

France's Asylum System

Introduction

Under France's asylum system, asylum seekers are streamed into one of two procedures, the regular or the priority procedure. Both procedures require asylum seekers to undertake a seemingly endless number of trips to various administrative offices and decision making bodies. The regular procedure is offered to those who have the proper documentation to be in France, whereas the priority procedure is offered to those who do not have proper documentation. The priority procedure does not allow asylum seekers very much time to put together their asylum claim. It also often deprives asylum seekers from access to legal aid or other social services. In the vast majority of cases, the claims under the priority procedure are rejected. Accordingly, many activists argue that there is a bias underpinning the priority procedure.

Asylum claims are first adjudicated by the Office for the Protection of Refugees and Stateless Persons (*Office Français de la protection des réfugiés et des apatrides* – OFPRA), which is located in Paris. However, often this first decision is not a fair one, because it is often predicated strictly followed and confusing procedural requirements. A high number of OFPRA's decisions are therefore appealed to the refugee appeal body, the *Cour Nationale du Droit d'Asile* (CNDA). However, this appeal is often illusory as it is difficult for asylum seekers to secure legal representation in France. Furthermore, in a number of situations, the asylum seeker may be deported while their appeal application is still being processed and decided upon.

In recent years, the asylum system has been influenced by a hardening of attitudes towards foreigners and asylum seekers. In particular, this attitude change has made it more difficult for individuals to arrive on French territory and access France's protection mechanisms. Moreover, those who do manage to arrive onto French territory are subject to France's liberal detention policy and aggressive deportation measures.

1. Types of Protection

OFPRA grants three types of refugee protection:

1) Conventional Asylum (under the 1951 United Nations Refugee Convention)

Asylum is principally granted under the 1951 UN Convention. To merit protection under the Convention, claimants must meet the criteria set out in the Convention definition of a refugee: they must (1) be outside their country of origin (2) have a well-founded fear of persecution (3) due to reasons of race, religion, nationality, political opinion or membership in a particular social group and (4) are unable or unwilling, by reason of their fear, to secure protection from their country of origin. The entire definition is available at: <http://www.unhcr.org.au/basicdef.shtml>

Before the 2003 legislative changes, OFPRA would rarely grant Conventional Asylum status to individuals persecuted by non-state actors. The concept of non-state agents of persecution has now been introduced into the law.¹

Convention Refugees (CRs) are granted a residency card (*carte de resident*) valid for 10 years. The card will also be issued to the CR's spouse if the marriage occurred prior to the CR becoming stateless and the CR's children when they attain 18 years of age, or 16 years of age if they wish to work. Renewing the residency card is largely an administrative exercise. The CR's refugee status is not re-assessed. Rather, the CR need only go to the regional administrative authority (*préfecture*) to re-apply for a new card.

2) Constitutional Asylum

This little-used form of refugee protection is enshrined in the 1946 French Constitution, which is in turn incorporated in the Preamble to the 1958 Constitution.² OFPRA can grant this type of asylum to individuals "persecuted on grounds of [their] action for freedom."³ It is thus a more narrow form of protection, requiring active involvement in activities in favour of freedom in addition to some form of persecution.

Asylum seekers granted Constitutional Asylum receive virtually identical benefits conferred to CRs, including the 10-year residency card.

3) Subsidiary protection

Subsidiary protection was introduced as part of the sweeping changes in French asylum law in 2003. It replaces a previous form of protection known as territorial asylum. Under this new system, protection may be granted to persons who do not satisfy the criteria of Conventional Asylum but who can prove that they would be exposed in their country of origin to serious threats of capital punishment, torture or inhuman treatment or punishment, or a serious threat to life as a result of indiscriminate violence due to internal or international armed conflict.⁴

Subsidiary protection is short-term. A person who is granted Subsidiary Protection is issued a renewable one-year residency card. The card and associated rights are extended to spouses and children in the same manner as for CRs. However, the card for Subsidiary Protection can only be renewed if the conditions that necessitated protection continue to exist. Furthermore, authorities

¹ Office of the Commissioner for Human Rights, *Report by Mr. Alvaro Gil-Robles, Commissioner for Human Rights, on the Effective Respect for Human Rights in France* (Strasbourg: Council of Europe, 2006), <<https://wcd.coe.int/ViewDoc.jsp?id=965765&Site=CommDH&BackColorInternet=FEC65B&BackColorIntranet=FEC65B&BackColorLogged=FFC679>> at para. 205 [*Gil-Robles Report*]. .

² *Préambule de la Constitution Française de 1958* (avec renvoi à l'article 4 du *Préambule de la Constitution Française de 1946*), J.O., 4 October 1958, <<http://www.legifrance.gouv.fr/html/constitution/constitution2.htm#preambule>> at para. 4.

³ United States Committee for Refugees and Immigrants, *World Refugee Survey – France 2003* (Arlington: U.S. Committee for Refugees and Immigrations (USCRI), 2003),

<<http://www.unhcr.org/refworld/publisher,USCRI,ANNUALREPORT,FRA,3eddc4980,0.html>> [*USCRI 2003*]

⁴ *Loi n° 2003-1176 du 10 décembre 2003 modifiant la loi n° 52-893 du 25 juillet 1952 relative au droit d'asile*, *Journal Officiel*, J.O., 11 December, 2003, 21080.

can refuse to renew the card if the individual is designated as a threat to public order, security, state interest or has committed a serious offence.⁵ The United States Committee for Refugees and Immigrations (USCRI) has criticized these grounds as being ill-defined.

After living in France for five years, a person who has been granted Subsidiary Protection may finally apply for a 10-year residency card.⁶

2. Asylum Procedure

Asylum seekers in France must overcome many procedural hurdles before the hearing of their case OFPRA even begins.

