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Database

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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 20 countries. This includes 17 EU Member States (AT, BE, BG, CY, DE, ES, FR, GR, HR, HU, IE, IT, MT, NL, PL, SE, UK) and 3 non-EU countries (Serbia, Switzerland, Turkey) which is easily accessible to the media, researchers, advocates, legal practitioners and the general public through the dedicated website www.asylumineurope.org. Furthermore the project 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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TABLE OF CONTENTS

Glossary & List of Abbreviations	5
Statistics	6
Overview of the legal framework and practice	9
Asylum Procedure	12
A. General	12
1. Flow chart	12
2. Types of procedures	12
3. List the authorities that intervene in each stage of the procedure	13
4. Number of staff and nature of the first instance authority	13
5. Short overview of the asylum procedure	14
B. Procedures	15
1. Registration of the asylum application	15
2. Regular procedure	16
3. Dublin	20
4. Admissibility procedure	22
5. Border procedure (border and transit zones)	24
6. Accelerated procedure	27
C. Information for asylum seekers and access to NGOs and UNHCR	28
D. Subsequent applications	29
E. Guarantees for vulnerable groups of asylum seekers (children, traumatised persons, survivors of torture)	29
1. Special procedural guarantees	29
2. Use of medical reports	31
3. Age assessment and legal representation of unaccompanied children	32
F. The safe country concepts	34
G. Treatment of specific nationalities	35
Reception Conditions	36
A. Access and forms of reception conditions	36

1. Criteria and restrictions to access reception conditions.....	36
2. Forms and levels of material reception conditions.....	37
3. Types of accommodation.....	37
4. Conditions in reception facilities.....	39
5. Reduction or withdrawal of reception conditions.....	40
6. Access to reception centres by third parties.....	40
7. Addressing special reception needs of vulnerable persons.....	40
8. Provision of information.....	41
9. Freedom of movement.....	41
B. Employment and education.....	42
1. Access to the labour market.....	42
2. Access to education.....	42
C. Health care.....	43
Detention of Asylum Seekers.....	44
A. General.....	44
B. Legal framework of detention.....	45
1. Grounds for detention.....	45
2. Alternatives to detention.....	46
3. Detention of vulnerable applicants.....	46
4. Duration of detention.....	46
C. Detention conditions.....	47
1. Place of detention.....	47
2. Conditions in detention facilities.....	47
D. Procedural safeguards.....	49
1. Judicial review of the detention order.....	49
2. Legal assistance for review of detention.....	50
ANNEX I – Transposition of the CEAS in national legislation.....	51

Glossary & List of Abbreviations

Desamparo	Declaration of destitution, triggering guardianship procedures for unaccompanied children
Tarjeta roja	Red card, certifying asylum seeker status
CAR	Refugee Reception Centre Centro de acogida de refugiados
CEAR	Spanish Commission of Aid to Refugees Comisión Española de Ayuda al Refugiado
CETI	Migrant Temporary Stay Centre Centro de estancia temporal para inmigrantes
CIAR	Inter-Ministerial Commission of Asylum Comisión Interministerial de Asilo y Refugio
CIE	Detention Centre for Foreigners Centro de Internamiento de Extranjeros
EASO	European Asylum Support Office
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
EDAL	European Database of Asylum Law
OAR	Office of Asylum and Refuge Oficina de Asilo y Refugio

Statistics

Table 1: Applications and granting of protection status at first instance: 2015

	Applicants in 2015	Pending applications in 2015	Refugee status	Subsidiary protection	Rejection ¹	Refugee rate	Sub. Prot. rate	Rejection rate
Total	14,780	16,430	220	800	2,220	6.8%	24.7%	68.5%

Breakdown by countries of origin of the total numbers

Syria	5,725	4,265	15	640	50	2.2%	90.8%	7%
Ukraine	3,345	4,195	0	0	35	0%	0%	100%
Palestine	800	895	30	15	10	54.5%	27.3%	18.2%
Algeria	675	505	0	0	370	0%	0%	100%
Venezuela	585	685	0	0	5	0%	0%	100%
Morocco	410	225	15	0	220	6.4%	0%	93.6%
Mali	225	1,565	0	0	230	0%	0%	100%
Nigeria	215	520	0	0	95	0%	0%	100%
Somalia	160	70	10	100	55	6.1%	60.6%	33.3%
Iraq	135	275	5	0	0	100%	0%	0%
Afghanistan	40	100	35	15	5	63.6%	27.3%	9.1%
Eritrea	20	15	5	0	0	100%	0%	0%

Source: Eurostat, migr_asyappctza; migr_asyencntzm; migr_asydcfsta.

¹ Rejection should include *both* in-merit and admissibility negative decisions (including Dublin decisions).

Table 2: Gender/age breakdown of the total numbers of applicants: 2015

	Number	Percentage
Total number of applicants	14,780	-
Men	8,995	60.9%
Women	5,785	39.1%
Children	3,720	25.2%
Unaccompanied children	65	0.44%

Source: Eurostat, migr_asyappctza, migr_asyunaa.

Table 3: Comparison between first instance and appeal decision rates: 2015

	First instance		Appeal	
	Number	Percentage	Number	Percentage
Total number of decisions	3,240	-	580	
Positive decisions	1,020	31.5%	10	1.7%
• Refugee status	220	6.8%	5	0.85%
• Subsidiary protection	800	24.7%	5	0.85%
Negative decisions	2,220	68.5%	570	98.3%

Source: Eurostat, migr_asydcfsta, migr_asydcfina.

Table 4: Applications processed under the accelerated procedure in 2015

Statistics have not been made available by the Ministry of Interior.

Table 5: Subsequent applications lodged in 2015

	Number	Percentage
Total number of subsequent applications	180	100%
Main countries of origin		
Algeria	25	13.8%
Morocco	15	8.3%
Nigeria	15	8.3%
Mali	10	5.5%

Source: Eurostat, migr_asyappctza.

Table 6: Number of applicants detained per ground of detention: 2013-2015

Statistics have not been made available by the Ministry of Interior.

Table 7: Number of applicants detained and subject to alternatives to detention: 2013-2015

Statistics have not been made available by the Ministry of Interior.

Overview of the legal framework and practice

Main legislative acts relevant to asylum procedures, reception conditions and detention

Title (EN)	Original Title (ES)	Abbreviation	Web Link
<p>Law 12/2009 of 30 October 2009, regulating the law of asylum and subsidiary protection Official Gazette No 263, 31 October 2009</p> <p><i>Amended by:</i> Law 2/2014 of 25 March 2014 Official Gazette No 74, 26 March 2014</p>	<p>Ley 12/2009, de 30 de octubre, reguladora del derecho de asilo y de la protección subsidiaria BOE núm. 263, de 31 de octubre</p> <p><i>Modificada por:</i> Ley 2/2014, de 25 de marzo BOE núm. 74, de 26 de marzo</p>	Asylum Law	< http://bit.ly/1R7wKyD > (ES)
<p>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</p> <p><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</p>	<p>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</p> <p><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</p>	Aliens Law (LOEX)	< http://bit.ly/1qto175 > (ES) < http://bit.ly/21nrJwQ > (ES)

Main implementing decrees and administrative guidelines and regulations relevant to asylum procedures, reception conditions and detention.

