

Country Report: Spain



2016
Update

Acknowledgements & Methodology

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The information in this report is up-to-date as of 31 December 2016.

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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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
CCSE	Spanish Constitutional and Socio-Cultural Knowledge test Prueba de Conocimientos Constitucionales y Socioculturales de España
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
ECCHR	European Centre for Constitutional and Human Rights
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
VIS	Visa Information System

Statistics

Overview of statistical practice

Statistics in Spain are collected by the Office on Asylum and Refuge (OAR), and published on an annual basis by the Ministry of Interior. The latest available annual statistics by the Ministry of Interior referring to 2015 were published at the end of January 2017.¹

Applications and granting of protection status at first instance: 2016

	Applicants in 2016	Pending applications in 2016	Refugee status	Subsidiary protection	Rejection	Refugee rate	Sub. Prot. rate	Rejection rate
Total	16,544	20,365	355	6,500	3,395	3.5%	63.4%	33.1%

Breakdown by countries of origin of the total numbers

Venezuela	4,196	4,435	0	0	40	0%	0%	100%
Syria	3,069	1,600	55	6,160	115	0.9%	97.3%	1.8%
Ukraine	2,764	5,555	15	50	355	3.6%	11.9%	84.5%
Algeria	761	400	5	0	720	0.7%	0%	99.3%
Colombia	656	755	0	0	120	0%	0%	100%
El Salvador	444	555	0	0	20	0%	0%	100%
Honduras	399	535	0	0	10	0%	0%	100%
Palestine	368	825	30	65	25	25%	54.1%	20.9%
Morocco	345	385	10	0	205	4.6%	0%	99.4%
Nigeria	294	705	20	0	45	30.8%	0%	69.2%
Iraq	:	250	25	55	0	31.2%	68.8%	0%
Somalia	:	145	10	90	10	9.1%	81.8%	9.1%
Afghanistan	:	115	15	15	5	42.9%	42.9%	14.2%
Eritrea	:	15	40	5	0	88.8%	11.1%	0%

Source applicants: OAR, Information provided on 28 February 2017.

Source others: Eurostat (rounded).

¹ The Ministry of Interior statistics are available at: <https://goo.gl/ljCJyN>.

Gender/age breakdown of the total number of applicants: 2016

	Number	Percentage
Total number of applicants	16,544	100%
Men	9,826	59.4%
Women	6,718	40.6%
Children	3,998	24.2%
Unaccompanied children	28	0.2%

Source: OAR, Information provided on 28 February 2017.

Comparison between first instance and appeal decision rates: 2016

Appeal decisions are not available.

Overview of the legal framework

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/1gto175 (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</p> <p>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.</p> <p>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</p> <p>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</p> <p>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</p> <p>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</p> <p>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</p> <p>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</p> <p>BOE núm. 251, de 16 de octubre</p>		http://bit.ly/1WQ4h4B (ES)
<p>Ministry of Health, Social Services and Equality,</p>	<p>Ministerio de Sanidad, Servicios Sociales e Igualdad, Plan</p>	National Plan	http://bit.ly/1S8g2lZ (ES)

Comprehensive Plan for fight against trafficking in women and girls for sexual exploitation 2015-2018	integral de lucha contra la trata de mujeres y niñas con fines de explotación sexual 2015-2018	against Trafficking	
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Overview of the main changes since the first report

The first report was last published in **April 2016**.

Asylum procedure

- ❖ **Access to the territory:** During 2016, there have been several critiques by organisations defending migrants and refugees' rights in Spain. The last incident happened on 31 December 2016, when a group of more than 1,000 migrants from Sub-Saharan Africa tried to jump a high double fence between Morocco and the Spanish enclave of Ceuta. With the exception of 2 people, all others were returned to Morocco. A similar assault on 9 December 2016 saw more than 400 migrants entering the tiny enclave. A coalition of 85 Spanish NGOs wrote an open letter to the Spanish Minister of Interior, demanding clarification over the potential push backs and the orders given to the Spanish Border Guards.
- ❖ **Interpretation:** Since June 2016, the Ministry of Interior has changed subcontractors for the provision of interpreters to the OAR and all police offices that register asylum applications in the Spanish territory, for which NGOs do not provide services anymore. The contract was awarded to the Ofilingua translation private company. Since then, several shortcomings have been reported, mainly due to the fact that the agency does not have a specific focus on migration and asylum, for which it did not count on the needed expertise due to the sensible thematic of asylum and did not have the contacts of most of the needed interpreters by the OAR. Also, interpreters who were working before with NGOs are now paid much less and their working conditions have worsened, thereby potentially affecting the quality of their work.
- ❖ **Vulnerable groups:** OAR's approach to the protection of victims of trafficking has started changing between the last months of 2016 and January 2017. In that period, 12 sub-Saharan women and their children were granted international protection.
- ❖ **Relocation:** As of the end of December 2016, Spain had pledged a total of 900 places for relocation, 150 of which for refugees relocated from Italy and 750 from Greece. However, as of early January 2017 only 690 refugees had been relocated. The main nationalities concerned in the relocation process are Syrians for relocation from Greece and Eritreans from Italy. Relocated refugees receive the same treatment as all other asylum seekers and refugees in Spain. Their asylum claims are not officially being assessed under the urgent procedure, although in the practice they receive faster asylum decisions, receiving subsidiary protection a general rule. Upon arrival in Spain, asylum seekers are referred to the OAR for the registration of their asylum application. At the same time, they are immediately placed within the official reception system as all other asylum seekers, in equal conditions relating to duration of reception, conditions and level of financial allowances.

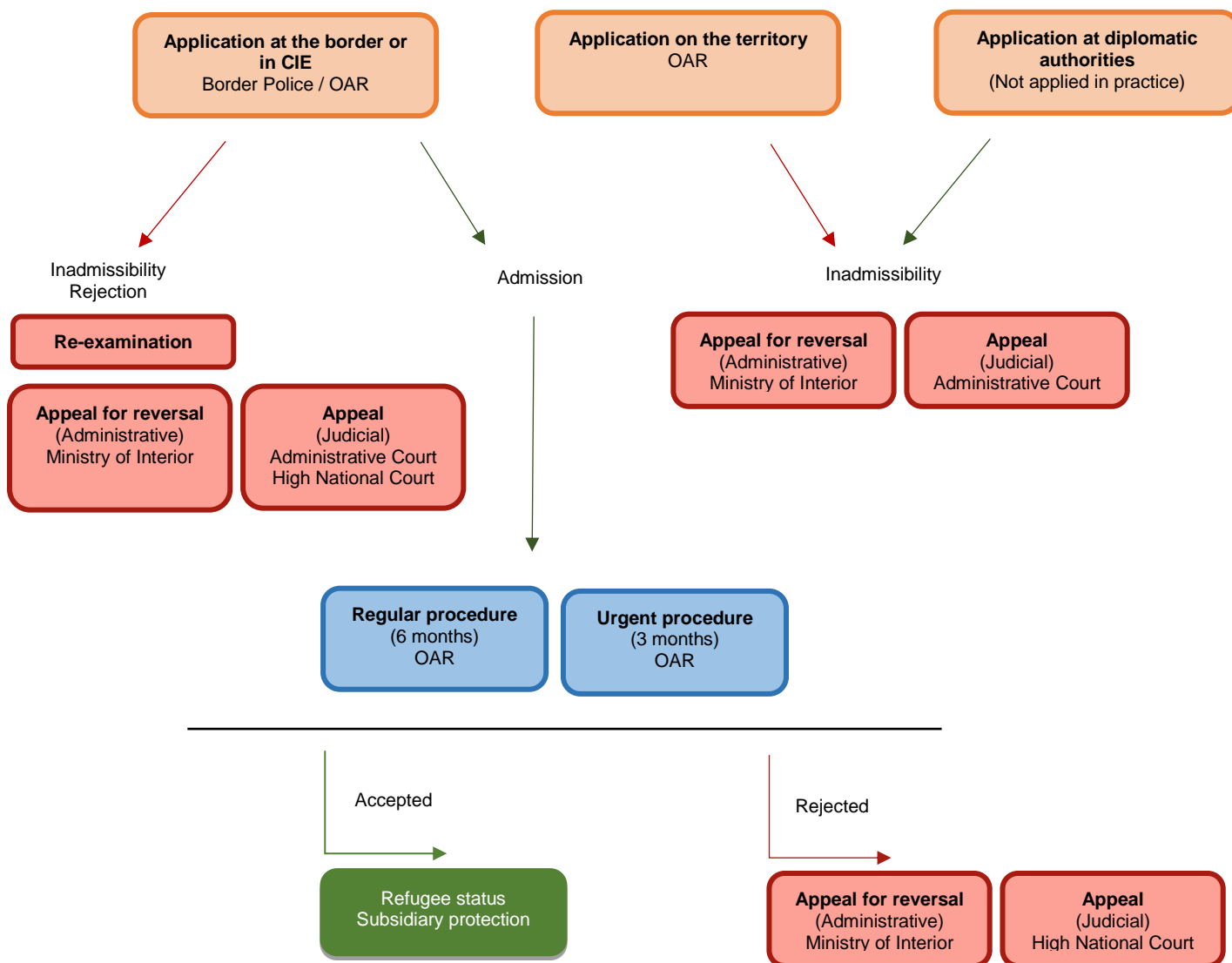
Reception conditions

- ❖ **Reception capacity:** In 2016, more non-governmental organisations were enlisted to provide accommodation: 4 additional organisations were subcontracted by the Ministry of Employment to manage new reception places for asylum seekers and refugees in Spain. The total number of accommodation places has increased from 1,656 places at the end of 2015 to 4,104 at the end of 2016. On the other hand, the Migrant Temporary Stay Centres (CETI) in Ceuta and Melilla have continued to face severe overcrowding in 2016. The two centres, whose maximum capacity is 1,308 places, hosted 2,009 persons at the end of the year.

