

# Country Report: Spain



**Accem**

**2018  
Update**

## Acknowledgements & Methodology

This report was written by Magdalena Queipo de Llano and Jennifer Zuppiroli at Accem, and was edited by ECRE. The 2017 update was written by Jennifer Zuppiroli, Laura Carrillo and Teresa De Gasperis at Accem, and was edited by ECRE. The 2018 update was written by Teresa De Gasperis at Accem and was edited by ECRE.

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The information in this report is up-to-date as of 31 December 2018, unless otherwise stated.

## The Asylum Information Database (AIDA)

The Asylum Information Database (AIDA) is coordinated by the European Council on Refugees and Exiles (ECRE). It aims to provide up-to date information on asylum practice in 23 countries. This includes 20 EU Member States (AT, BE, BG, CY, DE, ES, FR, GR, HR, HU, IE, IT, MT, NL, PL, PT, RO, SE, SI, UK) and 3 non-EU countries (Serbia, Switzerland, Turkey) which is accessible to researchers, advocates, legal practitioners and the general public through the dedicated website [www.asylumineurope.org](http://www.asylumineurope.org). The database also seeks to promote the implementation and transposition of EU asylum legislation reflecting the highest possible standards of protection in line with international refugee and human rights law and based on best practice.



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## Glossary & List of Abbreviations

<b>Desamparo</b>	Declaration of destitution, triggering guardianship procedures for unaccompanied children
<b>Tarjeta roja</b>	Red card, certifying asylum seeker status
<b>APDHA</b>	Human Rights Association of Andalusia   Asociación Pro Derechos Humanos de Andalucía
<b>CAED</b>	Centre for Emergency Reception and Referral   Centro de Acogida de Emergencia y Derivación
<b>CAR</b>	Refugee Reception Centre   Centro de acogida de refugiados
<b>CATE</b>	Centre for the Temporary Reception of Foreigners   Centro de Acogida Temporal de Extranjeros
<b>CCSE</b>	Spanish Constitutional and Socio-Cultural Knowledge test   Prueba de Conocimientos Constitucionales y Socioculturales de España
<b>CEAR</b>	Spanish Commission of Aid to Refugees   Comisión Española de Ayuda al Refugiado
<b>CETI</b>	Migrant Temporary Stay Centre   Centro de estancia temporal para inmigrantes
<b>CIAR</b>	Inter-Ministerial Commission of Asylum   Comisión Interministerial de Asilo y Refugio
<b>CIE</b>	Detention Centre for Foreigners   Centro de Internamiento de Extranjeros
<b>EASO</b>	European Asylum Support Office
<b>ECCHR</b>	European Centre for Constitutional and Human Rights
<b>ECHR</b>	European Convention on Human Rights
<b>ECtHR</b>	European Court of Human Rights
<b>EDAL</b>	European Database of Asylum Act
<b>ERIE</b>	Emergency Immediate Response Teams   Equipos de Respuesta Inmediata en Emergencia
<b>GRETA</b>	Council of Europe Group of Experts on Action against Trafficking in Human Beings
<b>OAR</b>	Office of Asylum and Refuge   Oficina de Asilo y Refugio
<b>OHCHR</b>	Office of the High Commissioner for Human Rights
<b>UTS</b>	Social Work Unit   Unidad de Trabajo Social
<b>VIS</b>	Visa Information System
<b>UNHCR</b>	United Nations High Commissioner for Refugees

## Statistics

### Overview of statistical practice

Statistics in Spain are collected by the Office on Asylum and Refuge (OAR), and published on an annual basis by the Ministry of Interior. The latest available annual statistics by the Ministry of Interior referring to 2016 were published in early 2018.<sup>1</sup>

### Applications and granting of protection status at first instance: 2018

	Applicants in 2018	Pending at end 2018	Refugee status	Subsidiary protection	Rejection	Refugee rate	Sub. Prot. rate	Rejection rate
<b>Total</b>	55,570	68,779	:	:	:	:	:	:

Breakdown by countries of origin of the total numbers

Venezuela	19,957	28,547	29	0	1,630	1.7%	0%	98.3%
Colombia	8,797	9,060	50	0	690	6.8%	0%	93.2%
Syria	2,897	2,112	31	1,996	135	1.4%	92.3%	6.3%
Honduras	2,464	3,428	8	0	29	21.6%	0%	78.4%
El Salvador	2,311	3,445	0	0	114	0%	0%	100%
Ukraine	2,058	3,117	73	122	2,681	2.5%	4.2%	93.3%
Palestine	2,011	2,427	87	122	41	34.8%	48.8%	16.4%
Algeria	1,367	924	2	0	209	0.9%	0%	99.1%
Nicaragua	1,364	1,039	4	0	19	17.4%	0%	82.6%
Morocco	1,321	861	64	0	132	32.6%	0%	67.4%

Source: OAR

<sup>1</sup> Ministry of Interior, *Asilo en cifras*, available in Spanish at: <https://goo.gl/ljCJyN>.

**Gender/age breakdown of the total number of applicants: 2018**

	Number	Percentage
<b>Total number of applicants</b>	54,050	-
Men	31,005	57.4%
Women	23,045	42.6%
Children	11,270	20.9%
Unaccompanied children	:	:

Source: Eurostat

**Comparison between first instance and appeal decision rates: 2018**

Statistics on appeals are not available.



## Overview of the legal framework

### Main legislative acts relevant to asylum procedures, reception conditions, detention and content of protection

Title (EN)	Original Title (ES)	Abbreviation	Web Link
Law 12/2009 of 30 October 2009, regulating the law of asylum and subsidiary protection Official Gazette No 263, 31 October 2009  <i>Amended by:</i> Law 2/2014 of 25 March 2014 Official Gazette No 74, 26 March 2014	Ley 12/2009, de 30 de octubre, reguladora del derecho de asilo y de la protección subsidiaria BOE núm. 263, de 31 de octubre  <i>Modificada por:</i> Ley 2/2014, de 25 de marzo BOE núm. 74, de 26 de marzo	Asylum Act	<a href="http://bit.ly/1R7wKyD">http://bit.ly/1R7wKyD</a> (ES)
Organic Law 4/2000 of 11 January 2000 on rights and liberties of aliens in Spain and their social integration Official Gazette No 10, 12 January 2000  <i>Amended by:</i> Organic Law 4/2015 of 30 March 2015 on the protection of citizen security Official Gazette No 77, 31 March 2015	Ley Orgánica 4/2000, de 11 de enero, sobre derechos y libertades de los extranjeros en España y su integración social BOE núm. 10, de 12 de enero  <i>Modificada por:</i> Ley Orgánica 4/2015, de 30 de marzo, de protección de la seguridad ciudadana BOE núm. 77, de 31 de marzo	Aliens Act (LOEX)	<a href="http://bit.ly/1gto175">http://bit.ly/1gto175</a> (ES)  <a href="http://bit.ly/21nrJwQ">http://bit.ly/21nrJwQ</a> (ES)

### Main implementing decrees and administrative guidelines and regulations relevant to asylum procedures, reception conditions, detention and content of protection

Title (EN)	Original Title (ES)	Abbreviation	Web Link
Royal Decree 1325/2003 of 24 October 2003 approving the Regulation on a regime of temporary protection in case of mass influx of displaced persons Official Gazette No 256, 25 October 2003	Real Decreto 1325/2003, de 24 de octubre, por el que se aprueba el Reglamento sobre régimen de protección temporal en caso de afluencia masiva de personas desplazadas BOE núm. 256, de 25 de octubre	Temporary Protection Regulation	<a href="http://bit.ly/1QBTjuN">http://bit.ly/1QBTjuN</a> (ES)
Royal Decree 203/1995 of 10 February 1995 approving the Regulation implementing Law 5/1984	Real Decreto 203/1995, de 10 de febrero, por el que se aprueba el Reglamento de aplicación de la Ley 5/1984, de	Asylum Regulation	<a href="http://bit.ly/21x75H7">http://bit.ly/21x75H7</a> (ES)

of 26 March 1984, regulating the law of asylum and criteria for refugee status, as amended by Law 9/1994 of 19 May 1994.  <i>Modified by:</i> Royal Decree 865/2001 of 20 July 2001, Royal Decree 1325/2003 of 24 October 2003 and Royal Decree 2393/2004 of 30 December 2004.	26 de marzo, reguladora del Derecho de Asilo y de la condición de Refugiado, modificada por la Ley 9/1994, de 19 de mayo.  <i>Modificado por:</i> Real Decreto 865/2001, de 20 de julio; por el Real Decreto 1325/2003, de 24 de octubre y por el Real Decreto 2393/2004, de 30 de diciembre.		
Royal Decree 557/2011 of 20 April approving the regulation implementing Law 4/2000 on rights and liberties of aliens in Spain and their social integration	Real Decreto 557/2011, de 20 de abril, por el que se aprueba el Reglamento de la Ley Orgánica 4/2000, sobre derechos y libertades de los extranjeros en España y su integración social, tras su reforma por Ley Orgánica 2/2009	Aliens Regulation	<a href="http://bit.ly/2BXCNI1">http://bit.ly/2BXCNI1</a> (ES)
Royal Decree 164/2014 of 14 March 2014 on the regulation and functioning of internal rules of the CIE  Official Gazette No 64, 15 March 2014	Real Decreto 164/2014, de 14 de marzo, por el que se aprueba el reglamento de funcionamiento y régimen interior de los CIE.  BOE núm. 64, de 15 de marzo	CIE Regulation	<a href="http://bit.ly/1WRxts0">http://bit.ly/1WRxts0</a> (ES)
Resolution of 27 February 2015 of the General Secretariat of Immigration and Emigration establishing for the year 2015 the minimum and maximum amounts of financial assistance to beneficiaries of Refugee Reception Centres integrated in the network of Migration Centres of the Ministry of Labour and Social Security  Official Gazette No 81, 4 April 2015	Resolución de 27 de febrero de 2015, de la Secretaría General de Inmigración y Emigración, por la que se establecen para el año 2015 las cuantías máximas y mínimas de las ayudas económicas para los beneficiarios de los Centros de Acogida a Refugiados integrados en la red de Centros de Migraciones del Ministerio de Empleo y Seguridad Social  BOE núm. 81, de 4 de abril		<a href="http://bit.ly/1RvDRnk">http://bit.ly/1RvDRnk</a> (ES)
Royal Decree 816/2015 of 11 September 2015 regulating the direct grant, of exceptional character for humanitarian reasons, for the extraordinary expansion of resources of the reception and integration system for applicants for and beneficiaries of international protection  Official Gazette No 219, 12 September 2015	Real Decreto 816/2015, de 11 de septiembre, por el que se regula la concesión directa de una subvención con carácter excepcional y por razones humanitarias para la ampliación extraordinaria de los recursos del sistema de acogida e integración de solicitantes y beneficiarios de protección internacional  BOE núm. 219, de 12 de septiembre		<a href="http://bit.ly/1UqhDFX">http://bit.ly/1UqhDFX</a> (ES)
Framework Protocol for protection of victims of	Protocolo Marco de Protección de las Víctimas de Trata de		<a href="http://bit.ly/2sqgZDi">http://bit.ly/2sqgZDi</a> (ES)

human trafficking, adopted by agreement between the Ministers of Justice, Home Affairs, Employment and Social Security, Health, Social Services and Equality, the Office of the Attorney General and the State Judicial Council on 28 October 2011	Seres Humanos, adoptado mediante acuerdo de 28 de octubre de 2011 por los Ministerios de Justicia, del Interior, de Empleo y Seguridad Social y de Sanidad, Servicios Sociales e Igualdad, la Fiscalía General del Estado y el Consejo del Poder Judicial		
Resolution of 13 October 2014 on the Framework Protocol on actions relating to foreign unaccompanied minors Official Gazette No 251, 16 October 2014	Resolución de 13 de octubre de 2014, de la Subsecretaria, por el que se publica el Acuerdo para la aprobación del Protocolo Marco sobre determinadas actuaciones en relación con los Menores Extranjeros No Acompañados BOE núm. 251, de 16 de octubre		<a href="http://bit.ly/1WQ4h4B">http://bit.ly/1WQ4h4B</a> (ES)
Ministry of Health, Social Services and Equality, Comprehensive Plan for fight against trafficking in women and girls for sexual exploitation 2015-2018	Ministerio de Sanidad, Servicios Sociales e Igualdad, Plan integral de lucha contra la trata de mujeres y niñas con fines de explotación sexual 2015-2018	National Plan against Trafficking	<a href="http://bit.ly/1S8g2lZ">http://bit.ly/1S8g2lZ</a> (ES)

## Overview of the main changes since the previous report update

The report was last updated in **March 2018**.

### *Asylum procedure*

- ❖ **Access to the territory:** In order to respond to the increasing number of arrivals, during 2018 the new Spanish Government started putting in place new resources in order to manage arrivals and to carry out the identification of persons' vulnerabilities in the first days of arrival. Specific facilities for emergency and referral have been created: these are referred to as Centres for the Temporary Reception of Foreigners (*Centros de Acogida Temporal de Extranjeros*, CATE) and Centres for Emergency Reception and Referral (*Centros de Acogida de Emergencia y Derivación*, CAED).
- ❖ **Dublin:** The Office of Asylum and Refuge (OAR) continued to apply the Dublin Regulation rarely, with only 7 outgoing requests issued in 2018. Conversely, Spain received 11,070 requests, the majority of which from France, Germany and Belgium.
- ❖ **Admissibility:** The number of applications dismissed as inadmissible increased considerably in 2018, with at least 1,455 inadmissibility decisions, of which 577 concerning nationals of Algeria and 492 nationals of Morocco.
- ❖ **Differential treatment of specific nationalities:** At the end of 2018, the number of pending claims by Venezuelan nationals was 28,547. On 5 March 2019, the authorities announced a policy granting one-year renewable residence permits "on humanitarian grounds of international protection" to Venezuelan nationals whose asylum applications have been rejected between January 2014 and February 2019.

### *Reception conditions*

- ❖ **Withdrawal of reception conditions:** Media reports have referred to at least 20 persons returned under the Dublin Regulation who were excluded from the reception system and were rendered homeless, on the basis that they had renounced their entitlement to accommodation upon leaving Spain. Also during October 2018, media reported that six families of asylum seekers were excluded from the asylum system after being returned from Germany to Spain in the framework of the Dublin Regulation. The families ended up accommodated in emergency shelters of the Municipality of Madrid, generally aimed at the reception of homeless persons. Following a January 2019 judgment of the Superior Court of Madrid, the Ministry of Labour, Migration and Social Security has issued instructions to ensure that asylum seekers returned under the Dublin Regulation are guaranteed access to reception.

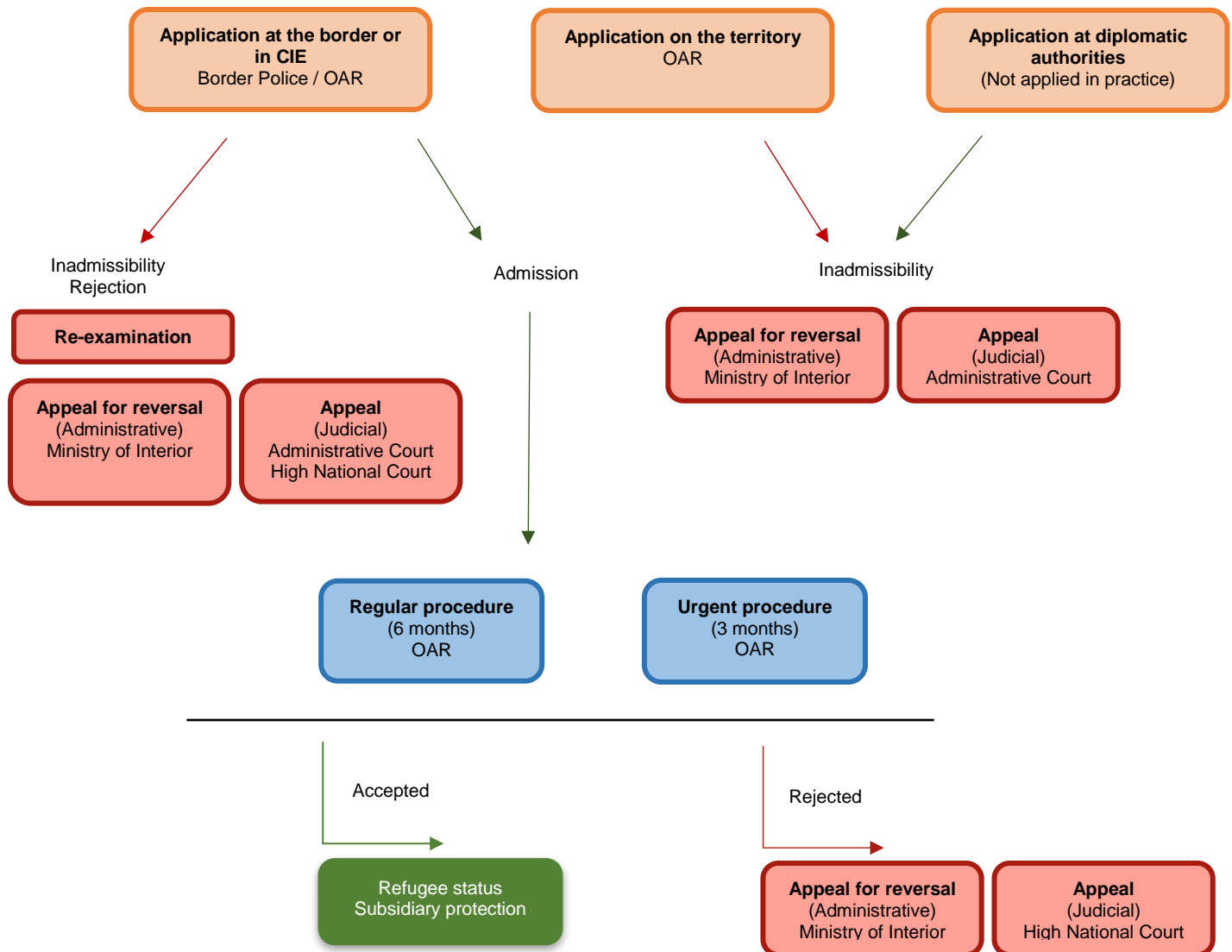
### *Detention of asylum seekers*

- ❖ **Grounds for detention:** It appears that as of 2018 detention policy has changed in Málaga, where detention orders in Foreigner Detention Centres (CIE) are issued just for Moroccan and Algerian nationals. The Spanish Ombudsman has asked for a clarification on this practice.
- ❖ **Detention conditions:** CIE have been the object of high public, media and NGO attention also during 2018 due to several episodes that took place throughout the year. Protests and riots are continuous in the CIE of Aluche in Madrid. In August 2018, 13 Algerian nationals escaped from the centre. In October 2018 a riot started following an escape attempt by some Algerian nationals and led to injuries of 11 police officers and one detainee.

# Asylum Procedure

## A. General

### 1. Flow chart



## 2. Types of procedures

### Indicators: Types of Procedures

Which types of procedures exist in your country?

- |   |   |  |
|---|---|--|
| ❖ Regular procedure:                    | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No            |
| ▪ Prioritised examination: <sup>2</sup> | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No            |
| ▪ Fast-track processing: <sup>3</sup>   | <input type="checkbox"/> Yes            | <input checked="" type="checkbox"/> No |
| ❖ Dublin procedure:                     | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No            |
| ❖ Admissibility procedure:              | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No            |
| ❖ Border procedure:                     | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No            |
| ❖ Accelerated procedure: <sup>4</sup>   | <input type="checkbox"/> Yes            | <input checked="" type="checkbox"/> No |
| ❖ Other: Embassy procedure              | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No            |

Are any of the procedures that are foreseen in the law, not being applied in practice? ☒ Yes ☐ No

Article 38 of the Asylum Act foresees the possibility to request international protection before Spanish Embassies and Consulates. As there is no Regulation to the 2009 Asylum Act, the previous 1995 Regulation of the previous Asylum Act is the legal provision currently being applied, and the latter makes no reference to this possibility. A new Regulation to the current Asylum Act would enable Article 38 to be implemented in practice.

## 3. List of authorities that intervene in each stage of the procedure

Stage of the procedure	Competent authority (EN)	Competent authority (ES)
Application <ul style="list-style-type: none"> <li>❖ At the border</li> <li>❖ On the territory</li> </ul>	Border Police Office of Asylum and Refuge	Policía Fronteriza Oficina de Asilo y Refugio
Dublin	Office of Asylum and Refuge	Oficina de Asilo y Refugio
Refugee status determination	Inter-Ministerial Commission on Asylum (CIAR) Office of Asylum and Refuge	Oficina de Asilo y Refugio
Appeal procedure <ul style="list-style-type: none"> <li>❖ Administrative appeal</li> <li>❖ Judicial appeal</li> </ul>	<ul style="list-style-type: none"> <li>❖ Ministry of Interior</li> <li>❖ Administrative Court / High National Court</li> </ul>	<ul style="list-style-type: none"> <li>❖ Ministerio del Interior</li> <li>❖ Juzgados Centrales de contencioso / Audiencia Nacional</li> </ul>
Subsequent application	Office of Asylum and Refuge	Oficina de Asilo y Refugio

## 4. Number of staff and nature of the first instance authority

Name in English	Number of staff	Ministry responsible	Is there any political interference possible by the responsible Minister with the decision making in individual cases by the first instance authority?
Office of Asylum and Refuge	205	Ministry of Interior	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

Source: OAR, 8 March 2019.

Out of a total 205 staff members at the end of 2018, 170 officials took decisions on asylum applications.

<sup>2</sup> For applications likely to be well-founded or made by vulnerable applicants.

<sup>3</sup> Accelerating the processing of specific caseloads as part of the regular procedure.

<sup>4</sup> Labelled as "accelerated procedure" in national law.

At the end of 2018, it was announced that 70% of the persons working at the OAR would cease their function due to the expiry and non-renewal of their contracts and the lack of renewal.<sup>5</sup> They have been replaced by personnel already working within the Spanish administration, but in different departments. After the completion of recruitment procedures, the overall number of staff will reach 305.<sup>6</sup>

## 5. Short overview of the asylum procedure

Any person willing to request international protection in Spain must present a formal application to the competent authorities. There are two main ways to apply for asylum: in the Spanish territory or at border controls. Asylum applications cannot be submitted through embassies or consular representations outside the Spanish territory, although the Asylum Act initially foresaw that possibility.

In case the asylum seeker is outside the Spanish territory, he or she must present a formal application to the border control authority. If the person is already in the Spanish territory, competent authorities are represented by the Office of Asylum and Refuge (OAR), any Foreigners' Office, Detention Centre for Foreigners (CIE) or police station.

Two different procedures are foreseen by the law: a regular procedure and an urgent procedure.

### Admissibility and regular procedure<sup>7</sup>

Under the terms of the regular procedure, applicants who are inside the Spanish territory lodge their request by sending it to the OAR, which is an authority dependent on the Ministry of Interior. The OAR shall have one month to examine the formal aspects of the request i.e. its admissibility. If the OAR does not issue a resolution within that time, it is understood that the application has been admitted under Spanish law (under positive silence). The resolution shall decide whether the request is admissible or inadmissible. The Office may deem the application as inadmissible on the following grounds: (a) lack of jurisdiction for the examination of the application; or (b) failure to comply with the formal requirements.

If the application is declared inadmissible, the applicant may appeal for reversal (*Recurso de reposición*) or file a contentious administrative appeal. On the other hand, if the OAR declares the application admissible, the Ministry of Interior will have a period of six months to examine the request. However, in practice this period is usually longer. During this time, the applicant will receive new documentation certifying his or her status as asylum seeker, a red card (*tarjeta roja*).

The Inter-Ministerial Commission of Asylum (*Comisión de Asilo y Refugio*, CIAR) is competent to decide on the application. If the deadline of six months is met and the matter remains unresolved, it is presumed that the request has been rejected.

The decision shall resolve the request with one of the following decisions: (a) granting the status of refugee; (b) granting subsidiary protection; (c) denying the status of refugee or subsidiary protection and granting a residence permit based on humanitarian grounds; or (d) refusing protection.

In case the application is declared inadmissible or rejected, the person shall return or leave the Spanish territory or will be transferred to the territory of the State responsible for examining the asylum application. Notwithstanding this, the person could be eligible to stay in Spain based on humanitarian grounds.

### Urgent and border procedure

If the applicant is outside the Spanish territory or is claiming asylum from a CIE, the assessment regarding the admissibility of the application will follow the urgent procedure. In this case, the OAR will

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<sup>5</sup> El Mundo, 'La Oficina de Asilo y Refugio, a punto de cerrar por colapso absoluto', 19 November 2018, available in Spanish at: <https://bit.ly/2qRBgxM>.

<sup>6</sup> Information provided by OAR, 8 March 2019.

<sup>7</sup> Article 24 Asylum Act.

have 72 hours, or 4 days in the case of applicant in CIE, to declare the application admissible, inadmissible or unfounded. If application is admitted, the person will be authorised to enter Spanish territory to continue under the urgent procedure. In the case that the application is found inadmissible or unfounded, the applicant may ask for reconsideration (*re-examen*) of the request within two days. In case of a second rejection or inadmissibility, the person can submit an appeal before a judge or a tribunal.

If any of the deadlines is not met, the applicant will be admitted to territory in order to continue the asylum claim in the regular procedure.

Where the request is found admissible, the Ministry of Interior will have three months to decide on the application in the urgent procedure. In case the request is submitted in a CIE, the procedure to be followed is the urgent procedure, even if the person is on Spanish territory.

The applicant can ask for the application of the urgent procedure, or the Ministry of Interior can apply the procedure *ex officio* under the following circumstances:<sup>8</sup>

- (a) The application is manifestly well-founded;
- (b) The application is made by a person with special needs, especially unaccompanied minors;
- (c) The applicant raises only issues which have no connection with the examination of the requirements for recognition of refugee status or subsidiary protection;
- (d) The applicant comes from a country considered a safe country of origin and has the nationality of that country or, in case of statelessness if he or she has residence in the country;
- (e) The applicant applies after a period of one month;<sup>9</sup>
- (f) The applicant falls within any of the exclusion clauses under the Asylum Act.

## B. Access to the procedure and registration

### 1. Access to the territory and push backs

#### Indicators: Access to the Territory

1. Are there any reports (NGO reports, media, testimonies, etc.) of people refused entry at the border and returned without examination of their protection needs? ☒ Yes ☐ No

#### 1.1. Arrivals in the enclaves of Ceuta and Melilla

The main obstacles regarding access to the Spanish territory are faced mostly at the Ceuta and Melilla borders and checkpoints. These obstacles are mainly due to the impossibility of asylum seekers to cross the border and exit Morocco. There are several reported cases concerning refusal of entry, *refoulement*, collective expulsions and push backs, including incidents involving up to a thousand persons during 2018.<sup>10</sup>

One of the ways used by migrants and asylum seekers to enter the territory is to attempt to climb border fences in groups. The increasing numbers of attempts to jump border fences occur due to the fact that migrants and asylum seekers, and mostly Sub-Saharan nationals, still face huge obstacles in accessing the asylum points at the Spanish border, due to the severe checks of the Moroccan police at the Moroccan side of the border. This reality is illustrated when looking at the data provided by the Government regarding asylum requests at border, which show that no asylum application was made at

<sup>8</sup> Article 25 Asylum Act.

<sup>9</sup> Article 17(2) Asylum Act.

<sup>10</sup> Info Migrants, 'Pushbacks on Spain's southern border', 8 March 2018, available at: <https://bit.ly/2D07bzL>. See also CEAR, *Refugees and migrants in Spain: The invisible walls beyond the southern border*, December 2017, available at: <https://bit.ly/2FC6ceC>, 25. See also the pending case before the Grand Chamber of the European Court of Human Rights (ECtHR) *N.D. and N.T. v. Spain*, Applications No 8675/15 and 8697/15. A case summary may be found in the European Database of Asylum Act (EDAL) at: <http://bit.ly/21xtu7g>.



Ceuta's border checkpoint, and that persons from sub-Saharan countries are underrepresented among the nationalities of asylum seekers at Melilla's border (see section on [Border Procedure](#)).

Several such attempts were been made both in Ceuta and Melilla throughout 2018. In July, almost 800 migrants attempted to enter Ceuta by jumping the border fences, and almost 600 ultimately entered the city. This is considered one of the main attempts to enter the enclave by land registered so far. According to the declarations made by the Minister of Interior, those migrants who were pushed back "had not technically reached Spanish soil yet".<sup>11</sup>

At the end of August, after a jump of the fence in Ceuta, the Spanish Government revived a readmission agreement signed in 1992 with Morocco in order to return 116 Sub-Saharan migrants to Morocco within 24 hours.<sup>12</sup> In its 26 years of existence, such agreement had been used only in exceptional cases and for a very limited number of migrants.

Criticisms of the Spanish policy of push backs have continued by several organisations and institutions during 2018, such as the Spanish Ombudsman,<sup>13</sup> who also carried out an investigation in relation to the push back of 114 migrants from Melilla to Morocco.<sup>14</sup>

The Melilla Bar Association lodged a complaint at the Ombudsman for the push back of 55 migrants to Morocco for the lack of guarantees of their access to justice.<sup>15</sup>

In addition, the Council of Europe's Special Representative on Migration and Refugees condemned Spanish practice in a country visit report published in September 2018. He also condemned the difficulty for Sub-Saharan migrants to enter Spain legally.<sup>16</sup> In the same vein, UNHCR and the European Union Agency for Fundamental Rights (FRA) expressed growing concerns on migrant push backs carried out by different Member States, including Spain.<sup>17</sup>

The number of persons arriving in Spain by land in 2018 was 6,800, up from 5,863 in 2017:

Arrivals in Spain by land: 2018	
Point of entry	Number of irregular arrivals
Ceuta	1,979
Melilla	4,821
<b>Total arrivals by land</b>	<b>6,800</b>

Source: Ministry of Interior, Irregular Migration – Weekly Report: <https://bit.ly/2F7IEhX>.

<sup>11</sup> El País, 'Más de 600 migrantes subsaharianos acceden a Ceuta tras saltar la valla', 26 July 2018, available in Spanish at: <https://bit.ly/2Of5JjM>; El Periodico, 'Más de 600 inmigrantes acceden a Ceuta tras un violento salto a la valla fronteriza', 26 July 2018, available in Spanish at: <https://bit.ly/2Did7aM>. El País, 'Spain justifies migrant pushback in wake of large-scale jump at Ceuta', 27 July 2018, available at: <https://bit.ly/2OqqqQQ>.

<sup>12</sup> CEAR, 'CEAR muestra su preocupación tras la expulsión "acelerada" de las 116 personas migrantes que llegaron ayer a Ceuta', 23 August 2018, available in Spanish at: <https://bit.ly/2o2SgQf>; El País, 'El Gobierno desempolva un convenio de hace 26 años para expulsar a 116 migrantes', 24 August 2018, available in Spanish at: <https://bit.ly/2RyD2ni>; Info Migrants, 'Spain takes hardline against migrants "assaulting" borders', 31 August 2018, available at: <https://bit.ly/2QXuMrY>.

<sup>13</sup> El País, 'El Defensor del Pueblo condena la devolución 'exprés' de migrantes', 23 October 2018, available in Spanish at: <https://bit.ly/2CuzwQB>.

<sup>14</sup> Cuarto Poder, 'El Defensor del Pueblo investiga la devolución en caliente a Marruecos de 114 personas en Agosto', 22 October 2018, available in Spanish at: <https://bit.ly/2Fla2Ch>.

