

A study of

ASYLUM IN SPAIN  
International Protection and  
Reception System Resources





SPANISH OMBUDSMAN

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Reception System Resources**

Madrid, June 2016

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## Summary

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Presentation .....	5
1. Introduction .....	7
2. Study purpose and methodology .....	14
3. Regulation of the right of asylum and of subsidiary protection.....	17
3.1 European framework .....	19
3.2 Law 12/2009 of October 30 <sup>th</sup> governing the right to asylum and subsidiary protection.....	24
3.2.1 Office for Asylum and Refugees: Application clearinghouse .....	26
3.2.2 Interpreters and interviews .....	28
3.2.3 Examination and decision.....	33
3.2.4 UNHCR intervention .....	40
3.2.5 Inter-Ministerial Asylum and Refugee Commission (IARC) .....	44
3.2.6 Statistics quality .....	46
4. Procedural issues.....	48
4.1 Accessing the procedure .....	48
4.2 Special situations of the access to the procedure in the autonomous cities of Ceuta and Melilla.....	51
4.3 Procedure-related legal aid .....	59
4.4 Application in appointment scheduling delays.....	61
4.5 Decision-making delays .....	63
4.6 Family extension and family reunification.....	68
5. Especially vulnerable groups .....	72
5.1 Minors.....	73
5.2 Victims of trafficking in human beings .....	79
5.3 LGTB persons .....	81
6. International protection applicant reception process.....	83
6.1 Spain's reception system .....	84
6.1.1 Refugee Reception Centre (CAR) .....	87
6.1.2 NGO-Managed Reception Mechanisms .....	89
6.1.3 Centres for Temporary Stay of Migrants in Ceuta and Melilla (CETI) .....	91
6.1.4 Dublin System .....	93
6.2 Collaboration by other administrative bodies. Civil society .....	94
6.3 Funding .....	95
6.4 Inter-Administration coordination.....	99
7. Conclusions.....	101
8. Recommendations .....	103

## ACRONYMS USED IN THIS STUDY

AC/ACs	Autonomous Community/Autonomous Communities
AMIF	Asylum, Migration and Integration Fund
CAR	Refugee Reception Centre
CEAR	Spanish Commission for Refugees
CEAS	Common European Asylum System
CETI	Centre for Temporary Stay of Migrants
CFREU	Charter of Fundamental Rights of the European Union
CJEU	Court of Justice of the European Union
CRAI	National International Protection Applicant and Beneficiary Reception System Resource Centre
EASO	European Asylum Support Office
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
ECRE	European Council on Refugees and Exiles
ESF	European Social Fund
EU	European Union
EUROSTAT	Statistical Office of the European Communities
GCJ	General Council of the Judiciary
IARC	Inter-ministerial Asylum and Refugee Commission
IOM	International Organisation for Migration
LGTB	Lesbian, Gay, Transgender and Bisexual Community
MDC	Migrant Detention Centre
NGO	Non-Governmental Organisation
OAR	Office of Asylum and Refugees
SRC	Spanish Red Cross
TFEU	Treaty on the Functioning of the European Union
UNHCR	United Nations High Commissioner for Refugees
UNO	United Nations Organisation

## PRESENTATION

The process of constructing the European Union has required many economic, tax-related and monetary agreements, and also agreements for prosecuting criminals. And its Charter of Fundamental Rights recognizes human dignity, the value of human rights. The process of constructing the EU included and still includes among the objectives of its constituents the purpose of making a community for living in democracy, freedom and peace. Its fundamentals and its purposes have been determining in order for countries which had been under the rule of undemocratic regimes over long periods of time to having most enthusiastically requested membership. But the EU had never had to think through and design a policy for hosting hundreds of thousands of people displaced by wars, terror and persecution, coming from countries located in distant places in geographical terms. For this, it was not prepared.

The number of people forcibly displaced; who are seeking refuge, requesting asylum, requesting protection, who want to reach countries where rights exist, where one is not persecuted for one's beliefs, ideas, race or ethnic background, has overflowed the capacity of the standard entry procedures.

The media and communications systems have reported there being places located not too far away where one can live differently, thus the high risk of the crossing, embarking upon a long journey into the unknown, is felt to be worthwhile by many. And Europe is the goal.

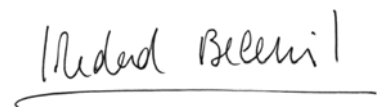
There are two main aspects which we must bear in mind under these circumstances. Firstly, humane reception, followed by possible integration. The former requires taking action in accordance with a common asylum system, expediting the procedures for lodging applications for asylum and the transfers to Spain, in addition to being particularly diligent in dealing with the situations of minors, persons with disabilities and victims of human trafficking. It is also necessary to avail of the necessary legal aid as well as high-qualified personnel for performing all of these functions involved in providing this assistance.

The second aspect, which is accommodation, makes it necessary to see to the economic aid to be collected, as well as seeing to the different phases of integration they may go through.

The collaboration of the Office of United Nations High Commissioner for Refugees (UNHCR) in all of these processes is of utmost importance due to the Commissioner's experience and expertise, it therefore being advisable to facilitate the work done thereby and heed this Commissioner's Office to the utmost. It is also necessary and advisable to continue collaborating with the NGOs which are providing highly significant services.

The Ombudsman Institution has considered it advisable at this time to review the conditions and circumstances set forth under **the law governing the right to asylum and subsidiary protection** of October 2009 for granting protection and assuring the integration of those who are forced to leave the usual places of residence. That is the end purpose of this study.

Madrid, June 2016

A handwritten signature in black ink that reads "Soledad Becerril". The signature is written in a cursive style and is underlined with a single horizontal line.

Soledad Becerril  
DEFENSORA DEL PUEBLO  
[SPANISH OMBUDSMAN]

## 1. INTRODUCTION

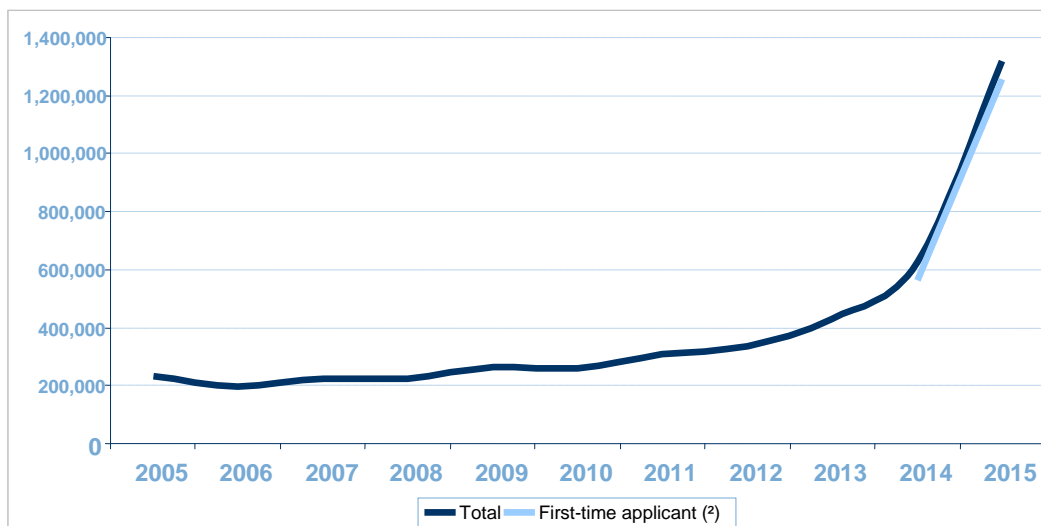
The analysis of the institution of asylum in Spain cannot be approached without first briefly reviewing the situation currently being experienced in Europe.

In 2015, the most severe refugee crisis since World War II has occurred. Over one million people crossed the Mediterranean as refugees and immigrants, more than 60 million refugees and internally displaced persons having been found to exist worldwide.

The factor which triggered the flow was the crisis in Syria and the armed conflicts in other locations. However, the trends that are being noted in the demographics, climate change, poverty and the globalization of means of transport and communications indicate that this combination of factors is not going to halt the influx of migrants and refugees into Europe in the near future. Since 2013, the number of applications for international protection in the European Union has been on the rise.

APPLICATIONS FOR ASYLUM (NON EU) IN THE EU-28 MEMBER STATES, 2005-15 (1)

	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
Total	234,675	197,410	222,635	225,150	263,835	259,400	309,040	335,290	431,090	626,960	1,321,560
First-time applicant (2)										562,680	1,255,640



(1) 2005-07: EU-27 and outside of the EU-27

(2) 2005-13: unavailable

Source: Eurostat

Prepared by: Ombudsman Institution

The rise in the number of people having found themselves forced to flee their homes and seek refuge in Europe in order to escape violence has put the European Union to the test. On May 13, 2015, the European Commission presented its European Agenda on



Migration, which determined the need of giving the management of migration a global focus.

Since then, measures have been taken, including two emergency plans adopted for relocating 160,000 people in need of international protection from the Member States most affected to other EU Member States, the approval of the Commission's Plan for Action on the subject of return, and the Plan for resettlement from third countries.

On September 23, 2015, the European Commission presented top-priority actions for implementing the European Agenda on Migration, which were to have been adopted within the subsequent six-month period. Short-range measures were included for stabilizing the current situation, as well as longer-range measures for setting up an effective system. The list of top-priority actions included operating measures, budgeting aid and enforcement of EC Law.

At the aforesaid meeting, the Member States acknowledged the need of mobilizing supplementary national funding and reiterated their commitment at the European Council meeting held on October 15, 2015. The Commission proposed amendments in the budgets for 2015 and 2016, increasing the resources allocated to the refugee crisis by 1.7 billion euros. The Member States undertook the commitment, in turn, of mobilizing matching national funding. However, there are numerous Member States which have not as yet approved funding matching the EU to the UNHCR, the World Food Program and other organisations (500 million euros), the EU Regional Trust Fund for Syria (500 million euros) and the Emergency Trust Fund for Africa (1.8 billion euros)<sup>1</sup>.

The Commission proposed measures for getting a relocation mechanism under way, which was adopted by the Council in September 2015 for 160,000 people in need of international protection. In order for these systems to function effectively, an appeal was made to the Member States asking them to provide national experts for supporting the work done at what are termed as being "hotspots". It was also requested that their reception-related capabilities be notified and that national contact points be designated for coordinating the relocations with Greece and Italy, as well as the national resettlement efforts for people in need of international protection who are located outside of the European Union territory<sup>2</sup>.

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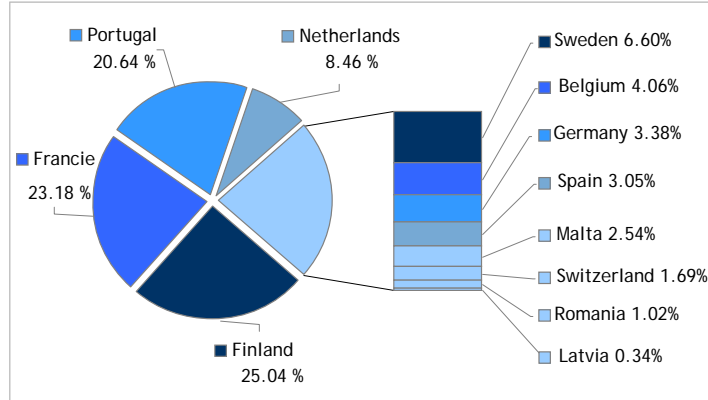
<sup>1</sup>[http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/press-material/docs/state\\_of\\_play\\_-\\_member\\_state\\_pledges\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/press-material/docs/state_of_play_-_member_state_pledges_en.pdf) (data updated to May 30, 2016) (Link consulted on June 23, 2016).

<sup>2</sup> Third report on relocation and resettlement [http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/20160518/communication\\_third\\_report\\_on\\_relocation\\_and\\_resettlement\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/20160518/communication_third_report_on_relocation_and_resettlement_en.pdf) (data updated to May 18, 2016) (Link consulted on June 23, 2016).

TABLE 1

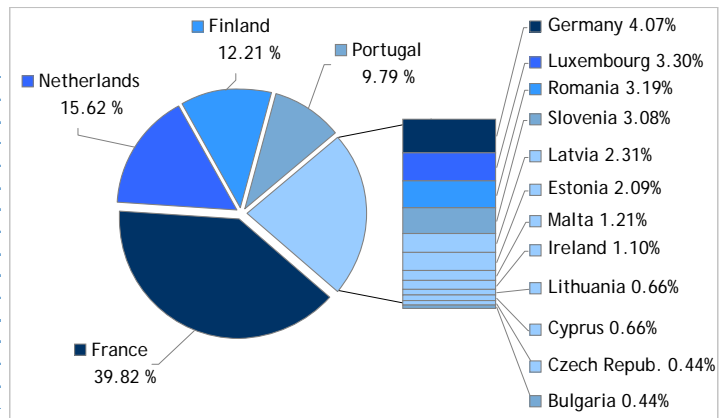
PERSONS RELOCATED FROM ITALY

Member State	Relocated from Italy	
	No.	%
FINLAND	148	25.04%
FRANCE	137	23.18%
PORTUGAL	122	20.64%
NETHERLANDS	50	8.46%
SWEDEN	39	6.60%
BELGIUM	24	4.06%
GERMANY	20	3.38%
SPAIN	18	3.05%
MALTA	15	2.54%
SWITZERLAND	10	1.69%
ROMANIA	6	1.02%
LATVIA	2	0.34%
<b>TOTAL</b>	<b>591</b>	<b>100.00%</b>



PERSONS RELOCATED FROM GREECE

Member State	Relocated from Greece	
	No.	%
France	362	39.82%
Netherlands	142	15.62%
Finland	111	12.21%
Portugal	89	9.79%
Germany	37	4.07%
Luxembourg	30	3.30%
Romania	29	3.19%
Slovenia	28	3.08%
Latvia	21	2.31%
Estonia	19	2.09%
Malta	11	1.21%
Ireland	10	1.10%
Lithuania	6	0.66%
Cyprus	6	0.66%
Czech Republic	4	0.44%
Bulgaria	4	0.44%
<b>TOTAL</b>	<b>909</b>	<b>100.00%</b>



Source: European Commission. Directorate General of Migration and Home Affairs (information available on May 13, 2016)  
 Prepared by: Ombudsman Institution <sup>3</sup>

<sup>3</sup> Considering the proposals from the Commission, the Justice and Home Affairs Council adopted two Decisions in September 2015 regarding the relocation of 160,000 asylum seekers from Italy and Greece for the purpose of helping both of these countries to deal with the pressure of the refugee crisis.

Within the framework of the emergency relocation program, the asylum seekers whose applications for entry have the greatest likelihood of meeting with success are being relocated from Greece and Italy, the countries where they arrived, to other Member States in which their applications for asylum will be processed. If the applications are approved, the applicants will be granted refugee status and entitlement to reside in the Member State in which they have been relocated.

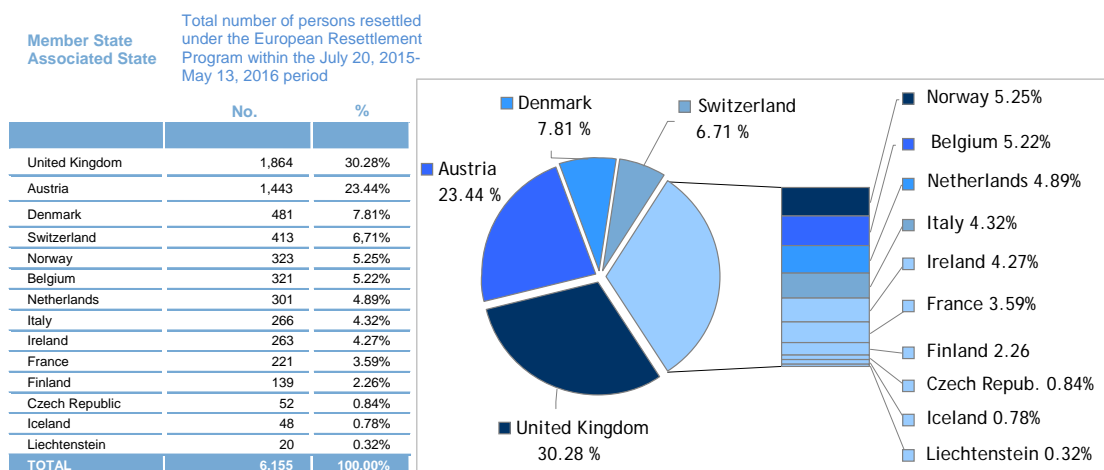
The relocations will be carried out within the next two years, charged to the EU Budget allocated for rendering financial support to the Member States.

The following tables show the implementation of these Decisions in the Member States at May 13, 2016. 1,500 people have been relocated since the start of the program.

[http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/background-information/docs/20160518/factsheet\\_relocation\\_and\\_resettlement\\_-\\_state\\_of\\_play\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/background-information/docs/20160518/factsheet_relocation_and_resettlement_-_state_of_play_en.pdf) (Link consulted on June 23, 2016).

## PERSONS RESETTLED

## TOTAL NUMBER OF PERSONS RESETTLED UNDER THE EUROPEAN RESETTLEMENT PROGRAM WITHIN THE JULY 20, 2015 – MAY 13, 2016 PERIOD



Source: European Commission. Directorate General of Migration and Home Affairs (information available on 13 May 2016)

Prepared by: Ombudsman Institution<sup>4</sup>

The European Union considered establishing these “hotspots” as essential to its strategy. It was necessary to demonstrate that the proper functioning of the migration system could be restored, particularly by way of the use of migration management support teams for aiding those Member States which were under heavier pressure to fulfil their obligations.