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 of authorities that intervene in each stage of the procedure

Stage of the procedure	Competent authority (EN)	Competent authority (ES)
Application <ul style="list-style-type: none"> ❖ 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 <ul style="list-style-type: none"> ❖ Administrative appeal ❖ Judicial appeal 	<ul style="list-style-type: none"> ❖ Ministry of Interior ❖ Administrative Court / High National Court 	<ul style="list-style-type: none"> ❖ 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	141	Ministry of Interior	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

Source: OAR, Information provided on 28 February 2017.

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. Access to the procedure and registration

1. Access to the territory and push backs

Indicators: Access to the Territory

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

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.⁸ 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.

The amendment, introduced through the adoption of the Law “on the protection of citizen security”,⁹ includes a specific regulation within the Aliens Law concerning the “Special regime of Ceuta and Melilla”. This new regime consists of three new elements:

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

⁶ Article 25 Asylum Law.

⁷ Article 17(2) Asylum Law.

⁸ 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>.

⁹ Organic Law 4/2015 of 30 March 2015 on the protection of citizen security.

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

The amendment aimed at legalising the push backs practiced in Ceuta and Melilla, and has been criticised for ignoring human rights and international law obligations towards asylum seekers and refugees by several European and international organisations such as UNHCR,¹⁰ the Council of Europe Commissioner for Human Rights,¹¹ and the UN Committee against Torture. Critics regard the fact that people are not able to request asylum, and that the law mostly affects groups in vulnerable situation, including unaccompanied minors and victims of trafficking.

On 30 July 2015, the European Court of Human Rights (ECtHR) published its first decision on a case brought by two Sub-Saharan men – from Mali and the Ivory Coast respectively – who alleged having been summarily and collectively expelled from Spanish territory on 13 August 2014 as part of a group of over 75 individuals.¹² Now Spain is requested to provide information on the procedures and identification measures taken at the time of the applicants' expulsion.

During 2016, there have been several critiques by organisations defending migrants and refugees' rights in Spain. The last occurrence concerning this topic happened on 31 December 2016, when a group of more than 1,000 migrants from Sub-Saharan Africa tried to jump a high double fence between Morocco and the Spanish enclave of Ceuta.¹³ From the total amount of people only two persons entered Spanish territory, after being severely injured and treated in the hospital. The remaining people were returned to Morocco. A similar assault on 9 December 2016 saw more than 400 migrants entering the tiny enclave, and another incident involving over 400 migrants occurred on 17 February 2017.¹⁴

A coalition of 85 Spanish NGOs wrote an open letter to the Spanish Minister of Interior, demanding clarification over the potential push backs and the orders given to the Spanish Border Guards.¹⁵

Moreover, the Provincial Court of Cádiz, with headquarters in Ceuta, has ordered the re-opening of the "El Tarajal" case,¹⁶ which regards 15 migrants who drowned in February 2014 after attempting to reach the Spanish enclave of Ceuta by sea and were repelled with rubber bullets and smoke grenades by officers from the Guardia Civil.

The case was shelved in October 2015 after a court in Ceuta decided that the migrants, who departed from El Tarajal beach along with some 200 others and attempted to swim around the fence that separates Ceuta from Moroccan territory, "were not persons in danger in the sea" in the sense given in the UN Convention on Safety of Life at Sea because "they assumed the risk of illegally entering Spanish territory by swimming at sea." It ruled that responsibility for the deaths could not be allocated to any of the 16 Guardia Civil officers who were accused of murder and causing injury.

The Provincial Court of Cádiz, however, stated on 12 January 2017 that there are survivors who were never called as witnesses and that the forensic investigations undertaken on the bodies of the dead

¹⁰ 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>.

¹¹ 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>.

¹² ECtHR, *N.D. and N.T. v. Spain*, Application Nos 8675/15 and 8697/15.

¹³ Euractiv, '1,000 migrants storm border fence at Spanish enclave of Ceuta', 2 January 2017, available at: <https://goo.gl/84js5S>.

¹⁴ El País, 'Más de 400 inmigrantes acceden a Ceuta en un asalto masivo a la valla', 17 February 2017, available in Spanish at: <http://bit.ly/2lfOErW>.

¹⁵ ECRE, 'Coalition of 85 Spanish NGOs demand clarification of potential push backs of over a thousand people at Spanish-Moroccan border', 13 January 2017, available at: <https://goo.gl/6VE8tV>; The open letter may be found at: <https://goo.gl/Cn3j2y>.

¹⁶ El Diario, 'Las muertes de Ceuta', available in Spanish at: <https://goo.gl/uU1Me3>.

were “unnecessarily rushed”, although there is now no possibility of undertaking further examinations of the corpses. The court found that insufficient witness evidence had been gathered and that the post-mortems carried out were inadequate. The court is also demanding that contact be made with the judicial authorities in Morocco, from whom assistance was sought three times previously but without any response. The decision comes in response to a complaint submitted by a Madrid lawyer working with the European Centre for Constitutional and Human Rights (ECCHR) against the closing of proceedings in October 2015.

2. Registration of the asylum application

Indicators: Registration

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

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.¹⁷

Persons willing to seek international protection to Spain must register a formal application during their first month of stay in Spain.¹⁸ When this time limit is not respected, the law foresees the possibility to apply the urgent procedure,¹⁹ 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 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 December 2016 (see section on [Access to the Territory](#)).

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.²⁰ In the same way, since 2015 UNHCR has guaranteed its presence as well.

¹⁷ Article 4(1) Asylum Regulation.

¹⁸ Article 17(2) Asylum Law.

¹⁹ *Ibid.*

²⁰ UNHCR Spain, 'ACNUR da la bienvenida a la creación de oficinas de asilo en puestos fronterizos de Ceuta y Melilla', 6 November 2014, available in Spanish at: <http://bit.ly/1OATaq8>.

C. Procedures

1. Regular procedure

1.1. General (scope, time limits)

Indicators: Regular Procedure: General

- | | |
|--|---|
| 1. Time-limit set in law for the determining authority to make a decision on the asylum application at first instance: | 6 months |
| 2. Are detailed reasons for the rejection at first instance of an asylum application shared with the applicant in writing? | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |
| 3. Backlog of pending cases as of 31 December 2016: ²¹ | 20,365 |

In all cases, asylum claims are examined by the Inter-ministerial Commission on Asylum (CIAR) of the Ministry of Interior.²² 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. 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.²³

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.²⁴ In practice, many applications last much more than 6 months. In these cases, usually no automatic notification of denial is provided by the OAR, and applicants prefer to wait until the final decision communication instead of asking a response to the authority, as they risk receiving a denial and having reception conditions and benefits withdrawn. If the applicant so wishes, however, he or she can lodge a judicial appeal when no response on the asylum claim is provided in time.

The duration of the asylum process is on average 1.5 years, although official figures by OAR are not available.²⁵ UNHCR Spain has recently declared that the Spanish government has a backlog of pending cases reaching 19,000 asylum claims, presented in the past years mainly from nationals from Ukraine, Venezuela, Syria, Nigeria and Mali.²⁶

1.2. Prioritised examination and 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.²⁷

The urgent procedure is applicable in the following circumstances:²⁸

- (a) The application is manifestly well-founded;

²¹ Eurostat, *migr_asypenczm* (rounded). Information from OAR was not available at the time of writing.

²² Article 23(2) Asylum Law.

²³ Royal Decree 400/2012 of 17 February 2012 developing the basic organic structure of the Ministry of Interior.

²⁴ Article 24(3) Asylum Law.

²⁵ Information provided by OAR, 28 February 2017.

²⁶ Publico, 'España acumula 19.000 peticiones de asilo sin resolver, según ACNUR', 10 January 2017, available in Spanish at: <https://goo.gl/We8Gbp>.

²⁷ Article 25(4) Asylum Law.

²⁸ Article 25(1) Asylum Law.

- (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.²⁹ 3,088 applications were processed under the urgent procedure in 2016, out of which 3,088 at the border and 769 in CIE.³⁰

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.³¹

There was information from the European Migration Network suggesting that the urgent procedure is applied to Syrian asylum seekers in practice.³² However, this is not confirmed as a systematic procedure by lawyers working with asylum seekers.

1.3. Personal interview

Indicators: Regular Procedure: Personal Interview

1. Is a personal interview of the asylum seeker in most cases conducted in practice in the regular procedure? Yes No
 - ❖ If so, are interpreters available in practice, for interviews? Yes No
2. In the regular procedure, is the interview conducted by the authority responsible for taking the decision? 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

²⁹ Article 25(2) Asylum Law.

³⁰ Information provided by OAR, 28 February 2017.

³¹ Article 25(3) Asylum Law.

³² European Migration Network, *Annual Report 2014*, May 2015, 14.

from one Syrian national),³³ 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, but proper solutions were found.

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.

Since June 2016, the Ministry of Interior has changed subcontractors for the provision of interpreters to the OAR and all police offices that register asylum applications in the Spanish territory, for which NGOs do not provide services anymore. The contract was awarded to the Ofilingua translation private company. Since then, several shortcomings have been reported, mainly due to the fact that the agency does not have a specific focus on migration and asylum, for which it did not count on the needed expertise due to the sensible thematic of asylum and did not have the contacts of most of the needed interpreters by the OAR. Also, interpreters who were working before with NGOs are now paid much less and their working conditions have worsened, thereby potentially affecting the quality of their work.

Since the beginning of the EU **Relocation** scheme, asylum seekers from Greece and Italy's hotpots have been transferred to Spain. The process has brought to Spain nationalities of asylum seekers who cannot count on a community in the country, such as Iraqis, Kurds and Eritreans. Due to the absence of a sizeable community, there have been many difficulties in finding interpreters who speak Tigrinya, Pashtu or Sorani. This fact has caused many shortcomings and obstacles not only to asylum authorities but also to NGOs providing services and accommodation to asylum seekers.

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

1.4. Appeal

Indicators: Regular Procedure: Appeal

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

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

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

None of these two appeals have automatic suspensive effect, and none of them foresee a hearing of the applicant.³⁴

The first type of appeal should be submitted before OAR under the Ministry of Interior, within 1 month from the notification of refusal.³⁵ 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

³³ 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>.

³⁴ Article 29(1) Asylum Law.

