determining the place taken individually and do they take into account the personal situation of the asylum seeker?) and to which extend the person is free to choose it and if it depends of the stage of the asylum procedure (for instance before and after admissibility); if there are constraints limiting the choice, explain which ones and their reasons (for instance attribution of reception conditions, processing of the application,…).

As mentioned above, it is COA who decides in what reception facility an asylum seeker is placed. This decision is an administrative decision. The normal legal remedies under the General Administrative Law Act may be lodged against such a decision. Depending on the stage of the asylum procedure COA places asylum seekers in an orientation & integration centre or in a return centre.

COA also has the possibility of placing specific categories of asylum seekers (asylum seekers with behavioural and/or serious (mental) health problems, unaccompanied minors) in special reception facilities run by third parties (article 7(2) of the Wet COA). For example, there are special reception facilties for asylum seekers who due to their unacceptable behaviour cannot stay in a normal reception facility (so-called AMOG centres) and for asylum seekers who have mental problems ('Abri' and 'de Vonk').

Asylum seekers have the choice not to be housed by COA (article 13 of the Rva 2005). In that case, however, they will not receive the provisions and benefits mentioned in article 9 of the Rva 2005 (with the exception of necessary medical care, legal assistance during the asylum procedure and education of minors).

There is one exception to the above mentioned: the administrative registration (see answer Q10 under 4). In special, exceptional circumstances asylum seekers are allowed to live outside COA reception centres and still receive the provisions and benefits of the Rva 2005. Asylum seekers are allowed to live with relatives in the first degree or with their spouse/partner who is/are lawfully resident in the Netherlands and has/have suitable housing. These asylum seekers are registered by a COA reception centre in the neighbourhood and subject to the rules mentioned in the Rva 2005. This means that they have to

participate in the phase-specific program in the centre they are administered by, but are also allowed to use its facilities.

Q.20.D. If all asylum seekers are not placed in accommodation centres because of capacity limits, explain <u>how the persons are distributed between accommodation centres and other accommodation facilities</u> (which authority takes the decisions, on the basis of which elements, can that decision be appealed by the asylum seeker,…)[604]

Because of the considerable decline of the number of asylum applications in the last five years (with an upsurge at the beginning of 2006), COA has been reducing the number of accommodation centres drastically.

In the past however it was often difficult for COA to organize sufficient reception capacity. Distribution of asylum seekers at times of a sudden mass influx (e.g. during the Kosovo crisis in 1999) occurred on an ad-hoc basis. It even proved necessary to use emergency accommodation in the form of tent camps.

Q.20.E. How can an asylum seeker ask to <u>leave temporarily</u> the place of residence or of reception or an assigned area? How is the individual AND impartial character of the decision ensured? (see §5 of article 7 which is a mandatory provision)

An asylum seeker is allowed to temporarily leave the place of a COA reception centre as long as he or she fulfils the duty to report weekly to the Aliens Police (article 54(1)(f) of the Aliens Act juncto article 4.51 of the Aliens Decree) and COA (article 19(e) of the Rva 2005). However, article 13 (1) of the Rva 2005 states that asylum seekers are not entitled to reception conditions if they do not make use of the offered accommodation. Under special circumstances, COA can deviate from this rule according to article 13 (2) of the Rva 2005. Furthermore, under certain circumstances it is possible for the asylum seeker to obtain a release from this duty to report. In some occasions he may be allowed to report only monthly to the Aliens Police (e.g. in situations in which an asylum seeker, by virtue of the Aliens Act or on the ground of a judicial decision, may await the outcome of an appeal against a negative decision). Children under 12 years of age do not have a duty to report (paragraph C3/13.2 of the Aliens Circular). Reception conditions under the Rva 2005 will however end when an asylum seeker fails to comply with his duty to report to the Aliens Police for two consecutive weeks (article 7(1)(j) of the Rva 2005). When an asylum seeker fails to comply with his duty to report to COA, reception conditions cannot end on this ground, but it is possible for COA to end the reception conditions (for a period of time) by virtue of a sanction (see answer Q21).

[604] To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

Q.21. **Q.21.A. Do rules on <u>reduction or withdrawal of reception conditions</u> exist in internal legislation and if yes in which cases (mention in particular if there are cases not foreseen by article 16, § 1 and 2 which are optional provisions)? Distinguish in your answer between cases of reduction and withdrawal and explain which conditions can be reduced.**

Yes. According to article 10 of Rva 2005 reception conditions can be reduced or withdrawn if an asylum seeker:

- *does not give proper information which is necessary in order to realize reception, like name, date of birth, nationality, country of origin, family composition, properties, date of asylum application;*
- *does not contribute to reception facilities if he or she has income from work or capital;*
- *does not comply with the house rules;*
- *does not follow instructions of COA personnel;*
- *refuses to do cleaning tasks in or around his or her living area;*
- *does not give entrance to his living area to COA personnel when it is likely that the asylum seeker does not comply with the house rules or when this is deemed necessary because of the management of the reception facility;*
- *does not comply with the duty to report at COA (once a week);*
- *causes trouble to other asylum seekers or COA personnel;*
- *refuses to participate in programmes aimed at informing, stimulating and alerting the asylum seeker with regard to his or her return. <u>This last ground is not mentioned in the Directive as a possible ground for reduction or withdrawal of reception conditions.</u>*

Details are laid down in COA's Rules on the Withholding of Provisions 2005 (Reglement Onthoudingen en Verstrekkingen 2005)(ROV 2005). See answer under Q21 (C) and Q25(D).

Reception facilities are ended if the asylum application has been definitively rejected (see answers Q15, Q21A and C and Q22A and C).

Q.21.B Has article 16, §2 dealing with refusal of reception conditions for <u>unreasonably late applications</u> for asylum been transposed by your Member State (or was this case already applicable before transposition)? Are there cases in practice[605]?

No.

Q.21.C Are the decisions of reduction or withdrawal taken individually, objectively AND impartially (for instance through and independent arbitrator) (see article 16, §4 which is a mandatory provision)?

COA has the competence to take decisions on the withdrawal or reduction of reception facilities. As mentioned above, in a separate,

[605] To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

internal regulation (ROV) COA laid down in what cases and under what circumstances sanctions are allowed. Decisions on the reduction or withdrawal of reception conditions are individual administrative decisions in the sense of article 1:3 (2) of the General Administrative Law Act. As a consequence all the (procedural) provisions of this Act are applicable. This implicates a.o. that the administrative decision must be based on proper reasons and must fulfil the duty of care and the weighing of interests. According to information provided by the Dutch Council for Refugees it occurs that in practice decisions of COA personnel often lack proper motivation. In that case the asylum seeker can appeal against the decision by lodging an objection with COA. When the objection is held to be legally unfounded, the asylum seeker can lodge an appeal to an administrative court. The District Court will then decide whether or not COA's decision was correct. If the court agrees with the rejection of the objection, the asylum seeker can lodge a further appeal to the Council of State, the highest court in administrative matters.

The decision to end the reception facilities if the asylum application has been definitively rejected is an element of the asylum decision. Some individual interests of the asylum seeker not to end the facilities are not being judged in that legal framework (see answers Q15, Q21A and C and Q22 A and C).

Q.21.D Is statement 14/03 adopted by the Council at the same moment as the directive respected (see the documentation pack you received at our meeting in Brussels in April)?

Statement 14/03
Member states must in all cases concerning article 16(2) and (3) of the Directive:

1. comply with international obligations on human dignity (in particular article 3 ECHR)

Comment:
The Netherlands is a party to the ECHR (and other relevant human rights treaties), the result being that they are legally obliged to respect international obligations on human dignity when deciding on reduction or withdrawal of reception conditions.

2. take account of the situation of the person concerned (in particular the specific situation of vulnerable persons provided for in article 17)

Comment:
According to the explanatory memorandum to the ROV,COA will have to verify whether the behaviour of the asylum seeker justifies the reduction or withdrawal of the reception facilities. The severity of the sanction has to be in proportion with the nature and seriousness of the behaviour. It has to be ascertained that no less severe sanction will serve the same goal.The interests of the asylum seeker have to be

balanced with regard to the decision whether a sanction (and what sanction) will be imposed.

3. ensure that as a minimum access to emergency healthcare is guaranteed under all circumstances.

Comment:
Yes. Access to emergency health care is ensured for all aliens regardingless whether they are legally or illegally resident in the Netherlands.

With regard to emergency health care, illegal migrants do not have an enforceable right to health care, but doctors, general practitioners, pharmacists and specialists have, on the basis of the criminal law and their disciplinary rules and professional ethics, a duty to extend health care to everybody in urgent situations.

There are two provisions to ensure that the costs for health care for illegal migrants do not completely fall on the shoulders of the individual providers. The first provision is for hospitals. According to arrangements with health insurance companies, hospitals have a special budget for unpaid bills. Unpaid bills by illegal migrants can be written off of this budget. The second provision is the so-called Linkage Fund (Koppelingsfonds) for primary health care, like GP's, midwives and pharmacies. This Fund does not pay the bills of the illegal migrants, but compensates the doctors for a loss of earnings. There are several conditions that have to be fulfilled to get an application accepted by the Fund. The health care provider should prove that the person is actually illegal, that the costs for the health care cannot be claimed in any other way, that the provided care was urgent[606], and that the financial burden on the provider was excessive. Because of these conditions and because it is the individual caregiver who decides whether the care is urgent, access to primary health care can in practise be difficult. Access to hospitals can even be more problematic in practice for illegal migrants since in hospitals the medical-ethical and financial considerations are not united in one person. Some doctors report that it becomes more and more complicated for illegal migrants to get access to hospitals. Often they are sent away without having their complaints examined by a doctor (Medisch Contact, 19 May 2006, nr. 20, p. 843).

Q.21.E Are there already administrative appeal decisions or judgements on cases of reduction, withdrawal or refusal which have been taken, and if yes, what has been the outcome[607]?

[606] Care is in any case urgent: in case – or for prevention - of life threatening situations, or in case – or for prevention - of situations of permanent loss of essential functions; in case there is a danger for a third party, e.g. certain contagious diseases (in particular TB) and for psychological disturbances and consequent aggressive behaviour; in case of pregnancy care; and in case of preventive health care for children.
[607] To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

With regard to the Rva 1997 there were a lot of administrative appeal decisions or judgments on cases of reduction, withdrawal or refusal of reception conditions, but with regard to the Rva 2005 there are only a few judgments at present. See answer Q 9 for one of the most important judgments: in a judgment of 20 January 2006 (Awb 05/57129 and 57971) the District Court of Haarlem held that the fact that the Minister for Alien Affairs and Integration did not provide reception conditions to an asylum seeker who filed a repeated asylum request according to article 4(2) of the Rva 2005 was not contrary to articles 16(1)(a), 16 (4) and 17 of the Reception Conditions Directive. Neither does article 16(5) of the Reception Conditions Directive compel the Minister to provide reception conditions until a final decision on the repeated asylum request has been reached nor do new policy rules regarding the filing of a repeated asylum request as laid down in WBV 2006/1 (answer Q16).

Q.22. **Q.22.A.** **<u>Appeal</u> against a negative decision relating to the granting of benefits or based on article 7 (see article 21 which is a mandatory provision): indicate against which decision an appeal can be introduced, describe the system of appeal in general and include in particular in your answer the deadline for appealing, if the appeal has or not a suspensive effect, if there are different steps (for instance first an administrative appeal and in particular if the guarantee of an appeal before a judicial body in the last instance is respected)?**

In principle, every asylum seeker who files a (first) asylum application in the Netherlands has a right to reception facilities until a negative decision is taken. According to the Aliens Act a negative decision on an asylum application has several 'automatic' effects. One of these 'de jure' effects is the <u>automatic</u> end of all reception facilities after 28 days. This means that COA does not have to take a separate decision to end reception conditions. Against the negative decision on the asylum application the asylum seeker can lodge an appeal to the administrative court. This appeal has to be lodged within 4 weeks after the negative decision. This appeal has suspensive effect: the asylum seeker is allowed to remain in the country and has a right to reception facilities while awaiting the outcome of the appeal. When the administrative court decides that the appeal is unfounded, the asylum seeker can lodge a further appeal to the Administrative Justice Division of the Council of State which is the highest court in administrative matters. He has to lodge this appeal again within 4 weeks. The appeal has no suspensive effect. This means that the asylum seeker may not await the Council of State's judgment in the Netherlands and has no right to reception facilities. In that case a preliminary injunction ('voorlopige voorziening') has to be requested. In accordance with policy rules, an asylum seeker is allowed to await the outcome of this preliminary provision.

The system mentioned above is different if a negative decision is reached within the so-called accelerated determination procedure (AC-procedure). In this procedure a decision is reached within 48 'processing' hours. During

these 48 hours (spread over several working days) the asylum seeker resides in the AC. During this period the Rva 2005 is not applicable to him. The asylum seeker can lodge an appeal against the negative decision to the administrative court within one week, but this appeal has no suspensive effect. He has to ask for a preliminary injunction. According to policy rules of the Minister the asylum seeker is allowed to await the outcome of this procedure, but he is not allowed to stay in the AC. He has to find accommodation himself. Against the judgment of the district court the asylum seeker can lodge an appeal to the Council of State, but also in this case the appeal has no suspensive effect.

As mentioned above, a rejected asylum seeker can lodge an appeal against the negative asylum decision. However, the rejected asylum seeker cannot lodge an appeal against the ending of the reception facilities itself, for the following reasons. Dutch law indicates that if the negative decision on the asylum application is definitive, the legal consequence that the facilities end, exists ex jure. In addition, the Council of State (ABRS, 24 July 2002, JV 2002/311) judged that the Aliens Act prescribes that this consequence cannot be judged independently from the (negative) decision on the asylum request. Reasons lodged by the asylum seeker to avoid the ending of the reception facilities, which reasons do not relate directly to the legal grounds on which the residence permit was asked, are not being judged in an asylum procedure. As a consequence a major part of e.g. serious medical and psychological problems are (according to the jurisprudence of the Council of State) not assessed in the asylum procedure. They are therefore not to be considered legal reasons for which reception facilities of an asylum seeker should not be ended (ABRS 28 March 2007, JV 2007/187 annotated by Larsson). Though the reception is not ended by a separate individual decision, it is possible to file a separate application for reception after the negative decision on an asylum application. In a judgment of 23 February 2005 the Council of State stated that a decision on such an application is an administrative decision against which an appeal can be lodged (NAV 2005/80 and JV 2005,155). Furthermore, the Council of State (ABRS 28 March 2007, JV 2007/187 annotated by Larsson) stated that COA, deciding on such a separate application, should grant reception facilities to the rejected asylum seeker, if very special reasons occur. The Council of State did not mention any possible very special reasons so far.

COA itself is in charge of taking decisions relating to the reduction or withdrawal of benefits and decisions relating to the place of residence or transfer to another place of residence of asylum seekers. Such decisions are individual administrative decisions in the sense of article 1:3 (2) of the General Administrative Law Act. As a consequence all the (procedural) remedies of this Act are applicable. In that case the asylum seeker can appeal against the decision by lodging an objection with COA. When the objection is held to be legally unfounded, the asylum seeker can lodge an appeal to the administrative court. The District Court will then decide whether or not COA's decision was correct. If the District Court agrees with the rejection of the objection, the asylum seeker can lodge a further appeal to the Council of State. These appeals do not have suspensive effect.

Regarding appeal against a negative decision based on article 7 of the Directive (restriction of freedom to move and detention): see answer Q33H.

Q.22.B. Explain which are the possibilities for asylum seekers to benefit from <u>legal assistance</u> when they introduce such an appeal (see article 21, §2 which is a mandatory provision but leaves space to Member States)?

During the entire asylum procedure an asylum seeker has the right to be legally assisted or represented by a legal representative (e.g. lawyer)(article 2:1 of the general Administrative Law Act). The administrative authority may require a legal representative to produce a written authorisation.

Pursuant to the Act on Legal Aid and the Aliens Circular, in the Netherlands all asylum seekers have a right to state-funded legal assistance at all stages of the asylum procedure (first-instance decision stage, first and second judicial appeals stage). The coordination of this legal assistance in asylum matters is to a large extent consigned to the Asylum Seekers' Legal Aid Foundation (SRA). This Legal Aid Foundation assigns independent lawyers and lawyers employed by the Foundation specialised in asylum and refugee law to asylum seekers.

When a lawyer refuses to proceed with an asylum seeker's case because of lack of merit (e.g. when the lawyer refuses to lodge an appeal against a negative decision taken in the AC), he has to inform the asylum seeker about his right to contact a second lawyer for a second opinion on the merits of the case. If the second lawyer also rejects the case, this usually means that no legal aid is available through the Legal Aid Act. In that case asylum seekers can seek the services of a private lawyer independently.

Due to the reduction of the number of asylum claims however, this system will be abolished in the near future. Asylum seekers will only be assisted by privately practising lawyers again.

Further, it should be noticed that because of the very strict time limits in the accelerated 48 hours procedure it is often very difficult for legal advisers to provide effective legal assistance. Another complication is that during the accelerated procedure lawyers appointed by the Legal Aid Foundation operate on a rota-basis, so the asylum seeker may be in contact with more than one or two lawyers during the few days or weeks (including appeal and further appeal) the procedure lasts.

Q.22.C. Are there already administrative appeal decisions or judgements which have been taken and if yes, which are the main important ones[608]?

See answer Q9 and Q21E: A judgment of 20 January 2006 (Jurisprudentie Vreemdelingenrecht (JV) 2006/142 m.nt. HBA) concerned a request for a preliminary injunction. The District Court of Haarlem held that the fact that the Minister for Alien Affairs and Integration did not provide reception conditions to an asylum seeker who filed a repeated asylum request according to article 4(2) of the Rva 2005 was not contrary to articles 16(1)(a), 16 (4) and 17 of the Reception Conditions Directive. Neither does article 16(5) of the Reception Conditions Directive compel the Minister to provide reception conditions until a final decision on the repeated asylum request has been reached.

Q.22.D. Is a mechanism of <u>complain for asylum seekers about quality of receptions conditions</u> in general (even if they are not personally concerned) organised? If yes, before which authority? Is it linked to the system of guidance, control and monitoring of reception conditions (see below question n° 39)?

Yes, in 2003 COA adopted a COA Complaints Regulation for residents and other persons (Klachtenregeling voor bewoners en derden). This Complaints Regulation is published in the Government Gazette of 29 January 2003, nr. 20, p. 25. According to this Complaints Regulation, every asylum seeker has the right to lodge a complaint with COA about a co-resident or about (a member of staff of) COA. COA uses the following information sheet which gives the asylum seeker more information about the complaints procedure, how to lodge a complaint, and how COA will deal with the complaint:

You have a complaint

A complaint is an expression of dissatisfaction with the behaviour or conduct of a co-resident, a COA member of staff, or about COA in general.

Lodging a complaint

If you have a complaint, COA will ask you to talk with the other(s) first. If you cannot come to an understanding with the other, you can lodge a written complaint with COA.

If you submit a written complaint, you must sign the complaint and give at least the following information:

Your name and address, or the name of the person who authorised you;
The issue you are complaining about, and the date of the event;
A description of the complaint.

You can send your written complaint to the reception centre where the undesirable behaviour took place. COA has a special complaints form for lodging your complaint. This form can be obtained from the Info desk.

Dealing with your complaint

After lodging a written complaint, COA will confirm receipt of your complaint in writing. Your complaint will be dealt with by a COA executive that has not been

[608] To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

involved in the case. The person(s) about whom you have lodged the complaint will receive a copy of the complaint and any related documents.

Hearing the persons involved

COA will give you and the person about whom you complained the opportunity to react verbally to the complaint. COA will make a report of this reaction. This so-called hearing of those involved will not take place if the complaint is obviously unfounded, or when you do not want to make use of the right to be heard.

Handling your complaint

COA will handle your complaint within six weeks after receipt. COA can extend the handling of your complaint with four weeks at the most. You and the person about whom you complained will be informed about the deferment in writing. COA will notify you in writing and well reasoned about the result of the investigation into the complaint and any possible conclusions COA attached to it. If COA does not consider a complaint, the complainant will be informed in writing as soon as possible but not later than four weeks after receipt of the complaint. After COA dealt with your complaint and you are not satisfied, you may seek the help of an arbitrator, the National Ombudsman.

Also the Community Health Services for Asylum Seekers (MOA) employs a complaints regulation with regard to their medical service which is available for asylum seekers in different languages.

6. RIGHTS AND OBLIGATIONS OF ASYLUM SEEKERS

Q.23. **Family unity of asylum seekers: define how a family is defined in relation with article 2, (d) which is a mandatory provision and explain how housing is provided to a family (see articles 8 which is a mandatory provision but leaves space to member States and 14, §2, (a) which is a mandatory provision).**

Article 1(f) of the Rva 2005 defines the family as follows:

1) *spouses or unmarried partners together;*
2) *spouses or unmarried partners and their (step)child under 18 years of age they are responsible for;*
3) *the single parent and his or her (step)child under 18 years of age.*

Ad 3) A single parent is the single person who has the full care for one or more (step)children they are responsible for and who has no joint household with another person, unless this concerns a relative in the first or second degree (article 1(9) of the Rva 2005).

According to article 11 (1) of the Rva 2005 COA decides on the housing facility of an asylum seeker. It has the authority to relocate an asylum seeker from one housing facility to another. But in using this authority COA has to maintain, as far as possible and with the asylum seeker's agreement, the family unity and takes the protection of family life as a starting point (article 11(3) of the Rva 2005). Provided that this will be in the interest of the child, COA will also take care of the fact that the minor child of an asylum seeker or the asylum seeker who is a minor will be accommodated with his or her parent or with an adult family member (article 11(4) of the Rva 2005). Finally, COA will, as far as possible, lodge minor siblings together (article 11(5) of the Rva 2005).

In the explanatory memorandum to the Rva 2005 the Minister mentions that subsections 3, 4 and 5 of article 11 of the Rva 2005 (as mentioned above) are only a formalization of what in practice is already common. What is noteworthy is that in the opinion of the Minister the maintaining of the family unity with regard to housing does not preclude the possible separated expulsion or eviction of asylum seekers after reception condition end, since according to standing jurisprudence neither article 8 of the European Convention on Human Rights nor the Convention on the Rights of the Child hinders reception conditions coming to an end at different moments for different members of a family (see explanatory memorandum to the Rva 2005).

Asylum seekers who arrive in the Netherlands while their familiy members are staying in orientation or return centres, are not reunited with their family members immediately. They have to stay in emergency temporary reception and application centres first, and during that time, they do not fall under the scope of the Rva 2005.

Q.24. **Q.24.A. How is <u>housing</u> of asylum seekers organised: describe the system in general and indicate in particular what is the most frequently system used (see article 14, §1 which is a mandatory provision but leaves space for Member States; distinguish between accommodation centres, private houses and apartments, hotels places or other premises).**

The housing of asylum seekers is organized in a centralised way. COA is the main responsible agency for the housing of asylum seekers. The following main forms of housing reception facilities (no private housing) of asylum seekers exist (see answer Q10):

a. Temporary emergency reception (TNV)
b. Application Centre (AC)
c. Regular reception in:
  a. Centre for orientation and integration
  b. Centre for return
d. Administrative registration and other arrangements

Ad a) TNV is run by COA. Housing is in caravans / mobile homes. The TNV in Ter Apel consists of 80 caravans, an office building and a shed. The caravans house about 400 asylum seekers. In the office building, office space is made available for the Community Health Services for Asylum Seekers (Medische Opvang Asielzoekers)(MOA), Dutch Council for Refugees (2 employees and 20 volunteers) and COA (about 16 employees). The shed accomodates a dining room and a depot (for second-hand clothing, furniture, etc.). Due to budgetary reasons, there is neither a recreation area nor a day-care centre for children. <u>The Rva 2005 is not applied to the stay in a TNV.</u>

Ad b) ACs are run by the IND. The AC in Ter Apel is a half-open centre to that extent that asylum seekers are allowed to leave the AC when their availability is not necessary for the investigation into the allowability

of the application (between 6pm and 7:30 am).The AC in Schiphol however is a so-called closed centre in which detention measures on the basis of article 6 of the Aliens Act (see answer Q32D) are implemented. According to the Minister forAlien Affairs and Integration accomodation in an AC is sober, but humane. Facilities are very basic. During the day, asylum seekers stay in common waiting areas with plastic chairs and one or two televisions. A small and confined outside area is available. During the night, the asylum seekers stay in dormitories with bunkbeds. Men and women are seperated during the night. If capacity allows it, families are allowed to stay in a separate room together. The sleeping facilities are not open during the day. The Rva 2005 is not applied to the stay in an AC.

Ad c) If the asylum application has not been denied within the accelerated 48 hours procedure and/or the asylum seekers hasn't been placed in detention, this is the main category of housing. The phase of the asylum procedure determines in which type of centre the asylum seeker is staying. Therefore the standard facilities are divided in reception centres for orientation and integration (before first decision and after positive decision) and reception centres for return (after first negative decision). The Rva 2005 is applicable.

Some of the centres are newly built facilities, others old buildings, like monasteries and schools, which are converted for reception purposes. Not only big buildings, also regular houses are used for reception.

Housing facilities include facilities to sleep, to cook, to do laundry, to shower, etc. Although reception centres are set up in different accomodations, COA however laid down prescribed dimensions for the different housing facilties in a so-called Program of Demands (Programma van Eisen)(PvE) which is of a highly technical nature and contains technical minimum standards for the construction or renovation of reception centres. For example bedrooms will be for a maximum of four individuals, measuring at least 5m²; for each eight inhabitants there will be at least one toilet and 3,25m² of bathroom space (including a washer and dryer) and for each eight inhabitants there has to be 5,72m² of kitchen space. According to the Minister for Alien Affairs and Integration, these standards meet the minimum standards for the reception of asylum seekers as laid down in the Directive (TK 2004-2005, 19 637, nr. 913, 30 March 2005).

Ad d) In case of administrative registration, the asylum seeker concerned will be registered in the nearest reception centre. This is where he may receive his weekly financial contribution (pocket money, allowance for clothing and allowance for food). By means of this registration he has also been insured against medical expenses and against the financial impact of third party liability. Another form of the small-scale reception are the 'central reception houses' (COW) or the small-scale central reception units

(KCO). These are ordinary houses rented by COA. The Rva 2005 applies to asylum seekers who stay in these reception houses / units. However, as from 2005, there is no new influx of asylum seekers in these small-scale reception centres anymore

Q.24.B. What is the total number of available places for asylum seekers?[609] Distinguish in your answer between accommodation centres, private houses and apartments, hotels or other premises.

According to information provided by COA, at 1 May 2006 the technical capacity was 30,764 places. A number of 23,260 asylum seekers were actually present on 1 April 2007.

Q.24.C. Is this number of places for asylum seekers sufficient in general or frequently insufficient?[610]

At the moment the number of places appear to be sufficient. In fact, due to the decrease in the number of asylum seekers in the last couple of years, COA has closed a number of reception facilities and laid off many staff. At the beginning of 2006 however, there was a (temporary) upsurge with regard to the entry of asylum seekers into the Netherlands. According to a random, non-public and small scale investigation by the Ministry of Justice, these asylum seekers were to a large extent single male Iraqi refugees who had left Germany because of a mass issue of refugee revocation notices and the lifting of a temporary protection policy for asylum seekers coming from Central Iraq. Even the reopening of the AC in Zevenaar was under serious consideration of the IND (AC Zevenaar was closed in 2003 due to the decrease in the number of asylum seekers) at that time. Since then, however, it has been quiet.

Q.24.D. Are there special measures foreseen in urgent cases of a high number of news arrivals of asylum seekers (outside the case of application of the directive on temporary protection)?

It is rather unclear whether there are such special measures. The Rva 2005 states that in urgent cases, the minister can grant COA the power to exclude certain categories of asylum seekers from reception conditions (article 4(1) Rva 2005). This power has been used in the past for certain categories of asylum seekers who could not be housed in reception centres due to a large influx of asylum seekers. These asylum seekers were however entitled to reception conditions similar to those of the Rva 2005 (except for accommodation) and were granted an extra financial allowance for the costs of accommodation outside reception centres. This was called: 'selfcare arrangement' (zelfzorgarrangement).

[609] To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.
[610] To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

This selfcare arrangement does no longer exist. It is therefore unclear what will happen in the future in case of large influx of asylum seekers.

Q.25. Accommodation centres **(important note: all the following questions are about open and not closed centres where asylum seekers are detained which are covered by another question)**

Q.25.A Are there different categories of accommodation centres, for instance depending of the stage of the procedure (admissibility and eligibility)?

Yes. As mentioned above, the following main categories of public accommodation centres exist:

1. Temporary emergency reception (TNV)
2. Application Centre (AC)
3. Regular reception in:
a. Centres for orientation and integration
b. Centres for return
4. Administrative registration and other arrangements

See for more details answer Q10. There are no formal private centres in the Netherlands.

Q.25.B. Is there a legal time limit for accommodation in a centre after which the asylum seekers have access to private houses or apartments or is this limit linked to a stage of the asylum procedure?

Except for the stay in the AC which may only last for 48 'processing' hours (spread over 4-5 working days), there are no legal time limits. With regard to the stay in the TNV: a decision of the district court in Groningen of 7 August 2002 (Awb 02/57266) made clear that the stay in a TNV should be as short as possible. A period of three months was not deemed as short as possible. According to the Dutch Council for Refugees, in AC Ter Apel it usually takes several weeks (2-3) until an asylum seeker is given the opportunity to submit his claim in an AC. At the beginning of 2006, due to a sudden influx of young single Iraqi men who, according to the Ministry of Justice, had left Germany because of a mass issue of refugee revocation notices and the lifting of a temporary protection policy for asylum seekers coming from Central Iraq, the waiting period amounted to almost 8 weeks. Because this led to capacity problems in the TNV Ter Apel, a number of temporary TNVs - more or less in the vicinity of Ter Apel - were opened (Zuid-Laren, Appelscha, Musselkanaal, Zwolle, Arnhem and Bellingwolde). At present (March 2007), besides the TNV in Ter Apel, only the temporary TNV in Bellingwolde is still in use.

The length of the stay in the ordinary reception centres depends on the duration of the asylum procedure. Pursuant to article 42(1) of the Aliens Act a decision must be reached within six months after application, but there are possibilities to postpone the decision for six months (in case expert advice is needed) or for up to one year (e.g. during a period when it is unclear how the

situation in a country will develop). In practice it can however take years before a decision on an asylum application is being taken. Accomodation ends 28 days after a final negative decision. When the outcome of the asylum procedure is positive, accomodation in a centre ends as soon as adequate housing in a community is available. This usually takes an average of six months.

Q.25.C Is there a general regulation about the internal functioning of those centres and the rights and duties of the asylum seekers? If yes, is this general regulation applicable to public and private centres? If not, are the centres supposed to adopt an internal regulation and does a central authority have or not a kind of control about its content?

With respect to the internal functioning of the TNV and the AC, COA and the IND respectively employ so-called (unpublished) house rules.
According to the house rules applicable to asylum seekers staying in a TNV, asylum seekers are not allowed to eat or to drink inside the caravans. They are obliged to enjoy their meals in the dining room only.

Regarding the internal functioning of the centres for orientation and integration and centres for return, COA also employs (unpublished) house rules. These house rules are identical for all COA reception centres and have to be signed by the asylum seeker. They contain a number of general obligations as mentioned in article 19 of the Rva 2005 and a number of more detailed rules (obligation for asylum seekers to participate in the obligatory elements of the orientation and return programmes, rules on behaviour and rules concerning the use of the living areas). Besides these house rules, asylum seekers have to sign another document with rights and duties when arriving at a reception centre. These documents are available in 13 languages: Dutch, Arabic, Chinese, English, Farsi, French, Croatian, Nepalese, Portuguese, Russian, Somalian, Spanish, and Turkish.

Q.25.D Do the regulations foresee the possibility of sanctions against asylum seekers in case of breach of the rules? (see article 16, §3) If yes, which sanctions for which rules? Which is the competent authority to decide? Are the decisions taken individually, objectively and in particular *impartially* (for instance through an independent arbitrator) as requested by §4 of article 21 which is mandatory provision*?* Which are the possibilities of appealing against those decisions if the system is different from the general one under question n°23? Are there already administrative appeal decisions or judgements which have been taken and if yes, which are the main important ones? [611]

According to the house rules applicable to asylum seekers staying in a TNV, the only possible sanction is to remove an asylum seeker from the area. But this will only happen in very extraordinary circumstances (e.g. in case of repeated extreme nuisance). An asylum seeker who stays in a TNV cannot be cut back on his benefits, because he does not get a

[611] To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

financial allowance during this stage.

House rule 15 (regarding the internal functioning of the centres for orientation and integration and the centres for return) reiterates article 10 of the Rva 2005 and says that in case of breach of the household rules a (punitive) measure or sanction pursuant to the ROV 2005 (Rules on the Withholding of Provisions 2005) can be imposed. There are 11 sanctions ranging from a one-off deduction of benefits (with a maximum up to € 15,89 for adults and € 5,45 for children from 12-17 years of age) in case of a very light form of nuisance to a permanent end of all provisions and services provided by COA (including housing) in case of very extreme extraordinary nuisance. In case of permanent ending of all provisions, also the health insurance will be ended. In all other cases (ending of all provisions for a certain period of time) the asylum seeker will remain covered for medical expenses pursuant to the health insurance for asylum seekers.

In 2005, the minister has given an overview of the imposed sanctions on the basis of the ROV in 2003 and 2004[612]*:*

Sanction	2003	Objection well-founded	Objection unfounded	2004	Objection well-founded	Objection unfounded
1	**2523**	**6**	**12**	**1534**	**7**	**6**
2	**486**		**5**	**322**		
3	**197**		**3**	**102**		
4	**180**	**1**	**1**	**141**	**1**	
5	**16**				**13**	
6	**214**	**2**	**7**	**131**		**5**
7	**85**	**1**		**50**	**1**	**1**
8	**15**			**6**	**1**	**1**
9	**1**		**1**			
10	**3**		**1**	**1**	**1**	
11	**1**					
totaal	3721	10	30	2300	11	13

On the basis of the Rva 2005 and the ROV 2005 the competent authority is COA itself. Because the punitive sanction or measure constitutes an infringement of the interests of the asylum seeker and interferes with his or her private life, the ROV 2005 requires COA to deal with this authority in a very careful and reserved manner. Furthermore the decision to impose a (punitive) sanction or measure has to fulfil the conditions of proportionality and subsidiarity. Every (punitive) sanction or measure will be imposed by virtue of an individual administrative decision in the sense of article 1:3 (2) of the General Administrative Law Act. See also a judgment of 28 December 2005 by the Council of State (described below). As a consequence all the (procedural) provisions of this Act are applicable. This implicates a.o. that the administrative decision must be based on proper reasons and must fulfil the duty of care and the weighing

[612] *Kamerstukken II,* 2004/05, 19 637, nr. 913, p. 6.

of interests. In general the asylum seeker shall also be given the opportunity to state his or her views before an administrative decision is reached. Furthermore, the asylum seeker can appeal against the decision by lodging an objection with COA. When the objection is held to be legally unfounded, the asylum seeker can lodge an appeal to an administrative court. The District Court will then decide whether or not COA's decision was correct. If the District Court agrees with the rejection of the objection, the asylum seeker can lodge a further appeal to the Council of State.

In a recent judgment of 28 December 2005 (200507133/1) the Council of State also held that a decision pursuant to the ROV 2005 is an appealable decision in the sense of article 3a of the Wet COA.

Q.25.E Are asylum seekers involved in the management of these centres? If yes, how (advisory board, appointment or election of representatives)? (see article 14, §6 which is an option provision)

According to COA this is not the case.

Q.25.F Do specific rules exist on work of asylum seekers inside the accommodation centres different from the general ones about employment (see below)? If yes, which ones? Can working inside accommodation centres be considered as a (mandatory) contribution of the asylum seekers to the management of the centres, is it or not paid and considered as implying access to the labour market and subject to the same rules?

Yes. Article 18 of the Rva 2005 provides that an asylum seeker may participate in work activities in and around the reception facility, indicated by COA for the performance of which a remuneration can be given. These work activities have to be distinguished from 'regular' work and cannot be considered as implying access to the labour market and are not subject to the same rules. According to COA, working on the premises must be seen as a contribution to the well-being of the asylum seeker and the liveability inside the reception centre.

According to the explanatory memorandum to the Rva 2005, one has to think of work activities for which strength or creative or skilful knowledge is required, like sawing down a tree, hanging a painting on the wall or shortening the curtains.

The remuneration can be provided in money (up to a maximum of € 12,50 per week), in vouchers or in kind (present). COA also has the possibility of not paying out the remuneration to the asylum seeker concerned, but to reserve the money for the benefit of all the inhabitants of the reception centre (e.g. purchase of a satellite dish, additional playthings for the recreation rooms or a joint trip).

With regard to the remuneration, COA employs the following directions:

Activity	Wages per hour
Organisation or the assisting with structural recreational and sports events	€ 0,50
Activities in the kitchen	€ 1
Activities in the canteen	€ 0,50
Bicycle workshop	€ 0,50
Supply room	€ 0,50
Assisting in the computer room	€ 0,50
Cleaning activities	€ 1
Assisting in the (children's) playroom	€ 0,50
Translating service	€ 0,50
Garbage collection on location	€ 1
Laundries	€ 0,50
Maintenance of the premises, the buildings and the green space	€ 0,50

COA has to take care of the fact that the supply of work activities will be proportionally divided among the asylum seekers who want to perform such work activities.

Q.26. **Q.26.A. How can asylum seekers <u>communicate</u> with legal advisers, representatives of UNHCR and NGOs? (see article 14, §2, (b) which is a mandatory provision).**

During their stay in the TNV asylum seekers can communicate with the Dutch Council for Refugees. The Dutch Council for Refugees uses this waiting period in order to prepare the asylum seeker for the asylum procedure in the AC. The employee stresses the fact that documents and being able to prove your identity are very important. Also individual counselling will be offered to the asylum seeker during which the asylum account will be gone through. In this way a digital dossier (also country-specific information can be added) will be composed which will be handed over to an employee of the Dutch Council for Refugees and to a lawyer of the Asylum Seekers' Legal Aid Foundation (SRA) in the AC. Every week the IOM has office hours in the TNV.

In the AC the asylum seeker will also be referred to the Dutch Council for Refugees which is present in the AC, because it is partly responsible for giving information about the asylum procedure and the available legal assistance. Legal assistance and medical care are also available in the AC. Members of the Dutch Council for Refugees and nurses will also walk around in the waiting area of the AC. In this way it it easy for the asylum seekers to get into contact with them. Members of the Dutch Council for Refugees also attend interviews in order to monitor proceedings. This member may make comments at the end of the interview and write a short report for the lawyer representing the asylum seeker. However, limited capacity means that the Dutch Council for Refugees

cannot always send a member to attend the asylum interviews. In practice, especially particularly vulnerable asylum seekers are accompanied to asylum interviews. In the AC there are also leaflets of the IOM. The Dutch Council for Refugees will also refer asylum seekers to the IOM if they want to know more about the possibilities to repatriate.

Regarding asylum seekers who stay in an orientation and integration centre or in a return centre, article 9(6) of the Rva 2005 is applicable. Pursuant to this article an asylum seeker has the opportunity to communicate with family members, legal advisers, representatives of UNHCR and NGO's which are recognized by the Minister. The Dutch Council for Refugees is present in these centres as well.

Q.26.B. What are the rules about <u>access</u> of legal advisers, UNHCR and NGOs regarding access to accommodation centres and other housing facilities (see article 14, §7 which is a mandatory provision)

Article 9 (7) of Rva 2005 provides that legal advisers, representatives of UNHCR and NGOs which are authorized by the Office of UNHCR and recognized by the Minister have access to accommodation centres in order to assist the asylum seekers. They too are under a duty to live up to the house rules of the reception centre (information COA).

According to information provided by the Dutch Council for Refugees, it has an office or a room in the TNV, in the AC's and in each reception centre where they can have office hours. COA and the Dutch Council for Refugees have an official agreement about this (since 2004, but before that time it was also practice). A problem might occur when an asylum seeker is not allowed to stay in the reception centre anymore (in case the application is rejected or as a sanction) and he still wants to make use of the services of the Dutch Council for Refugees. In that case they have to meet outside the centre or COA must give explicit permission for a one-time visit. Other visitors to the reception centre have to report to the COA reception desk to ask permission to enter the centre. Visitors are usually allowed between 8 am and 10 pm.

Q.26.C. Can the access of legal advisers, UNHCR and NGOs be <u>limited</u> for security reasons or any other reason (see article 14, §7, last sentence)?

Yes. According to article 9(8) of Rva 2005 the access of legal advisers, UNHCR and NGOs can be limited for reasons connected with the security of the accommodation centre or the security of the asylum seeker.

Up to now there have been two known cases where the access of members of an organisation has been denied. In one case it was a volunteer of a religious organisation and in another a local politician. In both cases COA found them to obstruct the work of the employees of COA. The first case led to Parliamentary questions (TK 2004-2005, Handelingen p. 1891, nr. 892).

However in the opinion of the Minister it was the right of COA considering the circumstances to forbid entrance. The local politician tried to annul the ban by a court order, but the courts verdict was that COA was right to do so (District Court of Groningen, 17 March 2006, KGZA 06-52).

Q.27. **Q.27.A. Is a <u>medical screening</u> organised by the receiving State, is it mandatory or voluntary? Does it include HIV tests? (see article 9 which is an optional provision)**

Pursuant to article 9(2) of the Rva 2005, which is a mandatory provision, a first examination of the asylum seeker's state of health will take place as soon as possible after an asylum seeker has been admitted to a reception centre. Upon arrival in the TNV every asylum seeker has to undergo a screening for long tuberculosis. See article 54 (1)(d) Aliens Act in conjunction with article 4.46 Aliens Decree which obliges (mandatory!) the alien who intends to stay in the Netherlands for more than 3 months to cooperate in an examination for tuberculosis. Paragraph B1/4.5 Aliens Circular contains the procedure for this examination. Asylum seekers are not tested for HIV. According to information provided by the IND this is usually performed within a week after arrival. Moreover, each asylum seeker is offered an individual consult with a nurse of the Community Health Services for Asylum Applicants (MOA) within six weeks after arrival. During this consult the nurse will make use of a questionnaire (in 19 different languages) in order to assess the asylum seeker's medical history and present state of health. Children (up to 19), pregnant women, people with handicaps or ailments and the elderly are always referred to a follow up medical examination, others only when they wish to.

Q.27.B. Do the legal provisions on reception conditions ensure that asylum seekers receive <u>at least emergency care and essential treatment of illness</u> as requested by article 15 §1 which is a mandatory provision? Do they have a further access to health care?

Asylum seekers who stay in a reception centre for orientation and integration or in a reception centre for return are covered for medical expenses pursuant to a health insurance which is taken out by COA (article 9(1)(e) of the Rva 2005). Coverage is comparable to that of what until 1 January 2006 was called Ziekenfondswet (Social Health Insurance Act) and the Algemene Wet Bijzondere Ziektekosten (AWBZ) with the exception of IVF-treatment and gender alteration surgery. Access to health care is thus ensured at a nearly equal level provided to nationals covered by these insurances (see also TK 2001-2002, 19 637, nr. 654).).

Since 2005 some basic medical costs have been taken out the basic insurance for nationals and transferred to relatively cheap extra insurances. However for asylum seekers it is because of the law not possible to enter into these insurances. For this reason there is only very limited dental care for adult asylum seekers (only emergency care) and f.i. no insurance for the costs of contraceptives.

Asylum seekers whose asylum claim has been rejected within the accelerated 48 hours procedure and are allowed to await the outcome of the preliminary injunction they have requested are only allowed to emergency care and essential treatment of illness. These asylum seekers do not have an enforceable right to health care, but doctors, general practitioners, pharmacists and specialists have, on the basis of the criminal law and their disciplinary rules and professional ethics, a duty to extend health care to everybody in urgent situations.

There are two provisions to ensure that the costs for health care for illegal migrants do not completely fall on the shoulders of the individual providers. The first provision is for hospitals. They have according to arrangements with health insurance companies a special budget for unpaid bills. Also unpaid bills by illegal migrants can be written of of this budget. The second provision is the so-called Linkage Fund (Koppelingsfonds) for primary health care, like GP's, midwives and pharmacies. This Fund does not pay the bills of the illegal migrants, but compensates the doctors for a loss of earnings. There are several conditions that have to be fulfilled to get an application accepted by the Fund. The health care provider should prove that the person is actually illegal, that the costs for the health care cannot be claimed in any other way, that the provided care was urgent[613], and that the financial burden on the provider was excessive. Because of these conditions and because it is the individual caregiver who decides whether the care is urgent, access to primary health care can in practise be difficult. Access to hospitals can even be more problematic in practice for illegal migrants since in hospitals the medical-ethical and financial considerations are not united in one person. Some doctors report that it becomes more and more complicated for illegal migrants to get access to hospitals. Often they are sent away without having their complaints examined by a doctor (Medisch Contact, 19 May 2006, nr. 20, p. 843).

Q.27.C. What is the practice regarding access of asylum seekers to health care and how is it organised? In particular, what is the situation in accommodation centres (are doctors coming to the centres or do asylum seekers go to doctors outside)?[614]

Every working day, nurses from the Community Health Service for Asylum Seekers (MOA) are present in each reception centre. MOA is responsible for preventive care and coordinates referral to curative care and mental health care. At most centres a general practitioner has surgery hours. Sometimes a general practitioner has office hours for asylum seekers in his own surgery. During the evenings, nights and in the weekends there is a special medical telephone line, connected to the Amsterdam Community Health Service.

[613] Care is in any case urgent: in case – or for prevention - of life threatening situations, or in case – or for prevention - of situations of permanent loss of essential functions; in case there is a danger for a third party, e.g. certain contagious diseases (in particular TB) and for psychological disturbances and consequent aggressive behaviour; in case of pregnancy care; and in case of preventive health care for children.

[614] To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

A report (2004) by the independent Medical Aspects of Alien Policy Commission, installed by the Minister of Health, Welfare and Sport and the State Secretary of Justice, showed that the selection of the access to a doctor by a nurse is subject of repeated complaints by asylum seekers. In February 2006, the Dutch Public Health Inspection issued a report on the quality of the medical care of asylum seekers. It concluded that, in general, the quality of the health care for asylum seekers offered at reception centres was adequate. However, the exchange of information between the stakeholders was not deemed sufficient.

The MOA does not work at applications centres. The IND is responsible for the health care for asylum seekers in application centres. For that reason, they make agreements with different health care providers.

In 2005, the Dutch Public Health Inspection visited two application centres. It concluded that the health care for asylum seekers in application centres was insufficient.

Q.28. **Q.28.A. What is the <u>length of the period</u> determined by the concerned Member State during which asylum seekers have <u>no access</u> to the labour market? (see article 11 which is a mandatory provision)**

According to the Aliens Employment Act (Wet Arbeid Vreemdelingen) (WAV) and its implementing order (Uitvoeringsbesluit, article 2a) and implementing rules (Uitvoeringsregels, article 22) the period during which asylum seekers in the Netherlands are fully excluded from the labour market amounts to 6 months. After these six months an asylum seeker may work for a maximum of 12 weeks per year, if his employer gets a labour permit for this employment. This limited form of access (12 weeks per year) continues as long as the asylum request is pending which may be for many years.

Q.28.B. After that period, are asylum seekers or not obliged to obtain <u>a work permit</u>? In case is there a limit for the administration to deliver the permits and how quick are they delivered? What is their length?

An employer who contracts an asylum seeker will have to get a work permit at the Centrum voor Werk en Inkomen (CWI)(Centre for Work and Income). In order to get such a work permit the asylum seeker has to submit a Declaration issued by the Minister of Justice confirming that the asylum application has been filed more than 6 months ago and that provisions and benefits have been granted according to the Rva 2005, according to the ROA (Regeling Opvang Asielzoekers)(Regulation for the Reception of Asylum Applicants) which was the predecessor of the Rva 2005, or under the responsibility of the Nidos Foundation, which is a guardianship institution for unaccompanied minors. It will take about two weeks to get this declaration. According to the Aliens Employment Act, the application for a work permit has to be decided upon within five weeks (article 6(2)).

Q.28.C. After that period, what are the conditions for access of the asylum seekers to the labour market? (in particular, are there rules concerning the maximum allowed of working hours or days per week, month or year, limits in terms of type of work or of professions authorised?

After these six months an asylum seeker can work for a maximum of 12 weeks every 52 weeks. A report published by Regioplan (an independent commercial research company specialised in social-economic policy research) in March 2004, called Asielzoekers en werk (Asylum Seekers and Work), states that this limitation of 12 weeks per year in practice seriously impedes the possibilities of an asylum seeker to take up work.

Until June 2002 the work during those 12 weeks was restricted to short time seasonal work. Nowadays no more restriction exists as to the nature of the work, but the duration remains limited to 12 weeks. The work for which a work permit is issued must be carried out under market conform conditions.

The Aliens Employment Act is also applicable to voluntary labour done by asylum seekers. Special rules are laid down in the Decision of 21 June 1997 to amend the Royal Decree of 23 August 1995 with respect to voluntary labour done by asylum seekers a.o. (Stb 1997, 405) and in the Enactment of policy rules regarding the Aliens Employment Act (Stcrt.2002, 19, 28 January 2002). Important conditions: labour must be unpaid with no intention to make profit but serving interest of society.

Q.28.D. What are the rules in terms of priorities between asylum seekers on the one hand and nationals, EU or EEE citizens and legally third-country nationals on the other?

Normally an employer when applying for a work permit has to show that he has first actively sought suitable candidates in the Netherlands or in the EEA for at least five weeks. However this does not apply to work to be carried out by asylum seekers. The employer on the other hand has to comply with the current working conditions (e.g. market conform wages).

Q.28.E. Do asylum seekers have access to vocational training, does this or not depend of their right to access to the labour market, and in case at which conditions? (see article 12 which is optional regarding §1 and mandatory regarding § 2)

Asylum seekers have access to all forms of education with the exception of in-service education and modern apprenticeship, because asylum seekers do not have free access to the labour market (see above). This practical, on-the-job training period will be regarded as 'labour', the result being that the same restrictions apply.
Asylum seekers may do a work placement for a maximum of one year,

when they follow e.g. regular intermediate vocational education, but this work placement has to be part of the school curriculum. Moreover, a work permit has to be applied for.

Asylum seekers are not entitled to a study grant or a contribution in study costs by the government, but they may apply to be exempted from school fees or for support from the University Assistance Fund (UAF). The UAF is a private foundation (NGO) and has limited resources.

Q.28.F. Are the rules regarding access to the labour market adopted to transpose the directive more or less generous than the ones applicable previously?

The rules regarding access to the labour market have not changed because of the transposition of the Directive.

Q.29. Are reception conditions subject to the fact that asylum seekers do not have sufficient resources? Are asylum seekers requested to contribute to reception conditions when they have personal resources (for instance if they work) or to refund the authorities if it appears that they have resources? (see article 13 §§ 3 and 4 which are optional provisions)

Yes. The Rva 2005 is only applicable to asylum seekers who do not have enough financial means to provide for the necessary costs of livelihood themselves within the meaning of the Law on Social Assistance (Wet Werk en Bijstand) (article 2(1) Rva 2005).

Moreover, if an asylum seeker has sufficient financial resources, savings or revenues, a contribution for reception facilities will be asked for (article 20 of the Rva 2005).

An asylum seeker who has financial means at his disposal that exceed the basic income level ensured by the Law on Social Assistance (Wet Werk en Bijstand) the asylum seeker has to contribute to the costs of reception (article 20 of the Rva 2005).

An asylum seeker who works has to pay a proportion of the wages he earns to COA to contribute to the costs of living. There is a special, very complicated, regulation to calculate the amount of money an asylum seeker has to pay (Regulation on personal contribution by asylum applicants with income or possessions)(Regeling eigen bijdrage asielzoekers met inkomen en vermogen)(Reba). This is yet another reason why legal employment by asylum seekers is difficult and unattractive.

According to article 20(3) of the Rva 2005 COA can also ask for a refund if after the end of the reception conditions it becomes known that an applicant had sufficient means to cover material reception conditions and health care at the moment when the basic needs were covered.

7. SPECIAL NEEDS OF PARTICULAR CATEGORIES OF ASYLUM SEEKERS

Q.30. **Q.30.A. Are the <u>different categories</u> of persons with special needs considered taken into account in the national legislation (see article 17, §1 which is a mandatory provision): disabled people, elderly people, pregnant women, single parents with minor children, persons who have been tortured, raped or victims of serious physical or psychological violence?**

Article 9 (4) of the Rva 2005 only states in general terms, without distinction between the different categories of persons, that more vulnerable persons with special needs have the right to special support or counselling. According to the explanatory memorandum to the Rva 2005 one has to think of unaccompanied minors and asylum seekers who have serious psychosocial problems. COA has the possibility to transfer the responsibility for the reception of asylum seekers who suffer from serious psychosocial problems to another organisation ('Abri and 'de Vonk').

Q.30.B. How is their <u>specific situation taken into account</u> (see articles 13, §2, second indent and 17 which are mandatory provisions)?

COA has some adapted facilities for disabled people. Medical devices for disabled and elderly asylum seekers are available though COA health care contract for asylum seekers. With regard to pregnant women, in most centres there are separate rooms where a woman can stay in the first period after the birth. Health care for pregnant asylum seekers is available at the same level as for Dutch women who are ensured through a statutory basic health insurance. For single parents no special facilities exist. Specialised health care is available when there is an indication. There is specialised mental and somatic health care for persons who have been tortured, raped or victims of serious physical or psychological violence. The Dutch Council for Refugees however indicates that when these people need more private living conditions this can often constitute a problem. According to COA, its employees are trained to deal with traumas asylum seekers face.

In a research carried out in 2002 about the safety of women and girls in receptions centres it turned out that many single women feel unsafe in reception centres because for instance men knock on their doors at night and if they have teenage-girls they feel they are unable to sufficiently protect them from sexual assaults. As a consequence of these results, COA took the following measures:

- *reconstruction of centres to prevent insecurity for women;*
- *training of employees;*
- *writing of procedures in case insecurity of women is addressed;*
- *training of women and girls within centres to inform them about their rights and to learn them how to act in situations of insecurity;*
- *research on women trafficking and the possible use of reception centres in this matter.*

Asylum seekers with behavioural and/or serious (mental) health problems

are taken care of in special reception facilities run by third parties (article 7(2) of the Wet COA). There are for example special reception facilties for asylum seekers who due to their unacceptable behaviour cannot stay in a normal reception facility (so-called AMOG centres) and for asylum seekers who have mental problems ('Abri' and 'de Vonk').

Also unaccompanied minors are accomodated in special centres.

Q.30.C. How and when are the special needs of the concerned persons supposed to be legally identified (see article 17 § 2 which is a mandatory provision and clarify how it has been interpreted by transposition)?

The special needs are identified by the Community Health Services for Asylum Seekers (MOA) and a doctor at arrival at a reception centre or during office hours in the reception centres.

Q.30.D. Is the necessary medical and other assistance provided to persons with special needs as requested by article 15, §2 which is a mandatory provision and in particular to victims of torture and violence as requested by article 20 which is a mandatory provision?

The MOA or general practitioner can refer asylum seekers to the Riagg, the institute that provides mental health care in the Netherlands. Especially in the big cities these centres are often specialised in migrant or refugee problems. There are also a few medical institutes that are specialised in the treatment of psychiatric problems of asylum seekers / refugees. In the Netherlands there is also a knowledge institute, Pharos in Utrecht, which provides specialist medical knowledge and training for the (mental) health care of asylum seekers / refugees. According to the UNHCR, in practice, psychological aid is often not provided by the specialized organizations during the asylum procedure as it is difficult (and sometimes contra-protective) to treat psychological disorders, including trauma, during this uncertain period.

Q.31. About minors:

Q.31.A. Till which age are asylum seekers considered to be minor?

In the Netherlands asylum seekers are considered to be minors until the age of 18.

Q.31.B. How is access of minor asylum seekers to the education system ensured? Is it at school or in case inside accommodation centres and can it be considered as similar to the conditions for nationals as requested by article 10, §1?

The 1969 Compulsory Education Law (Leerplichtwet) applies to all children on Dutch territory and thus also to minor asylum seekers. All children between the age of 5 and 16 residing in the Netherlands have

to be entered into a school by their parents or legal guardian. These children have to attend complete daytime classes. All children aged 16 and 17 have a partial obligation to education. They have to be enrolled in an educational institution but it does not have to be a full-time course. The Compulsory Education Law thus ensures access to schooling for all children of asylum seekers.

The Primary Education Act (Wet op het primair onderwijs), the Centres of Expertise Act (Wet op de expertisecentra), the Secondary Education Act (de Wet op het voortgezet onderwijs), the Vocational Education Act (de Wet Educatie en Beroepsonderwijs, WEB) and the Higher and Scientific Education Act (de Wet op het hoger en wetenschappelijk onderzoek, WHW) all state that access to education is not dependent on the legal right to stay in the Netherlands.

Children of asylum seekers can attend regular primary and secondary schools. In principle the parent(s) or legal guardian of the minor asylum seeker can choose the school of their liking, but only public schools have an obligation to admit children of asylum seekers. In some cases a primary school forms part of a reception centre and offers specialised education.

Q.31.C. Is access to education ensured <u>not later than 3 months</u> as requested by article 10, §2 (or after maximum one year if specific education for asylum seekers is provided)?

In general, asylum seekers have access to education within three months. According to the report 'The child and the asylum policy' (quick scan) carried out by Loes van Willigen (Consultant Health Service Refugees and Human Rights) at the request of the Advisory Committee on Aliens Affairs (ACVZ) in August 2003 it seems that asylum seekers are no longer put on waiting lists before they have access to education. However, when an asylum seeker has been admitted to a reception centre in May or June he will have to wait until the new school year begins (August).

Q.31.D. Is <u>specific education</u> (like language classes) available for asylum seekers, in particular to facilitate their effective access to the education system of the reception Member State (see article 10, §2 which is an optional provision)?

According to the Dutch Council for Refugees this depends on the situation. The municipality together with COA are responsible for organising the education. Sometimes schools provide so-called first-reception education ('eerste opvangonderwijs'), which is aimed at enabling children to participate in the regular educational programs as soon as possible, or have special language classes. For instance, in order to facilitate the effective access to secondary education, so-called international linking classes (internationale schakelklassen)(ISK)

provide intensive language education to asylum seekers between 12-18 years of age who do not have sufficient knowledge of the Dutch language. Sometimes special classes are organised at the centre. Municipalities get extra money for the education of asylum seekers' children. However in practice the relatively short existence of many reception centres (five years), or shorter in the case of emergency centres, often gives problems to organise the education well.

Q.31.E. Are minors in general accommodated with their parents or with the person responsible of them? (see article 14, § 3)

Provided that this will be in the interest of the child, COA has to take care of the fact that the minor child of an asylum seeker or the asylum seeker who is a minor will be accommodated with his or her parent or with an adult family member (article 11(4) of Rva 2005).

Q.31.F. Do minors with special needs enumerated by article 18, §2 which is a mandatory provision, have access to appropriate mental health care and qualified counselling?

Article 9 (4) of the Rva 2005 states that extremely vulnerable persons (including minors) with special needs have the right to special support or counselling.

According to the Dutch Council for Refugees these minors do have in general access to appropriate mental health care and qualified counselling (preventive child health care and curative care when there is an indication) but recent research (2005) carried out by T. Bean for the Institute of War Victims (Centrum '45) showed that their needs are not always effectively dealt with.

Q.31.G. How and when is organised the representation of unaccompanied minors (guardianship, special organisation) and regularly assessed? (see article 19, §1 which is a mandatory provision)

Guardianship of all unaccompanied minors who arrive in the Netherlands is awarded to the guardianship foundation Nidos. This Nidos Foundation is responsible for guarding the interests of the unaccompanied minors and for their upbringing and development. The Nidos Foundation is subsidised by the Ministry of Justice.

Q.31.H. How is placement of unaccompanied minors organised (with adult relatives, a foster family, in special accommodation centres or other suitable accommodation)? (see article 19, §2 which is mandatory provision)

The reception of unaccompanied minors is provided by the Nidos Foundation and by COA.

For unaccompanied minors aged 0-12, Nidos has contracted foster parents. Unaccompanied minors who are not placed with a foster family (> age 12) will be accommodated by COA in children's communal units (Kinderwoongroepen (KWG) of Kinderwooneenheden (KWE)) or in special 'AMA campuses' (Leek, Drachten, Baexem, Oisterwijk and Middelburg). Since the beginning of 2006, as a result of the disappearance of unaccompanied minors from reception facilities, several security measures have been implemented at these AMA campuses, like 24-hour protection and supervision, implementation of keycards and camera surveillance (TK 2005-2006, 27 062, nr. 49, 20 April 2006).

Within the different facilities, the reception conditions of each unaccompanied minor will be either directed at return or at integration, depending on the prospect of the unaccompanied minor and the stage of his or her (asylum) procedure (TK 2005-2006, 27 062, nr. 48, 13 December 2005).

However, in order to make sure that as much as possible homogeneous groups (orientation or return) will be accommodated in the different reception facilities, the new system implies that within a few weeks after the unaccompanied minor has filed an application, COA (in consultation with the IND and the Nidos) will decide on the basis of the perspective of the unaccompanied minor whether he will be sent to a reception facility directed at orientation or to a reception centre directed at return.

Q.31.I. How is the tracing of the family members of the unaccompanied minors organised? Are measures taken to protect confidentiality of information when necessary? (see article 19, §3 which is a mandatory provision)

At the request of a minor (and with the permission of his guardian) the Dutch Red Cross and the international Red Cross investigate whether a minor has parents or other family members. Minors can complete questionnaires providing information about their parents and other family members that they are looking for. The investigation procedure will then be put in progress. Most minors however do not use this procedure. Contact between the minor and his parents could lead to the IND concluding that the minor should be returned to his country of origin and be reunited with his parents. The IND and the Dutch Red Cross do not work together (Dutch Country Report on separated children in Europe, 2001-2003, Defence for Children).

8. EXCEPTIONAL MODALITIES OF RECEPTION CONDITIONS

Q.32. Apart from detention covered by the next question, are there exceptional modalities in the following cases and if yes, which ones and for how long are they applicable, knowing that it should be "as short as possible" (see article 14, §8)?

Q.32.A. Persons with specific or special needs, regarding in particular the period of assessment of those needs?

There are exceptional modalities for unaccompanied minors and also for asylum seekers with psychiatric problems. There are three categories for accomodating asylum seekers with psychiatric or behavioural problems:

- *Intensive supervised living (Intensief Begeleid Wonen (IBW));*
- *Psychiatric Intensive Homecare (Psychiatrisch Intensieve Thuiszorg (PIT));*
- *Asylum seekers with unacceptable behaviour (aielzoekers met onacceptabel gedrag) are accommodated in special AMOG-centres.*

Q.32.B. Non availability of reception conditions in certain areas

According to the Dutch Council for Refugees this is not the case.

Q.32.C. Temporarily exhaustion of normal housing capacities

This is not the case anymore. In the past asylum seekers were put in hotels or pensions (AVO – aanvullende opvang asielzoekers), ordinary houses were rented (COW - Centrale Opvangwoningen) or asylum seekers were allowed to live with family or friends (ZZA, Self Care Arrangement).

Q.32.D. The asylum seeker is confined to a border post

An asylum seeker who arrives in the Netherlands through Schiphol Airport (Amsterdam) or one of the seaports and who has been refused entry may be required to stay in a space or place designated by a border control officer (article 6 of the Aliens Act). When he declares that he wants to file an asylum application he will be transferred to the AC Schiphol which is secured against unauthorised departure. There is no legal regulation which says for what period of time such a 'detention measure' may be imposed. This depends on the ground for detention and whether the Minister has already decided on the asylum application.

When it appears to be impossible to reach a decision within 48 hours in AC Schiphol because more investigation is needed (e.g. because the authenticity of documents has to be checked), the detention measure can be prolonged and the asylum seeker will be transferred to a

detention centre referred to as 'Border Hospice' ('Grenshospitium'), in the vicinity of Schiphol Airport. In that case the asylum application has to be dealt with speedily. When this will not be the case this can lead to the annulment of the detention measure. According to the Aliens Circular (WBV 2004/32) a period of 6 weeks is 'speedily'. When the Minister wants to continue the detention measure after these 6 weeks this continuance has to be the result of balancing the interest of the asylum seeker in remaining at liberty and the interest of the state to guard the frontiers. This 6 weeks-rule is however only an internal guideline for the IND. It is not a maximum which can be enforced in legal proceedings. According to UNHCR, in many cases the 'research period' (and therefore the detention) is expanded considerably.

When the asylum request has been rejected within the AC-procedure, the detention measure will also be continued in the Border Hospice. In practice this detention measure may last for 6 months or more. The rules relating to the regime applicable to this Border Hospice are laid down in the Border Accomodation Regime Regulations (Reglement Regime Grenslogies) (Bulletin of Acts, Orders and Decrees 1993, nr. 45). The fundamental rule (article 4) is that a resident of the Border Hospice will not be subjected to any other restriction than the one that forbids him to leave the building. Within the Border Hospice the asylum seeker is free to move (except for the night). He is allowed to have visitors and to make telephone calls (article 5 and 7). Furthermore he is entitled to medical and mental care and some pocket money and can take part in recreational activities (article 8).

Q.32.E. <u>All other cases</u> not mentioned in the directive (for instance urgent situation in case of a sudden high number of applicants outside a case of application of the directive on temporary protection).

To our knowledge there are no other exceptional modalities.

Q.33. **<u>Detention of asylum seekers</u> (we do not cover the situation of rejected asylum seekers detained for the purpose of their return) (see articles 6 §2, 7 §3, 13, §2 2nd indent and 14 §8 which implies that the directive is in principle applicable in case of detention):**

Q.33.A. In which <u>cases or circumstances</u> and for which <u>reasons</u> (identity verification in particular if the persons have no or false documents, protection of public order or national security, refugee status determination, way of entry into the territory, etc) can an asylum seeker be detained during the asylum procedure till his request has been finally rejected. <u>Quote</u> precisely in English in your answer the <u>legal basis</u> for detention of asylum seekers in national law.

See for a recent research report on detention and alternatives to detention: UNHCR, Legal and Protection Policy Research Series, Alternatives to Detention of Asylum Seekers and Refugees by Ophelia Field with the assistance of Alice Edwards, external consultants (April 2006).

1. Aliens refused entry to the Netherlands (see answer Q32D)

Article 6 of the Aliens Act is specifically aimed at those aliens who are refused access to the Netherlands upon arrival by aircraft or boat at the border of the Schengen area (i.e. Schiphol Airport and the sea harbours of Rotterdam and Amsterdam). Such persons are required toleave the Netherlands and may be detained at the border until they can be put back on a plane or boat. When the asylum seeker declares that he wants to file an asylum application he will be transferred to the AC Schiphol which is secured against unauthorised departure.

When it appears to be impossible to reach a decision within 48 hours in AC Schiphol because more investigation is needed (e.g. because the authenticity of documents has to be checked), the detention measure can be prolonged and the asylum seeker will be transferred to a detention centre called Border Hospice ('Grenshospitium'). In that case the asylum application has to be dealt with speedily (see further Q32D).

2. Asylum seekers registered at in-country application centre in Ter Apel

Asylum seekers registered at the AC Ter Apel are instructed, on the basis of Article 55 of the Aliens Act, to remain at the disposal of the IND and, if necessary, available for processing through an accelerated procedure. In practice, this means that their movement is restricted almost continuously for a maximum of five days. They have to leave the AC after 48 processing hours from the moment that the asylum interview starts, but the hours between 6:00 pm and 8:00 am are not counted as processing hours (paragraph C3/12 of the Aliens Circular).

In 2001, the National Ombudsman requested more openness in the AC,as it considered the situation similar to detention, but without adequate legal safeguards. The government was at that time not willing to meet this request. However, the Court of Appeal in The Hague ruled, in a judgment of 31 October 2002, that restrictions on movement during the accelerated procedure at an AC constitute 'detention' in the sense of article 5 of the ECHR, which finds no legal basis in article 55 of the Aliens Act. In afirst reaction to this ruling, the Minister for Alien Affairs and Integration announced, in November 2002, that an application can no longer be rejected on the sole ground that an asylum seeker has left the AC during the accelerated procedure. As of March 2004, the Ministry of Justice is working on several general adjustments to the accelerated procedure, but so far the nature and timing of these adjustments remains unknown.

3. Asylum seekers detained during the asylum procedure
If necessary in the interests of public policy or national security, with aview to expulsion, administrative detention on the basis of article 59(1)(b) of the Aliens Act can be used with regard to asylum seekers who are legally resident in theNetherlands pending a decision on their asylum application or on their appeal. According to paragraph A5/5.3.3.6 of the Aliens Circular

detention of asylum seekers during their asylum procedure should be limited as far as possible. As an example the Aliens Circular mentions an asylum seeker who lodges a clearly fraudulent asylum application. In this situation a comparative assessment has to be maderegarding the enforcement of the detention in relation to the asylum application.

Q.33.B. Has your member State adopted measures to transpose §3 of article 7 which is an optional provision? If yes, how has this provision been legally understood (is it a case of detention or an obligation to stay in and not leave a certain place?) and for which reasons can an asylum seeker be "confined" in such a place?

Ad 1) Asylum seekers who are refused entry to the Netherlands are required to stay in a space or place designated by a border control officer. When an asylum seeker declares that he wants to file an asylum application he will be transferred to AC Schiphol which is secured against unauthorised departure. When the asylum request has been rejected within the accelerated 48 hours procedure the detention measure can be continued in a detention centre, the Border Hospice, in the vicinity of Schiphol Airport. The asylum seeker has to stay in the detention centre during the appeal and higher appeal (if he appeals at all) until his deportation. If the authorities do not succeed in deporting the rejected asylum seeker, he will eventually be released (this can take more than a year).

Ad 2) Asylum seekers registered at the AC in Ter Apel have to remain at the AC when their availability is necessary for the investigation into the allowability of the application. In practice this means that the asylum seeker has to remain at the AC during working hours from 7:30 am to 6:00 pm (paragraph C3/12.2.5 of the Aliens Circular).

Ad 3) In exceptional cases (e.g. in case of manifest fraud) an asylum seeker can be detained in a detention centre.

Q.33.C. Are there legally alternatives to detention, like obligation to report to the authorities, obligation to stay in a place, provision of a guarantor or of a financial guarantee?

Asylum seekers who stay in a reception centre run by COA, but also asylum seekers who make use of the 'administrative registration', have a duty to report weekly to the Aliens Police (article 54(1)(f) of the Aliens Act juncto article 4.51 of the Aliens Decree) and COA (article 19(e) of the Rva 2005). See answer Q20E.

Q.33.D. Which is the competent authority to order the detention of an asylum seeker? Explain if different authorities are involved to first take and later confirm the decision.

Ad 1) Asylum seekers are refused entry to the Netherlands by border control officers. According to article 3(3) of the Aliens Act these border control

officers shall not, save in accordance with a special direction issued by the IND, refuse entry into the Netherlands to an alien indicating that he wishes to have asylum. This special direction is usually issued with regard to asylum seekers.

Ad 2) An asylum seeker has to keep himself available in connection with the screening of his asylum application at a place which is designated by the Minister for Alien Affairs and Integration (=AC) and where he has to comply with the directions given to him by the IND.

Ad 3) The IND is the competent authority to order the remand in custody of an asylum seeker on the ground of article 59(1)(b) of the Aliens Act.

Q.33.E. <u>For how long</u> and till which stage of the asylum procedure can an asylum seeker be detained? Is this in line with the requirement of "a reasonable period which shall be as short as possible" set by article 14, §8 of the directive?

Ad 1) Regarding asylum seekers who are referred to AC Schiphol and the Border Hospice: see answer Q 32D.

Ad 2) The so-called AC-procedure lasts for a maximum period of 48 'processing' hours (spread over 4-5 working days). During this period the asylum seeker has to remain available at the AC during working hours from 7:30 am to 6:00 pm (paragraph C3/12.2.5 of the Aliens Circular).

Ad 3) Detention pursuant to article 59(1)(b) of the Aliens Act shall in any event last for no longer than six weeks (article 59(4) of the Aliens Act) with regard to asylum seekers who stay lawfully in the Netherlands. For asylum seekers who do not stay lawfully in the Netherlands, no maximum period of detention applies. However, the interests of detention and of the asylum seekers have to be balanced.

Q.33.F. In which <u>places</u> (can we call them "closed centres"?) are asylum seekers detained (places in a special closed centres reserved only to asylum seekers, together with returnees like illegal aliens or even in a normal prison, in case within separated areas or with the other detainees)? Indicate if a difference has to be made following the location of the "closed centres" at the border or on the territory? Which is the authority managing those places and is it the same as the one in charge of reception conditions?

Ad 1) Asylum seekers who are refused entry to the Netherlands and want to file an asylum application are referred to AC Schiphol. This is a so-called closed centre reserved only to this category of asylum seekers. When the asylum request has been rejected within the accelerated 48 hours procedure the detention measure can be continued in the Border Hospice. The rules relating to the regime applicable to the Border Hospice are laid down in the Border Accomodation Regime Regulations

(Reglement Regime Grenslogies) (Bulletin of Acts, Orders and Decrees 1993, nr. 45).

Ad 2) Asylum seekers who report to AC Ter Apel in order to file an asylum application have to stay in this AC. The AC Ter Apel is a 'half-open centre' in that sense that the asylum seeker has to remain available in connection with the screening of this asylum application during working hours (8:00 am – 6:00 pm).

Ad 3) Pursuant to article 5.4 of the Aliens Decree detention on the ground of article 59(1)(b) of the Aliens Act will be executed in a police station (maximum period of 10 days), a house of detention or a place to which the Border Accomodation Regime Regulations are applicable (see ad 1).

This means that asylum seekers are placed in detention centres together with illegal migrants or in normal prisons.

Q.33.G. Does UNHCR and NGOs have access to the places of detention and under which conditions?

The Dutch Council for Refugees has offices both in AC Schiphol and AC Ter Apel and also in the Border Hospice. UNHCR has also access to these places by appointment. This right of access to detention centres for UNHCR is not laid down in any formal document, but in practice UNHCR has not encountered any problems when access was requested.

Q.33.H. What appeal(s) can asylum seekers introduce against the fact he is detained?

The IND will notify the District Court of an order imposing a detention measure pursuant to article 6 or 59 of the Aliens Act no later than 28 days after communication of the order if the person detained has not already appealed against the decision himself (article 94 of the Aliens Act). This notification is viewed as an appeal. The court-session will take place not later than fourteen days after the notification or the appeal has been received, the court will then reach a decision within another seven days. Both the IND and the detained person can appeal against this decision of the court to the Council of State. The detained person can appeal against the prolongation of the detention at any time. This decision of the District Court is not open to appeal at the Council of State.

Q.33.I. Is the directive on reception conditions considered to be in principle applicable to the places where asylum seekers are detained? In particular which information do they receive about their rights, which access do they have to legal advice and health care?

As mentioned before the Rva 2005 is the main norm of transposition of the Reception Conditions Directive. According to article 1(d) of the Rva 2005 the Rva 2005 is not applicable to an asylum seeker who is in detention.

The rules relating to the regime applicable to the Border Hospice are laid down in the Border Accomodation Regime Regulations (Reglement Regime Grenslogies) (Bulletin of Acts, Orders and Decrees 1993, nr. 45). The fundamental rule (article 4) is that a resident of the Border Hospice will not be subjected to any other restriction than the one that forbids him to leave the building. Within the Border Hospice the asylum seeker is free to move (except for the night). He is allowed to have visitors and to make telephone calls (article 5 and 7). Furthermore he is entitled to medical and mental care and some pocket money and can take part in recreational activities (article 8).

According to a report of the Application of Sanctions Inspectorate (Inspectie voor de Sanctietoepassing) on 'Parents and children in aliens detention' (August 2005) asylum seekers who will be placed together with their children in the Border Hospice will not be informed about the circumstances in the Border Hospice beforehand. Once they are placed within the Border Hospice the parents are informed about the (house) rules.

With regard to access to medical care in the Border Hospice: there are doctors available although not all of them are qualified as general practitioners. In cases of infant welfare, parents will be referred to a child-health centre outside the Border Hospice. Dental treatment also takes place outside the Border Hospice. Finally, there is a psychologist available.

Asylum seekers staying in the Border Hospice will be assisted in their procedure by members of the Dutch Council for Refugees which has offices in the Border Hospice.. They also have access to lawyers by appointment.

Asylum seekers who are placed in police stations or houses of detention are entitled to the same rights as Dutch nationals placed in these facilities. According to the Penitentiary Principles Act (Penitentiaire beginselenwet) and the Management of Regional Police Forces Decree (Besluit beheer regionale politiekorpsen) they are entitled to (emergency) medical care, food, clothing etc.

Q.33.J. Apart from freedom of movement, what are the <u>main differences</u> between normal reception conditions and reception conditions in case of detention? If it is about closed centres, are the regulations of those places <u>in line with the requirements of the directive</u> (is article 13, §2, second indent of the directive following which "*Member States <u>shall</u> ensure that standards of living is met (…) in relation to the situation of persons who are in detention*" respected)?

Reception facilities in case of detention are in general more basic than normal reception centres. This can manifest itself for instance with regard to housing, education and recreational activities. Asylum seekers who have special needs (e.g. minors) will not always be offered the appropriate facilities. Upon arrival of asylum seekers with children in the Border

Hospice no information is available with regard to composition, country of origin, (legal) status, health or expected length of stay of the family.

Q.33.K. Are measures taken to avoid detention of asylum seekers with special needs (if yes, which ones?) or are special measures taken because of their needs?

According to chapter A6/1.5 Aliens Circular detention, in particular detention of minors below the age of 16, should be restricted as far as possible. Before the authorities proceed to the measure of detention, they must consider whether a notification to stay at a place known to the authorities (with family, acquaintances or other private persons) will be a suitable measure. Minors below the age of 12 cannot be detained on the basis of the Aliens Act in a police station or house of detention, unless their parents (who are also detained) insist on having their children with them.

In a judgment of 24 February 2003 the Council of State stated that pursuant to article 37 of the International Convention on the Rights of the Child and article 9 of the Youth Custodial Institutions (Framework) Act (Beginselenwet justitiële jeugdinrichtingen)(Bjj), detention of (unaccompanied) minors has to be executed as far as possible in a special detention centre for young people (separated from adults)(NAV 2003/128). According to UNHCR it is however not uncommon that children are detained in the Border Hospice either to await the outcome of an age assessment or with their family members. According to the report of the Application of Sanctions Inspectorate of August 2005 (see also answer Q33M) the Border Hospice is not truly suitable for children.

According to the report of Human Rights Watch "The Netherlands, fleeting refuge: The triumph of efficiency over protection in Dutch asylum policy (2003)" the AC procedure (especially the one carried out in AC Schiphol) is by its nature unlikely to ensure that unaccompanied children's special characteristics and needs are taken into account.

Q.33.L. Can minor asylum seekers be detained together with relatives? Can unaccompanied minor asylum seekers be detained? If yes, are there special measures which take into account that children are concerned?

Minor asylum seekers can be detained together with relatives in the Border Hospice.

Unaccompanied minors are detained in practice, for example when they enter the Netherlands through Schiphol Airport or a seaport and are refused entry. A detention measure pursuant to article 6 of the Aliens Act will be imposed. According to a judgment by the Council of State of 24 February 2003 (see answer Q 33K) unaccompanied minors have to be detained – as far as possible – in special detention centres for young people or in detention centres to which the Youth Custodial Institutions

(Framework) Act (Bjj) is applicable. See also: chapter A6/1.5 Aliens Circular which mentions that unaccompanied minors between 12 and 16 years of age can only be detained on the basis of the Aliens Act if the detention can be executed in a youth custodial institution within 4 days.

Unaccompanied minors of whom the IND has no doubts about their stated age have to be regarded as minors and cannot be detained in the Border Hospice (C5/24.4.2 of the Aliens Circular). In a judgment of 5 March 2004 (NAV 2004/130) the Council of State stated that the IND can treat unaccompanied minors of whom the IND has serious doubts about the stated minority (e.g. in case of false documents, diverse statements about identity and age) as being of age. In that case they can be detained in the Border Hospice pending an age assessment.

In the Border Accomodation Regime Regulations which is applicable to asylum seekers staying in the Border Hospice no rules specifically directed at minors are laid down: the Regulations only cover 'aliens in general'.

Q.33.M. In particular is article 10 regarding <u>access to education</u> of minors respected in those places?

According to the report of the Application of Sanctions Inspectorate (August 2005) in the Border Hospice education to children will only be provided during a few hours a week. The nature of the education is very basic / elementary. The question arises whether this is in accordance with a.o. the 1969 Compulsory Education Law (Leerplichtwet) which applies to all children on Dutch territory (also to those who are refused entry). According to this Law all children between the age of 5 and 16 residing in the Netherlands have to be entered into a school by their parents or legal guardian. These children have to attend complete daytime classes. All children aged 16 and 17 have a partial obligation to education.

Q.33.N. <u>How many</u> asylum seekers are for the moment detained in your Member State? Which <u>proportion</u> does this represent in comparison of the total number of asylum seekers at the same moment?

No itemized figures available.

9. ORGANISATION OF THE SYSTEM OF RECEPTION CONDITIONS

Q.34. Explain if the system of providing reception conditions is centralised or decentralised (which levels of government do provide practically reception conditions?) (do not confuse this question with question number 4 about the competence to make rules about reception conditions).

Since 1992 the Netherlands have a centralised reception system. According to the Wet COA the Minister for Alien Affairs and Integration is responsible for the reception of asylum seekers in central reception centres run by COA.

Q.35. In case, are accommodation centres public or/and private (managed by NGOs? If yes, are the NGOs financially supported by the State?)[615]

Accomodation centres in the Netherlands are public (run by COA). NGOs do not manage reception centres. However, NGOs can provide emergency reception for rejected asylum seekers.

Q.36. In case, how many accommodation centres are there in your Member State (distinguish in your answer between public and private centres)?[616]

There is one TNV in Ter Apel (and one temporary TNV in Bellingwolde, situated at a distance of 45 kilometers from Ter Apel). There are two ACs: one in Ter Apel and one at Schiphol Airport. According to information provided by COA, at 1 June 2006 there were about 60 (public) reception centres.

As mentioned in the answer to Q31H, unaccompanied minors are sometimes housed in foster homes, in children's communal units (Kinderwoongroepen (KWG) of Kinderwooneenheden (KWE)) or in one of the special 'AMA campuses' (Leek, Drachten, Baexem, Oisterwijk and Middelburg), and sometimes in COA's central reception centres. In 2004, 1,287 unaccompanied minors were staying at foster families. Nidos used 296 houses as small-scale children's communal units, capable of housing 1,529 children. COA housed 525 unaccompanied minors in the 5 reception centres for return.

Q.37. Is there in the legislation a plan or are there rules in order to spread the asylum seekers all over the territory of your Member State to avoid their concentration in some areas like big cities or to share the costs of their reception between central, regional and local authorities?

There is no specific legislation about the spreading of asylum seekers. The procedure is as follows: the Ministry of Justice distributes financial means to COA. COA decides the amount of places that have to be made available, based on numbers of intake of asylum seekers. Locations are offered by local authorities or COA looks for areas itself. After that negotiations with local authorities start. In practice, more asylum seekers live in the northern part of

[615] To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.
[616] To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

the country, because it proved to be easier to establish reception centres in less populated areas (Dutch Council for Refugees).

Q.38. Does a central body representing all the actors (like NGOs) involved in reception conditions exist? Does it play a consultative role for the State authorities, a coordination role for the actors or any other role?[617]

There is no central body representing all the actors involved in reception conditions. Occasionally, there are bilateral meetings between the Dutch Council for Refugees and COA on different levels (management, regional, policy).

Q.39. **Q.39.A. Which is the body in charge of guidance, monitoring and controlling the system of reception conditions as requested by article 23 which is mandatory provision? Include in your answer which is the competent ministry (Interior, Social affairs, etc) for reception conditions?**

According to the Wet COA, the board of COA has to provide the Minister for Alien Affairs and Integration with all the necessary information regarding the system of reception conditions (article 14) and with a report containing all the relevant activities of COA in the previous year (article 15). The Minister will send this report to both chambers of parliament. COA also has to submit an estimate and to supply the Minister with a financial report (article 16-19) both of which have to be approved by the Minister.

But apart from this kind of (financial) control, the only part of the reception system which is regularly monitored is the health care for asylum seekers by the National Health Inspection (Inspectie voor de Gezondheidszorg). With regard to the quality of reception conditions there is no control or monitoring. About the reception of unaccompanied minors the National Youth Inspection has done some reports in the last years. The most recent one in May 2006. These reports are public.

Q.39.B. Has your Member State (like the Czech Republic did recently) approved quality standards (not necessary legally binding) for housing services (for instance about the number of persons per bedroom on the basis of its size, number of accessible toilets, bathrooms, showers and washing machines per number of persons, existence of common rooms with radio, television, newspapers, books, computers, accessibility of telephone, existence of recreative rooms for children,…) to be respected in particular in accommodation centres?[618]

As mentioned above (Q24A), COA laid down prescribed dimensions for the different housing facilties (TNV, reception centres) in a so-called Program of Demands (Programma van Eisen)(PvE) which is of a highly technical nature and contains technical minimum standards for the construction or renovation

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of reception centres, based on building and fire preventing regulations. This PvE drawn up by COA is not applicable to the application centres run by the IND. For example bedrooms will be for a maximum of four individuals, measuring at least 5m²; for each eight inhabitants there will be at least one toilet and 3,25m² of bathroom space (including a washer and dryer) and for each eight inhabitants there has to be 5,72m² of kitchen space. According to the Minister for Alien Affairs and Integration, these standards meet the minimum standards for the reception of asylum seekers as laid down in the Directive (TK 2004-2005, 19 637, nr. 913, 30 March 2005). The Dutch Council for Refugees expresses its concern that this Program of Demands does not mention anything about common rooms and access to computers and telephone. The Dutch Council for Refugees refers to the fact that in many reception centres there is no quite place for children to do their homework or a recreation room with activities for children.

Q.39.C. How is this system of guidance, control and monitoring of reception conditions organised?[619]

See answer under Q39A.

Q.39.D. Does the body in charge of guidance, control and monitoring produce reports about the level of reception conditions? If yes, how frequently and are they public?[620]

No, apart from the reports by the National Health Inspection no reports on the level of reception conditions are produced. The general reports of the National Health Inspection are public, but the reports drawn up in individual cases (e.g. in case of the death of an asylum seeker or illness) are not public. About the reception of unaccompanied minors the National Youth Inspection has done some reports in the last years. The most recent one in May 2006. These reports are public.

Q.40. Q.40.A. What is the total number of asylum seekers covered by reception conditions for the last year for which figures are available (see article 22 obliging Member States to calculate those statistics about which we also asked the Commission to require them from Member States for mid June)?

On 1 December 2006, 23,492 people stayed in the central reception facilities run by COA, a 18,2 % drop from 1 January 2006. Of these 23,492 people, 2,282 people held a residence permit. The majority of the total number of 23,492 is male (13,196)(www.coa.nl).

Q.40.B. What is the total budget of reception conditions in euro for the last year for which figures are available?[621]

[619] To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.
[620] To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

COA's total costs for 2007 are estimated at € 290,7 million (Minister of Justice: Determination of the budget of the Ministry for Justice (VI) for the year 2007: Explanatory Memorandum, part B, chapter 11. TK 2006-2007, 30 800 VI). This includes amongst others the costs for COA's products and services and the costs for benefits provided to asylum seekers.

Q.40.C. What is the average cost of reception conditions in euro per asylum seeker for the last year for which figures are available?[622]
Average cost of an occupied central reception place for 2007 is estimated at € 17 270 (Minister of Justice: Determination of the budget of the Ministry for Justice (VI) for the year 2007: Explanatory Memorandum, part B, chapter 3, paragraph 15 (aliens). TK 2006-2007, 30 800 VI.

Q.40.D. Are the costs of reception conditions of asylum seekers supported by the central/federal or federated government or are they shared with regional and/or local authorities?

The budget of COA is mainly provided through a yearly subsidy by the Minister of Justice which is based on output financing.

Q.40.E. Is article 24 § 2 of the directive following which "*Member States shall allocate the necessary resources in connection with the nationals provisions enacted to implement this directive*" respected?[623]

Yes.

Q.41. Q.41.A. What is the total number of persons working for reception conditions? [624]

The total number of people employed by COA is 1,950 persons which count for 1,733 fte (date: 15 June 2006).

The total number of people working for the Dutch Council for Refugees in reception centres is an estimated 70 people (date: 15 June 2006).

There are no itemized figures available as to the number of people working for the IND.

The total number of people working for the MOA in reception centres is an estimated 400 people (date: 1 May 2007).

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[621] To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.
[622] To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.
[623] To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.
[624] To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

Q.41.B. **How is the <u>training</u> of persons working in accommodation centres organised? Does it take into account specific needs of unaccompanied minors when relevant as well as the gender dimension? (see article 14 §5, 19 § 4 and also 24 §1 which are mandatory provisions)?**[625]

Employees of COA receive training relevant for their work (e.g. to guide unaccompanied minors, to deal with violence and agression, etc.). According to COA's Annual Report 2004, as a result of the Investigation toward the Safety of Women and Girls in the Reception Centres initiated by the Minister for Alien Affairs and Integration in response to a motion in parliament (TK 2003-2004, 19 637, nr. 779), the COA decided to improve the safety of women and girls in reception centres amongst others by the training of assistants in the detection of danger to women and girls.

The Dutch Council for Refugees has an extended training programme about among other things the asylum procedure, family reunification, information on countries of origin, pointing out sociological and psychological problems, cultural and diversity aspects.

Q.41.C. Are there rules about the <u>deontology</u> of persons working in accommodation centres, in particular on confidentiality?[626]

COA employs a Code of Conduct (Gedragscode). The Dutch Council for Refugees asks all her volunteers and employees to sign a confidentiality statement.

[625] To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.
[626] To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

10. IMPACT OF THE DIRECTIVE

Legal impact of the transposition of the directive:

Q.42. Specify if there are or not big problems with the translation of the directive in the official language of your Member State and give in case a list of the worst examples of provisions which have been badly translated? (please note that this question has in particular been added to the questionnaire concerning the new Member States)

After comparing the Dutch and the English language version of the irective we have not come across any noteworthy problems with the tralation of the Directive into the Dutch language. There is however an inaccuracy regarding the transposition of article 10 (2) of the Directive.The English text of the Directive states: 'Access to the education system shall not be postponed for more than three months from the date the application for asylum was lodged (..).' The official Dutch translation is: 'Minderjarigen moeten uiterlijk drie maanden, te rekenen vanaf de datumwaarop zij of hun ouders een asielverzoek hebben ingediend, toegang krijgen tot het onderwijsstelsel.' Between the words 'uiterlijk' and 'drie maanden' the word 'na' (='after') should have been added.

Q.43. Where there precise legal rules on reception conditions for asylum seekers before the adoption of the norms of transposition of the directive (if yes, specify what the nature of those rules was (legislation, regulation, administrative instructions,…)?

Yes. Before the adoption of the Rva 2005, the Rva 1997 was in force. This regulation regarding the provisions for asylum seekers, like the Rva 2005, was a regulatory measure issued by the Minister for Alien Affairs and Integration pursuant to article 12 of the Wet COA.

Q.44. Did the legal rules applicable to reception conditions become more clear, precise, coherent or detailed with the adoption of the transposition norms (for instance do you now have after the transposition one basic text dealing with reception conditions instead of numerous different texts in the past?

Whether the legal rules in the Rva 2005 in comparison with the legal rules laid down in the Rva 1997 became more clear, precise, coherent or detailed is difficult to say. The Rva 2005 is to a large extent a revised version of the Rva 1997. Through the years the Rva 1997 has been revised several times, because of national reception developments (coming into force of the Aliens Act 2000 and a new return policy, policy regarding unaccompanied minors, etc.). After a while these amendments became so extensive that there was a need for a complete revision. In the explanatory memorandum to the Rva 2005, the Minister for Alien Affairs and Integration states that at some points the Rva is adjusted because of the transposition of Directive 2003/9/EC. In our opinion the Directive was actually an important reason for revision of the Rva 1997. In order to comply with the minimum norms laid down in the Directive, the Minister for Alien Affairs and Integration saw the need for a revision of the Rva 1997 in order to avoid far-reaching changes of the Rva after the implementation of this Directive.

Q.45. Did the transposition of the directive imply important changes in national law or were the changes of minor importance? In case, list the most important changes that have been introduced.

In comparison with the Rva 1997, there have been a few changes in the Rva 2005:

Directive 2003/9/EC	***Rva 1997***	***Rva 2005***
Article 5 (information)	*no provisions relating to 'information'*	*Art. 2(3) and (4): COA should inform asylum seekers within at least 10 days after they have been placed in a reception facility*
Article 8 (families)	*no provisions concerning family unity*	*Art. 11(3): COA maintains with the agreement of the asylum seeker the family unity and endeavours to protect family life as much as possible*
Article 14(2) and (7) (modalities for material reception conditions)	*no provisions relating to 'communication'*	*Art. 9(6) and (7): possibility of communicating with relatives, legal advisers and representatives of UNHCR and NGOs*

Another important change that occurred because of the transposition of the Directive is the eventual raising (in phases) of the weekly financial allowance and in particular the food allowance which was considered to be in breach of the criterion mentioned in article 13(2) of the Directive, namely that material reception conditions have to ensure a standard of living adequate for the health of applicants and capable of ensuring their existence (see answer Q12B).

Moreover, as a result of the Directive, the Dutch government decided in October 2002 that so-called Dublin claimants (asylum seekers about whom the Netherlands have made a 'Dublin claim' on a fellow Member State) were entitled again to reception facilities. Until October 2002 this category of asylum seekers was refused accommodation in reception centres because of capacity problems. Because according to the Directive the applicability of the Dublin procedure was no ground for a state to withhold reception conditions from an asylum seeker, the exclusion of this category was ended.

Political impact of the transposition of the directive:

Q.46. Explain briefly if there has been an important debate about the transposition of the directive (in particular in the Parliament, but possibly also in the government, between political parties, including in medias, etc; underline in case the main points which have been discussed or have created difficulties)

About the transposition of the directive in its entirety there has neither been an important debate in the parliament, the government nor in the media. However, there has been debate in parliament (initiated by a.o. the Dutch Council for Refugees) about the level of the weekly financial allowance and in particular the food allowance which was not enough to provide for a

responsible diet and therefore contrary to the criterion mentioned in article 13(2) of the Directive. This induced the Minister to re-examine the level of the allowances. As a consequence she decided in first instance to raise the level of the food allowance to the NIBUD standard with regard to all age-groups (including unaccompanied minors) in phases within a period of 4 years. In january 2007 however, she raised the level of the food allowance to the NIBUD standard at once. There has also been debate in parliament about the fact that providing no reception conditions to Dublin claimants was in breach of the Directive. As a consequence reception conditions are now provided to both categories of asylum seekers (under certain circumstances).

Q.47. Did the transposition of the directive contribute to make the internal rules <u>stricter or more generous</u>? In particular, did your Member State use the occasion of the transposition to abolish more favourable provisions of national law? Does your Member State still have rules more favourable than the provisions of the directive (if yes, try to give the more important examples).

The transposition of the Directive contributed to make the existing rules laid down in Rva 1997 a bit more generous (see answer Q45). To our knowledge the transposition of the Directive is not used to abolish more favourable provisions of national law.

11. ANY OTHER INTERESTING ELEMENT

Q.48. What are in your view the weaknesses and strengths of the system of reception conditions in your Member State?[627]

A weakness of the Dutch system of reception conditions is that asylum seekers whose asylum application has been rejected at an application center, are not entitled to reception conditions. They are only entitled to reception conditions once their request for an interim measure has been granted. In the time between, and if their request for an interim measure has not been granted, they have to fend for themselves and have the same position as illegal migrants. Although asylum seekers whose application has been rejected at an application centre do no longer stay lawfully in the Netherlands according to the Aliens Act 2000 (article 8), they are, generally, allowed to await the outcome of the procedure about their request for an interim measure in the Netherlands, according to the Aliens Circular 2000 (paragraph C4/17.3.2). The question is therefore whether these asylum seekers are 'allowed to remain on the territory as asylum seekers' within the meaning of article 3 of the Directive.

Another weakness of the system is that the main norm of transposition of the directive, the Rva 2005, is not applicable to asylum seekers staying in application centres. There are in fact no legal norms with regard to the reception of asylum seekers during this stage of the asylum procedure. Asylum seekers staying at application centres stay lawfully in the Netherlands according to article 8 of the Aliens Act 2000 and they have officially submitted their asylum application. Accordingly, they fall under the scope of Directive 2003/9/EC. The absence of legal norms with regard to the reception of asylum seekers in application centres means an inadequate implementation of the Directive.

There are no legal norms with regard to the reception of asylum seekers in the emergency temporary reception (TNV) either. According to article 3 of Directive 2003/9/EC 'this Directive shall apply to all third country nationals and stateless persons who make an application for asylum at the border or in the territory of a Member State as long as they are allowed to remain on the territory as asylum seekers...'. Article 2(b) defines 'application for asylum' as the application made by a third-country national or a stateless person which can be understood as a request for international protection from a Member State, under the Geneva Convention. Pursuant to article 2(c) an 'applicant' or 'asylum seeker' shall mean a third country national or a stateless person who has made an application for asylum in respect of which a final decision has not yet been taken. If these provisions mean that as soon as an asylum seeker makes known to a police officer or an immigration officer that he wants to file an asylum claim he will be covered by the provisions of Directive 2003/9/EC, the reception conditions offered in a TNV will fall under the scope of the Directive. In that case, the absence of legal norms for the reception of asylum seekers during this stage, means an inadequate implementation of the Directive.

[627] To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

In addition, a weakness of the system is the long duration of housing in reception centres as a result of the long asylum procedure and the high number of transfers from one reception centre to another as a result of the closure of centres.

The Dutch Council for Refugees points out that one of the strengths of the Dutch reception system is that every asylum seeker who is entitled to reception facilities gets a place to stay. The weakness of the system is that asylum seekers are not empowered to take care of themselves. They hardly have the possibility to work or to follow education. Asylum seekers have little privacy and have to stay in facilities that are meant for a short stay far too long. The lack of privacy (also within families), the lack of money, having to move frequently and to live very close to people who are tense, depressed and sometimes aggressive is especially harmful for children.
Furthermore, the reception centres are in general located outside residential areas in order to hinder the asylum seeker as much as possible in establishing contacts with the Dutch municipality which is in accordance with the objectives of the return policy. This segregation does not contribute to good living conditions.

Another strength is the fact that in the Netherlands the Directive is applied in connection with procedures for deciding on applications for kinds of protection other than that emanating from the Geneva Convention (see the 'may' provision of article 3(4) of the Directive). For more details see answer Q 13A and B.

Other favourable elements within reception centres run by COA include introductory activities and activities aimed at stimulating social orientation and social and cultural activities in the field of sports, play and spare time.

Q.49. Mention any good practice in your Member State which could be promoted in other Member States[628]

NGO's are closely involved in the reception of asylum seekers in any form of reception facility. The Dutch Council for Refugees for example has its seat in the TNV in Ter Apel, in the two AC's and in the reception centres run by COA.

A further example of good practice is given by the Dutch Council for Refugees. It mentions the existing of the MOA as a health care facility which makes the health care better accessible for asylum seekers in combination with Pharos (knowledge centre) which contributes to the specialist knowledge of refugee health care.

[628] To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

Q.50. Please add here any other interesting element about reception conditions in your Member State which you did not had the occasion to mention in your previous answers.

An interesting element of the Dutch system of reception conditions is that there is a difference between reception centres aimed at orientation and integration and reception centres aimed at return. This system has both weaknesses and strengts. On the one hand, a weakness is that refusing to participate in the compulsory programme aimed at voluntary return in return centres can be ground for the reduction of reception conditions. This ground is not mentioned as a possible ground for reduction of reception conditions in article 16 of the Directive. In addition, the obligations of COA employees, whose main task is the provision of reception conditions to asylum seekers, to engage in systematic conversations with asylum seekers about their return, may create ambivalence about their role and influence their behaviour towards asylum seekers living in reception centres. On the other hand, a strength of this system is that asylum seekers are motivated to think about and work on their future. COA employees (referred to as 'case managers') support them throughout the asylum procedure while confronting them with the reality of their supposed return. This happens right from the moment they arrive at an orientation and integration centre and continues when transferred to a return centre.

Another interesting element is the following. As mentioned before, the rejected asylum seeker can lodge an appeal against a negative asylum decision. Reasons lodged by the asylum seeker to avoid the withdrawal of the reception facilities, which reasons do not relate directly to the legalgrounds on which the residence permit was asked, are not assessed in an asylum procedure. As a consequence a major part of e.g. serious medical and psychological problems are not assessed in an asylum procedure. They are therefore not to be considered legal reasons forwhich reception facilities of an asylum seeker should not be ended (Council of State 28 March 2007, JV 2007/187 annotated by Larsson). Though the reception is not ended by a separate individual decision, (onlyrecently) it is possible to file a separate application for reception after the negative decision on an asylum application, but (again) not against the ending of reception itself.

[1] J.L. - Journal of Laws [Dziennik Ustaw].
[1] The Act has been amended on 24 May 2007. The amendment entered into force on 20 July 2007. The amendment does not refers to the receptions conditions but it changes the name of of the Office for Repatriation and Aliens. Now there is the Office for Foreigners which is managed by the Head of the Office.
[1] Druk Sejmowy nr 1988 (the Seym document no. 1988)

[1] Please specify if article 18 §1 of the directive on asylum procedures of 1 December 2005 following which *"Member States shall not hold a person in detention for the sole reason that he/she is an applicant for asylum"* is or not respected (even if it has not yet to be transposed).

QUESTIONNAIRE FOR THE NATIONAL REPORT ON THE IMPLEMENTATION OF THE DIRECTIVE :
RECEPTION CONDITIONS OF 27 JANUARY 2003

IN: POLAND
By

Barbara Mikołajczyk
Professor, University of Silesia
mikolaj@us.edu.pl
5.11. 2007

1. NORMS OF TRANSPOSITION

Q.1. Identify the main norm of transposition (indicate the title, date, number, date of entry into force and references of publication into the official journal) and indicate its legal nature (legislative, regulatory, administrative); indicate in your answer if this norm was only devoted to the directive or if it has been included in a more general text and indicate in that case by quoting precisely the numbers of the provisions adopted to transpose the directive.

The Act of 13 June 2003 on granting protection to aliens within the territory of the Republic of Poland [further called Act on Protection] (Consolidated text: J.L.[629] of 2006, No 234, item 1695) is the main act which transposes the Directive 2003/9/EC. It is clearly stated in the amendment to this Act adopted by the Parliament on 22 April 2005 (J. L. of 2005, No 94, item 788). This is the main norm of transposition. The Act of 22 April 2005 has amended not only the Act on granting protection to aliens within the territory of the Republic of Poland but also the Act on Aliens of 13 June 2003[630] (consolidated text: J. L. 2006 No 234, item 1695 with subsequent modifications) and other acts. It transposes provisions of the following Directives: 2003/86/EC, 2003/109/EC, 2003/110/EC, 2004/81/EC, 2003/9/EC, 2001/55/EC.

[629] J.L. - Journal of Laws [Dziennik Ustaw].
[630] The Act has been amended on 24 May 2007. The amendment entered into force on 20 July 2007. The amendment does not refers to the receptions conditions but it changes the name of of the Office for Repatriation and Aliens. Now there is the Office for Foreigners which is managed by the Head of the Office.

All the transposed directives are itemized at the beginning of the Act (in the footnote), not within the concrete provisions.

Part II of the Act on protection refers to the matters regulated in the Directive.

The new amendment of the Act has been prepared by the government (draft of 14 March 2007) but it does contain any significant changes in the field of the reception conditions for asylum seekers. This amendment was sent to the parliamentary commission[631] in July 2007 but the lower chamber of the Parliament – Seym - has not adopted this draft before the dissolution of the Polish Parliament in September 2007. According to the principle of discontinuation of the legislative procedure in case of dissolution of the Parliament the new draft should be submitted to the Parliament by the new government. However the Draft of 14 March 2007 is not controversial and it transposes the qualification directive so it is very likely that the new draft which will be submitted to the new Seym will be very similar. That is why it is still worth analysing.

Q.2. List by order of importance by using numbers (1, 2, 3) the others norms of transposition if there are more than one (indicate for each norm the title, date, number and references of publication into the official journal; include in your answer the administrative measures taken to ensure implementation of the directive and of the transposition norms like regulations, administrative circulars, special instructions,…)

Apart from the amended Act of 13 June 2003 on granting protection to aliens within the territory of the Republic of Poland the other norms should be taken into consideration in relation to the reception conditions.

1. The Act of 20 April 2004 on promotion of employment and institutions of labour market [*ustawa o promocji zatrudnienia i instytucjach rynku pracy*] (J. L. No 99, it. 1001, No 273, it. 2073 and of 2005 No 64, it. 565)
2. The Act of 1991 on the education system [*ustawa o systemie oświaty]* Journal of Laws 2004, No 256, item 2572 with subsequent amendments (relevant provision is Article 94a sec. 2 p. 10)
3. According to the Regulation of the Minister of Interior and Administration of 14 August 2003 amended by the Regulation of 8 August 2005 (J. L. 2003, no. 146 item 1428 and 2005, no. 157 no. 1322) on the rules according granting performances for applicants for refugee status. (The Directive is not mentioned in this Regulation because its mentioned in the Act on Protection but in fact the Regulation contains the details of the reception conditions and it should be taken into account in the assessment of the fulfilment of the Directive).
4. The Regulation of the Minister of Interior and Administration of 18 August 2003 on the accommodation conditions of unaccompanied minors in centres for applicants for refugee status. *[Rozporządzenie Ministra Spraw Wewnętrznych i Administracji w sprawie warunków zakwaterowania małoletnich bez opieki oraz standardu opieki w ośrodku dla cudzoziemców ubiegających się o nadanie statusu uchodźcy***]**(J. L. 2003, no. 151 item 1473)
5. Code of the Administrative Procedure of 14 June 1960.(*Kodeks postepowania administracyjnego*) (consolidated text: J.L.2000, no. 98, item 1071)
6. The draft of 14 March 2007 of the Amendment of the Act of 13 June 2003 on granting protection to aliens within the territory of the Republic of Poland. I will enter into force on the 1st of September 2007.

[631] Druk Sejmowy nr 1988 (the Seym document no. 1988)

Q.3. Explain which level of government is competent to adopt the legal norms on reception conditions for asylum seekers (specify in particular in case of a federal or regional State, if it is the federal/central power or the components; in case, specify below when it is impossible for you to answer a question because it is about the competence of the components and it is impossible for you to gather reliable information about all of them)

Acts (statutes) – *ustawy* – such as the Act of 13 June 2003 on granting protection to aliens within the territory of the Republic of Poland, are passed by the Parliament (according to Article 120 of the Constitution of the Republic of Poland of 2 April 1997) . However, the executive regulations – *rozporządzenia* – regulating the situation of aliens, including asylum seekers, in Poland are issued by the Minister of Interior and Administration. The main rules of the reception conditions of asylum seekers are contained in the Act of 2003 but the details are regulated by the Minister's regulations. Regulations are issued on the basis of a concrete provision of an act (statute). There are also regulations issued by other ministers, for example referring to taking up the work or details of admission of foreign children to schools.

Q.4. Explain the legal technical choices done to transpose the directive (comment on the nature and level of the norms used to do the transposition: legislative, regulatory, administrative like instructions, etc). Add any other element about the technique of transposition of the directive which is interesting for the implementation of Community law.

In all cases directives can be transposed by an act (statute), which means by the Parliament. The statutory norm is the only way to transpose a directive. The details are usually regulated in relevant regulations but they are always issued on the ground of a given provision of the act .

Q.5. Mention if there is a general tendency to just copy the provisions of the directive into national legislation without redrafting or adaptation them to national circumstances? If yes, give some of the worst examples and explain if there is a risk that those provisions remain unapplied or will create difficulties of implementation in the future.

Nowadays it is still too early to identify such a general tendency. However, it may be noted that some provisions are a copy of the Directive's provisions, for example Article 30a (right to work) of the Act on Protection is very similar to the Article 11 sec. 2 of the Directive.

Q.6. Have all the texts necessary to ensure the effective implementation of the new rules of transposition been adopted, prepared or at least foreseen in the future (for example a regulation completing a new law and the necessary instructions telling the administration how to apply the new rules)?

It may be stated that the main aims of the Directive are implemented. The issue of the access to employment was the last one which was to be regulated. However, there are no rules regarding vocational training of asylum seekers in the Polish law. But according to Article 12

of the Directive it is not obligatory and the Member States may allow asylum seekers to participate in any vocational training. The Polish law gives instruments to fulfil the obligations arising from the Directive but it must be stressed that sometimes the practical implementation of the aims of the Directive and the Polish legal acts is difficult.

2. BIBLIOGRAPHY

Q.7. Has an in-depth preparatory study been made public about the changes at the occasion of the transposition? If yes, thanks for trying to provide us a copy *(please contact to answer this question adequately the body and person who was responsible for the preparation of the transposition of the directive in the public administration).*

On 30 September 2004 the grounds of the draft of amendment of the Act on aliens, the Act on protection and other acts were submitted by the Prime Minister to the Parliament. The draft also referred to the transposition of the Directive 2003/9. The submission of the draft caused the work of the Parliament on the amendment to the aliens law. This and other documents on the issue were published and are accessible at the Sejm website.

Uzasadnienie do projektu ustawy z 13.06.2003 o cudzoziemcach – Druk Sejmowy no. 3333. http://ks.sejm.gov.pl/proc.4/ustawy/3333_u.htm.

The draft 14 March 2007 is also completed by the explanatory report. It is published at the Seym web site:

http://orka.sejm.gov.pl/Druki5ka.nsf/0/EA2D1D807020BBE6C125731D003706F4/$file/1988-uzas.doc

Q.8. Quote any recent scientific book or article published about the directive, the transposition rules or the question of reception conditions for asylum seekers in general (answer even if this literature is only available in your language and provide the complete title in your language (without translation) with all references; indicate author, title, in case name of periodical, year and place of publication).

There are not any strict scientific books or articles dedicated exclusively to the transposition of the Directive. The main discussion in this field took place before Poland's accession to the EU. For example, various aspects of the reception were discussed in:

B.Mikołajczyk: *Osoby ubiegające się o status uchodźcy. Ich Prawa i standardy traktowania.* Katowice 2004,

B.Mikołajczyk: *Prawa dziecka w sytuacji ubiegania się o status uchodźcy*. „Państwo i Prawo" 2004, no.. 7, pp. 88 – 99

B.Mikołajczyk: *Pomoc prawna w sprawach uchodźczych. Nowe wyzwania w związku z przystąpieniem Polski do UE.* „Palestra" 2004, no 1, pp. 19 – 29.

It is quite difficult to find any recent publications on transposition but worth mentioning is the article dedicated to all important changes which were introduced into the Polish law in 2005 (also amendments arising from the transposition of the Directive).

This is:

A.Jasiakiewicz, W.Klaus: 2005: *Zmiany w polskim prawie o uchodźcach. Nowelizacja przynosi korzystne zmiany, między innymi więcej praw socjalnych*. „Z obcej ziemi" May 2006.

The issue of education of children and the protection of unaccompanied minors are discussed in reports:

A.Jasiakiewicz, W. Klaus: Raport z monitoringu realizacji obowiązku szkolnego przez małoletnich cudzoziemców, przebywających w ośrodkach dla uchodźców. Stowarzyszenie Interwencji Prawnej 2005;

A. Jasiakiewicz, W. Klaus: *Raport z monitoringu realizacji obowiazku szkolnego przez maloletnich cudzoziemcow, przebywajacych w osrodkach dla uchodzcow. Druga edycja.* Stowarzyszenie Interwencji Prawnej 2006

Raport o sytuacji małoletnich cudzoziemców bez opieki ubiegających się o nadanie statusu uchodźcy w Polsce. Fundacja Studencki Ośrodek Pomocy Prawnej przy Wydziale Prawa i Administracji Uniwersytetu Warszawskiego – Klinika Prawa UW. Warszawa 2005.
K.Zdybska: *Ochrona ofiar przemocy oraz cierpiących na traumę na gruncie polskiej ustawy o udzielaniu cudzoziemcom ochrony*. In: Biuletyn Stowarzyszenia Praw Człowieka im. Haliny Nieć 2005, pp. 4-12 www.niecassociation.org
B.Smoter: *Wybrane zagadnienia sytuacji prawnej małoletnich cudzoziemców bez opieki w świetle nowelizacji ustawy o cudzoziemcach i ustawy o udzielaniu cudzoziemcom ochrony na terytorium RP z dnia 22 kwietnia 2005*. In: Biuletyn Stowarzyszenia Praw Człowieka im. Haliny Nieć 2005, pp. 13-18 www.niecassociation.org
Implementacja Prawa Azylowego w Polsce. Biuletyn Prawny Stowarzyszenia Praw Człowieka im. dr Haliny Niec. Nr 1/2004
Listening to refugees. Report in the Gender, Age and Diversity Roll-Out in Hungary, Poland, the Slovak Republic and Slovenia – UNHCR Regional Representation 2005
Dzieci cudzoziemskie w polskiej szkole. „Biuletyn Migracyjny". Luty 2007. http://www.migration-news.uw.edu.pl/
I. Koryś: *Dzieci imigrantów w Polsce. Nowe zjawisko .Nowe wyzwania*. „Biuletyn Migracyjny". Czerwiec 2006.
http://www.migration-news.uw.edu.pl/BiuletynMigracyjny7.pdf

Q.9. Quote any interesting decision of jurisprudence based on the implementation of the new rules of transposition of the directive (indicate references of publication if any)?

There were just three cases before the administrative courts. One case is pending. Two proceedings were discontinued because aliens did not pay court fees.

3. GENERAL INFORMATION ABOUT THE SYSTEM OF RECEPTION CONDITIONS

The purpose of the following two questions is to help the reader to understand easily and quickly the system of reception conditions in your Member State and also to avoid that you have to repeat general elements in other parts of the questionnaire. ***Please do not write more than one or maximum two pages and do not include large historical developments.***

Q.10. Describe in general the system of reception conditions in your Member State (in particular which are the main actors in charge of reception conditions?)

An alien who submitted an application for granting refugee status may also apply for social assistance for the time of pending procedure in both administrative instances. The request for assistance may also refer to an alien's spouse and his/her minor children.

Decisions on granting the assistance were rendered by the President of the Office of Repatriation and Aliens in Warsaw and according to the amendment of 24 May 2007 of the Act since 20 July 2007 they are taken by the Head of Office for Foreigners . The Head of the Office and the Office are the main actors in the whole of the asylum procedure. However in practice the one of the Office departments provides the assistance for foreigners – the Bureau of Organization of Centres for Aliens Applying for Refugee Status or Asylum.
This assistance is granted until the final decision (issued by the second administrative instance) and additionally for a period of 14 days after delivery of such a decision. An applicant must prove that he/she does not possess any financial resources allowing him/her to

cover the cost of their stay on the territory of Poland and that he/she is unable to obtain any financial resources and accommodation.