Setting up a program for effective return was an essential part of the work done by the migration management support teams at the “hotspots”. This made it necessary for there to be efficient systems within the EU for making and carrying out the return-related decisions. The Member States were urged to implement the EU Plan for Action concerning

<sup>4</sup> In May 2015, the European Commission proposed a European Resettlement Plan which was approved by the Council in June 2015.

To prevent displaced persons in need of international protection from having to resort to the criminal networks trafficking in human beings, the Resettlement Program offers safe, legal ways for entering the EU. This Program establishes the resettlement of 22,000 persons clearly in need of international protection from outside of the European Union in the Member States. This two-year program will be carried out charged to the European Union Budget.

Within the framework of the EU-Turkey Joint Agreement of March 18<sup>th</sup>, it was agreed that for each Syrian national who is returned from the Greek islands, another person will be resettled in the European Union from Turkey. This 1:1 mechanism is for the purpose of replacing the irregular flows of migrants who are travelling in highly dangerous conditions on the Aegean Sea with an orderly, legal relocation process.

6,321 persons have been relocated up to May 13, 2016 since the start of this program.

return proposed by the Commission and approved by the Member States in October 2015 at the Justice and Home Affairs Council Meeting<sup>5</sup>.

An EU Civil Protection Mechanism was also devised for offering practical support to the countries overwhelmed by a crisis situation. To date, Serbia, Slovenia and Croatia have requested this support. This mechanism could mobilize different types of aid in kind, including equipment and material, shelters, medical supplies and other non-food items, in addition to experts. The country activating the mechanism makes an appeal, and the participating Member States provide aid in response to whatever needs have been determined. The Commission increased the total amount of the joint funding for the transport of relief items and experts during the current refugee crisis. However, to date, not enough Member States have responded to these appeals, and a great number of resources must still be provided to Serbia, Slovenia and Croatia to deal with the situation at hand<sup>6</sup>.

In February 2016, the European Commission presented a communication to the European Parliament and to the Council detailing the implementation the priority measures within the framework of the European Agenda on Migration. The Commission found that, despite the existence of a feasible system for managing migration, it was failing in its implementation on the ground<sup>7</sup>.

It was acknowledged that the intense pressures coming from the flows of refugees and migrants had weakened the EU asylum system. Despite the European standards stipulating that application for protection must be lodged in the first EU country to which one arrives, the States located along the migration route started considering themselves solely as transit countries instead of assuming their responsibilities of managing the applications for asylum. This situation has caused the collapse in the enforcement of the standards and a disproportionate degree of pressure on the three main destination Member States.

In order for the Common European Asylum System to work, an actual chance must exist of returning the asylum seekers to the State where they initially entered the EU ("Dublin transfers"). The Commission has set out a reminder regarding the fact that, as of 2010-11, the Member States had not been capable of carrying out the transfers to Greece within the framework of the Dublin system.

The European Court of Human Rights and the Court of Justice of the European Union have stressed the main deficiencies as being gaining full access to the asylum system, the assistance and quality of the reception capacity and the guarantees of the

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<sup>5</sup> Returns since September [http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/press-material/docs/state\\_of\\_play\\_-\\_returns\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/press-material/docs/state_of_play_-_returns_en.pdf) (Data updated to May 26, 2016) (Link consulted on June 23, 2016).

<sup>6</sup> Support of the Member States to the Civil Protection Mechanism for Serbia, Slovenia and Croatia. [http://ec.europa.eu/news/2015/docs/factsheet\\_the\\_eu\\_civil\\_protection\\_mechanism.pdf](http://ec.europa.eu/news/2015/docs/factsheet_the_eu_civil_protection_mechanism.pdf) (Link consulted on June 23, 2016).

<sup>7</sup> Communication of the European Parliament Commission to the European Council and to the Council. Management of the refugee crisis, status of the process of carrying out the priority actions in keeping with the European Agenda on Migration. <https://ec.europa.eu/transparency/regdoc/rep/1/2016/ES/1-2016-85-ES-F1-1.PDF> (Link consulted on June 23, 2016).

resources and free legal aid. It is additionally acknowledged that the past history of the application of the EU legislation within the scope of asylum is not an encouraging one.

The European Union has adopted 40 violation-related decisions against 19 Member States and 58 decisions (letters of formal notice and reasoned opinions) concerning the incorporation of and full compliance with the EU aquis on the subject of asylum.

On October 15, 2015, the European Commission reached an *ad referendum* agreement with Turkey on a Joint Action Plan for the purpose of achieving closer cooperation on the issue of managing migration in a coordinated effort in order to deal with the refugee crisis. The Joint Action Plan was launched at the EU-Turkey meeting of November 29, 2015.

On March 18, 2016, the European Council members met with their Turkish counterpart and reached agreements on matters including the following<sup>8</sup>:

1) All new irregular migrants who pass through Turkey to the Greek islands commencing as of March 20, 2016 shall be returned to Turkey. This shall be applied in full compliance with International and EU Law, thus ruling out any type of mass expulsion. All of the migrants shall be protected in accordance with the pertinent international standards and within the respect of the principle of non-refoulement. This shall be a temporary, extraordinary measure which is necessary for putting a halt to human suffering and restoring public order. The migrants who reach the Greek islands shall be duly registered, and the Greek authorities shall process all applications for asylum individually in accordance with the Asylum Procedures Directive in cooperation with UNHCR. The migrants who do not apply for asylum or whose application has been considered unfounded or inadmissible in accordance with the aforesaid Directive shall be returned to Turkey.

With the aid of the EU institutions and organisations, Turkey and Greece shall take the measures necessary and shall reach agreements as to bilateral mechanisms, one of which shall be the presence of Turkish government officials on the Greek islands and Greek government officials in Turkey commencing as of March 20, 2016 for the purpose of guaranteeing the contacts and thus facilitating the smooth functioning of these mechanisms. The expenses of the operations for returning irregular migrants shall be paid by the EU.

2) For every Syrian returned to Turkey from the Greek islands, another Syrian from Turkey will be resettled in the EU, taking into account the United Nations vulnerability criteria. A mechanism shall be established, with the assistance of the Commission, the EU bodies and other Member States as well as UNHCR for guaranteeing that this principle will be applied from the very date on which the returns commence. Priority shall be given to the migrants who have not previously entered or attempted to enter irregularly into the EU. On the part of the EU, the resettlement according to this mechanism shall be carried out, at first, by means of full compliance with the commitments undertaken by the Member States

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<sup>8</sup> Full text of the agreement is accessible at: <http://www.consilium.europa.eu/es/press/press-releases/2016/03/18-eu-turkey-statement/> (Link consulted on June 23, 2016).

in the conclusions of the representatives of the Member State Governments who met in the Council meeting of July 20, 2015, by virtue of which there are 18,000 resettlement places left remaining.

Any further need of resettlement shall be dealt with by means of a similar voluntary agreement up to the point of reaching a maximum limit of 54,000 additional persons. The European Council members have congratulated themselves on the Commission's intention of proposing a modification of the resettlement decision of September 22, 2015 in order to make it possible for any resettlement commitment undertaken to be deducted from the unassigned places. In the event that these agreements do not meet the objective of putting an end to irregular migration and the number of returns nearing the figures forecast hereinabove, this mechanism shall be revised. In the event that the number of returns exceeds said figures, the mechanism shall cease being implemented.

However, following the aforementioned agreement having entered into effect, the UNHCR pointed out that the lack of coordination which has prevailed throughout 2015 and the months having already elapsed in 2016, it is neither in the interests of the persons who are fleeing war and are in need security nor those of Europe proper. UNHCR also advised as to the need of getting under way many of the guarantees for which provision was made under the agreement. On March 22, 2016, it issued a communiqué informing of its role in Greece being redefined following the agreement with Turkey having entered into effect. UNHCR pointed out that, according to the new provisions, the registration centres had been turned into detention facilities.

Therefore, in accordance with its policy of being opposed to compulsory detention, the UNHCR suspended some of its activities at all of the islands' closed centres, including the provision of transportation to and from these centres. Nevertheless, UNHCR reports that it will continue its presence by supervising the protection so as to assure that the human rights and refugee standards are met and so as to provide information on the rights and procedures for requesting asylum<sup>9</sup>.

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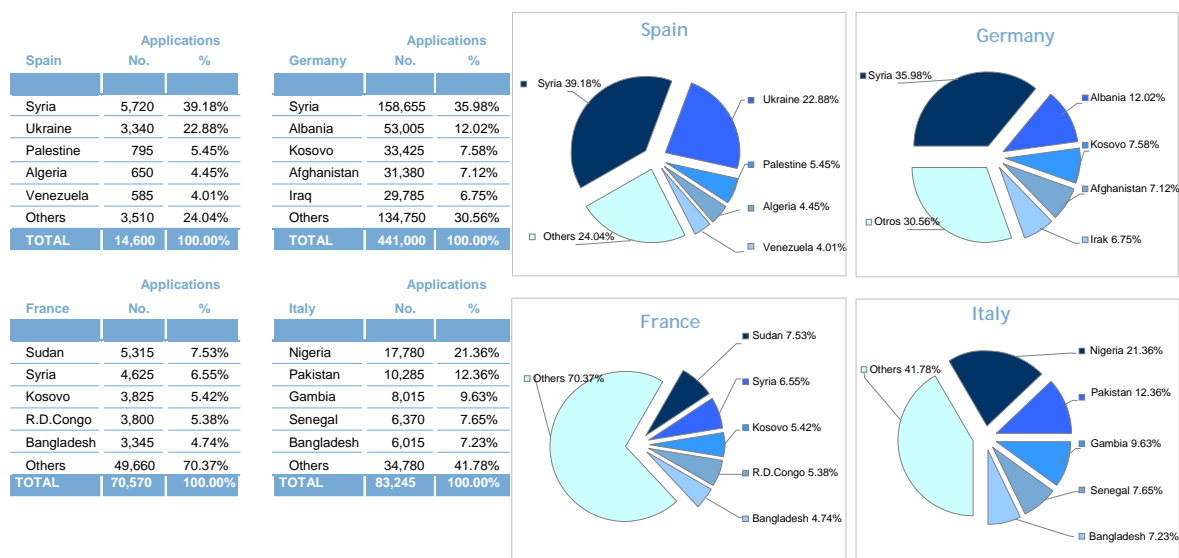
<sup>9</sup> In April 2016, the European Commission published the first report on the progress made following the joint Plan for Action with Turkey having been implemented [http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/20160420/report\\_implementation\\_eu-turkey\\_agreement\\_nr\\_01\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/20160420/report_implementation_eu-turkey_agreement_nr_01_en.pdf) , the second report having been published on June 15, 2016 [http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/20160615/2nd\\_commission\\_report\\_on\\_progress\\_made\\_in\\_the\\_implementation\\_of\\_the\\_eu-turkey\\_agreement\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/20160615/2nd_commission_report_on_progress_made_in_the_implementation_of_the_eu-turkey_agreement_en.pdf) (consulted June 23, 2016).

## 2. STUDY PURPOSE AND METHODOLOGY

The present study is for the purpose of analysing the management of the applications for international protection and the resources of Spain's reception system. A description is provided of the reception procedure and resources currently in place, also including the problems detected concerning essential issues: access to the procedure, the content of the protection and the guarantees.

The small number of applications for international protection lodged in Spain in comparison to the number of applications of other European Union countries has been a source of constant concern on the part of this Institution. However, as of 2013, a growing trend has been noted in the number of requests for international protection. Thus, 2015 ended with 14,600 applications. According to the latest data provided by the Office of the Vice-President on May 27, 2016, during the first four months of this year, 6,000 people applied for asylum in Spain. A total of 2,000 of the aforesaid 6,000 people had been referred from other EU Member States in application of the Dublin procedure (which will be dealt with in this study).

**TABLE 2**  
APPLICATIONS FOR ASYLUM 2015 (FIVE MAIN NATIONALITIES)



Source: Eurostat  
Prepared by: Ombudsman Institution

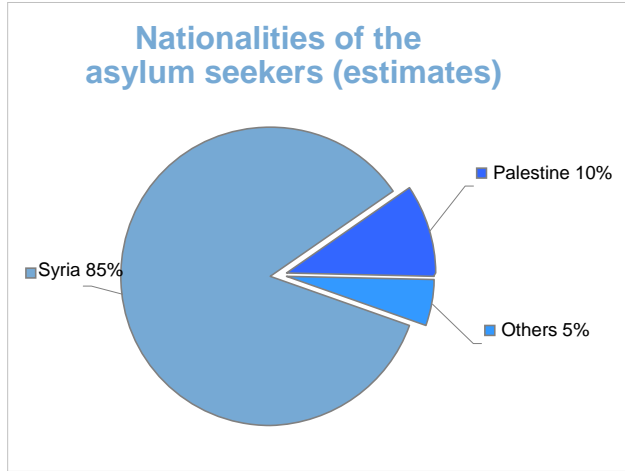
It is particularly interesting to note the rise in the number of applications lodged at the Spanish border control posts, which rose from 381 in 2013 to 1,039 in 2014 and then to 6,047 applications in 2015.

**TABLE 3**  
**APPLICATIONS FOR ASYLUM LODGED AT BORDER POSTS**

Border post	Asylum seekers	
	2015	2016*
Beni Enzar (Melilla)	6,047	520
El Tarajal (Ceuta)	0	0
<b>TOTAL</b>	<b>6,047</b>	<b>520</b>

\* Data from January-April 2016

Asylum seeker nationality (Estimates)	%
Syria	8.00%
Palestine	10.00%
Others	5.00%
<b>TOTAL</b>	<b>100.00%</b>



Source: Tentative UNHCR data  
Prepared by: Ombudsman Institution

By countries, the considerable increase in asylum seekers from Syria and the Ukraine must be emphasized.

The figures for applications for international protection in Spain are still as yet quite low in comparison to the European average. However, their rapid growth has dealt a severe blow to the Spanish asylum system, which has been flooded regarding both the processing of the applications and in the reception system.

As was previously advanced in the Ombudsman’s annual report for 2015, an improvement began being noticed in the delays for the formalization of the applications for international protection, as well as the allocations of places. However, the delay in issuing the decisions concerning the case files pending from previous years has still as yet gone unremedied, and the new staff members assigned to the Asylum and Refugee Office are apparently still not going to be enough. Similarly, the regulations further expanding upon the Asylum Law, which have been pending since 2009, have still not seen the light. All of these issues are analysed in this study.

For preparing this study, a follow-up was conducted on a total of 216 complaints, 14 of which were ex-officio, lodged by the asylum seekers proper or by associations on their behalf. Visits were made to the temporary stay centres for migrants in Ceuta and Melilla, as well as the border control posts, including the offices opened for processing the applications for asylum of the aforesaid Autonomous Cities. Visits were made to the four Refugee Reception Centres, hereinafter “CARs”, two of which are located in Madrid, one in Valencia and another in Seville. Additionally, the Migrant Detention Centre in Algeciras, as well as its annex in Tarifa, as well as also having visited the facilities of the Asylum and Refugee Office in Madrid.



<b>TABLE 4</b>					
<b>EVOLUTION IN THE COMPLAINTS REGARDING INTERNATIONAL PROTECTION (2013-JUNE 2016)</b>					
<b>Subjects</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>Total</b>
<b>Legal aid and interpreter assistance</b>					
Legal aid and interpreter assistance		1	3		4
<b>Granting of refugee status</b>					
General issues	1	1			2
Family extension	6	2	6	2	16
<b>Precautionary measures</b>					
Precautionary measures				1	1
<b>Obligation of non-refoulement</b>					
Obligation of non-refoulement	2	1		1	4
<b>Asylum and Refugee Office (OAR)</b>					
Asylum and Refugee Office (OAR)	2		8	10	20
<b>Other subjects</b>					
Other subjects	1		1	4	6
<b>General policy on asylum and subsidiary protection</b>					
General policy on asylum and subsidiary protection	2	2	2	24	30
<b>Procedure for acceptance for processing</b>					
General issues	1	6	7	3	17
Non-acceptance for processing and effects			1	1	2
Procedure within the country	13	8	7	5	33
Procedure at border	7	2	3		12
Applicant rooms			1		1
<b>Application processing</b>					
Reception centres and resources	3	1	14	10	28
General issues	6	4	6	5	21
Filing from abroad	1	1		2	4
Social protection benefits and employment	3	2	6	4	15
<b>TOTAL</b>	<b>48</b>	<b>31</b>	<b>65</b>	<b>72</b>	<b>216</b>

Source: Ombudsman Institution  
Prepared by: Ombudsman Institution

### 3. REGULATION OF THE RIGHT OF ASYLUM AND OF SUBSIDIARY PROTECTION

The Geneva Convention of 1951 and the New York Protocol of 1967 stem from the United Nations Charter and from the Universal Declaration of Human Rights approved on December 10, 1948. These instruments proclaim the principle that all human beings are entitled to the enjoyment, without distinction of any kind, of the fundamental rights and freedoms<sup>10</sup>.

One of the pillars on which the right of asylum is based is the principle of non-return, also referred to by the French term “non-refoulement”. This principle is set forth under Article 33 of the aforesaid convention and places the Member States under the obligation of not returning, removing or extraditing a refugee to their country of origin or to others in which their life or their liberty are in jeopardy<sup>11</sup>. This is also engrained into the legal instruments concerning asylum within a regional scope, especially under Article 19.2 of the EU Charter, and constitutes a rule of common law.