Title (EN)	Original Title (ES)	Abbreviation	Web Link
<p>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</p>	<p>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</p>	Temporary Protection Regulation	< http://bit.ly/1QBTjuN > (ES)
<p>Royal Decree 203/1995 of 10 February 1995 approving the Regulation implementing Law 5/1984 of 26 March 1984, regulating the law of asylum and</p>	<p>Real Decreto 203/1995, de 10 de febrero, por el que se aprueba el Reglamento de aplicación de la Ley 5/1984, de 26 de marzo, reguladora del Derecho de Asilo y de la</p>	Asylum Regulation	< http://bit.ly/21x75H7 > (ES)

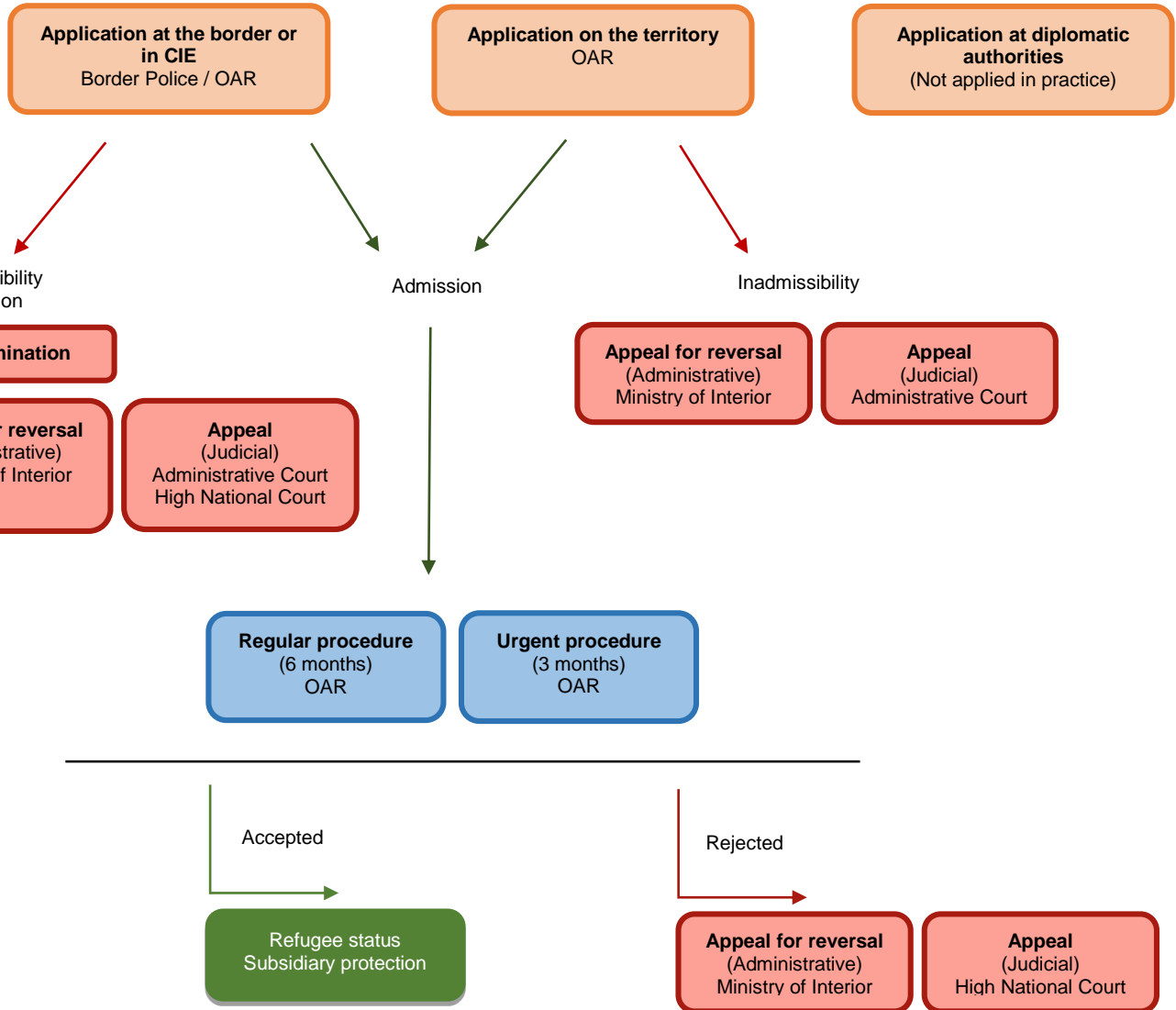
<p>criteria for refugee status, as amended by Law 9/1994 of 19 May 1994.</p> <p><i>Modified by:</i> Royal Decree 865/2001 of 20 July 2001, Royal Decree 1325/2003 of 24 October 2003 and Royal Decree 2393/2004 of 30 December 2004.</p>	<p>condición de Refugiado, modificada por la Ley 9/1994, de 19 de mayo.</p> <p><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.</p>		
<p>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</p>	<p>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</p>	CIE Regulation	< http://bit.ly/1WRxts0 > (ES)
<p>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</p>	<p>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</p>		< http://bit.ly/1RvDRnk > (ES)
<p>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</p>	<p>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</p>		< http://bit.ly/1UqhDFX > (ES)
<p>Resolution of 13 October 2014 on the Framework Protocol on actions relating to foreign unaccompanied minors Official Gazette No 251, 16 October 2014</p>	<p>Resolución de 13 de octubre de 2014, de la Subsecretaria, por 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</p>		< http://bit.ly/1WQ4h4B > (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	http://bit.ly/1S8g2lZ (ES)
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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: ² | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| ▪ Fast-track processing: ³ | <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: ⁴ | <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 Law foresees the possibility to request international protection before Spanish Embassies and Consulates. As there is no Regulation to the 2009 Asylum Law, the previous 1995 Regulation of the previous Asylum Law is the legal provision currently being applied, and the latter makes no reference to this possibility. A new Regulation to the actual Asylum Law would enable to give Article 38 a use in the practice.

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

Stage of the procedure	Competent authority in EN	Competent authority in original language (ES)
Application ❖ At the border ❖ On the territory	Border Police Office of Asylum and Refuge	Policia 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 ❖ Administrative appeal ❖ Judicial appeal	❖ Ministry of Interior ❖ Administrative Court / High National Court	❖ Ministerio del Interior ❖ Juzgados Centrales de contencioso / Audiencia Nacional
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	Not available	Ministry of Interior	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

² For applications likely to be well-founded or made by vulnerable applicants.

³ Accelerating the processing of specific caseloads as part of the regular procedure.

⁴ Labelled as "accelerated procedure" in national law.

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 Law 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, Foreigner Detention Centre (CIE) or police station.