However, upon the request of an alien, the assistance may be extended for a period of up to 3 months from the date of delivery of the decision in cases when an alien has been granted refugee status or he/she obtained a tolerated stay permit. This provision seems to be very important because sometimes a positive decision may be a big problem for a refugee. It can be difficult to find himself/herself in a new situation.

Moreover, upon the request of an alien the assistance may be prolonged until the end of a period of up to 1 month from the date of delivery of the decision on discontinuation of the procedures for granting refugee status due to the fact that that the application for granting refugee status has been withdrawn.

According to Article 57 of the Act of 13 June 2003 the assistance shall include:

- accommodation in the reception centre or granting to an alien a financial benefit to cover his / her own costs of stay
- granting the medical care.

The assistance may also include granting assistance in voluntary repatriation from the territory of the Republic of Poland.

The draft of 14 March 2007 amending the Act on Protection in its Article 71 described the social assistance in details. It means that the scope of the social assistance will not be described in the act of the lower legal power but in the statute. According to this provision the social assistance covers: accommodation, food (full board) or money for food, pocket money, financial benefit for hygienic supplies, a benefit or a voucher for cloth and footwear, Polish language lessons and teaching materials, didactic supplies, costs of transport to order to participate in a proceeding or transport to medical care institution and if possible the social assistance covers costs of additional educational and recreation classes.

In the case when the procedures concerning the -granting of refugee status to married couples staying in the centre together with minor children are being carried out separately, the stay of any spouses staying in the centre may not come to the end prior to the expiry of 14 days from the date of rendering the final decision in the proceedings completed later (presently binding Article 60 of the Act on Protection).

The social assistance is not granted to an alien who resides on the territory of the Republic of Poland on the basis of a fixed period residence permit, a permit to settle or the long-term resident's EC resident permit or he/she has been placed in the guarded centre or held in custody for the purpose of expulsion, has been preliminarily arrested or has been imprisoned. It is also possible not to grant any social assistance if the application for refugee status indicates arguments for refusal of granting refugee status.

The mentioned above social benefits are usually (not always because there is a group of asylum seekers who enjoy the financial benefits but they stay outside the centre for health or safety reasons) provided by the centres for asylum seekers. Nowadays there are 17 centres. The main reception centre is in Podkowa Leśna - Dębak near Warsaw. If an alien intends to apply for the social assistance they must apply to the Reception Centre for Aliens Applying for Refugee Status in Podkowa Leśna –Dębak. Then he/she is usually moved to another accommodation centre. One centre is under construction.

Under Article 63 sec. 2 the Head of the Office may delegate its responsibility for running the centres to social organizations, foundations, associations as well as natural and legal persons.

The Office for Foreigners is the owner of 3 of the 17 centres. The other centres are rented by the Office from private companies. However, all of them are under supervision of the Office or conducted by the personnel of the Office. The Bureau of Organization of Centres for Aliens Applying for Refugee Status or Asylum is a coordinator of the work of all the centres. It is located within the structure of the Office for Foreigners.

Analysing the practical side of the issue it should be noticed that there is the problem with getting to the centre in Debak remains (there is no means of transport from the train station in Otrebusy). The tickets to Debak are bought by the Border Guard but this situation is not legally regulated in the Act. The Border Guard is providing the train tickets for the journey from the border to the centre due to its own rules.

Q.11. **Q11. A.** Explain if you have different types and levels of reception conditions following the different stages of the asylum procedure (this implies that you have to give briefly the necessary explanations about the asylum procedure). Make if relevant for reception conditions a distinction between the following procedural stages: determination of the responsible Member State on the basis of the Dublin II regulation, special procedures at the border (including transit zones in airports), accelerated procedures, admissibility procedures, eligibility procedures and the different possibilities of appeals (suspensive or not) against a refusal of the asylum request. Indicate what the main differences of reception conditions are between the different stages (if necessary by detailing between the different elements of reception conditions, in particular housing) and explain what the evolution of reception conditions is following the different stages of the procedure.

The procedures for granting refugee status shall be initiated upon an application submitted personally by the alien to the Head of the Office for Foreigners. An alien shall submit an application for granting the refugee status through the commanding officer of the Border Guard division, the territorial scope of activity of which includes the city of Warsaw, or through the commanding officer of the Border Guard checkpoint. Prior to sending the application for granting refugee status to the Head of the Office for Foreigners, the authority admitting the application shall determine, whether: at the moment of submitting the application the alien was authorized to enter the territory of the Republic of Poland or he/she has legally stayed therein; the circumstances referred to in art. 1 sec. F of the Geneva Convention have arisen; shall provide for the performance of medical examinations and necessary sanitary treatments of the alien's body and clothes. An application for granting refugee status shall be immediately sent to the Head of the Office, no later, however, than within 48 hours from the moment of submitting an application by the alien. Usually it is on the same day. (Worth mentioning is that the draft of 14 March 2007 stated that an application should be sent to the Head of the Office without delay but when an alien is placed in the deportation centre or arrest his/her application should be sent within 48 hours from the moment of submitting an application). Then they apply for social assistance. The decision on the social assistance is issued by the Head of the Office for Foreigners. Then they go to the Central Reception Centre. Then they may be transferred to other centres.

The decision on granting or refusal to grant the refugee status should be rendered within the time limit of 6 months from the date of the submission of the application. The decision on the refusal to grant refugee status for the reason of manifestly unfounded application should be rendered within the time limit of 30 days from the date of submission of the application.

They are allowed to stay in the centre for all stages of the procedure and it does not matter if it is pending before an organ of the first (Head of the Office for Foreigners) and second instance (Refugee Board). The organ of the first instance is placed within the structure

of the Ministry of Interior and Administration. The Refugee Board is an organ consisting of 12 experts appointed by the Minister of Justice and Minister of Foreign Affairs. (In 2006 the idea of liquidation of the Refugee Board appeared but finally it was withdrawn and the draft of 14 March 2007 contained provisions on procedure before the Refugee Board)

According to the draft, from the 1st September 2007 aliens in Poland were to be able to obtain the refugee status or the subsidiary protection in meaning of the Directive 2004/83 or the tolerated stay. But the draft has not been adopted and Poland did not transposed the Directive 2004/83.

They enjoy the social assistance until the final administrative decisions are issued towards all members of the family and during the next 14 days from delivery of such a decision.

If a person receives two negative decisions issued by the Head of the Office for Foreigners instance and the Refugee Board may submit a complaint to the administrative court and then to the Supreme Administrative Court. Both courts verify the legality of the administrative decisions – if the decisions are in accordance with law. However, the refugee cases are very specific and the courts must refer to the merit of a case (definition of a refugee) if they intend to verify the formal aspects of a case.

It must be stated that according to Article 16 of the Act on Protection in the decision on refusal of granting refugee status an alien is granted a tolerated stay permit or is ordered to leave the territory of Poland within the time limit specified in the decision, not exceeding 30 days. However, if an alien appeals against the decision of the first instance the Refugee Board shall specify the new time limit, not exceeding 14 days. It means that he/she can submit a complaint to the administrative court but she/he should leave Poland. They may appoint their legal representative for the period of the judicial proceeding but in practice it is not of great importance because they are out of the territory of Poland. On the other hand, they may always apply for permission for stay/visa due to general rules for aliens reasoning that they want to be present before the court but there is no guarantee that obtain the permit to stay. (The not adopted Draft of 14 March 2007 contained the provision [Article 48 sec.4] stating that an alien should leave the Poland's territory within 30 days).

During the procedure before the courts they are not granted any social assistance stipulated in the Act on Protection. Concluding, social assistance is granted through all the administrative procedure and not during the judicial proceedings.

It must be stressed that it does not matter if he or she never was in Poland before and applies for the refugee status first time or he/she has been transferred to Poland due to the Dublin mechanism. He/she has the right to the same conditions of reception. According to the information provided by the Office for Foreigners 1197 persons (87% of the Russians citizens who declare Chechen nationality) were transferred to Poland from Czech Republic (428), Germany (413), France (89, Belgium (73) in 2005. In 2006 682 persons were transferred from other EU counties. 552 of them were of them were Chechens.

Completely different, however, is the situation of an alien who is not authorized to enter the territory of the Republic of Poland. In such a case he/she shall submit an application

for granting refugee status during the border control upon entry to the Republic of Poland, through the commanding officer of the Border Guard checkpoint.

According to Article 40 of the Act on protection an alien applying for granting refugee status shall not be detained unless he or she submits an application for granting refugee status during the border control, not having the right of entry on territory of the Republic of Poland or staying illegally. They are detained also if prior to submission of an application they have crossed or have attempted to cross the border contrary to the laws or have obtained the decision ordering to leave the territory of Poland or the decision on expulsion. He/she is also detained if it occurs (after submission of the application for refugee status) that for example his/her residence constitutes a threat to the security of Poland or is undesirable or he or she has broken the law (*inter alia* he or she has taken an employment against Act on promotion of employment and institutions of the labour market of 20 April 2004) and other reasons specified in Article 88 of the Act on Aliens of 13 June 2003.

This group of aliens is placed in the guarded centres or in deportation arrests and they cannot apply for any social assistance in the meaning of the Act on protection. But it should be stressed that the unaccompanied minors and applicants who are presumed to be victims of violence or disabled may not be placed in a guarded centre or deportation arrest.

Q 11. B. Indicate precisely for which stage(s) of the asylum procedure the answers on reception conditions you give below are valid.

As it was stated above the described reception conditions refer to both stages of the administrative procedure - before the Head of the Office for Foreigners and the Refugee Board - and exclusively towards the aliens who are not detained.

4. GENERAL RULES ON RECEPTION CONDITIONS

Q.12. **Q 12. A**. Are material reception conditions provided in kind, in money or in vouchers or in a combination of these elements (see article 13, §5 which is an optional provision)? Distinguish between the different elements (housing, food, clothes, health, transportation, pocket money,…). **If reception conditions are provided in money (in general or in some cases, for instance when no places are anymore available in accommodation centres), indicate the precise amount given to the asylum seekers. Indicate in your answer what is provided in general and if there are exceptional cases.** Specify in your answer if reception conditions are different from the general system of social aid for nationals or aliens and if yes, if and when (which stage of the asylum procedure) can asylum seekers have access to the general system of social aid?

According to the currently binding Article 61 of the Act on Protection the person who is placed in the centre shall be provided with travel fares and meals. The fares are provided in order to enable the person to take part in the procedures for granting refugee status or attend medical examination or prophylactic vaccinations and in other particularly justified cases. All these benefits were mentioned in the draft of 14 March 2007.

They there are also provided with teaching materials or aids for children enjoying education and care of public institutions, primary schools, gymnasia or grammar schools as well as covering of the expenses arising out of charges for education in such institutions, schools or gymnasia. Moreover, they are entitled to permanent financial assistance for the purchase of toiletries and covering out-of-pocket expenses. Worth mentioning is that according to the draft of 14 March 2007 these benefits was to be provided by virtue of the Act on Protection. Currently they are mentioned in the minister's regulation.

It is also possible that an alien referred placed in the centre may be provided with an equivalent in money in return for food. It is provided in case when due to his/her health state he / she should obtain dietary alimentation for a period specified in a medical report, and this alimentation may not be provided by the centre. It is also provided if he/she stays in the centre together with children under 7 years of age or a minor child of an alien enjoys education and care of public institutions, primary schools, gymnasia or grammar schools. They may also be provided the one-time financial assistance for the purchase of clothing and footwear.

In cases when children under 7 and minor children attend schools they receive money for them in cash. As the personnel of the reception centres and school teachers noticed, quite often the parents do not spend the received money on food for their children and as a result their children are undernourished. That is why there is an idea to transfer money to schools, which would provide them the food (for example breakfast or lunch).

The draft of 14 March 2007 was to change also the rules of granting the financial equivalent for food for children. for children under 3 years and children attending kindergartens and schools. The draft withdrew the provisions on possibility to provide an alien with equivalent in money in return for food due to the medical report (because in practice aliens do not dedicate money for appropriate food for them)

According to the Regulation of the Minister of Interior and Administration of 14 August 2003 amended by the Regulation of 8 August 2005 (Journal of Laws 2003, no. 146 item 1428 and 2005, no. 157 no. 1322) persons staying in the reception centre receive 20 PLN for the purchase of toilet articles and 50 PLN pocket money every month. They may also receive an allowance for cloth and footwear – 140 PLN. The NGO-s noticed that it is not enough, especially in the case of growing children.

The mentioned equivalent in money in return for food is 9 PLN per day.

However according to information provided by the Office for Foreigners it happened that aliens did not dedicate the allowances for cloth and footwear but for other things (for example alcohol or cigarettes) or they tried to save money, so the Office decided not to give them the allowance in cash but they receive vouchers. The idea of vouchers was introduced into the draft of 14 March 2007.

There are also situations when the asylum seekers do not stay in the reception centres they receive a benefit of 25 PLN per person for each day of stay. However, if an asylum seeker stays with his/her family this amount is different. When the family consists of 2 people the benefit is 20 PLN, 3 people– 15 PLN, 4 and more family members it is 12,50 PLN.

Q 12. B. Can the reception conditions in kind, money or vouchers be considered as <u>sufficient</u> "to ensure a standard of living adequate for the health of applicants and capable of ensuring their subsistence" as requested by article 13, §2 of the directive (which is a mandatory provision but leaves a certain space to Member States)? In order to help to assess the respect of this rule when reception conditions are provided in money, include if necessary in your answer points of

comparison with the minimum amount of social aid guaranteed for nationals in your Member State.

An answer to this question is quite difficult because of the meaning of the "standard". It is possible to compare the income for the people living outside the centre to the level of Poland's social minimum and the standard of living of the Polish citizens. Providing that the minimal salary is 899,10 PLN gross the help provided for the arriving to Poland asylum seekers should be recognized as sufficient. It must be remembered that if they stay in the reception centre they do not pay for food, accommodation and medical care. If they stay outside the centre they receive money for every day of stay, sometimes it is more than a Polish citizen is able to earn each month.

5. PROCEDURAL ASPECTS

Q.13. **Q 13. A. Does the national legislation specifically provide that a request for international protection is presumed to be under the Geneva Convention unless explicitly requested otherwise? (see article 2, b which is a mandatory provision)**

According to section 1 of Article 56 of the Polish Constitution of 1997 states that "foreigners shall have a right of asylum in the Republic of Poland in accordance with principles specified by statute".
Section 2 of Article 56 states that foreigners who, in the Republic of Poland, seek protection from persecution, may be granted the status of a refugee in accordance with international agreements to which the Republic of Poland is a party". Sec. 2 refers to the Geneva Convention status. Sec. 1 does not refer to the "international protection".

Under Article 13 sec. 1 of the Act on Protection refugee status in the Republic of Poland shall be granted to an alien who fulfils the conditions for being recognized as a refugee, as specified in the Geneva Convention and the New York Protocol. So, there is the direct reference to the Geneva Convention.

It must be stressed that the other kind of the protection – tolerated stay – is closely connected with refugee status – it does not have an independent nature (except a situation when the Voivode [governor of a province] issues a decision of expulsion of an alien or in extradition cases).

An alien is not eligible for tolerated status himself/ herself (except in the above mentioned situation of expulsion). He or she must apply for refugee status but as a result of the procedure he/she may obtain refusal of granting refugee status and granting a permit for tolerated stay in Poland. Most of the applicants of Chechen nationality is in such a situation.

In these cases the permit is rendered *ex officio* by the Head of the Office for Foreigners or, in second instance by the Refugee Board, in one decision "on refusal of refugee status and the granting of a permit for tolerated stay".

The tolerated stay is a type of humanitarian status. According to Article 97 of the Act on Protection an alien shall be granted the permit for tolerated stay if his/her expulsion may

be effected only to a country where his/her rights contained in Articles 1-7 of the ECHR could be under threat. Moreover this kind of protection shall be granted to an alien whose expulsion is unenforceable due to reasons beyond the authority of executing the decision on expulsion or beyond an alien (for example in case when there are not any direct flights to the country of an alien's origin, see: the judgement of the EctHR in the case *Shamsha and Shamsha v. Poland*)

That is why an alien enjoying the reception conditions in the reception centres or the other kind of social assistance may become " a refugee" or "an alien who possess a permit for tolerated stay in Poland". It is obvious that conditions of their reception are the same.

Q. 13. B. Explain if the scope of application of reception conditions is extended to other asylum seekers than refugees in the sense of the Geneva Convention, in particular to persons asking for subsidiary protection or to other forms of protection like humanitarian statuses (see article 3, § 4 which is an optional provision)? If not, explain briefly which the differences between these special regimes and the directive are.

Asylum and refugee status there are not all the kinds of the protection which may be granted to aliens in Poland. The Act on Protection contains, apart from the above mentioned solutions also two other possibilities of protection, namely the so called "tolerated stay" and "temporary protection". Thus, the currently binding Act on Protection regulates: refugee status, asylum, tolerated stay and temporary protection. The draft of 14 March 2007 was to introduce the subsidiary protection. If an alien is not granted the refugee status he/she may be granted the permit for tolerated stay. But from the 1st September 2007 he/she was to be granted the subsidiary protection or the permit for tolerated stay. There was only one procedure in the draft, so they were to enjoy the same reception conditions. The asylum seekers applying for asylum are placed in he same centres and they enjoy the same conditions. But in practice there are few applicants for asylum.

Q. 13. C. Are there specific provisions in national law for reception conditions in case of diplomatic or territorial asylum requests submitted through a diplomatic or consular representation (see article 3, §2 which is an optional provision)?

Articles 90 – 96 of the Act on Protection refer to the "asylum". Foreigners may apply for this type of the protection within of the territory of Poland or outside the Poland's territory. These foreigners are not entitled to the social assistance except the unaccompanied minors if they apply for asylum in Poland.

Q.14. **Are reception conditions available as from the moment one asylum application is introduced? How is article 13, §1 which is mandatory legally understood?** Do asylum seekers have to satisfy any other condition in order to get reception conditions?

The answer should be positive because after the submission of the application aliens are sent to the Reception Centre in Dębak. Theoretically they must prove that they do not have any resources to cover the costs of their stay in Poland, but in practice their declaration about the lack of any resources are very difficult to verify, so they receive benefits.

Q.15. **Explain when reception conditions end, for instance after refusal of the asylum request** (include in your answer the link with the right of appeal against a decision of refusal of the status, in particular the question of its suspensive effect)

According to the currently binding provisions an alien, in relation to whom the procedure for granting refugee status has been initiated, shall be provided, upon his/her request, with the assistance for the period of the procedure and for the period of 14 days from the date of delivery of the final decision in this case (so they enjoy reception conditions after appeal in the second instance, as well). However, if there is a family and if separate procedures are conducted in the case of each of them the period of 14 days is counted from the delivery of final decision in case of the last member of a family.

According the draft of 14 March 2007 they were to be entitled to the social assistance and the health care not only during the procedure in both administrative instances but also for two months from delivery of final decision in case of the last member of a family. Only in case of discontinuation of proceeding they would be provided with social assistance and the medical help for the period of 14 days from the date of delivery of the final decision in this case.

Q.16 Are there special rules or practices regarding reception conditions in case of successive applications for asylum introduced by the same person?

The draft of 14 March 2007 was to introduce a provision that if it turns out in the procedure initiated due to the successive application that there are new circumstances of persecution, an alien is provided the social and medical assistance as other applicants.

Q.17. Information of asylum seekers about their rights and obligations in terms of reception conditions, in particular about established benefits (see article 5 which is too large extend a mandatory provision; do not confuse this question with the information to be provided to asylum seekers about the asylum procedure):

Q. 17. A. Are asylum seekers informed, and if yes about what precisely?

Asylum seekers are informed immediately (this information is confirmed by the Halina Niec Human Rights Association – a very active NGO) and rather precisely. However, it is quite difficult to assess each case.

Q. 17. B. Is the information provided in writing or, when appropriate, orally?

The information is provided orally and in writing. It should be remembered that almost 90% of applicants in Poland speak (or at least understand) Russian. That is why there are not any problems with informing them in both forms - orally and in writing. If an asylum seeker speaks any exotic language the information is provided with assistance of an interpreter.

Information in a few basic languages is available in Debak. Moreover some NGOs such as Helsinki Foundation for Human Rights deliver information in the form of leaflets translated into numerous foreign languages. The information is also available in the internet in Russian and English on the Office web site.

Q.17. C. Is that information in general provided in a language understood by asylum seekers? Specify the list of languages in which it is available

As it as stated before 90% of asylum seekers arriving to Poland are Russian speaking persons. That is why the written information is provided mainly in Russian but it is also provided in Arabic, Chinese and English. It results from the fact that asylum seekers usually understand these languages. It may also be added that the reception centres "specialise" in certain languages and for example Arabic speaking asylum seekers are placed in one reception centre. In practice, the centre in Siekierki in Warsaw gives shelter to people with other than Chechnyan nationality.

The Act on Protection is also translated into Russian. It may be also added that the information on the Polish Office for Foreigners (UDSC) Web Page is available also in Russian (not only in English).

Q. 17. D. Is the deadline of maximum 15 days respected?

The deadline is fully respected. They receive the information immediately. It may also be added that some applicants are well informed before they come to Poland because the information on procedure and assistance is provided at the Office for Foreigners web site in English.

Q.18. Information of asylum seekers about the existence of organisations or groups promoting their interest and defending their rights (see article 5 which is to a large extend a mandatory provision):

Q. 18. A. Is there a list of organisations dressed by the authorities and if yes is it comprehensive? Is this in particular the case about the possibilities to get legal assistance and health care?

The list of NGO-s is accessible in each centre. They usually provide legal assistance and social assistance (the Polish Humanitarian Action) or medical assistance. They work permanently or incidentally (educational programmes). Recently the Office has put the list of NGO-s on its web site with their phone numbers and addresses . There are:

Stowarzyszenie Interwencji Prawnej, Al. 3 Maja 12/510 (V pietro), tel: 22 621 51 65, e-mail: Interwencja-prawna@o2.pl, http://www.interwencjaprawna.pl/
ELEOS Prawosławny Ośrodek miłosierdzia, Białystok , ul. Św. Mikołaja 5, tel: 85 742 65 00, 85 742 60 00
Fundacja Edukacji i Twórczości w Białymstoku, Białystok, u. Lipowa 41 D 15-424, tel: 85 742 40 41, 85 742 40 42
Caritas Polska - Biuro Informacji dla Migrantów i Uchodźców, Białystok, ul. Warszawska 43 lok.302
Uniwersytet Jagielloński Uniwersytecka Poradnia Prawna Sekcja Praw Człowieka, Kraków , Al. Zygmunta Krasińskiego 18 30-101, tel: 12 430 19 97, fax: 12 430 19 97, www.juhrc.org/poradnia
Centrum Pomocy Prawnej im. Haliny Nieć (Stowarzyszenie Praw Człowieka im. Haliny Nieć), Kraków , ul. Sobieskigo 7/3 31-136, tel: 12 633 72 23, fax: 12 633 72 23, e-mail: biuro@pomocprawna.org, http://www.pomocprawna.org/
Ośrodek Praw Człowieka Uniwersytetu Jagiellońskiego, Kraków, Al. Z. Krasińskiego 18 30-101, tel: 12 427 24 80, fax: 12 427 24 80, e-mail: biuro@juhrc.org, http://www.juhrc.org/
Polska Misja Medyczna, Kraków, ul. Rejtana 2 30-510, tel: 12 293 40 50, fax: 12 293 40 55, http://www.pmm.org.pl/

Centrum Duszpasterstwa Młodzieży, Lublin , Ul. Krakowskie Przedmieście 1 20-001, tel: 81 532 13 96, e-mail: pneuma@duch.lublin.pl, http://www.duch.lublin.pl/
Caritas Archidiecezji Lubelskiej Centrum Pomocy Migrantom i Uchodźcom, Lublin , Ul. Prymasa Stefana Wyszyńskiego 2 20-950, tel: 81 743 71 86, 81 743 62 48, fax: 81 743 62 49, e-mail: Migranci@kuria.lublin.pl, Migranci-lublin@caritas.pl
Fundacja A-venir, Lublin , Ul. Wojciechowska 7J, tel: 81 444 63 88, fax: 81 444 63 86, e-mail: fundacja@a-venir.org.pl, http://www.a-venir.org.pl/
Fundacja A-venir, Białystok Ul. Warszawska 43, tel: 85 740 72 88, fax: 85 740 72 8, e-mail: fundacja@a-venir.org.pl, http://www.a-venir.org.pl/
Fundacja Instytut na rzecz Państwa Prawa, Lublin , Ul.F.Chopina 14/70 20-023, 81 743 68 05, e-mail: fundacja@fipp.org.pl, http://www.fipp.org.pl/
Stowarzyszenie Centrum Wolontariatu, Lublin , Ul.Jezuicka 4/5 20-113, tel: 81 534 26 52, fax: 81 532 45 45, e-mail: lublin@wolontariat.org.pl, http://www.wolontariat.org.pl/
Stowarzyszenie 'Jeden Świat', Poznań , ul. Krasińskiego 3A/1 60-830, tel: 61 848 43 38, e-mail: info@jedenswiat.org.pl, http://www.jedenswiat.org.pl/
Caritas Archidiecezji Warszawskiej - Centrum Pomocy Migrantom i Uchodźcom, Warszawa, Ul Krakowskie Przedmieście 62, tel: 22 826 99 10, fax: 22 826 99 10, e-mail: Migranci-waw@caritas.pl, http://www.warszawa.caritas.pl/
Polskie Stowarzyszenie Edukacji Prawnej PSEP, Warszawa, Ul. Kredytowa 6/73, tel: 22 423 76 92, 22 423 36 12, fax: 22 826 10 27, e-mail: psep@psep.pl, http://www.psep.pl/
UNHCR, Warszawa , Al.Róż 2, 00-558, tel: 22 628 69 30, fax: 22 625 61 24, e-mail: polwa@unhcr.ch
Lekarze Bez Granic / Medecins Sans Frontieres, Warszawa , Pl. Konstytucji 5/8, 00-657, tel: 22 499 67 98, fax: 22 499 67 99, e-mail: Msff-varsovie@paris.msf.org, http://www.msf.org/
Fundacja na rzecz integracji zawodowej, społecznej oraz rozwoju przedsiębiorczości Via, Warszawa , ul. Długa 44/50 00-241, tel: 22 635 55 62, fax: 22 635 55 76, e-mail: zarzad@via.org.pl, http://www.via.org.pl/
Międzynarodowa Inicjatywa Humanitarna, Warszawa, ul. Fałata 2/41 02-534, tel: 22 849 94 78, fax: 22 849 14 07, e-mail: ihipol@yahoo.com
Fundacja „Studencki Ośrodek Pomocy Prawnej przy Wydziale Prawa i Administracji Uniwersytetu Warszawskiego - Klinika Prawa UW", Warszawa , ul. Krakowskie Przedmieście 26/28, 00-927, tel: 22 552 08 11, fax: 22 552 43 18, e-mail: klinika@wpia.uw.edu.pl, http://www.klinika.wpia.uw.edu.pl/
Związek Harcerstwa Polskiego, Warszawa, Ul. M.Konopnickiej 6 00-491, tel: 22 339 06 00, fax: 22 339 06 06, http://www.zhp.pl/
Polski Czerwony Krzyż, Warszawa , ul. Mokotowska 14 00-561, tel: 22 326 12 00, 22 628 55 75, 22 326 12 86, fax: 22 628 41 68, info@pck.org.pl, http://www.pck.org.pl/
Ośrodek Migranta Fu Shenfu, Warszawa, ul. Ostrobramska 98 04-118, tel: 22 610 02 52
Stowarzyszenie Ruch Nowego Życia, Warszawa, Ul. Polnej Róży 1C 02-798, tel: 22 648 98 18 22 418 29 50, e-mail: rnz@rnz.org.pl
Helsińska Fundacja Praw Człowieka, Warszawa, ul. Zgoda 11 00-018, tel: 22 828 10 08, 22 556 44 66, fax: 22 556 44 40, e-mail: hfhr@hfhrpol.waw.pl, http://www.hfhrpol.waw.pl/
Fundacja „Ocalenie", Warszawa, ul.Mokotowska 14 00-561, tel: 0 602 27 50 53, 0 697 17 60 92, e-mail: ocalenie@wp.pl
Stowarzyszenie Uchodźców w RP, Warszawa, ul.Oleandrów 7/14 00-629, tel: 22 839 09 27, e-mail: assref@hotmail.com
Polska Akcja Humanitarna, Warszawa, ul.Szpitalna 5/3 00-031, tel: 22 828 90 86, fax: 22 831 99 38,e-mail: pah@pah.org.pl, ucho@pah.org.pl; http://www.pah.org.pl/, http://www.refugee.pl/

Stowarzyszenie na rzecz Integracji i Ochrony Cudzoziemców „Proxenia", Warszawa, ul. Ostrobramska 98 04-118

Q. 18. B. Is the information provided to the asylum seekers, and if yes, in writing or, when appropriate, orally?

This kind of information is provided in writing and orally with other information about the conditions of reception. However, it usually depends on an individual situation for example there are illiterate asylum seekers or they speak a very exotic language. The Act on Protection in Article 22 obliges the authorities admitting the application to inform an alien in a language understandable to him/her about the principles and procedures, about his/her rights and obligation during the procedure.

Q. 18. C. Is that information in general provided in a language understood by asylum seekers? Specify if possible the list of languages in which it is available.

The rules referring to information about NGO-s are the same as in the case of the general information on reception conditions.

Q. 18. D. How many organisations are active in that field in your Member State?

At least there are all the itemized above NGO-s. (at least 28) However, forms of their activity are very various. They may be divided into three groups: there are NGO-s which provide legal assistance (the Halina Niec Human Rights Association – Stowarzyszenie im. Haliny Nieć, the Helsinki Foundation – Fundacja Helsińska, the Polish Association of Legal Education – Polskie Stowarzyszenie Edukacji Prawnej, the Polish Association of Legal Intervention – Polskie Stowarzyszenie Interwencji Prawnej, the Students' Law Clinic in Warsaw, Krakow, Bialystok and Lublin).

There are NGO-s which provide material and legal assistance, such as the Polish Red Cross or Caritas. The medical and psychological assistance is provided by the Polish Medical Mission, The *Salvation* Foundation "Ocalenie". The *Bobody's Children* Foundation "Dzieci Niczyje" focuses on assistance to the unaccompanied minors (This NGO is not mentioned on the list provided by the Office) . The Proxenia Association takes up many initiatives, such as writing reports, organisation of seminars, conferences, information actions, etc. There are NGO-s which help in other ways, for example organising teaching Polish language for children (the Polish Humanitarian Action). The Polish Humanitarian Action simultaneously provides other forms of assistance, of course. The A -venir Foundation should be mentioned as organization that also offers material and social help.

Q.19. Documentation of asylum seekers (see article 6):

Q.19. A. What kind of document is delivered to the asylum seeker? Explain the legal value of this document (just a certification of the status as asylum seeker or also prove of identity?) (see §1 of article 6 which is a mandatory provision)

According to Article 32 of the Act on Protection an alien who submitted an application for granting refugee status shall be issued a provisional identity certificate – "zaswiadczenie tozsamości". The certificate confirms an alien's identity and entitles him/her to stay on the territory of Poland.

This document replaces a passport or another travel document because an alien who submits the application for granting refugee status is obliged to deposit his travel document (as well as one of his/her children) to the Head of the Office and the Office for Foreigners.

Q.19. B. Are there situations or specific cases in which another equivalent document or even no document is issued? (in particular is there an exception for "procedures to decide on the right of the

applicant legally to enter the territory" as made possible by §2 of article 6)?

The Act on Protection does not contains any provisions on other kinds of documents. There are not any specific provisions in the Act on Aliens. Persons who are placed in the guarded centres or in arrests for deportation are obliged to deposit their documents but they do not receive any other documents.

The draft of 14 March 2007 was to introduce a provision containing the possibility to issue upon parents' request a separate document for children over 7 years.

Q.19. C. For how long is this document in principle valid and is it necessary to renew it after a certain period?

The document mentioned in Article 32 of the Act on Aliens is valid for 30 days. When it expires successive identity certificates are issued to an alien for periods of maximum 6 months until completion of the procedure for granting refugee status.

Q.19. D. What is the deadline for the delivery of that document? Is the mandatory deadline of 3 days set by article 6, §1 respected[632]?

The document is delivered immediately and the deadline of 3 days is fully respected. This information is also confirmed by the NGO-s and the UNHCR.

Q.19. E. Is it possible for an asylum seeker to get a travel document for serious humanitarian reasons (see §5 of article 6 which is an optional provision)?

None of the Acts of 2003 contains any provisions referring to §5 of Article 6.

Q.19. F. Is there a central system of registration of asylum seekers and is it or not separate from the registration of aliens? If yes, describe it briefly (content) and indicate in particular if it is an electronic database.

Article 132 of the Act on Aliens and Article 119 of the Act on Protection refer to the registers**.** Information System has central character and is available for Office for Foreigners as well as for the Border Guards ("POBYT").

There are many separate registers, among others, the register of procedures on granting the refugee status and on granting assistance to aliens applying for granting refugee status.

Q.20. Residence of asylum seekers :

Q.20. A. Is in principle an asylum seeker free to move on the entire territory of your Member State or only to a limited part of it and in case, which part? (see article 7, §1 which is a mandatory provision)

There are not any provisions limiting the free movement of asylum seekers within the entire territory of the Republic of Poland (providing that they are not detained, of course).

However according to the Article 45 of the Act on Protection, the Head of the Office for Foreigners may oblige an alien to stay in a specific place (only in case when an alien was

detained or should be detained but he/she is not placed in the guarded centre or arrest). In practice, this law is not being used . This provision was repeated in the draft of 14 March 2007 (its Article 89c).

Q.20. B. About the <u>place of residence (see §2 of article 7)</u>: explain to which extend the person is free to choose her residence and if this depends of the stage of the asylum procedure (for instance before and after admissibility); if there are constraints limiting the choice, explain which ones and their reasons (for instance processing of application, attribution of reception conditions,…).

The possibility to choose the place of residence does not depend on the stage of the procedure. It depends on the submission of the application for social assistance. If an asylum seeker does not apply for the assistance he or she may choose the place of his/her residence. However, he/she is obliged to inform the Office about each change of the place of residence. It is obvious due to the procedural rules and the asylum seeker is informed in an understandable language about this obligation at the beginning of the proceedings. (There is some written information in the form of an application for refugee status).

However, if an asylum seeker applies for social assistance his/her choice of the place of residence is limited. There are 17 reception centres and they are placed first in the central reception centre in Debak then in one of the other 16. They are usually persons of the same nationality or ethnic or language groups who are placed in the same centres. The family unity is also respected. It must be remembered that persons residing in the centre must observe the rules of stay in the centre but, as it was stated before, reception centres are not closed centres.

It must also be added that there is a group of asylum seekers who, according to Article 64 of the Act on Protection, enjoy social assistance (financial benefit) but who do not stay in the reception centre. They do not stay in the centre due to their health state acknowledged by a medical report or if there is a need to assure an alien's safety. According to the information obtained at the Office in May 2007 there were 548 asylum seekers who stay outside the centre and enjoy the financial benefits. Total number of asylum seekers enjoying the reception conditions is 4148 (May 2007).

Q.20. C. About the <u>place of reception (meaning where the asylum seeker has to stay to benefit from reception conditions) (see § 4 of article 7)</u>: explain which are the general rules about the determination of this place (to which extend are the decisions determining the place taken individually and do they take into account the personal situation of the asylum seeker?) and to which extend the person is free to choose it and if it depends of the stage of the asylum procedure (for instance before and after admissibility); if there are constraints limiting the choice, explain which ones and their reasons (for instance attribution of reception conditions, processing of the application,…).

As it was stated before if an asylum seeker applies for social assistance his /her choice of a place of residence is limited. It does not mean that he/she does not have any influence on a decision on placing him/her in the centre (not the first one – the central reception centre in Dębak but in others). There are not provisions in the Act on Protection on impartiality of decisions on reception conditions. It cannot be stated that that the decisions in these cases are not taken individually. The decisions on providing the material assistance are the

decisions in the meaning of the Code of the Administrative Procedure. It means that an organ rendering such decisions is obliged to act impartially and individually. It arises directly and indirectly from the principles of the Code (Articles 7, 10, 11)

Various aspects are taken into consideration in taking decisions on reception, for example, situation of the family of the asylum seeker, state of health, understanding of languages, etc. It may be stressed that an asylum seekers may apply for being placed in a concrete centre (for example because many of his/her acquaintances stay there).

Q.20. D. If all asylum seekers are not placed in accommodation centres because of capacity limits, explain how the persons are distributed between accommodation centres and other accommodation facilities (which authority takes the decisions, on the basis of which elements, can that decision be appealed by the asylum seeker,…)

In all these cases the Head of the Office takes the decisions. According to Article 63 of the Act on Protection it is possible to delegate NGOs to run the centres. That would also be possible in a crisis situation. Worth of mentioning is the fact that such a crisis situation happened in 1996. At that time the Polish Humanitarian Action opened its own centre "Dom Uchodźcy" in Warsaw but usually rejected asylum seekers had stayed there (but it should be remembered that the law on aliens was completely different at that time).

The draft of 14 March 2007 was to maintain the possibility to delegate NGOs, natural and legal persons to run the centres (Article 79 sec. 2 of the draft).

Q.20. E. How can an asylum seeker ask to leave temporarily the place of residence or of reception or an assigned area? How is the individual AND impartial character of the decision ensured? (see §5 of article 7 which is a mandatory provision)

As it was stated before the reception centres are not closed (they may leave the centre for a certain time if they give reasons for leaving it), but it must be remembered that a stay in centres is closely connected with providing social assistance. They are also bound by the rules of order in a centre. That is why asylum seekers are not interested in leaving centres. However, providing that for health or safety reasons they may be placed outside the centres and receive money for accommodation and food. If they can stay outside centres from the beginning of the procedure the more they can temporarily change their place of residence during the pending procedure if it turns out that it is necessary for their health or safety. The decisions in such cases must always be taken individually.

Q.21. **Q.21. A. Do rules on reduction or withdrawal of reception conditions exist in internal legislation and if yes in which cases (mention in particular if there are cases not foreseen by article 16, § 1 and 2 which are optional provisions)? Distinguish in your answer between cases of reduction and withdrawal and explain which conditions can be reduced and if access to emergency health care is always ensured as requested by article 16, §4, last sentence.**

Currently the reduction (1/3 of the financial benefit) or withdrawal of reception conditions is regulated by Article 65 and 66 of the Act on Protection. The Head of the Office has the competence to withhold in the whole or in part the assistance based on placing in the reception centre or granting the financial benefit if an alien is in possession of his/her own financial means sufficient to cover his/her needs or after being granted the assistance, has crossed the border contrary to the law or has

grossly violated the rules of social coexistence in the centre or without giving a reason, has stayed outside the centre for a period exceeding 3 days.

The draft of 14 March 2007 did not contain the provisions on reduction but only on withdrawal of the assistance. It could take place if an alien has grossly violated the rules of social coexistence in the centre. The assistance was to suspended if an aliens stayed outside the centre for a period exceeding 3 days. According to the draft an alien could ask for restoration of assistance. In case when an alien was deprived of assistance second time due to gross violation of the rules of social coexistence in the centre the Head of the Office could be grant him/her a financial benefit in the amount of 1/3.

Q.21. B. Has article 16, §2 dealing with refusal of reception conditions for unreasonably late applications for asylum been transposed by your Member State (or was this case already applicable before transposition)? Are there cases in practice?

The Act on Protection does not provide for the possibility to refuse the reception of condition in case of unreasonable late applications.

Q.21. C. How is it ensured that decisions of reduction or withdrawal are taken individually, objectively AND in particular impartially (for instance through and independent arbitrator) (see article 16, §4 which is a mandatory provision)?

There are not any independent arbitrators but all the decisions are administrative decisions in the meaning of the Code of Administrative Procedure, which means that an asylum seeker has the right to appeal against such a decision. The decision should be taken impartially and individually under provisions of the Code.

Q.21. D. Is statement 14/03 adopted by the Council at the same moment as the directive respected (see the document attached to our sending)?

There were not any special amendments implementing the statements 14/03. But it is obvious that in this case the ECHR should be respected. The obligation of ensuring that no one is subject to inhuman dignity or degrading treatment arises also from the Polish Constitution.

Q.21. E. Are there already administrative appeal decisions or judgements on cases of reduction, withdrawal or refusal which have been taken, and if yes, what has been the outcome?

As it was state before there were 3 cases before the administrative courts. 1 is still pending. Two were discontinues because aliens did not pay the court fee and they did not apply for exemption from court costs.

Q.22. **Q.22. A. Appeal against a negative decision relating to the granting of benefits or based on article 7 (see article 21 which is a mandatory provision): indicate against which decision an appeal can be introduced, describe the system of appeal in general and include in particular in your answer the information given to asylum seekers about possibilities of**

appealing, deadline for appealing, if the appeal has or not a suspensive effect, if there are different steps (for instance first an administrative appeal and in particular if the guarantee of an appeal before a judicial body in the last instance is respected)?

All the decisions on granting social assistance are taken by the Head of the Office for Foreigners. In cases concerning granting or refusal to grant refugee status the Head acts as an organ of the first instance and an alien has the right to appeal against his decision to the Refugee Board and then to the administrative courts. In cases referring to social assistance the appeal to the Refugee Board is excluded on virtue of Article 81 of the Act on Protection. The Act on Protection does not contain any specific provisions on the appeal procedure in social assistance matters. It means that the appeal may be submitted according to general rules provided for in the Code of Administrative Procedure. It means that an alien may submit an application for re-examination of a case to the Head. It means that it is "a quasi-appeal". If the second decision is negative an alien may submit a complaint to the administrative court or even to the Supreme Administrative Court.

Q.22. B. Explain which are the possibilities for asylum seekers to benefit from legal assistance when they introduce such an appeal (see article 21, §2 which is a mandatory provision but leaves space to Member States)?

The legal assistance may be granted in accordance with general rules before the courts. A person who submits a complaint to the court may apply for free legal assistance if he/she proves that does not posses financial resources to cover the costs of the assistance. It should be added that in practice NGO-s help aliens in these matters.

Q.22. C. Are there already administrative appeal decisions or judgements which have been taken and if yes, which are the main important ones?

There were not.

Q.22. D. Is a mechanism of complain for asylum seekers about quality of receptions conditions in general (even if they are not personally concerned) organised? If yes, before which authority? Is it linked to the system of guidance, control and monitoring of reception conditions (see below question n° 39)?

The problem is that if there is no decision then there is not any possibility to make a complaint about it to the administrative courts. The quality of reception conditions is very subjective and it is very difficult to complain about it. There is always a possibility for aliens to complain to the Head of the Office. Moreover, an alien may submit any complaints to a civil court if he/she believes that, for example, the quality of the reception conditions violates his/her dignity. In practice such situations have not taken place.

6. RIGHTS AND OBLIGATIONS OF ASYLUM SEEKERS

Q.23. **Family unity of asylum seekers: define how a family is defined in relation with article 2, (d) which is a mandatory provision and explain how housing is provided to a family (see articles 8 which is a mandatory provision but leaves space to member States and 14, §2, (a) which is a mandatory provision).**

There is not any definition of a family in the Polish law but there are family law and the Family and Guardianship Code of 1969. The Code contains norms on personal and property relations between spouses and parents and children. It is very helpful with the interpretation of the "family" notion.

It may be stated that the family consists of persons who are bound by marriage or parentship. The ties between siblings and grandparents and grandchildren are also taken into consideration (but these ties are much weaker). There are not any differences between children born in wedlock and out of wedlock and if a couple has a child (children) they should be treated as a family but the problem is that unmarried couples /partnerships do not exists in the Polish law. However, aliens arriving nowadays to Poland usually create a very traditional model of family (persons of the Chechen nationality), so there are no problems with, for example, the way of accommodation.

In the context of Article 14 sec. 2 of the Directive it should be noticed that the mentioned Article 60 of the Act of protection seems to be controversial. It says that "In cases when the proceedings for granting the refugee status to married couples staying in the centre together with minor children are being carried out separately, the stay of spouses staying in the centre may not come to the end prior to the expiry of 14 days from the date of rendering the final decision in the proceedings completed later...". The question which should be put toward this provision is why only married spouses with minor children are taken into consideration". What about families with children over 18 years? And what about unmarried couples with minor children?

It seems that the provision of Article 60 is not compatible with the Directive – its Article sec. 14 2a as well as with the jurisprudence of the EctHR and the Convention on Rights of the Child.

The draft of 14 March 2007 did not contain a provision similar to currently binding Article 60. However the rules of accommodation should be elaborated in an executive provision when the amendment enters into force.

Q.24. **Q.24. A. How is housing of asylum seekers organised: describe the system in general and indicate in particular what is the most frequently system used (see article 14, §1 which is a mandatory provision but leaves space for Member States; distinguish between accommodation centres, private houses and apartments, hotels places or other premises).**

Housing for asylum seekers is organized only in accommodation centres, which corresponds with Article 14 sec. 1b of the Directive. However, very often these centres are organized in hotels rented by the Office but the Central Reception Centre in Debak is organized in former military barracks, restored and fully adjusted to the asylum seekers' needs.

Q.24. B. What is the total number of available places for asylum seekers? Distinguish in your answer between accommodation centres, private houses and apartments, hotels or other premises.

Currently there are about 3958 places in the centres (more than last year). 350 aliens may be accommodated in the Central Reception Centre (all the asylum seekers are sent to the Central Reception Centre first). This number pf places is sufficient.

Q.24. C. Is this number of places for asylum seekers sufficient in general or frequently insufficient?

Currently the number of places is sufficient but there were moments in years 2004 and 2005 when the centres were overcrowded and NGO-s and UNHCR assessed that the number of places was not sufficient. That is why the Office has decided to build another, its own centre.

Q.24. D. Are there special measures foreseen in urgent cases of a high number of news arrivals of asylum seekers (outside the case of application of the directive on temporary protection)?

There are not any special provisions on urgent cases of a high number of news arrivals of asylum seekers but it seems that in such cases the Article 63 sec. 2 of the Act on Protection may be applied. The Head of the Office may delegate its responsibility for running the centres to NGO-s and natural or legal persons. The Office is planning to open another new centre in Biala Podlaska. However the plans for opening a new centre by the Office for foreigners in Biala Podlaska implies possible closure of some of the rented centres.

Q.25. Accommodation centres **(important note: all the following questions are about open and not closed centres where asylum seekers are detained which are covered by another question)**

Q.25. A Are there different categories of accommodation centres, for instance depending of the stage of the procedure (admissibility and eligibility)?

There are two kinds of reception centres. First all the asylum seekers applying for the refugee status are placed in the Central Reception Centre in Debak then they are located in other centres – accommodation centres (ośrodki pobytowe)

Linin and Czerwony Bor (former military units) are two accommodation centres being owned by Office for Foreigners. The rest are rented. The Office and the owner of the future centre (for example a hotel) conclude an agreement on the capacity of a centre.

The unaccompanied minors under 13 years are placed in the in the custodian – educational centres. There are 11 minors the in the in the custodian – educational centre in Warsaw (May 2007).

According to the draft of 14 march 2007 all minors should be placed in the custodian – educational centres.

Q.25. B. Is there a legal time limit for accommodation in a centre after which the asylum seekers have access to private houses or apartments or is this limit linked to a stage of the asylum procedure?

There is not such a regulation in the Polish law.

Q.25. C. Is there a general regulation about the internal functioning of those centres and the rights and duties of the asylum seekers? If yes, is this general regulation applicable to public and private centres? If not, are the centres supposed to adopt an internal regulation and does a central authority have or not a kind of control about its content?

There is a special provision in the Act on Protection – Article 62 – "1. An alien placed in the centre shall be obliged to observe the rules of stay in the centre. 2. The minister competent with respect to internal affairs shall specify by means of ordinance the rules of stay in

the centre, determining in particular the conditions of admissions an alien to the centre and of paying visits to persons placed therein, the rules of distribution of meals, the rules of cleaning maintenance as well as the internal regulation of the centre".

The Minister of Interior and Administration of 12 August 2003 has issued the rules of stay. It is the Minister Regulation on rules of stay in the centre for aliens applying for refugee status (Rozporzadzenie Ministra Spraw Wewnętrzych i Administracji w sprawie regulaminu pobytu w ośrodku dla cudzoziemców ubiegających się o status uchodźcy) – Journal of Law 2003 No 146 item.1425.

The rules refer to all centres (the central reception centre and all the others).

This principle was to be maintained by the draft of 14 March 2007 (Article 82).

Q.25. D. Do the regulations foresee the possibility of <u>sanctions</u> against asylum seekers in case of breach of the rules? (see article 16, §3) If yes, which sanctions for which rules? Which is the competent authority to decide? How is it ensured that decisions are taken individually, objectively and in particular *impartially* (for instance through an independent arbitrator) as requested by §4 of article 21 which is mandatory provision? Which are the possibilities of appealing against those decisions if the system is different from the general one under question n°22? Are there already administrative appeal decisions or judgements which have been taken and if yes, which are the main important ones?

As it was stated before an alien is obliged to follow the rules of stay. And the assistance may be withheld or limited if he or she has grossly violated the rules of social coexistence (Article 65 of the Act on Protection and Articles 76-78 of the draft of 14 March 2007). However, it is difficult to define the "gross violation". Violation of rules is one of the prerequisites of the withdrawal of the assistance based on placing an alien in the centre so, the withdrawal may be applied only by rendering the administrative decision. The appeal procedure has been described in no. 22.

Q.25. E. Are asylum seekers involved in the <u>management</u> of these centres? If yes, how (advisory board, appointment or election of representatives)? (see article 14, §6 which is an option provision)

There are not any rules on "self - government" of asylum seekers in the centres. However, due to information obtained from the centres the asylum seekers create their informal representatives (at least representatives of particular groups). It must be also added that according to paragraph 10 of the Rules of Stay each alien has the right to submit petitions, complaints and motions referring to her/his stay in the centre.

Q.25. F. Do <u>specific rules</u> exist on work of asylum seekers inside the accommodation centres different from the general ones about employment (see below)? If yes, which ones? Can working inside accommodation centres be considered as a (mandatory) contribution of the asylum seekers to the management of the centres, is it or not paid and considered as implying access to the labour market and subject to the same rules?

If an alien works for the centre as an interpreter or if he/she performs any cleaning works in the centre the pocket money paid every month may be doubled (100 PLN). It is not connected with the access to the labour market. The access to the labour market is regulated by the Act of 2004 on promotion of employment and institution of labour market.

However, it must be noticed that in the case when an asylum seeker takes any job the situation is unclear because the asylum seeker may apply for assistance (accommodation in the centre) if he/she has not any sufficient financial sources to cover the stay during the procedure. The problem lies in the assessment of "sufficient sources". If they have the sufficient sources they should leave the centre, so decisions in these matters should be taken very carefully. The provision concerning a work permit entered into force on 14 June 2005. Article 30a of the Act on Protection guarantees an alien access to the labour market if a first

instance decision has not been rendered within the time limit of one year from the date of submission of an application for granting refugee status. The draft of 14 March 2007 cut down this period to 6 months.

Q.26. **Q.26. A. How can asylum seekers communicate with legal advisers, representatives of UNHCR and NGOs? (see article 14, §2, (b) which is a mandatory provision).**

There are not any obstacles in contacts with UNHCR and NGO-s. The contact is guaranteed in Article 23 of the Act on Protection. There are not any regulations in force on legal advisers (the works on the draft of the act on legal counselling has started recently but presently they are suspended due to the dissolution of the Parliament) but in practice NGO-s provide legal assistance for asylum seeker. On the other hand there are not any obstacles for asylum seekers to contact with other legal advisers.

Q.26. B. What are the rules about access of legal advisers, UNHCR and NGOs regarding access to accommodation centres and other housing facilities (see article 14, §7 which is a mandatory provision)

A representative of UNHCR shall be allowed at any time to contact an alien applying for refugee status (Article 23 sec. 2). Representatives of NGO-s may also contact freely, but on the basis of the information obtained from NGOs, they are supposed to call the centre and fix the time of the meeting for practical reasons. It should be remembered that the centres are not closed and according to the Rules of Stay each person may visit an alien in the centre between 10.00 – 16.00 in a place appointed by a member of the centre staff . A visitor is obliged to produce his/her ID card (or another document) and explain the aim of the visit (paragraph 6 of the Rules). An alien may also meet his/her legal advisors outside the centre.

Q.26. C. Can the access of legal advisers, UNHCR and NGOs be limited for security reasons or any other reason (see article 14, §7, last sentence)?

There are not any provisions containing *expressiss verbis* such a limitation.

The UNHCR has noticed that the real problem arises in the lack of financial resources to pay for the travels to NGOs offices (many of them outside the cities). NGOs do not have funds or possibilities of systematized visits in the centres.

Q.27. **Q.27. A. Is a medical screening organised by the receiving State, is it mandatory or voluntary? Does it include HIV tests? (see article 9 which is an optional provision)**

According to Article 58 of the Act on Protection an alien who applies for a place in the centre must undergo a medical examination and if necessary a sanitary treatment of his/her body and clothes. The kinds of this examination and the way of carrying out the examinations are described in the Regulation of the Minister of Health of 30 August 2004 (rozporządzenie w sprawie badań lekarskich oraz zabiegów sanitarnych ciała i odzieży cudzoziemców ubiegających się o nadanie statusu uchodźcy) Journal of Laws 2004, No 202, item. 2079.

According to paragraph 3 sec. 2 the HIV tests (and other tests) may be ordered by a doctor but it did not happen in practice. In June 2006 training on HIV/AIDS was organized for medical and social personnel of centres.

Q.27. B. Do the legal provisions on reception conditions ensure that asylum seekers receive at least emergency care and essential treatment of illness as requested by article 15 §1 which is a mandatory provision? Do they have a further access to health care?

According to Article 67 of the Act on Protection an alien is supported with medical care within the scope of services to which persons covered by compulsory or voluntary insurance are entitled on the basis of the Act of 27 September 2004 on health care and services financed from public funds (Journal of Laws No 210, item 2135). The Act does not limit the medical care only to emergency situations. However, the scope of the medical service is determine in a contract concluded between the Head of the Office and a provider of medical service. The medical care is not only provided in emergency situations or it bases on he essential treatment and but its scope is broader

Q.27. C. What is the practice regarding access of asylum seekers to health care and how is it organised? In particular, what is the situation in accommodation centres (are doctors coming to the centres or do asylum seekers go to doctors outside)?

Medical assistance is organized in all the reception centres on the basis of an agreements and in cooperation between the Office for Foreigners in accordance with Ministry of Interior and Administration of Republic of Poland Central Hospital. As a rule, a doctor comes to every centre (at least twice a week). Moreover, during weekdays, there is at least one nurse in the centre.

A doctor's duty is to deliver basic health care, and in other cases sending a patient to a specialist outside the centre.

In the case requiring hospitalisation, a patient is placed in a hospital.

Q.28. **Q.28. A. What is the length of the period determined by the concerned Member State during which asylum seekers have no access to the labour market? (see article 11 which is a mandatory provision)**

According to Article 30a of the Act on Protection an asylum seeker obtains access to the labour market in the situation when the first instance decision has not been taken for one year and simultaneously if an alien has not contributed to so long proceedings. The draft of 14 March 2007 cuts down this period to 6 months.

Q.28. B. After that period, are asylum seekers or not obliged to obtain a work permit? In case is there a limit for the administration to deliver the permits and how quick are they delivered? What is their length?

Asylum seekers need to obtain a work permit like other third country nationals. Since 1 January 2006 the work permit has been issued by the respective marszałek województwa (chief of the self – government of a province [województwo] where the residence of an employer is located.

According to the Code of Administrative Procedure the decision should be taken within one month. If the case is very complicated this term may be prolonged until 3 months.

Q.28. C. After that period, what are the conditions for access of the asylum seekers to the labour market? (in particular, are there rules concerning the maximum allowed of working hours or days per week, month or year, limits in terms of type of work or of professions authorised?

If he/she obtains the permit the rules on performing any job are the same as in the case of other aliens – third-country nationals. There are not any rules on working hours.

Q.28. D. What are the rules in terms of priorities between asylum seekers on the one hand and nationals, EU or EEE citizens and legally third-country nationals on the other?

Providing that EU citizens do not apply for refugee status (the so called Spanish Protocol the Amsterdam Treaty), asylum seekers are treated as other third country nationals. Their possibilities to perform their professions are smaller than the possibilities of EU or EEE nationals. The limits arise from the Act on promotion of employment and institutions of labour market and the executive regulations to this Act. From 17 of January 2007 the EU nationals do not need any permits. Third-country nationals need a work permit. Exceptionally they may take up seasonal works but for period up to 3 months. Moreover, the limitation arises from the rules on recognition of qualification and diplomas and linguistic requirements.

Q.28. E. Do asylum seekers have access to vocational training, does this or not depend of their right to access to the labour market, and in case at which conditions? (see article 12 which is optional regarding §1 and mandatory regarding § 2)

There are not any provisions on vocational training in the Act on Protection or in the Act on Promotion of Employment and Institutions of the Labour Market. There are not any provisions forbidding or limiting access to vocational training. Recently two partnerships on pre–integration have been organized within Programme EQUAL. Asylum seekers may improve their professional qualifications, take courses on computing, language lessons and lessons on Polish society. In case when they obtain the work permit and then they take up an employment their rights are the same as the Polish nationals, so they have the same right to vocational training connected with employment.

Q.28. F. Are the rules regarding access to the labour market adopted to transpose the directive more or less generous than the ones applicable previously?

Before the amendment of the Act on Protection in 2005, the asylum seekers had not had any access to work at all.

Q.29. Are reception conditions subject to the fact that asylum seekers do not have sufficient resources? Are asylum seekers requested to contribute to reception conditions when they have personal resources (for instance if they work) or to refund the authorities if it appears that they have resources? (see article 13 §§ 3 and 4 which are optional provisions)

As it was stated before there are not any provisions referring to this problem and it is very difficult to assess if the resources are sufficient or not. On the other hand, taking into consideration the situation on the labour market in Poland, possibilities for an asylum seeker to find a job are rather small but bigger than one year ago. If he/she takes one it is not well–paid and probably not sufficient to cover the cost of living in Poland. (It should be noted that there are usually many children in Chechen families - the main group of asylum seekers in Poland). However, it is pity that there are not any provisions that would make it possible to refund part of expenses if an asylum seeker works. Nowadays an asylum seeker may enjoy full assistance or does not enjoy any at all.

7. SPECIAL NEEDS OF PARTICULAR CATEGORIES OF ASYLUM SEEKERS

Q.30.

Q.30.A. Which of the different categories of persons with special needs considered in the directive are taken into account in the national legislation (see article 17, §1 which is a mandatory provision): disabled people, elderly people, pregnant women, single parents with minor children, persons who have been tortured, raped or victims of serious physical or psychological violence? Include in your answer all other categories envisaged in national law.

Chapter 4 of the Act on Protection refers to procedures with participation of aliens whose psychophysical state allows presuming that they have been victims of violence or of aliens with disabilities. It means that the definition of this group of asylum seekers is very flexible. It consist of all people with disabilities and victims of all kinds of violence (not only tortures). There is a separate chapter on unaccompanied minors (chapter 3). There are not any separate provisions on pregnant women, elderly people or parents with minor children.
Their specific situation arises indirectly from other provisions, for example provisions of the Act on Aliens. Its Article 103 forbids detention of aliens if it may threaten his/ her life or health (it should be applied for example in the case of pregnant women). Moreover, pregnant women and elderly people may enjoy medical care on the basis of the above mentioned provisions.

The draft of 14 March 2007 in its chapter 4 contained provisions on unaccompanied children and aliens whose psychophysical state allows presuming that they have been victims of violence or of aliens with disabilities (so there are not two separate chapters). The rules of procedure remained the same. Worth mentioning is that the draft contained a provision stating that that social assistance is provided to an alien with respect to his/her safety and with particular attention to single women (Article 72).

Q.30. B. How is their specific situation taken into account (see articles 13, §2, second indent, 16 §4 second sentence and 17 which are mandatory provisions)?

Article 54 of the Act on Protection regulates the specific situation of this group of asylum seekers during the procedure. Its section 2 states that: "if it is justified by the mental or physical state of an alien placed in the centre. He/she shall be provided with a transport in order to:

1) give testimonies and statements in the proceedings for granting the refugee status;
2) undergo medical treatment".

According to sec. 3 these group of asylum seekers cannot be placed in the guarded centres or arrests for the purpose of deportation.

It should also added that in the above mentioned cases only financial benefits may be limited or withheld Medical care cannot be a subject of such a limitation (not only in the case of this specific group of asylum seekers but also in the case of all the asylum seekers).
Moreover, according to Article 55 activities connected with assistance in the centre may be carried out by a person of the sex indicated by an alien and who has received a vocational training on the work with victims of crimes or violence and with persons with disabilities.

Q.30. C. How and when are the special needs of the concerned persons supposed to be legally identified (see article 17 § 2 which is a mandatory provision and clarify how it has been interpreted by transposition)?

The needs of an alien should be identified just at the beginning of the procedure. According to Article 26 of the Act on Protection states that the authority admitting an application (in fact the Border Guard) is obliged to provide for the performance of medical examinations and necessary treatment of an alien's body and clothes. It seems that it is the moment of identification of the alien's state of health. It is not a new provision. This obligation existed before the amendment of 2005. Moreover, the medical examination is a

condition for placing in the centre. The way and scope of the examination is regulated by the Minister of Health in the above mentioned Regulation of 30 August 2004. According to paragraph 2 of this Regulation the aim of the examination is, *inter alia,* a general assessment of the alien's health.

Article 17 of the Directive requires establishing of a system of identification of the vulnerable, disabled and ill persons. It seems that such a system works in Poland. Each applicant is obliged to fill in a form. They must provide the following information:

"Have you ever been subject to physical or mental violence? – if the answer is positive, describe please the circumstances."

"Your current health condition"

" Mayor diseases and operations"

"Chronic diseases"

" Identify the degree of disability" (Pages 8 and 11 of the form. The form is accessible at the Office website: www.uric.gov.pl)

Such a catalogue of questions gives a chance for identification of disabled, ill and other applicants "whose psychophysical state allows to presume that he/she has been a victim of violence".

Q.30. D. Is the necessary medical and other assistance provided to persons with special needs as requested by article 15, §2 which is a mandatory provision and in particular to victims of torture and violence as requested by article 20 which is a mandatory provision?

As it arises from Article 57 sec. 1 p.3) and 67 of the Act on Protection. The medical assistance should be adequate to the alien's needs.. However, NGO-s noticed that the psychological assistance which is provided to aliens with special needs is not sufficient.

It may be also added that apart from medical and social assistance, transport to the Office and medical institutions is provided.

Q.31. About minors:

Q.31. A. Till which age are asylum seekers considered to be minor?

The Act on Protection does not contain any definition of a minor but according to the law a minor is a person under 18. It arises from Article 10 of the Civil Code of 1964 but providing that they are not married.

Q.31. B. How is access of minor asylum seekers to the education system ensured? Is it at school or in case inside accommodation centres and can it be considered as similar to the conditions for nationals as requested by article 10, §1?

According to the Polish Constitution (Article 70 sec.1) each person has a right to education not only Polish citizens but also aliens residing in Poland. No one can be denied the right to education even if he/she is under 18. The most important provision is Article 94a sec. 2 p. 10) of the Act of 7 September 1991 on the education system *(ustawa o systemie oświaty)* Journal of Laws 2004, No 256, item 2572 with subsequent amendments. It guarantees that asylum seekers' children enjoy education in public schools at the primary, lower secondary schools and upper secondary schools. It should be stressed that the Article 94a has been amended on 22 April 2005. This amendment, which entered into force on 1 October 2005, allows the asylum seekers' children (it is obvious that the provision also refers to unaccompanied minors) to take the upper secondary education. Previously it was impossible because the provisions were very unclear.

All children at the age of 7 should start their education. That is why all the parents should be informed that their children should start their education or continue the education. Usually the staff of the centres informs (in an understandable language) the parents about this duty.

Conditions of taking up education in Polish schools are described by the Regulation of the Minister of National Education of 4 October 2001 (Journal of Laws No 131, item 1458) – *Rozporządzenie w sprawie przyjmowania osób niebedacych obywatelami polskimi do publicznych przedszkoli, szkół, zakładów kształcenia i placówek*. The Regulation contains a provision giving the possibility to organize a placement exam in order to qualify children to an appropriate level of education if they do not possess any certificates or it is necessary to assess the children's capacity to take education.

If a minor does not know the Polish language or this knowledge is insufficient to attend a school, he or she should be granted free language lessons provided by a municipality. The language courses or additional lessons are granted for one year. These lessons are not instead of normal education, they are in addition to normal education. Children are obliged to attend all the lessons. No less than two hours of language lessons should be provided during a week.

Apart from the language lessons organized by the municipalities (in practice by schools) children staying in the centres may attend lessons organized there. Moreover, the social assistance for asylum seekers contains all the handbooks and other things necessary for attending school lessons.

Q.31. C. Is access to education ensured <u>not later than 3 months</u> as requested by article 10, §2 (or after maximum one year if specific education for asylum seekers is provided) and till an expulsion decision is really <u>enforced</u>?

Not counting the time of the summer vacation the requirements of 3 months and 1 year are theoretically respected but the practical side of the issue is quite complicated and differs from the legal requirements which are presented above. According to the above mentioned Regulation the placement exams are organized only twice a year. Such a regulation is not adjusted to the needs of asylum seekers who arrive to Poland regardless of the schedule of the school year. NGOs indicate that in the case of asylum seekers such exams should be organized more often. Moreover, school authorities do not always organize additional language lessons. There are two reasons of such a situation. Firstly, there is a lack of money in the schools' and municipalities' budget. Secondly, every year there are fewer and fewer Chechen children speaking Russian. There are not teachers who are able to teach Chechen speaking children. That is why language lessons are organized mainly in the centres. Moreover, as an NGO – Stowarzyszenie Interwencji Prawnej - indicates in its Report (*Raport z monitoringu realizacji obowiązku szkolnego przez małoletnich cudzoziemców, przebywających w ośrodkach dla uchodźców*) very often parents do not intend to send their children to schools and there is no effective remedy to force them to do this (for example the limitation of the social assistance).

The other thing is that teaching programmes are not adjusted to children who do not know the Polish language sufficiently and there are not any programmes elaborated only for asylum seekers' children. In practice a little bit more than 50% of asylum seekers' children attend schools in 2005. But in 2006 88% children have started the school year 2006/07. The first semester – 536 children and the second semester 646. It means that there is really a significant progress.

Not counting the time of the summer vacation the requirements of 3 month and 1 year are theoretically respected but the practical side of the issue is quite complicated and differs from the legal requirements which are presented above. According to the above mentioned Regulation the placement exams are organized only twice a year. Such a regulation is not adjusted to the asylum seekers needs who arrive to Poland regardless the schedule of the school year. The NGO-s indicate that in case of asylum seekers such exams should be organize more often. Moreover the authority of schools do not always organize the additional language lessons. There are two reasons of such a situation. Firstly, there is lack of money in the schools' and municipalities' budget. Secondly, every year there are less and less Chechen children speaking Russian. There are not teachers who are able to teach Chechen speaking children. That is way the language lessons are organized mainly in the centres. Moreover as the NGO – Stowarzyszenie Interwencji Prawnej - indicates in its Report (*Raport z monitoringu realizacji obowiązku szkolnego przez małoletnich cudzoziemców, przebywających w ośrodkach dla uchodźców*) that very often the parents do not intend to send their children to schools and there are not any effective remedy to force them to do this (for example the limitation of the social assistance).

The other thing is that the teaching programmes are not adjusted to children who does not know the Polish language sufficiently and there are not any programmes elaborated only for asylum seekers' children.

Q.31. D. Is <u>specific education</u> (like language classes) available for asylum seekers, in particular to facilitate their effective access to

the education system of the reception Member State (see article 10, §2 which is an optional provision)?

As it was stated above the language classes are organized always in the centres and not always in schools. However, generally they have the possibility to learn the Polish language in order to start their normal education in the future (usually in the next semester or the next school year).

Q.31. E. Are minors in general accommodated with their parents or with the person responsible of them? (see article 14, § 3)

Yes, they are.

Q.31. F. Do minors with special needs enumerated by article 18, §2 which is a mandatory provision, have access to appropriate mental health care and qualified counselling?

If they are under 13 they are placed in the custodian – educational centre. The psychologists usually work in the centres. If he or she is over 13 he/she stays at the accommodation centre the situation is unclear because there are not any provisions granting *expressis verbis* the psychological assistance but on the other hand in the procedures for granting refugee status the hearing, testimonies and explanations of the unaccompanied minor shall be effected in a manner considering the minor's age, maturity and mental state. That may happen in the presence of a psychologist or a pedagogue, who prepares an opinion on a psychophysical state of the unaccompanied minor.

However, NGO-s are of the opinion that the assistance of psychologists is not sufficient. It is very difficult to find any Chechen speaking psychologists.

Since currently the situation of the unaccompanied minors may differ depending on their age, the draft of 14 March 2007 was to introduce the rule that all they will be placed in the custodian – educational centre regardless their age.

Q.31. G. How and when is organised the representation of unaccompanied minors (guardianship, special organisation) and regularly assessed? (see article 19, §1 which is a mandatory provision)

According to the Article 47 of the Act on Protection the authority admitting an application for granting refugee status submitted by a minor without a legal representative shall apply immediately to the court with a motion for appointment of a guardian to represent the minor in the procedure. Moreover a custodian for an unaccompanied minor shall be appointed. The custodian supervises the provision of such a minor with appropriate accommodation conditions, access to education, medical care. The custodian shall cooperate on the arrangement of the minor free time and grant assistance in order to find the minor' s family.

The custodian is appointed by the Head of the Office and should have the qualification of a social worker.

The draft of 14 March 2007 was to introduce some changes in this field. Its Article 61 stated that the authority admitting an application for granting refugee status submitted by a minor without a legal representative should apply immediately to the court with a motion for appointment of a guardian to represent the minor in the procedure and for placing him/her in the custodian – educational centre. The draft did not contain a provision on custodian for a minor because such a role will play a custodian employed in the custodian – educational centre. According to the draft minors would not be divided into two groups over and under age of 13 years. It means that all the unaccompanied minors should be placed in such a centres not in adjusted accommodation centres for asylum seekers.

Q.31. H. How is placement of unaccompanied minors organised (with adult relatives, a foster family, in special accommodation centres or other suitable accommodation)? (see article 19, §2 which is mandatory provision)

As it was stated before currently they are placed in the custodian – educational centre or in the centre but always there is a special separated sector for them and usually for single mothers with minors. This sector is monitored all the time. If the draft of 14 March 2007 entered they would have been placed in the custodian – educational centre .

Q.31. I. How is the tracing of the family members of the unaccompanied minors organised? Are measures taken to protect confidentiality of information when necessary? (see article 19, §3 which is a mandatory provision).

According to Article 48 of the Act of protection an appointed custodian is obliged, among others, to grant assistance in order to find the minor's family members, in contacting national and international NGO whose statutory aim is to act for the well–being of minors and refugees. There are also provisions on protection of personal data of aliens. The principle of taking steps aiming to find the minors' relatives was maintained in the draft of 14 March 2007 (its Article 61 sec.3)

NGO-s indicate that the realization of this requirement is very difficult in practice paradoxally because of the norm on the protection of personal data. Moreover, because there are not enough appointed custodians, so they have no time for taking sufficient steps in order to find the minors' families. The other thing is the lack of financial resources for this aim.

8. EXCEPTIONAL MODALITIES OF RECEPTION CONDITIONS

Q.32. Apart from detention covered by the next question, are there exceptional modalities for reception conditions in the following cases and if yes, which ones and for how long are they applicable, knowing that they should be "as short as possible" (see article 14, §8)?

No, there are not. The aliens may stay in the reception (usually at the beginning) or accommodation centres. They may stay outside centres. However they may be also detained.

Q.32. A. Persons with specific or special needs, regarding in particular the period of assessment of those needs?

As it was stated before persons with special needs may stay outside the centres but they may enjoy assistance. They receive the equivalent for food and accommodation.

Q.32. B. Non availability of reception conditions in certain areas

In such cases aliens may be moved to other centres. But there cannot be any discussion about "certain areas" in case of Poland because the main rule is concentrate the centres around Warsaw and the Office - not further than 200 km.

Q.32. C. Temporarily exhaustion of normal housing capacities

There are not any rules concerning this but in such a situation the provision on delegation to NGO to run other centres may be applied. Moreover, according to information obtained at the Office, it intends to open a new centre. There is always a possibility to place more aliens in the existing centres but in this case there would be a problem with respecting the family unity.

Q.32. D. The asylum seeker is confined to a border post

There are not provisions on keeping an alien at the border in the Act on Protection. An alien may be detained only on the basis of the decision rendered by a court. However, all the formalities at the border may take a lot of time, sometimes few or several hours, especially if an alien has crossed the border illegally. They are provided with food and medical assistance (if necessary). Staying at the border an alien is allowed to contact with NGO-s and the UNHCR.

However, border check points are not adjusted to the reception of big groups of aliens (information obtained from NGO-s). There are specified rooms but there is not enough space.

It seems that in practice the situation of an alien being confined at the border post may take place, especially in cases when he or he does not explain that he/she intends to apply for the protection. According to Article 101 of the Act on Aliens it may last 24 (maximum time of waiting for the delivery of the court's decision on detention) or even 48 hours, maximum within this time he or she should be transferred to the court and the motion on detention should be submitted simultaneously.

Q.32. E. <u>All other cases</u> not mentioned in the directive (for instance urgent situation in case of a sudden high number of applicants outside a case of application of the directive on temporary protection).

Chapter 3 of the Act on Protection refers to the rules of granting temporary protection within the territory of Poland. It contains general rules but it delegates the Council of Ministers to issue an executive regulation on the conditions of the temporary protection if aliens arrive to the Republic of Poland in great number. So there are not any general rules on temporary protection but the conditions will be adjusted to each event. So far such event has not happened.

Q.33. <u>Detention of asylum seekers</u> (we do not cover the situation of rejected asylum seekers detained for the purpose of their return) (see articles 6 §2, 7 §3, 13, §2 2nd indent and 14 §8 which implies that the directive is in principle applicable in case of detention):

Q.33. A. In which <u>cases or circumstances</u> and for which <u>reasons</u>[1] (identity verification in particular if the persons have no or false documents, protection of public order or national security, refugee status determination, way of entry into the territory, etc) can an asylum seeker be detained during the asylum procedure till his request has been finally rejected. <u>Quote</u> precisely in English in your answer the <u>legal basis</u> for detention of asylum seekers in national law.

According to Article 40 of the Act on Protection an alien applying for refugee status may be detained only if:

"1) he/she submits an application for granting refugee status:
- during the border control, not having the rights of entry on the territory of the Republic of Poland;
- staying on the territory of the Republic of Poland illegally;

2) prior to the submission of an application for granting the refugee status he/she:
   a) crossed or attempted to cross the border contrary to the laws;
   b) obtained the decision on the obligation to leave the territory of the Republic of Poland or the decision of expulsion."

Section 1) a) covers all the cases of false documents or lack of documents.

The draft of 14 march 2007 was to modify the prerequisites of detention. An applicant was to be detained if it is necessary for his/her identification, in order to prevent abuses of the refugee procedure or it is necessary for safety, health, life or property of other people. He/she might be detained if it would be necessary for defence or security of the State or for the protection of the public order or public security. Moreover he/she might be detained if

[1] Please specify if article 18 §1 of the directive on asylum procedures of 1 December 2005 following which *"Member States shall not hold a person in detention for the sole reason that he/she is an applicant for asylum"* is or not respected (even if it has not yet to be transposed).

crossed or attempted to cross the border contrary to the laws except situations when she/he arrived directly from a territory where the circumstances of persecution or serious harm exist. He/she could not be detained if he/she stayed in Poland illegally but he/she submitted an application for refugee status without delay and it contained credible reasons of his/her illegal entry and stay.

An alien might be also detained if his/her behaviour in the centre for asylum seekers was a threat for safety, health or life of other aliens staying in a given centre.

Q.33. B. Has your member State adopted measures to transpose §3 of article 7 which is an optional provision? If yes, how has this provision been legally understood (is it a case of detention or an obligation to stay in and not leave a certain place?) and for which reasons can an asylum seeker be "confined" in such a place?

Yes. It is possible on the basis of Article 45 of the Act on Protection, the Head of the Office may (it is not an obligation) *ex officio* or upon request of an alien to render the decision to release from the guarded centre or the arrest for the purpose of expulsion and render the decision ordering to stay in a specified place or in the location, which he/she may not leave without the permission of the Head of the Office, up to the day of rendering the final decision in the procedure for granting refugee status. An alien may be also obliged to report to the authority indicated in the decision at specified intervals of time.

This decision may be taken if evidence of the case indicates the probability that an alien meets the conditions for being recognized the refugee status or if there are the prerequisites contained in Article 107 of the Act on Aliens.

There are following prerequisites:

1) the reasons justifying application of those measures ceased to exist;
2) any of the circumstances referred to in Art. 103 of the Act on Aliens have arisen (a decision on placing an alien in the guarded centre or in arrest shall not be rendered if it may cause a serious threat to his/her life or health)
3) application of those measures is not possible because of the circumstances other than referred to in art. 103 of the Act on Aliens
4) the decision on expulsion of the alien from the territory of the Republic of Poland has been reversed or invalidated;
5) an alien has been granted the refugee status or asylum;

- an alien has been granted the permit for tolerated stay;
- an alien has been preliminary detained or if any other legal measure resulting in deprivation of liberty has been imposed on him/her.

Q.33. C. Are there legally alternatives to detention, like obligation to report to the authorities, obligation to stay in a place, provision of a guarantor or of a financial guarantee?

On the basis of the Act on Protection and the Act on Aliens – the only possibility was mentioned above – the report to the authorities but as it was stated before the possibilities from Article 45 are not apply in practice.

Q.33. D. Which is the competent authority to order the detention of an asylum seeker? Explain if different authorities are involved to first take and later confirm the decision.

According to Article 42 sec. 1 of the Act on Protection and Article 89 of the draft of 14 March 2007 only the court (the district court) is competent to decide on the placement of an alien in the guarded centre or in the arrest for expulsion.

Q.33. E. For how long and till which stage of the asylum procedure can an asylum seeker be detained?

It is possible that an alien will be detained during the whole procedure, it does not matter if the case is in the first or second instance. However, there are two situations which should be described. If an alien who stays in Poland illegally or has crossed the border illegally applies for the refugee status the court renders the decision about detention for 30 days. According the draft of 14 March 2007 the court was to decide on the alien's detention for period from 30 to 60 days (Article 89 sec.1).

Secondly, if an alien is detained and during the detention he/she applies for the status the court shall extend the period of alien's stay for 90 days (since the day of the submission of the application). If the decision on refusal refugee status is delivered to an alien the period of detention may be prolonged in order to execute the decision on expulsion but it cannot be longer than one year.

Q.33. F. In which places (can we call them "closed centres"?) are asylum seekers detained (places in a special closed centres reserved only to asylum seekers, together with returnees like illegal aliens or even in a normal prison, in case within separated areas or with the other detainees)? Indicate if a difference has to be made following the location of the "closed centres" at the border or on the territory? Which is the authority managing those places and is it the same as the one in charge of reception conditions?

There are guarded centres and arrests for expulsion. They are situated inside the country. Asylum seekers are placed with other illegal immigrants. The Police is usually the owner of the arrests and other centres or the Border Guard if they are situated near the border or at the border for example at the Warsaw Okęcie airport.

Asylum seekers are usually placed in the Guarded Centre in Lesznowola. The conditions are various depending on the place (See: *the Report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment* (*CPT visit in Poland in 2004 the response of the Polish Government of 2 March 2006* CPT/Inf (2006) 11)

Q.33. G. Does UNHCR and NGOs have access to the places of detention and under which conditions?

According to Article 43 sec. 2 of the Act on Protection and Article 89a of the draft of 14 March 2007 the representative of UNHCR and NGO-s may personally contact an alien and have access to the place of detention. This provision is not applied if it is justified by necessity of providing public security and policy or observation of organizational rules in the guarded centre or in the arrest.

If due to security reasons the authorities of the arrest or the guarded centre refuse an alien personal contact with the representatives of the UNHCR or NGO-s, the authorities should inform about this fact the Office and the UNHCR. Such a decision is final.

In practice (information from the Halina Niec Human Rights Association) the access to the arrests and detention centres is limited because representatives of NGO-s need to apply for a permit to visit an alien. The time of such a visit is limited – max. 1 hour it means that it is impossible to provide legal assistance for many aliens.

Q.33. H. What appeal(s) can asylum seekers introduce against the fact he is detained? Is article 18 of the directive on asylum procedures of 1 December 2005 following which *"Where an applicant for asylum is held in detention, Member States shall ensure that there is a possibility of speedy judicial review"* respected (even if it has not yet to be transposed)?

The Act on Protection in its Article 2 1) and 10) states that the arrest for expulsion and the guarded centres should be understood within the meaning of the Act on Aliens. The Act on Aliens refers to the Code of the Criminal Procedure. It should be understood that an alien

may submit the complaint against the decision on detention. However it is difficult o say that it is a "speedy judicial review".

Q.33. I. Is the directive on reception conditions considered to be in principle applicable to the places where asylum seekers are detained? In particular which information do they receive about their rights, which access do they have to legal advice and health care?

The rules on reception are not applied to the detention places. However, according to Article 43 sec. 1 an alien should be informed in a language understandable for him /her about the organizations, which statutorily deal with refugees' affairs and shall be allowed a correspondence or telephone contact with these organizations. According to section 2 an alien particularly in purpose of being granted the legal assistance may contact personally with UNHCR and the mentioned organizations. The delegation of the CTP (see: the Report mentioned above) noticed that not in all the detentions such information in various language were available.

The draft of 14 march 2007 contained a provision on an alien's contact with UNHCR and relevant NGO-s but opposite to the currently binding provisions of the Act on Protection it does foresee the obligation to inform an alien in a language understandable for him /her about the organizations, which statutorily deal with refugees' affairs.

The detained asylum seekers have the access to the heath care. Details of detention are regulated in the Regulation of the Minister of the Interior and Administration of 24 August 2004 (Journal of Laws 2004, No 190, item 1953).

Q.33. J. Apart from freedom of movement, what are the main differences between normal reception conditions and exceptional modalities for reception conditions in case of detention, knowing that they should be "as short as possible" (see article 14, §8)? If it is about closed centres, are the regulations of those places in line with the requirements of the directive (is article 13, §2, second indent of the directive following which "*Member States shall ensure that standards of living is met (…) in relation to the situation of persons who are in detention*" respected?).

There is a difference between detained asylum seekers and these who stay in centres for asylum seekers in relation to information about NGO-s the. The difference in this field will be bigger when the amendment enters into force.

None of the provisions reflects *expressis verbis* Article 14 § 8 of the Directive, but the time limit of 30 days for placing an alien in the detention suggests that it is "as short as possible".

Referring to Article 13 §2 the conditions in detention centres are much worse but they are provided at least with food and health care. They have also contact with UNHCR and the NGO-s. Due to Article 103 of the Act on Aliens asylum seekers with special needs may not be detained.

Q.33. K. Are measures taken to avoid detention of asylum seekers with special needs (if yes, which ones?) or are special measures taken because of their needs?

Yes, it is possible, as it was stated in the answer to question 33 B. The most important provision is Article 44 of the Act on Protection with connection of Articles 107 and 103 of the Act on Aliens.

The most important is that the unaccompanied minors and applicants who are presumed to be victims of violence or disabled may not be placed in a guarded centre or deportation arrests. The draft of 14 March 2007 was to introduce an exception. Such an alien might be detained if his/her behaviour would be dangerous for other aliens living in a given centre for asylum seekers (Article 88 sec.2)

Q.33. L. Can minor asylum seekers be detained together with relatives? Can unaccompanied minor asylum seekers be detained? If yes, are there special measures which take into account that children are concerned?

In a situation of illegal stay or arrival to Poland, minors coming with their relatives can be detained in a guarded centre with their relatives but unaccompanied minors are not be detained. They may be allowed to stay together (in one room).

Q.33. M. In particular is article 10 regarding access to education of minors respected in those places?

There are not any possibility to take up the education in detention centres but it must be remembered that if aliens who have not any permit to enter Poland and they apply for the protection at the border, they are detained for 30 days (according to the draft of 14 March 2007 for period from 30 to 60 days) or are not detained at all. The other situation is when aliens apply for the protection during their detention. They may stay in the guarded centre without the access to education much longer - 90 days.

Q.33. N. How many asylum seekers are for the moment detained in your Member State? Which proportion does this represent in comparison of the total number of asylum seekers at the same moment?

There are not any data about applicants detained in the deportation arrests (it should not be more applicants in arrests than in the guarded centre). It is difficult to access because the numbers are changing every day. Usually about 10-15% of applicants are placed in the guarded centres (these who crossed the border illegally or they stayed in Poland illegally or they applied for the refugee status during their detention).

9. ORGANISATION OF THE SYSTEM OF RECEPTION CONDITIONS

Q.34. Explain if the system of providing reception conditions is centralised or decentralised (which levels of government do provide practically reception conditions?) (do not confuse this question with question number 3 about the competence to make rules about reception conditions).

The system is fully centralised. The Office for Organization of Reception Centres of the Office for Foreigners is in the structure of the Ministry of Interior and Administration.

Q.35. In case, are accommodation centres public or/and private (managed by NGOs? If yes, are the NGOs financially supported by the State?)

The centres are not managed by NGO-s (however, there is such a possibility). The Office has its own centres or it rents hotels or other centres with the personnel (for example, cooks, cleaning service, secretariat, etc.) but the social worker is always an employee of the Office, as well as a Polish language teacher or a nurse.

Doctors and nurses are hired by the Ministry of Interior and Administration of Republic of Poland. Hospitals provide the medical assistance on the basis of an agreement with the Office for Foreigners.

Q.36. In case, how many accommodation centres are there in your Member State (distinguish in your answer between public and private centres)?

There are 17 centres. 3 of them belong to the Office, the rest of them are rented.

Q.37. Is there in the legislation a plan or are there rules in order to spread the asylum seekers all over the territory of your Member State to avoid their concentration in some areas like big cities or to share the costs of their reception between central, regional and local authorities?

There is not such a legislation. The idea is to concentrate the centres around Warsaw (in distance up to 200 km). But if an asylum seeker does not enjoy the assistance he or she is allowed to live where he/she wants.

Q.38. Does a central body representing all the actors (like NGOs) involved in reception conditions exist? Does it play a consultative role for the State authorities, a coordination role for the actors or any other role?

Despite the fact that the system may be named centralised the Office which the main actor cooperates with the NGO –s, for example NGO-s were consulted during the works on the Act on Protection and its amendments.

The UNHCR stresses the growing importance of NGOs that work in the centres, among them Doctors Without Borders and NGOs working in the EQUAL programme.

Q.39. **Q.39. A. Which is the body in charge of guidance, monitoring and controlling the system of reception conditions as requested by article 23 which is mandatory provision? Include in your answer which is the competent ministry (Interior, Social affairs, etc) for reception conditions?**

The Office controls the reception conditions and considers all the complaints for the reception conditions in the centres. However, it may also be noted that the in the case when a decision is taken (for example on withdrawal of the reception conditions or about a limitation on them) an asylum seeker may apply for renewal of the decision and then (if the second decision is not satisfactory) may complain to the court. (In practice there are very exceptional situations).

Q.39. B. Has your Member State (like the Czech Republic did recently) approved quality standards (not necessary legally binding) for housing services (for instance about the number of persons per bedroom on the basis of its size, number of accessible toilets, bathrooms, showers and washing machines per number of persons, existence of common rooms with radio, television, newspapers, books, computers, accessibility of telephone, existence of recreative rooms for children,…) to be respected in particular in accommodation centres?

There are not any quality standards but there are Regulations of the Minister of Interior and Administration on the rules of stay in the reception centres, on the conditions of accommodation of unaccompanied minors and standards of protection in a centre for asylum seekers, there is also the Regulation on conditions of stay in a detention centre. Moreover, the Act on Protection refers to the rules and the Act on Aliens describes some of the condition of stay in the detention centre or arrest for expulsion.

It may be added that the "*Guide on Bureau of Organisation of Centres for Aliens Applying for Refugee Status or Asylum*" has been published. It is not a document of binding force but it describes the standards of the reception conditions and mechanism of granting

assistance in a very clear way. It is published also in English and is accessible on the Office web site www.uric.gov.pl

Q.39. C. How is this system of guidance, control and monitoring of reception conditions organised?

The monitoring of the conditions in the reception centres is conducted by NGOs and UNHCR. The systematical actions of UNHCR and NGOs are restricted due to the lack of financial resources

Q.39. D. Does the body in charge of guidance, control and monitoring produce reports about the level of reception conditions? If yes, how frequently and are they public?

The Office tends to give a very general information. However, each year the Head of the Office submits the report on the activity of the Office in the field of asylum. There is the information about the reception conditions. Moreover, NGO-s publish their own independent reports, for example the Helsinki Foundation issues the series "Raporty –Eksperyzy -Opinie", [Reports, Expertises, Opinions].

Generally there are lack of reports provided by NGO-s due to the above reasons.

Q.40. **Q.40. A.** What is the total number of asylum seekers covered by reception conditions for the last year for which figures are available (see article 22 obliging Member States to calculate those statistics about which we also asked the Commission to require them from Member States for mid June)?

The average number of people living in the centres every month is about 3,600 (May 2007) and 548 aliens outside the centres. The total number of aliens in the procedure is about overall 4,500.

Q.40. B. What is the total budget of reception conditions in euro for the last year for which figures are available?

In 2006 the Office spent:
47.562. 800 PLN (it is about 12.500 000 euro). It is more than in 2005 (about 11 000 000 euro).
Including 4.533. 000 PLN for medical treatment (about 1 192 894 euro). It is 3 times more than in 2005.

Q.40. C. What is the average cost of reception conditions in euro per asylum seeker for the last year for which figures are available?

It about 1000 PLN per person (on average).It is about 250 - 270 euro per month per person (depending on the exchange rate).

Q.40. D Are the costs of reception conditions of asylum seekers supported by the central/federal or federated government or are they shared with regional and/or local authorities?

The costs are covered from the central budget.

Q.40. E. Is article 24 § 2 of the directive following which "*Member States shall allocate the necessary resources in connection with the nationals provisions enacted to implement this directive*" respected?

The sources are concentrated in the Office as the main actor in providing the assistance for asylum seekers.

Q.41. **Q.41. A.** What is the total number of persons working for reception conditions?

According to the UNHCR information about 100 people are responsible for the reception in the centres (including social workers, doctors, nurses and teachers)

Q.41. B. How is the training of persons working in accommodation centres organised? Does it take into account specific needs of unaccompanied minors when relevant as well as the gender dimension? (see article 14 §5, 19 § 4 and also 24 §1 which are mandatory provisions)?

In 2003 UNHCR organized for Office for Foreigners workers training on how to deal with unaccompanied minors. In 2005 UNHCR organized training for social workers on conflict resolution, negotiation, and mediation with gender dimension in mind. In June 2006 the training on HIV/AIDS was organized for social workers and the medical personnel.

Q.41. C. Are there rules about the deontology of persons working in accommodation centres, in particular on confidentiality?

According to information supplied by the Office and the UNHCR, the Office for Foreigners workers hired in the centres are public workers and as such are bound by the rules for public workers. In addition, Article 9 (protection of the personal data) of the Act on Protection is being applied here.

10. IMPACT OF THE DIRECTIVE

Legal impact of the transposition of the directive:

Q.42. Specify if there are or not big problems with the translation of the directive in the official language of your Member State and give in case a list of the worst examples of provisions which have been badly translated? (please note that this question has in particular been added to the questionnaire concerning the new Member States)

The UNHCR Office in Warsaw has observed that the directives' translations (not only this one) are in many cases literal translations, e.g.:" asylum" translated as "azyl", and not as "status uchodzcy." This question is discussed while working on the acts' projects, and practically it requires a new directives' translation for the purpose of institution that is preparing the legal act's project.

Q.43. Where there precise legal rules on reception conditions for asylum seekers before the adoption of the norms of transposition of the directive (if yes,

specify what the nature of those rules was (legislation, regulation, administrative instructions,…)?

Yes, there was always the Act (a statute - ustawa). From 1997 till 31August 2003 the Act on Aliens. It referred to the reception conditions but rather not in detail (there were appropriate regulations). The Act on Protection and the Act on Aliens were adopted on 13 June 2003. They were both amended on 22 April of 2005 (among others in order to transpose the Directive). The Act on Protection is completed by 12 executive regulations issued by the Minister of Interior and Administration.

Q.44. Did the legal rules applicable to reception conditions become more clear, precise, coherent or detailed with the adoption of the transposition norms (for instance do you now have after the transposition one basic text dealing with reception conditions instead of numerous different texts in the past?

It is rather difficult to find any differences in the quality of norms referred to the reception conditions. It must be remembered that the Act on Protection was adopted on 13 June 2003, it is just after the issuance of the Directive and that is why the Act was to some extent adjusted to the requirements of the Directive, mainly in the aspect of Poland's endeavours to become an EU Member State. Poland had to take into consideration all the future EC law. But taking into consideration the main amendment of the Act – the first one of 22 April 2005 and the draft of 14 March 2007 it may be observed the tendency to make the norms of the Act more precise and clear.

Q.45. Did the transposition of the directive imply important changes in national law or were the changes of minor importance? In case, list the most important changes that have been introduced.

There are two eminent changes in the Polish law which are connected with the transposition of the Directive – the first one: owing to Article 30a of the Act on Protection an asylum seekers has obtained the possibility to take up any employment (after one year of procedure pending in the first instance). Secondly – the upper secondary education is guaranteed for minors who or whose parents apply for refugee status (Article 94 a of the Act on educational system).

Political impact of the transposition of the directive:

Q.46. Explain briefly if there has been an important debate about the transposition of the directive (in particular in the Parliament, but possibly also in the government, between political parties, including in medias, etc; underline in case the main points which have been discussed or have created difficulties)

It is quite difficult to talk about the debate on transposition spread out all over the country. The year 2005 was the year of the double (parliamentary and presidential) elections, so it was difficult to notice this kind of a debate. But on the other hand the draft of the amendment of the Act on Protection and especially the Act on promotion of employment and institution of labour market were consulted with NGOs. The Helsinki Foundation was very active in this field.

Undoubtedly the very active role of the UNHCR in the debate on the transposition should be stressed here. The same situation was in case of the draft of 14 March 2007.

Q.47. **Did the transposition of the directive contribute to make the internal rules stricter or more generous? In particular, did your Member State use the occasion of the transposition to abolish more favourable provisions of national law? Does your Member State still have rules more favourable**

than the provisions of the directive (if yes, try to give the more important examples).

Two very important changes have been introduced into the Polish law in 2005, which was the result of the transposition of the Directive. First, it is the possibility for an asylum seeker to take up work (after one year if the case is still under consideration of the first instance). Secondly, minors are allowed (at least potentially) to take up their education on the upper secondary school level. So, it may be concluded that the Directive has contributed to the generosity of the State towards asylum seekers.

However, providing that in practice it is very difficult for an asylum seeker to obtain any work and there are financial problems with providing the effective education for children, it would be saver to state that the transposition did not have any influence on deterioration of the reception conditions.

11. ANY OTHER INTERESTING ELEMENT

Q.48. What are in your view the weaknesses and strengths of the system of reception conditions in your Member State?

The main weakness of the reception system in Poland is the lack of financial resources. More financial resources could improve the education system for asylum seekers' children and unaccompanied minors. It would be possible to organize extra intensive courses of Polish as well as English languages. It would also be possible to cover costs of language training of psychologists. Generally speaking, social assistance would be higher (140 PLN for clothes is not enough).

More financial resources would make it possible to employ more well qualified social workers who would be able to take care of asylum seekers, especially with special needs, and unaccompanied minors.

Moreover if NGO-s would be financed from the national budget, their assistance for asylum seekers could become more complex and long – lasting.

It may be also stated that there is not any act on legal assistance.

Q.49. Mention any good practice in your Member State which could be promoted in other Member States

It seems that the most important thing is the fact that asylum seekers may enjoy the same reception conditions during all the administrative procedure, even if they receive the negative decision in the first instance. Secondly, an extremely important principle is that all the administrative decisions are under the judicial control.

Taking into consideration the fact that Poland is very often the country of first asylum and many asylum seekers are sent back to Poland on the basis of the Dublin mechanism, it should be noted that the same reception conditions for all asylum seekers should be recognized as a good practice.

The idea of concentration of all the centres around Warsaw may be controversial but it has some advantages because usually all the governmental institutions (like the Office for Foreigners) are located in Warsaw. Moreover, in the UNHCR Office and the main NGOs working for asylum seekers also work in Warsaw. It means that it is easier for asylum seekers to visit all the institutions, and on the other hand, the centres are more accessible for representatives of the UNHCR and NGO-s.

Moreover, the positive description is possible when dealing with the possibility of extending the stay in the reception centre up to three months (according to draft of 14 March 2007 two months) from the date of issuing the decision, including a person with tolerated stay and in future with subsidiary protection, as its aim is to give this person additional time to prepare oneself for the life outside the reception centre.

Q.50. Please add here any other interesting element about reception conditions in your Member State which you did not had the occasion to mention in your previous answer.

The new tendency may be observed that every year more and more NGO-s are active in the field of the protection of asylum seekers, and, what is maybe even more important, that the government is not reluctant to cooperate with them.

However it is very disappointing that the financing of NGOs from the national budget is only in a very small percentage and is mostly financed by various international organizations and

institutions, such as UE or UNHCR.
It should be also observed that the number of asylum seekers' children attending schools is growing rapidly. In the school year 2004/2005 only 10% of them started their education at schools, in 2005/2006 – 53 % of them and in 2006/2007 – 88% of them. Maybe it is an influence of the Directive.

QUESTIONNAIRE FOR THE NATIONAL REPORT ON THE IMPLEMENTATION OF THE DIRECTIVE :
RECEPTION CONDITIONS OF 27 JANUARY 2003

IN: PORTUGAL

by
Nuno Piçarra
nunopicarra@fd.unl.pt

11th of June 2007

1. NORMS OF TRANSPOSITION

Q.1. Identify the main norm of transposition (indicate the title, date, number, date of entry into force and references of publication into the official journal) and indicate its legal nature (legislative, regulatory, administrative); indicate in your answer if this norm was only devoted to the directive or if it has been included in a more general text and indicate in that case by quoting precisely the numbers of the provisions adopted to transpose the directive.

Loi nº 20/2006 adoptée par le Parlement national (Assembleia da República) le 23 juin 2006, portant sur les dispositions complémentaires du cadre juridique relatif à l'asile et aux réfugiés, assurant la pleine transposition dans l'ordre juridique interne de la directive 2003/9/CE du Conseil, du 27 janvier 2003, relative à des normes minimales pour l'accueil des demandeurs d'asile dans les Etats membres, publiée au *Diário da República* – I Série-A n.º 120 du 23-6-2006, p. 4452-4457, entrée en vigueur le 24-6-2006.
Cette loi ne concerne que la transposition de la directive 2003/9/CE.

Q.2. List by order of importance by using numbers (1, 2, 3) the others norms of transposition if there are more than one (indicate for each norm the title, date, number and references of publication into the official journal; include in your answer the administrative measures taken to ensure implementation of the directive and of the transposition norms like regulations, administrative circulars, special instructions,…)

L'autre texte juridique à mentionner, dans la mesure où il contient plusieurs dispositions en matière d'accueil des demandeurs d'asile est la Loi nº 15/98, du 26 mars, établissant le nouveau cadre juridique en matière d'asile et de réfugiés (*Diário da República* – I Série-A n.º 72, du 26-3-1998, p. 1328). La Loi nº 20/2006 se prétend un complément de la Loi nº 15/98. Celle-ci a été développée par le Décret-loi nº 242/98, du 7 août, relatif au Commissariat national pour les réfugiés (publié au *Diário da República* – I Série-A n.º 181, du 7-8-1998). La Loi nº 20/2006 a cependant abrogé le Décret-loi nº 242/98.
Il est encore à mentionner, d'une part, l'arrêté ministériel – Portaria nº 30/2001, du 17 janvier, des ministres des affaires intérieures et de la santé – établissant les modalités spécifiques d'assistance médicale à prêter au cours des différentes phases de la procédure d'octroi du droit d'asile, dès la présentation de la demande jusqu'á la décision finale (publié au *Diário da República* – I Série-B, nº 14, du 17-1-2001, p. 249) et, d'autre part, la décision ministérielle –

Supprimé :

Despacho 1/SESS/87 –applicable aux montants des allocations à accorder aux demandeurs d'asile.

Q.3. Explain which level of government is competent to adopt the legal norms on reception conditions for asylum seekers (specify in particular in case of a federal or regional State, if it is the federal/central power or the components; in case, specify below when it is impossible for you to answer a question because it is about the competence of the components and it is impossible for you to gather reliable information about all of them)

Conformément aux dispositions combinées des articles 165, paragraphe 1, sous b), et 227, paragraphe 1, sous b), de la Constitution, c'est au seul niveau central de l'Etat qu'il échoit d'adopter les dispositions juridiques sur les conditions d'accueil des demandeurs d'asile. La compétence pour ce faire appartient à l'Assembleia da República, qui peut autoriser le gouvernement à adopter un décret-loi en la matière.
Les assemblées législatives des deux régions autonomes (Açores et Madère) ne peuvent adopter des dispositions d'exécution en la matière que dans la mesure où l'Assembleia da República ou le gouvernement ne se sont pas réservés le correspondant pouvoir exécutif. Tel n'a pas été le cas.

Q.4. Explain the legal technical choices done to transpose the directive (comment on the nature and level of the norms used to do the transposition: legislative, regulatory, administrative like instructions, etc). Add any other element about the technique of transposition of the directive which is interesting for the implementation of Community law.

Dès lors que la directive porte sur la matière des droits, libertés et garanties, prévue par l'article 165, paragraphe 1, sous b), de la Constitution, en tant que matière relevant de la réserve relative de compétence de l'Assembleia da República, il y avait deux alternatives pour sa transposition : ou bien une loi de cette assemblée, ou bien un décret-loi du gouvernement autorisé par celle-ci. En l'espèce, l'option pour une loi de la Assembleia da República a été déterminée par le fait qu'il s'agit, par la transposition de la directive 2003/9/CE, de compléter la Loi nº 15/98. Il convenait donc d'adopter un acte de la même catégorie normative.

Q.5. Mention if there is a general tendency to just copy the provisions of the directive into national legislation without redrafting or adaptation them to national circumstances? If yes, give some of the worst examples and explain if there is a risk that those provisions remain unapplied or will create difficulties of implementation in the future.

Une tendance générale dans le sens de copier les dispositions de la directive, sans procéder à leur adaptation, n'a pas été constatée dans la Loi n.º 20/2006.

Q.6. Have all the texts necessary to ensure the effective implementation of the new rules of transposition been adopted, prepared or at least foreseen in the future (for example a regulation completing a new law and the necessary instructions telling the administration how to apply the new rules)?

La Loi nº 20/2006 est, pour l'essentiel, auto-applicable. Cependant, certaines de ses dispositions semblent exiger des dispositions complémentaires afin de clarifier leur application. Parmi ces dispositions on peut citer l'article 8, paragraphe 3, concernant la création de modalités spéciales d'enseignement pour demandeurs d'asile mineurs ; les articles 14, paragraphe 5, et 19, paragraphe 8, concernant la formation dont doivent bénéficier tous ceux qui travaillent dans un centre d'accueil ou avec des demandeurs d'asile mineurs ; l'article 19, paragraphe 6, concernant les procédures visant à localiser la famille du demandeur d'asile mineur non accompagné; l'article 18, paragraphe 2, portant sur l'accompagnement psychologique spécialement adapté dont doivent bénéficier tous les demandeurs d'asile mineurs victimes d'abus. Aucun projet de texte portant sur ces mesures n'a cependant été envisagé jusqu'à présent.

2. BIBLIOGRAPHY

Q.7. **Has an in-depth preparatory study been made public about the changes at the occasion of the transposition? If yes, thanks for trying to provide us a copy *(please contact to answer this question adequately the body and person who was responsible for the preparation of the transposition of the directive in the public administration).***

Il n'y a pas eu d'étude préparatoire. La Loi n.º 20/2006 a été élaborée par le Ministère des affaires intérieures avec la collaboration du Ministère du travail et de la sécurité sociale, du Ministère de l'éducation et du Ministère de la santé.

Q.8. Quote any recent scientific book or article published about the directive, the transposition rules or the question of reception conditions for asylum seekers in general (answer even if this literature is only available in your language and provide the complete title in your language (without translation) with all references; indicate author, title, in case name of periodical, year and place of publication).

Jusqu'à présent, aucun article à ce sujet n'a été publié en langue portugaise.

Q.9. **Quote any interesting decision of jurisprudence based on the implementation of the new rules of transposition of the directive (indicate references of publication if any)?**

La Loi n.º 20/2006 ayant entrée en vigueur le 24 juin 2006, il n'y a pas encore de décisions jurisprudentielles à son égard.

3. GENERAL INFORMATION ABOUT THE SYSTEM OF RECEPTION CONDITIONS

The purpose of the following two questions is to help the reader to understand easily and quickly the system of reception conditions in your Member State and also to avoid that you have to repeat general elements in other parts of the questionnaire. ***Please do not write more than one or maximum two pages and do not include large historical developments.***

Q.10. **Describe <u>in general the system of reception conditions</u> in your Member State (in particular which are the main actors in charge of reception conditions?)**

Selon l'article 11, paragraphe 1, de la Loi nº 15/98, l'étranger ou l'apatride qui entre dans le territoire national afin d'obtenir l'asile doit présenter sa demande au Service des étrangers et des frontières (ci-après le « SEF »), qui dépend du Ministère des affaires intérieures, ou à n'importe quelle autorité policière. Celle-ci doit transmettre la demande au SEF. C'est à ce service qu'il échoit d'informer le demandeur d'asile, dans un délai de cinq jours, de ses droits et obligations.

L'article 49 de la même loi impose à l'État portugais d'assurer aux demandeurs d'asile, jusqu'à la décision finale sur leur demande « des conditions de dignité humaine ».

Conformément à l'article 22 de la Loi n.º 20/2006 (compris dans le chapitre VII, dont le titre est « mesures destinées à rendre plus efficace le système d'accueil »), il incombe au Ministère des affaires intérieures de garantir aux demandeurs d'asile qui se trouvent retenus dans les postes de frontières les conditions de logement et d'accès à des soins de santé, ainsi que de supporter les charges découlant de l'octroi des conditions matérielles d'accueil jusqu'à la décision sur la recevabilité de la demande, laquelle doit intervenir dans un délai maximal de cinq jours (article 18, paragraphe 3, de la Loi nº 15/98). Ces conditions peuvent être assurées par d'autres entités publiques ou particulières sans but lucratif, en vertu d'un protocole.

Par ailleurs, il incombe au Ministère du travail et de la solidarité sociale, directement ou par l'intermédiaire d'autres entités publiques ou privées sans but lucratif en vertu d'un protocole, de supporter les charges découlant de l'octroi des conditions matérielles d'accueil aux demandeurs d'asile ne se trouvant pas retenus aux postes de frontières et dont la demande a été déclarée recevable jusqu'à la décision finale. Enfin, il échoit au Service national de santé d'assurer l'accès des demandeurs d'asile et des membres de leur famille aux soins de santé.

Q.11.A. **Explain if you have <u>different types and levels of reception conditions following the different stages of the asylum procedure</u> (this implies that you have to give briefly the necessary explanations about the asylum procedure). Make if relevant for reception conditions a distinction between the following procedural stages: determination of the responsible Member State on the basis of the Dublin II regulation, special procedures at the border (including transit zones in airports), accelerated procedures, admissibility procedures, eligibility procedures and the different possibilities of appeals (suspensive or not) against a refusal of the asylum request. Indicate what the main differences of reception conditions are between the different stages (if necessary by detailing between the different elements of reception conditions, in particular housing) and explain what the evolution of reception conditions is following the different stages of the procedure.**

La Loi nº 15/98 distingue une procédure d'asile « générale » ou commune, dont la première phase porte sur la recevabilité de la demande d'asile et la deuxième phase sur le fond. En tant que procédures spéciales figurent, d'une part, celle portant sur les demandes d'asile présentées aux postes de frontières par des demandeurs ne remplissant pas les conditions exigées pour entrer dans le territoire national. D'autre part, il y a la procédure spéciale de détermination de l'Etat responsable de l'analyse de la demande d'asile. Cela ne signifie cependant pas que la Loi nº 15/98 ou la Loi nº 20/2006 prévoient expressément des différents types et niveaux de conditions d'accueil en fonction du type ou de la phase de la procédure d'asile. En effet, ainsi qu'il a été mentionné, l'article 49 de la Loi nº 15/98 dispose en termes généraux que l'Etat portugais assure à tous les demandeurs d'asile des conditions de dignité humaine jusqu'à la décision finale sur leur demande. La seule distinction juridiquement établie à cet égard tient à l'entité chargée d'assurer ces conditions, dont les formes sont spécifiées à l'article 12 de la Loi nº 20/2006 (voir réponse à la Q 12 A). Le Ministère des affaires intérieures est compétent vis-à-vis des demandeurs d'asile ne réunissant pas les conditions pour entrer dans le territoire national, alors que le Ministère du travail et de la solidarité sociale est compétent vis-à-vis des demandeurs d'asile se trouvant dans le territoire national et dont la demande a été déclarée recevable.

Q.11.B. Indicate precisely for which stage(s) of the asylum procedure the answers on reception conditions you give below are valid.

Au cours de la phase de la recevabilité d'une demande d'asile présentée sur le territoire national, les demandeurs en situation de carence économique sont en principe logés et habillés en nature au *CAR* et reçoivent du *CPR* un appui monétaire d'émergence de 30 euros par semaine, pendant huit semaines. Cet appui monétaire vise à assurer le payement des dépenses personnelles et relatives à la nourriture et aux transports. Il s'étend aux demandeurs d'asile résidant chez de la famille ou des amis. Au cours de cette phase de la procédure d'asile, seuls ont droit à une allocation complémentaire pour logement les demandeurs ayant été exclus du CAR pour des raisons disciplinaires ou lorsque le centre est complet.

Au cours de la phase d'appréciation au fond de la demande d'asile, le bénéfice des mêmes conditions matérielles aux demandeurs en situation de carence économique se fait par l'attribution des allocations financières d'appui social. L'allocation d'appui social pour logement constitue la règle. Les demandeurs d'asile résidant hors de la région de Lisbonne ont droit à une telle allocation fournie par le compétent service d'action sociale local. Un adulte seul reçoit un montant d'au moins 70% du salaire minimum national, conformément à la décision ministérielle 1/SESS/87. S'agissant d'une famille, ce montant peut atteindre 100% de ce salaire. Dès lors que cette décision n'a pas été mis à jour depuis 1991, le salaire en référence est toujours de 200 euros, alors que le salaire minimal actuel est de 403 euros et la pension minimale du régime général de la sécurité sociale est de 223 euros. De leur côté, les demandeurs d'asile résidant dans la région de Lisbonne bénéficient, en vertu d'un protocole conclu entre le Centro Distrital de la Sécurité Sociale de Lisbonne et la Santa Casa da Misericórdia de Lisbonne, de l'accompagnement du *SES*. L'allocation pour logement à laquelle ils ont droit varie entre 150 euros par mois par adulte

et 670 euros pour des familles de quatre personnes. Les demandeurs d'asile logeant chez de la famille ou des amis peuvent bénéficier d'une allocation pécuniaire pouvant aller jusqu'à 150 euros par mois.

4. GENERAL RULES ON RECEPTION CONDITIONS

Q.12.A. **Are material reception conditions provided in kind, in money or in vouchers or in a combination of these elements (see article 13, §5 which is an optional provision)? Distinguish between the different elements (housing, food, clothes, health, transportation, pocket money,…). If reception conditions are provided in money (in general or in some cases, for instance when no places are anymore available in accommodation centres), indicate the precise amount given to the asylum seekers. Indicate in your answer what is provided in general and if there are exceptional cases. Specify in your answer if reception conditions are different from the general system of social aid for nationals or aliens and if yes, if and when (which stage of the asylum procedure) can asylum seekers have access to the general system of social aid?**

L'article 12, paragraphe 1, de la Loi n.º 20/2006 prévoit en termes généraux que les conditions matérielles d'accueil peuvent revêtir les formes suivantes : (1) logement en nature ; (2) alimentation en nature ; (3) prestation pécuniaire d'appui social, à caractère mensuel, pour les frais d'alimentation, habillement, hygiène et transports ; (4) allocation complémentaire pour logement, à caractère mensuel ; (5) allocation complémentaire pour dépenses personnelles et transports. Selon le paragraphe 2, le logement et l'alimentation en nature peuvent revêtir l'une des trois formes suivantes : (1) dans des installations assimilables à des centres d'hébergement pour des demandeurs d'asile dont la demande a été présentée aux postes de frontière ; (2) dans des centres d'hébergements pour demandeurs d'asile ou installation assimilable, susceptibles de proportionner des conditions de vie appropriées ; (3) dans des maisons particulières, appartements, hôtels, pensions ou d'autres installations adaptées à l'accueil des demandeurs d'asile. Le paragraphe 3 du même article prévoit que peuvent être cumulés (1) le logement et l'alimentation en nature avec l'allocation complémentaire pour frais personnels et transports ; (2) le logement en nature ou allocation complémentaire pour logement avec la prestation pécuniaire d'appui social.

L'article 12, paragraphe 4, prévoit à titre exceptionnel et pour une certaine période, la possibilité d'établir des conditions d'accueil différentes dans les circonstances suivantes : (1) lorsqu'une évaluation initiale des besoins spécifiques des demandeurs d'asile s'avère nécessaire ; (2) lorsque les conditions matérielles d'accueil prévues par le paragraphe 2 ne sont pas disponibles dans la région où se trouve le demandeur d'asile ; (3) lorsque les conditions d'accueil disponibles se trouvent temporairement épuisées ; (4) lorsque les demandeurs d'asile se trouvent en régime de rétention dans un poste de frontière qui ne dispose pas d'installations assimilables à des centres d'hébergement.