The institution of asylum is not confined to the prohibition of returning but rather includes the access of asylum seekers to fair and effective procedures for determining refugee status and the needs for protection in accordance with the Convention of 1951 and its Protocol of 1967. The obligation is additionally set forth of allowing the refugees to enter the territory of the States and to provide the persons regarding whom UNHCR is concerned with access to the procedure.

A reminder is also set forth regarding the need of restrictively applying the exclusion clauses for which provision is made under Article 1f of the Geneva Convention of 1951, as this is a matter of curtailments of human rights; the obligation of treating the asylum seekers and refugees in accordance with the Human Rights and the standards of Refugee Law; the responsibility of the host States of guaranteeing the civil and peaceful nature of the asylum, and the duty of the refugees and asylum seekers of respecting and abiding by the laws of the host States<sup>12</sup>.

In the European context, reference must also be made to the Council of Europe. The Member States of the Council adopted the European Convention on Human Rights (ECHR) in 1950. The European Court of Human Rights (ECtHR) was created by virtue of Article 19 of the ECHR in order to assure full compliance on the part of the State of the obligations placed thereupon under the Convention. The ECtHR examines complaints lodged by natural persons, groups of private citizens, non-governmental organisations and bodies corporate alleging violations of the ECHR.

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<sup>10</sup> Article 14 of the Universal Declaration of Human rights sets forth that “Everyone has the right to seek and to enjoy in other countries asylum from persecution.”

<sup>11</sup> As far as extradition is concerned, the law proper sets forth the possibility of extraditing to another European Union Member State if an arrest warrant is in place, or to a third country before the international criminal justice bodies.

<sup>12</sup> Conclusion of the Executive Committee No. 82 (XLVIII), 1997, Paragraph (d).

The ECHR makes no express mention of the protection of refugees. However, the jurisprudence of the ECtHR has examined matters having to do with refugees and asylum seekers under the protection of Article 3 of the ECHR<sup>13</sup>. In fact, it has now become a fundamental instance for halting expulsions of this group, who have taken exception to the rejection of their application by judicial process.

All Member States of the Council of Europe have signed the Geneva Convention of 1951 on Refugee Status, as well as the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms. However, signing international instruments per se does not mean a harmonised, uniform interpretation of the application of the obligations resulting from these texts. The Council of Europe bodies have been aware of the need of harmonising the asylum procedures, independently of there being a process of convergence in the Council member countries which are also Member States of the European Union<sup>14</sup>.

In 2003, the five basic principles which should be taken into account in a common policy within the scope of the Council of Europe were set out: flexibility, transparent information to asylum seekers, accessibility and effectiveness of the legal resources, decent living conditions for the stay on the part of the refugees and respect for human rights<sup>15</sup>. The Parliamentary Assembly of the Council of Europe has emphasized that it is necessary to adopt urgent measures for perfecting the asylum system and arbitrating mechanisms for swift intervention in view of the constant influx of applicants for international protection on the southern European coasts. Both Resolution 1805 (2011) and Recommendation 1967 (2011), both regarding mass influx of irregular migrants, asylum seekers and refugees to the southern European coasts are aimed at the preparation of emergency action plans in response to the mass influx of asylum seekers and migrants from the southern Mediterranean region.

Many of the asylum seekers are intercepted at sea and rescued in their attempt to enter EU territory or that of the Member States of the Council of Europe. In the

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<sup>13</sup> Prohibition of torture: No one shall be subjected to torture or to inhuman or degrading treatment or punishment. The prohibition of torture is a basic pillar of the protection of human rights. The prohibition thereof has now become an essential value of democratic societies and has been configured as an absolute prohibition because it does not allow for any relative weighing with other assets or rights and is independent of the conduct of the persons affected. See, court decisions including the ECtHR of Saadi vs Italy of February 28, 2008; Ryabikin vs Russia of June 19, 2008; Muminov vs Russia of December 11, 2008.

<sup>14</sup> There are study documents on a common asylum policy in the member States of the Council of Europe, such as the *Committee on Migration, Refugees and Demography, Report "Common policy on migration and asylum"*, Doc. 9726, March 11, 2003. <http://assembly.coe.int/nw/xml/XRef/X2H-Xref-ViewHTML.asp?FileID=10069&lang=EN> (Link consulted on June 23, 2016).

<sup>15</sup> Since 2011, the conflicts in North Africa and Syria have revived the debate as to the need for coordinating measures for guaranteeing the treatment and responsibility of the States regarding the applications for international protection will be common to all of them and will be effective and fair. See Resolution 1820 (2011) of the Parliamentary Assembly *Asylum seekers and refugees: sharing responsibilities in Europe*. <http://assembly.coe.int/nw/xml/XRef/X2H-Xref-ViewPDF.asp?FileID=18005&lang=en> (Link consulted on June 23, 2016).

border surveillance operations carried out at sea not only are human right and refugee law to be respected, but the International Law of the Sea must be applied.

The ECHR is applicable to all those persons who are under the jurisdiction of a Member State, even when the Member State in question is exercising its control on the high seas<sup>16</sup>. Both the Parliamentary Assembly and the Committee of Ministers share the concern regarding the doubts entertained by some States as to their responsibility in the application of the principle of non-refoulement on the high seas. In Resolution 1821 and Recommendation 1974 (2011) on the interception and rescue at sea of asylum seekers, refugees and irregular migrants, the Parliamentary Assembly urged the Committee of Ministers to offer the States all of the material necessary for training the personnel in charge of evaluating the applications for international protection of the persons intercepted<sup>17</sup>. The States are also urged to set out minimum operating procedures and guidelines in collaboration with the UNHCR for guaranteeing that the persons in need of international protection will be identified and provided with proper protection.

The Parliamentary Assembly has also recommended to the Committee of Ministers that the minimum standards of protection be applied equally to all of the asylum seekers who reach the coasts, either at a port or in uninhabited coastal areas. Recommendation 1645 (2004) on asylum seeker access to assistance and protection at seaports and in European coastal areas requires the States to provide legal aid and translators as soon as they reach the coast so that access to the asylum procedure will be respected. They have also been urged to have adequate permanent reception facilities at the coastal areas and nearby seaports in order to provide the new arrivals with lodging, whether or not they be asylum seekers<sup>18</sup>.

### 3.1 EUROPEAN FRAMEWORK

Since the Treaty of Rome in 1957, the successive amendments of the treaties have expanded the authorities of the EU in migration-related matters. The freedom of movement, as a prime objective of European integration, required measures being set out regarding the control of external borders, migration and asylum. Hence international protection was introduced into what is referred to as a Space of Freedom,

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<sup>16</sup> See the study on the mass influx of irregular migrants, asylum seekers and refugees on the shores of southern Europe, Committee on Migration, Refugees and Demography, Report *The mass influx of irregular migrants, asylum seekers and refugees on Europe's southern shores*, Doc. 12581, April 12, 2011 <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=13121&lang=en> (Link consulted on June 23, 2016).

<sup>17</sup> Resolution 1821 (2011) *The interception and rescue at sea of asylum seekers, refugees and irregular migrants* <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=18006&lang=en> Recommendation 1974 (2011) *The interception and rescue at sea of asylum seekers, refugees and irregular migrants* <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=18008&lang=en> (Links consulted on June 23, 2016).

<sup>18</sup> Recommendation 1645 (2004) *Access to assistance and protection for asylum seekers at European seaports and coastal areas*, <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=17187&lang=en> (Link consulted on June 23, 2016).

Security and Justice. The different national legislations on asylum gave rise to different treatments in view of in fact identical situations, as a result of which the European Council Meeting in Strasbourg in December 1989 pointed out the need for a harmonisation of the national asylum policies. In 1990, the countries of what was then the European Community signed the Dublin Convention regarding determining the State responsible for examining the applications for asylum lodged in the Member States of the European Communities<sup>19</sup>.

In October 1999, the European Council Meeting in Tampere determined the need of creating a common asylum system, the prime end purpose of which would be to achieve a regime for determining the State responsible for examining an application for protection, a uniform asylum status, a common procedure for granting or withdrawing the same and a common temporary protection system. In 2013, new standards were set for assuring that an asylum seeker was treated equally regardless of the European Union country in which application were to be lodged thereby. The EU has been working since then on creating a Common European Asylum System (CEAS) and on improving the legislative framework currently in force<sup>20</sup>.

In 2000, the European Union Charter of Fundamental Rights (EUCFR) was enacted and included a list of human rights inspired on the rights set forth in the constitutions of the Member States and in the international human rights treaties. The EU Charter of Fundamental Rights went from being a simple “declaration” to being a legally-binding instrument following the Lisbon Treaty having entered into effect on January 1, 2009. Article 18 of this Charter includes the right of asylum for the first time within the European scope, and Article 19 of the Charter prohibits returning persons to a State in which they are at a serious risk of being subjected to the death penalty, torture or other punishments or inhuman or degrading treatments<sup>21</sup>.

In September 2008, the European Pact on Immigration and Asylum was gotten under way. The need was stressed of setting up a single asylum procedure and the single status for refugees and subsidiary beneficiaries of protection in 2012 at the

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<sup>19</sup> The Dublin Convention aimed at putting an end to the problems posed by the institution of asylum within the framework of a common European space with no internal borders, in particular, the problem of what are referred to as “refugees in orbit”, in other words, those persons who are transferred from border to border as a result of the States refusing to take care of their application; and, another, what is referred to as “asylum shopping”, in other words, one same person lodging multiple applications for asylum in various States simultaneously or consecutively, in terms of economic circumstances or for the purpose of staying in Europe for a longer length time.

<sup>20</sup> Coinciding in time with the completion of the writing of this study, in May 2016, the European Parliament presented a report on the status of the degree to which the Common European asylum system is being carried out. Said document is available online in English at: [http://www.europarl.europa.eu/RegData/etudes/STUD/2016/556953/IPOL\\_STU\(2016\)556953\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2016/556953/IPOL_STU(2016)556953_EN.pdf) (Link consulted on June 23, 2106).

<sup>21</sup> Article 18: The right to asylum shall be guaranteed with due respect for the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and in accordance with the Treaty establishing the European Community.

Article 19: Protection in the event of removal, expulsion or extradition 1. Collective expulsions are prohibited. 2. No one may be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment.

latest. The European Asylum Support Office (EASO) was created by way of Regulation 439/2010 and was officially opened in June 2011. Its end purpose is to foster the collaboration among the Member States on the matter of asylum within the framework of the creation of the CEAS<sup>22</sup>.

The Treaty on the Functioning of the European Union (TFEU) requires the Union to adopt measures regarding asylum in accordance with the 1951 Refugee Convention Relating to the Status of Refugees, dealing with matters including a uniform asylum status valid throughout the entire Union, a uniform subsidiary protection status, common procedures for granting and withdrawing said statuses, criteria and mechanisms for determining the Member State responsible for examining the applications, standards relating to the conditions of reception, and association and cooperation with third countries. The TFEU considerably improves the judicial control carried out by the Court of Justice of the European Union, which benefits the process of furthering a more elaborate jurisprudence on the subject of asylum. As a result of the Lisbon Treaty, all jurisdictions of a Member State may submit a matter for preliminary ruling, and not only, as was previously the case, the national jurisdictional bodies whose decisions cannot be put to judicial appeal under internal Law<sup>23</sup>.

For systematic purposes, what are known as the reception and procedure directives will be analysed in greater detail in the following sections. However, on an ending note, a summary is provided of the contents of said standards of law as well as of the Dublin System and EURODAC.

**The Dublin Regulation of 2003** (Dublin II) reinforced the protection of asylum seekers during the process of determining the State responsible for examining the application and clarified the rules by which the relations among States are governed<sup>24</sup>.

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<sup>22</sup> The European Asylum Support Office (EASO) has undertaken mainly the following tasks: (1) support the cooperation among the Member States on the matter of asylum by facilitating the sharing of information on the countries of origin, by providing them with support in those in which translations and interpreters are concerned, by training the civil service staff members working in the field of asylum and by helping them in the relocation of refugees recognized as such; (2) support the Member States who receive large amounts of applications for asylum, including setting up an early warning system; (3) the organisation of teams of experts to be in charge of the initial evaluations of the applications for asylum; and (4) contributing to the implementation of the CEAS by means of compiling and sharing information on the best practices, the preparation of an annual report on the situation of asylum in the EU and the supervision of the enforcement of the European legislation on this matter.

<sup>23</sup> Article 78 of the TFEU makes provision for the creation of a common European asylum system which respects the obligations placed upon the States under the Geneva Convention of 1951 and, for such purposes, the following shall be adopted (art. 78): a uniform asylum status for third-country nationals valid throughout the entire Union; a uniform subsidiary protection status for third-country nationals which, without being granted the European asylum, are in need of European protection; a common system for the temporary protection of displaced persons in the case of mass influx; common procedures for granting or withdrawing the uniform asylum or subsidiary protection status; criteria and mechanisms for determining the Member State responsible for examining an application for asylum or subsidiary protection; standards related to the reception conditions of the applicants for asylum or subsidiary protection; the association and the cooperation with third countries for managing the flows of persons who are applying for asylum or subsidiary or temporary protection.

<sup>24</sup> Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national is based on the previous Dublin Convention of June 15, 1990

The essential principle of the Dublin Regulation supposes that the responsibility for examining the applications falls to the Member State which has played the most predominant role in the entry or residence of the asylum seeker in the EU. Based on the experience gained with the 2003 system, a new **Dublin Regulation of 2013** (Dublin III)<sup>25</sup> has been promoted, including reliable procedures for the protection of the asylum seekers and heightens the effectiveness of the system thanks to measures including an early warning mechanism. It also deals with a system for preparing for any crisis and the management thereof aimed at tackling the dysfunctional causes of the national asylum systems. Additionally, whatever appeals the interested party may lodge against his or her transfer may suspend the transfer in question until decisions are issued regarding these appeals. In general, the new Regulation heightens the legal clarity of the procedures among Member States by setting out thoroughly-detailed, more well-defined time frames. The Dublin procedure cannot take more than eleven months if the outcome is that of protecting a person, or nine months if the outcome is to return the person to the place from which they came (except in the cases of the person absconding or being imprisoned)<sup>26</sup>. The problems detected as a result of the large-scale movement of Syrian citizens have cast doubt upon the effectiveness of the Dublin III Regulation, the Commission having moved, in September 2015, in favour of its amendment. In January 2016, a new draft regulation was submitted on the part of the Council of Europe.

**The Eurodac Regulation** creates a fingerprint database for the EU asylum-related purposes<sup>27</sup>. When someone lodges an application for asylum at any point within the EU, their fingerprints are transmitted to the central Eurodac system, which is a computer program created in 1993. Given that some updates of the system were necessary in order to shorten the length of time for transmitting the information and provide a solution to certain data protection-related issues, as well as contributing to the fight against terrorism and serious crime, a **new Eurodac Regulation** has been passed and entered into effect as of July 20, 2015<sup>28</sup>. The new Regulation improves the

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regarding the process of determining the State responsible for examining the asylum applications lodged in the European Communities Member States.<http://eur-lex.europa.eu/legal-content/ES/TXT/?uri=uriserv:l33153> (Link consulted on June 23, 2016)

<sup>25</sup> Regulation (EU) No. 604/2013 of the European Parliament and of the Council of June 26, 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast) (applicable as of January 1, 2014) <https://www.boe.es/doue/2013/180/L00031-00059.pdf> (Link consulted on June 23, 2016).

<sup>26</sup> *Evaluation of the Implementation of the Dublin III Regulation* – Final Report DG Migration and Home Affairs [http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/asylum/examination-of-applicants/docs/evaluation\\_of\\_the\\_implementation\\_of\\_the\\_dublin\\_iii\\_regulation\\_-\\_executive\\_summary\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/asylum/examination-of-applicants/docs/evaluation_of_the_implementation_of_the_dublin_iii_regulation_-_executive_summary_en.pdf) (Link consulted on June 23, 2016).

<sup>27</sup> Council Regulation (EC) No. 2725/2000 of 11 December concerning the establishment of “Eurodac” for the comparison of fingerprints for the effective application of the Dublin Convention. <https://www.boe.es/doue/2000/316/L00001-00010.pdf> (Link consulted on June 23, 2016).

<sup>28</sup> Regulation (EU) No. 603/2013 of the European Parliament and of the Council of June 26, 2013 on the establishment of the “Eurodac” system for the comparison of fingerprints for the effective application of Regulation (EU) No. 604/2013 of June 26th and the requests for the comparison with Eurodac data lodged by the Member States’ law enforcement authorities and Europol for law enforcement purposes, and amending Regulation (EU) No. 1077/2011 establishing a European Agency for the operational

functioning, sets new time frames for the transmission of data on fingerprints and assures compatibility with the most recent legislation on the subject of asylum with the data protection requirements. Before, the Eurodac database could only be used for asylum-related purposes. The new Regulation allows the national police forces and Europol to compare fingerprints linked to criminal investigations with the contents in Eurodac. The data received from Eurodac cannot be shared with third countries.

**Directive 2013/32/EU of the European Parliament and of the Council of June 26, 2013 on common procedures for granting and withdrawing international protection**<sup>29</sup>. This Directive sets out a more coherent system providing greater guarantees in the adoption of just and effective decisions on the subject of asylum. Including a specific mechanism located at border to assure that anyone who wishes to apply for asylum can do so rapidly and effectively. This directive also expedites and heightens the efficiency of the procedures (the asylum procedure shall not take more than six months) and requires aspects including providing better training for those person responsible for making these decisions. In addition thereto, any person who has special needs for reasons of their age, disability, illness, sexual orientation or traumatic experiences shall be provided with suitable assistance for justifying their application.