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

Regular procedure⁵

Under the terms of the regular procedure, applicants, who are inside the Spanish territory, lodge their request by sending it to OAR, which is an authority dependent on the Ministry of Interior. OAR shall have one month to examine the formal aspects of the request i.e. its admissibility. If OAR does not issue a resolution within that time, it is understood that the application has been admitted under the Spanish law (under positive silence). The resolution shall decide whether the request is admissible or inadmissible. The Administrative 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 was declared inadmissible, the applicant may appeal for reversal (*Recurso de reposición*) or file a contentious administrative appeal. On the other hand, if the OAR declared 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 an accelerated procedure. In this case, the OAR will have 72 hours, or 4 days in the case of applicant in CIE, to declare the application admissible, inadmissible or refused. 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 refused, the applicant may ask for reconsideration (*re-examen*) of the request within two days. In case of another rejection or inadmissibility, the person can submit an appeal before a judge or a tribunal.

⁵ Article 24 Asylum Law.

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.

If the request is found admissible, the Ministry of Interior will have six months to resolve the matter when it follows the regular procedure, or three months in case of urgent procedure. In the case that 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:⁶

- (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;⁷
- (f) The applicant falls within any of the exclusions under the Asylum Law.

B. Procedures

1. 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? 1 month
3. 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

The Asylum Law provides that the authorities responsible for asylum claims registration are: the Office of Asylum and Refuge (OAR), any Foreigners' Office, Detention Centre for Foreigners (CIE) or police station.⁸

Persons willing to seek international protection to Spain must register a formal application during their first month of stay in Spain.⁹ When this time limit is not respected, the law foresees the possibility to apply the urgent procedure,¹⁰ 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 of the request, which the applicant shall present in person or, if this is not possible, be represented by someone else. The formalization of the application, which consists in an interview and the completion of a form, will be always be realized in presence of a police official or an officer of the Asylum and Refuge Office (OAR).

Most registered shortcomings in access to asylum in Spain concern the autonomous cities of Ceuta and Melilla. These obstacles are mainly due to the complex geopolitical position of the two Spanish enclaves, as they are located in the northern region of the African continent, forming Europe's only land borders with Africa. It should be put in evidence in fact, that Spanish and Moroccan territories are separated by

⁶ Article 25 Asylum Law.

⁷ Article 17(2) Asylum Law.

⁸ Article 4(1) Asylum Regulation.

⁹ Article 17(2) Asylum Law.

¹⁰ *Ibid.*

kilometres long wired fences, which in several occasions are assaulted by migrants in the desperate try to reach the Spanish side. Last reported collective episodes took place in October of 2014.¹¹

In order to facilitate access to asylum at land borders, since November 2014 the Ministry of Interior has established asylum offices at the borders' crossing points in Ceuta and Melilla.¹² In the same way, since 2015 UNHCR has guaranteed its presence as well.

Push backs

The main obstacles regarding the registration of asylum applications occur in cases of applications at the borders, and mostly at the Ceuta and Melilla border control 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 at the Spanish borders.¹³ Although UNHCR has also established its presence in the Ceuta and Melilla borders, asylum seekers, and mostly Sub-Saharan nationals, face huge obstacles in accessing the asylum points at the Spanish border.

In March 2015, the Spanish government adopted an amendment to the Aliens Law, introducing the possibility to "reject at borders" third-country nationals that are found crossing the border illegally.¹⁴

The amendment aimed at legalising the push backs practiced in Ceuta and Melilla, and has been criticised for ignoring human rights law and international law obligations towards asylum seekers and refugees.¹⁵ The Council of Europe Commissioner for Human Rights has accused Spain for trying to provide a legal cover to the practice of collective expulsions.¹⁶

2. Regular procedure

2.1. 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? | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |
| 3. Backlog of pending cases as of 31 December 2015: | 16,430 |

In all cases, asylum claims are examined by the Inter-ministerial Commission on Asylum (CIAR) of the Ministry of Interior.¹⁷ The Commission is composed by a representation of each of the departments having competences on: home and foreign affairs; justice; immigration; reception; asylum seekers; and equality.

¹¹ El Mundo, 'Mas de 200 inmigrantes protagonizan el segundo salto consecutivo a la valla en 24h', 15 October 2014, available in Spanish at: <http://bit.ly/1UalabZ>.

¹² 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/1OATag8>.

¹³ El Pais, 'Why Spain is not an option for Syrian refugees seeking a new life', 29 May 2015, available at: <http://bit.ly/1Q8lUK7>. See also the pending case before 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 Law (EDAL) here: <http://bit.ly/21xtu7g>.

¹⁴ Organic Law 4/2015 of 30 March 2015 on the protection of citizen security.

¹⁵ 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>.

¹⁶ 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>.

¹⁷ Article 23(2) Asylum Law.

UNHCR also participates, but only has the role to express its opinion on asylum cases, without veto power. The CIAR proposes the response to an asylum application, but the final decision lies with and is taken by the Ministry of Interior, no matter the type of procedure. The Spanish Ministry of Interior is in charge of broad range of tasks concerning 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 – penitentiary system, foreigners and immigration-related issues, and asylum applications.¹⁸

The Asylum Law rules 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.¹⁹ 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.

2.2. Prioritised examination / Fast-track processing

Article 25 of the Asylum Law 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.²⁰

The urgent procedure is applicable in the following circumstances:²¹

- (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;
- (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 Law.

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.²²

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 on the urgency of the cases.²³

There was information from the European Migration Network suggesting that the urgent procedure is applied to Syrian asylum seekers in practice.²⁴ However, this is not confirmed as a systematic procedure by lawyers working with asylum seekers.

¹⁸ Royal Decree 400/2012 of 17 February 2012 developing the basic organic structure of the Ministry of Interior.

¹⁹ Article 24(3) Asylum Law.

²⁰ Article 25(4) Asylum Law.

²¹ Article 25(1) Asylum Law.

²² Article 25(2) Asylum Law.

²³ Article 25(3) Asylum Law.

²⁴ European Migration Network, *Annual Report 2014*, May 2015, 14.

2.3. 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?
❖ If so, are interpreters available in practice, for interviews?
 Yes No
 Yes No
2. In the regular procedure, is the interview conducted by the authority responsible for taking the decision?
 Yes No
3. Are interviews conducted through video conferencing? Frequently Rarely Never

Article 17 of the Asylum Law 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. 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.

Unfortunately, not all asylum interviews are conducted by the OAR, nor the Ministry of Interior. In fact, as previously mentioned, 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.

Article 18 of the Asylum Law provides the right of all asylum seekers to have an interpreter, which also is respected in practice. For this purpose, the Spanish Ministry of Interior has employed interpreters and has also established contracts with NGOs for free provision of translation and interpretation services to asylum seekers at all stages of their asylum application. Thanks to this collaboration, interpreters are available for mostly all languages requested by asylum seekers. Since the European relocation scheme of refugees from Greece and Italy entered into force in September 2015, organisations are facing problems in finding the needed interpreters. This is due to the fact that the first group of 12 refugees that has been transferred from Italy are Eritrean nationals (except from one Syrian national),²⁵ whose community is very consistent in the Italian peninsula due to historical factors, but not in Spain. Finding Tigrinya speakers living in Spanish territory has been therefore a challenge.

Each authority and entity responsible for the provision of the service has adopted its own code of conduct applicable to the interpreters and translators it has contracted.

There have been reported cases of quality and conduct problems during the interviews. Usually, the system adopts self-control measures, as the authority responsible for interpreters always receives feedback on the work of the interpreter.