1) Access to Asylum

The French government has in recent years adopted increasingly stricter border security measures in an attempt to reduce migratory flows, including stricter visa requirements and carrier sanctions. The border police (*Police aux frontières* – PAF) have also begun to perform more gangway checks immediately after passengers disembark in order to identify those traveling without proper documentation. It is alleged that those found to be without proper documentation are often removed immediately without being given an opportunity to claim asylum.⁷ These increased security measures have made it more difficult for asylum seekers to reach the French border.⁸

2) At the Border

Asylum seekers with valid visas only file an asylum application request with the *prefecture* once inside France,⁹ preferably before their visa expires.¹⁰ However, asylum seekers entering France without the proper documentation must declare their intentions to apply for asylum to the PAF at the border. The PAF will forward the details of their claim to the OFPRA who will then render an initial decision as to whether the asylum claim is manifestly unfounded before allowing the asylum seeker to enter French territory.¹¹

⁵ USCRI, *World Refugee Survey – France 2004* (Arlington: USCRI, 2004), <<http://www.unhcr.org/refworld/publisher,USCRI,ANNUALREPORT,FRA,40b4593a8,0.html>> [USCRI 2004]; see also Canada Immigration and Refugee Board, *Response to Information Request FRA101741.FE*, 13 October 2006, <<http://www2.irb-cisr.gc.ca/en/research/rir/?action=record.viewrec&gotorec=450720>> [Immigration and Refugee Board].

⁶ Immigration and Refugee Board, *supra* note 5.

⁷ *Gil-Robles Report*, *supra* note 1 at para. 193.

⁸ European Commission against Racism and Intolerance, *Third Report on France* (Strasbourg: Council of Europe, 2005), <http://hudoc.ecri.coe.int/XML/Ecri/ENGLISH/Cycle_03/03_CbC_eng/FRA-CbC-III-2005-3-ENG.pdf> at para. 62.

⁹ Note that the same process applies for an asylum seeker without a valid visa who is not checked by police upon entry. See Forum Réfugiés, *La procédure d'asile*, <<http://www.forumrefugies.org/fr/Accompagner-les-demandeurs-d-asile/Demandeur-l-asile/La-procedure-d-asile/Entree-sur-le-territoire-francais>> [Forum Réfugiés].

¹⁰ United Nations High Commission for Refugees (UNHCR), *Guide for Asylum Seekers 2005* (Geneva: UNHCR, 2005), <http://www.forumrefugies.org/fr/content/download/1528/12798/file/guide_hcr_anglais.pdf> at 7 [UNHCR Guide].

¹¹ OFPRA, *La division de l'asile aux frontières*, 15 March 2009, <http://www.ofpra.gouv.fr/index.html?xml_id=236&dtd_id=10>. A “clearly unfounded” claim is a request for asylum which is clearly impossible to

At the Paris airports, OFPRA will render this initial decision after interviewing the claimant. However, at other ports of entry, this initial decision may only be based on a written record of the applicant's statement or via telephone.¹²

If the OFPRA is of the opinion that the claim is well-founded, it will issue the applicant an 8-day entry permit (*visa de régularisation*).¹³ The applicant must then go to a *préfecture* in the administrative district in which they wish to live before the visa expires. Instead of a *visa de régularisation*, the OFPRA official can also issue a safe-conduct pass (*sauf-conduit*), which is valid for 6 days. Because a permanent address is required in order to request an asylum application at the *préfectures*, the shorter period of stay may cause additional hardship for asylum seekers. The safe-conduct pass does not legalize the applicant's presence on the territory.

If the OFRA finds the claim to be manifestly unfounded, it must give written reasons for its decision. The applicant will then be deported.¹⁴ An applicant may request a *jour franc*, which prevents removal for 24 hours.¹⁵ The applicant may also waive their right to a *jour franc* with a signature. According to certain critics, the police sometimes check off this option themselves without notifying the applicant.¹⁶ Accordingly, there have been proposed reforms to require a second signature to forfeit the *jour franc*.

Within this twenty-four period, an applicant has the option of appealing the negative decision. Since November 2007, an appeal will suspend the deportation of the asylum seeker.¹⁷ Nevertheless, there are serious concerns about the effectiveness of the appeal given that it must be lodged within 48 hours and often without the benefit of legal representation.¹⁸

Waiting Wards (zones d'attente)

Asylum seekers are detained in a waiting ward in the port of entry while OFRA makes the initial decision on their claim. The chief of border control services (*chef du service de contrôle aux frontières*) decides whether or not to detain the applicant for a maximum duration of 48 hours. This decision must be made in writing with reasons and is transmitted to the *Procureur de la*

associate with any of the criteria of the 3 types of protection. Administrative Tribunal, Paris, May 5th, 2000, *Avila-Martinez*, request 9916547/4.

¹² *Gil-Robles Report*, *supra* note 1 at para. 200; Also see OFPRA, *supra* note 14.

¹³ Forum Réfugiés, *supra* note 12 at 3.

¹⁴ It is reported that these deportations are sometimes accompanied by violence. See Association Nationale d'Assistance aux Frontières pour les Etrangers (ANAFE), *Zones d'attente : en marge de l'Etat de droit* (Paris 2001) <<http://www.anafe.org/download/rapports/rapport-mai-2001.pdf>> at 28 [ANAFE].

¹⁵ *Ordonnance 45-2658 du 2 novembre 1945 relative à l'entrée et au séjour des étrangers en France et portant création de l'Office national d'immigration*, J.O., 4 November 1945, 7225, <<http://www.legifrance.gouv.fr/.affichTexte.do?cidTexte=JORFTEXT000000699737&dateTexte=&fastPos=1&fastReqId=1456218209&oldAction=rechTexte>> [Ordonnance 45-2658].