³⁵ Article 29 Asylum Law.

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*),³⁶ 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.

1.5. Legal assistance

Indicators: Regular Procedure: Legal Assistance

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

Spanish legislation and Article 18(1)(b) of the Asylum 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.

In 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](#).

³⁶ Article 29(2) Asylum Law.

2. Dublin

2.1. General

Dublin statistics: 2016

Outgoing procedure			Incoming procedure		
	Requests	Transfers		Requests	Transfers
Total	10	2	Total	5,854	1,085
Germany	4	1	Germany	1,689	172
France	2	1	France	1,380	90
Sweden	2	0	Belgium	614	93

Source: OAR, Information provided on 28 February 2017.

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.³⁷

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.³⁸

Concerning the humanitarian clause, it appears that no case has met the relevant criteria on the basis of Article 17(2) of the Regulation. In 2016, Spain has not applied the humanitarian clause.³⁹

No particular procedure is applied for vulnerable Dubliners.

2.2. Procedure

Indicators: Dublin: Procedure

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

³⁷ European Commission, *Evaluation of the implementation of the Dublin III Regulation*, March 2016, 23.

³⁸ European Commission, *Evaluation of the implementation of the Dublin III Regulation*, March 2016, 20.

³⁹ Information provided by OAR, 28 February 2017.

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.

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. However, according to OAR an average duration of the Dublin procedure is not available for 2016.⁴⁰

2.3. Personal interview

The same rules as in the [Regular Procedure: Personal Interview](#) apply. According to the authorities, the interview is never omitted.⁴¹

2.4. Appeal

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

2.5. Legal assistance

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

2.6. Suspension of transfers

Indicators: Dublin: Suspension of Transfers

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

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

2.7. 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.⁴² In a ruling of 25 March 2016, the Council of

⁴⁰ Information provided by OAR, 28 February 2017.

⁴¹ European Commission, *Evaluation of the implementation of the Dublin III Regulation*, March 2016, 12.

⁴² Nantes Administrative Tribunal, Judgment No 1600828, 18 February 2016.

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.⁴³ The same court also suspended transfers to Spain in three other cases.⁴⁴

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.⁴⁵

3. Admissibility procedure

3.1. General (scope, criteria, time limits)

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

The **Border Procedure** only comprises an admissibility procedure, as the second phase of the process takes place regularly in Spanish territory.

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

- ❖ The regular procedure foresees an admissibility phase of maximum 1 month;⁴⁶
- ❖ The border procedure reduces the admissibility phase to 72 hours;⁴⁷ and
- ❖ For asylum claims made from detention within a CIE, the admissibility phase must be completed within 4 days.

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

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

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

A total 40 applications – excluding Dublin decisions – were dismissed as inadmissible in 2016.⁴⁸

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

3.2. Personal interview

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

⁴³ Belgian Council of Alien Law Litigation, Judgment No 164 808, 26 March 2016.

⁴⁴ Belgian Council of Alien Law Litigation, Judgment No 173 295, 17 August 2016; No 177 192, 27 October 2016; No 178 640, 28 November 2016.

⁴⁵ European Commission, *Evaluation of the implementation of the Dublin III Regulation*, March 2016, 61.

⁴⁶ Article 20(2) Asylum Law.

⁴⁷ Article 19(4) Asylum Law Regulation.

⁴⁸ Information provided by OAR, 28 February 2017.

3.3. Appeal

Indicators: Admissibility Procedure: Appeal

Same as regular procedure

1. Does the law provide for an appeal against an inadmissibility decision?
- | | | |
|--|--|--|
| ❖ If yes, is it | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| ❖ If yes, is it automatically suspensive | <input checked="" type="checkbox"/> Judicial | <input checked="" type="checkbox"/> Administrative |
| ○ <i>Re-examen</i> | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| ○ <i>Recurso de reposición</i> | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| ○ Judicial appeal | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |

The inadmissibility decision is appealable in two different ways:

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

Both types of appeals lack automatic suspensive effect.

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

3.4. Legal assistance

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

4. Border procedure (border and transit zones)

4.1. General (scope, time limits)

Indicators: Border Procedure: General

1. Do border authorities receive written instructions on the referral of asylum seekers to the competent authorities? Yes No
2. Can an application made at the border be examined in substance during a border procedure? Yes No
3. Is there a maximum time-limit for 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 for a first instance decision, and another 4 for appeal. The border procedure is applied to all asylum seekers who ask for international protection in airports, maritime ports and land borders. 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:⁴⁹

⁴⁹ Article 21(2)(b) Asylum Law.

- (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, 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,⁵⁰ 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.⁵¹

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,⁵² 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.⁵³

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.⁵⁴

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.⁵⁵

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.

⁵⁰ CEAR, *Las personas refugiadas en España y Europa 2015*, Capítulo IV: La admisión a trámite, available at: <http://bit.ly/1JZFqai>.

⁵¹ Supreme Court, Judgment 4359/2012 of 22 November 2013, available at: <http://bit.ly/21zAFty>.

⁵² Article 21(2) Asylum Law.

⁵³ Article 21(4) Asylum Law.

⁵⁴ Spanish Ombudsman, *Recomendacion a la Secretaria General de Inmigracion y Emigracion para adoptar las medidas que procedan para prestar un servicio de asistencia social a los solicitantes de asilo en el puesto fronteriz*, available in Spanish at: <http://bit.ly/1QCeRaH>.

⁵⁵ Article 21(3) Asylum Law.

In 2016, OAR rejected 954 asylum applications in the border procedure.⁵⁶

4.2. Personal Interview

Indicators: Border Procedure: Personal Interview

Same as regular procedure

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

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

4.3. Appeal

Indicators: Border Procedure: Appeal

Same as regular procedure

1. Does the law provide for an appeal against the decision in the border procedure?
 Yes No
❖ If yes, is it Judicial Administrative
❖ If yes, is it automatically suspensive
 o *Re-examen* Yes No
 o Judicial appeal Yes 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.⁵⁷

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.

⁵⁶ Informaiton provided by OAR, 28 February 2017.

⁵⁷ Article 21(4) Asylum Law.

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

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

4.4. Legal assistance

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.⁵⁸ 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.

5. 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](#).

D. Guarantees for vulnerable groups

1. Identification

Indicators: Special Procedural Guarantees

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

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

⁵⁸ 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>.

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.⁵⁹

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.

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,⁶⁰ 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,⁶¹ and of a Protocol on Measures Concerning Victims of Trafficking,⁶² 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

⁵⁹ Article 46(2) Asylum Law.

⁶⁰ Articles 34-35 Asylum Law.

⁶¹ National Plan for fighting against trafficking available at: <http://bit.ly/1S8g2IZ>.

⁶² Framework Protocol of 2011 against trafficking, available at: <http://bit.ly/1S8FPud>.

have been granted refugee status in Spain. The first accepted asylum claim was in 2009, and since then and up to 2016, only 6 women have been granted refugee status in Spain.

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.

The situation and OAR's attitude has started changing concerning this topic between the last months of 2016 and January 2017. In that period, 12 sub-Saharan women and their children were granted international protection.⁶³

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.⁶⁴ 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,⁶⁵ 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

⁶³ CEAR, 'España empieza a reconocer el derecho de asilo a las víctimas de trata', 16 January 2017, available in Spanish at: <https://goo.gl/NZDQcf>.

⁶⁴ Framework Protocol of 13 October 2014 on actions relating to foreign unaccompanied minors, available in Spanish at: <http://bit.ly/1WQ4h4B>.

⁶⁵ Chapter II, para 6 Protocol on Unaccompanied Minors.

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.

These tests have resulted in very problematic age determinations and have attracted many criticisms from international organisations,⁶⁶ NGOs, academics, as well as administration officers and the Spanish Ombudsman.⁶⁷ 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.⁶⁸ 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.⁶⁹ 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".⁷⁰

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.

⁶⁶ 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/1PVIXqe>. See also Save the Children Spain, *Menores no acompañados: Informe sobre la situación de los menores no acompañados en España*, 2005, available in Spanish at: <http://bit.ly/1peTpmj>.

⁶⁷ Ombudsman, *Ni ilegales ni invisibles*, Madrid, 2011.

⁶⁸ 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.

⁶⁹ Fundación Raíces, *Solo por estar solos*, Madrid 2014, available in Spanish at: <http://bit.ly/211pBFo>.

⁷⁰ 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>.

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.

No information is available on the number and outcome of age assessments ordered in 2016.⁷¹

2. Special procedural guarantees

Indicators: Special Procedural Guarantees

1. Are there special procedural arrangements/guarantees for vulnerable people?
 Yes For certain categories No
❖ If for certain categories, specify which: Victims of trafficking, unaccompanied minors

The Law does not foresee specific procedural guarantees for vulnerable asylum seekers, except for the special rule on unaccompanied 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 [Identification](#).

3. Use of medical reports

Indicators: Use of medical reports

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

Neither the Asylum 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.⁷²

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.⁷³

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

⁷¹ Information provided by OAR, 28 February 2017.

⁷² Article 24(2) Asylum Regulation.

⁷³ Articles 37(b) and 46(3) Asylum Law.

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

4. Legal representation of unaccompanied children

Indicators: Unaccompanied Children

1. Does the law provide for the appointment of a representative to all unaccompanied children?

Yes No

The guardianship system in Spain is governed by the Spanish Civil Code, which establishes the conditions and defines the actions foreseen in the following different situations: measures in situations of risk, measures in situations of homelessness/distress, guardianship and family reception. The competence of minors' protection departments corresponds to the Autonomous Community or city which is responsible for the appointment of a legal guardian to its public entity of children protection. The process of guardianship starts with the Declaration of *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.⁷⁴

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.

E. Subsequent applications

Indicators: Subsequent Applications

1. Does the law provide for a specific procedure for subsequent applications? Yes No

2. Is a removal order suspended during the examination of a first subsequent application?

❖ At first instance 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.

⁷⁴ Chapter VII, para 1(2) Protocol on Unaccompanied Minors.

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.

According to Eurostat, a total 185 subsequent applications were registered in 2016, thereby less than 1.2% of the total number of claims.