Pour ce qui est des conditions matérielles d'accueil fournies en argent, lors de la phase d'admissibilité, les demandeurs d'asile ayant présenté leur requête sur territoire national et séjournant au *CAR* bénéficient d'une allocation

d'émergence de 30 euros par semaine pendant huit semaines, visant à leur permettre de payer leurs dépenses en denrées alimentaires, transports et dépenses personnelles. Cette allocation s'étend aux demandeurs d'asile résidant chez de la famille ou des amis. Au cours de cette phase de la procédure d'asile, seuls ont droit à une allocation complémentaire pour logement les demandeurs qui ont été exclus du *CAR* pour des raisons disciplinaires ou lorsque le centre est complet. Les demandeurs logeant au *CAR* reçoivent aussi une carte téléphonique et un titre de transport mensuel à leur arrivée.
Au cours de la phase d'appréciation au fond de la demande d'asile, l'allocation d'appui social pour logement constitue la règle. Les demandeurs d'asile résidant hors de la région de Lisbonne ont droit à une telle allocation fournie par le compétent service d'action sociale local. Un adulte seul reçoit un montant d'au moins 70% du salaire minimum national, conformément au Despacho 1/SESS/87. S'agissant d'une famille de 6 personnes, ce montant peut atteindre 100% de ce salaire. Dès lors que l'arrêté en question n'a pas été mis à jour depuis 1991, le salaire en référence est toujours de 200 euros, alors que le salaire minimal actuel est de 403 euros. En revanche, les demandeurs d'asile résidant dans la région de Lisbonne bénéficient, en vertu d'un protocole conclu entre le Centro Distrital de la Sécurité Sociale de Lisbonne et la Santa Casa da Misericórdia de Lisbonne, de l'accompagnement du *SES*. L'allocation pour logement à laquelle ils ont droit varie entre 150 euros par mois par adulte et 670 euros pour des familles de quatre personnes. Les demandeurs d'asile logeant chez de la famille ou des amis peuvent bénéficier d'une allocation pécuniaire pouvant aller jusqu'à 150 euros par mois.

Q.12.B. **Can the reception conditions in kind, money or vouchers be considered as <u>sufficient</u> "to ensure a standard of living adequate for the health of applicants and capable of ensuring their subsistence" as requested by article 13, §2 of the directive (which is a mandatory provision but leaves a certain space to Member States)? In order to help to assess the respect of this rule when reception conditions are provided in money, include if necessary in your answer points of comparison with the minimum amount of social aid guaranteed for nationals in your Member State.**

Selon l'article 13 de la Loi n.º 20/2006, (1) la prestation pécuniaire d'appui social à caractère mensuel pour des dépenses relatives à l'alimentation, habillement, hygiène et transports, (2) l'allocation complémentaire pour logement à caractère mensuel et (3) l'allocation complémentaire pour dépenses personnelles et transports, sont calculées par rapport à l'allocation d'appui social prévue par la législation nationale. La première ne doit pas dépasser 70% du montant de celle-ci. La seconde et la troisième ne doivent pas dépasser 30% de ce montant. Aucun pourcentage minimum n'est prévu. Il revient au Ministère du travail et de la solidarité sociale de fixer ce pourcentage. À ce stade, cette matière est réglée para le Despacho 1/SESS/87, mis à jour en dernier lieu en 1991.
Les allocations mentionnées en réponse à la Q.11.B. doivent être mis à jour urgemment, car elles ne s'avèrent pas suffisantes pour subvenir aux besoins des demandeurs d'asile. C'est aussi l'opinion généralisée des ONG et des autres acteurs de terrain.

5. PROCEDURAL ASPECTS

Q.13.A. **Does the national legislation specifically provide that a request for international protection is presumed to be under the Geneva Convention unless explicitly requested otherwise? (see article 2, b which is a mandatory provision)**

Selon l'article 2, sous b), de la Loi n.º 20/2006, la demande d'asile est définie comme une demande présentée par un ressortissant d'un pays tiers ou par un apatride, susceptible d'être comprise comme une demande de protection internationale adressée aux autorités portugaises en vertu de la Convention de Genève ou d'un autre régime subsidiaire de protection internationale prévue par la législation portugaise. Une telle demande de protection internationale doit être considérée comme une demande d'asile, à moins que son auteur ne sollicite explicitement une autre forme de protection pouvant faire l'objet d'une demande séparée.

Q.13.B. **Explain if the scope of application of reception conditions is extended to other asylum seekers than refugees in the sense of the Geneva Convention, in particular to persons asking for subsidiary protection or to other forms of protection like humanitarian statuses (see article 3, § 4 which is an optional provision)? If not, explain briefly which the differences between these special regimes and the directive are.**

Conformément à son article 1er, paragraphe 2, la Loi n.º 20/2006 n'est pas applicable aux cas relevant de la Loi nº 67/2003, du 23 août, établissant le régime de l'octroi d'une protection temporaire en cas d'afflux massif de personnes déplacées en provenance d'un pays tiers. En revanche, l'article 2, sous g), inclut dans son champ d'application les demandes de protection subsidiaire notamment pour des raisons humanitaires.

Q.13.C. **Are there specific provisions in national law for reception conditions in case of diplomatic or territorial asylum requests submitted through a diplomatic or consular representation (see article 3, §2 which is an optional provision)?**

La Loi n.º 20/2006, pas plus que la Loi nº 15/98, ne comprend pas des dispositions relatives aux demandes d'asile diplomatique ou territorial introduites auprès des représentations diplomatiques et consulaires de l'Etat portugais.

Q.14. **Are reception conditions available as from the moment one asylum application is introduced? How is article 13, §1 which is mandatory legally understood?** Do asylum seekers have to satisfy any other condition in order to get reception conditions?

Il découle de l'article 49 de la Loi nº 15/98, ainsi que de l'article 2, sous b) et c), de la Loi n.º 20/2006 que les demandeurs d'asile ont accès aux conditions d'accueil à partir du moment où leur demande est introduite.

Q.15. Explain when reception conditions <u>end</u>, for instance after refusal of the asylum request (include in your answer the link with the right of appeal against a decision of refusal of the status, in particular the question of its suspensive effect).

Selon l'article 24, paragraphe 1, de la Loi nº 15/98, le recours juridictionnel contre une décision (administrative) de refus d'une demande d'asile a un effet suspensif. Cela signifie que le demandeur d'asile conserve cette qualité jusqu'à ce qu'une *décision juridictionnelle* en dernière instance soit prononcée sur ce recours.
Cependant, selon l'article 59, paragraphe 1, de la même loi, l'appui social aux demandeurs d'asile cesse, en principe, au moment de la *décision administrative* finale sur la demande d'asile, « indépendamment de l'introduction d'un recours juridictionnel ». Le paragraphe 2 du même article prévoit néanmoins que la cessation de cet appui n'a pas lieu lorsque qu'il est constaté, après une évaluation de la situation économique et sociale du demandeur, qu'un tel appui doit subsister, en vertu d'une carence économique et sociale prouvée. Le paragraphe 3, pour sa part, prévoit que l'appui social au demandeur d'asile cesse également lorsque (1) sans justification, il ne comparaît pas devant les autorités qui le convoquent, (2) il s'absente ou change de résidence sans en avertir au préalable le SEF.
L'article 16 de la Loi n.º 20/2006 vient compléter ce dispositif. Il précise, d'une part, que les conditions d'accueil peuvent être totalement ou partiellement retirées si le demandeur (1) abandonne le lieu de résidence établi par l'autorité compétente sans en informer le SEF ou sans l'autorisation exigible ; (2) abandonne son lieu de résidence sans en informer l'autorité responsable du logement ; (3) ne respecte pas les obligations de se présenter ; (4) ne prête pas les informations qui lui ont été demandées ou ne comparaît pas aux entretiens individuels auxquels il est convoqué ; (5) a dissimulé ses recours financiers et, par conséquent, a bénéficié indûment des conditions matérielles d'accueil. D'autre part, il est précisé au paragraphe 3 que si, ultérieurement, le demandeur est trouvé ou se présente volontairement aux autorités compétentes, une décision fondée sur les motifs de sa disparition doit être prise à l'égard du rétablissement du bénéfice de quelques ou de toutes les conditions d'accueil. Aux paragraphes 4 et 5, il est précisé que les décisions relatives à la limitation et au retrait de ce bénéfice doivent être prises de façon individuelle, objective et impartiale, être dûment motivées et basées sur la situation particulière de la personne en cause y compris ses besoins particuliers, dans le respect du principe de proportionnalité. Conformément au paragraphe 6, l'accès aux soins de santé urgents n'est pas mis en cause par la limitation ou le retrait des bénéfices en question. Les décisions susmentionnées peuvent faire l'objet d'un recours juridictionnel.

Q.16 Are there special rules or practices regarding reception conditions in case of <u>successive applications</u> for asylum introduced by the same person?

Il n'y a pas de règles ou pratiques spéciales concernant les conditions d'accueil en cas de demandes successives d'asile introduites par la même personne.

Q.17[633]. Information of asylum seekers about their rights and obligations in terms of reception conditions, in particular about established benefits (see article 5 which is to a large extend a mandatory provision; do not confuse this question with the information to be provided to asylum seekers about the asylum procedure):

Q.17.A. Are asylum seekers informed, and if yes about what precisely?

L'article 51 de la Loi nº 15/98 se limitant à disposer que, au début de la procédure d'asile, le SEF doit informer les demandeurs de leurs droits et obligations, l'article 3, paragraphe 1, de la Loi n.º 20/2006 vient le compléter, en précisant que le SEF informe les demandeurs d'asile, immédiatement ou, lorsque la demande a été présentée à une autre autorité, jusqu'à cinq jours à partir de son dépôt, de leurs droits et obligations en matière d'accueil, ainsi que des organisations ou des groupes de personnes qui assurent une assistance juridique spécifique et des organisations disposées à les aider ou informer sur les conditions d'accueil disponibles, y compris les soins médicaux.
En pratique le SEF informe le demandeur d'asile sur son droit à l'appui social pour logement et alimentation, à l'accès au Service national de santé et à l'appui judiciaire. Il l'informe également sur l'appui prêté par le CPR. C'est celui-ci qui assure normalement l'explication détaillée sur le contenu de ces droits et les modalités de leur exercice. Le CPR dispose d'une base de données comprenant une quarantaine d'interprètes capables de communiquer en quarante langues différentes.

Q.17.B. Is the information provided in writing or, when appropriate, orally?

Conformément au paragraphe 2 de l'article 3 de la Loi n.º 20/2006, le SEF fournit au demandeur d'asile, dans une langue qu'il comprenne, une brochure informative ou, le cas échéant, lui fourni ces informations oralement. S'agissant de l'information sur l'appui prêté par le CPR, l'information est orale.

Q.17.C. Is that information in general provided in a language understood by asylum seekers? Specify the list of languages in which it is available.

Le demandeur d'asile dispose d'informations écrites en portugais, anglais, français, russe et roumain. S'il ne comprend aucune de ces langues, ces informations lui sont prêtées oralement dans sa langue maternelle à travers un interprète.

Q.17.D. Is the deadline of maximum 15 days respected?

Oui, ce délai est respecté. Les informations sont prêtées au demandeur d'asile juste après la présentation de sa demande.

[633] To be answered with the help of UNHCR local office competent for your Member State or to be completed on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

Q.18[634]. Information of asylum seekers about the existence of organisations or groups promoting their interest and defending their rights (see article 5 which is to a large extend a mandatory provision):

Q.18.A. Is there a list of organisations dressed by the authorities and if yes is it comprehensive? Is this in particular the case about the possibilities to get legal assistance and health care?

Le SEF ne dispose pas d'une liste de telles organisations et groupes. L'accueil des demandeurs d'asile est effectué par le CPR qui s'articule avec toutes les organisations et groupes participant à l'accueil des demandeurs d'asile. En tout cas, ainsi qu'il a déjà été répondu, tous les demandeurs d'asile sont informés sur les possibilités d'obtenir un appui juridique et d'accéder au Service national de santé pour ce qui est de l'assistance médicale ou en médicaments.

Q.18.B. Is the information provided to the asylum seekers, and if yes, in writing or, when appropriate, orally?

Ces informations sont fournies par écrit, dans les langues susmentionnées, et oralement, moyennant les services d'un interprète, si le demandeur d'asile ne comprend aucune de ces langues.

Q.18.C. Is that information in general provided in a language understood by asylum seekers? Specify if possible the list of languages in which it is available.

Oui, et ce dans les mêmes langues mentionnées dans la réponse aux Q.17.A. et Q.17.C.

Q.18.D. How many organisations are active in that field in your Member State?

Le CPR (*Conselho Português para os Refugiados*) est l'organisation la plus importante dans ce domaine au Portugal, qui se dédie à titre exclusif à l'accueil et au soutien des demandeurs d'asile. Outre le CPR, sont à mentionner l'Oeuvre catholique portugaise pour les migrations, le Service jésuite aux réfugiés, les centres d'hébergement et d'accueil de la Mairie de Lisbonne, ainsi que la Santa Casa da Misericórdia, institution privée de solidarité sociale, à travers son SES (*Serviço de Emergência Social*).

Q.19. Documentation of asylum seekers (see article 6):

Q.19.A. What kind of document is delivered to the asylum seeker? Explain the legal value of this document (just a certification of the status as asylum seeker or also prove of identity?) (see §1 of article 6 which is a mandatory provision).

Selon l'article 4 de la Loi n.º 20/2006, dans un délai de trois jours après le dépôt d'une demande d'asile, son auteur doit recevoir un document certifiant ce dépôt et aussi qu'il est autorisé à demeurer sur le territoire national tant que sa demande est pendante.

[634] To be answered with the help of UNHCR local office competent for your Member State or to be completed on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

Après que sa demande a été déclarée recevable, l'article 21 de la Loi nº 15/98 impose au SEF d'émettre en faveur du demandeur d'asile un permis de résidence provisoire.

Q.19B. Are there situations or specific cases in which another equivalent document or even no document is issued? (in particular is there an exception for "procedures to decide on the right of the applicant legally to enter the territory" as made possible by §2 of article 6)?

Il découle des dispositions mentionnées qu'aucun document n'est émis lorsque le demandeur d'asile est maintenu en rétention pendant l'examen d'une demande d'asile présentée à la frontière et dans le cas d'une procédure visant à déterminer le droit du demandeur d'asile à entrer légalement sur le territoire portugais.

Q.19.C. For how long is this document in principle valid and is it necessary to renew it after a certain period?

Le document émis en vertu de l'article 4 de la Loi n.º 20/2006 est en principe valable jusqu'à la prise d'une décision sur la recevabilité de la demande d'asile.
Le permis de résidence provisoire est valable pour une période de 60 jours à partir de la date du dépôt de la demande d'asile et renouvelable pour des périodes de 30 jours jusqu'à la décision finale sur cette demande.

Q.19.D. What is the deadline for the delivery of that document? Is the mandatory deadline of 3 days set by article 6, §1 respected[635]?

Le document prévu par l'article 4 de la Loi n.º 20/2006 doit être émis dans un délai de trois jours après le dépôt de la demande d'asile. Ce délai est en général respecté.

Q.19.E. Is it possible for an asylum seeker to get a travel document for serious humanitarian reasons (see §5 of article 6 which is an optional provision)?

La possibilité pour un demandeur d'asile d'obtenir un document de voyage pour des raisons humanitaires sérieuses n'est pas explicitement prévue par la législation portugaise. Cependant, tout étranger non résident au Portugal qui démontre une impossibilité ou difficulté pour sortir du territoire portugais peut se voir octroyer un sauf-conduit, en vertu de l'article 72 du Décret-loi nº 244/98.

Q.19.F. Is there a central system of registration of asylum seekers and is it or not separate from the registration of aliens? If yes, describe it briefly (content) and indicate in particular if it is an electronic database.

Il y a un système central d'enregistrement de demandeurs d'asile séparé de l'enregistrement des étrangers, comprenant une base de données électronique.

[635] To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

Q.20. **Residence of asylum seekers[636]:**

Q.20A. **Is in principle an asylum seeker free to move on the entire territory of your Member State or only to a limited part of it and in case, which part? (see article 7, §1 which is a mandatory provision)**

Il découle de l'article 5 de la Loi n.º 20/2006, dont le titre est « résidence et liberté de circulation », que les demandeurs d'asile peuvent se déplacer librement sur tout le territoire portugais. Cette disposition, en tant que *lex posterior*, semble rendre caduque l'exigence faite par l'article 11, paragraphe 5, de la Loi nº 15/98 que chaque demandeur d'asile se présente auprès du SEF de 15 en 15 jours, le jour de la semaine fixé par ce service.

Q.20.B. **About the place of residence (see §2 of article 7): explain to which extend the person is free to choose her residence and if this depends of the stage of the asylum procedure (for instance before and after admissibility); if there are constraints limiting the choice, explain which ones and their reasons (for instance processing of application, attribution of reception conditions,…).**

Il découle de l'article 5, sous b), de la Loi nº 20/2006 que les demandeurs d'asile sont en principe libres de choisir leur lieu de résidence. En effet, ils ne sont obligés que de communiquer à l'entité responsable de leur logement tout changement d'adresse. Cela s'applique même si un demandeur d'asile est destinataire d'un appui social pour logement, en raison de sa situation de carence économique et sociale.

Q.20.C. **About the place of reception (meaning where the asylum seeker has to stay to benefit from reception conditions) (see § 4 of article 7): explain which are the general rules about the determination of this place (to which extend are the decisions determining the place taken individually and do they take into account the personal situation of the asylum seeker?) and to which extend the person is free to choose it and if it depends of the stage of the asylum procedure (for instance before and after admissibility); if there are constraints limiting the choice, explain which ones and their reasons (for instance attribution of reception conditions, processing of the application,…).**

L'article 6 de la Loi n.º 20/2006 dispose que, s'agissant de l'octroi d'un logement aux demandeurs d'asile en situation de carence économique, des mesures appropriées doivent être prises afin de maintenir tant que possible l'unité de la famille se trouvant sur le territoire national.
Le législateur portugais n'a pas fait usage du paragraphe 4 de l'article 7 de la directive et par conséquent n'a pas prévu que, pour bénéficier des conditions matérielles d'accueil, les demandeurs doivent effectivement résider dans un lieu déterminé fixé par l'autorité compétente.

[636] Nota bene: the case of detention is covered by other questions and should be ignored under this question.

Q.20.D. **If all asylum seekers are not placed in accommodation centres because of capacity limits, explain <u>how the persons are distributed between accommodation centres and other accommodation facilities</u> (which authority takes the decisions, on the basis of which elements, can that decision be appealed by the asylum seeker)**[637]

Quand le CAR, seul centre d'hébergement de demandeurs d'asile existant au Portugal, est complet, celui-ci loge les demandeurs d'asile dans des pensions. Une telle décision est prise par la direction du CAR selon des critères tenant compte de la vulnérabilité des cas individuels et d'ordre d'arrivée au centre.

Q.20.E. **How can an asylum seeker ask to <u>leave temporarily</u> the place of residence or of reception or an assigned area? How is the individual AND impartial character of the decision ensured? (see §5 of article 7 which is a mandatory provision).**

La Loi nº 20/2006, pas plus que la Loi nº 15/98, ne prévoit rien à cet égard. Il découle cependant de son article 5, sous b), que le principe est celui de la liberté de changer temporairement d'adresse pourvu que le demandeur d'asile la communique à l'entité responsable de son logement. Selon les règles du CAR, où la majorité des demandeurs d'asile choisit de loger pendant la phase d'admissibilité de la procédure d'asile, les usagers ont le droit de quitter temporairement les installations pour y revenir à un moment postérieur moyennant une demande d'autorisation à la direction du CAR. Les demandes sont analysées individuellement et la décision dépend des justifications présentées.

Q.21.A. **Do rules on <u>reduction or withdrawal of reception conditions</u> exist in internal legislation and if yes in which cases (mention in particular if there are cases not foreseen by article 16, § 1 and 2 which are optional provisions)? Distinguish in your answer between cases of reduction and withdrawal and explain which conditions can be reduced and if access to emergency health care is always ensured as requested by article 16, § 4, last sentence.**

Il y a en droit portugais des règles relatives à la limitation et au retrait du bénéfice des conditions d'accueil. L'article 16, paragraphe 2, de la Loi n.º 20/2006 prévoit que les conditions d'accueil peuvent être retirés, totalement ou en partie, si le demandeur d'asile, sans justification, (1) abandonne le lieu de résidence établi par l'autorité compétente sans en informer le SEF, ou sans l'autorisation nécessaire ; (2) abandonne son lieu de résidence sans en informer l'entité compétente pour le logement ; (3) ne respecte pas les obligations de se présenter ; (4) ne prête pas les informations qui lui sont demandées ou ne se rend pas aux entretiens individuels, lorsqu'il est convoqué à cette fin ; (5) a dissimulé ses ressources financières et a donc indûment bénéficié des conditions matérielles d'accueil. Le fait qu'un demandeur d'asile a déjà introduit une demande au Portugal ne constitue pas un motif de limitation ou de retrait du bénéfice des conditions d'accueil, pas plus que le fait qu'un

[637] To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

demandeur d'asile n'a pas été en mesure de prouver que sa demande a été introduite dans un délai raisonnable après son arrivée au Portugal.
Selon l'article 16, paragraphe 4, les décisions portant réduction et retrait du bénéfice des conditions d'accueil sont prises de façon individuelle, objective et impartiale et doivent être dûment motivées. La Loi nº 20/2006 n'établit pas des critères de distinction entre réduction et retrait des conditions d'accueil. C'est donc à l'administration qu'il revient de choisir entre les deux possibilités. Toutefois, son article 16, paragraphe 6, prévoit explicitement que la réduction ou le retrait de ce bénéfice n'excluent pas l'accès aux soins médicaux d'urgence.

Q.21.B. Has article 16, §2 dealing with refusal of reception conditions for unreasonably late applications for asylum been transposed by your Member State (or was this case already applicable before transposition)? Are there cases in practice[638]?

Ainsi qu'il a déjà été mentionné, la Loi nº 20/2006 n'a pas transposé l'article 16, paragraphe 2, de la directive. Toutefois, selon l'article 13, paragraphe 1, sous d), de la Loi nº 15/98, une demande d'asile est irrecevable si elle est présentée, sans justification, après le délai de 8 jours prévu par l'article 11, paragraphe 1, de la même loi.

Q.21.C. How is ensured that decisions of reduction or withdrawal are taken individually, objectively AND in particular impartially (for instance through an independent arbitrator) (see article 16, § 4, which is a mandatory provision)?

Il est assuré que les décisions portant limitation ou retrait du bénéfice des conditions d'accueil sont prises objectivement et impartialement par un mécanisme de contrôle a posteriori : toutes ces décisions peuvent faire l'objet d'un recours juridictionnel, conformément au paragraphe 7 de l'article 16 de la Loi nº 20/2006.

Q.21.D. Is statement 14/03 adoted by the Council at the same moment as the directive respected (see the documentation pack you received at our meeting inn Brussels in April)?

La déclaration 14/03, adoptée par le Conseil en même temps que la directive, est respectée par la Loi n.º 20/2006. En effet, d'une part, l'article 16, paragraphe 4, de la directive, auquel se réfère cette déclaration, a été pleinement transposé par l'article 16, paragraphes 4 à 6, de la Loi n.º 20/2006. Il en va de même pour l'article 17 de la directive, lorsqu'on le compare avec l'article 17 de la Loi n.º 20/2006. Finalement, c'est la Constitution portugaise elle-même qui impose à tous les pouvoirs de l'Etat, y compris le législatif, le respect de la Convention européenne des droits de l'homme.

[638] To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

Q.21.E. **Are there already administrative appeal decisions or judgements on cases of reduction, withdrawal or refusal which have been taken, and if yes, what has been the outcome[639]?**

Il n'y en a pas.

Q.22.A. **<u>Appeal</u> against a negative decision relating to the granting of benefits or based on article 7 (see article 21 which is a mandatory provision): indicate against which decision an appeal can be introduced, describe the system of appeal in general and include in particular in your answer the information given to asylum seekers about possibilities of appealing, deadline for appealing, if the appeal has or not a suspensive effect, if there are different steps (for instance first an administrative appeal and in particular if the guarantee of an appeal before a judicial body in the last instance is respected)?**

Aux termes de l'article 21 paragraphe 1, de la Loi n.º 20/2006, les décisions négatives portant sur l'octroi des conditions d'accueil, ainsi que les décisions prises en matière de limitation et de retrait de ces conditions, qui concernent individuellement les demandeurs d'asile, sont soumises à toutes les garanties administratives et juridictionnelles prévues par la loi générale. S'agissant d'actes administratifs, il leur est directement applicable l'article 268, paragraphe 4, de la Constitution, aux termes duquel « la tutelle juridictionnelle effective des droits ou des intérêts légalement protégés des administrés leur est garantie, y compris, notamment, la reconnaissance de ces droits ou intérêts, le recours contre tout acte administratif leur portant atteinte, indépendamment de sa forme, la détermination de la pratique d'actes administratifs légalement dus et l'adoption des mesures conservatoires appropriées ». Ces mesures conservatoires comprennent la possibilité d'une suspension de l'efficacité de telles décisions si les conditions tenant au *fumus boni juris* et au *periculum in mora* sont réunies, les recours de ce type n'ayant pas en principe un effet suspensif. Dès que l'acte administratif est susceptible de porter atteinte à l'intéressé, il peut faire directement l'objet d'un recours juridictionnel sans qu'il soit nécessaire de présenter un recours administratif auparavant.
En tout cas, seul le recours juridictionnel introduit contre une décision de refus d'octroi de l'asile a un effet suspensif (article 24, paragraphe 1, de la Loi nº 15/98). Par contre, le recours introduit contre une décision administrative déclarant irrecevable une demande d'asile n'a qu'un effet dévolutif (article 20, paragraphe 4, de la même loi).
Les demandeurs d'asile doivent être informés de tout cela en vertu de l'article 3, paragraphe 1, de la Loi n.º 20/2006. Le destinataire de ce devoir est le SEF.

Q.22.B. **Explain which are the possibilities for asylum seekers to benefit from <u>legal assistance</u> when they introduce such an appeal (see article 21, §2 which is a mandatory provision but leaves space to Member States)?**

Aux termes de l'article 21, paragraphe 2, de la loi n.º 20/2006, c'est la loi générale relative à l'assistance judiciaire qui s'applique dans ces cas. Cette loi

[639] To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

a été adoptée en exécution de l'article 20, paragraphe 1, de la Constitution, en vertu duquel « l'accès au droit et aux tribunaux est garanti à toute personne pour la défense de ses droits et de ses intérêts protégés par la loi. La justice ne pourra être refusée pour insuffisance de moyens économiques ». Cette disposition constitutionnelle a été concrétisée en dernier lieu par la Loi nº 34/2004 et par le Décret-loi nº 71/2005, applicables s'agissant de l'assistance judiciaire aux demandeurs d'asile.

Q.22.C. Are there already administrative appeal decisions or judgements which have been taken and if yes, which are the main important ones[640]?

Il n'y en a pas.

Q.22.D. Is a mechanism of complaint for asylum seekers about quality of reception conditions in general (even if they are not personally concerned) organised? If yes, before which authority? Is it linked to the system of guidance, control and monitoring of reception conditions (see below question nº 39)?

Un tel mécanisme n'existe pas.

6. RIGHTS AND OBLIGATIONS OF ASYLUM SEEKERS

Q.23. Family unity of asylum seekers: define how a family is defined in relation with article 2, (d) which is a mandatory provision and explain how housing is provided to a family (see articles 8 which is a mandatory provision but leaves space to member States and 14, §2, (a) which is a mandatory provision).

Aux termes de l'article 2, sous d), de la Loi n.º 20/2006, la famille préalablement fondée au pays d'origine du demandeur d'asile comprend (1) son conjoint ou son partenaire non marié engagé dans une relation stable depuis plus de deux ans ; (2) les enfants mineurs ou incapables du couple, à condition qu'ils soient non mariés et à charge, indépendamment du fait d'être nés du mariage, hors mariage ou d'avoir été adoptés.
L'article 6 prévoit que, au moment de fournir un logement au demandeur d'asile, il faudra prendre les mesures appropriées pour maintenir dans la mesure du possible l'unité de sa famille sur le territoire portugais, pour lui accorder la protection de sa vie familiale et pour faire en sorte que ses enfants mineurs soient logés avec les parents ou avec le membre adulte de la famille qui les a sa charge.
Dans la pratique, le CPR essaie toujours de garantir dans le CAR, l'unité de la famille des demandeurs d'asile pendant la phase d'admissibilité.

Q.24.A. How is housing of asylum seekers organised: describe the system in general and indicate in particular what is the most frequently system used (see article 14, §1 which is a mandatory provision but leaves space for

[640] To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

Member States; distinguish between accommodation centres, private houses and apartments, hotels places or other premises).

Selon l'article 12, paragraphe 2, de la Loi n.º 20/2006, le logement doit être fourni sous une des formes suivantes : (1) dans des installations assimilables à des centres d'hébergement lorsque la demande d'asile est présentée aux postes de frontière ; (2) dans des centres d'hébergement pour demandeurs d'asile ou assimilables, offrant des conditions de vie appropriées ; (3) dans des maisons, appartements, hôtels ou d'autres installations adaptées à l'hébergement des demandeurs d'asile.

Q.24.B. What is the total number of available places for asylum seekers?[641] Distinguish in your answer between accommodation centres, private houses and apartments, hotels or other premises.

Il n'y a qu'un seul centre d'hébergement, le nouveau CAR de Bobadela, Loures, avec 32 places, inauguré en Décembre 2006 et ayant substitué le précédant. Dès que ces places sont occupées, les demandeurs d'asile sont logés dans des pensions ou appartements.

Q.24.C. Is this number of places for asylum seekers sufficient in general or frequently insufficient?[642]

Compte tenu du nombre réduit de demandeurs d'asile au Portugal, le nombre de places qui leur sont destinées semble en général suffisant. Lorsque le CAR devient complet, le recours aux pensions existantes dans la région de Lisbonne donne une réponse satisfaisante.

Q.24.D. Are there special measures foreseen in urgent cases of a high number of news arrivals of asylum seekers (outside the case of application of the directive on temporary protection)?

Il n'y a pas de mesures prévues pour des cas urgents d'arrivée en grand nombre de demandeurs d'asile.

Q.25. Accommodation centres (important note: all the following questions are about open and not closed centres where asylum seekers are detained which are covered by another question)

Q.25.A. Are there different categories of accommodation centres, for instance depending of the stage of the procedure (admissibility and eligibility)?

Il n'y a pas de différentes catégories de centres d'hébergement, mais un seul et unique, le CAR..

[641] To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.
[642] To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

Q.25.B. **Is there a legal time limit for accommodation in a centre after which the asylum seekers have access to private houses or apartments or is this limit linked to a stage of the asylum procedure?**

Une telle limite n'existe pas. En général le CPR n'accueillit des demandeurs d'asile dans le CAR que pendant la phase de la recevabilité de la procédure.
Mais il n'est pas rare que des personnes y demeurent après que leur demande d'asile a été déclarée recevable et ce, jusqu'à ce qu'elles se trouvent un hébergement privé grâce aux allocations sociales reçues de la *Santa Casa da Misericórdia* ou de la *Segurança Social*.

Q.25.C. **Is there a general regulation about the internal functioning of those centres and the rights and duties of the asylum seekers? If yes, is this general regulation applicable to public and private centres? If not, are the centres supposed to adopt an internal regulation and does a central authority have or not a kind of control about its content?**

Le CAR, seul centre d'hébergement servant au logement collectif des demandeurs d'asile au sens de l'article 2, sous l), de la directive, est un centre de nature privée, géré par le CPR, qui a établi son propre règlement intérieur.

Q.25.D. **Do the regulations foresee the possibility of sanctions against asylum seekers in case of breach of the rules? (see article 16, §3) If yes, which sanctions for which rules? Which is the competent authority to decide? How is it ensured that decisions are taken individually, objectively and in particular *impartially* (for instance through an independent arbitrator) as requested by §4 of article 21 which is mandatory provision*?* Which are the possibilities of appealing against those decisions if the system is different from the general one under question n°22? Are there already administrative appeal decisions or judgements which have been taken and if yes, which are the main important ones?** [643]

Le règlement intérieur du CAR prévoit l'abandon du centre dans les cas de non respect des règles en vigueur. C'est à la direction qu'il incombe de prendre les décisions correspondantes (après des avertissements préalables et une évaluation de la gravité des infractions). Un recours contre une telle décision peut être introduit devant la présidence du CPR. Il n'y a pas, jusqu'à présent, de tels recours.

Q.25.E. **Are asylum seekers involved in the management of these centres? If yes, how (advisory board, appointment or election of representatives)? (see article 14, §6 which is an option provision).**

Non, les demandeurs d'asile ne participant pas à la gestion du CAR.

Q.25.F. **Do specific rules exist on work of asylum seekers inside the accommodation centres different from the general ones about employment (see below)? If yes, which ones? Can working inside accommodation**

[643] To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

centres be considered as a (mandatory) contribution of the asylum seekers to the management of the centres, is it or not paid and considered as implying access to the labour market and subject to the same rules?

Il n'y a pas de règles spécifiques concernant le travail des demandeurs d'asile dans le CAR différentes des règles générales.
Le travail dans ce centre ne peut pas être considéré comme une contribution obligatoire des demandeurs d'asile pour sa gestion. Il ne peut pas être considéré comme impliquant l'accès au marché de travail.

Q.26.A. How can asylum seekers communicate with legal advisers, representatives of UNHCR and NGOs? (see article 14, §2, (b) which is a mandatory provision).

Conformément à l'article 14, paragraphe 1, sous c), de la Loi n.º 20/2006, l'entité responsable de l'octroi du logement en nature doit assurer aux demandeurs d'asile la possibilité de communiquer avec leur famille, leurs conseils juridiques, les représentants du Haut Commissariat des Nations unies pour les réfugiés et du CPR qui est l'organisation non gouvernementale la plus active dans ce domaine.

Q.26.B. What are the rules about access of legal advisers, UNHCR and NGOs regarding access to accommodation centres and other housing facilities (see article 14, §7 which is a mandatory provision).

Aux termes de l'article 14, paragraphe 4, de la Loi n.º 20/2006, les conseillers juridiques des demandeurs d'asile et les représentants de l'UNHCR, du CPR, ainsi que d'autres ONG reconnues par l'Etat qui exercent des activités dans ce domaine, peuvent accéder au centre d'hébergement et à d'autres locaux dans lesquels les demandeurs d'asile sont logés.

Q.26.C. Can the access of legal advisers, UNHCR and NGOs be limited for security reasons or any other reason (see article 14, §7, last sentence)?

Des limites à cet accès ne peuvent être imposées que si dûment motivées et pour des raisons tenant à la sécurité du centre et des locaux, ainsi que des demandeurs d'asile. C'est ce qui dispose le paragraphe 4, *in fine*, de l'article 14 de la Loi n.º 20/2006.

Q.27.A. Is a medical screening organised by the receiving State, is it mandatory or voluntary? Does it include HIV tests? (see article 9 which is an optional provision).

Aux termes de l'article 7 de la Loi nº 20/2006, les autorités sanitaires peuvent exiger, pour des raisons de santé publique, que les demandeurs d'asile soient soumis à un examen médical dont les résultats sont confidentiels et n'affectent pas la procédure d'asile. Cela n'inclut pas obligatoirement le test HIV.

Q.27.B. Do the legal provisions on reception conditions ensure that asylum seekers receive at least emergency care and essential treatment of illness as

requested by article 15 §1 which is a mandatory provision? Do they have a further access to health care?

Pour ce qui est de l'accès aux soins de santé, l'article 15, paragraphe 1, de la Loi n.º 20/2006 se borne à renvoyer à l'article 53 de la Loi n.º 15/98, aux termes duquel il est reconnu aux requérants d'asile l'accès au Service national de santé.

Q.27.C. **What is the practice regarding access of asylum seekers to health care and how is it organised? In particular, what is the situation in accommodation centres (are doctors coming to the centres or do asylum seekers go to doctors outside)?**[644]

Les demandeurs d'asile ont accès au Service national de santé, à titre gratuit. Il leur est garanti des soins primaires de santé, des moyens de diagnostique et thérapeutiques, internement, appui domiciliaire et médicaments. Ces médicaments sont en général payés par le CPR. Dans le CAR il n'y a pas de médecin, mais seulement une pharmacie.
Le CPR a établi des partenariats notamment avec le Instituto de Higiene e Medicina Tropical pour le dépistage des maladies infecto-contagieuses et avec la Santa Casa da Misericórdia pour l'oftalmologie et la psychologie clinique. Voir réponse à la Q.11.A.

Q.28.A. **What is the length of the period determined by the concerned Member State during which asylum seekers have no access to the labour market? (see article 11 which is a mandatory provision).**

L'article 9, paragraphe 2, de la Loi n.º 20/2006 dispose que l'accès au marché de travail n'est interdit aux demandeurs d'asile que pour la période entre le dépôt de la demande d'asile et la décision portant sur sa recevabilité, sauf si ce demandeur est titulaire d'un permis de résidence ou d'un autre titre de séjour sur le territoire national, qui lui permette d'exercer une activité professionnelle, subordonnée ou indépendante. Le paragraphe 3 précise qu'une telle période d'interdiction ne peut pas être supérieure à vingt jours à partir de la date du dépôt de la demande d'asile.

Q.28.B. **After that period, are asylum seekers or not obliged to obtain a work permit? In case is there a limit for the administration to deliver the permits and how quick are they delivered? What is their length?**

Après cette période, les demandeurs d'asile ne sont pas obligés d'obtenir un permis de travail.

Q.28.C. **After that period, what are the conditions for access of the asylum seekers to the labour market? (in particular, are there rules concerning the maximum allowed of working hours or days per week, month or year, limits in terms of type of work or of professions authorised?**

[644] To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

Après cette période, les demandeurs d'asile sont soumis aux lois générales du travail, qui prévoient en fait une période maximale de travail et des limites selon le type de travail ou la profession exercée.

Q.28.D. What are the rules in terms of priorities between asylum seekers on the one hand and nationals, EU or EEE citizens and legally third-country nationals on the other?

L'ordre juridique portugais ne comprend pas de règles à cet égard.

Q.28.E. Do asylum seekers have access to vocational training, does this or not depend of their right to access to the labour market, and in case at which conditions? (see article 12 which is optional regarding §1 and mandatory regarding § 2)

Selon l'article 10, paragraphe 1, de la Loi n.º 20/2006, les demandeurs d'asile ont accès à des programmes et à des mesures d'emploi et de formation professionnelle, qu'ils accèdent ou non au marché de travail. Selon le paragraphe 2, l'accès à la formation professionnelle lié à un contrat de travail est subordonné à la possibilité, pour le demandeur, d'accéder au marché de travail.

Q.28.F. Are the rules regarding access to the labour market adopted to transpose the directive more or less generous than the ones applicable previously?

Ces règles sont d'une façon générale plus généreuses que celles appliquées auparavant, prévues par l'article 55 de la Loi nº 15/98.

Q.29. Are reception conditions subject to the fact that asylum seekers do not have sufficient resources? Are asylum seekers requested to contribute to reception conditions when they have personal resources (for instance if they work) or to refund the authorities if it appears that they have resources? (see article 13 §§ 3 and 4 which are optional provisions)

Aux termes de l'article 11, paragraphe 3, de la Loi n.º 20/2006, lorsqu'il est prouvé qu'un demandeur d'asile dispose des ressources suffisantes, il peut lui être exigé une contribution, totale ou partielle, pour la couverture du coût des conditions matérielles d'accueil et des soins de santé. Selon le paragraphe 4, s'il est prouvé qu'un demandeur d'asile disposait de ressources suffisantes pour couvrir le coût des conditions matérielles d'accueil et les soins de santé au moment où ces besoins fondamentaux ont été couverts, l'autorité compétente peut lui demander le remboursement correspondant.

7. SPECIAL NEEDS OF PARTICULAR CATEGORIES OF ASYLUM SEEKERS

Q.30.A. Which of the different categories of persons with special needs considered in the directive are taken into account in the national legislation (see article 17, §1 which is a mandatory provision): disabled people, elderly people, pregnant women, single parents with minor children, persons who have been tortured, raped or victims of serious physical or psychological

violence? Include in your answer all other categories envisaged in national law.

L'article 17, paragraphe 1, de la Loi n.º 20/2006, en renvoyant aux articles 56 et 58 de la Loi nº 15/98 établit comme principe général que l'Etat portugais doit tenir compte de la « situation des personnes particulièrement vulnérables », y compris les handicapés, les personnes âgées, femmes enceintes, parents seuls avec des enfants – relevant toutes du champ d'application de l'article 15, paragraphe 2, de la Loi nº 20/2006. L'article 18 est dédié spécifiquement aux mineurs, l'article 19, aux mineurs non accompagnés et l'article 21, aux personnes ayant subi des tortures, des viols ou d'autres formes graves de violence.

Q.30.B. How is their specific situation taken into account (see articles 13, §2, second indent, 16 §4 second sentence and 17 which are mandatory provisions)?

La situation spécifique de ces personnes est prise en compte à travers d'une prestation de conditions matérielles d'accueil et des soins de santé appropriés.

Q.30.C. How and when are the special needs of the concerned persons supposed to be legally identified (see article 17 § 2 which is a mandatory provision and clarify how it has been interpreted by transposition)?

Selon l'article 17, paragraphe 2, de la Loi n.º 20/2006, lors du dépôt de la demande d'asile ou à toute autre phase de la procédure, l'autorité compétente doit identifier les personnes dont les besoins spéciaux doivent être pris en compte, moyennant une évaluation individuelle de leur situation.

Q.30.D. Is the necessary medical and other assistance provided to persons with special needs as requested by article 15, §2 which is a mandatory provision and in particular to victims of torture and violence as requested by article 20 which is a mandatory provision?

L'article 17, paragraphe 1, de la Loi nº 20/2006, combiné avec l'article 20, ainsi qu'avec l'article 58 de la Loi nº 15/98, impose à l'Etat portugais de fournir des soins de santé, un traitement spécial et un accompagnement par le centre de sécurité sociale compétent aux personnes ayant été victimes de torture et de violence. Conformément à l'article 15, paragraphe 2, « il est prêté de l'assistance médicale, ou tout autre qui s'avère nécessaire, aux demandeurs d'asile ayant des besoins particuliers ».

Q.31. About minors:

Q.31.A. Till which age are asylum seekers considered to be minor?

Jusqu'à 18 ans.

Q.31.B. How is access of minor asylum seekers to the education system ensured? Is it at school or in case inside accommodation centres and can it be

considered as similar to the conditions for nationals as requested by article 10, §1?

Selon l'article 8, paragraphe 1, de la Loi nº 20/2006, qui complète l'article 57 de la Loi nº 15/98, les mineurs demandeurs d'asile ainsi que les enfants mineurs des demandeurs d'asile ont accès au système d'enseignement public obligatoire dans les mêmes conditions des ressortissants portugais. Si, au vu de la situation spécifique du mineur, cet accès n'est pas possible, le département ministériel compétent doit prendre les mesures nécessaires pour lui fournir des formes d'enseignement appropriées (paragraphe 3 de l'article 8).

Q.31.C. Is access to education ensured not later than 3 months as requested by article 10, §2 (or after maximum one year if specific education for asylum seekers is provided) and till an expulsion decision is really enforced?

Conformément à l'article 8, paragraphe 2, de la Loi nº 20/2006, l'accès au système d'enseignement doit être assuré jusqu'à trois mois à compter de la date de la présentation de la demande d'asile par le mineur ou par ses parents. Cet accès doit se maintenir tant que leur situation ne subit pas des changements pour ce qui est du statut qui leur a été accordé.

Q.31.D. Is specific education (like language classes) available for asylum seekers, in particular to facilitate their effective access to the education system of the reception Member State (see article 10, §2 which is an optional provision)?

L'article 8, paragraphe 3, de la Loi nº 20/2006 permet d'accorder une éducation spécifique au mineur en vue de faciliter son accès effectif au système d'enseignement. Cette éducation spécifique inclut l'enseignement de la langue portugaise.

Q.31.E. Are minors in general accommodated with their parents or with the person responsible of them? (see article 14, § 3)

L'article 14, paragraphe 1, sous b), de la Loi nº 20/2006 établit le principe selon lequel les enfants mineurs des demandeurs d'asile ou les demandeurs d'asile mineurs sont logés avec leurs parents ou avec le membre adulte de la famille qui est responsable pour eux.

Q.31.F. Do minors with special needs enumerated by article 18, §2 which is a mandatory provision, have access to appropriate mental health care and qualified counselling?

En vertu de l'article 18, paragraphe 2, de la Loi nº 20/2006, les mineurs ayant été victimes de toute forme d'abus, de négligence, d'exploitation, de torture, de traitements cruels, inhumains et dégradants, ou de conflits armés, ont accès au services de réhabilitation, à l'assistance psychologique et au soutien qualifié.

Q.31.G. How and when is organised the representation of unaccompanied minors (guardianship, special organisation) and regularly assessed? (see article 19, §1 which is a mandatory provision)

Aux termes de l'article 56 de la Loi nº 15/98, « sans préjudice des mesures de protection applicables en vertu de la législation concernant la tutelle des mineurs, et lorsque les circonstances l'exigent, les demandeurs d'asile mineurs peuvent être représentés par une entité ou une organisation non gouvernementale ». L'article 19, paragraphe 1, de la Loi nº 20/2006, en renvoyant à cet article, vient préciser que de telles entités ou organisations doivent « assurer efficacement les soins et le bien-être des mineurs » et évaluer régulièrement leur situation. La législation concernant la tutelle des mineurs est appliquée, en vertu du principe de l'égalité établi par la constitution, aux mineurs étrangers non accompagnées. Les demandeurs d'asile mineurs sont d'office représentés par le Ministère public.

Q.31.H. How is placement of unaccompanied minors organised (with adult relatives, a foster family, in special accommodation centres or other suitable accommodation)? (see article 19, §2 which is mandatory provision)

Selon l'article 19, paragraphe 3, de la Loi nº 20/2006, les mineurs non accompagnés qui présentent une demande d'asile doivent être placés, à compter de la date à laquelle ils sont admis sur le territoire national jusqu'à celle à laquelle ils doivent le quitter, (1) auprès de membres adultes de leur famille ; (2) au sein d'une famille d'accueil ; (3) dans des centres d'hébergement avec des installations spéciales pour mineurs ; (4) dans d'autres lieux d'hébergement disposant d'installations appropriées pour des mineurs et, dès que justifié, dans des institutions d'accueil de personnes ayant des besoins particuliers.
Le paragraphe 4 prévoit que les mineurs non accompagnés âgés de seize ou de plus de seize ans peuvent être placés dans des centres d'hébergement pour demandeurs d'asile adultes.
Finalement le paragraphe 5 dispose que les frères doivent être maintenus ensemble, compte tenu des intérêts supérieurs du mineur et, en particulier, de leur âge et de leur maturité, les changements de lieux de résidence des mineurs non accompagnés devant être limités au minimum.

Q.31.I. How is the tracing of the family members of the unaccompanied minors organised? Are measures taken to protect confidentiality of information when necessary? (see article 19, §3 which is a mandatory provision)

Conformément à l'article 19, paragraphe 6, de la Loi nº 20/2006, le SEF en articulation avec les autres autorités participant à la procédure d'asile, ainsi qu'avec le Ministère des affaires étrangères, doit déployer tous les efforts pour trouver les membres de la famille du mineur non accompagné, en vue de protéger ses intérêts supérieurs.
Selon le paragraphe 7 du même article, au cas où la vie ou l'intégrité physique d'un mineur ou de ses proches pourraient être en risque, notamment s'ils sont restés dans leur pays d'origine, la collecte, le traitement et la diffusion d'informations concernant ces personnes sont effectués à titre confidentiel pour éviter de compromettre leur sécurité. Finalement, en vertu du paragraphe 8, le personnel travaillant avec des mineurs non accompagnés doit avoir ou recevoir

une formation appropriée aux besoins de ces mineurs et est soumis à un devoir de confidentialité pour ce qui est des informations dont il prend connaissance dans l'exercice de ses fonctions.

8. EXCEPTIONAL MODALITIES OF RECEPTION CONDITIONS

Q.32. **Apart from detention covered by the next question, are there exceptional modalities for reception conditions in the following cases and if yes, which ones and for how long are they applicable, knowing that they should be "as short as possible" (see article 14, §8)?**

En vertu de l'article 12, paragraphe 4, de la Loi nº 20/2006, peuvent être établies des conditions matérielles d'accueil différentes de celles prévues en termes généraux, « à titre exceptionnel et pour une période déterminée ». Cette disposition laisse à l'administration la compétence pour établir au cas par cas les différences pratiques entre les quatre modalités d'accueil exceptionnelles et transitoires énoncées ci-après.

Q.32.A. **Persons with specific or special needs, regarding in particular the period of assessment of those needs?**

Il y a lieu d'établir de telles conditions lorsqu'une évaluation initiale des besoins spécifiques des demandeurs s'avère nécessaire [paragraphe 4, sous a)].

Q.32.B. **Non availability of reception conditions in certain areas.**

Il en va de même lorsque, dans la région géographique où se trouve le demandeur d'asile, si les conditions matérielles générales d'accueil ne sont pas disponibles [paragraphe 4, sous b)].

Q.32.C. **Temporarily exhaustion of normal housing capacities.**

Idem, lorsque les capacités de logement normalement disponibles sont temporairement épuisées [paragraphe 4, sous c)].

Q.32.D. **The asylum seeker is confined to a border post.**

Idem, lorsque les demandeurs d'asile se trouvent en régime de rétention dans un poste de frontière ne disposant pas d'installations assimilables à des centres de hébergement [paragraphe 4, sous d)].

Q.32.E. **All other cases not mentioned in the directive (for instance urgent situation in case of a sudden high number of applicants outside a case of application of the directive on temporary protection).**

Il n'y a pas d'autres cas d'octroi de conditions matérielles d'accueil différentes de celles prévues en termes généraux.

Q.33.A. **Detention of asylum seekers (we do not cover the situation of rejected asylum seekers detained for the purpose of their return) (see articles 6 §2,**

7 §3, 13, §2 2nd indent and 14 §8 which implies that the directive is in principle applicable in case of detention):
A. In which cases or circumstances and for which reasons[645] (identity verification in particular if the persons have no or false documents, protection of public order or national security, refugee status determination, way of entry into the territory, etc) can an asylum seeker be detained during the asylum procedure till his request has been finally rejected. Quote precisely in English in your answer the legal basis for detention of asylum seekers in national law.

Les demandeurs d'asile qui se trouvent sur le territoire national ne sont pas soumis à un régime de détention. Ils ne sont obligés qu'à communiquer leur adresse au SEF.
Aux termes de l'article 20, paragraphe 1, de la Loi n.º 15/98, ceux qui ne réunissent pas les conditions pour être admis sur le territoire national restent en régime de rétention dans la zone internationale du port ou de l'aéroport , pour un délai maximale de cinq jours. Si a la fin de ce délai, aucune décision de refus d'admission ne leur est pas communiquée par le SEF, l'article 20, paragraphe 3, de la Loi nº 15/98 leur permet d'entrer dans le territoire national, afin que la procédure d'asile se poursuive.
Il en découle clairement que ce régime respecte l'article 18, paragraphe 1, de la directive relative aux procédures d'asile, en vertu duquel les Etats membres ne détiendront pas une personne par le seul fait qu'elle est un demandeur d'asile.

Q.33.B. **Has your member State adopted measures to transpose §3 of article 7 which is an optional provision? If yes, how has this provision been legally understood (is it a case of detention or an obligation to stay in and not leave a certain place?) and for which reasons can an asylum seeker be "confined" in such a place?**

Cet article de la directive n'a pas été transposé par le législateur portugais.

Q.33.C. **Are there legally alternatives to detention, like obligation to report to the authorities, obligation to stay in a place, provision of a guarantor or of a financial guarantee?**

Ainsi qu'il a déjà été dit, la seule obligation imposée au demandeur d'asile se trouvant sur le territoire national est celle de communiquer au SEF l'adresse et tout changement y afférent. En tout état de cause, il ne s'agit pas à proprement parler d'une alternative à une détention.

Q.33.D. **Which is the competent authority to order the detention of an asylum seeker? Explain if different authorities are involved to first take and later confirm the decision.**

Si le demandeur d'asile se trouve sur le territoire national, il ne peut pas être détenu pour la seule raison qu'il est un demandeur d'asile. Si, en revanche, il

[645] Please specify if article 18 §1 of the directive on asylum procedures of 1 December 2005 which specifies that *"Member States shall not hold a person in detention for the sole reason that he/she is an applicant for asylum"* is or not respected (even if has not yet to be transposed).

se trouve à un poste de frontière en attendant une décision concernant la recevabilité de sa demande, il ne pourra y rester que pour un délai maximal de cinq jours. L'autorité compétente pour ordonner la détention d'un demandeur d'asile à la frontière est le SEF, sous contrôle d'un tribunal. Aux termes des dispositions combinées des articles 20, paragraphe 1, de la Loi nº 15/98 et 4, paragraphe 2 de la Loi nº 34/94, les autorités informeront les tribunaux compétents aussitôt que la présence du demandeur d'asile dans la zone internationale du port ou de l'aéroport excède les 48 heures.

Q.33.E. **For how long and till which stage of the asylum procedure can an asylum seeker be detained?**

Voir réponse à la question précédente.

Q.33.F. **In which places (can we call them "closed centres"?) are asylum seekers detained (places in a special closed centres reserved only to asylum seekers, together with returnees like illegal aliens or even in a normal prison, in case within separated areas or with the other detainees)? Indicate if a difference has to be made following the location of the "closed centres" at the border or on the territory? Which is the authority managing those places and is it the same as the one in charge of reception conditions?**

Il n'y a pas de centres de détention pour des demandeurs d'asile au Portugal. Un demandeur d'asile retenu à la frontière ne peut demeurer dans un centre d'installation temporaire pour plus de 48h sans une décision juridictionnelle validant cette rétention. En l'absence d'une telle décision il peut entrer dans le territoire national.
En vertu de la résolution du Conseil des ministres nº 76/97 portant création de zones de détention séparées pour demandeurs d'asile dans les aéroports nationaux, des travaux de construction ont été effectués dans l'aéroport international de Lisbonne en 2000. Les nouvelles conditions offertes par ce centre d'accueil représentent une nette amélioration par rapport aux conditions précaires précédentes qui étaient offertes aux demandeurs d'asile qui présentaient leur demande à l'aéroport international de Lisbonne. Elles permettent de satisfaire les besoins basiques.
Plus récemment un nouveau centre temporaire d'accueil a été créé en 2006 à Porto avec les mêmes fonctions de celui de Lisbonne, auquel est également applicable la résolution du Conseil des ministres mentionnée ci-dessus.
Ces centres d'accueil sont gérés par la même autorité qui gère les aéroports, à savoir la ANA – Aeroportos de Portugal, S.A. En revanche, c'est au ministère du travail et de l'assurance sociale, ainsi qu'au ministère de la santé qu'il incombe de fournir les prestations correspondantes.

Q.33.G. **Does UNHCR and NGOs have access to the places of detention and under which conditions?**

En vertu de la résolution du Conseil des ministres nº 76/97, paragraphe 4, les demandeurs d'asile qui se trouvent dans les centres d'accueil des aéroports ont

droit à l'appui juridique prêté directement par le CPR en sa qualité de partenaire du HCNUR.

Q.33.H. **What appeal(s) can asylum seekers introduce against the fact he is detained? Is article 18 of the directive on asylum procedures of 1 December 2005 following which *"Where an applicant for asylum is held in detention, Member States shall ensure that there is a possibility of speedy judicial review"* respected (even if it has not yet to be transposed)?**

L'article 24 de la Loi nº 20/2006 ayant supprimé le poste de Commissaire national pour les réfugiés (CNR), les demandeurs d'asile dont la demande a été considérée non-admissible par le directeur-général du SEF n'ont plus droit à un recours administratif contre ces décisions avec effet suspensif devant le CNR. À présent, tous les recours doivent être introduits devant les tribunaux administratifs et n'ont pas d'effet suspensif automatique. Seul un sursis à l'exécution peut être demandé dans le cadre d'un référé.
Pour ce qui est des demandeurs d'asile qui se trouvent aux frontières et qui ont fait l'objet d'une décision de non-admissibilité, il devient souvent impossible de demander un sursis à l'exécution à temps, puisque la procédure de nomination d'un avocat à titre d'appui judiciaire est relativement lente. Par conséquent, il n'est pas rare que ces demandeurs d'asile soient écartés du territoire national sans avoir eu l'occasion de saisir un tribunal afin d'obtenir des mesures conservatoires leur permettant, le cas échéant, d'entrer dans le territoire national.

Q.33.I. **Is the directive on reception conditions considered to be in principle applicable to the places where asylum seekers are detained? In particular which information do they receive about their rights, which access do they have to legal advice and health care?**

L'article 11, paragraphe 3, de la Loi nº 20/2006 étend l'application des conditions matérielles d'accueil aux demandeurs d'asile qui sont retenus aux postes de frontières.

Q.33.J. **Apart from freedom of movement, what are the main differences between normal reception conditions and exceptional modalities for reception conditions in case of detention, knowing that they should be "as short as possible" (see article 14, §8)? If it is about closed centres, are the regulations of those places in line with the requirements of the directive (is article 13, §2, second indent of the directive following which "*Member States shall ensure that standards of living is met (…) in relation to the situation of persons who are in detention*" respected?).**

Voir réponse à la Q.33.F. Ainsi qu'il a été répété à plusieurs reprises, les demandeurs bénéficient en principe d'une ample liberté de circulation et de résidence, ne pouvant en aucun cas être mis en détention du seul fait qu'ils sont des demandeurs d'asile, qu'ils soient mineurs ou majeurs d'âge.

Q.33.K. **Are measures taken to avoid detention of asylum seekers with special needs (if yes, which ones?) or are special measures taken because of their needs?**

Même si l'article 20, paragraphe 1, de la Loi nº 15/98 ne le prévoit pas explicitement, sur demande du CPR normalement satisfaite par le directeur du SEF, les mineurs et femmes enceintes qui sont des demandeurs d'asile ne doivent pas en principe rester à la frontière, pouvant entrer immédiatement dans le territoire national. Au cours de 2006, sur demande du CPR, l'entrée exceptionnelle dans le territoire nationale de trois demandeurs a été accordée à trois – deux enfants mineurs et leur grand-mère – lesquels ne satisfaisaient pas aux conditions d'entrée requises.

Q.33.L. **Can minor asylum seekers be detained together with relatives? Can unaccompanied minor asylum seekers be detained? If yes, are there special measures which take into account that children are concerned?**

Voir réponse aux Q.33.F, J et K.

Q.33.M. **In particular is article 10 regarding access to education of minors respected in those places?**

Voir réponse aux Q.33.F, J et K.

Q.33.N. **How many asylum seekers are for the moment detained in your Member State? Which proportion does this represent in comparison of the total number of asylum seekers at the same moment?**

Voir réponse aux Q.33.F et J.

9. ORGANISATION OF THE SYSTEM OF RECEPTION CONDITIONS

Q.34. **Explain if the system of providing reception conditions is centralised or decentralised (which levels of government do provide practically reception conditions?) (do not confuse this question with question number 3 about the competence to make rules about reception conditions)**.

Conformément à l'article 22, le système d'octroi de conditions d'accueil est centralisé au gouvernement. La compétence est repartie entre trois ministères. Le Ministère des affaires intérieures se charge des conditions d'accueil des demandeurs d'asile aux postes de frontière et le Ministère du travail et de la sécurité sociale se charge des conditions d'accueil pour ceux qui se trouvent à l'intérieur du territoire portugais. L'accès aux soins de santé est assuré par le Ministère de la santé et l'accès à l'éducation par le Ministère de l'éducation.

Q.35. **In case, are accommodation centres public or/and private (managed by NGOs? If yes, are the NGOs financially supported by the State?)**[646]

[646] To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

Le seul centre d'hébergement au sens de la directive est privé, géré par le CPR et reçoit un soutien financier de l'Etat. Le centre est financé à 75% par le Fond européen pour les réfugiés et à 25% par le Ministère des affaires intérieures.

Q.36. **In case, how many accommodation centres are there in your Member State (distinguish in your answer between public and private centres)?**[647]

Voir réponse à la Q.35.

Q.37. **Is there in the legislation a plan or are there rules in order to spread the asylum seekers all over the territory of your Member State to avoid their concentration in some areas like big cities or to share the costs of their reception between central, regional and local authorities?**

Il n'y a pas de législation ou de plan pour disséminer les demandeurs d'asile à travers le territoire national.

Q.38. **Does a central body representing all the actors (like NGOs) involved in reception conditions exist? Does it play a consultative role for the State authorities, a coordination role for the actors or any other role?**[648]

Un tel organisme central n'existe pas. Mais le CPR, en tant que principale entité compétente pour l'accueil des demandeurs d'asile, est consulté régulièrement par les autorités nationales.

Q.39.A. **Which is the body in charge of guidance, monitoring and controlling the system of reception conditions as requested by article 23 which is mandatory provision? Include in your answer which is the competent ministry (Interior, Social affairs, etc) for reception conditions?**

La Loi nº 20/2006 ne prévoit aucun organisme spécifique d'orientation, de surveillance et de contrôle du niveau des conditions d'accueil. Toutefois, les quatre ministères compétents en la matière (de l'intérieur, du travail et de la solidarité sociale, de la santé et de l'éducation) sont a priori à même d'exercer une orientation et un contrôle effectifs et suffisants sur les conditions d'accueil. Une appréciation précise à cet égard ne peut pas être produite à ce stade dès lors que la loi de transposition n'est entrée en vigueur que le 24 juin 2006. En tout état de cause, aucun indice n'est apparu jusqu'à présent dans le sens qu'un système effectif et qui fonctionne réellement n'a pas été mis en place.

Q.39.B. Has your Member State (like the Czech Republic did recently) approved quality standards (not necessary legally binding) for housing services (for instance about the number of persons per bedroom on the basis of its size, number of accessible toilets, bathrooms, showers and washing machines per number of persons, existence of common rooms with radio, television, newspapers, books, computers, accessibility of telephone, existence of

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recreative rooms for children,…) to be respected in particular in accommodation centres?[649]

Non, de telles normes de qualité n'ont pas été adoptées par l'Etat portugais.

Q.39.C. How is this system of guidance, control and monitoring of reception conditions organised?[650]

Voir réponse à la Q.39.A.

Q.39.D. Does the body in charge of guidance, control and monitoring produce reports about the level of reception conditions? If yes, how frequently and are they public?[651]

Voir réponse à la Q.39.A.

Q.40.A. What is the total number of asylum seekers covered by reception conditions for the last year for which figures are available (see article 22 obliging Member States to calculate those statistics about which we also asked the Commission to require them from Member States for mid June)?

Selon les données obtenues, depuis le début de 2006, 53 demandes d'asile ont été enregistrées. Ont été octroyés 18 statuts de réfugié en vertu de la Convention de Genève et 6 statuts de résidents pour des raisons humanitaires. 34 demandes d'asile ont été refusées.
De 2000 à 2005, 32 demandeurs d'asile ont obtenu le statut de réfugié en vertu de la Convention de Genève.

Q.40.B. What is the total budget of reception conditions in euro for the last year for which figures are available?[652]

Le budget total du CPR a été de 209 011, 42 euros pour 2005.

Q.40.C. What is the average cost of reception conditions in euro per asylum seeker for the last year for which figures are available?[653]

2.049,13 euros pour demandeur d'asile en 2005.

Q.40.D. Are the costs of reception conditions of asylum seekers supported by the central/federal or federated government or are they shared with regional and/or local authorities?

[649] To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.
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Les coûts afférents aux conditions d'accueil sont supportés par le gouvernement central.

Q.40.E. **Is article 24 § 2 of the directive following which "*Member States shall allocate the necessary resources in connection with the nationals provisions enacted to implement this directive*" respected?**[654]**.**

La Loi nº 20/2002 n'est en vigueur que depuis le 24 juin. Il est donc trop tôt pour pouvoir donner une réponse sûre.

Q.41.A. What is the total number of persons working for reception conditions? [655]

Il y a 12 personnes qui travaillent à titre permanent dans le domaine de l'accueil au CPR : 1 directrice, 1 assistante sociale, 1 assistant pour l'intégration, 4 vigils, 2 réceptionnistes, une gouvernante et 2 professeurs (1 de langue portugaise et 1 d'informatique).

Q.41.B. **How is the training of persons working in accommodation centres organised? Does it take into account specific needs of unaccompanied minors when relevant as well as the gender dimension? (see article 14 §5, 19 § 4 and also 24 §1 which are mandatory provisions)?**[656]

Conformément aux articles 19, paragraphe 8, et 23 de la Loi nº 20/2006, les ministères participant à l'octroi de conditions d'accueil aux demandeurs d'asile doivent fournir à leurs fonctionnaires une formation de base adéquate aux besoins des demandeurs d'asile des deux sexes, y compris en particulier aux mineurs.

Q.41.C. Are there rules about the deontology of persons working in accommodation centres, in particular on confidentiality?[657]

Oui. L'article 19, paragraphes 7 et 8, de la Loi nº 20/2006 impose la confidentialité au personnel travaillant avec des demandeurs d'asile en situation de risque et des mineurs non accompagnés.

10. IMPACT OF THE DIRECTIVE

Legal impact of the transposition of the directive:

Q.42. Specify if there are or not big problems with the translation of the directive in the official language of your Member State and give in case a list of the worst examples of provisions which have been badly translated? (please note that this

[654] To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.
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question has in particular been added to the questionnaire concerning the new Member States)

Le portugais étant une langue officielle de l'Union européenne, la version portugaise de la directive ne peut pas être considérée comme une traduction d'aucune autre version linguistique. Il peut, tout au plus, être appréciée à son égard la qualité du portugais pratiqué dans l'UE. Dans le cas d'espèce il se trouve dans la moyenne.

Q.43. Where there precise legal rules on reception conditions for asylum seekers before the adoption of the norms of transposition of the directive (if yes, specify what the nature of those rules was (legislation, regulation, administrative instructions,…)?

Ainsi qu'il a déjà été mentionné à plusieurs reprises, la Loi 15/98 contient des dispositions sur les conditions d'accueil des demandeurs d'asile. Cette loi demeurera pour l'essentiel en vigueur même après l'entrée en vigueur de la loi transposant la directive.

Q.44. Did the legal rules applicable to reception conditions become more clear, precise, coherent or detailed with the adoption of the transposition norms (for instance do you now have after the transposition one basic text dealing with reception conditions instead of numerous different texts in the past?

La Loi nº 20/2006 précise et complète plusieurs règles en la matière, en les rendant donc plus claires, cohérentes et détaillées. Malheureusement même après son entrée en vigueur, il n'y a pas un seul et unique texte législatif en la matière.

Q.45. Did the transposition of the directive imply important changes in national law or were the changes of minor importance? In case, list the most important changes that have been introduced.

(1) une clarification du champ d'application du nouveau régime, par l'inclusion des demandeurs de protection subsidiaire ;
(2) une répartition plus claire des compétences en la matière ;
(3) explicitation de l'accès à la formation professionnelle pour les demandeurs d'asile ;
(4) une meilleure protection de l'unité familiale ;
(5) une détermination plus claire des prestations matérielles fournies aux demandeurs d'asile ;
(6) l'imposition d'une formation spécifique au personnel travaillant dans ce domaine.

Political impact of the transposition of the directive:

Q.46. Explain briefly if there has been an important debate about the transposition of the directive (in particular in the Parliament, but possibly also in the government, between political parties, including in medias, etc; underline in case the main points which have been discussed or have created difficulties).

Le nombre des demandeurs d'asile n'étant pas très significatif au Portugal, la transposition de la directive n'a pas suscité un débat politique important.

Q.47. **Did the transposition of the directive contribute to make the internal rules stricter or more generous? In particular, did your Member State use the occasion of the transposition to abolish more favourable provisions of national law? Does your Member State still have rules more favourable than the provisions of the directive (if yes, try to give the more important examples).**

La transposition de la directive a contribué pour rendre le régime d'accueil plus généreux, surtout en ce qui concerne la garantie des conditions matérielles d'accueil. Elle n'a donc pas été utilisée pour introduire des nouvelles restrictions ou pour supprimer des dispositions plus favorables.
Parmi les dispositions portugaises plus favorables sont à mentionner :
(1) l'interdiction de détention des demandeurs d'asile de ce seul fait ;
(2) un accès au marché de travail dans les mêmes conditions que les nationaux ;
(3) la possibilité d'accéder aux conditions d'accueil jusqu'à une décision juridictionnelle de dernière instance en cas de rejet d'une demande d'asile.

11. ANY OTHER INTERESTING ELEMENT

Q.48. What are in your view the weaknesses and strengths of the system of reception conditions in your Member State?[658]

L'aspect le plus faible de la Loi nº 20/2006 est la non-institution expresse d'un système d'orientation, de surveillance et de contrôle du niveau des conditions d'accueil. Un autre point faible est la dispersion du régime par deux textes juridiques.
Les points forts sont indiqués dans la réponse à la question 45.

Q.49. Mention any good practice in your Member State which could be promoted in other Member States[659]

(1) L'existence, dans le CAR cabinet destiné à prêter des informations juridiques et sociales aux demandeurs d'asile.
(2) L'existence dans le CAR de lieux de rencontre entre les demandeurs d'asile et la communauté des résidents, afin de combattre la ségrégation et de faciliter l'intégration.
(3) Le fait que le jardin école et la nursery du nouveau CAR inauguré en décembre 2006 avec une capacité respectivement pour 33 et 40 enfants soient ouverts non seulement aux enfants des demandeurs d'asile, mais aussi aux enfants en provenance de la communauté locale, afin d'intensifier les contacts entre les deux communautés.

[658] To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.
[659] To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

Q.50. Please add here any other interesting element about reception conditions in your Member State which you did not had the occasion to mention in your previous answers.

QUESTIONNAIRE FOR THE NATIONAL REPORT ON THE IMPLEMENTATION OF THE DIRECTIVE :
RECEPTION CONDITIONS OF 27 JANUARY 2003

IN: ROMANIA

by

National Rapporteur and National Coordinator: Corneliu-Liviu POPESCU-
Professor, University of Bucharest - Faculty of Law
liviu.popescu@drept.unibuc.ro

January 20th, 2008

1. NORMS OF TRANSPOSITION

Q.1. Identify the main norm of transposition (indicate the title, date, number, date of entry into force and references of publication into the official journal) and indicate its legal nature (legislative, regulatory, administrative); indicate in your answer if this norm was only devoted to the directive or if it has been included in a more general text and indicate in that case by quoting precisely the numbers of the provisions adopted to transpose the directive.

1. The Law regarding the Asylum in Romania no. 122/May 4, 2006, published in the Official Gazette of Romania, Section I, no. 428/May 18, 2006; rectification in the Official Gazette of Romania, Section I, no. 68/January 29, 2007 (hereinafter L122/2002)**.**

- date of entry into force: in principle, within 90 days from the publication in the Official Gazette of Romania; exceptionally, some articles enter into force at the date of adhesion of Romania to the EU, meaning January 1st, 2007;

- transposes the CE Directive 2001/55/CE; CE Directive 2003/9/CE; CE Directive 2003/86/CE and CE Directive 2004/83/CE;

- has a legislative nature.

2. The Government Decision no. 1251/September 13, 2006 on the approval of the Methodological Norms regarding the implementation of the Law no. 122/2006, published in the Official Gazette of Romania, Section I, no. 805/September 25, 2006; rectification in the Official Gazette of Romania, Section I, no. 833/October 10, 2006 (hereinafter GD1251/2006)**;**

- date of entry into force: in principle, within 3 days from the publication in the Official Gazette of Romania; exceptionally, some articles enter into force at the date of adhesion of Romania to the EU, meaning January 1st, 2007;

- transposes the CE Directive 2001/55/CE; CE Directive 2003/9/CE and CE Directive 2004/83/CE; creates the legal frame necessary for the direct application of the Regulations no. 1030/2002 and no. 2252/2004;

- it is a regulation.

3. The Government Emergency Ordinance no. 55/June 20, 2007 regarding the foundation f the Romanian Office for Immigration, published in the Official Gazette of Romania, Section I, no. 424/June 26, 2007 (hereinafter GEO 55/2007)**;**

- date of entry into force: the day of the publication in the Official Gazette of Romania;

- organization and functioning of the Romanian Office for Immigration;

- has a legislative nature.

Q.2. List by order of importance by using numbers (1, 2, 3) the others norms of transposition if there are more than one (indicate for each norm the title, date, number and references of publication into the official journal; include in your answer the administrative measures taken to ensure implementation of the directive and of the transposition norms like regulations, administrative circulars, special instructions,…)

Q.3. Explain which level of government is competent to adopt the legal norms on reception conditions for asylum seekers (specify in particular in case of a federal or regional State, if it is the federal/central power or the components; in case, specify below when it is impossible for you to answer a question because it is about the competence of the components and it is impossible for you to gather reliable information about all of them)

Q.4. Explain the legal technical choices done to transpose the directive (comment on the nature and level of the norms used to do the transposition: legislative, regulatory, administrative like instructions, etc). Add any other element about the technique of transposition of the directive which is interesting for the implementation of Community law.

The directive was transposed through a law, subsequently whose provisions have been subsequently developed by regulations.

Q.5. Mention if there is a general tendency to just copy the provisions of the directive into national legislation without redrafting or adaptation them to national circumstances? If yes, give some of the worst examples and explain if there is a risk that those provisions remain unapplied or will create difficulties of implementation in the future.

The general tendency was to just translate and copy the provisions of the directive.

Q.6. Have all the texts necessary to ensure the effective implementation of the new rules of transposition been adopted, prepared or at least foreseen in the future (for example a regulation completing a new law and the necessary instructions telling the administration how to apply the new rules)?

There are adopted: a law of transposition; the regulatory norms of application; the norms for organizing and functioning of the competent authority.

2. BIBLIOGRAPHY

Q.7. Has an in-depth preparatory study been made public about the changes at the occasion of the transposition? If yes, thanks for trying to provide us a copy *(please contact to answer this question adequately the body and person who was responsible for the preparation of the transposition of the directive in the public administration).*

Q.8. Quote any recent scientific book or article published about the directive, the transposition rules or the question of reception conditions for asylum seekers in general (answer even if this literature is only available in your language and provide the complete title in your language (without translation) with all references; indicate author, title, in case name of periodical, year and place of publication).

Q.9. Quote any interesting decision of jurisprudence based on the implementation of the new rules of transposition of the directive (indicate references of publication if any)?

It does not exist yet relevant jurisprudence, whereas Romania became EU member starting with January 1st, 2007.

3. GENERAL INFORMATION ABOUT THE SYSTEM OF RECEPTION CONDITIONS

The purpose of the following two questions is to help the reader to understand easily and quickly the system of reception conditions in your Member State and also to avoid that you have to repeat general elements in other parts of the questionnaire. ***Please do not write more than one or maximum two pages and do not include large historical developments.***

Q.10. Describe in general the system of reception conditions in your Member State (in particular which are the main actors in charge of reception conditions?)

The competent authority on asylum procedures is the Romanian Office for Immigration. This is a public body depending on the Ministry of Internal Affaires and Administrative Reform.

Q.11. **Q11. A.** Explain if you have different types and levels of reception conditions following the different stages of the asylum procedure (this implies that you have to give briefly the necessary explanations about the asylum procedure). Make if relevant for reception conditions a distinction between the following procedural stages: determination of the responsible Member State on the basis of the Dublin II regulation, special procedures at the border (including transit zones in airports), accelerated procedures, admissibility procedures, eligibility procedures and the different possibilities of appeals (suspensive or

not) against a refusal of the asylum request. Indicate what the main differences of reception conditions are between the different stages (if necessary by detailing between the different elements of reception conditions, in particular housing) and explain what the evolution of reception conditions is following the different stages of the procedure.

The procedure regarding the asylum is initiated with an application lodged by the asylum seeker. The application may be lodged either with the Romanian Office for Immigration, either with other public bodies (national police, national boarder police etc.).
There are two main stages of the procedure: an administrative stage and a judicial stage. During the administrative stage the Romanian Office for Immigration takes the decision regarding the recognition or not of the statute of refugee. The administrative decision adopted by the Romanian Office for Immigration may be challenged before judicial courts.

Q 11. B. Indicate precisely for which stage(s) of the asylum procedure the answers on reception conditions you give below are valid.

In principle, the reception conditions are the same, irrespective of situation and procedure.

4. GENERAL RULES ON RECEPTION CONDITIONS

Q.12.

Q 12. A. Are material reception conditions provided in kind, in money or in vouchers or in a combination of these elements (see article 13, §5 which is an optional provision)? Distinguish between the different elements (housing, food, clothes, health, transportation, pocket money,…). **If reception conditions are provided in money (in general or in some cases, for instance when no places are anymore available in accommodation centres), indicate the precise amount given to the asylum seekers. Indicate in your answer what is provided in general and if there are exceptional cases.** Specify in your answer if reception conditions are different from the general system of social aid for nationals or aliens and if yes, if and when (which stage of the asylum procedure) can asylum seekers have access to the general system of social aid?

There are two main material reception conditions: money and the insurance of accommodation in accommodation centres.
The ordinary situation is granting of money.
The amounts are divided as follows:
- 3 Romanian Lei (RON) per day for food;
- 1.80 RON per day for accommodation;
- 0.60 RON per day for other expenses.
TOTAL: 5.40 RON per day, meaning under 2 EUR.
This amount is granted in cash.
In case when the asylum seekers do not have the necessary possibilities for living, then they shall be granted with accommodation in the accommodation centres. In the accommodation centres must exist

conditions for living, preparing of food, sanitary conditions for the persons and their belongings.

Q 12. B. Can the reception conditions in kind, money or vouchers be considered as sufficient "to ensure a standard of living adequate for the health of applicants and capable of ensuring their subsistence" as requested by article 13, §2 of the directive (which is a mandatory provision but leaves a certain space to Member States)? In order to help to assess the respect of this rule when reception conditions are provided in money, include if necessary in your answer points of comparison with the minimum amount of social aid guaranteed for nationals in your Member State.

The amount cannot be considered sufficient. The amounts are lower than the national social aid for poverty.

5. PROCEDURAL ASPECTS

Q.13. **Q 13. A. Does the national legislation specifically provide that a request for international protection is presumed to be under the Geneva Convention unless explicitly requested otherwise? (see article 2, b which is a mandatory provision)**

The solution is implicitly provided by the L122/2006, in art. 13 par. 2:
(2) Any request for asylum shall be analysed individually and successively from the perspective of the statute of refugee and the subsidiary protection, under the conditions provided by this law, except the case when it starts the procedure for granting temporary humanitarian protection.

Q. 13. B. Explain if the scope of application of reception conditions is extended to other asylum seekers than refugees in the sense of the Geneva Convention, in particular to persons asking for subsidiary protection or to other forms of protection like humanitarian statuses (see article 3, § 4 which is an optional provision)? If not, explain briefly which the differences between these special regimes and the directive are.

A request includes also forms of subsidiary protection, not only that of recognition of the statute of refugee.

Q. 13. C. Are there specific provisions in national law for reception conditions in case of diplomatic or territorial asylum requests submitted through a diplomatic or consular representation (see article 3, §2 which is an optional provision)?

There are no explicit provisions in the law of transposition.

Q.14. **Are reception conditions available as from the moment one asylum application is introduced? How is article 13, §1 which is mandatory legally**

understood? Do asylum seekers have to satisfy any other condition in order to get reception conditions?

Reception conditions are available from the moment the asylum application is introduced.
According to the L122/2006, art. 17 par. 1, letter j):
(1) During the procedure of asylum, the alien which requests to be granted a form of protection has the following rights: [...] the right to benefit from, upon request, of the necessary assistance for his/her living/maintenance, if he/she does not have the necessary material means, the amounts granted for food, accommodation and other expenses being determined by government decision and made available from the state budget, through the budget of the Ministry of Internal Affaires and Administrative Reforms.

Q.15. **Explain when reception conditions end, for instance after refusal of the asylum request** (include in your answer the link with the right of appeal against a decision of refusal of the status, in particular the question of its suspensive effect)

The rights end after all available recourses have been used; the decision to leave the territory shall be issued after solving the recourse.

Q.16 Are there special rules or practices regarding reception conditions in case of successive applications for asylum introduced by the same person?

There is a procedure for granting access to a new application for asylum. If a person is allowed to access a new procedure for asylum, he/she shall benefit from the corresponding rights. The material reception conditions shall be granted until the refoullment from the Romanian territory, which implies the situation of a new application for asylum. There is a possibility to deprivation of freedom in the second procedure for asylum.

Q.17. Information of asylum seekers about their rights and obligations in terms of reception conditions, in particular about established benefits (see article 5 which is too large extend a mandatory provision; do not confuse this question with the information to be provided to asylum seekers about the asylum procedure):

Domestic legislation provides that the asylum seekers have the right to be informed.

Q. 17. A. Are asylum seekers informed, and if yes about what precisely?

The asylum seekers must be informed about their rights and obligations during the procedure for analysing their request (not only those related to the procedure of asylum).

Q. 17. B. Is the information provided in writing or, when appropriate, orally?

The information must be provided in writing.

Q.17. C. Is that information in general provided in a language understood by asylum seekers? Specify the list of languages in which it is available.

The information must be provided in a language known by the asylum seeker or, as the case may be, a language which is supposed to be known by the asylum seeker. There is no list of those languages.

Q. 17. D. Is the deadline of maximum 15 days respected?

The L122/2006 provides that the information shall be done at the moment of lodging the request.

Q.18. Information of asylum seekers about the existence of organisations or groups promoting their interest and defending their rights (see article 5 which is to a large extend a mandatory provision):

Q. 18. A. Is there a list of organisations dressed by the authorities and if yes is it comprehensive? Is this in particular the case about the possibilities to get legal assistance and health care?

The asylum seekers have the right to be assisted by non-governmental organizations. There is no list of such non-governmental organizations.

Q. 18. B. Is the information provided to the asylum seekers, and if yes, in writing or, when appropriate, orally?

The information is provided to the asylum seekers in writing.

Q. 18. C. Is that information in general provided in a language understood by asylum seekers? Specify if possible the list of languages in which it is available.

The information must be provided in the language known by the asylum seeker, or, as the case may be, in a language he/she is supposed to understand.

Q. 18. D. How many organisations are active in that field in your Member State?

Approximately 5 organizations strictly specialized.

Q.19. Documentation of asylum seekers (see article 6):

Q.19. A. What kind of document is delivered to the asylum seeker? Explain the legal value of this document (just a certification of the status as asylum seeker or also prove of identity?) (see §1 of article 6 which is a mandatory provision)

A temporary identification document, proving the statute of asylum seeker and his/her identity.

Q.19. B. Are there situations or specific cases in which another equivalent document or even no document is issued? (in particular is there an exception for "procedures to decide on the right of the applicant legally to enter the territory" as made possible by §2 of article 6)?

No temporary identification document is issued for the persons seeking asylum at the frontier, as long as no access has been granted on the Romanian territory, as well as for the persons being in public custody for reasons of national security and public order. In this case it is issue only a certificate attesting the capacity as asylum seeker.

Q.19. C. For how long is this document in principle valid and is it necessary to renew it after a certain period?

The temporary document has a validity period which can be periodically extended. The extension shall be done up to 15 days after the expiry of the procedure.

Q.19. D. What is the deadline for the delivery of that document? Is the mandatory deadline of 3 days set by article 6, §1 respected[660]?

The term of delivery is 3 days.

Q.19. E. Is it possible for an asylum seeker to get a travel document for serious humanitarian reasons (see §5 of article 6 which is an optional provision)?

There is no explicit norm in the legislation of transposition.

Q.19. F. Is there a central system of registration of asylum seekers and is it or not separate from the registration of aliens? If yes, describe it briefly (content) and indicate in particular if it is an electronic database.

The registration of asylum seekers is separate from the registration of aliens. There is an electronic database.

Q.20. Residence of asylum seekers :

Q.20. A. Is in principle an asylum seeker free to move on the entire territory of your Member State or only to a limited part of it and in case, which part? (see article 7, §1 which is a mandatory provision)

The asylum seeker has, in principle, the freedom of movement on the entire Romanian territory. In special cases, the asylum seeker is provided with a fixed

locality of residence which he/she cannot leave without the approval of the Romanian Office for Immigration.
The law does not explicitly provide that the fixed locality of residence shall not infringe some rights, such as: access to a lawyer, the right to private life, the right to reception conditions.

Q.20. B. About the place of residence (see §2 of article 7): explain to which extend the person is free to choose her residence and if this depends of the stage of the asylum procedure (for instance before and after admissibility); if there are constraints limiting the choice, explain which ones and their reasons (for instance processing of application, attribution of reception conditions,…).

A certain locality is determined, where the asylum seeker can freely chose his/her domicile. The L122/2006 does not provide for the reasons.

Q.20. C. About the place of reception (meaning where the asylum seeker has to stay to benefit from reception conditions) (see § 4 of article 7): explain which are the general rules about the determination of this place (to which extend are the decisions determining the place taken individually and do they take into account the personal situation of the asylum seeker?) and to which extend the person is free to choose it and if it depends of the stage of the asylum procedure (for instance before and after admissibility); if there are constraints limiting the choice, explain which ones and their reasons (for instance attribution of reception conditions, processing of the application,…).

If the asylum seeker does not have material means for living, the Romanian Office for Immigration may determine a place of residence and makes available the material assistance. The first option provided by the law is that of granting amounts of money; if the asylum seeker has not sufficient resources for living, than he/she shall have the possibility to be accommodated in an accommodation centre.

Q.20. D. If all asylum seekers are not placed in accommodation centres because of capacity limits, explain how the persons are distributed between accommodation centres and other accommodation facilities (which authority takes the decisions, on the basis of which elements, can that decision be appealed by the asylum seeker,…)

If the asylum seeker does not have material means for living, the Romanian Office for Immigration may determine a place of residence and makes available the material assistance. The first option provided by the law is that of granting amounts of money; if the asylum seeker has not sufficient resources for living, than he/she shall have the possibility to be accommodated in an accommodation centre.

Q.20. E. How can an asylum seeker ask to leave temporarily the place of residence or of reception or an assigned area? How is the individual AND impartial character of the decision ensured? (see §5 of article 7 which is a mandatory provision)

The asylum seeker requests the authorisation of the Romanian Office for Immigration, which is obliged to make an individual analysis, objective and impartial and to motivate the refuse.

Q.21. **Q.21. A. Do rules on reduction or withdrawal of reception conditions exist in internal legislation and if yes in which cases (mention in particular if there are cases not foreseen by article 16, § 1 and 2 which are optional provisions)? Distinguish in your answer between cases of reduction and withdrawal and explain which conditions can be reduced and if access to emergency health care is always ensured as requested by article 16, §4, last sentence.**

The asylum seekers benefit of rights that cannot be withdrawn.

Q.21. B. Has article 16, §2 dealing with refusal of reception conditions for unreasonably late applications for asylum been transposed by your Member State (or was this case already applicable before transposition)? Are there cases in practice?

This norm of the directive has not been transposed.

Q.21. C. How is it ensured that decisions of reduction or withdrawal are taken individually, objectively AND in particular impartially (for instance through and independent arbitrator) (see article 16, §4 which is a mandatory provision)?

Not applicable.

Q.21. D. Is statement 14/03 adopted by the Council at the same moment as the directive respected (see the document attached to our sending)?

Q.21. E. Are there already administrative appeal decisions or judgements on cases of reduction, withdrawal or refusal which have been taken, and if yes, what has been the outcome?

Not applicable.

Q.22. **Q.22. A. Appeal against a negative decision relating to the granting of benefits or based on article 7 (see article 21 which is a mandatory provision): indicate against which decision an appeal can be introduced, describe the system of appeal in general and include in particular in your answer the information given to asylum seekers about possibilities of appealing, deadline for appealing, if the appeal has or not a suspensive**

effect, if there are different steps (for instance first an administrative appeal and in particular if the guarantee of an appeal before a judicial body in the last instance is respected)?

Any administrative measure may be appealed within 30 days with the administrative courts. The judgement shall be made in two stages - first instance and then recourse to the superior court.

Q.22. B. Explain which are the possibilities for asylum seekers to benefit from legal assistance when they introduce such an appeal (see article 21, §2 which is a mandatory provision but leaves space to Member States)?

Legal assistance shall be granted to the persons with poor living means, if the interests of justice so require, according to the Romanian Code of Civil Procedure.

Q.22. C. Are there already administrative appeal decisions or judgements which have been taken and if yes, which are the main important ones?

There is not yet relevant jurisprudence on the transposed rules, as Romania became EU member on January 1st, 2007.

Q.22. D. Is a mechanism of complain for asylum seekers about quality of receptions conditions in general (even if they are not personally concerned) organised? If yes, before which authority? Is it linked to the system of guidance, control and monitoring of reception conditions (see below question n° 39)?

There is provided for an administrative complaint with the superior administrative body. This administrative complaint has no jurisdictional character.

6. RIGHTS AND OBLIGATIONS OF ASYLUM SEEKERS

Q.23. **Family unity of asylum seekers: define how a family is defined in relation with article 2, (d) which is a mandatory provision and explain how housing is provided to a family (see articles 8 which is a mandatory provision but leaves space to member States and 14, §2, (a) which is a mandatory provision).**

Same definition as in the directive, except of the unmarried partner. The unmarried partner has not the same status, under the domestic law, as a spouse. Therefore, there are no problems with the transposition.

Q.24. **Q.24. A. How is housing of asylum seekers organised: describe the system in general and indicate in particular what is the most frequently system used (see article 14, §1 which is a mandatory provision but leaves space for Member States; distinguish between accommodation centres, private houses and apartments, hotels places or other premises).**

According to art. 17 par. 5 of the L122/2006:
(5) If the asylum seeker does not have material means, the Romanian Office for Immigration may determine a place of residence and make available to him/her the necessary material assistance for maintenance, for the entire duration of the asylum procedure.
The only legal possibility for accommodation is in the accommodation centres, the law does not provide, as alternatives, for private houses and apartments, hotels places or other premises.

Q.24. B. What is the total number of available places for asylum seekers? Distinguish in your answer between accommodation centres, private houses and apartments, hotels or other premises.

1,478 places in 5 accommodation centres, administered by the Romanian Office for Immigration. Other places in transit centres nearby the border.

Q.24. C. Is this number of places for asylum seekers sufficient in general or frequently insufficient?

Taking into consideration the number of applications and the duration of the procedure, the statistical data show that the number of places is sufficient, in general.

Q.24. D. Are there special measures foreseen in urgent cases of a high number of news arrivals of asylum seekers (outside the case of application of the directive on temporary protection)?

In principle, there are no special measures foreseen in urgent cases. No general mechanism decided in advance.

Q.25. Accommodation centres **(important note: all the following questions are about open and not closed centres where asylum seekers are detained which are covered by another question)**

Q.25. A Are there different categories of accommodation centres, for instance depending of the stage of the procedure (admissibility and eligibility)?

No.

Q.25. B. Is there a legal time limit for accommodation in a centre after which the asylum seekers have access to private houses or apartments or is this limit linked to a stage of the asylum procedure?

No.

Q.25. C. Is there a general regulation about the internal functioning of those centres and the rights and duties of the asylum seekers? If yes, is this general regulation applicable to public and private centres? If not, are the centres supposed to adopt an internal regulation and does a central authority have or not a kind of control about its content?

The accommodation centres have internal regulations.

Q.25. D. Do the regulations foresee the possibility of sanctions against asylum seekers in case of breach of the rules? (see article 16, §3) If yes, which sanctions for which rules? Which is the competent authority to decide? How is it ensured that decisions are taken individually, objectively and in particular *impartially* (for instance through an independent arbitrator) as requested by §4 of article 21 which is mandatory provision*?* Which are the possibilities of appealing against those decisions if the system is different from the general one under question n°22? Are there already administrative appeal decisions or judgements which have been taken and if yes, which are the main important ones?

For serious or repeated misdemeanours, the respective person is evacuated from the accommodation centre. The interested person may appeal against this sanction to the competent administrative court.

Q.25. E. Are asylum seekers involved in the management of these centres? If yes, how (advisory board, appointment or election of representatives)? (see article 14, §6 which is an option provision)

It is possible, according to the internal regulations of each accommodation centre.

Q.25. F. Do specific rules exist on work of asylum seekers inside the accommodation centres different from the general ones about employment (see below)? If yes, which ones? Can working inside accommodation centres be considered as a (mandatory) contribution of the asylum seekers to the management of the centres, is it or not paid and considered as implying access to the labour market and subject to the same rules?

It may exist such rules in the internal regulations of each centre.

Q.26. **Q.26. A. How can asylum seekers communicate with legal advisers, representatives of UNHCR and NGOs? (see article 14, §2, (b) which is a mandatory provision).**

Yes, they do.

Q.26. B. What are the rules about access of legal advisers, UNHCR and NGOs regarding access to accommodation centres and other housing facilities (see article 14, §7 which is a mandatory provision)

UNHCR, NGOs representatives, as well as legal advisers has access in the accommodation centres.

Q.26. C. Can the access of legal advisers, UNHCR and NGOs be limited for security reasons or any other reason (see article 14, §7, last sentence)?

The access of legal advisers and UNHCR representatives cannot be limited.

Q.27. **Q.27. A. Is a medical screening organised by the receiving State, is it mandatory or voluntary? Does it include HIV tests? (see article 9 which is an optional provision)**

If the authorities so decide, the asylum seeker must be subject to a medical screening. The law does not provide for the types of medical examinations.

Q.27. B. Do the legal provisions on reception conditions ensure that asylum seekers receive at least emergency care and essential treatment of illness as requested by article 15 §1 which is a mandatory provision? Do they have a further access to health care?

According to art. 17 par. 1 letter m) from the L122/2006:
(1) During the asylum procedure, aliens who apply for being granted a form of protection have the following rights:
m) to receive free of charge primary and emergency hospital medical aid, as well as medical assistance and free of charge treatment in the case of acute or chronic diseases that put their life in imminent danger.

Q.27. C. What is the practice regarding access of asylum seekers to health care and how is it organised? In particular, what is the situation in accommodation centres (are doctors coming to the centres or do asylum seekers go to doctors outside)?

In principle, the health care assistance is insured in the same conditions as for the Romanian citizens. The asylum seekers have access to any hospital and any physician without discrimination. In practice, it seems not to be any special problems.

Q.28. **Q.28. A. What is the length of the period determined by the concerned Member State during which asylum seekers have no access to the labour market? (see article 11 which is a mandatory provision)**

One year.

Q.28. B. After that period, are asylum seekers or not obliged to obtain a work permit? In case is there a limit for the administration to deliver the permits and how quick are they delivered? What is their length?

Access on the labour market after 1 year is done under the same conditions as in case of the Romanian citizens.

Q.28. C. After that period, what are the conditions for access of the asylum seekers to the labour market? (in particular, are there rules concerning the maximum allowed of working hours or days per week, month or year, limits in terms of type of work or of professions authorised?

Access on the labour market after 1 year is done under the same conditions as in case of the Romanian citizens.

Q.28. D. What are the rules in terms of priorities between asylum seekers on the one hand and nationals, EU or EEE citizens and legally third-country nationals on the other?

Access on the labour market after 1 year is done under the same conditions as in case of the Romanian citizens.

Q.28. E. Do asylum seekers have access to vocational training, does this or not depend of their right to access to the labour market, and in case at which conditions? (see article 12 which is optional regarding §1 and mandatory regarding § 2)

Access on the labour market after 1 year is done under the same conditions as in case of the Romanian citizens.
There are no specific provisions regarding the access to vocational training. The law does not forbids to the asylum seekers vocational training, but it does not provides for special explicit facilities.

Q.28. F. Are the rules regarding access to the labour market adopted to transpose the directive more or less generous than the ones applicable previously?

In principle, there is *statu quo*.

Q.29. Are reception conditions subject to the fact that asylum seekers do not have sufficient resources? Are asylum seekers requested to contribute to reception conditions when they have personal resources (for instance if they work) or to refund the authorities if it appears that they have resources? (see article 13 §§ 3 and 4 which are optional provisions)

According to the L122/2006, art. 17 par. 1 letter j:
(1) During the asylum procedure, aliens who apply for being granted a form of protection have the following rights:
j) to benefit, upon request, from necessary assistance for maintenance, if she/he does not have the necessary material means, the amounts of money granted for food, accommodation and other expenditures shall be determined by government decision and provided from the state's budget

through the budget of the Ministry of Internal Afaires and Administrative Reforms.

7. SPECIAL NEEDS OF PARTICULAR CATEGORIES OF ASYLUM SEEKERS

Q.30.

Q.30.A. Which of the different categories of persons with special needs considered in the directive are taken into account in the national legislation (see article 17, §1 which is a mandatory provision): disabled people, elderly people, pregnant women, single parents with minor children, persons who have been tortured, raped or victims of serious physical or psychological violence? Include in your answer all other categories envisaged in national law.

There is provided for a general expression: "person with special needs". There are two special categories: "unaccompanied minor" and "minor".

Q.30. B. How is their specific situation taken into account (see articles 13, §2, second indent, 16 §4 second sentence and 17 which are mandatory provisions)?

- specific adapted accommodation conditions;
- specific adapted medical aid;
- psychological assistance.

Q.30. C. How and when are the special needs of the concerned persons supposed to be legally identified (see article 17 § 2 which is a mandatory provision and clarify how it has been interpreted by transposition)?

The asylum seekers are examined by the specialized personnel of the Romanian Office for Immigration, for the purpose of their inclusion in the category of persons with special needs. Normally, the specialized personnel of the Romanian Office for Immigration is trained to identify the persons with special needs. Normally, the special needs of the concerned persons are taken into consideration from the moment of lodging the application.

Q.30. D. Is the necessary medical and other assistance provided to persons with special needs as requested by article 15, §2 which is a mandatory provision and in particular to victims of torture and violence as requested by article 20 which is a mandatory provision?

Adequate medical and psychological aid. There are no specific provisions for the victims of torture. Art. 15 para. 2 of the directive indicates persons with special needs, without any particular reference for victims of torture. On the other hand, art. 20 of the directive concerns especially victims of torture. The Romanian legislation of transposition takes into consideration persons with special needs, but without any particular reference for victims of torture. For this reason, art. 15 para. 2 of the directive is well transposed, but the transposition of art. 20 of the directive raised a legal problem.

Q.31. **About minors:**

Q.31. A. Till which age are asylum seekers considered to be minor?

18 years old.

Q.31. B. How is access of minor asylum seekers to the education system ensured? Is it at school or in case inside accommodation centres and can it be considered as similar to the conditions for nationals as requested by article 10, §1?

Course of initiation in the Romanian language, than enrolment in the compulsory national education system.
Within 3 months from lodging the application for asylum, the minor asylum seeker shall be registered in a course of initiation in the Romanian language. The course of initiation is for 1 year, and is free of charge. The course is organized by the Ministry of Education, Research and Youth and the Romanian Office for Immigration. At the end of the course, an evaluation commission evaluates the level of knowledge of the Romanian language and decides in what school grade shall be enrolled the minor.

Q.31. C. Is access to education ensured not later than 3 months as requested by article 10, §2 (or after maximum one year if specific education for asylum seekers is provided) and till an expulsion decision is really enforced?

The enrolment is done within 3 months and it lasts until expulsion.

Q.31. D. Is specific education (like language classes) available for asylum seekers, in particular to facilitate their effective access to the education system of the reception Member State (see article 10, §2 which is an optional provision)?

Course of initiation in the Romanian language

Q.31. E. Are minors in general accommodated with their parents or with the person responsible of them? (see article 14, § 3)

Accommodation together with the accompanying relatives.

Q.31. F. Do minors with special needs enumerated by article 18, §2 which is a mandatory provision, have access to appropriate mental health care and qualified counselling?

Law provides psychological aid for persons with special needs. The persons with special needs are considered only in a general manner, without any particular mention for minors.

Q.31. G. How and when is organised the representation of unaccompanied minors (guardianship, special organisation) and regularly assessed? (see article 19, §1 which is a mandatory provision)

The Authority for Child Protection must appoint a legal representative. The appointment shall be done as soon as the authorities became aware about an unaccompanied minor.

Q.31. H. How is placement of unaccompanied minors organised (with adult relatives, a foster family, in special accommodation centres or other suitable accommodation)? (see article 19, §2 which is mandatory provision)

The unaccompanied minor is accommodated with the relatives, and if there are no relatives, in accommodation centres.

Q.31. I. How is the tracing of the family members of the unaccompanied minors organised? Are measures taken to protect confidentiality of information when necessary? (see article 19, §3 which is a mandatory provision)

The Romanian Office for Immigration has the obligation to identify the family of the unaccompanied minor and to keep the confidentiality.

8. EXCEPTIONAL MODALITIES OF RECEPTION CONDITIONS

Q.32. Apart from detention covered by the next question, are there exceptional modalities for reception conditions in the following cases and if yes, which ones and for how long are they applicable, knowing that they should be "as short as possible" (see article 14, §8)?

Q.32. A. Persons with specific or special needs, regarding in particular the period of assessment of those needs?

There are no specific norms in the law of transposition.

Q.32. B. Non availability of reception conditions in certain areas

There are no specific norms in the law of transposition.

Q.32. C. Temporarily exhaustion of normal housing capacities

There are no specific norms in the law of transposition.

Q.32. D. The asylum seeker is confined to a border post

The asylum seeker may be accommodated in special centres located in the proximity of the border post, these special centres having the special legal regime of a transit zone. Legally, the asylum seeker has not received the

permission to entry to the Romanian territory. The reception conditions are in principle the same. The maximum period of time of this special regime is 20 days. We appreciate that this regime is compatible with art. 14 para. 8 of the directive. It is a special regime, witch derogates from the general regime, but for a very short period of time and the reception conditions are in principle the same.

Q.32. E. <u>All other cases</u> not mentioned in the directive (for instance urgent situation in case of a sudden high number of applicants outside a case of application of the directive on temporary protection).

There are no specific norms in the law of transposition.

Q.33. <u>Detention of asylum seekers</u> (we do not cover the situation of rejected asylum seekers detained for the purpose of their return) (see articles 6 §2, 7 §3, 13, §2 2nd indent and 14 §8 which implies that the directive is in principle applicable in case of detention):

Q.33. A. In which <u>cases or circumstances</u> and for which <u>reasons</u>[1] (identity verification in particular if the persons have no or false documents, protection of public order or national security, refugee status determination, way of entry into the territory, etc) can an asylum seeker be detained during the asylum procedure till his request has been finally rejected. <u>Quote</u> precisely in English in your answer the <u>legal basis</u> for detention of asylum seekers in national law.

In case of national security, national safety; public heath and morality; the protection of the rights and freedoms of other persons; the public interest, as provided by the L112/2006 art. 17 par. 1 letter h), point (ii), art. 17 par. 6, art. 38 par. 4.

Q.33. B. Has your member State adopted measures to transpose <u>§3 of article 7 which is an optional provision</u>? If yes, how has this provision been legally understood (is it a case of detention or an obligation to stay in and not leave a certain place?) and for which reasons can an asylum seeker be "confined" in such a place?

For reasons of public interest, it may be determined a compulsory place of residence.

Q.33. C. Are there legally <u>alternatives</u> to detention, like obligation to report to the authorities, obligation to stay in a place, provision of a guarantor or of a financial guarantee?

No.

[1] Please specify if article 18 §1 of the directive on asylum procedures of 1 December 2005 following which *"Member States shall not hold a person in detention for the sole reason that he/she is an applicant for asylum"* is or not respected (even if it has not yet to be transposed).

Q.33. D. Which is the competent authority to order the detention of an asylum seeker? Explain if different authorities are involved to first take and later confirm the decision.

The Romanian Office for Immigration.

Q.33. E. For how long and till which stage of the asylum procedure can an asylum seeker be detained?

Until the end of the procedure.

Q.33. F. In which places (can we call them "closed centres"?) are asylum seekers detained (places in a special closed centres reserved only to asylum seekers, together with returnees like illegal aliens or even in a normal prison, in case within separated areas or with the other detainees)? Indicate if a difference has to be made following the location of the "closed centres" at the border or on the territory? Which is the authority managing those places and is it the same as the one in charge of reception conditions?

In special centres. The asylum seekers cannot be detained in normal prisons for convicted criminals or for persons accused for crimes. In the special centres for asylum seekers are accommodated only asylum seekers.

Q.33. G. Does UNHCR and NGOs have access to the places of detention and under which conditions?

UNHCR has access without any conditions, NGOs representatives with authorisation.

Q.33. H. What appeal(s) can asylum seekers introduce against the fact he is detained? Is article 18 of the directive on asylum procedures of 1 December 2005 following which *"Where an applicant for asylum is held in detention, Member States shall ensure that there is a possibility of speedy judicial review"* respected (even if it has not yet to be transposed)?

Complaint lodged to the court.

Q.33. I. Is the directive on reception conditions considered to be in principle applicable to the places where asylum seekers are detained? In particular which information do they receive about their rights, which access do they have to legal advice and health care?

The directive is applicable. They have normal access to the legal assistance and medical aid.

Q.33. J. Apart from freedom of movement, what are the main differences between normal reception conditions and exceptional modalities for reception conditions in case of detention, knowing that they should be "as short as possible" (see article 14, §8)? If it is about closed centres, are the

regulations of those places in line with the requirements of the directive (is article 13, §2, second indent of the directive following which "*Member States shall ensure that standards of living is met (…) in relation to the situation of persons who are in detention*" respected?).

In principle, the only major difference concerns the deprivation of liberty. There are no differences regarding the material conditions.

Q.33. K. Are measures taken to avoid detention of asylum seekers with special needs (if yes, which ones?) or are special measures taken because of their needs?

There are no specific norms. The law does not explicitly forbid the detention of asylum seekers with special needs. The authorities must ensure that the deprivation of liberty of such person do not represent an inhuman or degrading treatment, according the general principles of internal law.

Q.33. L. Can minor asylum seekers be detained together with relatives? Can unaccompanied minor asylum seekers be detained? If yes, are there special measures which take into account that children are concerned?

There are no specific norms. The detention is an individual measure, therefore, if there are no reasons for the detention of the minor, the minor cannot be detained only because his/her relatives are detained. The law does not forbid the detention of an unaccompanied minor. The law does not provide for special measures in case of the detention of a minor or of an unaccompanied minor. The authorities must ensure that the deprivation of liberty of such person do not represent an inhuman or degrading treatment, according the general principles of internal law, and is not contrary to the principle of the superior interest of the child.

Q.33. M. In particular is article 10 regarding access to education of minors respected in those places?

Normal access to education.

Q.33. N. How many asylum seekers are for the moment detained in your Member State? Which proportion does this represent in comparison of the total number of asylum seekers at the same moment?

No available information, for the specific situation of the detained asylum seekers, but only for aliens in general. Therefore, no proportion can be determined.

9. ORGANISATION OF THE SYSTEM OF RECEPTION CONDITIONS

Q.34. Explain if the system of providing reception conditions is centralised or decentralised (which levels of government do provide practically reception conditions?) (do not confuse this question with question number 3 about the competence to make rules about reception conditions).

Centralized system - the Romanian Office for Immigration within the Ministry of Internal Affaires and Administrative Reform

Q.35. In case, are accommodation centres public or/and private (managed by NGOs? If yes, are the NGOs financially supported by the State?)

They are public, under the coordination of the Romanian Office for Immigration

Q.36. In case, how many accommodation centres are there in your Member State (distinguish in your answer between public and private centres)?

5 public accommodation centres and 2 detention centres for asylum seekers, administrated by the Romanian Office for Immigration. No private centres.

Q.37. Is there in the legislation a plan or are there rules in order to spread the asylum seekers all over the territory of your Member State to avoid their concentration in some areas like big cities or to share the costs of their reception between central, regional and local authorities?

No.

Q.38. Does a central body representing all the actors (like NGOs) involved in reception conditions exist? Does it play a consultative role for the State authorities, a coordination role for the actors or any other role?

No.

Q.39. **Q.39. A. Which is the body in charge of guidance, monitoring and controlling the system of reception conditions as requested by article 23 which is mandatory provision? Include in your answer which is the competent ministry (Interior, Social affairs, etc) for reception conditions?**

The Romanian Office for Immigration within the Ministry of Internal Affaires and Administrative Reform is charged with the application of the law regarding the reception conditions.
A special body from the Ministry of Internal Affaires and Administrative Reform directly depending on the Minister is in charge with monitoring and controlling all bodies of the Ministry, including the Romanian Office for Immigration.
There is no administrative link between the Romanian Office for Immigration and the special body in charge with monitoring and controlling its activity.

Q.39. B. Has your Member State (like the Czech Republic did recently) approved quality standards (not necessary legally binding) for housing services (for instance about the number of persons per bedroom on the basis of its size, number of accessible toilets, bathrooms, showers and washing machines per number of persons, existence of common rooms with radio, television, newspapers, books, computers, accessibility of

telephone, existence of recreative rooms for children,…) to be respected in particular in accommodation centres?

There are no explicit norms in the legislation of transposition.

Q.39. C. How is this system of guidance, control and monitoring of reception conditions organised?

The control over the Romanian Office for Immigration is done by a special body within the Ministry of Internal Affaires and Administrative Reform. This special body is directly supervised by the Minister.

Q.39. **D.** Does the body in charge of guidance, control and monitoring produce reports about the level of reception conditions? If yes, how frequently and are they public?

Reports are drafted and submitted to the Ministry of Internal Affaires and Administrative Reforms, to which the public may have access as information of public interest. There are no explicit provisions regarding the periodicity of the reports, or the obligation to make them public *ex officio*.

Q.40. **Q.40. A.** What is the total number of asylum seekers covered by reception conditions for the last year for which figures are available (see article 22 obliging Member States to calculate those statistics about which we also asked the Commission to require them from Member States for mid June)?

The number of applications for asylum: 2003 – 1,077; 2004 – 662; 2005 – 593; 2006 - 464**.** For 2006, from the 464 applications, 83 represented double applications. It results for 2006, 381 asylum seekers.

Q.40. B. What is the total budget of reception conditions in euro for the last year for which figures are available?

There is no information available.

Q.40. C. What is the average cost of reception conditions in euro per asylum seeker for the last year for which figures are available?

There is no information available.

Q.40. D Are the costs of reception conditions of asylum seekers supported by the central/federal or federated government or are they shared with regional and/or local authorities?

The costs are supported from the state budget.

Q.40. E. Is article 24 § 2 of the directive following which "*Member States shall allocate the necessary resources in connection with the nationals provisions enacted to implement this directive*" respected?

The legislation provides for the obligation to include these amounts in the state budget.

Q.41. **Q.41. A.** What is the total number of persons working for reception conditions?

The information is not public.

Q.41. B. How is the training of persons working in accommodation centres organised? Does it take into account specific needs of unaccompanied minors when relevant as well as the gender dimension? (see article 14 §5, 19 § 4 and also 24 §1 which are mandatory provisions)?

The legislation provides for the obligation of professional training of the personnel, but there are no specific norms regarding the specialization.

Q.41. C. Are there rules about the deontology of persons working in accommodation centres, in particular on confidentiality?

The general norms applicable to public officers.

10. IMPACT OF THE DIRECTIVE

Legal impact of the transposition of the directive:

Q.42. Specify if there are or not big problems with the translation of the directive in the official language of your Member State and give in case a list of the worst examples of provisions which have been badly translated? (please note that this question has in particular been added to the questionnaire concerning the new Member States)

The translation is correct.

Q.43. Where there precise legal rules on reception conditions for asylum seekers before the adoption of the norms of transposition of the directive (if yes, specify what the nature of those rules was (legislation, regulation, administrative instructions,…)?

YES, the Government Ordinance no. 102/2000.

Q.44. Did the legal rules applicable to reception conditions become more clear, precise, coherent or detailed with the adoption of the transposition norms (for instance do you now have after the transposition one basic text dealing with reception conditions instead of numerous different texts in the past?

In principle, the previous legislation was clear, precise, coherent and detailed, so, from this point of view, there is a *status quo*.

Q.45. Did the transposition of the directive imply important changes in national law or were the changes of minor importance? In case, list the most important changes that have been introduced.

The most important changes regarded the cooperation between Romania and other EU member states, and between Romania and EU institutions.

Political impact of the transposition of the directive:

Q.46. Explain briefly if there has been an important debate about the transposition of the directive (in particular in the Parliament, but possibly also in the government, between political parties, including in medias, etc; underline in case the main points which have been discussed or have created difficulties)

No.

Q.47. **Did the transposition of the directive contribute to make the internal rules stricter or more generous? In particular, did your Member State use the occasion of the transposition to abolish more favourable provisions of national law? Does your Member State still have rules more favourable than the provisions of the directive (if yes, try to give the more important examples).**

In principle, there is a *status quo* regarding the content of the norms regarding the asylum.
In principle, the norms from the law of transposition are in line with the directive (nor more favourable, nor more restrictive).

11. ANY OTHER INTERESTING ELEMENT

Q.48. What are in your view the weaknesses and strengths of the system of reception conditions in your Member State?

The legislation transposes almost integrally the directive. However, there is a weak point: the absence of specific provisions regarding the categories of persons with special needs.

Q.49. Mention any good practice in your Member State which could be promoted in other Member States

Nothing to be mentioned.

Q.50. Please add here any other interesting element about reception conditions in your Member State which you did not had the occasion to mention in your previous answer.

Nothing to be mentioned.

Observation: The evolution of the legislation, the jurisprudence and the practical aspects need to take into consideration the fact that Romania became an EU member only from January 1st, 2007.

QUESTIONNAIRE FOR THE NATIONAL REPORT ON THE IMPLEMENTATION OF THE DIRECTIVE :
RECEPTION CONDITIONS OF 27 JANUARY 2003

IN: SLOVAK REPUBLIC

by
Skamla Martin
Lawyer
skamla@gmail.com
15/05/2007

1. NORMS OF TRANSPOSITION

Q.1. Identify the main norm of transposition (indicate the title, date, number, date of entry into force and references of publication into the official journal) and indicate its legal nature (legislative, regulatory, administrative); indicate in your answer if this norm was only devoted to the directive or if it has been included in a more general text and indicate in that case by quoting precisely the numbers of the provisions adopted to transpose the directive.

The main norm of transposition is a legislative norm - Law No 1/2005 from 2 December 2004 amending Law No 480/2002 on asylum and on amendments of some laws as amended, and on amendments of some laws - zákon č. 1/2005 Z. z. z 2. decembra 2004, ktorým sa mení a dopĺňa zákon č. 480/2002 Z. z. o azyle a o zmene a doplnení niektorých zákonov v znení neskorších predpisov a o zmene a doplnení niektorých zákonov (Collection of Laws (Zbierka zákonov), Vol. 1 (2005)).

The Law No 1/2005 entered into force on 1 February 2005.

According to the Explanatory Report to the draft law, the aim of the amendment of the Law on Asylum was to ensure the harmonisation of the Slovak legislation on asylum with the Directive 2003/9/EC, and to update some provisions of the Law on Asylum, which should, according to a practical experience, make the asylum procedure in Slovakia more effective.

Following provisions were adopted to transpose the directive:
Section I, §§ 8, 10, 19, 30, 31, 32, 35, 37, and 44; Section II, §§ 1-5; and Section III, § 2.