¹⁶ ANAFE, *supra* note 14.

¹⁷ Commissioner for Human Rights, *Memorandum by Thomas Hammarberg Council of Europe Commissioner for Human Rights following his visit to France from 21 to 23 May 2008* (Strasbourg: Council of Europe, 2008), <<http://www.unhcr.org/refworld/category,COI,COECHR,,492a6da72,0.html>> at para. 121 [*Hammarberg Memo*].

¹⁸ Asylum seekers may only communicate to NGO representatives about their appeals, since they are the only people allowed in waiting wards. See *Ibid.* at para. 121.

République (equivalent of the Attorney General in Canada). The chief of border control services may renew the detention period one time, placing the applicant in the ward for up to 96 hours.

The administration may submit a request to prolong the detention of the applicant further to either *Tribunal de Grande Instance* (TGI) or a magistrate delegated by the president of the TGI. The administration must justify why it is necessary to prolong the applicant's detention and must provide an estimate of the additional detention time necessary. The president of the TGI or his magistrate will then have a hearing with the claimant. The claimant may request to be represented by a duty counsel during this hearing and to have a translator. The president of the TGI or his magistrate may then decide to prolong the period of detention by up to 8 days. The administration may submit one more request for renewal with permission of the president of the TGI for a maximum duration of 8 days. The applicant will then have spent 20 days in a waiting ward.¹⁹

It is possible to appeal a renewal order before the First President of the Court of Appeal or his delegate (*premier président de la Cour d'appel*), who must give a decision within 48 hours. This appeal is not suspensive and the applicant may be deported during this time.

Some requests for asylum are only filed when the claimant appears before the president of the TGI or his magistrate for the renewal order. In this case, the applicant may be confined in the airport for the day in a cell or in a "connection" room. The conditions of these facilities are considered to be unacceptable; they are dirty and overcrowded. Applicants may only access washrooms when accompanied by a police officer. There have been reports of police humiliating applicants during these visits.²⁰

3) At the *Préfecture*

France is divided into administrative territories called *départements*. Each *département* has an administrative centre, or a *préfecture*.²¹ Once the asylum seeker enters France, he or she must request an asylum application and collect the necessary OFPRA forms at a *préfecture* of their choice. This must be done before their visas or entry permits expire.

The asylum seeker must submit to the *préfecture* identity photos, personal information, transit information, and proof of a place of residence in France. An asylum seeker who does not possess identity documents will still be able to submit an application but will have to make a written declaration about their personal information.

The *préfecture* will then decide whether the applicant is eligible to make a claim in France. If the applicant is eligible, the *préfecture* should issue the claimant a provisional stay authorization

¹⁹ *Ordonnance 45-2658, supra* note 15 at art. 35.

²⁰ ANAFE, *supra* note 14 at 28. The number of persons and associations authorized to enter these areas is decided upon by ministerial decree. Only the following associations may enter: ANAFE (*Association Nationale d'Assistance aux Frontières pour les Etrangers*), Doctors without Borders, Amnesty International, *Cimade*, Red Cross and France Terre d'Asile.

²¹ For more information, see Ministère de l'intérieur, <http://www.interieur.gouv.fr/sections/a_1_interieur/les_prefectures/missions>.

(*autorisation provisoire de séjour* – APS) within fifteen days. In order for the *préfecture* to issue this document, the applicant must have proof of residence. The APS is valid for one month and gives asylum seekers the right to emergency accommodation.²²

The asylum seeker is also provided with an OFPRA asylum application form at this time. The applicant must send this application with the supporting documents to OFPRA within 21 days of receiving their APS.²³ Failure to meet the deadline results in the rejection of the application. The form consists of 11 questions and *must* be filled out in French.²⁴

If all of the documentation and formatting is in order, OFPRA will send the applicant a letter confirming that the application has been registered. This letter allows the applicant to obtain a *récepissé*, or acknowledgment of asylum application, from the *préfecture*. The *récepissé* functions as a renewal of the APS for a further three months. At this point, the asylum seeker must have a *permanent* address.²⁵ The *récepissé* can be renewed during the whole procedure, until a final determination on status is made by OFPRA or the CNDA.

Certain aspects of this stage of the asylum procedure have been criticized by refugee advocates.²⁶ Most notably, the 21 day deadline to submit the OFPRA forms is arguably insufficient to allow applicants time to find translators, fill in the forms, and acquire the necessary documents. Previously, the deadline had been one month. There is no mention of the new 21 day deadline on the form itself. Rather, it is only mentioned on an attached explanatory note, which is available in French only. Additionally, it is often difficult for applicants to fill out the forms properly if at all because they cannot afford translation services. These obstacles can have irreversible effects as the refugee claim will be denied if the OFPRA forms are not filled out.²⁷

a) Ineligibility Grounds: an asylum seeker may be denied an APS by the *préfecture* for one of the following reasons:

i) Passage via “safe third country”: an asylum seeker who arrives in France through another country of the European Union (EU), or one that is a signatory to the Dublin Regulation, faces removal if the other country accepts responsibility for them. They are detained during this determination.

ii) Safe Country of Origin: French asylum law provides that if an asylum seeker is a national of a country considered to be safe by the OFPRA, he or she is ineligible for an APS.²⁸ Countries are considered safe if they respect principles of liberty, democracy, the

²² *Gil-Robles Report*, *supra* note 1 at para. 207.

²³ Required supporting documentation includes a photocopy of the APS, recent identity photos, originals of any identity documents and any other documents to support your account. *UNHCR Guide*, *supra* note 10 at 11.

²⁴ Collectif de soutien des exilés du Xème arrondissement de Paris [Exiles 10], *How to apply for asylum in France? Asylum seekers proceedings Guide* (Paris: Exiles 10, 2006), <http://www.exiles10.org/IMG/pdf/asylum_request_guide_ENG_03_2006.pdf> at 3 [Exiles 10].