2.4. Appeal

Indicators: Regular Procedure: Appeal

1. Does the law provide for an appeal against the first instance decision in the regular procedure?
❖ If yes, is it
❖ If yes, is it automatically suspensive
 Yes No
 Judicial Administrative
 Yes 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

²⁵ El Mundo, 'Llegan a Madrid los primeros refugiados que acoge España, reubicados desde Italia según el plan de la UE', 9 November 2015, available in Spanish at: <http://bit.ly/1Oyvt7Q>.

(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.²⁶

The first type of appeal should be submitted before OAR under the Ministry of Interior, within 1 month from the notification of refusal.²⁷ 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.

In case of a rejection of the appeal, a further onward appeal is possible before the Supreme Court (*Tribunal Supremo*),²⁸ which in case of a positive finding has the power to grant the applicant with an international protection status.

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 (12 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 Law 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.

2.5. 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 Law 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 recourses.

²⁶ Article 29(1) Asylum Law.

²⁷ Article 29 Asylum Law.

²⁸ Article 29(2) Asylum Law.

In the practice, obstacles to accessing legal assistance have been reported mostly in applications lodged from CIEs and at land borders during collective expulsions and pushbacks. For this reason, refer to section regarding Border Procedure.

3. Dublin

3.1. General

Indicators: Dublin: General
Statistics have not been made available by OAR.

Application of the Dublin criteria

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.

According to the evaluation of the Dublin III Regulation published by the European Commission in March 2016, problems relating to the application of Article 12(4) on the requirement that a visa enabled the asylum seeker to enter the country. While the Commission has clarified that a hit in the Visa Information System (VIS) is sufficient to establish this condition, Spain has not complied with that approach.²⁹

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.³⁰

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 2014, Spain received 8 requests to apply the clause.³¹

No particular procedure is applied for vulnerable Dubliners.

3.2. Procedure

Indicators: Dublin: Procedure

1. On average, how long does a transfer take after the responsible Member State has accepted responsibility?³² 2 months

The Asylum Law 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.

²⁹ European Commission, *Evaluation of the implementation of the Dublin III Regulation*, March 2016, 23.

³⁰ European Commission, *Evaluation of the implementation of the Dublin III Regulation*, March 2016, 20.

³¹ European Commission, *Evaluation of the implementation of the Dublin III Regulation*, March 2016, 35.

³² European Commission, *Evaluation of the implementation of the Dublin III Regulation*, March 2016, 59.

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

No information on the implementation of the *Tarakhel v Switzerland* ruling has been made available by the authorities.

Transfers

According to the European Commission's evaluation of March 2016, Spain conducts transfers within 2 months.

The situation of Dublin returnees

In a judgment of 18 February 2016, the Administrative Tribunal of Nantes in **France** annulled a transfer of a Cameroonian national whose fingerprints had been recorded in Spain but had not applied for asylum there. The court found that the French authorities had not sufficiently examined the applicant's personal circumstances prior to ordering the transfer.³³ In a ruling of 25 March 2016, the Council of Alien Law Litigation in **Belgium** suspended a Dublin transfer of a family with an infant on the ground that there was not sufficient evidence that the applicants would have access to adequate reception conditions upon return.³⁴

The authorities have stated that Dublin returnees are more likely to leave Spain and travel onwards to other countries rather than lodging an asylum claim.³⁵

3.3. Personal interview

Indicators: Dublin: Personal Interview

Same as regular procedure

1. Is a personal interview of the asylum seeker in most cases conducted in practice in the Dublin procedure? Yes No
❖ If so, are interpreters available in practice, for interviews? Yes No
2. Are interviews conducted through video conferencing? Frequently Rarely Never

The same rules as in the Regular Procedure: Personal Interview apply. According to the authorities, the interview is never omitted.³⁶

³³ Nantes Administrative Tribunal, Judgment No 1600828, 18 February 2016, available in French at: <http://bit.ly/1n26Rbv>.

³⁴ Belgian Council of Alien Law Litigation, Judgment No 164 808, 26 March 2016.

³⁵ European Commission, *Evaluation of the implementation of the Dublin III Regulation*, March 2016, 61.

³⁶ European Commission, *Evaluation of the implementation of the Dublin III Regulation*, March 2016, 12.

3.4. Appeal

Indicators: Dublin: Appeal

Same as regular procedure

1. Does the law provide for an appeal against the decision in the Dublin procedure?
- | | | |
|--|--|--|
| ❖ 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 |
| | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |

The same rules as in the Regular Procedure: Appeal apply.

3.5. Legal assistance

Indicators: Dublin: Legal Assistance

Same as regular procedure

1. Do asylum seekers have access to free legal assistance at first instance in practice?
- | | | | |
|-------------------------------------|---|--|-----------------------------|
| | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> With difficulty | <input type="checkbox"/> No |
| ❖ Does free legal assistance cover: | <input checked="" type="checkbox"/> Representation in interview | | |
| | <input checked="" type="checkbox"/> Legal advice | | |
2. Do asylum seekers have access to free legal assistance on appeal against a Dublin decision in practice?
- | | | | |
|------------------------------------|--|--|-----------------------------|
| | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> With difficulty | <input type="checkbox"/> No |
| ❖ Does free legal assistance cover | <input checked="" type="checkbox"/> Representation in courts | | |
| | <input checked="" type="checkbox"/> Legal advice | | |

The same rules as in the Regular Procedure: Legal Assistance apply.

3.6. 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?
- | | | |
|--|---|-----------------------------|
| | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| ❖ If yes, to which country or countries? | Greece | |

Transfers of asylum seekers to Greece under the Dublin Regulation have been suspended since 2014.

4. Admissibility procedure

4.1. 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:

- ❖ The regular procedure foresees an admissibility phase of maximum 1 month;³⁷
- ❖ The border procedure reduces the admissibility phase to 72 hours;³⁸ and

³⁷ Article 20(2) Asylum Law.

³⁸ Article 19(4) Asylum Law Regulation.

- ❖ For asylum claims made from detention within a CIE, the admissibility phase must be completed within 4 days.

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

- For lack of competence, when another country is responsible under the Dublin Regulation or pursuant to international conventions to which Spain is party;
- The applicant is recognised as a refugee and has the right to reside or to obtain international protection in another Member State;
- The applicant comes from a safe third country as established in Article 27 of Directive 2005/85/EC;
- 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
- The applicant is a national of an EU Member State.

The Border Procedure, however, has additional grounds for dismissing the application as inadmissible.

4.2. Personal interview

Indicators: Admissibility Procedure: Personal Interview

Same as regular procedure

- Is a personal interview of the asylum seeker in most cases conducted in practice in the admissibility procedure?

	<input type="checkbox"/> Yes	<input type="checkbox"/> No
❖ If so, are questions limited to identity, nationality, travel route?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
❖ If so, are interpreters available in practice, for interviews?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
- Are interviews conducted through video conferencing?

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

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

4.3. Appeal

Indicators: Admissibility Procedure: Appeal

Same as regular procedure

- Does the law provide for an appeal against an inadmissibility decision?

	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
	<input checked="" type="checkbox"/> Judicial	<input checked="" type="checkbox"/> Administrative
❖ If yes, is it	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
❖ If yes, is it automatically suspensive	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
○ <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:

- Asylum seekers have two months to appeal against an inadmissibility resolution before the Administrative Court (*Juzgados Centrales de contencioso*); or
- 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.