Q.2. List by order of importance by using numbers (1, 2, 3) the others norms of transposition if there are more than one (indicate for each norm the title, date, number and references of publication into the official journal; include in your answer the administrative measures taken to ensure implementation of the

directive and of the transposition norms like regulations, administrative circulars, special instructions,…)

Other laws – norms of transposition:

1. The Act No. 480/2002 on Asylum and on Amendments of Some Acts from 20 June 2002 (as amended
2. The Act No. 29/1984 on the Framework of Primary and Secondary Schools from 22 March 1984 (zákon č. 29/1984 Zb. o sústave základných a stredných škôl – Collection of Laws (Zbierka zákonov), Vol. 5 (1984)) as amended
3. The Act No. 48/2002 on Residence of Foreigners and on Amendments of Some Acts from 13 December 2001 (zákon č. 48/2002 Z. z. o pobyte cudzincov – Collection of Laws (Zbierka zákonov), Vol. 23 (2002)) as amended
4. The Act No. 99/1963 Code on Civil Procedure from 4 December 1963 (zákon č. 99/1963 Zb. Občiansky súdny poriadok - Collection of Laws (Zbierka zákonov), Vol. 56 (1963)) as amended
5. The Act No. 305/2005 on Socio-legal Protection of Children and on Social Tutelage and on Amendments of Some Acts from 25 May 2005 as amended (Act on Protection of Children)

Administrative measures:
There is a regulation of the Ministry of Interior implementing the Law No 480/2002 on asylum (Asylum Law) - Regulation of the Ministry of Interior of the Slovak Republic No 4/2003 regulating conduct of the Migration Office of the Ministry of Interior of the Slovak Republic and of departments of the Police Corps when implementing the Law No 480/2002 on asylum and on amendments of some laws. The consolidated version of the regulation was published in the Bulletin of the Ministry of Interior of the Slovak Republic on 10 March 2005 (Vol 19/2005).

This regulation was amended after adoption of the Law No 1/2005 by following regulation - Regulation of the Ministry of Interior of the Slovak Republic No 6/2005 amending Regulation of the Ministry of Interior of the Slovak Republic No 4/2003 regulating conduct of the Migration Office of the Ministry of Interior of the Slovak Republic and of departments of the Police Corps when implementing the Law No 480/2002 on asylum and on amendments of some laws as amended by Regulation of the Ministry of Interior of the Slovak Republic No 31/2004. The regulation was published in the Bulletin of the Ministry of Interior of the Slovak Republic on 1 February 2005 (Vol 6/2005). It is an internal regulation.

Two other internal documents of the Ministry of Interior are worth mentioning with this regard:
1. No PPZ-153-21/HCP-CP/2005 - Methods of Conduct of the departments of the Office of the Border and Foreigners Police according to Regulation of the Commission of the EC No.343/2003 and in the asylum procedure – methodical guide; and

2. Direction of the Director of the Migration Office of the Ministry of Interior of the Slovak republic No.11/2005 published on 12 April 2005 in the Collection of the Directions of the Director of the Migration Office, valid since 20.5.2005 which issued Internal Order of the Asylum Centre.

Q.3. Explain which level of government is competent to adopt the legal norms on reception conditions for asylum seekers (specify in particular in case of a federal or regional State, if it is the federal/central power or the components; in case, specify below when it is impossible for you to answer a question because it is about the competence of the components and it is impossible for you to gather reliable information about all of them)

It is the national (central) government, who are competent to adopt the legal norms on reception conditions for asylum seekers.

Q.4. Explain the legal technical choices done to transpose the directive (comment on the nature and level of the norms used to do the transposition: legislative, regulatory, administrative like instructions, etc). Add any other element about the technique of transposition of the directive which is interesting for the implementation of Community law.

The directive was transposed by a legislative norm adopted by the National Council of the Slovak Republic - Law No 1/2005.

Q.5. Mention if there is a general tendency to just copy the provisions of the directive into national legislation without redrafting or adaptation them to national circumstances? If yes, give some of the worst examples and explain if there is a risk that those provisions remain unapplied or will create difficulties of implementation in the future.

No such tendency was observed.

Q.6. Have all the texts necessary to ensure the effective implementation of the new rules of transposition been adopted, prepared or at least foreseen in the future (for example a regulation completing a new law and the necessary instructions telling the administration how to apply the new rules)?

All texts necessary to ensure the implementation have already been adopted, and no other texts will be prepared for the adoption. However, there are two issues, where the transposition was not done correctly; the first one is regarding the actual application for asylum, where the applicant has to state explicitly that he/she applies for asylum. The applications for international protection in general are not presumed to be applications for asylum until the word asylum is not mentioned. The other issue is connected with decisions according to Article 7 § 5 of the directive and possible appeals against them. These decisions are not given in writing and than there is no information or actual possibility for appeals. Also the issue of clothing for asylum seekers is not explicitly

mentioned in Slovak law, which may cause problems in practice. Several other provisions are transposed in very general terms, and this could cause also problems in practical implementation.

2. BIBLIOGRAPHY

Q.7. Has an in-depth preparatory study been made public about the changes at the occasion of the transposition? If yes, thanks for trying to provide us a copy *(please contact to answer this question adequately the body and person who was responsible for the preparation of the transposition of the directive in the public administration).*

No such study has been prepared; it is not a common practice in Slovakia.

Q.8. Quote any recent scientific book or article published about the directive, the transposition rules or the question of reception conditions for asylum seekers in general (answer even if this literature is only available in your language and provide the complete title in your language (without translation) with all references; indicate author, title, in case name of periodical, year and place of publication).

There was nothing published in Slovakia with regard to the directive, the transposition rules or the question of reception conditions for asylum seekers in general recently.

Q.9. Quote any interesting decision of jurisprudence based on the implementation of the new rules of transposition of the directive (indicate references of publication if any)?

No such decision is known.

3. GENERAL INFORMATION ABOUT THE SYSTEM OF RECEPTION CONDITIONS

The purpose of the following two questions is to help the reader to understand easily and quickly the system of reception conditions in your Member State and also to avoid that you have to repeat general elements in other parts of the questionnaire. ***Please do not write more than one or maximum two pages and do not include large historical developments.***

Q.10. Describe in general the system of reception conditions in your Member State (in particular which are the main actors in charge of reception conditions?)

The main actor in charge of the system of reception conditions is the Migration Office of the Ministry of Interior (if anywhere in the text "Ministry" or "Migration Office" is mentioned, it means the Migration Office of the Ministry of Interior). They provide accommodation for asylum seekers, ensure that asylum seekers have necessary health care, inform asylum seekers on their rights and obligations, and provide them with identification documents.

An asylum application has to be submitted at a department of Border and Foreigners Police. Therefore, before placement in a reception centre, it is department of Border and Foreigners Police in cooperation with The Ministry, which is responsible to provide necessary survival conditions, such as food, drinking water and necessary health care for asylum seekers in his disposal.

Q.11. **Q11. A.** Explain if you have different types and levels of reception conditions following the different stages of the asylum procedure (this implies that you have to give briefly the necessary explanations about the asylum procedure). Make if relevant for reception conditions a distinction between the following procedural stages: determination of the responsible Member State on the basis of the Dublin II regulation, special procedures at the border (including transit zones in airports), accelerated procedures, admissibility procedures, eligibility procedures and the different possibilities of appeals (suspensive or not) against a refusal of the asylum request. Indicate what the main differences of reception conditions are between the different stages (if necessary by detailing between the different elements of reception conditions, in particular housing) and explain what the evolution of reception conditions is following the different stages of the procedure.

The only body deciding on the status of refugee is the Migration office of the Ministry of Interior. First instance decision, except for granting or not granting asylum, can also reject application as inadmissible, manifestly unfounded or can terminate the procedure. Any decision, except for termination of the procedure, is reviewable by court, but only appeal against decision on not granting asylum has suspensive effect. Decision on termination of the procedure can be challenged by appeal to the Minister of Interior, but in case of a successive asylum application, appeal has no suspensive effect.

Until any decision in the first instance of the asylum procedure is issued, the same reception conditions apply to all asylum seekers (with an exception of those, who applied for asylum after being administratively detained – see the specific answers on detention below). Then, it depends on the content of the decision.

If asylum was not granted, an appeal against such decision has suspensive effect, which means that the reception conditions apply to the asylum seeker concerned until a final decision of courts is taken.

If an asylum application was rejected as inadmissible, was rejected as manifestly unfounded, an appeal against such decision has no suspensive effect, and it depends on action or omission of the Foreigners Police, if the reception conditions will further apply to the asylum seeker concerned, as the decision is enforceable even if the appeal was lodged.

If the appeal has no suspensive effect, the Foreigners Police can expel or return the asylum applicant concerned, even if the appeal was lodged. It is difficult to report on a common practice in such cases, as there are not many of them, and if there are some, the asylum seekers concerned often leaves the centre by

himself/herself. The Foreigners Police is notified about all the decisions issued by the Ministry, and it depends on them, if they act with regard to the expulsion or return, as they are allowed to do so by law, or not. If such persons are not expelled, they can remain in the reception centres until final decision of a court. According to the Internal rules of the Asylum Centre, asylum seeker is obliged to leave the centre only if the asylum procedure has been validly finished.

Asylum seekers who decide for voluntary return to their country of origin are also receiving reception conditions in the asylum centre, until their return is not arranged, although their procedure is legally terminated and they remain in the country on a tolerated stay.

Q 11. B. Indicate precisely for which stage(s) of the asylum procedure the answers on reception conditions you give below are valid.

The answers are valid for the first stage of the asylum procedure - until a first instance decision is delivered, and they are also valid for the next stages of the asylum procedure, if the first instance decision was about not granting asylum.

4. GENERAL RULES ON RECEPTION CONDITIONS

Q.12. **Q 12. A**. Are material reception conditions provided in kind, in money or in vouchers or in a combination of these elements (see article 13, §5 which is an optional provision)? Distinguish between the different elements (housing, food, clothes, health, transportation, pocket money,…). **If reception conditions are provided in money (in general or in some cases, for instance when no places are anymore available in accommodation centres), indicate the precise amount given to the asylum seekers. Indicate in your answer what is provided in general and if there are exceptional cases.** Specify in your answer if reception conditions are different from the general system of social aid for nationals or aliens and if yes, if and when (which stage of the asylum procedure) can asylum seekers have access to the general system of social aid?

The majority of asylum seekers are accommodated in asylum centres, reception and accommodation camps, where food, basic health care, and basic hygienic and material needs necessary for living are provided for them. They also receive pocket money in the sum of 12 SKK per day for adults, and 8 SKK per day for children. The pocket money is not provided in cases, if the asylum application was filled repeatedly and the previous asylum procedure had been terminated, or if the asylum applicant tried to enter unlawfully the territory of a different country, or if the asylum applicant voluntarily left the territory of the Slovak Republic and was returned by the authorities of the neighbouring country.

The rest of asylum seekers are detained in detention centres of the Bureau of the Border and Foreign Police of the Police Corps of the Slovak Republic. The main reason for that fact is that they applied for asylum while being already

detained, because of their illegal entry of the country or illegal presence in the country.

As the reception conditions are provided in kind, they differ completely from the general system of social aid for nationals or foreigners, and asylum seekers cannot have access to the general system of social aid while being in the asylum procedure.

Q 12. B. Can the reception conditions in kind, money or vouchers be considered as sufficient "to ensure a standard of living adequate for the health of applicants and capable of ensuring their subsistence" as requested by article 13, §2 of the directive (which is a mandatory provision but leaves a certain space to Member States)? In order to help to assess the respect of this rule when reception conditions are provided in money, include if necessary in your answer points of comparison with the minimum amount of social aid guaranteed for nationals in your Member State.

The reception conditions in kind can be considered as sufficient within the meaning of Article 13 (2) of the directive, however, sometimes difficulties with clothing arise. Provision of clothing is not explicitly mentioned in the law; other things necessary for living are just mentioned in Article 22 (4) of the Asylum Law. Clothes are usually provided by NGOs, but there is not always enough clothes for everyone, who needs them, which might be a problem especially in winter.

5. PROCEDURAL ASPECTS

Q.13. **Q 13. A. Does the national legislation specifically provide that a request for international protection is presumed to be under the Geneva Convention unless explicitly requested otherwise? (see article 2, b which is a mandatory provision)**

There is no such specific provision, but the Asylum Law as amended by the Law. No. 692/2006 is construed in a way implying such presumption.

According to Article 2 (a) of the Asylum Law, international protection means granting of asylum or subsidiary protection. Article 2 (h) provides that applicant means a foreigner declaring to the police department to seek granting of asylum or subsidiary protection on the territory of the Slovak Republic.

There is just one procedure for assessing the grounds for international protection, whether it is asylum, or subsidiary protection. Asylum grounds are always assessed at first.

Q. 13. B. Explain if the scope of application of reception conditions is extended to other asylum seekers than refugees in the sense of the Geneva Convention, in particular to persons asking for subsidiary protection or to other forms of protection like humanitarian statuses (see

article 3, § 4 which is an optional provision)? If not, explain briefly which the differences between these special regimes and the directive are.

The reception conditions apply to all applicants - those, who stated before a police department that they ask for international protection (asylum or subsidiary protection).

As asylum can be granted also for humanity reasons, the scope of application of reception conditions is extended also to persons applying for asylum for humanity reasons.

Q. 13. C. Are there specific provisions in national law for reception conditions in case of diplomatic or territorial asylum requests submitted through a diplomatic or consular representation (see article 3, §2 which is an optional provision)?

There are no such provisions in national law.

Q.14. **Are reception conditions available as from the moment one asylum application is introduced? How is article 13, §1 which is mandatory legally understood?** Do asylum seekers have to satisfy any other condition in order to get reception conditions?

According to Article 22 (4) of the Asylum Law, asylum applicants shall be provided with accommodation, food, and basic hygienic products and other things necessary for living, in course of the asylum procedure. According to Article 3 (6) of the Asylum Law, the asylum applicant is obliged to arrive at the reception camp within 24 hours from making the statement that he/she seeks asylum.
There is no other condition in law to be satisfied in order to get reception conditions.

Before arriving to the reception camp, asylum applicants stay for a short time (should not exceed 24 hours) at Border and Foreigners Police stations. In most of the situations asylum seeker comes into first contact with a department of the Border and Foreigners Police (at the border point, asylum police unit competent to receive application for asylum after entering Slovak republic) and his position as asylum seeker has been already established. In those situations, asylum unit is responsible in cooperation with the Migration Office of the Ministry of Interior to provide food and drinking regime for asylum seekers and in case of need also health care. At the border point, the department of the Border and Foreigners Police is responsible to provide health care in case there is a need.

Q.15. **Explain when reception conditions end, for instance after refusal of the asylum request** (include in your answer the link with the right of appeal against a decision of refusal of the status, in particular the question of its suspensive effect)

According to Article 22 (4) of the Asylum Law, asylum applicants shall be provided with accommodation, food, and basic hygienic products and other things necessary for living, in course of the asylum procedure. Therefore, reception conditions end, when the decision of the Ministry in the asylum procedure is enforceable.
According to Article, 21 (1), a remedy against a decision not to grant asylum shall have suspensive effect.
According to Article 21 (2) to (4), a remedy against a decision rejecting an application for asylum as inadmissible, or against a decision rejecting an application for asylum as manifestly unfounded, shall not have suspensive effect, if courts decides otherwise.

If an appeal against a decision rejecting an application for asylum as inadmissible, or against a decision rejecting an application for asylum as manifestly unfounded, was submitted, there are two possible situations for an asylum seeker concerned. As appeals in above mentioned cases have no suspensive effect, it is possible to start an expulsion procedure even if an appeal was lodged. It depends then on the Foreigners Police, if they start an expulsion procedure or not. If expulsion procedure was started and an expulsion order was issued, the asylum seeker concerned is usually transferred to a detention centre, where he/she is waiting for expulsion to be executed. If the Foreigners Police does not act, the asylum seeker concerned can remain in an asylum centre and enjoy all the reception conditions. There is no common practice established or observed by the NGO's.

Q.16 Are there special rules or practices regarding reception conditions in case of successive applications for asylum introduced by the same person?

There are no special rules or practices regarding reception conditions in case of successive applications for asylum introduced by the same person with one exception regarding pocket money. The pocket money is not provided in cases, if the asylum application was filled repeatedly and the previous asylum procedure had been terminated.

Q.17. Information of asylum seekers about their rights and obligations in terms of reception conditions, in particular about established benefits (see article 5 which is too large extend a mandatory provision; do not confuse this question with the information to be provided to asylum seekers about the asylum procedure):

Q. 17. A. Are asylum seekers informed, and if yes about what precisely?

Asylum seekers are generally informed about their rights and obligations in terms of reception conditions. The information leaflet in English and addendum to it is attached to this questionnaire. Following is the extract of it, which regards reception conditions:

"While your asylum application is being examined, you must remain, unless the law stipulates otherwise, in the asylum facility (reception centre or residential centre), where you will receive accommodation, food, urgent medical care, basic requirements for hygiene and pocket money, to which, however, you may not be entitled in certain cases specified in the Asylum Act. On arrival at the reception centre you must allow yourself to be photographed and undergo a medical examination. You must remain in the camp that the ministry assigns you to and abide by its internal regulations. You must also cooperate with measures necessary to determine the status of your assets and finances.

On arrival at the reception centre you will be given an identity card as an asylum seeker, which you must keep with you while your application is being examined and must present it on request to the relevant bodies in order to establish your identity. You are obliged to protect this identity card against loss, theft, damage, destruction or abuse and if the card is lost, stolen, damaged, destroyed or abused you must report this to the migration office without delay. On completion of the examination of your application you must return the identity card in the asylum facility where you end your stay.

You may leave the asylum facility only on the basis of permission issued by the ministry. Before applying for permission to leave the facility for periods longer than 24 hours and at most 7 days, you must attend an interview, and you must state the address where you will reside. You may be given permission to reside outside the camp if you make a written application and meet the criteria laid down in the Asylum Act."

Addendum, which is communicated to asylum seekers since January 2007 as regards reception conditions provides:

"The applicant whose application was not lawfully resolved during the asylum granting procedure within one year as of the beginning of the proceeding, except for the case if the application is declined as an evidently unfounded or inadmissible one, he is entitled to enter into labour relation. He is obliged to notify the establishment, change or termination of labour relation immediately to the migration office. During the duration of the labour relation the applicant is not entitled for pocket money, and the migration office might decide on his duty to pay accordingly his costs related to his stay in the asylum institution or integration centre.

The migration office issues to the applicant after his arrival to the asylum camp a document on his right for the provision of health care. The applicant is obliged to protect the on health care provision right against loss, alienation, damage, destruction or abuse, and in case that such situation occurs, he is obliged to notify the migration office immediately. After the establishment of labour relation or after the termination of the asylum granting proceeding is obliged to hand in the document on health care provision right to the asylum institution where he is located or where he was last located or to the migration office."

There is also obligation to get asylum seekers acquainted with the Internal rules of the asylum centre and law states that Migration Office shall acknowledge those accommodated in such centre with Internal rules of the asylum centre in the language they understand. In practice, Internal rules are translated into English, French, Russian, Arabic and Chinese language and asylum seekers are acknowledged with it by displaying these 5 language versions on the board in the asylum centre.

Q. 17. B. Is the information provided in writing or, when appropriate, orally?

The information is generally provided in writing. According to the Migration Office of the Ministry of Interior, if the information is not available in a language understood by asylum seekers, information is provided orally.

Q.17. C. Is that information in general provided in a language understood by asylum seekers? Specify the list of languages in which it is available

In general, the information is provided in a language understood by asylum seekers. The information is available in following languages: English, Bengali, French, Pashto, Romanian, Albanian, Ukrainian, Bulgarian, Hindi, Chinese, Urdu, Arabic, Dari, Punjabi, Russian, Turkish, and Vietnamese.

Q. 17. D. Is the deadline of maximum 15 days respected?

Yes, the deadline is respected.

Q.18. Information of asylum seekers about the existence of organisations or groups promoting their interest and defending their rights (see article 5 which is to a large extend a mandatory provision):

Q. 18. A. Is there a list of organisations dressed by the authorities and if yes is it comprehensive? Is this in particular the case about the possibilities to get legal assistance and health care?

Generally, there is a list of organisations providing legal, social, and psychological assistance, however, it is not updated.

As regards health care, it is provided by the Ministry of Interior itself. Health care is mostly provided by the asylum centre nurse and in more complicated cases, other health institutions are available. Since the Migration Office pays for the health care of asylum seeker through direct payments, it is not up to the choice of asylum seeker to contact health care institution.

Q. 18. B. Is the information provided to the asylum seekers, and if yes, in writing or, when appropriate, orally?

The information is provided in writing in the form of leaflets posted on notice boards in asylum centres, which are, as already stated before, not updated, and also orally by employees of the centres, if they are asked about it.

Q. 18. C. Is that information in general provided in a language understood by asylum seekers? Specify if possible the list of languages in which it is available.

The information in writing in the form of leaflets is available in English, Russian, French, Arabic, and Slovak.
The information on rights and obligations is available in following languages: English, Bengali, French, Pashto, Romanian, Albanian, Ukrainian, Bulgarian, Hindi, Chinese, Urdu, Arabic, Dari, Punjabi, Russian, Turkish, and Vietnamese.

Q. 18. D. How many organisations are active in that field in your Member State?

There are four non-governmental organisations providing legal aid - the Human Rights League, the Law Clinic of the Trnava University, the Slovak Humanitarian Council, and the Society of Goodwill. The Slovak Humanitarian Council and the Society of Goodwill are also providing social and psychological assistance, together with the Slovak Refugee Council.

Q.19. Documentation of asylum seekers (see article 6):

Q.19. A. What kind of document is delivered to the asylum seeker? Explain the legal value of this document (just a certification of the status as asylum seeker or also prove of identity?) (see §1 of article 6 which is a mandatory provision)

To the asylum seeker is delivered a document, which is considered as an identity document. According to Article 5 (1) and (2) of the Asylum Law, the Ministry of Interior shall issue, to a foreigner over 15 years of age, an applicant's card that will be his/her identity document during the period of the asylum procedure. The applicant's card shall contain the following data: name, surname, sex, date and place of birth and the applicant's citizenship, the card's date of issuance and expiration date, name of the asylum facility that issued the card and the names, surnames and dates of birth of the applicant's children under 15 years of age, provided that they are also applicants. The Ministry shall issue the applicant's card within three days from initiation of the procedure. The Ministry shall issue an applicant under 15 years of age such a card, when he/she is unaccompanied by his/her representative at law on the territory of the Slovak Republic.

Q.19. B. Are there situations or specific cases in which another equivalent document or even no document is issued? (in particular is there an exception for "procedures to decide on the right of the

applicant legally to enter the territory" as made possible by §2 of article 6)?

According to Article 5 (1) (b) of the Asylum Law, the document is issued to an asylum seeker after applicant's arrival to the reception camp only, when the competent authority which received an asylum application was:
a) when entering the territory of the Slovak Republic the police department at the place of border check point,
c) when the foreigner concerned arrived to the territory of the Slovak Republic by plane and he/she fails to satisfy requirements for entering the territory of the Slovak Republic the police department in the transit area of an international airport.
d) the police department at a facility for foreigners, in the case of a foreigner placed in such facility (detention centre for illegal migrants),
e) the police department according to the place of the foreigner's stay, in the case of the foreigner placed in a health care institution, the foreigner in execution of custody on remand or the foreigner in execution of imprisonment.

Before arriving to a reception camp, this document is not issued to the asylum applicants concerned.

For purposes of showing identity during journey to the reception camp, when application was made at the border or after release from detention centre, health care institution, custody, imprisonment, asylum seeker is issued a temporary document with 24-hours validity.

In other case (when the competent authority which received an asylum application was after entering the territory of the Slovak Republic the police department established at the reception camp), the identity document is issued within three days from initiation of the procedure (Article 5 (1) (a) of the Asylum Law).

Q.19. C. For how long is this document in principle valid and is it necessary to renew it after a certain period?

The document is valid for three months, and it is necessary to renew it every three months.

Q.19. D. What is the deadline for the delivery of that document? Is the mandatory deadline of 3 days set by article 6, §1 respected[661]?

The deadline for delivery of the document is, according to Article 5 (1) (a) of the Asylum Law, three days, and is, according to the Migration Office of the Ministry of Interior, fully respected.

Q.19. E. Is it possible for an asylum seeker to get a travel document for serious humanitarian reasons (see §5 of article 6 which is an optional provision)?

There is no such provision in Slovak law, which would allow an asylum seeker to get a travel document for humanitarian reasons.

Q.19. F. Is there a central system of registration of asylum seekers and is it or not separate from the registration of aliens? If yes, describe it briefly (content) and indicate in particular if it is an electronic database.

There is an electronic system of registration of asylum seekers, which is separate from the registration of foreigners. Following information are in the system: name, photograph, sex, date of birth, citizenship, nationality, religion, number of passport, family members, reasons for applying for asylum, name of the case-worker, code, number of protocol, date of the asylum application and other data regarding the procedure (date, when the decision was issued; delivery of the decision; type of the decision, etc.), information on movements of the applicant).

Q.20. Residence of asylum seekers :

Q.20. A. Is in principle an asylum seeker free to move on the entire territory of your Member State or only to a limited part of it and in case, which part? (see article 7, §1 which is a mandatory provision)

According to Article 23a (1) of the Asylum Law, an applicant may leave the asylum facility only based on a permit issued by the Ministry. The applicant may request the Ministry for issuance of the permit for leaving the asylum facility for more than 24 hours, but maximally seven days, only after being interviewed; in the request, he/she shall be obliged to state the place where he/she will stay. Until the interview with Migration office, applicant can leave facility based on permission granted by staff of the centre for less than 24 hours. The general regulation on administrative procedure shall not apply to the permit's issuance.

According to Article 23a (2) of the Asylum Law, the Ministry may refuse to issue the permit under Paragraph 1 only due to a public order or due to the need for the applicant's personal attendance at the asylum procedure.

If the permit has been issued, the applicant can move on the entire territory of Slovakia.

According to Article 23 (3) (c) and (d) of the Asylum Law, unless otherwise decided by the Ministry, the applicant shall be obliged to stay in the reception camp until announcement of the result of the medical examination, and also to stay in the asylum facility, if for the purposes of preventing contagious diseases, isolation or quarantine measure is ordered to the applicant.

The result of the medical examination is usually announced in up to one month, but there is no legal provision stating the maximum period, in which the result should be announced.

Q.20. B. About the <u>place of residence (see §2 of article 7)</u>: explain to which extend the person is free to choose her residence and if this depends of the stage of the asylum procedure (for instance before and after admissibility); if there are constraints limiting the choice, explain which ones and their reasons (for instance processing of application, attribution of reception conditions,…).

An applicant is obliged to stay in the reception camp, where he was placed, until announcement of the result of the medical examination.

According to Article 22 (2) of the Asylum Law, the applicant, after end of stay in a reception camp, shall be placed in the accommodation camp or shall be permitted to reside outside of the accommodation camp. The Ministry may place the applicant in the integration centre for the necessary period of time.

If the applicant is placed in the accommodation camp or in the integration centre, the choice of the camp or of the centre is up to the Ministry.

According to Article 22 (3) of the Asylum Law, the Ministry may permit the applicant to stay outside of the accommodation camp upon a written request, if he/she is capable of covering all his/her expenses related to the stay out of the accommodation camp of his/her own funds, or a citizen of the Slovak Republic with a permanent residence on the territory of the Slovak Republic or an foreigner with a residence permit on the territory of the Slovak Republic submits a written solemn declaration that he/she shall facilitate the accommodation of the applicant and cover all expenses relating to the applicant's stay on the territory of the Slovak Republic.
Then, the person concerned is free to choose her residence. The permission is usually granted for 1 month and needs to be renewed every month.

Q.20. C. About the <u>place of reception (meaning where the asylum seeker has to stay to benefit from reception conditions) (see § 4 of article 7)</u>: explain which are the general rules about the determination of this place (to which extend are the decisions determining the place taken individually and do they take into account the personal situation of the asylum seeker?) and to which extend the person is free to choose it and if it depends of the stage of the asylum procedure (for instance before and after admissibility); if there are constraints limiting the choice, explain which ones and their reasons (for instance attribution of reception conditions, processing of the application,…).

In reception camps, applicants are placed on a geographical basis depending on in which part of the country they applied for asylum.

Applicants have no chance to influence the choice of the place of accommodation.

According to Article 39 (2) of the Asylum Law, the Ministry, when placing a foreigner in an asylum facility, shall consider his/her age, health, and relatives,

religious, ethnic and national specific features. Men shall be placed separately from women, minors from adults while taking into account family ties. Transfer of foreigners from one asylum facility to another asylum facility shall only be executed in the necessary cases.

Q.20. D. If all asylum seekers are not placed in accommodation centres because of capacity limits, explain how the persons are distributed between accommodation centres and other accommodation facilities (which authority takes the decisions, on the basis of which elements, can that decision be appealed by the asylum seeker,…)

Such a situation did not happen yet, and is not foreseen in the law. It is expected that the capacity of the centres should be sufficient.

Q.20. E. How can an asylum seeker ask to leave temporarily the place of residence or of reception or an assigned area? How is the individual AND impartial character of the decision ensured? (see §5 of article 7 which is a mandatory provision)

According to Article 22 (3) of the Asylum Law, the Ministry may permit the applicant to stay outside of the accommodation camp upon a written request, if he/she is capable of covering all his/her expenses related to the stay out of the accommodation camp of his/her own funds, or a citizen of the Slovak Republic with a permanent residence on the territory of the Slovak Republic or a foreigner with a residence permit on the territory of the Slovak Republic submits a written solemn declaration that he/she shall facilitate the accommodation of the applicant and cover all expenses relating to the applicant's stay on the territory of the Slovak Republic.

According to Article 23a (1) of the Asylum Law, an applicant may leave the asylum facility only based on a permit issued by the Ministry. The applicant may request the Ministry for issuance of the permit for leaving the asylum facility for more than 24 hours, but maximally seven days, only after being interviewed; in the request, he/she shall be obliged to state the place where he/she will stay. The general regulation on administrative procedure shall not apply to the permit's issuance.

According to Article 23a (1) of the Asylum Law, the Ministry may refuse to issue the permit under Paragraph 1 only due to a public order or due to the need for the applicant's personal attendance at the asylum procedure.

There is no specific assurance with regard to impartiality. In case of refusal, no decision on refusal is issued, and no reasoning is provided to asylum applicants.

Q.21. **Q.21. A. Do rules on reduction or withdrawal of reception conditions exist in internal legislation and if yes in which cases (mention in particular if there are cases not foreseen by article 16, § 1 and 2 which are optional provisions)? Distinguish in your answer between cases of reduction and**

withdrawal and explain which conditions can be reduced and if access to emergency health care is always ensured as requested by article 16, §4, last sentence.

According to Article 23 (5) of the Asylum Law, the Ministry may decide, that the applicant is obliged to adequately cover the expenses relating to his stay in the asylum facility or integration centre, or the cost of medical care provided, if his/her financial and proprietary circumstances are such, that it is possible to request from him/her at least a partial payment of the expenses relating to this stay.

In practice, this provision was not applied yet.

There is also a provision, according to which the Ministry shall withdraw a pocket money for an applicant. The pocket money is not provided in cases, if the asylum application was filled repeatedly and the previous asylum procedure had been terminated, or if the asylum applicant tried to enter unlawfully the territory of a different country, or if the asylum applicant voluntarily left the territory of the Slovak Republic and was returned by the authorities of the neighbouring country. The Ministry may also withdraw a pocket money for an applicant for violating obligations under the Asylum Law. An appeal against the decision on the withdrawal of the pocket money does not have a suspensive effect. The decision is issued only in the latter case. In other cases, an applicant is informed only that the pocket money is not provided.

Access to emergency health care is ensured by Article 22 (5) of the Asylum Law. According to this provision, the Ministry shall pay for an urgent health care on behalf of an applicant, who does not have a public insurance. There is no derogation from this obligation.

Reception conditions are connected to asylum seeker's stay in asylum centre. In case permission to leave the centre is issued for more than 24 hours, asylum seeker is not entitled to receive food for that time. Also in case of asylum seeker permitted to stay outside the asylum centre (long-term permission), he is not entitled to receiving reception conditions, except for health care and education.

Q.21. B. Has article 16, §2 dealing with refusal of reception conditions for <u>unreasonably late applications</u> for asylum been transposed by your Member State (or was this case already applicable before transposition)? Are there cases in practice?

No, this provision was not transposed.

Q.21. C. How is it ensured that decisions of reduction or withdrawal are taken individually, objectively AND in particular impartially (for instance through and independent arbitrator) (see article 16, §4 which is a mandatory provision)?

There is no such assurance in the law with regard to withdrawal of pocket money. The decision is taken by the Ministry (in particular, director of an asylum centre). An appeal without a suspensive effect is possible, but it is the Minister of Interior who decides in the appeal procedure. Only then, a complaint to a court can be lodged.

Q.21. D. Is statement 14/03 adopted by the Council at the same moment as the directive respected (see the document attached to our sending)?

As only pocket money can be withdrawn from an asylum applicant, the statement 14/03 is respected.

Q.21. E. Are there already administrative appeal decisions or judgements on cases of reduction, withdrawal or refusal which have been taken, and if yes, what has been the outcome?

No such decisions or judgements are known.

Q.22.

Q.22. A. <u>Appeal</u> against a negative decision relating to the granting of benefits or based on article 7 (see article 21 which is a mandatory provision): indicate against which decision an appeal can be introduced, describe the system of appeal in general and include in particular in your answer the information given to asylum seekers about possibilities of appealing, deadline for appealing, if the appeal has or not a suspensive effect, if there are different steps (for instance first an administrative appeal and in particular if the guarantee of an appeal before a judicial body in the last instance is respected)?

There are no individual decisions made, if based on Article 7. As there is no decision, no appeal can be lodged. In general, complaints against any illegal acts or omissions of administrative bodies can be lodged with a court. No information about this possibility is given to asylum seekers, the complaint has no suspensive effect, and there is a deadline of 30 days with regard to complaint against an illegal act of an administrative body.

Q.22. B. Explain which are the possibilities for asylum seekers to benefit from <u>legal assistance</u> when they introduce such an appeal (see article 21, §2 which is a mandatory provision but leaves space to Member States)?

Legal aid is provided to asylum seekers by several non-governmental organisations in the centres and outside of them.

When an asylum seeker is bringing a case before a court, he can also ask for legal aid and representation under the same conditions as Slovak citizens (if it is reasonable in the view of the material situation of the person concerned, and if the application of law is not arbitrary or clearly without a possibility to succeed).

Q.22. C. Are there already administrative appeal decisions or judgements which have been taken and if yes, which are the main important ones?

There are no such decisions or judgements known.

Q.22. D. Is a mechanism of complain for asylum seekers about quality of receptions conditions in general (even if they are not personally concerned) organised? If yes, before which authority? Is it linked to the system of guidance, control and monitoring of reception conditions (see below question n° 39)?

There is no special formal mechanism of complaint about quality of reception conditions in general. An asylum seeker can complain in writing to the director of the Migration Office through a director of an asylum centre, through UNHCR, or through NGOs. A general complaint system for administrative bodies falling under Ministry of Interior can be used. There is a special body at the Ministry of Interior responsible for complaints.

6. RIGHTS AND OBLIGATIONS OF ASYLUM SEEKERS

Q.23. **Family unity of asylum seekers: define how a family is defined in relation with article 2, (d) which is a mandatory provision and explain how housing is provided to a family (see articles 8 which is a mandatory provision but leaves space to member States and 14, §2, (a) which is a mandatory provision).**

There is no specific definition of a family in the Asylum Law.

Article 10 (1) of the Asylum Law provides, who should be granted asylum for the purpose of family reunification. Article 10 (1) reads:
"The Ministry shall grant asylum for the purpose of family reunification to
a) the spouse of the person granted asylum if their marriage is continuing to exist in the country the person granted asylum left for reasons under Section 8, and the person granted asylum gave his/her prior written consent,
b) unmarried children of the person granted asylum or the person according to the letter a) younger than 18 years of age or
c) parents of an unmarried person granted asylum younger than 18 years of age, if the person granted asylum agrees."

According to Article 39 (1) and (2), appropriate conditions shall be created for families with children. When placing a foreigner in asylum facility, family relationship shall be considered, and family ties shall be taken into account.

Q.24. **Q.24. A. How is housing of asylum seekers organised: describe the system in general and indicate in particular what is the most frequently system used (see article 14, §1 which is a mandatory provision but leaves space for Member States; distinguish between accommodation centres, private houses and apartments, hotels places or other premises).**

In general, asylum seekers are accommodated in asylum centres – reception and accommodation camps. The Ministry may place the applicant in the integration centre for the necessary period of time. An asylum applicant may be also permitted to reside outside of the accommodation camp.

Q.24. B. What is the total number of available places for asylum seekers? Distinguish in your answer between accommodation centres, private houses and apartments, hotels or other premises.

Reception camps - places for 818 persons
Accommodation camps - places for 370 persons

Accommodation in private houses and apartments and hotels is not provided, it is up to the applicant to find for him/her a suitable accommodation, if he/she does not want to stay in an accommodation camp.

Q.24. C. Is this number of places for asylum seekers sufficient in general or frequently insufficient?

Existing number of places is sufficient. In case of an increase of asylum applications, the number of places in one of the centres can be increased by 250 additional places.

Q.24. D. Are there special measures foreseen in urgent cases of a high number of news arrivals of asylum seekers (outside the case of application of the directive on temporary protection)?

No such measures are foreseen in the law.

Q.25. Accommodation centres **(important note: all the following questions are about open and not closed centres where asylum seekers are detained which are covered by another question)**

Q.25. A Are there different categories of accommodation centres, for instance depending of the stage of the procedure (admissibility and eligibility)?

There are two different categories of centres: (i) reception camps, where applicants are accommodated until result of medical examination is announced, and (ii) accommodation camps, where are applicants placed after the end of stay in a reception camp.

These two categories of centres, accommodation and reception camps, have become mixed lately. Many asylum seekers although received already a positive result of the medical screening, remain on the premises of reception camps, but their regime changes into accommodation regime and are allowed to leave the reception camp based on permission.

Q.25. B. Is there a legal time limit for accommodation in a centre after which the asylum seekers have access to private houses or apartments or is this limit linked to a stage of the asylum procedure?

Asylum seekers have access to private houses or apartments after a result of medical examination is announced.

Q.25. C. Is there a general regulation about the internal functioning of those centres and the rights and duties of the asylum seekers? If yes, is this general regulation applicable to public and private centres? If not, are the centres supposed to adopt an internal regulation and does a central authority have or not a kind of control about its content?

There are only public centres in Slovakia, which are administered by the Migration Office of the Ministry of Interior.

According to Article 41 of the Asylum Law, the Ministry shall regulate the details concerning the conditions of foreigners' stay in the asylum facility in internal rules. In the internal rules the Ministry shall regulate in particular: (a) time table for food delivery, (b) the amount of the pocket money and a time table for its disbursement, (c) time table for delivery and distribution of documents, (d) conditions, under which the asylum facility may be left.

Q.25. D. Do the regulations foresee the possibility of sanctions against asylum seekers in case of breach of the rules? (see article 16, §3) If yes, which sanctions for which rules? Which is the competent authority to decide? How is it ensured that decisions are taken individually, objectively and in particular *impartially* (for instance through an independent arbitrator) as requested by §4 of article 21 which is mandatory provision*?* Which are the possibilities of appealing against those decisions if the system is different from the general one under question n°22? Are there already administrative appeal decisions or judgements which have been taken and if yes, which are the main important ones?

There is a possibility to withdraw pocket money from an applicant. According to Article 51 of the Asylum Law, the Ministry may withdraw away pocket money from the applicant for violating obligations under this Law. An appeal against the decision on the withdrawal of the pocket money does not have a suspensive effect. The decision is taken by the Ministry, and it is the Minister of Interior who decides in the appeal procedure. Only then, a complaint to a court can be lodged.

Q.25. E. Are asylum seekers involved in the management of these centres? If yes, how (advisory board, appointment or election of representatives)? (see article 14, §6 which is an option provision)

Internal rules of a camp give a possibility for the applicants to be involved in the activities of the self-administration, and its task is to organise free time

activities, solving of disputes and inferring of consequences in case of breach of the internal rules.

Q.25. F. Do specific rules exist on work of asylum seekers inside the accommodation centres different from the general ones about employment (see below)? If yes, which ones? Can working inside accommodation centres be considered as a (mandatory) contribution of the asylum seekers to the management of the centres, is it or not paid and considered as implying access to the labour market and subject to the same rules?

If an applicant works inside accommodation camp, director of the camp may increase the sum of the pocket money up to 36 SKK per day. Such a work is not considered as a work in employment relations, and therefore applicants do not have to wait for a year in the asylum procedure in order to work in the camp, as it is the case in the labour market, where access to employment is allowed after a year spent in the asylum procedure only.

Q.26. **Q.26. A. How can asylum seekers communicate with legal advisers, representatives of UNHCR and NGOs? (see article 14, §2, (b) which is a mandatory provision).**

According to Article 42 of the Asylum Law, the authorised representative of UNHCR can participate in the asylum procedure at any stage, and establish contact with a party to the procedure.

According to Article 40 (2) of the Asylum Law, a foreigner shall have the right to talk with authorised UNHCR representative, his/her representative or guardian in the absence of third persons.

According to Article 45 of the Asylum Law, the Ministry shall co-operate with non-governmental organisations in ensuring care for applicants.

According to Article 17 (1) of the Asylum Law, a party to the asylum procedure shall have the right to be in contact with the Office of United Nations High Commissioner for Refugees (hereinafter „UNHCR“) and non-governmental organisations involved in care for applicants and persons granted asylum on the territory of the Slovak Republic during the procedure.

In practice, legal advisors and NGO employees visit asylum centres on a weekly basis.

Q.26. B. What are the rules about access of legal advisers, UNHCR and NGOs regarding access to accommodation centres and other housing facilities (see article 14, §7 which is a mandatory provision)

According to Article 40 (1) of the Asylum Law, a stranger may enter the asylum facility only with a permission of the Ministry. The general regulation concerning administrative procedure shall not apply to permitting entry of an asylum facility.

In practice, permissions are issued for NGOs and legal advisers for a specified period of time.

Q.26. C. Can the access of legal advisers, UNHCR and NGOs be limited for security reasons or any other reason (see article 14, §7, last sentence)?

No such limitations have been used so far.

Q.27. **Q.27. A. Is a medical screening organised by the receiving State, is it mandatory or voluntary? Does it include HIV tests? (see article 9 which is an optional provision)**

A medical screening is mandatory, an applicant is obliged to undergo a medical examination (Article 23 (3) (b) of the Asylum Law). According to the Migration Office of the Ministry of Interior, it does not include HIV test. HIV is made if medical examination has brought some suspicion concerning the illness but test may be only done upon asylum seeker's consent.

Q.27. B. Do the legal provisions on reception conditions ensure that asylum seekers receive at least emergency care and essential treatment of illness as requested by article 15 §1 which is a mandatory provision? Do they have a further access to health care?

Access to health care is governed by Article 22 (5) of the Asylum Law. According to this provision, the applicant shall be provided with an urgent health care. In the cases requiring special attention, if based on an individual examination of the applicant's health condition there are determined special needs for health care, the Ministry shall pay, on behalf of the applicant, the costs of its provision exceeding the limit under the first sentence. The Ministry shall provide a due health care to minor asylum seekers who are victims of abuse, neglect, exploitation, torture or a cruel, inhuman and humiliating treatment or who suffered consequences of an armed conflict.

Q.27. C. What is the practice regarding access of asylum seekers to health care and how is it organised? In particular, what is the situation in accommodation centres (are doctors coming to the centres or do asylum seekers go to doctors outside)?

A nurse is working in the centres on a full time basis; a medical doctor is coming to the centres in a specified time, usually once a week. Specific medical examinations are executed in relevant medical institutions.

Asylum seekers do not participate in the general system of health insurance, if they do not work. The Ministry of Interior is responsible to provide urgent health care via direct payments to the health institution. In cases of special circumstances, when based on individual assessment of health state of asylum seeker special need of health care has been ascertained, Migration office pays for the health care beyond the standard of urgent health care. There is no choice

for asylum seeker to decide on health institution. However, there is no problem to undergo further health care according to own choice, in case asylum seeker is able to pay for it.

Q.28. **Q.28. A. What is the length of the period determined by the concerned Member State during which asylum seekers have no access to the labour market? (see article 11 which is a mandatory provision)**

Asylum seekers have no access to labour market during the first year of the asylum procedure. According to Article 23 (6) of the Asylum Law, the applicant must not enter any employment relation until the decision on granting asylum comes into effect; however, he/she shall be entitled to enter labour-law relations, if no final decision is made on his/her application for asylum within one year from initiation of the procedure, except for the case when the application for asylum was dismissed as manifestly unfounded or inadmissible.

Q.28. B. After that period, are asylum seekers or not obliged to obtain a work permit? In case is there a limit for the administration to deliver the permits and how quick are they delivered? What is their length?

Asylum seekers are not obliged to obtain a work permit, it is not necessary for them. They can enter work relations without a permit. The Migration Office just issues on a written request of an applicant a certification letter that the applicant is entitled to enter the labour market. The applicant can enter the labour market even without the certification letter, the letter is issued for the purposes of employer, for him to know that the applicant is entitled to enter the labour market.

Q.28. C. After that period, what are the conditions for access of the asylum seekers to the labour market? (in particular, are there rules concerning the maximum allowed of working hours or days per week, month or year, limits in terms of type of work or of professions authorised?

According to Article 21 (1) (b) of the Law No 5/2004 on services of employment (zákon č. 5/2004 Z. z. o službách zamestnanosti - Collection of Laws (Zbierka zákonov), Vol. 4 (2004)), asylum seekers entitled to enter labour market have the same legal position as Slovak citizens as regards employment.

Q.28. D. What are the rules in terms of priorities between asylum seekers on the one hand and nationals, EU or EEE citizens and legally third-country nationals on the other?

Asylum seekers with access to labour market, as well as EU and EEA citizens and their family members, have the same legal position as Slovak citizens with regard to services of employment (Article 2 (2) and Article 21 (1) (b) of the Law No 5/2004 on services of employment as amended).

There is no prioritisation between asylum seekers and legally third country nationals. EU and EEA citizens do not need any work permit.

Q.28. E. Do asylum seekers have access to vocational training, does this or not depend of their right to access to the labour market, and in case at which conditions? (see article 12 which is optional regarding §1 and mandatory regarding § 2)

After gaining access to labour market, asylum seekers have also access to vocational training under the same conditions as Slovak citizens.

Q.28. F. Are the rules regarding access to the labour market adopted to transpose the directive more or less generous than the ones applicable previously?

The rules are more generous, as there was no access to the labour market for asylum applicants before the transposition of the directive.

Q.29. Are reception conditions subject to the fact that asylum seekers do not have sufficient resources? Are asylum seekers requested to contribute to reception conditions when they have personal resources (for instance if they work) or to refund the authorities if it appears that they have resources? (see article 13 §§ 3 and 4 which are optional provisions)

According to Article 23 (5) of the Asylum Law, the Ministry may decide, that the applicant is obliged to adequately cover the expenses relating to his stay in the asylum facility or integration centre, or the cost of medical care provided, if his/her financial and proprietary circumstances are such, that it is possible to request from him/her at least a partial payment of the expenses relating to this stay.

In practice, this provision was not applied yet.

7. SPECIAL NEEDS OF PARTICULAR CATEGORIES OF ASYLUM SEEKERS

Q.30.

Q.30.A. Which of the different categories of persons with special needs considered in the directive are taken into account in the national legislation (see article 17, §1 which is a mandatory provision): disabled people, elderly people, pregnant women, single parents with minor children, persons who have been tortured, raped or victims of serious physical or psychological violence? Include in your answer all other categories envisaged in national law.

Unaccompanied minors and families with children are explicitly mentioned in Article 39 (1) of the Asylum Law with regard to appropriate conditions for accommodation and care. In addition to this, persons requiring special care are mentioned in this context. No other categories are mentioned in the Asylum Law.

According to Article 39 (1): ”The Ministry shall create appropriate conditions for the accommodation of minors unaccompanied by their representative at law on the territory of the Slovak Republic, for families with children and persons requiring special care in asylum facilities.”

Q.30. B. How is their specific situation taken into account (see articles 13, §2, second indent, 16 §4 second sentence and 17 which are mandatory provisions)?

They shall have appropriate conditions for accommodation and care created.

Q.30. C. How and when are the special needs of the concerned persons supposed to be legally identified (see article 17 § 2 which is a mandatory provision and clarify how it has been interpreted by transposition)?

This issue is not specified in Slovak legislation. Special needs might be identified in following procedures:

Medical examination
According to Article 23 (3) (b), an asylum applicant is obliged to undergo a medical examination provided by the Ministry without undue delay after his/her arrival to the reception centre.

Entrance interwiev
According to Article 4 (1) of the Asylum Law, after making application for asylum, the Ministry shall make an entrance interview with the applicant. However, there are no specific questions in the official form regarding special needs of the asylum applicant. As the Article 4 (1) further provides, in the course of the entrance interview, the applicant shall be obliged to provide truthfully and fully all requested information necessary for a decision on the application for asylum. The provided information shall be recorded on an official form. The specimen of the official form is enclosed in the Annex No. 2 to the Asylum Law.

Q.30. D. Is the necessary medical and other assistance provided to persons with special needs as requested by article 15, §2 which is a mandatory provision and in particular to victims of torture and violence as requested by article 20 which is a mandatory provision?

The issue of special medical assistance explicitly for victims of torture and violence is regulated only with regard to minors.

With this regard, Article 22 (5) of the Asylum Law provides:

“The Ministry shall pay for an urgent health care on behalf of an applicant, who does not have a public insurance; if based on individual examination of the applicant’s health condition there are determined special needs for provision of health care, the Ministry shall also cover the costs of such health

care in the cases worth special attention. The Ministry shall provide a due health care to minor asylum seekers who are victims of abuse, neglect, exploitation, torture or a cruel, inhuman and humiliating treatment or who suffered consequences of an armed conflict."

According to the Migration Office of the Ministry of Interior, persons with special needs are considered individually. Sick and elderly people are provided with advanced health care and persons handicapped otherwise are provided with psychological assistance and increased individual care by social workers in a camp.

Q.31. **About minors:**

Q.31. A. Till which age are asylum seekers considered to be minor?

According to a general rule provided in the Civil Code, asylum seekers are considered to be minors till 18. There is no special provision on different consideration of asylum seekers.

Q.31. B. How is access of minor asylum seekers to the education system ensured? Is it at school or in case inside accommodation centres and can it be considered as similar to the conditions for nationals as requested by article 10, §1?

According to Article 23 (3) (f) of the Asylum Law, an asylum applicant is obliged to attend a Slovak language course, if it is an applicant to whom the compulsory school attendance applies.

According to Article 34a (2) of the Law No. 29/1984 on the system of elementary and secondary schools as amended, which relates to education of foreigners, children of persons granted asylum and children of asylum applicants are provided with education in elementary and secondary schools under the same conditions as citizens of Slovakia.

Q.31. C. Is access to education ensured not later than 3 months as requested by article 10, §2 (or after maximum one year if specific education for asylum seekers is provided) and till an expulsion decision is really enforced?

Yes, Article 34a (4) of the Law No. 29/1984 on the system of elementary and secondary schools as amended was amended while transposing the directive to include the three months time limit.

Q.31. D. Is specific education (like language classes) available for asylum seekers, in particular to facilitate their effective access to the education system of the reception Member State (see article 10, §2 which is an optional provision)?

According to Article 23 (3) (f) of the Asylum Law, an asylum applicant is obliged to attend a Slovak language course, if it is an applicant to whom the compulsory school attendance applies.

The Slovak language courses are given in accommodation centres.

Q.31. E. Are minors in general accommodated with their parents or with the person responsible of them? (see article 14, § 3)

In general, minors are accommodated with their parents or with the person responsible of them. According to Article 39 (1) and (2), appropriate conditions shall be created for families with children. When placing a foreigner in asylum facility, family relationship shall be considered, and family ties shall be taken into account.

Q.31. F. Do minors with special needs enumerated by article 18, §2 which is a mandatory provision, have access to appropriate mental health care and qualified counselling?

According to Article 22 (5), a due health care to minor asylum seekers who are victims of abuse, neglect, exploitation, torture or a cruel, inhuman and humiliating treatment or who suffered consequences of an armed conflict shall be provided.

Q.31. G. How and when is organised the representation of unaccompanied minors (guardianship, special organisation) and regularly assessed? (see article 19, §1 which is a mandatory provision)

According to the Law No. 99/1963 Code on Civil Procedure as amended, a guardian will be appointed by the court, within 24 hours after the minor was found to be in Slovakia, to perform legal acts on behalf of the minor in his/her best interest. Until a guardian has been appointed unaccompanied minors stay at the police station. Guardians are either relatives or professionals with experience of working with children. The guardian makes the final decision on whether the unaccompanied minor applies for asylum or not.

Guardians of minors are established preferably from among close adult relatives, if not, then it is usually an employee of a closest Office of the labour, social welfare and family. Employees of the Office of the labour, social welfare and family who act as guardians in cases of unaccompanied minors are professionals with experience of working with minors; however they do not undergo special training and often are not familiar with asylum procedure and legislation regulating minor aliens.

Q.31. H. How is placement of unaccompanied minors organised (with adult relatives, a foster family, in special accommodation centres or other suitable accommodation)? (see article 19, §2 which is mandatory provision)

Article 39 (1) and (2) is the only provision, which provides for placement of unaccompanied minors. According to this Article, appropriate conditions shall be created for the accommodation of minors unaccompanied by their representative at law on the territory of the Slovak Republic, and for families with children. When placing a foreigner in asylum facility, family relationship shall be considered, and family ties shall be taken into account.

There is a reception camp and an accommodation camp specially designed for families, minors, and other vulnerable groups in Slovakia. In general, those groups of applicants are placed in the special centres, and this is especially the case with regard to the accommodation camps. In reception camps, applicants are placed on a geographical basis depending on in which part of the country they applied for asylum. However, not only those groups are placed in the special accommodation camp. If there is room enough, single men are also placed there.

Q.31. I. How is the tracing of the family members of the unaccompanied minors organised? Are measures taken to protect confidentiality of information when necessary? (see article 19, §3 which is a mandatory provision)

The Law No. 305/2005 on social and legal protection of children and on social guardianship and on amendments of some acts regulates among other issues also the social and legal protection of unaccompanied minors.

According to Article 29 of this act, the authority concerned (the authority on social and legal protection of children and on social guardianship) shall inform the embassy of the country, in which the unaccompanied minor usually resides about the measures adopted in order to return or remove the unaccompanied minor, and requests his/her return or removal into the country of his/her usual residence, if it is clear that he resides in a safe country according to the list of safe countries of origin or if the Convention on the Civil Aspects of International Child Abduction does not apply for him/her; or the authority concerned shall suggest to the embassy of a country, in which the unaccompanied minor does not reside, and in which is his/her parent or a person personally taking care of him/her, their reunification and informs about measures adopted regarding this reunification. If the authority concerned cannot follow the procedures mentioned above, or on the request of the unaccompanied minor, the authority submits an asylum application, and secures his/her placement in an asylum facility. The authority concerned participates on the search for parents or other family members of the unaccompanied minor for the purposes of family reunification.

There are no specific provisions on the confidentiality with this regard. Also no provisions regarding the issue, when the authority concerned cannot follow the procedures mentioned in previous paragraph.

If the authority concerned submits an asylum application, and an unaccompanied minor has his relatives in an EU country, family reunification is regulated by the Dublin Regulation.

8. EXCEPTIONAL MODALITIES OF RECEPTION CONDITIONS

Q.32. **Apart from detention covered by the next question, are there exceptional modalities for reception conditions in the following cases and if yes, which ones and for how long are they applicable, knowing that they should be "as short as possible" (see article 14, §8)?**

There are no exceptional modalities for reception conditions regulated by the law.

Q.32. A. Persons with specific or special needs, regarding in particular the period of assessment of those needs?

Q.32. B. Non availability of reception conditions in certain areas

Q.32. C. Temporarily exhaustion of normal housing capacities

Q.32. D. The asylum seeker is confined to a border post

When an asylum seeker is confined, even though for short time (it should be maximum 24 hours), to a border post, department of the Border and Foreigners police ensures essential health care in case there is a need. Neither in the provisions of law, nor in the Methods of Conduct of the departments of the Office of the Border and Foreigners Police in the asylum procedure, there are obligations concerning provision of material reception conditions, such as food and drinking water, embedded.

Q.32. E. All other cases not mentioned in the directive (for instance urgent situation in case of a sudden high number of applicants outside a case of application of the directive on temporary protection).

Q.33. **Detention of asylum seekers (we do not cover the situation of rejected asylum seekers detained for the purpose of their return) (see articles 6 §2, 7 §3, 13, §2 2nd indent and 14 §8 which implies that the directive is in principle applicable in case of detention):**

Q.33. A. In which cases or circumstances and for which reasons[1] (identity verification in particular if the persons have no or false documents, protection of public order or national security, refugee status determination, way of entry into the territory, etc) can an asylum seeker be detained during the asylum procedure till his request has been finally rejected. Quote precisely in English in your answer the legal basis for detention of asylum seekers in national law.

[1] Please specify if article 18 §1 of the directive on asylum procedures of 1 December 2005 following which *"Member States shall not hold a person in detention for the sole reason that he/she is an applicant for asylum"* is or not respected (even if it has not yet to be transposed).

According to Article 23 § 3 (a) of the Asylum Law, an asylum applicant is obliged to remain in the police department in the transit area of an international airport, when the foreigner concerned arrived to the territory of the Slovak Republic by plane and he/she fails to satisfy the requirements for entering the territory of the Slovak Republic.

Asylum seekers are obliged to remain in the reception camp until a medical check has been performed and the result thereof is known. There is no time limit for the performance of the medical examination, in practice this usually takes three weeks. Asylum seekers are also obliged to remain in the centre if isolation or quarantine is ordered for the purpose of preventing infectious diseases (Article 23 (3) (c) and (d)).

Furthermore, if someone applies for asylum while in administrative detention, the application can, but does not have to constitute a ground for release. The grounds for detention are set by the Law No. 48/2002 on Residence of Foreigners as amended (Foreigners Law). Article 62 (1) provides:

The police is entitled to take foreigners into custody for the purposes of:

a) execution of his/her administrative expulsion or enforcement of the punishment of expulsion,
b) execution of his/her transportation according to the Dublin regulation or
c) his/her return according to readmission agreements, provided that he/she entered the territory of the Slovak Republic without authorisation or stays on the territory of the Slovak Republic without authorisation.

It follows that foreigners may be detained before they formally lodge their asylum applications when decision on expulsion has been already issued, or in accordance with letter (c).
The foreigner may be taken into custody for the time needed, with a maximum of 180 days.

There is always a reason for detention of asylum seekers other than the sole fact that they are asylum seekers. It is either one of the reasons specified in Article 62 (1) of the Foreigners Law; or freedom of movement of an asylum seeker can be restricted also according to Asylum Law. There, public health (Article 23 (3) (c), (d), or public order (Article 23a (2)) are the reasons for restriction of the freedom of movement.

Q.33. B. Has your member State adopted measures to transpose §3 of article 7 which is an optional provision? If yes, how has this provision been legally understood (is it a case of detention or an obligation to stay in and not leave a certain place?) and for which reasons can an asylum seeker be "confined" in such a place?

Slovakia has adopted measures to transpose Article 7 (3). The provision in question was understood as an obligation to stay and not leave a certain place. The reasons are following:

Article 23a of the Asylum Law:
"(1) The applicant may leave the asylum facility only based on a permit issued by the Ministry. The applicant may request the Ministry for issuance of the permit for leaving the asylum facility for more than 24 hours, but maximally seven days, only after being interviewed; in the request, he/she shall be obliged to state the place where he/she will stay. The general regulation on administrative procedure shall not apply to the permit's issuance. In the course of the applicant's absence in the asylum facility, the applicant shall not be entitled to the benefits under Section 22 Paragraph 4 Subparagraph b).

(2) The Ministry may refuse to issue the permit under Paragraph 1 only due to a public order or due to the need for the applicant's personal attendance at the asylum procedure."

Article 23 (3) (c) and (d) of the Asylum Law:
"Unless otherwise decided by the Ministry, the applicant shall be obliged

…

c) to stay in the reception camp until announcement of the result of the medical examination,
d) to stay in the asylum facility, if for the purposes of preventing contagious diseases, isolation[11a)] or quarantine measure[11b)] is ordered to the applicant, …"

Q.33. C. Are there legally <u>alternatives</u> to detention, like obligation to report to the authorities, obligation to stay in a place, provision of a guarantor or of a financial guarantee?

There is no legal alternative to detention of asylum seekers.

Q.33. D. Which is the <u>competent authority</u> to order the detention of an asylum seeker? Explain if different authorities are involved to first take and later confirm the decision.

The competent authority is, according to the Foreigners Law, Bureau of the Border and Foreign Police of the Police Corps. The decision on detention can be reviewed by a court, but it is not done automatically, the detained person has to lodge an appeal first (within 15 days). The appeal has no suspensive effect.

Q.33. E. <u>For how long</u> and till which stage of the asylum procedure can an asylum seeker be detained?

According to Article 62 (3) of the Foreigners Law, a foreigner may be taken into custody for the time inevitably needed, at maximum for 180 days. There is no legal provision stating until which stage the asylum procedure can go on in detention, however, in general, an asylum seeker was released, when it was

11a) Section 16 of the Order of the Ministry of Health Care of the Slovak Republic No. 79/1997 Coll. on Measures for Preventing Contagious Diseases, as amended by the Order of the Ministry of Health Care of the Slovak Republic No. 54/2000 Coll.
11b) Section 17 of the Order of the Ministry of Health Care of the Slovak Republic No. 79/1997 Coll.

made quite obvious that asylum procedure will not be finished by valid decision until the last day of detention (usually when appeal with suspensive effect has been lodged to the court).

Q.33. F. In which places (can we call them "closed centres"?) are asylum seekers detained (places in a special closed centres reserved only to asylum seekers, together with returnees like illegal aliens or even in a normal prison, in case within separated areas or with the other detainees)? Indicate if a difference has to be made following the location of the "closed centres" at the border or on the territory? Which is the authority managing those places and is it the same as the one in charge of reception conditions?

1. Detention according to Foreigners Law – asylum seekers are detained together with illegal foreigners, and they are not separated. The Bureau of the Border and Foreign Police of the Police Corps is managing those places – police custodies for foreigners.
2. Restrictions on freedom of movement according to Asylum Law – asylum seekers are placed in asylum centres (reception and accommodation camps). The Migration Office of the Ministry of Interior is managing those places.

Q.33. G. Does UNHCR and NGOs have access to the places of detention and under which conditions?

UNHCR and NGOs have access to the places of detention. They usually get permission to enter the places from the bodies responsible for respective places for a specified period of time, e. g. one year. No problems with access to those places were observed.

Q.33. H. What appeal(s) can asylum seekers introduce against the fact he is detained? Is article 18 of the directive on asylum procedures of 1 December 2005 following which *"Where an applicant for asylum is held in detention, Member States shall ensure that there is a possibility of speedy judicial review"* respected (even if it has not yet to be transposed)?

Those, who are detained under the Foreigners Law, can lodge an appeal to a court within 15 days following the delivery of the decision on detention. However, the judicial review cannot be regarded as a speedy one. There is no time limit for a court to decide provided in the law, and in practice, courts sometimes decide only, when the foreigner concerned is not in the detention anymore.

There is an obligation of the Foreigners Police to prove whether grounds for detention still exist during the entire time of detention, however, it would be quite difficult to enforce them to do so, if they are not.

Q.33. I. Is the directive on reception conditions considered to be in principle applicable to the places where asylum seekers are detained? In

particular which information do they receive about their rights, which access do they have to legal advice and health care?

The access to legal advice and health care is similar to those, who are not detained.

After applying for asylum, they receive the same information about their rights, as not detained asylum seekers do, although it is not very useful in their situation, as they are detained under Foreigners Law.

Immediately after placing into detention, an alien should be acknowledged with nature of the facility he is placed in, with his rights and obligations relating to detention and with internal order of the facility in the language he understands.

Q.33. J. Apart from freedom of movement, what are the main differences between normal reception conditions and exceptional modalities for reception conditions in case of detention, knowing that they should be "as short as possible" (see article 14, §8)? If it is about closed centres, are the regulations of those places in line with the requirements of the directive (is article 13, §2, second indent of the directive following which "*Member States shall ensure that standards of living is met (…) in relation to the situation of persons who are in detention*" respected?).

Asylum seekers in detention do not receive any pocket money, and minors do not have access to education. Except of the fact regarding education, standards of living are met.

Food is provided to detained aliens for the first time when detention lasts for more than 6 hours. Food is provided according to internal rules of the facility with regards to age, health condition and religion of detained alien. Expenses concerning food are covered by detained alien himself from his belongings. In case detained alien does not have any financial sources, it is covered by the state. Accommodation is provided with regards to his age, health condition, and family relations, religious or ethnic differences. Men and women are accommodated separately, the same applies to minor and adult with exemption of family relations.

Q.33. K. Are measures taken to avoid detention of asylum seekers with special needs (if yes, which ones?) or are special measures taken because of their needs?

Unaccompanied minors are not detained. No other measures are taken.

Q.33. L. Can minor asylum seekers be detained together with relatives? Can unaccompanied minor asylum seekers be detained? If yes, are there special measures which take into account that children are concerned?

Unaccompanied minors are not detained. Minor asylum seekers, who are together with their relatives, can be detained, and if the relatives are detained, they are detained together with them.

Q.33. M. In particular is article 10 regarding access to education of minors respected in those places?

Article 10 is not respected as there is no access to education for children detained in detention centres for foreigners.

Q.33. N. How many asylum seekers are for the moment detained in your Member State? Which proportion does this represent in comparison of the total number of asylum seekers at the same moment?

On 30 April 2007, 61 asylum seekers were detained; the total number of those in reception and accommodation camps, detention, and pre-trial detention (9) was 515 asylum seekers.

9. ORGANISATION OF THE SYSTEM OF RECEPTION CONDITIONS

Q.34. Explain if the system of providing reception conditions is centralised or decentralised (which levels of government do provide practically reception conditions?) (do not confuse this question with question number 3 about the competence to make rules about reception conditions).

Provision of reception conditions is centralised, central government, in particular Ministry of Interior, is responsible for provision of reception conditions. All asylum centres are facilities of the Ministry of Interior

Q.35. In case, are accommodation centres public or/and private (managed by NGOs? If yes, are the NGOs financially supported by the State?)

Asylum centres are public only; they are managed by the Ministry of Interior.

Q.36. In case, how many accommodation centres are there in your Member State (distinguish in your answer between public and private centres)?

There are 5 centres for asylum seekers in Slovakia.

Q.37. Is there in the legislation a plan or are there rules in order to spread the asylum seekers all over the territory of your Member State to avoid their concentration in some areas like big cities or to share the costs of their reception between central, regional and local authorities?

There is nothing like that in legislation itself. In the past, all the centres were located in the western part of the country, however, two centres were opened in central Slovakia in last three years, and one centre was opened in the eastern part of the country recently.

Q.38. Does a central body representing all the actors (like NGOs) involved in reception conditions exist? Does it play a consultative role for the State authorities, a coordination role for the actors or any other role?

There is no such organisation or body right now.

Q.39. **Q.39. A. Which is the body in charge of guidance, monitoring and controlling the system of reception conditions as requested by article 23 which is mandatory provision? Include in your answer which is the competent ministry (Interior, Social affairs, etc) for reception conditions?**

It is the Ministry of Interior, specifically Migration Office of the Ministry of Interior, who is in charge of guidance of the system of reception conditions, and it has its own internal control system. Furthermore, if a particular complaint is lodged regarding the bodies in charge of reception conditions, the Inspection of the Ministry of Interior is the body investigating such complaints. As regards the hygienic standards of the accommodation centres, Major Sanitation Officer of the Ministry of Interior oversees meeting the standards mentioned above.

UNHCR, together with NGOs, are monitoring the system of reception conditions.

Q.39. B. Has your Member State (like the Czech Republic did recently) approved quality standards (not necessary legally binding) for housing services (for instance about the number of persons per bedroom on the basis of its size, number of accessible toilets, bathrooms, showers and washing machines per number of persons, existence of common rooms with radio, television, newspapers, books, computers, accessibility of telephone, existence of recreative rooms for children,…) to be respected in particular in accommodation centres?

There is a quality standard approved in Slovakia by way of the Regulation of the Government of Slovak Republic No 353/2006 from 10 May 2006 on details of requirements for internal environment of buildings, minimum requirements for apartments of lower standard, and for housing facilities – nariadenie č. 353/2006 z 10. mája 2006 o podrobnostiach o požiadavkách na vnútorné prostredie budov a o minimálnych požiadavkách na byty nižšieho štandardu a na ubytovacie zariadenia (Collection of Laws (Zbierka zákonov), Vol. 124 (2006)).

Q.39. C. How is this system of guidance, control and monitoring of reception conditions organised?

According to the Migration Office of the Ministry of Interior, guidance, control and monitoring of reception conditions are performed together with UNHCR.

Migration Office of the Ministry of Interior was established as a central governmental authority in the field of asylum. As such, the Migration Office is

in charge of guidance of reception conditions. As a body responsible for all reception centres in Slovakia, and responsible for organised movement of asylum seekers within the country, the Migration Office has a direct impact on all actors dealing with reception conditions of asylum seekers.

The system of control was described under Q. 39 C. above.

UNHCR, together with NGOs, are monitoring the system of reception conditions. The system of monitoring is not specifically institutionalised, but general provisions on cooperation between the Ministry of Interior and UNHCR and NGOs allowing monitoring of reception conditions are established in the Asylum Law.

Q.39. **D.** Does the body in charge of guidance, control and monitoring produce reports about the level of reception conditions? If yes, how frequently and are they public?

According to the Migration Office of the Ministry of Interior, reports are produced for internal use. They can be published upon request.

Q.40.

Q.40. A. What is the total number of asylum seekers covered by reception conditions for the last year for which figures are available (see article 22 obliging Member States to calculate those statistics about which we also asked the Commission to require them from Member States for mid June)?

2 871 foreigners applied for asylum in 2006 in Slovakia.

Q.40. B. What is the total budget of reception conditions in euro for the last year for which figures are available?

The total budget for 2006 was approximately 3 916 500 EUR. In the budget are included not only expenses for accommodation, food, pocket money, hygienic and other items, and health care, but also operational costs.

Q.40. C. What is the average cost of reception conditions in euro per asylum seeker for the last year for which figures are available?

The average cost per asylum seeker is approximately 20 EUR. In the budget are included not only expenses for accommodation, food, pocket money, hygienic and other items, and health care, but also operational costs.

Q.40. D Are the costs of reception conditions of asylum seekers supported by the central/federal or federated government or are they shared with regional and/or local authorities?

The costs are covered by the central government.

Q.40. E. Is article 24 § 2 of the directive following which "*Member States shall allocate the necessary resources in connection with the nationals provisions enacted to implement this directive*" respected?

According to the Migration Office of the Ministry of Interior, Article 24 (2) of the directive is respected.

Q.41. **Q.41. A.** What is the total number of persons working for reception conditions?

According to the Migration Office of the Ministry of Interior, there are 155 employees of this body working for reception conditions, plus up to 30 persons working for NGOs.

Q.41. B. How is the training of persons working in accommodation centres organised? Does it take into account specific needs of unaccompanied minors when relevant as well as the gender dimension? (see article 14 §5, 19 § 4 and also 24 §1 which are mandatory provisions)?

According to the Migration Office of the Ministry of Interior, the training is organised, following training activities were provided:
- trainings organised by the Migration Office of the Ministry of Interior;
- individual schedules;
- furthermore, in course of last year, educational activities in order to strengthen the administrative capacities in the field of Gender Mainstreaming were organised by the Ministry of Interior, and training activities focused on relaxation and abreaction were organised by the Ecumenical Council of Churches, and some other training activities.

Q.41. C. Are there rules about the deontology of persons working in accommodation centres, in particular on confidentiality?

According to the Migration Office of the Ministry of Interior, its employees are governed by internal rules and regulations, by the ethical code of civil servants, and personal data of asylum applicants are used only for official purposes.

According to a general provision applying to public servants – Article 8 (1) (c) of the Act No. 552/2003 on service under public interest (zákon č. 552/2003 o výkone práce vo verejnom záujme) (Collection of Laws (Zbierka zákonov) Vol. 226 (2003)) as amended, the public servant is obliged to keep in discretion the facts, he/she learned while executing his/her service under public interest, and which cannot be communicated to other persons.

10. IMPACT OF THE DIRECTIVE

Legal impact of the transposition of the directive:

Q.42. Specify if there are or not big problems with the translation of the directive in the official language of your Member State and give in case a list of the worst examples of provisions which have been badly translated? (please note that this question has in particular been added to the questionnaire concerning the new Member States)

No big problems with the translation of the directive were observed.

Q.43. Where there precise legal rules on reception conditions for asylum seekers before the adoption of the norms of transposition of the directive (if yes, specify what the nature of those rules was (legislation, regulation, administrative instructions,…)?

The rules on reception conditions for asylum seekers were incorporated in the legislation even before the adoption of the norms of transposition of the directive.

Q.44. Did the legal rules applicable to reception conditions become more clear, precise, coherent or detailed with the adoption of the transposition norms (for instance do you now have after the transposition one basic text dealing with reception conditions instead of numerous different texts in the past?

The rules became a bit more clear and detailed.

Q.45. Did the transposition of the directive imply important changes in national law or were the changes of minor importance? In case, list the most important changes that have been introduced.

The most important change that was introduced by the transposition of the directive was the fact that asylum seekers are allowed to work, although after being one year in the procedure only. Also the fact that minor asylum seekers shall be included into the education system within three months is important; the time limit was not in Slovak legislation before.

Political impact of the transposition of the directive:

Q.46. Explain briefly if there has been an important debate about the transposition of the directive (in particular in the Parliament, but possibly also in the government, between political parties, including in medias, etc; underline in case the main points which have been discussed or have created difficulties)

There was almost no public debate about the transposition of the directive; the debate was only on a professional level.
There was a provision in the draft law, according to which it would be possible to place an asylum seeker in a special centre, if he/she would have breached the internal order of an accommodation centre, behave violently, or would be reasonably suspected of committing a criminal offence. The NGOs together with UNHCR succeeded with a help of some members of parliament to exclude the relevant provision from the draft law.

Q.47. **Did the transposition of the directive contribute to make the internal rules stricter or more generous? In particular, did your Member State use the occasion of the transposition to abolish more favourable provisions of national law? Does your Member State still have rules more favourable**

than the provisions of the directive (if yes, try to give the more important examples).

The transposition of the directive contributed to make the rules more generous, especially with regard to access to employment, and more precise with regard to access to education and appointment of guardians for unaccompanied minors.

11. ANY OTHER INTERESTING ELEMENT

Q.48. What are in your view the weaknesses and strengths of the system of reception conditions in your Member State?

As a main weakness I would see the legal framework regarding restriction of freedom of movement. The reasons for which are asylum seekers kept in detention and the possibilities they have to have the detention reviewed, are in my view not only in breach of the directive, but also of the European Convention on Human Rights.

As regards material reception conditions, provision of clothing should be regulated more precisely, and pocket money for asylum seekers should be increased on a level above a symbolic one.

The following strengths and weaknesses are outcomes of the SWOT analyse made in the course of the project in 2005 (Twinning Light with Swedish partners – Swedish Migration Board) within Unallocated Institution Building Facilities 2003

Weaknesses:
Administrative structures
- Inadequate long-term planning
- Not enough career incentives due to national legislation
- Lack of interpreters in Slovakia
- Logistical shortcomings (delays in delivery of files etc)

Facilities
- Insufficient electronic connections between the MO and the different facilities (Comment: the problem has been already solved)
- Missing of internal monitoring system for prevention of damage of property

Services
- Too extensive entry health examinations resulting in high costs for health care (Comment: the problem has been solved partially)

Strengths:
Administrative structures
- Adoption of the Migration Policy Concept
- Creation of the Asylum Departments in Vlachy, Adamov-Gbely and Rohovce
- Good co-operation with municipalities involved

- Enthusiastic staff in MO and BBAP
- Improved co-operation between MO and BBAP

Facilities
- Accommodation centre in Brezova pod Bradlom: designed for vulnerable groups such as unaccompanied minors
- Accommodation centre in Gabcikovo: flexibility in case of emergency situations and could be expanded into a reception centre
- RC Rohovce: designed for vulnerable groups such as unaccompanied minors

Services
- Good co-operation with the municipalities
- Good co-operation with NGOs

Q.49. Mention any good practice in your Member State which could be promoted in other Member States

Q.50. Please add here any other interesting element about reception conditions in your Member State which you did not had the occasion to mention in your previous answer.

QUESTIONNAIRE FOR THE NATIONAL REPORT ON THE IMPLEMENTATION OF THE DIRECTIVE : RECEPTION CONDITIONS OF 27 JANUARY 2003

IN: SLOVENIA

by
Vita HABJAN
Rapporteur for Slovenia, lawyer
vita.habjan@pic.si
(the report completed in May 14, 2007)

1. NORMS OF TRANSPOSITION

Q.1. Identify the main norm of transposition (indicate the title, date, number, date of entry into force and references of publication into the official journal) and indicate its legal nature (legislative, regulatory, administrative); indicate in your answer if this norm was only devoted to the directive or if it has been included in a more general text and indicate in that case by quoting precisely the numbers of the provisions adopted to transpose the directive.

Act amending the Asylum Act (ZAzil-D), Number: 2006-01-0626, adopted on February 6, 2006, published in the Official Journal of the Republic of Slovenia (RS), No. 17/06, February 17, 2006, entered into force on March 4, 2006. The act of transposition is of a legislative nature. The act amended the existing Asylum Act (see Asylum Act – consolidated text, Number: 2006-01-2179, the Official Journal of the Republic of Slovenia, No. 51/06, May 18, 2006, hereinafter: Asylum Act) which besides the reception conditions for asylum seekers also contains provisions on refugee status determination procedure (RSDP) and rights and obligations of refugees.

The norms of the Asylum Act transposing the directive are: 1, 2, 15.a, 16, 27, 42, 43, 45, 45.b, 46, 46.a, and 46.b. The norms of the Asylum Act transposing directive 2005/85/EC, which directly concern the reception conditions, are: 26, 37, 38, 40, 40.a, 41, and 56.

The norms of the Asylum Act which concern the reception conditions and were already included in the Asylum Act before the transposition of the directive, are: 3, 7, 8, 9, 11, 14, 15, 18, 28, 36, 44, 45.a, 57, 58, 63.b, 63.e, and 64.

After adoption of the Act amending the Asylum Act (ZAzil-D) the Constitutional Court issued an Order of the Constitutional Court, No. U-I-59/06-11, dated April 3, 2006, published in the Official Journal of the Republic of Slovenia (RS), No. 37/06, April 7, 2006, entered into force on April 8, 2006, by which it temporarily withheld implementation of Paragraphs 1, 2, 3 and 4 of the Article 26, the second sentence of the Paragraph 2 of the Article 37 and the second sentence of Paragraph 2 of the Article 41 of the Asylum Act.

The Act amending the Asylum Act (ZAzil-D) also defined an obligation to harmonise Instructions on the procedure and method of dealing with aliens who enter the Republic of Slovenia and wish to lodge asylum applications, and on receiving,

contents and processing of applications lodged by asylum seekers and statements put on record (the Official Journal of the RS, No. 65/00), Rules on the criteria for remuneration and reimbursement of expenses to refugee counsellors (the Official Journal of the RS, No. 103/04), Rules on manners and conditions to guarantee the rights of asylum applicants and aliens granted a special protection (the Official Journal of the RS, No. 80/02) and Decree on the rights and duties of refugees in the Republic of Slovenia (the Official Journal of the RS, No. 33/04 and 129/04) with provisions of the Act amending the Asylum Act in six months after its entry into force. See below Q.2.

The proposal of the Act on International Protection[662]: when adopted (the adoption is foreseen till November 2007), the proposal will replace the currently valid Asylum Act. By this Act the Council Directive 2003/9/EC of 27 January 2003, the Council Directive 2003/86/EC of 22 September 2003, the Council Directive 2004/83/EC of 29 April 2004 and the Council Directive 2005/85/EC of 1 December 2005 will be transposed into the Act on International Protection. By this Act basic principles, procedure for granting and withdrawal of international protection, duration and content of international protection and on rights and duties of applicants for international protection and of personas granted international protection will be set.

Q.2. List by order of importance by using numbers (1, 2, 3) the others norms of transposition if there are more than one (indicate for each norm the title, date, number and references of publication into the official journal; include in your answer the administrative measures taken to ensure implementation of the directive and of the transposition norms like regulations, administrative circulars, special instructions,…)

The Decree amending the Decree on the rights and duties of refugees in the Republic of Slovenia (hereinafter: Decree on the rights and duties), Number: 2006-01-4735, was adopted on October 19, 2006, published on November 3, 2006 (the Official Journal of the Republic of Slovenia (RS), No. 112/2006), entered into force on November 18, 2006.

The Rules on the criteria for remuneration and reimbursement of expenses to refugee counsellors (hereinafter: Rules on reimbursement to refugee counsellors), Number: 2006-01-3187, was adopted on July 7, 2006, published on July 14, 2006 (the Official Journal of the Republic of Slovenia (RS), No. 74/2006), entered into force on July 29, 2006.

The Rules on manners and conditions to guarantee the rights of asylum applicants (hereinafter: Rules on reception conditions), Number: 2006-01-5185, was adopted on November 9, 2006, published on November 24, 2006 (the Official Journal of the Republic of Slovenia (RS), No. 121/2006), entered into force on December 24, 2006. Article 17 of the Rules entered into force on January 1, 2007.

The new Instructions on the procedure and method of dealing with aliens who enter the Republic of Slovenia and wish to lodge asylum applications, and on receiving, contents and processing of applications lodged by asylum seekers and statements put on record has not been adopted yet. Until then, the previous Instructions, Number: 2000-01-3003, adopted on

[662] At the moment the proposal has been debated over by the Ministry of the Interior, the NGOs and UNHCR. It has not been submitted to the Parliament to be adopted yet.

July 7, 2000, published on July 21, 2000 (the Official Journal of the Republic of Slovenia (RS), No. 65/2000), entered into force on July 29, 2000 are still valid.

The Internal Regulations of the Asylum Home (hereinafter: Internal regulations) adopted September 19, 2006.

Q.3. Explain which level of government is competent to adopt the legal norms on reception conditions for asylum seekers (specify in particular in case of a federal or regional State, if it is the federal/central power or the components; in case, specify below when it is impossible for you to answer a question because it is about the competence of the components and it is impossible for you to gather reliable information about all of them)

Since Slovenia is a centralized state the competency for adopting legal norms on reception conditions in a form of legislative provisions lies with the National Assembly of the Republic of Slovenia. The competency for the adoption of administrative (implementing) norms lies within the Ministry of the Interior of the Republic of Slovenia: the norms are adopted by the Minister of the Interior, after a consultation with other relevant ministries. The competency for adopting Internal Regulations of the Asylum Home also lies with the Minister of the Interior

Q.4. Explain the legal technical choices done to transpose the directive (comment on the nature and level of the norms used to do the transposition: legislative, regulatory, administrative like instructions, etc). Add any other element about the technique of transposition of the directive which is interesting for the implementation of Community law.

The directive was transposed in a form of legislative amendments to the existing Asylum Act. Acts (laws, statutes) are the main form of regulation in Slovenia since according to paragraph 2 of the article 15 of the Constitution of the Republic of Slovenia, only the law can define the manner of implementation of constitutional rights (including the right to asylum). Furthermore, the methods of implementation of legislative provisions are defined with the administrative regulations or instructions, adopted by the Minister of Interior.

Q.5. Mention if there is a general tendency to just copy the provisions of the directive into national legislation without redrafting or adaptation them to national circumstances? If yes, give some of the worst examples and explain if there is a risk that those provisions remain unapplied or will create difficulties of implementation in the future.

The tendency of just copying the provisions of the directive while transposing it into the national legislation is not general. However, there are cases where the provisions introducing new measures were simply copied into the national law without a thorough examination of possibilities for actual implementation. For example, according to article 15.a of the Asylum Act, vulnerable groups should receive specific treatment and counselling after an individual assessment of their needs, but neither counselling neither the process of assessment are defined nor are they existent in practice. The psychologists and social workers, employed in the Asylum Home (three staff members all together), are busy with accommodation checkups and other tasks (e.g. counting the applicants every morning) and are not able to engage in individual

treatment of asylum seekers with an intention to find out whether they have been subject to abuse or domestic violence or whether they have special needs. Identification of their special needs mostly depends on the assertiveness of the applicants.

Generally, in the processes of legal transposition of the directives in Slovenia there is a tendency of taking the most extreme positions, foreseen with the directive, even if it is not mandatory for the state to adopt such extreme measures (e.g. access to the right to work after one year since lodging the asylum application). In addition, all transposition procedures in the National Assembly are carried out in urgent procedures which allows for one debate in a parliamentary committee, one chance to submit amendments to the proposal and one plenary discussion (contrary to three discussions and three opportunities to submit amendments, available in regular legislative procedures). The directives are being used as a justification for lowering the achieved standards.

As required by the official position of the government of the Republic of Slovenia, that in decision making the authorities have to cooperate with the civil society, both UNHCR and NGOs had an opportunity to comment extensively on the proposed draft amendments and appeared before the parliamentary select committee that reviews the legislation. Most of the comments were not accepted.

Q.6. Have all the texts necessary to ensure the effective implementation of the new rules of transposition been adopted, prepared or at least foreseen in the future (for example a regulation completing a new law and the necessary instructions telling the administration how to apply the new rules)?

The new Instructions on the procedure and method of dealing with aliens who enter the Republic of Slovenia and wish to lodge asylum applications, and on receiving, contents and processing of applications lodged by asylum seekers and statements put on record has not been adopted yet.

2. BIBLIOGRAPHY

Q.7. Has an in-depth preparatory study been made public about the changes at the occasion of the transposition? If yes, thanks for trying to provide us a copy *(please contact to answer this question adequately the body and person who was responsible for the preparation of the transposition of the directive in the public administration).*

Yes, the preparatory study, prepared by the Asylum Sector of the Directorate for Internal Administrative Affairs (which is an organizational unit within the Ministry of Interior) has been made public: In the process of drafting the amendments the study has been sent to both UNHCR and the non-governmental organizations (NGOs), active in the field of asylum, that were invited to submit comments. When the proposed amendments were submitted by the Ministry of Interior to the Slovenian Government for a confirmation, the study and the proposed amendments were published on the official website of the Government (http://193.2.236.95/dato3.nsf/ OC/0511291400363/$file/50v5.doc). During the legislative procedure at the National Assembly, the study and the proposed amendments were published at the official website of the National Assembly (www.dz-rs.si). Both, the representatives of

UNHCR and NGOs appeared before a parliamentary committee discussing the proposed amendments and presented their views on the proposal.

At the time of writing of this report (May 2007) a Proposal of the Act on International Protection is in the process of drafting. At the moment, opinions of NGOs, UNHCR and the Government about the Proposal are being harmonised, since NGOs and UNHCR were invited to submit comments. The Proposal of the Act on International Protection is being published on the official website of the Ministry of the Interior[663].

Q.8. Quote any recent scientific book or article published about the directive, the transposition rules or the question of reception conditions for asylum seekers in general (answer even if this literature is only available in your language and provide the complete title in your language (without translation) with all references; indicate author, title, in case name of periodical, year and place of publication).

Bardutzky, Samo: "Implementacija acquisa na področju azila", Pravna praksa, No. 43/2005, 2005, Ljubljana, Slovenia.
Mrak, Andreja: "Še o spremembah zakona o azilu", Pravna praksa, No. 4/2006, 2006, Ljubljana, Slovenia.
Vrbnjak Urška: "Subsidiarna zaščita, EU in mednarodno pravo človekovih pravic", Pravna praksa, No. 10/2006, 2006, Ljubljana, Slovenia.
Zagorc, Saša: "Ustavno sporna ureditev predhodne policijske obravnave v azilnem postopku", No. 3/2006, 2006, Ljubljana, Slovenia.

Q.9. Quote any interesting decision of jurisprudence based on the implementation of the new rules of transposition of the directive (indicate references of publication if any)?

Immediately after the directive was transposed and the Asylum Act amended (March 2006), it has been sent into revision to the Constitutional Court by the opposition parliamentary parties and by a group of asylum seekers. Upon the request for interim measures the Constitutional Court suspended the application of several new provisions of the Asylum Act which were added pursuant to the transposition, until its final decision on the case. The suspended provisions are: the newly introduced police pre-procedure which would give the police the authority to consider whether the reasons for applying for asylum are in accordance with the Geneva Convention and decide whether or not a person is allowed to apply for asylum at all; and the newly adopted provision allowing for a non-suspensive effect of appeals in manifestly unfounded cases and safe third country cases (allowing for the execution of a first instance decision on asylum application).[664]

There was an interesting decision issued by the Slovenian Constitutional Court extending the reception conditions (but only accommodation and food) beyond a final decision on the asylum application. The applications of two asylum seeking families were rejected with a final decision issued by the Supreme Court. The families were (together with minor children) transferred from the Asylum Home to the Deportation Centre (a prison-like facility). Their

[663] http://www.mnz.gov.si/fileadmin/mnz.gov.si/pageuploads/SOJ/2007/word/ZMZ___obrazlozitve_174.doc
[664] Decision of the Constitutional Court of the Republic of Slovenia, No. U-I-59/06-11 of 3 April 2006.

legal representative filed a complaint to the Constitutional Court jointly with a request for interim measure to suspend the execution of the final decision and release the children and their parents from the Deportation Centre. The Constitutional Court, invoking Article 3 of the Convention on the Rights of the Child (best interest of the child) and Article 8 of the European Convention of Human Rights (family reunion), decided in favour of the request for interim measure, suspended the execution and ordered the Ministry of Interior to re-accommodate the families in the Asylum Home until the final decision of the Constitutional Court is issued. With these two decisions the Constitutional Court extended reception conditions (accommodation and food) for rejected asylum seekers beyond the final decision on asylum applications.[665]

3. GENERAL INFORMATION ABOUT THE SYSTEM OF RECEPTION CONDITIONS

The purpose of the following two questions is to help the reader to understand easily and quickly the system of reception conditions in your Member State and also to avoid that you have to repeat general elements in other parts of the questionnaire. ***Please do not write more than one or maximum two pages and do not include large historical developments.***

Q.10. Describe in general the system of reception conditions in your Member State (in particular which are the main actors in charge of reception conditions?)

Asylum seekers are accommodated in the Asylum Home in Ljubljana which is a state-ran accommodation centre. There are no other accommodation centres in Slovenia, either state or private. The Asylum Home is under the authority of the Asylum Sector of the Directorate for the Administrative Internal Affairs (an organizational unit within the Ministry of Interior). The Ministry of Interior is responsible for all issues concerning the reception conditions. In specific fields of reception conditions the Ministry of Interior coordinates its activities with other responsible ministries (e.g. in issues of health with the Ministry of Health, in issues of labour with the Ministry of Labour, Family and Social Affairs, in issues of schooling with the Ministry of Education). In the course of urgent daily matters, the Asylum Sector cooperates directly with elementary schools Vič and Livada (attended by asylum seeking minors) and the public health centre Vič (visited by the asylum seekers in need of medical treatment). But, until 18 years of age, children and unaccompanied minors visit the public health centre Tabor, located in the centre of Ljubljana, which is farther away from the Asylum Home than the public health centre Vič. When 18 years old, the visit the public health centre Vič. All the stated institutions are the closest available to the Asylum Home, although they are still several bus stops away.

Asylum Home is the only open-type accommodation centre in Slovenia. It includes a detention unit. In addition, a limited number of asylum seekers (there were none on May 15, 2007), whose right to move is restricted and who have been previously issued an expulsion decision (before they applied for asylum), are detained in the Centre for Aliens in Postojna, which is under the authority of the Police (hereinafter: Deportation Centre). It is not unimportant where asylum seekers are detained since the level of reception conditions is de

[665] Decisions of the Constitutional Court of the Republic of Slovenia, No. Up-956/06 of 7 July 2006 and No. Up-859/06 of 7 July 2006.

facto higher in Asylum Home (even for those who are detained). Also, communication with refugee counsellors and NGOs from the Deportation Centre is often limited.

Article 45b.(§2) of the Asylum Act also stipulates a possibility for asylum seekers to be accommodated in private apartments on conditions that appropriate accommodation is not available in the Asylum Home or other such facilities and the hearing of an asylum seeker has already taken place. Vulnerable groups may be granted accommodation in private facilities for health reasons even when above stated conditions are not met (Article 45b., §3). In case of emergency circumstances the Government may issue a conclusion allowing asylum seekers to be accommodated in private apartments even when above mentioned conditions are not met (Article 45b., §4). When accommodated in private facilities and being without any income and free accommodation and care, asylum seekers receive a financial aid (Article 45b., §5). A number of those, who were living in private apartments has decreased in the last few months due to an appeal sent to them by the Asylum Home management, stating they have to return to the Asylum Home where a reassessment will be done whether they still meet requirements defined in the Asylum Act for accommodation in private apartments.

In general, the NGOs play an important role in ensuring the awareness of rights and obligations of the asylum seekers, in providing services, legal aid, leisure and education activities as well as carrying out monitoring of reception conditions.

Q.11. **Q11. A.** Explain if you have <u>different types and levels of reception conditions following the different stages of the asylum procedure</u> (this implies that you have to give briefly the necessary explanations about the asylum procedure). Make if relevant for reception conditions a distinction between the following procedural stages: determination of the responsible Member State on the basis of the Dublin II regulation, special procedures at the border (including transit zones in airports), accelerated procedures, admissibility procedures, eligibility procedures and the different possibilities of appeals (suspensive or not) against a refusal of the asylum request. Indicate what the main differences of reception conditions are between the different stages (if necessary by detailing between the different elements of reception conditions, in particular housing) and explain what the evolution of reception conditions is following the different stages of the procedure.

Legally, there is one uniformed level of reception conditions for all stages of the asylum procedure with an exception of legal assistance offered by the refugee counsellors which is only provided in appeal procedures before the Administrative and the Supreme Court. However, there are several situations when asylum seekers are subject to *de facto* lower level of reception conditions:

- when accommodated in the pre-reception area;
- when returned to Slovenia pursuant to the Dublin Regulation;
- when detained in the detention unit of the Asylum Home; and
- when detained in the Deportation Centre in Postojna because their applications are considered manifestly unfounded and abusive.

Pre-reception area: Upon their arrival to the Asylum Home the asylum seekers are accommodated in the pre-reception area where they wait for up to 12 hours for their asylum application to be taken. The pre-reception area is separated from the rest of the Asylum Home

and is kept locked. The asylum seekers must sign a statement saying that they agree their asylum application will be deemed withdrawn if they leave the pre-reception area. This measure is foreseen neither with the Asylum Act nor with any of the implementing acts and can therefore be considered *de facto* limitation of movement. If asylum seekers, accommodated in the pre-reception area, ask the guards to open the door, they are free to go but in that case they are not considered as asylum seekers anymore. During the time of waiting in the pre-reception area they receive one daily food package, consisting of water, toast, chocolate, and tuna fish can per day (and not warm cooked meals as received by other asylum seekers in the Asylum Home) which altogether amounts to 1200 Kcal. Upon the first 12 hours since the arrival they are treated less favourably than later in the procedure. Except for the Legal Information Centre for NGOs, which is also an implementing partner of UNHCR, none of the NGOs has access to the pre-reception area.

The asylum application of the asylum seekers who leave Asylum Home and do not return on time (i.e. within three days – see also the withdrawal of reception conditions, Q. 21. A), is deemed withdrawn, consequently their reception conditions are withdrawn and the asylum procedure is terminated. If they are returned to Slovenia pursuant to the Dublin Regulation, their asylum procedure does not continue but they must lodge another asylum application. Such application is considered a repeat application and they have to wait for a decision detained in the Deportation Centre in Postojna (Article 41, § 3 of the Asylum Act). In practice their applications are considered as manifestly unfounded, abusive and lodged for the sole reason to suspend the deportation.

Asylum seekers detained for filing repeat applications or asylum seekers detained for other reasons, are entitled to *de facto* lower level of reception conditions. E.g. detained minors cannot attend elementary school; detained asylum seekers cannot choose to settle outside accommodation centre and receive financial aid. This does not concern only asylum seekers detained in the Deportation Centre in Postojna, but also those detained in the detention unit of the Asylum Home. In addition, for the asylum seekers detained in the Deportation Centre, health care is limited to the capacity of the nurses and a physician visiting the centre. Their access to NGOs and the access of NGOs to them are limited. In addition, the asylum seekers detained in Deportation Centre are entitled to one hour recreation outside (although for prisons there is a legal minimum of two hours for adults and three hours for minors). Those detained in the detention unit of the Asylum Home have the right to exercise outdoors for two hours but mostly do not go outside at all. Namely, from the detention unit of the Asylum Home it is only possible to exit into a compound cage-like area of 4 x 15 square meters which is not protected from the sun. There is no organized recreation time available for them. For more information on reception conditions in detention please see Q. 33. I. – M.

The Proposal also foresees all above mentioned types and levels of reception conditions. The types are described later in the report.

Q 11. B. Indicate precisely for which stage(s) of the asylum procedure the answers on reception conditions you give below are valid.

Asylum procedure in Slovenia consists of three stages: the first (administrative) stage is carried out before the Asylum Sector of the Ministry of Interior, the second is the appeal procedure before the Administrative Court and the third is the appeal procedure before the Supreme Court. The answers on reception conditions are valid for all three stages of the

asylum procedure from lodging an asylum application to the final decision issued by the Supreme Court. Below, it is made clear when the information is given for the pre-reception area, for the detention unit of the Asylum Home, or for the Deportation Centre in Postojna. The answers include appeal procedures in Dublin and Safe Third Country cases since currently (as of May 2007) until a decision of the Constitutional Court is issued, these appeals still have a suspensive effect.

4. GENERAL RULES ON RECEPTION CONDITIONS

Q.12. **Q 12. A**. Are material reception conditions provided in kind, in money or in vouchers or in a combination of these elements (see article 13, §5 which is an optional provision)? Distinguish between the different elements (housing, food, clothes, health, transportation, pocket money,…). **If reception conditions are provided in money (in general or in some cases, for instance when no places are anymore available in accommodation centres), indicate the precise amount given to the asylum seekers. Indicate in your answer what is provided in general and if there are exceptional cases.** Specify in your answer if reception conditions are different from the general system of social aid for nationals or aliens and if yes, if and when (which stage of the asylum procedure) can asylum seekers have access to the general system of social aid?

In general, material reception conditions are provided in kind (Articles 43-46 of the Asylum Act). Most asylum seekers are accommodated in Asylum Home under the same conditions (except for those detained in the Deportation Centre). Reception conditions are provided in money, only if asylum seekers are accommodated in private apartments. This is only allowed for medical reasons or if other type of accommodation in Asylum Home or its branch office is not available, and if the hearing of the asylum seeker has already taken place. In this case (if an asylum seeker has no money of his or her own) he or she has the right to financial aid, provided by the state (Article 45. of the Asylum Act) in the amount of a minimal income, set by the Minister of Labour, Family and Social Affairs according to the index of growth of living expenses in the past year (on June 5, 2006 the financial aid allowance was 48.062,00 SIT – approximately 200 EUR per person per month). This amount is lowered by 15% if the asylum seeker has free housing, by 40 % if he or she has free food, 55% if he or she has free housing and food. The asylum seekers have to apply for financial aid at the Centre for social work. Financial aid is paid to the asylum seeker each month (article 20 of the proposal of the Regulations on Reception Conditions).

Besides accommodation, asylum seekers have the right to food, clothing and footwear, articles for personal hygiene, humanitarian assistance, emergency health care, elementary schooling, work and legal assistance in appeal procedures (Article 43 of the Asylum Act and Article 3 of the Rules on Reception Conditions). Before they have also received bus tokens to go to the city centre, but now the practice changed and receiving bus tokens is rare. Before the transposition of the directive, the asylum seekers also had the right to pocket money in allowance of approximately 8 EUR per month which enabled them to afford a telephone card, a bus ride to the city centre or other small things that maintain a dignity of a person. With the transposition the pocket money was cancelled due to a reason of rationalization of asylum procedure and the fact that the reception conditions in kind suffice for all the needs asylum

seekers have in the course of asylum procedure.[666] This represents a problem concerning the transposition of the directive.

Transportation costs of asylum seekers (to the police station, from the police station to the Deportation Centre, from the police station to the Asylum Home, to and from health centres, to and from school, etc.) are covered by the state. However, the budget for bus tokens needed to accompany children to school is low and many times the parents need to cover these expenses from their own resources (for more information see Q. 31. B.).

The same elements of material reception condition are foreseen in the Proposal of the Act on International Protection. The state provides accommodation facilities (articles 80 and 81), but in exceptional cases accommodation in private apartments is possible (article 83). Applicants accommodated in private apartments that have no income or whose accommodation and care are not provided free of charge, shall obtain financial assistance in the amount set by the regulation from the third paragraph of Article 78 of this Law (article 83(4)). The regualtion has not been even a project at the time of writing of this report (May 2007). Besides accommodation, applicants also have a right to basic care which entails food, clothing and footwear and personal hygiene necessities, humanitarian assistance, emergency health care, elementary schooling, work and legal assistance in appeal procedures (articles 79, 84, 85, 86, 87 and 13(1)).

Q 12. B. Can the reception conditions in kind, money or vouchers be considered as <u>sufficient</u> "to ensure a standard of living adequate for the health of applicants and capable of ensuring their subsistence" as requested by article 13, §2 of the directive (which is a mandatory provision but leaves a certain space to Member States)? In order to help to assess the respect of this rule when reception conditions are provided in money, include if necessary in your answer points of comparison with the minimum amount of social aid guaranteed for nationals in your Member State.

Accommodation is generally well provided for. The Asylum Home was built in September 2004. The centre and the reception conditions in kind are in principle sufficient to ensure a basic standard of living adequate for the health of the applicants and capable of ensuring their subsistence (except for the vulnerable groups with special needs which are often not met). The Asylum Home has four wards; separate accommodation is foreseen for unaccompanied minors, women, families and single men. The Asylum Home staff generally follows the principle of accommodating each asylum seeker in the department specially foreseen for his or her group. Although the capacity of the Asylum Home is rarely exceeded, the capacity of each ward often is and it is therefore not always possible to separate all the groups. In principle, single women are separated from the rest of the applicants, but are also accommodated in the same ward as unaccompanied minors (including males). Special premises and restrooms for disabled persons are available, but since disabled persons are rarely accommodated in the Asylum Home, single men are put in the rooms intended for the disabled (because the ward for single men is usually overcrowded). Other vulnerable groups are accommodated with regard to their needs if there are free facilities available, e.g. elderly people are accommodated on the ground floor and pregnant women and other vulnerable

[666] As it was indicated in the justification of the legislative amendments, transposing the directive.

groups who need a more peaceful and quiet environment are accommodated with less people in the room or in more peaceful parts of the Asylum Home, if the capacities are available. In the ward for unaccompanied minors and single women there are also single parents with children and couples with no children. This way, families have more room (although it needs to be stressed that lack of availability of the facilities often requires two families to share the same room).[667]

Legally, besides accommodation, the asylum seekers have the right to food, clothing, footwear, and articles for personal hygiene. The ~~proposal of the Regulations~~ Rules on Reception Conditions foresees for vulnerable groups to have the right to additional or different meals, if that will be approved by the social or medical worker; children under the age of 14 will have the right to two additional snacks (which already exists in practice); asylum seekers with specific health needs will be, upon confirmation from the doctor, receive meals suitable for his health; and if possible, meals will be prepared in accordance with the asylum seeker's religious belief (article 11 of the proposal of the Regulations on Reception Conditions). In practice, they receive three meals per day, one thereof is a warm meal, but many asylum seekers are buying additional food in stores. The calorie value of the meals amounts to 2100 – 2300 Kcal per day. Concerning the asylum seekers' beliefs with regard to food it is assured that there is no pork meat on the menu (only chicken, beef and tuna) but otherwise the menu is standard. Many complaints have been made by asylum seekers that food is not tasty, it is sometimes cold and it is not enough. These complaints have been especially made by adult men who would need more portions. Due to complaints, since April 1, 2007, a new company has been preparing and distributing food in the Asylum Home and so far the food has been assessed as better. ~~For other provisions stipulated in the proposal of the Regulations it is not possible to assess if and how they will function in practice.~~

Clothing and footwear, which is mostly provided by Red Cross or Caritas, is stored in a warehouse. Generally, the amount of clothing is sufficient but there is a lack of rules on how the articles from the warehouse should be distributed. Consequently the asylum seekers often experience arbitrary and discriminatory manner of distribution by the warehouse manager. They also receive articles for personal hygiene but if they run out of them it is often problematic to obtain additional articles because sufficient resources are not allocated for this purpose. Problems such as insufficiency of hygienic napkins or baby napkins have occurred.

With regard to the right to health care (Article 46 of the Asylum Act) there are applicants whose needs are not met because the level of health care is limited to emergency health care and essential treatment of disease. E.g. the applicants with serious health conditions the treatment of which is not considered as urgent or essential; the applicants in need of medicine that is not enlisted on the "positive list" – i.e. list of medicine, fully covered by health insurance; and the applicants with special needs are in danger of health deterioration. For that purpose (as well as for other purposes when the asylum seekers need financial assistance to meet their basic needs which are not provided by the state) in the past the NGOs carried out supplementary programs funded by UNHCR and by the NGOs' own resources. One of them was ~~is~~ the eligibility committee, a program organized by the NGO Slovene Philanthropy. The eligibility committee was ~~is~~ receiving and considering applications for financial assistance to those asylum seekers whose needs were ~~are~~ not covered by the emergency health care or reception conditions in general. The eligibility committee had ~~has~~ mostly been granting

[667] Report of the Human Rights Ombudsman of the Republic of Slovenia on visiting the Asylum Home on 23.05.2006.

financial assistance to mothers with small children and people with health issues (e.g. who were in need of glasses, crutches, specific medicine, vitamins for the babies, etc.).

The Rules on Reception Conditions provide for a possibility for asylum seekers with special health conditions to be granted additional health care services. The request for additional health care services has to be lodged at a commission of the Asylum Home (Article 15, § 3 of the Rules on Reception Conditions). The purpose of this commission is to replace the eligibility committee, organized by the NGO Slovene Philanthropy, funded by UNHCR.
Also, Rules in Reception Conditions foresee for asylum seekers to exercise their right to health care by submitting a valid asylum seeker ID card and in some emergency cases, also upon submission of a receipt that he or she has lodged an asylum application. In the past some problems occurred since public health centres did not want to provide medical care merely upon submission of the asylum seeker ID card since they have not been notified by the Ministry of Health on this matter (other patients receive medical care upon submission of their health care card). Also, the Asylum Section, the competent body for accepting asylum applications, does not issue receipts to asylum seekers who have lodged asylum applications. It is therefore impossible to prove the asylum seeker status while seeking medical assistance before an asylum seeker ID card is issued.

When reception conditions are provided in money, the amount stated under Q.12.A, equals the minimum amount of social aid guaranteed for nationals of Slovenia. However, it is questionable whether 205,57 EUR per month can maintain a dignity of a person.

The Proposal of the Act on Temporary Protection (article 78(1)) stipulates the following rights of applicants that would ensure a standard of living adequate for the health of applicants and capable of ensuring their subsistence: basic care in the case of accommodation in the Asylum Home; financial assistance in the case of private accommodation; health care.

A right to basic care entails: accommodation, food, clothing and footwear and personal hygiene necessities. (article 79)

The Asylum Home shall be designated for the accommodation of applicants (article 80(1)). After his application was taken, the competent authority may in exceptional cases accommodate an applicant outside the Asylum Home if accommodation cannot be provided at the Asylum Home or its branches (article 83(1)). Asylum applicants accommodated outside the Asylum Home that have no income or whose accommodation and care are not provided free of charge, shall obtain financial assistance in the amount set by the regulation (article 84(4)).

Article 84(1): The extent of health care services shall include the right to:

1. Emergency medical care, emergency ambulance transportation upon a doctor's decision, and emergency dental care;
2. Essential treatment according to the decision by the physician responsible for treatment, which shall consist of:

- The preservation of vital functions, stopping serious bleeding or preventing fatal bleeding;

- The prevention of a sudden deterioration of health that could cause permanent damage to individual organs or vital functions;
- Treatment of shock;
- Services relating to chronic diseases and states of illness the abandonment of which could directly and imminently result in disability and other permanent health defects and in death;
- Treatment of states of fever and prevention of the spread of an infection that could lead to a septic state;
- Treatment and prevention of poisoning;
- Treatment of bone fractures, sprains and other injuries requiring emergency medical assistance;
- Medications included in the positive list in accordance with a list of exchangeable medications' substitutes issued on the basis of a prescription for treatment of the states specified above;
- Medical care for women: contraceptives, abortion and medical care during pregnancy and at giving birth.

Article 84(2): A vulnerable person with special needs and exceptionally some other applicant shall have the right to additional medical services, approved and defined by the commission referred to in the third paragraph of the previous Article of this Law.

At the time of writing of this report no regulations have been in the process of preparation.

5. PROCEDURAL ASPECTS

Q.13. **Q 13. A. Does the national legislation specifically provide that a request for international protection is presumed to be under the Geneva Convention unless explicitly requested otherwise? (see article 2, b which is a mandatory provision)**

The national legislation specifically states that the request for international protection is presumed to be under the Geneva Convention and the New York Protocol (article 1, §2 of the Asylum Act). Only if the applicant does not meet the criteria for a refugee status, the decision-making body examines the eligibility for subsidiary protection, i.e. if there is a justified reason to believe that the applicant would risk a serious harm if returned to his or her country of origin (article 1, § 3 of the Asylum Act). Both examinations (for refugee status and for subsidiary protection) are carried out in a single procedure (article 1, § 4 of the Asylum Act).

Article 2(1) of the Proposal of the Act on International Protection defines "international protection in the Republic of Slovenia" as "refugee status and subsidiary protection status". Refugee status is recognised to a third-country national or a stateless person who fulfils the requirements as set in the Geneva Convention. Subsidiary protection is granted to a third-country national or a stateless person who does not meet the criteria for recognition of the refugee status, when a well-founded reason exists that this person would face a well-founded risk of serious harm if returned to a country of origin or the country of the last permanent residence. (article 2(2 and 3) of the Proposal of the Act on International Protection) The competent authority establishes grounds for recognition of international protection in an unified procedure, where it first establishes grounds for refugee status recognition and only

then, if these grounds are non-existent, grounds for subsidiary protection recognition (article 34).

Q. 13. B. Explain if the scope of application of reception conditions is extended to other asylum seekers than refugees in the sense of the Geneva Convention, in particular to persons asking for subsidiary protection or to other forms of protection like humanitarian statuses (see article 3, § 4 which is an optional provision)? If not, explain briefly which the differences between these special regimes and the directive are.

The scope of reception conditions described above is also extended to those applicants who apply for or are only eligible for subsidiary protection. In practice, all applicants first apply for asylum according to the Geneva Convention. Subsidiary protection is considered once it is established they do not meet the criteria for a refugee in the meaning of the Geneva Convention. Even if an applicant first applies for subsidiary protection, he or she would enjoy the same scope of reception conditions. There are no special regimes for different types of applicants.

The Proposal of the Act on International Protection will apply both to persons granted refugee status and persons granted subsidiary protection (article 2(1) of the Proposal – a right to international protection).

Q. 13. C. Are there specific provisions in national law for reception conditions in case of diplomatic or territorial asylum requests submitted through a diplomatic or consular representation (see article 3, §2 which is an optional provision)?

No, in Slovenian legislation there are no specific provisions for reception conditions in case of applying for a diplomatic or territorial asylum.

No specific provisions for reception conditions in case of diplomatic or territorial asylum foreseen in the Proposal.

Q.14. **Are reception conditions available as from the moment one asylum application is introduced? How is article 13, §1 which is mandatory legally understood?** Do asylum seekers have to satisfy any other condition in order to get reception conditions?

In practice, asylum seekers are divided into two categories: 1) those who expressed their intention to apply for asylum but their asylum application has not yet been taken, 2) and those who already lodged their asylum application. The first group of people is accommodated in the pre-reception area and is treated less favourably than the asylum seekers. According to the national legislation, foreigners who at their entry into Slovenia declare their intention to apply for asylum must be treated as asylum seekers, have to be allowed to enter the country (article 7, §1 of the Asylum Act), and reception conditions have to be available for them (article 43,

§1 of the Asylum Act). Accordingly, a person becomes an asylum seeker as soon as he or she expresses the intention to apply for asylum.

In practice, they are not treated as asylum seekers until the asylum application is taken which has to be done in 12 hours at the latest after their arrival to the Asylum Home (article 12, §1 of the Instruction on the Procedure). Lodging (taking) the asylum application means conducting a short interview with the applicant, taking his or her statement and writing it in the application, and issuing a confirmation that the asylum application has been lodged. According to law, the reception conditions are therefore available to the applicant from the moment of lodging the asylum application, but not during the time of waiting in the pre-reception area. Since doctors who medically examine persons who expressed their intention to apply for asylum (category 1) as stated above) only come in the morning, the 12-hour time limit is not respected in cases when persons arrive or are brought to the Asylum Home and accommodated in the pre-reception area in the afternoon.

It is important to mention that with the transposition of the directives a new police pre-procedure was introduced (article 26 of the Asylum Act). The provisions introducing the police pre-procedure are at the moment of completing this study (~~October 2006~~ May 2007) being reviewed by the Constitutional Court which has already suspended their application in practice since it is not clear whether or not they are in accordance with the Constitution of the Republic of Slovenia. The provisions under scrutiny give the police the authority to treat the applicant as an illegal immigrant if (*inter alia*) the reasons for which an applicant would be entitled to international protection (the refugee status in accordance with the Geneva Convention and the subsidiary protection) are not evident from the applicant's statement. Whether or not the reasons are evident the police would establish together with the RSD authority (i.e. Asylum Sector of the Ministry of Interior) before the asylum procedure would even begin (article 26, §3 of the Asylum Act). In practice this means that the applicant whose statement *on the face* does not reflect the reasons from the Geneva Convention or the reasons for the subsidiary protection, would not be allowed to lodge the asylum application, would be treated as an illegal immigrant and would therefore not be entitled to reception conditions under the directive (although the RSDP carried out by a competent body has not even been conducted yet). Such measure, enabling the police to return foreigners without a thorough examination of their claim would increase the possibility of a violation of the principle of non-refoulement. As already stated, these specific provisions should currently not be in use because of the on-going procedure before the Constitutional Court. If the Constitutional Court does not annul the stated provisions, the applicant – in order to get the reception conditions – will have to satisfy the preliminary police test on whether his or her reasons correspond to the reasons for a refugee status or for subsidiary protection.