²⁵ *UNHCR Guide*, *supra* note 10.

²⁶ *Gil-Robles Report*, *supra* note 1 at para. 207.

²⁷ *Ibid.* at paras. 208-209.

²⁸ Authority delegated to OFPRA by art. L. 722-1 of *Code de l'entrée et du séjour des étrangers et du droit d'asile*, J.O., 4 December 2009, <http://www.legifrance.gouv.fr/.affichCode.do?idArticle=LEGIARTI000006335238&idSectionTA=LEGISCTA000006147782&cidTexte=LEGITEXT0000060701>

rule of law as well fundamental human rights.²⁹ This provision has been criticized by a number of groups as unjustly excluding legitimate claims for protection.³⁰

iii) Safety Threat: the asylum seeker is held to constitute a serious threat to public order, public safety or state security.

iv) Fraudulent Application: an application is considered to be fraudulent if an asylum seeker has submitted numerous applications using false identities or applied for asylum for the sole purpose of avoiding expulsion.³¹ There is some concern that the *préfectures* interpret the notion of fraud very broadly.

If the asylum seeker is refused the APS due to criteria 2-4, they may still apply for asylum to OFPRA using the prefecture as an intermediary. However, in these situations, the application is examined under the priority procedure (*procédure prioritaire*).

4) OFPRA Procedure

a) Regular Procedure: Once an asylum application is submitted to OFPRA, OFPRA examines the claim based on its merits. CR status may be established on the basis of the documents provided with the application. If CR cannot be established on the basis of documents alone, the applicant may be called in for a private interview with a protection officer who is familiar with the conditions of their country of origin.³² The interviews take place at OFPRA offices in Paris, and applicants must arrange for their own transportation to the venue.³³ Interpreters for interviews are provided by OFPRA.

The OFPRA will not summon the applicant for an interview if:

- i)** The application for asylum is accepted on basis of provided documents
- ii)** The applicant is a national of a country on OFPRA's Safe Country of Origin List
- iii)** The application is manifestly unfounded
- iv)** Medical reasons prevent the applicant from attending the interview.

Under the regular procedure, OFPRA will generally render a decision to grant or refuse protection within several weeks in the regular procedure.³⁴

58&dateTexte=20080807 [Code].

²⁹ *Ibid.* at art. L. 741-4 2°.

as of 2008, 15 countries were on OFPRA's safe country of origin list: Benin, Bosnia-Herzegovina, Cape Verde, Croatia, Georgia, Ghana, India, Madagascar, Mali, Former Yugoslav Republic of Macedonia, Mauritius, Mongolia, Senegal, Tanzania and Ukraine. Nigeria and Albania were removed from the safe list following a 2008 decision of the Conseil d'Etat.

³⁰ *Gil-Robles Report*, *supra* note 1 at paras. 223-224.

³¹ *UNHCR Guide*, *supra* note 10 at 10.

³² Collectif de soutien des exilés du Xème arrondissement de Paris, *Claiming Asylum in France*, <http://www.exiles10.org/IMG/pdf/Anglais-Guide_d_asile.pdf> at 4 [*Claiming Asylum in France*].

³³ *Gil-Robles Report*, *supra* note 1 at para. 212.

³⁴ *UNHCR Guide*, *supra* note 10 at 13.

Refusal to recognise refugee status can be explicit or implicit. Explicit refusal is sent to the applicant by registered mail with written reasons.³⁵ Explicit refusal can be appealed to the refugee appellate body, the *Cour Nationale du Droit d'Asile* (CNDA), within one month of receiving the decision. Implicit refusal is signified by a silence of more than two months, counting from the date at which the application was received by OFPRA. It is possible for the asylum seeker to lodge an appeal with the CNDA at this point. However, it is generally advised that the asylum seeker waits 4 months to be certain of the rejection.³⁶

If no appeal is made, the asylum seeker will be required to leave French territory. The *préfectures* will issue an invitation to leave the territory (*invitation à quitter le territoire* – IQF) notifying the asylum seeker to leave within one month. This is followed by a removal measure notification (*l'arrêté préfectoral de reconduite à la frontière* – APRF), ordering the police to escort the asylum seeker to the border.³⁷ The asylum seeker may be placed in a detention centre prior to their removal.

b) Priority Procedure (*procédure prioritaire*): The priority procedure may be applied to several categories of asylum seekers, namely:

- Persons examined in proximity to the border and detained
- Persons whose applications have been rejected by OFPRA as being fraudulent
- Persons who are nationals of countries on the OFPRA Safe Country List
- Persons who are threats to national security

Under the priority procedure, OFPRA gives a ruling on the applicant's claim within 15 days or within 96 hours if the applicant is in a detention centre. Often, this decision is made without interviewing the applicant.³⁸ While waiting for OFPRA's decision, the priority procedure applicant has no legal status; unlike regular procedure applicants, they are not issued a provisional authorization to stay (APS). Accordingly, priority procedure claimants may be subjected to a removal order and placed in detention (*rétenion administrative*) while waiting for OFPRA's decision. They may not be removed however, until OFPRA renders its decision. However, further appeals by those in the priority procedure on the OFPRA decision are not suspensive. This means that they can be removed from the country before the appeal is judged.

In 2008, 43% of first-instance asylum claims were streamed through the priority procedure, the vast majority was from Mali. The former European Commissioner for Human Rights has expressed some concern with the summary nature of the priority procedure, particularly for those claimants applying from detention centres.³⁹

c) Procedure for claiming Asylum from Detention Centres: Detained asylum seekers must make a request for asylum within 5 days of their detention. Their requests are forwarded to a *préfecture*, which will then send them an application form. Forms must be filled out in French, and detainees must pay for interpreters by themselves, if they can find one on such short notice.⁴⁰

³⁵ *Exiles 10*, *supra* note 24 at 4.

