

DUBLIN II Regulation National Report

European network for technical
cooperation on the application
of the Dublin II Regulation

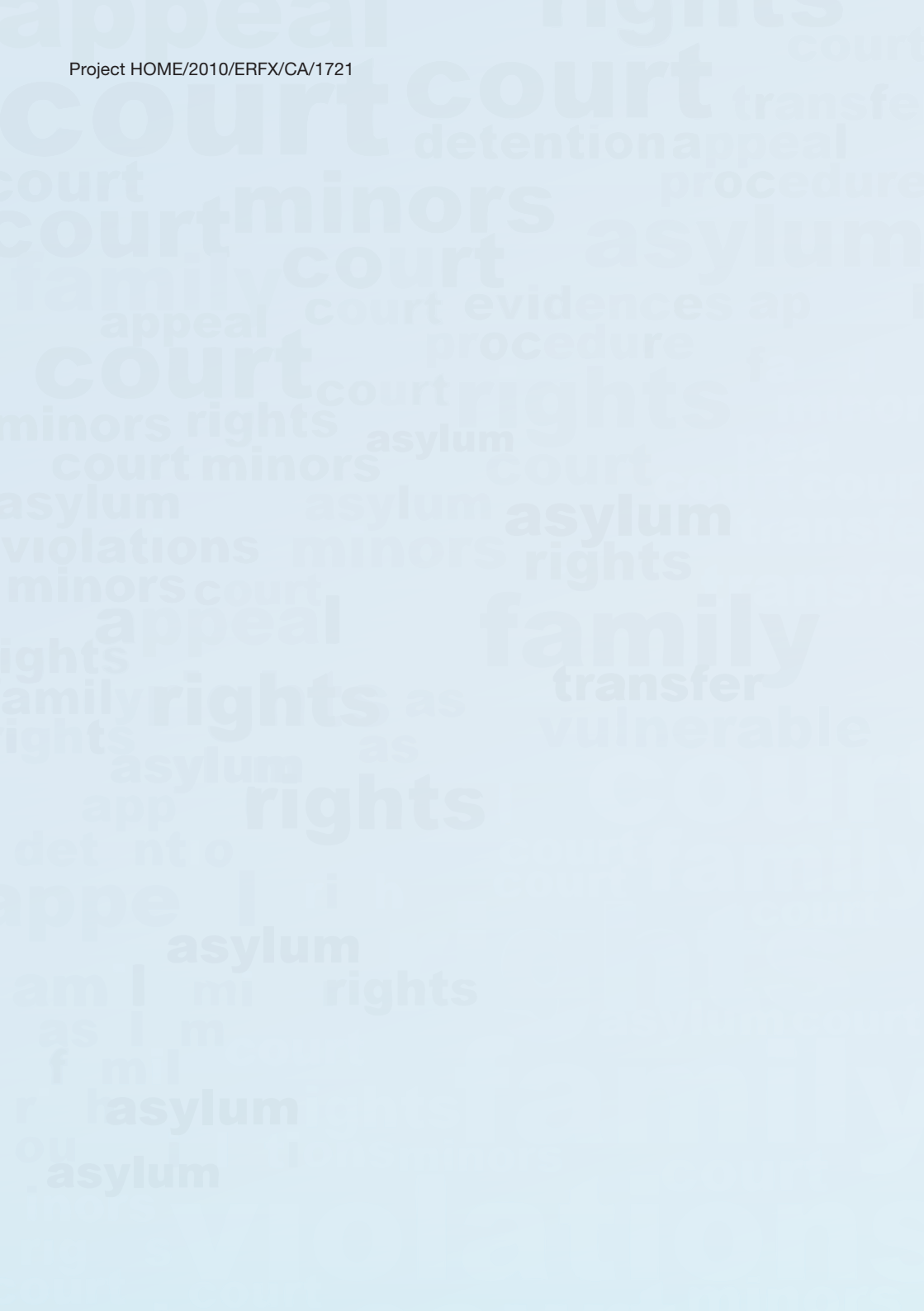


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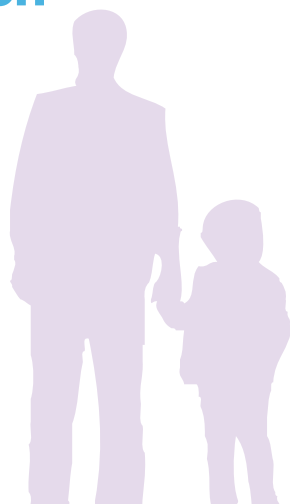
European
Refugee Fund





DUBLIN II **regulation** **National Report**

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cooperation on the application
of the Dublin II Regulation**



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SPAIN

20th of June 2012

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Introduction

1

1.1 *The Dublin II System: Perspectives and challenges at the European Level*

The Dublin Regulation,¹ as its predecessor the Dublin Convention, was designed to ensure that one Member State is responsible for examining the asylum application of an asylum seeker and to avoid multiple asylum claims and secondary movement. It is confined to fixing uniform grounds for the allocation of Member State responsibility on the basis of a hierarchy of criteria binding on all EU Member States as well as Iceland, Norway, Switzerland and Liechtenstein. On the ten year anniversary of its entry into force this research provides a comparative overview of national practice in selected Member States on the application of this Regulation.

Our research shows that the operation of the Dublin system continues to act to the detriment of refugees, causing families to be separated and leading to an increasing use of detention. The Dublin procedure leads to serious delays in the examination of asylum claims and by doing so, effectively places peoples' lives on hold. The hierarchy of criteria is not always respected whilst Art. 10 is the predominant criterion used in connection with Eurodac. State practice demonstrates that asylum seekers subject to this system may be deprived of their fundamental rights *inter alia* the right to be heard, the right to an effective legal remedy and the very right to asylum itself as access to an asylum procedure is not always guaranteed. Reception conditions and services may also be severely limited for asylum seekers within the Dublin system in a number of Member States. There is an increasing use of bilateral administrative arrangements under Art. 23 and most States resort

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

to informal communication channels to resolve disputes in the allocation of responsibility. Evidentiary requirements are very strict in some Member States, which in turn creates difficulties for asylum seekers in substantiating family links or showing time spent outside the territories of the Dublin system. A number of Member States also apply an excessively broad interpretation of absconding thereby extending the time limits for Dublin transfers further increasing delays in the examination of asylum claims. Furthermore the problems inherent in the Dublin system are also exacerbated by varied levels of protection, respect for refugee rights, reception conditions and asylum procedures in Member States creating an 'asylum lottery'.

The national reports provide an insight into the application of this Regulation at the national level whilst the comparative report outlines the main trends and developments at the European level. This research comes at a time when the Grand Chambers of both the European Court of Human Rights and the Court of Justice of the European Union have questioned the compatibility of the Dublin system with asylum seekers fundamental rights. In addition the EU institutions have recently reached a compromise agreement upon a recast Dublin III Regulation that introduces significant reforms including the creation of a mechanism for early warning, preparedness and crisis management. Despite these significant advances, the findings of this research demonstrates the continuous need to carefully evaluate the foundational principles of the Dublin system and its impact both with respect to asylum seekers' fundamental rights and Member States. It is hoped that this research will aid the Commission's review of the Dublin system within the forthcoming launch of a 'fitness check' and for any future dialogue on the assignment of responsibility for the examination of asylum claims.²

² European Commission, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on enhanced intra-EU solidarity in the field of asylum, An EU agenda for better responsibility-sharing and more mutual trust, COM 2011 (835), 2.11.2011 p.7.

1.2 Overview of The Dublin II Regulation in Spain

Spain is comprised of seventeen autonomous communities (*comunidades autónomas*) and two autonomous African cities (*ciudades autónomas*): Ceuta and Melilla. The communities have their own parliaments and regional governments with wide legislative and executive powers. This decentralised administrative structure has a strong impact on the way migration and asylum issues are managed. On one hand, the federal government - namely the Ministry of the Interior, the Ministry of Foreign Affairs and Cooperation and the Ministry of Labour and Immigration - has the general competence for policy-making in asylum and migration issues.

On the other hand, the autonomous communities are largely responsible for local socioeconomic and cultural-educational integration policies, such as the accommodation of asylum seekers and migrants. In certain instances, they are also responsible for guardianship of minors and social and labour integration programmes³.