<sup>15</sup> Europapress, 'Colegio de Abogados de Melilla presenta una queja al Defensor del Pueblo por la devolución de 55 migrantes a Marruecos', 2 November 2018, available in Spanish at: <https://bit.ly/2sAeawG>.

<sup>16</sup> Council of Europe, *Report of the fact-finding mission by Ambassador Tomáš Boček, Special Representative of the Secretary General on migration and refugees, to Spain, 18-24 March 2018*, SG/Inf(2018)25, 3 September 2018, available at: <https://bit.ly/2CrZzYB>. See also El País, 'Council of Europe slams conditions for migrants in Spain's enclave cities', 6 September 2018, available at: <https://bit.ly/2Cx3B3Wa>.

<sup>17</sup> UNHCR, *Desperate journeys: January-August 2018*, available at: <https://bit.ly/2Cyt9LU>; FRA, 'Migrant pushbacks a growing concern in some Member States', 26 March 2018, available at: <https://bit.ly/2T5YDQU>.

## The persisting problem of push backs (*devoluciones en caliente*)

The situation at borders and regarding access to territory has also worsened since March 2015, after the Spanish government adopted an amendment to the Aliens Act, introducing the possibility to “reject at borders” third-country nationals that are found crossing the border illegally.

The amendment, introduced through the adoption of the Law “on the protection of citizen security”,<sup>18</sup> includes a specific regulation within the Aliens Act concerning the “Special regime of Ceuta and Melilla”. This new regime consists of three new elements:

- (1) It rules that “those foreigners who are detected at Ceuta’s and Melilla’s border lines when trying to pass the border’s contentious elements to irregularly cross the border, can be rejected to avoid their illegal entry in Spain”;
- (2) It declares that “these rejections will be realised respecting the international law on human rights and international protection ratified by Spain”;
- (3) Lastly, it states that “international protection claims will be formalised at the *ad hoc* border point in line with international protection obligations.”

In practice, when a person is found within Spanish border territory, which includes the land between the Moroccan and Spanish border, he or she is taken outside the Spanish border through existing passages and doors controlled by border guards.

The amendment aimed at legalising the push backs (*devoluciones en caliente*) practiced in Ceuta and Melilla, and has been criticised for ignoring human rights and international law obligations towards asylum seekers and refugees by several European and international organisations such as UNHCR,<sup>19</sup> the Council of Europe Commissioner for Human Rights,<sup>20</sup> and the United Nations Committee against Torture. Critics regard the fact that people are not able to request asylum, and that the law mostly affects groups in vulnerable situation, including unaccompanied minors and victims of trafficking.

These circumstances make Spain one of the European countries with the highest numbers of refusal of entry at the border. In 2017, it refused entry to 203,025 persons, mostly at the land borders of Ceuta and Melilla.<sup>21</sup>

Several cases have been brought to court to challenge the conduct of Spanish border control patrols and guards.

One case before the European Court of Human Rights (ECtHR) concerned two Sub-Saharan men – from Mali and the Ivory Coast respectively – who alleged having been summarily and collectively expelled from Spanish territory on 13 August 2014 as part of a group of over 75 individuals. On 3 October 2017, the ECtHR held unanimously that there had been a violation of the prohibition of collective expulsions of the right to an effective remedy in conjunction with said prohibition under Article 4 Protocol 4 and Article 13 of the European Convention on Human Rights (ECHR).<sup>22</sup>

The Court noted that the appellants, N.D. and N.T., had been expelled and sent back to Morocco against their wishes and that the removal measures were taken in the absence of any prior administrative or judicial decision, since the appellants were not subject to any identification procedure

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<sup>18</sup> Organic Law 4/2015 of 30 March 2015 on the protection of citizen security.

<sup>19</sup> UNHCR Spain, ‘Enmienda a Ley de Extranjería vincula gestión fronteriza y respeto de obligaciones internacionales’, 13 March 2015, available in Spanish at: <http://bit.ly/1oEUcMD>. See also ECRE, ‘Spain: New law giving legal cover to pushbacks in Ceuta and Melilla threatens the right to asylum – Op-Ed by Estrella Galán, CEAR’, 27 March 2015, available at: <http://bit.ly/1FRab0K>.

<sup>20</sup> Council of Europe Commissioner for Human Rights, *Third party intervention in N.D. v. Spain and N.T. v. Spain*, 9 November 2015, available at: <http://bit.ly/1oN9Vdk>.

<sup>21</sup> Eurostat, *migr\_eirfs*.

<sup>22</sup> ECtHR, *N.D. and N.T. v. Spain*, Application Nos 8675/15 and 8697/15, Judgment of 3 October 2017.

by the Spanish authorities. The Court concluded that, in those circumstances, the measures were indeed collective in nature. Lastly, the Court noted the existence of a clear link between the collective expulsion to which N.D. and N.T. were subjected at the Melilla border and the fact that they were effectively prevented from having access to a remedy that would have enabled them to submit their complaint to a competent authority and to obtain a thorough and rigorous assessment of their requests before their removal.

However, the Spanish government has successfully requested a referral of the Court's decision to the Grand Chamber, and refuses to amend the Law on Citizens Security, as other parties within the Congress have asked.<sup>23</sup> Different organisations and countries intervened in the written proceedings as third parties, such as CEAR, the AIRE Centre, Amnesty International, ECRE, the Dutch Council for refugees and the International Commission of Jurists (ICJ).<sup>24</sup> The Grand Chamber hearing was held on 26 September 2018.<sup>25</sup> The final decision is pending.

Moreover, the Provincial Court of Cádiz, with headquarters in Ceuta, has ordered the re-opening of the "*El Tarajal*" case,<sup>26</sup> which regards 15 migrants who drowned in February 2014 after attempting to reach the Spanish enclave of Ceuta by sea and were repelled with rubber bullets and smoke grenades by officers from the Guardia Civil. The case was shelved in October 2015 after a court in Ceuta decided that the migrants, who departed from El Tarajal beach along with some 200 others and attempted to swim around the fence that separates Ceuta from Moroccan territory, "were not persons in danger in the sea" in the sense given in the UN Convention on Safety of Life at Sea because "they assumed the risk of illegally entering Spanish territory by swimming at sea." It ruled that responsibility for the deaths could not be allocated to any of the 16 Guardia Civil officers who were accused of murder and causing injury.

The Provincial Court of Cádiz (*Audiencia Provincial de Cádiz*), however, stated on 12 January 2017 that there are survivors who were never called as witnesses and that the forensic investigations undertaken on the bodies of the dead were "unnecessarily rushed", although there is now no possibility of undertaking further examinations of the corpses. The court found that insufficient witness evidence had been gathered and that the post-mortems carried out were inadequate. The court is also demanding that contact be made with the judicial authorities in Morocco, from whom assistance was sought three times previously but without any response. The decision comes in response to a complaint submitted by a Madrid lawyer working with the European Centre for Constitutional and Human Rights (ECCHR) against the closing of proceedings in October 2015. Nevertheless, the court struck out the case at the end of January 2018.<sup>27</sup>

After the case was archived by the Provincial Court of Cádiz, at the end of August 2018 the Fourth Section of the same Court decided to reopen the case in order to allow two survivors located in Germany to testify.<sup>28</sup> In particular, the Court noted that in the archived case no efforts had been made to carry out a proper and effective investigation, including allowing survivors to testify.

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<sup>23</sup> Público, 'La mentira de Zoido sobre las devoluciones en caliente y las solicitudes de asilo', 10 October 2017, available in Spanish at: <http://bit.ly/2rv1yt2>.

<sup>24</sup> The AIRE Centre et al., *Third party intervention in N.D. and N.T. v. Spain*, 5 April 2018, available at: <https://bit.ly/2DiuVCD>.

<sup>25</sup> ECtHR, 'Grand Chamber hearing in a case concerning the immediate return of a Malian and an Ivorian migrant who had attempted to enter Spain illegally', 26 September 2018, available at: <https://bit.ly/2RycYJ9>.

<sup>26</sup> El Diario, 'Las muertes de Ceuta', available in Spanish at: <https://goo.gl/uU1Me3>.

<sup>27</sup> CEAR, 'El archivo del caso Tarajal, "un paso hacia la impunidad" según Coordinadora de Barrios y CEAR', 27 January 2018, available in Spanish at: <http://bit.ly/2DKRodp>.

<sup>28</sup> RTVE, 'La Audiencia de Cádiz ordena reabrir el caso de las muertes de inmigrantes en el Tarajal, Ceuta', 31 August 2018, available in Spanish at: <https://bit.ly/2FFxW1w>; CEAR, 'CEAR celebra la reapertura de la causa Tarajal ordenada por la Audiencia de Cádiz', 31 August 2018, available in Spanish at: <https://bit.ly/2LHPCsx>.

## 1.2. Arrivals by sea

In 2018, almost 58,569 persons arrived in Spanish shores by boat,<sup>29</sup> leading to another year of record numbers of arrivals since the “*Crisis de los Cayucos*” in 2006, when 38,000 people disembarked in the Canary Islands.<sup>30</sup> Sea arrivals increased sharply in 2018 and reached to 57,498 according to the official data released by the Minister of Interior.<sup>31</sup> During that year Spain recorded more sea arrivals than the past eight years combined.<sup>32</sup>

Almost 90% of migrants (57,205) disembarked on the shores of Andalucía Autonomous Community, the Eastern shore (which includes Catalonia, Valencian Community, Murcia and Balearic Islands) and Canary Islands. The rest (1,488) disembarked in **Ceuta** and **Melilla**.<sup>33</sup>

Maritime Rescue (*Salvamento Marítimo*), an authority under the Ministry of Transport, is responsible for search and rescue carried out in the search and rescue zone belonging to Spain and Morocco.<sup>34</sup> The Police (*Guardia Civil*) usually participates along with the personnel of Maritime Rescue in **Almería**, but not in **Algeciras**. The Spanish Red Cross (*Cruz Roja Española*) is always informed of arrivals by the Maritime Rescue. The Spanish Red Cross notifies its Emergency Immediate Response Teams (*Equipos de Respuesta Inmediata en Emergencia*, ERIE) that operate in Almería, Motril, Málaga, Tarifa and Ceuta, where migrants are taken upon their arrival.

The ERIE comprise of Red Cross staff and volunteers who are usually medical personnel, nurses and some intercultural mediators. Their first action consists in a health assessment to check the state of health and detect medical needs and the preparation of a health card for each of the newly arrived persons, which contains their personal data. UNHCR also has a team of four people, two of whom are based in **Málaga** and also cover sea arrivals in **Motril** and **Almería** (the Alborán area) and two based in **Algeciras** and covering arrivals in **Cádiz** and **Ceuta** (the Gibraltar Strait area). The main objective of the presence of UNHCR in Andalucía is to work in the field of identification, referral and protection of people who need international protection.

After this health screening, the ERIE distribute food, water, shelter, dry clothes and a hygiene kit. Normally, men are separated from women. The aforementioned procedures, including humanitarian and health care by the Spanish Red Cross, must be carried out within a period of 72 hours in accordance with the maximum term of preventive detention foreseen in the Spanish legal system.

All adults arriving to mainland Spain by boat are placed in **Detention** for up to 72 hours in police facilities for identification and processing. This is also the case of families and women travelling with children, while children who arrive unaccompanied are usually taken to the competent protection centre.<sup>35</sup>

All persons rescued at sea are issued an expulsion order. If the order cannot be executed within a period of 72 hours, they are transferred to detention in a Foreigners Detention Centre (CIE) in order to proceed with the expulsion. The majority of migrants who are sent there are eventually not removed from the country,<sup>36</sup> as Spain does not have bilateral agreements with all countries of origin. Once the maximum 60-day **Duration of Detention** in CIE has expired, the person is released with a pending

<sup>29</sup> UNHCR, *Spain – Sea and Land Arrivals*, January-December 2018, available at: <https://bit.ly/2tmFzmc>.

<sup>30</sup> La SER, ‘2017, el año del record histórico de pateras a la Península Ibérica’, 5 January 2018, available in Spanish at: <https://goo.gl/eP2d8U>.

<sup>31</sup> Ministry of Interior, *Inmigración irregular: Informe quincenal*, 31 December 2018, available in Spanish at: <https://bit.ly/2F7IEhX>.

<sup>32</sup> El Confidencial, ‘España recibe en 2018 a más migrantes en patera que en los últimos 8 años juntos’, 1 January 2019, available in Spanish at: <https://bit.ly/2DwGUwg>.

<sup>33</sup> UNHCR, *Spain – Sea and Land Arrivals*, January-December 2018 Ministry of Interior, *Inmigración irregular - Informe Quincenal - Datos acumulados del 1 de enero al 31 de diciembre de 2018*, December 2018, available at: <https://bit.ly/2F7IEhX>.

<sup>34</sup> CEAR, *Refugiados y migrantes en España: Los muros invisibles tras la frontera sur*, December 2017, 8.

<sup>35</sup> *Ibid*, 10.

<sup>36</sup> El País, ‘España expulsa 30 inmigrantes por día desde 2013’, 7 January 2019, available in Spanish at: <https://bit.ly/2QvIvqC>.

expulsion order. During 2017, Moroccan nationals who were previously returned to Morocco within 72 hours have also been detained in CIE.<sup>37</sup>

In a recent report, CEAR highlighted shortcomings concerning access to legal assistance for persons arriving by sea. Usually the police contacts lawyers only for the notification of the expulsion order and not at the moment migrants arrive in Spain. Lawyers meet with clients once they are in the CIE, but these interviews are in most cases collective and are conducted in the presence of police officers.

In **Motril**, **Tarifa** and **Almería** the procedure is very similar and includes collective interviews and collective hearings in court, in addition to collective detention orders. In **Motril**, the judge goes to the port with pre-approved detention orders without having heard the persons concerned.<sup>38</sup>

The situation seems to have improved in 2018, with some Bar Associations adopting specific protocols / guidelines providing guidance to lawyers on how to assist migrants arriving by sea. These include **Cádiz**,<sup>39</sup> **Almería**,<sup>40</sup> and **Málaga**.<sup>41</sup>

In addition, in order to respond to the increasing number of arrivals, during 2018 the new Spanish Government started putting in place new resources in order to manage arrivals and to carry out the identification of persons' vulnerabilities in the first days of arrival. Specific facilities for emergency and referral have been created: these are referred to as Centres for the Temporary Reception of Foreigners (*Centros de Acogida Temporal de Extranjeros*, CATE) and Centres for Emergency Reception and Referral (*Centros de Acogida de Emergencia y Derivación*, CAED).<sup>42</sup>

- **CATE** are managed by the National Police and are aimed at facilitating the identification of persons by the police, i.e. recording of personal data, fingerprinting etc. In practice these are closed centres which function as police stations and all newly arrived persons must pass through CATE. The maximum duration of stay in CATE is 72 hours.

At the moment there are three such centres: **San Roque-Algeciras** in Cádiz, **Almería**, and **Motril** in Granada. In addition, a new CATE is expected to open in **Málaga**.<sup>43</sup> CATE are usually large facilities; the one in **San Roque** has a capacity of about 600 places, for example.

- **CAED** are open centres managed by NGOs, i.e. the Spanish Red Cross and CEAR, and are usually large centres where certain assistance services are provided, including information, social and legal assistance.<sup>44</sup> For example, the CAED in Chiclana de la Frontera, Cádiz is managed by the Spanish Red Cross and has capacity for 600-700 persons. Its aim is to establish the status of each newly arrived migrant and to facilitate them the possibility of contacting family members and friends across Spain and the EU.<sup>45</sup>

At the time of writing, there are three CAED managed by the Spanish Red Cross (**Chiclana**, **Guadix** and **Mérida**) and one by CEAR in **Sevilla**. The Spanish Red Cross is expected to open another CAED in **Almería**.

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<sup>37</sup> CEAR, *Refugiados y migrantes en España: Los muros invisibles tras la frontera sur*, December 2017, 16.

<sup>38</sup> *Ibid*, 12-15.

<sup>39</sup> Diario de Cádiz, 'El Colegio de Abogados trata la asistencia letrada a extranjeros', 6 July 2018, available in Spanish at: <https://bit.ly/2X8wpY5>.

<sup>40</sup> Diario de Almería, 'Abogados editan una guía para las llegadas masivas de inmigrantes', 7 July 2018, available in Spanish at: <https://bit.ly/2SQo3pm>.

<sup>41</sup> Ilustre Colegio de Abogados de Málaga – Subcomisión de Extranjería, *Guía para la asistencia letrada en las llegadas marítimas de extranjeros/as*, available in Spanish at: <https://bit.ly/2VaCKjX>.

<sup>42</sup> Europapress, 'Un total de 22.082 personas han sido atendidas a pie de playa en lo que va de 2018, casi la cifra total de 2017', 30 July 2018, available in Spanish at: <https://bit.ly/2RNdsKL>; El Periódico, 'La inusual llegada de pateras a Málaga obliga a buscar soluciones de emergencia', 13 November 2018, available in Spanish at: <https://bit.ly/2Rygwed>.

<sup>43</sup> Asociación Pro Derechos Humanos de Andalucía (APDHA), *Derechos Humanos en la Frontera Sur 2019*, February 2019, available in Spanish at: <https://bit.ly/2DZePOq>, 30.

<sup>44</sup> Europapress, 'El centro para la acogida temporal de migrantes en Mérida atiende a 196 personas en su primera semana en servicio', 3 August 2018, available in Spanish at: <https://bit.ly/2RZQosk>.

<sup>45</sup> APDHA, *Derechos Humanos en la Frontera Sur 2019*, February 2019, 36-37.



As far as the author is aware, the Government has noted adopted adopt (or at least not published) any legal instrument defining and regulating these two new types of centres created to manage sea arrivals.<sup>46</sup>

The inadequacy of these centres has been highlighted, as there are some places of arrival where conditions have been considered unacceptable.<sup>47</sup> The Police Trade Union (*Sindicato Unificado de Policía*) denounced the lack of appropriate health conditions of the facilities of the CATE of **San Roque**, including cases of scabies, as well as the lack of sufficient resources, health staff and of interpreters during arrivals at night.<sup>48</sup>

In June 2018, following the political turnover in Italy and Spain, the newly appointed Italian Minister of Interior denied a boat with 629 migrants and refugees (including 123 unaccompanied children, 11 young children and 7 pregnant women) disembarkation in Italy, in light of the government's new "closed ports" policy.<sup>49</sup> Considering Malta's similar decision to deny disembarkation in its ports, and despite multiple calls from many organisations to have a nearest safe port made available soon,<sup>50</sup> the Spanish Government offered to take in those persons. After eight days of dispute and travel, the 629 persons, who were travelling on three boats, the *Aquarius* and two vessels of the Italian Navy, were finally disembarked at the port of **Valencia**.<sup>51</sup>

In this specific case, the aforementioned standard procedure for disembarkation was partially modified, given the particular status of the persons and the "emergency and exceptional" situation.<sup>52</sup> More specifically, the initial phase was maintained, with the medical screening carried out by the ERIE. After that, instead of transferring migrants and refugees to police stations for identification purposes, the same Government Delegation carried out the identification procedure directly at the port of Valencia, by screening those in need of international protection and those who were not within 45 days.<sup>53</sup>

In January 2019, the Spanish Government announced its intention to reduce irregular migration by 50%, following a record number of 64.298 persons entering the country in 2018.<sup>54</sup> To that end, it designed a plan aiming at avoiding active patrol by the *Salvamento Marítimo* in the Mediterranean coasts and at prohibiting to the rescue boats managed by NGOs from setting sail from Spanish shores. The plan also foresees pressure on the Italian Government to open ports to boats close to its territory.

## 2. Registration of the asylum application

### Indicators: Registration

1. Are specific time limits laid down in law for asylum seekers to lodge their application?  
☐ Yes ☒ No
2. If so, what is the time limit for lodging an application?

<sup>46</sup> *Ibid.*, 29.

<sup>47</sup> CEAR, '2018, el año que España se convirtió en la principal entrada por mar a Europa', 27 December 2018, available in Spanish at: <https://bit.ly/2LBjmJ8>.

<sup>48</sup> Europapress, 'SUP lamenta "casos de sarna" en el Centro de Atención Temporal de Extranjeros de San Roque', 5 September 2018, available in Spanish at: <https://bit.ly/2SxNYIz>.

<sup>49</sup> Europapress, 'Salvini, al "Aquarius": "Vayan donde quieran, pero no a Italia"', 21 September 2018, available in Spanish at: <https://bit.ly/2HirFvt>.

<sup>50</sup> Médecins Sans Frontières, 'MSF urges immediate disembarkation of 629 people on board Aquarius at nearest port of safety', 12 August 2018, available at: <https://bit.ly/2swYVo3>.

<sup>51</sup> El Diario, 'Gobierno, Valencia y ONG se ponen en marcha: los primeros pasos para recibir a los rescatados del Aquarius', 12 June 2018, available in Spanish at: <https://bit.ly/2RWtamO>; El Mundo, 'España acoge ya a los 629 inmigrantes rescatados por el Aquarius tras llegar al Puerto de Valencia', 17 June 2018, available in Spanish at: <https://bit.ly/2QWWg0E>.

<sup>52</sup> *Ibid.*

<sup>53</sup> *Ibid.*

<sup>54</sup> El País, 'El Gobierno traza un plan para reducir un 50% la migración irregular', 30 January 2019, available in Spanish at: <https://bit.ly/2leZRrO>.

The Asylum Act provides that the authorities responsible for the lodging of asylum claims are: the Office of Asylum and Refuge (OAR), any Foreigners' Office, Detention Centre for Foreigners (CIE) or police station.<sup>55</sup> In practice, "registration" and "lodging" of asylum applications entail different procedural steps.

## 2.1. Rules on making (*presentación*), registering and lodging (*formalización*)

Persons willing to seek international protection to Spain must make a formal application during their first month of stay in Spain.<sup>56</sup> When this time limit is not respected, the law foresees the possibility to apply the urgent procedure,<sup>57</sup> although in practice the competent authority will reject any asylum application that does not comply with the 1-month deadline when it considers that no valid justification exists for the delay.

The process begins with the presentation ("making") of the application, which the applicant shall present in person or, if this is not possible, with representation by another person. For persons disembarking in ports, the intention to apply for international protection is registered by the police, usually following the intervention of NGOs.

Upon the registration of the intention to apply for asylum, the applicant receives a paper-form "certificate of intention to apply for asylum" (*Manifestación de voluntad de presentar solicitud de protección internacional*).

After registration has been completed, the applicant is given an appointment for the formalisation ("lodging") of the application, which consists of an interview and the completion of a form, and shall be always be realised in the presence of a police official or an officer of the OAR. Upon the lodging of the application, the person receives a "receipt of application for international protection" (*Resguardo de solicitud de protección internacional*), also known as "white card" (*tarjeta blanca*). This document is later replaced by a "red card" (*tarjeta roja*), issued after the asylum application has been deemed admissible by the OAR.

## 2.2. Obstacles to registration in practice

Due to the increase in asylum applications made in Spain in recent years, leading to a slowing down of responses by the Spanish asylum system, applicants wait long periods of time before getting an appointment to be interviewed by the OAR.

As it was the case in summer 2017, media reports in autumn 2018 showed long lines of hundreds of asylum seekers sleeping rough and waiting for their appointment to lodge their asylum claim in front of the offices of the Provincial Brigade for Alien Affairs of the National Police of Aluche in **Madrid**.<sup>58</sup> Severe concerns were raised as the Aluche police station started to process only 99 asylum seekers per day, and to give appointments for lodging of applications as late as December 2020.<sup>59</sup>

In order to shed light on the situation, the Spanish Ombudsman opened an investigation to inquire into the measures undertaken by the General Commissariat for Foreigners and Borders (*Comisaría General de Extranjería y Fronteras*) to avoid the long queues and the conditions that those seeking asylum in Madrid are obliged to face.<sup>60</sup>

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<sup>55</sup> Article 4(1) Asylum Regulation.

<sup>56</sup> Article 17(2) Asylum Act.

<sup>57</sup> *Ibid.*

<sup>58</sup> AIDA, 'Severe delays in registration of asylum applications', 4 December 2018, available at: <https://bit.ly/2FzO3ye>; Público, 'La larga y fría noche de espera para iniciar el trámite de asilo en Madrid', 21 November 2018, available in Spanish at: <https://bit.ly/2BAfJjv>.

<sup>59</sup> Madridiario, 'Emplazados a finales de 2020 para poder solicitar asilo', 21 November 2018, available in Spanish at: <https://bit.ly/2QZriFg>.

<sup>60</sup> Defensor del Pueblo, 'El Defensor del Pueblo investiga las dificultades para acceder a la cita previa para solicitar protección internacional en Madrid', 15 November 2018, available in Spanish at: <https://bit.ly/2StZDxk>.

At the time of writing, the average waiting time for an appointment is 6 months, even though delays vary depending on the province. Waiting times can range from 1 month to 1 year:

Waiting time for appointment to lodge asylum applications: 2018	
Province	Average period
Alicante	12 months
Cádiz	9 months
Castellón	11 months
Guadalajara	8 months
Madrid	1 month
Málaga	5 months
Murcia	3-4 months
Sevilla	12 months
Valencia	7 months

Source: Accem

In any case, in order to reduce timeframes, the administration is increasing the personnel in charge of registering asylum applications at police stations.

### Access to the procedure in Ceuta and Melilla

Beyond the mainland, most shortcomings concerning the registration of asylum claims in Spain relate to the autonomous cities of **Ceuta** and **Melilla**, due to the difficulties in [Access to the Territory](#). In order to facilitate access to asylum at land borders, the Ministry of Interior has established asylum offices at the borders' crossing points in Ceuta and Melilla since November 2014.<sup>61</sup> In the same way, since mid-2014 UNHCR has guaranteed its presence as well.

Since its establishment, the border checkpoint in **Melilla** has quickly become one of the main registration points for asylum applications in Spain, receiving 6,000 asylum claims in 2015, 2,209 in 2016,<sup>62</sup> and 2,572 in 2017.<sup>63</sup> Information for 2018 is not available. Conversely, there has been virtually no asylum claim made at the **Ceuta** border point. This is mainly due to the impossibility faced by migrants and asylum seekers to exit the Moroccan border due to the severe checks performed by Moroccan police. This issue also affects Melilla but mainly impacts on the nationalities that can access the Spanish border rather than on the number of asylum claims overall. In fact, most of persons on the Moroccan side are stopped following racial profiling, meaning that nationalities such as Syrians cross the border more easily persons from Sub-Saharan countries (see section on [Access to the Territory](#)). Between 1 January 2015 and 31 May 2017, only 2 out of 8,972 persons seeking asylum in Ceuta and Melilla were of Sub-Saharan origin.<sup>64</sup>

### Access to the procedure from detention

Shortcomings have also been reported concerning the possibility to claim asylum from administrative detention due to the difficulties faced by detained persons in accessing legal assistance.<sup>65</sup> In this regard, the Spanish Ombudsman recommended the General Commissariat for Foreigners and Borders to adopt instructions so as to establish an appropriate system for registration of asylum applications in

<sup>61</sup> UNHCR Spain, 'ACNUR da la bienvenida a la creación de oficinas de asilo en puestos fronterizos de Ceuta y Melilla', 6 November 2014, available in Spanish at: <http://bit.ly/1OATaq8>.

<sup>62</sup> Senate, Reply of the Government to question 689/1339, 20 September 2017, available in Spanish at: <http://bit.ly/2DHJ1yB>.

<sup>63</sup> Information provided by OAR, 2 March 2018.

<sup>64</sup> *Ibid.*

<sup>65</sup> Human Rights Watch, *Spain: Migrants held in poor conditions*, 31 July 2017, available at: <https://goo.gl/maQ2V7>.



CIE in accordance with the law. In particular, the Ombudsman highlighted the difficulties detainees have to apply for asylum at CIE, namely in **Madrid** where individuals are instructed to put their written intention to apply for asylum in a mailbox and to wait until the mailbox has been opened for the asylum procedure to start, and the fact that many persons have been expelled without having had access to the asylum procedure.<sup>66</sup> In July 2018, the General Commissariat for Foreigners and Borders of the Minister of Interior accepted the recommendation made by the Spanish Ombudsman, thus it issued instructions to all CIE to adapt their systems for registration of asylum applications to the existing law.<sup>67</sup>

According to the Asylum Act,<sup>68</sup> all registered asylum applications are communicated to the UNHCR, which will be able to gather information on the application, to participate in the applicant's hearings and to submit reports to be included in the applicant's record.

## C. Procedures

### 1. Regular procedure

#### 1.1. General (scope, time limits)

##### Indicators: Regular Procedure: General

1. Time limit set in law for the determining authority to make a decision on the asylum application at first instance: 6 months
2. Are detailed reasons for the rejection at first instance of an asylum application shared with the applicant in writing? ☐ Yes ☒ No
3. Backlog of pending cases at first instance as of 31 December 2018: 68,779

All asylum decisions are examined by the Office of Asylum and Refuge (OAR) of the Ministry of Interior. The Ministry of Interior is responsible for a broad range of tasks involving national security, such as the management of national security forces and bodies – including police guards and *Guardia Civil*, which are responsible of border control activities – the penitentiary system, foreigners and immigration-related issues, and asylum applications.<sup>69</sup>

The OAR centralises the processing of all asylum applications which are officially lodged in Spain, both inside the country and at its borders, as well as the processing and decision-making concerning the cases of stateless persons. This Office also participates in a unit operating under the Office of the Police Commissioner-General for Affairs Related to Foreign Nationals and Borders concerning documentation and within another unit operating under the Ministry of Labour and Social Security, with authority over matters concerning the reception of asylum seekers.

The examination of an application by the OAR culminates in a draft decision which is submitted to the Inter-Ministerial Asylum and Refugee Commission (CIAR),<sup>70</sup> which will decide to grant or to refuse international protection. The resolution passed within said Commission must be signed by the Minister of the Interior, although it is standard practice for it to be signed by the Under-Secretary of the Interior by delegation of signature authority. The CIAR is composed by a representation of each of the departments having competences on: home and foreign affairs; justice; immigration; reception; asylum

<sup>66</sup> Defensor del Pueblo, 'El Defensor del Pueblo reclama un sistema de registro de las solicitudes de asilo para los CIE que cumpla con la normativa vigente', 22 May 2018, available in Spanish at: <https://bit.ly/2snaz4j>.

<sup>67</sup> Ombudsman, 'Interior acepta la recomendación del Defensor para adecuar el sistema de registro de las solicitudes de asilo en los CIE a la normativa vigente', July 2018, available in Spanish at: <https://bit.ly/2AYji28>.

<sup>68</sup> Articles 34-35 Asylum Act.

<sup>69</sup> Royal Decree 400/2012 of 17 February 2012 developing the basic organic structure of the Ministry of Interior.

<sup>70</sup> Article 23(2) Asylum Act.

seekers; and equality. UNHCR also participates but may only express its opinion on asylum cases without the right to vote.

According to the information reported by the Spanish Ombudsman after a visit conducted in February 2016, each case examiner in the OAR is assigned 120-150 cases. In the case of applications lodged at the border and from CIE, claims are assigned by the country of origin of the applicant, up to a total of 5 applications per caseworker. If they exceed this number, the applications are examined by a three-member group which meets monthly and which examines the excess number of border and CIE applications. In 2014, caseworkers stated that they assessed a monthly average of 20-25 cases of this type of applications. That would mean approximately 119 case files per year, including the requests for re-examination, plus those of the three-member group, totalling approximately 240 applications per caseworker.<sup>71</sup>

The OAR does not have guidelines in place to guarantee homogeneity in the examination of applications, with the exception of some instructions regarding the formal structure of the report, nor does it have a code of best practices in place.