³⁶ *Exiles 10*, *supra* note 24 at 4.

³⁷ *UNHCR Guide*, *supra* note 10 at 15.

³⁸ *Gil-Robles Report*, *supra* note 1 at para. 227.

³⁹ *Gil-Robles Report*, *supra* note 1 at para. 229.

⁴⁰ *Gil-Robles Report*, *supra* note 1 at para. 245.

Applications submitted by detainees are automatically streamed through the priority procedure, which means that OFPRA must decide a claim within 96 hours of receiving it.⁴¹ Very few detained asylum seekers are called in for an interview and 90% of their claims are rejected.⁴²

The current Commissioner for Human Rights is critical of the procedure for detained applicants, suggesting that the extremely short period of time for rendering a decision indicates an implicit presumption that these claims are unfounded.⁴³

5) Appeal Mechanisms

Appeals may be submitted to two courts: the *Cour Nationale du Droit d'Asile* (CNDA) and the *Conseil d'Etat*. If new evidence arises after the appeal, there is also a possibly for a re-examination procedure at the OFPRA, although this is not a true appeal.

a) Appeal to the CNDA

If OFPRA rejects an asylum claim, the first avenue of recourse available to the asylum seeker is an appeal before the CNDA. Until very recently, the CNDA was administratively linked with OFPRA. In 2009, however, the CNDA was placed under the authority of the *Conseil d'Etat*, the country's highest administrative court.⁴⁴

The deadline for filing an appeal depends on whether refusal was explicit or implicit. In the case of an explicit refusal, the deadline is one month after receipt of the refusal. Whereas, in the case of an implicit refusal, the applicant may appeal to the CNDA at any point after two months have elapsed. The appeal for implicit refusals must include reasons for appeal, a declaration that the applicant considers OFPRA's silence to be an implicit refusal, and any supporting documentation, including proof that an asylum application has been lodged with OFPRA.⁴⁵ Appeals must also be written in French.

The CNDA will send an acknowledgment of receipt to the asylum seeker once the appeal is filed. This letter allows the asylum seeker to renew their *recipissé*, allowing them to stay on French territory until a decision is rendered.⁴⁶

To prepare for their appeal, applicants may request copies of their OFPRA file, including notes made by the officer during the interview, upon request to the CNDA.⁴⁷ This preparation stage is crucial. Appeals that are vague and that do not demonstrate that OFPRA's decision is without foundation are rejected without a hearing (*ordonnance de rejet*).⁴⁸ Conversely, appeals that

⁴¹ In 2007, applications for asylum while in detention accounted for 20% of the claims in the priority procedure. See *Hammarberg Memo*, *supra* note 17 at para. 123.

⁴² *Gil-Robles Report*, *supra* note 1 at para. 247.

⁴³ *Hammarberg Memo*, *supra* note 17 at para. 124.

⁴⁴ *Ibid.* at para. 117.

⁴⁵ *Claiming Asylum in France*, *supra* note 32 at 5.

⁴⁶ *UNHCR Guide*, *supra* note 10 at 16.

⁴⁷ Otherwise, the applicant is given the opportunity to review it at a later point in person at the CNDA: See *Claiming Asylum in France*, *supra* note 32 at 5.

⁴⁸ *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*, J.O., 31 May 2005,

appear to hold merit will be given a hearing in which the applicant can present their case. Applicants may be assisted by a counsellor, who may be a legal or non-legal practitioners, at the hearing. Since 2009, legal aid for appeals to the CNDA is available to all asylum seekers.⁴⁹ Legal assistance at this stage is highly recommended.⁵⁰

The hearings before the CNDA are public, unless the applicant requests that they be held in private. The appeal is heard by a commission comprised of a president, an individual appointed by the UNHCR, and an individual appointed by the *Conseil d'Etat* on the advice of a Minister sitting on OFPRA's governing body.⁵¹

The CNDA will send its decision to the applicant and OFPRA by registered mail within approximately 4 weeks.⁵² If the CNDA overrules OFPRA's decision, the applicant receives the same rights and benefits as if OFPRA had accepted the claim at first instance. If the CNDA upholds OFPRA's decision, a limited appeal may be available to the *Conseil d'Etat*. Otherwise, the applicant has one month to leave the country.

b) Appeal to the *Conseil d'Etat*

The *Conseil d'Etat* is the highest administrative court. It only has jurisdiction to review errors of law made by the CNDA when rejecting the asylum claim. The procedure before the *Conseil d'Etat* is long and costly and requires the assistance of a lawyer. Furthermore, it is not suspensive – the applicant may be removed back to their country of origin in the meantime.⁵³

c) Request for Re-Examination

If the appeal to the CNDA is unsuccessful, the asylum seeker may request a re-examination at OFPRA if new evidence capable of justifying a fear of persecution becomes available.⁵⁴ The evidence must have only become available after the CNDA rendered its decision.

To initiate the procedure, the asylum seeker must return to the *préfecture*, and request re-examination forms. The *préfecture* will then engage in a new analysis before deciding whether to issue the applicant another provisional stay authorisation, or APS.⁵⁵ If the *préfecture* decides to issue an APS for 15 days, the applicant will have 8 days to return the re-examination forms and new evidence to OFPRA. A decision to re-examine the claim will be made within 96 hours.⁵⁶ An absence of a response within this timeframe means that the request has been denied.

If the *préfecture* decides not to issue an APS to the applicant for one of the reasons outlined above (see Part 2), it will provide them with a form and a summons to return to the *préfecture* with a complete asylum dossier. The applicant is then placed in the priority procedure, and

<<http://www.legifrance.gouv.fr/.affichTexte.do?cidTexte=JORFTEXT000000629184&dateTexte=&fastPos=1&fastReqId=1624061789&oldAction=rechTexte>> at art. 22.