The general rights of asylum seekers and migrants are guaranteed by the Spanish Constitution. The basic instruments currently in place to apply this constitutional mandate are the Organic Law 2/2009 (Immigration law) and the Law 12/2009 (Asylum law), complemented by implementing Regulations and Royal Decrees.

The most important legal changes in both fields took place in 2009 when both instruments were reformed in order to ensure compatibility with EU legislation.

3 ICMC, Mayday, Strengthening Assistance and Protection Responses for Boat People and Other Migrants Arriving in Southern Europe. DRIVE Project “*Differentiation for Refugee Identification and Vulnerability Evaluation*”. Led by ICMC Europe, in partnership with seven other non-governmental organisations: ACCEM, CEAR, CIR, ECRE, JRS Malta, PRAKSIS and Save the Children Italy, the DRIVE Project was implemented from March 2010 to September 2011.

2

The National Legal Framework and Procedures

Legislation on asylum

- General rights of asylum seekers and migrants are guaranteed by the Spanish Constitution.
- Organic Law 2/2009 (Immigration law) and the Law 12/2009 (Asylum law), complemented by implementing Regulations and Royal Decrees.
- Law 12/2009, of 30 October 2009, governs the right to asylum and subsidiary protection.
- Royal Decree 203/1995 (modified by Royal Decree 2393/2004) transposes into Spanish law the EU Reception Conditions Directive. The regulation to implement the law is pending approval, thus the previous regulation (RD 203/1995) is still temporarily in use, as far as it does not contradict the new law. In case of contradiction, the new law is applied directly.
- Organic Law 4/2000, of January 11th, modified by Organic Law 2/2009, of December 11th (Aliens Law), covers the rights of migrants (including unaccompanied foreign children and trafficking victims).

Principal legislation on asylum and migration

Law 12/2009, dated 30th October 2009, governs the right to asylum and subsidiary protection. This law replaces the earlier Asylum Law (5/1984), by introducing important reforms, and fully implements the European Union's legislation and policy on asylum (transposition of the Qualification Directive, the Asylum Procedures Directive and Chapter 5 of the Family Reunification Directive). It includes the notion of subsidiary protection and broadens the

grounds for granting refugee status or subsidiary protection to include individuals persecuted on the grounds of gender, gender identity and/or sexual orientation, as well as guaranteeing the following rights: the right to free legal aid, the right to have an interpreter and the right to health care. With respect to covering the basic needs of asylum seekers, these are also guaranteed by this law, as well as by Royal Decree 203/1995 (modified by Royal Decree 2393/2004) which transposes into Spanish law the EU Reception Conditions Directive. The regulation to implement the law is pending approval, thus the previous regulation (RD 203/1995) is still temporarily in use, as far as it does not contradict the new law. In cases of contradiction, the new law is applied directly.

Organic Law 4/2000, dated 11th January, modified by Organic Law 2/2009, dated 11th December (Aliens Law), covers the rights of migrants, (including unaccompanied foreign children and trafficking victims). The new law introduced provisions on the identification and protection of both trafficking victims and foreign victims of domestic violence. However, it also introduced provisions that restrict the rights of migrants. Examples of this include: the introduction of integration conditions as a prerequisite for the granting or renewal of residence and work permits and the restriction of the rules on family reunification. In addition, the law extended administrative sanctions against irregular migration, the prime example being the extension of the maximum duration of detention of irregular migrants in administrative detention centres from 40 to 60 days.

According to the Spanish Asylum Law⁴, any foreigner (who is not a citizen of an EU country) can apply for asylum, based on Spanish and International Law.

Law 12/2009, dated 30th October, which regulates the right to asylum and subsidiary protection, expressly refers to Council Regulation 343/2003, dated 18th February, which establishes the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a national from a third country.

⁴ Law 12/2009 (Asylum Law), expressly refers to Regulation 343/2003 of the Council of 18th February, establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a national of a third country.

Institutions involved in asylum procedures

- The Asylum and Refugee Office (*Oficina de Asilo y Refugio, OAR*), which falls under the responsibility of the Ministry of the Interior. It is assisted by the Interministerial Commission on Asylum and Refugees (*Comision Interministerial de Asilo y Refugio, CIAR*), a body attached to the Ministry of the Interior. CIAR submits a proposal for a decision to the Ministry of the Interior on the basis of the information produced by the applicant, the OAR's report and UNHCR's opinion, in addition to information provided by NGO's. The Minister then decides on the outcome of the claim.
- The competent Courts of Appeal are three: Central Litigious Administrative Court (*Juzgados Centrales de lo Contencioso Administrativo*), National Court of Justice (*Audiencia Nacional*) and Supreme Court (*Tribunal Supremo*).

Registration of asylum claim: An asylum seeker may make a claim inside the territory, at OAR premises in Madrid or police stations in other provinces. The person must claim asylum within a month of entering the country or within a month of the occurrence of persecution. Asylum applications submitted after a month will be processed in an urgent procedure where the time limits are halved (3 months). An asylum seeker may make a claim for asylum at entry/border points and Migrant Internment Centres, CIEs - Centros de Internamiento de Extranjeros (for deportation of irregular migrants).

Screening/admissibility procedure: There are two types of admission procedure, within the territory and at border posts and Migrant Internment Centres. Admission to process requests within the territory must be resolved within one month of submission.

Council Regulation 343/2003, dated 18th February, which establishes the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a national from a third country, is activated at the admission stage of the asylum application.

Admissibility procedure: Decision on whether asylum seekers are eligible to enter the territory in order to apply for asylum.

This stage must normally be completed within 4 days of lodging the application (UNHCR can request a prolongation of this period consisting of an additional 10 days). The Asylum and Refugee Office submits a proposal for a decision to the Ministry of the Interior, which is responsible for issuing the decision.

The application is examined by the OAR, whilst UNHCR is also informed and can provide an opinion on the claim. The OAR makes a recommendation on whether to admit the applicant to the normal procedure or not, whilst the formal decision regarding the claim is made by the Minister of the Interior, subject to OAR’s recommendation. UNHCR has access to all of the asylum seekers’ files and must issue a report on applications that are submitted at Migrant Internment Centres and border points. This report is not binding.

Timeframes

	Application at first instance	First instance decision	Lodge appeal	Appeal decision
Border/ detention	4 days	8 / 18 days	2 months / 10 days	Average in ruling from 1 to 2 years
Regular	1 month	6 months		
Accelerated/ Prioritised		3 months		
Dublin				
Subsequent claim				

Border procedure: The admission procedure at border posts and CIEs should be resolved within 4 days. In cases of rejection, applicants can submit a request for review within two days and the matter must be resolved within two days. The four-day period can be extended to ten days based on a UNHCR proposal.

Accelerated/prioritised procedure: In urgent procedures, time limits for examining asylum claims are halved (3 months).

Appeals: If the application is not admitted, an appeal before the Central Litigious Administrative Court can be lodged within 2 months. There is no difference between decisions issued as part of the accelerated procedure and as part of the normal procedure with regard to their appeal. The decision of the Central Litigious Administrative Court can be appealed before the National Court of Justice within 2 months. An appeal against a negative decision on the merits of the claim can be filed with the Administrative Chamber of the National High Court. This appeal is not limited to points of law, but also extends to the facts, in which respect 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 asylum status to the applicant and it is not necessary to return the case to the Ministry for review. Should the appeal be turned down, a further onward appeal is possible before the Supreme Court, which in cases of a favourable decision has the power to grant the application based on international protection status.

The Central Litigious Administrative Court is authorised to rule on decisions of inadmissibility regarding asylum applications. The Administrative Appeals Chamber at the National Court is authorised to rule on decisions in which asylum applications are turned down and hears appeals against decisions issued by the Central Litigious Administrative Court.

Protection status granted in Spain

Residence permit	Refugee status	Subsidiary protection	Humanitarian Reasons
	5 years	5 years	1 year

The different forms of protection that exist in Spain include the following:

Conventional asylum: According to Articles 2 and 3 of the Law on Asylum, asylum as refugee status is recognized for any person who fulfils the requirements of Article 1A of the UN Refugee Convention and its protocol.