**Directive 2013/33/EU of the European Parliament and of the Council of June 26, 2013, laying down standards for the reception of applicants for international protection**<sup>30</sup>. The objective thereof is to lay down standards for the reception of applicants for international protection. Article 2 thereof details the definitions of several concepts. Particularly noteworthy due to its interest for this study is that of the material reception conditions, which include housing, food and clothing provided in kind or as financial Regulation (EU) allowances or vouchers, or a combination of the three, and a daily expenses allowance. Special mention is also made of the definition of the accommodation centre, which is any place used for the collective housing of applicants. This Directive will be analysed in the section of this study related to Spain's reception system.

**Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the**

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management of large-scale IT systems in the area of freedom, security and justice (recast) (applicable as of July 20, 2015)

<https://www.boe.es/doue/2013/180/L00001-00030.pdf> (Link consulted on June 23, 2016).

<sup>29</sup> Directive 2013/32/EU of June 26th of the European Parliament and of the Council on common procedures for granting and withdrawing international protection (recast) (applicable as of July 21, 2015) [http://eur-lex.europa.eu/legal-content/ES/TXT/?uri=uriserv:OJ.L\\_.2013.180.01.0060.01.SPA&toc=OJ:L:2013:180:TOC](http://eur-lex.europa.eu/legal-content/ES/TXT/?uri=uriserv:OJ.L_.2013.180.01.0060.01.SPA&toc=OJ:L:2013:180:TOC) (Link consulted on June 23, 2016).

<sup>30</sup> Directive 2013/33/EU of the European Parliament and of the Council of June 26, 2013 laying down standards for the reception of applicants for international protection (recast). OJ of June 29, 2013 [http://eur-lex.europa.eu/legal-content/ES/TXT/?uri=uriserv:OJ.L\\_.2013.180.01.0096.01.SPA&toc=OJ:L:2013:180:TOC](http://eur-lex.europa.eu/legal-content/ES/TXT/?uri=uriserv:OJ.L_.2013.180.01.0096.01.SPA&toc=OJ:L:2013:180:TOC) (Link consulted on June 23, 2016).



**content of the protection granted**<sup>31</sup>. This Directive is for the main purpose of improving the quality of the decision-making process and is aimed at assuring that those who are fleeing persecution, war and torture will be given fair, equal treatment. It makes the rights granted to all beneficiaries of international protection (recognized refugees and beneficiaries of what is referred to as “subsidiary protection”) more closely similar on the subject of access to employment and healthcare and also broadens the validity of the residence permits of the beneficiaries of subsidiary protection. It is additionally proposed to assure that the interests of minors and the aspects of gender be taken into account in the evaluation of the asylum applications and in the application of the standards on the contents of international protection<sup>32</sup>.

### 3.2 LAW 12/2009 OF OCTOBER 30<sup>th</sup> GOVERNING THE RIGHT TO ASYLUM AND SUBSIDIARY PROTECTION

The right to asylum in Spain is set forth under Article 13.4 of the Constitution. In 1978, Spain signed the 1951 Geneva Convention and the 1967 New York Protocol. Law 5/1984 of March 26<sup>th</sup> was passed as mandated by the Constitution, governing the right to asylum and refugee status. Said standard of law was amended by Law 9/1994 of May 19<sup>th</sup>. Subsequently, Law 12/2009 of October 30<sup>th</sup> was enacted, governing the right to asylum and subsidiary protection, which entered into effect on November 20, 2009<sup>33</sup>. This Law was amended by Law 2/2014 of March 25<sup>th</sup>, which has added a paragraph to Article 40.1 for the purpose of fully incorporating Article 2.j) of Directive 2011/95/EU of December 13<sup>th</sup><sup>34</sup>.

The Preamble to Law 12/2009 justifies the pertinence of this rule of law on the basis of the long length of time having lapsed since the preceding law and the need of incorporating the standards of law passed within the European Union into the national legal system due to its having a bearing on the very core of the asylum system. The lawmakers proper point out that the transposition of said legislation entails total acceptance of what is referred to as the “First Phase of the Common European Asylum

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<sup>31</sup> Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast) (applicable as of December 21, 2013). In practice, this standard is referred to as a “Definition Directive” <https://www.boe.es/doue/2011/337/L00009-00026.pdf> (Link consulted on June 23, 2016).

<sup>32</sup> What is referred to as an “asylum package” consisting of the revision of the Asylum Procedures Directive and the Reception Conditions Directive in conjunction with the 2011 Asylum Qualification Directive on the requirements for recognition of the persons entitled to subsidiary protection and asylum and to the Dublin Regulation and to the Eurodac has the potential for improving the levels of protection and practice in all of the European Union countries.

<sup>33</sup> The delay in the transposition of the second-mentioned was grounds for the Court of Justice of the European Union having rendered judgment against Spain in Court of Justice of the European Union Decision of July 9, 2009.

<sup>34</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:337:0009:0026:ES:PDF>, Page 5. Spain’s External Action and Foreign Service Law 2/2014 of March 25<sup>th</sup>. Spanish Official Gazette (BOE) No. 74 of March 26, 2014 (Link consulted on June 23, 2016).

System”, which, as is stated thereby, includes the bases for constituting a complete regime of international protection guaranteeing the fundamental rights on the basis of the 1951 Geneva Convention and the 1967 New York Protocol. Reference is also made to the need of adapting Spain’s legislation to the new interpretations and criteria having arisen in international doctrine and in the jurisprudence of the Spanish courts and supranational bodies such as the CJEU or the ECtHR.

This legal standard explicitly includes the right to subsidiary protection for the very first time. It also introduces a new way of family members being reunited such as family reunification, special consideration being given to vulnerable groups and elevating to legal status the obligations regarding the material reception conditions.

This law is comprised of a preliminary title and five titles, throughout the course of which a detailed explanation is provided as to the purpose, the right to asylum, refugee status and subsidiary protection, the rights which are guaranteed by way of both, the procedural rules for the recognition of these rights, the provisions regarding the nuclear family of the persons who are beneficiaries of international protection, the legal standards for the process of cancelling and revoking international protections, as well as the regime for the protection of minors and other vulnerable persons.

Additional Provision Three thereof authorizes the Government to pass, within a six-month period, all those provisions of a regulatory nature which are required for further expanding upon this law. However, nearly seven years having gone by since this law entered into effect, no regulations expanding upon this law have been passed as yet. The Ombudsman has repeatedly recommended that the process of preparing the regulatory standard be expedited, after complaints having been lodged with the Ombudsman in which there was no specific regulation governing the matter put forth as a result of the law making reference to the regulations<sup>35</sup>. This referral to the regulations is made a total of fourteen times in this rule of law.

At the point in time of the writing of this report, the European Commission had sent Spain a Letter of formal notice due to the failure to have transposed the Asylum Procedures Directive 2013/32/EU<sup>36</sup>. With regard to the Reception Conditions Directive 2013/33/EU, the notification of Spain regarding full transposition of the Directive is currently being evaluated. Similarly, the European Union sent a reasoned opinion due to the failure of having informed of the transposition of the Asylum Requirements Directive 2011/95/EU, and Spain has notified the partial transposition<sup>37</sup>.

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<sup>35</sup> See Annual Reports from the Ombudsman: 2011, Page 325; 2012, Page 169; 2013, Page 217.

<sup>36</sup> [http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/managing\\_the\\_refugee\\_crisis\\_state\\_of\\_play\\_20160210\\_annex\\_08\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/managing_the_refugee_crisis_state_of_play_20160210_annex_08_en.pdf) (Link consulted on June 23, 2016).

<sup>37</sup> Regarding the violation proceedings against Spain, please see [http://europa.eu/rapid/press-release\\_IP-15-5699\\_en.htm](http://europa.eu/rapid/press-release_IP-15-5699_en.htm) (Link consulted on June 23, 2016).

### 3.2.1 Office for Asylum and Refugees: Application clearinghouse

The Assistant Directorate General for Asylum, operating under the Directorate General of Interior Policy of the Ministry of the Interior, is considered to be an Asylum and Refugee Office (OAR)<sup>38</sup>. The Procedures Directive for 2013 sets forth the obligation of designing a decision-making authority for all of the procedures to be responsible for examining the applications and adds that the Member States shall guarantee that said authority has the appropriate means, including competent personnel in sufficient number to carry out the tasks thereof.

The OAR, which has been visited twice by personnel from this Institution for the preparation of this study, centralizes the evaluation and processing of all of the applications for international protection which are officially lodged in Spain, both inside the country and at its borders, as well as the processing and decision-making concerning the cases of stateless persons<sup>39</sup>. This Office also furnishes information on the procedure in general and also encompasses in a unit operating under the Office of the Police Commissioner-General for Affairs Related to Foreign Nationals and Borders with functions concerning documentation and another unit operating under the Ministry for Labour and Social Security, a department assigned the authority over matters concerning the reception of asylum seekers. Three social workers are currently rendering services at the OAR, and the number of social workers is planned to be increased to a total of six, although no specific date has been set concerning when this plan will be carried out.

Within the framework of holding the case file evaluation proceedings, the law makes provision for interviews being conducted, which are held at the OAR proper or in authorized offices. The case file evaluation proceedings culminate in a draft decision which will be raised to the Inter-ministerial Asylum and Refugee Commission (IARC), which will decide as to granting or refusing the international protection<sup>40</sup>. The resolution passed within said Commission must be signed by the Minister of the Interior, although be standard practice for it to be signed by the Undersecretary of the Interior by delegation of signature authority.

The urgent need of adopting measures in order to provide a solution to the growing delays in the processing and decision-making concerning the case file proceedings was the reason for which an initial reinforcement of temporary personal

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<sup>38</sup> Law 12/2009 of October 30th governing the right to asylum and subsidiary protection. Article 23. The OAR was created by the sole additional provision of Royal Decree 203/1995 of February 10th (Regulation further expanding upon the previous Asylum Law).

<sup>39</sup> The present study refers solely to international protection. Nevertheless, this Institution has expressed its concern numerous times regarding the delays found to exist in the stateless persons procedure. The latest data furnished by the Ministry for the Interior show 454 decisions to have been handed down regarding stateless persons in 2014 and 1,184 in 2015. As has been notified, a total of 1,151 applications were lodged in 2015, and 2,265 case files of stateless persons were pending decision in March 2016. The Ombudsman will continue paying particular attention to this matter, as a result of considering that the backlog does not seem to have any prospects of being remedied within a reasonable length of time, worsening the situation of the applicants.

<sup>40</sup> See Section 3.2.5 of this study.

assigned to the examination process in 2015. In January 2016, a total of sixty case examiners and six coordinators were engaged for one year, renewable for up to three years. With the exception of the aforementioned personnel hired, the case examiners are civil service personnel from the Central Government Civil Service Corps, Groups A or A2. For performing their duties, no specific training in international protection or human rights is required of them.

The asylum case file proceedings opened as a result of petitions lodged inside the country are divided up and shared out by geographical regions. According to the information gathered on the visit made in February 2016, each case file examiner is assigned 120–150 case files, and the ordinary case examination procedures take an average of a year and a half. The applications lodged at the border and at the migrant detention centres (MDCs) are assigned to the case examiner who has been assigned the country from which the applicant comes, up to a total of five applications. If they exceed this number, the applications are examined by a three-member group which meets monthly and which examines the excess border and detention centre applications. In the prior visit made to the OAR, which was in 2014, the case examiners were said to be reporting on an average of 20-25 case files per month of this type of applications. That would mean approximately 119 case files per year, including the requests for re-examination plus those of the three-member group, having totalled approximately 240 case files per case file examiner.

As far as the recording of applications is concerned, a maximum of three business days, commencing as of the next day immediately following the date on which the application is lodged before the competent authority is set forth under Article 6 of the Procedures Directive 2013/32/EU, this Directive also extending the six-day time frame when it is lodged through an authority other than that which is competent and an extension of ten business days when the increase in the number of applications makes it impossible to respect the stipulated time frames.

The Administration is not complying with these time frames, as is revealed in the present study. The Ombudsman is of the opinion that in order to guarantee the provisions of the aforesaid Article 6, it is indispensable to permanently increase the staff of OAR case examiners, as well as reinforcing other positions supporting the case examination process.

The increase in the number of applications for international protection from Syrian citizens and prospects of accommodating a major number of applicants following the agreements at the EU level, as well as the degree of conflict currently existing in many countries, reveal the need not only of temporarily reinforcing those bodies which have been assigned the authority over the matter of international protection, but rather the need of improving the coordination among executive centres and bodies of the different ministerial departments for the management of the applications for international protection and reception lodged by the applicants. To achieve this improvement in the coordination, it is advisable to review the organic and functional dependence thereof.

Law 6/1997 of April 14<sup>th</sup> on the Organisation and Functioning of the Central Government Administration points out in its preamble that serving the citizenry requires that the structure and organisation of the Central Government Administration be in keeping with the social reality. Along with the principle of legality of the administrative activity, the law states that the principle of efficacy is also binding for the Central Government Administration, and that its functioning must be well-adapted to management by objectives and to quality as standard practice of rendering the public services.

The authorities over the matter of international protection are assigned to two different ministerial departments, and no Delegated Commission or other group body or individual has been designated for the coordination thereof for the purpose of dealing with whatever problems or deficiencies may arise and for proposing measures for improving this management. The Council of Ministers of September 4, 2015 created the Inter-ministerial Commission for the Refugee Crisis, the Vice-President of the Spanish Government assuming the chair of this Commission.

It is considered that the aforesaid organic and functional review could make the management of the civil service more effective. Additionally, the institution of asylum has an external aspect which is carried out in international spheres, it therefore being considered that such a decision would meet with favourable acceptance on the part of both the Council of Europe and the Commission.

### 3.2.2 Interpreters and interviews

Article 12 of Directive 2013/32/EU of June 26<sup>th</sup> sets forth that the Member States shall guarantee that the applicants will be informed in a language which they understand or which it is reasonable to assume they understand, concerning different questions related to the procedure. This is a matter of substantial information concerning their rights, obligations and consequences of their failure to comply or lack of cooperation, as well as the consequences of withdrawing their explicit or implicit application. This guarantee of adequately and effectively informing the applicants also includes the outcome of the decision made regarding their application and the measures which they may carry take in order to take exception thereto, were the decision to be in rejection of the application. This precept even specifically states that in this case and in other cases in which the interested party is called to appear, the services shall be paid for by way of public funds.

In the processing of the case file, the selection of the interpreter takes on crucial importance. Article 15 of Directive 2013/32/EU sets forth under paragraph 3.c) thereof that the Member States shall select an interpreter who is capable of guaranteeing correct communication between the applicant and the person holding the interview and that the communication shall be held in whatever language the applicant prefers, unless there is another language which the applicant understands and in which he/she

is capable of communicating clearly. The aforesaid precept similarly makes reference to the gender of the interpreter.

The UNHCR considers the collaboration of a good interpreter to be an indispensable pre-requisite for a fair procedure, and whenever there is not a qualified person made available for this purpose, any proof obtained in the course of the personal interview may be unreliable.

The practical guide on the interviews prepared by the EASO, which includes a revised version of Article 15 of the Procedures Directive (2013/32/EU), specifically states that compliance must be rendered with the requests made as to civil service personnel and interpreters being of the same gender as the applicant whenever possible, unless the determining authority has reasons to believe that such requests are based on reasons which are not related to the difficulties on the part of the applicant to present the grounds of his or her application in a comprehensive manner.

Every possible effort must be made to enable the applicant to set out a full, exact account of the facts, designating a civil service official and an interpreter of a gender which does not cause the applicant to feel threatened or uncomfortable. This is a matter of vital importance when the applicant has been the victim of a rape or other type of sexual abuse. In some cases, the applicant may express their preference for an interviewer or interpreter of a different sex than his or her own. In some Member States, the consolidated practice consists of meeting such a request whenever possible<sup>41</sup>.

The OAR currently has solely one Russian and Armenian interpreter. For the rest of the languages, interpreters are requested from the non-governmental organisation Accem. This organisation was engaged by the Asylum Office in 2015, and at the point in time of the visit made by this Institution, there was reportedly a procedure under way for awarding a new contract via public tender<sup>42</sup>.

Regarding the interview, the UNHCR considers it crucial, on providing the applicant with the chance to thoroughly explain the reasons for his or her application in person<sup>43</sup>. Therefore, it recommends that all of the Member States prepare and give a mandatory specialized training program to each new interviewer at the point in time of their incorporation, prior to starting to hold personal interviews.

The 2013 Procedures Directive, which devotes four articles to the personal interview, sets forth under Article 15.3.a) that the Member States shall ensure that the person who conducts the interview is competent to take account of the personal and

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<sup>41</sup> <http://www.asylumlawdatabase.eu/sites/www.asylumlawdatabase.eu/files/aldfiles/ES%20-%20EASO-Practical-Guide-Personal-Interview-ES.pdf>, page 17. *EASO Practical Guide "Personal Interview"*. EASO Practical Guide Series. December 2014 (Link consulted on June 23, 2016).

<sup>42</sup> Information obtained on April 21, 2016.

<sup>43</sup> The UNHCR considers that those Member States which have a national legislation which allows the personal interview to be omitted based on the matters set out being irrelevant, incoherent, contradictory, unlikely, insufficient or that the only purpose thereof is to postpone or thwart a removal, should do away with this legislative provision, UNHCR, *Improving the procedures* ..., op. cit. page 27.

general circumstances surrounding the application, including the applicant's cultural origin, gender, sexual orientation, gender identity or vulnerability<sup>44</sup>.