⁴⁹ *Claiming Asylum in France*, *supra* note 32 at 6.

⁵⁰ *Ibid.* at 6.

⁵¹ *UNHCR Guide*, *supra* note 10 at 17.

⁵² *Claiming Asylum in France*, *supra* note 32 at 6.

⁵³ *UNHCR Guide*, *supra* note 10 at 17.

⁵⁴ *Claiming Asylum in France*, *supra* note 32 at 6.

⁵⁵ *Ibid.* at 6.

⁵⁶ *UNHCR Guide*, *supra* note 10 at 18–19.

OFPPRA will decide within 15 days whether to re-examine the claim.⁵⁷

4. Detention

1) Grounds & procedure for detention of asylum seekers

Foreigners who are facing removal or deportation will likely spend their last days in France detained in an administrative detention centre (CRA).⁵⁸ These centres are separate from the penitentiary administration in France. Their purpose is to organize deportations when they cannot be carried out immediately.⁵⁹ In 2001, an additional type of detention centre for foreigners, *locaux de rétention*, was created to accommodate detainees who cannot be immediately placed in a CRA.⁶⁰ These centres tend to be situated in police stations.

Detained individuals are held in a CRA for 48 hours. After this period, a judge responsible for release and detention (*juge de la liberté et des detentions*) reviews the detainee's case. The administration may request that the judge extend the detention to allow it to obtain travel documents for the detainee. The judge may prolong the period of detention for two.⁶¹ Following that period, the detainee's case is again reviewed by the judge, who may extend detention for a further two weeks. The maximum length of detention allowed by law is 32 days, an increase from the maximum of 12 days prior to the 2003 asylum reforms.⁶² After 32 days, detainees are freed, although they remain in France illegally.⁶³ Although foreigners may not be detained for longer than 48 hours, a report by the former European Commissioner for Human Rights noted that this time frame is not always observed at the police centres.⁶⁴

The detained individual may appeal their detention at any point during their time in the CRA, however the appeals are not suspensive, and the individual may still be removed.

2) Detention statistics

No reliable statistics relative to the number of persons detained in centres are available.⁶⁵ CRAs have been expanding in recent years in line with more aggressive border and migration control policies - the number of spaces in CRAs has increased from 786 in 2003, to 1,700 in 2008.⁶⁶ Unofficial reports state that nearly 5,000 foreigners were detained at the Le Mesnil-Amelot CRA

⁵⁷ *UNHCR Guide*, *supra* note 10 at 18–19.

⁵⁸ The legal basis for detention of foreigners is found in *Ordonnance 45-2658*, *supra* note 15; This is also found at *Code*, *supra* note 28 at s. L551-1.

⁵⁹ *Gil-Robles Report*, *supra* note 1 at para. 232.

⁶⁰ These *locaux de rétention* were created by the *décret no 2001-236 du 19 mars 2001*, J.O., 31 May 2005, 04344, <<http://droit.org/jo/20010320/INTD0100055D.html>> and *décret n° 2005-617 du 30 mai 2005*, J.O., 25 November 2006, <<http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000813349&dateTexte=>>.

⁶¹ *Gil-Robles Report*, *supra* note 1 at para. 233.

⁶² *Gil-Robles Report*, *supra* note 1 at para. 233.

⁶³ Carine Eff, "The detention centre maze" (2006) 37 *Vacarme*, <<http://www.vacarme.org/article1361.html#nb7>> ["The detention centre maze"].

⁶⁴ *Gil-Robles Report*, *supra* note 1 at para. 234.

⁶⁵ For a rough sense of these numbers, see reports by Comité Inter-Mouvements Auprès Des Evacués [CIMADE], <<http://www.cimade.org/publications/16>>.

⁶⁶ *Hammarberg Memo*, *supra* note 17 at para. 93.

at Roissy airport in 2005.⁶⁷ The European Commissioner for Human Rights has also noted increasing numbers of children and families being detained at CRAs.⁶⁸

3) Detention conditions

Detention conditions vary across the various CRAs. Concerns have been expressed by various NGOs and European Human Rights Commissioners about overcrowding, lack of hygiene and the difficulty of accessing health care.⁶⁹ Access to interpreters is difficult, so detainees receive information about their rights from translated forms.⁷⁰ Suicide attempts, hunger strikes and protests are common at certain CRAs.⁷¹

Tensions between detainees and the police officers guarding them have also been cited as a problem. The police officers allegedly do not always notify detainees about their rights to an interpreter or lawyer, their reviews before the *juges des libertés et de la détention*, and removal procedures and deadlines. Detainees have also filed criminal complaints against the police for inappropriate use of force during detention and removals.⁷²

A further concern raised by the Commissioner for Human Rights has been the practice of French officials of taking detained asylum seekers to their consulates in order to obtain a “consular pass,” a document which authorizes travel. This practice is particularly alarming in cases where the alleged persecutor is a state organ; it may place both the asylum seekers, as well as their relatives in the country of origin, in danger.⁷³

5. Removal of Refused Asylum-seekers

1) Procedure

If a *préfecture* issues a removal order directly to the asylum seeker, it can be challenged by that individual within 48 hours before an administrative court (*tribunal administratif*). If the removal order is sent to the asylum seeker by mail, the period for challenging it increases to 7 days.⁷⁴

2) Impediments to removal

Excessive delays may result if it takes the administration a long time to secure travel documents through the country of origin consulates or otherwise.⁷⁵ Voluntary Return Assistance is automatically proposed in the CADA centres during visits by ANAEM and the *préfecture*'s “services des étrangers.” Refused asylum seekers who are not lodged in CADA centres are

⁶⁷ “The detention centre maze,” *supra* note 63.