Both types of appeals lack of 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.

4.4. Legal assistance

Indicators: Admissibility Procedure: Legal Assistance

Same as regular procedure

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 an inadmissibility decision in practice?
 Yes With difficulty No
❖ Does free legal assistance cover:
 Representation in courts
 Legal advice

The same rules as in the Regular Procedure: Legal Assistance apply.

5. Border procedure (border and transit zones)

5.1. 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 border procedures laid down in the law? Yes No
❖ If yes, what is the maximum time-limit? 8 days

The border procedure foreseen under Spanish asylum law only regards an admissibility examination of the asylum application, and is characterised by its strict time limits, which in any case cannot exceed 4 days. The border procedure is applied to all asylum seekers who ask for international protection in airports, maritime ports and land borders. In these cases, the applicant has not formally entered the Spanish territory. 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).

In the border procedure, which is also applicable to claims from CIE, 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 in the following circumstances:³⁹

- (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 Law;
- (d) The applicant had 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.

The latter cause of denial of the application concerns an assessment of the substance of the asylum claim. For this, it can be said that, while the admissibility phase in the regular procedure only regards formal aspects, the admissibility phase of the border and CIE procedure in law, and mostly in practice,

³⁹ Article 21(2)(b) Asylum Law.

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.

These aspects in practice make asylum applications at borders and in CIE 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 put in evidence by several organisations in Spain,⁴⁰ 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.⁴¹

As 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,⁴² 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.⁴³

Article 22 of the Asylum Law states that the applicant must remain in the *ad hoc* habilitated facilities during the admissibility assessment of his or her asylum claim at the border.⁴⁴

It should be pointed out that the 72 hours – 4 day initial terms 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 Law.⁴⁵

When these set time limits are not respected, the application will pass to be examined under the regular procedure and the person will be admitted to the territory. These legislative provisions seem to reflect what happens in practice, as there is no evidence on the failure to comply with time limits set by law or with any other established procedural guarantee.

5.2. 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?
 Yes No
❖ If so, are questions limited to nationality, identity, travel route? Yes No
❖ If so, are interpreters available in practice, for interviews? Yes No
2. Are interviews conducted through video conferencing? Frequently Rarely Never

Concerning the conduct of the personal interview at border points, the only element which differs from the Regular Procedure: Personal Interview carried out in the Spanish territory is the authority conducting the interview. In fact, at borders, the interview is carried out by police officers.

⁴⁰ CEAR, *Las personas refugiadas en España y Europa 2015*, Capítulo IV: La admisión a trámite, available at: <http://bit.ly/1JZFqai>

⁴¹ Supreme Court, Judgment 4359/2012 of 22 November 2013, available at: <http://bit.ly/21zAFty>.

⁴² Article 21(2) Asylum Law.

⁴³ Article 21(4) Asylum Law.

⁴⁴ Spanish Ombudsman, *Recomendación a la Secretaría General de Inmigración y Emigración para adoptar las medidas que procedan para prestar un servicio de asistencia social a los solicitantes de asilo en el puesto fronteriz*, available in Spanish at: <http://bit.ly/1QCeRaH>.

⁴⁵ Article 21(3) Asylum Law.

Procedural safeguards for the interview are the same concerning the presence of interpreters, gender sensitivity and so forth.

5.3. 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 |

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 the period of 2 working days from the notification of the decision to the applicant.⁴⁶

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 2 days 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.

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 a second inadmissibility decision, the applicant may submit a judicial appeal before the central courts (*Juzgados centrales de lo contencioso*). Conversely, in the case of denial, 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, precautionary measure will have to be taken to avoid the removal of the applicant.

Organisations working with migrants and refugee 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 procedure at the border, and on the other hand the fast execution of removals and forced return once admission is refused, represent an obstacle in practice to filing a judicial appeal.

⁴⁶ Article 21(4) Asylum Law.

5.4. Legal assistance

Indicators: Border Procedure: Legal Assistance

Same as regular procedure

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

The same rules as in the Regular Procedure: Legal Assistance apply.

The main obstacles regarding access to legal assistance 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.⁴⁷ 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.

Difficulties in the provision 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.

6. Accelerated procedure

The Asylum Law foresees an urgent procedure, which is applicable *inter alia* on grounds transposing 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.

⁴⁷ El Pais, 'Why Spain is not an option for Syrian refugees seeking a new life', 29 May 2015, available at: <http://bit.ly/1Q81UK7>. See also the pending case before 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 Law (EDAL) here: <http://bit.ly/21xtu7g>.

C. Information for asylum seekers and access to NGOs and UNHCR

Indicators: Information and Access to NGOs and UNHCR

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
2. 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

The Asylum Regulation, which gives practical application to the Asylum Law, makes specific reference to the provision of information to asylum seekers on their rights.⁴⁸ 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.

The Ministry of Interior has published a leaflet, available online⁴⁹ 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.⁵⁰

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 it is not available in electronic format.

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 the border points in Ceuta and Melilla. For more information refer to section on Border Procedure.

⁴⁸ Article 5(1) Asylum Regulation.

⁴⁹ The leaflet is available at: <http://bit.ly/1MfeUxt>.

⁵⁰ Article 5(2) Asylum Regulation.

D. 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 Yes No
 - ❖ At the appeal stage Yes No
3. Is a removal order suspended during the examination of a second, third, subsequent application?
 - ❖ At first instance Yes No
 - ❖ At the appeal stage Yes No

The Spanish Asylum Law does not provide for a specific procedure for subsequent applications. In fact, the Asylum Law 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 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 Law, which is when the lawyer asks for precautionary measures to be taken to avoid the removal.

E. Guarantees for vulnerable groups of asylum seekers (children, traumatised persons, survivors of torture)

1. Special procedural guarantees

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. 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

Identification

The Asylum Law 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 Law 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 Law 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.⁵¹

Moreover, concerning unaccompanied minor asylum seekers, Article 47 of the Asylum Law establishes that they will be referred to the competent authorities on children protection. In addition to this provision, the National Protocol on unaccompanied minors 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 (see section on Age Assessment).

Early risk assessment and further kinds of vulnerability identification in practice are conducted by aware and well-trained 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.

A frequently missed opportunity for early identification of vulnerable profiles within migration mixed flows is represented by the framework of 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 unfortunately the limited resources, frequent overcrowding of the centres and short-term stay of the persons prevent them from effectively doing so.

Also, concerning identification, the intervention of UNHCR should be highlighted, as it is highly relevant for playing a consultative and suggestive role during the whole asylum process. Under the Asylum Law,⁵² all registered asylum claims will 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), 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. In asylum claims following the urgent procedure and in the case of an inadmissibility decision on border applications, UNHCR will be able to request an additional 10 days term to submit a report to support the admission of the case.

It could be concluded that, although there are no specific mechanisms for the early identification of most vulnerable groups in need of international protection, in practice, the participation and contribution of committed and specialised organisations inside the asylum system enable the identification of some – most evident – vulnerable cases.