The conditions are also set out for holding the interview in relation to the competence of the interviewer in complex situations (minors, persons with symptoms of torture, etc.), the place where the interview is held and includes an express mention as to the clothing which the interview must not be wearing (neither a law enforcement or military uniform).

Article 14 of the aforesaid directive introduces the possibility of the Member States availing of the possibility of the personnel of a different authority temporarily taking part in the interviewing process whenever the number of applications makes it impossible for the determining authority to conduct interviews in time concerning the in-depth aspects of each application and that, in such cases, the personnel of that other authority be provided beforehand with the pertinent training in accordance with that which is set forth under Regulation (EU) No. 439/2010<sup>45</sup>.

Article 14.2 expressly sets forth the cases in which the personal interview may be omitted and those cases in which the fact that the applicant does not come in for the interview shall be taken into account, save a duly justified absence.

The law governing the right to asylum in Spain makes reference solely to the training of the case examiners in general terms. It states that the Administration shall ensure that the public employees and other persons who deal with the applicants for international protection, refugees and persons who are beneficiaries of subsidiary protection avail of the proper training and that the competent Ministries prepare training programs for the purpose of acquiring the necessary skills for performing the duties of the positions in question<sup>46</sup>.

This Institution is of the opinion that it is indispensable that the still as yet pending incorporation of the 2013 Procedures Directive expressly further expand upon the authorities of the interviewer. The initial and continued training programs of the persons in charge of processing the case files for international protection must also be considered mandatory.

The customary processing system begins with requesting an appointment and, once this formality has been completed, the interested party holds what is referred to as a first interview, with or without a lawyer, given that the aid of a lawyer is only

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<sup>44</sup> Article 14 (Personal Interview), Article 15 (Requirements for a Personal Interview), Article 16 (Content of a Personal Interview) and Article 17 (Report and Recording of Personal Interviews). Directive 2013/32/EU of June 26th.

<sup>45</sup> Regulation (EU) No. 439/2010, of the European Parliament and of the Council, of May 19, 2010, creating the European Asylum Support Office.

<sup>46</sup> Additional Provision Three of Law 12/2009.

required in applications lodged at borders<sup>47</sup>.

Said interview is held in private offices which are of the adequate characteristics with regard to privacy and confidentiality. However, the interview is not carried out by the case examiners but rather the auxiliary personnel, using documents prepared by the case examiner. The documents state a number of questions which the civil service official must take into account during the interview: certain references which must be avoided, guideline questions as to the reasons for which persecuted, general and specific question regarding the account given by the interested party, etc. The purpose of these questions is to detect frauds early along, and instructions are included for the case in which it is necessary to give the nationality questionnaire<sup>48</sup>.

The case examiners hold a second interview with the applicants when they consider the information furnished to the case file to be insufficient. Law 12/2009 sets forth that the possibility will be considered of a further personal interview concerning their application for asylum under the terms for which provision is made under the regulations. The process of weighing whether or not it may be necessary to hold further interviews must be reasoned (Article 17.8). However, the case examination reports do not systematically make reference to whether or not a second interview is necessary<sup>49</sup>.

Second interviews are held in a very small percentage of cases, and this is despite the persons who conduct the first interview lacking the necessary training. Therefore, it must be demanded that it be made mandatory for a second interview to be held when the first one has not been conducted by the case examiner, who, in the judgment of this Institution, should assume this task, just as is the case in most of the Member States<sup>50</sup>.

As it has been possible to see, the UNHCR requests within the scope of the IARC for a further interview to be conducted are not heeded in a major number of cases. If the case examiner considers it necessary to conduct a further interview and

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<sup>47</sup> According to the information obtained by the Institution on the applications which are lodged directly at the OAR in Madrid, there are a very large percentage of cases in which the applicant lodges his or her application without a lawyer. This is due mainly to the fact that, on making an appointment by telephone, they are not informed that they can come in assisted by a lawyer, and once at the office, if they want a lawyer, they have to be given a new appointment. Many applicants opt to go ahead without a lawyer.

<sup>48</sup> These interviews are more of what the UNHCR research project refers to as an initial or detection interview, the purpose of which is that of recording and compiling information and proof regarding the profile of the applicant. This type of interview can actually be quite useful for the preparation of the interview, but cannot be considered to suffice. UNHCR. *Improving the asylum procedures: comparative analysis and legal and practical recommendations*. March 2010. page 31. [http://www.acnur.es/PDF/7399\\_20120830130348.pdf](http://www.acnur.es/PDF/7399_20120830130348.pdf) (Link consulted on June 23, 2016).

<sup>49</sup> In some, it is indicated as not being necessary, no mention or record thereof being made in others and a complete transcription of the interview being incorporated in yet others.

<sup>50</sup> According to the investigation conducted by the UNHCR on the application of the key provisions of the Asylum Procedures Directive in certain Member States, this is carried out, in most cases, by a civil service office of the determining authority who is responsible for reviewing the application, examining the information on the country of origin of the interested party and obtaining other proof. This person is also the person in charge of proposing the final decision. UNHCR. *Improving the asylum procedures. Comparative analysis and practical, legal recommendations*. March 2010. page 24. [http://www.acnur.es/PDF/7399\\_20120830130348.pdf](http://www.acnur.es/PDF/7399_20120830130348.pdf) (Link consulted on June 23, 2016).



the applicant is not in Madrid, the Ministry for Public Administrations headquarters, which is equipped with videoconferencing media, can be used.

The profile of the interviewer differs depending on the location where the application is lodged, the quality of the interview therefore varying greatly depending on the person who is doing the interviewing. At the international airports and at the border control posts, the interview is conducted by police officers; at the prisons, it is conducted by the prison's own staff; in Ceuta, the interviews for the applications lodged inside the territory come under the authority of a Government Delegation official. The interviews for the applications lodged within the territory of Melilla are conducted by an officer from the Central Police Headquarters; and in Valencia and Catalonia, the interview is usually conducted at the alien affairs offices

The interviews conducted with persons who are prison facility inmates are usually conducted by a person pertaining to the technical team at the prison facility and are conducted on the basis of a questionnaire furnished by the Asylum and Refugee Office. In this case, generally speaking, the person who conducts the interview does not usually have enough training to carry it out, it therefore being considered that a second interview on the part of the case examiner through the use of technologies allowing for this possibility without any need of travel should be mandatory.

The aforementioned guide prepared by the EASO was created for aiding the Member States regarding what is considered to be one of the essential obligations concerning the subject of international protection: providing the applicant with a fair and effective chance to present the grounds of their application. The guide indicates preparation as being key to a good interview, and the better prepared the civil service staff member, the more effective the interview and the more pertinent the questions posed will be. It also states that a sufficient amount of time should be assigned to the interview. By means of a proper preparation, the interviewer makes certain that the time available can be focused on the grounds of the claim and not on aspects less relevant to the application.

The guide specifically mentions that an effective interview in which the pertinent details standing as proof of the essential aspects of the claim are gathered is indispensable in order for a fair decision to be made regarding the application. The aforesaid guide has mainly been conceived to aid the competent civil service staff members in examining the cases in their regular work, not solely for those newly incorporated but also for those who have accumulated years of experience, as a refresher concerning their work.

During the interview, the person being interviewed may experience psychological blocks as a result of the process of recounting events involved in setting out their account. In these cases, it is normal to suspend the interview and request a psychological report from the lawyer or a further interview with the psychologist present, if possible. The problem lies, as previously discussed, in the many interviews which are held without a lawyer, and the OAR does not have a protocol in place for

these cases, nor do the interviewers go through specific training for dealing with stressful situations.

After analysing the procedure which is currently in place and taking the importance of the interview into consideration, this Institution is of the opinion that one of the Administration's immediate objectives should be to improve their reliability.

### 3.2.3 Examination and decision

After the first interview, the case examiner commences evaluating the case file, and the intervention thereof ends following the preparation of the case examination report setting out the grounds for the proposed favourable or unfavourable decision regarding granting refugee status or subsidiary protection.

No complete guide currently exists for the preparation of these case examination reports although the case examiners are indeed given specific orders such as, for example, that of putting the decision concerning certain nationalities on hold, that of preferentially granting subsidiary protection status to certain nationalities (as has occurred concerning Syrian nationals), etc. However, there are no guidelines in place so that a case examination will be homogeneous, with the exception of some instruction regarding the formal structure of the report. Nor does the OAR have a code of best practices in place.

The reports of the case examiners take three factors into consideration: 1) the account given by the applicant 2) the proof provided in support of the application and 3) the information on the country of origin. Therefore, in the process of evaluating the applications for international protection, the credibility of the statements made by the applicant take on singular importance, given that, in many cases, it is not possible to submit documentation supporting such statements<sup>51</sup>.

The credibility analysis is particularly necessary in the applications based on sexual orientation or related to questions of gender, given that the decision is made mainly based on the credibility of the applicant.

Directive 2011/95/EU of December 13<sup>th</sup> sets forth under Article 4 thereof that where Member States apply the principle according to which it is the duty of the applicant to substantiate the grounds of the application for international protection, and where aspects of the applicant's statements are not supported by documentary or other evidence, such aspects will not require confirmation if certain conditions are met, one of which is that of the overall credibility of the applicant having been established<sup>52</sup>.

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<sup>51</sup> In the applications lodged at the border, this is especially necessary if the interested party is undocumented, given that the time frames for issuing a decision on the application are quite short.

<sup>52</sup> Directive 2011/95/EU of the European Parliament and of the Council of December 13, 2011, DOUE L 337/9, 20.12.2011, Article 4, Section 5 e).

The need for the credibility assessment was brought to fore in the “*CREDO. Improved credibility assessment in EU asylum procedures*” project, in which the European Union and the UNHCR took part, the purpose of which was that of contributing to setting out better-structured, more objective, higher-quality practices with a protection-related focus on the part of the Member States of the European Union in the credibility assessments involved in the asylum procedures.

The aforesaid objective was supposed to be met by identifying best practices and shortcomings in the recommendations offered by the EU Member States in regard to the credibility in the asylum procedures. Multidisciplinary training must be set out and promoted on the assessment of credibility, in addition to the awareness raised on the part of the national authorities competent in decision-making and the European Union lawmakers concerning the need and importance of conducting objective, structured credibility assessments<sup>53</sup>.

The information on the country of origin is customarily gathered by the case examiners by way of queries made to different websites. One part of the information on the country of origin is found in English, it therefore being important that the case examiners have an acceptable level of English comprehension, without dismissing the fact that, in the event of need, they can request the support of interpreters<sup>54</sup>.

The information on the country includes not only the legislation, but also the political and social circumstances and the degree to which the rules of law are actually enforced. Each case examiner queries specific sources from the countries from which the case files have come and evaluates and must take into account the information provided by the UNHCR concerning the legal and political situation of said countries, as well as the events having come to pass during the migratory travel of the applicant for international protection in specific situations.

The use of other languages is therefore not limited to the use of an interpreter-translator at the interviews, but in many case file examinations includes the case file investigation proper. However, the level of English of the case examiners is not always sufficient in all cases. It seems indispensable that the necessary supports be provided to those persons who are currently reviewing the procedures and that, in the new openings for covering the case examiner positions, that a suitable level of English be required for performing case examination duties.

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<sup>53</sup> Within the framework of this project, a Seminar was organized on the credibility assessment and held in Madrid on November 28-29, 2012 for Spanish and Portuguese case examiners and magistrates, in which very few case examiners took part. At said seminar, issues were addressed such as “the credibility concept and its application in the asylum procedure, the application of the principle of the benefit of the doubt, the determining authority is a human being (the influence of the attitude and personal experiences, etc.)”.

<sup>54</sup> Websites regularly queried: <http://www.refworld.org/cgi-bin/tehis/vtx/rwmain?page=index>; <http://www.state.gov/j/prm/>; <http://eige.europa.eu/gender-based-violence/resources/france/french-office-protection-refugees-and-stateless-people-ofpra-doctrine-modification-granting-subsiadiary-protection-status>; <https://freedomhouse.org/> (Links queried on June 23, 2016).

In addition to the foregoing, it is also necessary to reinforce the document support service currently in place at the OAR, to which the case examiners must resort when the online search engines do not provide results sufficing to detect the specific problem to which the person applying for international protection makes reference. In view of the lack of sources, the credibility assessment once again becomes essential, given that if the case examiner is lacking training in this regard, he or she must resort to their own personal intuition or to other skills resulting from their own experience.

The importance of a complete, correct case examination is unquestionable, given that whatever decision is made concerning the case file may have highly important consequences for the life of the applicant. The rejection of the application entails mandatorily leaving the country and, wherever applicable, expulsion to the country from which the interested party has fled, provided that they not be legally-entitled to reside in Spain via other channels. In the border-lodged applications, the return to the place from which they have come is immediate. The risk that this return or expulsion could entail led the Ombudsman to put forth a Recommendation for the law enforcement bodies to keep in constant touch with the UNHCR and to make a risk assessment in terms of the updated current situation of the country of the interested party before carrying through on any of these measures<sup>55</sup>.

The Recommendation was taken, although it subsequently came to the knowledge of this Institution that no record is made of such an assessment in the case file, which prevents supervising what is done by the police. The police authorities have repeatedly said that, since having taken said recommendation, queries are made to assess the risk systematically prior to proceeding to the return or expulsion of the third-party nationals.

In order to achieve the objective of a correct case file examination, it is necessary for the case file examiners to be given good quality training and for them to be able to profit from familiarizing themselves with the experiences of other legal practitioners, which would contribute to minimizing the errors in the decisions. It is indispensable that they be given training prior to beginning their work regarding interviewing techniques, techniques for an effective credibility assessment and training for dealing with case files on LGTB or gender-related issues. The OAR currently has no-one specialized in gender violence. According to the information of which this Institution has been able to avail, the OAR had broadened the training in 2015, and the case file examiners have been able to attend courses specializing in LGTB issues. However, access to this training has not been readily available in previous years, given that, in addition to the fact that few courses were organised, the case file examiners

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<sup>55</sup> Recommendation 190/2013 of November 15th put forth to the Office of the Police Commissioner-General for Affairs Related to Foreign Nationals and Borders of the Ministry for the Interior [https://www.defensordelpueblo.es/wp-content/uploads/2015/05/2013\\_Anexo\\_E\\_1\\_Recomendaciones\\_2013.pdf](https://www.defensordelpueblo.es/wp-content/uploads/2015/05/2013_Anexo_E_1_Recomendaciones_2013.pdf) (Link consulted on June 23, 2016).

were not provided with sufficient information on those offered by the UNHCR or the EASO.

After having evaluated the process of the review of the case files for international protection, this Institution is of the opinion that the following changes should be considered:

- 1) That there be a rotation in the assignment of case files so as to avoid the objectivity which the case file examiner must have on dealing with each case going by the wayside<sup>56</sup>.
- 2) The processing of the applications involving some cause for exclusion must be reviewed so that the applicant will be provided with formal notice as to the cause due to which the decision has been made in favour of the exclusion thereof prior to issuing a decision on the case file and he or she may present evidence in defence of their entitlement, should he or she so deem fitting.
- 3) Lines of action encompassing all aspects of the case examination process must be determined, save the individual assessment of each case.
- 4) Minors must be granted the same degree of protection as their parent, even when the parent cannot be located or whenever gender violence has been found to be involved. The father's consent being needed when dealing with applications of persons who are fleeing war or who are in other circumstances in which it is possible to deduct a major risk to human life is not suitable.

Regarding the administrative decision, the Procedures Directive determines that with regard to rejections one must assure that the grounds of fact and law are detailed, as well as the measures to take following a rejection<sup>57</sup>. Although Law 12/2009 does not make any reference to the content or requirements of the decision, prior Asylum Law Regulation 203/1995 does indeed make reference to this question and sets forth that the decision must be reasoned and individualized.

This Institution has had access to decisions issued in asylum applications which do not meet the minimum requirements exigible of an administrative decision. For example, mention can be made of the fact that in the unfavourable decision of an Ivory Coast citizen, the grounds stated solely general references to the applicable rules of procedure<sup>58</sup>.

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<sup>56</sup> Some of the case file examination reports have been found to include statements of a general nature questioning the credibility of the interested party and the documentation provided thereby, due to the case file examiner having found falsehood or irrationality to exist in what was done by other applicants of the same nationality.

<sup>57</sup> Article 11. Directive 2013/32/EU.

<sup>58</sup> The applications lodged by the interested party was submitted on September 1, 2011, and the decision was issued in August 2013 (Case File No. 13005621. Ombudsman Institution Files).

One of the arguments which have repeatedly been used for refusing the applications is the possibility the asylum seeker has had of requesting asylum in another country before arriving in Spain. Although this argument is used in conjunction with others for the refusal, it does not seem reasonable to make mention of such an option when the transit countries have no effective asylum system.

Recently, headway has been seen to be made in the reasoning of the decisions, which must be considered as being something positive. One must remember that the statement of the reasons for the decision is a requirement of the principle of transparency and is for the end purpose of knowing the reasons for a decision in order to be able to draw a legal comparison thereof and, wherever applicable, to take exception to the decision.

The reasons set out need not be thoroughly detailed, but indeed sufficiently expressive of the legal reasons and, wherever applicable, of the non-judicial reasons for the decision. Doctrine repeatedly states that a statement of reasons by way of purely conventional, abstract formulas applicable to any case is not acceptable. Nor is the use of reasoning of a general nature suitable for setting out the grounds and reasoning of a decision which is issued in reference to certain specific individual situations.