Article 78(2) stipulates that the applicant becomes eligible for the rights as defined in paragraph 1 of the same article (residence, being able to use the procedure in a language for which it is justifiable to assume the person understands, information, basic care when accommodated in the asylum home, financial aid when accommodated in private apartments, free legal aid in procedures before the administrative and the supreme court until a final decision is issued, health care, education, work and employment, humanitarian aid) with submitting a complete application and will remain eligible until the execution of the decision of the responsible authority or at most until the decision becomes final.

Q.15. **Explain when reception conditions end, for instance after refusal of the asylum request** (include in your answer the link with the right of appeal against a decision of refusal of the status, in particular the question of its suspensive effect)

In regular asylum procedures the reception conditions end with issuing a final decision on the asylum application. The decision is final with the expiration of a deadline for the appeal to the Administrative Court, if the appeal was not submitted or, if it was submitted, after the deadline and the delay is not justified; with the expiration of a deadline for the appeal to the Supreme Court, if the appeal was not submitted or if it was submitted after the deadline and the delay is not justified; and with serving the Supreme Court decision dismissing or rejecting the appeal (article 40, §2 of the Asylum Act).

In the regular asylum procedures the appeals have a suspensive effect. In Dublin and Safe Third Country procedures, however, pursuant to the 2006 amendments to the Asylum Act, the appeals to the Administrative Court do not have a suspensive effect (articles 37, §2 and 40.a, § 2 of the Asylum Act). These provisions are also under the scrutiny of the Constitutional Court and until its final decision the appeals will have a suspensive effect.

The ~~proposed~~ adopted implementing acts stipulate that the asylum seeker may remain in the Asylum Home until the expiration of the deadline to leave the country (article 10, § 2 of the ~~proposal of the~~ Regulations on Reception Conditions). If the asylum seeker does not leave the country, he or she is relocated to the Deportation Centre in Postojna.

Article 78(2) obliges the state to provide reception conditions from the time of lodging a complete application and until the execution of the decision of the responsible authority or at most until the decision becomes final.

The decision is final with the expiration of a deadline for the appeal to the Administrative Court, if the appeal was not submitted or, if it was submitted, after the deadline and the delay is not justified; with the expiration of a deadline for the appeal to the Supreme Court, if the appeal was not submitted, or if it was submitted after the deadline and the delay is not justified; and with serving the Supreme Court decision dismissing or rejecting the appeal (article 74 of the Proposal).

The reception conditions are also withdrawn in a case when the applicant withdrawns his application. The procedure will be stopped by the order of the responsible authority and the applicant shall leave the Republic of Slovenia immediately after the order becomes final. (article 50 of the Proposal)

Q.16 Are there special rules or practices regarding reception conditions in case of successive applications for asylum introduced by the same person?

In case of successive (repeat) applications the applicants are detained in the Deportation Centre (article 41, §3 of the Asylum Act) – a prison like facility for illegal migrants. They are detained because they are considered to be abusing asylum procedure, their repeat applications are considered manifestly unfounded and they are considered to be only lodging repeat applications with a purpose to suspend the execution of a negative decision. Although legally they enjoy the same reception conditions, the fact that they are detained means de facto lower level of reception conditions (see also Q. 33.).

The person who lodges a request for the introduction of the procedure of subsequent application shall be accommodated with the body, responsible for persons' removal from the country (article 57(4) of the Proposal).

Q.17. Information of asylum seekers about their rights and obligations in terms of reception conditions, in particular about established benefits (see article 5 which is too large extend a mandatory provision; do not confuse this question with the information to be provided to asylum seekers about the asylum procedure):

Q. 17. A. Are asylum seekers informed, and if yes about what precisely?

Legally, the asylum seeker has to be informed about his or her rights and obligations (article 9, §2 of the Asylum Act). They receive information before the asylum application is taken. They are informed about the rights they are entitled to (residence, basic subsistence, financial assistance if they live in a private apartment, basic health care, free legal aid, humanitarian assistance, primary education, right to work – each right is described in a short paragraph) and their obligations.

As one of the "Basic procedural guarantees of asylum seekers" (article 8) is defined an obligation of the state to inform in a language, for which it can be justifiable to assume that the asylum seeker understands, about the procedure in the Republic of Slovenia, about rights and duties during the procedure, and possible consequences in a case when the asylum seeker disregards duties and does not cooperate with competent authorities (indent 1).

Q. 17. B. Is the information provided in writing or, when appropriate, orally?

The Asylum Sector provides the information to them in writing. The applicants are given a brochure when they are placed in the pre-reception area where they wait for their asylum application to be taken. The brochures are given to the applicants by the guards. In the process of taking asylum application the competent official asks them whether they have received the brochure and whether they have understood the information provided to them orally by an NGO representative. In 2007 Legal Information Centre for NGOs (implementing partner of UNHCR and the only NGO that has access to the pre-reception area) has started implementing a project, co-financed by the European Refugee Fund and The Ministry of the Interior, providing information sessions before lodging asylum applications. Information sessions take place before each lodging of the asylum application with each asylum seeker. Information sessions are conducted by a representative of the above mentioned NGO where an interpreter is present. After conclusion of the information session the asylum seeker signs the record of the information session stating he/she has understood rights and obligations according to the Asylum Act have been presented in an understandable manner. The record is used by the Ministry of the Interior as an evidence to prove the fact of the asylum seeker being well informed.

While waiting in the pre-reception area the applicants are visited by a representative of the Legal Information Centre for NGOs. The representative of the NGO talks to the applicants, explains their rights and obligations to them in detail, and makes sure the applicants

understood the information. This activity is conducted upon the initiative of the NGO and ~~is~~ has been financially supported by UNHCR.[668] When negotiations between NGOs and the Ministry of Interior on the projects activities that would be financed by the Ministry of Interior through ERF funds took place, NGOs repeated the necessity to regard persons who expressed the intent to apply for asylum as asylum seekers, having the same rights and obligations as those asylum seekers who have already lodged the application. The basis for such treatment of those persons lies, according to UNHCR's and NGOs' point of view, in article 7 of the Asylum Act (see above Q. 14.). Nevertheless, the Ministry of Interior did not accept this notion and providing of free legal aid in the pre-reception area could not be included in project proposals on providing free legal aid which were later approved and are now financed by the Ministry of Interior and by ERF funds.

The Proposal of the Act on International Protection obliges the state to provide to an applicant seeking international protection a brochure with information on the procedures defined in this act, rights and duties of applicants, possible consequences of disregard of duties and of lack of cooperation with competent authorities and about time-limits for enforcement of legal remedies, a list of refugee counsellors as well as a list of NGOs working in the field of asylum. The brochure has to be served to a person in a language for which it is justifiable to assume that the applicant understands, so that the applicant becomes acquainted with the information before he submits the application. If the applicant is illiterate or the content is not understandable to the applicant, the content is read to him and additionally, with a help of an interpreter, explained in a language, for which it is justifiable to assume that the applicant understands. (article 9)

Q.17. C. Is that information in general provided in a <u>language</u> understood by asylum seekers? Specify the list of languages in which it is available

Information on rights and obligations is provided in writing in most of the languages that the asylum seekers who come to Slovenia speak: Serbian/Croatian, Russian, Albanian, Turkish, Kurdish, Arab, Persian, Bengali, Urdu, English and French. There are no brochures provided in a language of Georgians, Bangladeshi, Roma and Kurds.

Information sessions are conducted in a language understood by asylum seekers since an interpreter is present.

For the Proposal of the Act on International Protection see Q.17.B.

Q. 17. D. Is the <u>deadline</u> of maximum 15 days respected?

Information on the rights and obligations of the asylum seekers are made available to them in writing as soon as they are brought to the pre-reception area of the Asylum Home and before their application is taken. Normally, that is within the 12-hour deadline after they are brought to the pre-reception area. ~~At~~ Before the acceptance of the application (normally within the 12-

[668] The visits in the pre-reception area are a replacement for the information sessions that were held in the Asylum Home until May 2005. The sessions were conducted jointly by the Asylum Home employee and an NGO representative. At the sessions, the Asylum Home staff and the NGOs made sure the asylum seekers received and understood the information about their rights and obligations which, according to the NGOs, often proved useful later in the procedure. In May 2005 the information sessions were discontinued by a decision made unilaterally by the Asylum Sector. There was no official explanation for the cancellation provided.

hour deadline at the latest), during the information session, they have the opportunity to ask additional questions. Formally, the 15-day deadline is respected (please see Q. 17. B.).

The brochure will be submitted before the application for international protection is submitted so that the applicant becomes acquainted with the content (article 9(2) of the Proposal of the Act on International Protection).

Q.18. Information of asylum seekers about the existence of organisations or groups promoting their interest and defending their rights (see article 5 which is to a large extend a mandatory provision):

Q. 18. A. Is there a list of organisations dressed by the authorities and if yes is it comprehensive? Is this in particular the case about the possibilities to get legal assistance and health care?

According to the law, the applicants must be informed about the possibility to contact the NGOs, offering assistance to asylum seekers, in a language they understand (article 9, § 2 of the Asylum Act). In practice the applicants do not receive a list of organizations offering assistance to asylum seekers nor are they systematically informed about the NGOs by the Asylum Home employees. This problem has been addressed by the NGOs on many occasions, demanding from the Asylum Home employees to hand out information sheets with information on NGOs working in the refugee field to every asylum seeker. The NGOs approach the applicants on their own initiative and provide information to them. The activities of the NGOs differ: some are more focused on legal counselling (e.g. Legal Information Centre for NGOs, Foundation GEA 2000), some offer psycho-social assistance to the applicants (e.g. Slovene Philanthropy, Novi Paradoks), while others organize various activities and classes (e.g. Mozaik, Slovene Philanthropy, Jesuit Refugee Service, etc). There are no specialized NGOs for health care in Slovenia.

See above Q.17.A.

Q. 18. B. Is the information provided to the asylum seekers, and if yes, in writing or, when appropriate, orally?

There is no organized system of providing comprehensive information on the NGOs, their role or their activities neither in writing nor orally. The applicants get the information on NGOs because they approach them themselves or because NGOs organize activities and are present in the Asylum Home. During information sessions the representative of Legal Information Centre for NGOs points out that two NGOs (Legal Information Centre for NGOs and Slovene Philanthropy) are daily present in the Asylum Home and can thus be easily accessible. The applicants may also receive the information from the social workers or from other asylum seekers but the information is not provided to them in an organized way.

Q. 18. C. Is that information in general provided in a language understood by asylum seekers? Specify if possible the list of languages in which it is available.

There is a schedule of the NGO activities hung on the board in a format of a chart (specifying the days and hours of the activities) but there is no written translation available into other languages. Upon request the charts are explained to the applicants by the social workers in a

language they understand, which is mostly in Serbian and English (currently, most of the asylum seekers in the Asylum Home are from Serbia, Montenegro as well Bosnia and Herzegovina).

Also, Legal Information Centre for NGOs has put on notice boards in different wards of the Asylum Home information on providing free legal aid, when and where it can be obtained. Information is provided in several foreign languages.

Q. 18. D. How many organisations are active in that field in your Member State?

In the field of asylum there are currently twelve active NGOs:
- Amnesty International Slovenia (monitoring, lobbying)
- Association Ključ (prevention and assistance to victims of trafficking)
- Association Mozaik (activities for children)
- Foundation GEA 2000 (legal assistance, monitoring activities)
- Institute for African Studies
- Jesuit Refugee Service (leisure activities for women and single men)
- Legal Information Centre for NGOs – PIC (legal assistance, providing information about the rights, obligations and asylum procedure, monitoring activities)
- Matafir – Association for Intercultural Relations (research, monitoring activities)
- Peace Institute (private research institute, also conducts monitoring activities)
- Racio Social (psycho-social assistance)
- Slovene Philanthropy (psychosocial assistance, guardianship).

In general, the NGOs active in the field of asylum have a limited capacity. On one hand, there is a lack of funding (they receive only 10% of the grant provided to the Republic of Slovenia by the European Refugee Fund) and a lack of skilled personnel (which is connected to the lack of funding and consequently the instable working environment). Two of these NGOs (Slovene Philanthropy and Legal Information Centre for NGOs) are extensively funded by UNHCR and are functioning as their implementing partners which enables them to provide the most essential activities such as guardianship, psycho-social assistance to vulnerable groups, eligibility committee, providing information, monitoring activities etc. For many of their activities they engage students and volunteers.

Q.19. Documentation of asylum seekers (see article 6):

Q.19. A. What kind of document is delivered to the asylum seeker? Explain the legal value of this document (just a certification of the status as asylum seeker or also prove of identity?) (see §1 of article 6 which is a mandatory provision)

Asylum seekers receive a certificate of the submission of an asylum application and documents; and asylum applicant identification card (article 56, § 1 of the Asylum Act). The certificate of the submission of the asylum application confirms the fact that a person is an asylum seeker and that the application has been lodged. The identification card which, according to the law, should be issued to the applicant within 12-hours after his or her arrival to Asylum Home is mandatory (article 60, § 1 of the Asylum Act). It serves as a proof of identity and as a permission for temporary residence in Slovenia until the end of asylum procedure, i.e. until the final decision upon the asylum application is served to the applicant

(articles 11 and 57, § 1 and 3 of the Asylum Act; article 2, § 1 and 2 Rules on Reception Conditions).

Still, in cases when an asylum seeker is detained due to lack of established identity, the Ministry of Interior, the Asylum Sector does not issue an asylum applicant identity card, because, as they explain it in the argumentation of the detention decision, it is not possible to allow such person to move freely in the territory of the Republic of Slovenia and to provide to such asylum seeker all rights as provided to other asylum seekers. Legal Information Centre for NGOs has argued this argumentation in several appeals against restriction of movement and the Administrative Court has confirmed the practice as being incorrect, but so far the Asylum Sector has ignored the Court's opinion.

The Proposal of the Act of the International Protection foresees in its article 112(1) issuing of an applicant card which no longer proves identity of an asylum seeker but only proves his legal status of an asylum seeker and serves as a permission for temporary residence in Slovenia.

Q.19. B. Are there situations or specific cases in which another equivalent document or even no document is issued? (in particular is there an exception for "procedures to decide on the right of the applicant legally to enter the territory" as made possible by §2 of article 6)?

According to the Asylum Act issuing an ID card to asylum seekers is mandatory (article 60, § 1 of the Asylum Act). There are no situations foreseen with the law when the ID would not be mandatory. The ID cards of the asylum seekers detained in the Deportation Centre are kept by the management of the Deportation Centre.

In addition, if the provisions of article 26 of the Asylum Act which introduced the police pre procedure, remain valid (i.e. if the Constitutional Court does not annul them), the applicants might need to spend some time at the border or in other police-controlled premises in order to be allowed to legally enter Slovenia. In such case, no identification document for the time of waiting on such decision will be issued. However, in the moment of completing of this study (~~October 2006~~ May 2007) it is still not clear whether or not the police pre-procedure will remain valid since the Constitutional Court has not yet decided upon the constitutional complaint against these provisions.

Q.19. C. For how long is this document in principle valid and is it necessary to renew it after a certain period?

There is a discrepancy in the provisions of the Asylum Act and the Rules on Reception Conditions. On one hand the Asylum Act states that the identification document is valid until the end of the asylum procedure (i.e. until the decision upon the asylum application becomes final – see also Q. 15.) (article 57, § 3 of the Asylum Act). It does not mention any duty of the asylum seeker to apply for extension of the document. On the other hand, the Rules on Reception Conditions foresee the issuing of the identification document of the asylum seeker with a validity of a maximum of 60 days with a possibility of extension. The applicant must apply for the extension of the identification document in person in official hours of the competent body before the expiration (article 2, § 3 of the Rules on Reception Conditions). Such procedure may be too bureaucratic. In practice, in official hours no official is present in

the office that is intended for administrative affairs of the asylum seekers. If the applicants wish to talk to the officials of the Asylum Sector, they must notify the guards that they want to see one of the officials and tell the guards about what they need. The guards then call the official and notify him or her on the asylum seeker's request. The official decides whether he or she would see the applicant. Considering such practice it is questionable how the extensions of the ID cards will be achieved in practice.

It is also not clear what will happen if the applicant will miss the expiration date and apply for extension after that date. As the practice shows, asylum seekers do tend to forget to apply for extension. So far, no problems occurred. But the danger is that the applicant, whose identification document is expired because he or she forgot to apply for extensions, would not be entitled to health care or that he or she would be treated as an illegal migrant by the police although he or she would legally still be an asylum applicant.

The Proposal of the Act on International Protection stipulates validity of the applicant card for the maximum 60 days, with a possibility to be extended (article 112(3)). If the Proposal will be adopted in the Parliament, it will then be in conformity with the Rules on Reception Conditions, which are not in conformity with the Asylum Act at the moment.

Q.19. D. What is the deadline for the delivery of that document? Is the mandatory deadline of 3 days set by article 6, §1 respected[669]?

The identity card is issued to the applicant within 12 hours after he or she arrived to the Asylum Home. This deadline is connected to the 12 hour period in which the asylum application must be taken. Until June 2005, there was a lack of staff taking the asylum applications and they were only working on weekdays but not on Saturdays, Sundays and holidays. Consequently, both deadlines (12 hours according to Asylum Act and 3 days according to the directive) were often not respected. In June 2005 the Asylum Sector increased the number of officials taking the asylum applications and organized the on-call system of taking the applications on weekends and holidays.[670] Since then the deadline of 3 days is respected.

According to the Proposal of the Act on International Protection the applicant card has to be issued in three days after the application has been lodged at the latest (article 112(2)).

Q.19. E. Is it possible for an asylum seeker to get a travel document for serious humanitarian reasons (see §5 of article 6 which is an optional provision)?

Legally, the possibility of receiving a permit for border crossing for the applicants is foreseen (article 56, § 1 of the Asylum Act), but there are no such cases in practice. In general, the asylum seekers are not allowed to leave Slovenia during the asylum procedure (article 58 of the Asylum Act).

[670] Report of the Human Rights Ombudsman of the Republic of Slovenia on visiting the Asylum Home on 23.05.2006.

No travel document issued to an asylum seeker in cases of serious humanitarian reasons is foreseen in the Proposal of the Act on International Protection.

Q.19. F. Is there a central system of registration of asylum seekers and is it or not separate from the registration of aliens? If yes, describe it briefly (content) and indicate in particular if it is an electronic database.

A central register of asylum seekers is kept in electronic form separately from the registration of aliens. It contains personal data (name, date and place of birth, sex, nationality, personal status, address of residence, ethnicity or tribe, religion, education, profession, membership of a political party or organization, identification documents, criminal record, special needs), route information (countries of residence after leaving the country of origin, date of entry in Slovenia, place and type of entry), data on previous asylum applications in Slovenia and elsewhere, family data of an unaccompanied minor, close family members accompanying the asylum seeker, other relatives accompanying the asylum seeker, relatives of the asylum seeker already residing in the Republic of Slovenia, close family members living in the country of origin, family members living outside the country of origin, statement of the asylum seeker and other findings of the competent body (articles 63.b, § 1 and 63.e of the Asylum Act). Further, the register also contains data on the procedure (rejected or approved applications, deadline to leave the country etc) and some specific data on reception conditions enjoyed by the applicant, e.g. social aid, elementary schooling, and working (article 63.e, § 4 of the Asylum Act).

The Proposal of the Act on International Protection sets up 35 different registries on information regarding asylum seekers, refugees, subsidiary protection seekers and persons enjoying subsidiary protection (article 118 of the Proposal). The register of the applicants will be kept electronic form separately from the registration of aliens.

Q.20. Residence of asylum seekers :

Q.20. A. Is in principle an asylum seeker free to move on the entire territory of your Member State or only to a limited part of it and in case, which part? (see article 7, §1 which is a mandatory provision)

In principle, the asylum seekers are free to move across the entire territory of Slovenia. However, in practice they need to notify the social worker every time they wish to leave the Asylum Home. Leaving and entering is subject to time limitations since it is not allowed to leave the Asylum Home before 6 a.m. and after 10 p.m. (11 p.m. in the summer time). If they want to leave the Asylum Home for periods of up to three days they must obtain a written permission from the Head of Asylum Home. If they wish to leave the Asylum Home for periods longer than three days, they must obtain a written permission from the Head of the Asylum Sector on the proposal of the Head of the Asylum Home (article 5, § 3 and 4 of the Internal Regulations). In addition, every morning at 7.30 the social workers count the asylum seekers and check their IDs. If they are caught outside Ljubljana (especially in a direction closer to the border with Italy) they are considered to be abusing the asylum procedure and their applications are seen as manifestly unfounded. See also Q. 20.E.

In practice, Asylum Sector staff which take the asylum applications, warn asylum seekers not to move close to the border as such action could be understood as an abuse of the procedure. In one case a family was permitted to visit friends during the

weekend in a town close to the border with Italy. Because they got lost and already entered Italy (not knowing where exactly they are) they were issued manifestly unfounded decision few days after the incident.

Also, for a few months an ongoing practise is present in the Asylum Home punishing asylum seekers who return to the Asylum Home after 10. p.m. (even if it is at 10.10p.m.) by forcing them to spend the night in the pre-reception area and return to the Asylum Home the next day after 6.00 a.m.

In practice, many male asylum seekers leave the Asylum Home before 6.00 a.m. for work, and at 7.30 a.m. when asylum seeker are counted those men are erased from evidence. But, later in the day, when they return to the Asylum Home they are again listed in the evidence.

The Proposal of the Act on International Protection does not foresee limitation of movement to a part of the territory except for limitation on grounds as defined in the article 51 (please see Q.33.A).

Q.20. B. About the <u>place of residence (see §2 of article 7)</u>: explain to which extend the person is free to choose her residence and if this depends of the stage of the asylum procedure (for instance before and after admissibility); if there are constraints limiting the choice, explain which ones and their reasons (for instance processing of application, attribution of reception conditions,…).

Most asylum seekers are accommodated in the only existing Asylum Home in Slovenia (article 45 of the Asylum Act) (some are detained in the Deportation Centre; for detention reasons and reception conditions in detention please see Q. 33). They are allowed to be accommodated in private apartments only if other type of accommodation in Asylum Home or its branch office is not available and if the hearing of the asylum seeker has already taken place, or for health reasons (article 45.b, § 2 and 3 of the Asylum Act). Still, it is not possible for an asylum seeker to be accommodated in a private apartment by himself/herself but only with someone who guarantees for the asylum seeker (owner of the apartment or the tenant who also lives there). Letter of guarantor must be added to the asylum seeker's application to the commission to grant his request to be accommodated in a private apartment. The guarantor must state in his letter whether the accommodation and food are free; if not, asylum seeker will receive financial aid. These provisions were introduced with the transposition. Before that, persons were free to choose their residence.

The Proposal of the Act on International Protection also foresees accommodation of asylum seekers in the Asylum Home or its branch office. Those who shall be accommodated in the Asylum Home or its branch office will have to provide (partially) for their accommodation when receiving income. Under the same conditions as in the present Asylum Act asylum seekers will be allowed to accommodate themselves in private apartments (see Q. 10.).

Q.20. C. About the <u>place of reception (meaning where the asylum seeker has to stay to benefit from reception conditions) (see § 4 of article 7)</u>: explain which are the general rules about the determination of this place (to which extend are the decisions determining the place taken individually and do they take into

account the personal situation of the asylum seeker?) and to which extend the person is free to choose it and if it depends of the stage of the asylum procedure (for instance before and after admissibility); if there are constraints limiting the choice, explain which ones and their reasons (for instance attribution of reception conditions, processing of the application,…).

The only personal situation taken into account for allowing the applicants to choose their residence are health reasons (please see answer to Q.20. B.). In practice, health reasons are understood very narrow since it is not enough for an asylum seeker to have a doctor's certificate on his health reasons, but the certificate has to include the doctor's opinion that Asylum home is not suitable for him/her and that an accommodation in private apartment is recommended.

In general, the actual presence in Asylum Home is a condition for eligibility for reception conditions. Every morning at 7.30 a.m. the asylum seekers are counted and their presence at the Asylum Home is verified by checking their identification documents. If a person is not present during the counting for three consecutive days his or her asylum application is deemed withdrawn and the asylum procedure is terminated. This is a practical administrative measure, not foreseen in the law.

Q.20. D. If all asylum seekers are not placed in accommodation centres because of capacity limits, explain <u>how the persons are distributed between accommodation centres and other accommodation facilities</u> (which authority takes the decisions, on the basis of which elements, can that decision be appealed by the asylum seeker,…)

Up until the moment of completing this report (May 2007) on a few occasions the number of asylum seekers exceeded the capacity of the Asylum Home. On those occasions the Asylum Sector used measures to transform the multipurpose facilities of the Asylum Home into a temporary accommodation area with foam beds and additional bathrooms until the circumstances normalized. In case of a need to distribute the applicants into other areas (or when the branch offices of the Asylum Home will be established, as foreseen with the law), the competent body to take decisions on the distribution will be the Asylum Sector of the Ministry of Interior. With the Rules on Reception Conditions it is foreseen that the applicants move to other facilities if the Asylum Home cannot ensure the asylum seeker appropriate accommodation and case that would take into consideration his specific circumstances. The Rules on Reception Conditions give examples of such facilities being safe houses, psychiatric institutions, home for the elderly, etc. However, there are no criteria foreseen to define on the basis of which elements the applicants would move to other facilities. In the Rules it is foreseen that the Asylum Sector issues a decision on moving of the applicant to another facility, therefore the applicant should have the right to appeal to the Administrative Court in 30 days in accordance with general provisions on asylum procedure (article 6 of the Rules on Reception Conditions).

Q.20. E. How can an asylum seeker ask to <u>leave temporarily</u> the place of residence or of reception or an assigned area? How is the individual AND impartial character of the decision ensured? (see §5 of article 7 which is a mandatory provision)

The asylum seekers must inform the social worker every time he or she wants to leave Asylum Home or its immediate vicinity. In general it is only allowed to leave the Asylum Home after 6 a.m. and return before 10 p.m. (11 p.m. in the summer time). The asylum seekers are obliged to inform the social worker about the place of their whereabouts and their overnight stay, and a contact telephone number where they can be reached (article 5 of the Internal Rules).

The individuality of the decision is ensured since a social worker is taking decisions on a case by case basis. Impartiality of decision making is not ensured since the social worker is employed by the Asylum Home and is in contact with the asylum seeker every day. Also, there is no appeal possible if temporary leave is not allowed since no written decision is issued which represents a problem concerning the transposition of the directive.

The Proposal of the Act on International Protection does not foresee any procedure that would ensure individual and impartial character of the decision. Also, whether it is possible to leave the place of residence temporarily is not defines in the Proposal, but will probably be included in the Internal Rules of the Asylum Home as it is currently.

Q.21. **Q.21. A. Do rules on <u>reduction or withdrawal of reception conditions</u> exist in internal legislation and if yes in which cases (mention in particular if there are cases not foreseen by article 16, § 1 and 2 which are optional provisions)? Distinguish in your answer between cases of reduction and withdrawal and explain which conditions can be reduced and if access to emergency health care is always ensured as requested by article 16, §4, last sentence.**

Reception conditions are withdrawn when the asylum application is deemed withdrawn for reasons for which the asylum seeker is responsible. In these cases the asylum procedure of the applicant is terminated. Regardless of the stage of the asylum procedure, the reception conditions are withdrawn for two general reasons: if the asylum application is rejected and if the asylum seeker withdraws his or her application. However, the asylum application is *deemed withdrawn* and consequently the reception conditions withdrawn in case of (article 42, § 1 of the Asylum Act):

- non-compliance with reporting duties or with requests to provide information: if in spite of a received summon, the asylum applicant fails to attend the interview or oral hearing without prior justification; if the asylum applicant fails to notify the change of his or her address which leads to unsuccessful deliveries of summons or other mail; if the asylum applicant refuses to co-operate in establishing his/her identity
- abandoning the place of residence: if it appears clearly from the official record kept by the competent asylum authority that the asylum applicant has without due notice left the Asylum Home or its branch and did not return within 3 days from her/his arbitrary departure; if within three days from the notice made by the landlord to the competent authority for conducting the asylum procedure, the asylum applicant has not returned to his or her declared residence.

In spite of the obligation of asylum seekers who can rely on their own financial means, to bear their expenses (article 45, § 4 of the Asylum Act) there is no specific provision in the Slovenian legislation that the reception conditions would be withdrawn from an asylum

seeker who concealed to have had sufficient material means to cover material reception conditions. In practice those asylum seekers accommodated in Asylum Home are not required to pay for reception conditions (although the enforcement of this in measure is already in preparation). On the contrary, this measure has always been enforced in the Deportation Centre in Postojna: the money of asylum seekers detained in Postojna is used to cover their reception conditions.

The possibility of reducing the reception conditions are not foreseen with the Slovenian legislation. In practice though, there are informal ways of reducing reception conditions concerning the right to health care and the right to subsistence. The asylum seekers in need of medical assistance are not aware of the fact that they can visit the public health centres on their own but they go to the nurse employed at the Asylum Home and ask her to make an appointment at the public health centre for them. Whether or not they will get the appointment depends on whether the nurse will believe them that they are sick or in pain. In such cases it is impossible to file an appeal because there are no written decisions issued to the applicants. It is therefore questionable if access to emergency health care is always insured. For more information please see Q. 27. B. and C.

In addition, the asylum seekers who are detained are entitled to de facto lower level of reception conditions which amounts to a reduction of reception conditions (e.g. no right to work, de facto limited access to health care, no right to schooling). For more information please see Q. 33.

The Proposal of the Act on International Protection does not foresee any changes regarding withdrawal or reduction of reception conditions. On the other hand, the Proposal foresees the possibility to claim a refund in the amount of all or part of expenses for a person's accommodation if later the competent body establishes the fact that the person had money upon arrival in the Asylum Home or received it later (article 80).

Q.21. B. Has article 16, §2 dealing with refusal of reception conditions for <u>unreasonably late applications</u> for asylum been transposed by your Member State (or was this case already applicable before transposition)? Are there cases in practice?

According to Slovenian legislation it is required to lodge an asylum application without delay (article 8, § 1 of the Asylum Act), but there are no specific provisions sanctioning unreasonably late applications. However, in practice late lodging of the asylum applications can be interpreted as abusing the asylum procedure, although the Constitutional Court in its recent decisions ruled that lodging an application after few days does not automatically mean the abuse of the procedure. Still, most single men - asylum seekers who failed to file an application without delay, that is immediately, are accommodated in the Aliens Centre in Postojna, where the level of reception conditions is automatically lower. Consequently the applications are considered as manifestly unfounded since late lodging of the application is seen as an attempt to postpone a forced deportation (article 36 of the Asylum Act). In practice such cases are numerous.

The Proposal of the Act on International Protection does not foresee any change regarding the time in which lodging of the application is necessary. ("An alien who legally entered the Republic of Slovenia shall express his intent to file an application as soon as possible. If an

alien entered the Republic of Slovenia illegally, he shall express his intent to file an application as soon as possible. In this case, he shall not be prosecuted for violation of illegal crossing of the state border." – article 35 of the Proposal.

Q.21. C. How is it ensured that decisions of reduction or withdrawal are taken individually, objectively AND in particular impartially (for instance through and independent arbitrator) (see article 16, §4 which is a mandatory provision)?

All first instance decisions on the withdrawal of reception conditions, issued by the Ministry of Interior, can be challenged by filing a complaint to the Administrative Court and afterwards to the Supreme Court. This is only possible, however, if a written decision is issued. In such cases individuality, objectivity and impartiality is secured due to judicial review.

However, an oral decision (which is most common in cases of actual reduction) cannot be appealed against. Therefore the individuality, objectivity and impartiality are not ensured.

The Proposal of the Act on International Protection lacks of any provision that would ensure/impose obligation that decisions of reduction or withdrawal are taken individually, objectively and in particular impartially.

Q.21. D. Is statement 14/03 adopted by the Council at the same moment as the directive respected (see the document attached to our sending)?

Some provisions of the Statement 14/03 adopted by the Council are respected while others are insufficiently followed. The prohibition of inhuman and degrading treatment is respected. Neither the NGOs nor the asylum seekers complain in those terms. However, there is a discrepancy between the legal provisions and the reality in terms of respect for human dignity, treatment of vulnerable groups and emergency health care. With respect for human dignity the asylum seekers often experience arbitrary and discriminatory treatment from the nurse and the warehouse manager in the Asylum Home, and there is no possibility to complain against that and receive a written decision. With the transposition of the directive the access to labour market was restricted to after one year since lodging the asylum application while at the same time the pocket money has been cancelled. Consequently, the asylum seekers have been deprived of any legal income which would enable them to afford small things, such as a bus ride to the city centre, a phone call etc., and maintain the minimum level of human dignity. Many asylum seekers are detained in the Deportation Centre without a formal decision on detention issued to them, although they have not been found guilty of any crimes and although the reasons for their detention have not been established. For more information on reception conditions in detention please see Q. 33.

Moreover, arbitrary behaviour of the nurse in Asylum Home and the fact that in the Deportation Centre anti-depressants and pain-killers are massively prescribed to the asylum seekers are facts that de facto restrict the right to emergency health care of the asylum seekers. For more information on health care please see Q. 27. B and Q. 33. I.

With respect to vulnerable groups the discrepancy between the law and the practice is most visible. While the law stipulates special programs and treatment of the vulnerable groups, no such measures exist in practice. There is no procedure for determining that a person belongs to a vulnerable group and there are no programs

or specialized counselling sessions available because the two social workers and one psychologist, employed in the Asylum Home, are preoccupied with tasks concerning accommodation and control of the asylum seekers. The only specialized programs for vulnerable groups are conducted by the NGOs and these activities are mostly funded by their own sources or by the UNHCR.

Q.21. E. Are there already administrative appeal decisions or judgements on cases of reduction, withdrawal or refusal which have been taken, and if yes, what has been the outcome?

There are no specific cases on withdrawal or reduction of reception conditions, except for the cases where asylum applications were treated as manifestly unfounded because of an alleged abuse of the asylum procedure. The appeals in these cases do not counter a reduction of reception conditions as such but are filed as any other appeal against a rejection of the asylum application.

It is important to mention again the decisions of the Constitutional Court which extended the duration of reception conditions (accommodation and food) beyond the final decision on asylum application. We experienced four such cases (four families). For more information please see Q. 9. [671]

Q.22. **Q.22. A.** **<u>Appeal</u> against a negative decision relating to the granting of benefits or based on article 7 (see article 21 which is a mandatory provision): indicate against which decision an appeal can be introduced, describe the system of appeal in general and include in particular in your answer the information given to asylum seekers about possibilities of appealing, deadline for appealing, if the appeal has or not a suspensive effect, if there are different steps (for instance first an administrative appeal and in particular if the guarantee of an appeal before a judicial body in the last instance is respected)?**

Against all first instance decisions issued by the Ministry of Interior an asylum seeker has the right to file an appeal to the Administrative court and after that to the Supreme Court (both are judicial bodies). However, the possibility to appeal depends on whether the reception conditions are *withdrawn* or *reduced.*

If they are withdrawn and consequently the asylum procedure is terminated (due to reasons for which the asylum seekers are responsible – see Q. 21.A), they are issued a written decision against which they can file an appeal to the Administrative court and after that to the Supreme Court. The deadline for appealing to the Administrative court is 3 days (article 38, § 3 of the Asylum Act) and for appealing to the Supreme Court 15 days. Both appeals have a suspensive effect. The asylum seekers are informed about the possibility to appeal against a negative decision and about the appeal procedure in writing through a leaflet they receive in the pre-reception area before lodging their application. The information about the possibility to appeal is also included in the decision on the termination of the procedure.

[671] Decisions of the Constitutional Court of the Republic of Slovenia, No. Up-956/06 of 7 July 2006 and No. Up-859/06 of 7 July 2006.

If the reception conditions are reduced (which is not foreseen by law but happens in practice – see Q. 12. for subsistence and Q. 27. C for health care) there is no possibility to appeal which represents a problem concerning the transposition of the directive.

The same system of appeal is foreseen in the Proposal of the Act on International Protection (article 74(3 and 5)).

Q.22. B. Explain which are the possibilities for asylum seekers to benefit from legal assistance when they introduce such an appeal (see article 21, §2 which is a mandatory provision but leaves space to Member States)?

Legally, in the case of *withdrawal* of the reception conditions the asylum seekers have the right to free legal assistance in the second and third instance of the asylum procedure, i.e. in the appeal procedures before the Administrative and Supreme Court (article 43, § 1 of the Asylum Act). The legal assistance is provided free of charge and is offered by the refugee counsellors, whose expenses and rewards are covered by the state budget (article 16, § 5 of the Asylum Act). The refugee counsellors are appointed by the Ministry of Interior (article 16, § 1 of the Asylum Act) – the same body that also decides upon the asylum applications. Before the transposition, the Ministry of Justice was appointing and paying the refugee counsellors, which may have been more appropriate since the Ministry of Justice is not an interested party in the asylum procedure. Before the directive was transposed the asylum seekers also had the right to free legal assistance, offered by the refugee counsellors, at the first instance of the asylum procedure which might be problematic because if there is no free legal assistance available in the first instance procedure, the asylum seekers without a legal representative often fail to stress certain facts or submit evidence that would be useful for their procedure. Having a legal representative only on the second and third level of procedure is often meaningless because new facts and evidence cannot be invoked in appeal procedures if they were not invoked already in the first instance procedure. Since the free legal assistance is cancelled the NGOs set up programs to supplement for the legal counselling in the first instance that was previously offered by the refugee counsellors. In practice, there are also many problems concerning the right to free legal aid and the refugee counsellors which make the access to free legal aid more difficult. For more information please see Q. 26. B.

In case of *reduction* of the reception conditions there is no free legal assistance available which represents a problem concerning the transposition of the directive.

The Proposal of the Act on International Protection also foresees the right to free legal assistance in the second and third instance of the asylum procedure, but deprives the refugee counsellors of the right to receive a reward for their work and to be compensated for their costs in the procedure in cases when the asylum seeker has his own financial means, when the legal remedy was not successful, or in cases when the refugee counsellor filed an appeal which was not allowable. (article 13 (1 and 6) of the Proposal)

Q.22. C. Are there already administrative appeal decisions or judgements which have been taken and if yes, which are the main important ones?

No, there are no appeal judgments concerning the withdrawal of reception conditions (in case of reduction it is not even possible to appeal). There are only appeal judgments concerning the

manifestly unfounded applications which result in a withdrawal of reception conditions because of the alleged abuse of the asylum procedure. No appeals have been filed in cases the reception conditions were withdrawn because an applicant had not returned to the Asylum Home for three days, since such person is normally not in the country anymore.

There was a case that needs to be mentioned concerning the refusal of the request to move to a private apartment. The refusal was not issued in a form of an official decision but in a form of an informal letter/notification. The legal representative of the asylum seeker filed an appeal to the Administrative Court asking the court to consider the notification as a decision and to accept the appeal into consideration. Namely, this has been the only written response the applicant has received from the Asylum Home when he requested to be allowed to move. However, the Administrative court declared the appeal inadmissible because according to the opinion of the judges this "notification" could not be understood as a "decision".[672]

Q.22. D. Is a mechanism of complain for asylum seekers about quality of receptions conditions in general (even if they are not personally concerned) organised? If yes, before which authority? Is it linked to the system of guidance, control and monitoring of reception conditions (see below question n° 39)?

Legally, there is no special mechanism for complaints about the quality of the reception conditions foreseen with the law. In practice, if an asylum seeker is not satisfied with the level or quality of the reception conditions he or she can file an anonymous complaint into a box, available for this purpose. The disadvantage of this mechanism is that the asylum seekers who complain do not receive a written response to their complaint. A complaint can also be submitted to the social worker who either acts upon the complaint himself or herself or forwards the complaint to the management of the Asylum Home. It is also possible to file a complaint to the Administrative Inspectorate but there were no such cases so far because the asylum seekers are not informed about this possibility: it is neither mentioned in the information leaflet they receive when accommodated in the pre-reception area, nor is it known by the Asylum Home staff. This system is not linked to the control mechanism because a formal control mechanism of the reception conditions in Slovenia does not exist.

In addition, due to the lack of efficient and impartial complaint mechanism there were occasions when the asylum seekers resorted to signing a petition (e.g. the last petition was being signed in January 2006). Also, in September 2006 detained asylum seekers in the Asylum Home went on hunger strike for a few days as they were unsatisfied with medical care (they complained about the lack of visits by doctors and that they were treated only by a nurse who treated them with tea and antidepressants; the complaint was also made with regard to not being able to talk to the inspectors and the head of the Asylum Home). The strike ended after the head of the Asylum Home and inspectors had individually talked with them, and after they were all examined by the doctor.

6. RIGHTS AND OBLIGATIONS OF ASYLUM SEEKERS

Q.23. Family unity of asylum seekers: define how a family is defined in relation with article 2, (d) which is a mandatory provision and explain how housing is provided to a family (see articles 8 which is a mandatory provision but

[672] The author of this report was present at the session of the Administrative Court on 14.12.2005 where such legal reasoning was adopted.

leaves space to member States and 14, §2, (a) which is a mandatory provision).

In Slovenia, the status of an asylum seeker is also recognised to the asylum seeker's close family members. The persons considered to be close family members are the asylum seeker's spouse and minor unmarried children as well as parents of a minor asylum seeker. The authorised custodian of a child is regarded as a close family member of an unaccompanied minor (article 3, § 1 and 3 of the Asylum Act). The status of asylum seeker and the right to asylum is recognised to a spouse of the asylum seeker only if the marriage existed before arriving in the Republic of Slovenia (article 3, § 2 of the Asylum Act)**.** The asylum seeker's unmarried partner in a stable relationship is not explicitly mentioned in the Slovenian legislation among the close family members. However, in Slovenia non-married couples are in practice treated as married couples. The couple does not even have to fulfil the condition of being together before lodging asylum application or before entering Slovenia.

In practice, close family members are accommodated together in the same room in the family department of the Asylum Home.

Family unity was also invoked in the recent decision issued by the Constitutional Court which was already mentioned (see Q. 21. E.). With this decision the Constitutional Court extended the reception conditions (accommodation and food) beyond the issuing of the final decision upon the asylum application. It found that in accordance with article 3 of the Convention on the Rights of the Child (best interest of a child) a child cannot be detained in a Deportation Centre while waiting for a decision of the Constitutional Court upon the complaint filed against a negative decision on the asylum application. Respecting the principle of the family unity in accordance with article 8 of the European Convention on Human Rights the Court ordered that the child is moved back to the Asylum Home together with his parents. At the time of issuing the decision only the child's mother was present in Slovenia. When his father joined them in Slovenia, the head of the Asylum Sector refused to admit the father into the Asylum Home, arguing that the Constitutional Court decision did not specifically mention the father's name. Later on, in three other similar cases, the Constitutional Court extended the reception conditions beyond the issuing of the final decision.

However, there are also some cases when family members are not accommodated together after one of the family members has been issued a final decision and moved from the Asylum Home to the Deportation Centre in Postojna, but the others still wait for the decision to be issued. Such cases happen when some family members arrive to Slovenia earlier than the others. Although they are accommodated together in the same room as a family, asylum procedures are conducted separately since some members have lodged the application earlier. In such cases, family members that are accommodated in the Asylum Home in Ljubljana are allowed to regularly visit other members in the Deportation Centre in Postojna or vice versa (if their request is granted by the inspector of the Deportation Centre). But such trips are quite costly.

The Proposal of the Act on International Protection regards as a close family member also the asylum seeker's unmarried partner in a stable relationship (article 3(1), indent 15). But, the Proposal defines as close family members only children who are unmarried and dependent at the same time, regardless whether they were born in or out of wedlock or adopted, which is different from the present Asylum Act where children are regarded as close family members

only if unmarried, regardless whether they were born in or out of wedlock or adopted (article 3).

Regarding the practice how families will be accommodated, assuring protection of their family life, it can be assumed that the practice will not change and that the family members will be accommodated together.

Q.24. **Q.24. A. How is housing of asylum seekers organised: describe the system in general and indicate in particular what is the most frequently system used (see article 14, §1 which is a mandatory provision but leaves space for Member States; distinguish between accommodation centres, private houses and apartments, hotels places or other premises).**

Most asylum seekers are accommodated in the only existing Asylum Home in Slovenia (article 45 of the Asylum Act), except for those that are detained in the Deportation Centre. They can remain in the Asylum Home until the expiration of the deadline to leave the country, if their asylum application is rejected (article 10, § ~~2~~ 1 of the Rules on Reception Conditions). Their right to choose their own residence is limited: they are only allowed to be accommodated in private apartments if other type of accommodation in Asylum Home or its branch office is not available and if the hearing of the asylum seeker has already taken place. Vulnerable groups (e.g. children, unaccompanied children, the elderly, pregnant women, single parents with children, and persons who have survived rape, torture or other forms of psychological, physical or sexual violence) also have the right to chose their own residence if that is required for reasons concerning their health (article 15.a, § 1 and article 45.b, § 2 and 3 of the Asylum Act). In case of emergency, the government may issue a decision to allow asylum seekers to be accommodated in private apartments although the above mentioned conditions are not met (article 45.b, § 4 of the Asylum Act). In the Asylum Home, asylum seekers are accommodated in different wards if possible (article 5, § 2 of the Rules on Reception Conditions).

The Proposal of the Act on International Protection foresees the same accommodation possibilities (articles 80, 81 and 83 of the Proposal).

Each asylum seeker has the right to his or her own bed and to use the accompanying furniture in the rooms. There are also tea kitchens, sanitary premises and laundry rooms that the applicants can use (article 5 of the Rules on Reception Conditions). However, the applicants cannot use the laundry machines by themselves but must hand the laundry over to the Asylum Home staff who ~~do~~ activate the laundry machines for them. But, asylum seekers, especially women, often complain about numerous breakdowns of the laundry machines (although usually asylum seekers cause the breakdowns).

Q.24. B. What is the total number of available places for asylum seekers? Distinguish in your answer between accommodation centres, private houses and apartments, hotels or other premises.

The housing capacity of the Asylum Home is 202 persons while accommodation at private addresses is not limited.

Q.24. C. Is this number of places for asylum seekers sufficient in general or frequently insufficient?

Normally, the total number of places for asylum seekers is sufficient. There were cases of overcrowding and some wards of the Asylum Home ~~are~~ were constantly overcrowded (family ward, single men ward). So far, in 2007 the number of places for asylum seekers has been sufficient. See the following question and Q. 48, indent 1.

Q.24. D. Are there special measures foreseen in urgent cases of a high number of news arrivals of asylum seekers (outside the case of application of the directive on temporary protection)?

Occasionally and for shorter periods of time the current housing capacity was exceeded due to an increased number of asylum seekers. In these cases the multipurpose area and the common premises where the asylum seekers spend their free time, were temporarily transformed into accommodation facilities and additional bathrooms were activated. The Human Rights Ombudsman of Slovenia reported that in March 2005 when the capacity of the Asylum Home was temporarily exceeded the accommodation conditions in multipurpose area were inappropriate (instead of beds and mattresses the asylum seekers were offered provisory foam beds and slept on the floor) and hygienic conditions insufficient. Also, on occasions of a higher number of asylum seekers there are two families accommodated in one room of only 6 beds, with parents and children together which completely eradicates a possibility of intimacy between partners. In general, the problem which is more persistent is the constant overcrowding of particular wards of the Asylum Home (e.g. insufficient number of rooms for all the families and for the single men who then have to be accommodated in the wards that are no intended for them).

Currently there are no back up plans set up for urgent situations of a high number of new arrivals. With the adopted rules it is foreseen that the asylum seekers are to be accommodated in other appropriate premises (e.g. homes for elderly persons, safe houses, psychiatric institutions, student dorms, and appropriate social institutions), if the competent body cannot ensure an appropriate accommodation for them. Asylum seekers can only be accommodated in a psychiatric institution on the basis of a referral by their personal physician or psychiatrist (article 6, § 1 of the adopted Rules on Reception Conditions). Also, most elderly homes require a person to have permanent residency in Slovenia and Slovenian citizenship, they are highly overcrowded, and it is therefore not clear how that could function in practice.

Q.25. Accommodation centres **(important note: all the following questions are about open and not closed centres where asylum seekers are detained which are covered by another question)**

Q.25. A Are there different categories of accommodation centres, for instance depending of the stage of the procedure (admissibility and eligibility)?

Yes, there are two different categories of accommodation: The first is pre-reception (waiting) area for accommodating the asylum seekers who expressed their intention to apply for asylum, before their asylum application is taken. The second (and main) category of accommodation is a residential facility for asylum seekers after their asylum application is taken until the final decision is issued. Both types of facilities are located in the Asylum Home but are physically separated. The period of waiting for the asylum application to be taken is maximum 12 hours. After that the asylum seekers have to be moved to the residential

facility. The reception conditions in the pre-reception area are lower than in the reception part: they receive one cold food package per day (consisting of toast, water, chocolate and tuna fish can, amounting to 1200 Kcal per day) and they are not entitled to any of the rights as the asylum seekers. The pre-reception area is locked. When they enter the pre-reception area they must sign a statement that if they leave the pre-reception area their asylum application will be deemed withdrawn. Neither this statement nor locking the pre-reception area have a basis in the law. Except for Legal Information Centre, that is also an implementing partner of UNHCR, the NGOs do not have access to the pre-reception area. Asylum seekers in the pre-reception area are not separated with regard to their age, sex and special needs. But, there are two separate rooms in the pre-reception area, for families and for persons with contagious diseases.

The Proposal also foresees that before an alien lodges a complete application, he will be accommodated in the pre-reception area (37(1) of the Proposal).

Q.25. B. Is there a legal time limit for accommodation in a centre after which the asylum seekers have access to private houses or apartments or is this limit linked to a stage of the asylum procedure?

No, access to private houses is not limited either to a certain period of time or to the stage of the asylum procedure. Asylum seekers are allowed to be accommodated in private apartments only if other type of accommodation in Asylum Home or its branch office is not available and if the hearing of the asylum seeker has already taken place. Vulnerable groups with special needs (e.g. children, unaccompanied children, the elderly, pregnant woman, single parents with children, and persons who have survived rape, torture or other forms of psychological, physical or sexual violence – article 15.a, § 1 of the Asylum Act) may access private apartments even if they do not fulfil these two conditions if that is required for reasons concerning their health (article 45.b, § 2 and 3 of the Asylum Act). The asylum seeker must file an application for accommodation in a private apartment to the Asylum Sector. With the application the applicant has to enclose a renting agreement or a consensus of the apartment owner to receive the applicant and a copy of the apartment owner's ID. If the applicant wishes to move to a private apartment for medical reasons, the proof of his or her health condition must be enclosed as well. The body deciding upon the application to move to a private apartment submits the application to ~~is~~ a special commission of the asylum home, established for giving opinions on this and other issues (article 8 of the Rules on Reception Conditions). After the commission provides its opinion on the application, the competent body issues a decision on accommodation in the private apartment. Against the decision the asylum seeker may file a lawsuit to the Administrative court (article 8, § 3 and 4 of the Rules on Reception Conditions). Before the completion of this report (May 2007) the commission has been in session only twice, once granting the application.

According to the Proposal the access to private apartments is linked to fulfillment of two conditions: accommodation at the Asylum Home or its branches cannot be provided; personal interview with the applicant has already been performed (article 83(2)). Only in exceptional cases (the authority establishes substantiated medical or other reasons supporting that – article 83(3)) the applicant may be accommodated in private apartments although the two conditions are not fulfilled.

Q.25. C. Is there a general regulation about the internal functioning of those centres and the rights and duties of the asylum seekers? If yes, is

this general regulation applicable to public and private centres? If not, are the centres supposed to adopt an internal regulation and does a central authority have or not a kind of control about its content?

Yes, there are Internal Regulations adopted regulating the internal functioning of the Asylum Home. These regulations are only applicable to the public accommodation and not to private apartments - private accommodation centres do not exist in Slovenia; the law only provides a possibility for the non-governmental organizations to run and operate accommodation centres (article 45, § 1 of the Asylum Act), however this is also non-existent in practice.

The Internal Regulations define the organization of living in the Asylum Home, the rights and obligations of the asylum seekers regarding their accommodation in the centre, internal regulations and respect thereof, and sanctions for violating its provisions (article 1 of the ~~proposal of~~ Internal Regulations). The obligations of the asylum seekers are: to enable carrying out the control by the competent body, to respect the time restrictions on departure out of and entry into the Asylum Home, to respect the schedule of meals and activities, to take care of personal hygiene and hygiene of their clothes, to clean the room at least once a day and to thoroughly clean the room at least once a week, to clean and manage the common areas and the surroundings of the Asylum Home based on a schedule prepared by a social worker who supervises the implementation of the schedule, to report to the competent body any damage to the premises or equipment, to allow and conduct necessary sanitary and disinfection measures, to notify the competent body on contagious diseases, to use water, electricity and equipment economically, to clean their rooms when moving and to return the bedding and towels to social workers, to notify the competent person about loosing an ID card, to act respectfully towards the employees in the Asylum Home and to other persons, ~~and~~ to respect the conflagration instructions, and to respect instructions and orders of the security service (article ~~9~~ 10 of the Internal Regulations).

With a purpose to maintain order in the Asylum Home it is forbidden to express any kind of intolerance based on race, nationality, sex or political opinion, to possess or use arms, explosives or pyrotechnics, to purposefully destroy equipment, pollute the premises of the Asylum Home and its surroundings or to act violently, to smoke outside of assigned area, to cook in the rooms, to bring in pets or other animals, to bring in heaters, furniture, technical equipment, except for TVs, radios, computers, carpets and other equipment, to bring in and consume alcohol or other intoxicating substances, to bring in food that is easily perishable, to play games for money, to take food and cutlery from the dinning room and tea-kitchen (except if that is specifically allowed for health reasons), to hang clothes on windows, to purposefully write or put stickers on the walls or equipment, to bring visitors into the rooms,

to move without authorization in other parts of the Asylum Home, to enable overnight stay or accommodation to other persons (article 12 of the Internal Regulations).

Since there are no other types of centres in Slovenia but one public centre, it is not yet clear what kind of regulations will be in force in other types of centres.

Q.25. D. Do the regulations foresee the possibility of sanctions against asylum seekers in case of breach of the rules? (see article 16, §3) If yes, which sanctions for which rules? Which is the competent authority to decide? How is it ensured that decisions are taken individually, objectively and in particular *impartially* (for instance through an independent arbitrator) as requested by §4 of article 21 which is mandatory provision? Which are the possibilities of appealing against those decisions if the system is different from the general one under question n°22? Are there already administrative appeal decisions or judgements which have been taken and if yes, which are the main important ones?

Yes, the Internal Regulations foresee a possibility of sanctions against the asylum seekers in case of breach of the rules. The breaches of rules from article ~~9~~ 10 and all but the first three prohibitions from article ~~12~~ 13 of the Regulations are considered as minor breaches, while breaches of the first three prohibitions of article ~~9~~ 10 of the Regulations (inflation of intolerance, possessing or using arms, explosives or pyrotechnics, purposefully destroying equipment, polluting the premises of the Asylum Home and its surroundings or acting violently) are considered as serious breaches. The sanctions for minor breaches are: oral reminder, written reminder (which is given for three minor breaches), and denial of possibility to leave the asylum home for up to three days or over three days (given for five minor breaches). The social worker issues these sanctions. Against the decision of the social worker the asylum seeker may file and appeal in three days to the head of the Asylum Home or other authorized person. If the asylum seeker purposefully pollutes or destroys the premises or the equipment, he or she can be required by the social worker to compensate the damages. Against such decision it is also possible to file and appeal in three days to the Head of the Asylum Home or other authorized person. If the asylum seeker brings in heaters, furniture or technical equipment to the rooms, the head of the Asylum Home may order the withdrawal of the objects. Against such decision it is possible to file an appeal with the Head of the Asylum Sector (article 21, 22, 23 and 24 of the Internal Regulations).

For serious breaches the head of the Asylum Home may issue a decision ordering that the asylum seeker is moved to one of the branches of the Asylum Home (when they are established). An appeal to the Minister of Interior is allowed in 5 days. The appeal does not have a suspensive effect. The Minister must issue a decision in 10 days (article 25 of the proposal if Internal Regulations).

In all these cases it is questionable whether the decisions will be taken individually, impartially and objectively since the bodies deciding upon the breaches are interested parties to all these procedures and are therefore not impartial. There is also no independent outside review of the decisions foreseen. In all cases the sanctions are imposed by the staff of the Asylum home (either by a social worker or by the head of the Asylum Home).

Q.25. E. Are asylum seekers involved in the management of these centres? If yes, how (advisory board, appointment or election of representatives)? (see article 14, §6 which is an option provision)

No, asylum seekers are not involved in the management of the accommodation centre.

The Proposal does not foresee any involvement of the applicants in the management.

Q.25. F. Do specific rules exist on work of asylum seekers inside the accommodation centres different from the general ones about employment (see below)? If yes, which ones? Can working inside accommodation centres be considered as a (mandatory) contribution of the asylum seekers to the management of the centres, is it or not paid and considered as implying access to the labour market and subject to the same rules?

Yes, the asylum seeker can help in the Asylum Home with the chores connected to maintenance (article 46.b of the Asylum Act and article 17 of the Rules on Reception Conditions). For this work an asylum seeker may receive remuneration. The type of tasks that can be performed by asylum applicants are: gardening, laundry, ironing, cleaning and managing the surroundings of the Asylum Home, assistance in the warehouse etc. In practice, the asylum seeker would receive two bus tokens for cleaning another person's room after moving or for maintenance work in the Asylum Home's surroundings. Currently, working inside the Asylum Home cannot be considered as a mandatory contribution to the management (since sanctions for not working are only a reminder and limitation of certain benefits).

In general, work of the applicants inside the Asylum Home is not subject to the same rules as labour and it is not considered as access to the labour market.

The Proposal of the Act on International Protection also foresees the possibility of the applicants helping with the chores connected to maintenance in the Asylum Home. For their work they may receive remuneration. (article 82 (1) of the Proposal).

Q.26. **Q.26. A. How can asylum seekers communicate with legal advisers, representatives of UNHCR and NGOs? (see article 14, §2, (b) which is a mandatory provision).**

At lodging an asylum application the asylum seekers receive a leaflet with information on the asylum procedure, and their rights and obligations, generally in a language they can understand (except for Georgian, Bangladeshi, Kurdish and the Roma applicants). At the back of the leaflet there is a list of refugee counsellors whom they can contact to represent them in

asylum procedures. The list includes names, ~~and~~ addresses and phone numbers of the refugee counsellors, but some information are not up to date. This list is not updated – there are numerous names on it of lawyers who have not been taking asylum cases for years. Usually the asylum seekers obtain phone numbers of the refugee counsellors from the NGOs and from other asylum seekers, who were already accommodated in the Asylum Home. Usually, the asylum seekers contact the legal advisers by phone. Two phone booths have been placed in the Asylum Home, one in the detention unit. Since asylum seekers receive no pocket money the costs for phone calls can represent an insuperable obstacle for communicating. This forces the asylum seekers to ask social workers to make the call for them or to obtain cellular phones, which makes calls more expensive (either they have a cellular phone from home or they need to use pre-paid cards). Possibilities of communication are therefore extremely limited.

According to the national legislation an asylum seeker has the right to demand to contact his or her refugee counsellor at any time (article 9, § 5 of the Asylum Act). If an asylum seeker asks a social worker to make a phone call, the social workers are present when the applicant phones a legal representative. It is also problematic how the asylum seekers communicate with his or her legal representative since the interpreters are not always available (they are only available in conducting procedures, e.g. interviews, taking the applications, etc): the practice is that the first phone call is made from the social worker's office and if the asylum seeker speaks Slovenian, Croatian or English, he shall be able to communicate with the refugee counsellor. But when he speaks other language, the social worker will explain the problem to the refuge counsellor. Currently, the social workers are also forbidden by the management of the Asylum Home to call a legal representative when requested by an asylum seeker, if he or she has already received a final negative decision from the Supreme Court.

Since UNHCR is not permanently present in Slovenia but is only able to perform occasional visits, the asylum seekers are physically unable to communicate with it. It is only possible to communicate with the NGOs which are implementing partners of the UNHCR. These NGOs are present in the Asylum Home on a daily basis. An NGO Slovene Philanthropy (a UNHCR implementing partner) offers free translators to asylum seekers who need to visit their advocate and do not speak Slovenian, Croatian or English. Since July 2006 a representative of the Legal Information Centre for NGOs (a UNHCR implementing partner) is daily present in the Asylum Home and asylum seekers can contact her for any legal questions in an NGO office in the Asylum Home. The Legal Information Centre for NGOs also has an on duty mobile phone where lawyers can be reached every day.

It is very important to stress that there are many problems with legal advisers (refugee counsellors) and legal representation in Slovenia, which is an issue closely connected to asylum seekers' access to legal assistance. First, with the transposition of the directive free legal aid on the first instance of asylum procedure was cancelled. As a result, refugee counsellors have no interest anymore in representing asylum seekers on the first instance of the asylum procedure since they are not paid for their work (most of the asylum seekers are not able to pay for it). Second, the fee of the refugee counsellors is 50 % of the attorneys' fee in Slovenia which is a deterring factor for taking new cases. Third, the body responsible for paying the refugee counsellors for their work, i.e. the Ministry of Interior, is regularly late in processing the payments while some payments are never processed at all. Consequently, out of more than thirty officially appointed refugee counsellors there are only four that actually represent asylum seekers. Of these four, at least one is not taking new cases because of late payments. Due to poorly paid (or not at all) refugee counsellors the possibility of the asylum

seekers (upon whose rights it is deciding) to succeed in asylum procedure is diminished. Fifth, the refugee counsellors are not paid for their work before the asylum procedure is completed. Sixth, before the transposition of the directive, the responsible body for the refugee counsellors was the Ministry of Justice. With the transposition, the competency for the refugee counsellors was transferred to the Ministry of Interior, a body that is also an interested party to the asylum procedure, deciding upon the asylum applications and the opposite party if the case is appealed at the Administrative or Supreme Court. Seventh, the requirements for refugee counsellors are easy to meet and no specific knowledge on asylum procedure and asylum law is required to obtain this status. All the stated problems cause a poor functioning of the legal representation for asylum seekers in Slovenia and decrease their chances in succeeding in asylum procedure.

The Proposal of the Act on International Protection foresees the obligation of the state to give to a person seeking international protection a list of refugee counsellors and a list of non-governmental organisations working in the field of asylum (article 9, § 1 of the Proposal). Article 8, indent 3 of the Proposal also obliges the state to allow persons seeking international protection to communicate with UNHCR or organisation, working on its behalf in the Republic of Slovenia pursuant to an agreement with the competent authority in the Republic of Slovenia on the transfer of responsibilities and manner and scope of work in the Republic of Slovenia.

Q.26. B. What are the rules about <u>access</u> of legal advisers, UNHCR and NGOs regarding access to accommodation centres and other housing facilities (see article 14, §7 which is a mandatory provision)

In principle, the representatives of the UNHCR, NGOs and the refugee counsellors have an unlimited access to the asylum seekers accommodated in the Asylum Home. UNHCR and the refugee counsellors can access the asylum seekers anytime (article 9, § 4 of the Asylum Act), while the NGOs can access them according to the schedule, available at the board of the Asylum Home. The asylum seekers have the right to request contact to the representatives of UNHCR and the NGOs as well as their legal representatives at anytime (article 9, § 5 of the Asylum Act).

Since UNHCR does not have a permanent presence in Slovenia and can only engage in occasional monitoring missions, the NGOs which are UNHCR implementing partners are those who have the access in principle. As far as the pre-reception area is concerned only the Legal Information Centre for NGOs has access to it. The NGOs, however, may conduct visits following a schedule which means that they may not pay unannounced visits.

In a case of a Roma family which was being deported to Germany the family informed their legal representative in the course of deportation but was not allowed to enter the Asylum Home to speak with the family and had to observe the deportation from behind the fence.

The Proposal of the Act on International Protection obliges the state to grant UNHCR access to persons seeking international protection and applicants in the territory of the Republic of Slovenia and in transit areas of airports and ports (article 14(2) indent 2). Access is granted upon the persons consent (article 14(3)). The same applies for organisations, working on its behalf in the Republic of Slovenia pursuant to an agreement with the competent authority in

the Republic of Slovenia on the transfer of responsibilities and manner and scope of work in the Republic of Slovenia (article 14(4)).

There are no rules regarding access of legal advisers to accommodation centres and other housing facilities (the Proposal of the Act on International Protection).

Q.26. C. Can the access of legal advisers, UNHCR and NGOs be limited for security reasons or any other reason (see article 14, §7, last sentence)?

There is no legal basis for limiting the access of NGOs. In practice though, the access of all NGOs but Legal Information Centre for NGOs is limited with regard to pre-reception area. Furthermore, even Legal Information Centre for NGOs has to comply with the schedule agreed with the Asylum Sector which makes the access limited.

Q.27. Q.27. A. Is a medical screening organised by the receiving State, is it mandatory or voluntary? Does it include HIV tests? (see article 9 which is an optional provision)

Legally, the competent body must conduct a physical examination of the applicant while taking the asylum application (article 15, § 1 of the Instructions on the Procedure – see Q. 1, and article 5, § 2 of the Rules on Reception Conditions). The preventive physical examination is conducted by a contract-based doctor who visits the Asylum Home on a daily basis. Each asylum seeker is medically examined before being accommodated in the Asylum Home, that is, after the leave the pre-reception area. The costs of physical examination are covered by the Ministry of Interior. The examination is organized by the state and is obligatory for all applicants. The doctor only checks the applicants for signs of visible diseases on their stomach and hands. The examination does not include an HIV test or any blood or urine examinations.

Q.27. B. Do the legal provisions on reception conditions ensure that asylum seekers receive at least emergency care and essential treatment of illness as requested by article 15 §1 which is a mandatory provision? Do they have a further access to health care?

The extent of health care services includes the right to:
1. emergency medical care, emergency ambulance transport, and emergency dental care;
2. essential treatment based on the decision by the physician in charge of treatment, which shall consist of: the preservation of vital functions, stopping serious bleeding or preventing fatal bleeding; the prevention of a sudden deterioration of health that could cause permanent damage to individual organs or vital functions; treatment of shock; services relating to chronic diseases and states of illness the abandonment of which could directly and imminently result in disability and other permanent health defects and in death; treatment of states of fever and prevention of the spread of an infection that could lead to a septic state; treatment and prevention of poisoning; treatment of bone fractures, sprains and other injuries requiring emergency medical assistance; medications included in the positive list and issued on the basis of a prescription for the treatment of the states specified above; emergency transport using ambulance and other vehicles in the cases specified above;
3. medical care for women: contraceptives, abortions, and medical care during pregnancy and upon giving birth (article 46 of the Asylum Act).

Legally, asylum seekers have no right to further health care. The adopted implementing acts however, foresee a possibility for the asylum seeker to apply for additional health care services. The request must be lodged at a commission of the Asylum Home (article 15, § 3 of the Rules on Reception Conditions). This commission replaced the eligibility committee organized within the NGO Slovene Philanthropy and supported by UNHCR with a purpose of financially assisting asylum seekers who had special needs not covered by the emergency health care (e.g. glasses or crutches).

The Proposal of the Act on International Protection defines a right to health care in article 84(1):
"The extent of health care services shall include the right to:

3. Emergency medical care, emergency ambulance transportation upon a doctor's decision, and emergency dental care;
4. Essential treatment according to the decision by the physician responsible for treatment, which shall consist of:

- The preservation of vital functions, stopping serious bleeding or preventing fatal bleeding;
- The prevention of a sudden deterioration of health that could cause permanent damage to individual organs or vital functions;
- Treatment of shock;
- Services relating to chronic diseases and states of illness the abandonment of which could directly and imminently result in disability and other permanent health defects and in death;
- Treatment of states of fever and prevention of the spread of an infection that could lead to a septic state;
- Treatment and prevention of poisoning;
- Treatment of bone fractures, sprains and other injuries requiring emergency medical assistance;
- Medications included in the positive list in accordance with a list of exchangeable medications' substitutes issued on the basis of a prescription for treatment of the states specified above;

Medical care for women: contraceptives, abortion and medical care during pregnancy and at giving birth."

Q.27. C. What is the practice regarding access of asylum seekers to health care and how is it organised? In particular, what is the situation in accommodation centres (are doctors coming to the centres or do asylum seekers go to doctors outside)?

The Asylum Sector concluded contracts with six doctors who visit the Asylum Home and conduct preventive medical examinations. Curative medical treatment is provided by the doctors working at the competent health centre (according to the address of residence of the asylum seeker; for the applicants living in the Asylum Home that is the health centre Vič in Ljubljana). These doctors do not visit the Asylum Home; for sick asylum seekers the nurse employed in the Asylum Home makes an appointment and the asylum seekers visit the health centres on their own by a city bus for which they receive bus tokens. In practice, the sick asylum seekers often experience barriers in accessing health care due to arbitrary decisions taken by the nurse on whether or not she would believe the asylum seeker is sick or in pain, and whether or not she would make an appointment at the health centre for him or her.

Making appointments is not necessary though since asylum seekers have the right to visit the health centre on their own. However, if they do it they risk being rejected because the health centres are not sufficiently informed about the status of the asylum seekers and their entitlement to receive urgent medical care, essential treatment of disease and special care for women in terms of contraception, abortion, pregnancy and labour.

In addition, by law vulnerable groups are entitled to special additional care in accordance with their special needs. In practice, even their basic needs (glasses, crutches, vitamins for children, sometimes even life-important medicine, etc.) are often not covered and additional sources for them ~~have~~ used to be (until December 31, 2006) provided by the eligibility committee of the Slovene Philanthropy, financed by the UNHCR.

Q.28. **Q.28. A. What is the length of the period determined by the concerned Member State during which asylum seekers have no access to the labour market? (see article 11 which is a mandatory provision)**

An asylum applicant can work if his or her identity is indisputably established. He or she can begin to work one year after applying for asylum if in this period of time the competent authority did not issue a first instance decision, and this delay can not be attributed to the asylum seeker (article 46.a, § 1 of the Asylum Act). In practice, most asylum seekers are issued the first instance decision within one year after lodging the asylum application and therefore the right to work is de facto non-existent for them. At the time of writing of this report (~~July 2006~~ May 2007) there were only two asylum seekers who have not been issued an asylum decision for long enough to obtain the right to work. In addition to that, when asylum seekers legally obtain the right to work, they must first obtain a confirmation from the Asylum Sector that no decision has been issued in one year. They have to send this confirmation to the Unemployment Office and apply for a work permit. Then they need to look for work on their own since they are not entitled to any employment programs, generally available for Slovenian nationals. Practically, access to work is extremely limited and actually non existent for a large majority of the asylum seekers. Due to a long waiting period (one year) and only minimum needs covered, many asylum seekers engage in illicit work in order to pass the time usefully and obtain at least a minimum income to cover for daily expenses.

The Proposal of the Act on International Protection also foresees a right to work gained after one year after the asylum application is submitted if during this period a decision has not been issued and the delay cannot be attributed to the asylum seeker (article 85(1)).

Q.28. B. After that period, are asylum seekers or not obliged to obtain a work permit? In case is there a limit for the administration to deliver the permits and how quick are they delivered? What is their length?

If the first instance decision is not issued in one year the applicant may request the Sector for Asylum for a confirmation that no decision was issued for him in the period of one year and on the basis of this confirmation the applicant can apply for a work permit. The asylum applicant has to acquire a work permit in line with the established regulations in the field of employment and work of aliens. The asylum applicant can obtain a work permit for the period of three months with a possibility of extension and a possibility of cessation in case of finality of his or her asylum procedure (article ~~64. a~~ 46.a, § 2 and 3 of the Asylum Act). The permits

need to be delivered in one month (in accordance with the general provisions of the Administrative Procedure Act) and this deadline is usually respected. An asylum seeker who obtains work must report the information about his or her work (employer, working hours, payment) to the Asylum Sector. If the asylum seeker works, he or she is not entitled to free subsistence, except accommodation (article 16 of the Rules on Reception Conditions).

The Proposal of the Act on International Protection stipulates: "To exercise the right to work, the asylum seeker has to obtain a work permit which expires after three months and can be prolonged or cancelled." (article 85(2))

Q.28. C. After that period, what are the conditions for access of the asylum seekers to the labour market? (in particular, are there rules concerning the maximum allowed of working hours or days per week, month or year, limits in terms of type of work or of professions authorised?

There are no specific rules on what type of work or profession the applicant can perform. The rules for maximum working hours per week, month or year are the same as for Slovenian citizens (as long as the time for which the work permit is issued is not exceeded).

Q.28. D. What are the rules in terms of priorities between asylum seekers on the one hand and nationals, EU or EEE citizens and legally third-country nationals on the other?

After obtaining the work permit, the asylum seekers are legally equal in their access to labour market as nationals, EU or EEE citizens and legal third country nationals. However, it is difficult to actually obtain work because usually they do not have diplomas or school certificates with them to have their level of education recognized.

Q.28. E. Do asylum seekers have access to vocational training, does this or not depend of their right to access to the labour market, and in case at which conditions? (see article 12 which is optional regarding §1 and mandatory regarding § 2)

No, the asylum seekers in Slovenia do not have the right to vocational training. Vocational training in Slovenia is part of the regular post-primary education from which adult asylum seekers are excluded and to which minor asylum seekers generally do not have access (see also Q. 31. B.).

But, the Proposal of the Act on International Protection foresees the possibility to allow asylum seekers who have entered into a contract of employment access to courses of vocational training (article 85, § 4 of the Proposal).

Q.28. F. Are the rules regarding access to the labour market adopted to transpose the directive more or less generous than the ones applicable previously?

Previously the rules regarding access of the asylum seekers to the labour market were the same as for the temporarily displaced persons, who were upon their request allowed to engage in temporary and occasional type of work in accordance with the provisions of the Temporary

Protection Act. If they wanted to work they received a referral from the Asylum Sector on the basis of which they could conclude a contract with an employer for a maximum of 60 days per year, 8 hours per week. Temporary and occasional work was regulated with the previous Labour Relations Act which was revised on January 1, 2003. In the meantime until March 4, 2006, when the new Asylum Act entered into force, no law regulated the work of the asylum seekers. Arguably, it is questionable whether the rules adopted to transpose the directive are more or less generous than before: under the previous system, the asylum seekers were allowed to start to work immediately and once they were working in practice no one was controlling the working hours. Now they only have the right to access the labour market after one year. In practice many of them are forced to take up illicit work in the meantime. Illicit work enables them to maintain contact with everyday life, pass the time usefully, maintain their working habits and earn some money to cover for their needs and the needs of their families that are not covered by the minimum reception conditions (especially considering that their pocket money was also cancelled).

There is currently (May 2007) only one asylum seeker who was not issued a decision upon the asylum application within one year and obtains a work permit. For all the others whose decisions were issued before the deadline of one year, the right to work is not accessible.

The Proposal does not foresee any change with regard to access to the labour market: the applicant may start working one year after lodging the application, if in this period of time the relevant authority did not yet take a decision and this delay cannot be attributed to the applicant. His identity has to be fully established at that time. (article 85(1))

Q.29. Are reception conditions subject to the fact that asylum seekers do not have sufficient resources? Are asylum seekers requested to contribute to reception conditions when they have personal resources (for instance if they work) or to refund the authorities if it appears that they have resources? (see article 13 §§ 3 and 4 which are optional provisions)

The asylum seekers who can rely on their own financial means or whose living expenses are provided for in a different way, are obliged to bear their expenses or part thereof (article 45, § 4 of the Asylum Act). Although this measure is provided for in the law, it has not yet been exercised in practice.

Asylum applicants who can rely on their own financial resources or whose living expenses are provided for in some different way shall bear their expenses or contribute a proportionate share of funds for covering their cost for accommodation in the Asylum Home or its branches (article 80(5) of the Proposal of the Act on International Protection).

7. SPECIAL NEEDS OF PARTICULAR CATEGORIES OF ASYLUM SEEKERS

Q.30.

Q.30.A. Which of the different categories of persons with special needs considered in the directive are taken into account in the national legislation (see article 17, §1 which is a mandatory provision): disabled people, elderly people, pregnant women, single parents with minor children, persons who have been tortured, raped or victims of serious

physical or psychological violence? Include in your answer all other categories envisaged in national law.

According to the law, specific care and attention shall be provided to persons with special needs and vulnerabilities, especially children, unaccompanied children, disabled people, the elderly, pregnant woman, single parents with children, and persons who have survived rape, torture or other forms of psychological, physical or sexual violence (article 15a., § 1 of the Asylum Act).

The Proposal of the Act on International Protection does not foresee any change when listing categories (article 15, § 1 of the Proposal).

Q.30. B. How is their <u>specific situation taken into account</u> (see articles 13, §2, second indent, 16 §4 second sentence and 17 which are mandatory provisions)?

Special needs and vulnerability shall be established on the basis of an individual need assessment of each asylum seeker, refugee or person having subsidiary protection. The accommodation of vulnerable asylum applicants, refugees or persons having subsidiary protection shall take into consideration their specific situation with regard to material conditions of reception, medical and psychological counselling and care (article 15a., § 2 and 3 of the Asylum Act).

The Proposal of the Act on International Protection does not foresee any change with regard to how special needs and vulnerability shall be established and how accommodation will take into account their specific situation (article 15, § 2 and 3 of the Proposal). Regardless of the conditions which have to be fulfiled to be able to allow an applicant to accommodate in a private apartment, the responsible authority may approve the applicant's accommodation at a private address, if the authority establishes substantiated medical or other reasons supporting that. Whether the reasons are substantiated or not shall be established by a commission, appointed by the Minister (article 83(3) of the Proposal). A vulnerable person with special needs and exceptionally some other applicant shall have the right to additional medical services, approved and defined by the commission referred to in the third paragraph of the previous Article of this Law (article 84(2) of the Proposal).

The Asylum Home staff takes into account the special needs of persons while accommodating them in one of the wards foreseen for each particular group (as foreseen with article 5, § 6 of the Asylum Act). Please also see Q. 12. B.

In general, there are no specific programs organized by the Asylum Home with a purpose to deal with vulnerable groups. The Asylum Home employs two social workers and one psychologist (3 people for 150-200 applicants) who cannot perform specialized counselling for vulnerable groups because they are overburdened with tasks such as counting the asylum seekers in the mornings and accommodation of the new arrivals. The only vulnerable groups-related activities are carried out by the NGOs and funded by UNHCR or NGOs' own sources. E.g. an NGO Slovene Philanthropy carries out a project Sex and Gender Based Violence Program (SGBV) aiming at the prevention of gender based violence with women, and

association Ključ carries out a Project against Trafficking and Sex and Gender based Violence (PATS), aiming at a prevention of trafficking with human beings and assistance to victims.[673]

There are no specific counselling programs for children, pregnant women and elderly people. Due to a higher number of pregnant women in the Asylum Home non-governmental organisations noticed a necessity to organise a seminar for them on health risks, appropriate food, etc. The Asylum Sector merely complained how negligent they were but did not organise any session.

Q.30. C. How and when are the special needs of the concerned persons supposed to be legally identified (see article 17 § 2 which is a mandatory provision and clarify how it has been interpreted by transposition)?

The Slovenian Asylum Act does not define when the vulnerability of a person should be legally identified. The Asylum Home staff is trying to identify the vulnerability of the asylum seekers on the basis of an individual assessment of their needs either at accommodating them or while accepting their asylum application, or later in the asylum procedure. The identification of vulnerability depends on the perceptivity of individual psychologists, employed by the Asylum Home, and persistence of the applicants. However, as stated above, there are three persons employed (two social workers and one psychologist) to deal with 150-200 applicants, but even these three persons are overburdened with basic reception activities.

The procedure to establish vulnerability legally is also not defined with the Asylum Act, nor is it existent in practice. There are no questionnaires or procedures developed to determine post-traumatic stress disorder, suicidal states or other disorders.

Special needs of the vulnerable groups when being accommodated or to establish the need of proper health care shall be identified by a commission appointed by the Minister (article 83(3) and article 84(2)).

Q.30. D. Is the necessary medical and other assistance provided to persons with special needs as requested by article 15, §2 which is a mandatory provision and in particular to victims of torture and violence as requested by article 20 which is a mandatory provision?

Legally, vulnerable groups have additional rights in terms of health care and counselling (article 15.a, § 3 of the Asylum Act). In practice, the level of medical assistance provided for vulnerable groups is equal to medical assistance provided to other asylum seekers (except for contraception, abortions, treatment during pregnancy and labour which are available for women). Persons with special needs (glasses, crutches and vitamins for children are the most frequent) ~~are~~ were often financially supported by the eligibility committee of the Slovene Philanthropy (an NGO), funded by UNHCR. Dissolution of the eligibility committee since January 1, 2007 has placed vulnerable groups even into a less favourable situation. Medical care for vulnerable groups is therefore often not always sufficient.

[673] The NGOs made attempts to have discussion groups with female migrants with an aim of empowerment and discovered that women know little of the asylum procedures since they are mostly handled by their husbands. Domestic violence, gender related violence, emancipation, abortion, and sometimes even contraception are taboos; women are not prepared to talk about this, which is conditioned by their cultural backgrounds, but they are also not encouraged to deal with such topics.

Regarding minors there were instances when Asylum Home staff contacted a Centre for Counselling for Children and Young People if they dealt with a child whose needs were beyond their expertise. If needed, an interpreter was also provided.

Other programs are not available. The Asylum Home employs a psychologist who is overburdened with other tasks and mostly does not provide individual counselling. In the past there was a case of a female applicant with a post traumatic stress disorder, whose husband insisted she needs to be checked up. A psychologist who was previously employed by the Asylum Home engaged herself and achieved that the applicant was accepted into a group therapy in an external institution, which is a unique case. Please also see Q. 30. C.

Article 84(2) of the Proposal of the Act on International Protection: "A vulnerable person with special needs and exceptionally some other applicant shall have the right to additional medical services, approved and defined by the commission referred to in the third paragraph of the previous Article of this Law."

Q.31. **About minors:**

Q.31. A. Till which age are asylum seekers considered to be minor?

Asylum seekers are considered as minors until the age of 18 (article 14, § 1 of the Asylum Act).

The Proposal of the Act on International Protection does not foresee any change (article 3, § 1, indent 16 of the Proposal).

Q.31. B. How is access of minor asylum seekers to the education system ensured? Is it at school or in case inside accommodation centres and can it be considered as similar to the conditions for nationals as requested by article 10, §1?

Legally, minor asylum seekers have the right to elementary schooling (article 43 of the Asylum Act). The schooling is carried out in two nearby public schools (Livada and Vič) under the same conditions as the nationals. In Slovenia it is obligatory to attend elementary school between the ages of 6 and 15 which applies to asylum seeking children as well. For older minors (between the ages of 15 and 18) attending schools is no longer mandatory in Slovenia. Minor asylum seekers between 15 and 18 can only attend classes if there are free places available in secondary schools and depending on the readiness of the secondary school to accept them. In practice though the management of the Asylum Home try to enable the asylum seeking minors between the ages of 15 and 18 to attend classes in secondary schools if they express such wish. The main problems encountered are: i) proving the completion of elementary school since asylum seekers are mostly lacking such proofs, ii) differences in the existing knowledge of the asylum seekers, and iii) lack of proficiency in Slovenian language. Due to these problems for minors between the ages of 15 and 18, the right to education is not ensured by law which represents a problem concerning the transposition of the directive.

In practice there are problems in accessing schools. While access to school “Livada” is well organized (children are picked up and brought back by a ~~school~~ mini bus), access to school “Vič” is problematic: it is only possible to access it by a public bus. In accordance with article

91, § 5 of the Road Traffic Safety Act, children in their first year of school have to be accompanied by an adult on their way to school. Since children are taken to the school by bus, parents do not need tokens anymore, except from a mother of a child that attends the school "Vič" who receives bus tokens only when she goes to parents' hours. Otherwise, the child has a monthly bus ticket and is old enough to go to school without being escorted. Occasionally the Asylum Sector is giving the parents additional bus tokens which are otherwise intended for visiting a doctor, a lawyer of for other purposes. At the moment, only one child attends the school "Vič" and receives monthly bus ticket, while his mother receives bus tokens for accompanying him to and from school.

The adopted implementing act stipulates that minor asylum seekers attending schools will have the right to free usage of textbooks. If their parents have no resources of their own, the children may receive workbooks, notebooks and other schooling equipment (article 25 of the Rules on Reception Conditions). In practice there are also numerous problems with insufficient availability of textbooks, workbooks and other school equipment.

The Proposal of the Act on International Protection foresees the right to elementary schooling in accordance with laws on obligatory elementary schooling. The applicant is also enabled access to education at the vocational and secondary schools under the same criteria that apply to citizens of the Republic of Slovenia (article 86 of the Proposal).

Q.31. C. Is access to education ensured not later than 3 months as requested by article 10, §2 (or after maximum one year if specific education for asylum seekers is provided) and till an expulsion decision is really enforced?

In practice, the minors start attending school in one month after lodging the asylum application. Legally, schooling must last until the final decision upon their asylum application is issued and served to them. This norm is respected in practice. After that the children are not entitled to go to school although the expulsion decision is not yet enforced.

The proposal of the Act on International Protection also does not put any limitations on when children can start attending schools (article 86).

Q.31. D. Is specific education (like language classes) available for asylum seekers, in particular to facilitate their effective access to the education system of the reception Member State (see article 10, §2 which is an optional provision)?

In Asylum Home the asylum seekers have a possibility to attend classes on Slovenian and English language, and computer classes. Children below the age of 6 and children above the age of 15 who never went to school attend literacy classes. Other children attend classes on Slovenian language from the moment of filing the asylum application and throughout their stay. These classes are organized by the NGOs (association Jesuit Refugee Service carries out classes on Slovenian language for children and Slovene Philanthropy for adults).

NGO Jesuit refugee service carries out classes on Slovenian language twice a week, but there are not many asylum seekers interested. Among those who attend this class, one female asylum seeker learns to read and write. Also NGO Slovene Philanthropy is

having Slovene classes twice a week, for single women and single men. They also noticed that interest for this classes is decreasing

The schools have offered to provide afternoon tutoring with a purpose of providing assistance with the language and homework. However, attending the afternoon tutoring is not possible due to the transportation constraints. Those minors attending Livada who are taken to school and brought back by a mini bus cannot attend tutoring lessons because of the early departure of the school bus. The minor attending Vič cannot use the tutoring hours due to a problem connected with monthly bus ticket which is only valid for one specific bus and cannot commute with other buses.

In addition, the NGOs carry out various practical workshops for children and women, and sport activities for single men. However, these classes cannot be considered education classes but more as an active way of passing time.

Q.31. E. Are minors in general accommodated with their parents or with the person responsible of them? (see article 14, § 3)

Minors, who entered the country together with their parents or other relatives or responsible persons, are accommodated with them in a family ward of the Asylum Home.

There is no provision in the Proposal that would stipulate such obligation.

Q.31. F. Do minors with special needs enumerated by article 18, §2 which is a mandatory provision, have access to appropriate mental health care and qualified counselling?

There are no specific counselling programs for vulnerable groups or for the children available. The only programs that exist are the programs of the NGOs which are mostly not funded by the state. There were instances when Asylum Home staff contacted a Centre for Counselling for Children and Young People if they dealt with a child whose needs were beyond their expertise. If needed, an interpreter was also provided. Please also see Q. 30. B.

Article 84(2) of the Proposal of the Act on International Protection: "A vulnerable person with special needs and exceptionally some other applicant shall have the right to additional medical services, approved and defined by the commission referred to in the third paragraph of the previous Article of this Law." This provision is applicable to all cases when a vulnerable person needs special care. As it is very loose, it can be also applicable to minors with mental problems.

Q.31. G. How and when is organised the representation of unaccompanied minors (guardianship, special organisation) and regularly assessed? (see article 19, §1 which is a mandatory provision)

Legally, a legal guardian should be appointed to an unaccompanied minor before the start of the asylum procedure (article 28, § 1 of the Asylum Act). The competent bodies to deal with guardianship are centres for social work.

In practice, if the unaccompanied minor is accommodated in the Deportation Centre, the police in the Deportation Centre request the centres for social work in Postojna to issue a decision on guardianship for a minor. On the same day they have to notify also the Slovene Philanthropy. Guardianship of the unaccompanied minors is coordinated by Slovene Philanthropy (SF), an NGO specialized in working with minors. The Centre for social work in Postojna should contact the SF in approx. two days to serve the decision on guardianship. Volunteers affiliated with the Slovene Philanthropy are appointed as guardians. The Centre for social work Postojna notifies Slovene Philanthropy on the minor immediately, however it then takes in average two days to issue a decision on guardianship. Before the decision is issued, Slovene Philanthropy is not entitled to access the child.

If an unaccompanied minor is accommodated in the Asylum home the inspector calls the Centre for social work Vič and notifies Slovene Philanthropy. Before lodging an asylum application guardian is given approx. 10-15 minutes to talk to the minor and is present during the information session. Later, at lodging an application, both the guardian and a legal representative are present (usually a representative of Legal Information Centre for NGOs). At the time of lodging the application the guardian the decision on guardianship has not been issued yet, since it is usually issued a week later, but in the mean time, the guardian has free access to the minor. After the application has been lodged the guardian accompanies the minor to his/her room.

A formal system of assessment of guardianship does not exist. Each guardian has to submit regular reports on the guardianship to the Centre for social work Postojna but it depends on the centre whether these reports are reviewed. The Centre for social work Vič does not demand any reports on performing of guardianship.

The Proposal of the Act on International Protection foresees appointment of a legal representative of an unaccompanied minor before the procedure (article 16(1) indent 4) and stipulates that a person who may act as legal representatives can be a child's relative or companion or a representative of the organization specializing in working with children and youth (article16, § 3 of the Proposal).

Q.31. H. How is placement of unaccompanied minors organised (with adult relatives, a foster family, in special accommodation centres or other suitable accommodation)? (see article 19, §2 which is mandatory provision)

Unaccompanied minors (minors who are not accompanied by parents or other adult relatives) should be placed in a separate department of the Asylum Home. Internal Rules of the Asylum Home in article 1 (10) mentions as one of the units of the Asylum Home a unit for unaccompanied minors. Due to overcrowded wards, the unaccompanied minors are usually placed in the same ward as single women.

No provision in the Proposal of the Act on International Protection stipulates placement of unaccompanied minors with adult relative, a foster family, etc).

Q.31. I. How is the tracing of the family members of the unaccompanied minors organised? Are measures taken to protect confidentiality of information when necessary? (see article 19, §3 which is a mandatory provision)

The system of tracing of the family members is available through the Red Cross tracing service. In practice, there were only a few cases when Red Cross inquired about family members in Slovenia upon the request of other EU member states. However, there are no cases of Slovenian competent body inquiring through this service which signals that there is a

lack of awareness about it. In a few cases where tracing of family members was necessary tracing was carried out on ad hoc basis through contacting UNHCR, NGOs and police in the countries concerned. Generally, confidentiality is respected.

No provision regarding tracing of family members of the unaccompanied minors are in the Proposal of the Act on International Protection. But, the Proposal in article 128(4) obliges the state authorities and other bodies and organisations while collecting, processing and communicating the personal and general data on the applicants and persons who were recognised international protection to obtain and protect the data in accordance with provisions regulating personal data collection.

8. EXCEPTIONAL MODALITIES OF RECEPTION CONDITIONS

Q.32. Apart from detention covered by the next question, are there exceptional modalities for reception conditions in the following cases and if yes, which ones and for how long are they applicable, knowing that they should be "as short as possible" (see article 14, §8)?

Q.32. A. Persons with specific or special needs, regarding in particular the period of assessment of those needs?

There are no exceptional modalities foreseen with the law or in practice for persons with special needs.

Also, the Proposal of the Act on International Protection (article 83(3)) foresees a possibility for accommodation in private facilities regardless the conditions set in the paragraph 1 if the authority establishes substantiated medical or other reasons supporting that. Whether the reasons are substantiated or not shall be established by a commission, appointed by the Minister.

Q.32. B. Non availability of reception conditions in certain areas

Slovenia is a very small country which means that most of the asylum seekers are brought to Asylum Home, located in the capital Ljubljana.

Also, the Proposal of the Act on International Protection does not foresee any exceptional modalities for reception conditions in such cases.

Q.32. C. Temporarily exhaustion of normal housing capacities

In the adopted Rules on Reception Conditions it is foreseen that the asylum seekers are accommodated in other appropriate premises (e.g. homes for elderly persons, safe houses, psychiatric institutions, student dorms, and appropriate social institutions), if the Asylum Sector cannot ensure an appropriate accommodation for them (article 6, § 1 of the Rules on Reception Conditions) due to overcrowding. It is not yet clear how this will function in practice.

In exceptional cases, after his application was taken, the competent authority may accommodate an applicant outside the Asylum Home if accommodation cannot be provided at the Asylum Home or its branches (article 83(1)) of the Proposal.

Q.32. D. The asylum seeker is confined to a border post

Slovenia is very small and it would therefore not be reasonable to build detention facilities at the border post. Instead, asylum seekers are brought either to the Asylum Home in Ljubljana or to the Deportation Centre in Postojna.

But the Proposal of the Act on International Protection (article 58(1)) enables the state to confine an alien if he expresses intent to apply for asylum in the transit zone at the airport or on board of a ship anchored in the port or harbor. Until a decision in an accelerated procedure is issued or until a decision in the context of the Dublin procedure or the procedure of the national or the European safe third country or the first country of asylum becomes final, the person shall remain in the area mentioned.

Q.32. E. All other cases not mentioned in the directive (for instance urgent situation in case of a sudden high number of applicants outside a case of application of the directive on temporary protection).

There are no other exceptional modalities foreseen in the legislation neither do they exist in practice.

Q.33. Detention of asylum seekers (we do not cover the situation of rejected asylum seekers detained for the purpose of their return) (see articles 6 §2, 7 §3, 13, §2 2nd indent and 14 §8 which implies that the directive is in principle applicable in case of detention):

Q.33. A. In which cases or circumstances and for which reasons[1] (identity verification in particular if the persons have no or false documents, protection of public order or national security, refugee status determination, way of entry into the territory, etc) can an asylum seeker be detained during the asylum procedure till his request has been finally rejected. Quote precisely in English in your answer the legal basis for detention of asylum seekers in national law.

According to article 27, § 1 of the Asylum Act, if necessary, the movement of an asylum applicant can be temporarily limited on the grounds of: establishing the identity of the applicant; preventing the spread of contagious diseases; suspicion of misleading or abusing asylum procedure; or preventing the threat to other persons' life or property**.** Formally, detention order is issued to those asylum seekers who have previously been issued a security measure of expulsion. Misleading or abuse of the asylum procedure is presumed when a person applies for asylum when already in the Deportation Centre (because he or she is presumed to be filing the application for a sole reason of suspending the expulsion from the country) and when a person files a repeat application, including a person that is returned on the basis of the Dublin Regulation and wants to re-initiate his or her asylum procedure.

[1] Please specify if article 18 §1 of the directive on asylum procedures of 1 December 2005 following which *"Member States shall not hold a person in detention for the sole reason that he/she is an applicant for asylum"* is or not respected (even if it has not yet to be transposed).

The Proposal of the Act on International Protection foresees the same grounds for limiting one's movement: establishing the identity of the applicant; suspicion on the existence of reasons for rejection of the application in an accelerated procedure as defined in Article 55 of this Law, with an exception of sub-paragraphs 3 and 14 of that Article, prevention the threat to other persons' life or property, prevention of the spread of contagious diseases (article 51, § 1 of the Proposal).

Q.33. B. Has your member State adopted measures to transpose §3 of article 7 which is an optional provision? If yes, how has this provision been legally understood (is it a case of detention or an obligation to stay in and not leave a certain place?) and for which reasons can an asylum seeker be "confined" in such a place?

Beside the reasons for detention, stated under Q. 33. A., when the asylum seeker is detained after lodging asylum application, there is another situation when asylum seekers' freedom of movement is de facto limited. Namely, after they are brought to the Asylum Home and before their asylum application is taken, which should take maximally 12 hours, they are accommodated in a pre-reception (waiting) area – a part of the Asylum Home which is locked and physically separated from the rest of the accommodation facilities. When asylum seekers are brought to the pre-reception area they need to sign a statement that if they leave the pre-reception area their asylum application will be deemed withdrawn. Leaving the pre-reception area means leaving the building itself. This measure (signing of the statement, the fact that the asylum application will be deemed withdrawn) is not defined by the Asylum Act nor any other law.

Q.33. C. Are there legally alternatives to detention, like obligation to report to the authorities, obligation to stay in a place, provision of a guarantor or of a financial guarantee?

According to article 27, § 2 of the Asylum Act, movement of the asylum seekers can be limited by means of prohibition of movement beyond a certain area; by means of prohibition of movement outside the Asylum Home or its branches; or by means of prohibition of movement outside a certain border crossing if accommodation is available there. The latter option is not exercised in practice since there is no accommodation available at the border crossings. The first alternative (prohibition of movement beyond a certain area) has also never been used in practice. The second alternative was exercised in a few cases (prohibition of movement outside the Asylum Home or its branches).

The Proposal of the Act on International Protection foresees only one alternative to limitation of one's movement to a designated facility of the Asylum Home or other appropriate facility of the Ministry, that is limitation of movement to an area of the Asylum Home or its branch (article 51, § 2 of the Proposal).

Q.33. D. Which is the competent authority to order the detention of an asylum seeker? Explain if different authorities are involved to first take and later confirm the decision.

The competent authority to order detention of the asylum seekers is the Asylum Sector of the Ministry of Interior (article 27, § 5 of the Asylum Act).

The same competent authority is foreseen in the Proposal of the Act on International Protection (article 51, § 3 of the Proposal).

Q.33. E. For how long and till which stage of the asylum procedure can an asylum seeker be detained?

Legally, limitation of movement may stay in effect until the grounds for it subsist, but not longer than three months. If the grounds for limitation of movement still exist after the three month period, the limitation can be extended for a further period of one month. Limitation of movement on the ground of preventing the spread of contagious diseases shall stay in effect until the grounds therefore subsist (article 27, § 5). In practice, there are asylum seekers in the Deportation Centre (see the following question) detained for more than four months (in May 2007 there was at least one asylum seeker detained since).

In practice, time limitations for detention of asylum seekers, detained in the detention unit of

the Asylum Home, are respected. But, asylum seekers detained in the Deportation Centre in

Postojna, are limited in their movement much longer, sometimes even for 6 or more months.

Time limits of limitation of movement as foreseen in the Proposal of the Act on International Protection are the same as in the adopted Asylum Act, with one exception: no longer is foreseen that the limitation of movement on the ground of preventing the spread of contagious diseases shall stay in effect until the grounds therefore subsist. Therefore, we may conclude that limitation on this ground shall also be terminated after four months maximum (article 51, § 3 of the Proposal.

Q.33. F. In which places (can we call them "closed centres"?) are asylum seekers detained (places in a special closed centres reserved only to asylum seekers, together with returnees like illegal aliens or even in a normal prison, in case within separated areas or with the other detainees)? Indicate if a difference has to be made following the location of the "closed centres" at the border or on the territory? Which is the authority managing those places and is it the same as the one in charge of reception conditions?

Limitation of movement outside Asylum Home or its branch is carried out in designated facility of the Asylum Home or other appropriate facility of the Ministry of Interior (article 27, § 3 of the Asylum Act). In practice that means that beside the detention unit of the Asylum Home, where only asylum seekers can be detained, applicants are also detained in a Deportation Centre in Postojna together with illegal migrants. Detention area of the Asylum Home is under the authority of the Asylum Sector of the Ministry of Interior, while Deportation Centre is under a direct authority of the Police. Detention unit of the Asylum Home is located in one of the buildings in the middle of the group of accommodation buildings comprising the Asylum Home. Because it is placed in the middle of the courtyard where children play and other asylum seekers as well as the Asylum Home staff moves freely, Legal Information Centre for NGOs has tried to brought to the Administrative Court's attention in its lawsuits filed against detention orders such placement of the detention unit as inhumane and degrading, since detainees are on one hand visible to everybody who passes by

the detention unit, and on the other hand constant exposure to people moving freely can cause psychological disorders and stress because they do not have the same privilege. In two cases, asylum seekers tried to commit suicide due to mental distress.

Limitation of movement based on the prevention of contagious diseases is carried out in the separate facility of the Asylum Home intended for the isolation (article 27, § 4 of the Asylum Act). The facility is under the authority of the Asylum Sector.

The Proposal of the Act on International Protection foresees movement of the applicants to be limited to an area of the Asylum Home or its branch or to a designated facility of the Asylum Home or other appropriate facility of the Ministry (article 51(2)). The Proposal does not mention anymore a separate facility of the Asylum Home intended for the isolation of persons with contagious diseases. But, as the Proposal of the Act on International Protection foresees limitation of one's movement to a designated facility (underlined by the rapporteur) of the Asylum Home or other appropriate facility of the Ministry, such persons will probably be accommodated while their movement is limited in the facility intended for the isolation.

The Proposal also foresees accommodation of a person who lodges a subsequent application with the body, responsible for persons' removal from the country (article 57(4)). In such cases the person will be accommodated in the Deportation Centre, managed by the police.

Q.33. G. Does UNHCR and NGOs have access to the places of detention and under which conditions?

Legally, UNHCR and legal representatives have access to all asylum seekers, including those in detention, at all times (article 9, § 4 of the Asylum Act). UNHCR implementing partners, who should also have access because they are authorized by the UNHCR to act in their name, are experiencing limitations in accessing certain premises. In practice, their access to asylum seekers and the places of detention is often restricted on both locations – Asylum Home and the Deportation Centre. There were cases when while trying to access the detention area of the Asylum Home, they were informed that there were no detained asylum seekers in detention at that time and were not let into the premises to check. The UNHCR-authorized NGOs also report that in the Deportation Centre in Postojna they could not access the living premises of detention with an explanation that for practical reasons the asylum seekers were accommodated together with illegal migrants and since access to illegal migrants is forbidden, they could not see the place of detention (although a visit has been previously agreed upon with the authorized inspectors). This way the NGOs never know whether they had access to all asylum seekers or not. Making unannounced visits to Deportation Centre in Postojna is not allowed for NGOs: they must announce the visit and obtain a permission. Legal Information Centre for NGOs has made an agreement both with the Deportation Centre in Postojna and the Asylum Home on the schedule for visiting the detainees. It has also been agreed between this NGO and the Deportation Centre that the NGO representative will be able to visit detained asylum seekers in the living premises.

Q.33. H. What appeal(s) can asylum seekers introduce against the fact he is detained? Is article 18 of the directive on asylum procedures of 1 December 2005 following which *"Where an applicant for asylum is held in detention, Member States shall ensure that there is a possibility of speedy judicial review"* respected (even if it has not yet to be transposed)?

An asylum applicant has the right to appeal against the written detention order to the Administrative Court within three days after a decision has been served to him. The Administrative Court shall call for a hearing and decide on the appeal within three days (article 27, § 6 of the Asylum Act). Provision of article 18 of the Directive on Asylum Procedures of 1 December 2005 (speedy judicial review) is in principle respected although it is questionable whether speedy judicial review also enables short appeal deadlines. The fact that such short deadlines can be easily missed may prevent a person from obtaining any judicial review.

The Proposal of the Act on International Protection also foresees the same appellate procedure (article 51, § 4 of the Proposal). But, in the Asylum Act, the time-limit for serving a detention order to a person in writing is within 48 hours from the time when a person has been orally informed about detention order (article 27, § 5 of the Asylum Act). With the Proposal of the Act on International Protection that will be probably changed as the proposal foresees serving of the detention order in writing in three working days since the detention order has been issued to the person orally (article 51, § 3 of the Proposal).

With regard to the time-limit for serving the detention order in writing within 48 hours, two different arguments exist regarding what this time-limit refers to. The Asylum Sector sometimes serves the order to the asylum seeker after more than 48 hours after the asylum seeker has been orally informed about the detention order. They believe that the time-limit of 48 hours obliges them only to write the order, but not to serve it to the asylum seeker, since they have to also translate the order, which is done by the translators. Such arguments and practice lead to a longer waiting period during which the asylum seeker has to wait for a possibility to demand a judicial review by filing a lawsuit because the order has not yet been served to him in writing, he cannot file a lawsuit). On the other hand, Legal Information Centre for NGOs argues such prolongation of time-limit as unlawful, stating the above given argument.

Q.33. I. Is the directive on reception conditions considered to be in principle applicable to the places where asylum seekers are detained? In particular which information do they receive about their rights, which access do they have to legal advice and health care?

The Directive on Reception Conditions is fully applicable to the places where asylum seekers are detained. There are no legal provisions in the Asylum Act or in the implementing acts that would limit the applicability of the directive in detention.

The Proposal of the Act on International Protection also does not foresee any legal provisions that would limit the applicability of the directive on reception conditions in detention.

Q.33. J. Apart from freedom of movement, what are the main differences between normal reception conditions and exceptional modalities for reception conditions in case of detention, knowing that they should be "as short as possible" (see article 14, §8)? If it is about closed centres, are the regulations of those places in line with the requirements of the directive (is article 13, §2, second indent of the directive following which "*Member States shall ensure that standards of living is met (…) in relation to the situation of persons who are in detention*" respected?).

Legally detained asylum seekers have the right to the same level of reception conditions as those who are in open-type accommodation centres (basic subsistence, hygienic goods, clothing, footwear and food), although there is no provision in the Slovenian asylum legislation that would explicitly state this. In practice, however, the level and quality of de facto reception conditions is much lower comparing to those received by asylum seekers in the open-type reception centre.

Asylum seekers detained in the Deportation Centre do not receive any leaflets with information on the asylum procedure, their rights and obligations and refugee counsellors. Their access to information is much more limited comparing to the open-type accommodation centre. Due to lack of information of asylum seekers in the Deportation Centre, Legal Information Centre for NGOs agreed with the Deportation Centre to be able to distribute pamphlets on asylum procedure and asylum seekers' rights and obligations only to asylum seekers in the Deportation Centre. Their access to legal advice is substantially lower, since they have a limited access to phone calls. Although a phone booth has been placed in the detention unit, the asylum seekers do not receive any phone cards. (Many asylum seekers in an open-type accommodation centre are engaged in illicit work. This allows them to provide for them and their families a bit more than they receive from the state. In detention that is not possible. Even if they have their own financial means they are taken away from them to cover for their expenses, therefore they are left with very limited options to contact anyone.) Legal Information Centre for NGOs also makes regular visits to the Deportation Centre (twice per week) to provide legal information to asylum seekers. Usually such visits are encouraged by asylum seekers themselves or by inspectors. An additional restricting factor for those who are in the Deportation Centre in Postojna is the distance of the location from the capital of Slovenia where most active refugee counsellors are located. In detention there are also no books, magazines and newspapers for the detainees to read.

Not only that the freedom of movement of the asylum seekers is limited, they also have restricted possibilities for recreation outdoors. In the Deportation Centre outdoor recreation is allowed ~~only~~ approx. for one hour twice per day (it should be minimum two hours and three hours for the minors as guaranteed by articles 43 and 117 of the Enforcement of Penal Sentences Act, Slovenian national legislation regulating prison regimes). Families and children are allowed to leave the premises and to play outside the fence on a playground next to the Deportation Centre. Furthermore, the applicants detained in the detention unit of the Asylum Home, which is located in the middle of the accommodation area, have no organized recreation activities available. Behind the detention unit there is a fenced cage-like open space of 4 x 15 square meters. Apart from the "cage" which most asylum seekers refuse to enter, there are no organized sport or recreation activities for these detainees. After the detainees in the detention unit went on a hunger strike, the head of the Asylum Home has allowed them to have a two-hour exercise in the open under supervision of guards.

Asylum seekers detained in the Deportation Centre in Postojna complain about the poor quality and quantity of food; they reported on at least two occasions of worms in the food or food with a particularly rotten or non-eatable smell and taste; small portions and the last meal received at 6 p.m.; only one warm meal per day (out of three). They are not allowed to leave the premises and cannot supplement for their food by buying it elsewhere but are depended on the food offered by the institution and the sellers of goods which are let into the detention centre (e.g. in Postojna) to sell goods to the asylum seekers.

The right to work is also limited. If an asylum seeker is detained after already obtaining the right to work (i.e. after one year since lodging asylum application if a first instance decision has not yet been issued), his or her access to the labour market is prevented since work is not available in detention. Due to the nature of detention, confined asylum seekers do not have the right to move to a private address.

The right to health care (which is already low since it is restricted to emergency health care and essential treatment of disease, which is not suitable for those residing under such conditions for a longer period of time) is substantially lower in detention places, especially in Postojna: asylum seekers only have access to the doctors who visit the places of detention (and not to public health centres as those in open-type accommodation centres). Usually, they receive either painkillers or anti-depressants for any illness they suffer from. Moreover, anti-depressant medication is prescribed to them massively. Asylum seekers with serious illnesses are encountering difficulties in accessing treatment they need. For example, an asylum seeker suffering from an advanced stage of hepatitis C complained about a constant pain and insufficient treatment of his disease. Only upon the intervention of an NGO he was taken to the hospital for a liver check and for appropriate treatment.

The Proposal of the Act on International Protection also does not stipulate any other distinction in reception conditions apart from being freedom of movement. Article 78(2) stipulates that an applicant becomes eligible for the rights with lodging a complete application and shall remain eligible until the execution of the decision of the responsible authority or at most until the decision becomes final.

Q.33. K. Are measures taken to avoid detention of asylum seekers with special needs (if yes, which ones?) or are special measures taken because of their needs?

Although there are no provisions in the legislation prohibiting detention of vulnerable groups, families, minors, unaccompanied minors and disabled are in principle not detained. However, due to the lack of specific provisions, that will not necessarily always be the case (especially in the case of prevention of transmitting contagious diseases). If a person who is considered to belong to one of the vulnerable groups lodges his or her asylum application in Deportation Centre they are usually immediately transferred from Deportation Centre to Asylum Home. In the legislation there are no special measures foreseen for vulnerable groups in detention and neither are they existent in practice.

At the time of concluding the report (May 2007) one family is accommodated in the Deportation Centre in Postojna after it lodged a subsequent asylum application, although the father is a mental patient.

The Proposal of the Act on International Protection does not foresee any provisions prohibiting detention of vulnerable groups.

Q.33. L. Can minor asylum seekers be detained together with relatives? Can unaccompanied minor asylum seekers be detained? If yes, are there special measures which take into account that children are concerned?

In the legislation there is no specific provision prohibiting minors (those with relatives or unaccompanied) from being detained. However, in practice minors are usually not detained

(there was one case of a minor who was detained because he refused to separate from a group of 13 people he entered the country with). There are no special measures for minors in detention foreseen with the law nor are they existent in practice. There was a Constitutional Court decision ordering the Deportation Centre to release a minor and his parents. For more information please see Q. 23.

The Proposal of the Act on International Protection does not foresee any provisions prohibiting detention of (unaccompanied) minors.

Q.33. M. In particular is article 10 regarding access to education of minors respected in those places?

In the case of detention of minors, their right to education would be respected, since a right to education is not limited (article 86 of the Proposal of the Act on International Protection). Also, in cases of minors accommodated in the Deportation Centre in Postojna, which is a closed-type facility, children do go to school, but are being escorted by the police. Therefore, I can conclude that the right to education would not be limited, but it is impossible to predict since there have never been any minors detained in the detention unit of the Asylum Home.

Q.33. N. How many asylum seekers are for the moment detained in your Member State? Which proportion does this represent in comparison of the total number of asylum seekers at the same moment?

On May 15, 2007 no asylum seekers were detained in the detention unit of the Asylum Home

(91 asylum seekers were accommodated in the Asylum Home on that day). Four asylum

seekers were detained in the Deportation Centre in Postojna.

9. ORGANISATION OF THE SYSTEM OF RECEPTION CONDITIONS

Q.34. Explain if the system of providing reception conditions is centralised or decentralised (which levels of government do provide practically reception conditions?) (do not confuse this question with question number 3 about the competence to make rules about reception conditions).

There is only one Asylum Home in Slovenia and the system of providing reception conditions is centralized and ran by the Asylum Sector of the Ministry of Interior (central government). Many activities contributing to maintaining a basic level of reception conditions are carried out by the NGOs using their own resources or with a support of UNHCR.

Q.35. In case, are accommodation centres public or/and private (managed by NGOs? If yes, are the NGOs financially supported by the State?)

The Asylum Home and the Deportation Centre in Postojna, where some asylum seekers are confined, are managed by the state and financed by the Ministry of Interior. In Slovenia there are no accommodation centres which would be managed by private actors or NGOs.

The Proposal of the Act on International Protection foresees the possibility of, on the basis of a public invitation for tenders, transferring the management of the activities and accommodation in the Asylum Home to a selected association, institution, or other non-profit legal entity active in the field of accommodation of applicants (article 80, § 1 of the Proposal).

Q.36. In case, how many accommodation centres are there in your Member State (distinguish in your answer between public and private centres)?

Please see answer to Q. 35.

Q.37. Is there in the legislation a plan or are there rules in order to spread the asylum seekers all over the territory of your Member State to avoid their concentration in some areas like big cities or to share the costs of their reception between central, regional and local authorities?

The legislation provides for a possibility of additional branches of the Asylum Home in different parts of the country to be established in the future. The Government of the Republic of Slovenia shall determine the number, criteria and conditions for the establishment of Asylum Home's branches by taking into account the possibilities of local communities (article 45.a, § 2 of the Asylum Act).

The same provision is foreseen in the article 81 of the Proposal of the Act on International Protection.

Q.38. Does a central body representing all the actors (like NGOs) involved in reception conditions exist? Does it play a consultative role for the State authorities, a coordination role for the actors or any other role?

None of the NGOs involved in reception conditions represents other NGOs and other actors nor does it speak in their name. All NGOs play a consultative role for the state authorities. The NGOs and the authorities meet on monthly coordination meetings with a purpose to acquaint the authorities with the NGO concerns and to resolve the most pressing issues. Some NGOs which are present in the field on a daily basis (e.g. Legal Information Centre for NGOs, Slovene Philanthropy, Mozaik and others) play a particularly important role in reversing and influencing the practices in a positive direction.

Q.39. **Q.39. A. Which is the body in charge of guidance, monitoring and controlling the system of reception conditions as requested by article 23 which is mandatory provision? Include in your answer which is the competent ministry (Interior, Social affairs, etc) for reception conditions?**

There was no body specifically established with a purpose of guidance, monitoring and controlling the system of reception conditions (neither with the legislation nor in practice). The body which is generally responsible to visit any premises where persons are detained, including Asylum Home and Deportation Centre, is the Office of the Human Rights Ombudsman of the Republic of Slovenia (in accordance with article 159 of the Constitution of the Public of Slovenia). However, no additional resources were allocated to the Ombudsman's Office to monitor and control the reception conditions of asylum seekers. The

responsible ministry for the reception conditions is the Ministry of Interior of the Republic of Slovenia.

The Proposal of the Act on International Protection does not foresee any body in charge of guidance, monitoring and controlling.

Q.39. B. Has your Member State (like the Czech Republic did recently) approved quality standards (not necessary legally binding) for housing services (for instance about the number of persons per bedroom on the basis of its size, number of accessible toilets, bathrooms, showers and washing machines per number of persons, existence of common rooms with radio, television, newspapers, books, computers, accessibility of telephone, existence of recreative rooms for children,…) to be respected in particular in accommodation centres?