Main shortcomings regard victims of trafficking. Despite the adoption of a National Plan against Trafficking for Sexual Exploitation,⁵³ and of a Protocol on Measures Concerning Victims of Trafficking,⁵⁴ 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 accepted asylum claim was in 2009, and since then, only 6 women have been granted the refugee status in Spain.

⁵¹ Article 46(2) Asylum Law.

⁵² Articles 34-35 Asylum Law.

⁵³ National Plan for fighting against trafficking available at: <http://bit.ly/1S8g2IZ>.

⁵⁴ Framework Protocol of 2011 against trafficking, available at: <http://bit.ly/1S8FPud>.

The Spanish Network against Trafficking (*Red Española contra la Trata*) 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 Law, 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.

Special procedural guarantees

The Law does not foresee specific procedural guarantees for vulnerable asylum seekers, except for the special rule on unaccompanied minor asylum seekers who are entitled to have their application examined through an urgent procedure, which halves the duration of the whole process. As explained in the section on Regular Procedure: Fast-Track Processing, the urgent procedure reduces time limits for the whole asylum process from 6 months to 3.

Several concerns regarding the measures and provisions regarding identification, age assessment and protection of unaccompanied minors are discussed in the section on Age Assessment.

2. 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 Law 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.⁵⁵

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.⁵⁶

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.

⁵⁵ Article 24(2) Asylum Regulation.

⁵⁶ Articles 37(b) and 46(3) Asylum Law.

3. Age assessment and legal representation of unaccompanied children

Indicators: Unaccompanied Children

1. Does the law provide for an identification mechanism for unaccompanied children?
 Yes No
2. Does the law provide for the appointment of a representative to all unaccompanied children?
 Yes No

Age assessment

A specific Protocol was adopted in 2014 in cooperation between the Ministries of Justice, Interior, Employment, Health and Social Services and of Foreign Affairs along with the *Fiscalia General*, which aims at coordinating the actions of all involved actors in the Spanish framework in relation to unaccompanied children.⁵⁷ 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 minors 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.

The Protocol establishes that minors' passports and travel documents issued by official authorities have to be considered as sufficient evidence of the age of the person,⁵⁸ but it also sets out the exceptions to this rule and the cases in which the minor 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.

Under Article 35(3) of the Aliens Law, 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.

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.

⁵⁷ Framework Protocol of 13 October 2014 on actions relating to foreign unaccompanied minors, available in Spanish at: <http://bit.ly/1WQ4h4B>.

⁵⁸ Chapter II, para 6 Protocol on Unaccompanied Minors.

These tests have resulted in very problematic age determinations and have attracted many criticisms from international organisations,⁵⁹ NGOs, academics, as well as administration officers and the Spanish Ombudsman.⁶⁰ 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.⁶¹ 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.

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.

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.⁶² In this way, the Autonomous Communities would avoid having the minors in their charge.

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.

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 Law, which provides that "in case it is not possible to surely assess the age, tests for age determination can be used".⁶³

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.

It should be highlighted that one of the main problems regarding the age of unaccompanied third-country national minors, 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 minors 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.

⁵⁹ For a critique by the United Nations High Commissioner for Human Rights, see El Diario, 'La desprotección de los menores migrantes solos en España', 17 February 2016, available in Spanish at: <http://bit.ly/1PVIxqg>. 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>.

⁶⁰ Defensor del Pueblo, *Ni ilegales ni invisibles*, Madrid, 2011.

⁶¹ Comisión Española de Ayuda al Refugiado (CEAR), *Informe sobre la situación de la determinación de la edad a menores no acompañados en España*, Madrid, 10 May 2003.

⁶² Fundación Raíces, *Solo por estar solos*, Madrid 2014, available in Spanish at: <http://bit.ly/211pBFo>.

⁶³ 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>.

Guardianship

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 *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.⁶⁴

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 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 of 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.

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 type="checkbox"/> Yes | <input checked="" 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 type="checkbox"/> Yes | <input checked="" 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 |

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.⁶⁵

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

⁶⁴ Chapter VII, para 1(2) Protocol on Unaccompanied Minors.

⁶⁵ Article 20(1)(d) Asylum Law.

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 Law. 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 practical application of the concepts of safe country of origin or safe third country, nor does the Asylum Law explicitly state the cases to which these terms should be applied.

G. Treatment of specific nationalities

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?⁶⁶ Yes No
❖ If yes, specify which:

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

Some recurrent criteria, however, are applied by the Ministry of Interior regarding the treatment of specific nationalities. This is the case of **Malian** and **Ukrainian** asylum seekers. Organisations working with refugees⁶⁷ and the Spanish Ombudsman⁶⁸ have in fact noticed the prolongation of terms in the decision making regarding asylum applications of nationals from Mali and Ukraine, as apparently the competent authorities are waiting to see how the conflicts concerned develop, before granting asylum or subsidiary protection status.

Another non-official criterion regards 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.

⁶⁶ Whether under the “safe country of origin” concept or otherwise.

⁶⁷ CEAR, *Report on international protection in Spain and Europe 2015*, 61.

⁶⁸ Spanish Ombudsman, *Informe del Defensor del Pueblo 2014*, 240.

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? Yes No

Article 30 of the Asylum Law 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.

Material reception conditions under the national legislation on asylum are the same for every asylum seeker, no matter the profile or the type of asylum procedure applicants are enrolled in.

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

Until 2014, the reception system was accessible when asylum seekers received their appointment to the Office of Asylum and Refuge to register the asylum application. During that first appointment, the person would receive a so called white card, which represented his or her status as applicant.

During 2014, due to the emergency situation which the reception system 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 a 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,⁶⁹ as it was facing difficulties responding to the number of asylum seekers that were applying for international protection in Spain.

⁶⁹ 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.

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 as of 31 December 2015 (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 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 Immigration and Emigration of the Ministry of Employment 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.

During 2015,⁷⁰ all asylum seekers hosted in the first phase of the reception system were given the amount of 51.60 € per month each, 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 receive no pocket money, they live in apartments and private housing, and expenses for the rent are covered by the reception system.

Financial assistance to refugees 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' integration in the host society.

3. Types of accommodation

Indicators: Types of Accommodation

- | | |
|--|---|
| 1. Number of reception centres: ⁷¹ | 4 |
| 2. Total number of places in the reception system: | 1,656 |
| ❖ Refugee reception centres (CAR) | 426 |
| ❖ NGO centres and private accommodation | 1,230 |
| 3. Type of accommodation most frequently used in a regular procedure: | |
| <input checked="" type="checkbox"/> Reception centre | <input checked="" type="checkbox"/> Hotel or hostel |
| <input type="checkbox"/> Emergency shelter | <input checked="" type="checkbox"/> Private housing |
| <input type="checkbox"/> Other | |
| 4. Type of accommodation most frequently used in an accelerated procedure: | |
| <input checked="" type="checkbox"/> Reception centre | <input checked="" type="checkbox"/> Hotel or hostel |
| <input type="checkbox"/> Emergency shelter | <input type="checkbox"/> Private housing |
| <input type="checkbox"/> Other | |

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

The Spanish reception system is a mixed system which combines:

⁷⁰ 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.

⁷¹ 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.

- ❖ 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**);
- ❖ A reception and care network managed by NGOs subcontracted by the Ministry of Labour.