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 |

1. Safe third country

The concept of “safe third country” is defined with reference to Article 27 of the original Asylum Procedures Directive and where appropriate with an EU list of safe third countries, as a country where the applicant does not face persecution or serious harm, has the possibility to seek recognition as a refugee and, if recognised, enjoy protection in accordance with the Refugee Convention. The law also requires the existence of links in the form of a relationship with the safe third country, which make it reasonable for the applicant to be returned to that country.⁷⁵

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

2. Safe country of origin

The notion of “safe country of origin” is defined with reference to the conditions for “safe third countries” laid down in Article 20(1)(d) of the Asylum 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.

⁷⁵ Article 20(1)(d) Asylum Law.

G. Relocation

Indicators: Relocation

1. Number of persons effectively relocated since the start of the scheme: 810

Relocation statistics: 22 September 2015 – 31 December 2016

Relocation from Italy			Relocation from Greece		
	Received requests	Relocations		Received requests	Relocations
Total		144	Total		546
Eritrea			Syria		
Syria			Iraq		
			Eritrea		

Source: OAR, Information provided on 28 February 2017.

Spain has committed to relocating 9,323 asylum seekers from Italy and Greece under the Council Decisions 2015/1523 and 2015/1601.

As of the end of December 2016, Spain had pledged a total of 900 places for relocation, 150 of which for refugees relocated from Italy and 750 from Greece.⁷⁶ As of the end of 2016, 810 refugees had been relocated, while 202 persons arrived on 11 January 2017, 23 on 16 February and another 41 on 23 February 2017.⁷⁷ The main nationalities concerned in the relocation process are Syrians (526), Iraqis (138) and Eritreans (143), while one national of the Central African Republic has also been relocated.⁷⁸

The whole procedure usually has a duration of a month until the transfer. To date Spain has only rejected two cases for security reasons from Greece.⁷⁹ The Spanish government has prioritised the relocation of families with children and of unaccompanied minors,⁸⁰ while the last pledge for 400 persons made to Greece largely concerns vulnerable profiles, including persons with severe health needs.⁸¹

Upon arrival in Spain, asylum seekers are referred to the OAR for the registration of their asylum application. At the same time, they are immediately placed within the official reception system as all other asylum seekers, in equal conditions relating to duration of reception, conditions and level of financial allowances.

Relocated refugees receive the same treatment as all other asylum seekers and refugees in Spain. Their asylum claims are not officially being assessed under the urgent procedure, although in the practice they receive faster asylum decisions, receiving subsidiary protection a general rule. To date all relocated persons have received positive decisions on their applications.⁸² The entire relocation procedure, from registration in Italy or Greece until the final decision in Spain, has decreased to about 4 months.⁸³

⁷⁶ European Commission, *State of play relocation*, available at: <https://goo.gl/1oj6l3>.

⁷⁷ Information provided by OAR, 28 February 2017.

⁷⁸ *Ibid.*

⁷⁹ *Ibid.*

⁸⁰ Regarding this group, see UNHCR Spain, 'España: ACNUR recibe primer grupo de menores no acompañados reubicados desde Grecia', 23 September 2016, available in Spanish at: <https://goo.gl/kgC9xm>.

⁸¹ Information provided by OAR, 28 February 2017.

⁸² *Ibid.*

⁸³ *Ibid.*

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

1. Provision of information on the procedure

Indicators: Information on the Procedure

1. Is sufficient information provided to asylum seekers on the procedures, their rights and obligations in practice? Yes With difficulty No
- ❖ Is tailored information provided to unaccompanied children? Yes No

The Asylum Regulation, which gives practical application to the Asylum Law, makes specific reference to the provision of information to asylum seekers on their rights.⁸⁴ 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 online⁸⁵ 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.⁸⁶

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

In 2014, the Spanish Ombudsman in collaboration with UNHCR and Save the Children have published a leaflet specifically addressed to unaccompanied minors, with the aim of providing them useful information for their auto-identification as asylum seekers and to foster their protection. Unfortunately, the document is not available in electronic format as of the end of 2016.

2. Access to NGOs and UNHCR

Indicators: Access to NGOs and UNHCR

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

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

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

⁸⁴ Article 5(1) Asylum Regulation.

⁸⁵ The leaflet is available at: <http://bit.ly/1MfeUxt>.

⁸⁶ Article 5(2) Asylum Regulation.

I. Differential treatment of specific nationalities in the procedure

Indicators: Treatment of Specific Nationalities

1. Are applications from specific nationalities considered manifestly well-founded? Yes No
❖ If yes, specify which:
2. Are applications from specific nationalities considered manifestly unfounded?⁸⁷ 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 for asylum-seeking nationals of **Ivory Coast, Cameroon, Mali, Palestine occupied territories** and **Ukraine**. Organisations working with refugees⁸⁸ and the Spanish Ombudsman⁸⁹ 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. Applications by Ukrainian nationals were the largest backlog of cases at the end of 2016, with 5,555 pending claims.⁹⁰

Applicants from **Venezuela** have also seen their applications frozen since 2015 on the basis of the aforementioned criteria, but since last months the OAR has started assessing their claims. At the end of 2016, 4,435 claims by Venezuelan nationals were pending at first instance.⁹¹ **Chinese** applicants are also seeing delays, as very few claims have been assessed since 2015.

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.

⁸⁷ Whether under the “safe country of origin” concept or otherwise.

⁸⁸ CEAR, *Report on international protection in Spain and Europe 2015*, 61.

⁸⁹ Spanish Ombudsman, *El asilo en España: La protección internacional y los recursos del sistema de acogida*, June 2016, available in Spanish at: <https://goo.gl/rJrg3k>, 64.

⁹⁰ Eurostat, migr_asypenczm (rounded).

⁹¹ Eurostat, migr_asypenczm (rounded).

Reception Conditions

A. Access and forms of reception conditions

1. Criteria and restrictions to access reception conditions

Indicators: Criteria and Restrictions to Reception Conditions

- 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
- Is there a requirement in the law that only asylum seekers who lack resources are entitled to material reception conditions?

<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
---	-----------------------------

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

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

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

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

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

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

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

In September 2015, a Royal Decree was adopted in order to increase the capacity of the national reception system and guarantee access to all asylum seekers,⁹² as it was facing difficulties responding to the number of asylum seekers that were applying for international protection in Spain. The Decree also introduced the possibility to host asylum seekers in hotels for a 30-day period. This initial phase, called "Assessment and referral phase", is now officially part of the reception scheme. Persons who want to apply for asylum are provided with the information they need on the whole process and their basic necessities are covered until their referral to the first asylum reception phase.

During this phase asylum seekers are placed in hostels and hotels until they are referred to their asylum place within an asylum reception centre or private housing. Expenses covered by the system include accommodation, transport, hygiene and per diems).

Since the 2015 increase of available places for refugees' reception, the Spanish government has reformed the system regarding financing for NGOs service providers for asylum seekers and refugees. Since then, 5 more NGOs have been included within the official asylum reception system as financing addressed to this sector has substantially increased. The reception system counts a total of 4,104 places for asylum seekers as of December 2016.

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 2016 (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.

All asylum seekers hosted in the first phase of asylum temporary reception are given the amount of 51.60 € per month per person, 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

⁹² 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.

receipt of the expense when it regards: public transport, clothing, health related expenses, education and training related expenses, administration proceedings related expenses, translation and interpretation fees.

During the second phase of reception, asylum seekers are not provided with accommodation anymore, they live in private apartments and housing. They receive no pocket money, although expenses for the rent are covered by the asylum system. During the last phase, asylum applicants receive financial support for punctual things.

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

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

3. Reduction or withdrawal of reception conditions

Indicators: Reduction or Withdrawal of Reception Conditions

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

Article 33 of the Asylum 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.

Refugees and asylum seekers can have their reception conditions reduced in case they do not participate and collaborate in the activities scheduled for their social and labour integration. In both cases beneficiaries sign a "social contract" where they commit to participate in these measures and accept this as a requirement to benefit from the different sources of support provided.

There have been reported cases of arbitrary or non-motivated sanctions and punishments in the **Melilla** CETI, where motivations or criteria for withdrawal of reception conditions are not clear.⁹³

⁹³ Amnesty International, *El asilo en España: Un sistema de acogida poco acogedor*, May 2016, available in Spanish at: <https://goo.gl/G1YtPi>, 37.

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](#)).

4. Freedom of movement

Indicators: Freedom of Movement

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

In the Spanish system, asylum seekers are placed in the reception place which better fits their profile and necessities. A case by case assessment is made 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.

A special case worth mentioning is the situation of asylum seekers that have made their asylum claim in **Ceuta** or **Melilla**. Due to the special regime of the two autonomous cities, these applicants have to wait for the decision regarding the admissibility of their claim in order to be transferred to the Spanish peninsula and its asylum reception system. Limitations are also applied to asylum applicants who pass the admissibility phase, who are entitled to free of movement in the rest of the Spanish territory. This limitation has been declared unlawful by Spanish courts,⁹⁴ but the situation has not completely changed. Although since 2015 transfers to the peninsula have been sped up, the criteria applied by the competent authority are still not transparent and clear.

In the meantime, applicants stay within the CETI, and they are not free to move outside the two cities; also due to their geographical location. This fact affects asylum claims made by potential applicants, as most informed persons will wait to be transferred to the peninsula as “economic migrants” and will lodge their asylum request from there in order to benefit from greater freedom of movement and not stay confined within the two enclaves. Although since 2015 transfers to the peninsula have been sped up, there is a general lack of transparency concerning the criteria followed by the CETI for transferring people to the Spanish peninsula, which has been repeatedly denounced and criticised by human rights organisations.

⁹⁴ High Court of Andalusia, Decision STSJ AND 14042/2010, 21 December 2010; High Court of Madrid, Decision STSJM 490/2015, 11 May 2015.