The Asylum Act provides that, where applicants do not receive a final notification on the response to their first instance asylum claim after 6 months, the application will have to be considered rejected.<sup>72</sup> In practice, many applications last much more than 6 months. In these cases, usually no automatic notification of denial is provided by the OAR and applicants prefer to wait until the final decision communication instead of asking a response to the authority, as they risk receiving a denial and having reception conditions and benefits withdrawn. If the applicant so wishes, however, he or she can lodge a judicial appeal when no response on the asylum claim is provided in time.

The duration of the asylum process varies a lot depending on the nationality of applicants, and can go from 3 months to 3 years. For example, in 2018, the average duration of the procedure was 288 days for Syrians, 505 days for Afghans and 633 days for Iraqis. The overall average processing time in 2018 was reported at 473 days.<sup>73</sup>

In early 2017, UNHCR Spain declared that the Spanish government had a backlog of pending cases reaching 19,000 asylum claims, presented in the past years mainly from nationals of Ukraine, Venezuela, Syria, Nigeria and Mali.<sup>74</sup> The number of pending cases rose from 35,261 at the end of 2017 to 68,779 at the end of 2018, mainly concerning nationals of Venezuela.<sup>75</sup>

## 1.2. Prioritised examination and fast-track processing

Article 25 of the Asylum Act lays down the urgent procedure, a prioritised procedure whereby the application will be examined under the same procedural guarantees as the regular procedure, but within a time limit of 3 months instead of 6 months.<sup>76</sup>

The urgent procedure is applicable in the following circumstances:<sup>77</sup>

- (a) The application is manifestly well-founded;
- (b) The application was made by a person with special needs, especially unaccompanied minors;
- (c) The applicant raises only issues which have no connection with the examination of the requirements for recognition of refugee status or subsidiary protection;

<sup>71</sup> Ombudsman, *El asilo en España: La protección internacional y los recursos del sistema de acogida*, June 2016, available in Spanish at: <http://bit.ly/2n88SpE>.

<sup>72</sup> Article 24(3) Asylum Act.

<sup>73</sup> Information provided by OAR, 8 March 2019.

<sup>74</sup> Publico, 'España acumula 19.000 peticiones de asilo sin resolver, según ACNUR', 10 January 2017, available in Spanish at: <https://goo.gl/We8Gbp>.

<sup>75</sup> Information provided by OAR, 8 March 2019.

<sup>76</sup> Article 25(4) Asylum Act.

<sup>77</sup> Article 25(1) Asylum Act.

- (d) The applicant comes from a safe country of origin and has the nationality of that country or, in case of statelessness has residence in the country;
- (e) The applicant applies after a period of one month, without justification; or
- (f) The applicant falls within any of the exclusion grounds under the Asylum Act.

The urgent procedure is also applied to applicants who have been admitted to the in-merit procedure after lodging a claim at the border or within the CIE.<sup>78</sup> 2,182 applications were processed under the urgent procedure in 2018.<sup>79</sup>

The authority in charge of the asylum decision is the Ministry of Interior like in any asylum procedure in Spain. CIAR, responsible for the case examination, will be informed of the urgency of the cases.<sup>80</sup>

### 1.3. Personal interview

#### Indicators: Regular Procedure: Personal Interview

1. Is a personal interview of the asylum seeker in most cases conducted in practice in the regular procedure? ☒ Yes ☐ No  
 ❖ If so, are interpreters available in practice, for interviews? ☒ Yes ☐ No
2. In the regular procedure, is the interview conducted by the authority responsible for taking the decision? In some cases
3. Are interviews conducted through video conferencing? ☐ Frequently ☒ Rarely ☐ Never

Article 17 of the Asylum Act states that asylum applications are formalised by the conduct of a personal interview, which will always be conducted individually. This legislative provision is respected in practice, as all asylum seekers are interviewed.<sup>81</sup> The law also provides the possibility of carrying out other interviews with the applicant after the initial one foreseen for the formalisation of the asylum claim. These interviews can take place any time during the procedure after the claim is declared admissible.

When applicants go to their registration appointment with the OAR, they undergo a first interview, with or without a lawyer, given that the assistance of a lawyer is mandatory only for applications lodged at borders and CIE. The interview is held in private offices which generally fulfil adequate standards with regard to privacy and confidentiality, but this situation can vary from one region to another.

The interview is not carried out by the case examiners but rather the auxiliary personnel, using documents prepared by the case examiner. The Ombudsman reports that the documents contain the questions which the official must take into account during the interview. The purpose of these questions is to detect fraudulent applications, and instructions are included for the case in which it is required to pass the nationality test to prove the country of origin of the applicant in case doubts exist.<sup>82</sup>

Police and border guards also have the competence of registering asylum applications, for which in these cases they are the authority in charge of conducting the asylum interview. This mostly happens to asylum claims made at borders and from the CIE.

The caseworker may hold a second interview with the applicant when he or she considers the information in the case file to be insufficient.<sup>83</sup> The case examination reports do not systematically make reference to whether or not a second interview is necessary, although the law states that the decision to hold further interviews must be reasoned. However, as second interviews are held in a very small percentage of cases, and this despite the expertise of the interviewer, the Ombudsman has asked for a

<sup>78</sup> Article 25(2) Asylum Act.

<sup>79</sup> Information provided by OAR, 8 March 2019.

<sup>80</sup> Article 25(3) Asylum Act.

<sup>81</sup> Information provided by OAR, 2 March 2018.

<sup>82</sup> Ombudsman, *El asilo en España: La protección internacional y los recursos del sistema de acogida*, June 2016, available in Spanish at: <http://bit.ly/2n88SpE>.

<sup>83</sup> Article 17(8) Asylum Act.

mandatory second interview to be held when the first one has not been conducted by an OAR caseworker.<sup>84</sup> This was recommended by the Ombudsman who stated that:

“The profile of the interviewer differs depending on the location where the application is lodged, the quality of the interview therefore varies greatly depending on who carried it out. At the international airports and at the border control posts, the interview is conducted by police officers; in prisons, it is conducted by the prison’s own staff; in **Ceuta**, the interviews for the applications lodged inside the territory come under the authority of a Government Delegation official. The interviews for the applications lodged within the territory of **Melilla** are conducted by an officer from the Central Police Headquarters; and in **Valencia** and **Catalonia**, the interview is usually conducted at the immigration affairs offices. The interviews conducted with persons who are prison facility inmates are usually conducted by a person of the technical team at the prison facility and are conducted on the basis of a questionnaire furnished by the Asylum and Refugee Office. In this case, generally speaking, the person who conducts the interview does not usually have enough training to carry it out, it therefore being considered that a second interview on the part of the case examiner through the use of technologies allowing for this possibility without any need of travel should be mandatory.”<sup>85</sup>

These observations remain valid as of 2018, since arrangements vary according to the province where the interview takes place.

## Interpretation

Article 18 of the Asylum Act provides the right of all asylum seekers to have an interpreter. This is respected in practice.

Since June 2016, the Ministry of Interior has changed subcontractors for the provision of interpreters to the OAR and all police offices that register asylum applications in the Spanish territory, for which NGOs do not provide services anymore. The contract was awarded to the Ofilingua translation private company. Since then, several shortcomings have been reported, mainly due to the fact that the agency does not have a specific focus on migration and asylum, for which it did not count on the needed expertise due to the sensitive field of asylum and did not have the contacts of most of the needed interpreters by the OAR. In addition, a lack of proper expertise in interpretation techniques has been detected in many cases. It is thus common for some interpreters to make personal comments going beyond their interpretation role in front of the interviewer and with the risk of including subjective considerations in the asylum interview. There are also interpreters who do not speak adequate Spanish, so in many circumstances the statements made by the asylum seeker are not properly reflected in the interview. In addition, interpreters who were working before with NGOs have reported a reduction of pay and deterioration of working conditions, thereby potentially affecting the quality of their work.

In cases of less common languages, asylum interviews are postponed and the concerned asylum seeker is not informed in advance but only on the day of the cancelled interview. In some cases, interpretation during asylum interviews has been carried out by phone, because the company did not consider arranging the deployment of the interpreter from his or her city to the place of the interview. Since the beginning of the EU relocation scheme running between 2015 and 2017, asylum seekers from Greece and Italy’s hotspots have been transferred to Spain. The process has brought to Spain nationalities of asylum seekers who cannot count on a community in the country, such as Iraqis, Kurds and Eritreans. Due to the absence of a sizeable community, there have been many difficulties in finding interpreters who speak Tigrinya, Pashtu or Sorani. This fact has caused many shortcomings and obstacles not only to asylum authorities but also to NGOs providing services and accommodation to asylum seekers. These difficulties were resolved in 2017, but some provinces can still face delays in having interpreters of such languages available on time and when needed.

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<sup>84</sup> Ombudsman, *El asilo en España: La protección internacional y los recursos del sistema de acogida*, June 2016, available in Spanish at: <http://bit.ly/2n88SpE>.

<sup>85</sup> *Ibid.*

Due to this, sometimes lawyers and asylum seekers are asked to move from the place they are to the closest place where interpretation can be provided, which was usually not done under the precedent interpretation service.

Video conferencing is rare, although it is used in the cases of asylum seekers who are in prison or in the case of applications made from the enclave of **Melilla**.

## Transcript

As a rule, the minutes of the interview are transcribed *verbatim*. No issues have been raised regarding the transcription of interviews.

### 1.4. Appeal

#### Indicators: Regular Procedure: Appeal

- |   |  |  |
|---|--|--|
| 1. Does the law provide for an appeal against the first instance decision in the regular procedure? | <input checked="" type="checkbox"/> Yes      | <input type="checkbox"/> No                        |
| ❖ If yes, is it   | <input checked="" type="checkbox"/> Judicial | <input checked="" type="checkbox"/> Administrative |
| ❖ If yes, is it automatically suspensive  | <input type="checkbox"/> Yes                 | <input checked="" type="checkbox"/> No             |
| 2. Average processing time for the appeal body to make a decision:                                  | 1-2 years                                    |  |

When the asylum applicant wants to appeal against the first instance decision, there are two types of appeals he or she can lodge:

- (a) An administrative appeal for reversal (*Recurso de reposición*); or
- (b) A judicial appeal before the Chamber of the National High Court (*Audiencia Nacional*).

None of these two appeals have automatic suspensive effect, and none of them foresee a hearing of the applicant.<sup>86</sup>

The first type of appeal should be submitted before the OAR under the Ministry of Interior, within 1 month from the notification of refusal.<sup>87</sup> It marks the end to the administrative procedure, and therefore it is optional as the lawyer can appeal directly to the courts. This first option for appealing is based on points of law and does not assess the facts. For this reason, the applicant and his or her lawyer may prefer to file the contentious administrative appeal.

An appeal against a negative decision on the merits of the claim can be filed before the Administrative Chamber of the High National Court (*Audiencia Nacional*) within 2 months term from the notification of the asylum denial. This appeal is not limited to points of law but also extends to the facts, therefore the Court may re-examine evidence submitted at first instance. If the Court finds that the applicant should be granted protection it has the power to grant itself the protection status to the applicant and it is not necessary to return the case to the Ministry for review. Decisions of the *Audiencia Nacional* are publicly available in the [CENDOJ](#) database.

Nonetheless, it should be kept in mind that there is no deadline for the Court to decide, and that the average time for ruling is from 1 to 2 years. During this period, if the applicant has expired its maximum duration within the asylum reception system (18 months), the person will have no reception conditions.

For this reason, most of the applicants and their lawyers prefer to collect more documentation to support the asylum application, in order to start a new asylum claim from the starting point of the asylum process. In fact, the Asylum Act does not set a limit number of asylum applications per person, and as mentioned in the section on [Subsequent Applications](#), it does not establish a specific procedure for subsequent applications.

<sup>86</sup> Article 29(1) Asylum Act.

<sup>87</sup> Article 29 Asylum Act.

Although statistics on appeals are not available,<sup>88</sup> the success rate of appeals is generally low.

## Onward appeal

In case of a rejection of the appeal, a further onward appeal is possible before the Supreme Court (*Tribunal Supremo*),<sup>89</sup> which in case of a positive finding has the power to grant the applicant with an international protection status.

### 1.5. Legal assistance

#### Indicators: Regular Procedure: Legal Assistance

1. Do asylum seekers have access to free legal assistance at first instance in practice?  
☒ Yes      ☐ With difficulty      ☐ No  
❖ Does free legal assistance cover:  
☒ Representation in interview  
☒ Legal advice
2. Do asylum seekers have access to free legal assistance on appeal against a negative decision in practice?  
☒ Yes      ☐ With difficulty      ☐ No  
❖ Does free legal assistance cover:  
☒ Representation in courts  
☒ Legal advice

Spanish legislation and Article 18(1)(b) of the Asylum Act guarantee the right to legal assistance to asylum seekers from the beginning and throughout all stages of the procedure. This assistance will be provided free of charge to those who lack sufficient financial means to cover it, both in the administrative procedure and the potential judicial proceedings. It is also established that NGOs can provide legal assistance to asylum seekers. In addition, they can play a consultative role in the determination procedure by submitting written reports on individual cases.

#### 1.5.1. Legal assistance at first instance

In 2018, shortcomings in access to legal aid have persisted for persons arriving by sea. In order to guarantee asylum seekers' rights, some Bar Associations from the southern cities of Andalucía have created *ad hoc* teams of lawyers. Nonetheless, assistance has been undermined by obstacles such as the lack of information on asylum to newly arrived persons and the lack of possibility to access a lawyer (see [Access to the Territory](#)). The CATE and CAED facilities established for newly arrived persons in 2018 have not resulted in improvements in this regard, although in the CAED operated by CEAR migrants are reported to receive legal assistance.

Concerning free legal aid, in September 2015 Spain's General Bar Council (*Consejo General de la Abogacía Española*) launched a Register of *pro bono* immigration and asylum lawyers that will be made available to the Spanish and EU authorities to address legal aid of potential refugees.

The Supreme Court has highlighted the obligation of the State to provide effective access to legal assistance during the procedure, without which the individual is in a state of "real and effective helplessness, which is aggravated in the case of foreigners who are not familiar with the language and Spanish law, and which may have annulling effect on administrative acts."<sup>90</sup> Beyond merely informing applicants of the possibility to receive legal aid, the authorities are required to indicate in the case file whether the asylum seeker has accepted or rejected legal aid in the procedure.<sup>91</sup>

<sup>88</sup> Information provided by OAR, 8 March 2019.

<sup>89</sup> Article 29(2) Asylum Act.

<sup>90</sup> Supreme Court, Decision STS 3186/2013, 17 June 2013, available in Spanish at: <http://bit.ly/2n8tDAJ>.

<sup>91</sup> Supreme Court, Decision STS 4316/2015, 19 October 2015, available in Spanish at: <http://bit.ly/2DB9y16>.



The OAR registered 12,722 requests for legal aid at first instance in 2017,<sup>92</sup> representing only 40% of the total number of people seeking asylum in Spain during that year. Figures for 2018 are not available.

### 1.5.2. Legal assistance in appeals

Legal aid is also contemplated for the subsequent judicial review and appeal procedures. Free legal aid for litigation must be requested through the Bar Association Legal Assistance Service (*Servicio de Orientación Jurídica del Colegio de Abogados*) or through NGOs specialised in asylum.

The *Audiencia Nacional* has clarified that deadlines for appealing a negative decision are suspended pending the outcome of a legal aid application. The asylum seeker must also be duly notified of the outcome of the legal aid request.<sup>93</sup> Legal aid is generally granted in appeals in practice.

The Bar Association of Madrid has a specialised roster of lawyers taking up asylum cases. While this bar association generally represents most appeals lodged in any part of Spain, other bar associations have also organised similar rosters since 2015.

The level of financial compensation awarded to legal aid lawyers is established by each bar association. It does not differ based on the type of cases – asylum-related or other – taken up by lawyers.

## 2. Dublin

### 2.1. General

#### Dublin statistics: 2018

Outgoing procedure			Incoming procedure		
	Requests	Transfers		Requests	Transfers
<b>Total</b>	7	2	<b>Total</b>	11,070	671
Germany	5	0	France	5,353	243
France	2	2	Germany	2,923	215
			Belgium	1,260	21
			Netherlands	399	55
			Switzerland	336	45
			Sweden	192	30
			United Kingdom	104	2
			Greece	75	9
			Italy	73	0
			Austria	72	7

Source: OAR

The OAR rarely applies the Dublin Regulation. It only issued 10 outgoing requests in 2016, 11 in 2017, and 7 in 2018.<sup>94</sup> The Dublin Regulation usually concerns incoming requests and transfers to Spain.

In August 2018, Germany and Spain concluded a bilateral agreement entitled “Administrative arrangement on cooperation when refusing entry to persons seeking protection in the context of temporary checks at the internal German-Austrian border”, which entered into force on 11 August

<sup>92</sup> Information provided by OAR, 2 March 2018.

<sup>93</sup> Audiencia Nacional, Decision SAN 3274/2017, 21 July 2017, available in Spanish at: <http://bit.ly/2n8b5Rf>.

<sup>94</sup> Information provided by OAR, 28 February 2017; 2 March 2018; 8 March 2019.

2018.<sup>95</sup> The agreement, implemented by the two countries' police authorities, foresees that persons who have lodged an application for international protection in Spain and are apprehended at the German-Austrian border are to be refused entry and returned to Spain within 48 hours. Given that it concerns transfers of asylum seekers outside a Dublin procedure, it infringes the Dublin Regulation.<sup>96</sup> No cases of persons returned to Spain under the agreement were witnessed in 2018.

### **Application of the Dublin criteria**

Out of the 7 outgoing requests issued in 2017, 6 were "take back" requests.<sup>97</sup> Given the limited use of the Dublin Regulation by the OAR, there is not sufficient practice to draw upon for an analysis of the way in which criteria are applied.

As regards incoming requests, Spain received 7,796 "take charge" and 3,076 "take back" requests, as well as 198 information requests in 2018.<sup>98</sup>

The OAR's edited leaflet providing information to asylum seekers on the Dublin Regulation states that having family members living in a country is one of the factors that will be taken into account for establishing the Member State responsible for the processing of the asylum application.

In general, family unity criteria are applied in practice. For unmarried couples, it is even sufficient to provide – in the absence of a legal document – an official declaration of the partners demonstrating their relationship.

### **The discretionary clauses**

In Spain the sovereignty clause is applied on rare occasions, for vulnerable people or to guarantee family unity. In 2009, the OAR applied the sovereignty clause in the case of a pregnant woman dependent on her partner but with whom she was not married. The partner and father of the child was a legal resident with regular employment in Spain. According to the European Commission's evaluation of March 2016, Spain also undertakes responsibility for unaccompanied children, even where there is evidence that the Dublin family criteria could apply.<sup>99</sup> However, the sovereignty clause was not applied in 2017.<sup>100</sup>

Concerning the humanitarian clause, it appears that no case has met the relevant criteria on the basis of Article 17(2) of the Regulation. In 2016 and 2017, the OAR has not applied the dependent persons and humanitarian clauses.<sup>101</sup>

No particular procedure is applied for vulnerable persons.

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<sup>95</sup> The agreement is available at: <https://bit.ly/2G2lZ7E>.

<sup>96</sup> See e.g. ECRE, *Bilateral agreements: Implementing or bypassing the Dublin Regulation?*, December 2018, available at: <https://bit.ly/2rvGNur>.

<sup>97</sup> Information provided by OAR, 8 March 2019.

<sup>98</sup> *Ibid.*

<sup>99</sup> European Commission, *Evaluation of the implementation of the Dublin III Regulation*, March 2016, 20.

<sup>100</sup> Information provided by OAR, 2 March 2018.

<sup>101</sup> Information provided by OAR, 28 February 2017; 2 March 2018.



## 2.2. Procedure

### Indicators: Dublin: Procedure

1. On average, how long does a transfer take after the responsible Member State has accepted responsibility? Not available

The Asylum Act does not provide specific elements regarding the Dublin procedure. In practice, it consists of an admissibility assessment with the same characteristics and guarantees foreseen for other applicants. The only difference is the length of the process. In the Dublin procedure, the phase is 1 month longer.

Asylum seekers are systematically fingerprinted and checked in Eurodac in practice.

The OAR official or the police ask the person questions about identity and travel route. If the person is in the territory, he or she will be documented and then a decision upon admission to the procedure will be taken within two months. If the person is denied access to the procedure, he or she will be asked to leave the country. If the person does not return, he or she remains illegally but without being detained or returned to the country of origin.

### Individualised guarantees

There are very few outgoing requests made by Spain. No specific guarantees have applied to these cases.<sup>102</sup>

### Transfers

According to the European Commission's evaluation of March 2016, Spain conducts transfers within 2 months. However, according to the OAR an average duration of the Dublin procedure is not available for 2017. The OAR implemented 2 transfers in 2016, 2 in 2017 and 2 in 2018.<sup>103</sup>

## 2.3. Personal interview

The same rules as in the [Regular Procedure: Personal Interview](#) apply. According to the authorities, the interview is never omitted.<sup>104</sup>

## 2.4. Appeal

The same rules as in the [Regular Procedure: Appeal](#) apply.

## 2.5. Legal assistance

The same rules as in the [Regular Procedure: Legal Assistance](#) apply.

<sup>102</sup> Information provided by OAR, 20 August 2017.

<sup>103</sup> Information provided by OAR, 28 February 2017; 2 March 2018; 8 March 2019.

<sup>104</sup> European Commission, *Evaluation of the implementation of the Dublin III Regulation*, March 2016, 12.

## 2.6. Suspension of transfers

### Indicators: Dublin: Suspension of Transfers

1. Are Dublin transfers systematically suspended as a matter of policy or jurisprudence to one or more countries?  
☒ Yes ☐ No  
❖ If yes, to which country or countries? Greece

Transfers of asylum seekers to Greece under the Dublin Regulation have been suspended since 2014. Spain makes very rare use of the Dublin procedure in practice.

## 2.7. The situation of Dublin returnees

The number of incoming procedures to Spain is far higher than the number of outgoing procedures. Spain received 11,070 requests and 671 transfers in 2018.<sup>105</sup>

The Dublin Unit does not provide guarantees to other Member States prior to incoming transfers, although upon arrival of an asylum seeker through a Dublin transfer, the OAR coordinates with the Ministry of Labour, Migration and Social Security, responsible for reception.<sup>106</sup> Nevertheless, civil society organisations have witnessed particular difficulties with regard to victims of trafficking returning to Spain under the Dublin system, mainly from **France**. These are due to different factors, i.e. the fact that victims of trafficking are not effectively identified as such, the lack of an effective mechanism to register and identify trafficked persons before return, as well as to identify victims among Dublin returnees once they arrive in Spain. The lack of coordination among the Spanish competent authorities (Dublin Unit, OAR, Ministry of Labour in charge of reception) is another factor.

In 2018, there have been reports of Dublin returnees not being able to access reception conditions (see [Reception Conditions: Criteria and Restrictions](#)). In January 2019, the Superior Court (*Tribunal Superior de Justicia*, TSJ) of Madrid condemned the Spanish Government for denying reception to asylum seekers returned to Spain within the Dublin procedure.<sup>107</sup> For this purpose, the Ministry of Labour, Migration and Social Security issued an instruction establishing that asylum seekers shall not be excluded from the reception system if they left voluntarily Spain to reach another EU country.<sup>108</sup> The instruction has not been made public yet.

Dublin returnees do not face obstacles in re-accessing the asylum procedure. The OAR prioritises their registration appointment for the purpose of lodging an asylum application. If their previous asylum claim has been discontinued, they have to apply again for asylum. However, that claim is not considered a subsequent application.

## 3. Admissibility procedure

### 3.1. General (scope, criteria, time limits)

The asylum procedure in Spain is divided into two phases: an admissibility procedure and a consequent evaluation on the merits in case the claim is admitted.

The [Border Procedure](#) only comprises an admissibility procedure, as the second phase of the process takes place regularly in Spanish territory.

The two-phase scheme is applied to all types of procedures, with the initial difference applied being time limits set by law:

<sup>105</sup> Information provided by OAR, 8 March 2019.

<sup>106</sup> Information provided by OAR, 20 August 2017.

<sup>107</sup> El Diario, 'La Justicia obliga al Gobierno a readmitir en el sistema de acogida a los refugiados devueltos desde otros países europeos', 22 January 2019, available in Spanish at: <https://bit.ly/2HwBFAQ>.

<sup>108</sup> La Vanguardia, 'Los solicitantes de asilo que abandonen voluntariamente España no serán excluidos del sistema de protección', 22 January 2019, available in Spanish at: <https://bit.ly/2MoPeRC>.

- ❖ The regular procedure foresees an admissibility phase of maximum 1 month (2 months for Dublin cases);<sup>109</sup>
- ❖ The border procedure reduces the admissibility phase to 72 hours;<sup>110</sup> and
- ❖ For asylum claims made from detention within a CIE, the admissibility phase must be completed within 4 days.

When these deadlines are not met, the applicant will be automatically admitted to the asylum procedure in territory.

As provided in Article 20(1) of the Asylum Act, applications can be considered inadmissible on the following grounds:

- (a) For lack of competence, when another country is responsible under the Dublin Regulation or pursuant to international conventions to which Spain is party;
- (b) The applicant is recognised as a refugee and has the right to reside or to obtain international protection in another Member State;
- (c) The applicant comes from a **Safe Third Country** as established in Article 27 of Directive 2005/85/EC;
- (d) The applicant has presented a subsequent application but with different personal data and there are no new relevant circumstances concerning his or her personal condition or the situation in his or her country of origin; or
- (e) The applicant is a national of an EU Member State.

In 2017, the OAR dismissed 23 applications as inadmissible, of which 14 in the border procedure. This number increased considerably in 2018, with at least 1,455 applications dismissed as inadmissible, of which 577 concerning nationals of Algeria and 492 nationals of Morocco.<sup>111</sup>

Information on the inadmissibility grounds applied are not available.<sup>112</sup>

### 3.2. Personal interview

The same rules as in the **Regular Procedure: Personal Interview** apply.

### 3.3. Appeal

#### Indicators: Admissibility Procedure: Appeal

☒ Same as regular procedure

1. Does the law provide for an appeal against an inadmissibility decision?

- |  |  |  |
|--|--|--|
| ❖ If yes, is it                          | <input checked="" type="checkbox"/> Yes      | <input type="checkbox"/> No                        |
| ❖ If yes, is it automatically suspensive | <input checked="" type="checkbox"/> Judicial | <input checked="" type="checkbox"/> Administrative |
| ○ <i>Re-examen</i>                       | <input checked="" type="checkbox"/> Yes      | <input type="checkbox"/> No                        |
| ○ <i>Recurso de reposición</i>           | <input type="checkbox"/> Yes                 | <input checked="" type="checkbox"/> No             |
| ○ Judicial appeal                        | <input type="checkbox"/> Yes                 | <input checked="" type="checkbox"/> No             |

The inadmissibility decision is appealable in two different ways:

- (a) Asylum seekers have two months to appeal against an inadmissibility resolution before the Administrative Court (*Juzgados Centrales de contencioso*); or
- (b) In cases where new pieces of evidence appear, the person has one month to present a revision appeal before the Minister (*Recurso de Reposición*), in which case a decision should be taken within two months.

<sup>109</sup> Article 20(2) Asylum Act.

<sup>110</sup> Article 19(4) Asylum Act Regulation.

<sup>111</sup> Information provided by OAR, 8 March 2019.

<sup>112</sup> *Ibid.*

Both types of appeals lack automatic suspensive effect.

These same appeals are available in second instance in the border procedure. The first level of appeal, however, is the *re-examen* administrative appeal, which does have automatic suspensive effect. For more information, see the section on [Border Procedure: Appeal](#).

### 3.4. Legal assistance

The same rules as in the [Regular Procedure: Legal Assistance](#) apply.

## 4. Border procedure (border and transit zones)

### 4.1. General (scope, time limits)

#### Indicators: Border Procedure: General

1. Do border authorities receive written instructions on the referral of asylum seekers to the competent authorities? ☒ Yes ☐ No
2. Can an application made at the border be examined in substance during a border procedure? ☒ Yes ☐ No
3. Is there a maximum time limit for a first instance decision laid down in the law? ☒ Yes ☐ No  
❖ If yes, what is the maximum time limit? 4 days

The border procedure foreseen under Spanish Asylum Act only concerns an admissibility examination of the asylum application, and is characterised by its strict time limits, which in any case cannot exceed 4 days for a first instance decision and another 4 for appeal.

The border procedure is applied to all asylum seekers who ask for international protection in airports, maritime ports and land borders, as well as CIE. In these cases, the applicant has not formally entered the Spanish territory. This is not the case in applications submitted in Migrant Temporary Stay Centres (CETI) in **Ceuta** and **Melilla**, which are considered to be made on the territory and fall under the regular procedure rather than the border procedure, as clarified by the *Audiencia Nacional*.<sup>113</sup>

6,494 asylum seekers, nearly 12% of the total number of applicants in Spain, made applications at borders and transit zones in 2018.

While the border procedure was applied to sea arrivals during 2017 in areas of disembarkation such as **Almería** and **Málaga**,<sup>114</sup> the statistics provided by OAR indicated that most asylum applications have also been registered as applications on the territory and channelled to the regular procedure due to a lack of available spaces in the CIE. A breakdown was not provided for 2018.

According to the OAR, 6,514 applications were processed under a border procedure in 2018.<sup>115</sup>

In the border procedure, additional grounds to those mentioned under the [Admissibility Procedure](#) are applied to establish the so-called reasons for denial of the application. In fact, applications at borders can be denied as manifestly unfounded in the following circumstances:<sup>116</sup>

- (a) The facts exposed by the applicant do not have any relation with the recognition of the refugee status;
- (b) The applicant comes from a [Safe Third Country](#);
- (c) The applicant falls under the criteria for denial or exclusion sent under Article 8, 9, 11 and 12 of Asylum Act;

<sup>113</sup> Audiencia Nacional, Decision SAN 1780/2017, 24 April 2017.

<sup>114</sup> CEAR, *Refugiados y migrantes en España: Los muros invisibles tras la frontera sur*, December 2017, 13-14.

<sup>115</sup> Information provided by OAR, 8 March 2019.

<sup>116</sup> Article 21(2)(b) Asylum Act.

- (d) The applicant has made inconsistent, contradictory, improbable, insufficient declarations, or that contradict sufficiently contrasted information about country of origin or of habitual residence if stateless, in manner that clearly shows that the request is unfounded with regard to the fact of hosting a founded fear to be persecuted or suffer a serious injury.

Both in law and mostly in practice the border procedure therefore consists in an evaluation of the facts presented by the applicant for substantiating his or her request for international protection.

This element leaves a high level of discretion in the decision making of the competent authority on the admission of the application, as it does not state the criteria for which allegations should be judged as inconsistent, contradictory or improbable. In addition, it should be kept in mind that this assessment is made in very short time limits, compared to the regular procedure. However, the *Audiencia Nacional* has stressed in 2017 that an asylum application cannot be rejected on the merits in the border procedure unless it is manifestly unfounded. In that respect, a claim is not manifestly unfounded where it is not contradicted by country of origin information or where UNHCR has issued a positive report supporting the granting of protection.<sup>117</sup>

Once the application is admitted, the person will receive the authorisation to access the country, and the rest of the asylum process will take place under the urgent procedure (see section on [Regular Procedure: Fast-Track Processing](#)).