Subsidiary protection: With the new law, the benefits of subsidiary protection status are similar to those of refugee status. According to Article 4 of the law, it is granted to persons who do not fulfil the requirements for refugee status, but whose situation reveals sufficient grounds to consider that the person suffers a real risk to his/ her life, personal integrity or is subject to serious threats caused by an armed conflict or generalized violence. Law 12/2009, which regulates the right to asylum and subsidiary protection, reproduces Article 15 of Council Directive 2004/83/EC, dated 29th April, which establishes the minimum requirements for the recognition of nationals from third countries and stateless persons and the granting of refugee status and international protection and the granting of a sole status for refugees and other persons who have a right to subsidiary protection.

Special protection for humanitarian reasons: According to Article 46.2 of the law, for reasons different to those of the two previous situations, the State can authorize a person to remain in the country under the general migration regime. This is applied on a very exceptional basis.

3

The application of the Dublin II Regulation in Spain

When the Dublin Regulation is triggered.

As described above, the Dublin II Regulation is an admissibility procedure. The OAR official or the police, depending on where the asylum claim is lodged, must inquire into identity and the travel route.

In the initial interview the applicant must be informed about the possibility of a Dublin procedure being applied to the claim in cases where the applicant has a passport with visas issued by another country. Otherwise, from the information provided in the first interview it can be inferred that the Dublin procedure should be applied.

In these cases, CEAR emphasizes the need to provide any evidence to establish some kind of family or cultural link with Spain or any reason why the application should not be transferred to another country. OAR official also inform the applicant concerned if they will consult another Member State on the application of the Dublin Regulation. Asylum seekers do not receive specific information regarding Council Regulation 343/2003, dated 18th February, which establishes the criteria and mechanisms for determining the Member State responsible for examining an asylum application. At border points and Migrant Internment Centres they receive general information regarding the procedure.

If the asylum seeker is in the territory they will be documented and then their admissibility to the asylum procedure within Spain will be decided upon within two months. If the asylum claim is not admitted (denied access to the procedure) the asylum seeker will be asked to leave the country.

If the asylum seeker under Dublin is at the border, the accelerated deadlines usually force the authorities to admit them into the country and then decide upon admission in the procedure in the same way as previously mentioned above. Asylum seekers in Spain are never detained.

The application is examined by the OAR. UNHCR is also informed and can provide an opinion on the claim. The OAR makes a recommendation on whether to admit the applicant to the normal procedure or not, and the formal decision regarding the claim is made by the Minister of the Interior.

Claims may be found to be inadmissible because a different member state is considered responsible for examining the claim under Dublin Regulation 343/2003 (Article 20.1.A of the Asylum Law).

Units operation including the staff and administrative costs.

There is just one Dublin Unit in the Asylum and Refugee Office called "Dublin Convention Application Service" (Servicio de Aplicación del Reglamento de Dublín).

There are six staff members in this Service: the Head of the Area for Special Procedures, three Officers and two administrative staff working exclusively on the Dublin Convention.

The costs are those related to staff costs.

The competent authorities for monitoring fingerprints within the EURODAC system is Forensic Science, Central Unit of Identification (Policía Científica, Unidad Central de Identificación).

Transfers depend on the "General Department for Alien Affairs and Borders" (Comisaría General de Extranjería y Fronteras).

The competent bodies for dealing with persons in the Dublin procedure.

The competent authorities are the “Dublin Convention Application Service” of the Asylum Refugee Office, the police (see paragraph b) above) and reception authorities in the provinces for the initial interviews and the reception facilities.

The Asylum and Refugee Office (*Oficina de Asilo y Refugio, OAR*) falls under the responsibility of the Ministry of the Interior. It is assisted by the Interministerial Commission on Asylum and Refugees (*Comisión Interministerial de Asilo y Refugio, CIAR*), a body assigned to the Ministry of the Interior. CIAR submits a Dublin decision proposal to the Ministry of the Interior on the basis of the information provided by the applicant, the OAR’s report and UNHCR’s opinion, in addition to information provided by NGOs. The Minister then decides on the outcome of the claim.

There is not an appeal in the court that specialises in dealing with all asylum appeals; the courts for contentious-administrative proceedings deal with asylum appeals.

There are no Dublin liaisons officers from other Member States present in Spain, nor Spanish ones in other Member States, but there are Police Liaison officers in other Member States, not just for Dublin.

We do not know if there are any bi/multilateral co-operation agreements between States in the operation of the Dublin Regulation, including your own.

3.1 The Application of Dublin II Regulation Criteria.

Access to the asylum procedure/ when MS’s consider any asylum application withdrawn

In Spain practice shows that information on asylum procedures is mainly provided by NGOs. Consequently, there is a risk that in the absence of NGOs asylum seekers may not be properly and “immediately informed of their rights and obligations”⁵. It is,

⁵ Article 35(3)(b).

however, essential that asylum seekers be given information about Dublin Regulation. Although article of Council Regulation 343/2003 establishes the obligation to inform the applicant and we have information about a new specific leaflet.

In Spanish territory, foreign persons may submit the application for asylum to the OAR, provincial police department or district police station designated by the Ministry of the Interior, and, as a result of the new Asylum Law, to any Detention Centre.

In Spain asylum claims must be submitted to the national authority within one month. Besides, numerous judgements delivered by the Spanish Supreme Court have established that a delay of more than a month in filing an application for asylum should not, by itself, make the alleged persecution unlikely.

Also, people arriving on Spanish land at the sea border and detained in an Aliens Detention Centre are also informed of the asylum procedure with an informative leaflet, but no institution is in charge of explaining this information and ensuring that aliens have understood the procedure.

As regards admissibility/inadmissibility, it is worth pointing out that according to the Asylum Law an application can be declared inadmissible, even in cases of gender-based persecution, on any of the following grounds:

- The alleged persecution is neither personal nor direct.
- The application is based on facts, data or allegations that are evidently false or improbable, or that are no longer valid (doubts about nationality, implausible persecutions on the basis of documents/reports in the possession of the public authority or court that examines the application, statements are found to be incoherent or that contradict existing country of origin information).

Upon their arrival, asylum seekers whose claim has been declared admissible by the Spanish authorities have to formally submit the application for international protection, which entails the opening of a file and the examination of the formally submitted asylum application.

As regards withdrawal of asylum applications, Article 27 of the Asylum Law establishes that the procedure will end if the applicant withdraws or desists in cases, and under the terms of Law 30/1992, of 26 November, regulating the Legal Regime of Public Administrations and Common Administrative Proceedings in any case, it may be presumed that such withdrawal or abandonment has occurred when within thirty days the applicant has not responded to requests to provide information essential to the application, has not attended a hearing to which he/she was summoned, or fails to appear for the renewal of the documentation which would have been provided, unless the applicant proves that these behaviours were due to circumstances beyond their control.

Article 5.2 of RD 203/1995, which is still temporarily in use, as the regulation implementing Asylum Law 12/2009 is pending approval, establishes the obligation of the Authorities to inform the asylum seekers in a legal-technical field, about the need to provide signs and evidence for the claim, and about their rights to a lawyer and an interpreter, in order not only to be able to answer the police questionnaire of the police, but also to gain signs and evidence to justify the asylum claim (Sentence of the Supreme court, Administrative Chamber no.3, 13th May 2008).

Article 24.5 about the processing of the procedure states that whenever a procedure is stopped due to a cause attributable to the asylum seeker, the Asylum Office shall inform that, after 3 months, the procedure will be withdrawn.

If this period elapses and the asylum seeker does not carry out the necessary tasks to resume the procedure, the file will be closed and the party will be notified at the last known address known.

Renouncing an international protection application in process before the Spanish authorities leads to the provisional documentation being withdrawn from the asylum seeker, who henceforth is deemed to be in an irregular situation in our country. Such renunciation will normally have effects in each Member State according to the applicable internal legislation.

The reception standards apply to any asylum seeker, including those whose asylum application is the responsibility of a Member State until the transfer takes place.

Family unit and the definition of family Members

Title III of the Spanish Asylum Law governs the Family Unit of the beneficiaries of International Protection (articles 39 to 41).

If the family members of an asylum seeker are in Spain while the asylum claim is being processed they will be granted a provisional residence permit and be subject to it. The residence of family members is provisionally authorized until the application of the asylum-seeking family member is determined.

The family unit will be re-established by granting the same kind of international protection for Family Extension to ascendants and descendants in the first degree, except in cases of family independence, become adult and different nationality.

Family relationships of the ascendants and descendants shall be established by scientific evidence as may be necessary in cases where that family relationship can not be determined without doubt.