No, quality standards for reception conditions in Slovenia were not legally adopted or approved. However, the Asylum Home is a modern institution, built in 2004 in accordance with the prescribed legal provisions and standards. In the rooms there are usually four beds except for the family department where the rooms are bigger with six beds. Each floor has modern bathrooms (separated for women, children, and men), showers, a tea kitchen, a washing room and common space with a TV. In practice, more and more asylum seekers have their own TVs, radios and even computers in their rooms.

Q.39. C. How is this system of guidance, control and monitoring of reception conditions organised?

Within the Ministry of Interior, there is no formal system of guidance, monitoring and control of the reception conditions in Slovenia that would be established specifically for the purpose of systematic monitoring the implementation of this directive.

In accordance with its mandate, both the Asylum Home and the Deportation Centre have been visited by the Ombudsman of the Republic of Slovenia, whose activities are based on article 159 of the Constitution. However, these visits are rare, not systematic and are performed following the complaints filed by asylum seekers or NGOs (in 2006 the Ombudsman paid one visit and one follow up visit to both Asylum Home and the Deportation Centre, both on the initiative of the NGOs). Visiting the premises where asylum seekers are accommodated is not at all a priority of the Ombudsman's office; the priority is to visit all detention premises in the country (including prisons, police stations, criminal proceeding detentions, and psychiatric hospitals). However, for visiting the Asylum Home and the Deportation Centre no additional resources were allocated to the Ombudsman's office and no training on reception conditions for the Office of the Human Rights Ombudsman was provided. At its visits, the Ombudsman checked the same type of conditions as in regular prisons but did not perform checks that would be specific for the reception conditions of asylum seekers. For example, reception conditions such as the right to education, the right to enter the labour market, the right to clothes and footwear, access to information, a well as access of UNHCR, NGOs and legal representatives were not checked.

In March 2007 the Ombudsman of the Republic of Slovenia visited the Deportation Centre in Postojna as a response to a media reporting on families with small children being detained in the Deportation Centre. In its public statement the Ombudsman

stated that conditions the Deportation Centre were satisfactory and that the Constitutional Court (which stated in its judgement that accommodation of children in such closed-type facility is a violation of children's rights) should not look only into limitation of movement, but also into other conditions for placement of families with small children in such centre. Three NGOs issued a joint statement (Legal Information Centre for NGOs, Slovene Philanthropy and Peace Institute), stating that assessment of some living conditions in such centres as good cannot diminish the importance of violation of other human rights (i.e. right to free movement).

The Asylum Home has also been visited by the European Committee for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment, sanitary inspectorates of the Republic of Slovenia, UNHCR and NGOs. However, these visits can not be considered as a system of guidance, monitoring and control. This represents a problem concerning the transposition of the directive. If the monitoring, guidance and control, required by the directive need to be regular and systematic, the directive is not correctly transposed. If a couple of visits in the Asylum home and the Deportation centre by the Ombudsman's Office, responsible for all other detention facilities in the country, are sufficient, then the directive is correctly transposed.

The Proposal of the Act on International Protection does not foresee any system of guidance, control and monitoring of reception conditions.

Q.39. **D.** Does the body in charge of guidance, control and monitoring produce reports about the level of reception conditions? If yes, how frequently and are they public?

As already stated, there is no body in charge of guidance, monitoring and control in Slovenia.

The organizations and bodies that visited the reception facilities produce reports on their findings concerning the reception conditions. The report of the Ombudsman is made public once a year. The report of the European Committee for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment is also made public. The reports of the UNHCR and its implementing partners are not made public but remain internal. They are used to conduct demarches with the authorities in line with its mandate responsibilities under the Geneva Convention.

In addition, UNHCR implementing partners and some government counterparts came together in 2005 and in 2006 in multi-functional teams and engaged in the gender, age and diversity participatory assessment with asylum seekers, refugees and other persons of concern. The persons interviewed raised a number of issues concerning quality and standard of reception conditions. These reports were published in English and in the local language. This will now be a regular activity.

Q.40. **Q.40. A.** What is the total number of asylum seekers covered by reception conditions for the last year for which figures are available (see article 22 obliging Member States to calculate those statistics about which we also asked the Commission to require them from Member States for mid June)?

In 2005 there were 1674 asylum seekers accommodated in the Asylum Home. In 2006 579 and 98 till May 15, 2007.

Q.40. B. What is the total budget of reception conditions in euro for the last year for which figures are available?

Total budget for reception conditions for 2004 was 1,057,365.21 EUR. ~~The figure for 2005 is not available.~~ In 2005, total budget for reception conditions was 479.781,88 EUR (including 50% contribution of the state) and 532.228,12 EUR in 2006.

Q.40. C. What is the average cost of reception conditions in euro per asylum seeker for the last year for which figures are available?

The average cost of reception conditions in 2005 were approximately 18.19 EUR per asylum seeker per day. In 2006 the number was a bit higher, but the Asylum Sector dos not have the estimation prepared yet.

Q.40. D Are the costs of reception conditions of asylum seekers supported by the central/federal or federated government or are they shared with regional and/or local authorities?

The cost of reception conditions are supported by the central government through the Ministry of Interior.

It is important to mention the activities of the NGOs which contribute significantly to maintain the basic level of the reception conditions and are funded by the European Refugee Fund, UNHCR, local government and the European Commission (EQUAL projects and other tenders).

Q.40. E. Is article 24 § 2 of the directive following which "*Member States shall allocate the necessary resources in connection with the nationals provisions enacted to implement this directive*" respected?

The necessary resources for building the new Asylum Home and for providing basic reception conditions were allocated in order for the minimal standards to be generally respected. There are issues of concern regarding the areas where there is a lack of funds to ensure a normal functioning of the system (medical care and counselling for the vulnerable groups, textbooks and other necessary equipment for schooling children, bus tokens for the parents, etc.) which is a problem concerning the transposition of the directive. Besides the lack of basic reception conditions in the stated areas there are also issues of concern arising from the attitudes and lack of training of the Asylum Home staff on the sensibility issues concerning diversity and cultural differences.

It is also problematic that 90% of the funds allocated to Slovenia by the European Refugee Fund (ERF) are used by the Ministry of Interior to meet the requirements for the reception conditions. Only 10% of the ERF funds are allocated for the activities of the NGOs. In 2006 the percentage of funds allocated to NGOs was higher, 14%.

Q.41. **Q.41. A.** What is the total number of persons working for reception conditions?

There are 16 people working for reception conditions in the Asylum Home: one nurse, ~~7~~ 6 people for accommodation and subsistence, ~~7~~ 6 people for processing asylum applications and

for other operational matters, and 3 persons for psycho-social matters (1 psychologist and 2 social workers). NGO staff is not included in these numbers.

Q.41. B. How is the training of persons working in accommodation centres organised? Does it take into account specific needs of unaccompanied minors when relevant as well as the gender dimension? (see article 14 §5, 19 § 4 and also 24 §1 which are mandatory provisions)?

All Asylum Home staff that deal with psycho-social work, who are directly involved with managing various departments in Asylum Home, completed university studies or have a college education in the fields of psychology, sociology or social work. Some have Master degrees, PhD or specialization. They passed professional exams under the mentorship of Slovene Social Chamber.

The system of training of the Asylum Home staff is not institutionalized and is carried out on ad hoc basis, depending on the programs of the NGOs, UNHCR, Ombudsman, Faculty of Social Work, Faculty of Social Sciences and other institutions that organize seminars within specific projects. In the beginning of the establishing the Slovenian asylum system (after 1999) there were numerous training programs organized (mainly by UNHCR) for the Asylum Home staff. In the last few years the number of trainings decreased. On average, a staff member participates in two trainings per year. Some members of the staff also take part in international events in the field of asylum. The trainings cover various issues but mostly basic concepts such as international protection. There is a lack of training on sensibility for cultural differences and vulnerable groups.

Q.41. C. Are there rules about the deontology of persons working in accommodation centres, in particular on confidentiality?

All employees of the Asylum Home are obliged to protect personal data of the asylum seekers (article 64, § 3 of the Asylum Act). Personal data collected and obtained during the asylum procedure by competent authorities and other state authorities shall be protected in accordance with the Law on Personal Data Protection and the provisions of this Law. All declarations, statements, explanations and data presented to authorities mentioned in the previous paragraph by an asylum applicant in the asylum procedure shall be considered as confidential. Authorities mentioned in the first paragraph shall use particular care in protecting any declarations, statements, explanations and data presented in the procedure by an asylum applicant from the authorities of his or her country of origin (article 18 of the Asylum Act).

The same provision regarding collection, processing and communication of personal data is foreseen in the Proposal of the Act on International Protection (article 128, § 4 and 130 of the Proposal).

10. IMPACT OF THE DIRECTIVE

Legal impact of the transposition of the directive:

Q.42. Specify if there are or not big problems with the translation of the directive in the official language of your Member State and give in case a list of the worst

examples of provisions which have been badly translated? (please note that this question has in particular been added to the questionnaire concerning the new Member States)

The assessment is that there are no problems with the translation of the directive into Slovenian. However, there is one remark that needs to be mentioned concerning the translation of all sentences containing "shall" that imply the mandatory nature of the directive provision (e.g. "the Member States shall inform…"). Namely, instead of translating these sentences in a way which would imply their mandatory nature in the Slovenian language as well (e.g. by using the translation of a word "have to" which in Slovenian implies an obligation), they were translated in the same way as any other sentence in present tense would be (e.g. "the Member States inform…"). Such translation might be technically correct and is usually applied in regard to international conventions, but it does not reflect the obligation to the same extent as the word "have to" would.

Q.43. Where there precise legal rules on reception conditions for asylum seekers before the adoption of the norms of transposition of the directive (if yes, specify what the nature of those rules was (legislation, regulation, administrative instructions,…)?

Precise legal rules on the reception conditions for asylum seekers existed even before the directive was transposed. The law regulating the reception conditions was Asylum Act – the same law which was amended as a consequence of the transposition. In addition, the reception conditions were regulated by administrative regulations (Regulations on Reception Conditions, Internal regulations) which will also be changed shortly with an aim of synchronization with the Asylum Act.

Q.44. Did the legal rules applicable to reception conditions become more clear, precise, coherent or detailed with the adoption of the transposition norms (for instance do you now have after the transposition one basic text dealing with reception conditions instead of numerous different texts in the past?

The legal rules applicable to reception conditions became more precise and detailed in certain areas (e.g. the definition of vulnerable groups, the right to work, the right to live in a private apartment, the right to health care), however, it also needs to be mentioned that the level of these rights are more restricted than before the transposition. Otherwise, the number and hierarchy of the legal documents regulating the reception conditions, remains unchanged.

Q.45. Did the transposition of the directive imply important changes in national law or were the changes of minor importance? In case, list the most important changes that have been introduced.

The transposition of the directive implied important negative changes in the national law. The right to work, the right to health care, and the right to live in a private apartment were defined in a clearer but also in a more restrictive way. The right to participate in maintenance work in the Asylum Home was introduced. The right to free legal aid provided by the refugee counsellors in the first instance procedure and the right to pocket money were cancelled.

Generally speaking, the process of transposition has been traumatic for both the asylum seekers and the NGOs. Comments and recommendations submitted by

UNHCR, NGOs and even some government bodies with a view to make the legislation more favourable and more humane were not accepted. In the process of transposition, there is a tendency to choose the most extreme positions which are foreseen by the directives. E.g. if the directive stipulates that the asylum seeker should have access to labour market one year after lodging asylum application at the latest, the legislator would choose the period of one year (and not nine months or six months as it would also be a possibility under the directive). Such legislation, which not only forbids the asylum seekers to work, but requires them to obtain work permits, look for work by themselves, takes away the minimum pocket money and free legal counselling in the first instance procedure, drives people underground and enhances the possibility of social exclusion.

Political impact of the transposition of the directive:

Q.46. Explain briefly if there has been an important debate about the transposition of the directive (in particular in the Parliament, but possibly also in the government, between political parties, including in medias, etc; underline in case the main points which have been discussed or have created difficulties)

The amendment of the Asylum Act of the Republic of Slovenia due to the transposition of two directives (2003/9/EC and 2005/85/EC) was accompanied by a heated debate throughout the legislative process (in the government, between the Ministry of Interior and the NGOs, in the parliament between coalition and opposition political parties, and consequently in the media). The main characteristic of the debate was that on one hand the government and the coalition political parties were defending the changes as legitimate since they were transposing the directive in accordance with the minimal standards, while on the other hand the opposition political parties and the NGOs were advocating for retaining the standards that existed before and to introduce more favourable provisions than required by the directive. Specifically, the focus was on whether or not the right to free legal assistance provided by the refugee counsellors in the first instance should be kept, whether or not the access to labour market should be restricted, what should be the level of health care, and whether or not the asylum seekers should be free to choose their residence. Also the introduction of the Police pre-procedure was a heated topic, as it would channel asylum seekers away from the asylum procedure into the alien policing procedure with the consequent result of them not having the same level of reception conditions as asylum seekers admitted into the procedure as such.

At the time of writing of this report (May 2007) the Proposal of the Act on International Protection has been debated over by the Government, UNHCR and NGOs. The draft of the Proposal has been made public[674], but has not yet been submitted to the Parliament for adoption.

Q.47. **Did the transposition of the directive contribute to make the internal rules stricter or more generous? In particular, did your Member State use the occasion of the transposition to abolish more favourable provisions of national law? Does your Member State still have rules more favourable than the provisions of the directive (if yes, try to give the more important examples).**

[674] http://www.mnz.gov.si/fileadmin/mnz.gov.si/pageuploads/SOJ/2007/word/ZMZ___obrazlozitve_174.doc

In certain fields where the previous regulation was more favourable for the asylum seekers, Slovenia used the occasion of the transposition to abolish more favourable provisions (e.g. the right to pocket money was cancelled; previously the asylum seekers also had the right to free legal assistance provided by the refugee counsellors in all three instances of asylum procedure while after the transposition they only kept this right in appeal procedures; the right to work is more restricted than before the transposition, the right to move to a private address is more restricted; the right to health care is restricted to emergency health care and essential treatment which is less than before when they had the right to basic medical treatment). It can also be noted that Slovenia did not use the occasion of transposition to introduce all possibilities for restrictions which are available in the directive (e.g. there are no provisions in the Slovenian legislation for withdrawing the reception conditions if the applicant concealed he or she had sufficient means to cover the material reception conditions as foreseen with article 16, § 1(b) of the directive).

11. ANY OTHER INTERESTING ELEMENT

Q.48. What are in your view the weaknesses and strengths of the system of reception conditions in your Member State?

The weaknesses of the system of reception conditions in Slovenia are:

- Limited capacity of the Asylum Home: with the new premises of the Asylum Home which was built in 2004, the capacity of the Asylum Home significantly increased. However, on a few occasions since 2004 the capacities of the Asylum Home were exceeded. The management of the Asylum Home addressed the situation by transforming other premises which are normally not intended for accommodating the applicants (e.g. the multi-purpose room) to the provisional bedrooms with foam beds. Since these premises were not intended for such purposes the hygienic conditions soon became unacceptable and therefore, other durable solutions for such situations should be identified for the future.
- Incomplete implementation of sanctions foreseen with the Internal Regulations of the Asylum Home: Although there are sanctions foreseen with the Internal Regulations, their implementation is not consistent. The appeal procedure for withdrawing the reception conditions is not appropriate as well and no written decisions on withdrawal are issued.
- The lack of possibilities for the asylum seekers to participate in the management of the Asylum Home: asylum seekers are not allowed to participate in the management of the Asylum Home. The management, however, takes their suggestions into consideration whenever possible.
- Weak continuous training possibilities for the Asylum Home staff.
- No access to secondary schooling for minors between the ages of 15 and 18: Although the directive requires the Member States to provide education for all minors, those minors between the age of 15 and 18, who are no longer entitled to attend elementary school, do not have the access to secondary schooling.
- Elementary schooling is cut when the decision upon the asylum application is final and not when it is executed: A child whose application has been rejected and who has not yet been expelled and therefore has no status, does not have the right to attend elementary school.
- Limited access of NGOs to asylum seekers accommodated in the Deportation Centre in Postojna.

The strengths of the system of reception conditions in Slovenia are:

- Coordination meetings between NGOs and the authorities providing for an opportunity to address issues that need attention.
- Relatively new accommodation facilities.
- Anti-trafficking project carried out by association Ključ.

Q.49. Mention any good practice in your Member State which could be promoted in other Member States

It is important to mention Association Ključ, an NGO carrying out a program for the prevention of trafficking of human beings and sexual harassment (the PATS project). Their work consists of informing all single women and unaccompanied minors with an aim for the victims to recognize themselves as victims of trafficking, to trust them about their problems and seek assistance and protection. In such case the association possesses a special safe house where a person can obtain refuge.

Q.50. Please add here any other interesting element about reception conditions in your Member State which you did not had the occasion to mention in your previous answer.

May 2007

QUESTIONNAIRE FOR THE NATIONAL REPORT ON THE IMPLEMENTATION OF THE DIRECTIVE : RECEPTION CONDITIONS OF 27 JANUARY 2003

IN: SPAIN

By
Ph.D. Irene Claro
Lecturer on International Public Law
University Pontificia Comillas
iclaro@der.upcomillas.es

1. NORMS OF TRANSPOSITION

Q.1. Identify the main norm of transposition (indicate the title, date, number, date of entry into force and references of publication into the official journal) and indicate its legal nature (legislative, regulatory, administrative); indicate in your answer if this norm was only devoted to the directive or if it has been included in a more general text and indicate in that case by quoting precisely the numbers of the provisions adopted to transpose the directive.

On 7 January 2005, a new Aliens Regulation was published in the official gazette. [Royal Decree 2393/2004 of 30 December, which is an enlargement of the Organic Law No. 4/2000 of 11 January, on Rights and Freedoms of Foreigners in Spain and their Social Integration (which was amended by Organic Law No. 14/2003 of 20 November, and by he Organic Law 11/2003 of 20 September 2003)]. This Royal Decree entered into force the 7th February 2005.

Along with it, several provisions of the 1995 Asylum Regulation [Royal Decree 203/1995 of 10 February] were amended. One of the reported intentions of the Government when drafting the amendments to the Asylum Regulation, was to transpose the Reception Conditions Directive, which was mainly done through the modification of article 15 of the Asylum Regulation, but also through an Additional Disposition, the number seventeen, to the Royal Decree by which the Aliens Regulation and amendments to the Asylum Regulation, were approved.

In addition to these articles, articles 163, 164 and 165 of the 2004 Aliens Regulation deals with the establishment of Reception Centres for Refugees as a part of the public Migration Centres network[675].

[675] The translation of the Articles into English in this report has been made by UNHCR.

Q.2. List by order of importance by using numbers (1, 2, 3) the others norms of transposition if there are more than one (indicate for each norm the title, date, number and references of publication into the official journal; include in your answer the administrative measures taken to ensure implementation of the directive and of the transposition norms like regulations, administrative circulars, special instructions,…)

- Approved before the Reception Conditions Directive and still in force:

1. Ministerial Order of 13 January 1989 (Social Affairs Ministry), regulating the Reception Centres for Refugees (CAR).
2. Resolution 6 July 1998, General Department (*Dirección General*) of the IMSERSO (Institute of Migrations and Social Services depending on the Labour and Social Affairs Ministry), to develop the Ministerial Order of 13 January 1989.
3. Ministerial Order of 18 September 2001 (Labour and Social Affairs Ministry), by which the economic quantities for the beneficiaries of the Reception Centres are established.

- Approved after the Reception Conditions Directive:

4. Resolution 11 February 2005, General Department for Integration of the Immigrants (*Dirección General de Integración de los Inmigrantes*) (depending on the Labour and Social Affairs Ministry), by which the maximum quantities regarding the economic helps for the beneficiaries of the Reception Centres for Refugees are updated.

Q.3. Explain which level of government is competent to adopt the legal norms on reception conditions for asylum seekers (specify in particular in case of a federal or regional State, if it is the federal/central power or the components; in case, specify below when it is impossible for you to answer a question because it is about the competence of the components and it is impossible for you to gather reliable information about all of them)

The central Government is competent to adopt legal norms on reception conditions for asylum seekers. The Reception Centres for Refugees were created by a Ministerial Order.

As a part of the public Migration Centres network, the Reception Centres for Refugees are depending on the Labour and Social Affairs Ministry, specifically on the General Department for Integration of the Immigrants (*Dirección General de Integración de los Inmigrantes*) (see articles 163, 164 and 165 of the 2004 Aliens Regulation).

Q.4. Explain the legal technical choices done to transpose the directive (comment on the nature and level of the norms used to do the transposition: legislative, regulatory, administrative like instructions, etc). Add any other element about the technique of transposition of the directive which is interesting for the implementation of Community law.

To transpose the Reception Conditions Directive the Government amended the 1995 Asylum Regulation through the 2004 Aliens Regulation.

Besides the previous internal and administrative norms, like the Ministerial Orders or the Instructions, are still in force.

Q.5. Mention if there is a general tendency to just copy the provisions of the directive into national legislation without redrafting or adaptation them to national circumstances? If yes, give some of the worst examples and explain if there is a risk that those provisions remain unapplied or will create difficulties of implementation in the future.

There is not a general tendency to just copy the provisions of this directive into national legislation.

Q.6. Have all the texts necessary to ensure the effective implementation of the new rules of transposition been adopted, prepared or at least foreseen in the future (for example a regulation completing a new law and the necessary instructions telling the administration how to apply the new rules)?

From the Governmental point of view, the transposition of the Reception Conditions Directive has been finished with the amendment of the Asylum Regulation and the internal regulations of the Ministry of Labour and Social Affairs.

The directive has been transposed in general with the amendment of the Asylum Regulation and this is a correct way to transpose. The problem is related to the amendment of the internal regulations of the Ministry of Labour and Social Affairs. The internal regulations of the Ministry of Labour and Social Affairs have been used also to transpose the directive.

In this regard we are waiting for the new Asylum Law, although probably the future Asylum Law will introduce no change or development of the reception conditions regime.

At this moment the first draft of a new Asylum Law is being discussed at the Governmental level. Unfortunately the first draft is not yet available and we have had no access to the project of transposition rules.

2. BIBLIOGRAPHY

Q.7. Has an in-depth preparatory study been made public about the changes at the occasion of the transposition? If yes, thanks for trying to provide us a copy *(please contact to answer this question adequately the body and person who was responsible for the preparation of the transposition of the directive in the public administration).*

No in-depth preparatory study has been made public.

Q.8. Quote any recent scientific book or article published about the directive, the transposition rules or the question of reception conditions for asylum seekers in general (answer even if this literature is only available in your language and provide the complete title in your language (without translation) with all references; indicate author, title, in case name of periodical, year and place of publication).

"Guía sobre el derecho de asilo" Rafael K. Polo y Virginia Carmona (coords.), Ministerio de Trabajo y Asuntos Sociales, 2005.

"Final Report of the European Open Forum on Reception and Health Care of Asylum Seekers" Vienna, 26-28 January 2006 (www.receptionandhealth.net) (information provided by Spanish Red Cross).

About legal advice: "Informe sobre asistencia jurídica a los extranjeros en España", Defensor del Pueblo (Spanish Ombdusman), Madrid, September 2005.

About minors: "Nuevos retos que plantean los menores extranjeros al Derecho" IV Jornadas sobre Derecho de los Menores, Isable E. Lázaro e Irene Culebras (Coord.), Universidad Pontificia Comillas y Fundación SEUR, 2006.

Q.9. Quote any interesting decision of jurisprudence based on the implementation of the new rules of transposition of the directive (indicate references of publication if any)?

At this moment there is no decision of jurisprudence.

3. GENERAL INFORMATION ABOUT THE SYSTEM OF RECEPTION CONDITIONS

The purpose of the following two questions is to help the reader to understand easily and quickly the system of reception conditions in your Member State and also to avoid that you have to repeat general elements in other parts of the questionnaire. ***Please do not write more than one or maximum two pages and do not include large historical developments.***

Q.10. Describe in general the system of reception conditions in your Member State (in particular which are the main actors in charge of reception conditions?)

The Department for the Integration of Immigrants is the organism responsible for the design and management of programmes for attending to the applicants for asylum (Royal Decree 1600/2004, of July 2. Official State Gazette (BOE) of July 3, 2004).

The programme for temporary hosting is carried out at the Centres for Hosting Refugees, at the places agreed to with the Centres for Temporary Stays and custody houses managed by the NGOs (ACCEM, CEAR and Red Cross).

In order to enter a Centre, the following are taken into consideration: the family circumstances, the date of arrival in Spain, the country the person has come from, the grounds for the application for asylum, the financial situation, the projects for the stay in Spain and the psychological aspects.

The main actors in charge of reception conditions are the following Reception Centres:

- Public Reception Centres for Refugees (*Centros de Acogida de Refugiados* or CAR) (Alcobendas, Madrid, Mislata –Valencia- and Sevilla are directly dependent on the Public Administration);
- Reception Centres for Refugees (*Centros de Acogida de Refugiados* or CAR) under the supervision of NGOs (for example, Spanish Red Cross is running 7 reception centres, preferably for asylum seekers but to be also used for immigrants in case there are vacancies).
- Temporary Reception Centres (*Centros de Estancia Temporal* or CETI) in Ceuta and Melilla.
- Temporary Reception Centres (*Centros de Acogida Temporal* or CAT), under the supervision of the Spanish Commission for Refugee Assistance (CEAR) (6 around Spain).
- Because of lack of vacancies, hotels or apartments.
- When asylum seekers have family members living in Spain they can choose not to stay at the reception centre but to be hosted by their families. They can use the reception centres services or the ones placed at the Spanish Red Cross local branches. They can receive financial support for 6 months, max. 1 year –the same period as if they were at a reception centre[676].

[676] Information provided by the Spanish Red Cross at www.receptionandhealth.net

Q.11. **Q11. A.** Explain if you have different types and levels of reception conditions following the different stages of the asylum procedure (this implies that you have to give briefly the necessary explanations about the asylum procedure). Make if relevant for reception conditions a distinction between the following procedural stages: determination of the responsible Member State on the basis of the Dublin II regulation, special procedures at the border (including transit zones in airports), accelerated procedures, admissibility procedures, eligibility procedures and the different possibilities of appeals (suspensive or not) against a refusal of the asylum request. Indicate what the main differences of reception conditions are between the different stages (if necessary by detailing between the different elements of reception conditions, in particular housing) and explain what the evolution of reception conditions is following the different stages of the procedure.

Under Spanish legislation, an asylum seeker can apply for asylum at the border or within the territory. In both cases the asylum procedure has two stages. The first one, after the asylum claim is lodged, implies the admission or inadmission to the normal refugee status determination procedure. The second one, after the admission, implies the examination of the refugee status or, when it has been applied, also the humanitarian status (leave to remain for humanitarian reasons).

When asylum seekers lodged their claim at the border, they are hold, not "detained", while the asylum office decides on the admissibility or inadmissibility of the asylum claim.

If the decision, after 4 days, is non-acceptance for admission the asylum seeker can ask for a re-examination on his/her request within the next 24 hours. Within a period of 2 days the re-examination must be decided upon. If the decision is again negative, the applicant has to leave the border post and will be returned to their country of origin or to a third country (i.e. under readmission agreements, flight destination, visas on their passport…).

The maximum length of time for the admissibility procedure at the border is 7 days, from the moment in which the asylum application is lodged. In case of a judicial recourse, this may be extended for one or two additional days.

If UNHCR considers, against the criterion of the administration, that the application should be admitted to the regular Refugee Status determination procedure, the asylum seeker will be allowed to enter Spanish territory to lodge a judicial recourse against the Administration's decision. Should the inadmissibility be agreed by UNHCR, that applicant can still lodge the recourse and the judge will decide on its suspensive effect[677].

Madrid airport is the point in the country where most asylum claims are submitted. The asylum seekers allowed to enter the country are referred to an emergency reception point at Madrid local branch where they are counselled.

[677] Information provided by UNHCR.

They stay in a hostel for a short period and when clinical analysis results are ready they are referred to a reception centre –like those who apply for asylum within the territory.

When applicants apply for asylum within the territory, the Spanish Red Cross local branches are responsible for all the clinical analyses and the referral to a reception centre is made by the headquarters[678].

The accomodation of an asylum seeker in a Reception Centre is not mandatory. According Article 4 of the Ministerial Order of 13 January 1989 regulating the Reception Centres for Refugees "in order to be accepted in these Centres it will be required, besides the availability of places, to fulfill the following requisites:

a) Be a foreigner.

b) Have presented an asylum request or for the recognition of the refugee status in Spain, and that the administrative file has not been decided upon.

c) Lack of economic means for the needs of his/her needs and of his/her family. (...)".

According to Article 13 of the Resolution 6 July 1998, approved to develop the Ministerial Order of 13 January 1989, special cases will have priority (for example, couples with children under 18, persons or families with a serious risk for political reasons in their country of origin, persons with psychosocial problems, etc.).

It should be noted that asylum seekers are allowed to remain in the Reception Centers for Refugees for a period of six months, which may be renewed (six months more) because of particular social circumstances or vulnerability.

The Temporary Reception Centres in Ceuta and Melilla do not normally have the capacity to lodge all asylum seekers, some of which have to wait until places are free, in order to access the Centers. The situation of asylum seekers who are outside the Temporary Reception Centres because of lack of vacancies and the refusal of the Government to move them to the peninsula (Ceuta and Melilla are not Schengen territory), has been precarious.Asylum seekers who lodge their applications in Ceuta and Melilla, remain in the respective Temporary Reception Centers (open Centers) until the admissibility of their claim is decided upon. If admitted to the procedure, they are then transferred to the Mainland where they may, according to the general requisites, be lodged in the Reception Centers for refugees[679].

When asylum seekers overcome the admissibility phase in Ceuta and Melilla (maximum 2 months) they are relocated to a Reception Centre in the mainland[680].

[678] Information provided by the Spanish Red Cross at www.receptionandhealth.net.
[679] Information provided by UNHCR.
[680] Information provided by the Spanish Red Cross at www.receptionandhealth.net

Q 11. B. Indicate precisely for which stage(s) of the asylum procedure the answers on reception conditions you give below are valid.

The answers covered both stages according to the Asylum Regulation (Article 15 introduced to transpose the Directive to the Spanish legislation). The first one, after the asylum claim is lodged until the admission or inadmission to the normal refugee status determination procedure. The second one, after the admission to the normal refugee status determination procedure and till the final administrative resolution granting or denying refugee status or, when it has been applied, also the humanitarian status (leave to remain for humanitarian reasons).

However the practice is different. Asylum seekers are not beneficiaries of the reception conditions during the first stage. They are beneficiaries of the reception conditions only when their applications are admitted to the normal Refugee Status Determination procedure.

In case of application of Dublin II Regulation, they are not beneficiaries of the reception conditions.

4. GENERAL RULES ON RECEPTION CONDITIONS

Q.12.

Q 12. A. Are material reception conditions provided in kind, in money or in vouchers or in a combination of these elements (see article 13, §5 which is an optional provision)? Distinguish between the different elements (housing, food, clothes, health, transportation, pocket money,…). **If reception conditions are provided in money (in general or in some cases, for instance when no places are anymore available in accommodation centres), indicate the precise amount given to the asylum seekers. Indicate in your answer what is provided in general and if there are exceptional cases.** Specify in your answer if reception conditions are different from the general system of social aid for nationals or aliens and if yes, if and when (which stage of the asylum procedure) can asylum seekers have access to the general system of social aid?

Only after studying the cases on an individual basis and when there are special and extraordinary circumstances (usually because of psychiatric problems), it is possible to cover part of the material conditions (including some budget money) outside the reception centre.

When there is no place available in any reception centre or it is considered no advisable to access, it is possible to cover part of the material conditions (including some budget money) outside the reception centre, (for example, in hotels or apartments).

It is important to take into account that how the total quantities are distributed to the asylum seekers depends on the organisation (Public Administration or NGO) that manage the centre. For example, one NGO has reported that its policy is to give them a total amount of money at the beginning of the month/week as a salary for everything and they will have to learn how to manage their savings. Public reception centres reported that they have around 300 euros per asylum seeker, but this money is not given immediately to each one.

The total amount in and out the centre should cover certain allowances established by law [See Resolution 11 February 2005, General Department for Integration of the Immigrants, by which the maximum quantities regarding the economic helps for the beneficiaries of the Reception Centres for Refugees are updated]:

The quantities are:

Personal expenses and transport
Asylum seeker: 46 euros/month
Couple: 78 euros/month
Minors under 18: 17/ euros/ month/ person
Child over 18 and other relatives: 30 euros/month/person

Transport: depends on the cost of a monthly ticket

Wardrobe
Clothes and shoes: 62/season/person
Expenses for birth of a child: 162 euros/child

Training and social and cultural skills
Language courses: depending on the specific costs/person
Nursery: depending on the specific costs for every child
Cultural activities: depending on the specific costs
Didactic school Material: 130 euros course/child

Expenses for their support outside the centre
One person: the minimum official wage, around 560 euros/month
Family: Twice the minimum official wage, around 560 euros/month
Family numerous: Twice and a half the minimum official wage, around 560 euros/month

Q 12. B. Can the reception conditions in kind, money or vouchers be considered as sufficient "to ensure a standard of living adequate for the health of applicants and capable of ensuring their subsistence" as requested by article 13, §2 of the directive (which is a mandatory provision but leaves a certain space to Member States)? In order to help to assess the respect of this rule when reception conditions are provided in money, include if necessary in your answer points of comparison with the minimum amount of social aid guaranteed for nationals in your Member State.

The reception conditions in kind, money or vouchers can be considered sufficient, taking into account that all services are basically covered within the reception centres. In addition certain centres provide psychological assistance and if the centre does not provide the service the person will be sent to whoever may provide him with the proper treatment for free.

Asylum seekers who need it, get their material needs covered through the administration and specialized NGOs that receive funding from the government. Referrals are made by asylum State organs.

Notwithstanding the situation of asylum seekers who are outside the Reception Centres for Refugees because of lack of vacancies is precarious[681].

Spanish legal basis regarding Article 13(2) of the Reception Conditions Directive is Article 15 of the Asylum Regulation (as amended by the Royal Decree 2393/2004, of 30 December):

"1. Asylum seekers, provided that that they do not have economic means, shall be able to benefit from the social, educational and health-related services rendered by the competent agencies of the Public Administration, within the means and budget availabilities of these agencies, to ensure a standard of living adequate and capable of ensuring their subsistence. The benefits given could be modulated when the asylum application is pending of admission to the normal Refugee Status Determination procedure, guaranteeing in any case the coverage of the basic needs of the asylum seekers. In general, access to education, to health care, to social security and to social services will be regulated, respectively, according to the dispositions in articles 9, 12 and 14 of the Organic Law 4/2000, of 11 January, on the Rights and Freedoms of foreigners in Spain and their social integration (in the wording given by the Royal Decree 2393/2004, of 30 December) (…)

3. In providing the services which are referred to in paragraph 1 of this article, will be taken into consideration the specific situation of persons with a specific vulnerability, such as minors, unaccompanied minors, senior citizens, pregnant women, one-parent families with minor children, and persons who have been subject to torture, rape, or other serious form of psychological, physical o sexual violence, according with the directives that appear in the international recommendations used in harmonizing the treatment of these social groups of refugees or displaced individuals (in the wording given by the Royal Decree 2393/2004, of 30 December).

5. PROCEDURAL ASPECTS

Q.13. **Q 13. A. Does the national legislation specifically provide that a request for international protection is presumed to be under the Geneva Convention unless explicitly requested otherwise? (see article 2, b which is a mandatory provision)**

The national legislation establishes that an application for asylum is an application for the status of refugee under the Geneva Convention (article 2 Asylum Law 1994), unless explicitly required another status.

At this moment the draft of a new Asylum Law is under discussion. This new Law is expected to transpose the Qualification Directive. It could introduce a change in this question. Unfortunately we have had still no access to the draft.

Q. 13. B. Explain if the scope of application of reception conditions is extended to other asylum seekers than refugees in the sense of the Geneva Convention, in particular to persons asking for subsidiary protection or to other forms of protection like humanitarian statuses (see

[681] Information provided by NGOs.

article 3, § 4 which is an optional provision)? If not, explain briefly which the differences between these special regimes and the directive are.

There are no different reception conditions. Asylum seekers and beneficiaries of subsidiary protection are covered by the legislation on Reception conditions.

Q. 13. C. Are there specific provisions in national law for reception conditions in case of diplomatic or territorial asylum requests submitted through a diplomatic or consular representation (see article 3, §2 which is an optional provision)?

There are not specific provisions in national law for reception conditions in case of diplomatic or territorial asylum requests submitted through a diplomatic or consular representation. Article 4.1 of the Ministerial Order of 13 January 1989 establishes that the beneficiary of the Reception Centres for Refugees must be a foreigner that has presented an asylum request in Spain (that means, at the border or within the territory).

Each person can apply for asylum at the Spanish embassy if he/she is in a third country, different from his/her country of origin. In case of risk for the applicant article 16 of 1995 Asylum Regulation provides that the Interministerial Commission on Asylum and Refuge (*Comisión Interministerial de Asilo y Refugio* or CIAR), based on a proposal of the Asylum and Refugee Office (*Oficina de Asilo y Refugio* or OAR), can decide to move him/her to the territory of Spain.

Q.14. **Are reception conditions available as from the moment one asylum application is introduced? How is article 13, §1 which is mandatory legally understood?** Do asylum seekers have to satisfy any other condition in order to get reception conditions?

The article 13(1) of the Reception conditions Directive makes clear that the reception conditions are available to applicants when they make their application for asylum. Nevertheless, the recently modified article 15(1) of the 1995 Asylum Regulation establishes the possibility to modulate the social, educational and health-related services, when the asylum application is pending admission to the normal Refugee Status Determination Procedure. It has to be noted that prior to the December 2004 amendment of this article, only asylum seekers whose claims had been admitted to the procedure had access to benefits. While the new formulation opens the benefits to all asylum seekers, keeps the possibility of 'modulating' them pending admission of the applicant. The contradiction goes further: article 13(2) establishes that the material reception conditions should be capable of ensuring the subsistence of applicants. It is difficult then to understand the standard set in article 15(1) of

the Asylum Regulation when it says that the 'modulation' of benefits for asylum seekers pending the admission of their application to the normal Refugee Status Determination procedure, in any case should cover their basic needs. The only possible explanation is that the 'modulation' could operate only in cases where the benefits for applicants admitted to the normal Refugee Status Determination procedure, are above the standard of ensuring their subsistence[682].

Article 15 of the Asylum Regulation (as amended by the Royal Decree 2393/2004, of 30 December) provides that:

"1. Asylum seekers, provided that that they do not have economic means, shall be able to benefit from the social, educational and health-related services rendered by the competent agencies of the Public Administration, within the means and budget availabilities of these agencies, to ensure a standard of living adequate and capable of ensuring their subsistence. The benefits given could be modulated when the asylum application is pending of admission to the normal Refugee Status determination procedure, guaranteeing in any case the coverage of the basic needs of the asylum seekers. (…)" (underlined added).

However, as mentioned above, asylum seekers don't have access in the practice to reception conditions while they are not admitted to the normal refugee status determination procedure.

Q.15. **Explain when reception conditions end, for instance after refusal of the asylum request** (include in your answer the link with the right of appeal against a decision of refusal of the status, in particular the question of its suspensive effect)

Q.16 Are there special rules or practices regarding reception conditions in case of successive applications for asylum introduced by the same person?

The mere repetition of an application for asylum already rejected in Spain is a reason not to admit the application to proceedings (article 5(6)(c) of the Law on Asylum of 1984 reformed in 1994). The only exception occurs when "new circumstances arise in the country of origin which may entail a substantial change to the basis of the application".

Q.17. Information of asylum seekers about their rights and obligations in terms of reception conditions, in particular about established benefits (see article 5 which is too large extend a mandatory provision; do not confuse this question with the information to be provided to asylum seekers about the asylum procedure):

Q. 17. A. Are asylum seekers informed, and if yes about what precisely?

[682] Information provided by UNHCR.

Article 5 Asylum Regulation of 1995:.

"2. Those asylum-seekers who are inside Spanish national territory will receive information on the need to provide evidence to support their request from the governmental agency that they have addressed. This agency must also provide information on the rights to which asylum-seekers are entitled under Law 5/1984 regulating refugee status and the right to asylum. In particular, they are to be informed of the right to have an interpreter and legal counsel. Likewise, the authority to which they have submitted their request will provide the asylum-seeker with medical attention, when appropriate, and will provide guidance regarding the currently-existing social services intended to cover the asylum-seeker's immediate human needs" (emphasis added).

Asylum seekers are informed as soon as they allocated to a Reception Centre and the latest as soon as they arrive into the Centre.

At the border point (and as mentioned before, the most asylum claims are submitted in Madrid airport), asylum seekers are informed about the asylum procedure, social workers canalise the demands to the police (change of lawer, medical demands, ….), they are informed about their rights and obligations during their stay at the transit zone.

Asylum seekers allowed to enter the country are referred to an emergency reception point at Madrid local branch where they are counselled. They stay in a hostel for a short period and when clinical analysis results are ready they are referred to a reception centre –like those who apply for asylum within the territory. During this period they are informed about the Spanish health care and welfare system, the asylum procedure, their rights and duties, the necessity to be registered with the local population register ("padrón") in order to be entitled to benefit from social benefits and the public health care system; if necessary, they can receive psychological support, etc.[683]

Q. 17. B. Is the information provided in writing or, when appropriate, orally?

The information is generally provided in writing in different languages as soon as they get into the reception centre. The information is provided orally when the information sheet is not available in a language understood by an asylum seeker.

Q.17. C. Is that information in general provided in a language understood by asylum seekers? Specify the list of languages in which it is available

Yes, there is an information sheet in different languages (French, English, Russian, Armenian, Rumanian, Georgian, Arabic and Spanish). If the asylum seeker has another language, he/she will be informed orally by an interpreter[684] .

At the public Centres for Refugees the languages are French, English, Spanish, Arabic and Russian.

[683] Information provided by the Spanish Red Cross, at www.receptionandhealth.net

[684] Information provided by NGOs.

Q. 17. D. Is the deadline of maximum 15 days respected?

The deadline of maximum 15 days is respected when the asylum seeker lodge its application at the Asylum and Refugee Office (OAR) or at Barajas airport.

In and outside Madrid the written information is provided at the time of lodging the asylum application[685].

At the 4 public Centres for Refugees the maximum is 10 days.

Q.18. Information of asylum seekers about the existence of organisations or groups promoting their interest and defending their rights (see article 5 which is to a large extend a mandatory provision):

Q. 18. A. Is there a list of organisations dressed by the authorities and if yes is it comprehensive? Is this in particular the case about the possibilities to get legal assistance and health care?

In order to get legal advice the Asylum and Refugee Office (OAR) provides an information brochure where four NGOs (Spanish Red Cross, CEAR-Spanish Commission for Refugee Assistance, *Rescate* and ACCEM-Association of Spanish Catholic Commission for Migrations), the UNHCR Madrid Office and the details of the General Department of Immigrant Integration are mentioned.

Q. 18. B. Is the information provided to the asylum seekers, and if yes, in writing or, when appropriate, orally?

As mentioned before there is an information sheet in different languages (French, English, Russian, Armenian, Rumanian, Georgian, Arabic and Spanish). If the asylum seeker has another language, he/she will be informed orally by an interpreter.

Q. 18. C. Is that information in general provided in a language understood by asylum seekers? Specify if possible the list of languages in which it is available.

As mentioned before, they are informed by writing in through an information sheet in different languages (French, English, Russian, Armenian, Rumanian, Georgian, Arabic and Spanish). If the asylum seeker has another language, he/she will be informed orally by an interpreter (information provided by NGOs).

Q. 18. D. How many organisations are active in that field in your Member State?

Spanish Red Cross, CEAR –Spanish Commission for Refugee Assistance, *Rescate Internacional* and ACCEM –Association of Spanish Catholic Commission for Migrations, and the UNHCR Madrid Office.

[685] Information provided by UNHCR.

Q.19. **Documentation of asylum seekers (see article 6):**

Q.19. A. What kind of document is delivered to the asylum seeker? Explain the legal value of this document (just a certification of the status as asylum seeker or also prove of identity?) (see §1 of article 6 which is a mandatory provision)

Article 13 of Asylum Regulation provides:

"1. The asylum-seeker will be provided with a duly stamped receipt of his request for asylum. He must attach this receipt to his passport, thereby enabling him to remain in Spain for a term no longer than sixty days. He must notify the competent authority whenever he changes his place of residence.

2. Once the request for asylum has been admitted to the regular refugee status determination procedure, authorization to remain in the country will be accredited through the issuance of a document to the asylum-seeker, thereby enabling him to remain inside Spanish territory while his file is being processed."

The practice is that the receipt and the document are given at the time of formalizing the asylum application and of the notification of admission to the procedure, respectively.

Q.19. B. Are there situations or specific cases in which another equivalent document or even no document is issued? (in particular is there an exception for "procedures to decide on the right of the applicant legally to enter the territory" as made possible by §2 of article 6)?

Q.19. C. For how long is this document in principle valid and is it necessary to renew it after a certain period?

Article 13 of Asylum Regulation establishes that:

"1. The asylum-seeker will be provided with a duly stamped receipt of his request for asylum. He must attach this receipt to his passport, thereby enabling him to remain in Spain for a term no longer than sixty days. He must notify the competent authority whenever he changes his place of residence.

2. Once the request for asylum has been admitted to the regular refugee status determination procedure, authorization to remain in the country will be accredited through the issuance of a document to the asylum-seeker, thereby enabling him to remain inside Spanish territory while his file is being processed." (underlined added).

Q.19. D. What is the deadline for the delivery of that document? Is the mandatory deadline of 3 days set by article 6, §1 respected[686]?

The mandatory deadline of 3 days is respected in the practice. Asylum seekers usually receive the document when they apply for asylum or when they receive the notification of admission to the normal refugee status procedure.

Q.19. E. Is it possible for an asylum seeker to get a travel document for serious humanitarian reasons (see §5 of article 6 which is an optional provision)?

Q.19. F. Is there a central system of registration of asylum seekers and is it or not separate from the registration of aliens? If yes, describe it briefly (content) and indicate in particular if it is an electronic database.

Q.20. Residence of asylum seekers :

Q.20. A. Is in principle an asylum seeker free to move on the entire territory of your Member State or only to a limited part of it and in case, which part? (see article 7, §1 which is a mandatory provision)

The asylum seekers who lodged their applications within the country or at borders and have been admitted to the regular Refugee Status Determination procedure, have freedom of movement.

Q.20. B. About the place of residence (see §2 of article 7): explain to which extend the person is free to choose her residence and if this depends of the stage of the asylum procedure (for instance before and after admissibility); if there are constraints limiting the choice, explain which ones and their reasons (for instance processing of application, attribution of reception conditions,…).

Article 5 of the Asylum Law**:** *Consequences of the request for asylum at the border:*

"7. (…). While the request for asylum or for re-examination is being processed, the asylum-seeker must remain at the border point. Adequate facilities will be provided for this purpose. (…)"

Regarding asylum applications within the territory Article 14 of the Asylum Regulation establishes: (*Precautionary measures)*

"If the asylum-seeker does not possess the official documents required to reside in Spain, the Ministry of Justice and of the Interior may set an obligatory place of residence for the individual concerned until a final decision on his file is handed down. The asylum-seeker must be informed of the decision to set an obligatory place of residence by the Governor of the province in which he is located. Likewise, for reasons of public safety, the Minister of the Interior has the authority to adopt any of the measures stipulated in article 6 of Constitutional Law 7/1985 (July 1) regarding the Rights and Freedoms of Aliens in Spain." (emphasis added).

It should be noted that this article has never been used[687].

[687] Information provided by UNHCR.

Q.20. C. About the <u>place of reception (meaning where the asylum seeker has to stay to benefit from reception conditions) (see § 4 of article 7)</u>: explain which are the general rules about the determination of this place (to which extend are the decisions determining the place taken individually and do they take into account the personal situation of the asylum seeker?) and to which extend the person is free to choose it and if it depends of the stage of the asylum procedure (for instance before and after admissibility); if there are constraints limiting the choice, explain which ones and their reasons (for instance attribution of reception conditions, processing of the application,…).

Madrid airport is the point in the country where most asylum claims are submitted. The asylum seekers allowed to enter the country are referred to an emergency reception point at Madrid local branch where they are counselled. They stay in a hostel for a short period and when clinical analysis results are ready they are referred to a reception centre –like those who apply for asylum within the territory. When applicants apply for asylum within the territory, the Spanish Red Cross local branches are responsible for all the clinical analyses and the referral to a reception centre is made by the headquarters. When asylum seekers have family members living in Spain they can choose not to stay at the reception centre but to be hosted by their families. The can use the reception centres services or the ones placed at the Spanish Red Cross local branches. They can receive financial support for 6 months, max. 1 year –the same period as if they were at a reception centre[688].

The accomodation of an asylum seeker in a Reception Centre is not mandatory.

According Article 4 of the Ministerial Order of 13 January 1989 regulating the Reception Centres for Refugees "in order to be accepted in these Centres it will be required, besides the availability of places, to fulfil the following requisites:

a) Be a foreigner.

b) Have presented an asylum request or for the recognition of the refugee status in Spain, and that the administrative file has not been decided upon.

c) Lack of economic means for the needs of his/her needs and of his/her family. (…)".

An asylum seeker will be informed and adviced about the Reception Centres for Refugees by the Unit of Social Work placed at the OAR (Asylum and Refugee Office). Afterwards he/she lodge his/her application to be admitted in a Reception Centre. After an interview and taking into account the situation of the applicant, the Reception Centre makes a proposal to the General Department for Integration of the Immigrants, which is the responsible of the final decision of admission (Article 21 of the Resolution 6 July 1998).

[688] Information provided by the Spanish Red Cross at www.receptionandhealth.net.

According to Article 13 of the Resolution 6 July 1998 special cases will have priority (for example, couples with children under 18, persons or families with a serious risk for political reasons in their country of origin, persons with psychosocial problems, etc.).

Q.20. D. If all asylum seekers are not placed in accommodation centres because of capacity limits, explain how the persons are distributed between accommodation centres and other accommodation facilities (which authority takes the decisions, on the basis of which elements, can that decision be appealed by the asylum seeker,…)

Q.20. E. How can an asylum seeker ask to leave temporarily the place of residence or of reception or an assigned area? How is the individual AND impartial character of the decision ensured? (see §5 of article 7 which is a mandatory provision)

The accomodation of an asylum seeker in a reception centre is not mandatory.

An asylum seeker has the duty only to inform the competent authority of any changes of address as soon as possible (article 4(6) Asylum Law and article 9(2) and 13(4)of Asylum Regulation).

Q.21. **Q.21. A. Do rules on reduction or withdrawal of reception conditions exist in internal legislation and if yes in which cases (mention in particular if there are cases not foreseen by article 16, § 1 and 2 which are optional provisions)? Distinguish in your answer between cases of reduction and withdrawal and explain which conditions can be reduced and if access to emergency health care is always ensured as requested by article 16, §4, last sentence.**

There are no dispositions in the Asylum Law or Regulation on the withdrawal of benefits for asylum seekers.

The only reference to this matter refers to the possibility to 'modulate' the benefits for asylum seekers pending their admissibility to the normal Refugee Status Determination. The recently modified article 15(1) of the Asylum Regulation establishes the possibility to modulate the social, educational and health-related services, when the asylum application is pending admission to the normal Refugee Status Determination Procedure[689].

However it must be taken into account that asylum seekers don't have reception conditions before their applications are admitted to the normal refugee status determination procedure (admissibility phase).

Access to emergency health care is always ensured.

[689] Information provided by UNHCR.

Q.21. B. Has article 16, §2 dealing with refusal of reception conditions for <u>unreasonably late applications</u> for asylum been transposed by your Member State (or was this case already applicable before transposition)? Are there cases in practice?

Article 16(2) has not been transposed. The 1995 Asylum Regulation mentions since its approval that the asylum seeker has one month to apply for asylum within the territory (Article 7).

Q.21. C. How is it ensured that decisions of reduction or withdrawal are taken individually, objectively AND in particular impartially (for instance through and independent arbitrator) (see article 16, §4 which is a mandatory provision)?

Q.21. D. Is statement 14/03 adopted by the Council at the same moment as the directive respected (see the document attached to our sending)?

Q.21. E. Are there already administrative appeal decisions or judgements on cases of reduction, withdrawal or refusal which have been taken, and if yes, what has been the outcome?

Q.22.

Q.22. A. <u>Appeal</u> against a negative decision relating to the granting of benefits or based on article 7 (see article 21 which is a mandatory provision): indicate against which decision an appeal can be introduced, describe the system of appeal in general and include in particular in your answer the information given to asylum seekers about possibilities of appealing, deadline for appealing, if the appeal has or not a suspensive effect, if there are different steps (for instance first an administrative appeal and in particular if the guarantee of an appeal before a judicial body in the last instance is respected)?

There are no legal or by-legal provisions concerning appeals on negative decisions on grant of benefits or on reception conditions, except on cases of article 7 paragraph 3 of the Directive (confinement of the asylum seeker in a particular place).The confinement or detention shall be decided by a judge, and hence appeals are possible according to the general procedural laws. The confinement or detention of asylum seekers normally takes place in the context of a trial for the expulsion or devolution of the asylum seeker that has entered or been caught in the process of entering illegally Spain. Normally the judge will decide on the confinement or detention prior to the lodging of the asylum application, which usually is made in the Internment Centre for Foreigners. In these cases, the admissibility procedure, which in Spain can take up to a maximum of two months, is shortened in order to end before the 40 days maximum confinement. If the asylum seeker is admitted to the procedure he/she is let free.[690]

[690] Information provided by UNHCR.

Q.22. B. Explain which are the possibilities for asylum seekers to benefit from legal assistance when they introduce such an appeal (see article 21, §2 which is a mandatory provision but leaves space to Member States)?

Articles 8(4) and 19(2) of Asylum Regulation establish the right to legal assistance for asylum seekers.

Article 2(f) of Organic Law 1/1996 of 10 January, and article 22(1) of Aliens Law establish free legal assistance for asylum seekers.

Q.22. C. Are there already administrative appeal decisions or judgements which have been taken and if yes, which are the main important ones?

At this moment there are no administrative decisions or judgements.

Q.22. D. Is a mechanism of complain for asylum seekers about quality of receptions conditions in general (even if they are not personally concerned) organised? If yes, before which authority? Is it linked to the system of guidance, control and monitoring of reception conditions (see below question n° 39)?

If asylum seekers would like to put forward a complain they could send a letter addressed to the General Department for Integration of the Immigrants, the body in charge and dependant of the Ministry of Labour and Social Affairs.

The *Subdirección General de Intervención Social* (at the General Department for Integration of the Immigrants depending on the Labour and Social Affairs Ministry) is the office responsible for management of reception conditions. The Asylum and Refugee Office (OAR) is responsible for housing.

The Social Work Unit (*Unidad de Trabajo Social*) receives the complains. This Unit belongs to the Labour and Social Affairs Ministry (MTAS), although it is placed at the Asylum and Refuge Office (OAR) (which belongs to the Ministry of Interior).

6. RIGHTS AND OBLIGATIONS OF ASYLUM SEEKERS

Q.23. Family unity of asylum seekers: define how a family is defined in relation with article 2, (d) which is a mandatory provision and explain how housing is provided to a family (see articles 8 which is a mandatory provision but leaves space to member States and 14, §2, (a) which is a mandatory provision).

Article 5(7) of the 1994 Asylum Law provides for asylum applications lodged at border that:

"7. (…). While the request for asylum or for re-examination is being processed, the asylum-seeker must remain at the border point. Adequate facilities will be provided for this purpose."

Article 4 of Ministerial Order of 13 January 1989 regulating the Reception Centres for Refugees:

"1. In order to be accepted in these Centers it will be required, besides the availability of places, to fulfil the following requisites:

a) Be a foreigner.
b) Have presented an asylum request or for the recognition of the refugee status in Spain, and that the administrative file has not been decided upon.
c) Lack of economic means for the needs of his/her needs and of his/her family. (...)"

Article 4(2) Ministerial Order of 13 January 1989 regulating the Reception Centers for Refugees defines the family members:

- ascendents and descendants;
- and the spouse of the asylum seeker or his or her unmarried partner in a stable relationship, except legal or voluntary separation, divorce, age of majority or family independence.

In these cases the situation of each family member will be separately examined.

Article 13 of Resolution of 1998 gives priority to couples with children under 18.

At the international airports of Madrid, Barcelona and Las Palmas, there are reception facilities for families, and families reside there until their asylum claims are examined. In-country applicants, who lack financial means, have access to the Reception Centers, and there reside in family rooms. For applications in-country where the asylum seeker is kept in detention pending the decision on admissibility, men and women are kept separate in the Centers for aliens. Minors remain with their mothers. [691]

When asylum seekers have family members living in Spain they can choose not to stay at the reception centre but to be hosted by their families. The can use the reception centres services or the ones placed at the Spanish Red Cross local branches. They can receive financial support for 6 months, max. 1 year –the same period as if they were at a reception centre[692].

[691] Information provided by UNHCR.
[692] Information provided by the Spanish Red Cross at www.receptionandhealth.net.

Q.24. **Q.24. A. How is housing of asylum seekers organised: describe the system in general and indicate in particular what is the most frequently system used (see article 14, §1 which is a mandatory provision but leaves space for Member States; distinguish between accommodation centres, private houses and apartments, hotels places or other premises).**

Article 5 of the 1994 Asylum Law establishes for asylum applications lodged at border that:

"7. (…). While the request for asylum or for re-examination is being processed, the asylum-seeker must remain at the border point. Adequate facilities will be provided for this purpose. (…)"

Article 5 of the 1995 Asylum Regulation provides for asylum applications lodged within the territory that:

"2. Those asylum-seekers who are inside Spanish national territory will receive information on the need to provide evidence to support their request from the governmental agency that they have addressed. This agency must also provide information on the rights to which asylum-seekers are entitled under Law 5/1984 regulating refugee status and the right to asylum. In particular, they are to be informed of the right to have an interpreter and legal counsel. Likewise, the authority to which they have submitted their request will provide the asylum-seeker with medical attention, when appropriate, and will provide guidance regarding the currently-existing social services intended to cover the asylum-seeker's immediate human needs" (emphasis added).

All asylum seekers have appropriate accommodation. It should be noted that asylum seekers are allowed to remain in the Reception Centers for Refugees for a period of six months, which may be renewed because of particular social circumstances or vulnerability.

An asylum seeker will be informed and adviced about the Reception Centres for Refugees by the Unit of Social Work placed at the OAR (Asylum and Refugee Office). Afterwards he/she lodge his/her application to be admitted in a Reception Centre. After an interview and taking into account the situation of the applicant, the Reception Centre makes a proposal to the General Department for Integration of the Immigrants, which is the responsible of the final decision of admission (Article 21 of the Resolution 6 July 1998).

Q.24. B. What is the total number of available places for asylum seekers? Distinguish in your answer between accommodation centres, private houses and apartments, hotels or other premises.

The total number of places for asylum seekers at the reception centres is at the moment 2079 (1370 at the public centres, and 700 at the centres managed by NGOs).

Q.24. C. Is this number of places for asylum seekers sufficient in general or frequently insufficient?

It has been usually proved to be sufficient but sometimes may became insufficient depending on the changes on the numbers of asylum applications. For example, just after the Reception Directive came into force there were an overbooked situation of the centres during the first months[693] .

Q.24. D. Are there special measures foreseen in urgent cases of a high number of news arrivals of asylum seekers (outside the case of application of the directive on temporary protection)?

There are no special measures foreseen.

Q.25. Accommodation centres **(important note: all the following questions are about open and not closed centres where asylum seekers are detained which are covered by another question)**

Q.25. A Are there different categories of accommodation centres, for instance depending of the stage of the procedure (admissibility and eligibility)?

There are only differences between public (managed by Public Administration) and private (managedby NGOs) centres.

Q.25. B. Is there a legal time limit for accommodation in a centre after which the asylum seekers have access to private houses or apartments or is this limit linked to a stage of the asylum procedure?

The time limit for accommodation is linked to a stage of the asylum procedure if its duration is lower than 6 months.

The time limit is 6 months unless they do fall into any sanctions and may be extended to 12 months for cases under special needs (article 5 Ministerial Order 1898). This time limit will no longer be extended after the end of the asylum procedure, only if the asylum seekers get a positive resolution (subsidiary protection or refugee status) their stay can be extended up to one more month to give them time to make all the necessary arrangements to start up outside the centre .[694]

Q.25. C. Is there a general regulation about the internal functioning of those centres and the rights and duties of the asylum seekers? If yes, is this general regulation applicable to public and private centres? If not, are the centres supposed to adopt an internal regulation and does a central authority have or not a kind of control about its content?

Under the General Law the regulations regarding the reception centres are established under:

- Aliens Regulation approved in 2004 (Royal Decree 2393/2004 of 30 December):

Chapter II- Migration Centres

[693] Information provided by NGOs.
[694] Information provided by NGOs.

Article 163-Public network of the migration centres.
Article 164-Legal system of the migration centres.
Article 165-Admission of the migration centres.

- Ministerial Order of 13 January 1989 (Social Affairs Ministry), regulating the Reception Centres for Refugees (CAR).

- Resolution 6 July 1998, General Department of the IMSERSO (Institute of Migrations and Social Services depending on the Labour and Social Affairs Ministry), to develop the Ministerial Order of 13 January 1989.

There are agreements signed by the Central Government with every region (*Comunidad Autónoma*) in Spain where there is a reception centre for refugees. For example Resolution 19 January 2005, of the General Technical Secretary, by which is Publishes the Additional Protocol to the Collaboration Agreement subscribed between the Ministry of Labour and Social Affairs and the Community of Madrid, for the developments of group actions on the assistance to immigrants, refugees, asylum seekers and displaced persons.

Besides there are internal regulations in each Reception Centre (article 24 of Resolution of 1998).

Q.25. D. Do the regulations foresee the possibility of sanctions against asylum seekers in case of breach of the rules? (see article 16, §3) If yes, which sanctions for which rules? Which is the competent authority to decide? How is it ensured that decisions are taken individually, objectively and in particular *impartially* (for instance through an independent arbitrator) as requested by §4 of article 21 which is mandatory provision? Which are the possibilities of appealing against those decisions if the system is different from the general one under question n°22? Are there already administrative appeal decisions or judgements which have been taken and if yes, which are the main important ones?

The regulations foresee the possibility of sanctions against asylum seekers in case of serious breach of the rules.

The decisions are taken together with the NGO and the correspondent civil servant in charge of the centres, although there isn't an independent arbitrator as such. [695]

In case of breach of the rules at public reception centres, the competent authority is the direction of the centre.

In case of serious breaches of the rules (when the sanction can be the expulsion from the centre), the General Department for Integration of the Immigrants is the competent authority.

Q.25. E. Are asylum seekers involved in the management of these centres? If yes, how (advisory board, appointment or election of representatives)? (see article 14, §6 which is an option provision)

[695] Information provided by NGOs.

The asylum seekers are involved in the management of the centres. There is a counsel of residents (*asamblea de residentes or Junta de Participación*) in each Reception Centre for Refugees, with a consultive nature (article 7 Resolution of 1998).

Q.25. F. Do specific rules exist on work of asylum seekers inside the accommodation centres different from the general ones about employment (see below)? If yes, which ones? Can working inside accommodation centres be considered as a (mandatory) contribution of the asylum seekers to the management of the centres, is it or not paid and considered as implying access to the labour market and subject to the same rules?

The contribution to the cleaning, cooking and maintenance of the Reception Centres is the only work developed by the asylum seekers that could be considered as a (mandatory) contribution of them to the management of the Centres. This work is unpaid.

Q.26. **Q.26. A. How can asylum seekers communicate with legal advisers, representatives of UNHCR and NGOs? (see article 14, §2, (b) which is a mandatory provision).**

In the internal practice asylum seekers have free access to their relatives, legal advisers, UNHCR and NGOs. Further specification at legal or by-legal level would be advisable.

Q.26. B. What are the rules about access of legal advisers, UNHCR and NGOs regarding access to accommodation centres and other housing facilities (see article 14, §7 which is a mandatory provision)

There are no legal or by-legal dispositions establishing the possibility of the asylum seeker of communicating with relatives, UNHCR, legal advisers or NGOs.

Notwithstanding asylum seekers have access to UNHCR, specialized lawyers and pro-bono lawyers. In the information brochures established in article 5(1) of the 1995 Asylum Regulation, contact telephones and addresses of UNHCR, specialized NGOs and Bar Associations are included[696].

What usually happens when a NGO runs a Reception Centre for Refugees is that the NGOs' lawyers will be in charge of the cases, but there is no compulsory obligation for the asylum seekers to accept them. If the asylum seeker would like to take another legal adviser, private or NGO worker, he or she will be always free to choose who is going to represent and defend him/her.

[696] Information provided by UNHCR.

Q.26. C. Can the access of legal advisers, UNHCR and NGOs be limited for security reasons or any other reason (see article 14, §7, last sentence)?

No, there are no restrictions to access to the Reception Centres for Refugees.

Q.27. **Q.27. A. Is a medical screening organised by the receiving State, is it mandatory or voluntary? Does it include HIV tests? (see article 9 which is an optional provision)**

The medical screening is compulsory. It does include the HIV test and it is organised by the Spanish authorities within the Health Public System or in contact with the specialized services already in place.

The asylum seekers allowed to enter the country are referred to an emergency reception point at Madrid local branch where they are counselled. They stay in a hostel for a short period and when clinical analysis results are ready they are referred to a reception centre –like those who apply for asylum within the territory. When applicants apply for asylum within the territory, the Spanish Red Cross local branches are responsible for all the clinical analyses and the referral to a reception centre is made by the headquarters. [697]

Q.27. B. Do the legal provisions on reception conditions ensure that asylum seekers receive at least emergency care and essential treatment of illness as requested by article 15 §1 which is a mandatory provision? Do they have a further access to health care?

The legal provisions on reception conditions ensure that asylum seekers receive emergency care and essential treatment of illness.

Article 5 of the Asylum Regulation, about informing the asylum-seeker of his rights, provides:

"2. Those asylum-seekers who are inside Spanish national territory will receive information on the need to provide evidence to support their request from the governmental agency that they have addressed. This agency must also provide information on the rights to which asylum-seekers are entitled under Law 5/1984 regulating refugee status and the right to asylum. In particular, they are to be informed of the right to have an interpreter and legal counsel. Likewise, the authority to which they have submitted their request will provide the asylum-seeker with medical attention, when appropriate, and will provide guidance regarding the currently-existing social services intended to cover the asylum-seeker's immediate human needs" (emphasis added).

Article 15 of the Asylum Regulation (as amended by the Royal Decree 2393/2004, of 30 December) establishes that:

"1. Asylum seekers, provided that that they do not have economic means, shall be able to benefit from the social, educational and health-related services rendered by the competent agencies of the Public Administration, within the means and budget availabilities of these agencies, to ensure a standard of living adequate and capable of ensuring their subsistence. The

[697] Information provided by the Spanish Red Cross at www.receptionandhealth.net

benefits given could be modulated when the asylum application is pending of admission to the normal RSD procedure, guaranteeing in any case the coverage of the basic needs of the asylum seekers. In general, access to education, to health care, to social security and to social services will be regulated, respectively, according to the dispositions in articles 9, 12 and 14 of the Organic Law 4/2000, of 11 January, on the Rights and Freedoms of foreigners in Spain and their social integration (in the wording given by the Royal Decree 2393/2004, of 30 December) (emphasis added). (…)

3. In giving the services which are referred to in paragraph 1 of this article, will be taken into consideration the specific situation of persons with a specific vulnerability, such as minors, unaccompanied minors, senior citizens, pregnant women, one-parent families with minor children, and persons who have been subject to torture, rape, or other serious form of psychological, physic o sexual violence, according with the directives that appear in the international recommendations used in harmonizing the treatment of these social groups of refugees or displaced individuals (in the wording given by the Royal Decree 2393/2004, of 30 December)" (emphasis added).

Article 12 of the Aliens Law, about the right to Health Care, establishes:
"1. Those aliens who are in Spain and registered on the list of residents ("padrón") of the municipality in which they habitually reside have the right to health care under the same conditions as Spaniards.
2. Those aliens who are in Spain have the right to casualty care under the public health service if they contract grave or accidental illnesses, regardless of their cause, and to the continuation of said care until they are considered medically recovered.
3. Those aliens under the age of eighteen years that are in Spain have the right to health care under the same conditions as Spaniards.

4, Pregnant aliens who are in Spain shall have the right to health care during pregnancy, labor and the postpartum period."

Q.27. C. What is the practice regarding access of asylum seekers to health care and how is it organised? In particular, what is the situation in accommodation centres (are doctors coming to the centres or do asylum seekers go to doctors outside)?

In Spain even if you are irregularly within the territory you are entitled to free access to the Public Health Care System in case of an emergency, women during pregnancy and chilbirth, and all minors.

The asylum seekers go through the medical screening before going into the centre and on that interval time they are lodged (covering the expenses by the State or NGO) in hostels. Afterwards they usually go to doctors outside.[698]

In general, Spanish Red Cross provides free medical help and in some cases psychological support to all asylum seekers who are still waiting to benefit from the medical insurance they are granted like any other national or foreigner national who has been registered with the local population register (*padrón*)[699]

[698] Information provided by NGOs.
[699] Information provided by the Spanish Red Cross at www.receptionandhealth.net

Q.28. **Q.28. A. What is the length of the period determined by the concerned Member State during which asylum seekers have no access to the labour market? (see article 11 which is a mandatory provision)**

Seventeenth Additional Disposition of the Royal Decree 2393/2004, of 30 December, by which the Aliens Regulation is approved**:**

"The asylum seekers will be authorized to work in Spain, after six months of having lodged the asylum request, in case that it has been admitted to the procedure and has not been decided upon due to a cause not attributable to the applicant. The work authorization will be proven through the inscription "authorizes to work" in the asylum seeker identification card and, if should that be the case, in its successive renewals, and will be conditioned to its validity. In case that the inscription cannot be put in the document because the above mentioned requirements are not fulfilled, the Office for Asylum and Refuge will record this fact in a reasoned decision that will be notified to the applicant." (underlined added).

Q.28. B. After that period, are asylum seekers or not obliged to obtain a work permit? In case is there a limit for the administration to deliver the permits and how quick are they delivered? What is their length?

Article 15 of the Asylum Regulation (as amended by the Royal Decree 2393/2004, of 30 December) establishes that:

"2. The asylum-seeker may be granted authorization to work in Spain by the competent authority, in accordance with the rules and regulations in force regarding aliens, depending on the circumstances surrounding his file and current situation."

Q.28. C. After that period, what are the conditions for access of the asylum seekers to the labour market? (in particular, are there rules concerning the maximum allowed of working hours or days per week, month or year, limits in terms of type of work or of professions authorised?

Q.28. D. What are the rules in terms of priorities between asylum seekers on the one hand and nationals, EU or EEE citizens and legally third-country nationals on the other?

Q.28. E. Do asylum seekers have access to vocational training, does this or not depend of their right to access to the labour market, and in case at which conditions? (see article 12 which is optional regarding §1 and mandatory regarding § 2)

Article 9 of the Alien's Law, on the right to Education, establishes that:

"3. Aliens legally resident shall have the right to education of a non-obligatory nature under the same conditions as Spaniards. More specifically, they shall have the right to access the levels of education and training not covered in the previous paragraph, as well as to the obtainment of the corresponding degrees in each instance and to access the public system of scholarships and aid".

Internal regulations of Reception Centres can provide for vocational training.

Vocational training is provided in the Reception Centres runned by the Ministry of Labor and Social Affairs. It is also provided by some NGOs that provide assistance to asylum seekers.

Asylum seekers are in this respect in a similar situation to that of Spaniards. There is no specific disposition on special vocational training for asylum seekers designed to improve their possibilities to join the labor market.[700] .

Q.28. F. Are the rules regarding access to the labour market adopted to transpose the directive more or less generous than the ones applicable previously?

The rules goes well beyond the standard set in the Directive in some aspects: the timeframe is six months and there is no discrimination against the asylum seeker, as established in Article 11, paragraph 4 of the Directive.

Q.29. Are reception conditions subject to the fact that asylum seekers do not have sufficient resources? Are asylum seekers requested to contribute to reception conditions when they have personal resources (for instance if they work) or to refund the authorities if it appears that they have resources? (see article 13 §§ 3 and 4 which are optional provisions)

According to Article 15 of the Spanish Asylum Regulation, as amended by the Royal Decree 2393/2004, of 30 of December, asylum seekers could be beneficiaries of the reception programs whenever "*they don't have sufficient economics means*". Therefore if there is any possibility to prove it, it could imply for them not to be accepted within the reception centre.

In practice asylum seekers are not requested to contribute to reception conditions.

7. SPECIAL NEEDS OF PARTICULAR CATEGORIES OF ASYLUM SEEKERS

Q.30.

Q.30.A. Which of the different categories of persons with special needs considered in the directive are taken into account in the national legislation (see article 17, §1 which is a mandatory provision): disabled people, elderly people, pregnant women, single parents with minor children, persons who have been tortured, raped or victims of serious physical or psychological violence? Include in your answer all other categories envisaged in national law.

Article 15 of the Asylum Regulation (as amended by the Royal Decree 2393/2004, of 30 December):

[700] Information provided by NGOs.

"3. In providing the services which are referred to in paragraph 1 of this article, will be taken into consideration the specific situation of persons with a specific vulnerability, such as minors, unaccompanied minors, senior citizens, pregnant women, one-parent families with minor children, and persons who have been subject to torture, rape, or other serious form of psychological, physical o sexual violence, according with the directives that appear in the international recommendations used in harmonizing the treatment of these social groups of refugees or displaced individuals (in the wording given by the Royal Decree 2393/2004, of 30 December)."

Q.30. B. How is their specific situation taken into account (see articles 13, §2, second indent, 16 §4 second sentence and 17 which are mandatory provisions)?

Their specific situation is taken into account by giving priority in access to Reception Centres for Refugees (Article 13 Resolution 6 July 1998, General Department of the IMSERSO (Institute of Migrations and Social Services depending on the Labour and Social Affairs Ministry), to develop the Ministerial Order of 13 January 1989)

As said before, asylum seekers have access to Spanish health care in the same conditions as Spanish citizens. The Reception Centres provides monitoring and support for minors with special educational needs and psychosocial support and coordination with other public or private mental health system (at least the Reception Centres runned by Spanish Red Cross, see www.receptionandhealth.net).

Q.30. C. How and when are the special needs of the concerned persons supposed to be legally identified (see article 17 § 2 which is a mandatory provision and clarify how it has been interpreted by transposition)?

The special needs of the concerned persons are identified when they apply for asylum by the Social Work Unit (*Unidad de Trabajo Social*) of the Labour and Social Affairs Ministry placed at the Asylum and Refuge Office.

Afterwards they could be identified any time since they are assigned to a reception centre through the social workers, psychologist and authorized personal that will be monitoring and providing counselling and assistance in the evolution process of the asylum seeker. [701]

Q.30. D. Is the necessary medical and other assistance provided to persons with special needs as requested by article 15, §2 which is a mandatory provision and in particular to victims of torture and violence as requested by article 20 which is a mandatory provision?

If special needs are identified asylum seekers will be properly referred to the appropriate professionals existing within the Spanish Health System and

[701] Information provided by NGOs.

other possible complementary services provided by other NGOs or specialized organizations.

Q.31. **About minors:**

Q.31. A. Till which age are asylum seekers considered to be minor?

Till 18.

Q.31. B. How is access of minor asylum seekers to the education system ensured? Is it at school or in case inside accommodation centres and can it be considered as similar to the conditions for nationals as requested by article 10, §1?

Minors are attending public school but they can receive educational support at the Reception Centre.

Article 15 of the Asylum Regulation (as amended by the Royal Decree 2393/2004, of 30 December):

"1. Asylum seekers, provided that that they do not have economic means, shall be able to benefit from the social, educational and health-related services rendered by the competent agencies of the Public Administration, within the means and budget availabilities of these agencies, to ensure a standard of living adequate and capable of ensuring their subsistence. The benefits given could be modulated when the asylum application is pending of admission to the normal Refugee Status Determination procedure, guaranteeing in any case the coverage of the basic needs of the asylum seekers. In general, access to education, to health care, to social security and to social services will be regulated, respectively, according to the dispositions in articles 9, 12 and 14 of the Organic Law 4/2000, of 11 January, on the Rights and Freedoms of foreigners in Spain and their social integration (in the wording given by the Royal Decree 2393/2004, of 30 December)" (emphasis added)

Article 9 of the Alien's Law:

"1. All aliens under the age of eighteen years have the right and obligation to education under the same conditions as Spaniards, including access to a basic, obligatory education free of charge, the obtainment of the corresponding academic degrees and access to the public scholarship and aid system.

2. In the case of the pre-school education, which is of voluntary nature, the Public Administrations will guarantee the existence of a number of vacancies enough for the schooling of the population that requires it.

3. Aliens legally resident shall have the right to education of a non-obligatory nature under the same conditions as Spaniards. More specifically, they shall have the right to access the levels of education and training not covered in the previous paragraph, as well as to the obtainment of the corresponding degrees in each instance, and to access the public system of scholarships and aid.

4. The public powers shall promote that the foreigners legally resident that have need of it, are able to receive teaching for their better social integration, with acknowledgement and respect for their cultural identity".

Fourteenth Additional Disposition of the Royal Decree 2393/2004, of 30 December, by which the Aliens Regulation is approved, on access of minors to education of non-mandatory nature, establishes that:

"Without prejudice to article 9.3 of the Organic Law 4/2000, of 11 January, the educational administrations, exercising their competences on educational matters, may facilitate the access of minor foreigners registered on the list of residents ("padrón") of a municipality to levels of post-obligatory non-university education and to the obtainment of the corresponding degrees in equality of conditions than Spaniards of their age."

Q.31. C. Is access to education ensured <u>not later than 3 months</u> as requested by article 10, §2 (or after maximum one year if specific education for asylum seekers is provided) and till an expulsion decision is really <u>enforced</u>?

Minors seeking asylum have access to the obligatory education system when they arrive to the reception centres.

Minors in Spain, included asylum seekers or undocumented migrants, have access to the general education system, immediately after being registered on the list of residents (*padrón*). The time limits depends on each city and village.

Q.31. D. Is <u>specific education</u> (like language classes) available for asylum seekers, in particular to facilitate their effective access to the education system of the reception Member State (see article 10, §2 which is an optional provision)?

Specific education is available for asylum seekers at the Reception Centre, where the asylum seekers usually have access to Spanish language and social skill courses.

Reception Centres can provide another coursees (like gardening, building, etc.) based on particular agreements with local Councils.

Q.31. E. Are minors <u>in general</u> <u>accommodated</u> with their parents or with the person responsible of them? (see article 14, § 3)

Yes, as a general rule based on a full respect of the family union principle.

Q.31. F. Do <u>minors with special needs</u> enumerated by article 18, §2 which is a mandatory provision, have access to appropriate mental health care and qualified counselling?

Minors with special needs have access to appropriate mental health case and qualified counselling. They are entitled to benefit form the health care

public system and to the psychological support provided by the Spanish Red Cross.

Article 15 of the Asylum Regulation (as amended by the Royal Decree 2393/2004, of 30 December):

"3. In providing the services which are referred to in paragraph 1 of this article, will be taken into consideration the specific situation of persons with a specific vulnerability, such as minors, unaccompanied minors, senior citizens, pregnant women, one-parent families with minor children, and persons who have been subject to torture, rape, or other serious form of psychological, physical o sexual violence, according with the directives that appear in the international recommendations used in harmonizing the treatment of these social groups of refugees or displaced individuals (in the wording given by the Royal Decree 2393/2004, of 30 December)."

Attention to vulnerability of asylum seekers is ensured in the Reception Centres, but the situation is not so clear in other reception/detention facilities[702].

Q.31. G. How and when is organised the representation of unaccompanied minors (guardianship, special organisation) and regularly assessed? (see article 19, §1 which is a mandatory provision)

Regional Governments are responsible for all unaccompanied minors. There are a number of practical shortcomings linked to the exercise of the legal guardianship for unaccompanied minor asylum seekers. Among the most relevant is the tendency of guardians not to pursue the asylum procedure on behalf of the minor, but to try to regularize their stay in Spain through the aliens regime, in which they evaluate they have better chances that going through a restrictive asylum procedure. While there is no legal impediment to pursue the asylum and aliens ways in parallel, an incorrect interpretation of the Asylum and Refugee Office has resulted until recently in having to choose one of them.

Article 15 of the Asylum Regulation (as amended by the Royal Decree 2393/2004, of 30 December):

"4. Asylum seekers under 18 years of age in situation of abandonment shall be referred to the competent services in matters of minors' protection, communicating this to the Prosecutor's Office. The legal guardian that is legally assigned to the minor shall represent him during the asylum proceedings. The asylum requests shall be processed in conformity with the criteria set in Conventions and International recommendations applicable to the minor asylum seeker."

Q.31. H. How is placement of unaccompanied minors organised (with adult relatives, a foster family, in special accommodation centres or

[702] Information provided by UNHCR.

other suitable accommodation)? (see article 19, §2 which is mandatory provision)

Regional Governments are responsible for all unaccompanied minors, so unaccompanied minors who apply for asylum are housed at these facilities. But because of the strict Regional Authorities' interpretation of the osteometric analysis to establish the age of a minor and because Spanish Red Cross considered a specific resource to be a better option for young people (18-23 years old), Spanish Red Cross has been running it for the last 3 years.

Reception Centres for young asylum seekers:

Staying: during all the asylum procedure's length.

Age: between 18 to 23 years old.

Spanish Red Cross is running one centre with 8 places.

Services: Many services are quite similar to the ones at Reception Centres but emphasizing the socio-educational programme (vocational training, sexual and emotional education, fostering healthy habits, proper nutrition, dental care, etc.), the preparation for the transition to adulthood supporting autonomy and fostering labour market integration.[703]

Q.31. I. How is the tracing of the family members of the unaccompanied minors organised? Are measures taken to protect confidentiality of information when necessary? (see article 19, §3 which is a mandatory provision)

See article 92 of Aliens Regulation:

"(...) 4. In accordance with the principle of family regrouping of the minor, the General Administration of the State will hear the minor and, after seeing the report from the services for the protection of minors, it will resolve on the repatriation to his country of origin, or to the country where his family members are, or, failing this, on his permanence in Spain. In accordance with the principle of the greater interest of the minor, the repatriation to his country of origin will only be agreed if the conditions for the effective family regrouping of the minor are present, or due to the proper custody by the services for the protection of minors in the country of origin.

The procedure will commence ex officio by the General Administration of the State or, possibly, on the proposal of the public entity which has the custody of the minor. The organism responsible for the custody of the minor will provide the Governmental authority with any information which it has concerning the identity of the minor, his family, his country or his address, and will inform of the steps it has taken to locate the family of the minor.

The Governmental authority will inform the Attorney General's Office of all the actions carried out in these proceedings.

The General Administration of the State competent for the taking the steps concerning the repatriation of an unprotected minor from Spain will act through the Delegations and Sub-Delegation of the Government, which will request the Police Department for Aliens and Documentation to carry out the work required with the corresponding embassies and consulates in order to locate the families of the minors or, failing this, the services for the protection of minors in their countries of origin which might be responsible for these. If there is no diplomatic representation in Spain,

[703] Information provided by the Spanish Red Cross at www.receptionandhealth.net

these steps will be channelled through the Ministry of Foreign Affairs and Cooperation.

Once the family of the minor is located, or, failing this, the services for the protection of minors in his country, repatriation will take place through the handover to the border authorities at the country he is repatriated to. This measure will not apply when the existence of risk or danger to the integrity of the minor, or his prosecution or the prosecution of his family members is verified.

(...)

The repatriation of the minor will be agreed to by the Government Delegate or Sub-Delegate, and will be executed by the civil servants of the National Police.

(...)

5. Once nine months have elapsed from the time that the minor has been placed at the disposal of the services competent for the protection of minors, (...), and once repatriation to his family or to the country of origin has been attempted, and if this is not possible, he will be granted the residence permit referred to in article 35.4 of Organic Law 4/2000, of January. In any case, the fact that the minor does nit have a residence permit is not a hindrance to him accessing the education or training activities or programmes which, in the opinion of the entity competent for the protection of minors, is beneficial for him.

(...)

6. If this involves minors applying for asylum, the stipulations in article 15.4" of the Regulations on Asylum of 1995 revised by the Implementation Rules of the Law on Aliens 2393/2004 will apply.

8. EXCEPTIONAL MODALITIES OF RECEPTION CONDITIONS

Q.32. Apart from detention covered by the next question, are there exceptional modalities for reception conditions in the following cases and if yes, which ones and for how long are they applicable, knowing that they should be "as short as possible" (see article 14, §8)?

Q.32. A. Persons with specific or special needs, regarding in particular the period of assessment of those needs?

Reception Centres for young asylum seekers. The stay during all the asylum procedure's length. Age: between 18 and 23 year old. Spanish Red Cross is running one reception centre with 8 places.

Q.32. B. Non availability of reception conditions in certain areas

Q.32. C. Temporarily exhaustion of normal housing capacities

Q.32. D. The asylum seeker is confined to a border post

Article 5 of the Asylum Law:

"7. (…). While the request for asylum or for re-examination is being processed, the asylum-seeker must remain at the border point. Adequate facilities will be provided for this purpose. (…)"

Detention conditions for asylum seekers at airports (or, according to the Spanish Constitutional Court, "restriction to personal freedom", which is an intermediate status between detention and personal freedom) are good. Acceptable shelter facilities exist in the Airports of Madrid (where 95% of asylum requests at borders are lodged), Barcelona and Las Palmas. The maximum time of confinement at the border is of seven days. If asylum applications are lodged in other airports, the Police resort to Internment Centres for Foreigners where the asylum seekers remain in detention conditions. [704].

Q.32. E. <u>All other cases</u> not mentioned in the directive (for instance urgent situation in case of a sudden high number of applicants outside a case of application of the directive on temporary protection).

Q.33. <u>Detention of asylum seekers</u> (we do not cover the situation of rejected asylum seekers detained for the purpose of their return) (see articles 6 §2, 7 §3, 13, §2 2nd indent and 14 §8 which implies that the directive is in principle applicable in case of detention):

Q.33. A. In which <u>cases or circumstances</u> and for which <u>reasons</u>[1] (identity verification in particular if the persons have no or false documents, protection of public order or national security, refugee status determination, way of entry into the territory, etc) can an asylum seeker be detained during the asylum procedure till his request has been finally rejected. <u>Quote</u> precisely in English in your answer the <u>legal basis</u> for detention of asylum seekers in national law.

Asylum seekers are never detained when they lodge their claim within the territory. They are detained or arrested if a crime has been committed.

When asylum seekers lodged their claim at the border, they are hold, not "detained", while the asylum office decides on the admissibility or inadmissibility of the asylum claim. The maximum length of time for the admissibility procedure at the border is 7 days. If the final administrative decision is negative, the applicant has to leave the border post and will be returned to their country of origin or to a third country (i.e. under readmission agreements, flight destination, visas on their passport…) (Article 5(7) Asylum Law of 1994).

Detention conditions for asylum seekers at airports (or, according to the Spanish Constitutional Court, "restriction to personal freedom", which is an intermediate status between detention and personal freedom) are good. Acceptable shelter facilities exist in the Airports of Madrid (where 95% of asylum requests at borders are lodged), Barcelona and Las Palmas. The maximum time of confinement at the border is of seven days. If asylum applications are lodged in other airports, the Police resort to Internment

[704] Information provided by the UNHCR.

[1] Please specify if article 18 §1 of the directive on asylum procedures of 1 December 2005 following which *"Member States shall not hold a person in detention for the sole reason that he/she is an applicant for asylum"* is or not respected (even if it has not yet to be transposed).

Centres for Foreigners where the asylum seekers remain in detention conditions.[705]

Asylum seekers who lodge their applications after being confined to an Internment Centre for Foreigners (normally those intercepted attempting to enter Spain or immediately after) are 'detained' [Article 60 of the Aliens Law: *Placement in an Internment Center* (nb. Relevant for persons who request asylum after the internment order has been issued)].

If the asylum application is admitted to the regular Refugee Status Determination procedure, the asylum seeker is freed and placed in a centre for asylum seekers.

The general conditions of those centres, if not overcrowded, are acceptable according to UNHCR standards.

The situation of asylum seekers in Ceuta and Melilla is particular. They are free within these North African enclaves, but are not free to pass to the Peninsula. It has to be noted that both enclaves are not Schengen territory. Only those asylum seekers admitted to the regular Refugee Status Determination procedure are allowed to pass to the peninsula and then are placed in reception centres[706].

From the UNHCR's point of view, Spanish legislation meets the standards of article 7 Reception Conditions Directive and generally also meets the UNHCR standards on detention of asylum seekers.

Article 60 of the Aliens Law: *Placement in an Internment Center* (nb. Relevant for persons who request asylum after the internment order has been issued)

"1. If the proceedings on the alien are due to the causes included in sections a), b) and c) of Article 50 herein or section g) of Article 49 herein, and the expulsion of the alien concerned is to be proposed, the governmental authority may propose to the corresponding Examining Judge with jurisdiction that the alien be placed in an internment center until the sanction proceedings have been conducted. The judicial decision with regard to the request for the internment of the alien pending expulsion shall be issued in a reasoned court order ("auto"), following a hearing with the alien concerned.

2. The internment shall continue throughout the time required for the purposes of the proceedings, but may in no case surpass forty days. Nor may the alien's internment be re-ordered for any of the causes provided for in the same proceedings. The court decision authorizing the internment may, depending on the circumstances surrounding each case, establish a maximum term of internment that is shorter than the aforementioned.

3. Minors who are in the circumstances foreseen for internment shall be placed at the disposal of the proper child protection services. Following a favorable report by the Public Prosecutor, the Judge may authorize the minor's placement in an alien internment center if the minor's parents or guardians are there as well, if his or her parents or guardians request the minor's placement there and if special cells exist which guarantee family privacy."

[705] Information provided by the UNHCR.
[706] Information provided by UNHCR.

Article 9 of the Asylum Regulation:

"2. He must also indicate a place of residence and inform the competent authority of any changes of address as soon as possible."

Q.33. B. Has your member State adopted measures to transpose §3 of article 7 which is an optional provision? If yes, how has this provision been legally understood (is it a case of detention or an obligation to stay in and not leave a certain place?) and for which reasons can an asylum seeker be "confined" in such a place?

Spain has not adopted specific measures to transpose article 7(3) of the Reception Conditions Directive. The only case of 'detention', as mentioned above (Q.33.A), takes place when asylum seekers lodged their claim at the border. In this case they are hold, not "detained", while the asylum office decides on the admissibility or inadmissibility of the asylum claim. The maximum length of time for the admissibility procedure at the border is 7 days (Article 5(7) Asylum Law of 1994 Article 5(7) of the 1994 Asylum Law provides that:

"7. (…). While the request for asylum or for re-examination is being processed, the asylum-seeker must remain at the border point. Adequate facilities will be provided for this purpose.")

Q.33. C. Are there legally alternatives to detention, like obligation to report to the authorities, obligation to stay in a place, provision of a guarantor or of a financial guarantee?

Article 14 of the Asylum Regulation: *Precautionary measures*

"If the asylum-seeker does not possess the official documents required to reside in Spain, the Ministry of Justice and of the Interior may set an obligatory place of residence for the individual concerned until a final decision on his file is handed down. The asylum-seeker must be informed of the decision to set an obligatory place of residence by the Governor of the province in which he is located. Likewise, for reasons of public safety, the Minister of the Interior has the authority to adopt any of the measures stipulated in article 6 of Constitutional Law 7/1985 (July 1) regarding the Rights and Freedoms of Aliens in Spain." (emphasis added).

Q.33. D. Which is the competent authority to order the detention of an asylum seeker? Explain if different authorities are involved to first take and later confirm the decision.

As mentioned above, asylum seekers are never detained when they lodge their claims within the territory. They are only detained or arrested if a crime has been committed.

Q.33. E. For how long and till which stage of the asylum procedure can an asylum seeker be detained?

The only case of 'detention' takes place when asylum seekers lodged their claim at the border. In this case they are hold, not "detained", while the asylum office decides on the admissibility or inadmissibility of the asylum claim. The maximum length of time for the admissibility procedure at the border is 7 days (Article 5(7) Asylum Law of 1994).

Q.33. F. In which places (can we call them "closed centres"?) are asylum seekers detained (places in a special closed centres reserved only to asylum seekers, together with returnees like illegal aliens or even in a normal prison, in case within separated areas or with the other detainees)? Indicate if a difference has to be made following the location of the "closed centres" at the border or on the territory? Which is the authority managing those places and is it the same as the one in charge of reception conditions?

Asylum seekers are only 'detained' at border points at airports during a maximum length of 7 days. Otherwise there are no closed centres for asylum seekers.

Q.33. G. Does UNHCR and NGOs have access to the places of detention and under which conditions?

UNHCR has unhindered access to all locations where asylum seekers are placed or sheltered.

Q.33. H. What appeal(s) can asylum seekers introduce against the fact he is detained? Is article 18 of the directive on asylum procedures of 1 December 2005 following which *"Where an applicant for asylum is held in detention, Member States shall ensure that there is a possibility of speedy judicial review"* respected (even if it has not yet to be transposed)?

As mentioned above (Q.33.A), asylum seekers are never detained when they lodge their claims within the territory. They are only detained or arrested if a crime has been committed.

Q.33. I. Is the directive on reception conditions considered to be in principle applicable to the places where asylum seekers are detained? In particular which information do they receive about their rights, which access do they have to legal advice and health care?

Q.33. J. Apart from freedom of movement, what are the main differences between normal reception conditions and exceptional modalities for reception conditions in case of detention, knowing that they should be "as short as possible" (see article 14, §8)? If it is about closed centres, are the regulations of those places in line with the requirements of the directive (is article 13, §2, second indent of the directive following which "*Member States shall ensure that standards of living is met (…) in relation to the situation of persons who are in detention*" respected?).

As mentioned above, asylum seekers are never detained when they lodge their claims within the territory. They are only detained or arrested if a crime has been committed**.**

Q.33. K. Are measures taken to avoid detention of asylum seekers with special needs (if yes, which ones?) or are special measures taken because of their needs?

As mentioned above, asylum seekers are never detained when they lodge their claims within the territory. They are only detained or arrested if a crime has been committed.

Q.33. L. Can minor asylum seekers be detained together with relatives? Can unaccompanied minor asylum seekers be detained? If yes, are there special measures which take into account that children are concerned?

Article 60 of the Aliens Law: *Placement in an Internment Centre* (nb. Relevant for persons who request asylum after the internment order has been issued):

"3. Minors who are in the circumstances foreseen for internment shall be placed at the disposal of the proper child protection services. Following a favourable report by the Public Prosecutor, the Judge may authorize the minor's placement in an alien internment centre if the minor's parents or guardians are there as well, if his or her parents or guardians request the minor's placement there and if special cells exist which guarantee family privacy."

Q.33. M. In particular is article 10 regarding access to education of minors respected in those places?

There are no closed places for minors.

Q.33. N. How many asylum seekers are for the moment detained in your Member State? Which proportion does this represent in comparison of the total number of asylum seekers at the same moment?

There is no information available, due to the absence of asylum seekers detained.

9. ORGANISATION OF THE SYSTEM OF RECEPTION CONDITIONS

Q.34. Explain if the system of providing reception conditions is centralised or decentralised (which levels of government do provide practically reception conditions?) (do not confuse this question with question number 3 about the competence to make rules about reception conditions).

The system of providing reception conditions is centralised (article 163(3) of 2004 Aliens Regulation; article 2 of Ministerial Order of 1989 and article 21 of Resolution of 1998).

Q.35. In case, are accommodation centres public or/and private (managed by NGOs? If yes, are the NGOs financially supported by the State?)

All Reception Centres are runned either by the Central Government through General Department for Integration of the Immigrants –depending on the Ministry of Labour and Social Affairs- or managed by NGOs, that receive funding from the Government.

Q.36. In case, how many accommodation centres are there in your Member State (distinguish in your answer between public and private centres)?

Reception Centres in Spain are distributed around the Spanish territory. Some of them are located in rural areas but the biggest ones are mainly located in urban areas.

Managed by the NGOs: 29
Runned directly by the State (public Centres): 6 .

Q.37. Is there in the legislation a plan or are there rules in order to spread the asylum seekers all over the territory of your Member State to avoid their concentration in some areas like big cities or to share the costs of their reception between central, regional and local authorities?

There is no specific legislation, plan or rules in order to spread the asylum seekers all over the territory. But there is a general practice trying not to locate people from the same nationality in the same regions and villages. NGOs in charge try to spread them in different locations[707].

Q.38. Does a central body representing all the actors (like NGOs) involved in reception conditions exist? Does it play a consultative role for the State authorities, a coordination role for the actors or any other role?

It does not exist a central body representing all the actors involved in reception conditions.

The role of coordination is played by Central Government through General Department for Integration of the Immigrants (which depends on the Ministry of Labour and Social Affairs).

Q.39. **Q.39. A. Which is the body in charge of guidance, monitoring and controlling the system of reception conditions as requested by article 23 which is mandatory provision? Include in your answer which is the competent ministry (Interior, Social affairs, etc) for reception conditions?**

According to the Royal Decree 1600/2004 of 2 July, developing the structure of the Ministry of Labour and Social Affairs, the body in charge of guidance, monitoring and controlling the system of reception conditions is the

[707] Information provided by NGOs.

General Department for Integration of the Immigrants (*Dirección General de Integración de los Inmigrantes*). The competent ministry is the Labour and Social Affairs Ministry. But the Interior Ministry is the competent one for reception conditions at the Internment Centres for Foreigners (*Centros de Internamiento de Extranjero*s or CIE).

UNHCR undertakes regular monitoring of the reception conditions as part of its missions to different regions of Spain. The conclusions and recommendations are shared and discussed with the Spanish Government, notably the General Directorate for the integration of Immigrants, at the Ministry of Labor and Social Affairs.[708]

Q.39. B. Has your Member State (like the Czech Republic did recently) approved quality standards (not necessary legally binding) for housing services (for instance about the number of persons per bedroom on the basis of its size, number of accessible toilets, bathrooms, showers and washing machines per number of persons, existence of common rooms with radio, television, newspapers, books, computers, accessibility of telephone, existence of recreative rooms for children,…) to be respected in particular in accommodation centres?

It has not been approved specific quality standards for housing services to be respected in accommodation centres.

Q.39. C. How is this system of guidance, control and monitoring of reception conditions organised?

Q.39. D. Does the body in charge of guidance, control and monitoring produce reports about the level of reception conditions? If yes, how frequently and are they public?

The body in charge produce public reports for the institutions interested. No information has been provided about the frequency.

Q.40.

Q.40. A. What is the total number of asylum seekers covered by reception conditions for the last year for which figures are available (see article 22 obliging Member States to calculate those statistics about which we also asked the Commission to require them from Member States for mid June)?

The total number of places for asylum seekers at the reception centres is at the moment 2079 (1370 at the public centres, and 700 at the centres managed by NGOs).

Q.40. B. What is the total budget of reception conditions in euro for the last year for which figures are available?

[708] Information provided by the UNHCR

The only information received by the Spanish authorities refers to the information provided by Spain to Eurostat. Relating the target group of article 3.3 European Refugee Fund II, the amounts are in the last three years:

- 2003: 5927.
- 2004: 5553.
- 2005: 5257.

Q.40. C. What is the average cost of reception conditions in euro per asylum seeker for the last year for which figures are available?

Q.40. D Are the costs of reception conditions of asylum seekers supported by the central/federal or federated government or are they shared with regional and/or local authorities?

The costs of reception conditions are supported by the central government, taking into account also the funds of the European Refugee Fund and the ENEAS EQUAL programme.

About financing Reception Centres, see Article 7 of Ministerial Order of 13 January 1989, regulating the Reception Centres for Refugees.

Q.40. E. Is article 24 § 2 of the directive following which "*Member States shall allocate the necessary resources in connection with the nationals provisions enacted to implement this directive*" respected?

No legal or by-legal provisions refer to these matters. Moreover, concerning the allocation of necessary resources, article 15 of the Asylum Regulation, amended in December 2004, expressly contradicts the standard set in article 24(2) of the Directive.

Article 15 of the Asylum Regulation:

"1. Asylum seekers, provided that that they do not have economic means, shall be able to benefit from the social, educational and health-related services rendered by the competent agencies of the Public Administration, within the means and budget availabilities of these agencies, to ensure a standard of living adequate and capable of ensuring their subsistence. The benefits given could be modulated when the asylum application is pending of admission to the normal Refugee Status Determination procedure, guaranteeing in any case the coverage of the basic needs of the asylum seekers. (…)" (underlined added)

The underlined phrase quoted above contradicts the provision of article 24(2) of the Directive, conditioning the reception conditions to funding availability, instead of ensuring that necessary resources are allocated. It is interesting to note that article 15 of the Asylum Regulation has been amended (30 December 2004), and the underlined phrase that was included in the previous formulation, has remained in the newly amended article[709].

[709] Information provided by the UNHCR.

Q.41. **Q.41. A.** What is the total number of persons working for reception conditions?

At the public reception centres there are 131 persons working for reception conditions. There is no information available from the centres managed by NGOs.

Q.41. B. How is the training of persons working in accommodation centres organised? Does it take into account specific needs of unaccompanied minors when relevant as well as the gender dimension? (see article 14 §5, 19 § 4 and also 24 §1 which are mandatory provisions)?

Staff at the Reception Centres of Refugees is adequately trained. UNHCR believes that at present there is no shortage of funds for the reception conditions of asylum seekers.[710]

The training of workers takes into account specific needs of unaccompanied minors. At this moment the gender dimension is one of the priorities for the public reception centres for refugees.

Q.41. C. Are there rules about the deontology of persons working in accommodation centres, in particular on confidentiality?

There are no specific rules about the deontology of persons working in reception centres. Each profession has its own general deontological code. Regarding confidenciality, the general rules are applied [Ley Orgánica 15/1999, de 13 de diciembre, de protección de datos de carácter personal (*BOE núm. 298, de 14 de diciembre*), en su redacción dada por la Ley 62/2003, de 30 de diciembre (*BOE núm. 313, de 31 de diciembre*)].

10. IMPACT OF THE DIRECTIVE

Legal impact of the transposition of the directive:

Q.42. Specify if there are or not big problems with the translation of the directive in the official language of your Member State and give in case a list of the worst examples of provisions which have been badly translated? (please note that this question has in particular been added to the questionnaire concerning the new Member States)

Q.43. Where there precise legal rules on reception conditions for asylum seekers before the adoption of the norms of transposition of the directive (if yes, specify what the nature of those rules was (legislation, regulation, administrative instructions,…)?

The rules on reception conditions before the Directive were the norms regulating the Centres for Refugees. These norms were the Ministerial Order of

[710] Information provided by the UNHCR.

1989, the Resolution of 1998 and the Ministerial Order of 2001. They are still in force and don't have legal or by-legal nature.

Q.44. Did the legal rules applicable to reception conditions become more clear, precise, coherent or detailed with the adoption of the transposition norms (for instance do you now have after the transposition one basic text dealing with reception conditions instead of numerous different texts in the past?

The rules are more clear and precise (specially relating to education, health care, work permits) but there is no one basic text dealing with reception conditions. The transposition has been made through the reform of 2004 of the Aliens Regulation. This reform amended only some articles of the Asylum Regulation and the existing norms relating reception centres are still in force.

Q.45. Did the transposition of the directive imply important changes in national law or were the changes of minor importance? In case, list the most important changes that have been introduced.

Several aspects and standards of the Directive need still to be transposed. It appears possible that the transposition of those aspects is undertaken in an overall transposition effort through a new Asylum Law and Regulation with the transposition of the Procedures, Qualification and Reception (in those aspects already not transposed) Directives[711].

The reception conditions have remained unchanged but what have change is the right to access to them for the asylum seekers. Now they do have the right to access them just immediately after formulating their asylum claim. .

Nevertheless, the situation in the internal practice has not changed and asylum seekers must wait until they are admitted to the refugee status determination procedure in order to receive reception conditions.

The information in the brochure for asylum seekers is better than before the Directive was approved.

Asylum seekers are allowed to work automatically after six months the application of asylum was submitted. They will just stamp the inscription "authorised to work" on their asylum seeker card when requested.

Before the implementation of the Reception Directive, asylum seekers were allowed to work after six months, but they needed to lodge an application together with a job offer to obtain the administrative authorisation to work[712].

Political impact of the transposition of the directive:

Q.46. Explain briefly if there has been an important debate about the transposition of the directive (in particular in the Parliament, but possibly also in the government, between political parties, including in medias, etc; underline in case the main points which have been discussed or have created difficulties)

[711] Information by UNHCR.
[712] Information by UNHCR.

There has been no important debate about the transposition of the directive. At this moment the draft of a new Asylum Law is under discussion. It has not been made yet public. One reason of the delay of its approval could be related to the need to extend reception conditions to asylum seekers during the admissibility stage.

Q.47. **Did the transposition of the directive contribute to make the internal rules stricter or more generous? In particular, did your Member State use the occasion of the transposition to abolish more favourable provisions of national law? Does your Member State still have rules more favourable than the provisions of the directive (if yes, try to give the more important examples).**

The transposition has contributed to make the internal rules more generous, specially relating work permits.

11. ANY OTHER INTERESTING ELEMENT

Q.48. What are in your view the weaknesses and strengths of the system of reception conditions in your Member State?

Weaknesses:

1. Asylum seekers must wait until they are admitted to the refugee status determination procedure in order to receive reception conditions. During the first stage of the asylum procedure they are not beneficiaries of reception conditions.

2. A Ministerial Order or a Resolution cannot be considered as a by-legal act through which a Directive (questions like respect to family union principle, regulation of housing or access to UNHCR, legal advisers and NGOs) could be considered transposed, hence the transposition should be made through the Asylum Regulation or Law.

3. Reception conditions in an emergency case: If the number of places is insufficient it is necessary to rent a guest house or apartment and then the reception conditions are worst.

4. One element that could be changed in order to obtain a substantial improvement of the services provided will be the inclusion of a team of professionals specialized on psiquiatric pathologies within the Centres. At present just only certain centres have psychology services. Besides it would be really valuable to have a professional of specific compensatory education for minors under 12 years. (suggestions by NGOs at practical questionnaires).

Strengths:

1. Work permit received automatically six months after the asylum claim (better integration).

2. Generalised access to health care and general education.

Q.49. Mention any good practice in your Member State which could be promoted in other Member States

The standards set in the above quoted articles on health care (Q.27) are higher than those set in the Reception Conditions Directive.

The most relevant aspect of the transposition, in which Spain goes well beyond the standards set in the Directive, is the automatic work permit for asylum seekers six months after lodging their asylum application, with no restrictions whatsoever.

Q.50. Please add here any other interesting element about reception conditions in your Member State which you did not had the occasion to mention in your previous answer.

QUESTIONNAIRE FOR THE NATIONAL REPORT ON THE IMPLEMENTATION OF THE DIRECTIVE : RECEPTION CONDITIONS OF 27 JANUARY 2003

IN: Sweden

By
Professor, Dr. Örjan Edström
October 26, 2006

Updated May 16th 2007 by Markus Gunneflo

1. NORMS OF TRANSPOSITION

Q.1. Identify the main norm of transposition (indicate the title, date, number, date of entry into force and references of publication into the official journal) and indicate its legal nature (legislative, regulatory, administrative); indicate in your answer if this norm was only devoted to the directive or if it has been included in a more general text and indicate in that case by quoting precisely the numbers of the provisions adopted to transpose the directive.

1. *The Act (1994:137) on the reception of asylum seekers* (Lagen om mottagande av asylsökande). The Act was issued in March 30, 1994, and came into in force on July 1, 1994.[713] The Act has been subject to certain minor adjustments referring to the Directive 2003/9. The regulations on different relief, benefits, reception conditions etc. in connection with asylum seekers, have been applied already before, and hence the Directive has not contributed to any far going amendments of the Act.

In the Act on the reception of asylum seekers § 1, there are regulations regarding the personal scope for the application of reception conditions regulated by the Act. Hence, the Act should apply to foreigners that have applied for residence permit in accordance with the Aliens Act ch. 4 § 1 or 2. Further, the Act should apply to foreigners that have applied for residence permits referring to "particular reasons".

However, the Act should not apply when a child up to the age of 18 is staying with a guardian who has a residence permit in Sweden. Concerning unaccompanied children arriving to Sweden the local authorities may arrange the children's living, and the Migration Board should assign a local authority for that purpose.

2. The *Ordinance (1994:361) on the reception of asylum seekers* (Förordningen om mottagande av asylsökande). The Ordinance, which was issued on May 11, 1994 and came into force on July 1, 1994, is a more detailed regulation issued by the Government regarding the application of the Act taken by the Riksdag.

[713] Government's proposition 1993/94:94 Mottagande av asylsökande m.m. The Act in 1994 replaced the previous Act (1988:153) on assistance to asylum seekers and more.

3. Concerning the definition of asylum seekers the Act on the reception of asylum seekers refers to the new *Aliens Act (2005:716)*, which came into force on April 30, 2006.[714] Of certain importance is the Aliens Act ch. 4 § 1 with the definition of who is considered to be a refugee, and ch. 4 § 2 with the regulations concerning subsidiary protection; a person applying for a residence permit referring to the Aliens Act ch. 4 §§ 1 and 2 should be considered as an asylum seeker (further, on these matters, see Q.13B).

Basically, the definition of who should be considered to be a refugee refers to the *Geneva Convention*, although Swedish law in certain matters is going beyond the term used in the Convention. Further, there are regulations in the Aliens Act ch. 5 § 4 dealing with residence permit referring to "particular distressing circumstances" (särskilt ömmande omständigheter).

In the Aliens Act there are also regulations concerning the procedure, appeals against decision taken by the State authorities, certain control and coercive measures and more.

Q.2. List by order of importance by using numbers (1, 2, 3) the others norms of transposition if there are more than one (indicate for each norm the title, date, number and references of publication into the official journal; include in your answer the administrative measures taken to ensure implementation of the directive and of the transposition norms like regulations, administrative circulars, special instructions,…)

Other Acts and Ordinances than those listed above that are directly concerned regarding the reception of asylum seekers are:

1. The Ordinance (2002:1118) on state compensation for asylum seekers. (Förordning om statlig ersättning för asylsökande m.fl.)
2. The Ordinance (1996:1357) on state compensation for health and medical treatment for asylum seekers. (Förordning om statlig ersättning för hälso- och sjuk- vård till asylsökande.)
3. The Ordinance (1994:362) on charge for nursing care for certain foreigners. (Förordning om vårdavgifter m.m. för vissa utlänningar.)
4. The Ordinance (2001:976) on education, pre-school activity and school childcare for asylum seekers. (Förordning om utbildning, förskoleverksamhet och skolbarnsomsorg för asylsökande barn m.fl.)
5. The Health and medical treatment Act (1982:763). (Hälso- och sjukvårdslagen).
6. The School Act (1985:1100).[715] (Skollagen.)
7. The Act (2005:429) on guardian for unaccompanied minors. (Lag om god man för ensamkommande barn.)
8. The Social services Act (2001:453). (Socialtjänstlagen.)
9. MIGRFS 2003:10 The Migration Board's instructions on the reception of asylum seekers. (Migrationsverkets föreskrifter om mottagande av asylsökande m.m.)[716]

[714] Government's proposition 2004/05:170 Ny instans- och processordning i utlännings- och medborgarskapsärenden. The new Aliens Act replaced the previous Aliens Act (1989:529).
[715] See also the Ordinance (1994:1194) on the nine-year compulsory school (Grundskoleförordningen), the Ordinance on the upper secondary school (1992:394; Gymnasieförordningen) and the Ordinance (2002:1012) on local government adult education (Förordningen om kommunal vuxenutbildning).
[716] Including amendments through MIGRFS 02/2005.

10. The National Board of Health and Welfare, General instructions 1995:4 Health and medical care for asylum seekers and refugees. (Socialstyrelsens 1995:4 Allmänna råd Hälso- och sjukvård för asylsökande och flyktingar.)

The grading regarding the importance of each regulation is very rough; for instance it is doubtful to state that the Social services Act should be considered of less importance than the Ordinance on state compensation for asylum seekers.

Further, the following Acts and Ordinances listed are indirectly relevant to or of minor importance regarding the reception of asylum seekers:

- The Aliens Ordinance (2006:97).[717] (Utlänningsförordningen.)
- The Dental service Act (1985:125). (Tandvårdslagen).
- The Act (1991:572) on particular control of foreigners. (Lag om särskild utlänningskontroll.)
- The Ordinance (2001:720) on treatment of personal particulars in activities referring to acts on aliens law and citizenship. (Förordning om behandling av personuppgifter i verksamhet enligt utlännings- och medborgarskapslagstiftningen.)

Q.3. Explain which level of government is competent to adopt the legal norms on reception conditions for asylum seekers (specify in particular in case of a federal or regional State, if it is the federal/central power or the components; in case, specify below when it is impossible for you to answer a question because it is about the competence of the components and it is impossible for you to gather reliable information about all of them)

Hence, regulations concerning asylum seekers are found in *law*, *ordinances* and *administrative instructions* issued by the competent authorities. Laws – for instance the Act on the reception of asylum seekers – are taken by *the Riksdag* on the proposal of the Government, but before the Government's proposition is dealt with in the Riksdag's committees, and the Standing committee on civil law legislation (lagutskottet) gives an opinion on the proposal from the Government.

The Government is in charge of the promulgation of Ordinances such as the Ordinance on the reception of asylum seekers. An Ordinance is founded on law and in practice it is a more practical guidance on how to apply the law in practice.

Further regulations or instructions are presented by the competent authority. Regarding asylum seekers, the *Swedish Migration Board* is the Swedish State authority in charge of the reception of asylum seekers. The Board issues instructions presented in the Board's statute-book and, further, there is a Migration Board's Aliens handbook, with more internal instructions within the Board.

In accordance with the Act on the reception of asylum seekers § 2, the Migration Board has the main responsibility for the reception of foreigners that are under the scope of the application of the Act. Further, in general and in accordance with the Aliens Act ch. 4 § 6, the

[717] The Aliens Ordinance (2006:97) replaced the former Aliens Ordinance (1989:547) in April 30, 2006.

Migration Board should take decisions concerning the application of the basic regulations concerning refugees and people otherwise in need of protection (subsidiary protection).

Also otherwise regarding residence permits the Migration Board should take the decision (the Aliens Act ch. 5 § 20). However, also the Government's Office could take decisions on residence permits.[718]

Regarding health care it is the regional *County councils* that are in charge of public health care services. In accordance with the Health and medical treatment Act § 4, the County councils are obliged to immediately offer treatment to people who are staying in the county council's area of responsibility. Regarding asylum seekers that obligation means a duty to provide acute health care services.[719] Medical treatment that is not acute – or if the risk to wait is considered to be moderate – should not be reimbursed by the State.[720]

Concerning health care further regulations are found in the Ordinance on charge for nursing care for certain foreigners.