B. Housing

1. Types of accommodation

Indicators: Types of Accommodation

1. Number of reception centres:⁹⁵ 4
2. Total number of places in the reception system: 4,104
 - ❖ Refugee reception centres (CAR) 420
 - ❖ NGO centres and private accommodation 3,684
3. Type of accommodation most frequently used in a regular procedure:
 - Reception centre Hotel or hostel Emergency shelter Private housing Other
4. Type of accommodation most frequently used in an urgent procedure:
 - Reception centre Hotel or hostel Emergency shelter Private housing Other

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

The Spanish reception system is a mixed system which combines:

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

There are 2 Migrant Temporary Stay Centres (CETI) in the autonomous cities of Ceuta and Melilla. This type of centre hosts any migrant or asylum seeker that enters the Spanish territory undocumented, either by land or by sea and arrives in the **Ceuta** and **Melilla** enclaves.

Every third country national who enters irregularly the Spanish territory through the two cities is placed in one of the two centres before being moved to the peninsular territory as an asylum seeker or an economic migrant. At the end of December 2016, the capacity of the CETI was 512 places in **Ceuta** and 796 in **Melilla**, although they are frequently found to be overcrowded.

Capacity and occupancy of CETI		
CETI	Capacity	Occupancy at 31 December 2016
Ceuta	512	1,109
Melilla	796	900
Total	1,308	2,009

The typologies of reception places vary depending on the institution or entity that manages the centre. The reception system relies on places within big reception centres and apartments, but some reception places are in urban neighbourhoods while other are located in rural areas. The different types of available accommodation also differ from the point of view of provided services and spaces. The total capacity of the asylum reception system as at December 2016 is 4,104 places, 3,143 of which were occupied on the same date.

The Ministry directly manages the Refugee Reception Centres (CAR), part of the first phase reception centres for asylum seekers. There are a total of 4 CAR on the Spanish territory, as seen below. Moreover, reception places for asylum seekers are available inside the reception centres and private

⁹⁵ 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.

apartments managed by NGOs, funded by the Ministry. Until 2014, only 3 NGOs managed these reception places: Red Cross, CEAR and Accem. The Royal Decree adopted in September 2015 to extend the reception system capacity granted authorisation to 3 more: Dianova, CEPAIM and La Merced. In addition, it included a previous phase of reception in hostels and hotels during a maximum of 30 days. In 2016, more organisations were enlisted to provide accommodation: 4 more organisations were subcontracted by the Ministry of Employment to manage new reception places for asylum seekers and refugees in Spain.

Capacity and occupancy of the asylum reception system		
CAR	Capacity	Occupancy at 31 December 2016
Alcobendas	82	72
Mislata	122	105
Sevilla	120	107
Vallecas	96	90
Total CAR	420	374
NGO centres / private housing	Capacity	Occupancy at 31 December 2016
Accem	856	745
CEAR	865	779
Red Cross	1,216	1,032
La Merced	26	21
CEPAIM	300	239
Dianova	192	175
APIP-ACAM	85	52
Red Acoge	86	67
Pro Vivienda	56	31
Adoratrices	2	2
Total NGO centres / private housing	3,684	3,143
Grand total	4,104	3,413

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.

2. Conditions in reception facilities

Indicators: Conditions in Reception Facilities

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

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

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

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

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

The usual length of stay for asylum seekers inside the reception facilities is the maximum stay admitted, which is 6 months. This is due to the fact that the system is divided into 3 main phases that gradually prepare the person to live autonomously in the hosting society. Following the 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. In addition, it should be note that asylum applicants must complete the first reception phase within asylum facilities in order to access the support foreseen in the following phases; the completion of the first phase is mandatory.

Reception conditions in CETI

In the CETI in Ceuta and Melilla, situations of overcrowding lead asylum seekers and migrants to substandard reception conditions. At the end of December 2016, 1,109 persons were hosted in Ceuta's CETI and 900 in Melilla's CETI, far beyond their respective capacity. Severe overcrowding was also reported in October 2015, Melilla was hosting 1,156 persons,⁹⁶ and 2014, when the average occupancy rates were 638 in Ceuta and 1,338 in Melilla,⁹⁷ even though the respective capacities of the CETI are 512 and 480.

The two CETI are reception facilities that receive the most criticism from organisations and institutions that monitor migrants' and refugees' rights. In 2016, Amnesty International,⁹⁸ UNICEF⁹⁹ and the Spanish Ombudsman¹⁰⁰ published reports in which they denounced deficiencies in the conditions concerning the two centres. Besides shortcomings due to their usual overcrowding, attention was paid to the fact that CETI do not provide satisfactory conditions for family units and overall for families with minors. In fact, there are no available places for family units, due to which families are separated and children stay with only one of their parents. In both centres, the shortage of interpreters and psychologists has also been criticised.¹⁰¹

⁹⁶ Amnesty International, *Fear and Fences: Europe's approach to keeping refugees at bay*, EUR 03/2544/2015, November 2015, 23.

⁹⁷ 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.

⁹⁸ Amnesty International, *El asilo en España: Un sistema de acogida poco acogedor*, May 2016, available in Spanish at: <https://goo.gl/G1YtPi>, 37.

⁹⁹ UNICEF, *Acogida en España de los niños refugiados*, 2016, available in Spanish at: <https://goo.gl/SaBZgo>.

¹⁰⁰ Spanish Ombudsman, *El asilo en España: La protección internacional y los recursos del sistema de acogida*, June 2016, available in Spanish at: <https://goo.gl/rJrg3k>, 64.

¹⁰¹ Amnesty International, *Fear and Fences: Europe's approach to keeping refugees at bay*, EUR 03/2544/2015, November 2015, 23.

C. Employment and education

1. Access to the labour market

Indicators: Access to the Labour Market

1. Does the law allow for access to the labour market for asylum seekers? Yes No
❖ If yes, when do asylum seekers have access the labour market? 6 months
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

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

Once the 6-month period is over, applicants may request the renewal of their Red Card (“*tarjeta roja*”), as the first version does not state this entitlement, in which it will appear that they are authorised to work in Spain with the term of validity of the document that has been issued.¹⁰²

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.¹⁰³

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

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

¹⁰² Article 32 Asylum Law; Article 13 Asylum Regulation.

¹⁰³ See the dedicated website at: <http://www.redariadna.org/index.php>.

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

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

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

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

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

In addition, it should be reported the situation of a wide group of minors living in the streets of Melilla, who do not have access to basic social services to whom they are entitled. These adolescents, mainly from Morocco and Algeria, are under the guardianship of the Melilla's Autonomous administration, as they entered Spain as irregular unaccompanied minors or unaccompanied asylum seekers.

Due to the conditions of the Melilla's Centre of Protection of Minors in which they should live because they are under the administration's custody, they prefer living in the city's street and trying to reach the Spanish Peninsula hiding in transport.

D. Health care

Indicators: Health Care

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

Spanish law foresees full access to the public health care system for all asylum seekers.¹⁰⁴ 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.

¹⁰⁴ Article 15 Asylum Regulation.

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,¹⁰⁵ 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.

E. Special reception needs of vulnerable groups

Indicators: Special Reception Needs

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

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

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

In addition, based on vulnerability factors referred to under the Asylum Law, most vulnerable profiles are allowed to longer reception compared to the normal 18-month period. For vulnerable profiles, the first phase can last until 9 months, the second until 11 and the third phase until 4, thereby totalling 2 years of reception.

Nonetheless, available resources have a generalised approach, and they do not cover needs necessities presented by the most vulnerable asylum applicants, who are referred to external and more specialised services in case they need them. The Spanish reception system in fact does not provide special reception places addressed to asylum applicants such as victims of trafficking (with the exception only 2 places made available by the Adoratrices Project), victims of torture or persons with mental disorders.

NGO La Merced Migraciones was for a long time the only specialised organisation in charge of *ad hoc* reception for unaccompanied minors seeking asylum, but no longer provides such services. Since 2016 there are no specialised resources for unaccompanied asylum seeking-children, and they are hosted in general centers for unaccompanied minors.

The generalised approach of the asylum reception system has been criticised by several organisations in 2016, including Amnesty International,¹⁰⁶ UNICEF¹⁰⁷ and the Spanish Ombudsman,¹⁰⁸ as it fails to provide adequate responses to the most vulnerable cases.

¹⁰⁵ See the dedicated website at: <http://www.accemarbeyal.com/>.

¹⁰⁶ Amnesty International, *El asilo en España: Un sistema de acogida poco acogedor*, May 2016, available in Spanish at: <https://goo.gl/G1YtPi>, 37.

¹⁰⁷ UNICEF, *Acogida en España de los niños refugiados*, 2016, available in Spanish at: <https://goo.gl/SaBZgo>.

¹⁰⁸ Spanish Ombudsman, *El asilo en España: La protección internacional y los recursos del sistema de acogida*, June 2016, available in Spanish at: <https://goo.gl/rJrg3k>, 64.

F. Information for asylum seekers and access to reception centres

1. Provision of information on reception

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.

2. Access to reception centres by third parties

Indicators: Access to Reception Centres

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

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

G. Differential treatment of specific nationalities in reception

Persons held within the CETI in **Ceuta** and **Melilla** are not free to move outside the two cities, also due to their geographical location. In order to be transferred to the peninsula applicants and migrants have to wait for the permission of the Ministry of Employment and Social Security, which manages the centres.

There is a general lack of transparency concerning the criteria followed by the CETI for transferring people to the Spanish peninsula, which has been repeatedly criticised and criticised by human rights organisations. In particular, organisations denounce discriminatory treatment based on countries of origin for the issuance of permits to allow transfer to the peninsula. **Sub-Saharan** nationals are one of the most affected groups facing delays before transfers to the peninsula, while **Syrian** nationals are now rapidly moved to the Spanish territory.

Detention of Asylum Seekers

A. General

Indicators: General Information on Detention

1. Total number of persons detained in 2016:	7,597
2. Number of persons in detention at the end of 2016:	1,240
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 2016, the asylum seekers in these centres rose to 10.1%, a slight increase compared to previous years.¹⁰⁹ In 2016, 769 persons applied from CIE,¹¹⁰ out of a total 7,597 persons detained.