⁶⁸ *Hammarberg Memo*, *supra* note 17 at paras. 96–97.

⁶⁹ *Ibid.* at para. 94–95; *Gil-Robles Report*, *supra* note 1 at para. 235–238.

⁷⁰ “The detention centre maze,” *supra* note 63.

⁷¹ *Hammarberg Memo*, *supra* note 17 at para. 94.

⁷² *Hammarberg Memo*, *supra* note 17 at para. 94.

⁷³ *Hammarberg Memo*, *supra* note 17 at para. 125.

⁷⁴ *UNHCR Guide*, *supra* note 10 at 18.

⁷⁵ Secrétariat général du comité interministériel de contrôle de l'immigration, *Rapport au Parlement, Les orientations de la politique de l'immigration* (Paris : La Documentation Française, 2008),

<http://www.assfam.org/IMG/pdf/Les_orientations_de_la_politique_de_l_immigration_Dec_2008_CICI.pdf>.

systematically sent a letter proposing this subsidy. Return assistance is not available to nationals of countries subject to clause 1 C(5) of the United Nations Convention on the Status of Refugees, where conditions have improved such that fear of persecution no longer exists.

3) Recent Trends

Since 2005, the French government has been establishing an annual target number of removals. This target rose from 20,000 removals in 2005 to 26,000 in 2008.⁷⁶ Some concerns have been raised about the effects of quantitative targets on human rights, particularly relating to the manner of detention. There are reports of increased racial “profiling” and mass arrests in zones known to be frequented by foreigners.⁷⁷ Additionally, there have been allegations of excessive use of force by police during removals and deportations.⁷⁸

Number of persons removed from the country*

1997	1998	1999	2000	2001	2002	2003	2004	2005	2006
5 653	4 501	5 144	6 592	6 161	7 611	9 352	12 720	14 897	16 616

Source: Ministry of the Interior.

* The number of removals executed by order of the *préfecture*. The number of asylum seekers among these numbers is neither known nor accessible.

Unofficial statistics suggest that approximately 50% of detained foreigners are deported.⁷⁹ The remaining 50% are released. However, because release is not accompanied by legalization of status, these foreigners are likely to be detained again, leading to a cycle of detention and release, which seriously affects their lives.

6. State support for Asylum-seekers

1) Employment

Asylum seekers are not allowed to work while their claims are processed. They may only work once they have been recognized as refugees or afforded subsidiary protection and are in possession of the *récépissé*.

2) Financial Assistance and Housing

Financial Assistance:

⁷⁶ Hammarberg Memo, *supra* note 17 at para. 98.

⁷⁷ Gil-Robles Report, *supra* note 1 at para. 250; Hammarberg Memo, *supra* note 17 at para. 99.

⁷⁸ Gil-Robles Report, *supra* note 1 at paras. 259-260.

⁷⁹ Gil-Robles Report, *supra* note 1 at para. 253; “The detention centre maze,” *supra* note 63.

A subsidy of 290 EUR per month is available for persons not lodged in a reception centre. As of 2005, the subsidy is paid during the whole period of the asylum procedure.⁸⁰ Previously, it was only given for one year, even though the asylum process generally exceeded this duration.

Housing:

Asylum seekers and their immediate family members may apply for accommodation at a reception centre (*Centre d'Accueil pour Demandeur d'Asile – CADA*) if they have been issued an APS or a *récépissé*. Placement in the CADAs is determined by a state social services committee and is based on availability across France.⁸¹ Asylum seekers may have to move to another part of the country.⁸²

Asylum seekers are entitled to stay in a CADA for the duration of the asylum procedure, and have access to administrative, social and financial support. The NGO *France Terre d'Asile* has noted those asylum seekers who manage to secure a spot in a CADA are five times more likely to be granted refugee status as a result of access to this support network.⁸³

If they are rejected by OFPRA, asylum seekers must leave the CADAs. However, there appear to be a number of instances where individuals stay beyond their eligibility period, leading to shortages of housing spots for incoming asylum seekers.⁸⁴

Other shorter-stay housing centres also exist for asylum seekers. Stay at provisional accommodation centres (*centres provisoires d'hébergement – CPH*) is limited to 6 months.

3) Education

Children under 16 years of age are sent to school during the processing period. It is not permitted for adults to participate in a remunerated training program during the processing period.

4) Health Care

During the processing period of the asylum request, foreigners have access to three medical systems:

- While waiting for registration of their asylum requests, asylum seekers can go to hospitals with permanent health care access points (*Permanences d'Accès Aux Soins de Santé – PASS*). They may obtain treatment and medication free of charge here.⁸⁵
- Once in possession of an APS or a *récépissé*, an asylum seeker may be eligible for universal medical coverage (*Couverture Maladie Universelle – CMU*), which covers all medical expenses.⁸⁶

⁸⁰ *UNHCR Guide, supra* note 10 at 22.

⁸¹ In 2005, there were 15,719 places available at CADAs. See *Gil-Robles Report, supra* note 1 at para. 220.

⁸² *UNHCR Guide, supra* note 10 at 20.

⁸³ *Gil-Robles Report, supra* note 1 at para. 222.

⁸⁴ *Gil-Robles Report, supra* note 1 at para. 222.

⁸⁵ *UNHCR Guide, supra* note 10 at 22–23.

⁸⁶ *UNHCR Guide, supra* note 10 at 22–23.