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. Every third country national who enters irregularly the Spanish territory in that way, 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 480 in **Melilla**, although they are frequently found to be overcrowded.

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

CAR	Capacity
Vallecas, Madrid	96
Alcobenda, Madrid	80
Seville	130
Mislata, Valencia	120
Total	426
CETI	Capacity
Ceuta	512
Melilla	480
Total	992

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 has granted authorisation to 3 more: Dianova, CEPAIM and La Merced. In addition, it has included a previous phase of reception in hostels and hotels during a maximum of 30 days.

Reception provided by NGOs offers the following places:

NGO centres and private accommodation	Capacity
ACCCEM	361
CEAR	355
Red Cross	378
La Merced	21
CEPAIM	45
Dianova	70
Total	1,230

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.

4. Conditions in reception facilities

Indicators: Conditions in Reception Facilities

1. Are there instances of asylum seekers not having access to reception accommodation because of a shortage of places? Yes No
2. What is the average length of stay of asylum seekers in the reception centres? 18 months
3. Are unaccompanied children ever accommodated with adults in practice? Yes No

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.

Unaccompanied minors are not placed in regular asylum seeker reception centres or apartments. In fact, NGO La Merced Migraciones is the specialised entity in charge of the reception of minors seeking asylum.

The usual length of stay for asylum seekers inside the reception system is the maximum stay admitted, which is 18 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 last 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.

Reception conditions in CETI

In the CETI in Ceuta and Melilla, situations of overcrowding lead asylum seekers and migrants to substandard reception conditions. Severe overcrowding was reported in 2014, when the average occupancy rates were 638 in Ceuta and 1,338 in Melilla,⁷² even though the respective capacities of the CETI are 512 and 480. In October 2015, Melilla was hosting 1,156 persons.⁷³ In both centres, the shortage of interpreters and psychologists has been criticised.⁷⁴

⁷² See European Committee for the Prevention of Torture, *Response of the Spanish Government to the Report of the Committee on its visit to Spain from 14 to 18 July 2014*, CPT/Inf(2015) 20, 27 February 2015, available at: <http://bit.ly/1TG7F2F>, 25-26.

⁷³ Amnesty International, *Fear and Fences: Europe's approach to keeping refugees at bay*, EUR 03/2544/2015, November 2015, 23.

⁷⁴ *Ibid.*

5. 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 Law, of 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.

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).

6. 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.

7. Addressing special reception needs of vulnerable persons

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, asylum seekers are placed in the reception place which better fits their profile and necessities. 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 integral features of the applicant (age, sex, household, nationality, existence of family networks, maintenance, personal necessities etc.), the person is placed in the place that best 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 necessities of each

person. NGO La Merced Migraciones is the specialised entity in charge of the reception of minors seeking asylum.

In addition, based on vulnerability factors referred to under the Asylum Law, most vulnerable profiles are allowed to longer reception, as the first phase can last until 9 months, the second until 11 and the third phase until 4, thereby totalling 2 years of reception.

8. Provision of information

Article 17(2) of the Asylum Law provides that, at the time of making of the asylum request, 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.

9. 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 between OAR and the NGO in charge of the reception centres, and 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 etc.), the person is placed in the place that best responds to his or her needs. Once the applicant is given a place within the reception system, he or she cannot move around the territory unless losing the right to reception within the public system.

Due to these measures, 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 Spanish territory.

B. 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? Yes No
❖ If yes, when do asylum seekers have access the labour market? Immediate
2. Does the law allow access to employment only following a labour market test? Yes No
3. Does the law only allow asylum seekers to work in specific sectors? Yes No
❖ If yes, specify which sectors:
4. Does the law limit asylum seekers' employment to a maximum working time? Yes No
❖ If yes, specify the number of days per year
5. Are there restrictions to accessing employment in practice? Yes No

Under the Asylum Law, asylum seekers in Spain are allowed to work from the moment they are admitted to proceedings and they are given the so-called red card identification document.⁷⁵ 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 Red Cross and CEAR –have created the Ariadna Network within the 4 CAR managed by the Ministry of Labour. 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.⁷⁶

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? Yes No
2. Are children able to access education in practice? Yes No

Minors seeking asylum have the right to education, and the schooling of minors is compulsory from age 6 to 16. 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.

⁷⁵ Article 32 Asylum Law.

⁷⁶ See the dedicated website at: <http://www.redariadna.org/index.php>.

C. 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.⁷⁷ Through this legal provision, they are entitled to the same level of health care as nationals and documented third-country nationals residing in Spain, including access to more specialised treatment for persons who have suffered torture, severe physical or psychological abuses or traumatising circumstances.

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.

The only existing structure that works with asylum seekers suffering from mental health problems is coordinated by Accem in collaboration with Arbeyal, a private company. In fact, since 2012, they jointly manage the “Hevia Accem-Arbeyal” centre,⁷⁸ specialised in disability and mental health. The purpose of the residential centre is to offer a space for assistance, care and coexistence to people whose mental illness impedes their integration. The centre reserves places for asylum seekers, although it is not specialised in asylum-related experiences.

⁷⁷ Article 15 Asylum Regulation.

⁷⁸ See the dedicated website at: <http://www.accemarbeyal.com/>.

Detention of Asylum Seekers

A. General

Indicators: General Information on Detention

1. Total number of asylum seekers detained in 2015: ⁷⁹	Not available
2. Number of asylum seekers in detention at the end of 2015: ⁸⁰	1,374
3. Number of detention centres:	7
4. Total capacity of detention centres:	2,572

The Ministry of Interior does not provide figures on asylum seekers who have applied for asylum from detention, though this information has been requested.

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. If the applicant is detained, the urgent procedure will be applied, which halves the time-limits for a decision.

The grounds for detention are specified in the section on Grounds for Detention. Of the total number of people deprived form liberty in the CIE in 2014, the asylum seekers in these centres barely exceeded 8%, a slight increase compared to previous years.⁸¹ In 2014, 7,286 persons were detained in CIE and 587 asylum applications were lodged from detention, compared to 306 in 2013.⁸²

In Spain there are 7 CIE which are under the responsibility of the Ministry of Interior. These facilities are located in Algeciras, Barcelona, Canary Islands, Madrid, Murcia, Tenerife, and Valencia, making up a total capacity of 2,572 places, 226 of which are for women. 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 Foreigners' Law.

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 practiced. The judge responsible for monitoring the stay of foreigners in detention centres and in "areas of rejection at borders" (*Salas de Inadmisión de fronteras*), 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;⁸³ 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.⁸⁴

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. 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.

⁷⁹ Including *both* applicants detained in the course of the asylum procedure and persons lodging an application from detention.

⁸⁰ Specify if this is an estimation.

⁸¹ CEAR, *Report on international protection in Spain in Europe 2015*, 72.

⁸² *Ibid*, 71-72.

⁸³ Article 62(6) Aliens Law.

⁸⁴ Article 60(4) Aliens Law.

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: ⁸⁵ | <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 type="checkbox"/> Never | |

The legal framework of administrative detention of third-country nationals in Spain is set out by the Aliens Law. Until last year, there was no Regulation for the CIE.