As far as the percentage of rejections and cases of non-acceptance of applications for international protection is concerned, the statistics show that Spain had a very small percentage of refugee statuses granted in comparison to other European Union countries.

The recognition rate of the decisions made in 2013 was 20.62 % with regard to 203 refugee statuses, 325 for subsidiary protection status and 4 authorisations for humanitarian reasons<sup>59</sup>. In 2014, there was a rise in the recognition rate, which rose to 40.48 % due to a great degree to the high percentage of granting subsidiary protection status to Syrian citizens, having added up to a total of 1,199 whilst 384 refugee statuses were granted<sup>60</sup>. In 2015, the recognition rate was 31 %<sup>61</sup>.

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<sup>59</sup> Source: Ministry for the Interior. Asylum in numbers 2013 [http://www.interior.gob.es/documents/642317/1201562/Asilo\\_en\\_cifras\\_2013\\_126140719.pdf/5c514420-3dfc-48fa-9435-763d6bed4959](http://www.interior.gob.es/documents/642317/1201562/Asilo_en_cifras_2013_126140719.pdf/5c514420-3dfc-48fa-9435-763d6bed4959) (Link consulted on June 23, 2016).

<sup>60</sup> Source: Ministry for the Interior. Asylum in numbers 2014 [http://www.interior.gob.es/documents/642317/1201562/Asilo\\_en\\_cifras\\_2014\\_126150899.pdf/6e403416-82aa-482f-bcda-9a38e5a3a65c](http://www.interior.gob.es/documents/642317/1201562/Asilo_en_cifras_2014_126150899.pdf/6e403416-82aa-482f-bcda-9a38e5a3a65c) (Link consulted on June 23, 2016).

<sup>61</sup> Source: Eurostat. <http://ec.europa.eu/eurostat/documents/2995521/7233417/3-20042016-APEN.pdf/34c4f5af-eb93-4ecd-984c-577a5271c8c5> (Link consulted on June 23, 2016).

**TABLE 5**  
**RECOGNITION RATE for 2015**

	Positive decisions			
	Total	Positive	Recognition rate (%)	
			Total	Refugee and subsidiary protection status
EU	592,845	307,620	52%	48%
Belgium	19,420	10,475	54%	54%
Bulgaria	6,175	5,595	91%	91%
Czech Republic	1,335	460	34%	33%
Denmark	12,225	9,920	81%	81%
Germany	249,280	140,910	57%	56%
Estonia	180	80	44%	44%
Ireland	1,150	485	42%	42%
Greece	9,640	4,030	42%	42%
Spain	3,240	1,020	31%	31%
France	77,910	20,630	26%	26%
Croatia	185	40	22%	22%
Italy	71,345	29,615	42%	19%
Cyprus	2,065	1,585	77%	77%
Latvia	170	20	13%	13%
Lithuania	180	85	46%	46%
Luxembourg	775	185	24%	24%
Hungary	3,420	505	15%	15%
Malta	1,490	1,250	84%	79%
Netherlands	20,465	16,450	80%	78%
Austria	21,095	15,045	71%	70%
Poland	3,510	640	18%	15%
Portugal	370	195	52%	52%
Romania	1,320	480	36%	36%
Slovenia	130	45	34%	34%
Slovakia	130	80	60%	34%
Finland	2,960	1,680	57%	51%
Sweden	44,590	32,215	72%	69%
United Kingdom	38,080	13,905	37%	32%
Iceland	235	50	22%	20%
Liechtenstein	30	5	14%	7%
Norway	9,475	6,250	66%	64%
Switzerland	21,840	14,000	64%	41%

Source: Eurostat  
Prepared by: Ombudsman Institution

**TABLE 6**  
**POSTIVIE DECISIONS CONCERNING APPLICATIONS FOR ASYLUM IN 2015**

	Positive decisions		
	Total	Refugee Status	Subsidiary Protection
EU	333,350	246,175	60,680
Belgium	10,900	9,220	1,675
Bulgaria	5,605	4,705	895
Czech Republic	460	55	390
Denmark	10,200	7,815	2,315
Germany	148,215	142,305	2,230
Estonia	80	20	55
Ireland	710	335	375
Greece	5,875	5,020	705
Spain	1,030	220	805
France	26,015	20,620	5,395
Croatia	40	35	5
Italy	29,630	3,575	10,280
Cyprus	1,875	240	1,630
Latvia	30	5	25
Lithuania	85	15	65
Luxembourg	210	185	25
Hungary	545	170	370
Malta	1,320	290	955
Netherlands	17,045	6,915	9,655
Austria	17,750	14,330	2,950
Poland	695	360	195
Portugal	195	35	160
Romania	525	250	275
Slovenia	50	35	15
Slovakia	80	5	40
Finland	1,795	1,110	510
Sweden	34,470	13,510	18,460
United Kingdom	17,920	14,785	210
Iceland	85	45	20
Liechtenstein	10	5	0
Norway	7,150	5,610	780
Switzerland	14,135	6,360	2,640

Source: Eurostat  
 Prepared by: Ombudsman Institution

The figures shown reveal that most Syrian nationals are given subsidiary protection in Spain, whilst they are granted refugee status in other Member States. The difference in the protection granted is attributed to the practices of the Member States in interpreting the criteria of the Recognition Directive and the national policies<sup>62</sup>.

The person to whom subsidiary protection status is granted must request renewal upon the lapse of a five-year period, and at that point in time an analysis is made as to whether or not it is fitting for the person in question to continue in said situation. However, the holder of refugee status solely renews the card, but no further study is conducted of the case file. For granting Spanish nationality, it is not considered

<sup>62</sup> EASO, *Annual Report Situation of Asylum in the European Union 2013*, Luxembourg: Publications Office of the European Union, 2014 <https://www.easo.europa.eu/sites/default/files/public/EASO-AR-final.pdf>, page 40 (Link consulted on June 23, 2016).



indifferent either that the person applying be a refugee or that he or she have been granted subsidiary protection. Refugees are required to have completed five years of residence, whilst the beneficiaries of subsidiary protection have no privilege for obtaining citizenship<sup>63</sup>.

The ruling of the Contentious-Administrative Chamber of Spain's Supreme Court of December 10, 2015 in relation to a case in which the Administration had granted subsidiary protection instead of refugee status to a Syrian woman, rules that the instance chamber incurred in an error of Law on not recognizing said status. It considers that, although there be no full proof of persecution, the report issued by the UNHCR on May 30, 2014 and that which was prepared by the Accem must have underestimated by the same without any justification whatsoever. The ruling also cites the international protection issues from the UNHCR report of October 22, 2013 concerning the persons who flee the Syrian Arab Republic, the nationwide spread of the armed hostilities and the expansion of the battle fronts, which encompass the entire country and which are affecting the civil population, which is suffering from being completely unprotected.

The Supreme Court considers that the decision of the Spanish Government of not returning the citizens coming from Syria to their country of origin for the purpose of alleviating the potential risk of serious threats against their lives or integrity by granting subsidiary protection cannot be an obstacle for refugee status being granted in the case of the woman in question seeking asylum, when it is deemed that the pre-requisites required under law for recognizing said status of asylum are met<sup>64</sup>. The court ruling sets forth the reminder that although the situation of armed conflict in a country entails the granting of international protection, it cannot determine the degree of protection and that it is indispensable to analyse each individual case in particular.

The Supreme Court expresses itself in similar terms in another ruling of February 19, 2016, in which the right to be granted refugee status is recognized for the plaintiffs as a result of not considering it to suffice that subsidiary protection to be granted<sup>65</sup>.

### 3.2.4 UNHCR intervention

The 2013 Procedures Directive sets forth the right of the applicants to contact the UNHCR and the duty of the States to see to obtaining accurate, up-to-date information concerning the countries of origin of the applicants by consulting the pertinent sources, one of the most important of which are those furnished by the UNHCR.

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<sup>63</sup> Article 2 of the Civil Code.

<sup>64</sup> Spanish Supreme Court Ruling 5211/2015. Contentious Chamber. Section 3. First Supreme Court ruling on the appeals filed against the refusals of recognition of refugee status for Syrian nationals who were granted subsidiary protection.

<sup>65</sup> Spanish Supreme Court Ruling 569/2016. Contentious Chamber. Section 3.

Spain's Asylum Law devotes one chapter to the interventions of the UNHCR in the procedure and processing of the applications<sup>66</sup>.

Article 34 of the Asylum Law sets forth the obligation on the part of the Administration of informing the UNHCR of the applications which are lodged, recognizing the right of access on the part of the asylum seekers both at border facilities and at migrant detention centres or prisons, as well as the right thereof to be informed of the situation of the case files, to be present at the hearings of the applicants and to submit opinions to be included in the case file.

In turn, Article 35 sets forth the obligation of notifying the UNHCR representative in Spain to attend the IARC meetings and to be informed immediately of the applications lodged at the border, as well as hearing his or her opinions prior to issuing decisions concerning these types of applications. It falls to the UNHCR to decide whether or not it submits an opinion in these cases. Provision is also made for a ten-day period to be granted thereto for issuing an opinion on the applications which are processed by the emergency procedure and, in the cases of non-acceptance of Article 20, whether the draft decision of the OAR were unfavourable<sup>67</sup>.

The intervention of the UNHCR has undergone a major change in the law currently in force as compared to the immediately previous version of this law, particularly concerning the possibility of setting out a "veto" in the border procedure.

Article 21.2 of the immediately prior Asylum Law included a provision for the procedures process at the border which, although did not suspend the act being carried out, did indeed allow the applicant to enter Spanish territory when there was an UNHCR report on record taking exception to the unfavourable decision of the Administration. Said authorisation was linked to an appeal being filed by the interested party through the contentious-administrative jurisdiction.

The opinions issued by the UNHCR are not recognised as binding by the law in force in any of the procedures, although the relevance thereof is indeed recognized.

According to the information provided by the UNHCR delegation in Spain, at the request of the Ombudsman Institution, the UNHCR assessed 3,990 cases over the course of 2015 which were raised to the eleven IARC meetings which were held that year.

At said meetings, the UNHCR made proposals for the recognition of Refugee Status for the large majority of the asylum seekers from Syria (1,725 cases) by virtue of the consideration thereof on International Protection in relation to the persons who fled the Syrian Arab Republic within the October 2014 to November 2015 period<sup>68</sup>.

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<sup>66</sup> Chapter IV, Title II of Law 12/2009.

<sup>67</sup> Article 20: "Non-acceptance of applications lodged within Spanish territory". Law 12/2009 of October 30th governing the right of asylum and subsidiary protection.

<sup>68</sup> UN High Commissioner for Refugees (UNHCR), *International Protection Considerations with regard to people fleeing the Syrian Arab Republic*, Update III, October 2014. Available at: <http://www.refworld.org/docid/544e446d4.html> UN High Commissioner for Refugees (UNHCR),

However, in practically all of these cases, the Administration did not heed the recommendation made by the UNHCR, having granted subsidiary protection.

In regard to the cases of all other nationalities, the UNHCR raised proposals for modification in 96 cases (concerning 138 persons) with a view to raising the protection granted or concerning the improvement of the procedure, the IARC having heeded 17.89 % of the recommendation made either in full or in part.

In certain cases, a proposal was made for the Geneva Convention refugee status to be granted. The typology of said cases has to do with cases of persecution due to nationality, for religious reasons, sexual identity or orientation, political reasons, pertaining to a certain social group in particular or concerning gender and the application of Article 1D of the Geneva Convention.

The proposals made in all of the other cases were focused on the need of granting some type of international protection, granting the family extension with more flexible criteria in accordance with Spain's legislation proper and the assessment of doctrine-related positions of the UNHCR related to the application of clauses on the exclusion or revocation of refugee status. Similarly, in some cases is which a need for international protection was found to exist, the application of Article 46.3 of the law and the resulting granting of residence authorisations for humanitarian reasons was urged.

Lastly, in a great number of cases, the UNHCR requested postponing the assessment for the purpose of a further interview or study being conducted by the case examiners. In these cases, the requests had to do with women who were victims of physical and sexual violence or another form of persecution related to reasons of gender, victims of torture, persons pertaining to the LGBT community, as well as to applications for protection for religious or political reasons.

The reasons for which the UNHCR assessed the need of conducting another interview or another study of the case had to do with the quality of the procedure which had been employed: problems assessing the credibility of the alleged facts and the fear expressed by the applicant; defects of the initial interview for different reasons, one of which was the failure to have conducted this interview or having employed written allegations instead, etc.

In the procedure for processing the applications lodged at the border or at the migrant detention centres, UNHCR studied a total of 4,667 applications: 744 coming from a Migrant Detention Facility, recommending entry of 127; and 3,923 coming from border control posts, regarding which the UNHCR recommended accepting 3,297 for processing. These recommendations for entry made by the UNHCR were heeded on

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*International Protection Considerations with regard to people fleeing the Syrian Arab Republic*, Update IV, November 2015, available at: <http://www.refworld.org/docid/5641ef894.html> (links queried on June 23, 2016).

the part of the Administration by 99.80 % in the case of Syria or Palestine and 21.52 % in all of the other nationalities<sup>69</sup>.

The issues on which the main discrepancies are found to exist between UNHCR and the OAR within the framework of the procedure of Article 21 of Law 12/2009 have to do with the assessment of applications related to gender-related issues (women who are possible victims of trafficking, cases of forced marriage and female genital mutilation) and those linked to sexual orientation and gender identity (although in 2015 a larger percentage of this type of applications was accepted for processing). In both cases, the discrepancies revolve around the assessment of the credibility of the allegations and on the analysis of the information on the countries of origin.

There was also a discrepancy between the UNHCR and the asylum authorities in the assessment of applications in which the applicant alleged being a minor, due to the disagreement with the age assessment procedure. Similarly, it was noted that there is no special protocol in place for assessing the applications of vulnerable persons in those cases in which the asylum seekers are in a Migrant Detention Facility or at border control post.

The Ombudsman is of the opinion that the decision of not heeding the recommendation made by the UNHCR must be reasoned sufficiently. The large percentage of cases in which the Administration decides not to heed these recommendations must be stated for the record, taking into account that this is a matter of a specialized opinion of utmost importance.

The Supreme Court has stated its opinion on this failure to heed the UNHCR opinions. In its ruling of February 28, 2014, the seventh legal ground states: "There is no indication that the Administration were to have taken into account that which was noted by the UNHCR in its reports of February 15, 2011 and February 18<sup>th</sup>, 2011, in which they recommended that the application be accepted for processing, as there is no mention or reasoning stated, therefore being an evident violation of Law 12/2009, which attributes this body with a role of far-reaching importance in the investigation of the applications for asylum, precisely as is emphasized in the legal grounds set out in the law proper, wherein it is stated: 'Specific mention must be made of this point to the United Nations High Commissioner for Refugees (UNHCR), who is recognized to have the important role which is carries out in the processing of the applications for asylum in Spain, thus reinforcing the guarantees of the procedures' "<sup>70</sup>.

The Administration does not currently call in the UNHCR when dealing with applications which fall to another Member State to review according to the rules for determining which Member State is to examine any one application as set forth under EU Regulation 604/2013 of June 26<sup>th</sup>. Although the European Union Regulations do

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<sup>69</sup> Source: UNHCR

<sup>70</sup> Statements similar thereto were made in the decisions of January 27, 2014, March 27, 2013 and June 24, 2013.

not require the UNHCR to be notified to take part in these cases, such a decision does not recognize the authority with which this body is vested on the subject of asylum. In the case that, for different reasons, Spain were possibly be the one responsible for the application, there is no justification for the UNHCR being excluded from the evaluation and processing of the case file, this Institution therefore being of the opinion that the UNHCR must be notified to take part.

With regard to the intervention in the IARC on the part of the UNHCR, this Institution considers that the opinion thereof regarding each one of the case files must be put on record and included in the certificate if the same were to differ from the position taken by the Administration, which is something that is currently not being done.

### 3.2.5 Inter-Ministerial Asylum and Refugee Commission (IARC)

Once the case file has been reviewed and the draft decision has been made, the case file is then raised to the IARC. In the event of refusal or non-acceptance for processing, whatever decision is issued exhausts administrative remedies, and the interested party has the possibility of filing an administrative appeal for review or taking recourse to the contentious jurisdiction, unless an application lodged at a border is involved, in which case the applicant may request that the application be reviewed once again<sup>71</sup>. In the decision, notice is given as to the obligation of abandoning Spanish territory within a two-week period if the applicant has not be granted authorisation to remain in Spain in enforcement of the laws and regulations governing third-party nationals.

The IARC has no operating regulations specifically of its own. The operating-related provisions governing collegial bodies set out under Law 30/1992 governing the Legal Regime of the Public Administrations and Common Administrative Procedure are applicable thereto as set forth under Royal Decree 203/1995<sup>72</sup>.

Article 23 of the Asylum Law currently in force sets forth under Article 2 thereof that “The Inter-Ministerial Asylum and Refugee Commission is a collegial body operating under the Ministry of the Interior which is comprised of a representative from each one of the departments having authorities over foreign and domestic policy, justice, immigration, asylum seeker reception and equality” and states that the functions thereof are those for which provision is made under the law and those others

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<sup>71</sup> Article 21.4. Law 12/2009 sets forth that a request for re-examination may be made within the two-day period commencing as of the notification thereof, which will suspend the effects of the decision of non-acceptance or refusal of the application. The decision as to said request for re-examination falls to the Ministry for the Interior and must be notified to the interested party within the two-day period commencing as of the date on which the request was made.