### Time limits

As with all asylum requests, the only authority in charge of the admissibility decision is the Ministry of Interior. The decision on admissibility must be notified within 4 days from the lodging of the application,<sup>118</sup> and the applicant has 2 days to ask for a re-examination of the application in case the latter was denied or not admitted. Once again, the answer to the re-examination will have to be notified within another 2 days.<sup>119</sup>

Article 22 of the Asylum Act states that the applicant must remain in the *ad hoc* dedicated facilities during the admissibility assessment of his or her asylum claim at the border (see [Place of Detention](#)).<sup>120</sup>

The 4-day initial term can be extended to 10 days in case UNHCR so requests, where the Ministry of Interior intends to declare the application inadmissible considering that the applicant falls under one of the reasons for exclusion or denial within the Asylum Act.<sup>121</sup>

In 2017, the OAR started applying the criteria set by the *Audiencia Nacional* concerning the appropriate counting of the deadline established by the Asylum Act for completing the border procedure. In several rulings, the Court decided that these deadlines had to be computed as 96 hours from the moment the application is made,<sup>122</sup> and not in working days i.e. excluding weekends as the OAR had been doing since summer 2015. The situation prior to the ruling had led to longer periods of detention of asylum seekers in border facilities.

When these set time limits are not respected, the application will be channelled in the regular procedure and the person will be admitted to the territory. This situation has occurred frequently during 2017 due to capacity shortages in OAR following the rise in asylum applications in Spain. Applicants were

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<sup>117</sup> Audiencia Nacional, Decision SAN 1179/2017, 17 March 2017. On the importance of UNHCR reports, see also Supreme Court, Decision STS 3571/2016, 18 July 2016; Audiencia Nacional, Decision SAN 335/2017, 3 February 2017.

<sup>118</sup> Article 21(2) Asylum Act.

<sup>119</sup> Article 21(4) Asylum Act.

<sup>120</sup> Ombudsman, *Recomendacion a la Secretaria General de Inmigracion y Emigracion para adoptar las medidas que procedan para prestar un servicio de asistencia social a los solicitantes de asilo en el puesto fronteriz*, 7 October 2015, available in Spanish at: <http://bit.ly/1QCeRaH>.

<sup>121</sup> Article 21(3) Asylum Act.

<sup>122</sup> Audiencia Nacional, Decision SAN 66/2017, 24 January 2017; Audiencia Nacional, Decision SAN 2366/2017, 5 June 2017; Supreme Court, Decision STS 498/2017, 16 February 2017.

admitted to territory with a document stating their intention to claim asylum once on Spanish territory, in case they were stopped by the police.

During 2017 and 2018, however, some cases were detected in the CIE of **Valencia** whereby the Ministry of Interior affirmed that the deadline provided by the Asylum Act for the border procedure did not apply to asylum applications lodged from CIE. This means that, in case the OAR did not provide a positive decision on the application within 4 days, the applicant kept being detained in the CIE instead of being released. The Ministry of Interior considered that in such cases the 1-month time limit foreseen for the regular procedure applied, instead of applying the mentioned 4-days-time limit provided for the border procedure. Already in 2017, the Spanish Ombudsman adopted a recommendation recalling to the Ministry of Interior the legal obligation to decide asylum applications lodged at borders and from CIE within 96 hours.<sup>123</sup>

During 2017 there were also shortcomings concerning asylum claims made from airports, in particular **Madrid Barajas Airport**. The increase in the number of arrivals of asylum seekers during the summer, which saw applications quadrupling the number registered in 2016, caused the overcrowding and inadequate conditions of the border facilities at the airport and severe difficulties for the OAR and police to regularly register and process the admissibility of applications, often resulting in allowing entry into the territory before taking a decision on the application.<sup>124</sup> That said, the Ombudsman documented cases of persons who were kept in the airport facility longer than the prescribed time limit.<sup>125</sup> Such a situation has not been witnessed during 2018.

### Quality of the procedure

Applications at borders and in CIE are in general much more susceptible to being refused or dismissed as inadmissible compared to applications in territory, increasing even more the vulnerability of applicants concerned. This fact has been highlighted by several organisations in Spain,<sup>126</sup> who denounce the low number of admissions in border procedure compared to the regular procedure, and has also been supported by the jurisprudence of the Supreme Court.<sup>127</sup>

## 4.2. Personal interview

### Indicators: Border Procedure: Personal Interview

☐ Same as regular procedure

1. Is a personal interview of the asylum seeker in most cases conducted in practice in the border procedure?

❖ If so, are questions limited to nationality, identity, travel route?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
❖ If so, are interpreters available in practice, for interviews?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
2. Are interviews conducted through video conferencing? ☐ Frequently ☒ Rarely ☐ Never

The personal interview at border points is carried out by police officers, as is generally the case in the **Regular Procedure: Personal Interview**. Procedural safeguards for the interview are the same concerning the presence of interpreters, gender sensitivity and so forth.

<sup>123</sup> Ombudsman, *Solicitudes de asilo en frontera, Resolución en plazo*, 21 December 2017, available in Spanish at: <https://bit.ly/2TOFSIf>.

<sup>124</sup> Madrid Bar Association and CEAR, 'Comunicado conjunto del Colegio y la Comisión Española de Ayuda al Refugiado sobre la situación de los solicitantes de asilo en Barajas', 11 September 2017, available in Spanish at: <https://goo.gl/QpbDjL>.

<sup>125</sup> Ombudsman, 'El Defensor del Pueblo inspecciona la sala de asilo del aeropuerto de Barajas para conocer la situación de un grupo de saharauis', 31 August 2017, available in Spanish at: <http://bit.ly/2rFUmdl>.

<sup>126</sup> CEAR, *Las personas refugiadas en España y Europa 2015*, Capítulo IV: La admisión a trámite, available at: <http://bit.ly/1JZFqai>.

<sup>127</sup> Supreme Court, Decision 4359/2012, 22 November 2013, available in Spanish at: <http://bit.ly/21zAFty>.



### 4.3. Appeal

#### Indicators: Border Procedure: Appeal

☐ Same as regular procedure

1. Does the law provide for an appeal against the decision in the border procedure?

- |  |   |  |
|--|---|--|
| ❖ If yes, is it                          | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No                        |
| ❖ If yes, is it automatically suspensive | <input type="checkbox"/> Judicial       | <input checked="" type="checkbox"/> Administrative |
| ○ <i>Re-examen</i>                       | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No                        |
| ○ Judicial appeal                        | <input type="checkbox"/> Yes            | <input checked="" type="checkbox"/> No             |

#### Request for re-examination

The border procedure foresees the possibility to ask for the re-examination (*re-examen*) or petition of review of the asylum application when the latter has been denied or declared inadmissible. This procedure is not applicable to the other types of procedures. The petition for review has automatic suspensive effect and must be requested within 48 hours from the notification of the decision to the applicant.<sup>128</sup> The *Audiencia Nacional* has clarified that the time limit must be calculated by hours rather than working days.<sup>129</sup>

The re-examination is performed under the direction of the lawyer, without the presence of any officer. There is no time limit beyond the referral within 48 hours from the notification.

Through this procedure, it is possible to incorporate new arguments, new documentation and even new allegations, other than those expressed in the application (even though it is a good idea to explain the reasons for this change of allegations, as well as the late addition of other documents to the record). The notice of review therefore consists of an extension of allegations that detail and clarify those aspects that are not clear in the initial application, with particular emphasis on the facts and information from the country of origin that have been queried.

Since the increase in asylum applications in locations such as **Madrid Barajas Airport** in the summer of 2017, there have been deficiencies in the notification of negative decisions and the coordination of re-examination procedures, thereby posing obstacles to asylum seekers' access to this remedy.<sup>130</sup> This situation has not been witnessed in 2018.

#### Judicial appeal

Against the decision to dismiss the re-examination, which would exhaust administrative channels for appeal, the applicant can lodge a judicial appeal (*Recurso contencioso-administrativo*). In the case of an inadmissibility decision, the applicant may submit a judicial appeal before the central courts (*Juzgados centrales de lo contencioso*). Conversely, in the case of rejection on the merits, the judicial appeal will have to be presented before the National Court (*Audiencia Nacional*). In practice, the first type of appeal will be denied in the vast majority of cases, for which the second should be considered more effective.

In these second-instance appeals, no automatic suspensive effect is applicable. Instead, interim measures will have to be taken to avoid the removal of the applicant.

Organisations working with migrants and refugees criticise this latter element, as it represents an additional obstacle faced by international protection seekers detained at the border posts and in CIE to accessing effective judicial protection. The tight deadlines foreseen in the border procedure, and on the

<sup>128</sup> Article 21(4) Asylum Act.

<sup>129</sup> Audiencia Nacional, Decision SAN 2591/2017, 8 June 2017; Decision SAN 2960/2017, 30 June 2017.

<sup>130</sup> Madrid Bar Association and CEAR, 'Comunicado conjunto del Colegio y la Comisión Española de Ayuda al Refugiado sobre la situación de los solicitantes de asilo en Barajas', 11 September 2017, available in Spanish at: <https://goo.gl/QpbDjL>.

other hand the fast execution of removals and forced return once admission is refused, represent an obstacle in practice to filing a judicial appeal.

#### 4.4. Legal assistance

The same rules as in the [Regular Procedure: Legal Assistance](#) apply. The Asylum Act provides reinforced guarantees in this context, however, as it states that legal assistance is mandatory for applications lodged at the border.<sup>131</sup> The *Audiencia Nacional* held at the end of 2017 that the mandatory nature of legal assistance at the border entails an obligation to offer legal aid to the applicant for the purpose of lodging the application, even if he or she does not ask for it or rejects it.<sup>132</sup>

The main obstacles regarding access to legal assistance in practice concern cases of applications at borders, notably in the **Ceuta** and **Melilla** border control checkpoints. In fact, there are several reported cases concerning refusal of entry, *refoulement*, collective expulsions and push backs at the Spanish borders.<sup>133</sup> Obviously, during these illegal operations that do not assess on a case-by-case the need of international protection of the person, legal assistance is not provided. Although UNHCR and other organisations denounce these practices, asylum seekers, and mostly Sub-Saharan nationals who try to cross land borders without permit, are victims thereof.

As discussed in [Access to the Territory](#), obstacles to effective legal assistance in points of disembarkation have intensified in areas such as **Almería**, **Tarifa** and **Motril** in 2017. Access to legal assistance has improved, with some Bar Associations issuing specific guidance in this regard.

On the other hand, the increase in applications made in **Madrid Barajas Airport** during that year has created confusion and lack of coordination in the appointment of legal representatives to asylum seekers, while the legal aid option chosen by the asylum seeker is not verified.<sup>134</sup> Such problems have not been reported during 2018. The main concerns relate to private lawyers, especially as regards the lack of specialisation in asylum-related issues and paid services; since asylum seekers have the right to free legal aid provided by NGOs or Bar Associations. CEAR has a team of 4 lawyers assisting asylum seekers at the Madrid Barajas Airport.

Difficulties in the provision of effective legal assistance are also caused by the tight deadlines foreseen in the procedure at borders and in CIE, and on the other hand the fast execution of removals and forced return once admission to the procedure is refused.

#### 5. Accelerated procedure

The Asylum Act foresees an urgent procedure, which is applicable *inter alia* on grounds transposing the predecessor of Article 31(8) of the recast Asylum Procedures Directive. However, since it does not entail lower procedural guarantees for the applicant, the urgent procedure is more accurately reflected as a prioritised procedure rather than an accelerated procedure. For more information, see [Regular Procedure: Fast-Track Processing](#).

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<sup>131</sup> Article 16(2) Asylum Act, citing Article 21.

<sup>132</sup> Audiencia Nacional, Decision SAN 5389/2017, 28 December 2017.

<sup>133</sup> El País, 'Why Spain is not an option for Syrian refugees seeking a new life', 29 May 2015, available at: <http://bit.ly/1Q8IUK7>. See also ECtHR, *N.D. and N.T. v. Spain*, Applications No 8675/15 and 8697/15, Judgment of 3 October 2017.

<sup>134</sup> Madrid Bar Association and CEAR, 'Comunicado conjunto del Colegio y la Comisión Española de Ayuda al Refugiado sobre la situación de los solicitantes de asilo en Barajas', 11 September 2017, available in Spanish at: <https://goo.gl/QpbDjL>.



## D. Guarantees for vulnerable groups

### 1. Identification

#### Indicators: Special Procedural Guarantees

1. Is there a specific identification mechanism in place to systematically identify vulnerable asylum seekers? ☐ Yes ☐ For certain categories ☒ No  
❖ If for certain categories, specify which:
2. Does the law provide for an identification mechanism for unaccompanied children? ☒ Yes ☐ No

#### 1.1. Screening of vulnerability

The Asylum Act does not provide a specific mechanism for the early identification of asylum seekers that are part of most vulnerable groups. Article 46(1) of the Asylum Act does make specific reference to vulnerable groups when referring to the general provisions on protection, stating that the specific situation of the applicant or persons benefiting from international protection in situations of vulnerability, will be taken into account, such in the case of minors, unaccompanied children, disabled people, people of advanced age, pregnant women, single parents with minor children, persons who have suffered torture, rape or other forms of serious violence psychological or physical or sexual, and victims of human trafficking. In these cases, the Asylum Act encourages the adoption of necessary measures to guarantee a specialised treatment to these groups. These provisions, however, do not really concern procedural arrangements. Instead, the law makes reference to protection measures and assistance and services provided to the person.<sup>135</sup> In addition, due to the lack of a Regulation on the implementation of the Asylum Act to date, Article 46, as other provisions, is not implemented in practice.

Early risk assessment and further kinds of vulnerability identification in practice are conducted by asylum officers during the conduct of the asylum interview with the applicant, or by civil society organisations that provide services and assistance during the asylum process and within asylum reception centres. In addition, the increase in the number of asylum seekers in 2017 and 2018 has exacerbated difficulties in the identification of vulnerabilities.

The intervention of UNHCR should also be highlighted, as it is highly relevant for playing a consultative and suggestive role during the whole asylum process. Under the Asylum Act,<sup>136</sup> all registered asylum claims shall be communicated to the UN agency, which will be able to gather information on the application, to participate in the applicant's hearings and to submit reports to be included in the applicant's record. In addition, UNHCR takes part in the Inter-Ministerial Commission of Asylum and Refuge (CIAR), with the right to speak but not to vote, playing a central role in the identification of particular vulnerabilities during the decision-making process.

Moreover, UNHCR's access to asylum seekers at the border, in CIE or in penitentiary facilities enables the monitoring of most vulnerable cases considering procedural guarantees. These are crucial places for the identification of most vulnerable profiles due to the existing shortcomings and limitations that asylum seekers face in accessing to legal assistance. In asylum claims following the urgent procedure and in the case of an inadmissibility decision on border applications, UNHCR is able to request an additional 10 days term to submit a report to support the admission of the case.

A frequently missed opportunity for early identification of vulnerable profiles within mixed migration flows is represented by the framework of Migrant Temporary Stay Centres (CETI) in **Ceuta** and **Melilla**. These centres manage the first reception of undocumented newly arrived migrants and non-identified asylum seekers, before they are transferred to the Spanish peninsula. For this reason, CETI could provide an opportunity for the establishment of a mechanism of early identification of most vulnerable collectives. NGOs and UNHCR who work in the CETI try to implement this important task, but

<sup>135</sup> Article 46(2) Asylum Act.

<sup>136</sup> Articles 34-35 Asylum Act.

unfortunately the limited resources, frequent overcrowding of the centres and short-term stay of the persons prevent them from effectively doing so.

The lack of a protocol for the identification and protection of persons with special needs in CETI has been criticised in a recent report,<sup>137</sup> which highlights that vulnerable groups such as single women or mothers with children, trafficked persons, LGBTI people, religious minorities, unaccompanied children and victims of domestic violence cannot be adequately protected in these centres. In addition, it is stressed that such factors of vulnerability, coupled with prolonged and indeterminate stay in the CETI, has a negative influence on the mental health of residents. The report recommended that those identified as being vulnerable should be quickly transferred to mainland in order to access protection in more adequate facilities.

As regards sea arrivals, identification of vulnerabilities should in principle be carried out in the CATE where newly arrived persons are accommodated (see [Access to the Territory](#)). This is not the case in practice, however, UNHCR and CEAR as implementing partner started a project in August 2018 with the aim of supporting authorities in the identification of persons arriving by boat in **Andalucía**.<sup>138</sup> More specifically, the teams of both organisations are in charge of providing legal information to persons arriving by boat, as well as detecting persons with vulnerabilities and special needs i.e. asylum seekers, children, trafficked persons, etc. Also, Save the Children started to deploy teams of professionals in some parts of the coast of Andalucía, in order to monitor sea arrivals, especially in relation to children.

Major shortcomings regard victims of trafficking. Despite the adoption of a National Plan against Trafficking of Women and Girls for the purpose of Sexual Exploitation,<sup>139</sup> and of a Framework Protocol on Protection of Victims of Human Trafficking,<sup>140</sup> aiming at coordinating the action of all involved actors for guaranteeing protection to the victims, several obstacles still exist regarding this issue. In fact, not only is their early identification as victims of trafficking very difficult, but they also face huge obstacles to being identified as persons in need of international protection. This fact is highlighted by the low number of identified victims of trafficking who have been granted refugee status in Spain. The first successful asylum claim on trafficking grounds was reported in 2009.

Concerns about the identification of trafficked persons and the need for more proactive detection of victims of trafficking among asylum seekers and migrants in an irregular situation have been highlighted by relevant international organisations, such as the Council of Europe Special Representative on Migration and Refugees<sup>141</sup> and GRETA.<sup>142</sup> They also stressed the need of providing the staff working in CETI with training on the identification of victims of trafficking in human beings and their rights.

The Spanish Network against Trafficking in Persons (*Red Española contra la Trata de Personas*) and the Spanish Ombudsman agree on the fact that this is due to a malfunctioning of the protection system because the victims, after being formally identified by Spanish security forces, are given a residence permit based on provisions of the Aliens Act, instead of taking into consideration their possible fulfilment of the requirements for refugee status. The latter would of course guarantee greater protection to victims of trafficking.

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<sup>137</sup> Servicio Jesuita a Migrantes, *Sacar del laberinto – Informe Frontera Sur 2018*, December 2018, available in Spanish at: <https://bit.ly/2RSSbPH>, 40 and 53.

<sup>138</sup> CEAR, 'CEAR y ACNUR se unen para facilitar la identificación de refugiados en costas', 14 August 2018, available in Spanish at: <https://bit.ly/2MiPNQn>.

<sup>139</sup> Ministry of Health, Social Services and Equality, *Plan Integral De Lucha Contra La Trata De Mujeres Y Niñas Con Fines De Explotación Sexual*, 2015-2018, available in Spanish at: <https://bit.ly/2E3Moks>.

<sup>140</sup> Framework Protocol of 2011 against trafficking ("Protocolo Marco de Protección de las Víctimas de Trata de Seres Humanos"), available in Spanish at: <http://bit.ly/1S8FPud>.

<sup>141</sup> Council of Europe, *Report of the fact-finding mission by Ambassador Tomáš Boček, Special Representative of the Secretary General on migration and refugees, to Spain, 18-24 March 2018*, SG/Inf(2018)25, 3 September 2018.

<sup>142</sup> GRETA, *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Spain – Second Evaluation Round*, GRETA(2018)7, 20 June 2018, available at: <https://bit.ly/2RzTKCW>.

The situation and the OAR's attitude on this topic has started to change from the last months of 2016 and January 2017. In that period, 12 sub-Saharan women and their children were granted international protection.<sup>143</sup> Since then, the criteria adopted by the OAR have changed and the Office considers Nigerian women a "particular social group" according to the refugee definition, thus possible beneficiaries of international protection due to individual persecution connected to trafficking.

The OAR does not collect disaggregated statistics on vulnerable groups.

## 1.2. Age assessment of unaccompanied children

A specific Protocol regarding unaccompanied children was adopted in 2014 in cooperation between the Ministries of Justice, Interior, Employment, Health and Social Services and of Foreign Affairs along with the Public Prosecutor (*Fiscalía General*), which aims at coordinating the actions of all involved actors in the Spanish framework in relation to unaccompanied children.<sup>144</sup> It should be highlighted that, due to the territorial subdivision of competences, the Protocol only represents a guidance document for all actions involving unaccompanied minors, which aims at being replicated at lower regional level. In fact, children-related issues fall within the competence of the Autonomous Regions between which governance is divided in Spain.

The Protocol sets out the framework for the identification of unaccompanied children within arrivals at sea and defines the procedure that should be followed for the conduct of age assessment procedures in case of doubts about the age of the minor.

It establishes that children's passports and travel documents issued by official authorities have to be considered as sufficient evidence of the age of the person,<sup>145</sup> but it also sets out the exceptions to this rule and the cases in which the child can be considered undocumented, and accordingly be subjected to medical age assessment. These circumstances are the following:

- (a) The documents present signs of forgery or have been corrected, amended, or erased;
- (b) The documents incorporate contradictory data to other documents issued by the issuing country;
- (c) The child is in possession of two documents of the same nature that contain different data;
- (d) Data is contradictory to previous medical age assessments, conducted at the request of the public prosecutor or other judicial, administrative or diplomatic Spanish authority;
- (e) Lack of correspondence between the data incorporated into the foreign public document and the physical appearance of the person concerned;
- (f) Data substantially contradicts circumstances alleged by the bearer of the document; or
- (g) The document includes implausible data.

Concerning the fourth condition relating to previous age assessments, it is necessary to remark the fact that these age determination tests are not precise and make an estimation of the date of birth of the young migrant, which would imply cases where the two dates of birth would never coincide. In those cases, the Protocol would justify the application of a second age assessment test and the non-consideration of the officially issued document of the person.

### Medical methods and consideration of documentary evidence

Under Article 35(3) of the Aliens Act, the competence to decide on the application of medical tests aimed to remove the doubts about the majority or minority of age of undocumented children is exclusive of the Public Prosecutor's Office. The medical assessment foresees the application of X-ray tests to assess the maturity of the minor's bones.

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<sup>143</sup> CEAR, 'España empieza a reconocer el derecho de asilo a las víctimas de trata', 16 January 2017, available in Spanish at: <https://goo.gl/NZDQcf>.

<sup>144</sup> Framework Protocol of 13 October 2014 on actions relating to foreign unaccompanied minors, available in Spanish at: <http://bit.ly/1WQ4h4B>.

<sup>145</sup> Chapter II, para 6 Protocol on Unaccompanied Minors.

When the medical test has been performed, the age of the person will match with the lower value of the fork; the day and month of birth will correspond to the date in which the test has been practiced.

These tests have resulted in very problematic age determinations and have attracted many criticisms from international organisations,<sup>146</sup> NGOs, academics, as well as administration officers and the Spanish Ombudsman.<sup>147</sup> The main concerns regard the inaccurate nature of the tests, their ethnic irrelevance mainly due to the lack of professionals' medical knowledge on the physical development of non-European minors, the lack of provision of information to the minor on how tests work and on the whole procedure. In addition, it has been proven by several documents that, while these tests limit children's access to their dedicated protection system, they do not limit adults' access to the minors' system.<sup>148</sup> The most criticised aspect of the practical application of the tests for the determination of age is the lack of legislative coherence and the excessive discretion of the authorities.

The provisions of the Protocol do not follow the recent Spanish Supreme Court ruling, which has provided clarification and the right interpretation of Article 35 of Aliens Act, which provides that "in case it is not possible to surely assess the age, tests for age determination can be used".<sup>149</sup>

In this judgment, the Supreme Court ruled that, when the official documentation of the minor states the age minority, the child must be sent to the protection system without the conduct of medical tests. In the cases when the validity of the documentation is unclear, the courts will have to assess with proportionality the reasons for which the mentioned validity is questioned. In that case, medical tests can be conducted but always bearing in mind that the doubts based on the physical aspects of the minor must be read in his or her favour. In the same way, documented unaccompanied minor migrants cannot be considered undocumented if they hold an official document issued by their country of origin. As said above, this latter aspect is contradicted by the Protocol.

The United Nations Committee on the Rights of the Child has also granted interim measures in cases concerning medical age assessments of unaccompanied children in 2017.<sup>150</sup> *D.D. v. Spain*, which refers to an individual communication on behalf of an unaccompanied Malian minor in November 2015, challenged the applicant's unlawful return from Spain to Morocco. In June 2017, the Committee on the Rights of the Child decided to examine the admissibility of the communication together with its merits. In May 2018, different organisations such as ICJ, ECRE, the AIRE Centre and the Dutch Council for Refugees submitted a third party intervention to support the complaint of the applicant.<sup>151</sup> In February 2019, the Committee body adopted a decision condemning Spain for the illegal practice and establishing the obligation to compensate the applicant.<sup>152</sup>

On 27 September 2018, the Committee on the Rights of the Child issued an opinion in *N.B.F. v. Spain*,<sup>153</sup> providing relevant guidance on age assessment. In particular, it stressed that, in the absence of identity documents and in order to assess the child's age, states should proceed to a comprehensive

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<sup>146</sup> For a critique by the United Nations High Commissioner for Human Rights (OHCHR), see El Diario, 'La desprotección de los menores migrantes solos en España', 17 February 2016, available in Spanish at: <http://bit.ly/1PVIXqe>. See also Save the Children Spain, *Menores no acompañados: Informe sobre la situación de los menores no acompañados en España*, 2005, available in Spanish at: <http://bit.ly/1peTpmj>.

<sup>147</sup> Ombudsman, *Determinación edad presunta menor de edad*, 10 May 2017, available in Spanish at: <http://bit.ly/2DvtDBW>.

<sup>148</sup> CEAR, *Informe sobre la situación de la determinación de la edad a menores no acompañados en España*, Madrid, 10 May 2003.

<sup>149</sup> Supreme Court, Judgment No 453/2014, 23 September 2014, available in Spanish at: <http://bit.ly/1QD7YGj>. See EDAL summary at: <http://bit.ly/1n4OOTM>.

<sup>150</sup> OHCHR, *Table of pending cases before the Committee on the Rights of the Child*, available at: <https://bit.ly/2R00THz>; EU Observer, 'Spain turns its back on migrant children's rights', 7 August 2017, available at: <http://bit.ly/2vaQG31>.

<sup>151</sup> AIRE Centre et al., *Third party intervention in D.D. v Spain, 4/2016 to the UN Committee on the Rights of the Child*, 31 May 2018, available at: <https://bit.ly/2MjQJAu>.

<sup>152</sup> El País, 'La ONU reprende a España por devolver en caliente a un menor', 19 February 2019, available in Spanish at: <https://bit.ly/2TT6BNv>; ECCHR, 'Spanish practice of push-backs violates children's rights', 19 February 2019, available at: <https://bit.ly/2Em0o7z>.

<sup>153</sup> Committee on the Rights of the Child, *N.B.F. v. Spain*, CRC/C/79/D/11/2017, 27 September 2018, available in Spanish at: <https://bit.ly/2RzNpXZ>.

evaluation of the physical and psychological development of the child and such examination should be carried out by specialised professionals such as paediatricians. The evaluation should be quickly carried out, taking into account cultural and gender issues, by interviewing the child in a language he or she can understand. States should avoid basing age assessment on medical examinations such as bone and teeth examinations, as they are not precise, have a great margin of error, can be traumatic and give rise to unnecessary procedures.

Nevertheless, medical age assessment procedures in practice are used as a rule rather than a procedure of exception, and are applied to both documented and undocumented children, no matter if they present official identity documentation or if they manifestly appear to be minors; the benefit of the doubt is also not awarded in practice. Children are also not given the benefit of the doubt if they present documentation with contradictory dates of birth. In several cases in **Madrid Barajas Airport** in 2017, children with identity documents stating their minority were registered as adults due to the fact that they were travelling with a (false) passport declaring them over the age of 18.<sup>154</sup> Children who are declared adults while their country of origin documentation states they are children are in fact expelled from both child and adult protection due to the inconsistency between the age sets stated in their documentation.

In addition, several NGOs denounce the discriminatory application of the procedure, as for example it is always applied to Moroccan unaccompanied young migrants, and the only original documentation that is considered as valid is the one that states that the migrant has reached the major age. Some organisations have also expressed concerns around and denounced the fact that most of the unaccompanied migrants are declared adults, following several applications of the tests until the result declares the person of major age.<sup>155</sup> In this way, the Autonomous Communities would avoid having the minors in their charge.

In order to guarantee unaccompanied children effective access to justice, the Spanish Ombudsman issued a recommendation to the State General Prosecutor (*Fiscal General del Estado*).<sup>156</sup> The Ombudsman recommended the adoption of an instruction providing that, in the context of the procedure to assess the age of a person issued an expulsion order, public prosecutors shall issue the decree establishing the person's majority before removal is executed.

### Other obstacles in practice

Last but not least, the Protocol does not foresee legal assistance for minors from the moment they come into contact with the authorities. The minor, who is in charge of signing the authorisation to be subjected to the tests of age determination, can only count on the right to an interpreter to explain to him or her the procedure. On the contrary, the possibility to be assisted by a lawyer is not foreseen.

It should be highlighted that one of the main problems regarding the age of unaccompanied children, and in particular those arriving in **Ceuta** and **Melilla**, is the fact that many prefer to declare themselves as adults because of the deficiencies of the minors' protection system and the restriction of movement to which they are subject in the two autonomous cities. This means that unaccompanied children prefer to be transferred to the Spanish peninsula as adults, thereby not being able to access the *ad hoc* protection system there, instead of remaining as children in Ceuta and Melilla. Once in the peninsula, these children find it almost impossible to prove they are minors as they have already been registered and documented as adults.

In 2014-2017, the Prosecutor concluded the following age assessment examinations:

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<sup>154</sup> CEAR, 'Defensor del Pueblo reclama presunción de minoría de edad a refugiados', 2 August 2017, available in Spanish at: <http://bit.ly/2vlp4AW>; Ombudsman, *Presunción de minoría de edad para solicitantes de asilo*, 12 July 2017, available in Spanish at: <http://bit.ly/2naKjIX>.

<sup>155</sup> Fundación Raíces, *Solo por estar solos*, 2014, available in Spanish at: <http://bit.ly/211pBFo>.

<sup>156</sup> Ombudsman, 'Procedimiento de determinación de la edad. decreto de mayoría de edad y notificación a los interesados, por parte de los fiscales, con anterioridad a la materialización de su devolución', 13 September 2018, available in Spanish at: <https://bit.ly/2FFF1PA>.



Age assessments by outcome: 2014-2017				
Type of decision	2014	2015	2016	2017
<b>Total assessments conducted</b>	<b>2,043</b>	<b>2,539</b>	<b>2,971</b>	<b>5,600</b>
Determined as adult	744	888	1,243	2,205
Determined as minor	899	1,033	1,365	2,751
Did not appear for age assessment	400	615	363	644

Source: Fiscalía General, 2016 and 2017 Activity reports: <http://bit.ly/2muOQEL> and <https://bit.ly/2zN1VAB>.

Age assessment procedures in 2017 mark an important increase (88.48%) on 2016. **Barcelona, Algeciras Almería, Granada and Melilla** were the main cities where age assessments were requested. Moreover, it is worth highlighting that age assessment outcomes vary from one region to another: in **Algeciras, Almería, Málaga, Granada and Murcia** examinations mainly led to declarations of majority, while declarations of minority were prevalent in, **Barcelona, Madrid, Las Palmas, Melilla and Ceuta**.

## 2. Special procedural guarantees

### Indicators: Special Procedural Guarantees

1. Are there special procedural arrangements/guarantees for vulnerable people?

☐ Yes ☒ For certain categories ☐ No

❖ If for certain categories, specify which: Victims of trafficking, unaccompanied minors

The law does not foresee specific procedural guarantees for vulnerable asylum seekers, except for the special rule on unaccompanied asylum-seeking children who are entitled to have their application examined through an urgent procedure, which halves the duration of the whole process. As explained in [Regular Procedure: Fast-Track Processing](#), the urgent procedure reduces time limits for the whole asylum process from 6 months to 3. Beyond this, the existing protocols on unaccompanied children and victims of trafficking do not imply special guarantees.