- As of 2000, illegal residents who have been living in France for more than three months continuously have access to state medical aid (*l'Aide Médicale d'Etat – AME*).⁸⁷

5) Legal Services

Universal legal aid for asylum seekers was introduced as of January 2009. Legal services are also provided by NGOs such as Ligue des Droits de l'Homme, ANAFE, CIMADE, COMEDE and Amnesty International. The French NGO CIMADE is permitted by decree to give legal assistance to persons in detention centres.⁸⁸

Although applicants are entitled to legal assistance in theory, in practice they have difficult securing it. For example, while in waiting wards, legal representatives have difficulty gaining access to asylum seekers in the waiting wards, a process which is strictly controlled by the border police. Furthermore, the deadlines for filing applications and appeals often do not give applicants sufficient time to find counsel to represent them.

7. Legal Authorities for French Asylum Law:

I _ European law

Convention for the Protection of Human Rights and Fundamental Freedoms (the European Human Rights Convention) (Rome, 4 November 1950; TS 71 (1953); Cmd 8969), s. 3,
<http://www.echr.coe.int/NR/rdonlyres/D5CC24A7-DC13-4318-B457-5C9014916D7A/0/EnglishAnglais.pdf>

The Committee of the Regions, *Opinion of the Committee of the Regions on the "Proposal for a Council Directive 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"* (2001) 357 OJ C 6,
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2001:357:0006:0010:EN:PDF>

II _ French Law

Préambule de la Constitution Française de 1958 (avec renvoi à l'article 4 du *Préambule de la Constitution Française de 1946*), J.O., 29 January 2009,
<http://www.legifrance.gouv.fr/html/constitution/constitution2.htm#preambule>
<http://www.legifrance.gouv.fr/html/constitution/const02.htm>

Loi 52-893 du 25 juillet 1952 portant création d'un Office français de protection des réfugiés et apatrides, J.O., 27 July 1952, 7642
http://www.legifrance.gouv.fr/jopdf/common/jo_pdf.jsp?numJO=0&dateJO=19520727&pageDebut=07642&pageFin=&pageCourante=07642

⁸⁷ *Hammarberg Memo*, *supra* note 17 at para. 151.

⁸⁸ "Droits de migrants réfugiés," Comité Inter-Mouvements Auprès Des Evacués [CIMADE], <<http://www.cimade.org/poles/defense-des-droits>>.

Loi 98-349 du 11 mai 1998 relative à l'entrée et au séjour des étrangers en France et au droit d'asile, J.O., 12 May 1998, 7087

[http://www.legifrance.gouv.fr/jopdf/common/jo_pdf.jsp?
numJO=0&dateJO=19980512&numTexte=&pageDebut=07087&pageFin=120598](http://www.legifrance.gouv.fr/jopdf/common/jo_pdf.jsp?numJO=0&dateJO=19980512&numTexte=&pageDebut=07087&pageFin=120598)

Loi 2003-1119 du 26 novembre 2003 relative à la maîtrise de l'immigration, au séjour des étrangers en France et à la nationalité, J.O., 27 November 2003, 20136

[http://www.legifrance.gouv.fr/.affichTexte.do?
cidTexte=JORFTEXT000000795635&dateTexte=&fastPos=1&fastReqId=29073669&oldAc
tion=rechTexte](http://www.legifrance.gouv.fr/.affichTexte.do?cidTexte=JORFTEXT000000795635&dateTexte=&fastPos=1&fastReqId=29073669&oldAction=rechTexte)

Loi 2003-1176 du 10 décembre 2003 modifiant la loi du 25 juillet 1952 relative au droit d'asile, J.O., 11 December 2003, 21080

<http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000611789&dateTexte=>

Décret 53-377 du 2 mai 1953 relatif à l'office français de protection des réfugiés et apatrides, J.O., 3 May 1953, 4029

[http://www.legifrance.gouv.fr/jopdf/common/jo_pdf.jsp?
numJO=0&dateJO=19530503&numTexte=&pageDebut=04029&pageFin=](http://www.legifrance.gouv.fr/jopdf/common/jo_pdf.jsp?numJO=0&dateJO=19530503&numTexte=&pageDebut=04029&pageFin=)

Décret du 27 mai 1982 pris pour l'application de l'article 5 de l'ordonnance du 2 novembre 1945, J.O., 29 May 1982, 1712

[http://www.legifrance.gouv.fr/jopdf/common/jo_pdf.jsp?
numJO=0&dateJO=19820529&numTexte=&pageDebut=01712&pageFin=](http://www.legifrance.gouv.fr/jopdf/common/jo_pdf.jsp?numJO=0&dateJO=19820529&numTexte=&pageDebut=01712&pageFin=)

Décret 98-503 du 23 juin 1998 pris pour l'application de la loi du 25 juillet 1952, J.O., 24 June 1998, 9558

[http://www.legifrance.gouv.fr/jopdf/common/jo_pdf.jsp?
numJO=0&dateJO=19980624&numTexte=&pageDebut=09558&pageFin=240698](http://www.legifrance.gouv.fr/jopdf/common/jo_pdf.jsp?numJO=0&dateJO=19980624&numTexte=&pageDebut=09558&pageFin=240698)

Ordonnance 45-2658 du 2 novembre 1945 relative à l'entrée et au séjour des étrangers en France et portant création de l'Office national d'immigration, J.O., 4 November 1945, 7225

[http://www.legifrance.gouv.fr/.affichTexte.do?
cidTexte=JORFTEXT000000699737&dateTexte=&fastPos=1&fastReqId=1456218209&old
Action=rechTexte](http://www.legifrance.gouv.fr/.affichTexte.do?cidTexte=JORFTEXT000000699737&dateTexte=&fastPos=1&fastReqId=1456218209&oldAction=rechTexte)

Circulaire du 25 juin 1998 modifiée par la décision du Conseil d'Etat en date du 26 juin 2000, J.O., 25 June 1998,

<http://www.gisti.org/doc/textes/1998/intd98000138c/index.html>