In the same way, spouses and those who maintain an affective relationship, similar to that of a married couple, except divorce, legal separation, de facto separation, different nationality or when the international protection has been granted due to gender based persecution or gender based violence from the spouse.

International Protection can also be extended to other family members who depend on the refugee or beneficiary of subsidiary protection.

Refugees and beneficiaries of subsidiary protection have the option of family reunification for family members already in Spain who do not have the same nationality (they do not need to apply for extension of international protection).

If family reunification is accepted, family members will have the same kind of residence and work permit.

Family reunification can be requested only once. A reunified family cannot apply to reunify other family members. Family reunification is only possible with respect to the family members specified in article 40 of Law 12/2009, namely: ascendants and descendants in the first degree, spouse or person with whom the refugee has an affective or cohabiting relationship.

Regarding Dublin Convention, the OAR studies the cases one by one to determine whether to apply Family Unit criteria for take back/charge decisions taking in consideration the legal situation of the family members in Spain and vulnerability that amounts to dependence on the family member.

When analysing cases which it is necessary to consider the family clause provided for in articles 7 and 8 of Council Regulation 343/2003, of 18 February, establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application, the Asylum and Refugee Office (OAR) takes into consideration the legal situation of the family members present in Spanish territory and the effective dependence of the asylum seeker with respect to them.

Timeframes

Problems with time frames: and delay of information transmission delays (e.g. fingerprints), are common in Spain⁶.

Asylum seekers whose cases trigger the submission of a take back request to another Member State are documented as asylum seekers until a positive response from the concerned Member State concerned allows the Spanish authorities to reject the case during the admissibility procedure.

If the rejection is not formalized before the timeframe for reaching a decision at the admissibility stage (1 month), asylum seekers are automatically admitted to the on-merits procedure and continue to be documented as asylum-seekers until the case is closed.

However, in order to avoid automatic admission of the cases which are awaiting a response from the Requested Member State, the 1-month time limit of the admissibility procedure is extended by one month; this is notified to the applicant.

The abovementioned timeframes do not exceed the extension of the periods provided for in Regulation 343/2003.

⁶ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0415:FIN:EN:PDF>

The OAR informs the applicant in writing, in the admission resolution, that they are studying the determination of the Member State responsible according to with Council Regulation 343/2003.

Stay outside the EU within the timeframe of Dublin

Spanish authorities apply the rules established in article 16 of Council Regulation 343/2003.

The three-month period established by article 16 of Council Regulation 343/2003, of 18 February, establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national, is applied by the Spanish authorities mainly when the stamps on the asylum applicant's travel documentation indicate that the asylum applicant has left EU territory. Under no circumstances do the allegations of international protection applicants suffice in this respect.

Application of the Visa criterion within the Dublin Regulation

The rules contained in article 9 of Council Regulation 343/2003, of 18 February, establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national, are the rules that the Spanish authorities apply most frequently when asking another Member State to take responsibility for examining asylum applications.

Application of the Residence Permit criterion within the Dublin Regulation

The Spanish authorities always ask other Member States to take charge of or take back international protection applicants if the applicant has been issued a residence permit by another Member State. This is

one of the most common reasons for Spain's application of Council Regulation 343/2003, of 18 February, establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national.

Suspension of transfers to Greece and any other Member State as part of a general policy or on a case by case basis

As we previously stated, suspension of transfers to Greece is becoming a general policy for special vulnerable cases (single women with children, medical cases, elderly persons, etc).

We have also found out that Spanish Courts do recognize Spanish responsibility when time-frames are not respected in "take-back" requests to Greece.

For example, National High Court Rulings, SAN 5926/2011, appeal 1154/2010, SAN 2/2012 appeal 648/2010, SAN 199/2012 appeal 1093/2010, SAN 4779/2011 appeal 571/2010, SAN 2415/2010 appeal 632/2009, SAN 3099/2010 appeal 182/2009.

In all these cases the National High Court granted the appeals of the asylum seekers because they had not been transferred within the time frame of 6 months established in article 19.4 of the Dublin Regulation CE/343/2003.

Despite that, if another State is responsible Spanish Courts consider that the time-frame of 6 months is not binding if the asylum seeker has been properly informed about the take-back decision to other State, i.e., National High Court rulings, SAN 937/2010 appeal 583/2009, dismissed the appeal brought by a Colombian asylum seeker and decided to send her back to Belgium despite the fact that the six-month period had elapsed.

SAN 3388/2011 appeal 60/2011, dismissed the appeal brought by an Iranian asylum seeker to Germany.

As stated above, in these cases, Spanish Courts established that the transfer to the responsible State is a voluntary decision of the asylum seeker but not an obligation for Spain.

The gender perspective requires that both the gender-related circumstances of the applicant and any other circumstances included in their international protection application be taken into consideration when applying each one of the criteria and mechanisms established in Regulation 343/2003. Thus, both the special needs that applicants may have in connection with their gender-related circumstances at the time of application and any others deriving from the history of persecution suffered should be taken into account, especially the situation of possible receiving countries as regards domestic violence, female genital mutilation or forced marriage.

Therefore, the process of determining the Member State responsible for examining an asylum application should involve consideration of the gender-related aspects of the applicant's circumstances, since they may have implications for the process of the applicant's integration in the country of origin. By way of example we can mention the case of people who have fled from their country as a result of being persecuted on grounds of sexual orientation. When applying Regulation 343/2003 it seems reasonable that the legal system in the legislation of the receiving and petitioning country should be considered as regards the possibility of obtaining legal recognition of the applicant's cohabitating relationship.

According to with Official Figures Report 2010⁷ of the Ministry of the Interior Ministry (the 2011 Report has not yet been officially published), in 2010 there were have been:

1170 requests to Spain to take charge of asylum seekers. 922 were accepted by Spain and there were 432 transfers to Spain.

Spain issued 116 take back requests to other States. 94 were accepted and 16 were transferred, 8 to France, 1 to Italy, 2 to Sweden, 1 to Germany, 1 to Czeck Republic, 1 to Norway, 1 to Denmark and 1 to Portugal.

⁷ <http://www.interior.gob.es/file/55/55779/55779.pdf>

3.2 *The Use of Discretionary Provisions*

Application of the sovereignty clause, Article 3.2

The jurisprudence compiled shows that the sovereignty clause is often requested but almost never accepted by the Authorities.

The jurisprudence shows that the safeguard clause of article 3.2 of Council Regulation 343/2003 is not applied by the Administration in cases where its application is expressly requested by the applicants, lawyers or NGOs.

The Courts do understand that the Common European Asylum System is based on the principle of loyal cooperation, according to the article 4.3 of the Treaties of the European Union, and therefore no reproaches may be made to the institutions in those countries.

Thus, it is considered, that this clause shall not apply, since it would be seen as a reproach to other countries.

We consider that the safeguard clause is applied more frequently in other Member States.

However, it is true, some Courts stated, that they would have liked to be able to bring a request before the European Court of Human Rights regarding the application of the article 3.2, but the treaty on the EU reserves such requests for preliminary ruling for those courts whose decisions might not be appealed, and these cases almost never reach to the Supreme Court.

In this respect, we should highlight the National High Court Ruling 1570/2011, which establishes that article 3.2. of the Dublin Convention is a sovereign decision and not a petitioner right and that the decision should take into consideration the circumstances of the claimant and not the situation in the other Member State.

3.3 *The Practicalities of Dublin Procedures*

Application of the humanitarian clause

This clause is only considered by the Courts in extreme situations. Spanish jurisprudence has delivered judgment on the existence of humanitarian grounds and the granting of residence permits for these reasons, but not in relation to the humanitarian clause in order to undertake the examination of cases that correspond to other Member States in accordance with Regulation 343/2003.

The CIAR decided in 2011 to refrain from transferring vulnerable asylum seekers to Greece under a Dublin procedure, which including families with children. There is no formal agreement, but transfers to Greece are not carried out.

On this basis, Spain decided not to transfer to Greece a woman who suffered gender based violence from her husband in her country of origin and had had psychological problems when she lived in Greece.

In the case of an unaccompanied Afghan child, Spain also decided to refuse the transfer to Greece.

Despite the abovementioned cases, in April 2009 the National High Court stated that the reports and recommendations from UNHCR to refrain from transfers to Greece were not binding, and due to the recognition of responsibility of the Greek authorities a woman asylum seeker and her son could be transferred to Greece. In January 2010 the National High Court confirmed this ruling⁸.