Although the Asylum Act does not foresee the exemption of persons with special needs from the [Border Procedure](#), in practice the OAR makes exceptions for applicants such as pregnant women or persons requiring medical assistance, who are admitted to the territory.<sup>157</sup>

The OAR states that its staff are trained on European Asylum Support Office (EASO) modules but that there are no specialised units dealing with cases from vulnerable groups.<sup>158</sup> In his 2016 report, the Spanish Ombudsman urged for indispensable training of caseworkers, prior to the beginning of their work, regarding interviewing techniques, techniques for an effective credibility assessment and dealing with cases on LGBTI persons or gender-related issues.<sup>159</sup> The OAR currently has no caseworkers specialised in gender violence.

Several concerns regarding the measures and provisions regarding identification, age assessment and protection of unaccompanied children are discussed in [Identification](#).

<sup>157</sup> Information provided by OAR, 20 August 2017.

<sup>158</sup> Information provided by OAR, 20 August 2017.

<sup>159</sup> Ombudsman, *El asilo en España: La protección internacional y los recursos del sistema de acogida*, June 2016, available in Spanish at: <http://bit.ly/2n88SpE>.

### 3. Use of medical reports

#### Indicators: Use of Medical Reports

1. Does the law provide for the possibility of a medical report in support of the applicant's statements regarding past persecution or serious harm?  
☒ Yes ☐ In some cases ☐ No
2. Are medical reports taken into account when assessing the credibility of the applicant's statements?  
☒ Yes ☐ No

Neither the Asylum Act nor the Asylum Regulation mention explicitly the possibility to have medical reports supporting the applicant's allegations. Nonetheless, the law does state that the competent authority will be able to ask any institution or organisation to provide a report on the situation of the applicant. In practice, medical reports are often used and included in the applicant's asylum file.<sup>160</sup>

The examinations are paid by public funds, as all asylum seekers have full and free access to the Spanish public health system. The examination may be requested by either the applicant or the OAR itself in case it deems it necessary, although this rarely happens in practice.

It should be noted that medical reports on the conditions of asylum seekers in Spain are not only relevant under the asylum process but also, in case the asylum request is denied, to provide the possibility to receive a residence permit based on humanitarian grounds.<sup>161</sup>

There are no *ad hoc* organisations or specialised bodies carrying out the medical assessment for asylum seekers, or writing medical reports for asylum applications.

The methodology recommended under the Istanbul Protocol is not always applied. Its application depends on the characteristics of the patient and his or her past experiences, and it is up to the doctor's discretion whether to follow the Protocol or not.

### 4. Legal representation of unaccompanied children

#### Indicators: Unaccompanied Children

1. Does the law provide for the appointment of a representative to all unaccompanied children?  
☒ Yes ☐ No

The guardianship system in Spain is governed by the Spanish Civil Code, which establishes the conditions and defines the actions foreseen in the following different situations: measures in situations of risk, measures in situations of homelessness/distress, guardianship and family reception. The competence of minors' protection departments corresponds to the Autonomous Community or city which is responsible for the appointment of a legal guardian to its public entity of children protection. The process of guardianship starts with the Declaration of Abandonment (*Declaración de Desamparo*) by the Autonomous Communities, which is the declaration of the homelessness/helplessness of the minor, and represents the first step not only for undertaking the guardianship of the child but also to guarantee his or her access to the minors' protection system and services. This procedure has different durations depending on the Autonomous Community in which it is requested, but a maximum time limit of three months must be respected for the assumption of the guardianship by the public entity of protection of minors, as set by the Protocol.<sup>162</sup>

After the declaration of *Desamparo*, the public administration grants the guardianship and the minor is provided with clothing, food and accommodation. Guardianship is usually left to entities such as NGOs or religious institutions which are financed by Minors' Protections Services. It implies the responsibility

<sup>160</sup> Article 24(2) Asylum Regulation.

<sup>161</sup> Articles 37(b) and 46(3) Asylum Act.

<sup>162</sup> Chapter VII, para 1(2) Protocol on Unaccompanied Minors.

of protecting and promoting the child's best interests, guaranteeing the minor's access to education and proper training, legal assistance or interpretation services when necessary, enabling the child's social insertion and providing him or her with adequate care. Concerning the specific issues of asylum applications, the Protocol states that the guardians will take care of providing the minor with all needed information and guaranteeing him or her access to the procedure.

Shortcomings and problems have been raised concerning the guardianship systems for unaccompanied minors, and mostly with regard to the excessively long duration of the procedures for issuing an identification document when children are undocumented.

Moreover, serious concerns have been reported regarding children who have been under the guardianship of the Autonomous Communities and are evicted from protection centres once they turn 18 even if they have not been documented or have not yet received a residence permit. In these cases, children are left in the streets, homeless and undocumented.

Concerning the right to apply for asylum, Article 47 of the Asylum Act establishes that unaccompanied children shall be referred to the competent authorities on children protection. In addition to this provision, the National Protocol on unaccompanied children makes specific reference to the cases of children in need of international protection, with the aim of coordinating the actions of all involved actors and guarantee access to protection.

Nevertheless, it should be highlighted that there are very few asylum applications made by unaccompanied children. In 2016, the Government communicated that in the last 5 years, 101 asylum claims had been made by unaccompanied children in 2011-2016, 28 of which were registered in 2016.<sup>163</sup> A total of 31 unaccompanied children were granted protection in those five years. Given the increasing numbers of arrivals in Spain, the low numbers on unaccompanied children seeking asylum highlight the existence of shortcomings concerning their access to protection. This is mostly due to the lack of provision of information on international protection within the minors' protection systems of the Autonomous Communities.

## E. Subsequent applications

### Indicators: Subsequent Applications

1. Does the law provide for a specific procedure for subsequent applications? ☐ Yes ☒ No
2. Is a removal order suspended during the examination of a first subsequent application?
 

❖ At first instance	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
❖ At the appeal stage	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
3. Is a removal order suspended during the examination of a second, third, subsequent application?
 

❖ At first instance	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
❖ At the appeal stage	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

The Asylum Act does not provide for a specific procedure for subsequent applications. In fact, the Asylum Act does not set a limit number of asylum applications per person, and as mentioned, it does not establish a specific procedure for subsequent applications.

When the OAR receives the new asylum claim, in practice, the second application submitted by the same applicant will not be deemed admissible in the first admissibility phase if it does not present new elements to the case.

Being considered as new asylum claim, and not as a subsequent application, the applicant will have the same rights as any other first time asylum applicant, including the right not to be removed from Spanish

<sup>163</sup> Senate, Response of the Government to Question 684/22616, 19 September 2017.



territory. Consequently, the person is allowed on the territory until he or she receives a response on the admissibility of his or her file and the correspondent timing during the available appeals foreseen under the Asylum Act, which is when the lawyer asks for precautionary measures to be taken to avoid the removal.

1,351 persons lodged subsequent applications in 2018:

Subsequent applicants: 2018	
Country	Number
Venezuela	236
Colombia	174
Ukraine	127
Georgia	115
Pakistan	87
<b>Total</b>	<b>1,351</b>

Source: OAR, 8 March 2019.

## F. The safe country concepts

### Indicators: Safe Country Concepts

- |  |   |
|--|---|
| 1. Does national legislation allow for the use of “safe country of origin” concept?  | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |
| ❖ Is there a national list of safe countries of origin?                              | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |
| ❖ Is the safe country of origin concept used in practice?                            | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |
| 2. Does national legislation allow for the use of “safe third country” concept?      | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |
| ❖ Is the safe third country concept used in practice?                                | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |
| 3. Does national legislation allow for the use of “first country of asylum” concept? | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |

### 1. Safe third country

The concept of “safe third country” is defined with reference to Article 27 of the original Asylum Procedures Directive and where appropriate with an EU list of safe third countries, as a country where the applicant does not face persecution or serious harm, has the possibility to seek recognition as a refugee and, if recognised, enjoy protection in accordance with the Refugee Convention. The law also requires the existence of links in the form of a relationship with the safe third country, which make it reasonable for the applicant to be returned to that country.<sup>164</sup>

The applicability of the “safe third country” concept is a ground for inadmissibility (see section on [Admissibility Procedure](#)).

The OAR has increasingly applied the “safe third country” concept in 2016, 2017 and 2018 in the case of **Morocco**; the Government did not expressly refer to the “safe third country” concept, but the motivation of the dismissal of the application was essential based on that). The concept has been applied in 2018 especially in cases of mixed marriage between Moroccan and Syrian nationals. These designations have been upheld by several rulings of the *Audiencia Nacional*.<sup>165</sup> In a decision of 2018,

<sup>164</sup> Article 20(1)(d) Asylum Act.

<sup>165</sup> See e.g. Audiencia Nacional, Decision SAN 3736/2016, 13 October 2016; Decision SAN 3839/2016, 17 October 2016; Decision 4053/2016, 27 October 2016; Decision SAN 1524/2017, 16 January 2017, Decision SAN 1232/2017, 3 March 2017; Decision SAN 2589/2017, 12 May 2017; Decision SAN 3183/2017, 29 June 2017.

the *Audiencia Nacional* makes reference to Morocco as a “safe third country”, indicating that the Court has reiterated this position on many occasions.<sup>166</sup>

### Safety criteria

In the cases concerning **Morocco**, the *Audiencia Nacional* has implied that ratification of the Refugee Convention is a prerequisite to the application of the “safe third country” concept, stating that a country must, in principle, have ratified the Convention and observe its provisions.<sup>167</sup> The same reasoning is used in a case concerning **Algeria**.<sup>168</sup>

The majority of inadmissibility decisions in 2018 concerned nationals of Algeria and Morocco (see [Admissibility Procedure](#)).

### Connection criteria

Although Article 20(1)(d) of the Asylum Act refers to the existence of a connection between the applicant and the third country, the aforementioned rulings of the *Audiencia Nacional* have not referred to this condition when concluding on Morocco being a “safe third country”.

## 2. Safe country of origin

The notion of “safe country of origin” is defined with reference to the conditions for “safe third countries” laid down in Article 20(1)(d) of the Asylum Act. The application of the safe country of origin concept is a ground for applying the urgent procedure (see section on [Regular Procedure: Fast-Track Processing](#)).

There is no widespread practice on the use of this concept, although the *Audiencia Nacional* reasoned in 2016 that **Morocco** and **Algeria** qualify as a “safe countries of origin” on the ground that they are “safe third countries”, without referring to separate criteria.<sup>169</sup> The *Audiencia Nacional* continued to consider that the “safe country of origin” concept can be applied to Algeria in 2018.<sup>170</sup>

## G. Information for asylum seekers and access to NGOs and UNHCR

### 1. Provision of information on the procedure

#### Indicators: Information on the Procedure

1. Is sufficient information provided to asylum seekers on the procedures, their rights and obligations in practice? ☒ Yes ☐ With difficulty ☐ No

❖ Is tailored information provided to unaccompanied children? ☐ Yes ☒ No

The Asylum Regulation, which gives practical application to the Asylum Act, makes specific reference to the provision of information to asylum seekers on their rights.<sup>171</sup> It provides that the Spanish administration, in collaboration with UNHCR and other NGOs who work with refugees, will elaborate leaflets for the provision of relevant information to asylum seekers in several languages.

<sup>166</sup> Audiencia Nacional, Decision SAN 1441/2018, 15 March 2018.

<sup>167</sup> See e.g. Audiencia Nacional, Decision SAN 3736/2016, 13 October 2016; Decision SAN 3839/2016, 17 October 2016; Decision 4053/2016, 27 October 2016; Decision SAN 1524/2017, 16 January 2017; Decision SAN 1232/2017, 3 March 2017; Decision SAN 2589/2017, 12 May 2017; Decision SAN 3183/2017, 29 June 2017.

<sup>168</sup> Audiencia Nacional, Decision SAN 3838/2016, 17 October 2016.

<sup>169</sup> Audiencia Nacional, Decision SAN 4076/2016, 17 October 2016; Decision SAN 3838/2016, 17 October 2016.

<sup>170</sup> See e.g. Audiencia Nacional, Decision SAN 4632/2018, 23 November 2018.

<sup>171</sup> Article 5(1) Asylum Regulation.

The Ministry of Interior has published a leaflet, available online<sup>172</sup> and handed to all applicants on the moment they express the will to ask for international protection, so that they can contact any organisation that provides support and assistance. The information is available in English, French, Spanish and Arabic.

In addition, the Asylum Regulation specifies that information on the asylum procedure and on applicants' right will be given orally by the authority in charge of the registration procedure, and in particular on their right to free legal assistance and interpretation service.<sup>173</sup>

Besides institutional information channels, other organisations design and disseminate information leaflets and brochures regarding the asylum procedure and related rights. The information may be provided in several languages, depending on the entity promoting the material.

In 2014, the Spanish Ombudsman in collaboration with UNHCR and Save the Children have published a leaflet specifically addressed to unaccompanied minors, with the aim of providing them useful information for their auto-identification as asylum seekers and to foster their protection. Unfortunately, the document is not available in electronic format as of the end of 2018.

## 2. Access to NGOs and UNHCR

### Indicators: Access to NGOs and UNHCR

1. Do asylum seekers located at the border have effective access to NGOs and UNHCR if they wish so in practice? ☐ Yes ☒ With difficulty ☐ No
2. Do asylum seekers in detention centres have effective access to NGOs and UNHCR if they wish so in practice? ☐ Yes ☒ With difficulty ☐ No
3. Do asylum seekers accommodated in remote locations on the territory (excluding borders) have effective access to NGOs and UNHCR if they wish so in practice? ☒ Yes ☐ With difficulty ☐ No

In general, asylum seekers at the borders are the ones that face most difficulties in accessing not only information, but the asylum process itself. For this reason, UNHCR has established its presence in **Andalucía**, in order to monitor arrivals by boat, and at the border points in **Ceuta** and **Melilla**. For more information refer to section on [Border Procedure](#).

Migrants arriving in ports or Spanish sea shores are assisted by the police and the ERIE teams of the Spanish Red Cross, which carries out the first medical screening. As mentioned, UNHCR and CEAR are present in different parts of **Andalucía** in order to support the authorities in detecting persons with vulnerabilities and special needs, as well as in informing persons about the right to international protection. Save the Children also has team of professionals that monitor sea arrivals.

The second category with most difficult access to information and NGO counselling are third-country nationals willing to apply for asylum from detention within CIE.

<sup>172</sup> The leaflet is available at: <https://bit.ly/2RCKcqL>.

<sup>173</sup> Article 5(2) Asylum Regulation.

## H. Differential treatment of specific nationalities in the procedure

### Indicators: Treatment of Specific Nationalities

1. Are applications from specific nationalities considered manifestly well-founded? ☐ Yes ☒ No  
❖ If yes, specify which:
2. Are applications from specific nationalities considered manifestly unfounded?<sup>174</sup> ☐ Yes ☒ No  
❖ If yes, specify which:

In practice there are no specific nationalities considered to be well-founded or unfounded.

Applicants from **Venezuela** had seen their applications frozen since 2015 on the basis of the aforementioned criteria, but since last months the OAR has started assessing their claims. At the end of 2017, 12,818 claims by Venezuelan nationals were pending at first instance. From summer 2018 onwards, applications by asylum seekers from Venezuela have been frozen again, due to several decisions adopted by the *Audiencia Nacional* on the legal status of Venezuelan nationals in Spain. According to the judgments, the socio-politic and economic crisis in Venezuela entitles Venezuelan asylum seekers to a residence permit in Spain under humanitarian reasons.<sup>175</sup> At the end of 2018, the number of pending claims by Venezuelan nationals was 28,547.

On 5 March 2019, the CIAR announced a policy granting one-year renewable residence permits “on humanitarian grounds of international protection” to Venezuelan nationals whose asylum applications have been rejected between January 2014 and February 2019.<sup>176</sup>

All other nationalities’ asylum applications are processed at the moment.

Another non-official practice of differential treatment concerns applications presented by **Syrian** nationals, who are in their vast majority granted subsidiary protection, and no case by case assessment is realised on the requirement to receive international protection. In one case concerning a Syrian family resettled from Lebanon, however, the *Audiencia Nacional* overturned the subsidiary protection grant and granted refugee status on the basis that the father was at risk of persecution in Syria and that the family had been recognised as refugees by UNHCR.<sup>177</sup>

Another criterion concerns persons who were fleeing from gangs (*maras*) in Central American countries, who were not granted international protection in previous years. In 2017 the *Audiencia Nacional* recognised subsidiary protection in different cases regarding asylum applicants from **Honduras** and **El Salvador**.<sup>178</sup> At the beginning of 2018, the *Audiencia Nacional* issued another important decision on the matter and revised its jurisprudence in relation to asylum applicants from Honduras.<sup>179</sup> Concretely, in light of the 2016 UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Honduras, the Court concluded that the situation in Honduras can be considered an internal conflict and that Honduran State is not able to offer protection to the population from the violence, extortion and threats carried out by the *Mara Salvatrucha* gang.

<sup>174</sup> Whether under the “safe country of origin” concept or otherwise.

<sup>175</sup> Audiencia Nacional, Decisions SAN 2522/2018, 26 June 2018; SAN 4063/2018, 8 October 2018; SAN 4060/2018, 18 October 2018.

<sup>176</sup> OAR, *Nota sobre la propuesta de concesión de una autorización temporal de residencia por ... de una autorización de residencia temporal por razones humanitarias*, 5 March 2019, available in Spanish at: <https://bit.ly/2UCYGV0>.

<sup>177</sup> Audiencia Nacional, Decision SAN 5336/2017, 11 December 2017.

<sup>178</sup> Audiencia Nacional, Decision SAN 5110/2017, 22 November 2017; SAN 5189/2017, 22 November 2017; SAN 3930/2017, 14 September 2017.

<sup>179</sup> Audiencia Nacional, Decision SAN 508/2018, 9 February 2018.

## Reception Conditions

### A. Access and forms of reception conditions

#### 1. Criteria and restrictions to access reception conditions

##### Indicators: Criteria and Restrictions to Reception Conditions

1. Does the law make material reception conditions to asylum seekers in the following stages of the asylum procedure?
 

❖ Regular procedure	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Reduced material conditions	<input type="checkbox"/> No
❖ Dublin procedure	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Reduced material conditions	<input type="checkbox"/> No
❖ Admissibility procedure	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Reduced material conditions	<input type="checkbox"/> No
❖ Border procedure	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Reduced material conditions	<input type="checkbox"/> No
❖ First appeal	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Reduced material conditions	<input type="checkbox"/> No
❖ Onward appeal	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Reduced material conditions	<input type="checkbox"/> No
❖ Subsequent application	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Reduced material conditions	<input type="checkbox"/> No
  
2. Is there a requirement in the law that only asylum seekers who lack resources are entitled to material reception conditions?
 

<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
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Article 30 of the Asylum Act provides that “applicants for international protection, in the case they lack of own financial means, will be provided with needed shelter and social services in order to ensure the satisfaction of their basic needs”. The system has an integral character which assists the applicant/beneficiary from the time of the submission of the application for asylum until the completion of the integration process.

It has to be noted that the detailed rules on the workings of the reception system for asylum seekers in Spain are provided by a non-binding handbook, as the Regulation implementing the Asylum Act has been pending since 2009. The first version of the handbook was published in January 2016 and was last updated in early 2019.<sup>180</sup> The last version of the handbook (Version 3.3) has been in use since November 2018, but it has not been yet published. The last available version online (Version 3.2) dates back to July 2017.<sup>181</sup>

Material reception conditions under national legislation on asylum are the same for every asylum seeker, no matter the profile or the type of asylum procedure applicants are subject to. The reception system is independent from the evolution or the duration of the asylum procedure, as it foresees a rigid 18-month assistance and financial support. This can reach a maximum of 24 months for vulnerable cases (see section on [Special Reception Needs](#)).

It must be highlighted that all the process and foreseen services are based on the applicant’s inclusion within official asylum reception places, which give access to all other services provided. This means that applicants who can afford or decide to provide themselves with independent accommodation are in practice cut off the system, and have no guaranteed access to financial support and assistance foreseen in reception centres. Also, this requirement is applied to people who arrive in Spain from the Moroccan border, who are obliged to be hosted within the **Ceuta** and **Melilla**’s Migrant Temporary Stay Centres (CETI) in order to be transferred to the Spanish peninsula – to which they are otherwise not legally entitled – and to access the official reception system. Thus, persons applying for asylum in Ceuta and Melilla start benefitting the full services provided within the reception system only when transferred to mainland, but not during their stay in the CETI.

<sup>180</sup> Ministry of Labour, Migration and Social Security, *Instrucción DGIAH 2018/12/19 por la que se modifica el manual de gestión del sistema de acogida para solicitantes y beneficiarios de protección internacional en lo relativo al reingreso en el sistema de acogida de personas devueltas a España en aplicación del Reglamento Dublin*, 20 December 2018, available in Spanish at: <https://bit.ly/2GA9QGY>.

<sup>181</sup> Ministry of Labour and Social Security, *Sistema de acogida e integración para solicitantes y beneficiarios de protección internacional - Manual de gestión*, Version 3.2, July 2017, available in Spanish at: <https://bit.ly/2W4EfBB>.

Another category facing difficulties in accessing reception conditions in 2018 is asylum seekers returned to Spain under the Dublin Regulation. According to reports, 20 persons returned under the Regulation protested against their exclusion from the reception system in May 2018, due to which they had been rendered homeless.<sup>182</sup> The same happened in October 2018 to six families of asylum seekers, who ended up accommodated in emergency shelters of the Municipality of Madrid, generally aimed at the reception of homeless persons.<sup>183</sup> Following a January 2019 judgment of the TSJ of Madrid, the Ministry of Labour, Migration and Social Security has issued instructions to ensure that asylum seekers returned under the Dublin Regulation are guaranteed access to reception (see [Dublin: Situation of Dublin Returnees](#)).<sup>184</sup>

### 1.1. Three-phase approach to reception

The system is divided into three main phases, each lasting 6 months, which gradually reduce the material conditions granted to the asylum seeker, aiming to achieve autonomy and social integration in the final phase.

1. During the first 6 months (“first phase”), applicants are provided with accommodation within the CAR and flats located all over the Spanish territory. During these months of temporary reception, applicants receive basic trainings which aim to facilitate their integration within the Spanish society which is foreseen to start the following 6 months.
2. In this second phase, called “integration phase”, asylum applicants are entitled to financial support and coverage of basic expenses to start their ‘normal’ life.
3. Finally, the “autonomy phase”, which also has a 6-month duration, foresees the reach of the financial independence of applicants, and provides them with punctual support and service provision.

The different phases are also discussed in the section on [Types of Accommodation](#).

In practice, evidence of the applicant’s lack of financial means is only required in the second phase of the process. There is no other assessment concerning the level of resources of the applicants.

Since the 2015 increase of available places for refugees’ reception, the Spanish government has reformed the system regarding financing for NGOs service providers for asylum seekers and refugees. Five more NGOs entered the reception system in 2016 and many more in 2017. The reception system now counts 16 organisations:

- [Accem](#)
- [Adoratrices](#)
- [Andalucía Acoge](#)
- [Apip-Acam](#)
- [CEAR](#)
- [CEPAIM](#)
- [CESAL](#)
- [Cruz Roja Española \(Spanish Red Cross\)](#)
- [Diaconia](#)
- [Fundación Juan Ciudad](#)
- [La Merced](#)
- [MPDL \(Movimiento por la Paz\)](#)
- [Plataformas Sociales Salesianas](#)

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<sup>182</sup> El Diario, ‘Una veintena de solicitantes de asilo denuncia ante el Ministerio de Empleo su exclusión del sistema de acogida’, 16 May 2018, available in Spanish at: <https://bit.ly/2loFh7Z>.

<sup>183</sup> El Diario, ‘Varias familias de refugiados duermen hacinadas desde hace meses en un centro de emergencias del Ayuntamiento de Madrid’, 31 October 2018, available in Spanish at: <https://bit.ly/2Dg44lw>.

<sup>184</sup> Ministry of Labour, Migration and Social Security, *Instrucción DGI/AH 2018/12/19 por la que se modifica el manual de gestión del sistema de acogida para solicitantes y beneficiarios de protección internacional en lo relativo al reingreso en el sistema de acogida de personas devueltas a España en aplicación del Reglamento Dublín*, 20 December 2018, available in Spanish at: <https://bit.ly/2GA9QGy>.



- **Provisianda**
- **Red Acoge**
- **Rescate**

Furthermore, the Ministry of Labour, Migration and Social Security directly runs four reception centres (*Centro de Acogida a Refugiados*, CAR), subject to the same regime and handbook: two of them are in **Madrid**, one in **Sevilla** and one in Mislata, **Valencia**.

Although statistics on reception places for each NGO are no longer available, overall capacity was at around 8,000 reception places in 2018.

## 1.2. The additional initial phase of reception

Until 2014, the reception system was accessible when asylum seekers received their appointment to the Office of Asylum and Refuge (OAR) to register the asylum application. During 2014, due to the high increase in arrivals it was going through, the reception system was restructured. The three phases of reception were regulated and an initial additional phase was added, which guaranteed reception in hostels and hotels to asylum seekers that had not received an appointment with OAR yet. This was mainly due to the fact that OAR was overburdened and did not manage to handle the registration of the asylum application in a short timeframe, leaving many asylum seekers out of the official reception system and assistance for several months. This new measure opened an initial 30-day reception to asylum seekers that were waiting for their place in the reception system.

In September 2015, a Royal Decree was adopted in order to increase the capacity of the national reception system and guarantee access to all asylum seekers,<sup>185</sup> as it was facing difficulties responding to the number of asylum seekers that were applying for international protection in Spain.

The Decree also introduced the possibility to host asylum seekers in hotels for a 30-day period. This initial phase, called “Assessment and referral phase”, is now officially part of the reception scheme. Persons who want to apply for asylum are provided with the information they need on the whole process and their basic necessities are covered until their referral to the first asylum reception phase.

In 2018, the increase in asylum applications has caused longer waiting periods reaching up to 4 months in hotels, and some asylum seekers have also been hosted in the humanitarian reception system as the asylum reception system had reached full capacity.

## 1.3. The assessment of resources

At any stage of the reception phase, asylum seekers have the obligation to declare the incomes they receive. Only actual incomes are verified, while savings are not, because it is expected that asylum seekers applying for reception conditions do not have sufficient economic resources to provide to their subsistence.

## 2. Forms and levels of material reception conditions

### Indicators: Forms and Levels of Material Reception Conditions

1. Amount of the monthly financial allowance/vouchers granted to asylum seekers (out-of-pocket expenses) as of 31 December 2018 (in original currency and in €): 51.60 €

Reception conditions for asylum seekers in Spain include the coverage of personal expenses for basic necessities and items for personal use, transportation, clothing for adults and children, educational activities, training in social and cultural skills, learning of hosting country language, vocational training

<sup>185</sup> Real Decreto 816/2015, de 11 de septiembre, por el que se regula la concesión directa de una subvención con carácter excepcional y por razones humanitarias para la ampliación extraordinaria de los recursos del sistema de acogida e integración de solicitantes y beneficiarios de protección internacional.



and long life training, leisure and free time, child care and other complementary educational type, as well as aid to facilitate the autonomy of the beneficiaries and others of extraordinary nature.

Financial allowances and further details are decided on a yearly basis and published by the responsible Directorate-General for Migration of the Ministry of Labour, Migration and Social Security, which is in charge of the general administration of the asylum reception system. These amounts are based on the available general budget for reception of the Directorate-General.

All asylum seekers hosted in the first phase of asylum temporary reception are given the amount of 51.60 € per month per person (to cover personal out-of-pocket expenses), plus 19.06 € per month per each minor in charge. In addition to this pocket money they receive on a monthly basis, other necessities are also covered after presenting a receipt of the expense when it regards: public transport, clothing, health related expenses, education and training related expenses, administration proceedings related expenses, translation and interpretation fees.

During the second phase of reception, asylum seekers are not provided with accommodation anymore; they live in private apartments and housing. They receive no pocket money, although expenses for the rent are covered by the asylum system. During the last phase, asylum applicants receive additional financial support for certain expenses (*ayudas puntuales*) such as health, education, training, birth.

Financial assistance to asylum seekers could be considered as adequate or sufficient during the first phase, as it aims to cover all basic needs. However, during the subsequent phases of reception, as remarked in the section on [Criteria and Restrictions to Access Reception Conditions](#), conditions and financial support are not meant to be adequate, as they are conceived as extra assistance for supporting refugees' gradual integration in the host society.

Main obstacles for asylum applicants are faced after passing the first phase, as the system foresees an initial degree of autonomy and self-maintenance which is hardly accomplishable in 6 months' time, and almost impossible in the case of applicants who have difficulties in learning and speaking the Spanish language, and thus face greater barriers to access to employment.

### 3. Reduction or withdrawal of reception conditions

#### Indicators: Reduction or Withdrawal of Reception Conditions

1. Does the law provide for the possibility to reduce material reception conditions?  
☒ Yes ☐ No
2. Does the law provide for the possibility to withdraw material reception conditions?  
☒ Yes ☐ No

Article 33 of the Asylum Act provides that asylum seekers' access to reception conditions may be reduced or withdrawn in the following cases, where:

- a. The applicant leaves the assigned place of residence without informing the competent authority or without permission;
- b. The applicant obtains economic resources and could deal with the whole or part of the costs of reception conditions or has any hidden economic resources;
- c. The resolution of the application for international protection has been issued, and is notified to the interested party;
- d. By act or omission, the rights of other residents or staff of the centres are violated;
- e. The authorised programme or benefit period has finished.

Usually, asylum seekers are rarely expelled from reception facilities, unless they accumulate breaches to the rules of conduct of the centres, causing the necessary mandatory abandonment of the centre. In this case, the management authority will start a procedure which foresees the hearing of the subject, who can make allegations or give explanations within a 15-day period, after which a decision is taken. Legal assistance is not foreseen during this process, as this is an internal procedure.

Refugees and asylum seekers can have their reception conditions reduced in case they do not participate and collaborate in the activities scheduled for their social and labour integration. In both cases, beneficiaries sign a “social contract” where they commit to participate in these measures and accept this as a requirement to benefit from the different sources of support provided. In other cases, asylum seekers are warned in writing but there are no consequences such as reduction or withdrawal of reception conditions.

There have been reported cases of arbitrary or non-motivated sanctions and punishments in the **Melilla CETI**, where motivations or criteria for withdrawal of reception conditions are not clear.<sup>186</sup> One of these cases concerning Moroccan applicants was recognised as eligible for interim measures by the TSJ. The asylum seeker was expelled from the CETI in Melilla and left in vulnerable situation, although his appeal was still pending.<sup>187</sup>

Moreover, media reports have referred to at least 20 persons returned under the Dublin Regulation who were excluded from the reception system and were rendered homeless, on the basis that they had renounced their entitlement to accommodation upon leaving Spain.<sup>188</sup> Also during October 2018, media reported that six families of asylum seekers were excluded from the asylum system after being returned from Germany to Spain in the framework of the Dublin Regulation. The families ended up accommodated in emergency shelters of the Municipality of Madrid, generally aimed at the reception of homeless persons.<sup>189</sup> Following a January 2019 judgment of the TSJ of Madrid, the Ministry of Labour, Migration and Social Security has issued instructions to ensure that asylum seekers returned under the Dublin Regulation are guaranteed access to reception (see [Dublin: Situation of Dublin Returnees](#)).<sup>190</sup>

Reception conditions are never limited due to large numbers of arrivals. Instead, emergency measures are taken and asylum seekers are provided new available places where they can be hosted (see section on [Types of Accommodation](#)).