The only grounds for detention included within the Aliens Law 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;⁸⁶
- (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;⁸⁷
- (3) When a notification for expulsion has been issued and the non-national fails to depart from the country within the prescribed time limit.⁸⁸

Accordingly, asylum seekers are not detained during the Dublin procedure.⁸⁹

However, persons who apply for asylum at borders or in airports must remain in *ad hoc* spaces, with restricted freedom of movement, until their application is admitted to proceedings.⁹⁰ The maximum duration of their restriction of movement and their obligation to remain in border asylum spaces is 7 days, including the time for responding to possible appeals against the resolution. If this time limit is not respected, applicants will be admitted to territory in order to continue their asylum claim under the regular procedure.

Another situation, in which asylum seekers may be in detention, is the case of persons who apply for asylum from detention centres (CIE) before their expulsion, or from penitentiary centres. In these cases, applicants 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.

⁸⁵ Accommodation in airport transit zone with very restricted freedom of movement.

⁸⁶ Articles 53-54 Aliens Law.

⁸⁷ Article 58(6) Aliens Law.

⁸⁸ Article 63(1)(a) Aliens Law.

⁸⁹ European Commission, *Evaluation of the implementation of the Dublin III Regulation*, March 2016, 69.

⁹⁰ Article 22 Asylum Law.

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 Law,⁹¹ 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.

3. Detention of vulnerable applicants

Indicators: Detention of Vulnerable Applicants

1. Are unaccompanied asylum-seeking children detained in practice? Frequently
 Rarely
 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? Frequently
 Rarely
 Never

Although detention of asylum seekers or vulnerable categories is not 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. Nonetheless, when they are identified as minors or victims while they are in detention, they are released and handled to the competent protection systems.

4. Duration of detention

Indicators: Duration of Detention

1. What is the maximum detention period set in the law (incl. extensions): 60 days
2. In practice, how long in average are asylum seekers detained?⁹² 22-23 days

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.

⁹¹ Article 61 Aliens Law.

⁹² Information provided by the Ministry of Interior, March 2016.

The maximum duration of persons' restriction of movement and their obligation to remain in border asylum spaces is 7 days. When this time limit is not respected, the applicant is admitted to territory, and will continue his or her asylum claim through the regular procedure.

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

There are 7 *Centros de Internamiento de Extranjeros* (CIE). These facilities are located in:⁹³

CIE	Occupancy at end 2015
Piñera, Algeciras	234
Zona Franca, Barcelona	226
Barranco Seco, Canary Islands	168
Aluche, Madrid	214
Sangonera la Verde, Murcia	138
Hoya Fría, Tenerife	238
Zapadores, Valencia	156
Total	1,374

In addition, asylum seekers who apply at borders are retained in *ad hoc* facilities during the admissibility phase and in any case for no more than 7 days. These facilities have been visited and monitored by the Spanish Ombudsman,⁹⁴ and at present time are not the object of severe criticism. The conditions are extremely basic, but no major violations or bad treatment or conditions have been reported. Nonetheless, the Ombudsman has formulated recommendations to guarantee the standards of reception needed by applicants. Similar recommendations have been addressed to the Directorate-General on Immigration and Emigration concerning the asylum facilities at the border point of Beni Enzar in Melilla.⁹⁵

2. Conditions in detention facilities

Indicators: Conditions in Detention Facilities

1. Do detainees have access to health care in practice? Yes No
 - ❖ If yes, is it limited to emergency health care? Yes No
2. Is access to detention centres allowed to
 - ❖ Lawyers: Yes Limited No
 - ❖ NGOs: Yes Limited No
 - ❖ UNHCR: Yes Limited No
 - ❖ Family members: Yes Limited No

⁹³ For more information on CIE, see El Diario, 'Los CIE, en cifras', 14 June 2015, available at: <http://bit.ly/1FirzFK>.

⁹⁴ Spanish Ombudsman, 'Garantía de que los solicitantes de asilo, así como los inadmitidos, tengan acceso a zonas donde puedan estar en contacto con la luz solar y con ventilación natural', Resolución 15006572, 14 July 2015, available in Spanish at: <http://bit.ly/1T0mT37>.

⁹⁵ Spanish Ombudsman, *Annual Report 2015*, available in Spanish at: <http://bit.ly/1RsyBOW>, 54.

The CIE Regulation,⁹⁶ which was adopted in 2014, provides in its Article 3 that:

“The competences on direction, coordination, management and inspection of the centers 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 Spanish Ombudsman (and its respective representatives at regional level), by the State Prosecutor,⁹⁷ and by several organisations of the third sector, academic institutions⁹⁸ and media. In addition, valuable information is contained in the rulings of the judicial bodies responsible for controlling stays in the CIEs (*Jueces de Control de Estancia*).

While the recent CIE Regulation had been expected and demanded for a long time, 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 sentence of the Supreme Court, which, right after the adoption of the Regulation, cancelled four of its provision within it 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.⁹⁹

While, 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.

The CIE Regulation governs the provision of services for sanitary assistance,¹⁰⁰ 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.¹⁰¹ In the same way, Article 15 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,¹⁰² and have access to open air spaces.¹⁰³

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 seven CIE directors.

⁹⁶ 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.

⁹⁷ See e.g. <http://bit.ly/1MgSHz2>.

⁹⁸ University of Comillas, University of Valencia, and University of Valladolid for Pueblos Unidos NGO, *Situación actual de los centros de internamiento de extranjeros en España y su adecuación al marco legal vigente*, June 2015.

⁹⁹ El País, 'El Supremo anula cuatro artículos de la norma de los Centros de Internamiento', 27 January 2015, available at: <http://bit.ly/1uAbrvf>.

¹⁰⁰ Article 14 CIE Regulation.

¹⁰¹ Articles 39-47 CIE Regulation.

¹⁰² Article 42 CIE Regulation.

¹⁰³ Article 40 CIE Regulation.

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 modules for persons who have committed mere administrative faults, 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.

The seventh section of the CIE Regulation concerns participation and collaborations 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 Red Cross and the Ministry of Interior. In addition, Article 59 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.

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.

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? | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| 2. If yes, at what interval is the detention order reviewed? | Ongoing | |

Under the Aliens Law 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 convictions or administrative sanctions and other pending criminal proceedings or administrative proceedings.¹⁰⁴

Against decisions on detention, the third-country national can lodge appeals of reform, appellation and complaint¹⁰⁵ under the Criminal Procedure Law.¹⁰⁶ Reform and appellation 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 CIEs (*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.

¹⁰⁴ Article 62 Aliens Law.

¹⁰⁵ Articles 216 and 219 of Criminal Law Procedure.

¹⁰⁶ Real decreto de 14 de septiembre de 1882 por el que se aprueba la Ley de Enjuiciamiento Criminal.

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 Conditions in Detention Facilities.

The recent adoption of the CIE Regulation, should and has already 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.

ANNEX I – Transposition of the CEAS in national legislation

Directives and other CEAS measures transposed into national legislation

N/A

Pending transposition and reforms into national legislation

Directive / Regulation	Deadline for transposition	Stage of transposition / Main changes planned	Participation of NGOs
Directive 2011/95/EU 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	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Directive 2013/32/EU 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	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Directive 2013/33/EU 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	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Regulation (EU) No 604/2013 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	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No