Analysis of the relevant jurisprudence revealed mentions of significant rulings in this respect, but no significant references were found for 2011.

⁸ Sentencia nº 381/09, Audiencia Nacional, Sala de Apelación, enero 2010.

3.4 Vulnerable Persons in the Asylum Procedure

Vulnerable persons/ Medical case

The Directive on minimum reception standards refers to pregnant women, single parents with minor children and persons who have been subjected to torture, rape or other forms of psychological, physical or sexual violence as vulnerable persons⁹. The reference to this Directive is included in order to frame article 46 of Law 12/2009. Although it is currently under amendment, we think it needs to be mentioned.

In this respect, Law 12/2009, article 46, establishes the criteria for minors and vulnerable persons. Given their special status, the Law allows the adoption of differentiated procedures adapted to their specific needs whenever necessary. According to article 46 of Law 12/2009, any procedure must be adapted to the particular needs of these groups, including those procedures which include questions of determining the Member State responsible for examining the application. On the other hand, temporary stay in the country may be allowed in the terms specified by the Immigration Law (Humanitarian Permit). Article 46 of Law 12/2009, which regulates the right to asylum and international protection, provides for the possibility of the Ministry of the Interior, after examining the asylum application, authorizing residence for humanitarian reasons. Article 125 of Royal Decree 557/2011, of 20 April, approving the Regulations of Organic Law 4/2000 on rights and freedoms of aliens in Spain and their integration, states that these persons shall be granted a residence authorization under exceptional circumstances for international protection reasons.

Spanish Authorities do not consider women as a vulnerable group *per se* according to the identification of risk factors exposing women and girls to particular threats.

In 2011 the Eligibility Commission decided not to transfer vulnerable asylum seekers under Dublin Regulation to Greece, including families with children. Based on this, Spain decided not to

⁹ Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers.

transfer to Greece a woman victim of gender-based violence from her husband in her country of origin and due to the psychological problems she suffered in Greece as a consequence. In another case, an Afghan unaccompanied child was not transferred because Spanish authorities applied the sovereignty clause.

In Spain there is no specific procedure for the identification of vulnerable asylum seekers so that their special needs can be addressed. The non-identification of vulnerable asylum seekers may affect the fairness of the asylum procedure and the likelihood that their need for international protection is recognised. An early identification and adequate follow-up for traumatised asylum seekers is key to address their special needs – you should put this as a recommendation.

According to information provided by the Head of the Area for Special Procedures in the OAR on 15th June 2012, the OAR decides on case by case grounds, according to the vulnerable situations mentioned in Asylum Spanish Law 12/2009 and Council Regulation 343/2003. Thus, the Dublin Regulation Application Service determines the Responsible State according to the Dublin II Regulation rules and the OAR Officers studies the file in order to decide whether or not to take charge of the asylum seeker.

According to the information, the Asylum and Refugee Office makes a decision regarding the application of the humanitarian clause contained in article 15 of Council Regulation 343 of 18 February, and in accordance with the vulnerable situations mentioned in Asylum Law 12/2009 case by case. The authorities rely on the medical information contained in the file of the person concerned and did not provide us with information on the exchange of this information with the other Member States.

Unaccompanied Minors

When deciding about the future of minors, the jurisprudence stated the following:

- Hearing the minor is always a requirement of each procedure - whether Administrative or Judicial - in which she/he would

take part. Not hearing him/her would constitute an infringement of article 9 of the Law for the Protection of Minors, and of article 92.4 of its regulation, according to the interpretation stated by the Constitutional Court in Ruling 152/2005 of 6th June. This is not a case of asylum but of matrimonial separation, but it constitutes a landmark ruling with regard to any minor.

- In order to grant the interest of the minor, Article 92.4 of the regulation mentioned above imposes the need to verify and confirm the possibility of reuniting the minor with her/his family members and, if this were not possible, that she/he would be properly protected by the Authorities charged with this task in the country of origin.
- If it were not possible to verify this, there would be no repatriation.

Furthermore, as stated by UNHCR, the sovereignty clause in article 3.2 of the Dublin Regulation (instead of the more recurrent article 6) has been voluntarily applied by Spanish authorities for special cases, thus including unaccompanied minors, medical cases and vulnerable persons¹⁰, -in a more sensitive interpretation of the sovereignty clause.

A National Court ruling of July 2009 (Resolution 1016/2008, Appeal Court) established that it was necessary to rule on a case by case basis and not according to the conditions of the responsible State, but exceptions should always be made in cases of vulnerability, minors or ill persons. Reference: Decision of the National Court of 20 January 2010 (Ruling 381/2010).

According to information provided by the Head of the Area for Special Procedures in the OAR, the 15th June 2012, the basic principle is Family Unity regarding Minors.

¹⁰ <http://www.acnur.org/biblioteca/pdf/8147.pdf?view=1>

3.5 The Rights of Asylum Applicants in the Dublin Procedure

Right to information

Asylum seekers receive written information (leaflets) from authorities regarding international protection, the national asylum procedure, rights and obligations for asylum seekers and refugees.

When submitting an asylum application, asylum seekers are informed in a leaflet about their rights and obligations, asylum procedure and about the principle of confidentiality. The problem with the access to information is often the language and how to explain rights and obligations clearly. The languages in which the information leaflets are published are clearly insufficient. These shortcomings are offset in practice by the assistance of an interpreter and a lawyer, as occurs in the cases of people who cannot read or write.

Furthermore, people arriving on Spanish land at the sea border and detained in a Migrant Detention Centre, CIE, are also informed of the asylum procedure with an information leaflet but no institution is in charge of explaining this information and ensuring that aliens have understood the procedure.

Article 18 of Law 12/2009, of 30 October 2009, governing the right to asylum and subsidiary protection (hereinafter Spanish Asylum Law) establishes the Rights and Obligations of Asylum Seekers.

In the meeting held on 15th June 2012 with the Head of the Area for Special Procedures at OAR, we were informed about the development of a new brochure/leaflet regarding international protection that will include Dublin II Regulation information.

3.6 Reception Conditions & Detention

Reception conditions in the transferring Member State, including whether the RCD¹¹ is applied to asylum seekers in the Dublin Procedure.

According to the Spanish Asylum Law, international protection applicants shall be provided with the necessary social and reception services in order to ensure their basic needs are met in conditions of dignity. Nevertheless it were established that an applicant has sufficient means to cover the costs inherent in the services and benefits reserved for persons who lack sufficient economic resources, the person concerned shall be formally required to pay these costs.

In this respect, and with regard to the conditions for the reception of asylum applicants, it is worth mentioning the European Parliament's Legislative Observatory report on the implementation of Directive 2009/3/EC laying down minimum standards for the reception of asylum seekers and refugees. The report (2008/2235(INI)) regrets that these minimum standards are being poorly applied in Spain or in general? This question in the template was asking whether the Reception Conditions Directive standards are applied to Dublin II Applicants.

In the case of Spain, reception takes place mainly through the Ministry of Labour and Migration centres, subsidized centres or NGOs.

Asylum support: Admission to process requests for support within the territory must be resolved within one month of submission. If the application is not admitted due to Dublin II Regulation, the asylum seeker will be asked to leave the country and will not have access to the reception system.

¹¹ Reception Conditions Directive: Council Directive 2003/9/EC.

Reception Conditions in the responsible Member State

Once the asylum application has been accepted for consideration in Spain, the asylum applicant is documented as such and receives a residence permit for a period of at least 6 months (regular procedure). Free legal aid is available to asylum seekers during all possible stages of the asylum procedure, including a final appeal to the Supreme Court. Asylum seekers have access to health care through the “*tarjeta individual sanitaria*”. Asylum seekers receive a work permit after six months.

Reception system for asylum seekers: Asylum seekers who are considered to be in a situation of economic and social vulnerability are housed in CAR (*Centros de Acogida de Refugiados*). Asylum seekers can usually stay for six months in a centre; but this period can be prolonged for another six months or more for social reasons. After that, they have to make their own arrangements regarding accommodation.

The stay may be extended in exceptional situations which must be authorized by the Ministry of Employment and Social Security.

Number of supported centres/places in 2010: 4 CARs are run by the Ministry of Labor and Immigration (2 in Madrid, 1 in Valencia and 1 in Sevilla): 414 beds. Migrants arriving in Ceuta (512 beds) and Melilla (480 beds) are brought to a specific type of centre: the CETI (*Centro de Estancia Temporal de Inmigrantes*). CETIs are open centers for both migrants and asylum seekers. NGO Reception Centres– Spanish Red Cross, ACCEM, CEAR (624 beds).