In case of withdrawal, two main criteria are taken into consideration: (a) severity of the violation of the reception conditions’ contract signed by the asylum seeker; and (b) the individual situation and vulnerabilities of the person. If the non-fulfilment of the obligations deriving from the contract stems from a vulnerability (i.e. cases of trauma, victims of torture, etc.), the asylum seeker is referred to specific assistance facilities instead of withdrawal of conditions.

#### 4. Freedom of movement

##### Indicators: Freedom of Movement

1. Is there a mechanism for the dispersal of applicants across the territory of the country?  
☐ Yes ☒ No
2. Does the law provide for restrictions on freedom of movement? ☒ Yes ☐ No

In the Spanish system, asylum seekers are placed in the reception place which better fits their profile and necessities. A case by case assessment is made by the NGOs and/or by the Social Work Unit (*Unidad de Trabajo Social*, UTS), the unit in charge of referring asylum seekers to available reception facilities. The UTS falls under the Ministry of Labour, Migration and Social Security and is based at the

<sup>186</sup> Amnesty International, *El asilo en España: Un sistema de acogida poco acogedor*, May 2016, available in Spanish at: <https://goo.gl/G1YtPi>, 37.

<sup>187</sup> TSJ Madrid, Decision 368/2010, 31 March 2010.

<sup>188</sup> El Diario, ‘Una veintena de solicitantes de asilo denuncia ante el Ministerio de Empleo su exclusión del sistema de acogida’, 16 May 2018, available in Spanish at: <https://bit.ly/2loFh7Z>.

<sup>189</sup> El Diario, ‘Varias familias de refugiados duermen hacinadas desde hace meses en un centro de emergencias del Ayuntamiento de Madrid’, 31 October 2018, available in Spanish at: <https://bit.ly/2Dg44lw>.

<sup>190</sup> Ministry of Labour, Migration and Social Security, *Instrucción DGIAH 2018/12/19 por la que se modifica el manual de gestión del sistema de acogida para solicitantes y beneficiarios de protección internacional en lo relativo al reingreso en el sistema de acogida de personas devueltas a España en aplicación del Reglamento Dublín*, 20 December 2018, available in Spanish at: <https://bit.ly/2GA9QGy>.

OAR. After assessing the availability of reception spaces and the integral features of the applicant (age, sex, household, nationality, existence of family networks, maintenance, personal necessities, presumed trafficked person or a vulnerable woman, etc.), if feasible, the person is placed in the place that best responds to his or her needs. This placement is done informally as a matter of administrative practice, without a formal decision being issued to the asylum seeker. Once the applicant is given a place within the reception system, he or she cannot move around the territory unless he or she loses the right to reception within the public system.

Most of asylum seekers and refugees who are hosted in the official reception places live in **Andalucía**, followed by **Madrid** and **Catalonia**.

Normally asylum seekers do not move within the Spanish territory, as they do not have many reasons for moving throughout the territory since they are placed with family members or close to any contact they have in the country. The situation is different in cases of family members who arrive separately to the Spanish territory or in the asylum reception system. Difficulties there concern the possibility for family members to join each other, particularly when they are in different phases of the three-stage asylum reception process (see [Criteria and Restrictions to Access Reception Conditions](#)). In this case, there are obstacles to being hosted together.

A special case worth mentioning is the situation of asylum seekers that have made their asylum claim in **Ceuta** or **Melilla**. Due to the interpretation that the administration gives to the special regime of the two autonomous cities, these applicants have to wait for the decision regarding the admissibility of their claim in order to be transferred to the Spanish peninsula and its asylum reception system, together with an authorisation issued by the National Police allowing them to be transferred to the mainland. Limitations are also applied to asylum applicants who pass the admissibility phase, who are entitled to free of movement in the rest of the Spanish territory. These limitations are informally imposed on asylum seekers.

This limitation has been declared unlawful by Spanish courts, affirming the right to freedom of movement of all asylum seekers within the Spanish territory on more than 18 occasions since 2010.<sup>191</sup> Following on from established case law, the Superior Court (TSJ) of Madrid delivered three new interim measure orders in 2018, holding again once asylum seekers pass the admissibility phase, they must be considered as documented, and for this reason their freedom of movement cannot be restricted.<sup>192</sup> Until now, however, no measure has been taken regarding this issue.

In October 2018 the TSJ of Madrid issued a similar decision stating the same principle in relation to asylum seekers in **Melilla**. Concretely, the Court stated that, according to the Spanish Constitution, asylum seekers in Melilla are entitled to the right to freedom of movement to the mainland, as that they hold the required documentation and their asylum application has been deemed admissible by the OAR.<sup>193</sup>

Although in recent year transfers to the peninsula have been sped up, the criteria applied by the competent authority are still not transparent and clear. There is evidence of nationality-based discrimination in the way transfers to the peninsula are handled, as transfers to the mainland from **Ceuta** are offered to nationals of Sub-Saharan countries who do not apply for asylum, whereas asylum seekers and nationals of countries such as Pakistan, Bangladesh and Sri Lanka may wait for more than a year in the enclave.<sup>194</sup>

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<sup>191</sup> CEAR, 'Nuevo fallo judicial a favor de la libre circulación de solicitantes de asilo en Ceuta', 11 July 2018, available in Spanish at: <https://bit.ly/2ucgqxz>.

<sup>192</sup> TSJ Madrid, Order 197/2018, 19 June 2018, available in Spanish at: <https://bit.ly/2SZXJFq>; Order 196/2018, 19 June 2018, available in Spanish at: <https://bit.ly/2DjocIE>; Order 276/2018, 27 June 2018, available at: <https://bit.ly/2CuK8i9>.

<sup>193</sup> TSJ Madrid, Decision 817/2018, available in Spanish at: <https://bit.ly/2HiAswR>.

<sup>194</sup> CEAR, *Refugiados y migrantes en España: Los muros invisibles tras la frontera sur*, December 2017, available in Spanish at: <http://bit.ly/2mEUPqH>, 22-26.

In the meantime, applicants stay within the CETI, and they are not free to move outside the two cities; also due to their geographical location. This fact affects asylum claims made by potential applicants, as most informed persons will wait to be transferred to the peninsula as “economic migrants” and will lodge their asylum request from there in order to benefit from greater freedom of movement and not stay confined within the two enclaves. There is a general lack of transparency concerning the criteria followed by the CETI for transferring people to the Spanish peninsula, which has been repeatedly denounced and criticised by human rights organisations.<sup>195</sup> In 2018, the Ombudsman reiterated a recommendation for instructions authorising the transfer of asylum seekers to the mainland.<sup>196</sup>

## B. Housing

### 1. Types of accommodation

#### Indicators: Types of Accommodation

1. Number of reception centres:<sup>197</sup> Not available
2. Total number of places in the reception system: Not available
3. Type of accommodation most frequently used in a regular procedure:  
☒ Reception centre ☐ Hotel or hostel ☐ Emergency shelter ☒ Private housing ☐ Other
4. Type of accommodation most frequently used in an urgent procedure:  
☒ Reception centre ☐ Hotel or hostel ☐ Emergency shelter ☒ Private housing ☐ Other

The competent authority for the development and management of the reception system is the General Secretariat of Immigration and Emigration, Directorate-General of Migrations under the Spanish Ministry of Labour, Migration and Social Security.

The Spanish reception system is a mixed system which combines:

- ❖ A network of collective centres, consisting of Refugee Reception Centres (*Centros de acogida de refugiados*, CAR) and Migrant Temporary Stay Centres (*Centros de estancia temporal para inmigrantes*, CETI) managed by the Ministry of Labour, Migration and Social Services;
- ❖ A reception and care network managed by NGOs, subcontracted by the Ministry of Labour, Migration and Social Services.

There are two Migrant Temporary Stay Centres (CETI) in the autonomous cities of **Ceuta** and **Melilla**. This type of centre hosts any migrant or asylum seeker that enters the Spanish territory undocumented, either by land or by sea and arrives in the Ceuta and Melilla enclaves.

Every third country national who enters irregularly the Spanish territory through the two cities is placed in one of the two centres before being moved to the peninsular territory as an asylum seeker or an economic migrant. The capacity of the CETI is 512 places in **Ceuta** and 782 in **Melilla**, including places in tents in the latter. The facilities continued to be overcrowded in 2018.<sup>198</sup>

The typologies of reception places vary depending on the institution or entity that manages the centre. The reception system relies on places within big reception centres and apartments, but some reception places are in urban neighbourhoods while others are located in rural areas. The different types of available accommodation also differ from the point of view of provided services and spaces. The total

<sup>195</sup> *Ibid.*

<sup>196</sup> Ombudsman, ‘Fernández Marugán visita Melilla y Ceuta para conocer de primera mano la realidad de estas dos ciudades’, 11 July 2018, available in Spanish at: <https://bit.ly/2DhBsNU>.

<sup>197</sup> Centres during the first phase of reception (CAR). There are also two CETI in Ceuta and Melilla but these are not directly aimed at hosting asylum seekers.

<sup>198</sup> Melillahoy, ‘El CETI acoge a 900 personas tras el traslado de 90 migrantes a Melilla’, 12 June 2018, available in Spanish at: <https://bit.ly/2FybXu5>; Europapress, ‘El CETI de Ceuta acoge a 878 extranjeros tras la salida de cien hacia la Península’, 30 August 2018, available in Spanish at: <https://bit.ly/2FzOY1G>.

capacity of the asylum reception system as at December 2016 was 4,104 places, 3,143 of which were occupied on the same date. More recent figures are not available.

The Ministry directly manages the Refugee Reception Centres (CAR), part of the first phase reception centres for asylum seekers. There are a total of 4 CAR on the Spanish territory:

Capacity of CAR	
CAR	Capacity
Alcobendas, Madrid	80
Vallecas, Madrid	96
Mislata, Valencia	120
Sevilla	120
<b>Total</b>	<b>416</b>

Moreover, reception places for asylum seekers are available inside the reception centres and private apartments managed by NGOs, funded by the Ministry. Until 2014, only 3 NGOs managed these reception places: Red Cross, CEAR and Accem. The Royal Decree adopted in September 2015 to extend the reception system capacity granted authorisation to 3 more: Dianova, CEPAIM and La Merced. In addition, it included a previous phase of reception in hostels and hotels during a maximum of 30 days. As of the end of 2018, 16 organisations provide accommodation.

The process of assigning reception places takes into consideration the availability of places and the profile of the asylum seekers, giving special attention to vulnerable persons.

The Royal Decree issued in September 2015 introduced the possibility to host asylum seekers for a maximum period of 30 days in hotels or hostels due to the large number of asylum seekers that were left out of the reception system. This situation was due to the slowing down of asylum application registrations by OAR, which until 2015 gave access to accommodation facilities for applicants. Now, asylum seekers can wait for the registration of their application from a reception place. In 2018, the rise in asylum claims resulted in applicants having up to 4 months in some cases hosted in hotels instead of asylum accommodation.

## 2. Conditions in reception facilities

### Indicators: Conditions in Reception Facilities

- Are there instances of asylum seekers not having access to reception accommodation because of a shortage of places? ☒ Yes ☐ No
- What is the average length of stay of asylum seekers in the reception centres? 6 months
- Are unaccompanied children ever accommodated with adults in practice? ☐ Yes ☒ No

While the increase in arrivals of asylum seekers throughout 2018 has exacerbated difficulties in accessing reception, the actual conditions in reception facilities have not deteriorated since reception capacity was increased. The problem asylum seekers face on some occasions is the long waiting time before they can be placed in accommodation facilities.

### 2.1. Conditions in CAR and NGO accommodation

The majority of available places for asylum seekers in Spain are in reception centres, during the first phase of reception, which lasts for a maximum of 6 months. As stressed, during the second phase they are placed in private housing, as the final aim is their autonomy within the Spanish society.



In general, there have not been reports of bad conditions of reception. In fact, there are no registered protests or strikes by applicants. Unless they are placed in private housing, asylum seekers are not able to cook by themselves during the first phase of reception, as meals are managed by the authority in charge of the centre.

Hosted applicants have access to several types of activities, which may vary from trainings or leisure programmes. In general, particular conditions or facilities within the reception centre depend on the authority managing the reception places. As the majority of centres are managed by specialised NGOs, generally the staff that works with asylum seekers during their reception is trained and specialised.

The accommodation of every asylum seeker is decided on case by case basis, in order to prevent tensions or conflicts (such as nationality or religious based potential situations), vulnerability or violence. Single women for example are usually placed in female-only apartments, while the same happens for single men. In this context, the unity of families is also respected, as family members are placed together.

The usual length of stay for asylum seekers inside the reception facilities is the maximum stay admitted, which is 6 months. This is due to the fact that the system is divided into 3 main phases that gradually prepare the person to live autonomously in the hosting society. Following the Royal Decree adopted in September 2015, asylum seekers whose application has been rejected may remain within the reception facilities until they reach the maximum duration of their stay. In addition, it should be noted that asylum applicants must complete the first reception phase within asylum facilities in order to access the support foreseen in the following phases; the completion of the first phase is mandatory.

## 2.2. Conditions in CETI

In the CETI in Ceuta and Melilla, situations of overcrowding are constant and this lead asylum seekers and migrants to substandard reception conditions. At the end of August 2018, for example, the CETI in **Ceuta** was hosting 1,057 persons, while the one in **Melilla** was hosting 1,192 persons.<sup>199</sup>

The two CETI are reception facilities that receive the most criticism from organisations and institutions that monitor migrants' and refugees' rights. In 2016 and 2017, Human Rights Watch,<sup>200</sup> Amnesty International,<sup>201</sup> UNICEF<sup>202</sup> and the Spanish Ombudsman<sup>203</sup> published reports in which they denounced deficiencies in the conditions concerning the two centres. Also during 2018, different organisations and institutions kept on expressing concerns about the living conditions in such facilities. Accommodation standards have been considered inadequate and concerns about the exposure of women and children to violence and exploitation due to the continuous overcrowding have been highlighted.<sup>204</sup> In light of this, the Council of Europe Special Representative of the Secretary General on Migration and Refugees expressed the necessity for the Spanish authorities to "ensure that CETIs in Ceuta and Melilla have the same standards in terms of living conditions, education, health care, language and training courses which asylum-seekers are entitled to and receive in mainland Spain."<sup>205</sup> A recent report by the Jesuit Migrants Service also stressed inadequate conditions at the CETI in Melilla, especially in cases of

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<sup>199</sup> Congress, Response of the Government to written question, 184/36992, 15 October 2018, available in Spanish at: <https://bit.ly/2RC6Hfa>.

<sup>200</sup> Human Rights Watch, 'Spain: LGBT Asylum Seekers Abused in North African Enclave', 28 April 2017, available at: <http://bit.ly/2oS5jTD>. See also The Guardian, 'In limbo in Melilla: the young refugees trapped in Spain's African enclave', 10 May 2017, available at: <http://bit.ly/2pyuTxb>.

<sup>201</sup> Amnesty International, *El asilo en España: Un sistema de acogida poco acogedor*, May 2016, available in Spanish at: <https://goo.gl/G1YtPi>, 37.

<sup>202</sup> UNICEF, *Acogida en España de los niños refugiados*, 2016, available in Spanish at: <https://goo.gl/SaBZgo>.

<sup>203</sup> Spanish Ombudsman, *El asilo en España: La protección internacional y los recursos del sistema de acogida*, June 2016, available in Spanish at: <https://goo.gl/rJrg3k>, 64.

<sup>204</sup> Council of Europe, *Report of the fact-finding mission by Ambassador Tomáš Boček, Special Representative of the Secretary General on migration and refugees, to Spain, 18-24 March 2018*, SG/Inf(2018)25, 3 September 2018, para 5.1.

<sup>205</sup> *Ibid.*

prolonged stays, as well as the lack of identification of vulnerabilities, of a gender and age perspective and of guaranteeing residents' rights to privacy and family life.<sup>206</sup>

Besides shortcomings due to their usual overcrowding, attention was paid to the fact that CETI do not provide satisfactory conditions for family units and overall for families with minors. In fact, there are no available places for family units, due to which families are separated and children stay with only one of their parents. In both centres, the shortage of interpreters and psychologists has also been criticised.<sup>207</sup>

## C. Employment and education

### 1. Access to the labour market

#### Indicators: Access to the Labour Market

- |  |   |
|--|---|
| 1. Does the law allow for access to the labour market for asylum seekers?<br>❖ If yes, when do asylum seekers have access the labour market? | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No<br>6 months |
| 2. Does the law allow access to employment only following a labour market test?  | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No             |
| 3. Does the law only allow asylum seekers to work in specific sectors?<br>❖ If yes, specify which sectors:                                   | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No             |
| 4. Does the law limit asylum seekers' employment to a maximum working time?<br>❖ If yes, specify the number of days per year                 | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No             |
| 5. Are there restrictions to accessing employment in practice?   | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No             |

Asylum seekers are legally entitled to start working 6 months after their application for asylum is officially accepted, while their application is being examined.

Once the 6-month period is over, applicants may request the renewal of their "red card" (*tarjeta roja*), as the first version does not state this entitlement, in which it will appear that they are authorised to work in Spain with the term of validity of the document that has been issued.<sup>208</sup>

There are no other criteria or requirements for them to obtain a work permit, which is valid for any labour sector.

Due to this, and to facilitate their social and labour insertion, reception centres for asylum seekers organise vocational and host language training.

In addition, the 3 main NGOs that manage asylum reception centres – Accem, the Spanish Red Cross and CEAR – have created the [Ariadna Network](#) within the 4 CAR managed by the Ministry of Labour, Migration and Social Security. The Ariadna Network consists of a comprehensive plan of actions that are intended to meet to the specific needs in terms of labour integration presented by asylum seekers and beneficiaries of international protection.

Labour integration supportive schemes offered to hosted asylum seekers include services like personalised guidance interviews, pre-employment training, occupational training, active job seeking support.

<sup>206</sup> Servicio Jesuita a Migrantes, *Sacar del Laberinto. Informe Frontera Sur 2018*, December 2018, 39.

<sup>207</sup> Amnesty International, *Fear and Fences: Europe's approach to keeping refugees at bay*, EUR 03/2544/2015, November 2015, 23.

<sup>208</sup> Article 32 Asylum Act; Article 13 Asylum Regulation.



However, asylum seekers face many obstacles to accessing the Spanish labour market in practice. Most of them do not speak Spanish at the time they receive the red card. In addition to that, the recognition of their qualifications is a long, complicated and often expensive procedure. Last but not least, they face discrimination due to their nationality or religion.

## 2. Access to education

### Indicators: Access to Education

- |  |   |
|--|---|
| 1. Does the law provide for access to education for asylum-seeking children? | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |
| 2. Are children able to access education in practice?                        | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |

Children in Spain have the right to education, and the schooling of children is compulsory from age 6 to 16. This right is not explicitly ruled under Asylum Act but it is guaranteed by other regulations concerning aliens and children.

Minors' protection-related issues fall within competence of the Autonomous Communities, which manage education systems on their territory and must guarantee access to all minors living thereon. Asylum seeking children are given access to education within the regular schools of the Autonomous Community in which they are living or they are hosted in.

The scheme followed for integrating asylum seeking children in the school varies depending on the Autonomous Community they are placed in, as each regional Administration manages and organises school systems as they rule. Some Communities count on preparatory classrooms, while others have tutors within the normal class and some others do not offer extra or specialised services in order to ease the integration within the school.

In the practice, asylum seeking children are usually put in school, even during the first phase in which they are accommodated in asylum facilities.

Nonetheless, shortcoming concerning asylum seeking minors accessing education have been reported concerning children hosted in the CETI in periods of overwhelmed conditions due to extreme overcrowding.

In addition, particular difficulties were reported by Asociación Harraga regarding a large group of minors living in the streets of **Melilla**, who do not have access to basic social services to whom they are entitled. These adolescents, mainly from Morocco and Algeria, are under the guardianship of the Melilla's Autonomous administration, as they entered Spain as irregular unaccompanied minors or unaccompanied asylum seekers.<sup>209</sup>

Due to the conditions of the Melilla's Centre of Protection of Minors in which they should live because they are under the administration's custody, they prefer living in the city's street and trying to reach the Spanish Peninsula hiding in transport. In 2017, this group is estimated to involve more than 100 children. This situation persisted in 2018, and it is estimated that between 50 and 100 children live on the streets of Melilla.<sup>210</sup>

After the death of an unaccompanied Moroccan 16-year-old boy in **Ceuta**, Save the Children also denounced the abandonment of unaccompanied children in the two Spanish enclaves, estimating that, out of 250 unaccompanied children under the responsibility of the city of Ceuta, around 50 leave on the street.<sup>211</sup> The organisation estimates that around 100 children are homeless in the two cities.<sup>212</sup>

<sup>209</sup> Asociación Harraga, *De niños en peligro a niños peligrosos: una visión sobre la situación actual de los menores extranjeros no acompañados en Melilla*, 2016, available in Spanish at: <https://goo.gl/i1p9UV>.

<sup>210</sup> El País, 'Melilla, una insólita ciudad de niños solos y sin derecho a la escuela', 25 June 2018, available in Spanish at: <https://bit.ly/2Mg59BI>.

<sup>211</sup> Ansamed, 'Save The Children denuncia abandono minori migranti a Ceuta', 10 April 2018, available in Italian at: <https://bit.ly/2RWm3L1>.

<sup>212</sup> Save the Children, *Los más solos*, May 2018, available in Spanish at: <https://bit.ly/2x5pFkD>, 21.

## D. Health care

### Indicators: Health Care

1. Is access to emergency healthcare for asylum seekers guaranteed in national legislation?  
☒ Yes ☐ No
2. Do asylum seekers have adequate access to health care in practice?  
☒ Yes ☐ Limited ☐ No
3. Is specialised treatment for victims of torture or traumatised asylum seekers available in practice?  
☐ Yes ☒ Limited ☐ No
4. If material conditions are reduced or withdrawn, are asylum seekers still given access to health care?  
☒ Yes ☐ Limited ☐ No

Spanish law foresees full access to the public health care system for all asylum seekers.<sup>213</sup> Through this legal provision, they are entitled to the same level of health care as nationals and third-country nationals legally residing in Spain, including access to more specialised treatment for persons who have suffered torture, severe physical or psychological abuses or traumatising circumstances.

Since the 2012 reform of access to the Public Health System, which had limited the previously guaranteed universal access to health care, asylum seekers had been facing problems in receiving medical assistance, even though it is provided by law. In particular, some asylum seekers were denied medical assistance, because medical personnel was not acquainted with the “red card” (*tarjeta roja*) that applicants are provided with, or they did not know that asylum seekers were entitled to such right.

In September 2018, the Government approved a decree reinstating universal access to the Public Health System, thus covering irregular migrants as well.<sup>214</sup>

Although access to special treatment and the possibility to receive treatment from psychologists and psychiatrists is free and guaranteed, it should be highlighted that in Spain there are no specialised structures for victims of severe violations and abuses like the ones faced by asylum seekers escaping war, indiscriminate violence or torture. There are no specialised medical centres that exclusively and extensively treat these particular health problems.

Currently, there are 3 NGOs in charge of places for asylum seekers with mental health needs. For about 5 years, Accem, in collaboration with Arbeyal, a private company, managed the “Hevia Accem-Arbeyal” centre,<sup>215</sup> specialised in disability and mental health. During 2018, it opened the Centre for the Reception and Integral Assistance to Persons with Mental Health Problems (*Centro de Acogida y Atención Integral a Personas con Problemas de Salud Mental*), and it’s dedicated to asylum seekers, beneficiaries of international protection and to migrants in a situation of vulnerability. The purpose of the residential centre is to offer a space for assistance, care and coexistence to people whose mental illness impedes their integration.

In addition, CEAR also manages places specialised in asylum seekers with mental conditions. La Merced Migraciones Foundation also provides reception places for young adult asylum seekers who need special assistance due to mental health-related conditions.

Information on organisations providing such services in Spain is not public.

<sup>213</sup> Article 15 Asylum Regulation.

<sup>214</sup> El País, ‘El Congreso aprueba el decreto para recuperar la sanidad universal’, 6 September 2018, available in Spanish at: <https://bit.ly/2Nt140c>.

<sup>215</sup> See the dedicated website at: <http://www.accemarbeyal.com/>.

## E. Special reception needs of vulnerable groups

### Indicators: Special Reception Needs

1. Is there an assessment of special reception needs of vulnerable persons in practice?  
☒ Yes ☐ No

In the Spanish reception system, efforts are made to place asylum seekers in the reception place which best fits their profile and needs depending on their age, sex, household, nationality, existence of family networks, maintenance, etc. A case by case assessment is made between OAR and the NGO in charge of the reception centres and, after assessing the availability of reception spaces and the individual characteristics of the applicant, the person is placed in the place that responds to his or her needs.

As asylum seekers' placement is made on case by case basis, it could be stated that there is an ongoing monitoring mechanism which takes into consideration the response to reception needs of each person concerning the mentioned profiles.

In addition, based on vulnerability factors referred to under the Asylum Act, most vulnerable profiles are allowed to longer reception compared to the normal 18-month period. For vulnerable profiles, the first phase can last until 9 months, the second until 11 and the third phase until 4, thereby totalling 24 months of reception.

Nonetheless, available resources have a generalised approach and do not cover the needs presented by the most vulnerable asylum applicants, who are referred to external and more specialised services in case they need them. The Spanish reception system in fact does not guarantee specialised reception places addressed to asylum applicants such as victims of trafficking, victims of torture, unaccompanied asylum-seeking children or persons with mental disorders, although some NGOs offer specialised services (see [Health Care](#)).

Reception places for asylum-seeking victims of trafficking are very few, managed by Adoratrices – Proyecto Esperanza, APRAMP association and Diaconia.

There are no specialised resources for unaccompanied asylum seeking-children, and they are hosted in general centres for unaccompanied children.

The generalised approach of the asylum reception system has been criticised by several organisations, including Amnesty International,<sup>216</sup> UNICEF<sup>217</sup> and the Ombudsman,<sup>218</sup> as it fails to provide adequate responses to the most vulnerable cases.

Due to the high increase in arrivals during 2018, many unaccompanied children have been left with no safe accommodation and have been forced to sleep in police stations.<sup>219</sup> The Committee on the Rights of the Child issued its Observations on Spain in 2018, where it expressed serious concerns about the reception of unaccompanied children.<sup>220</sup> In particular, the Committee raised concerns about the deficiencies of the facilities and the overcrowding of some centres, as well as the cases of ill-treatment treatment of children in reception centres. The Committee was also concerned about the reports of reclusion of children in isolation, erroneous medical diagnosis and wrong medical treatments, together as well as the lack of surveillance systems and of reporting mechanisms to the authorities.

<sup>216</sup> Amnesty International, *El asilo en España: Un sistema de acogida poco acogedor*, May 2016, available in Spanish at: <https://goo.gl/G1YtPi>, 37.

<sup>217</sup> UNICEF, *Acogida en España de los niños refugiados*, 2016, available in Spanish at: <https://goo.gl/SaBZgo>.

<sup>218</sup> Spanish Ombudsman, *El asilo en España: La protección internacional y los recursos del sistema de acogida*, June 2016, available in Spanish at: <https://goo.gl/rJrg3k>, 64.

<sup>219</sup> The Province, 'Refugee children sleeping in Spanish police stations spark calls for "urgent intervention" by officials', 22 September 2018, available at: <https://bit.ly/2QVujq4>.

<sup>220</sup> Committee on the Rights of the Child, *Observaciones finales sobre los informes periódicos quinto y sexto combinados de España*, 5 March 2018, available at: <https://bit.ly/2AUBVUD>.

In addition, the Ombudsman reiterated his concerns about the reception of unaccompanied children in **Melilla**, affirming that “unpleasant things are happening”.<sup>221</sup>

## F. Information for asylum seekers and access to reception centres

### 1. Provision of information on reception

Article 17(2) of the Asylum Act provides that, at the time of making of the asylum application, the person shall be informed, in a language he or she can understand, about the rights and social benefits to which he or she has access by virtue of his or her status as applicant for international protection.

The provision of information on the reception system is given orally and in written copy at the moment of expressing the will to apply for asylum. The leaflet regarding asylum related issues and procedures also provides information on the right of the person to be hosted in reception places. At the same time, persons are informed on the codes of conduct and other details when they are welcomed in the reception places.

### 2. Access to reception centres by third parties

#### Indicators: Access to Reception Centres

1. Do family members, legal advisers, UNHCR and/or NGOs have access to reception centres?
- ☐ Yes ☒ With limitations ☐ No

Family members are not allowed to enter reception centres or apartments. Any external actor who wishes to visit any of the facilities within the official reception system must ask for authorisation from the managing authority. As mentioned in [Types of Accommodation](#), most of the centres are managed by NGOs, and for this reason this type of personnel is already inside the centres.

## G. Differential treatment of specific nationalities in reception

Persons held within the CETI in **Ceuta** and **Melilla** are not free to move outside the two cities, also due to their geographical location. In order to be transferred to the peninsula applicants and migrants have to wait for the permission of the Ministry of Labour, Migration and Social Security, which manages the centres (see [Freedom of Movement](#)).

There is a persisting general lack of transparency concerning the criteria followed by the CETI for transferring people to the Spanish peninsula, which has been repeatedly criticised by human rights organisations. In particular, organisations denounce discriminatory treatment based on countries of origin for the issuance of permits to allow transfer to the peninsula. Transfers to the mainland from **Ceuta** are provided to nationals of Sub-Saharan countries who do not apply for asylum, whereas asylum seekers and nationals of countries such as Pakistan, Bangladesh and Sri Lanka may wait for more than a year in the enclave. In **Melilla**, on the other hand, nationals of Sub-Saharan countries and Syria benefit from transfers to the mainland but Moroccans, Algerians and Tunisians do not.<sup>222</sup>

In 2018, the Ombudsman reiterated a recommendation to Spanish authorities concerning the need to guarantee transfers to the peninsula to asylum seekers who are hosted in the CETI.<sup>223</sup>

<sup>221</sup> El Faro de Melilla, ‘El Defensor del Pueblo, sobre menores: “En Melilla están pasando cosas desagradables”’, 16 February 2018, available at: <https://bit.ly/2sBv5Pq>.

<sup>222</sup> CEAR, *Refugiados y migrantes en España: Los muros invisibles tras la frontera sur*, December 2017, available in Spanish at: <http://bit.ly/2mEUPqH>, 22-26.

<sup>223</sup> Ombudsman, ‘Fernández Marugán visita Melilla y Ceuta para conocer de primera mano la realidad de estas dos ciudades’, 11 July 2018, available in Spanish at: <https://bit.ly/2DhBsNU>.

## Detention of Asylum Seekers

### A. General

#### Indicators: General Information on Detention

1. Total number of persons detained in 2018:	Not available
2. Number of persons in detention at the end of 2018:	Not available
3. Number of detention centres:	7
4. Total capacity of detention centres:	Not available

In 2018, 1,776 persons applied for asylum from CIE.<sup>224</sup>

Persons in asylum proceedings are not detained. However, people who apply for asylum after being placed in detention, both in detention centres for foreigners, called *Centros de Internamiento de Extranjeros* (CIE), and in penitentiary structures, remain detained pending the decision on admission into the asylum procedure.