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 Aliens 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;¹¹¹ 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.¹¹²

The quality of the asylum procedure when the application is made from detention is affected mostly in relation to access to information on international protection, which is not easily available, and access to legal assistance, as communication is not as easy as for asylum seekers at liberty. In addition, several shortcomings are due to the urgent procedure to which applicants are subject, as it hinders access to appeals once the application is rejected, and a subsequent order of removal is applied.

¹⁰⁹ See figures at CEAR, *Report on international protection in Spain in Europe 2015*, 72.

¹¹⁰ Information provided by OAR, 28 February 2017.

¹¹¹ Article 62(6) Aliens Law.

¹¹² 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: ¹¹³ | <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;¹¹⁴
- (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;¹¹⁵
- (3) When a notification for expulsion has been issued and the non-national fails to depart from the country within the prescribed time limit.¹¹⁶

Accordingly, asylum seekers are not detained during the Dublin procedure.¹¹⁷

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.¹¹⁸ 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.

¹¹³ Accommodation in airport transit zone with very restricted freedom of movement.

¹¹⁴ Articles 53-54 Aliens Law.

¹¹⁵ Article 58(6) Aliens Law.

¹¹⁶ Article 63(1)(a) Aliens Law.

¹¹⁷ European Commission, *Evaluation of the implementation of the Dublin III Regulation*, March 2016, 69.

¹¹⁸ 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,¹¹⁹ 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.

The Court of Justice of the European Union (CJEU) delivered its judgment in Case C-38/14 *Subdelegación del Gobierno en Gipuzkoa — Extranjería v Samir Zaizoune* on 23 April 2015. The judgment concerned the case of an undocumented migrant originally from Morocco and residing in Spain. Following his arrest by Spanish national authorities on 15 July 2011, Mr Zaizoune was issued with an expulsion order accompanied by a re-entry ban for the period of five years on 19 October 2011. The expulsion order was subsequently replaced by a fine by a Spanish court. In its judgment, the CJEU ruled that Member States cannot impose a fine on non-EU nationals unlawfully present on their territory rather than removing them, finding that such measures are at odds with the objectives of the Return Directive.

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 of trafficking.

Nonetheless, when they are identified as minors or victims while they are in detention, they are released and handled to the competent protection systems.

¹¹⁹ Article 61 Aliens Law.

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? | 4 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. The maximum detention duration for an asylum seeker who has applied for asylum from the CIE is the 4-day admissibility phase, if they are admitted they will continue their asylum claim outside detention.

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)? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| 2. If so, are asylum seekers ever detained in practice in prisons for the purpose of the asylum procedure? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |

There are 7 *Centros de Internamiento de Extranjeros* (CIE).¹²⁰ These facilities are located in:

CIE and detentions ordered: 2016		
CIE	Detentions ordered in 2016	Occupancy at end 2016
Piñera, Algeciras	3,101	58
Zona Franca, Barcelona	639	203
Barranco Seco, Canary Islands	633	92
Aluche, Madrid	1,526	183
Sangonera la Verde, Murcia	654	80
Hoya Fría, Tenerife	215	4
Zapadores, Valencia	829	0
Total	7,597	1,240

Source: Ministry of Interior

CIE had reached total occupancy all over the territory at the end of December 2016. In fact the last arrived migrants of the year could not be detained in the CIE for expulsion and were directed to the reception foreseen under the Humanitarian System.

Applicants at borders are also retained in *ad hoc* facilities during the admissibility phase and in any case for no more than 7 days.

¹²⁰ For more information on CIE, see El Español, 'Efecto llamada' en los CIEs: 98 fugas y tres motines en dos meses', 29 November 2016, available in Spanish at: <https://goo.gl/3gLs3C>; El Diario, 'Los CIE, en cifras', 14 June 2015, available at: <http://bit.ly/1FirzFK>.

These facilities have been visited and monitored by the Spanish Ombudsman,¹²¹ and at present time are not the object of severe criticism. The conditions are extremely basic, and the lack of natural light within facilities has been denounced, but no other 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.¹²²

2. Conditions in detention facilities

Indicators: Conditions in Detention Facilities			
1. Do detainees have access to health care in practice?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	
❖ If yes, is it limited to emergency health care?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	
2. Is access to detention centres allowed to			
❖ Lawyers:	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Limited	<input type="checkbox"/> No
❖ NGOs:	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Limited	<input type="checkbox"/> No
❖ UNHCR:	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Limited	<input type="checkbox"/> No
❖ Family members:	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Limited	<input type="checkbox"/> No

The CIE Regulation,¹²³ 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,¹²⁴ and by several organisations of the third sector, academic institutions¹²⁵ 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.¹²⁶

¹²¹ 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>.

¹²² Spanish Ombudsman, *Annual Report 2015*, available in Spanish at: <http://bit.ly/1RsyBOW>, 54.

¹²³ 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.

¹²⁴ See e.g. <http://bit.ly/1MgSHz2>.

¹²⁵ 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.

¹²⁶ El País, ‘El Supremo anula cuatro artículos de la norma de los Centros de Internamiento’, 27 January 2015, available at: <http://bit.ly/1uAbrvf>.

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. CIE have been the object of high public, media and NGO attention during 2016, due to several violent episodes that took place simultaneously during the months of October and November 2016. In fact, the Madrid CIE of **Aluche** witnessed in October the riot of around 50 detained men who during 11 hours locked themselves on the rooftop of the centre. The episode had a sad end as, after being forced to descend from the rooftop, the group comprising of Moroccan and Algerian nationals has been expelled to their respective countries of origin, despite criticism and protests by NGOs and civil society members. In addition to this episode, 17 detainees escaped in August and 15 more in the month of November 2016.

A few days following these episodes, a group of detained persons in the CIE of **Barcelona** also rioted for a couple of hours. The centre has also registered two other unsuccessful riots. During the same period, 67 people escaped on 5 October 2016 from the CIE in **Murcia**, another 5 on 31 October and another 9 on 14 November; the latter occurred during a riot.

The **Barcelona** CIE has also been protagonist of conflicts between the city administration and the Ministry of Interior after the announcement by the Barcelona Mayor concerning the definitive closure of the centre due to the lack of appropriate license for its establishment.¹²⁷ It should be noted that the centre had previously been closed from November 2015 to May 2016 for maintenance works. Nonetheless, the Secretary of State appealed the mayor's notification and the centre has been reopened.

The latest information published on the conditions inside detention centres stems from the visits conducted to the CIE by the Spanish Ombudsman, within its responsibilities as Mechanism for the Prevention of Torture. The findings, facts and recommendations concerning the visited CIE are available in its last Annual Report 2015.¹²⁸

The CIE Regulation governs the provision of services for sanitary assistance,¹²⁹ 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.¹³⁰ 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,¹³¹ and have access to open air spaces.¹³²

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.

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

¹²⁷ El País, 'Interior reabre el CIE de Barcelona pese a la orden de cierre de Colau', 7 July 2016, available in Spanish at: <https://goo.gl/R0mDLn>.

¹²⁸ See the Annexes to the report at: <https://goo.gl/oZcVrf>.

¹²⁹ Article 14 CIE Regulation.

¹³⁰ Articles 39-47 CIE Regulation.

¹³¹ Article 42 CIE Regulation.

¹³² Article 40 CIE Regulation.

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.¹³³

Against decisions on detention, the third-country national can lodge appeals of reform, appellation and complaint¹³⁴ under the Criminal Procedure Law.¹³⁵ 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.

¹³³ Article 62 Aliens Law.

¹³⁴ Articles 216 and 219 Code of Criminal Procedure.

¹³⁵ 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 adoption of the CIE Regulation in 2014 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.

E. Differential treatment of specific nationalities in detention

Organisations working with migrants in irregular situation or in the area of immigration detention have reported that most detained migrants are from Maghreb and sub-Saharan countries. From the Annexes to the report published by the Spanish Ombudsman,¹³⁶ acting as National Mechanism against torture, it results that the great majority of detained migrants in 2015 come from **Morocco, Algeria, Guinea, Ivory Coast and Cameroon**.

The over-representation in detention of people from Maghreb or sub-Saharan Africa is explained by the fact that identity checks conducted by police are still mostly based on ethnic and racial characteristics. The discriminatory attitude and incidents within the Spanish have been the subject of several reports and critiques.¹³⁷

¹³⁶ Ombudsman, *Informe anual 2015: Mecanismo nacional de prevención de la tortura*, July 2016, available in Spanish at: <http://bit.ly/2ctvjzc>.

¹³⁷ For an example from previous years, see Amnesty International, 'Spain: Discrimination condoned by the authorities', 13 December 2011, available at: <http://bit.ly/2kps3so>.

A. Status and residence

1. Residence permit

Indicators: Residence Permit

- | | |
|--|---------|
| 1. What is the duration of residence permits granted to beneficiaries of protection? | |
| ❖ Refugee status | 5 years |
| ❖ Subsidiary protection | 5 years |
| ❖ Humanitarian protection | 1 year |

Both refugees and beneficiaries of subsidiary protection benefit from a residence permit of 5 years once they are granted status.¹³⁸ The responsible authority for issuing the residence permit is the Police of Aliens' Law and Documentation. There are no difficulties systematically encountered in the issuance and renewal of those residence permits in practice.

The issuance of residence permits for humanitarian reasons is foreseen under the Foreigners Law. This residence permit has 1 year duration. The Law foresees the possibility to request this kind of permit under the following conditions:¹³⁹

- Being a victim of any of the offences collected under Articles 311 to 315, 511.1 and 512 of the Criminal Code, concerning offences against the rights of workers;
- Being the victim of crimes based on racist, anti-Semitic or other kind of discrimination relating to ideology, religion or beliefs of the victim, the ethnic group, race or nation to which they belong, their sex or sexual orientation, or disease or disability;
- Being a victim of crime by domestic violence, provided that a judicial decision has established the status of victim; or
- Having a severe disease requiring health care specialist, not accessible in the country of origin, where the interruption of treatment would pose a serious risk to the health or life.