Beyond strict acute treatment the asylum seekers' access to health care is regulated in an agreement between the Government and the Swedish Association of Local Authorities and Regions (Svenska Kommunförbundet och Landstingsförbundet i samverkan). The agreement – replacing a former agreement on the matter – came into force at July 1, 2006, and is supposed to regulate asylum seekers' right to health care awaiting a regulation in law on the matter An important aspect of the agreement is that the health care service will be reimbursed for providing health care for the asylum seekers not embraced by the general regulations on the matter. Further, a proposal for a supplementary regulation on the matter is being prepared by the Government.[721]

Following an amendment of the Act on the reception of asylum seekers, which came into force on July 1, 2006, it is the local municipality that should be responsible for the accommodation of unaccompanied asylum seeking children and the children's needs. (amendment of Act on the reception of asylum seekers §§ 2 and 3 made through SFS 2006:177 entered into force on July 1, 2006). [722]

Practically, the Migration Board's accommodation places and living for these children should be transmitted to the local authorities who took over the responsibility. Hence, in principle the Migration Board should restrict its activity to assign the children to municipalities, and then it should be the local authority that will take care of the child, referring to the Social services Act and it is the duty of the local authority to provide for persons staying in the municipality.

Concerning schooling – see Q.31B.

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[718] Further, the Government has a particular authority to take decisions in very specified and particular situations (see the Aliens Act ch. 23). The regulation will apply for instance in war situations when the Government could issue regulations concerning foreigners' right to enter Swedish territory.

[719] Compare the Ordinance (1996:1357) on State compensation for health- and medical treatment to asylum seekers. Further, see Socialstyrelsens allmänna råd 1995:4 Hälso- och sjukvård för asylsökande och flyktingar.

[720] Government's proposition 1993/94:94 Mottagande av asylsökande m.m.

[721] See Utrikesdepartementet, Sverige, Underrättelse om nationella åtgärder för att uppfylla Sveriges förpliktelser i Europeiska unionen, bilaga 15. (Communication from the Swedish Foreign Ministry to the European Comission, Attachment 15.) See also Government's proposition 1993/94 :94 Mottagande av asylsökande m.fl.

[722] Government's proposition 2005/06:46 Mottagande av ensamkommande barn. Concerning children – see also Q.32A.

Q.4. Explain the legal technical choices done to transpose the directive (comment on the nature and level of the norms used to do the transposition: legislative, regulatory, administrative like instructions, etc). Add any other element about the technique of transposition of the directive which is interesting for the implementation of Community law.

Adjustments have been made both in different Acts, mainly in the Act on the reception of asylum seekers, in the Ordinance on the reception of asylum seekers and in the instructions issued by the Migration Board. A basic ascertainment regarding the implementation of Directive 2003/9 into Swedish law is that only minor adjustments have been necessary, since the established regulations and practice in the main were in line with the Directive.[723]

Q.5. Mention if there is a general tendency to just copy the provisions of the directive into national legislation without redrafting or adaptation them to national circumstances? If yes, give some of the worst examples and explain if there is a risk that those provisions remain unapplied or will create difficulties of implementation in the future.

Hence, already before the Directive was taken by the Council, Sweden had regulations concerning the reception of asylum seekers. Further, there already was a judicial practice as well as a practice developed by the competent State authority.

Q.6. Have all the texts necessary to ensure the effective implementation of the new rules of transposition been adopted, prepared or at least foreseen in the future (for example a regulation completing a new law and the necessary instructions telling the administration how to apply the new rules)?

In the main all the necessary texts have been taken in order to ensure the effective implementation of the Directive.

2. BIBLIOGRAPHY

Q.7. Has an in-depth preparatory study been made public about the changes at the occasion of the transposition? If yes, thanks for trying to provide us a copy *(please contact to answer this question adequately the body and person who was responsible for the preparation of the transposition of the directive in the public administration).*

In an Official report presented in 2003 the existing regulations concerning the reception of asylum seekers were examined.[724] Further, the practical dealing with the reception of asylum seekers was investigated. The public investigation was appointed by the Ministry of Foreign Affairs. The minister in charge was the Migration minister Mrs. Barbro Holmberg and the investigator appointed was (regeringsrådet) Mr. Mats Melin from the Government's office. A practical field study on the reception conditions was presented. The main conclusion from the

[723] Official report SOU 2003:89 EG-rätten och mottagandet av asylsökande.
[724] Official report SOU 2003:89 EG-rätten och mottagandet av asylsökande.

Official report was that Swedish law in the main was in accordance with the Directive and only minor amendments were suggested.[725]

Q.8. Quote any recent scientific book or article published about the directive, the transposition rules or the question of reception conditions for asylum seekers in general (answer even if this literature is only available in your language and provide the complete title in your language (without translation) with all references; indicate author, title, in case name of periodical, year and place of publication).

There is no recent scientific book or article published about the transposition of the Directive into Swedish law.

Q.9. Quote any interesting decision of jurisprudence based on the implementation of the new rules of transposition of the directive (indicate references of publication if any)?

Concerning interesting judicial practice, there are no cases to report on especially concerning the Directive. However, there are some previously judicial decisions that are relevant to refer to; see Q.21E.

3. GENERAL INFORMATION ABOUT THE SYSTEM OF RECEPTION CONDITIONS

The purpose of the following two questions is to help the reader to understand easily and quickly the system of reception conditions in your Member State and also to avoid that you have to repeat general elements in other parts of the questionnaire. ***Please do not write more than one or maximum two pages and do not include large historical developments.***

Q.10. Describe in general the system of reception conditions in your Member State (in particular which are the main actors in charge of reception conditions?)

Primary the Migration Board is the authority in charge of the reception of asylum seekers, although the first official representatives the foreigner meets at the border is from the police or maybe a customs officer, but as soon as it is clear that a foreigner seeks protection the Migration Board takes over.

The Migration Board makes an investigation, an application for asylum is drawn up, information on reception conditions etc. should be given, the foreigner's accommodation is arranged etc. A remark to be observed when analysing the reception of asylum seekers, is that also an application for so called subsidiary protection explicitly should be treated as an application for asylum.

An asylum seeker waiting for a decision on the application for asylum can choose between living with relatives or friends or in any of the apartments rented by the Migration Board.

[725] The Official report SOU 2003:89 EG-rätten och mottagandet av asylsökande is available on the Government's webbsite: http://www.regeringen.se/sb/d/108/a/1429
http://www.regeringen.se/sb/d/108/a/1429

During the waiting period the asylum seeker is expected to participate in organised activities, such as learning the Swedish language or practical helping to other foreigners coming to Sweden.

An asylum seeker with money should pay for his or her living, but if the applicant does not have any money he or she is entitled to a daily allowance (dagersättning) and other facilities for daily life.

Asylum seekers are entitled to acute medical treatment and dental service. Asylum seekers under the age of 18 have the right to free medical treatment and dental service. However, all asylum seekers and their relatives are entitled to a free, voluntary examination of health. The aim is to find out if there is an immediate need for medical treatment. Another reason is to see to society's need for infectious measures.

Local authorities are entitled to State financial compensation or reimbursement for the dealing with asylum seekers. The subsidies are – among others – for health care, dental care and schooling.[726] As mentioned above (see Q.3) there is an agreement between the Government and the Swedish Association of Local Authorities and Regions concerning State compensation for health care beyond acute treatment to asylum seekers. Further, a supplementary legislation on the matter is being prepared by the Government (see Q.3).

Asylum seeking children should be kept together with their families and the children are entitled to schooling and health care. Special attention should be paid to unaccompanied children and children having certain needs.[727] Further, the local authority should be responsible for unaccompanied children when the Migration Board has assigned the child to a place in a municipality.

Asylum seekers are entitled to accept employment and work if the Migration Board's dealing with the application for asylum could is calculated to take more than four months. If the employment is somewhere in a place where the Board cannot offer a place to live, the asylum seeker has the right to benefit for housing, if the work lasts for more than three months.

In order to facilitate the introduction of the asylum seeker in society there is a need for co-operation between different authorities. The Swedish Labour Market Board, the Swedish Migration Board, the Swedish Integration Board, the Swedish Board of Education, the Swedish National Agency for School Improvement and the Swedish Association of Local Authorities have agreed to develop an introduction for refugees and other immigrants.[728]

According to the agreement the asylum seeker's educational background and work experience shall be examined. Individuals with working experiences shall have a certain right to consultation at the local employment office. Should the result from the application procedure be the granting of a residence permit, the co-operation between different authorities will continue in accordance with the agreement. However, even if the agreement concerning the

[726] See the Ordinance (2002:1118) on state compensation for asylum seekers.
[727] See also the Migration Board's Aliens handbook (ch. 33.8).
[728] Agreement on the development of the introduction of refugees and other immigrants. (Revised in March 1, 2004.)

introduction in society, plans, programmes etc. is very ambitious, there have been problems realising the intentions.[729]

In 2005 a temporary regulation in the former Aliens Act was taken by the Riksdag. Rejected applications for asylum and decisions on expulsion that – for any reason – had not been executed, could be reconsidered in accordance with the new Act, which came into force in November 15, 2005 (see SFS 2005:762).[730] The foreigners embraced – many were keeping away – by the amendment, should hand in another application for a residence permit, or otherwise the Migration Board could bring up the matter for a new consideration before March 31, 2006. Following this temporary procedure around 30,000 foreigners applied for residence permits and the number of occupied places in accommodation centres was increasing temporarily.

Q.11. **Q11. A.** Explain if you have <u>different types and levels of reception conditions following the different stages of the asylum procedure</u> (this implies that you have to give briefly the necessary explanations about the asylum procedure). Make if relevant for reception conditions a distinction between the following procedural stages: determination of the responsible Member State on the basis of the Dublin II regulation, special procedures at the border (including transit zones in airports), accelerated procedures, admissibility procedures, eligibility procedures and the different possibilities of appeals (suspensive or not) against a refusal of the asylum request. Indicate what the main differences of reception conditions are between the different stages (if necessary by detailing between the different elements of reception conditions, in particular housing) and explain what the evolution of reception conditions is following the different stages of the procedure.

Q 11. B. Indicate precisely for which stage(s) of the asylum procedure the answers on reception conditions you give below are valid.

Answer to Q.11.A and Q.11.B:
In principle, the Migration Board shall offer the asylum seeker a place at an accommodation centre. This follows from the regulation in the Act on the reception of asylum seekers. However, by way of introduction a comment should be made regarding the term "accommodation centre" ("förläggning") used in regulations. Practically, the procedure is that the reception of the asylum seeker will take place in an application centre. When the application for asylum (or subsidiary protection) is made at the centre, the foreigner will be accommodated in an apartment provided by the Migration Board or the foreigner could choose to stay with relatives or friends already in Sweden.

Further, when the application has been made and the foreigner is registered, he or she will be entitled to reception conditions founded on the Act on the reception of asylum seekers, even if there is a temporary and very short stay in an application housing (see below) waiting for a more permanent lodging.

[729] See Integrationsverket (the Swedish Integration Board), Integrationsverkets rapport 2000:5 Integrationsverkets kartläggning av kommunernas introduktionsverksamhet. See also Riksrevisionen (the State Audit Institution), Statliga insatser för nyanlända invandrare, Stockholm 2006.
[730] The Riksdag's standing committee on social questions 2005/06:SfU5 Ny prövning av avvisnings- och utvisningsbeslut.

In Sweden there is no division of accommodation in relation to different stages of the asylum procedure beyond the beginning of the procedure, which starts with a visit at one of the Migration Board's application units (in Stockholm, Göteborg, Malmö, Norrköping or Gävle, where the first steps in the procedure are taken, for instance registration of the application for asylum or protection.[731] (The system with application units as well as application housing [see below] has replaced the former "transition units" from September 1, 2006.)

If the applicant needs an accommodation arranged by the Migration Board, he or she could stay temporary in a so called "application housing" (in Stockholm, Göteborg or Malmö). Further, the reception conditions should apply from the first day when the application for asylum etc. is handed in to the Migration Board.

If the foreigner arrives at the airport and declares that he or she will apply for asylum or protection, the foreigner will meet the Migration Board staff. A refusal of entering Sweden should – regarding an asylum seeker – be taken by the Migration Board (the Aliens Act ch. 8 § 4).

It is also possible that the foreigner applies for asylum after a short stay in Sweden, and if so the application normally is made at the nearest application unit. In such cases the foreigner often already might be living with friends or relatives in Sweden. In fact most of the asylum seekers apply for asylum after staying for a period in Sweden.

Regularly a foreigner seeking asylum will be transmitted to the nearest Migration Board's application unit. The units are open 24 hours and the Migration Board's staff are always ready to help the asylum seekers to satisfy their acute need for lodging, and they will also give basic information regarding the reception of asylum seekers. A stay at an application housing is – as mentioned above – supposed to be short. A practical examination of the asylum procedure has shown that normally the stay a former transit unit could be expected to be not more than five days.[732]

If the foreigners agree, family members should be kept together as far as possible.[733]

The initial examination is concerning the fulfilment of basic requirements for staying in Sweden and the application for asylum is set up. The examination could for instance — referring to the Dublin II regulation – deal with if the application for asylum should be made in Sweden.

When the application for asylum is made, there is an introductory meeting at the application unit and the registration is dealt with. The applicant has to give an account for incomes, cash and other personal circumstances relevant to the decision on assistance and decisions are taken concerning the daily allowance and housing is offered. Further, the asylum seeker should also receive information regarding the right to appeal against decisions taken by the authorities.

[731] See for instance the Official report SOU 2003:89 EG-rätten och mottagandet av asylsökande, p. 47.
[732] Official report SOU 2003:89 EG-rätten och mottagandet av asylsökande.
[733] That is stated in the Ordinance on the reception of asylum seekers § 2c. Further, in § 2d there is a corresponding regulation concerning unaccompained children and efforts should be made to find family members. (Amended through SFS 2005:16.)

The foreigner gets a receipt of the application of asylum; photographs are taken for the issuing of an LMA card (the document refers to the Directive, article 6.1). Hence, from this point the foreigner is covered by the Act on the reception of asylum seekers (see the Act § 1.1), and he or she is entitled to assistance in accordance with the Act. (See also Q.14.)

Regarding housing the applicants for asylum are asked about how their living should be arranged. Regularly they are offered a place at an accommodation centre, but they are also informed that they are free to stay with relatives or friends.

An important aspect of the procedure is the *right to appeal* against decisions taken by the State. In April 30, 2006, a new legal procedure concerning appeal against decisions taken by the Migration Board was introduced through the new Aliens Act.[734] The former Aliens Board dealing with appeals against the Migration Board's decision was laid down and a Migration Court should be the new authority dealing with appeals (the Aliens Act ch. 16). Appeals against the decision taken by the Migration Court should be dealt with by the Supreme Migration Court (ch. 16 § 9).

The meaning of the new procedure was to introduce a clear two-party procedure and also to reduce the former order when an asylum seeker after a rejection of the application for asylum could hand in another application and restart the process. The result was often very long time dealing with a case leading to human suffering for the individual.[735]

In accordance with the new Aliens Act ch. 14 § 3 a decision taken by the Migration Board on expulsion, a rejected application for a residence permit and more, may be appealed against at a Migration Court. Further, a decision to keep a foreigner in custody and more should be appealed against in a Migration Court (ch. 14 § 9). If there is an appeal against a decision referring to the Aliens Act ch. 8 § 6 (refused entry because there was obviously no ground for granting asylum) it should be tried if the execution of the decision not to enter Sweden should be inhibited (the Aliens Act ch. 12 § 10).

Also the Government can take a decision to cancel the execution of a decision to refuse entry or to expel a foreigner (see the Aliens Act ch. 12 § 11).

In accordance with the Aliens Act ch. 14 § 2 a decision taken by a police authority can be appealed against at the Migration Board. A decision to refuse entry to Sweden taken by the police can be executed even if there is an appeal against the decision (the Aliens Act ch. 12 § 6). However, regarding asylum seekers a decision to refuse entry – as stated above – should always be taken by the Migration Board.

A general note to be observed is that when taking decisions on expulsion, the refoulment regulations in the Aliens Act ch. 12 §§ 1–3 should always be considered.

When the foreigner's application for asylum is made the right to appeal will focus on other decisions dealing with the asylum seeker's situation. A decision referring to the Act on the reception of asylum seekers, taken by the Migration Board or a Social welfare board, could be appealed against at an Administrative court, more specifically the County administrative court

[734] Government's proposition 2004/05:170 Ny instans- och processordning i utlännings- och medborgarskapsärenden.
[735] See Government's proposition 2004/05:170 Ny instans- och processordning i utlännings- och medborgarskapsärenden, pp. 105 f. Further, oral dealing before a decision is taken was emphasised.

in the district where the asylum seeker was staying at the time the decision was taken (see the Act on the reception of asylum seekers § 22). However, a decision on assistance based on the Act on the reception of asylum seekers has immediate effect. (See also Q.22.)

Concerning the right to legal assistance there is a regulation in the Legal aid Act (1996:1619). In accordance with § 4 legal aid might be given for two hours by a lawyer (or an assistant lawyer). The client should pay a fee for the advice, but the adviser may set down the fee to 50 percent referring to the client's economic resources. If the client is a minor the fee can be fully reduced for the same reason. Further, the legal adviser is entitled to a reasonable compensation from the State, including compensation for the use of an interpreter.

(On matters concerning expulsion and more, a public assistant (offentligt biträde) should be appointed in accordance with the Aliens Act ch. 18.)

4. GENERAL RULES ON RECEPTION CONDITIONS

Q.12. **Q 12. A**. Are material reception conditions provided in kind, in money or in vouchers or in a combination of these elements (see article 13, §5 which is an optional provision)? Distinguish between the different elements (housing, food, clothes, health, transportation, pocket money,…). **If reception conditions are provided in money (in general or in some cases, for instance when no places are anymore available in accommodation centres), indicate the precise amount given to the asylum seekers. Indicate in your answer what is provided in general and if there are exceptional cases.** Specify in your answer if reception conditions are different from the general system of social aid for nationals or aliens and if yes, if and when (which stage of the asylum procedure) can asylum seekers have access to the general system of social aid?

Different forms of reception conditions are available (compare the Directive, article 13). In accordance with the Act on the reception of asylum seekers § 13 assistance is provided for as a:

- daily allowance (dagsersättning),
- particular allowance (särskilt bidrag),
- compensation for housing (bostadsersättning).

The daily allowance is paid in money and should cover expenses for food-stuffs, clothes, free time activities, hygiene products and other articles of consumption (the Ordinance on the reception of asylum seekers § 4[736]). A precondition for this entitlement is that the foreigner does hot have money to pay for his or her own living.

The daily allowance is 7,6 Euro (SEK 71) for a single person; 6,6 Euro (SEK 61) for a person who is living together with another person; 4 Euro (SEK 37) for children 0–3 years old; 4,6 Euro (SEK 43) for children 4–10 years old; 5,4 Euro (SEK 50) for children 11–17 years old and 6,6 Euro (SEK 61) for a home staying adult. (The amounts are including the foreigner's

[736] See also the Migration Board's Aliens handbook (ch. 33).

own food providing; Ordinance on the reception of asylum seekers § 6, and a precondition is that the foreigner cannot provide for him or herself; compare the Directive, article 13.3.)

Further the daily allowance should cover health care costs, dental care costs, phone calls, medicine and more, if such costs are not covered by the Ordinance on charge for nursing care for certain foreigners (the Ordinance on the reception of asylum seekers § 5). The daily allowance is reduced when free food is included in lodging (§ 6). Finally, there are reductions for families with more than two children (§ 6).

The particular allowance should be granted in order to provide for certain needs. The examples presented in the Ordinance on the reception of asylum seekers § 7 are for instance winter clothes, glasses, handicap equipment and equipment for babies. The allowances can also cover fees for health care, medicine and charges for nursing care.

The housing normally is in flats depending on the circumstances and it is provided in-kind. By "in-kind" I mean that the asylum seeker has a right to accommodation and that he or she will not have to pay if they don't have money to pay with. If the asylum seeker has money he or she should pay a reasonable compensation to the Migration Board (the Act on the reception of asylum seekers § 15).

If food is provided the asylum seeker will have a reduction on the daily allowance. The reduction is specified in the Ordinance. In practice the providing for food or money is dependent on for instance the number of asylum seekers living in a flat etc. It is often more practical to let the asylum seeker have a sum of money to by the food, and if so there is no reduction of the daily allowance.

The compensation for housing is only for those who have been granted a working permit, have been employed or offered an employment for at least three months and in order to take the employment must move to a place where the Migration Board cannot offer housing (the Ordinance on the reception of asylum seekers § 4).[737] The compensation is 37,8 Euro (SEK 350) per month or 91,8 Euro (SEK 850) per month if also the foreigner's family moves to the other place.

A person covered by the Act on the reception of asylum seekers is not entitled to assistance founded on the Social services Act. (See the Act on the reception of asylum seekers § 1.) However, unaccompanied children seeking asylum are embraced by the Social services Act. These children should be assigned to a municipality that in practice often has concluded an agreement with the Migration Board concerning the reception of the children.[738]

When a child has been assigned to a municipality, the child is considered to stay in that municipality in accordance with the Social services Act 2 ch. § 2.[739] Hence, the local authority has the responsibility for the child and for providing the child with the support and

[737] Government's proposition 2004/05:28 Bostadsersättning för asylsökande. In accordance with the proposition the compensation for housing was taken away for asylum seekers living on their own and not fulfilling the requirements. See also instructions from the Migration Board, Migrationsverkets föreskrifter om ändring i Migrationsverkets föreskrifter (MIGRFS 2003:10) om mottagande av asylsökande m.m.

[738] Such an agreement is a prerequisite for the local authority's right to certain stereotyped financial contributions for unaccompanied children.

[739] See also the Migration Board's Aliens handbook (ch. 33.8).

help that the child needs.[740] The form of the assistance depends on what kind of assistance the child needs. Hence, a certain amount or form for the service is not specified.

Concerning unaccompanied children and the local authorities' responsibility referring to the Social services Act, there are critics on the field fearing that this division of labour between the Migration Board and municipalities on the local level will not work, and that it would be a better solution to assign the Migration Board to have the responsibility for the child.

Q 12. B. Can the reception conditions in kind, money or vouchers be considered as <u>sufficient</u> "to ensure a standard of living adequate for the health of applicants and capable of ensuring their subsistence" as requested by article 13, §2 of the directive (which is a mandatory provision but leaves a certain space to Member States)? In order to help to assess the respect of this rule when reception conditions are provided in money, include if necessary in your answer points of comparison with the minimum amount of social aid guaranteed for nationals in your Member State.

The amount of money paid as a daily allowance etc. should be sufficient "to ensure a standard of living adequate for the health of applicants and capable of ensuring their subsistence" (the Directive, article 13.2).

The level of assistance to asylum seekers is fixed by the Government in the Ordinance on the reception of asylum seekers (§ 6), and a leading word is that the level should secure a "tolerable" standard of living.

Comparatively, the right to assistance in accordance with the Social services Act, should be enough to secure a "reasonable level" considering the receiver's standard of living, the amount of money provided as assistance to asylum seekers is low.[741] Further, critics have pointed out that the levels for assistance to asylum seekers have been fixed since 1994, and that today the level must be considered to be too low.

In order to make a more precise specification you must consider that it is difficult to compare the daily allowance and other compensation to asylum seekers with the norm that follows from the Social services Act. When the Social services Act should apply the amount is specified in the Social services Ordinance (2001:937) ch. 2 § 1, but this amount is based on a calculation of a person's or family's needs and more. In accordance with the Ordinance a single person should have 283 Euro (SEK 2640) per month and a couple 512 Euro (SEK 4770). However, a flat, telephone, TV, newspaper etc. is not included and could lead to more compensation, which could vary for instance referring to the size of a person's flat and more. Further, the amount specified is a minimum and the sum to apply could vary in different municipalities. A Swedish citizen will be reimbursed for more costs dependent on the

[740] In Government's proposition 2005/06:46 Mottagande av ensamkommande barn, it is stated that the Migration Board will have the overall responsibility for the child, but the consequences of the division of responsibility between the Board and the local authorities in the municipality should be subject to further investigation by the Board. (See Government's proposition 2005/06:46, p. 39.)

[741] In the Migration Board's Aliens handbook (ch. 33) it is explicitly stated that there is no connection between the level of assistance in accordance with the Act on the reception of asylum seekers and the national standard that is recommended by the the National Board of Health and Welfare for the application of the the Social services Act.

circumstances in the individual's situation compared with an asylum seeker that will have an allowance on around 226,5 Euros (SEK 2.100) and with a more restricted possibility to have reimbursement for many additional costs.

Hence, one could estimate that the allowance granted for an asylum seeker, in accordance with the Ordinance on the reception of asylum seekers, is around maximum 80 percent of the norm to be applied in accordance with the Social Services Act, but at the same time this comparison is a grave estimation that do not consider the possibility to have extra benefits based on the Social Services Act, and the asylum seeker will not be entitled to these benefits. Hence, in practice the asylum seeker will maybe have not more than 40–50 percent of the norm stipulated in the Social Services Ordinance, but I will emphasize that any specification of an exact figure on the matter could be questioned. (The sums specified above do not include lodging.)

5. PROCEDURAL ASPECTS

Q.13. **Q 13. A. Does the national legislation specifically provide that a request for international protection is presumed to be under the Geneva Convention unless explicitly requested otherwise? (see article 2, b which is a mandatory provision)**

A request for international protection in accordance with the Aliens Act ch. 4 § 2 should explicitly be dealt with as an application for asylum (see the Aliens Act ch. 1 § 12). This regulation should not apply if the foreigner explicitly requests otherwise. (Compare the Directive, article 2b.)

Q. 13. B. Explain if the scope of application of reception conditions is extended to other asylum seekers than refugees in the sense of the Geneva Convention, in particular to persons asking for subsidiary protection or to other forms of protection like humanitarian statuses (see article 3, § 4 which is an optional provision)? If not, explain briefly which the differences between these special regimes and the directive are.

The scope of application of the Act on the reception of asylum seekers embraces both persons who have applied for residence permit referring to the Aliens Act ch. 4 § 1 as well as persons who have applied for protection referring to ch. 4 § 2 and even other forms of international protection (see the Act on the reception of asylum seekers § 1.1–3). Hence, the Act on the reception of asylum seekers also embraces a person who applies for a residence permit referring to "particular distressing circumstances" (the Aliens Act ch. 4 § 6) as well as people who have been granted residence permit for temporary protection (the Aliens Act ch. 21) and some more. If a child should be granted a residence permit referring to the Aliens Act ch. 4 § 6, the requirements for granting the permit could be set lower than for adults.

Q. 13. C. Are there specific provisions in national law for reception conditions in case of diplomatic or territorial asylum requests submitted through a diplomatic or consular representation (see article 3, §2 which is an optional provision)?

Regarding reception conditions in case of diplomatic or territorial asylum requests submitted through a diplomatic or consular representation, there are no regulations found in Swedish law (compare the Directive, article 3.2, which is not mandatory), and there are no regulations concerning reception conditions in such cases found in the Act on the reception of asylum seekers.[742]

Q.14. **Are reception conditions available as from the moment one asylum application is introduced? How is article 13, §1 which is mandatory legally understood?** Do asylum seekers have to satisfy any other condition in order to get reception conditions?

In principle reception conditions should be available from the moment the asylum application is made (in accordance with the Directive, article 13.1) (see section 1 in the The law on the reception of asylum seekers (1994:137). Beyond the daily allowance regulated in the Act on reception of asylum seekers, there is a certain contribution for special needs (§ 18; for instance for winter clothes at the arrival).

A precondition for the entitlements is that the foreigner is registered at an accommodation centre; in practice an application centre (the Act on reception of asylum seekers § 8). (Concerning the point of time for access to benefits, see also Q.11, and concerning the term "accommodation centre", see also Q.23.) Further, more detailed regulations concerning for instance the periodizing of benefits and more are found in the Migration Board's statute-book.[743]

The public investigation presented in 2003 shows that in practice more than 50 percent of the asylum seekers had access to benefits, for instance the daily allowance, within one to three days.[744] In practice sometimes delays for different reasons had occurred, uncertainty regarding the application, misunderstanding etc. that may have caused imperfections. However, the conclusion from the public investigation was that Swedish law fulfils the requirements from the directive.[745]

Q.15. **Explain when reception conditions end, for instance after refusal of the asylum request** (include in your answer the link with the right of appeal against a decision of refusal of the status, in particular the question of its suspensive effect)

In principle the right to assistance will cease if the foreigner is granted a residence permit or if the foreigner leaves Sweden (the Act on the reception of asylum seekers § 11).

A foreigner that has been granted a residence permit but still is staying in a Migration Board accommodation centre, is entitled to assistance if he or she has not been assigned a place – or has not been able to utilize such an assignment – in a local municipality (§ 8). A foreigner that is not staying in a Migration Board accommodation centre is entitled to assistance during a month after a residence permit has been granted (§ 8).

[742] Looking back, in exceptional situations in the 1970s there were cases when Chileans applied for asylum directly at the Swedish embassy in Santiago.
[743] See also MIGRFS 2003:10 Migrationsverkets föreskrifter om mottagande av asylsökande m.m.
[744] Official report SOU 2003:89 EG-rätten och mottagandet av asylsökande, p. 139.
[745] Official report SOU 2003:89 EG-rätten och mottagandet av asylsökande, p. 144.

A foreigner that is keeping away or is hiding so that a deportation order cannot be executed, is not entitled to assistance (§ 12).

Further, the daily allowance can be reduced or withdrawn if the asylum seeker refuses to take part in organised activities without a valid reason, if he or she obstructs the investigation in the case, does not cooperate to clarify the personal identity or makes it difficult to carry out the investigation concerning the right to residence permit by keeping away (the Act on the reception of asylum seekers § 10).[746]

Concerning reduced allowances the reason presented by the foreigner for not, for instance, participating in organised activities should be considered.[747] If the foreigner is offered a place in a Migration Board accommodation centre and free food is included, the daily allowance might be withdrawn (the Act on the reception of asylum seekers § 10). (Concerning reduction or withdrawal of assistance – see also Q.21A.)

An appeal introduced by the asylum seeker against a decision (see also Q.22), will not lead to a withdrawal or a reduction of the assistance. The person will still be considered as an asylum seeker and is entitled to the assistance in connection to that legal status. That follows indirectly from the Act on the reception of asylum seekers §§ 10–12 where the basis for possible reductions etc. of assistance are stipulated.

Q.16 Are there special rules or practices regarding reception conditions in case of successive applications for asylum introduced by the same person?

Regarding reception conditions in case of successive applications for asylum introduced by the same person, the Act on the reception of asylum seekers should apply. A successive application means that the person as an asylum seeker will be embraced by the Act.

A considerable consequence is that in such cases the Act on the reception of asylum seekers (§ 1) stipulates that the person should not be embraced by the Social services Act (see also Q.12A). Hence, in case of successive application the asylum seeker will lose his or her benefits founded on the Social services Act, for instance the right to housing supplementary allowance.

In an integration perspective this could be very negative for the individual, since he or she may not be able to pay the rent for an apartment, which might lead to a report and execution from the enforcement service and, further, to a record for non-payment of debt. Following this, in the future the person will have trouble getting for instance a bank loan.

Such consequences will often occur, according to informants. However, practically in certain municipalities the parties await the registration of the asylum seeker in order not to put the individual concerned in an awkward situation, although this dealing with the matter is not in accordance with law, it is more a humanitarian way to deal with the situation.

[746] In the Official report 2003:89 EG-rätten och mottagandet av asylsökande it was discussed whether the possibility to reduce or withdraw allowances was in accordance with the Directive. However, a precondition was that the foreigner's need could be met in any other way, and a recommendation from the investigation was to clarify this in an instruction on the application of the regulations concerned. (See the Official report, p. 152 ff.)
[747] Compare Government's proposition 1993/94:94 Mottagande av asylsökande m.m., p. 49.

Q.17. Information of asylum seekers about their rights and obligations in terms of reception conditions, in particular about established benefits (see article 5 which is too large extend a mandatory provision; do not confuse this question with the information to be provided to asylum seekers about the asylum procedure):

Q. 17. A. Are asylum seekers informed, and if yes about what precisely?

In accordance with the Ordinance on the reception of asylum seekers (amendment through SFS 2005:16), the Migration Board should inform the asylum seeker on different benefits and forms for assistance and how to obtain them (§ 2a). Before the amendment made in 2005 Swedish law did not explicitly regulate this right to information in certain respects.[748]

In the Migration Board's Aliens handbook (ch. 33) there is a detailed list of the content of the information provided. For instance, information should be presented concerning the Act on the reception of asylum seekers, including the entitlements referring to the Act, the right to health and medical care, regarding work permits, information on parenthood, Swedish legislation and more.

Q. 17. B. Is the information provided in writing or, when appropriate, orally?

Q.17. C. Is that information in general provided in a language understood by asylum seekers? Specify the list of languages in which it is available

(Answer to Q.17 B-C)
The asylum seeker should obtain written information on different benefits etc.[749] If there is a need for it information should also be presented orally (the Ordinance on the reception of asylum seekers § 2a).

Also in the Migration Board's Aliens handbook there are instructions that the foreigner at the registration at a Migration Board accommodation centre should be informed about allowances, right to health and dental care and more. In practice also written information is provided in many languages.[750] Regarding languages, translation to new languages is continuously made depending on what nationalities that for the moment are seeking asylum.

[748] Official report SOU 2003:89 EG-rätten och mottagandet av asylsökande, pp. 50 f.
[749] An example is Migrationsverket (the Migration Board), Reception of asylum seekers in Sweden (fact sheet), see (in English) http://www.migrationsverket.se/infomaterial/asyl/allmant/mottagandet_en.pdf
[750] The Migration Board's introducing fact sheet on these matters was at a certain point of time in 2003 available in seven languages: Albanian, Arabic, English, Frensch, Spanish and in a commonly understood version for people from Bosnia, Croatia and Serbia. See Official report SOU 2003:89 EG-rätten och mottagandet av asylsökande, p. 46. In 2006 there are examples in practice that some fact sheets are presented in more languages. The number of languages is depending on the number of nationalities of the asylum seekers atthe moment.

Further, at the local Migration Board centres information on the local society is provided (local map, where social and commercial service is situated etc.).

However, from NGOs there are reports that there are sometimes problems in getting correct information, and both UNHCR and NGO representatives underline the need for current information and to make sure that the asylum seeker really understands the information, which is a practical problem to consider.

Q. 17. D. Is the deadline of maximum 15 days respected?

In accordance with the Ordinance on the reception of asylum seekers, the information should be provided as soon as possible and not later than 15 days after the application for a residence permit (§ 2a).

The practical evaluation of the application of the asylum seeker's right to information, made by a public investigation and which was presented in 2003, showed that the asylum seekers in practice obtained the information requested, as soon as possible and not later than 15 days after the application for residence permit.

In 2006-2007 the Swedish Migration Board performed an internal investigation on the exercise of authority in the reception of asylum seekers. According to this investigation there are divergences between the different reception centres on both the content and the ways to inform asylum seekers. The investigation concludes that there is a need for a more thorough investigation in order to have a more uniform practice in these aspects and to be able to determine if the standards of the Ordinance on the reception of asylum seekers and the Directive is met in practice.[751]

Q.18. Information of asylum seekers about the existence of organisations or groups promoting their interest and defending their rights (see article 5 which is to a large extend a mandatory provision):

Q. 18. A. Is there a list of organisations dressed by the authorities and if yes is it comprehensive? Is this in particular the case about the possibilities to get legal assistance and health care?

Q. 18. B. Is the information provided to the asylum seekers, and if yes, in writing or, when appropriate, orally?

(Answers to Q.18.A-B)
In accordance with the Ordinance on the reception of asylum seekers, the asylum seeker should have information about organisations or groups providing judicial assistance. Further, information should be given concerning organisations giving support or information on the right to reception conditions, health care and medical service (§ 2a; amendment through SFS 2005:16; compare the Directive, article 5.1).

The Swedish representatives from UNHCR have the impression that asylum seekers are informed about different organisations, although it is underlined that the information could be

[751] See Översyn av myndighetsutövningen inom Migrationsverkets mottagningsverksamhet p. 14 2007-01-22 www.migrationsverket.se/swedish/press/dokument/översyn_myndighetsutovning.pdf

improved. Further, there are examples that NGOs have been invited to inform about the organisations' activities concerning asylum seekers. A practical problem regarding information about NGOs etc. follows from the fact that the asylum seekers are dispersed, living in different places, in apartments etc., which however from other points of view is considered to be positive.

An example of regular meetings, exchange of information and planning between the Migration Board and NGOs, is the activity at the accommodation centre in Boden (a town in the north of Sweden). Once a month or at least every second month the Migration Board staff meets NGO representatives, and once a year they arrange a day devoted to a particular theme or topic.

In practice there is no existing central list of organisations. Practitioners on the field report that the information provided is very much dependent on local initiatives, and this impression is confirmed by the NGOs in Sweden. An informant from an accommodation centre has indicated that in practice it is up to the official dealing with a case to inform the asylum seeker regarding supporting organisations. Hence, a recommendation from the reporter is to set up a central list of the NGO organisations and other groups supporting asylum seekers and to make it open for completion on the local level.

Q. 18. C. Is that information in general provided in a <u>language</u> understood by asylum seekers? Specify if possible the list of languages in which it is available.

The Ordinance on the reception of asylum seekers does not stipulate anything about the language regarding this kind of information. However, an informant from an accommodation centre reports that information is available in different languages that varies depending on what nationalities that are seeking asylum. (Compare Q.17B-C.)

Q. 18. D. <u>How many organisations</u> are active in that field in your Member State?

Six or more NGOs are active in Sweden and are working with asylum seekers and refugees.[752] However, beside there are also other groups such as local organisations, temporary groups and people active within the church.

Q.19. <u>Documentation of asylum seekers (see article 6):</u>

Q.19. A. <u>What kind of document</u> is delivered to the asylum seeker? Explain the legal value of this document (just a certification of the status as asylum seeker or also prove of identity?) (see §1 of article 6 which is a mandatory provision)

[752] Amnesty, Caritas Sverige (Caritas Sweden), Flyktinggruppernas och Asylkommittéernas Riksråd (FARR ; not in English), Rådgivningsbyrån (Swedish Refugee Advice Centre), Rädda Barnen (Save the Children Sweden) and Röda Korset (Red Cross Sweden) have been contacted for the present study. However, the reporter will point out that the list of organisations active on these matters is not complete.

The asylum seeker is provided with an LMA card issued by the Migration Board (compare the Directive, article 6.1). Regulations on the issuing of the card are found in the Ordinance on the reception of asylum seekers and – in detail – in the Migration Board's statute-book.[753]

The LMA card certifies the foreigner's right to entitlements granted to an asylum seeker, including the right to stay on Swedish territory until the application for a residence permit has been dealt with. The LMA card does not fulfil the requirements of a legal identity card, although there is a photograph on the document showing the card holder. (Concerning these matters the Ordinance on the reception of asylum seekers was amended in 2005 through SFS 2005:16.)

Q.19. B. Are there situations or specific cases in which another equivalent document or even no document is issued? (in particular is there an exception for "procedures to decide on the right of the applicant legally to enter the territory" as made possible by §2 of article 6)?

Further, the receipt of the application for asylum (see Q.11) is a temporary document that certifies the asylum seeker's legal status as an asylum seeker waiting for the LMA card to be issued, which should be done within fourteen days (compare the Directive, article 6.2.).[754] In practice the receipt is connected to a document with a photograph of the asylum seeker, and the receipt works as a proof of the asylum seeker's right to health and medical care, discount on pharmacy products in pharmacies etc.

Q.19. C. For how long is this document in principle valid and is it necessary to renew it after a certain period?

The LMA card's period of validity varies depending on the estimation of how long the dealing with the application will take. However, in accordance with the Migration Board's statute-book the maximum valid period is 6 months.[755] Further, the card could be renewed after the 6 months period or if the card is lost.

Q.19. D. What is the deadline for the delivery of that document? Is the mandatory deadline of 3 days set by article 6, §1 respected[756]?

In line with the Directive, article 6.1, there is a regulation in the Ordinance on the reception of asylum seekers § 2b, stating that the asylum seeker should within three days be provided with a document that certifies his or her status as asylum seeker. However, the public investigation in 2003 claimed that there sometimes were practical obstacles to issuing a card within three days.[757]

[753] See MIGRFS 07/2005 Migrationsverkets föreskrift om Tillfälligt LMA-kort för utlänning i Sverige och dokument som intygar att innehavaren är asylsökande. (The Migration Board's instruction on Temporary LMA-card for foreigners in Sweden and a document showing that the holder is an asylum seeker.)
[754] MIGRFS 07/2005 Migrationsverkets föreskrift om Tillfälligt LMA-kort för utlänning i Sverige och dokument som intygar att innehavaren är asylsökande § 7.
[755] MIGRFS 07/2005 Migrationsverkets föreskrift om Tillfälligt LMA-kort för utlänning i Sverige och dokument som intygar att innehavaren är asylsökande.

[757] Official report SOU 2003:89 EG-rätten och mottagandet av asylsökande.

When the application for asylum is made, the foreigner will have a written receipt showing that he or she has applied for residence permit referring to the Aliens Act. The receipt shows that the foreigner is applying for asylum, but it is not a formal document that can be compared with an LMA card.

Informants from accommodation centres have claimed that the issuing of an LMA card normally takes at least 1–2 weeks. However, the receipt on the application for asylum serves as a temporary document in most situations. Hence, the basic requirements from the Directive should be fulfilled (see Q.19B).

Q.19. E. Is it possible for an asylum seeker to get a travel document for serious humanitarian reasons (see §5 of article 6 which is an optional provision)?

A travel document making it possible for an asylum seeker to travel to another State for "serious humanitarian reasons" referring to the Directive, article 6.5, was suggested by the public investigation in 2003.[758]

In the new Aliens Ordinance, that came into force in 2006, there is a regulation in § 12 considering a certain travelling document. If a foreigner does not have a document for travelling that corresponds to a passport and the foreigner has no possibility otherwise to be granted such a document or if particular circumstances are present, the Migration Board might issue an Alien's passport (främlingspass) for travelling. Further, the Migration Board might issue a temporary Alien's passport if a foreigner has an immediate need to travel to or from Sweden (14 §).

The Alien's passport should be issued for at the longest a period of five years (the Aliens Ordinance § 13). Further, there might be a note in the alien's passport restricting the territory. It should also be possible to make a note in the passport if the foreigner's identity is not verified.[759]

Q.19. F. Is there a central system of registration of asylum seekers and is it or not separate from the registration of aliens? If yes, describe it briefly (content) and indicate in particular if it is an electronic database.

A precondition to be entitled to the assistance granted asylum seekers, is that the foreigner is registered at a Migration Board accommodation centre (the Act on the reception of asylum seekers § 8). Hence, there is registration both on the local and central level, and the registration could be expected to be computerized.

However, there are restrictions concerning the aim with the register as well as what kind of information that should be stored. (See the Ordinance on treatment of personal particulars in activities referring to acts on aliens law and citizenship.[760])

[758] See Official report SOU 2003:89 EG-rätten och mottagandet av asylsökande.
[759] The latter was introduced in order to counteract the situation where asylum seekers throw away their passports or other identity documents.
[760] Förordning (2001:720) om behandling av personuppgifter i verksamhet enligt utlännings- och medborgarskapslagstiftningen.

Q.20. Residence of asylum seekers :

Q.20. A. Is in principle an asylum seeker free to move on the entire territory of your Member State or only to a limited part of it and in case, which part? (see article 7, §1 which is a mandatory provision)

In principle the asylum seeker is free to move on the entire territory of Sweden. An exception (which in practice is extraordinary) is of course if the foreigner is taken into custody, for instance if it is necessary for an investigation (the Aliens Act ch. 10 §§ 1–2). (See also Q.33B.)

The freedom to move on the entire territory is ultimately guaranteed by the Instrument of government chapter 2 art. 22 paragraph 2 point 4 stating that unless it follows otherwise from special provisions of law, a foreign national within the Realm is equated with a Swedish citizen in respect of protection against deprivation of liberty. Apart from the cases mentioned above where the foreigner is taken into custody there are no hindrance of significance to the freedom to move on the entire territory of Sweden for asylum seekers.

Q.20. B. About the place of residence (see §2 of article 7): explain to which extend the person is free to choose her residence and if this depends of the stage of the asylum procedure (for instance before and after admissibility); if there are constraints limiting the choice, explain which ones and their reasons (for instance processing of application, attribution of reception conditions,…).

The asylum seeker is free to arrange his or her living, for instance with friends or relatives during the asylum procedure and around half of the asylum seekers prefer to arrange their stay in that way.[761]

Q.20. C. About the place of reception (meaning where the asylum seeker has to stay to benefit from reception conditions) (see § 4 of article 7): explain which are the general rules about the determination of this place (to which extend are the decisions determining the place taken individually and do they take into account the personal situation of the asylum seeker?) and to which extend the person is free to choose it and if it depends of the stage of the asylum procedure (for instance before and after admissibility); if there are constraints limiting the choice, explain which ones and their reasons (for instance attribution of reception conditions, processing of the application,…).

A precondition for the right to assistance in accordance with the Act on the reception of asylum seekers, is that the foreigner is registered at a Migration Board accommodation centre (the Act § 8). However, from the right to arrange his or her living follows that the asylum seeker does not have to stay in the Migration Board accommodation centre in order to be entitled to assistance.

[761] Compare Migrationsverket (the Migration Board), Årsredovisning 2005 (Annual report), p. 16.

Q.20. D. If all asylum seekers are not placed in accommodation centres because of capacity limits, explain how the persons are distributed between accommodation centres and other accommodation facilities (which authority takes the decisions, on the basis of which elements, can that decision be appealed by the asylum seeker,…)

The Migration Board rents apartments for accommodation, if the asylum seeker does not him- or herself choose to arrange the accommodation.

The Board's aim is to spread the accommodations throughout the local municipality and certain employees at the Board are responsible for accommodation and for planning organised activities, in which the asylum seekers are expected to participate.

The UNHCR experience is that there is enough capacity in the Swedish reception system. However, problems have occurred when the inflow of asylum seekers has peaked, for instance in the beginning of the 1990s. Further, certain disadvantages have been reported regarding asylum seekers living outside the accommodation centers, since difficulties have occurred in the contact between the Migration Boards officials and the asylum seeker when he or she has not been available.

Q.20. E. How can an asylum seeker ask to leave temporarily the place of residence or of reception or an assigned area? How is the individual AND impartial character of the decision ensured? (see §5 of article 7 which is a mandatory provision)

In principle there are no restrictions on the asylum seekers right to travel on Swedish territory (see Q.20.A) (except for situations when an asylum seeker is taken into custody etc. – see Q.33B). However, in practice the asylum seeker should take part in the investigation etc., which means that for practical reasons there could be restrictions. Further, in practice the asylum seeker should take part in organised activities depending among other things on the way the living is organised.

In November 2005 43 percent of the asylum seekers participated in organised activities. A total of 10,192 persons (including 2,996 women) participated; 3,660 persons studied the Swedish language, 2,237 persons were educated in return back matters, 492 persons took part in self management in accommodation centres and 1,470 in occupational practice.[762]

Q.21. **Q.21. A. Do rules on reduction or withdrawal of reception conditions exist in internal legislation and if yes in which cases (mention in particular if there are cases not foreseen by article 16, § 1 and 2 which are optional provisions)? Distinguish in your answer between cases of reduction and withdrawal and explain which conditions can be reduced and if access to emergency health care is always ensured as requested by article 16, §4, last sentence.**

The assistance granted in accordance with the Act on the reception of asylum seekers could be reduced or withdrawn for different reasons (compare the Directive, article 16). If the

[762] Migrationsverket (the Migration Board), Årsredovisning 2005 (Annual report), p. 15.

foreigner refuses – without any valid reason – to participate in activities organised by the Migration Board, or makes it difficult to carry through the investigation on residence permit, or does not contribute to clarify his or her identity or is keeping away, the daily allowance could be reduced (the Act on the reception of asylum seekers § 10). (See also Q.15 regarding reduction or withdrawal of assistance.)

Further, for the same reasons the allowance could be withdrawn. In addition to that, the assistance could be fully reduced if a foreigner who is obstructing is offered a place in an accommodation where food is included. The allowance could also be fully reduced if the foreigner without any valid reason does not cooperate to execute a decision on expulsion (amendment in 2004 through SFS 2004:1377[763]). (See also Q.15.)

In 2003 a public investigation showed that the same year the Migration Board at the accommodation centre in Malmö during one month took the decision to reduce the daily allowance in 250 cases. The reason was that the asylum seekers had not participated in organised activities arranged by the Board.[764]

Concerning health care the County council should provide health care to persons who are staying in the district (the Health and medical treatment Act § 4) (See also Q.3.) The County councils will always provide acute health care, in practice even for asylum seekers that are keeping away.

Since the year 2000 children (up to the age of 18) have full entitlements concerning health and medical care (mental care included) as well as dental care on the same conditions as other children in Sweden, and the entitlements also embrace those who keep away (concerning certain problems regarding this, see Q.27B). Further, the County councils' cost should be reimbursed by the State in accordance with the Ordinance on state compensation for health and medical treatment for asylum seekers.

There has been a discussion concerning children's schooling when the family is keeping away, and it has been suggested that it should not be restricted in such situations. The matter is dealt with in an ongoing investigation.

However, the Migration Board claims that in practice the local authorities already have received compensation even for hidden children's schooling as a part of the extra compensation for asylum seeking children that was granted to local authorities in 2005, even though this purpose was not explicitly expressed in the decision.[765] However, if the family and the child is keeping away so that a decision on expulsion cannot be executed, the right to schooling should not apply (see Q.31B).

Q.21. B. Has article 16, §2 dealing with refusal of reception conditions for <u>unreasonably late applications</u> for asylum been transposed by your Member State (or was this case already applicable before transposition)? Are there cases in practice?

[763] Government's proposition 2004/05:28 Bostadsersättning för asylsökande.
[764] Official report SOU 2003:89 EG-rätten och mottagandet av asylsökande, p. 150.
[765] Concerning the extra compensation, see Government's propostion 2005/06:1 Budgetpropositionen för 2006 Bilaga 11. See also Migrationsverket (the Migration Board), PM 2006-05-04 Utbetalning av ersättning för sociala insatser till asylsökande barn.

Refusal of reception conditions or assistance referring to "unreasonable late applications" (compare the Directive, article 16.2) has not, as far as the reporter knows, been applied to asylum seekers in Sweden, and there is no such regulation to apply for that reason. Neither have the UNHCR representatives any information saying that this kind of reason for a refusal has occurred.

Q.21. C. How is it ensured that decisions of reduction or withdrawal are taken individually, objectively AND in particular impartially (for instance through and independent arbitrator) (see article 16, §4 which is a mandatory provision)?

The Migration Board is taking the decision to reduce or make a withdrawal of assistance referring to the Act on the reception of asylum seekers. Further, decisions on assistance based on the Act should have an immediate effect, even if a decision could be appealed against at the County administrative court in the relevant court district where the foreigner was staying when the decision was taken (the Act on the reception of asylum seekers § 22). The sa§ 9 regulates that the exercising of authority should be based on objective and impartial grounds.

In 2006-2007 the Swedish Migration Board performed an internal investigation on the exercise of authority concerning the reception of asylum seekers. The reduction or withdrawal of the daily allowance was one of the areas pointed out as a problem since there are divergences in practice between the different reception centres on when to withdraw or reduce the daily allowance.[766]

me applies to decisions taken by a social welfare board referring to the Social services Act (the Act on the reception of asylum seekers § 22). Fundamentally the Constitution ch. 1

Q.21. D. Is statement 14/03 adopted by the Council at the same moment as the directive respected (see the document attached to our sending)?

In Statement 14/03 the Council dealt with the withdrawal of reception conditions referring to the Directive, article 16. In accordance with the Act on the reception of asylum seekers § 10, the daily allowance could be reduced if the asylum seeker refuses to take part in organised activities. Regarding this the Swedish standpoint – according to officials at the Foreign Ministry – is that the level of assistance after the reduction fulfils the requirements raised by the Directive (the Foreign Ministry).

Q.21. E. Are there already administrative appeal decisions or judgements on cases of reduction, withdrawal or refusal which have been taken, and if yes, what has been the outcome?

From the former judicial practice, there are some examples of cases to report on concerning assistance to asylum seekers. In Case 3565-1995 the Administrative court of appeal in Stockholm rejected an appeal concerning assistance for buying winter clothes. The applicant had had daily allowances for six months, and it should have been possible to save money for buying winter clothes.

[766] See Översyn av myndighetsutövningen inom Migrationsverkets mottagningsverksamhet p. 17 2007-01-22 www.migrationsverket.se/swedish/press/dokument/översyn_myndighetsutovning.pdf

In Case 1229-1995 the Administrative court of appeal in Jönköping rejected an appeal concerning assistance for buying maternity wear. The Court did not find the clothes necessary for a "tolerable living". (Compare Q.12B.)

In a judgement in July 8, 1996, the Administrative court of appeal in Stockholm approved an appeal concerning particular assistance on 104,6 Euro (SEK 970) for repairing a pair of glasses.

Q.22. **Q.22. A. Appeal against a negative decision relating to the granting of benefits or based on article 7 (see article 21 which is a mandatory provision): indicate against which decision an appeal can be introduced, describe the system of appeal in general and include in particular in your answer the information given to asylum seekers about possibilities of appealing, deadline for appealing, if the appeal has or not a suspensive effect, if there are different steps (for instance first an administrative appeal and in particular if the guarantee of an appeal before a judicial body in the last instance is respected)?**

As stated above a decision taken referring to the Act on the reception of asylum seekers, taken by the Migration Board could be appealed against at an Administrative court, more specifically the County administrative court in the district where the asylum seeker was staying at the time the decision was taken (the Act on the reception of asylum seekers § 22).

Since a decision on assistance taken by the Board has an immediate effect, an appeal against such a decision does not have a suspensive effect. (Regarding asylum seeking children staying in a municipality there is a corresponding regulation in the Social services Act ch. 16 § 3 on the local authority's responsibility concerning assistance referring to the Act ch. 4 § 1.)

Concerning the deadline for an appeal against a decision there is a general rule in the Public administration Act (1986:223) § 23. The appeal should be in writing and it should be handed in not later than three weeks from the day the complainant took part of the decision.

Regarding the Directive, article 7, and the Member State's possibility to put restrictions on the asylum seeker's right to choose where he or she will stay, there are in principle no such restrictions in Swedish law. However, the asylum seeker must participate in the investigation and he or she should take part in the activities organized by the Board etc. Hence, from these requirements restrictions could follow in practice (concerning the freedom of movement, see Q.20E, and concerning the right to choose where to live, see Q.24A).

Q.22. B. Explain which are the possibilities for asylum seekers to benefit from legal assistance when they introduce such an appeal (see article 21, §2 which is a mandatory provision but leaves space to Member States)?

Concerning the right to legal assistance (compare the Directive, article 21.2) there is a regulation in the Legal aid Act (1996:1619). In accordance with § 4 legal aid might be given for two hours by a lawyer (or an assistant lawyer). Regarding the fee for legal assistance, the reporter refers to Q.11.

Further, in the Aliens Act ch. 18 there are regulations on the appointment of a public assistant (offentligt biträde), but this regulation should apply in matters concerning expulsion and more.

Q.22. C. Are there already administrative appeal decisions or judgements which have been taken and if yes, which are the main important ones?

Concerning the judicial practice – see Q.21E and the cases referred to (Case 3565-1995; the Administrative court of appeal in Stockholm concerning assistance for buying winter clothes, Case 1229-1995; the Administrative court of appeal in Jönköping concerning assistance for buying maternity wear, and the judgement in July 8, 1996; the Administrative court of appeal in Stockholm concerning particular assistance).

Q.22. D. Is a mechanism of complain for asylum seekers about quality of receptions conditions in general (even if they are not personally concerned) organised? If yes, before which authority? Is it linked to the system of guidance, control and monitoring of reception conditions (see below question n° 39)?

In principle it is possible to make complaints concerning the quality of the assistance, since the assistance is based upon a decision taken by an authority. However, regarding benefits in the form of a certain amount the "quality" fixed in law there is no problem from a legal point of view.

Concerning for instance the quality of the food in an accommodation centre, should preliminary be a matter for the centre. However, the more general and individualized assistance referring to the Social services Act could be subject to complaints on "quality matters", for instance if a measure taken is the best measure considering a certain child's need in a specific situation.

6. RIGHTS AND OBLIGATIONS OF ASYLUM SEEKERS

Q.23. Family unity of asylum seekers: define how a family is defined in relation with article 2, (d) which is a mandatory provision and explain how housing is provided to a family (see articles 8 which is a mandatory provision but leaves space to member States and 14, §2, (a) which is a mandatory provision).

According to the Aliens Act Ch. 5 § 1 a residence permit should be granted to persons defined as refugees in the Geneva Convention. Under the same paragraph, persons who are not Convention refugees may also qualify for protection. This category is described as 'persons in need of protection' (skyddsbehövande). Persons in need of protection are those who have left their native country and have good reason to fear capital punishment, torture, etc., or who need protection due to an internal or external armed conflict or an environmental disaster in their native country.

No specific implementation measures have been taken on account of the Directive, article 2.d. The Aliens Act does not define who is a "family member" to an asylum seeker. However, in

accordance with the Ch. 5 § 3, a residence permit might also be granted if the applicant's situation comply with any of the following conditions, stating that the foreigner[767]

- has to be married or live together with someone who has residence in Sweden or has been granted a residence permit in Sweden,
- has to be a foreign child (under the age of 18) and unmarried and either has been a child at home to someone who is a resident or has been granted residence permit for residence,
- has to be a foreign child (under the age of 18) and unmarried and who has been or is going to be adopted by someone who, at the time of the adoption, is and still is resident in Sweden or who has been granted a residence permit,
- has to be a close relative on some other ground to someone who is a resident or has been granted residence permit, if the person has been part of the houshold and there is a particular dependency relation between the relatives,
- has to be a husband, spouse or a cohabitant to someone who is a resident or has been granted residence permit, if the relationship is considered to be serious,
- has the intention to marry or cohabit with someone who is a resident or has been granted a residence permit, if the relationship is considered to be serious,
- has to be together with a child who has residence in Sweden,
- is a relative to a foreigner that is a refugee or otherwise in need of protection,
- in any other way must have a particular connection to Sweden.[768]

The Aliens Act defines relatives to persons who have been granted residence permit or a refugee status. Hence, the relatives position is basically dependent on the outcome of the asylum seekers application for asylum.

According to the Act on the reception of asylum seekers § 3, the Migration Board should offer asylum seekers accommodation in an accommodation centre, which in practice will be in an apartment provided by the Migration Board. Following the same paragraph, all asylum seekers have to be registered at an accommodation centre (in practice this means that the foreigner will be registered at the application centre/office where the asylum seekers meet the Migration Board's staff), even if they arrange their own accommodation (see below Q.24). Further, in accordance with the Ordinance on the reception of asylum seekers § 2c, the Migration Board, when it offers accommodation, should as much as possible keep families together if the foreigners do not oppose.

Q.24. **Q.24. A. How is <u>housing</u> of asylum seekers organised: describe the system in general and indicate in particular what is the most frequently system used (see article 14, §1 which is a mandatory provision but leaves space for Member States; distinguish between accommodation centres, private houses and apartments, hotels places or other premises).**

Asylum seekers can choose to live with friends or relatives, otherwise they will be provided with a temporary housing organised by the Migration Board, either in an ordinary residential

[767] The list is not complete, since it also embraces other categories not covered by the present study.
[768] The reason is subsidiary compared with the previous grounds, and further, «particular reasons» should be present. See Government's propostion 2004/05:170 Ny instans- och processordning i utlännings- och medborgarskapsärenden, pp. 183 f. and Government's proposition 1996/97:25 Svensk migrationspolitik i globalt perspektiv, pp. 113 f.

area or – which is an exception – temporarily in application housing or in other accommodations (compare the Directive, article 14.1). Approximately more than 50 percent of the asylum seekers choose the first alternative.[769] The Migration Board is obliged to offer accommodation in an accommodation centre for those who do not arrange their own living (see the Act on the reception of asylum seekers § 14).

Asylum seekers who choose to live on their own may, on certain conditions, be granted a monthly housing allowance (see the Act on the reception of asylum seekers § 16). The conditions, which are cumulative, are that the applicant must be granted a work permit or exempted from such a requirement, has been offered a job of at least three months duration and, as a prerequisite to take that job, has to move to a place where the Migration Board is unable to offer housing. The allowance is, as previously stated in my answer to Q.12A, 37,8 Euro (SEK 350) per month for single asylum seekers and 91,7 Euro (SEK 850) for families.

Q.24. B. What is the total number of available places for asylum seekers? Distinguish in your answer between accommodation centres, private houses and apartments, hotels or other premises.

The number of individuals staying at the Migration Board's lodging in November 2005 was 18,800. The number was almost half of the total number of asylum cases dealt with by the Board at that time (almost 33,000 applicants).[770]

Q.24. C. Is this number of places for asylum seekers sufficient in general or frequently insufficient?

Generally the number of places available for the reception of asylum seekers is considered to be sufficient, and this judgment is also the opinion of the UNHCR representatives in Sweden. Further, following the decrease in the number of asylum seekers in 2005, around 3,500 places for asylum seekers were taken away.[771]

Q.24. D. Are there special measures foreseen in urgent cases of a high number of news arrivals of asylum seekers (outside the case of application of the directive on temporary protection)?

As stated above the number of asylum seekers has decreased in 2005, Hence, the question of special measures in urgent cases is not relevant concerning Sweden. Historically the number of places has fluctuated and the organisation for the reception of asylum seekers is rather flexible on this matter.

Q.25. Accommodation centres **(important note: all the following questions are about open and not closed centres where asylum seekers are detained which are covered by another question)**

There are no different categories of open accommodation centres, and there are not any rules saying that asylum seekers must stay a certain period in an accommodation centre before they get access to a private house or apartment.

[769] Official report SOU 2003:89 EG-rätten och mottagandet av asylsökande, p. 141.
[770] Migrationsverket (the Migration Board), Årsredovisning 2005 (Annual report), p. 16.
[771] Migrationsverket (the Migration Board), Årsredovisning 2005 (Annual report), p. 16.

Q.25. A Are there different categories of accommodation centres, for instance depending of the stage of the procedure (admissibility and eligibility)?

There is no general regulation about the internal functioning of accommodation centres. However, according to 4 § of the Act on the reception of asylum seekers, the Migration Board can adopt rules concerning the applicants' participation in the maintenance of these centres. The Act also contains other rules as regards rights and duties of asylum seekers, for example rules about occupation and economic assistance, rules which are further elaborated in the governmental ordinance.

The rules may differ to some extent depending on whether the asylum seeker lives in an accommodation centre or in a private house or apartment. Further, in principle there is no certain time limit for accommodation in an accommodation centre beyond the time limits for dealing with applications for asylum.

Q.25. B. Is there a legal time limit for accommodation in a centre after which the asylum seekers have access to private houses or apartments or is this limit linked to a stage of the asylum procedure?

There is no general regulation about the internal functioning of accommodation centres. However, according to 4 § of the Act on the reception of asylum seekers, the Migration Board can adopt rules concerning the applicants' participation in the maintenance of these centres. The Act also contains other rules as regards rights and duties of asylum seekers, for example rules about occupation and economic assistance, rules which are further elaborated in the governmental ordinance.

The rules may differ to some extent depending on whether the asylum seeker lives in an accommodation centre or in a private house or apartment. Further, in principle there is no certain time limit for accommodation in an accommodation centre beyond the time limits for dealing with applications for asylum.

Q.25. C. Is there a general regulation about the internal functioning of those centres and the rights and duties of the asylum seekers? If yes, is this general regulation applicable to public and private centres? If not, are the centres supposed to adopt an internal regulation and does a central authority have or not a kind of control about its content?

In accordance with the Act on the reception of asylum seekers § 10, an asylum seeker who without a valid reason refuses to take part in the daily work at the centre may get his or her daily allowance reduced and ultimately suspended (compare the Directive, article 16.3). However, this is not possible for persons under the age of 18. Further, from the preparatory works follow that this sanction should be reserved for exceptional cases, i.e. when the person in question systematically and regularly refuses to take part in the common activities.[772] The decision must be taken by the Migration Board. Appeal against the decision can be brought before the district Administrative Court (see of the Act on the reception of asylum seekers § 22). (See also Q.21A.)

[772] Government's proposition 1993/94:94 Mottagande av asylsökande m.m., p. 49.

Q.25. D. Do the regulations foresee the possibility of sanctions against asylum seekers in case of breach of the rules? (see article 16, §3) If yes, which sanctions for which rules? Which is the competent authority to decide? How is it ensured that decisions are taken individually, objectively and in particular *impartially* (for instance through an independent arbitrator) as requested by §4 of article 21 which is mandatory provision? Which are the possibilities of appealing against those decisions if the system is different from the general one under question n°22? Are there already administrative appeal decisions or judgements which have been taken and if yes, which are the main important ones?

There are no formal rules which give asylum seekers a right to take part in the management of accommodation centres. (Compare the Directive, article 14.6 which is an optional provision.)

Q.25. E. Are asylum seekers involved in the management of these centres? If yes, how (advisory board, appointment or election of representatives)? (see article 14, §6 which is an option provision)

See the answer on Q.25C

Q.25. F. Do specific rules exist on work of asylum seekers inside the accommodation centres different from the general ones about employment (see below)? If yes, which ones? Can working inside accommodation centres be considered as a (mandatory) contribution of the asylum seekers to the management of the centres, is it or not paid and considered as implying access to the labour market and subject to the same rules?

Section 5 in the Act on the reception of asylum seekers (1994:137) states that foreigners participating in the activities at the accommodation centres shall not be considered as employees except as provided for in certain provisions (chapter 2 sections 1-9, chapter 3 sections 1-4 and 7-13, chapter 4 section 1-4 and 8-10, chapter 5, sections 1-3 and chapter 7-9) in the Working Environment Act (1977:1160). These provisions states for example that the working environment shall be satisfactory with regard to the nature of the work and social and technical progress in the community, working conditions shall be adapted to people's differing physical and mental aptitudes, efforts shall be made to ensure that work provides opportunities of variety, social contact and co-operation, as well as coherence between different tasks etcetera (see chapter 2 section 1 in the Working Environment Act (1977:1160).

Q.26. **Q.26. A. How can asylum seekers communicate with legal advisers, representatives of UNHCR and NGOs? (see article 14, §2, (b) which is a mandatory provision).**

In accordance with the Ordinance on the reception of asylum seekers § 2a, the Migration Board shall inform the applicants about organisations or groups of individuals who can give legal aid on matters concerning reception conditions, access to health care and medical treatment. Asylum seekers are also guaranteed legal assistance in accordance with the rules

laid down in the Legal aid Act (1996:1619). (Compare the Directive, article 14.2; see also Q11.)

The UNHCR representatives have not experienced any obstacles regarding communication, although in practice you must of course agree with the person and the Migration Board about the time of meetings etc. The UNHCR also think that NGOs have good possibilities to get in contact with the asylum seekers although also here the practical aspects must be considered.

The freedom of expression, the freedom of information and freedom of assembly for asylum seekers among others are ultimately guaranteed by the Instrument of government chapter 2 Art. 22 paragraph 2 point 1.

Q.26. B. What are the rules about access of legal advisers, UNHCR and NGOs regarding access to accommodation centres and other housing facilities (see article 14, §7 which is a mandatory provision)

There are no explicit regulations that give legal advisors, NGOs and UNHCR access to accommodation centres (compare the Directive, article 14.7). On the other hand, there are no rules that prevent access, and referring to Q.26A above, in practice this activity seems to be working well.

The freedom of expression, the freedom of information and freedom of assembly for asylum seekers is ultimately guaranteed by the Instrument of government chapter 2 art. 22 paragraph 2 point 1.

Q.26. C. Can the access of legal advisers, UNHCR and NGOs be limited for security reasons or any other reason (see article 14, §7, last sentence)?

Practically, it might be possible to restrict access of legal advisers, but such a situation is extreme and for instance the UNHCR cannot give any example of such events in Sweden. Further, there are no certain regulations concerning restrictions on the matter.

Q.27. Q.27. A. Is a medical screening organised by the receiving State, is it mandatory or voluntary? Does it include HIV tests? (see article 9 which is an optional provision)

There are no rules requiring medical screening for asylum seekers on public health grounds, but asylum seekers are offered a voluntary medical examination. Considering HIV-test the matter has been discussed, but there are no regulations on this issue. Probably a HIV-test could be offered on a voluntary basis as part of the free health screening, but this conclusion has not been confirmed.

Q.27. B. Do the legal provisions on reception conditions ensure that asylum seekers receive at least emergency care and essential treatment of illness as requested by article 15 §1 which is a mandatory provision? Do they have a further access to health care?

Every County council district must, in accordance with the Health and Medical Service Act § 4, offer emergency care and essential treatment of illness to all persons who stay in the district, even if they are not resident. Regarding asylum seekers that obligation means a duty to provide acute health care services.[773] (Compare the Directive, article 15.) Medical treatment that is not acute, or if the risk to await treatment is considered to be moderate, should not be reimbursed by the State. A corresponding right to emergency dental care follows from the Act on dental care § 6.

In principle, asylum seekers have no right to more comprehensive health care benefits than what follows from these regulations, but there is also an agreement between the Government and the Swedish Association of Local Authorities and Regions (Svenska Kommunförbundet och Landstingsförbundet i samverkan). The agreement regulates among others State compensation for health care beyond acute treatment to asylum seekers and, further, supplementary regulation on the matter is being prepared by the Government. (See also Q.3.)

Children up to the age of 18 years are fully entitled to health, medical (mental care included) and dental care on the same conditions as other children in Sweden. These entitlements embrace children who keep away or are being kept away, and the County councils' cost should be reimbursed by the State.

However, especially concerning children's health care the NGO Save the Children Sweden is sceptical of the practice. The health and medical care could sometimes be insufficient, since the parents do not have the right to full health care services, they will not bring the children to health centres etc.; the parents do not fully realise their children's entitlements in these respects. Further, there are certain problems regarding health care and foreigners that are keeping away commented on by the NGO organisation Medecins sans Frontiers (Läkare utan gränser).[774] For instance the absence of State reimbursement for adult asylum seekers' health care means that they could be turned away and otherwise there will be trouble in the contact with the health care.

Q.27. C. What is the practice regarding access of asylum seekers to health care and how is it organised? In particular, what is the situation in accommodation centres (are doctors coming to the centres or do asylum seekers go to doctors outside)?

Asylum seekers will be sent to a County council's care centre for health screening, but, as stated before, the screening is voluntary (compare the Directive, article 9). But there are examples from for instance the application centres – that first meet the asylum seeker – that medical care is available there (at the former transit units). The UNHCR representatives refer to an example where a former Migration Board's transit unit offered medical care by a visiting nurse coming to the centre regularly for two hours per week.

[773] Compare the Ordinance (1996:1357) on State compensation for health and medical treatment to asylum seekers. Further see the National Board of Health and Welfare (Socialstyrelsen), Socialstyrelsens allmänna råd 1995:4 Hälso- och sjukvård för asylsökande och flyktingar. See also Government's proposition 1993/94:94 Mottagande av asylsökande m.m., p. 54.

[774] Medecins sans Frontiers (Läkare utan gränser), Gömda i Sverige. Utestängda från hälso- och sjukvård. Resultat från en studie av Läkare utan gränser. Stockholm 2005.

Q.28. **Q.28. A. What is the length of the period determined by the concerned Member State during which asylum seekers have no access to the labour market? (see article 11 which is a mandatory provision)**

Q.28. B. After that period, are asylum seekers or not obliged to obtain a work permit? In case is there a limit for the administration to deliver the permits and how quick are they delivered? What is their length?

Q.28. C. After that period, what are the conditions for access of the asylum seekers to the labour market? (in particular, are there rules concerning the maximum allowed of working hours or days per week, month or year, limits in terms of type of work or of professions authorised?

(Answer to Q.28.A,B and C)
There are no rules laying down a fixed period during which asylum seekers do not have access to the labour market. However, in accordance with the Aliens Ordinance ch. 5 § 4, if a final decision is judged *not* to be reached within four months from the point of time the application for asylum or international protection (referring to the Aliens Act ch. 4 §§ 1 or 2) was made, the foreigner is explicitly excepted from the demand for a work permit. Hence, the foreigner should have access to the labour market at least after four months after the application for asylum etc. was handed in. The provision in ch. 5 § 4 fulfils the requirements in article 11.1 of the Directive, and furthermore the four months period is more favourable than the one year period stipulated in article 11.2.

In accordance with the Ordinance ch. 4 § 9 the work permit should not be granted for a period beyond the time when the foreigner no longer can stay legally in Sweden. For instance, if the application for residence permit is rejected, the foreigner's work permit no longer is valid.

Further, in line with the restriction that the work permit should apply as long as the foreigner legally is staying in the country, a procedure with suspensive effect should not mean that the work permit no longer should be valid.

Q.28. D. What are the rules in terms of priorities between asylum seekers on the one hand and nationals, EU or EEE citizens and legally third-country nationals on the other?

Swedish legislation lacks rules that give priority to Swedish citizens, EEA-nationals and legally resident third-country nationals before asylum seekers as regards access to the labour market.

Q.28. E. Do asylum seekers have access to vocational training, does this or not depend of their right to access to the labour market, and in case at which conditions? (see article 12 which is optional regarding §1 and mandatory regarding § 2)

There is no explicit rules that explicitly give asylum seekers access to vocational training (compare the Directive, article 12).[775] On the other hand there are no restrictions to the asylum seeker's right to vocational training in connection with an employment contract (compare the Directive, article 12 indent 2). (Further, it could be noted that the Swedish Government has not considered article 12.2 as mandatory.)

Q.28. F. Are the rules regarding access to the labour market adopted to transpose the directive more or less generous than the ones applicable previously?

Current rules that govern access to the labour market for asylum seekers have basically not been adopted to transpose the directive, but are of an earlier date even if clarifications have been made. (In the former Aliens Ordinance 1989:547 the "four months rule" was found in ch. 4 § 3a [Ordinance 2000:391].)

Q.29. Are reception conditions subject to the fact that asylum seekers do not have sufficient resources? Are asylum seekers requested to contribute to reception conditions when they have personal resources (for instance if they work) or to refund the authorities if it appears that they have resources? (see article 13 §§ 3 and 4 which are optional provisions)

Asylum seekers are entitled to a daily allowance if they lack sufficient resources to provide for themselves (see the Act on the reception of asylum seekers § 17; compare the Directive, article 13.3 and 4). For applicants who live in an accommodation centre, the allowance will be reduced if they have free meals (see § 6 of the Ordinance on the reception of asylum seekers). (See also Q.15 and Q.21A.)

An applicant engaged in gainful employment or who have other resources and who stays in an accommodation centre, shall pay a reasonable sum to the Migration Board for food and housing (Act on the reception of asylum seekers § 13).

There are no national rules that make it possible to reclaim money if, on some future occasion, it appears that an asylum seeker has an income or personal resources (compare the Directive, article 13.4). However, in cases of acts of deception or other criminal acts and if the State has suffered damages, the State has the possibility to start civil proceedings.

7. SPECIAL NEEDS OF PARTICULAR CATEGORIES OF ASYLUM SEEKERS

Q.30.

Q.30.A. Which of the different categories of persons with special needs considered in the directive are taken into account in the national legislation (see article 17, §1 which is a mandatory provision): disabled people, elderly people, pregnant women, single parents with minor children, persons who have been tortured, raped or victims of serious

[775] For an introduction of the foreigner on the labour market efforts should be made in accordance with the Agreement between different authorities on the development of the introduction of refugees and other immigrants (see Q.10), but a precondition is that a residence permit has been granted. However, already before that point of time the asylum seeker's educational background and working life experience should be mapped, in order to facilitate a coming introduction to the labour market *if* a residence permit should be granted.

physical or psychological violence? Include in your answer all other categories envisaged in national law.

Rules that take into account the specific situations of vulnerable persons such as minors, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children, persons who have been tortured, raped or victims of serious physical or psychological violence are to be found in different statutes (compare the Directive, article 17.1). In other words, there is no single piece of legislation transposing this part of the Directive.

The most important regulations aiming at the groups mentioned above can be found in the Social Service Act, the Health and medical services Act and several Governmental Ordinances, such as the Ordinance on state compensation for asylum seekers.

Concerning the listing of vulneable persons many of the entitlements discussed are based on regulations having a general character or more concret State authorities' guidelines. Regarding the judgement of the implementation in this context of entitlements founded on the Directive, there is also judicial practice from the ECJ to consider.[776] The entitlements based on the Health and medical services Act for instance could be regarded as to vaguely expressed for the individual concerned to understand etc. However, my impression is that the practical outcome when these many times general regulations applies – together with guidelines from State authorities – is in line with the Directive.

Q.30. B. How is their <u>specific situation taken into account</u> (see articles 13, §2, second indent, 16 §4 second sentence and 17 which are mandatory provisions)?

According to informants in accommodation centres there is a wide range of supporting measures, for instance apartments equipped for special purposes, for disabled people, and more. In general the informants from the Migration Board's accommodation centres express that they can offer relevant measures such as apartments especially equipped for disabled people and more.

However, in practice there are often problems to focus on, especially regarding asylum seekers suffering from psychological traumas. Although help is available a person could be judged to be healthy enough to be placed in an accommodation centre, in an apartment etc., but in fact he or she has problems that the staff thinks should be treated.

In 2006-2007 the Swedish Migration Board performed an internal investigation regarding the exercise of authority in the reception centres. The investigation concluded that there is a need for additional regulations in this area since the prevailing lack of regulation makes it difficult for an asylum seeker in need of special assistance to know what his or hers rights are. Furthermore, there is a diverging practice between different reception centres concerning the assistance given to this specific group of asylum seekers.[777]

[776] See for instance Case 29/84 ECR 1985 p. I-1681 concerning the transposition of EC directives into national law in Member States.
[777] See Översyn av myndighetsutövningen inom Migrationsverkets mottagningsverksamhet p. 12 2007-01-22 www.migrationsverket.se/swedish/press/dokument/översyn_myndighetsutovning.pdf

Q.30. C. How and when are the special needs of the concerned persons supposed to be legally identified (see article 17 § 2 which is a mandatory provision and clarify how it has been interpreted by transposition)?

The demand for providing for special needs in certain matters is legally defined in different Acts, for instance the need for social assistance in accordance with the Social services Act should be laid down in accordance with the Act. The applicant must meet the requirements stipulated in each Act respectively. (Compare the Directive, article 17.2.)

In this connection, the Act on the reception of asylum seekers § 18 should be mentioned. According to this paragraph, a particular allowance can be granted to asylum seekers with special needs, and it is paid in addition to the daily allowance earlier mentioned. The special allowance is intended to cover expenses for, by example, glasses, handicap equipment and baby equipment (see also the Ordinance on the reception of asylum seekers § 7 and Q.12A).

Q.30. D. Is the necessary medical and other assistance provided to persons with special needs as requested by article 15, §2 which is a mandatory provision and in particular to victims of torture and violence as requested by article 20 which is a mandatory provision?

The necessary medical and other assistance to persons with special needs should be provided in accordance with the applicable Act, for instance in accordance with the Health and medical services Act or the Social services Act. (Compare the Directive, article 15.2.)

Q.31. About minors:

Q.31. A. Till which age are asylum seekers considered to be minor?

The full age legally defined in Sweden is 18 years and asylum seekers not older than 18 years are considered to be minors or children. In practice it is often a problem to fix a person's age, especially around the ages of 16–20 years. The declared age could sometimes be questioned and since most of the arriving asylum seekers cannot give proof of their identity, there could be great difficulties when taking decisions on the asylum seeker's status, entitlements and the future dealing with the case. (The examples have been discussed with the UNHCR representatives.)

Q.31. B. How is access of minor asylum seekers to the education system ensured? Is it at school or in case inside accommodation centres and can it be considered as similar to the conditions for nationals as requested by article 10, §1?

Basically the school system is regulated in the School Act, which in principal regulates all children's right to schooling. (Compare the Directive, article 10.1.) Regarding asylum seeking children's right to schooling, the children should be assigned a place in a public school. This follows from the Ordinance on education, pre-school activity and school childcare for asylum seekers. The Ordinance, which refers to the Act on the reception of asylum seekers, also

embraces pre-school activities as well as the nine-year compulsory school, the upper secondary school education and more in public schools.[778]

Asylum seeking children are not embraced by the general compulsory school attendance (skolplikt), but the local authorities are in charge of offering the children a place in the public schools on the same terms as other children staying in the municipality.

Young people, who have begun an education on the upper secondary level (continuation of the nine-year compulsory school) before reaching the age of 18, should have the right to education on the upper secondary level. Further, they may participate in organised activities that are arranged for other asylum seekers.

The right to schooling will not cease if the child's application for residence permit is rejected and a decision on expulsion has been taken. In such a situation the child is still entitled to schooling until the decision is executed (the Ordinance on education, pre-school activity and school childcare for asylum seekers § 9). However, if the child is kept away so the decision cannot be executed he or she will not have the right to schooling (§ 9; amendment through SFS 2004:700). (See also comment on the matter in Q.21A.)

Further, the access to schooling is financially secured through State reimbursement for educational costs for children to asylum seekers in accordance with the Ordinance on state compensation for asylum seekers. Financial contribution could also be granted so called free-schools if the school is entitled to public subsidies, which means that the school must fulfill the requirements raised through the public curriculum for schools.

However, the NGO Save the Children Sweden has stated that especially children with special needs will not always be treated in a correct way. Even if the local authorities are compensated for children's schooling, the children with special needs will cost more money than on average, and for this reason Save the Children Sweden claims that there has been situations when the local authorities have been reluctant.[779]

Q.31. C. Is access to education ensured <u>not later than 3 months</u> as requested by article 10, §2 (or after maximum one year if specific education for asylum seekers is provided) and till an expulsion decision is really <u>enforced</u>?

In accordance with the Ordinance on education, pre-school activity and school childcare for asylum seekers § 4, the assignment to a place in a public school should be made as soon as possible, considering the child's personal circumstances, but not later than one month after the arrival to Sweden. (Compare the Directive, article 10.2.) In principle only personal circumstances such as, for instance, illness should be reason for delays.

Q.31. D. Is <u>specific education</u> (like language classes) available for asylum seekers, in particular to facilitate their effective access to the education system of the reception Member State (see article 10, §2 which is an optional provision)?

[778] That is special schools on the corresponding level and the Lapp school.

[779] However, in accordance with Ordinance on state compensation for asylum seekers the local authorities should be reimbursed for extraordinary costs for children with special needs. See also the Migration Board's Aliens handbook (ch. 33). (Further, see also Q31F.)

In the Ordinance on education, pre-school activity and school childcare for asylum seekers § 5, there is a regulation stipulating that the schooling should be conducted on the same terms as for other children in Sweden and the asylum seeking child's prerequisites and special needs should be considered.

For children speaking another language than Swedish or if one or two of the child's parents are speaking another language in daily life with the child, the child is entitled to education in that language in accordance with the School Act ch. 2 § 9 (compare the Directive, article 10.2).

Q.31. E. Are minors in general accommodated with their parents or with the person responsible of them? (see article 14, § 3)

In general minors are accommodated with their parents or with the person responsible for them in accordance with the Ordinance on the reception of asylum seekers 2c. (Compare the Directive, article14.3.)

Q.31. F. Do minors with special needs enumerated by article 18, §2 which is a mandatory provision, have access to appropriate mental health care and qualified counselling?

Concerning minors with special needs appropriate activities and measures should be provided for. The local authorities are compensated for certain cost for the care of children under the age of 18, in accordance with the Ordinance on state compensation for asylum seekers § 7. A precondition is that the child is embraced by the Act on the reception of asylum seekers § 1. Subsidies are paid for caretaking in accordance with the Social services Act or the Act (1990:52) with particular regulations concerning the care of minors.

Asylum seeking children suffering from post-traumatic difficulties should be treated, but, as stated above, for primary medical reasons this treatment often will not start before a residence permit has been granted. However, there is a great need for child psychiatry care and psychiatrists are often referred to when the application for residence permit is tried.[780] (See also Q.31F above.)

There are also NGO activities on these matters, for instance the Swedish Red Cross runs six rehabilitation centres, and these centres are in some cases engaged and paid by a County Council for the fulfilling of that function.

Efforts have been made concerning the children concerned, but according to the UNHCR representatives there is reason to follow-up the development in this matter.

Further, reimbursements to the County councils in charge of the care etc. should be covered in accordance with the Ordinance on state compensation for health and medical treatment for asylum seekers.

[780] The National Board of Health and Welfare, Medicinskt omhändertagande av asylsökande barn i hälso- och sjukvården.

Even if the child's application for asylum is rejected, the reimbursement for the caretaking should continue to be paid until the child is leaving Sweden (the Ordinance on State compensation for asylum seekers § 7).

In 2003 the Government appointed a certain Council for migration and asylum policy concerning children. The Council should be a forum for consultation and exchange of information. Members of the Council are persons with special knowledge in these matters, for instance specialists in children's diseases, doctors, the Child ombudsman, representatives from Save the children Sweden, the Red Cross, psychologists, the Migration Board and more. During 2005 the Council had three meetings discussing the reception of unaccompanied children, childrens' reasons for seeking asylum and the meaning of what is the best for a child and more.[781]

Q.31. G. How and when is organised the representation of unaccompanied minors (guardianship, special organisation) and regularly assessed? (see article 19, §1 which is a mandatory provision)

As commented on above in Q.3, the local authority should have the responsibility for the care of unaccompanied children referring to the Social services Act and the explicitly expressed duty for the local authority to provide for persons staying in the municipality.[782]

The representation of unaccompanied minors is organised through the appointment of a guardian ("god man"), which shall see to the child's interest. The appointment is made referring to the Act (2005:429) on guardian for unaccompanied minors, which came into force in July 1, 2005 (compare the Directive, article 19.1).[783] The guardian should be appointed by the local authority when the Migration Board has made a notification on the matter in accordance with the Act on guardian for unaccompanied minors (§ 3).

A public assistant and normally, the guardian shall accompany the child to the meetings with the Migration Board.

The UNHCR and NGOs have made considerations on this and how the system with a public assistance is realised in practice. There might be problems considering the distribution of responsibility between the Board, the local authorities and the guardian, since there are many people involved. Further, the guardians need a special training and there are examples on such training performed by NGOs (see also Q.41C on the duty to professional secrecy).

Q.31. H. How is placement of unaccompanied minors organised (with adult relatives, a foster family, in special accommodation centres or other suitable accommodation)? (see article 19, §2 which is mandatory provision)

Concerning unaccompanied minors arriving in Sweden the local authorities may arrange the children's living, and the Migration Board should assign a local authority normally having an agreement with the Board to arrange the child's living (amendment of Act on the reception of

[781] Government's communication, Regeringens skrivelse 2005/06:18 Migration och asylpolitik, p. 26.
[782] Compare the Government's proposition 2005/06:46 Mottagande av ensamkommande barn.
[783] Government's proposition 2004/05:136 Stärkt skydd för ensamkommande barn. See also Official report SOU 2003:51 God man för ensamkommande flyktingbarn.

asylum seekers §§ 2 and 3, made through SFS 2006:177 which came into force at July 1, 2006).

Children up to the age of 16 should be placed in group living ("grupphem") or other particular accommodations for children, including for instance a placing in family-home or with relatives (compare the Directive, article 19.2). The local Social welfare board is responsible for the offering of a suitable living for the child (the Social welfare board's duties follow from the Social services Act, ch. 6 § 1).[784]

Q.31. I. How is the tracing of the family members of the unaccompanied minors organised? Are measures taken to protect confidentiality of information when necessary? (see article 19, §3 which is a mandatory provision)

In the Ordinance on the reception on asylum seekers there is a regulation stipulating an obligation for the Migration Board to try as soon as possible to trace the family members of the unaccompanied children (§ 2d; which came into force at July 1, 2006). Further, in the Secrecy Act (1980:100) there are regulations about the confidentiality of information in these cases. Practically, the tracing of unaccompanied minors is made in different ways. Beyond the Migration Board also Swedish embassies in the country of origin are engaged as well as NGOs. For instance the Swedish Red Cross organisation can investigate a minor's background and the possibility of finding relatives to the minor (compare the Directive, article 19.3).

A practical problem when tracing a minor's relatives etc., which the Swedish UNHCR representatives called attention to, is that the dealing with this kind of matters often takes a long time. Sometimes there will even be a decision to expel the minor during the search for relatives, but a precondition for the execution is that there is a receiving person in the country of origin. The general problem with long time dealing with asylum applications also has an impact on these kinds of matters.

8. EXCEPTIONAL MODALITIES OF RECEPTION CONDITIONS

Q.32. Apart from detention covered by the next question, are there exceptional modalities for reception conditions in the following cases and if yes, which ones and for how long are they applicable, knowing that they should be "as short as possible" (see article 14, §8)?

Q.32. A. Persons with specific or special needs, regarding in particular the period of assessment of those needs?

Foreigners with special needs are unaccompanied children, elderly, disabled people, pregnant women, single parents with children, persons who have been exposed to torture, rape or other forms of outrageous psychological, physical or sexual violence (the Directive Article 17).

In the Act on the reception of asylum seekers §§ 1, 2 and 3, there are certain regulations concerning children up to 18 years of age, who at the arrival in Sweden are separated from

[784] See the Government's proposition 2005/06:46 Mottagande av ensamkommande barn.

their parents or from any other person close to the children. (Amendments through SFS 2006:177.) Every year there is around two hundred unaccompanied children in this category.

Unaccompanied children should be taken care of in special accommodations. Usually these children are accommodated in group housing provided by the Migration Board or stay with relatives in Sweden.[785] From July 1, 2006, the local authorities in the municipalities will be responsible for these children seeking asylum, and the group housing activity etc. will be transferred to the local authorities.[786]

Asylum seeking children are embraced by the regulation in the Health and medical treatment Act and the duty for County councils to provide treatment (§ 4). Concerning adults there are certain restrictions. However, asylum seeking children not older than 18 years are entitled to the same health, medical and dental treatment as other children living in Sweden.[787]

However, when judging the relevant treatment, it must be taken into account that it is not certain that the child will get a residence permit, and thus the consequences this could have for the treatment must be considered. For instance, in accordance with the general instructions from the National Board of Health and Welfare, a long and not acute treatment period should not start if an interruption could have negative consequences, should the asylum seeker not be granted a residence permit.[788]

Asylum seeking children suffering from post-traumatic difficulties should be treated, but, as stated above, in the main this treatment seriously will not start before a residence permit has been granted. However, there is a great need for child psychiatry care and psychiatrists are often referred to when the application for residence permit is tried.[789] (See also Q.31F above.)

During the last few years many cases of children showing serious symptoms of resignation have been observed, and there has been a debate regarding the reason for the occurrence of such physical conditions. In many cases children have been more or less force-feeded, since they have been in an apathetic mood. One reason for the situation could be the nervous tensions families and children experience waiting for a final decision concerning their application for asylum. However, experts disagree concerning the reasons behind and there is a difference between, for instance, the NGOs and the National Board's of Health and Welfare standpoints.

Q.32. B. Non availability of reception conditions in <u>certain areas</u>

There is no information on non availability of reception conditions in certain areas, but in general the best reception facilities in a wide range are supposed to be found in big places or cities (hospitals, specialists on different matters, doctors, psychiatry resources etc.).

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[785] Statistics Sweden (SCB), Reception Systems, their Capacities and the Social Situation of Asylum Applicants within the Reception System in the EU Member States (Small Scale Study I), SCB, Stockholm 2005, p. 15.
[786] Government's proposition 2005/06:46 Mottagande av ensamkommande barn.
[787] See also the National Board of Health and Welfare, Allmänna råd (General instructions) 1995:4 Hälso- och sjukvård för asylsökande och flyktingar. See also the National Board of Health and Welfare, Medicinskt omhändertagande av asylsökande barn i hälso- och sjukvården.
[788] The National Board of Health and Welfare, Medicinskt omhändertagande av asylsökande barn i hälso- och sjukvården.
[789] The National Board of Health and Welfare, Medicinskt omhändertagande av asylsökande barn i hälso- och sjukvården.

Q.32. C. Temporarily exhaustion of normal housing capacities

The fluctuation in the number of asylum seekers over the years makes it difficult to foresee the need for lodging in accommodation centres etc., but generally the reception organisation is flexible on this matter (see also Q.32E).

Q.32. D. The asylum seeker is confined to a border post

If a foreigner is confined to a border post in connection with an arrival or a departure from Sweden, he or she must not be detained for investigation longer than necessary and not for more than six hours (the Aliens Act ch. 9 § 11). However, if the foreigner declares that his or her intention is to apply for asylum the person will immediately be transferred to a Migration Board application unit.

Q.32. E. All other cases not mentioned in the directive (for instance urgent situation in case of a sudden high number of applicants outside a case of application of the directive on temporary protection).

At for instance urgent situation in case of a sudden high number of applicants reception facilities should be flexible. According to an internal instruction an accommodation centre should be able to increase its capacity with up to 200 places during a two months period.[790]

However, extreme situations could occur. An example is when the crisis in former Yugoslavia developed, there were thousands of Bosnians arriving with ferries from the Continent and improvised reception conditions must be set up.[791]

Q.33. Detention of asylum seekers (we do not cover the situation of rejected asylum seekers detained for the purpose of their return) (see articles 6 §2, 7 §3, 13, §2 2nd indent and 14 §8 which implies that the directive is in principle applicable in case of detention):

Q.33. A. In which cases or circumstances and for which reasons[1] (identity verification in particular if the persons have no or false documents, protection of public order or national security, refugee status determination, way of entry into the territory, etc) can an asylum seeker be detained during the asylum procedure till his request has been finally rejected. Quote precisely in English in your answer the legal basis for detention of asylum seekers in national law.

[790] See for instance Migrationsverket (the Migration Board), Principer för kapacitetsplanering – ABO. (Administrative instruction, October 13, 2004.)

[791] However, today such a situation would be dealt with in line with the Directive on temporary protection: Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof. *Official Journal L 212, 07/08/2001 P. 0012 – 0023.*

[1] Please specify if article 18 §1 of the directive on asylum procedures of 1 December 2005 following which *"Member States shall not hold a person in detention for the sole reason that he/she is an applicant for asylum"* is or not respected (even if it has not yet to be transposed).

A foreigner that is at least 18 years old can be *detained* referring to the following conditions stipulated in the Aliens Act ch. 10 § 1:

- if the foreigner's identity is not clear at the arrival or if he or she cannot make the identity probable when applying for a residence permit,
- if it is necessary for the investigation concerning the foreigner's identity or it is probable that the foreigner will be turned away referring to certain circumstances[792], or
- If there is a decision to expel the foreigner.[793]

A general precondition is – concerning the two latter reasons – that the foreigner's personal circumstances or other circumstances give reason to assume that the foreigner will keep away. Hence, article 18.1 of the Directive 2005/85 EC which specifies that « Members states shall not hold a person in detention for the sole reason that he/she is an applicant for asylum » is respected.

Concerning children there are specific similar reasons presented in the Act ch. 10 § 2. Children cannot be subject to detention only if the reason for the measure taken is connected with expulsion. Further, beyond that a child should not be separated from his or her guardians if there are not particular reasons for the measure (§ 3).

Q.33. B. Has your member State adopted measures to transpose §3 of article 7 which is an optional provision? If yes, how has this provision been legally understood (is it a case of detention or an obligation to stay in and not leave a certain place?) and for which reasons can an asylum seeker be "confined" in such a place?

The possibility to put a foreigner under surveillance, including a requirement on daily reporting to the police or the Migration Board, in practice also could be a restriction on the foreigner's possibilities to leave a place.[794] (See below Q.33E.)

Q.33. C. Are there legally alternatives to detention, like obligation to report to the authorities, obligation to stay in a place, provision of a guarantor or of a financial guarantee?

In accordance with the Aliens Act ch. 10 §§ 6–8 it is possible – instead of keeping a foreigner in detention – to put him or her under the authorities' charge (uppsikt). This means that the foreigner is obliged to report regularly to the local police authority or the Migration Board (§ 8).

Q.33. D. Which is the competent authority to order the detention of an asylum seeker? Explain if different authorities are involved to first take and later confirm the decision.

[792] See the Aliens Act ch. 8 §§ 1, 2 or 7.
[793] Further, beside the regulation in the Aliens Act a foreigner can be expelled, taken into custody or under surveillance referring to state security, criminal activities including terrorism in accordance with the Act (1991:572) on particular control of foreigners (Lag om särskild utlänningskontroll).
[794] See also the Act (1991:572) on particular control of foreigners, and concerning surveilance especially § 8, amended through SFS 2005:720.

The competent authority to take the decision on detention of a foreigner is the authority that is dealing with the case (the Aliens Act ch. 10 § 12; see also § 14 concerning the Migration Board). Concerning asylum seekers it is the Migration Board or the Migration Court dealing with the matter that is the competent authority.

However, if there is no time for this in urgent situations the police authority could take a decision on detaining or putting a foreigner under the authority's charge (ch. 10 § 17). However, the decision should be reported to the competent authority which shall confirm the decision.

In certain matters, when a case has been transmitted to the Government, it is the Government's minister in charge that should take a decision on detention etc. (§ 15). In security matters it is the Supreme migration court that is the competent authority for dealing with the matter until the competent Ministry takes over (§ 16).

The Migration Board and not the police is the authority in charge of the execution of a decision on detention. Only on the request from the Board or a Migration Court, the police authority should give the assistance needed in order to execute a decision (§§ 18 and 19).

Q.33. E. For how long and till which stage of the asylum procedure can an asylum seeker be detained?

In accordance with the Aliens Act ch. 10 § 4 a foreigner might not be kept in custody for the purpose of an investigation for more than 48 hours. Otherwise a foreigner who is at least 18 years old, might not be kept in custody for more than two weeks, if not particular reasons are at hand. If the foreigner is a child, it must not be kept in custody for more than 72 hours or, if there are particular reasons, for another 72 hours (§ 5). (See also Q.32D and Q.33I.)

Q.33. F. In which places (can we call them "closed centres"?) are asylum seekers detained (places in a special closed centres reserved only to asylum seekers, together with returnees like illegal aliens or even in a normal prison, in case within separated areas or with the other detainees)? Indicate if a difference has to be made following the location of the "closed centres" at the border or on the territory? Which is the authority managing those places and is it the same as the one in charge of reception conditions?

The most far-reaching form of detention is to put the foreigner in custody or even in prison, although such a measure should be considered as extraordinary. Further, the Migration Board should take the decision to keep a foreigner detained in custody or a prison for security reasons or other particular circumstances (the Aliens Act ch. 10 § 20).

Q.33. G. Does UNHCR and NGOs have access to the places of detention and under which conditions?

The UNHCR and NGOs have access to places of detention (compare the Aliens Act ch. 11 § 4). A visit might be supervised for security reasons. However, the UNHCR representatives report no difficulties to get into detention places. This current state of affairs is confirmed by the NGOs in Sweden, and for instance Amnesty in Sweden reports that such visits are made regularly.

Q.33. H. What appeal(s) can asylum seekers introduce against the fact he is detained? Is article 18 of the directive on asylum procedures of 1 December 2005 following which *"Where an applicant for asylum is held in detention, Member States shall ensure that there is a possibility of speedy judicial review"* respected (even if it has not yet to be transposed)?

A decision on detention should be appealed against at a Migration Court in accordance with the Aliens Act ch. 14 § 9. If the foreigner should be held in custody, the appeal should be made in accordance with § 10. Further, in accordance with ch. 16 § 4 an appeal concerning expulsion or detention should be dealt with in a speedy manner (compare Directive 2005/85/EC, article 18[795]).

Q.33. I. Is the directive on reception conditions considered to be in principle applicable to the places where asylum seekers are detained? In particular which information do they receive about their rights, which access do they have to legal advice and health care?

In principle the regulations concerning reception conditions should apply also when the foreigner is in detention. However, the assistance should be restricted considering that the foreigner is provided with food and accommodation. Further, the entitlements regarding health care should not be restricted because of detention (see Q.33E). Concerning visits there could be restrictions, for instance for security reasons (see Q.33G).

Q.33. J. Apart from freedom of movement, what are the main differences between normal reception conditions and exceptional modalities for reception conditions in case of detention, knowing that they should be "as short as possible" (see article 14, §8)? If it is about closed centres, are the regulations of those places in line with the requirements of the directive (is article 13, §2, second indent of the directive following which "*Member States shall ensure that standards of living is met (…) in relation to the situation of persons who are in detention*" respected?).

Concerning the main differences between normal reception conditions and the exceptional modalities in case of detention (see Q.33G, Q.33.I, Q.33.K and Q.34H).

Q.33. K. Are measures taken to avoid detention of asylum seekers with special needs (if yes, which ones?) or are special measures taken because of their needs?

In practice such considerations are made. Informants have pointed out that there is often no reason to put for instance a disabled person in detention since he or she is prevented from mobility due to the handicap. Further, a person suffering from for instance mental illness could be transferred to a clinic for psychiatric care, if that is considered necessary.

Concerning the transfer of a person for psychiatric care informants have pointed out that this possibility is sometimes abused. For instance, a person that is in custody could have a doctor's stated opinion saying that he or she is in urgent need for psychiatric care. Hence, examples

[795] Council Directive 2005/85/EC on minimum standards on procedures in Member States for granting and withdrawing refugee status. *Official Journal L326 13/12/2005 P. 13–34.*

have been presented by the Migration Board that the person has been taken out of custody and placed in a place for the treatment, where there has been no watch and then the person has deviated and gone into a hiding-place.

Q.33. L. Can minor asylum seekers be detained together with relatives? Can unaccompanied minor asylum seekers be detained? If yes, are there special measures which take into account that children are concerned?

Children and even unaccompanied children could be detained but only in connection with decisions on expulsion. However, in practice the first step should always be to keep children under surveillance. More restricted forms for detention should be practiced only for very limited periods (compare the 72 hours rule mentioned above; Q.33E).

Q.33. M. In particular is article 10 regarding access to education of minors respected in those places?

Considering the very limited period for keeping a child in detention, the educational activities are rather reduced, even if there formally is no restriction (compare the Directive, article 10). Practically, detention could occur in very particular situations, for instance just before an expulsion will be executed.

Q.33. N. How many asylum seekers are for the moment detained in your Member State? Which proportion does this represent in comparison of the total number of asylum seekers at the same moment?

The number of foreigners kept in detention is low. At the end of 2005 the number of detention places was 125 and the number of foreigners in detention was 72 (to be compared with 202 persons on December 31, 2004).[796] However, in general most of these persons were not asylum seekers. For instance, they were in detention for other reasons such as criminality and waiting for the execution of an expulsion decision or likely.

The total number of asylum seeker at the end of 2005 was around 9,000, although the figure is not exact (see comments in footnote).[797]

9. ORGANISATION OF THE SYSTEM OF RECEPTION CONDITIONS

Q.34. Explain if the system of providing reception conditions is centralised or decentralised (which levels of government do provide practically reception conditions?) (do not confuse this question with question number 3 about the competence to make rules about reception conditions).

The Swedish system for reception of asylum seekers is centralised. There is a central State authority – the Swedish Migration Board – in charge of reception conditions. Within the Board there is a certain Head of unit in charge of asylum and reception matters. The Migration Board takes decisions on the budget and policy within the framework of regulations taken by the Riksdag and the Government.

[796] Migrationsverket (the Migration Board), Årsredovisning 2005 (Annual report), p. 17.
[797] The figure is so called «open asylum cases» that is the number of cases in the asylum procedure, however cases in the appeal procedure are not included. See Migrationsverket (the Migration Board), Årsredovisning 2005 (Annual report), p. 11.

However, concerning the practical dealing with reception conditions the Migration Board's administrative officials take decision on, for instance, the asylums seeker's living and allowances in accordance with the Act on the reception of asylum seekers.

Q.35. In case, are accommodation centres public or/and private (managed by NGOs? If yes, are the NGOs financially supported by the State?)

The accommodation (or reception) centres are public and financed by the State. Previously, for instance, the Red Cross organisation carried out reception facilities.

Q.36. In case, how many accommodation centres are there in your Member State (distinguish in your answer between public and private centres)?

Concerning the number of accommodation centres in Sweden there are no exact figures, since in practice the accommodation is in apartments and most asylum seekers arrange there own living. However, a figure on the number of what could be called accommodation centres is that there were 38 such centres.[798]

Almost half of the asylum seekers is arranging their own living, and at the end of 2005 there were 38,000 persons registered in the asylum procedure, which means that around half of the number should be accommodated by the Migration Board (the figure should not be mixed up with the number of foreigners seeking asylum in 2005; see Q.40A).

Q.37. Is there in the legislation a plan or are there rules in order to spread the asylum seekers all over the territory of your Member State to avoid their concentration in some areas like big cities or to share the costs of their reception between central, regional and local authorities?

There is no legislation in order to spread the asylum seekers all over the territory of Sweden. However, indirectly such an ambition follows from the intention that the Board should be represented all over Sweden.[799] At the same time the Board should consider the aim to run a flexible activity with a good quality and in positive cooperation with the local authorities.

This means that for instance the access to experts on different fields (health care professionals, jurists, trained social workers, administrators for the examination of the application etc.). Concerning the quality of the reception conditions also the access to schooling for children, police, public transport, public service should be considered. Further, a positive attitude from the local authority facilitates the arranging of good reception conditions.

Q.38. Does a central body representing all the actors (like NGOs) involved in reception conditions exist? Does it play a consultative role for the State authorities, a coordination role for the actors or any other role?

[798] The figure is from a draft report from the Small scale study I: «Reception systems, their capacities and the social situation of asylum applicants within the reception system in the EU Member States», (May 2006).
[799] See Migrationsverket (the Migration Board), Principer för kapacitetsplanering – ABO. (Administrative instruction, October 13, 2004.)

There is no central body representing all the actors involved in the reception of asylum seekers.[800]

Q.39. **Q.39. A. Which is the body in charge of guidance, monitoring and controlling the system of reception conditions as requested by article 23 which is mandatory provision? Include in your answer which is the competent ministry (Interior, Social affairs, etc) for reception conditions?**

The Swedish Migration Board is the authority in charge of the dealing with reception conditions concerning these matters; compare the Directive, article 23). In the Government's Office the reception conditions and migration matters belong under the Department of Justice and the minister in charge is the Migration minister. Further, the local authorities in municipalities are in charge of the care taking concerning unaccompanied children.

Concerning health care, the Ministry of Health and Social Affairs and the County councils are in charge, and the State authority in charge is the National Board of Health and Welfare. Concerning schooling the Board of Education is in charge under the Ministry of Education, Research and Culture, and on the local level the schools are under the local authorities in the municipalities.

Q.39. B. Has your Member State (like the Czech Republic did recently) approved quality standards (not necessary legally binding) for housing services (for instance about the number of persons per bedroom on the basis of its size, number of accessible toilets, bathrooms, showers and washing machines per number of persons, existence of common rooms with radio, television, newspapers, books, computers, accessibility of telephone, existence of recreative rooms for children,…) to be respected in particular in accommodation centres?

Concerning the quality standards for housing service there is no central list stipulating a certain standard, but according to officials at the Migration Board such a list probably will be worked out when the Migration Board's Aliens handbook is made up to date.[801]

At the same time informants at reception centres report that certain guidelines apply. For instance, in apartments there should be chairs, tables, beds and another guideline is that two persons should share a room. In practice the Board's staff also distribute a "package" for adults including bedclothes, kitchen equipment etc. and a corresponding "package" is available for children.

A critical remark concerning reception facilities have been made by NGOs. Sometimes there is lack of practical facilities such as saucepans and other kitchen equipment and more. Local NGO representatives have in such cases made efforts to procure the utensils that have been missing.

[800] A central organisation in Sweden for NGOs that could be mentioned is FOSIF (Frivilligorganisationernas samarbetsorgan i flykting och invandrarfrågor). However, the FOSIF is primarily dealing with matters concerning the asylum procedure and not reception matters.

[801] In accordance with the Migration Board's Aliens handbook (ch. 33.7), the Board has followed the directions for pension and camping establishments concerning the number of lavatories and showers.

Q.39. C. How is this system of guidance, control and monitoring of reception conditions organised?

The Migration Board – as well as other State authorities – presents an annual report concerning its activities regarding migration and asylum before the Government.[802] Annually the Government presents a report – or formally a written communication – to the Riksdag concerning migration and asylum.[803]

Further, the National Swedish Audit Bureau (Riksrevisionsverket) scrutinizes the State activity in different aspects, especially regarding the effectiveness in the State sector, and also presents reports. In 2002 there was, for instance, a critical report regarding the Migration Board's dealing with asylum seekers.[804] In 2003 the State Audit Institution (Riksrevisionen) was created in Sweden replacing Riksrevisionsverket and the Parliamentary Auditors (Riksdagens revisorer). In 2006 there was a new report that again critizized the cooperation between State authorities and the integration into society of newly arrived immigrants (see above Q.10.)

Q.39. D. Does the body in charge of guidance, control and monitoring produce reports about the level of reception conditions? If yes, how frequently and are they public?

Concerning the level of reception conditions there are figures presented by the Migration Board in the annual reports. However, for instance the level of the daily allowance granted to asylum seekers, is stipulated by the Government through the Ordinance on the reception of asylum seekers (see Q.12A).

Q.40. **Q.40. A.** What is the total number of asylum seekers covered by reception conditions for the last year for which figures are available (see article 22 obliging Member States to calculate those statistics about which we also asked the Commission to require them from Member States for mid June)?

The total number of asylum seekers to Sweden in 2005 was 17,530 persons.[805] (The figure should not be mixed up with the figures concerning how many persons are there registered in the asylum procedure at the Migration Board.)

Q.40. B. What is the total budget of reception conditions in euro for the last year for which figures are available?

The total cost for reception conditions in 2005 was 388,573,000 Euro (SEK 3,603,781 000).[806]

Q.40. C. What is the average cost of reception conditions in euro per asylum seeker for the last year for which figures are available?

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[802] See for instance Migrationsverket (the Migration Board), Årsredovisning 2005 (Annual report´).
[803] Regeringens skrivelse 2005/06:18 Migration och asylpolitik.
[804] See for instance Riksrevisionsverket, Hur mottas de asylsökande? - Den organiserade verksamheten för asylsökande inom Migrationsverket, Report RRV 2002:19 (presented in September 2002). The report, which was rather critical, is available on website http://www.riksrevisionen.se/templates/PublikationDokument.aspx?id=2132&pubid=499&type=Sökresultat
[805] More detailed statistical figures on asylum seekers to Sweden in 2005 are available at the Migration Board's website http://www.migrationsverket.se/pdffiler/statistik/statistik_1_2005.pdf
[806] Migrationsverket (the Migration Board), Årsredovisning 2005 (Annual report), p.16.

The average cost for reception conditions for twenty-four hours to an individual in 2005 was 28,4 Euro (SEK 263).[807] From this amount the cost for an individual for a one year period should be around 10,353 Euro (SEK 96,000) per year.

Q.40. D Are the costs of reception conditions of asylum seekers supported by the central/federal or federated government or are they shared with regional and/or local authorities?

The costs mentioned are supported by the Migration Board, and the costs for local authorities dealing with asylum seekers paid by the Migration Board are included.[808] For instance, the Board's reimbursement in 2005 to County councils and local authorities was 125,861,029 Euro (SEK 1,167,050,000).[809] In February 2006 the Government decided to contribute additional money, 5,391,181 Euro, for assistance to children on the local authority level.[810]

Q.40. E. Is article 24 § 2 of the directive following which "*Member States shall allocate the necessary resources in connection with the nationals provisions enacted to implement this directive*" respected?

Concerning the Directive, article 24.2, and the allocations of resources to reception conditions, a conclusion is that the Swedish State fulfils the commitment.

Q.41. **Q.41. A.** What is the total number of persons working for reception conditions?

The total number of employees in the Migration Board in May 31, 2006, was 2,992 persons. The number working with asylum matters was 1,961 persons, including 947 persons directly involved in the reception of asylum seekers.[811]

Q.41. B. How is the training of persons working in accommodation centres organised? Does it take into account specific needs of unaccompanied minors when relevant as well as the gender dimension? (see article 14 §5, 19 § 4 and also 24 §1 which are mandatory provisions)?

All staff in accommodation centres dealing with the reception of asylum seekers shall have a general introduction course. Furthermore, there is an educational programme called the "migration programme" divided into a basic part and two more specialised parts (Step II and IIII). (On these matters, compare the Directive, article 14.5, 19.4.) The specialised parts are given in different directions such as "asylum and reception" depending on the individual's tasks.

In Step II and III there are modules on different subjects such as human rights, migration policy, cultural patterns, secrecy, working together with an interpreter, conversation

[807] Migrationsverket (the Migration Board), Årsredovisning 2005 (Annual report), p.16.
[808] Migrationsverket (the Migration Board), Årsredovisning 2005 (Annual report), p.16.
[809] Migrationsverket (the Migration Board), Årsredovisning 2005 (Annual report), p.16.
[810] The Migration Board's website (pressrelease). See also Migrationsverket, PM 2006-05-04 Utbetalning av ersättning för sociala insatser till asylsökande barn.
[811] The share of women working with reception conditions is 64.8 percent. Source: the Migration Board.

technique, legislation concerning asylum seekers, effects from torture, working with families and children, aspects on sexual orientation and more. Each module comprises 1–2 days.

Concerning unaccompanied children there is certain education especially for staff working with this category. Finally, there are courses concerning asylum seekers with a gender perspective (compare the Directive, article 24.1).

In 2005 totally 6,517 workdays were applied for personnel education activities at the Migration Board.

Q.41. C. Are there rules about the deontology of persons working in accommodation centres, in particular on confidentiality?

Concerning the deontology of persons working in accommodation centres there are certain regulations on confidentiality. In general the Official secrets Act (1980:100) should apply to activities in the public sector and in ch. 7 there are restrictions concerning individual circumstances. Beyond that there is a regulation in the Act on the reception of asylum seekers § 24 stipulating that staff in accommodation centres or the corresponding (including private actors) are obliged to observe professional secrecy.

Staff at the Migration Board, in the health care service and local authorities' social welfare services have a duty to observe professional secrecy, and, for instance, staff at accommodation centres sign a document on the matter (compare the Directive, article 14.5). Further, NGOs have pointed out that a guardian (god man) appointed in accordance with the Act on guardian for unaccompanied minors does not formally have a duty to observe professional secrecy.

10. IMPACT OF THE DIRECTIVE

Legal impact of the transposition of the directive:

Q.42. Specify if there are or not big problems with the translation of the directive in the official language of your Member State and give in case a list of the worst examples of provisions which have been badly translated? (please note that this question has in particular been added to the questionnaire concerning the new Member States)

Concerning the translation of the Directive into Swedish there has not been any big problems. However, regarding the term "legal assistance" in article 21.2 (in Swedish "juridisk rådgivning") there were some considerations in the public investigation that was presented in 2003.[812]

Q.43. Where there precise legal rules on reception conditions for asylum seekers before the adoption of the norms of transposition of the directive (if yes, specify what the nature of those rules was (legislation, regulation, administrative instructions,…)?