In Spain there are 7 CIE which are under the responsibility of the Ministry of Interior. These facilities are located in Algeciras-Tarifa, Barcelona, Las Palmas, Madrid, Murcia, Tenerife, and Valencia, making up a total capacity of 1,589 places, 116 of which are for women. Between the end of 2017 and the beginning of 2018, a prison in Archidona (near Málaga) was provisionally used as a CIE in order to respond the increase in sea arrivals.

These centres are not made for the detention of asylum seekers, but instead for the detention of migrants who are found to be living without residence permit on the Spanish territory, or for those who are found to have entered irregularly the Spanish territory, and have to be expelled or repatriated under the Aliens Act.

Asylum seekers may also be *de facto* detained in “areas of rejection at borders” (*Salas de Inadmisión de fronteras*) at international airports and ports for a maximum of 8 days, until a decision is taken on their right to enter the territory. A total of 6,494 persons applied at a border post or transit zone in 2018.

The competent authority to authorise and, where appropriate, annul the placement in a CIE is the first instance court which has territorial jurisdiction over the place where detention is imposed. The judge responsible for monitoring the stay of foreigners in detention centres and in “areas of rejection at borders” will also be the first instance judge of the place they are located in. This judge decides requests and complaints raised by inmates as they affect their fundamental rights.<sup>225</sup> These decisions are not appealable.

Moreover, the arrest of a foreigner shall be communicated to the Ministry of Foreign Affairs and the embassy or consulate of the person detained, when detention is imposed with the purpose of return as a result of the refusal of entry.<sup>226</sup>

If the applicant is detained, the urgent procedure will be applied, which halves the time limits for a decision (see [Prioritised Examination](#)). The quality of the asylum procedure when the application is made from detention is affected mostly in relation to access to information on international protection, which is not easily available, and access to legal assistance, as communication is not as easy as for asylum seekers at liberty. In addition, several shortcomings are due to the urgent procedure to which applicants are subject, as it hinders access to appeals once the application is rejected, and a subsequent order of removal is applied.

<sup>224</sup> Ministry of Interior, *Avance de solicitudes de protección internacional: Datos provisionales acumulados entre el 1 de enero y el 31 de diciembre de 2018*, available at: <https://bit.ly/2GzMRLd>.

<sup>225</sup> Article 62(6) Aliens Act.

<sup>226</sup> Article 60(4) Aliens Act.

## B. Legal framework of detention

### 1. Grounds for detention

#### Indicators: Grounds for Detention

- |  |   |   |
|--|---|---|
| 1. In practice, are most asylum seekers detained                       |   |   |
| ❖ on the territory:  | <input type="checkbox"/> Yes            | <input checked="" type="checkbox"/> No    |
| ❖ at the border: <sup>227</sup>  | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No               |
| 2. Are asylum seekers detained during a regular procedure in practice? | <input type="checkbox"/> Frequently     | <input type="checkbox"/> Rarely           |
|  |   | <input checked="" type="checkbox"/> Never |
| 3. Are asylum seekers detained during a Dublin procedure in practice?  | <input type="checkbox"/> Frequently     | <input type="checkbox"/> Rarely           |
|  |   | <input checked="" type="checkbox"/> Never |

The legal framework of administrative detention of third-country nationals in Spain is set out by the Aliens Act.

#### 1.1. Pre-removal detention

The only grounds for detention included within the Aliens Act are the following, and they are not meant to be applied to asylum seekers:

- (1) For the purposes of expulsion from the country because of violations including, being on Spanish territory without proper authorisation, posing a threat to public order, attempting to exit the national territory at unauthorised crossing points or without the necessary documents and/or participating in clandestine migration;<sup>228</sup>
- (2) When a judge issues a judicial order for detention in cases where authorities are unable to carry out a deportation order within 72 hours;<sup>229</sup>
- (3) When a notification for expulsion has been issued and the non-national fails to depart from the country within the prescribed time limit.<sup>230</sup>

In 2017, due to the increase in arrivals by sea, there was a rise in automatic detention at police stations in **Almería, Tarifa, Motril** and **Algeciras**. Where the authorities have not been able to carry out removal within 72 hours, individuals have been transferred to CIE. During 2018 the police stations in Algeciras and Cádiz were overcrowded due to the high numbers of arrivals and the shortage in police responsible for the identification procedure.<sup>231</sup> After the 72-hour detention permitted by law for the identification procedure, it seems that many persons, especially nationals of Morocco, were released without removal being executed.

A report issued by the Spanish Ombudsman, in its capacity as National Prevention Mechanism against Torture, highlights that Spanish CIE are in practice used as a tool to contain and channel irregular migration, especially sea arrivals.<sup>232</sup> In fact, out of 8,814 persons detained in the CIE and in the prison of Archidona in 2017, only 37.3% were expelled.

<sup>227</sup> Accommodation in airport transit zone with very restricted freedom of movement.

<sup>228</sup> Articles 53-54 Aliens Act.

<sup>229</sup> Article 58(6) Aliens Act.

<sup>230</sup> Article 63(1)(a) Aliens Act.

<sup>231</sup> Pressreader, 'La llegada de 900 magrebíes satura las comisarías de Policía', 9 October 2018, available in Spanish at: <https://bit.ly/2Hq5GSS>; El País, 'La llegada de migrantes colapsa los servicios de acogida en el Estrecho', 26 July 2018, available in Spanish at: <https://bit.ly/2Oko6Uv>.

<sup>232</sup> Ombudsman, *Informe Anual 2017 – Mecanismo Nacional de Prevención*, July 2018, available in Spanish at: <https://bit.ly/2RYCUNa>, 94.



It appears that as of 2018 the situation has changed in **Málaga**, where detention orders in CIE are issued just for Moroccan and Algerian nationals.<sup>233</sup> The Spanish Ombudsman has asked for a clarification on this practice.<sup>234</sup>

Asylum seekers are not detained during the Dublin procedure. It should be recalled that Spain initiates very few Dublin procedures (see [Dublin](#)).

Where persons apply for asylum from CIE before their expulsion, or from penitentiary centres, they will also remain detained pending the asylum decision. If the application is admitted to in-merit proceedings, the asylum claim will be examined under the urgent procedure, for which the notification decision must be made within 3 months.

## 1.2. Detention at the border

Persons who apply for asylum at borders or in airports must remain in *ad hoc* spaces (*Salas de Inadmisión de Fronteras*) with restricted freedom of movement, until their application is declared admissible.<sup>235</sup> This amounts *de facto* to deprivation of liberty, since applicants are not allowed to leave those spaces. From the moment an asylum application is made, there is a period of 4 working days to issue a decision of admission, non-admission or rejection. This period may be extended to 10 days in some cases (see [Border Procedure](#)).

## 2. Alternatives to detention

### Indicators: Alternatives to Detention

1. Which alternatives to detention have been laid down in the law?  
☐ Reporting duties  
☐ Surrendering documents  
☐ Financial guarantee  
☐ Residence restrictions  
☐ Other
2. Are alternatives to detention used in practice?  
☐ Yes ☒ No

There are no provisions under Spanish law regarding alternatives to detention for asylum seekers; meaning applicants in CIE, penitentiary centres or *ad hoc* spaces at borders.

Under the Aliens Act,<sup>236</sup> the only cautionary alternative measures that can be taken concern foreigners that are subject to a disciplinary proceeding, under which removal could be proposed, and they are the following:

- (a) Periodic presentation to the competent authorities;
- (b) Compulsory residence in a particular place;
- (c) Withdrawal of passport or proof of nationality;
- (d) Precautionary detention, requested by the administrative authority or its agents, for a maximum period of 72 hours prior to the request for detention;
- (e) Preventive detention, before a judicial authorisation in detention centres;
- (f) Any other injunction that the judge considers appropriate and sufficient.

These alternatives are not applied in practice.

During 2017, many persons have been detained in violation of fundamental procedural guarantees, namely an individualised assessment of the necessity and proportionality of detention. In **Motril**,

<sup>233</sup> El País, 'Las llegadas de migrantes se duplican en Málaga', 26 July 2018, available in Spanish at: <https://bit.ly/2W1AzQX>.

<sup>234</sup> Ombudsman, 'El Defensor insiste en la necesidad de mejorar la primera acogida de personas migrantes que llegan a las costas en situación irregular', 17 December 2018, available in Spanish at: <https://bit.ly/2Hi03pV>.

<sup>235</sup> Article 22 Asylum Act.

<sup>236</sup> Article 61 Aliens Act.



collective detention orders have been issued to groups of newly arrived migrants for the purpose of removal, which have been upheld by the Provincial Court of Granada.<sup>237</sup> This situation has improved in 2018, partly because of the creation of CATE where identification of international protection needs should be carried out, including one managed by CEAR with presence of lawyers, partly because of the mentioned project the UNHCR and CEAR are implementing for informing persons arriving by boat about asylum. In addition, as already indicated, in practice detention orders are issued solely for persons coming from Morocco and Algeria, to which expulsion is generally executed. Thus, the lack of individualised assessment of necessity and proportionality of detention may predominantly concern persons coming for those two countries.

### 3. Detention of vulnerable applicants

#### Indicators: Detention of Vulnerable Applicants

1. Are unaccompanied asylum-seeking children detained in practice?
 

<input type="checkbox"/> Frequently	<input checked="" type="checkbox"/> Rarely	<input type="checkbox"/> Never
-------------------------------------	--	--------------------------------

  - ❖ If frequently or rarely, are they only detained in border/transit zones? ☐ Yes ☒ No
2. Are asylum seeking children in families detained in practice?
 

<input type="checkbox"/> Frequently	<input type="checkbox"/> Rarely	<input checked="" type="checkbox"/> Never
-------------------------------------	---------------------------------	---

Although detention of asylum seekers or vulnerable categories is not explicitly allowed by law, in practice several exceptions have been reported concerning unaccompanied children and victims of trafficking. This is due to the lack of identification of the minor age of the person, or of his or her status of victim of trafficking. For example, 48 minors were officially identified as such while in detention in 2017.<sup>238</sup>

Nonetheless, when they are identified as minors or victims while they are in detention, they are released and handled to the competent protection systems. In addition, applicants such as pregnant women or persons requiring assistance may be exempted from the border procedure and admitted to the territory in specific cases.

### 4. Duration of detention

#### Indicators: Duration of Detention

1. What is the maximum detention period set in the law (incl. extensions):
 

❖ CIE	60 days
❖ Border detention facilities	8 days
2. In practice, how long in average are asylum seekers detained?
 

4 days
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The maximum detention period that a third country national can stay in a CIE is 60 days, after which he or she must be released if he or she is not. The maximum detention duration for an asylum seeker who has applied for asylum from the CIE is the 4-day admissibility phase. If he or she is admitted, he or she will continue their asylum claim outside detention.

Persons issued with detention orders upon arrival are detained in police stations for a maximum period of 72 hours. Where return has not been carried out within that time limit, they have been transferred to a CIE.

The maximum duration of persons' *de facto* detention and their obligation to remain in border facilities is 8 days. When this time limit is not respected, the applicant is usually admitted to territory, and will continue his or her asylum claim through the regular procedure.

<sup>237</sup> CEAR, *Refugiados y migrantes en España: Los muros invisibles tras la frontera sur*, December 2017, 14.

<sup>238</sup> Servicio Jesuita a Migrantes, *Sufrimiento Inútil – Informe CIE 2017*, June 2018, available in Spanish at: <https://bit.ly/2HsETQF>, 5.

## C. Detention conditions

### 1. Place of detention

#### Indicators: Place of Detention

1. Does the law allow for asylum seekers to be detained in prisons for the purpose of the asylum procedure (i.e. not as a result of criminal charges)? ☐ Yes ☒ No
2. If so, are asylum seekers ever detained in practice in prisons for the purpose of the asylum procedure? ☐ Yes ☒ No

Although the law expressly prohibits the confinement of migrants in prisons, in November 2017 the Penitentiary Centre of **Archidona** in Malaga was “conditioned” as a CIE before its opening and hosted more than 500 persons arriving in the Spanish coasts by boat. The Ministry of Interior has tried to present the Archidona prison as a “centre”, without using the adjective “penitentiary”, and he even talked about 1,008 rooms instead of cells. However, the building has officially been considered as a prison since March 2018.<sup>239</sup>

The Spanish government stated that it was a temporary and exceptional measure, pending the migrants’ return to Algeria within the 60-day deportation period allowed by Spanish law.<sup>240</sup> However, the Ombudsman questioned this decision, since “numerous weaknesses” have been detected in the facility, such as the lack of proper heat and drinking water and a poor health care in the cases of HIV, scabies, epilepsy and tuberculosis. Its technicians appreciated a “lack of information to persons deprived of liberty, both in relation to their legal situation, including the possibility of requesting international protection, and in terms of the conditions and place in which they were”.<sup>241</sup> Many politicians, including Maribel Mora, a senator from the Podemos party, exposed the fact that underage Algerians were placed in the prison, even though children are supposed to be housed in separate facilities.

One month after the “conditioning” of the Archidona prison as CIE, one of the detained persons, a 36-year-old Algerian, was found dead in his cell, strangled with a bedsheet. The case was quickly shelved as a suicide, to the dismay of his family members and organisations defending human rights. The Government of Algeria has been investigating the death of the young man as a result of the dissemination of videos by Algerian television in which several people were being beaten by the police.<sup>242</sup> The Archidona prison was finally closed in January 2018. Most of the detainees have been deported and the rest have been moved to other CIE.

#### 1.1. CIE

There were 7 *Centros de Internamiento de Extranjeros* (CIE) at the end of 2018.<sup>243</sup> These facilities are located in Madrid, Barcelona, Valencia, Murcia, Algeciras / Tarifa – Las Palomas, Barranco Seco – Las Palmas, and Tenerife – Hoya Fria.

Media have recently reported on the costs incurred by the government for the CIE of **Fuerteventura**. More than 4 million € have been spent to maintain the facility, even though no people have been

<sup>239</sup> El Periódico, ‘Interior inaugura este lunes la cárcel de Archidona tras la polémica de su uso como CIE’, 26 February 2018, available in Spanish at: <https://bit.ly/2ARcbZg>.

<sup>240</sup> New York Times, ‘Short on Space for Migrants, Spain Sent Them to a Town’s New Prison’, 10 January 2018, available at: <http://nyti.ms/2F2gHVv>.

<sup>241</sup> El País, ‘El Defensor del Pueblo cuestiona que se recluya a los inmigrantes en la cárcel de Archidona’, 1 December 2017, available in Spanish at: <http://bit.ly/2BtmOT6>.

<sup>242</sup> El Diario, ‘Policía antidisturbios golpea a los internos en la cárcel CIE de Archidona’, 31 December 2017, available in Spanish at: <http://bit.ly/2C1ux8i>.

<sup>243</sup> For more information on CIE, see El Español, ‘“Efecto llamada” en los CIEs: 98 fugas y tres motines en dos meses’, 29 November 2016, available in Spanish at: <https://goo.gl/3gLS3C>; El Diario, ‘Los CIE, en cifras’, 14 June 2015, available at: <http://bit.ly/1FirzFK>.

detained there since May 2012.<sup>244</sup> This CIE was definitively closed in June 2018 as it was deemed a high cost for the administration despite being empty for 6 years.<sup>245</sup>

## 1.2. Police stations and CATE

Persons arriving in Spain by sea and automatically issued with detention orders are detained in police stations for a period of 72 hours with a view to the execution of removal measures. Police stations in **Málaga, Tarifa, Almería** and **Motril** were mainly used for that purpose.

As mentioned in [Access to the Territory](#), in June 2018 the Spanish Government put in place new resources in order to manage arrivals and to carry out the identification of persons' vulnerabilities in the first days of arrival. Specific facilities for emergency and referral include the Centres for the Temporary Reception of Foreigners (*Centros de Acogida Temporal de Extranjeros*, CATE) and the Centres for Emergency Reception and Referral (*Centros de Acogida de Emergencia y Derivación*, CAED). While CAED are open facilities, CATE operate under police surveillance and persons cannot go out until they have been identified.

## 1.3. Border facilities

Applicants at borders are also detained in *ad hoc* facilities during the admissibility phase and in any case for no more than 8 days. According to the OAR, operational transit zones are mainly those in **Madrid Barajas Airport** and **Barcelona El Prat Airport**, accommodating up to 200 and 10 people respectively.<sup>246</sup>

There is evidence of one non-admission room (*Sala de Inadmisión de Fronteras*) in **Barcelona El Prat Airport**, one room in **Málaga Airport** and two rooms in Terminals 1 and 4 of the **Madrid Barajas Airport**.<sup>247</sup> Each room at the Barajas Airport can accommodate a maximum of 80 people according to media.<sup>248</sup> These rooms are owned by the public company AENA and are guarded by agents of the National Police.

One of the main incidents occurring in 2017 concerned a group of 54 Saharawi applicants who started a hunger strike due to the long period of detention in **Madrid Barajas Airport**, the conditions in which they were held and the impossibility to be assisted by specialised NGOs during this period. Their asylum claims were analysed. The Spanish Ombudsman visited Barajas' Airport facilities in this occasion and after a complaint was presented by CEAR.<sup>249</sup>

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<sup>244</sup> El Confidencial, 'Dos documentos oficiales elevan a más de 4 millones de euros el gasto en un CIE vacío', 3 December 2017, available in Spanish at: <http://bit.ly/2EHWW8f>.

<sup>245</sup> El Diario, 'Interior ordena el cierre del CIE de Fuerteventura, que ha gastado millones de fondos públicos pese a estar vacío', 26 June 2018, available in Spanish at: <https://bit.ly/2FFLWs1>.

<sup>246</sup> Information provided by OAR, 8 March 2019.

<sup>247</sup> Ombudsman, *Mapa de los centros de privación de libertad*, 5 February 2018, available in Spanish at: <http://bit.ly/2EDjc30>.

<sup>248</sup> El Diario, 'Salas de inadmitidos de Barajas: viajeros retenidos durante días sin sus enseres personales', 9 May 2015, available in Spanish at: <http://bit.ly/2EDa3HQ>.

<sup>249</sup> Ombudsman, 'El Defensor del Pueblo inspecciona la sala de asilo del aeropuerto de Barajas para conocer la situación de un grupo de Saharauis', 31 August 2017, available in Spanish at: <https://goo.gl/wzXhU2>.

## 2. Conditions in detention facilities

### Indicators: Conditions in Detention Facilities

- |   |   |  |
|---|---|--|
| 1. Do detainees have access to health care in practice? | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No            |
| ❖ If yes, is it limited to emergency health care?       | <input type="checkbox"/> Yes            | <input checked="" type="checkbox"/> No |

### 2.1. Conditions in CIE

The CIE Regulation,<sup>250</sup> which was adopted in 2014, provides in its Article 3 that:

“The competences on direction, coordination, management and inspection of the centres correspond to the Ministry of the Interior and they are exercised through the General Directorate of the police, who will be responsible for safety and security, without prejudice to judicial powers concerning the entry clearance and control of the permanence of foreigners.”

The Ministry of the Interior is also responsible for the provision of health and social care in the centres, notwithstanding whether such service can be arranged with other ministries or public and private entities.

On the operation and living conditions within the CIE, there is scarce official information provided by the administrations responsible for their management. Due to this lack of transparency, during the last years several institutions and NGOs have developed actions of complaint and denounce shortcomings in the functioning of the CIE. Examples of these activities are the specialised annual reports by the Ombudsman (and its respective representatives at regional level), by the State Prosecutor,<sup>251</sup> and by several organisations of the third sector, academic institutions<sup>252</sup> and media. In addition, valuable information is contained in the rulings of the judicial bodies responsible for controlling stays in the CIE (*Jueces de Control de Estancia*).

While the CIE Regulation was long awaited, it was established with many aspects to be improved and ignoring many of the recommendations formulated by the aforementioned entities. This is reflected by the decision of the Supreme Court, which, right after the adoption of the Regulation, cancelled four of its provisions as contrary to the Returns Directive, regarding the need to establish separated units for families, procedural safeguards on second-time detention and prohibition of corporal inspections.<sup>253</sup>

In December 2017 the Ombudsman published a set of recommendations to the General Department of Aliens Affairs and Borders, in order to improve the social, legal and cultural assistance provided in CIE.<sup>254</sup> In addition, following a visit carried out during the same month to the provisional CIE of **Archidona**, the Spanish Ombudsman identified a huge number of shortcomings, including in the provision of basic services.<sup>255</sup>

#### Conditions and riots

Even though under the law CIE do not have prison status, this does not seem to correspond with reality, as conditions of detention therein are still not satisfactory. CIE have been the object of high public, media and NGO attention also during 2018 due to several episodes that took place throughout the year.

<sup>250</sup> Real Decreto 162/2014, de 14 de marzo, por el que se aprueba el reglamento de funcionamiento y régimen interior de los centros de internamiento de extranjeros.

<sup>251</sup> See e.g. <http://bit.ly/1MgSHz2>.

<sup>252</sup> Servicio Jesuita a Migrantes, *Sufrimiento Inútil – Informe CIE 2017*, June 2018, 8.

<sup>253</sup> El País, ‘El Supremo anula cuatro artículos de la norma de los Centros de Internamiento’, 27 January 2015, available at: <http://bit.ly/1uAbrvf>.

<sup>254</sup> Ombudsman, ‘El Defensor del Pueblo formula seis recomendaciones para mejorar la asistencia social, jurídica y cultural en los CIE’, 18 December 2017, available in Spanish at: <http://bit.ly/2F4cq3S>.

<sup>255</sup> Ombudsman, ‘El Defensor del Pueblo detecta numerosas carencias en las instalaciones de Archidona en las que se encuentran internados más de medio millar de ciudadanos extranjeros’, 1 December 2017, available in Spanish at: <http://bit.ly/2GdXu3z>.

Protests and riots are continuous in the CIE of **Aluche** in Madrid. In August 2018, 13 Algerian nationals escaped from the centre.<sup>256</sup> In October 2018 a riot started following an escape attempt by some Algerian nationals and led to injuries of 11 police officers and one detainee.<sup>257</sup>

In 2018, the organisation SOS Racismo published a report on the situation of CIE between 2014 and 2017, highlighting that there were at least 15 hunger strikes, 3 collective riots involving high numbers of persons, 7 attempts of suicide and 11 attempts of escape in the CIE of Aluche during that period.<sup>258</sup>

Riots in the prison of **Archidona** in Málaga were a constant phenomenon since its conditioning as CIE in November 2017 until January 2018. On several occasions, the inmates have thrown all kinds of objects through the windows of their cells: sheets, bins, plastics and even mattresses, in order to protest against the lack of food and the beginning of deportations. Outside the centre, NGOs and civil society have also staged protests to ask for migrants to be released. Riots have intensified after the death of an Algerian immigrant in his cell (see [Place of Detention](#)).

The latest information published on the conditions inside detention centres stems from the visits conducted to the CIE by the Spanish Ombudsman, including within its responsibilities as National Prevention Mechanism for Torture. The findings, facts and recommendations concerning the CIE visited by the Ombudsman are available in the Annual Report 2017,<sup>259</sup> as well as in the report issued by National Prevention Mechanism against Torture.<sup>260</sup> Moreover, the annual report of the Jesuit Migrants Service on the CIE in Spain contains relevant information on conditions and their situation, thanks to the visits that the organisation carries out.<sup>261</sup> Visits to the CIE of Aluche in Madrid are carried out by the organisation SOS Racismo, including with the aim to provide legal and psychological support to detainees.<sup>262</sup>

### Activities, health care and special needs

The CIE Regulation governs the provision of services for sanitary assistance,<sup>263</sup> including access to medical and pharmaceutical assistance (and hospital assistance when needed), and contains provisions concerning clean clothes, personal hygiene kits and diets that take into account personal requirements.<sup>264</sup> In the same way, Article 15 of the Regulation concerns the provision of services for social, legal and cultural assistance, which can be provided by contracted NGOs. Detained third-country nationals can receive visits from relatives during the established visiting hours,<sup>265</sup> and have access to open air spaces.<sup>266</sup>

The Annual Report 2017 published by the Spanish Ombudsman in its capacity of National Prevention Mechanism) underlines the constant deficiencies of CIE in terms of space, ventilation, water, heating and toilets.<sup>267</sup> It also recalls the different recommendations made to the government for the purpose of improving the health and habitability conditions for individuals.

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<sup>256</sup> Europapress, 'La Policía busca a ocho internos del CIE y subraya que fueron 13 los que se fugaron anoche', 16 August 2018, available in Spanish at: <https://bit.ly/2DhvTPw>.

<sup>257</sup> El Mundo, 'Heridos once policías y un interno en un motín de un grupo de inmigrantes en el CIE de Aluche', 19 October 2018, available in Spanish at: <https://bit.ly/2DjiRkG>.

<sup>258</sup> SOS Racismo, *Informe CIE 2014 – 2017. Más allá de la frontera de lo humano*, July 2018, available in Spanish at: <https://bit.ly/2T18zLf>.

<sup>259</sup> Ombudsman, *Informe Anual 2017 y debates en las Cortes Generales*, March 2018, available in Spanish at: <https://bit.ly/2AUXVi9>.

<sup>260</sup> Ombudsman, *Informe Anual 2017 – Mecanismo Nacional de Prevención*, July 2018.

<sup>261</sup> Servicio Jesuita a Migrantes, *Sufrimiento Inútil – Informe CIE 2017*, June 2018.

<sup>262</sup> SOS Racismo, *Visitas al CIE de Aluche*, available in Spanish at: <https://bit.ly/2ARSIYI>.

<sup>263</sup> Article 14 CIE Regulation.

<sup>264</sup> Articles 39-47 CIE Regulation.

<sup>265</sup> Article 42 CIE Regulation.

<sup>266</sup> Article 40 CIE Regulation.

<sup>267</sup> Ombudsman, *Informe Anual 2017 – Mecanismo Nacional de Prevención*, July 2018, 121.

Concerning families with children in detention, although the Regulation did not initially foresee *ad hoc* facilities, the 2015 ruling of the Spanish Supreme Court obliged the detention system for foreigners to provide separated family spaces. Officially recognised unaccompanied minors are not detained in CIE, although there have been several reported cases of non-identified minors in detention.

Notwithstanding legal provisions, and the improvement in conditions after the adoption of the CIE Regulation, each centres still presents different deficiencies, as the establishment of specific available services depends on each of the CIE directors.

In general, shortcomings have been reported concerning structural deficiencies or significant damages which may put at risk the health and safety of detained persons, overcrowding, absence of differentiated modalities for persons who have committed mere administrative infractions, restrictions to visits or to external communications, frequent lack of material for leisure or sports activities. In addition, the provision of legal, medical, psychological and social assistance is limited and not continuous; detained persons often lack information regarding their legal situation, their rights or the date of their return when removal is applicable. Also, interpreters and translators are often not available in practice.

## 2.2. Conditions in police stations

Migrants detained in police stations after arriving in Spain by sea face particularly dire conditions. In 2017, Human Rights Watch denounced substandard conditions in police facilities in **Motril**, **Almería** and **Málaga**.<sup>268</sup> Facilities in Motril and Almería have large, poorly lit cells with thin mattresses on the floor, while the Málaga police station has an underground jail with no natural light or ventilation. Persons are locked in at all times, except for medical checks, fingerprinting and interviews.<sup>269</sup>

In December 2018, the Spanish Ombudsman recommended better assistance and reception provided to migrants who arrive by sea to Spain.<sup>270</sup>

## 2.3. Conditions in border facilities

Border facilities have been visited and monitored by the Spanish Ombudsman. The inadequacy of such facilities at the airports of **Madrid** and **Barcelona** has been pointed out by the Spanish Ombudsman, in terms of guarantee of privacy and rest, medical assistance, adapted spaces for children, etc.<sup>271</sup> As noted in the report, a comprehensive reform of the asylum facilities of the Madrid's airport is underway at the time of writing.

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<sup>268</sup> Human Rights Watch, 'Spain: Migrants held in poor conditions', 31 July 2017, available at: <https://goo.gl/maQ2V7>.

<sup>269</sup> CEAR, *Refugiados y migrantes en España: Los muros invisibles tras la frontera sur*, December 2017, available in Spanish at: <http://bit.ly/2mEUPqH>, 15.

<sup>270</sup> Ombudsman, 'El Defensor insiste en la necesidad de mejorar la primera acogida de personas migrantes que llegan a las costas en situación irregular', 17 December 2018, available in Spanish at: <https://bit.ly/2Hi03pV>.

<sup>271</sup> Ombudsman, *Informe Anual 2017 – Mecanismo Nacional de Prevención*, July 2018, 63-66.



### 3. Access to detention facilities

#### Indicators: Conditions in Detention Facilities

1. Is access to detention centres allowed to

❖ Lawyers:

☐ Yes ☒ Limited ☐ No

❖ NGOs:

☐ Yes ☒ Limited ☐ No

❖ UNHCR:

☐ Yes ☒ Limited ☐ No

❖ Family members:

☐ Yes ☒ Limited ☐ No

The seventh section of the CIE Regulation concerns participation and cooperation of NGOs. In particular, Article 58 foresees the possibility to contract NGOs for the provision of services of social assistance inside the centres. Following this provision, a contract was signed in 2015 between the Spanish Red Cross and the Ministry of Interior. In addition, Article 59 of the Regulation allows organisations working with migrants to receive a special accreditation to enter CIE and conduct monitoring of the detained persons. Detained migrants will also be able to contact an organisation to which they wish to speak. Before this agreement, the CIE had a stronger penitentiary character and social assistance to detainees was much more limited.

These provisions have been very much welcomed by the Spanish civil society committed to migrants' rights protection, as they enable their regular access to the centres which could make a significant difference in improving conditions of detention for third-country nationals.

In particular, thanks to organisations' access to CIE, better identification of most vulnerable groups or persons with particular needs will be assured, as no specific mechanism with this aim has been established by the state.

However, the Spanish Ombudsman issued several recommendations on 18 December 2017 to improve the situation in the CIE, as the change envisioned by the CIE Regulation has not yet been realised. Specifically, with regard to social assistance, the Ombudsman asked for instructions for CIE in order to ensure the right of detainees to contact NGOs and the right of NGOs to visit the centres and to meet with them.<sup>272</sup> Thus, despite the existence of the Regulation, most of the formulated measures have not yet been implemented in most of the centres.

In the 2017 annual report, the Ombudsman recalls the several recommendations proposed with the aim of improving social, legal and cultural assistance provided in CIE, as well as the necessity of a deep reform of such facilities. The Ombudsman noted that improvements had not been made during the visits carried out.<sup>273</sup>

### D. Procedural safeguards

#### 1. Judicial review of the detention order

##### Indicators: Judicial Review of Detention

1. Is there an automatic review of the lawfulness of detention?

☒ Yes

☐ No

2. If yes, at what interval is the detention order reviewed?

Ongoing

Under the Aliens Act and Article 2 of the CIE Regulation, no one may be detained without the order or authorisation of the competent judicial authority. The judge, after hearing the interested party, decides whether or not to impose detention by reasoned order, assessing the personal circumstances of the person and, in particular, the lack of domicile or documentation, and the existence of previous

<sup>272</sup> Ombudsman, 'El Defensor del Pueblo exige que se mejore la asistencia en los CIE', 18 December 2017, available in Spanish at: <http://bit.ly/2F4cq3S>.

<sup>273</sup> Ombudsman, *Informe Anual 2017 y debates en las Cortes Generales*, March 2018, 9.

convictions or administrative sanctions and other pending criminal proceedings or administrative proceedings.<sup>274</sup>

Against decisions on detention, the third-country national can lodge appeals of reform, appealation and complaint<sup>275</sup> under the Criminal Procedure Act.<sup>276</sup> Reform and appealation appeals will be lodged before the same judge that issued the detention order. Conversely, the judicial appeal of complaint would be lodged before the competent Superior Court within a 2-month time limit.