2. Long-term residence

Indicators: Long-Term Residence

- | | |
|---|---------------|
| 1. Number of long-term residence permits issued to beneficiaries in 2016: | Not available |
|---|---------------|

The long-term residence permit in Spain is governed by the Aliens Law and can be obtained when the following conditions are fulfilled:¹⁴⁰

- Having legal residence;
- Not having non entry bans applied;
- Not having criminal penalties;
- Five years' legal and continuous residence within Spanish territory;
- Five years' residence as holder of the EU Blue Card in the European Union, proving that the two last years occurred in Spanish territory;
- Being a beneficiary resident of a contributory pension;
- Being a resident beneficiary of a pension of absolute permanent disability or severe disability, tax, including modality consisting of a lifetime, not capital income, sufficient for its continued existence;
- Being a resident and being born in Spain, and upon the reaching the age of majority having resided in Spain legally and continuously for at least the last three years consecutively;
- Spanish nationals who have lost the Spanish nationality;
- Being a resident that, upon reaching the age of majority, has been under the guardianship of a Spanish public entity during the last preceding five years;
- Being stateless or having refugee or beneficiary of subsidiary protection;

¹³⁸ Article 34(3) Aliens Regulation.

¹³⁹ Article 126 Aliens Regulation.

¹⁴⁰ Article 148 Aliens Regulation.

- Having contributed significantly to the economic, scientific or cultural advancement of Spain, or the projection of Spain abroad. (In these cases, it will be the Ministry of employment and Social security holder the granting of long-term residence authorization, following a report from the head of the Ministry of the Interior).

Refugees and beneficiaries of subsidiary protection can request the issuance of a long term residence permit after the 5-year duration of the refugee or subsidiary protection permit when they meet the aforementioned legal requirements.

The application procedure must be started in the Aliens Offices of the territorial administration in which the applicant has taken up residence. The whole process has a duration of 3 months, after which the administration has to give an answer. There are no systematic or generalised obstacles to obtaining long-term residence permits.

3. Naturalisation

Indicators: Naturalisation		
1. What is the waiting period for obtaining citizenship?		
❖ Refugee status		5 years
❖ Subsidiary protection		10 years
2. Number of citizenship grants to beneficiaries in 2016:		Not available

There are several criteria foreseen by the law for obtaining the Spanish nationality:

- ❖ Spaniards of origin: applicants born from a Spanish national mother or father, or applicants born from foreign parents but who have at least one parent was born in Spain.
- ❖ Residence in Spain: which vary depending on the nationality and status of the applicant. These are:
 - 5 years for **refugees** and 10 years beneficiaries of **subsidiary protection**;
 - 2 years for nationals of Spanish American countries, Andorra, Philippines, Guinea, Portugal or Sefardies;
 - 1 year for applicants who were born in Spain and those who were under public guardianship for a period of 2 years, applicants married to Spanish nationals for at least 1 year, widows of Spanish nationals, and Spanish descendants.
- ❖ Possession: applicants of Spanish citizenship during 10 years continuously;
- ❖ Option: applicants who are or have been under Spanish custody (*patria potestad*) or with Spanish nationals or born parents.

The management of the naturalisation process is undertaken by the Directorate-General for Registers and Notaries. The procedure is exclusively administrative and Civil Registers participate in the final oath taken by the naturalised person.

The application is submitted through an online platform, a website which will allow starting the process immediately with the request of the necessary documents and the assignment of a registration number.

Another new feature included in October 2015 in the procedure of acquisition of Spanish nationality by residence is the replacement of the interview on integration with two examinations or tests to be carried out at the Headquarters of the Cervantes Institute. The first test assesses the knowledge of the Spanish language (except for countries that are already Spanish speaking). The second test is on knowledge of constitutional and socio-cultural aspects of the country (CCSE). This second test consists of 25 questions, 13 of which must be correct to pass the exam. Neither disabled persons nor children go through these tests. 5 calls are scheduled for the taking of the first test and 10 for the second.

The CCSE tests have been subject to several critiques, and often sarcasm, due to the type of information that can be asked, as it seems not to be relevant to assessing the degree of integration of the applicant, and as many organisations and newspapers have pointed out that most of the Spanish population would not know to answer either.¹⁴¹

Costs foreseen under the whole procedure include 100€ tax for naturalisation, plus 80€ and 120€ for taking the first and second exam.

The whole naturalisation process is known to be quite tedious, and overall very long. The average duration of the process reaches a minimum of 1.5 years. Despite the recent measures taken by the government, the system still faces serious backlogs, with 300,000 applications still left to be assessed as of October 2016, 180,000 of which still have not been even opened.¹⁴²

4. Cessation and review of protection status

Indicators: Cessation

1. Is a personal interview of the asylum seeker in most cases conducted in practice in the regular procedure? Yes No
2. Does the law provide for an appeal against the first instance decision in the cessation procedure? Yes No
3. Do beneficiaries have access to free legal assistance at first instance in practice? Yes With difficulty No

The Asylum Law and Regulation foresee the cessation of **refugee status** in the following cases:¹⁴³

- a. When the refugee expressly so requests;
- b. When the refugee has obtained Spanish nationality;
- c. When the refugee avails, again, voluntarily, to the protection of the country of nationality;
- d. When the refugee has voluntarily established him or herself in another country, producing a transfer of responsibility;
- e. When, after a fundamental change of circumstances in the given country, it is considered that have disappeared the causes that justified the recognition of its nationals, or of a determined social group, as refugees, the Inter-Ministerial Commission of Asylum and Refuge (CIAR) after consulting UNHCR, may agree the cessation of the status.

This provision shall be communicated at the time of renewal of the residence permit. The refugee will be given a deadline to formulate allegations that they deem appropriate. Under the latter situation, continuation of residence permit under Aliens Law will be allowed when the person concerned alleges reasonable justification to stay in Spain.

Similar grounds are foreseen for the cessation of **subsidiary protection**.¹⁴⁴

Cessation is not applied to any specific group in practice. In the case of changes in the circumstances of their countries of origin, refugees and beneficiaries of subsidiary protection can ask for a long-residence permit in order to remain in Spain, which is granted without many problems in practice.

Procedure for cessation

The process for cessation foreseen is the same for the withdrawal of the protection status, and it is ruled in Article 45 of the Asylum Law. The initiative is taken in both cases by the OAR.¹⁴⁵ The beneficiary will

¹⁴¹ See the following articles for reference: <https://goo.gl/mBWbj6>, <https://goo.gl/EhDh9R>, <https://goo.gl/VLyFXz>.
¹⁴² Cadena Ser, 'Más de 300.000 extranjeros esperan para obtener la nacionalidad española', 12 October 2016, available in Spanish at: <https://goo.gl/O6nazA>.

¹⁴³ Article 42 Asylum Law; Article 37 Asylum Regulation.

¹⁴⁴ Article 43 Asylum Law.

be informed in writing of the start of the process and its motivation and he or she will be heard for his or her submissions on the case. UNHCR provides the necessary information for the OAR to take the decision. Information is under no circumstance provided by the persecuting authorities, nor would the process put the beneficiary in danger in any way.¹⁴⁶ Finally, the OAR's decision is submitted to the CIAR, which is responsible for taking the final decision concerning withdrawal or cessation.¹⁴⁷

The decision will have to be notified to the beneficiary in a time limit of 6 months since the start of the procedure.¹⁴⁸ When this time limit is not respected, the process procedures no effects on the beneficiary's protection status. If a decision is taken, the beneficiary can lodge an initial administrative appeal face to the Ministry of Interior or directly lodge a judicial appeal against the notified decision.¹⁴⁹

5. Withdrawal of protection status

Indicators: Withdrawal

1. Is a personal interview of the asylum seeker in most cases conducted in practice in the regular procedure? Yes No
2. Does the law provide for an appeal against the withdrawal decision? Yes No
3. Do beneficiaries have access to free legal assistance at first instance in practice? Yes With difficulty No

The withdrawal of protection status is foreseen by Article 44 of the Asylum Law in the following cases, where:

- a. Any of the exclusion clauses provided in Articles 8, 9, 11 and 12 of the Asylum Law apply;
- b. The beneficiary has misrepresented or omitted facts, including the use of false documentation, which were decisive for the granting of refugee or subsidiary protection status;
- c. The beneficiary constitutes, for well-founded reasons, a danger to the security of Spain, or who, having been convicted by final judgment for offence serious, constitutes a threat to the community.

The withdrawal of international protection leads to the immediate application of existing rules in matters of aliens and immigration law, and when appropriate, expulsion proceedings.

The Asylum Law also prohibits any revocation or eventual expulsion which may lead to the return of the beneficiary to a country in which exist danger for life or freedom or in which he or she can be exposed to torture or to inhuman or degrading treatment or in which lacks of protection effective against return to the persecuting country.¹⁵⁰

The process for the withdrawal of protection status is the same as that described in the [Cessation and Review](#) section.

¹⁴⁵ Article 45(1) Asylum Law.

¹⁴⁶ Article 45(2) Asylum Law.

¹⁴⁷ Article 45(4) Asylum Law.

¹⁴⁸ Article 45(7) Asylum Law.

¹⁴⁹ Article 45(8) Asylum Law.

¹⁵⁰ Article 44(8) Asylum Law.

B. Family reunification

1. Criteria and conditions

Indicators: Family Reunification

1. Is there a waiting period before a beneficiary can apply for family reunification? Yes No
 - ❖ If yes, what is the waiting period?
2. Does the law set a maximum time limit for submitting a family reunification application? Yes No
 - ❖ If yes, what is the time limit?
3. Does the law set a minimum income requirement? Yes No

The right to family unity is established in Articles 39-41 of the Asylum Law. The law reflects two aspects which add to and comply with this right: “Extension” of the international protection status of the beneficiary to his or her family (*Extensión familiar del derecho de asilo o de la protección subsidiaria*),¹⁵¹ and “Family reunification” (*Reagrupación familiar*).¹⁵² The applicant can opt for any of these, except for cases where the family has different nationality. In these cases, it will be mandatory to opt for family reunification.