If necessary, the number of places is usually increased by means of temporary reception resources (supervised apartments, for example).

Asylum seekers are not detained neither prior to transfer nor if a negative answer response is received from the country. The criterion of absconding is applied to illegal migrants under an expulsion procedure when they do not have family, social links in Spain or a known address, so the authorities detain them to enforce their expulsion outside Europe.

The jurisprudence compiled shows that the decision to transfer the asylum seeker is not regarded by the Authorities as an obligation for the receiving State (Spain), but as an “option” for the asylum seeker who might decide to go or to stay as an illegal.

If the applicant disregards the obligation to move to the Member State responsible for examining the international protection application and remains in Spain, he/she is deemed to be in an irregular situation.

The timeframes for reaching a decision on applications lodged at Administrative Detention Centres (CIEs) do not allow the application of the Convention determining the Member State responsible for examining an asylum application, and therefore the applicant will generally have to be released pending acceptance of the asylum application by the responsible Member State.

Notion of absconding

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Detention – grounds, duration, material conditions, effective remedies applied, etc.

Asylum seekers are not detained during or after the decision-making process, including in the II Dublin Procedure.

Spain does not use detention to enforce transfers of asylum seekers to other Member States, Norway, Iceland or Switzerland.

When a migrant submits an application within a CIE, Migrant Detention Centre, they will remain there until the decision on the admission into the asylum procedure which length as applications at the border. Only women in late stages of pregnancy are exempt from administrative detention in CIEs.

Torture survivors can qualify for subsidiary protection under the provisions of the recognition Directive whose article has been transposed into Law 12/2009 regulating the right to asylum and subsidiary protection.

Unaccompanied minors cannot be detained in Administrative Detention Centers, in accordance with Spanish legislation.

Administrative detention¹².

After the registration procedure at the police departments and the issuance of a judicial order authorising their detention, irregular migrants are taken led to centres of administrative detention centres, known as the so-called CIEs (*Centros de Internamiento de Extranjeros*). Currently, there are 9 official CIEs in Spain which cover the whole territory, except Ceuta and Melilla which have a special status: Barcelona (Zona Franca), Canary islands (Matorral

¹² ICMC, Mayday, Strengthening Responses of assistance and protection to boat people and other migrants arriving in Southern Europe. DRIVE project “*Differentiation for Refugee Identification and Vulnerability Evaluation*”. Led by ICMC Europe, in partnership with seven other non-governmental organisations -ACCEM, CEAR, CIR, ECRE, JRS Malta, PRAKSIS and Save the Children Italy-, the DRIVE project was implemented from March 2010 to September 2011.

in Fuerteventura, Barranco Seco in Gran Canaria), Tenerife (Hoya Fría), Málaga (Capuchinos), Madrid (Carabanchel), Valencia (Zapadores), Murcia (Sangonera la Verde) and Algeciras (La Piñera). Unaccompanied minors who have already been identified as such by the authorities and pregnant women at a late stage of pregnancy are not detained. Children can only be put in detention centres at the request of their parents if they are also inside the centre and if the detention centre has facilities that guarantee family unity. Illegal entry into Spain is not criminalised and CIEs are not formally not considered as detention centres but as normally, not considered as person are kept until their legal situation is resolved.

Aliens may be detained in CIE when their expulsion from the territory has been ordered by the Spanish authorities. Detention constitutes an interim measure to ensure expulsion and must be judicially determined.

Detainees leave the CIE when the court lifts the previously determined interim measure or when the legally established maximum period expires.

These administrative detention centres are under the responsibility of the Ministry of the Interior, and in particular the Directorate General of the Police and the Guardia Civil-General Commissariat for Immigration and Borders. The Ministry is responsible for all aspects of the management of the CIEs, from the security to the provision of all services available inside the centres e.g., medical, social, etc.

The maximum duration of detention in the CIEs was raised from 40 to 60 days in 2009, after the transposition of the EU Returns Directive. If the detention has already been ordered when an application for asylum is lodged, the asylum seeker will remain in the CIE until the final decision on the admissibility of the application is taken. This could lead to a situation where the final placement period in the CIE may be increased, effectively making it last 60 days plus the duration of the admissibility procedure.

Services within provided at detention centres

Order 22/1999 established standards for provision of services and regulated the functioning of the CIEs, but currently no Decree exists. At present, none of the Spanish NGOs or international organisations have unlimited access to CIEs, but some have signed ad-hoc individual memoranda of understanding to provide certain services within the centres. Services offered and quality of standards vary significantly within different CIEs, with regard to material conditions, presence of non-governmental organisation representatives who can provide legal and social assistance, and the presence of translators and interpreters.

Legal assistance: Migrants have a general entitlement to free legal assistance provided by the State. In addition, they may in some cases receive legal assistance from NGOs, if they specifically request their assistance.

Social support: According to the law (Article 13 of Order 22/1999), the CIEs should employ social workers among their staff. It states that social assistance should exist and that it can be outsourced to NGOs. However, not all the CIEs are currently implementing this measure. In some centres the Red Cross is intervening, providing social support to the detainees.

Medical assistance: all newly- arrived migrants including asylum applicants are entitled to emergency health care and continuity of such care until their release. There is a medical examination upon arrival (within 24 hours) to assess possible physical or mental illnesses or a drug addiction, provide adequate treatment and, if necessary, isolation or hospitalisation (new Article 66 of Law 2/2009 and Articles 12, 14(1), 14(5) and 22 of Order 22/1999). Within the internment centres the medical assistance is provided by the health department of the police and more serious cases are referred to public hospitals. The provision of medical and social services is the responsibility of the Ministry of the Interior which may, however, arrange for that these services to be provided by other ministries or non-profit, public or private entities (Article 6(1) of the Order 22/1999).

This includes all persons detained in the CIEs, including those who have applied for asylum during detention.

Psychological support: Psychological support is not available inside the CIEs and no special service is geared towards people with trauma and victims of torture.

Interpreting/cultural mediation: There is no uniform practice regarding the presence of cultural mediators and interpreters at the CIEs. Research conducted by both UNHCR in at the Canary Islands¹³ 36 and the DEVAS research¹⁴ conducted by CEAR³⁷ footnote needed attest to the fact that there are varying arrangements according to the funding available and depending on the management of the centres. In practice, the role of interpreters is often undertaken by fellow detainees who are able to speak some Spanish.

During detention people with special needs have no access to specialised services (notably medical or psychological). If a person is identified as having a specific medical needs, they will be addressed within the medical care system available at the centre or through the corresponding hospital if required.

We are referring to cases dealt with particularly in the alien legislation, which contains specific clarifications concerning these groups when they are detained. In the event that they lodge asylum applications and should the State responsible for examining the asylum application have to be determined, the specific provisions included in Council Regulation 343/2003, of 18 February, establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national, could be applied.

13 UNHCR, Refugee protection and international migration: a review of UNHCR 's role in the Canary Islands, Spain, 2009, at p.11, available at: <http://www.unhcr.org/4a1d2d7d6.pdf>

14 CEAR, Situación de los centros de internamiento para extranjeros en España, Informe Técnico realizado por la Comisión Española de Ayuda al Refugiado (CEAR) en el marco del estudio europeo DEVAS, 2009, available at: <http://www.inmigrapenal.com/Areas/Cies/Documentos/InformeCearCIESdic09.PDF>

3.7 Member State Co-operation

Exchange of information with other Member States

Information is exchanged through the use of the Eurodac data system. A lot more information than Eurodac should be exchanged – Eurodac is only applicable for one of the Dublin criteria for determining responsibility.

We were not provided with information about exchanges of information with other Member States. We consider that the EURODAC system constitutes a fundamental tool in the application of Regulation 343/2003, but we do have any additional information.

There is no official information on the functioning of EURODAC and we were not given any information during the meeting with the Asylum and Refugee Office (OAR).

Cooperation with other Dublin States

We do not have any information, and neither does the Head of the Dublin Unit in the OAR.

We are referring to the fact that there is no unit that specializes in Dublin cases at the Asylum and Refugee Office and that we were not given any information on this matter during the meetings held.