Third-country nationals in detention remain available for the judge or court that authorised or ordered the detention. The competent judge for the control of the stay in CIE (*Juez de control de estancia*) will also decide, without a possibility of further appeal, on all petitions and complaints raised by detainees as they affect their fundamental rights, and will visit the centres when serious breaches are acknowledged.

## 2. Legal assistance for review of detention

### Indicators: Legal Assistance for Review of Detention

1. Does the law provide for access to free legal assistance for the review of detention?  
☒ Yes ☐ No
2. Do asylum seekers have effective access to free legal assistance in practice?  
☐ Yes ☒ No

Free legal assistance is provided by law to both detained persons and asylum seekers in general. Nonetheless, several obstacles faced by lawyers and interpreters to access the CIE have been reported. This is mainly due to shortcomings regarding social and legal assistance and difficulties in external communications as stated in the section regarding [Access to Detention Facilities](#).

The adoption of the CIE Regulation in 2014 has improved the situation, however, as it defines the rules and modalities for access of lawyers and NGOs into the centres. The new provisions regarding the collaboration of NGOs in the provision of social and assistance (including legal) services inside the centres also goes in the same direction. In different parts of the territory, collaboration contracts have already been issued for free legal assistance of detained persons with the Red Cross and the Spanish Bar Association.

The main reported criticisms on legal assistance and access to international protection for third-country nationals who have been issued a removal order (and wait for the procedure within detention) concern the lack of information on the asylum procedure at the time the person enters the centre, and the short timeframe of the urgent procedure applied to asylum claims made in detention, as they require a fast reaction to official notifications, which is hard to realise when the applicant is detained.

## E. Differential treatment of specific nationalities in detention

Organisations working with migrants in irregular situation or in the area of immigration detention have always reported that most detained migrants are from **Maghreb** and **sub-Saharan countries**. The over-representation in detention of people from Maghreb or sub-Saharan Africa is explained by the fact that identity checks conducted by police are still mostly based on ethnic and racial profiling. A report issued in 2018 by SOS Racismo highlights that 31% of detainees they assisted in the CIE of **Aluche** in Madrid

<sup>274</sup> Article 62 Aliens Act.

<sup>275</sup> Articles 216 and 219 Code of Criminal Procedure.

<sup>276</sup> Real decreto de 14 de septiembre de 1882 por el que se aprueba la Ley de Enjuiciamiento Criminal.

between 2014 and 2017 were detained after a documentation check.<sup>277</sup> The discriminatory attitude and incidents within the Spanish territory have been the subject of several reports and critiques.<sup>278</sup>

In 2017, the Minister of Interior under the previous government presented plans for the new CIE of **Algeciras**, a model which will be replicated in other CIE in Spain. The only novelty involves distributing the detainees by “sex, nationality and religion”. However, the Minister did not provide any detail about the modalities applicable in these new centres, despite the fact that the project has been ongoing for a year. In January 2019, the Spanish Council of Ministers adopted a new plan which provides for the construction of the new CIE in **Algeciras**. According to available information, the construction will be carried out in 2020-2021, the new CIE will cover an area of 20,000 m<sup>2</sup> and will have a capacity of 500 places.<sup>279</sup>

The presentation of the new CIE has been criticised for its discriminatory nature and for arriving at a time when its efficiency as a mechanism of expulsion is doubted, with a percentage of expelled inmates that has not exceeded 30% in 2016. In addition, the majority of NGOs and some political parties<sup>280</sup> demand the closure of the CIE because it is “a violation of human rights in itself”.<sup>281</sup>

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<sup>277</sup> SOS Racismo, *Informe CIE 2014 – 2017. Más allá de la frontera de lo humano*, July 2018, 25.

<sup>278</sup> Liberties, “‘Because You’re Black’: Spain Ethnic Profiling Case Goes to Strasbourg”, 25 January 2018, available at: <https://bit.ly/2sBpiJG>; SOS Racismo, ‘Parad de pararme’, available in Spanish at: <https://www.pareudepararme.org/testimonios/>.

<sup>279</sup> El Diario, ‘El Gobierno aprueba la construcción del nuevo CIE de Algeciras ideada en la etapa de Rajoy’, 18 January 2019, available in Spanish at: <https://bit.ly/2AXo8ga>.

<sup>280</sup> La Vanguardia, ‘Pablo Echenique defiende el cierre de los CIE, que considera “cárceles”’, 20 October 2018, available in Spanish at: <https://bit.ly/2MiURB5>.

<sup>281</sup> ‘CIE NO – Campaña para el cierre de los centros de internamiento de extranjeros’, available in Spanish at: <https://ciesno.wordpress.com/>; Alfa y Omega, ‘El Servicio Jesuita de Migrantes pide el cierre de los CIE’, 7 June 2018, available in Spanish at: <https://bit.ly/2CvnxCK>.

## A. Status and residence

### 1. Residence permit

#### Indicators: Residence Permit

1. What is the duration of residence permits granted to beneficiaries of protection?
  - ❖ Refugee status 5 years
  - ❖ Subsidiary protection 5 years
  - ❖ Humanitarian protection 1 year

Both refugees and beneficiaries of subsidiary protection benefit from a residence permit of 5 years once they are granted status.<sup>282</sup> The responsible authority for issuing the residence permit is the Police of Aliens' Law and Documentation. There are no difficulties systematically encountered in the issuance and renewal of those residence permits in practice.

The issuance of residence permits for humanitarian reasons is foreseen under the Aliens Act. This residence permit has a one-year duration. The law foresees the possibility to request this kind of permit under the following conditions:<sup>283</sup>

- Being a victim of any of the offences collected under Articles 311 to 315, 511.1 and 512 of the Criminal Code, concerning offences against the rights of workers;
- Being the victim of crimes based on racist, anti-Semitic or other kind of discrimination relating to ideology, religion or beliefs of the victim, the ethnic group, race or nation to which they belong, their sex or sexual orientation, or disease or disability;
- Being a victim of crime by domestic violence, provided that a judicial decision has established the status of victim; or
- Having a severe disease requiring health care specialist, not accessible in the country of origin, where the interruption of treatment would pose a serious risk to the health or life.

### 2. Civil registration

Beneficiaries of international protection follow the same civil registration procedure as Spanish nationals. The required documentation from the country of origin can be substituted by a certificate issued by the OAR.

Registration of child birth is made through a declaration in an official format duly signed by the person. To that end, the doctor or the nurse assisting the birth will prove the identity of the mother in order to include this information into the report. Parents make their declaration by filling the corresponding official format, and the officer at the Civil Registry proceeds to registration accordingly.

No obstacles to civil registration have been observed in practice.

### 3. Long-term residence

#### Indicators: Long-Term Residence

1. Number of long-term residence permits issued to beneficiaries in 2018: Not available

The long-term residence permit in Spain is governed by the Aliens Act and can be obtained when the following conditions are fulfilled:<sup>284</sup>

- Having legal residence;
- Not having non entry bans applied;
- Not having criminal penalties;

<sup>282</sup> Article 34(3) Aliens Regulation.

<sup>283</sup> Article 126 Aliens Regulation.

<sup>284</sup> Article 148 Aliens Regulation.

- Five years' legal and continuous residence within Spanish territory;
- Five years' residence as holder of the EU Blue Card in the European Union, proving that the two last years occurred in Spanish territory;
- Being a beneficiary resident of a contributory pension;
- Being a resident beneficiary of a pension of absolute permanent disability or severe disability, tax, including modality consisting of a lifetime, not capital income, sufficient for its continued existence;
- Being a resident and being born in Spain, and upon the reaching the age of majority having resided in Spain legally and continuously for at least the last three years consecutively;
- Spanish nationals who have lost the Spanish nationality;
- Being a resident that, upon reaching the age of majority, has been under the guardianship of a Spanish public entity during the last preceding five years;
- Being stateless or having refugee or beneficiary of subsidiary protection;
- Having contributed significantly to the economic, scientific or cultural advancement of Spain, or the projection of Spain abroad. (In these cases, it will be the Ministry of employment and Social security holder the granting of long-term residence authorization, following a report from the head of the Ministry of the Interior).

Refugees and beneficiaries of subsidiary protection can request the issuance of a long term residence permit after the 5-year duration of the refugee or subsidiary protection permit when they meet the aforementioned legal requirements.

The application procedure must be started in the Aliens Offices of the territorial administration in which the applicant has taken up residence. The whole process has a duration of 3 months, after which the administration has to give an answer. There are no systematic or generalised obstacles to obtaining long-term residence permits.

#### 4. Naturalisation

##### Indicators: Naturalisation

1. What is the waiting period for obtaining citizenship?	
❖ Refugee status	5 years
❖ Subsidiary protection	10 years
2. Number of citizenship grants to beneficiaries in 2018:	Not available

There are several criteria foreseen by the law for obtaining the Spanish nationality:

- ❖ Spaniards of origin: applicants born from a Spanish national mother or father, or applicants born from foreign parents but who have at least one parent was born in Spain.
- ❖ Residence in Spain: which vary depending on the nationality and status of the applicant. These are:
  - 5 years for **refugees** and 10 years beneficiaries of **subsidiary protection**;
  - 2 years for nationals of Spanish American countries, Andorra, Philippines, Guinea, Portugal or Sefardies;
  - 1 year for applicants who were born in Spain and those who were under public guardianship for a period of 2 years, applicants married to Spanish nationals for at least 1 year, widows of Spanish nationals, and Spanish descendants.
- ❖ Possession: applicants of Spanish citizenship during 10 years continuously;
- ❖ Option: applicants who are or have been under Spanish custody (*patria potestad*) or with Spanish nationals or born parents.

The management of the naturalisation process is undertaken by the Directorate-General for Registers and Notaries. The procedure is exclusively administrative and Civil Registers participate in the final oath taken by the naturalised person.

The application is submitted through an online platform, a website which will allow starting the process immediately with the request of the necessary documents and the assignment of a registration number.

Another feature of the procedure of acquisition of Spanish nationality by residence is the replacement of the interview on integration with two examinations or tests to be carried out at the Headquarters of the Cervantes Institute. The first test assesses the knowledge of the Spanish language (except for countries that are already Spanish speaking). The second test is on knowledge of constitutional and socio-cultural aspects of the country (CCSE). This second test consists of 25 questions, 13 of which must be correct to pass the exam. Neither disabled persons nor children go through these tests. 5 calls are scheduled for the taking of the first test and 10 for the second.

The CCSE tests have been subject to several critiques, and often sarcasm, due to the type of information that can be asked, as it seems not to be relevant to assessing the degree of integration of the applicant, and as many organisations and newspapers have pointed out that most of the Spanish population would not know to answer either.<sup>285</sup>

Costs foreseen under the whole procedure include 100 € tax for naturalisation, plus 80 € and 120 € for taking the first and second exam.

The whole naturalisation process is known to be quite tedious, and overall very long. The average duration of the process reaches a minimum of 1.5 years. Despite the recent measures taken by the government, the system still faces serious backlogs, with 400,000 applications still left to be assessed as of June 2018, only just 5 officers in charge of dealing with them.<sup>286</sup> In November 2018, the Ministry of Justice announced a plan with measures to resolve the backlog of around 360,000 of pending applications, including through the possibility of contracting about 100 professionals.<sup>287</sup>

## 5. Cessation and review of protection status

### Indicators: Cessation

1. Is a personal interview of the asylum seeker in most cases conducted in practice in the cessation procedure? ☒ Yes ☐ No
2. Does the law provide for an appeal against the first instance decision in the cessation procedure? ☒ Yes ☐ No
3. Do beneficiaries have access to free legal assistance at first instance in practice? ☒ Yes ☐ With difficulty ☐ No

The Asylum Act and Regulation foresee the cessation of **refugee status** in the following cases:<sup>288</sup>

- a. When the refugee expressly so requests;
- b. When the refugee has obtained Spanish nationality;
- c. When the refugee avails, again, voluntarily, to the protection of the country of nationality;
- d. When the refugee has voluntarily established him or herself in another country, producing a transfer of responsibility;
- e. When, after a fundamental change of circumstances in the given country, it is considered that have disappeared the causes that justified the recognition of its nationals, or of a determined

<sup>285</sup> See the following articles for reference: <https://goo.gl/mBWbj6>, <https://goo.gl/EhDh9R>, <https://goo.gl/VLyFXz>.

<sup>286</sup> El Confidencial, 'El gran atasco de la nacionalidad española: 5 funcionarios para 400.000 expedientes', 2 June 2018, available in Spanish at: <https://bit.ly/2FyaiER>.

<sup>287</sup> El Confidencial, 'Plan de choque del Gobierno para conceder la nacionalidad a más de 300.000 personas', 3 November 2018, available in Spanish at: <https://bit.ly/2zoEs7U>.

<sup>288</sup> Article 42 Asylum Act; Article 37 Asylum Regulation.



social group, as refugees, the Inter-Ministerial Commission of Asylum and Refuge (CIAR) after consulting UNHCR, may agree the cessation of the status.

This provision shall be communicated at the time of renewal of the residence permit. The refugee will be given a deadline to formulate allegations that they deem appropriate. Under the latter situation, continuation of residence permit under Aliens Act will be allowed when the person concerned alleges reasonable justification to stay in Spain.

Similar grounds are foreseen for the cessation of **subsidiary protection**.<sup>289</sup>

Cessation is not applied to any specific group in practice. In the case of changes in the circumstances of their countries of origin, refugees and beneficiaries of subsidiary protection can ask for a long-residence permit in order to remain in Spain, which is granted without many problems in practice.

The OAR took cessation decisions in 4 cases, all concerning Syrian holders of subsidiary protection.<sup>290</sup>

### Procedure for cessation

The process for cessation foreseen is the same for the withdrawal of the protection status, and it is ruled in Article 45 of the Asylum Act. The initiative is taken in both cases by the OAR.<sup>291</sup> The beneficiary will be informed in writing of the start of the process and its motivation and he or she will be heard for his or her submissions on the case. UNHCR provides the necessary information for the OAR to take the decision. Information is under no circumstance provided by the persecuting authorities, nor would the process put the beneficiary in danger in any way.<sup>292</sup> Finally, the OAR's decision is submitted to the CIAR, which is responsible for taking the final decision concerning withdrawal or cessation.<sup>293</sup>

The decision will have to be notified to the beneficiary in a time limit of 6 months since the start of the procedure.<sup>294</sup> When this time limit is not respected, the process procedures no effects on the beneficiary's protection status. If a decision is taken, the beneficiary can lodge an initial administrative appeal face to the Ministry of Interior or directly lodge a judicial appeal against the notified decision.<sup>295</sup>

## 6. Withdrawal of protection status

### Indicators: Withdrawal

1. Is a personal interview of the asylum seeker in most cases conducted in practice in the withdrawal procedure? ☒ Yes ☐ No
2. Does the law provide for an appeal against the withdrawal decision? ☒ Yes ☐ No
3. Do beneficiaries have access to free legal assistance at first instance in practice? ☒ Yes ☐ With difficulty ☐ No

The withdrawal of protection status is foreseen by Article 44 of the Asylum Act in the following cases, where:

- a. Any of the exclusion clauses provided in Articles 8, 9, 11 and 12 of the Asylum Act apply;
- b. The beneficiary has misrepresented or omitted facts, including the use of false documentation, which were decisive for the granting of refugee or subsidiary protection status;
- c. The beneficiary constitutes, for well-founded reasons, a danger to the security of Spain, or who, having been convicted by final judgment for offence serious, constitutes a threat to the community.

<sup>289</sup> Article 43 Asylum Act.

<sup>290</sup> Information provided by OAR, 8 March 2019.

<sup>291</sup> Article 45(1) Asylum Act.

<sup>292</sup> Article 45(2) Asylum Act.

<sup>293</sup> Article 45(4) Asylum Act.

<sup>294</sup> Article 45(7) Asylum Act.

<sup>295</sup> Article 45(8) Asylum Act.

The withdrawal of international protection leads to the immediate application of existing rules in matters of aliens and immigration law, and when appropriate, expulsion proceedings.

The Asylum Act also prohibits any revocation or eventual expulsion which may lead to the return of the beneficiary to a country in which exist danger for life or freedom or in which he or she can be exposed to torture or to inhuman or degrading treatment or in which lacks of protection effective against return to the persecuting country.<sup>296</sup>

The process for the withdrawal of protection status is the same as that described in the [Cessation and Review](#) section.

There were no withdrawals of international protection in 2018.<sup>297</sup>

## B. Family reunification

### 1. Criteria and conditions

#### Indicators: Family Reunification

1. Is there a waiting period before a beneficiary can apply for family reunification?  
☐ Yes ☐ No  
❖ If yes, what is the waiting period?
2. Does the law set a maximum time limit for submitting a family reunification application?  
☐ Yes ☐ No  
❖ If yes, what is the time limit?
3. Does the law set a minimum income requirement?  
☐ Yes ☐ No

The right to family unity is established in Articles 39-41 of the Asylum Act. The law reflects two aspects which add to and comply with this right: “Extension” of the international protection status of the beneficiary to his or her family (*Extensión familiar del derecho de asilo o de la protección subsidiaria*),<sup>298</sup> and “Family reunification” (*Reagrupación familiar*).<sup>299</sup> The applicant can opt for any of these, except for cases where the family has different nationality. In these cases, it will be mandatory to opt for family reunification.

#### 1.1. Family extension

The “extension” applies to:<sup>300</sup>

- First degree ascendants that prove dependence;
- Descendants who are minors;
- Spouse or person who is linked by analogous relationship or cohabitation;
- Any other adult who is responsible for the beneficiary of international protection in accordance with current Spanish legislation, when the beneficiary is an unmarried minor;
- Other family members of a beneficiary, in cases where dependence and cohabitation with these individuals in the country of origin has been proved.

As the extension is attached to the main norm on beneficiaries established by the Asylum Act, there are no distinctions between refugees and subsidiary protection beneficiaries when it comes to setting requirements for extension.

<sup>296</sup> Article 44(8) Asylum Act.

<sup>297</sup> Information provided by OAR, 8 March 2019.

<sup>298</sup> Article 40 Asylum Act.

<sup>299</sup> Article 41 Asylum Act.

<sup>300</sup> Article 40(1)(a)-(d) Asylum Act.

When referring to the extension of international protection of the beneficiary to those relatives who are *ascendants*, the original Asylum Act did not establish economic dependence requirements from the sponsor, although the law was amended in 2014 to include the requirement of economic dependence.<sup>301</sup> Therefore, the requisite threshold is to prove that the ascendant depends economically on the beneficiary of international protection.

A major difficulty faced in practice is the certification and proof of dependence in the cases of ascendants of beneficiaries of international protection, which becomes especially burdensome in the case of Syrian nationals.

Regarding extension of the international protection of the beneficiary to those relatives who are *descendants*, the only requirement set to the beneficiary of protection is to prove family ties. There is no economic requirement established for the individual who benefits from protection.

In relation to the extension of the international protection of the beneficiary to other family members, the requisite conditions established by law are economic dependence and previous cohabitation in the country of origin. If both aspects are not proved, the “extension” is not granted.

As to economic dependence, the law does not establish a clear criterion. In practice, concessions are given as long as the beneficiary of protection sends money to the family which is in the country of origin. This, however, is a major problem for countries in conflict where money transfers not possible.

One of the main problems in practice concerns sons / daughters who are over 18 but depend on the beneficiary of protection. These are normally cases of 19 or 20-year-olds who still live in the family nucleus next to underage siblings. In these cases, extension is granted to underage sons / daughters but is denied to overage children, thereby breaking the nuclear family and consequently leaving these individuals in a vulnerable situation in their countries of origin.

In addition, problems arise when trying to reunite minors who are dependent on the beneficiary of protection but who are not children but nephews / nieces, underage siblings etc., who also conform the family unit. In these cases, we come across the same problem of family separation as mentioned before.

## 1.2. Family reunification (only in law)

The concept of family reunification is established by law as an alternative to “extension” except in cases involving different nationalities of spouses, in which it is compulsory.<sup>302</sup>

Article 41 of the Asylum Act establishes that neither refugees or beneficiaries of subsidiary protection nor beneficiaries of family reunification will be subject to the requirements established in the Aliens Act, but will be subject to specific rules defined through a Regulation. Nevertheless, the establishment of these requirements and duties is still pending since 2009, which means that all applications for family reunification have been on hold and waiting to be resolved since October 2009.

This situation is extremely serious for the cases of family members who have different nationality than the sponsor beneficiaries of protection, because the compulsory application of the family reunification excludes them from “extension” and leaves them with no other option. In these particular cases, applicants are prevented from exercising their right to maintain their family unit.

However, a judgment of the *Audiencia Nacional* at the end of 2017 recognised a Palestinian refugee’s right to family reunification with her 71-year-old Syrian mother under the family reunification provisions of the Asylum Act. Importantly, the *Audiencia Nacional* states that whilst Article 41(2) does refer to an

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<sup>301</sup> Final Provision 3 Law 2/2014 of 25 March 2014.

<sup>302</sup> Article 41(1) Asylum Act.

implementing regulation, the provision itself contains a sufficiently detailed regulation, almost analogous to that contained in Article 40, which makes it perfectly applicable in practice. The judgment also highlighted the favourable report issued by the UNHCR supporting the case, on the basis of the fundamental right to family unity of refugees.<sup>303</sup>

### 1.3. Procedure

The procedure starts with the presentation of a report to the OAR, which has to be complemented by the following documents:

- Copy of the card which certifies the person as beneficiary of extension;
- Copy of the resolution where international protection is granted;
- Copy of the documentation which certifies and proves family ties;
- In the case of parents: birth certificate of children and family book;
- In the case of siblings: birth certificate of the corresponding siblings and family book;
- Copy of the documentation which proves that the applicant and his family cohabited together in the country of origin and had dependence on him or her;
- Copy of each family member's passport;
- In the cases of spouses of siblings, marriage certificate;
- Report where the applicant provides a verbal account and description of the family situation;

It is also necessary to choose the consulate where the applicant wants to submit the extension application to be formalised in and leave contact details.

The OAR sends a letter to the applicant and with it, the family members are able to formalise the application in the Spanish consulate they have chosen. Family members formalize the application of family extension in the consulate of choice by presenting originals of all the documents required. Following this, the consulate sends all the documentation to the OAR and the application is studied. The instructor gives CIAR the proposal for resolution. Lastly, CIAR gives a final resolution to the case, if it is positive, it will be communicated to the consulate and the visas are issued accordingly.

The OAR received 269 applications for family extension with a beneficiary of international protection in 2018.<sup>304</sup>

## 2. Status and rights of family members

As explained in the section on [Family Reunification: Criteria and Conditions](#), only “extension” of international protection status is applied in practice, as the rules on family reunification have not yet been defined. In the context of extension, the beneficiary's international protection status is extended to cover family members. There is no difference relating to this as regards refugees and subsidiary protection beneficiaries.

Once the extended family members obtain their visa they will be able to travel. Once they are in Spain, the recognition of their extended international protection status is automatic. They go to the OAR to receive their temporary “red card” (*tarjeta roja*) while they wait for the residence permit to be issued.

## C. Movement and mobility

### 1. Freedom of movement

Beneficiaries of international protection have freedom of movement around the entire Spanish territory. In practice, they generally reside in the area where the procedure has been conducted, unless they have family members or networks in other cities. As with asylum seekers, the majority of refugees are

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<sup>303</sup> Audiencia Nacional, Decision SAN 5372/2017, 15 December 2017.

<sup>304</sup> Information provided by OAR, 8 March 2019.

accommodated in **Andalucía**, followed by **Madrid** and **Catalonia** (see [Reception Conditions: Freedom of Movement](#)).

## 2. Travel documents

Article 36(1)(d) of the Asylum Act governs the issuance of travel documents for refugees and, where necessary, for beneficiaries of subsidiary protection. The validity of these documents is 5 years for both types of protection. The travel documents have similar format, but only the refugee travel document makes reference to the 1951 Refugee Convention.

The beneficiary has to go personally to request the expedition of the document to the OAR or to the competent provincial police department of foreigners. There are no formal limitations to the permitted area of travel except the country of origin of the person benefitting from international protection.

Travel documents for beneficiaries of international protection issued by other countries are accepted in Spain. Spain has also ratified the Council of Europe Agreement for Transfer of Responsibility for Refugees.

The number of travel documents issued in 2018 is not available.<sup>305</sup>

## D. Housing

### Indicators: Housing

- |  |               |
|--|---------------|
| 1. For how long are beneficiaries entitled to stay in reception centres?       | 6 months      |
| 2. Number of beneficiaries staying in reception centres as of 31 December 2018 | Not available |

The 3-phase reception and integration process is available for all persons who ask for asylum, even in the case they are granted with international or subsidiary protection during the 18-month period. In case a person receives a negative response during the process, usually the person is allowed to complete at least the first period within the reception phase. In any case, the Ministry of Labour, Migration and Social Security must give permission for the rejected applicant to continue the on-going phase and also the following ones, also accessing financial support foreseen within the second and third phases. It should however be noted that usually applicants receive their asylum decision after 1 year or more from the moment of the asylum claim.

Therefore beneficiaries follow the same process as described in [Reception Conditions: Criteria and Restrictions](#). They are hosted within the asylum reception centres during the first 6 months. The typologies of reception places vary depending on the institution or entity that manages it: the system relies on places within big reception centres and apartments, some reception places are in urban neighbourhoods while other are located in rural areas. The different types of available accommodation also differ from the point of view of provided services and spaces.

After this first phase of accommodation inside the reception system, beneficiaries are granted financial support to help them pay the rent on their own place. Due to the rigidity which characterises the Spanish 3-phase reception process, they must complete their stay inside the reception places in order to have access to the following foreseen financial support for private housing, also because the participation to initial integration activities developed during the first reception phase is considered is well evaluated and relevant at the time of asking for other financial support available in the last 2 phases.

This factor obviously causes obstacles for those beneficiaries that can either pay their own housing since the beginning or for those who have relatives or personal contacts that can host them. In case

<sup>305</sup> Information provided by OAR, 8 March 2019.

they decide to go and live by themselves, they would be renouncing to the entire assistance and support foreseen under the reception system.

The lack of available social housing, the insufficient financial support foreseen for paying the rent, high requirements and criteria in rental contracts and discrimination exposes many beneficiaries of protection to very vulnerable economic conditions and in some cases leads to destitution. Although many NGOs who work with refugees and asylum seekers during the first phase try to mediate between refugees and house holders at the time they start looking for private housing, there is not a specialised agency or intermediate service for helping beneficiaries finding a home. Also, even with the mediation of NGOs, asylum seekers face serious discrimination in renting apartments. Some of them face homelessness and are accommodated in homeless shelters.<sup>306</sup>

## E. Employment and education

### 1. Access to the labour market

Access to the labour market for refugees and beneficiaries of subsidiary protection is not limited by law or by any other measure in such as a labour market test or restricted access to certain sectors. It is fully accessible under equal conditions to nationals.

As mentioned in the chapter on [Reception Conditions](#), during the first phase of reception, asylum applicants are provided with financial support for requesting the recognition of their studies or professional qualifications when this is feasible. This financial support is welcomed as recognition process usually undertakes important expenses for the legalisation and the translation of the documentation. Unfortunately, financial support is often not sufficient for guaranteeing full coverage to recognition related expenses. In the following two phases, beneficiaries of international protection are required to be more financially self-sufficient, providing financial help for punctual support, as self-sufficiency is hardly achievable in reality.

Nonetheless, as mentioned in the section on [Reception Conditions: Access to the Labour Market](#), all persons within the 18-month long process are provided with individualised schemes to support their training, qualification recognition etc. After they complete the 3-phase process, beneficiaries can still access labour integration and orientation services provided by NGOs addressed to the migrant population in general. These generalised services are funded by the Ministry of Employment and co-financed by EU funds, and also include personalised schemes, employment orientation, trainings etc.

Even when they are granted with refugee or subsidiary protection status, in the practice many beneficiaries face obstacles entering the labour market due to language, qualifications, and discrimination-based obstacles. This situation is made worse by the fact that the Spanish economy has gone through a long economic crisis which has lead the country to high levels of unemployment even within the national population.

### 2. Access to education

No major differences are reported between the situation of asylum seekers and beneficiaries of international protection. See the section on [Reception Conditions: Access to Education](#).

Nonetheless, concerning this topic and many others related to their rights and protection, refugee unaccompanied minors are the most vulnerable collective, and are sometimes excluded from education or vocational training. Obstacles faced by these minors concern the lack of proper attention paid by administrations that have their legal guardianship.

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<sup>306</sup> El País, 'La red de albergues de Madrid deja en la calle a familias con niños', 18 November 2018, available in Spanish at: <https://bit.ly/2PAw8Nb>; Público, 'Varios solicitantes de asilo denuncian que España les deja fuera del sistema de acogida', 16 May 2018, available in Spanish at: <https://bit.ly/2AUvKQr>.



Also during 2018 several cases have been denounced concerning unaccompanied minors, putting in evidence the shortcomings of the public system for minors' protection. These have mainly been witnessed in the City of **Melilla** and **Madrid**. Although none of the reported cases concerned directly refugee children, the system in which they are received faces problem and obstacles concerning their documentation, their integration and their protection.

## F. Social welfare

Refugees and subsidiary protection beneficiaries have access to social welfare under the same conditions as Spanish nationals.<sup>307</sup> No difference is made between the two types of protection status. They are entitled to, among others, employment and unemployment, benefits, scholarship, social assistance allowances, emergency allowances, allowances for housing, etc.

The Ministry of Employment and Social Security is responsible for the provision of social assistance. In practice, beneficiaries access benefits without any particular obstacles.

Social welfare is not conditioned on residence in a specific place, since it is distributed at national level. However, assistance may be complemented by support at municipal and regional level if applicable.

## G. Health care

No differences are reported between the situation of asylum seekers and beneficiaries of international protection. See the section on [Reception Conditions: Health Care](#).

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<sup>307</sup> Article 36(1)(f) Asylum Act.

## ANNEX I – Transposition of the CEAS in national legislation

### Directives and other CEAS measures transposed into national legislation

Spain has not yet transposed the recast Qualification, Asylum Procedures and Reception Conditions Directive.

### Pending transposition and reforms into national legislation

Directive / Regulation	Deadline for transposition	Stage of transposition / Main changes planned	Participation of NGOs
<b>Directive 2011/95/EU</b> Recast Qualification Directive	21 December 2013	Proyecto de Real Decreto por el que se aprueba el Reglamento de la Ley 12/2009, de 30 de octubre, reguladora del Derecho de Asilo y de la protección subsidiaria (8 noviembre 2013)	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
<b>Directive 2013/32/EU</b> Recast Asylum Procedures Directive	20 July 2015 Article 31(3)-(5) to be transposed by 20 July 2018	Proyecto de Real Decreto por el que se aprueba el Reglamento de la Ley 12/2009, de 30 de octubre, reguladora del Derecho de Asilo y de la protección subsidiaria (8 noviembre 2013)	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
<b>Directive 2013/33/EU</b> Recast Reception Conditions Directive	20 July 2015	Proyecto de Real Decreto por el que se aprueba el Reglamento de la Ley 12/2009, de 30 de octubre, reguladora del Derecho de Asilo y de la protección subsidiaria (8 noviembre 2013)	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
<b>Regulation (EU) No 604/2013</b> Dublin III Regulation	Directly applicable 20 July 2013	Proyecto de Real Decreto por el que se aprueba el Reglamento de la Ley 12/2009, de 30 de octubre, reguladora del Derecho de Asilo y de la protección subsidiaria (8 noviembre 2013)	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No