Family extension

The “extension” applies to:¹⁵³

- First degree ascendants that prove dependence;
- Descendants who are minors;
- Spouse or person who is linked by analogous relationship or cohabitation;
- Any other adult who is responsible for the beneficiary of international protection in accordance with current Spanish legislation, when the beneficiary is an unmarried minor;
- Other family members of a beneficiary, in cases where dependence and cohabitation with these individuals in the country of origin has been proved.

As the extension is attached to the main norm on beneficiaries established by the Asylum Law, there are no distinctions between refugees and subsidiary protection beneficiaries when it comes to setting requirements for extension.

When referring to the extension of international protection of the beneficiary to those relatives who are *ascendants*, the original Asylum Law did not establish economic dependence requirements from the sponsor, although the law was amended in 2014 to include the requirement of economic dependence.¹⁵⁴ Therefore, the requisite threshold is to prove that the ascendant depends economically on the beneficiary of international protection.

A major difficulty faced in practice is the certification and proof of dependence in the cases of ascendants of beneficiaries of international protection, which becomes especially burdensome in the case of Syrian nationals.

Regarding extension of the international protection of the beneficiary to those relatives who are *descendants*, the only requirement set to the beneficiary of protection is to prove family ties. There is no economic requirement established for the individual who benefits from protection.

¹⁵¹ Article 40 Asylum Law.

¹⁵² Article 41 Asylum Law.

¹⁵³ Article 40(1)(a)-(d) Asylum Law.

¹⁵⁴ Final Provision 3 Law 2/2014 of 25 March 2014.

In relation to the extension of the international protection of the beneficiary to other family members, the requisite conditions established by law are economic dependence and previous cohabitation in the country of origin. If both aspects are not proved, the “extension” is not granted.

As to economic dependence, the law does not establish a clear criterion. In practice, concessions are given as long as the beneficiary of protection sends money to the family which is in the country of origin. This, however, is a major problem for countries in conflict where money transfers not possible.

One of the main problems in practice concerns sons / daughters who are over 18 but depend on the beneficiary of protection. These are normally cases of 19 or 20-year-olds who still live in the family nucleus next to underage siblings. In these cases, extension is granted to underage sons / daughters but is denied to overage children, thereby breaking the nuclear family and consequently leaving these individuals in a vulnerable situation in their countries of origin.

In addition, problems arise when trying to reunite minors who are dependent on the beneficiary of protection but who are not children but nephews / nieces, underage siblings etc., who also conform the family unit. In these cases, we come across the same problem of family separation as mentioned before.

Family reunification (only in law)

The concept of family reunification is established by law as an alternative to “extension” except in cases involving different nationalities of spouses, in which it is compulsory.¹⁵⁵

Article 41 of the Asylum Law establishes that neither refugees or beneficiaries of subsidiary protection nor beneficiaries of family reunification will be subject to the requirements established in the Aliens Law, but will be subject to specific rules defined through a Regulation. Nevertheless, the establishment of these requirements and duties is still pending since 2009, which means that all applications for family reunification have been on hold and waiting to be resolved since October 2009.

This situation is extremely serious for the cases of family members who have different nationality than the beneficiaries of protection, because the compulsory application of the family reunification excludes them from “extension” and leaves them with no other option. In these particular cases, applicants are prevented from exercising their right to maintain their family unit.

Procedure

The procedure starts with the presentation of a report to the OAR, which has to be complemented by the following documents:

- Copy of the card which certifies the person as beneficiary of extension;
- Copy of the resolution where international protection is granted;
- Copy of the documentation which certifies and proves family ties;
- In the case of parents: birth certificate of children and family book;
- In the case of siblings: birth certificate of the corresponding siblings and family book;
- Copy of the documentation which proves that the applicant and his family cohabited together in the country of origin and had dependence on him or her;
- Copy of each family member's passport;
- In the cases of spouses of siblings, marriage certificate;
- Report where the applicant provides a verbal account and description of the family situation;

It is also necessary to choose the consulate where the applicant wants to submit the extension application to be formalised in and leave contact details.

The OAR (Asylum Office) sends a letter to the applicant and with it, the family members are able to formalize the application in the Spanish consulate they have chosen. Family members formalize the

¹⁵⁵ Article 41(1) Asylum Law.

application of family extension in the consulate of choice by presenting originals of all the documents required. Following this, the consulate sends all the documentation to the OAR and the application is studied. The instructor gives CIAR (Interministerial Commission for Asylum and Refugee) the proposal for resolution. Lastly, CIAR gives a final resolution to the case, if it is positive, it will be communicated to the consulate and the visas are issued accordingly.

2. Status and rights of family members

As explained in the section on [Family Reunification: Criteria and Conditions](#), only “extension” of international protection status is applied in practice, as the rules on family reunification have not yet been defined. In the context of extension, the beneficiary’s international protection status is extended to cover family members. There is no difference relating to this as regards refugees and subsidiary protection beneficiaries.

Once the extended family members obtain their visa they will be able to travel. Once they are in Spain, the recognition of their extended international protection status is automatic. They go to the OAR to receive their temporary Red Card (*tarjeta roja*) while they wait for the residence permit to be issued.

C. Movement and mobility

1. Freedom of movement

Beneficiaries of international protection have freedom of movement around the entire Spanish territory.

2. Travel documents

Article 36(1)(d) of the Asylum Law governs the issuance of travel documents for refugees and, where necessary, for beneficiaries of subsidiary protection. The validity of these documents is 5 years for both types of protection.

The beneficiary has to go personally to request the expedition of the document to the OAR or to the competent provincial police department of foreigners. There are no formal limitations to the permitted area of travel except the country of origin of the person benefitting from international protection.

Travel documents for beneficiaries of international protection issued by other countries are accepted in Spain. Spain has also ratified the Council of Europe Agreement for Transfer of Responsibility for Refugees.

D. Housing

Indicators: Housing

- | | |
|--|----------|
| 1. For how long are beneficiaries entitled to stay in reception centres? | 6 months |
| 2. Number of beneficiaries staying in reception centres as of 31 December 2016 | cc. 0 |

The 3-phase reception and integration process is available for all persons who ask for asylum, even in the case they are granted with international or subsidiary protection during the 18-month period. In case a person receives a negative response during the process, usually the person is allowed to complete at least the first period within the reception phase. In any case, the Ministry of Interior must give permission for the rejected applicant to continue the on-going phase and also the following ones, also accessing financial support foreseen within the second and third phases. It should however be noted that usually applicants receive their asylum decision after 1 year or more from the moment of the asylum claim.

Therefore beneficiaries follow the same process as described in [Reception Conditions: Criteria and Restrictions](#). They are hosted within the asylum reception centres during the first 6 months. The typologies of reception places vary depending on the institution or entity that manages it: the system relies on places within big reception centres and apartments, some reception places are in urban neighbourhoods while other are located in rural areas. The different types of available accommodation also differ from the point of view of provided services and spaces.

After this first phase of accommodation inside the reception system, beneficiaries are granted financial support to help them pay the rent on their own place. Due to the rigidity which characterises the Spanish 3-phase reception process, they must complete their stay inside the reception places in order to have access to the following foreseen financial support for private housing, also because the participation to initial integration activities developed during the first reception phase is considered as well evaluated and relevant at the time of asking for other financial support available in the last 2 phases.

This factor obviously causes obstacles for those beneficiaries that can either pay their own housing since the beginning or for those who have relatives or personal contacts that can host them. In case they decide to go and live by themselves, they would be renouncing to the entire assistance and support foreseen under the reception system.

The lack of available social housing, the insufficient financial support foreseen for paying the rent, high requirements and criteria in rental contracts and discrimination exposes many beneficiaries of protection to very vulnerable economic conditions and in some cases leads to destitution. Although many NGOs who work with refugees and asylum seekers during the first phase try to mediate between refugees and house holders at the time they start looking for private housing, there is not a specialised agency or intermediate service for helping beneficiaries finding a home.

E. Employment and education

1. Access to the labour market

Access to labour market for refugees and beneficiaries of subsidiary protection is not limited by law or by any other measure in such as a labour market test or restricted access to certain sectors. It is fully accessible under equal conditions to nationals.

As mentioned in the chapter on [Reception Conditions](#), during the first phase of reception, asylum applicants are provided with financial support for requesting the recognition of their studies or professional qualifications when this is feasible. This financial support is welcomed as recognition process usually undertakes important expenses for the legalisation and the translation of the documentation. Unfortunately, financial support is often not sufficient for guaranteeing full coverage to recognition related expenses. In the following two phases, beneficiaries of international protection are required to be more financially self-sufficient, providing financial help for punctual support, as self-sufficiency is hardly achievable in reality.

Nonetheless, as mentioned in the section on [Reception Conditions: Access to the Labour Market](#), all persons within the 18-month long process are provided with individualised schemes to support their training, qualification recognition etc. After they complete the 3-phase process, beneficiaries can still access labour integration and orientation services provided by NGOs addressed to the migrant population in general. These generalised services are funded by the Ministry of Employment and co-financed by EU funds, and also include personalised schemes, employment orientation, trainings etc.

Even when they are granted with refugee or subsidiary protection status, in the practice many beneficiaries face obstacles entering the labour market due to language, qualifications, and discrimination-based obstacles. This situation is made worse by the fact that the Spanish economy has

gone through a long economic crisis which has led the country to high levels of unemployment even within the national population.

2. Access to education

No major differences are reported between the situation of asylum seekers and beneficiaries of international protection. See the section on [Reception Conditions: Access to Education](#).

Nonetheless, concerning this topic and many others related to their rights and protection, refugee unaccompanied minors are the most vulnerable collective, and are sometimes excluded from education or vocational training. Obstacles faced by these minors concern the lack of proper attention paid by administrations that have their legal guardianship.

During 2016, several cases have been denounced concerning unaccompanied minors, putting in evidence the shortcomings of the public system for minors' protection. These have mainly been witnessed in the City of **Melilla** and **Madrid**. Although none of the reported cases concerned directly refugee children, the system in which they are received faces problem and obstacles concerning their documentation, their integration and their protection.

F. Health care

No differences are reported between the situation of asylum seekers and beneficiaries of international protection. See the section on [Reception Conditions: Health Care](#).

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