3.8 *The Impact of European Jurisprudence at national level*

Effective Remedy (Appeals/ Judicial Remedies)

The jurisprudence compiled shows that appeals based on human rights are hardly taken into account, due to the difficulty in proving the allegations. As mentioned before, the sovereign clause is almost never used; it is considered to be a discretionary clause, but can never be considered an obligation for the State.

We found out that procedural grounds are usually taken into account. Decisions taken without informing the alien, or those taken outside the procedural timeframe, are cancelled and returned to a previous point.

There are no subsequent rulings that deal with the question.

In spite of this, jurisprudence stated that the envisaged transfers foreseen shall in no way be understood to be a coercive duty for the Member States; the alien who is to be transferred, is the one who shall voluntarily travel to the responsible State. The State where they live does fulfil its obligations when communicating or notifying the responsibility.

Judicial remedies against refusals of admission do not have suspensory effects *per se*. Appeals must be lodged within two months of notification of inadmissibility due to the application of Regulation 343. The suspension may be requested, but it must be expressly arranged by the court by express decision prior to the ruling.

The figures provided by the Asylum and Refugee Office (AOR) as regards Spain's requirements of other Member States for taking charge of or taking back international protection applicants show that the rule contained in article 10 is not the mechanism for attributing responsibility most frequently applied by the Spanish authorities. Spain's geographical location explains why the irregular crossing of external borders is not a decisive criterion in attributing responsibility for the examination of asylum application to other Member States.

Application of the criterion related to the Irregular border-crossing

Spanish authorities apply the rules established in article 10 of Council Regulation 343/2003.

EURODAC

Successful transactions through the EURODAC system for Spain amount to 5.748.

Use of accelerated procedures/ third country procedures beyond the Dublin system

Asylum seekers under Dublin procedure are not subject to accelerated procedures specifically but on the same grounds as any other applicant.

3.9 Good Practices in Spain.

- Asylum seekers during the pendency of the proceedings of international protection, remain in host devices under spanish Law.
- The Spanish authorities made no forced relocations of persons whose application was not accepted for processing and whose responsibility is accepted by another member. The asylum seekers are informed of the decision and they decide voluntarily agreed to appear at the police station that manage the transfers.
- People do not remain arrested during the asylum procedure in order to ensure their return.
- People who have been returned to Spain under the Dublin Convention, have social assistance at the border post by Red Cross.

Conclusion and Recommendations

4

- Spanish authorities should establish well-defined formal identification procedures and agreed indicators for the proactive identification of victims.
- In accordance with the obligation to inform asylum applicants about the circumstances associated with Council Regulation 343/2003, of 18 February, establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national, the Spanish authorities should include in the information leaflet specific references relating to the system of application of the convention currently in force.
- The Dublin System should not be automatically applied.
- Spanish authorities should establish a specific gender-oriented policy under the Dublin Procedure. See point above need for improved information leaflets.
- Humanitarian Clause should be interpreted flexibly and Spanish authorities should also take into consideration whether in the other responsible Member State persons who are not granted international protection may have access to a residence permit for exceptional humanitarian reasons in view of the person's individual circumstances, as occurs in Spain.

A. Bibliography

Government Institutions:

- OAR - Oficina de Asilo y Refugio (Asylum Refugee Office).
- CIAR - Comisión Interministerial de Asilo y Refugio (Interministerial Commission on Asylum and Refugees)

Legislation:

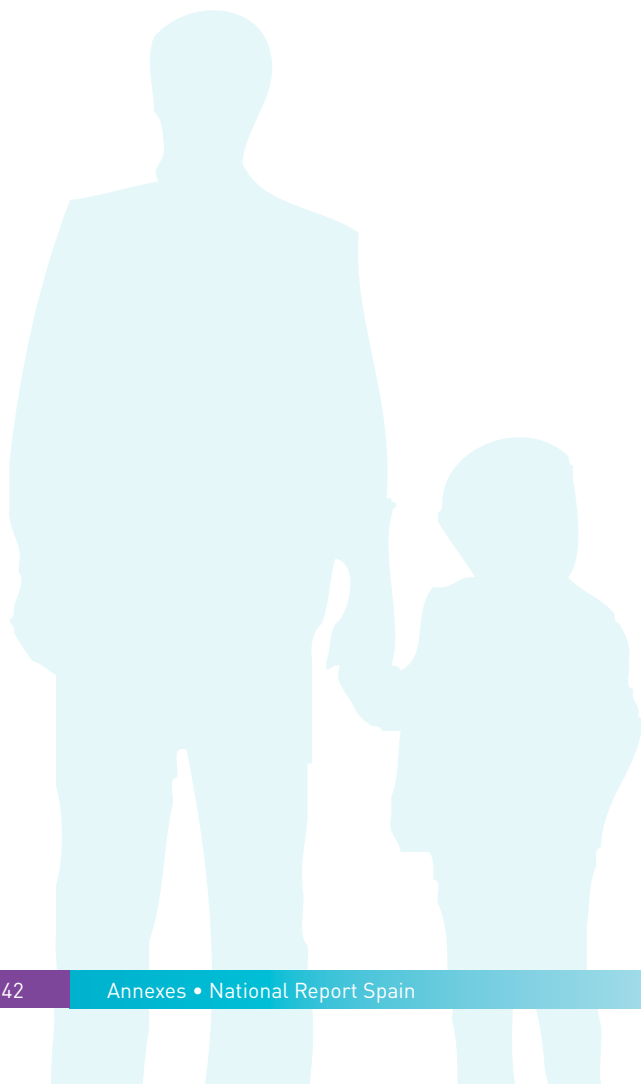
- Constitución Española de 1978.
 - General rights of asylum seekers and migrants are guaranteed by the Spanish Constitution.
- Ley 12/2009, de 30 de octubre, reguladora del derecho de asilo y de la protección subsidiaria, se refiere expresamente al Reglamento 343/2003 del Consejo, de 18 de febrero, por el que se establecen los criterios y mecanismos de determinación del Estado miembro responsable del examen de una solicitud de asilo presentada en uno de los Estados miembros por un nacional de un tercer país.
 - Law 12/2009 Asylum law, expressly refer to Regulation 343/2003 of the Council of 18 February, establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a national of a third country.

- 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 condición de refugiado, modificada por la ley 9/1994 de 19 de mayo, modificado por RD 2393/2004 (derogadas las disposiciones que se opongan a lo establecido en la ley 12/2009 de acuerdo con la Disposición Derogatoria Única).
 - Royal Decree 203/1995 (modified by Royal Decree 2393/2004) transposes into Spanish law the EU Reception Conditions Directive. The regulation to implement the law is pending approval, thus the previous regulation (RD 203/1995) is still temporarily in use, as far as it does not contradict the new law. In case of contradiction, the new law is applied directly.
- Ley 4/2000, sobre derechos y libertades de los extranjeros en España y su integración social, tras su reforma por Ley Orgánica 2/2009.
 - Organic Law 4/2000, of January 11th, modified by Organic Law 2/2009, of December 11th (Aliens Law), covers the rights of migrants (including unaccompanied foreign children and trafficking victims).
- Real Decreto 557/2011, de 20 de abril, por el que se aprueba el Reglamento de la Ley Orgánica 4/2000, sobre derechos y libertades de los extranjeros en España y su integración social.
 - Royal Decree 557/2011, of 20 April, which approves the Regulation of Law No. 4/2000 on the rights and freedoms of foreigners in Spain and their social integration.

B. Relevant Statistics

STATISTICS OF INTERNATIONAL PROTECTION IN SPAIN IN 2011 (THE ASYLUM AND REFUGEE OFFICE OAR – OFICINA DE ASILO Y REFUGIO)

Requirements addressed to Spain from other UE members States concerned to the readmission of applicants for international protection.

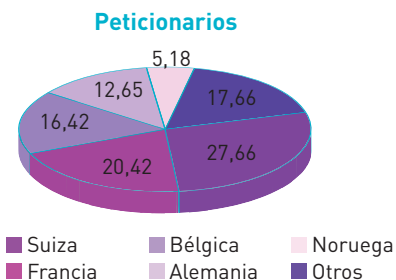


Responses to requests directed to Spain for other UE members States and protection seekers readmission international.

Tabla 23. Requerimientos dirigidos a España por otros Estados parte para la toma a cargo y readmisión de solicitantes de protección internacional.