[812] Official report SOU 2003:89 EG-rätten och mottagandet av asylsökande.

Before the adoption of the norms of transposition of the Directive there were already Acts, Ordinances and State authority instructions concerning asylum seekers.

Q.44. Did the legal rules applicable to reception conditions become more clear, precise, coherent or detailed with the adoption of the transposition norms (for instance do you now have after the transposition one basic text dealing with reception conditions instead of numerous different texts in the past?

In fact, the Directive did not impose much amendments beyond certain clarifications dealt with above.

Q.45. Did the transposition of the directive imply important changes in national law or were the changes of minor importance? In case, list the most important changes that have been introduced.

The amendments referring to the Directive are considered to be of minor importance, for instance concerning the right to information, which before the transposition was practiced but now is explicitly regulated.

Political impact of the transposition of the directive:

Q.46. Explain briefly if there has been an important debate about the transposition of the directive (in particular in the Parliament, but possibly also in the government, between political parties, including in medias, etc; underline in case the main points which have been discussed or have created difficulties)

The transposition of the Directive was not preceded by any extensive debate. One reason is that the impact from the Directive was rather moderate, although for instance NGOs were critical concerning the asylum system, but the criticism was not based on the new Directive.

Q.47. **Did the transposition of the directive contribute to make the internal rules stricter or more generous? In particular, did your Member State use the occasion of the transposition to abolish more favourable provisions of national law? Does your Member State still have rules more favourable than the provisions of the directive (if yes, try to give the more important examples).**

The impact from the Directive on Swedish regulations concerning asylum seekers was insignificant. Further, there was no deterioration concerning the reception of asylum seekers referring to the Directive. There is still more favourable regulation from the asylum seeker's perspective. For instance, children should be assigned schooling within one month (the Directive stipulates three months) and the right to free movement on Swedish territory has not been restricted even if such restrictions should be acceptable referring to the Directive.

11. ANY OTHER INTERESTING ELEMENT

Q.48. What are in your view the weaknesses and strengths of the system of reception conditions in your Member State?

The legal structure of reception conditions in Sweden could be difficult to grasp. There is a lot of Acts, Ordinances and regulations on the matter, and many State authorities are involved

covering different aspects of an asylum seeker's existence, although the Migration Board is the authority mainly in charge of the reception conditions. For instance, health care entitlements are dealt with by the County councils and local authorities are in charge of unaccompanied children's living in accordance with the new order that came into force in 2006. Sometimes the situation is characterised by certain indistinctness regarding the responsibility for the asylum seeker and a more distinct regulation on these matters has been asked for by many informants in the study.

An example is discussed above in Q.16 and the situation that may occur in case of a successive application. The asylum seeker risks to lose his or her benefits founded on the Social services Act, for instance the right to housing supplementary allowance, since he or she now is covered by the Act on the reception of asylum seekers, and then the asylum seeker could fall between the two Acts with serious consequences for the individual.

Further, the Migration Board is in charge of both the reception in general, the assistance to asylum seekers as well as the exercising of public authority by taking decisions concerning expulsion and more. Hence, the Board is in charge of measures that sometimes put the staff in a role conflict vis-à-vis the asylum seeker. However, the new procedural order with particular Migration Courts that came into force in 2006 will contribute to the separation of at least some aspects.

A problem currently discussed concerning reception conditions in Sweden is that the dealing with applications for asylum takes a long time. In 2005 the average time for dealing with an application, including dealing with appeals was 244 days (compared with 291 days in 2004).[813] Even if there are efforts to cut down the time dealing with cases it is still not satisfying.

Further, even if the information provided to asylum seekers on reception conditions are made in accordance with regulations, many informants have claimed that the information must be improved. The asylum seekers are not familiar with Sweden and there are often misunderstandings etc.

However, disregarding these remarks there are also positive aspects to consider. The involvement of many actors in the care of the asylum seeker also means a step towards integration in society. The local society must take responsibility for the asylum seekers, which is positive, although there are also many times the asylum seeker's needs are not fulfilled in accordance with the political goals.

Q.49. Mention any good practice in your Member State which could be promoted in other Member States

No further comments.

Q.50. Please add here any other interesting element about reception conditions in your Member State which you did not had the occasion to mention in your previous answer.

No further information.

[813] Migrationsverket (the Migration Board), Årsredovisning 2005 (Annual report), p. 10.

REFERENCES

Government's proposition 1993/94:94 Mottagande av asylsökande m.m.

Government's proposition 1996/97:25 Svensk migrationspolitik i globalt perspektiv.

Government's proposition 2004/05:136 Stärkt skydd för ensamkommande barn.

Government's proposition 2004/05:170 Ny instans- och processordning i utlännings- och medborgarskapsärenden.

Government's proposition 2005/06:1 Budgetpropositionen för 2006 Bilaga 11.

Government's proposition 2005/06:6 Flyktingskap och förföljelse pga. kön eller sexuell läggning.

Government's communication, Regeringens skrivelse 2005/06:18 Migration och asylpolitik.

Government's proposition 2005/06:46 Mottagande av ensamkommande barn.

Integrationsverket (the Swedish Integration Board), Integrationsverkets rapport 2000:5 Integrationsverkets kartläggning av kommunernas introduktionsverksamhet. Norrköping 2005.

Läkare utan gränser (Medecins sans Frontiers), Gömda i Sverige. Utestängda från hälso- och sjukvård. Resultat från en studie av Läkare utan gränser. Stockholm 2005.

Migrationsverket (the Swedish Migration Board), The Migration Board's Aliens handbook. (Current updates.)

Migrationsverket, Principer för kapacitetsplanering – ABO. (Administrative instruction, October 13, 2004.)

Migrationsverket, PM 2006-05-04 Utbetalning av ersättning för sociala insatser till asylsökande barn.

Migrationsverket, Reception of asylum seekers in Sweden. (Fact sheet).

Migrationsverket, Årsredovisning 2005. (Annual report.)

Migrationsverket, Översyn av myndighetsutövningen inom Migrationsverkets mottagningsverksamhet 2007-01-22, www.migrationsverket.se/swedish/press/dokument/översyn_myndighetsutovning.pdf

Official report SOU 2003:51 God man för ensamkommande flyktingbarn.

Official report SOU 2003:89 EG-rätten och mottagandet av asylsökande.[814]

Official report SOU 2004:31 Flyktingskap och könsrelaterad förföljelse.

[814] Available on the Government's website: http://www.regeringen.se/sb/d/108/a/1429

Official report SOU 2006:6 Skyddsgrundsdirektivet och svensk rätt.

Riksrevisionen (the State Audit Institution), Statliga insatser för nyanlända invandrare, RiR 2006:19, Stockholm 2006.

Riksrevisionsverket (the National Swedish Audit Bureau), Hur mottas de asylsökande? Den organiserade verksamheten för asylsökande inom Migrationsverket, Report RRV 2002:19.

Socialstyrelsen (the National Board of Health and Welfare), Medicinskt omhändertagande av asylsökande barn i hälso- och sjukvården.

Socialstyrelsen, Socialstyrelsens allmänna råd 1995:4 Hälso- och sjukvård för asylsökande och flyktingar.

Statistics Sweden (SCB), Reception Systems, their Capacities and the Social Situation of Asylum Applicants within the Reception System in the EU Member States (Small Scale Study I), SCB, Stockholm 2005.

The Riksdag's standing committee on social questions (Socialförsäkringsutskottet) 2005/06:SfU5 Ny prövning av avvisnings- och utvisningsbeslut.

Utrikesdepartementet, Sverige, Underrättelse om nationella åtgärder för att uppfylla Sveriges förpliktelser i Europeiska unionen, bilaga 15. (Communication from the Swedish Foreign Ministry to the European Comission [regarding the transposing of Directive 2003/9/EC], Attachment 15.)

Överenskommelse mellan regeringen och Svenska Kommunförbundet och Landstingsförbundet i samverkan om ersättning för hälso- och sjukvård till asylsökande. (In force at July 1, 2006.)

APPENDIX I

Web links to Acts and Ordinances in Sweden

General Acts

The Aliens Act: Utlänningslag (2005:716)

The Aliens Ordinance: Utlänningsförordning (2006:97)

The Ordinance (2001:720) on treatment of personal particulars in activities referring to acts on aliens law and citizenship: Förordning (2001:720) om behandling av personuppgifter i verksamhet enligt utlännings- och medborgarskapslagstiftningen

The Act (2005:429) on guardian for unaccompanied minors: http://62.95.69.15/

The Act (1991:572) on particular control of foreigners: Lag (1991:572) om särskild utlänningskontroll

Asylum and reception

The Act (1994:137) on the reception on asylum seekers: Lag (1994:137) om mottagande av asylsökande m.fl.

The Ordinance (1994:361) on the reception of asylum seekers: http://62.95.69.15/

The Ordinance (2002:1118) on state compensation for asylum seekers: Förordning (2002:1118) om statlig ersättning för asylsökande m.fl.

MIGRFS 07/2005 The Migration Board's instruction on Temporary LMA-card for foreigners in Sweden and a document showing that the holder is an asylum seeker: http://www.migrationsverket.se/ (search for: 07/2005)

Health care

The Social services Act (2001:453): http://62.95.69.15/

The Health and medical treatment Act (1982:763): http://62.95.69.15/

The Ordinance (1994:362) on charge for nursing care for certain foreigners: Förordning (1994:362) om vårdavgifter m.m. för vissa utlänningar

The Ordinance (1996:1357) on state compensation for health and medical treatment for asylum seekers: Förordning (1996:1357) om statlig ersättning för hälso- och sjukvård till asylsökande

The Dental service Act (1985:125): http://62.95.69.15/

Schooling

The School Act (1985:1100): http://62.95.69.15/

The Ordinance (2001:976) on education, pre-school activity and school childcare for asylum seekers: Förordning (2001:976) om utbildning, förskoleverksamhet och skolbarnsomsorg för asylsökande barn m.fl.

QUESTIONNAIRE FOR THE NATIONAL REPORT ON THE IMPLEMENTATION OF THE DIRECTIVE : RECEPTION CONDITIONS OF 27 JANUARY 2003

IN: UNITED KINGDOM

by
Anneliese Baldaccini
abalda@gmx.net

30/05/07

1. NORMS OF TRANSPOSITION

Q.1. Identify the main norm of transposition (indicate the title, date, number, date of entry into force and references of publication into the official journal) and indicate its legal nature (legislative, regulatory, administrative); indicate in your answer if this norm was only devoted to the directive or if it has been included in a more general text and indicate in that case by quoting precisely the numbers of the provisions adopted to transpose the directive.

Transposition in the UK has involved amending the following rules and regulations:
Statement of Changes to the Immigration Rules HC 194 – January 2005: laid amendments to the Immigration Rules (HC 395) to create a new section (Part 11B) dealing with:

- the duty to provide written information to applicants ;
- the duty to provide applicants with a document certifying their status as an applicant for asylum;
- arrangements for an applicant to apply for permission to work after 12 months;
- the duty on applicants to notify the Home Office of their current address.

http://www.ind.homeoffice.gov.uk/lawandpolicy/immigrationrules/change194

Asylum Support (Amendment) Regulations 2005, SI 2005 No.11: laid amendments to the Asylum Support Regulations 2000 (ASR) in order to bring them into line with the directive's provisions on discontinuation, withdrawal or reduction of support.
http://www.opsi.gov.uk/si/si2005/20050011.htm

Asylum Seekers (Reception Conditions) Regulations 2005, SI 2005 No.7: new set of regulations to deal with family unity, unaccompanied asylum-seeking children, and vulnerable persons.
http://www.opsi.gov.uk/si/si2005/20050007.htm

These changes came into force on 5 February 2005.

Q.2. List by order of importance by using numbers (1, 2, 3) the others norms of transposition if there are more than one (indicate for each norm the title, date, number and references of publication into the official journal; include in your answer the administrative measures taken to ensure implementation of the

directive and of the transposition norms like regulations, administrative circulars, special instructions,…)

Norms of transposition are listed at Q1. There has been very little in terms of instructions given to immigration staff on how to apply the new rules. In fact, the only guidance appears to be a general instruction to Immigration Service staff alerting them to the new duty to provide information within a given timeframe and providing a revised information leaflet; and to the duty to issue a document confirming status within three days in order to ensure compliance with the directive.

Furthermore, in April 2005, the former Home Office agency responsible for asylum support (National Asylum Support Service – NASS) issued casework instructions about the amended regulations and how they should apply (Policy Bulletin 83 - Duty to offer support, family unity, vulnerable persons, withdrawing support, available at: http://www.ind.homeoffice.gov.uk/6353/12358/pb83.pdf).

Q.3. Explain which level of government is competent to adopt the legal norms on reception conditions for asylum seekers (specify in particular in case of a federal or regional State, if it is the federal/central power or the components; in case, specify below when it is impossible for you to answer a question because it is about the competence of the components and it is impossible for you to gather reliable information about all of them)

The central government department responsible for adopting transposition norms is the Immigration and Nationality Directorate (IND) of the Home Office. As from 2 April 2007, a new executive Agency of the Home Office, the Border and Immigration Agency, has assumed the responsibilities of the Immigration and Nationality Directorate (IND).

Q.4. Explain the legal technical choices done to transpose the directive (comment on the nature and level of the norms used to do the transposition: legislative, regulatory, administrative like instructions, etc). Add any other element about the technique of transposition of the directive which is interesting for the implementation of Community law.

Transposition was effected through secondary legislation. The new/amended Regulations were laid before Parliament and adopted by negative resolution procedure (i.e. Parliament cannot amend but only recommend that it be vetoed within a 40-day period). Instructions as to transposition of EC directives are set out in the Cabinet Office transposition guide (Transposition Guide - how to implement European directives effectively: www.cabinetoffice.gov.uk/regulation/documents/pdf/tpguide.pdf). This recommends a timely implementation, which achieves the objectives of the European measure, while also being in accordance with other national policy goals. It recommends avoiding over-implementation of directives unless the benefits of exceeding the minimum standard are clearly grater than the associated costs.

Q.5. Mention if there is a general tendency to just copy the provisions of the directive into national legislation without redrafting or adaptation them to national circumstances? If yes, give some of the worst examples and explain if

there is a risk that those provisions remain unapplied or will create difficulties of implementation in the future.

New rules and regulations essentially 'copy out' the directive, i.e. they adopt the same language without attempting to elaborate on the meaning of the provisions in the national context. For instance, the provisions on special needs of individuals belonging to vulnerable groups may not be applied in the absence of a clear understanding of vulnerabilities and of a clear legal obligation to identify people with special needs. Furthermore, the UK has transposed the 'best interests of the child' requirement of the directive although its reservation to the UN Convention on the Rights of the Child operates specifically to exclude the consideration of 'best interests' when immigration decisions, including relevant to support, are made about asylum seeking children.

Q.6. Have all the texts necessary to ensure the effective implementation of the new rules of transposition been adopted, prepared or at least foreseen in the future (for example a regulation completing a new law and the necessary instructions telling the administration how to apply the new rules)?

The UK believes that all necessary implementing measures have been adopted. However, this is disputed by practitioners who argue that some provisions have not been implemented at all while others have not been properly implemented.

2. BIBLIOGRAPHY

Q.7. Has an in-depth preparatory study been made public about the changes at the occasion of the transposition? If yes, thanks for trying to provide us a copy *(please contact to answer this question adequately the body and person who was responsible for the preparation of the transposition of the directive in the public administration).*

The Home Office has issued a public consultation document on implementation of the Reception Directive on 10 September 2004. Responses were invited by 3 December 2004 and an analysis of responses was published on 14 January 2005.

Consultation document:
http://www.ind.homeoffice.gov.uk/6353/6356/17715/closedconsultationscouncild2.pdf

Responses to Consultation:
http://www.ind.homeoffice.gov.uk/6353/6356/17715/closedconsultationscouncild3.pdf

Q.8. Quote any recent scientific book or article published about the directive, the transposition rules or the question of reception conditions for asylum seekers in general (answer even if this literature is only available in your language and provide the complete title in your language (without translation) with all references; indicate author, title, in case name of periodical, year and place of publication).

House of Lords and House of Commons, Joint Committee on Human Rights, *The Treatment of Asylum Seekers*, Tenth Report of Session 2006-07, London, 30 March 2007

Valsamis Mitsilegas, 'The Directive on the Reception of Asylum Seekers and its implementation in the UK', *Immigration Asylum and Nationality Law (IANL),* Vol. 20, No.1, 2006

Anneliese Baldaccini, 'Asylum support: new rights under EC law', *Legal Action,* February 2006

Anneliese Baldaccini, 'Asylum Support and EU Obligations: implementation of the EU Reception Directive in the UK', *Immigration Asylum and Nationality Law (IANL),* Vol. 19, No.3, 2005

Anneliese Baldaccini, *Asylum Support: A practitioners' guide to the EU Reception Directive*, JUSTICE, November 2005.

Sue Willman, Stephen Knafler, Stephen Pierce, *Support for Asylum-seekers: a guide to legal and welfare rights,* LAG, 2004 (2nd ed).

Q.9. Quote any interesting decision of jurisprudence based on the implementation of the new rules of transposition of the directive (indicate references of publication if any)?

Cases relevant for interpretation of Article 16(2) Directive:

R (Limbuela, Tesema, Adam and others) v Secretary of State for the Home Department [2004] EWCA Civ 540.

R v Secretary of State for the Home Department, ex parte Adam and Others [2005] UKHL 66.

The House of Lords confirmed the Court of Appeal judgement in the case of *Limbuela, Tesema, Adam and Others,* which had found that support must be provided to asylum seekers verging on destitution, who have not claimed asylum as soon as reasonable practicable after entering the UK, to avoid a breach of their Article 3 rights.

In addition, the directive is now quoted in certain ASA (Asylum Support Adjudicators) decisions. These cases may not be high profile ones but nevertheless it is still an interesting development.

Thus for example in paragraph 25 in a decision from July 2005 the ASA stated that:

> In making the decision to discontinue support, the respondent appears to have overlooked Regulation 20(3) of the [Asylum Support] Regulations:
> "Any decision to discontinue support in the circumstances referred to in paragraph (1) above shall be taken individually, objectively and impartially and reasons shall be given. Decisions will be based on the particular situation of the persons concerned and particular regard shall had to whether he is a vulnerable person as described by Article 17 of Council Directive 2003/9/EC of 27 January 2003 laying down the minimum standards for the reception of asylum seekers."

For the full decision: http://www.asylum-support-adjudicators.org.uk/decisions/pdf/9550.pdf

Also see paragraph 6 of another ASA decision with regard to vulnerable individuals:

On the subject of vulnerability, I have a letter dated 27 July 2005 from a Doctor with the Medical Foundation. He confirms that the appellant was tortured and is still suffering from the psychological effects of prolonged mistreatment. I therefore consider that he is a vulnerable person as described by Article 17 of Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers.

For the full decision : http://www.asylum-support-adjudicators.org.uk/decisions/pdf/9766.pdf

3. GENERAL INFORMATION ABOUT THE SYSTEM OF RECEPTION CONDITIONS

The purpose of the following two questions is to help the reader to understand easily and quickly the system of reception conditions in your Member State and also to avoid that you have to repeat general elements in other parts of the questionnaire. ***Please do not write more than one or maximum two pages and do not include large historical developments.***

Q.10. Describe in general the system of reception conditions in your Member State (in particular which are the main actors in charge of reception conditions?)

In the UK, asylum applicants may initially on entry be held for short periods (normally up to five days, but as far as possible asylum applicants are moved after one day, either to a removal centre or granted temporary release) at a Short Term Holding Facility (STHF), which are located in or near the ports of entry, or placed in an Induction Centres or Initial Accommodation for up to two weeks. The provision of Initial Accommodation is a temporary arrangement for asylum seekers who would otherwise be destitute and are awaiting a decision on whether they qualify for support under section 95 of the Immigration and Asylum Act 1999 (dispersal accommodation and/or subsistence) or qualify for support under section 95 but are awaiting transfer to their dispersal accommodation.

At the Induction Centres, as well as being provided with bed and board, asylum seekers are given an overview of their rights and responsibilities, a description of the asylum process itself, and details of voluntary return programmes. After this initial placement, asylum applicants may choose private accommodation with family or friends (and may receive subsistence payments for essential living needs at the level indicated in the regulations), or move on to accommodation, on a "no-choice" basis, which the Home Office has contracted with the public and private sector and registered social landlords normally in a designated dispersal area away from London and the South East.

The National Asylum Support Service (NASS) no longer formally exists and support issues are instead be dealt with by New Asylum Model (NAM) caseworkers. For those within the NAM, all decisions on eligibility, payment and cessation of asylum support are now made by a single dedicated case owner.
Initial Accommodation (IA) is no longer managed by voluntary sector but by private accommodation providers sub-contracted by the Home Office. There are large IA centres in each NAM region (London, Liverpool, Leeds, Cardiff, Glasgow, Solihull). NGOs provide wraparound advice services in some but not all areas, but no longer manage the accommodation.

Registered Social Landlords (RSLs) are contracted by NASS to provide housing in the same way as other public/private suppliers. Such contracts do not generally include the provision of food. RSLs are independent housing organisations registered with the Housing Corporation

under the Housing Act 1996 to provide social housing. As the council has a limited supply of council housing, councils work closely with RSLs to provide additional housing

A minority of asylum applicants (up to 30% according to the government target set out in the Five Year Strategy on Immigration and Asylum – see link below) may be detained in one of the 10 removal centres if the Immigration Officers believes that there is a risk of absconding, if they are from so-called safe countries to which the non-suspensive appeals provisions (NSA) apply, or if it is expected that their application can be quickly dealt with and, in case of rejection, they can subsequently be returned to their country of origin. Those who require higher levels of security and control may be detained in a number of prison establishments. In Northern Ireland, as there are no dedicated detention facilities, asylum seekers are detained in prisons.

Q.11. **Q11. A.** Explain if you have different types and levels of reception conditions following the different stages of the asylum procedure (this implies that you have to give briefly the necessary explanations about the asylum procedure). Make if relevant for reception conditions a distinction between the following procedural stages: determination of the responsible Member State on the basis of the Dublin II regulation, special procedures at the border (including transit zones in airports), accelerated procedures, admissibility procedures, eligibility procedures and the different possibilities of appeals (suspensive or not) against a refusal of the asylum request. Indicate what the main differences of reception conditions are between the different stages (if necessary by detailing between the different elements of reception conditions, in particular housing) and explain what the evolution of reception conditions is following the different stages of the procedure.

There are in the UK no procedural stages with different reception conditions as such. The main difference in treatment is between asylum seekers who are detained and those who are not detained. Everyone making an asylum application undergoes a screening interview either at the port of entry or at the Asylum Screening Unit (ASU) in either Croydon or Liverpool. At the screening interview, the immigration officer will consider whether (i) another Member State is responsible for considering the application under Dublin II or similar third country arrangements; (ii) the application could be dealt with quickly at one of the fast-track detention centres in Oakington, Harmondsworth or Yarl's Wood.

Depending on the outcome of the screening, and assuming the UK is responsible for processing the claim, applicants may either find their own accommodation with family or friends, enter an induction centre or be detained at one of the removal centres. At least 10 days after the screening (but less so in fast-track detention centres), applicants will be invited to attend a substantive asylum interview. After the interview, the immigration authorities may detain the applicant, or recommend continuation of detention if they feel the case can be decided quickly or if they feel the applicant will not stay in touch, or given temporary admission to the UK, usually with reporting requirements, whilst they wait for a decision to be made on their case.

As part of the Home Office Five Year Strategy on Immigration and Asylum a New Asylum Model (NAM) was launched in January 2006 and rolled out March 2007. NAM is based on the reorganisation of asylum processing in three ways. The first involves segmentation: during the screening interview, Immigration Officers will assign the case to 'segments' which will

then determine processing, management and support pathways for each case. The five segments which have been defined are: third country cases; cases involving accompanied or unaccompanied children; cases that can potentially attract non-suspensive appeals; so-called late or opportunistic claims; and general casework. Whatever segment a person is placed will determine the speed at which the case is processed, the timing of the initial interview, assistance in obtaining access to legal advice, the type of accommodation, and reporting conditions.
Fast track processing is the second and 'case ownership' the third element of NAM. The idea is to have a single owner who is responsible for an asylum seeker throughout the process – from application to the granting of status or removal.

For the government's Five Year Strategy for Asylum and Immigration, see http://www.ind.homeoffice.gov.uk/6353/aboutus/fiveyearstrategy.pdf

From 5th March all new asylum applicants have come within the NAM. Any case not formally within the NAM by that date is dealt with by a separate Legacy Directorate. The asylum process is now divided in five segments, with processing times as follows (in working days):

Segment	Screened	First Reporting	Asylum Interview	Decision served	Appeal	Removal
1. Third Country	1	N/A	N/A	N/A	N/A	N/A
2. Minors	1	10	25	35	35-115	N/A
3. NSA detained	1	1	2-3	3-4	Post removal	
NSA non detained	1	2	5	11	Post removal	
4.Late/Opportunistic Detained	1	1	2-3	3-4	9-10	After 10
Late/Opportunistic Non detained	1	2	5	11	11-91	After 91
5.General Casework	1	3	8-12	20	20-100	After 100

Under the NAM programme, people who need accommodation and support stay overnight for 1 night in accommodation near the ASUs (where people claim asylum). They are taken, usually the following day, to Initial Accommodation in one of six NAM areas, after which they are usually dispersed to more long term accommodation within the same region. The timescales have increased – people now tend to spend between 1 week and 3 months in IA and are then moved to dispersal accommodation.

Q 11. B. Indicate precisely for which stage(s) of the asylum procedure the answers on reception conditions you give below are valid.

The answers below are valid for the general system of reception in both detained and non-detained cases, with the exception of the NAM as this is still in the process of being rolled out.

The general system of reception is now the one provided under the NAM system. Those outside the NAM are known as Legacy Cases and are being dealt with by a separate Legacy

Directorate. Most of these are cases of those who have exhausted their appeal rights but who remain in the UK. The aim is to resolve all legacy cases by June 2011.

4. GENERAL RULES ON RECEPTION CONDITIONS

Q.12. **Q 12. A**. Are material reception conditions provided in kind, in money or in vouchers or in a combination of these elements (see article 13, §5 which is an optional provision)? Distinguish between the different elements (housing, food, clothes, health, transportation, pocket money,…). **If reception conditions are provided in money (in general or in some cases, for instance when no places are anymore available in accommodation centres), indicate the precise amount given to the asylum seekers. Indicate in your answer what is provided in general and if there are exceptional cases.** Specify in your answer if reception conditions are different from the general system of social aid for nationals or aliens and if yes, if and when (which stage of the asylum procedure) can asylum seekers have access to the general system of social aid?

Material reception conditions are provided in kind (i.e. accommodation and services) and/or money (subsistence payments). From 10 April 2006, the weekly subsistence rates are (see The Asylum Support (Amendment) Regulations 2006, SI No.733):

Single person aged 18 – 24	£31.85 (€46.66)
Single person aged 25 or over	£40.22 (€58.91)
Lone parent aged 18 or over	£40.22 (€58.91)
Qualifying couple	£63.07 (€92.40)
Person aged at least 16 but under 18 (except a member of a qualifying couple)	£34.60 (€50.69)
Person aged under 16	£45.58 (€66.77)

Pregnant women and those with children under 3 years can apply for additional payments each week (£5 per week if baby is under 1 year old, £3 per week if between 1 and 3 yrs old). There is a maternity grant of £300 (€439.48) available to those whose support has been approved – this must be claimed within tight timescales just before or after the birth.

Weekly income increased as of 9th April 07 (see The Asylum Support (Amendment) Regulations 2007, SI No.863). The new rates are:

Single person aged 18 – 24	£32.80 (€48.07)
Single person aged 25 or over	£41.41 (€60.69)
Lone parent aged 18 or over	£41.41 (€60.69)
Qualifying couple	£64.96 (€95.21)
Person aged at least 16 but under 18 (except a member of a qualifying couple)	£35.65 (€52.25)
Person aged under 16	£47.45 (€69.54)

Subsistence payments are available both for those who need accommodation and those who are accommodated with friends and family. To qualify for such payments the case owner must ascertain whether a person is destitute or likely to become so, taking income or assets as defined under the regulations into account (see reg6 of the Asylum Support Regulations 2002 (http://www.opsi.gov.uk/si/si2000/20000704.htm#3 which lists as assets: cash, savings, investments, land, cars, goods etc). The whole household's income and assets are taken into account in assessing the level of support. Therefore, an asylum seeker with other resources may receive a lower rate of support.

At the Induction Centre/Initial Accommodation, asylum seekers are provided with bed and board. There is generally no cash payment. Some Initial Accommodation is not full board and cash is provided.

There is no cash payment for asylum seekers in detention.

Q 12. B. Can the reception conditions in kind, money or vouchers be considered as sufficient "to ensure a standard of living adequate for the health of applicants and capable of ensuring their subsistence" as requested by article 13, §2 of the directive (which is a mandatory provision but leaves a certain space to Member States)? In order to help to assess the respect of this rule when reception conditions are provided in money, include if necessary in your answer points of comparison with the minimum amount of social aid guaranteed for nationals in your Member State.

The amounts are generally not considered sufficient by stakeholders as they equate to only 70% of the subsistence payment to indigenous welfare recipients. However, the government disputes this arguing that although monetary support is set at 70% of the universal level of Income Support which is said to maintain an individual or a family immediately above the 'poverty line', support in kind creates a degree of parity in so far as indigenous persons in receipt of Income Support must provide for their services (i.e. gas/electricity and water) from their Income Support while these are included in the support and accommodation package for asylum seekers.

Nationals on Income Support may be eligible to Housing Benefit (Housing Benefit is available to help people who are on benefits or who have low incomes to pay their rent. It is paid by local councils). Housing Benefit is only available to those on the mainstream welfare system. Asylum seekers receiving support do not pay for the cost of Home Office-contracted accommodation with private/public suppliers.

Children under 16 receive 100% equivalent of income support but their parents still receive a reduced amount and are ineligible for other valuable mainstream financial entitlements such as child benefits, working family and child tax credits. This increases the disparity between asylum and mainstream welfare support levels.

In general, where such level of support and accommodation is provided for a limited period it may be argued to be "sufficient". Conditions become intolerable for those who are in receipt of limited support for a long period of time. This assumption is based on the government's own stated policy for introducing lower levels of cash payments. The UK first justified lower levels of basic cash payment to asylum seekers on the basis that the asylum support system

was a safety-net arrangement on which people were intended to live for only a short time (see Home Secretary's statement in *Hansard,* 15 June 1999, Vol.333, col.475). However, particularly in the early years in which NASS was established (from 2000 onwards) a large number of asylum seekers were living on NASS support for a considerable time. The hardship of those living on NASS support was documented by Oxfam and the Refugee Council in their report *Poverty and Asylum in the UK*, 2002, which compared mainstream welfare benefits with the package of support given by NASS. The report showed that it was particularly the most vulnerable who were losing out: pregnant women, mother with babies, the elderly and people with disabilities and ill-health, because they could not benefit from a range of additional payments that are designed to enable income support recipients to deal with extra essential costs, hardships and special needs.

It may be argued that that the level of support is sufficient for applicants who have a final decision, up to and including appeal, determined within 6 months (which is the government target). This was the case of 67% of applications received in 2004/05.

Agencies working in the voluntary sector further highlight that asylum seekers who have made their own accommodation arrangements and apply for subsistence payments only, may not receive anything for several weeks while their application is assessed. They do not believe that this is sufficient to ensure they are capable of ensuring their subsistence.

Another circumstance where the adequacy of support is disputed concerns asylum seekers who make a fresh claim for asylum after a first claim has been disposed of at appeal. According to section 5(v) of Asylum Policy Bulletin 71, issued on 31 March 2005 (available at: http://www.ind.homeoffice.gov.uk/6353/12358/pb71.pdf), a person who made further representations to the Home Office seeking a fresh claim for asylum will be entitled for support under section 4 of the 1999 Act (hard case support). Support in these circumstances is provided in the form of self-catering accommodation with vouchers to the value of £35 (52 Euro) per week to purchase food and essential toiletries. In some cases, full board accommodation may be provided depending on availability. This is below the support provided to those who are claiming asylum on the first occasion. For details on section 4 support see http://www.ind.homeoffice.gov.uk/6353/12358/QandA.doc.

For domestic rules regarding successive applications see Q.16.

5. PROCEDURAL ASPECTS

Q.13. **Q 13. A. Does the national legislation specifically provide that a request for international protection is presumed to be under the Geneva Convention unless explicitly requested otherwise? (see article 2, b which is a mandatory provision)**

No, domestic rules do not mention requests for 'international protection' but requests for asylum. The asylum process does, however, distinguish between refugee status and subsidiary protection status (ie humanitarian protection and discretionary leave) with clearly less rights attached to the latter (thus underlining the primacy of the Geneva Convention). However, until the determination of the status, support provisions are the same for all applicants and all applications are treated as 'applications for asylum'.

The Asylum Seekers (Reception Conditions) Regulations 2005, reg.2(c) define a 'claim for asylum' "a claim made by a third country national or a stateless person that to remove him or require to leave the United Kingdom would be contrary to the United Kingdoms obligations under the [Geneva Convention] and its Protocol."

Q. 13. B. Explain if the scope of application of reception conditions is extended to other asylum seekers than refugees in the sense of the Geneva Convention, in particular to persons asking for subsidiary protection or to other forms of protection like humanitarian statuses (see article 3, § 4 which is an optional provision)? If not, explain briefly which the differences between these special regimes and the directive are.

In the consultation document, the Home Office stated that it would not extend the provisions of the directive to other asylum seekers than refugees in the sense of the Refugee Convention and has accordingly restricted the scope of the implementing legislation to claims made under the Refugee Convention (see above the definition of asylum claim in the RCR). However, in practice, for persons who are making their first asylum application the Home Office are not making technical distinctions between an asylum application made under the Refugee Convention and an asylum application made under Article 3 ECHR only, even though the EU Reception Directive allows then to make such a distinction. This is consistent with the single procedure in the UK, where human rights issues can be raised alongside an asylum claim or are inherent in that claim.

Q. 13. C. Are there specific provisions in national law for reception conditions in case of diplomatic or territorial asylum requests submitted through a diplomatic or consular representation (see article 3, §2 which is an optional provision)?

There is no provision in the UK Immigration Rules allowing applications for asylum through diplomatic or consular representations.

Q.14. **Are reception conditions available as from the moment one asylum application is introduced? How is article 13, §1 which is mandatory legally understood?** Do asylum seekers have to satisfy any other condition in order to get reception conditions?

Under domestic provisions entitlement to support starts when a claim for asylum is recorded and notified to the Home Office in person. In practice, therefore, asylum seekers who fulfil the eligibility criteria may be left without support because of delays in recording a claim or where it is disputed that a claim has been brought.

It is arguable that the practice of 'recording' a claim under domestic law makes various benefits under the directive subject to an additional requirement, which may result in asylum seekers being denied the rights to which they are entitled.

Q.15. **Explain when reception conditions end, for instance after refusal of the asylum request** (include in your answer the link with the right of appeal against a decision of refusal of the status, in particular the question of its suspensive effect)

In line with Regulation 2(2A) of the Asylum Support Regulations 2000, if a person is granted refugee status, support will be terminated 28 days from the day on which the Home Office notifies the claimant of their decision. This person will from that moment onwards enter the mainstream benefit system. If a person's application for asylum is rejected, or his appeal is dismissed, support will cease 21 days after the Home Office notified him or her of the decision or after the notification about the dismissal of the appeal.

Q.16 Are there special rules or practices regarding reception conditions in case of successive applications for asylum introduced by the same person?

Asylum seekers who make a fresh claim for asylum after a first claim has been disposed of at appeal, may receive basic (hard case) support under section 4 1999 Act pending consideration of these further representations, if the asylum support caseworker considers that there is substance in these representations. His application will then be passed for consideration to the asylum caseworker who will determine under rule 353 of the Immigration Rules whether the further representations constitute a fresh claim for asylum. There are then 3 possibilities: (1) the asylum caseworker considers that the further representations amount to a fresh claim for asylum and makes a decision to grant asylum - the applicant will then become eligible for mainstream benefits as a refugee. (2) The asylum caseworker decides that the further representations do amount to a fresh claim but decides to reject the claim. This carries a right of appeal and the applicant will be entitled to apply for asylum support under section 95 of the 1999 Act if he chooses to appeal the decision and pending a final outcome. (3) The asylum caseworker decides that the further representations do not amount to a fresh claim for asylum and rejects them. This carries no right of appeal. The applicant would no longer be eligible for support under section 4, unless he brought himself under one of the other criteria for support, for example that he was taking steps to leave the UK.

Q.17. Information of asylum seekers about their rights and obligations in terms of reception conditions, in particular about established benefits (see article 5 which is too large extend a mandatory provision; do not confuse this question with the information to be provided to asylum seekers about the asylum procedure):

Q. 17. A. Are asylum seekers informed, and if yes about what precisely?

Information about rights and obligations is provided to everyone who claims asylum even if they make no application for asylum support. Central government funds six agencies to provide orientation briefings to newly arrived asylum seekers, all of which are also responsible for the information provided through the formal induction processes.

Orientation briefings include an explanation of the support system, requirements in order to continue to access this support (eg what constitutes a breach of conditions etc), the Accommodation Provider's role, how to access legal advice, reporting requirements, health care, how to complain etc.

Q. 17. B. Is the information provided in writing or, when appropriate, orally?

It is given orally, accompanied by written information for example a list of local solicitors and a Welcome Pack including information on local services. New asylum claimants are also shown a Home Office DVD outlining the Home Office's approach to the asylum process.

Briefings and DVDs for asylum seekers and induction staff have are being updated in order to reflect the changes that have been introduced to the decision making and support arrangements under the NAM

Q.17. C. Is that information in general provided in a language understood by asylum seekers? Specify the list of languages in which it is available

Orientation briefings are centrally controlled and provided on DVD in 15 languages (Arabic, Dari, English, Farsi, French, Kurdish Sorani, Mandarin, Pashtu, Russian, Somali, Spanish, Swahili, Turkish, Urdu and Vietnamese). Asylum seekers whose language is not covered by this list receive a briefing given by an interpreter from a script.

Q. 17. D. Is the deadline of maximum 15 days respected?

The 15 days deadline has been transposed in the Immigration Rules Part 11B para. 358. In the large majority of cases delivery of information is usually completed within 15 days.

Q.18. Information of asylum seekers about the existence of organisations or groups promoting their interest and defending their rights (see article 5 which is to a large extend a mandatory provision):

Q. 18. A. Is there a list of organisations dressed by the authorities and if yes is it comprehensive? Is this in particular the case about the possibilities to get legal assistance and health care?

There is no central list of organisations dressed by the authorities. When a person claims asylum there are usually signposted to the local One Stop Service where further information on specific needs (list of local solicitors, GPs etc) is given.

One Stop Services are a network of advice centres which are managed by NGOs but receive funding from central government to provide services to asylum seekers.

Q. 18. B. Is the information provided to the asylum seekers, and if yes, in writing or, when appropriate, orally?

Asylum seekers may be given a leaflet containing the address of the local One Stop Service but, quite often this information is given orally.

Q. 18. C. Is that information in general provided in a language understood by asylum seekers? Specify if possible the list of languages in which it is available.

Where leaflets are provided they are given in English. Each One Stop Service also produces a "service description" leaflet which may be translated into languages which are needed locally.

Q. 18. D. How many organisations are active in that field in your Member State?

This is extremely difficult to quantify. There are a range of organisations active in the UK. These include Refugee Community Organisations, charitable, voluntary sector and faith organisations. They range in size and capacity and their number is believed to run in the hundreds if not thousands.

Q.19. Documentation of asylum seekers (see article 6):

Q.19. A. What kind of document is delivered to the asylum seeker? Explain the legal value of this document (just a certification of the status as asylum seeker or also prove of identity?) (see §1 of article 6 which is a mandatory provision)

Asylum seekers are issued an Asylum Registration Card (ARC). The ARC provides prove of identity and gives asylum seekers access to services provided for them within the UK. The ARC is a credit card-sized plastic card issued as an acknowledgement of an Asylum or Article 3 application made to IND. It contains information about the identity and immigration status of the holder (as recorded by IND when the card was created) in visible form and/or stored on a magnetic chip that can be read in specially programmed "QuickCheck" card readers. As well as the inclusion of the holder's personal details, the card contains a number of security features including the inclusion on the face of the card of two digital images of the holder, the holder's fingerprint details on the chip and optically variable printing. On all ARCs issued from mid-January 2005 the card shows on the reverse whether or not the holder is an asylum claimant.
The ARC has been defined in section 26A of the 1971 Immigration Act, as amended by section 148 of the Nationality, Immigration and Asylum Act 2002 (the NIA Act) in connection with certain offences as:
(1) ..."a document which-
(a) carries information about a person (whether or not wholly or partially electronically), and
(b) is issued by the Secretary of State to the person wholly or partly in connection with a claim for asylum (whether or not made by that person)."

Q.19. B. Are there situations or specific cases in which another equivalent document or even no document is issued? (in particular is there an exception for "procedures to decide on the right of the applicant legally to enter the territory" as made possible by §2 of article 6)?

A Standard Acknowledgement Letter (SAL) is provided if an ARC cannot be issued.
A SAL is a double-sided A4-sized document printed on special security paper and containing a unique number. It is used to acknowledge a claim for asylum in circumstances where it is not possible to issue an ARC within 3 days of the claim being lodged. A SAL displays the name, date of birth and nationality of the claimant and any dependants, the date of arrival (if known), the date of application, their address in the UK and HO reference. Photographs of the claimant and any dependants are also attached. Following changes introduced on 17

December 2004, SALs issued are now normally valid for just 2 months from date of issue (known as a time-limited SAL). The time limiting is to enable arrangements to be made for the claimant and any dependants to attend and be issued an ARC, and to encourage attendance at such an event.
Very rarely, where for wholly exceptional reasons (such as severe physical disability making the taking of fingerprints impossible) it is not possible to issue an ARC, a SAL valid until the claim has been finally decided will be issued to a claimant instead of an ARC. Such a SAL will be withdrawn when the claim is finally decided or the claimant leaves the UK.

Q.19. C. For how long is this document in principle valid and is it necessary to renew it after a certain period?

There is no expiry date on the ARC card and there is no requirement for renewal.

Policy instructions state that the ARC, once issued, is valid for as long as the asylum claimant is authorised to remain in the UK while their application is pending or being examined.

A sample of ARC is available at: http://www.bba.org.uk/pdf/Asylumcard.pdf

Q.19. D. What is the deadline for the delivery of that document? Is the mandatory deadline of 3 days set by article 6, §1 respected[815]?

The Home Office usually issue either a SAL or an ARC card within 3 days. The duty to issue a status document within three days is now a requirement under the Immigration Rules (rule 359), which have been amended to implement the Directive.

Delays to issuing an ARC occur on account of the fact that the Rules subject this requirement to an asylum application being *recorded*, rather than *made.* Those who make a fresh claim for asylum after a first claim has been disposed of at appeal are rarely documented within three days because of delays in recording a fresh claim.

Q.19. E. Is it possible for an asylum seeker to get a travel document for serious humanitarian reasons (see §5 of article 6 which is an optional provision)?

The UK has not transposed this optional provision. The qualifying criteria set out in the instructions are limited to people granted limited leave to remain (humanitarian protection or discretionary leave), who wish to apply for travel documents on compassionate grounds, such as for serious illness or the funeral of a close relative, or to receive medical treatment. The instructions do not explicitly include those awaiting a decision on their claim.

Q.19. F. Is there a central system of registration of asylum seekers and is it or not separate from the registration of aliens? If yes, describe it briefly (content) and indicate in particular if it is an electronic database.

There are various enabled sites were asylum seekers are registered and issued with an Asylum Registration Card. These are located at airports, at the Asylum Screening Units in Croydon and Liverpool, at Reporting Centres and at Oakington Detention Centre. Fingerprints taken

from applicants as part of the registration process are examined and retained in the central Immigration Fingerprint Bureau (IFB).
The system is separate from the registration of aliens.

Q.20. Residence of asylum seekers :

Q.20. A. Is in principle an asylum seeker free to move on the entire territory of your Member State or only to a limited part of it and in case, which part? (see article 7, §1 which is a mandatory provision)

There is no rule explicitly restricting freedom of movement but conditions which may be imposed upon asylum seekers (such as reporting requirements under paragraph 21 of Schedule 2 to the Immigration Act 1971, as amended) may restrict this freedom in practice.

Q.20. B. About the place of residence (see §2 of article 7): explain to which extend the person is free to choose her residence and if this depends of the stage of the asylum procedure (for instance before and after admissibility); if there are constraints limiting the choice, explain which ones and their reasons (for instance processing of application, attribution of reception conditions,…).

UK policy makes it a condition of support that an asylum seeker lives at 'the authorised address'. An 'authorised address' is either the accommodation provided to the applicant and his or her dependants (if any) by way of asylum support (generally in a dispersal area) or the address notified by the supported person to the Home Secretary in his or her application for asylum support.

Q.20. C. About the place of reception (meaning where the asylum seeker has to stay to benefit from reception conditions) (see § 4 of article 7): explain which are the general rules about the determination of this place (to which extend are the decisions determining the place taken individually and do they take into account the personal situation of the asylum seeker?) and to which extend the person is free to choose it and if it depends of the stage of the asylum procedure (for instance before and after admissibility); if there are constraints limiting the choice, explain which ones and their reasons (for instance attribution of reception conditions, processing of the application,…).

If asylum seekers apply for the 'accommodation and support' package, accommodation will be provided on a no-choice basis. The policy is to disperse asylum seekers around the UK, to areas outside London and the southeast where accommodation is more readily available. The Home Office makes arrangements for accommodation in hotels, flats or houses through contracts with public, private and/or voluntary sector suppliers.

In determining the nature and location of accommodation, the case owner must take into account circumstances such as the location of other family members, education, medical or other social welfare needs (see Asylum Policy Bulletin 31 - Dispersal Guidelines, available at: http://www.ind.homeoffice.gov.uk/6353/12358/pb31.pdf).

Q.20. D. If all asylum seekers are not placed in accommodation centres because of capacity limits, explain how the persons are distributed between accommodation centres and other accommodation facilities (which authority takes the decisions, on the basis of which elements, can that decision be appealed by the asylum seeker,…)

Not applicable in UK context.

The Secretary of State has a statutory power to set up 'accommodation centres', in which supported asylum seeker households would live and be educated and which would include the provision of facilities for determining asylum claims and appeals (Part II Nationality, Immigration and Asylum Act 2002). This provision was to be implemented on a pilot basis but this has proved difficult due to planning objections from district councils. The government has recently stated that it will not proceed with the building of accommodation centres.

Q.20. E. How can an asylum seeker ask to leave temporarily the place of residence or of reception or an assigned area? How is the individual AND impartial character of the decision ensured? (see §5 of article 7 which is a mandatory provision)

Requirements on notifying IND of any temporary absences from accommodation are set out in the NASS Agreement. Asylum seekers have also an obligation to notify the authorities of any change of address, i.e. when they permanently leave the place of residence (Immigration Rules, Part.11B rule 358B).

Q.21. **Q.21. A. Do rules on reduction or withdrawal of reception conditions exist in internal legislation and if yes in which cases (mention in particular if there are cases not foreseen by article 16, § 1 and 2 which are optional provisions)? Distinguish in your answer between cases of reduction and withdrawal and explain which conditions can be reduced and if access to emergency health care is always ensured as requested by article 16, §4, last sentence.**

The UK has transposed Article 16 by adding provisions in domestic regulations where asylum support is terminated. Reg 20(1) of the Asylum Support Regulations (ASR), as amended, now sets out the same set of circumstances in which support can be suspended or discontinued as those specified in the directive. In addition, support can be discontinued for failure, without reasonable excuse, to comply with a relevant condition (reg 20(1)(k)). A relevant condition is a condition subject to which asylum support is being provided (reg 19(2)). These may include living at 'the authorised address' and the duty to notify a change of circumstances as specified by the regulations (reg 15 ASR).

Access to emergency health care is always ensured. The National Health Service (Charges to Overseas Visitors) Regulations and Health Service Circular HSC 1999/018 *Overseas visitors' eligibility to receive free primary care*, state that no charge shall be made in respect of any services forming part of the health service in respect of those who have made a formal application for asylum.

Q.21. B. Has article 16, §2 dealing with refusal of reception conditions for unreasonably late applications for asylum been transposed by your Member State (or was this case already applicable before transposition)? Are there cases in practice?

A provision allowing support to be refused, where the asylum seeker failed to demonstrate that his or her asylum claim was made as soon as reasonable practicable after arrival, existed in the UK (in section 55 of the Nationality, Immigration and Asylum Act 2002) prior to adoption and transposition of the Directive and has been applied in practice since January 2003. In fact, the wording of Article 16(2) of the directive follows closely the wording of section 55.

Further to a Court of Appeal judgement in *R (Limbuela, Tesema, Adam and others) v Secretary of State for the Home Department* [2004] EWCA Civ 540 – see Q9 above), the Home Office has revised guidance on section 55 to the effect that the government must provide support unless it is positively satisfied that the individual concerned has some alternative form of support available to meet his or her need for housing, food and washing facilities. The case was examined by the House of Lords, which reached a similar judgement to that of the Court of Appeal (*R v Secretary of State for the Home Department, ex parte Adam and Others* – see Q9 above). The Courts clarification on the interpretation of Article 3 ECHR in the context of section 55 has led to the number of section 55 refusals decreasing significantly ever since this provision entered into force in January 2003. Home Office statistics show that in 2003, of 14,760 cases referred to NASS, 9,410 were refused support under section 55. In 2004, section 55 refusals were 1,360 out of 10,570 cases referred to NASS. In 2005, section 55 refusals were 340 out of 3,780 cases referred to NASS. Finally, there were 450 section 55 refusals in the first 2 quarters of 2006 (January to June) out of 2,515 applications for support.

During 2006, there were still 895 people who were refused support under section 55.

Q.21. C. How is it ensured that decisions of reduction or withdrawal are taken individually, objectively AND in particular impartially (for instance through and independent arbitrator) (see article 16, §4 which is a mandatory provision)?

Article 16(4) of the Directive has been transposed in reg 20(3) ASR, and requires, in similar terms, that decisions to discontinue support take into account the particular circumstances of the person concerned. Asylum policy instructions (see Policy Bulletin 83) do not provide any further guidance as to how this requirement is to be ensured in practice.

Q.21. D. Is statement 14/03 adopted by the Council at the same moment as the directive respected (see the document attached to our sending)?

Yes, as a matter of policy, since the Court of Appeal judgement in the case of *Limbuela* and the Home Office's decision to review application of section 55. See revised guidance in Asylum Policy Bulletin 75(V5) – Section 55 (late claims) 2002 Act guidance: http://www.ind.homeoffice.gov.uk/6353/12358/pb75.pdf

There is no specific guidance as to how decisions to discontinue support (other than in section 55 cases) are to take account of the situation of the persons concerned, particularly those of

vulnerable people, nor is there any litigation readily traceable on the subject. I cannot say whether this statement is respected in practice.

Q.21. E. Are there already administrative appeal decisions or judgements on cases of reduction, withdrawal or refusal which have been taken, and if yes, what has been the outcome?

Section 55, allowing support to be refused where the asylum seeker failed to demonstrate that his or her asylum claim was made as soon as reasonable practicable after arrival, has been subject to extensive litigation in the UK and to an unprecedented number of applications for interim relief. The issue was finally settled in final instance by the House of Lords, which found that the Home Office must provide support to asylum seekers verging on destitution, who have not claimed asylum as soon as reasonably practicable after entering the UK, to avoid a breach of their Article 3 ECHR rights.

Q.22. **Q.22. A.** **<u>Appeal</u> against a negative decision relating to the granting of benefits or based on article 7 (see article 21 which is a mandatory provision): indicate against which decision an appeal can be introduced, describe the system of appeal in general and include in particular in your answer the information given to asylum seekers about possibilities of appealing, deadline for appealing, if the appeal has or not a suspensive effect, if there are different steps (for instance first an administrative appeal and in particular if the guarantee of an appeal before a judicial body in the last instance is respected)?**

Appeals against support decision are heard by the Asylum Support Adjudicator (ASA). However, ASA's jurisdiction is limited. For example, there is no right to appeal as to the location, nature or standard of support. The only way of challenging all such decisions is by way of judicial review. Asylum Policy Bulletin 23 explains the process of asylum support appeals (see http://www.ind.homeoffice.gov.uk/6353/12358/pb23.pdf).

Furthermore, ASA appeals lack suspensive effect, i.e. they do not allow the continuation of support while the appeal is being decided. This makes interim relief in the courts the only possible remedy, but this remedy is not a practical one and, therefore, in most cases interim relief will not be a viable option.

Under section 103 of the Immigration and Asylum Act 1999, a right of appeal exists only against the Secretary of State's decision that an applicant does not qualify for support, and the Secretary of State's decision to stop providing that support before that support would otherwise have come to an end.

In the context of Article 7, there is no appeal against the decision in respect of the 'assigned' dispersal accommodation. A decision to detain, on the other hand, can be challenged as explained in Q.33H.

Where an asylum seeker is notified of a decision against which they may appeal, he will be sent a notice of appeal with two copies of the decision letter. The asylum seeker will have been deemed to have received the decision on the second working day after it was sent, unless

the contrary is proven. The asylum seeker then has three working days in which to submit an appeal to the Asylum Support Adjudicators.

The Asylum Support Adjudicators have discretion to extend the time limit for receiving the notice of appeal if it is in the interests of justice, and if they are satisfied that the appellant or his representative was prevented from complying with the three working days' time limit by circumstances beyond his control.

After receipt of an appeal by the ASA, if there is no oral hearing, the appeal must be determined on consideration day (day 4) or as soon as possible thereafter, and in any event not later than 5 days after the consideration day – ie day 9. If there is an oral hearing, the reasons statement will be sent to appellant or representative, and Secretary of State by day 11.

Q.22. B. Explain which are the possibilities for asylum seekers to benefit from legal assistance when they introduce such an appeal (see article 21, §2 which is a mandatory provision but leaves space to Member States)?

There is very limited, voluntary, assistance available at ASA hearings. The lack of a proper system of legal assistance before ASA (other than on an exceptional funding basis which, if granted, is invariably ex post facto) represents a serious obstacle to asylum seekers wishing to exercise their appeal rights or be represented before the ASA.

Q.22. C. Are there already administrative appeal decisions or judgements which have been taken and if yes, which are the main important ones?

See Q. 9 above.

Q.22. D. Is a mechanism of complain for asylum seekers about quality of receptions conditions in general (even if they are not personally concerned) organised? If yes, before which authority? Is it linked to the system of guidance, control and monitoring of reception conditions (see below question n° 39)?

Asylum seekers can lodge a complaint both in relation to the treatment of their claim and the support they receive.

The Home Office Immigration and Nationality Directorate (IND) has a complaints procedure for responding to complaints about its services and staff. The IND Complaints Unit deals with all complaints about IND service delivery. It can only accept complaints in English and in writing and reserves the right not to respond to complaints that it consider abusive. IND also permits complaints lodged on behalf of another person. The IND Complaints Unit can accept complaints on another person's behalf such as spouse or partner, or the legal representative. People can also involve their Member of Parliament (MP) in raising their complaint with IND.

When the investigation of a formal complaint is complete and the unit has sent their response to the complainant with its findings, the complaint file is audited by the Complaints Audit Committee (CAC). The CAC is an independent panel set up to oversee the investigation of formal complaints. The CAC are not part of the investigation process for complaints and do

not enter into correspondence about individual cases. They report directly to the Home Secretary and make recommendations from their findings to improve the complaints service.

An 'informal complaints' procedure has only recently been implemented by the Home Office and only at the insistence of the Complaints Audit Commission (CAC). The CAC (reports readily available) has also recently raised concerns about the manner in which complaints are investigated. The CAC were critical of the Home Office's complaints procedures generally.

In addition to the informal and formal complaints procedures all asylum seekers have access to the UK's Parliamentary Ombudsman scheme if they are dissatisfied with the outcome of any complaint. Access to the Ombudsman is available only after other internal processes have been exhausted although delay in dealing with a complaint can amount to maladministration. Complaints to the Ombudsman must be made via a constituency MP. The scheme is not well publicised to asylum seekers and is under use.

6. RIGHTS AND OBLIGATIONS OF ASYLUM SEEKERS

Q.23. **Family unity of asylum seekers: define how a family is defined in relation with article 2, (d) which is a mandatory provision and explain how housing is provided to a family (see articles 8 which is a mandatory provision but leaves space to member States and 14, §2, (a) which is a mandatory provision).**

There a two definitions of 'family' in UK Regulations : The Reception Conditions Regulations (RCR), which provide a duty to have regard to family unity when provisions of support are made, use the directive's definition of family members ; The Asylum Support Regulations (ASR) use a much wider concept of family by defining a 'dependant' in relation to an asylum seeker or supported person as being:

(a) the spouse;
(b) the child of the applicant or the applicant's spouse and dependent on the applicant;
(c) the minor who is a member of the close family of the applicant or the applicant's spouse;
(d) the minor who has been living as part of the household since birth or for six of the 12 months before the application for support;
(e) the disabled family member who is in need of care and attention and fulfils the conditions in (c) or (d);
(f) the unmarried partner who has been living with the applicant for two of the three years before the application for support was made.

While the Asylum Seekers (Reception Conditions) Regulations (reg.3) places a new obligation on the Secretary of State to accommodate members of a family together as defined in the directive, the government maintains a discretion to accommodate with the family other dependants, as defined in the ASR. The implications of not exercising this discretion properly are significant in the context of the UK's dispersal policy. If a family member is not treated as a dependant he or she could be dispersed to a different part of the UK from the other relatives claiming support.

Q.24. **Q.24. A. How is housing of asylum seekers organised: describe the system in general and indicate in particular what is the most frequently system used (see article 14, §1 which is a mandatory provision but leaves space for Member States; distinguish between accommodation centres, private houses and apartments, hotels places or other premises).**

Where asylum seekers apply for accommodation and support (rather than support only), the Home Office makes arrangements for accommodation in hotels, flats or houses through contracts with public, private and/or voluntary sector suppliers.

The Asylum Seekers (Reception Conditions) Regulations now establish that the Secretary of State has a duty (rather than a discretion) to provide support to eligible asylum seekers (reg.5). Under section 95 of the Immigration and Asylum Act 1999, support is provided to asylum seekers who do not have adequate accommodation or any means of obtaining it (whether or not his other essential living needs are met). Such support may take the form of adequate accommodation. Under the provisions of section 97 the caseworkers must have regard to the desirability, in general, of providing accommodation in areas in which there is a ready supply of accommodation. Casework instructions (Policy Bulletin 31) specify that careful consideration must be given to the individual circumstances of each case and when deciding whether it is reasonable to allocate dispersed accommodation particular attention should be given to the following:
Medical treatment
Family ties
Education
Ethnic group
Religion
Employment
Legal advice
Special needs

The UK does not have accommodation centres as such (a statutory provision allowing for such centres to be established has never been implemented – see Q.20D above). The UK has a small network of "Induction Centres" (or Initial Accommodation) which are facilities that provide short term accommodation to people who have made an asylum application and who are waiting for an application for support to be considered. These are not accommodation centres as defined by the directive, being based upon hotel or other accommodation.

Q.24. B. What is the total number of available places for asylum seekers? Distinguish in your answer between accommodation centres, private houses and apartments, hotels or other premises.

There is no fixed number of dispersal beds available for asylum seekers. There are approximately 1700 bedspaces available in the initial accommodation estate (where people may stay on arrival), however this too can be increased upon negotiation with the accommodation provider. There are regions in which asylum seekers may be dispersed. There are agreed percentages of the overall total of asylum seekers which each region agrees to accommodate. It is then up to the contracted accommodation provider to provide the accommodation in that region.

Q.24. C. Is this number of places for asylum seekers sufficient in general or frequently insufficient?

The number of dispersal places for asylum seekers is generally sufficient. According to responses from the non-governmental sector initial accommodation less so.

Q.24. D. Are there special measures foreseen in urgent cases of a high number of news arrivals of asylum seekers (outside the case of application of the directive on temporary protection)?

None.

Q.25. Accommodation centres **(important note: all the following questions are about open and not closed centres where asylum seekers are detained which are covered by another question)**

Q.25. A Are there different categories of accommodation centres, for instance depending of the stage of the procedure (admissibility and eligibility)?

As mentioned above, there are no accommodation centres in the UK as defined in the directive. The questions will therefore be answered, in so far as relevant, with regard to Induction Centres (or Initial Accommodation) where asylum seekers are housed for the time necessary to assess their application for support and organise their dispersal.

Q.25. B. Is there a legal time limit for accommodation in a centre after which the asylum seekers have access to private houses or apartments or is this limit linked to a stage of the asylum procedure?

There is no time limit for accommodation in an Induction Centre. The Home Office aims to move all asylum seekers who are in Induction Centres to more permanent accommodation as soon as possible. The Government states that this is usually carried out in two weeks.

Unless accommodation in an Induction Centre proves unsuitable for medical reasons then asylum seekers will be accommodated until their application for asylum support is considered. A positive asylum support decision will result in transferral to dispersal accommodation while a negative asylum support decision will mean no support is forthcoming. However, an asylum seeker whose application for asylum support is refused will have the opportunity to appeal against that decision to the ASA.

Q.25. C. Is there a general regulation about the internal functioning of those centres and the rights and duties of the asylum seekers? If yes, is this general regulation applicable to public and private centres? If not, are the centres supposed to adopt an internal regulation and does a central authority have or not a kind of control about its content?

There is a general regulation about the internal functioning and the rights and duties of asylum seekers in Induction Centres. Each asylum seeker resident in the Centre receives a briefing on rights and responsibilities as part of their introduction to the UK (this briefing is centrally

managed and controlled). Each Induction Centre also briefs its residents on the house rules of the centre.

Q.25. D. Do the regulations foresee the possibility of sanctions against asylum seekers in case of breach of the rules? (see article 16, §3) If yes, which sanctions for which rules? Which is the competent authority to decide? How is it ensured that decisions are taken individually, objectively and in particular *impartially* (for instance through an independent arbitrator) as requested by §4 of article 21 which is mandatory provision*?* Which are the possibilities of appealing against those decisions if the system is different from the general one under question n°22? Are there already administrative appeal decisions or judgements which have been taken and if yes, which are the main important ones?

Each organisation managing an Induction Centre has a system of house rules which are explained to residents on arrival. If these rules are breached it is dealt with on a case by case basis. For example, one organisation requires residents to sign a register each day. If one day is missed then a warning is given, on the second occasion a final warning is given and if a third signing is missed then the organisation will seek to move the asylum seeker to alternative accommodation which will involve a further briefing session on rights and responsibilities. Serious breaches of rules may be dealt with by the police where necessary, for instance fighting or criminal damage although organisations try to minimise potential incidents where at all possible.

The UK has, moreover, amended the Regulations so that support may be suspended or discontinued if the case owner has reasonable grounds for believing that the asylum seeker or a dependant has committed a serious breach of the rules of collective accommodation or committed an act of seriously violent behaviour anywhere (new reg 20(1)(a)), and has defined 'collective accommodation' to include shared accommodation or accommodation with shared facilities (such as kitchen or common area). According to the directive, support can only be withdrawn for breach of an occupancy agreement if the perpetrator is in an accommodation centre – not dispersal accommodation. In dispersal accommodation, support can be withdrawn if the applicant has demonstrated seriously violent behaviour (new reg 20(1)(b)) .
Decision to suspend or discontinue support under these regulations can be appealed to the ASA.

Q.25. E. Are asylum seekers involved in the management of these centres? If yes, how (advisory board, appointment or election of representatives)? (see article 14, §6 which is an option provision)

Asylum seekers are not involved in the management of Induction Centres. One NGO which manages two induction centres is planning to introduce client forums where residents can make suggestions on ways to improve the Centre. This work is outside the current contract specification for Induction Centres and is not something that the State has requested.

Q.25. F. Do specific rules exist on work of asylum seekers inside the accommodation centres different from the general ones about employment (see below)? If yes, which ones? Can working inside accommodation centres be considered as a (mandatory) contribution of

the asylum seekers to the management of the centres, is it or not paid and considered as implying access to the labour market and subject to the same rules?

Asylum seekers resident in Induction Centres are not required to work or to make a contribution to the management of the centre.

Q.26. **Q.26. A. How can asylum seekers communicate with legal advisers, representatives of UNHCR and NGOs? (see article 14, §2, (b) which is a mandatory provision).**

The referral system for communication with NGOs, legal advisers and UNHCR is set up in practice. There is no norm of transposition or pre-existing provision in either regulations or rules.

Q.26. B. What are the rules about access of legal advisers, UNHCR and NGOs regarding access to accommodation centres and other housing facilities (see article 14, §7 which is a mandatory provision)

Some of the six Induction Centres have a referral system to legal advisers such as the Refugee Legal Centre or the Immigration Advisory Service. Where such a referral service exists asylum seekers may of course exercise their right to seek advice from any other adviser of their choice. Generally, asylum seekers go to the legal advisers rather than advisers entering the centre.

As part of the NAM process, those who request support and accommodation are usually allocated a solicitor on a rota basis. In many ways this is a very positive step forward as individuals found it difficult on occasion to find a solicitor previously. In some cases however the applicant is not given an appointment before the substantive asylum interview. Those applying only for cash-support must still find their own solicitor.

Asylum seekers who are resident in dispersal accommodation may contact a One Stop Service for information on how to find legal advice. All access to publicly funded legal advice on asylum and immigration is strictly controlled.

Q.26. C. Can the access of legal advisers, UNHCR and NGOs be limited for security reasons or any other reason (see article 14, §7, last sentence)?

No.

Q.27. **Q.27. A. Is a medical screening organised by the receiving State, is it mandatory or voluntary? Does it include HIV tests? (see article 9 which is an optional provision)**

A voluntary medical screening is available to all asylum seekers. It does not include HIV test. Under the NAM, the Home Office intend a general 15 minute medical check up to be available to every individual requesting accommodation and support. This happens in some regions but not in others. Screening is voluntary.

Q.27. B. Do the legal provisions on reception conditions ensure that asylum seekers receive at least emergency care and essential treatment of illness as requested by article 15 §1 which is a mandatory provision? Do they have a further access to health care?

National Health Services Regulations, as amended, entitle asylum seekers to access to the National Health Service, nationally on the same basis as the indigenous population.

Section 1 of the National Health Service Act 1977 requires the Government to provide comprehensive health service so as to secure an improvement in the prevention, diagnosis and treatment of illness. In 1989, the Government introduced regulations requiring NHS Trusts to charge "overseas visitors" for secondary care (hospital treatment), subject to various exemptions (National Health Service (Charges to Overseas Visitors) Regulations 1989). Asylum seekers and failed asylum seekers who had been in the UK for 12 months were unaffected at that time. In 2004, the regulations were amended again so that more overseas visitors, including failed asylum seekers, became liable for hospital charges (2004 Charging Regulations and Department of Health guidance *Implementing the Overseas Hospital Charging Regulations)*. The current system is that a person who has formally applied for asylum is entitled to NHS routine hospital treatment without charge for as long as his application (including any appeal) is under consideration.

Q.27. C. What is the practice regarding access of asylum seekers to health care and how is it organised? In particular, what is the situation in accommodation centres (are doctors coming to the centres or do asylum seekers go to doctors outside)?

The policy is set out at http://www.ind.homeoffice.gov.uk/6353/12358/pb85.pdf.

Asylum seekers who are resident in Induction Centres have access to medical services. In some centres medical services are provided at the centre but the majority of asylum seekers go outside the centre and use the same facilities as the indigenous population.

Health care via an initial assessment is not universal throughout the Initial Accommodation Network and therefore, while there are examples of good practice (e.g. Initial Accommodation at Dover and Ashford), no health care assessments and therefore, potentially no prompt access to primary health care is available in other parts of the Network.

Furthermore, when asylum seekers are 'onward dispersed' from Initial Accommodation to their 'final dispersal destination' access to primary health care is not universal. For example, although the Home Office has arranged with the accommodation providers with which it contracts for them to facilitate the registration of asylum seekers with primary health care providers, this does not generally take place until *after* the individual has left her/his Initial Accommodation which may be 15 days or more after an asylum application has been made. Also, doctors in primary health care remain confused as to the definition of an asylum seekers and are therefore tempted to evade their responsibility to register asylum seekers with their practices on the basis that they may be or may become failed asylum seekers who have diminished entitlement to primary and secondary health care.

Procedures exist, in principle, to ensure that all asylum seekers are registered with GPs for primary health care in accordance with their entitlements under the UK's regulations and the

directive. However, there is anecdotal evidence that those procedures may not be fully effective.

The recent parliamentary by the Joint Committee on Human Rights inquiry into the treatment of asylum seekers reported about considerable difficulties experienced by asylum seekers in registering with a GP.

Q.28. **Q.28. A. What is the length of the period determined by the concerned Member State during which asylum seekers have no access to the labour market? (see article 11 which is a mandatory provision)**

Applicants for asylum are allowed to apply for permission to take up employment if a decision at first instance has not been made within one year of the date on which it was recorded (the policy is set out in Asylum Policy Bulletin http://www.ind.homeoffice.gov.uk/6353/12358/pb72.pdf).

Q.28. B. After that period, are asylum seekers or not obliged to obtain a work permit? In case is there a limit for the administration to deliver the permits and how quick are they delivered? What is their length?

No, they don't require a work permit but must obtain written permission from the Home Office before taking employment (if successful, this permission will be endorsed on the holder's ARC). Employment is granted only until such time as his or her asylum application has been finally determined The Immigration Rules do not transpose Article 11(3), which prohibits withdrawal of permission to work while an appeal or further appeal is pending (where such an appeal has suspensive effect). There is no fixed period within which written permission must be given.

The Home Office does not automatically inform asylum seekers that they have the right to apply for permission to work after one year without an initial decision, or when the year has passed. If an asylum seeker applies to the Home Office after a year, waiting times vary greatly with some receiving no reply. Asylum seekers informed that they have been granted permission to work then have to arrange an interview for a new Asylum Registration Card (ARC) which will state *employment permitted***.**

Q.28. C. After that period, what are the conditions for access of the asylum seekers to the labour market? (in particular, are there rules concerning the maximum allowed of working hours or days per week, month or year, limits in terms of type of work or of professions authorised?

The Immigration Rules explicitly exclude the entitlement to become self-employed or engage in a business or professional activity.

Q.28. D. What are the rules in terms of priorities between asylum seekers on the one hand and nationals, EU or EEE citizens and legally third-country nationals on the other?

The normal labour market tests apply.

Q.28. E. Do asylum seekers have access to vocational training, does this or not depend of their right to access to the labour market, and in case at which conditions? (see article 12 which is optional regarding §1 and mandatory regarding § 2)

The UK has not transposed this provision. However any applicants who have access to the labour market in line with Article 11 would be able to participate in vocational training funded by their employer.

Q.28. F. Are the rules regarding access to the labour market adopted to transpose the directive more or less generous than the ones applicable previously?

Prior to transposition, there was no entitlement for asylum seekers to access the labour market. Ministers retained discretion to allow asylum seekers to work in exceptional circumstances. An exceptional circumstance might have arisen where an application for asylum remained outstanding for longer than 12 months without a decision being made on it, providing the reason for the delay was not attributable to the applicant.

Q.29. Are reception conditions subject to the fact that asylum seekers do not have sufficient resources? Are asylum seekers requested to contribute to reception conditions when they have personal resources (for instance if they work) or to refund the authorities if it appears that they have resources? (see article 13 §§ 3 and 4 which are optional provisions)

Any government-funded reception support is only available to those who can prove they are destitute. Most asylum seekers are not allowed to work. However, if they have any savings/ other forms of income, they are required to report it to Home Office, and it is usually deducted from their payments, or payments stop altogether. If the Home Office become aware of any income the applicant has not reported, they can request a refund, or prosecute the individual.

There is updated guidance for caseowners on determining destitution: see Asylum Support Policy Bulletin 4, *Determining whether persons who apply for asylum support are destitute*. It includes a destitution threshold table to determine whether a person is destitute.

7. SPECIAL NEEDS OF PARTICULAR CATEGORIES OF ASYLUM SEEKERS

Q.30.

Q.30.A. Which of the different categories of persons with special needs considered in the directive are taken into account in the national legislation (see article 17, §1 which is a mandatory provision): disabled people, elderly people, pregnant women, single parents with minor children, persons who have been tortured, raped or victims of serious physical or psychological violence? Include in your answer all other categories envisaged in national law.

Article 17(1) has been transposed in identical terms in the Reception Conditions Regulations (RCR) which define a vulnerable person by reference to the list contained in Article 17.

Q.30. B. How is their specific situation taken into account (see articles 13, §2, second indent, 16 §4 second sentence and 17 which are mandatory provisions)?

Provided people with special needs are identified, upon arrival or in their dispersal area, they will be referred to a GP for assessment and/or their Local Authority for additional support. However, the Asylum Seekers (Reception Conditions) Regulations 2005 establish that there is no duty on the Home Office to carry out or arrange for the carrying out of an individual evaluation of a vulnerable person's situation to determine whether he or she has special needs. It is up to applicants to disclose details of special needs they may have in writing to the Home Office or to health care professionals. Hence, there is no assurance under domestic regulations that such persons will be identified and their specific situation taken into account when provisions for their support and health care are made.

Q.30. C. How and when are the special needs of the concerned persons supposed to be legally identified (see article 17 § 2 which is a mandatory provision and clarify how it has been interpreted by transposition)?

Under the National Health Service and Community Care Act 1990 a person can request an assessment from the Local Authority if they think they have a need for community services. If they are found to have such a need then they will be able to access specialist care facilities. An asylum seeker with a disability can also request an assessment under Section 3 of the Disabled Persons (Services, Consultation and Representation) Act 1986.

As stated above, while there is a duty on local authorities to assess special needs for asylum seekers who need community care services, there is no corresponding duty to assess special needs where this is only relevant for support provided by the Home Office. Policy instructions simply state that the Home Office must take into account any evidence of an individual evaluation supplied that confirms that a vulnerable person has special needs (Asylum Policy Bulletin 83). Examples of individual evaluations which the Home Office will accept include an assessment from the Medical Foundation for the Care of Victims of Torture confirming that an asylum-seeker has been accepted for further treatment, or a community care assessment undertaken by a social services department.

Q.30. D. Is the necessary medical and other assistance provided to persons with special needs as requested by article 15, §2 which is a mandatory provision and in particular to victims of torture and violence as requested by article 20 which is a mandatory provision?

This is contingent upon their needs being recognised and appropriately assessed and supported. There is limited capacity for such screening, assessment and support outside of London where few asylum seekers are now dispersed.

There has been no transposition of these provisions. The UK believes they are complied with under existing regulations giving asylum applicants access to free NHS medical services. Decisions as to what health services should be provided for an individual, including mental health provision and treatment for victims of torture and violence, is a matter of clinical judgment made within the policies of the particular NHS Trust or Primary Care Trust. Clinical

information is assessed by NASS and the medical advisor, who have to ensure that asylum seekers are linked to the health care services they need in the areas to which they are to be dispersed. A review undertaken in 2004 of how NASS meets the health care needs of people seeking asylum has found that NASS is not consistent in considering and acting upon evidence of the applicant's health care needs and that staff making these assessments are sometimes not equipped for the task.

Q.31. About minors:

Q.31. A. Till which age are asylum seekers considered to be minor?

A child, whether unaccompanied or accompanied, is defined in the Immigration Rules (paragraph 349 of HC395 as amended) as a person under eighteen years of age or who, in the absence of documentary evidence establishing age, appears to be under that age.

Q.31. B. How is access of minor asylum seekers to the education system ensured? Is it at school or in case inside accommodation centres and can it be considered as similar to the conditions for nationals as requested by article 10, §1?

Asylum seekers' children of school age are entitled to primary and secondary education under section 16 Education Act 1996, which places a duty on local education authorities to secure places in primary and secondary schools for children residing temporarily or permanently in their area. The duty covers education appropriate to the age, aptitude, abilities and special educational needs they may have up to the age of 16. In addition, there is a power in the regulations to make provision for services to asylum seekers in the form of education, including English language classes and 'developmental activities'. This power has never been used.

Q.31. C. Is access to education ensured not later than 3 months as requested by article 10, §2 (or after maximum one year if specific education for asylum seekers is provided) and till an expulsion decision is really enforced?

There is an expectation that unaccompanied asylum seeking children in public care are found a full-time education placement in a school within a time limit of 20 days. (Guidance on the Education of Children and Young People in Public Care, May 2000). However in practice this often takes much longer due to limited resources.
There is only guidance as to this matter and only for children in public care.

Q.31. D. Is specific education (like language classes) available for asylum seekers, in particular to facilitate their effective access to the education system of the reception Member State (see article 10, §2 which is an optional provision)?

Theoretically yes but in reality this depends entirely on where the minor is supported and resources of their local authority to meet this need.

Q.31. E. Are minors in general accommodated with their parents or with the person responsible of them? (see article 14, § 3)

Minors are always accommodated with their parents or with the person responsible for them unless there are child protection concerns (see sections 17 and 20 of the Children Act 1989).

Q.31. F. Do minors with special needs enumerated by article 18, §2 which is a mandatory provision, have access to appropriate mental health care and qualified counselling?

Sections 1 and 3 of the National Health Service Act 1977 provide for this care. Children have access to mental health care and qualified counselling via Local Authority children's social services and Child and Adolescent Mental Health Services (CAMHS) teams, but in practice this depends on how a child gains access to the statutory assessment process (there are major differences for children in families and for separated/unaccompanied children), the quality of the assessment of the child's needs and the availability of resources within the area of accommodation. For all (non-age disputed) unaccompanied children the Children Act 1989 section 17 needs assessment process should, if carried out properly, identify mental health needs and provide the vehicle to refer to all necessary services. Age disputed children deemed to be over 18 can however be excluded from children's services by taking the age assessment as a preliminary issue prior to a full needs assessment and as a result may be treated as adults, referred to the adult support scheme and never receive a proper needs assessment or referral for treatment/counselling.

Asylum Policy Bulletin 82 (http://www.ind.homeoffice.gov.uk/6353/12358/pb82.pdf) contains detailed guidance on dispersing asylum seekers with special needs. However, it focuses on recognition of "clear and urgent" cases and only uses "obvious" examples of often extreme physical/mental characteristics in guidance to its staff. This militates against caseworkers correctly identifying the mental and other health needs of children and their families and leaves too much scope for these needs to be overlooked or delayed in being treated.

Q.31. G. How and when is organised the representation of unaccompanied minors (guardianship, special organisation) and regularly assessed? (see article 19, §1 which is a mandatory provision)

The UK considers that its obligations under Article 19 are met by reference to the Children Act 1989 duties upon social services departments to look after children in need in their area, under the safeguarding provisions of the Children Act 2004 and the Home Office's contractual arrangement with the Refugee Council establishing a Children Panel of Advisers. All unaccompanied minors arriving in the UK should be referred to the Refugee Children's Panel (RCP), based at the Refugee Council, where a named adviser is meant to be allocated to them to provide guidance and support and ensure that they are aware of their rights and the services to which they are entitled. However, there is no guarantee that a child, who has been referred, will be taken on by the RCP. Furthermore, the Children's Panel Adviser has no legal responsibility for the child and no rights with regard to their care.

The panel has an advisory function, adivors on the panel provide short-term support to children who have claimed or are about to claim asylum in their own right. This includes: assisting child in accessing quality legal representation; guiding the child through the complexities of the asylum procedure; if necessary, accompanying the child to asylum interviews, tribunal and appeal hearings, magistrates and crown court appointments; building

up a support network for the child involving a range of statutory and non-statutory service providers; supporting the child during appointments with GPs, hospitals, social service or other service providers. The Panel does not provide a guardianship type role for unaccompanied children in the UK.
The Panel is only able to meet some of the needs, for some of its clients, some of the time. For example, in 2004 the Panel received 3,868 referrals and of those, 990 were allocated a named adviser. Although the Panel saw many more children through drop-in and surgery work, it does not have the capacity to provide named advisers to all children throughout the process. Moreover the role of the Panel is not a statutory one and, although the Home Office funds it, there is no obligation on Social Services Departments to work together with the Panel's advisers or vice versa. It does not act as an 'appropriate adult' or litigation friend in legal proceedings. At the same time the Children's Panel has limited capacity to follow up the referrals that it makes and no powers to ensure that the wide range of bodies in contact with a child act in his or her best interests.

The Policy Instructions to case-workers only say that:
Panel of Advisers
The Refugee Council will represent a child in his/her dealings with the Home Office and other agencies for the duration of the asylum claim. IND should notify the Panel of Advisers as soon as a claim for asylum is made by, or on behalf, of a child. The Panel of Advisers should also be notified of all age dispute cases. The legal role is limited to advising the child on her or his options and acting on the instructions, to the extent that the young person is capable of giving them.

The Home Office has commissioned a review of the RCP, to focus on, amongst other issues, whether the RCP arrangements meet the Home Office's obligations to unaccompanied minors under the directive. The findings are not yet publicly available

Q.31. H. How is placement of unaccompanied minors organised (with adult relatives, a foster family, in special accommodation centres or other suitable accommodation)? (see article 19, §2 which is mandatory provision)

Unaccompanied minors are the responsibility of the local authority social service department and are provided with housing and support under the Children Act 1989, until he or she reaches the age of 18. They should, on arrival, be referred immediately to the social services department for an assessment and for the immediate provision of assistance. Assistance ranges from accommodation and food to foster carers, language help and trauma counselling.

Q.31. I. How is the tracing of the family members of the unaccompanied minors organised? Are measures taken to protect confidentiality of information when necessary? (see article 19, §3 which is a mandatory provision)

This provision has been transposed in the regulations (reg 6 RCR) and underpins current domestic arrangements that link unaccompanied minors with the family tracing service provided by the Red Cross. The Home Office considers it to be in the best interests of the child to remove an unaccompanied minor where it is possible to put in place acceptable reception and care arrangements in their country of origin. This is for example due to take place shortly to return minors to Vietnam, in disregard of their vulnerability as children who

have very likely been trafficked to the UK. It is arguable whether this policy protects the unaccompanied minor's best interests.

8. EXCEPTIONAL MODALITIES OF RECEPTION CONDITIONS

Q.32. Apart from detention covered by the next question, are there exceptional modalities for reception conditions in the following cases and if yes, which ones and for how long are they applicable, knowing that they should be "as short as possible" (see article 14, §8)?

Q.32. A. Persons with specific or special needs, regarding in particular the period of assessment of those needs?

Q.32. B. Non availability of reception conditions in certain areas

Q.32. C. Temporarily exhaustion of normal housing capacities

Q.32. D. The asylum seeker is confined to a border post

Q.32. E. All other cases not mentioned in the directive (for instance urgent situation in case of a sudden high number of applicants outside a case of application of the directive on temporary protection).

Confinement to a border post should be considered to be detention – Her Majesty's Inspectorate of Prisons (HMIP) has produced several recent reports on conditions in "short term holding facilities" – e.g Heathrow October 2005 and Calais/Les Coquelles January 2005 juxtaposed border controls – August 2005 and found that facilities, procedures and staffing were insufficient.

Q.33. Detention of asylum seekers (we do not cover the situation of rejected asylum seekers detained for the purpose of their return) (see articles 6 §2, 7 §3, 13, §2 2nd indent and 14 §8 which implies that the directive is in principle applicable in case of detention):

Q.33. A. In which cases or circumstances and for which reasons[1] (identity verification in particular if the persons have no or false documents, protection of public order or national security, refugee status determination, way of entry into the territory, etc) can an asylum seeker be detained during the asylum procedure till his request has been finally rejected. Quote precisely in English in your answer the legal basis for detention of asylum seekers in national law.

All asylum seekers are liable to detention under the Immigration Act 1971 and could be detained. In practice, however, only a proportion of them are (what this proportion is we do not know but the target set by the government in their Five Year Strategy is 30%).

[1] Please specify if article 18 §1 of the directive on asylum procedures of 1 December 2005 following which *"Member States shall not hold a person in detention for the sole reason that he/she is an applicant for asylum"* is or not respected (even if it has not yet to be transposed).

The power to detain an illegal entrant, seaman deserter, person liable to administrative removal (or someone suspected to be such a person) is in paragraph 16(2) of Schedule 2 to the 1971 Act as amended by section 140(1) of the Immigration and Asylum Act 1999 and section 73(5) of the Nationality, Immigration and Asylum Act 2002. Paragraph 16(2) states: "If there are reasonable grounds for suspecting that a person is someone in respect of whom directions may be given under any of paragraphs 8 to 10 or 12 to 14, that person may be detained under the authority of an immigration officer pending a) a decision whether or not to give such directions; b) his removal in pursuance of such directions".
Section 62 of the Nationality, Immigration and Asylum Act 2002 introduced a free-standing power for the Secretary of State (i.e. an official acting on his behalf) to authorise detention in cases where he has the power to set removal directions.

The government's criteria with regard to detention are outlined in chapter 38 of the Operational Enforcement Manual (OEM). The OEM states that *'detention must be used sparingly and for the shortest period necessary*'. Section 38.3 cites factors that should be taken in consideration when deciding whether or not to detain an individual. The following factors must be taken into account when considering the need for initial or continued detention.
♦ what is the likelihood of the person being removed and, if so, after what timescale?
♦ is there any evidence of previous absconding?
♦ is there any evidence of a previous failure to comply with conditions of temporary release or bail?
♦ has the subject taken part in a determined attempt to breach the immigration laws? (e.g. entry in breach of a deportation order, attempted or actual clandestine entry)
♦ is there a previous history of complying with the requirements of immigration control? (e.g. by applying for a visa, further leave, etc)
♦ what are the person's ties with the United Kingdom? Are there close relatives (including dependants) here? Does anyone rely on the person for support? Does the person have a settled address/employment?
♦ what are the individual's expectations about the outcome of the case? Are there factors such as an outstanding appeal, an application for judicial review or representations which afford incentive to keep in touch?
The three factors mentioned against detention (put in a form of questing the case worker needs to consider) are: '*is the subject under 18?' 'Has the subject a history of torture?' 'Has the subject history of physical or mental ill health?'* Section 38.10 identifies persons considered unsuitable for detention. Section 38.4 identifies persons considered unsuitable for detention under the Fast Track procedure.
Since March 2000 asylum applicants have been detained at Oakington where it appears that their claims are capable of being decided quickly. Detention for this purpose is commonly referred to as being under the 'Oakington criteria' although it is now set out under the title "Detained Fast Track Processes Suitability List".
In addition, since 10 April 2003 there has been a Detained Fast Track process at Harmondsworth which includes an expedited in-country appeals procedure for male claimants. In May 2005, the Detained Fast Track was expanded to include the processing of female claimants at Yarl's Wood.
The policy in relation to detention for Fast Track processes was updated in February 2006.
When officers come across a person who makes an application for asylum, they should consider whether he or she meets the Detained Fast Track Suitability List criteria. All potentially suitable applicants must be referred to the National Intake Unit (NIU) Oakington co-ordinator who will confirm if they are accepted into either the process at Oakington,

Harmondsworth or Yarl's Wood. The use of detention to Fast Track suitable claims under these processes is necessary to achieve the objective of delivering decisions quickly.
Any claim may be referred to the Detained Fast Track, whatever the nationality or country of origin of the applicant, where it appears after screening to be one that may be decided quickly. To assist staff in making referrals, the 'Detained Fast Track Processes Suitability List', includes a list of countries which may well give rise to claims which may be decided quickly, within the indicative timescales for the Detained Fast Track. Generally speaking, any asylum claim from a national of the countries listed on the Detained Fast Track Suitability List should be referred to the NIU unless the claimant falls within one of the excluded categories.

The OEM was revised in 2005 though the nature of the changes introduced is not clear.
http://www.ind.homeoffice.gov.uk/documents/oemsectiond/chapter38?view=Binary

The OEM seems to allow wide scope for discretion in individual decisions to detain. Practitioners and stakeholders raise concerns stating that the Home Office decision to detain is often arbitrary and that caseworkers do not give appropriate consideration to the specific circumstances of the individual's case. See, for instance, Amnesty's report from June 2005 commenting on the detention policy of the UK government:
http://web.amnesty.org/library/Index/ENGEUR450192005?open&of=ENG-2EU

Amnesty's report, *United Kingdom, Detenion of People who have sought asylum,* highlights how individuals are often taken into detention on the basis that a bed is available within the detention estate, rather than on considerations of necessity, proportionality and appropriateness. They found that authorities are using the risk of absconding as justification for detention without a detailed and meaningful assessment of the risk, if any, posed by each individual. In short, Amnesty International considers that detention is not being carried out according to international standards, is arbitrary and serves little if any purpose at all in the majority of cases where measures short of detention would suffice.

Q.33. B. Has your member State adopted measures to transpose §3 of article 7 which is an optional provision? If yes, how has this provision been legally understood (is it a case of detention or an obligation to stay in and not leave a certain place?) and for which reasons can an asylum seeker be "confined" in such a place?

This measure was not transposed. Indeed, the UK government considers that the directive is not relevant to detention and therefore does not have any impact on its detention practice.

Q.33. C. Are there legally alternatives to detention, like obligation to report to the authorities, obligation to stay in a place, provision of a guarantor or of a financial guarantee?

Contingent on an immigration service assessment, a person may be required to report regularly. This may involve an electronic tag or voice recognition technology or physically attending a reporting centre.

Q.33. D. Which is the competent authority to order the detention of an asylum seeker? Explain if different authorities are involved to first take and later confirm the decision.

Chief immigration officers acting under the authority of the Secretary of State.

Q.33. E. For how long and till which stage of the asylum procedure can an asylum seeker be detained?

People can be detained at any stage of their application for asylum. There is no maximum period of detention.

Q.33. F. In which places (can we call them "closed centres"?) are asylum seekers detained (places in a special closed centres reserved only to asylum seekers, together with returnees like illegal aliens or even in a normal prison, in case within separated areas or with the other detainees)? Indicate if a difference has to be made following the location of the "closed centres" at the border or on the territory? Which is the authority managing those places and is it the same as the one in charge of reception conditions?

There are 10 immigration removal centres (IRCs) in the UK. Most are run by private companies contracted to the Immigration and Nationality Directorate (IND), however, 3 centres are run by the Prison Service.
There are 'short term holding facilities' at Manchester, Dover, Harwich and Colnbrook.

Q.33. G. Does UNHCR and NGOs have access to the places of detention and under which conditions?

UNHCR and NGOs may access immigration detention. Particularly important is the work carried out by AVID (Association of Visitors to Immigration Detainees), the national umbrella charity for groups visiting immigration detainees, in supporting individuals and groups of visitors to detainees, and collating and communicating information in order to help define and implement best practice.

Within the framework of exercising its supervisory function under Article 8 of its Statute and Article 35 of the 1951 Convention relating to the Status of Refugees, UNHCR engages in a monitoring role of detention policy and practice in the United Kingdom. As such, UNHCR London is granted unhindered access (including to detainee persons of concern) to places of detention throughout the UK upon notification to the relevant authorities. While unannounced 'spot visits' are not carried out, a high level of cooperation on the part of the authorities is exercised. UNHCR conducts regular visits to detention centres and may bring concerns to the attention of the authorities including interventions on individual cases where deemed necessary and appropriate in extending protection to persons of concern to UNHCR.

Q.33. H. What appeal(s) can asylum seekers introduce against the fact he is detained? Is article 18 of the directive on asylum procedures of 1 December 2005 following which *"Where an applicant for asylum is held in detention, Member States shall ensure that there is a possibility of speedy judicial review"* respected (even if it has not yet to be transposed)?

Ways of challenging detention are :
- Bring a bail application to an Immigration Court (the Asylum and Immigration Tribunal or AIT) where an independent Immigration Judge makes a decision on whether released should

be allowed. The case is presented by a legal representative and opposed by a Home Office Presenting Officer, who is a representative of the Home Office and Immigration Service. If bail is refused, the detainee has the right to apply for bail again. If bail is granted there will normally be certain conditions attached.
- The legal representative can also make an application for 'CIO (Chief Immigration Officer) Bail'. Normally this involves two people offering a large amount of money (often more than £2,000 each although it can be much less) to obtain release.
- The detainee's legal representative can make an application for 'Temporary Admission.' If successful the Immigration Service will usually release with very few conditions - normally a condition to live at a particular address and report to the Immigration Service on a particular date.
- In addition, legal representative can go to the High Court in a 'Judicial review' or 'Habeas Corpus' procedures.

Bail applications are lodged with the AIT by completing a given form B1. The AIT must list the hearing within three days of receiving the application.

Habeas corpus is only appropriate where it is asserted that there is no power to detain. There are procedural advantages to habeas corpus: habeas corpus writs are issued as of right (there is no discretion to withhold relief as there is in judicial review); habeas corpus applications are given high priority; there is no permission procedure and there is no time limit on applications However, the Courts have cautioned against using habeas corpus.

Judicial review affords greater flexibility. Judicial review should be used in detention cases where:
a) ***the real challenge is to the administrative decision underlying the decision to detain (such as the issuing of a deportation order);***
b) ***the challenge is to a refusal by an immigration judge to grant bail;***
c) ***the challenge is brought on the basis that the detention was not in accordance with Home Office policy; or***
d) ***the challenge does not concern the power to detain but about whether the exercise of the power was reasonable or proportionate***
Where the claimant is still detained at the time that the judicial review is lodged, bail can be sought from the High Court.
The claimant (or his representative) must serve notice on IND within 7 days that they have filed a claim for JR and must disclose the grounds on which his claim relies. Once notice is served and the grounds disclosed, a summary defence must be submitted within 21 days. If permission is granted, IND then has 35 days to submit a full defence. Expedited consideration of the claim for judicial review can be sought by lodging an application for urgent consideration in addition to the standard judicial review claim form.

Q.33. I. Is the directive on reception conditions considered to be in principle applicable to the places where asylum seekers are detained? In particular which information do they receive about their rights, which access do they have to legal advice and health care?

The UK government considers that the directive is not relevant to detention.

Q.33. J. Apart from freedom of movement, what are the main differences between normal reception conditions and exceptional modalities for

reception conditions in case of detention, knowing that they should be "as short as possible" (see article 14, §8)? If it is about closed centres, are the regulations of those places in line with the requirements of the directive (is article 13, §2, second indent of the directive following which "*Member States shall ensure that standards of living is met (…) in relation to the situation of persons who are in detention*" respected?).

The Detention Centre Rules 2001 provide for the regulation and management of these centres, underpinned by a comprehensive set of Operating Standards.

Independent inspections by Her Majesty's Chief Inspector of Prisons and Her Majesty's Chief Inspector of Education have highlighted concerns about the welfare and development of children within a locked-in custodial setting, where there is a high level of insecurity, and without the freedom to engage with wider society and establish other social and cultural relationships. "It remains our view that, however conscientiously and humanely children in detention are dealt with, it is not possible to meet the full range of their developmental needs. We therefore remain of the view that the detention of children should be an exceptional course, and only for a very short period – no more than a matter of days. We also believe that the guiding principles that underlie international and domestic law on children should be brought into decisions to detain, and to continue to detain, children and families" (HMIP Report on Dungavel Published August 2003, p45)

As at 30 December 2006, 45 people detained solely under Immigration Act powers were recorded as being less than 18 years old. 25 of these had been in detention for less than one month, 15 for between 1 and 2 months, and the remainder between two and three months.

Q.33. K. Are measures taken to avoid detention of asylum seekers with special needs (if yes, which ones?) or are special measures taken because of their needs?

With regard to detention of individuals with special needs, section 38.1 of the OEM states that people suffering from serious medical conditions or the mentally ill should not be detained. With regard to possible victims of torture, the policy stases that there should be *'independent evidence that they have been tortured'* to prevent detention. The question remains whether the screening procedure is efficient enough to identify such cases as the onus appears to be on the person with special needs to draw these to the attention of the Home Office.

Q.33. L. Can minor asylum seekers be detained together with relatives? Can unaccompanied minor asylum seekers be detained? If yes, are there special measures which take into account that children are concerned?

Children can be lawfully detained as part of a family group. Continued detention is subject to Ministerial review but only after 28 days. The Ministerial review is considered an inadequate safeguard against inappropriate detention and is currently subject to pending legal challenge. The process provides for a statutory child in need assessment only at day 21 of the detention.

Immigration instructions clearly provide that unaccompanied children should not be detained except in exceptional circumstances and for the shortest possible period and that measures are followed to minimise the risk of children being detained as adults by mistake. The current guidance on detained fast-track processes gives clear unequivocal advice to immigration

personnel on how to reduce the risk of detention on account of age dispute. Despite these instructions, children continue to be detained as adults whilst awaiting age assessment to be carried out rather than being released pending the outcome of an age assessment.

There is growing concern among practitioners and stakeholders that use of detention for children contravenes a range of international human rights standards relating to the treatment of children, and impacts negatively on already vulnerable children. Save The Children has recently produced a report, *No Place for a Child*, which sets out to analyse current UK detention policy and practice, its impact on children, and to offer viable alternatives to the immigration detention of children. The report is available at:
http://www.savethechildren.org.uk/scuk_cache/scuk/cache/cmsattach/2414_no_place_for_a_child.pdf

The UK's reservation to the Convention on the Rights of the Child (CRC) operates specifically to exclude the consideration of 'best interests' when immigration decisions are being made about foreign children, including asylum seekers, as is apparent in the current policy to detain families with children or unaccompanied minors whose age is disputed by the Home Office or social services departments.

It is clear that this approach is at odds with the CRC's best interest of the child principle in article 18(1) of the directive and that significant changes will have to be made for the UK effectively to implement that the best interests of asylum seeking children should be a primary consideration for Member States in operating reception facilities and making decisions about reception arrangements.

The exclusion of immigration agencies, including the Immigration Removal Centres, from section 11 of the Children Act 2004 is illustrative of this wider failure to treat children seeking asylum as children first and foremost. Section 11 imposes a duty on public bodies to have regard to the need to safeguard and promote the welfare of children in discharging their normal functions and to ensure that their services are provided with regard to that need.
The recent report by the Joint Committee on Human Rights is very critical of the UK Government's continued reservation to the CRC and insists that the reservation should be withdrawn.

Q.33. M. In particular is article 10 regarding access to education of minors respected in those places?

Education in detention centres is ensured as a matter of practice but independent inspections have found that educational provisions are deficient in detention centres. While schoolrooms are provided within the detention facilities, at present, it does not appear that funds have been made available, and processes put in place, to make education in any real sense meaningful. A recent inspection of one immigration detention centre with dedicated family units has highlighted cases of children whose education had been severely damaged by their detention (HM Chief Inspector of Prisons, Report on an announced inspection of Yarl's Wood Immigration Removal Centre, 28 February-4 March 2005).

Q.33. N. How many asylum seekers are for the moment detained in your Member State? Which proportion does this represent in comparison of the total number of asylum seekers at the same moment?

At 30 December 2006, 1285 asylum seekers were detained in Immigration Removal Centres, and 30 at Immigration Short Term Holding Facilities. This excludes persons detained in police cells and those detained under both criminal and immigration powers. The number of people detained in prison facilities and in police cells is not given in the latest statistics.

It is not possible to know exactly what proportion of all asylum seekers this represents as the UK government does not collate the relevant information.
The most recent bulletin (Home Office, Asylum Statistics: 4th Quarter 2006) includes statistics on the number of asylum seekers leaving detention during the quarter. A total of 3,740 people left detention in the 3rd quarter of 2006, 1970 (53%) were removed from the UK, 1545 (41%) were granted temporary admission/release and 215 (6%) were bailed. These statistics however exclude persons detained at Oakington Reception Centre, Harwich and prison establishments.

9. ORGANISATION OF THE SYSTEM OF RECEPTION CONDITIONS

Q.34. Explain if the system of providing reception conditions is centralised or decentralised (which levels of government do provide practically reception conditions?) (do not confuse this question with question number 3 about the competence to make rules about reception conditions).

The system is centralised but in the process of being regionalised. NASS is the overall government body with responsibility for supporting asylum seekers, although service delivery is mostly run by voluntary sector agencies with the assistance of NASS. Many of the detention centres are managed by private companies, contracted by the Home Office.

With the New Asylum Model (NAM) complete, responsibility for all new asylum claims falls to one of six regions across the UK: Scotland and Northern Ireland; North West; North East, Yorkshire and Humberside; Midlands and East of England; London and South East; and Wales and South West. Six new Regional Directors will be in post in the next few months. They are responsible for managing all aspects of Agency business in their regions, except ports and detention centres.

Q.35. In case, are accommodation centres public or/and private (managed by NGOs? If yes, are the NGOs financially supported by the State?)

Initial accommodation is managed by NGOs and public organisations. Dispersal accommodation is managed by public and private providers. They are all funded by the State to deliver this support.

Both initial and dispersal accommodation is managed by public or private providers contracted by the Home Office.

Q.36. In case, how many accommodation centres are there in your Member State (distinguish in your answer between public and private centres)?

There are six Induction Centres in the UK. Induction Centres are where asylum seekers may be accommodated while there asylum claim is registered and while their application for

support is decided. Four of the centres are run by NGOs and the other two are run by Local Authorities.

NGOs no longer deliver Initial Accommodation. Instead, the Home Office runs mainly large IA centres in each NAM region (London, Liverpool, Leeds, Cardiff, Glasgow, Solihull).

Q.37. Is there in the legislation a plan or are there rules in order to spread the asylum seekers all over the territory of your Member State to avoid their concentration in some areas like big cities or to share the costs of their reception between central, regional and local authorities?

Under the 1999 Act, the UK government has the power to "disperse" asylum seekers around the country. There are currently 34,220 dispersed asylum seekers living in accommodation provided by the National Asylum Support Service (end of March 2006). The idea behind the law is to move asylum seekers away from London and the South East of England where they have historically resided.

Dispersal is divided into a dozen cluster areas in the UK. Within each cluster area NASS proposes to form smaller clusters of asylum seekers based on language. For an area to be considered suitable to house asylum seekers it must have available affordable accommodation, a multi-cultural environment and a support infrastructure.
There are additional guidelines on cluster areas. They should:

- Have unemployment levels at, or below, the national average.
- Be within 1 - 1.5 miles of further or adult education college.
- Be within 3 miles of a district general hospital.
- Be adequate number of health centres in the locality.
- Be sufficient primary schools with gaps on rolls.

Q.38. Does a central body representing all the actors (like NGOs) involved in reception conditions exist? Does it play a consultative role for the State authorities, a coordination role for the actors or any other role?

There is no central body representing all the actors involved in reception conditions. There is a National Asylum Support Forum which is co-ordinated by the Home Office and holds quarterly meetings. Membership is individual not organisational. It is an advisory body for the Immigration Minister and has no statutory powers and there is no obligation to follow its advice.

The six agencies involved in providing initial accommodation are co-ordinated by a central body – the Inter-Agency Co-ordination Team. They meet regularly together to share good practice, and with the Home Office, to raise difficulties or discuss issues relating to reception conditions.

The Home Office intends to develop regional stakeholder groups to reflect devolution of responsibility to the regional NAM centres.

Q.39. **Q.39. A. Which is the body in charge of guidance, monitoring and controlling the system of reception conditions as requested by article 23**

which is mandatory provision? Include in your answer which is the competent ministry (Interior, Social affairs, etc) for reception conditions?

The Immigration and Nationality Directorate of the Home Office is overall in charge for the system of reception.
There is no system of orientation, guidance and control in place, nor has one been set up further to the directive. The only control, monitoring and guidance that takes place is, with regard to housing, in respect of arrangements for accommodation under target contracts. Target contracts set out performance standards, which those contracted by the the government to provide accommodation to asylum seekers must respect. While this guidance is very detailed (see http://www.ind.homeoffice.gov.uk/6353/12358/schedule3tothetargetcontract.pdf) it concerns only housing and there is no public account of how/how often the contract standards are monitored by government officials and requirements respected by housing providers.

The system of guidance, control and monitoring of the level of reception conditions cannot be deemed to be sufficient as it does not concern all asylum seekers (but only those housed under the target contracts above), relates only to standards of accommodation, and is not made public.

Q.39. B. Has your Member State (like the Czech Republic did recently) approved quality standards (not necessary legally binding) for housing services (for instance about the number of persons per bedroom on the basis of its size, number of accessible toilets, bathrooms, showers and washing machines per number of persons, existence of common rooms with radio, television, newspapers, books, computers, accessibility of telephone, existence of recreative rooms for children,…) to be respected in particular in accommodation centres?

The National Asylum Support Service has introduced (in April 2006) quality standards for housing services. These are known as "Target Contracts" and were introduced following a large tendering exercise. The Statements of Requirements for Accommodation providers can be found at
http://www.ind.homeoffice.gov.uk/6353/12358/schedule3tothetargetcontract.pdf.
While the contract specifications are more prescriptive than the previous specifications, NGOs working with asylum seekers accommodated by the Home Office find that they are still difficult to enforce and that standards still vary widely.

Q.39. C. How is this system of guidance, control and monitoring of reception conditions organised?

There is no organised system of guidance, control and monitoring of reception conditions. The Home Office undertakes inspections of dispersal accommodation and plans are being developed to undertake inspections of Initial Accommodation. Her Majesty's Inspectorate of Prisons (HMIP), and independent body, inspects removal centres on a regular basis.

Q.39. D. Does the body in charge of guidance, control and monitoring produce reports about the level of reception conditions? If yes, how frequently and are they public?

No.

Q.40. **Q.40. A.** What is the total number of asylum seekers covered by reception conditions for the last year for which figures are available (see article 22 obliging Member States to calculate those statistics about which we also asked the Commission to require them from Member States for mid June)?

At the end of 2006, 49295 asylum seekers (including dependants) were being supported. 36420 asylum seekers (including dependants) were being supported in dispersed accommodation, 11355 were receiving subsistence only support and 1525 were supported in initial accommodation.

Q.40. B. What is the total budget of reception conditions in euro for the last year for which figures are available?

Costs estimates for asylum support for 2005-06 are around £170 million (€250 million). (See NASS evidence to House of Lords 32nd Report of Session 2005-06, p.52)

Q.40. C. What is the average cost of reception conditions in euro per asylum seeker for the last year for which figures are available?

The cost of accommodation and cash support per person in dispersed accommodation is £610 (€ 900) per month. The cost of cash support for those requiring "subsistence only" support is £170 (€250) per month (see NASS evidence to House of Lords 32nd Report of Session 2005-06, p.52).

Q.40. D Are the costs of reception conditions of asylum seekers supported by the central/federal or federated government or are they shared with regional and/or local authorities?

All costs are supported by central government.

Q.40. E. Is article 24 § 2 of the directive following which "*Member States shall allocate the necessary resources in connection with the nationals provisions enacted to implement this directive*" respected?

The problem is not so much the lack of central government resources but the lack of local resources and the political control of those resources which creates a failure to provide consistent services and support. Stakeholders and legal practitioners point out the following areas where more resources are needed to meet obligations under the directive:
- There remains no structured legal guardianship or representation arrangements as required by Article 18. It is legally possible for an asylum seeking child to be appointed a children's guardian within the asylum process through the Children and Family Courts Advisory and Support Service (CAFCASS) but practically remote. The government presumption is that local social services departments act as an adequate "corporate parent" for the purpose of Article 18 of the directive – in practice there is a real lack of genuine independence of social services due to financial pressures and relationships and information sharing practices between Home Office and social services for purposes not necessarily connected with the best interests and welfare of the child. This compromises the independence needed to ensure that

legal guardianship or representation properly maintains a child's best interests and for the child to be confident that their views, wishes and feelings at all stages of the asylum and support process are taken into account and reflected in the decision making process.
- The lack of a proper system of legal assistance before Asylum Appeals Adjudicators (ASA) represents a serious obstacle to asylum-seekers wishing to be represented before the ASA and exercise their appeal rights under Article 21 of the directive.

Q.41. **Q.41. A.** What is the total number of persons working for reception conditions?

According to the section about NASS in the IND website, NASS employs approximately 900 staff. About half of them are based in the 11 regional offices and the other half in Croydon.
http://www.ind.homeoffice.gov.uk/applyin/nass/claimingsupport/aboutus
However, this is a fraction of the numbers involved as there are others working in providing health care, education, detention services etc.

Under the New Asylum Model (NAM), around 300 case owners have been recruited to staff 25 teams in the six regions across the UK. In addition, some 1,000 staff comprises the Legacy Team.

Q.41. B. How is the training of persons working in accommodation centres organised? Does it take into account specific needs of unaccompanied minors when relevant as well as the gender dimension? (see article 14 §5, 19 § 4 and also 24 §1 which are mandatory provisions)?

The UK contracts out the provision of accommodation. For staff working in Initial Accommodation, a job description details their individual roles and responsibilities.

Case owners who have been recruited to work in the New Asylum Model (NAM) have to complete a 55-day training programme.

Q.41. C. Are there rules about the deontology of persons working in accommodation centres, in particular on confidentiality?

There generic contracts in place between the Government and its contractors include clauses relating to confidentiality.

10. IMPACT OF THE DIRECTIVE

Legal impact of the transposition of the directive:

Q.42. Specify if there are or not big problems with the translation of the directive in the official language of your Member State and give in case a list of the worst examples of provisions which have been badly translated? (please note that this question has in particular been added to the questionnaire concerning the new Member States)

None in the UK.

Q.43. Where there precise legal rules on reception conditions for asylum seekers before the adoption of the norms of transposition of the directive (if yes, specify what the nature of those rules was (legislation, regulation, administrative instructions,…)?

The UK government considered that many elements of the Directive did not require implementation as equivalent provision already existed in UK law. The main Acts covering reception conditions, which predate transposition of the Directive, are:

Immigration and Asylum Act 1999
Nationality, Immigration and Asylum Act 2002
Asylum and Immigration (Treatment of Claimants, etc.) Act 2004

Q.44. Did the legal rules applicable to reception conditions become more clear, precise, coherent or detailed with the adoption of the transposition norms (for instance do you now have after the transposition one basic text dealing with reception conditions instead of numerous different texts in the past?

Rules relating to asylum support did, if anything, become more confused and scattered. Implementation of the directive has further complicated the legislative asylum reception framework by adding/amending regulations and immigration rules against which various statutory provisions (i.e. primary legislation) have to be read to understand what exactly rights and obligations in the system of asylum support are.

Q.45. Did the transposition of the directive imply important changes in national law or were the changes of minor importance? In case, list the most important changes that have been introduced.

The changes were of minor importance. The government stated that that they did not need to make any changes with regard to several sections of the directive. Voluntary sector organisations agreed with this in some cases – for example the UK government have always, on the whole, attempted to house families together where possible. In other cases, voluntary sector organisations felt that the government would need to make modifications in order to meet the directive's requirements – for example reviewing the level of support that is currently 30% below income support.

Of the changes the government did intent to make, very few have been carried out. For example, they noted that they would need to provide information on voluntary organisations and legal representatives to new asylum applicants. This has not become standard policy. The Home Office policy is instead to fund the voluntary sector to provide further information.

Because very little appears to have changed in terms of government policy or procedure, implementation of the directive has not affected voluntary sector service to asylum seekers very much. However, the directive has been a useful tool on a broader policy level, when debating the need for increased protection or more detailed standards for newly arrived asylum seekers.

Political impact of the transposition of the directive:

Q.46. Explain briefly if there has been an important debate about the transposition of the directive (in particular in the Parliament, but possibly also in the government, between political parties, including in medias, etc; underline in case the main points which have been discussed or have created difficulties)

None to my knowledge.

Q.47. **Did the transposition of the directive contribute to make the internal rules stricter or more generous? In particular, did your Member State use the occasion of the transposition to abolish more favourable provisions of national law? Does your Member State still have rules more favourable than the provisions of the directive (if yes, try to give the more important examples).**

Transposition transformed some discretionary powers with regard to reception in a legal duty without however making a difference in practice. Some rules, such as those on reduction and withdrawal of support, have become stricter further to transposition.

11. ANY OTHER INTERESTING ELEMENT

Q.48. What are in your view the weaknesses and strengths of the system of reception conditions in your Member State?

Weaknesses:

- Increasing reliance on detention (see IND's Five Year Strategy: Home Office, *Controlling our Borders: Making Migration Work for Britain,* 2005)
- Use of support as a tool of coercion throughout the system
- UK reservation to the CRC which has a negative impact on the way in which asylum seeking children and young people in public care are dealt with, despite the same care duties as for indigenous children being enshrined in primary legislation
- Lack of definition of 'vulnerable' individuals who should receive additional and tailored support and lack of agreement between NASS and Social Services around who should support those with less clear care needs

Strengths:

- Eligibility for support for all destitute asylum seekers after lodging their claim
- Families are on the whole housed together and NASS has in practice kept its broader definition of a family
- Independent advice on support is available from contracted voluntary agencies
- Independent adjudication body for negative support decisions.
- Minors entitled to the same support and education as other children in UK
- Free access to primary and secondary health care until appeal stage.

Q.49. Mention any good practice in your Member State which could be promoted in other Member States

- Consultation with relevant stakeholders on implementing legislation
- Commitment to working with stakeholders

- Funding for voluntary sector agencies which play a role in advice and delivering support services while preserving their right to advocate against government policy
- Accommodation within indigenous UK communities rather than in institutionalised accommodation centres

Q.50. Please add here any other interesting element about reception conditions in your Member State which you did not had the occasion to mention in your previous answer.

Stakeholders and practitioners question the desirability of maintaining a separate housing and social security system for asylum seekers. It would arguably be more equitable and cost-effective to revert to delivering welfare support to destitute asylum seekers through the mainstream welfare system. At a minimum, they consider that the provision of support to asylum seekers by a dedicated agency (such as, at present, NASS) should be made independent of the Home Office, so as to insulate it from Home Office policies that are driven by a culture of deterrence and restriction, rather than designed to meet asylum seekers' needs.

Another major, negative, impact on asylum seekers' reception conditions are the frequent and rapid changed to the support system which leave asylum seekers between regimes. An example is the situation of asylum seekers supported by local authorities under Interim Provisions, which in the course of the last year have been transferred to NASS support on a phased basis. Disbenefited cases have also been transferred to direct NASS support. A 'disbenefited' asylum seeker is one whose claim for asylum was refused on or after 25 September 2000 and who was previously in receipt of income support. NASS has agreed special arrangements to fund local authorities to continue providing necessary accommodation for them. Between 5,000 and 6,000 interim cases and up to 350 disbenefited cases were caught under this change of policy. It is thought that the majority of people involved will have had to move in line with NASS's dispersal policies, although they will normally have been accommodated since at least 2000.

The UK parliamentary Joint Committee on Human Rights has recently conducted an inquiry into the treatment of asylum seekers (see Q7 bibliography) and concluded that: "In the Committee's view, the current system is overly complex, poorly administered, offers inadequate information and advice to ensure that people receive the support to which they are entitled and in some cases denies any support at all to those who are destitute."