<sup>72</sup> Article 2. Royal Decree 203/1995 of February 10, issued in passage of the Regulations applicable to Law 5/1984 of March 26th governing the right of asylum and refugee status, revised by Law 9/1994 of May 19th.

which, in conjunction with the operating regime thereof, are set forth subject to regulations<sup>73</sup>.

The IARC is comprised of five members, and it is not customary for the collaboration of experts to be requested, even when there may be specific cases in particular which may be worthy of specialised opinions. The Minutes of the Commission meeting do not state the votes cast by its members, save express request. There is currently no established way of making it possible to place more importance on the vote cast by the member who, for reasons of the authorities assigned to the Ministry thereof, has a better knowledge of the matter with which the Commission is dealing. The Commission additionally does not deal with all of the cases, but rather solely those in which some discrepancy exists regarding the proposal from the case examination process.

It is important to point out that, in practice, no training in international protection or in human rights is required of those serving on the Commission, despite the importance of their function. The case files are furnished to them approximately one month ahead of time for their study.

The Ombudsman puts forth the reminder that, although the regulation included under the Asylum Law concerning the IARC is limited and refers back to what is set out under the regulations with regard to its functioning, that which is set forth under Additional Provision Three thereof, which sets forth that the Central Government Administration shall see to the public employees and other persons who deal with the applicants for international protection, refugees and beneficiaries of subsidiary protection availing of the appropriate training, is applicable thereto.

Therefore, said training must be required of those serving on the IARC. Similarly, it is deemed that experts should be notified to take part in the necessary cases and, in particular, on subjects in which doubts are entertained which are worthy of a more in-depth evaluation or by persons possessing expertise.

Based on the cases evaluated, it follows that no indication is made as to the position taken by the UNHCR. To reflect its intervention in the procedure, approaches are used which do not clarify what the UNHCR position has been in a particular case, such as: "The Inter-Ministerial Asylum and Refugee Commission, at its meeting held on ....., with all of the members thereof and of the United Nations High Commissioner for Refugees (UNHCR) in attendance, resolved in favour of presenting a draft decision...";

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<sup>73</sup> Article 2 of Royal Decree 203/1995 of February 10th sets forth that: The IARC shall be comprised of representatives from the Ministry for Foreign Affairs, Justice and Interior and Social Services. It shall be chaired by the Director General of Electoral Processes, Alien Affairs and Asylum and, in absence thereof, by the Assistant Director General of Asylum. The Assistant Director General of Asylum shall serve as the ex-officio secretary of the IARC, and in absence thereof, any other civil service staff member from the Asylum and Refugee Office who is designed by the Chairman. The representative for Spain of the United Nations High Commissioner for Refugees shall be notified to attend its meetings and shall attend as an ex-officio member.

“the report from the United Nations High Commissioner for Refugees having been heard...”.

### 3.2.6 Statistics quality

Regulation 862/2007 of July 11<sup>th</sup> regarding community statistics in the field of migration and international protection states that harmonised, comparable community statistics on migration are fundamental for further expanding upon and following up on the community legislation and policies regarding immigration and asylum and the free movement of persons, also adding that it is essential to avail of information from the entire European Union for the purpose of following up on the further expansion upon and enforcement of the community legislation and policies.

The Regulation sets out common rules on the subject of gathering and processing community statistics, including the administrative and judicial procedures and processes of the Member States regarding asylum and other forms of international protection. Under Article 4 thereof, it states that the Member States shall provide the Commission (Eurostat) with certain statistics related to the applications from persons over a certain reference period, which shall be broken down by age, sex and nationality. The period which is set is one calendar month, and the data is to be delivered to Eurostat within the two-month period commencing as of the end of the one-month reference period.

The aforesaid Article stipulates the obligation of providing statistics related to decisions made, which are to be broken down in the same way as the aforementioned data, the reference period being three calendar months, and they shall be furnished to Eurostat within a two-month period. The obligation is also set forth of facilitating data regarding applicants considered to be unaccompanied minors, regarding the application of the Dublin Regulation and other data such as the number of persons to whom authorisation has been granted to reside in a Member State within the framework of a national or community resettlement program. In these cases, the reference period is one calendar month, a three-month period being stipulated for the delivery of the data.

Article 9, Paragraph 1 sets forth that the statistics shall be based on data sources that it lists, depending on the availability thereof in the Member State in question, including records of administrative and judicial procedures, records regarding administrative procedures, records of population inhabitants or of a certain subgroup in particular of that population, censi, etc. Paragraph 2 stipulates that the Member States shall inform Eurostat as to the data sources used, the reasons for selecting the sources in question, the effects these sources have on the quality of the statistics and the estimating methods used, keeping the Commission informed of any changes. In addition to the foregoing, at the request of the Commission, the Member States shall provide all of the information necessary to evaluate the quality, comparability and thoroughness of the statistical data.

According to the report from the Commission to the European Parliament and to the Council of July 30, 2015, there has been an improvement in the availability and thoroughness of the data and an overall improvement in the quality as far as the accuracy, coherence and comparability of the data is concerned. However, this report also states that the Commission is continuing to adopt follow-up measures due to the failure to comply with the regulations and, in some cases, countries having provided incomplete, and low-quality data or have provided the data outside of the legal time frames<sup>74</sup>.

In the course of the visit made to the Asylum Office in 2016, the need came to fore of implementing a new data processing system meeting the obligations and requirements of the European laws and regulations. The data processing system which the OAR is using is obsolete, there hence being problems involved in fulfilling the obligations imposed by the European laws and regulations. This may be one of the reasons why Spain's Administration takes an exceedingly long time to provide the statistics being called for by the different spheres involved in this matter.

One must bear in mind that the availability of the statistics and their reliability are required as part of the transparency of the system and directly affect the reception management process, given that they facilitate measures being adopted on the basis of real, recent data. Therefore, this Institution considers it to be of utmost importance for a new data processing system to be implemented which will make it possible to fulfil the requirements of the European laws and regulations and for the data to be publicized in Spain through the respective Ministerial channels and for this data to be broken down yet further, for example, by gender or by those persons belonging to vulnerable groups, including in this data the average lengths of time for issuing a decision on the case files for international protection. As one example of the delay in the publication of the data on the subject of asylum, it must be said that on the date of the completion of this study, there was no item of data as yet on international protection related to 2015 on the Ministry of the Interior website, as a result of which it was necessary to resort to Eurostat and other sources to obtain data on Spain<sup>75</sup>.

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<sup>74</sup> Report from the Commission to the European Parliament and to the Council regarding the application of EC Regulation No. 862/2007 concerning community statistics within the scope of migration and international protection (Brussels, 30.7.2015. COM (2015) 374 final. Page 11). Report

<sup>75</sup> The Ministry for the Interior website was queried for the last time on July 6, 2016.



## 4. PROCEDURAL ISSUES

### 4.1 ACCESSING THE PROCEDURE

Access to the asylum procedure on the part of all those persons who may be in need of international protection is one of the greatest challenges facing the Spanish and European system. The EASO put forth the reminder in its annual report in 2013 as to access to the procedure in the EU still presupposing access to the territory in practice<sup>76</sup>. The Common European Asylum System (CEAS) is focused more on guaranteeing that asylum seekers are given equal treatment in the European Union than on guaranteeing access to the procedure<sup>77</sup>.

Law 12/2009 makes no mention as to the locations at which the applications for international protection can be lodged. Royal Decree 203/1995 of February 10<sup>th</sup>, in force with regard to all that which does not contravene the aforesaid law, states that application can be lodged at the OAR, border control posts for entry into the national territory, alien affairs offices, provincial police stations or district police stations which are stipulated by means of an Order from the Ministry for Justice and the Interior<sup>78</sup>.

Solely third-country nationals may apply for international protection, and unlike the previous law, Law 12/2009 does not allow applications for asylum to be lodged at diplomatic mission offices and leaves the possibility of promoting the transfer of the applicant to Spain in the hands of the ambassador if he or she deems that the applicant is in physical danger.

The major degree of conflict currently existing in many countries, in conjunction with the limitation of not allowing application to be lodged in Spain's diplomatic mission offices abroad all contribute to hindering access to the procedure, which, in the opinion of this Institution, may impinge upon the international commitments undertaken by Spain and the end purpose of said instrument<sup>79</sup>. Therefore, it is deemed indispensable for this possibility to be reinstated and also for the granting of visas for humanitarian reasons to be regulated so as to allow access to Spanish territory and to the procedure.

This Institution has received complaints revealing this need which have given rise to the respective interventions. Measures were gotten under way for the granting of visas to Afghani interpreters who had been engaged by Spain's Ministry for Defence and who were in an at-risk situation in their country on their contract ending. In the end, the Spanish Embassy in Kabul (Afghanistan) finally granted the visas. To the contrary,

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<sup>76</sup> EASO, *Annual Report Situation of Asylum in the European Union 2013*, Luxembourg: Publications Office of the European Union, 2014 <https://www.easo.europa.eu/sites/default/files/public/EASO-AR-final.pdf>, page 75 (Link consulted on June 23, 2016).

<sup>77</sup> Fifth Annual Report on Migration and Asylum (2013) Brussels, 22.05.2014. COM (2014) 288 final.

<sup>78</sup> Article 4. Royal Decree 203/1995 of 10th February issued in passage of the Regulation applicable to Law 5/1984 of March 26th governing the right of asylum and refugee status amended by Law 9/1994 of May 19th.

<sup>79</sup> In fact, one of the recommendations of the Council of Europe on Refugees and Exiles refers precisely to granting access to this protection through the Embassies. The Council is a pan-European alliance of 85 NGOs for protecting and promoting the rights of refugees, applicants for asylum and displaced persons.

in another case, the Spanish Embassy in Ankara (Turkey) did not facilitate a visa being issued for humanitarian reasons for a Syrian minor who had been burned over a major portion of his body so that he could come to Spain to officially lodge his application for asylum, despite his direct family members being located here. The suggestion has indeed been taken for a transfer to Spain of a person who urgently needs to undergo surgery<sup>80</sup>.

Access to the procedure must necessarily be rounded out with correct information on the possibility of exercising this right. Therefore, the Ombudsman has repeatedly reiterated the need of the third-country nationals who gain access to Spanish territory, regardless of how they may have entered, being provided with adequate information concerning the possibility of applying for international protection. The obligation of furnishing this information must be considered as being a guarantee that a person who find himself or herself in this situation will know that they are entitled to do so. For example, the interviews which are regularly conducted with third-country nationals during the visits to the Migrant Detention Facilities on the part of this Institution's technical team reveal that many are unaware of the possibility of applying for asylum.

When third-country nationals arrive at the Migrant Detention Facilities, they are given an information sheet concerning this right, but this approach has been found to be ineffective, as it has been found that not all of these persons receive this information and that those who do receive it do not always understand it. It has also been found that, in many cases, the inmates put the information sheet away among their belongings without stopping to read it to see what it says, and that this sheet is also given out to persons who are completely illiterate<sup>81</sup>.

The Administration is publishing pamphlets in several languages titled "Information for applicants for international protection in Spain: right to asylum and subsidiary protection", which furnish more complete information than the aforementioned information sheet, although the language and the contents thereof are not adapted to all persons.

Article 62bis of Spain's Law governing the rights and freedoms of third-country nationals states that the exercise of the rights recognized under the legal system must be facilitated for inmates, without any further limitations than those resulting from their situation of being imprisoned (Paragraph 1c). A significant number of the third-country nationals who enter our country by way of unofficial border crossing points, especially in Ceuta and Melilla, and who are transferred to a Migrant Detention Facility prior to

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<sup>80</sup> <https://www.defensordelpueblo.es/resoluciones/impartir-instrucciones-urgentes-para-el-traslado-por-razones-humanitarias-a-espana-de-un-solicitante-de-asilo-enfermo-que-se-encuentra-en-grecia-y-pueda-recibir-el-tratamiento-medico-que-necesita/>

<sup>81</sup> [https://www.defensordelpueblo.es/wp-content/uploads/2015/05/2013\\_Informe\\_Anual\\_Vol\\_I\\_Informe\\_2013.pdf](https://www.defensordelpueblo.es/wp-content/uploads/2015/05/2013_Informe_Anual_Vol_I_Informe_2013.pdf) See p. 214-215 (Link consulted on June 23, 2016).

their expulsion come from countries in which there are serious armed conflicts and therefore may be in need of international protection. These conflicts may also lead to the persons who are already located in Spain being afraid of returning to their country in view of the situation there.

This Institution put forth a Reminder of legal duties to the Administration in order for all of the third-country nationals who are inmates in detention centres to be provided with sufficient information in a language they understand concerning the right to apply for international protection in accordance with that for which provision is made under Article 62.1 of Spain's Organic Law 4/2000<sup>82</sup>.

It is considered essential that the information be understandable on the part of all concerned, which has so been repeatedly put forth to the Administration. In its report on *Legal Aid for Third-Country Nationals in Spain* the Ombudsman pointed out that these pamphlets must be understandable on the part of the end users for whom they are being published, taking into account also that this is a matter of making a procedure involving a remarkable degree of complexity comprehensible. Editing a publication in terms not making it understandable on the part of a person with the average cultural level of the applicants our country is receiving is merely a formal guarantee which cannot meet with satisfactory results in the end<sup>83</sup>.

The informative document must be a tool so that the third-country national will read it and will be able to decide whether or not he or she is in any of the situations making him or her eligible to apply for international protection<sup>84</sup>.

It is considered to be of utmost importance that one be correctly informed as to the right to asylum, and in order to achieve this end purpose, measures must be taken in addition to solely handing out the documentation. Both the OAR and the Directorate General of the Police and the Office of the Secretary General for Immigration and Emigration must keep abreast of the initiatives which the EASO and FRONTEX are carrying out in order to improve the training of the civil service staff members who are in charge of dealing with persons in need of international protection. Some of the most outstanding initiatives of particular importance are the practical tools on the subject of asylum for civil service staff members have been published in English on the EASO website<sup>85</sup>.

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<sup>82</sup> [https://www.defensordelpueblo.es/wp-content/uploads/2015/05/2013\\_Informe\\_Anual\\_Vol\\_I\\_Informe\\_2013.pdf](https://www.defensordelpueblo.es/wp-content/uploads/2015/05/2013_Informe_Anual_Vol_I_Informe_2013.pdf), page 193. (Link consulted on June 23, 2016).

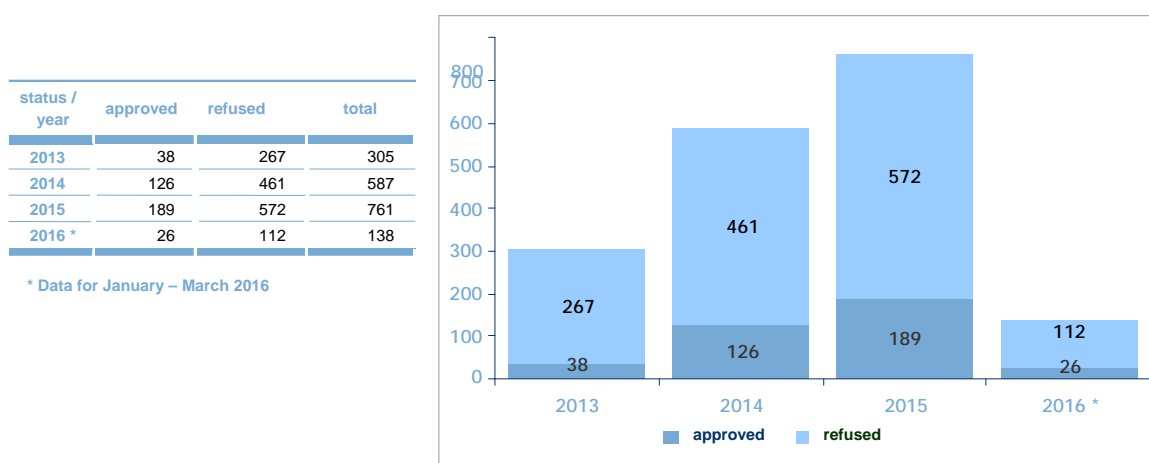
<sup>83</sup> Ombudsman, Report on *Legal Aid for the Third-Country Nationals in Spain*, Madrid, 2005, page 223 <https://www.defensordelpueblo.es/wp-content/uploads/2015/05/2005-05-Informe-sobre-asistencia-jur%C3%ADdica-a-los-extranjeros-en-Espa%C3%B1a.pdf> (Link consulted on June 23, 2016)

<sup>84</sup> <http://www.interior.gob.es/documents/642012/1557834/10971.pdf/6b313dab-c420-4ca8-b645-536af49721de> (Link consulted on June 23, 2016).

<sup>85</sup> Access to the Asylum Procedure. Practical Tools for First-Contact Officials <https://www.easo.europa.eu/accesstoprocedure> Providing a readily comprehensible, graphic explanation of access to the asylum procedure in a practical guide: [https://www.easo.europa.eu/sites/default/files/public/Practical-Guide1\\_0.pdf](https://www.easo.europa.eu/sites/default/files/public/Practical-Guide1_0.pdf) A poster highlighting this

If the civil service official confirms that the person is illiterate, the civil service official must inform the person as to the right to asylum by other means, which must be set out in a protocol. In addition thereto, it is absolutely essential to include a gender-related perspective, as well as translating the documentation into an ample number of languages. The objective of appropriately informing third-country nationals as to this right requires studying new approaches. The small number of applications for international protection lodged at the Migrant Detention Centres is revealing of the need for said study.