Pais	Peticionarios	% s/total
Suiza	470	27,66
Francia	347	20,42
Bélgica	279	16,42
Alemania	215	12,65
Noruega	88	5,18
Suecia	71	4,18
País Bajos	65	3,83
Austria	49	2,88
Finlandia	26	1,53
Dinamarca	21	1,24
Italia	18	1,06
Reino Unido	17	1,00
Luxemburgo	6	0,35
Portugal	6	0,35
Islandia	4	0,24
Rep. Checa	4	0,24
Eslovenia	2	0,12
Grecia	2	0,12
Polonia	2	0,12
Rep. Eslovaca	2	0,12
Bulgaria	1	0,06
Chipre	1	0,06
Hungría	1	0,06
Irlanda	1	0,06
Rumania	1	0,06
Estonia	0	0,00
Letonia	0	0,00
Lituania	0	0,00
Malta	0	0,00
Total	1,699	100,00 %

Estado parte	Solicitante	% s/total
Suiza	470	27,66
Francia	347	20,42
Bélgica	279	16,42
Alemania	215	12,65
Noruega	88	5,18
Otros	300	17,66
Total	1,699	100,00



Accepted - Rejected - Transfers

Tabla 24. Respuestas a los requerimientos dirigidos a España por otros Estados parte para la toma a cargo y readmisión de solicitantes de protección internacional.

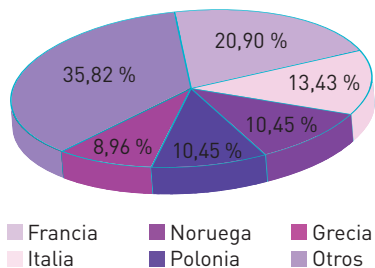
Pais	Aceptadas	Denegadas	Traslados
Suiza	365	104	180
Francia	308	38	26
Bélgica	204	74	92
Alemania	153	61	48
Noruega	79	8	9
Suecia	55	16	14
País Bajos	53	8	22
Austria	38	11	19
Finlandia	22	4	10
Dinamarca	20	1	14
Reino Unido	12	5	7
Italia	10	8	0
Luxemburgo	5	1	4
Portugal	6	0	3
Islandia	4	0	4
Rep. Checa	3	1	1
Grecia	2	0	1
Rep. Eslovaca	1	1	1
Eslovenia	1	1	0
Hungría	1	0	1
Polonia	1	1	0
Bulgaria	0	1	0
Chipre	0	1	0
Irlanda	1	0	0
Rumania	0	1	0
Estonia	0	0	0
Letonia	0	0	0
Lituania	0	0	0
Malta	0	0	0
Total	1,344	346	456

Spain requests made by other UE members States for decision charge and readmission of applicants for international protection

Tabla 25. Requerimientos efectuados por España a otros Estados parte para la toma a cargo y readmisión de solicitantes de protección internacional.

Pais	Peticionarios	% s/total
Francia	14	20,90
Italia	9	13,43
Noruego	7	10,45
Polonia	7	10,45
Grecia	6	8,96
Otros	24	35,82
Total	67	100,00

Peticionarios



Spain requests made by other UE members States for decision charge and readmission of applicants for international protection.

Tabla 26. Respuestas a los requerimientos efectuados por España a otros Estados parte para la toma a cargo y readmisión de solicitantes de protección internacional.

Pais	Aceptadas	Denegadas	Traslados
Francia	5	9	1
Polonia	6	1	4
Italia	8	0	2
Noruega	7	0	2
Grecia	5	1	0
Alemania	3	0	1
Austria	3	0	1
Reino Unido	3	0	1
Suecia	2	2	0
Bélgica	1	0	1
Eslovenia	1	0	1
Lituania	2	0	0
Finlandia	1	0	0
Hungría	1	0	0
País Bajos	1	0	0
Portugal	1	0	0
Suiza	1	0	0
Bulgaria	0	0	0
Chipre	0	0	0
Dinamarca	0	0	0
Estonia	0	0	0
Irlanda	0	0	0
Islanda	0	0	0
Letonia	0	0	0
Luxemburgo	0	0	0
Malta	0	0	0
Rep. Checa	0	0	0
Rep. Eslovaca	0	0	0
Rumania	0	0	0
Total	51	13	14

Information requests (queries) addressed to Spain by other UE members States

Tabla 27. Peticiones de información (consultas) dirigidas a España por otros Estados parte

Pais	Aceptadas
Suiza	155
Noruega	82
Suecia	53
Austria	48
Francia	25
Dinamarca	23
País Bajos	13
Reino Unido	12
Finlandia	11
Irlanda	8
Bélgica	7
Alemania	4
Polonia	2
Rep. Checa	2
Islandia	1
Malta	1
Rep. Eslovaca	1
Bulgaria	0
Chipre	0
Eslovenia	0
Estonia	0
Grecia	0
Hungaria	0
Italia	0
Letonia	0
Lituania	0
Luxemburgo	0
Portugal	0
Rumania	0
Total	448

C. Contact information in Spain

1. Partner organization activities and contact details (CEAR)

Spanish Commission for Refugees (CEAR)

Avenida General Perón 32.

2º dcha.

28020 Madrid

 www.cear.es

 + 34 915 981 535

@ virginia.lopez@cear.es

Activities:

Gives direct legal and social assistance to asylum seekers and refugees. It runs several programs of legal aid and reception centers and flats for asylum seekers, refugees and vulnerable migrants. It runs social, cultural and labor integration programs. It advocates for the respect of the 1951 Convention and European Human Rights Law and participates in European and national fora. It has 16 offices and representations all over Spain and around 350 workers and 1,500 volunteers.

2. Support organizations for asylum seekers


ACCEM

Spanish Catholic Commission for Migration

Plaza Santa Maria Soledad Torres Acosta, 2.

20004 Madrid

 www.accem.es

 + 34 915 3274 78/9

@ accem@accem.es

Activities:

Gives direct attention to asylum seekers and refugees, integration programs for migrants and asylum seekers. It has presence in the entire Spanish national territory.

3. Administrations

Oficina de Asilo y Refugio

Office of Asylum and Refuge

OAR. Dublin Unit.

Calle Pradillo, 40.

28002 Madrid

 www.mir.es/SGACAVT/extranje/asilo_refugio

 + 34 915 372 132 or + 34 915 372 170.

 + 34 915 372 169 or + 34 915 372 167 or + 34 915 372 141

@ cgimeno@refugio.mir.es

Activities:

Reception of asylum claims;

Processing the cases of asylum claims both within the territory and at the border;

To construct the Secretariat of the Inter-ministerial Commission of Asylum and Refugee (Eligibility Commission);

To notify the asylum seekers the decisions on their applications;

e) To establish permanent communication with UNHCR in relation to asylum claims, statistics and any other issues related to asylum claims.

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European network for technical cooperation on the application of the Dublin II Regulation

By creating a European-wide network of NGOs assisting and counselling asylum seekers subject to a Dublin procedure, the aim of the network is to promote knowledge and the exchange of experience between stakeholders at national and European level. This strengthens the ability of these organisations to provide accurate and appropriate information to asylum seekers subject to a Dublin procedure.

This goal is achieved through research activities intended to improve knowledge of national legislation, practice and jurisprudence related to the technical application of the Dublin II Regulation. The project also aims to identify and promote best practice and the most effective case law on difficult issues related to the application of the Dublin II Regulation including family unity, vulnerable persons, detention.

During the course of the project, national reports were produced as well as a European comparative report. This European comparative report provides a comparative overview of the application of the Dublin II Regulation based on the findings of the national reports. In addition, in order to further enhance the knowledge, we created information brochures on different Member States, an asylum seekers' monitoring tool and a training module, aimed at legal practitioners and civil society organisations. They are available on the project website.

The Dublin II Regulation aims to promptly identify the Member State responsible for the examination of an asylum application. The core of the Regulation is the stipulation that *the Member State responsible for examining the asylum claim of an asylum seeker is the one where the asylum seeker first entered.*

www.dublin-project.eu

European Partner Organisations:



Hungarian Helsinki Committee



Comisión Española de Ayuda al Refugiado



ПРАВНА КЛИНИКА ЗА БЕЖАТЛИЦИ И МИГРАНТИ

LEGAL CLINIC FOR REFUGEES & IMMIGRANTS

HUMAN RIGHTS LEAGUE LIGA ZA ČLOVEKSKA PRAVA



ecre European Council on Refugees and Exiles