**TABLE 7**  
2013-16 APPLICATIONS LODGED FOR ASYLUM AT MIGRANT DETENTION CENTRES (MDTs)



Source: Ombudsman Institution files. Data furnished by the Ministry of the Interior on May 4, 2016.  
Prepared by: Ombudsman Institution

#### 4.2 SPECIAL SITUATIONS OF THE ACCESS TO THE PROCEDURE IN THE AUTONOMOUS CITIES OF CEUTA AND MELILLA

Up until September 2014, the third-country nationals in need of international protection did not have access to the border control posts of the Autonomous Cities of Ceuta and Melilla. This situation gave rise to complaints having been lodged by non-governmental organisations and by the applicants themselves when they manage to enter Spanish territory by other means. The UNHCR also expressed its opinion regarding this situation and states that the impossibility of applying for international protection at the

information is provided in conjunction with the aforementioned guide.

[https://www.easo.europa.eu/sites/default/files/public/Poster\\_0.pdf](https://www.easo.europa.eu/sites/default/files/public/Poster_0.pdf) plus a pocket version

[https://www.easo.europa.eu/sites/default/files/public/Pocket-Book\\_0.pdf](https://www.easo.europa.eu/sites/default/files/public/Pocket-Book_0.pdf) plus a guide with the most frequently asked questions (FAQ) and their answers

[https://www.easo.europa.eu/sites/default/files/public/FAQs\\_0.pdf](https://www.easo.europa.eu/sites/default/files/public/FAQs_0.pdf) All of this material has been prepared by experts and has been validated by all of the European Union Member States (links queried on June 23, 2016)

border with Morocco, combined with the fact that there is a barrier in place surrounding the perimeter of the border, gives rise to only the strongest or those with the most resources, and not necessarily those in need of international protection, being able to gain access to a safe territory. The review of the data on applicants for international protection from the Temporary Residence Centre for Migrants in Melilla for the 2010-13 period corroborates this fact. In 2010, the applications for asylum totalled 10.87 % of the persons residing there, the applications having totalled 2 % in 2013.

The Ombudsman Institution warned of this situation in its annual report for 2013 and advised that this drop in number was due to the interpretation given in due course on the part of the Secretary of State for Security as to the consequences of accepting an application for international protection for processing following the entry into effect of the Asylum Law of 2009, which prevents the free movement of applicants for asylum from the Autonomous Cities of Ceuta and Melilla throughout the rest of Spain's territory.

This practice has been ruled illegal by way of different court rulings but still continues being carried out to date<sup>86</sup>.

The year 2013 marked a change in trend, given that there was a rise in the number of nationals in the two Autonomous Cities, regarding which the UNHCR has put out calls for their nationals not to be returned.

However, in the conversations held with the personnel who conducted the reception interviews and with the legal services specialised in asylum-related matters of the NGO which is rendering its services at the centre, the conclusion was reached that a significant number of the persons residing there should have lodged an application for asylum on being in need of international protection, and that the only reason why they were not doing so was because they had seen how said application was meaning a longer stay at the Temporary Residence Centre for Migrants.

The Ombudsman Institution recommended that the criteria for inclusion on the lists for transfer to the Spanish mainland of the persons residing at the Temporary Residence Centre for Migrants be revised and that priority be given to those applicants for international protection coming from countries regarding which calls had been put out on the part of the UNHCR asking that they not to be returned and regarding the

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<sup>86</sup> The court decisions distinguish among the limits which the administration can impose on the right to freedom of movement within the national territory for asylum seekers. Thus, the Andalusian Higher Court of Justice states that, when the right to asylum has been granted, the right to freedom of movement is final and unconditional. When the application has been accepted for processing, the applicant is under the obligation of notifying the administration as to any change of address. The Andalusian Higher Court of Justice of Seville (Contentious-Administrative Chamber, Section 4) Decision No. 1177/2010 of October 25th; The Andalusian Higher Court of Justice of Seville (Contentious-Administrative Chamber, Section 2) Decision of January 13, 2011; The Andalusian Higher Court of Justice of Seville (Contentious-Administrative Chamber, Section 2) Decision of February 24, 2011.

One must bear in mind that, in due course, the report from the State Attorney's Office analysed this matter and called for a clarification concerning the restriction of the freedom of movement under the new asylum regulation.

vulnerable groups such as families with dependent minors<sup>87</sup>. In parallel, several Suggestions were made, which were taken, for the immediate transfer of some asylum seekers due to their situation of vulnerability.

In 2014, a change in trend took place in Melilla on a numerous group of Syrian nationals gaining access to the Beni Enzar border control post expressing their desire to apply to the Spanish authorities for asylum. This change in trend was consolidated in 2015. Hence, the applications for asylum totalled 70 % of the persons residing there in 2015. Up to April 2016, approximately 60 % of the persons residing at the TRCM were asylum seekers.

The new situation brought to bear the need of adapting the border control post facilities and of reorganizing the work of the police officers in order to avail of facilities suitable for processing the applications and housing the applicants throughout the course of time stipulated by law for this type of procedure and also for availing of personnel trained on the subject of asylum who could take charge of these procedures, given the nature and difficulty thereof.

The Ministry of the Interior set up facilities at the border control posts in both of the Autonomous Communities. First of all, a border control post was opened at Beni Enzar (Melilla) and, as previously mentioned, applications for international protection then began being taken as of September 2014. In March 2015, the border control post at El Tarajal (Ceuta) was opened.

In the course of the visits made to the border control post in Beni Enzar (Melilla), some serious deficiencies were detected regarding the social protection provided to the applicants. It was found that the persons who were arriving at the border control post presented a high degree of anxiety as a result of the hardships they had experienced along the way to the border control post; that a major number of these persons were in need of medical care which the National Police Force officers were not able to identify and make the pertinent referral correctly, and that it was customary for unaccompanied minors to be present. In addition to the foregoing, the daily allowance agreements with the CETI were not sufficient. All of the foregoing was conveyed to the Office of the Secretary General for Immigration and Emigration, and a Recommendation was put forth calling for the same social protection at these posts as that which is in place at other border control posts, specifically in Madrid and Barcelona. This recommendation has been rejected<sup>88</sup>.

In addition to the above, the border control post was not functioning properly from the procedure-related standpoint, given that, in view of the large number of persons who were arriving at the post, the application was not officially lodged upon

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<sup>87</sup> Recommendation 153/2013, of September 10th, put forth to the Directorate General of the Police under the Ministry for the Interior concerning the changes in the criteria for inclusion in the program for transfer to mainland Spain and humanitarian reception at the TRCM in Melilla.

<sup>88</sup> <https://www.defensordelpueblo.es/resoluciones/recomendacion-a-la-secretaria-general-de-inmigracion-y-emigracion-para-adaptar-las-medidas-que-procedan-para-prestar-un-servicio-de-asistencia-social-a-los-solicitantes-de-asilo-en-el-puesto-fronteriz/> (Link consulted on June 23, 2016).

entry, but rather they were given an appointment to come in another day, the asylum seekers being accommodated meanwhile at the CETI. This situation gave rise on several occasions to groups of Syrian nationals not having officially lodged their application for asylum when the date of their appointment finally came with the idea of carrying out this process in other European countries.

On the other hand, no application for international protection has been received from Sub-Saharan citizens at the border control posts in Ceuta and Melilla. The attempts to cross the border at unofficial border crossing points and the lodging of applications for international protection from those who manage to enter the country, make it possible to say that this group does not have access to the border control point and therefore does not have access to the procedure.

Complaints have been received and measures have been set into motion with the Administration to verify that the Law Enforcement Forces and Bodies which are serving at the borders in the cities of Ceuta and Melilla or which have intercepted aliens at sea have turned these persons over to the Moroccan police ignoring the possibility that they may be persons in need of international protection, The Administration approves and justifies such an action for the sake of the defence of the borders and in enforcement of the Spain–Morocco Readmission Agreement<sup>89</sup>. However, the content of the aforesaid Accord having been analysed, no provisions exist therein, in the judgment of this Institution, in protection of the aforementioned actions<sup>90</sup>.

Complaints have been constantly lodged with this Institution concerning aliens being returned at sea within the period covered by this report. Both individuals and non-governmental organisations have contacted the Ombudsman furnishing audio-visual material providing proof of these practices.

This Institution has repeatedly stated that the Spanish authorities must guarantee that aliens be able to officially lodge applications for international protection whenever they are intercepted by Spanish officials, regardless of whether this possibility were to arise outside or inside the bounds of Spain's territorial waters<sup>91</sup>. Hot

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<sup>89</sup> The Agreement between the Kingdom of Spain and the Kingdom of Morocco regarding the movement of persons, the transit and readmission of foreigners having entered illegally, made in Madrid on February 13, 1992, entered into effect on October 21, 2012, thirty days after both parties thereto notified one another as to full compliance with the constitutional requirements for the ratification thereof as is set forth under Article 16 thereof. Spanish Official Gazette (BOE) No. 299 of December 13, 2012.

<sup>90</sup> Article 2 of the Agreement states: "The readmission will be effected if it is proven, by any means, that the foreigners whose readmission is requested actually come from the territory of the requested State. The application for readmission shall be submitted within ten days after the illegal entry into the territory of the requested State [sic]. It shall contain all available data relating to the identity, the personal documents that the foreigner may possess and the conditions of his/her illegal entry into the territory of the requesting State, as well as any other information available..."

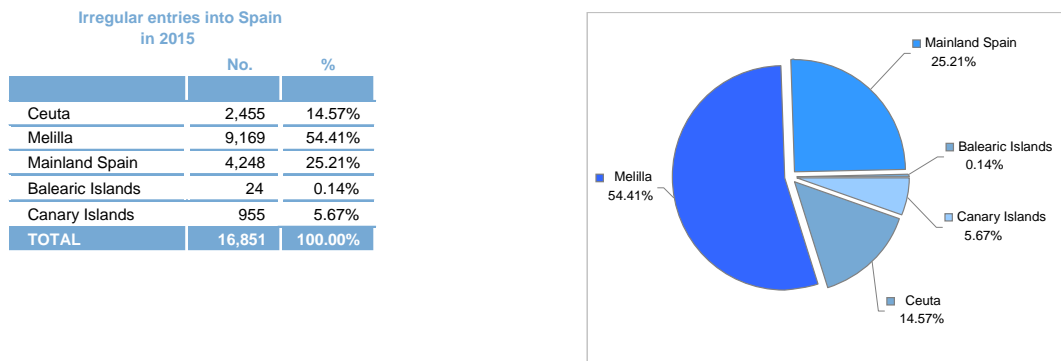
<sup>91</sup> Regulation (EU) 656/2014 of May 15th, setting our rules for the surveillance of the external sea borders in the context of operational cooperation coordinated by the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union stipulates under Whereas Clause No. 13 thereof that: "The possible existence of an arrangement between a Member State and a third country does not absolve Member States from their obligations under Union and international law, in particular as regards compliance with the principle of non-refoulement, whenever they are aware or ought to be aware that systemic deficiencies in the asylum procedure and in the reception

returns of persons rescued at sea do not respect the laws and regulations on the subject of asylum, as the Ombudsman Institution has pointed out in its annual reports<sup>92</sup>. The way of proceeding does not allow the potential asylum seekers to be able to avail of the protection guaranteed under the Geneva Convention. Safe from the situations of individual persecution, it is befitting to also remember that the UNHCR has put out calls for persons from countries where the situation of conflict may put their lives in jeopardy not be turned back, returned or removed<sup>93</sup>.

The Ombudsman Institution considers Spain's Government to be under the obligation of detecting what the existing obstacles are that are preventing the persons in need of protection from being able to access the border control posts without putting their lives in jeopardy. To this end, ways of coming to an agreement with Morocco must be found which will allow those aliens who wish to apply for asylum to cross the border. In 2015, the number of interventions of the Sea Rescue services increased; and in 2016, the attempts to climb over the border fences as well as cases of open boats transporting migrants sinking with the loss of lives have continued and, in many cases, the persons who were attempting to reach Spanish territory were Sub-Saharanians.

The details of the irregular entries into Ceuta and Melilla in 2015 are provided in following.

**TABLE 8**  
**IRREGULAR ENTRIES INTO SPAIN IN 2015. DISTINGUISHING AMONG CEUTA, MELILLA, THE CANARY ISLANDS, MAINLAND SPAIN AND THE BALEARIC ISLANDS<sup>1</sup>.**



<sup>1</sup> The number also includes the asylum seekers who entered Spanish territory without meeting the entry requirements.  
 Source: Ombudsman Institution Files. Data furnished by the Ministry of the Interior on Marcy 1, 2016  
 Prepared by: Ombudsman Institution

conditions of asylum seekers in that third country amount to substantial grounds for believing that the asylum seeker would face a serious risk of being subjected to inhuman or degrading treatment or where they are aware or ought to be aware that that third country engages in practices in contravention of the principle of non-refoulement”.

<sup>92</sup> [https://www.defensordelpueblo.es/wp-content/uploads/2015/05/2013\\_Informe\\_Anual\\_Vol\\_I\\_Informe\\_2013.pdf](https://www.defensordelpueblo.es/wp-content/uploads/2015/05/2013_Informe_Anual_Vol_I_Informe_2013.pdf) (Link consulted on June 23, 2016).

<sup>93</sup> <http://www.refworld.org/cgi-bin/texis/vtx/rwmain/opendocpdf.pdf?reldoc=y&docid=5600f2f54>; <http://www.refworld.org/cgi-bin/texis/vtx/rwmain/opendocpdf.pdf?reldoc=y&docid=5003d75cbdf> (Link consulted on June 23, 2016).



Public Safety Law 4/2015 of March 30<sup>th</sup> published in the Spanish Official Gazette (BOE) on March 31, 2015 included a provision amending Organic Law 4/2000 of January 11<sup>th</sup> governing rights and freedoms of foreigners in Spain and their social integration<sup>94</sup>. The provision in question states under Paragraph 1 thereof that the aliens who are detected at the border marking the territorial bounds of Ceuta and Melilla may be refused entry for the purpose of preventing their illegal entry into Spain whilst they are in the process of attempting to get past the border protection elements to cross the border irregularly. This refusal of entry shall be carried out, according to Paragraph 2 thereof, by respecting the international human rights and international protection regulations to which Spain is party. Paragraph 3 sets forth that the applications for international protection shall be officially lodged in those places set up for this purpose at the border crossing points and shall be processed in accordance with that which is set forth under the laws and regulations governing the subject of international protection.

The Ombudsman Institution did not file the appeal of unconstitutionality petitioned by several private citizens and social entities however did resolve to put forth two recommendations regarding the substance of the aforesaid provision of law.

The 2015 annual report has once again spread upon the record the position which this Institution has been taking since 2005 regarding entry into national territory being made when the internationally-established limits have been exceeded, it also having been stated that the limits of the actions of the civil service personnel of the Spanish Law Enforcement Forces and Bodies which take action inside and outside of our territory and singularly in the neutral areas dividing Ceuta and Melilla from Moroccan territory are also governed under Spanish Law. An explanation is also provided as to the position taken by the Ombudsman Institution regarding Additional Provision Ten of Law 4/2015. Although the lawmakers have opted to set out a new procedure for the two Autonomous Cities which is to be applied to “the foreigners who are detected on the border whilst they are in the process of attempting to get past the border protection elements”, the provision does not indicate what that procedure must be beyond making a general reference to the respect for the international humans rights and international protection laws and regulations to which Spain in party.

In the report submitted to Spanish Parliament, an analysis is also made for the purpose of verifying whether or not the territorial bounds stipulated for the enforcement of the procedures for which provision is made under Organic Law 4/2000 of January 11<sup>th</sup> in the cases of interception of a foreigner who is attempting to irregularly enter national territory are respectful of the constitutional norms. The Ombudsman Institution is of the opinion that the limits set by the Constitutional Court must be taken into account first of all so that they will be assumed by the lawmakers in the regulation of

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<sup>94</sup> Additional Provision Ten. Entered into effect on the day following the publication of the aforesaid law in the Spanish Official Gazette (BOE), whilst the rest of the precepts of the aforesaid law entered into effect on July 1, 2015.

the rights of aliens (Spanish Constitutional Court Judgment 236/2007 of November 27<sup>th</sup>, F.4), more specifically, the degree to which the specific rights are linked to the guarantee of human dignity, the preceptive substance of the law, when this is recognized for aliens directly by the Constitution, the substance for which the bounds are determined for this right under the Constitution and the international treaties and the conditions for the exercise thereof set forth by law must be aimed at preserving other constitutionally-safeguarded rights, assets or interests and must be suitably in proportion to the end purpose pursued.

As far as the limits of the regulation of the attempts to irregularly enter Spain, in Constitutional Court Session Judgment 17/2013 of January 31<sup>st</sup>, this ruling analysed the nature of the return and rules that the return is not, in a technical-juridical sense, a penalty, but rather a governmental measure in immediate reaction to a disruption of the legal order, coordinated by way of a flexible, swift channel. However, this flexibility and swiftness does not mean that the decision resolving in favour of the return has not respected the guarantees for which provision is made under the general legislation on administrative procedure. The High Court makes reference particularly to the need of whatever decision is issued in the return proceedings being in keeping with the principles of publicity of the legal standards, *audi alteram partem*, a hearing of the interested party and stated reasoning of the decisions.

The aforesaid Constitutional Court Judgment 17/2013 also set forth, in general terms regarding the alien affairs procedures, that a right does not exist to the full processing of an administrative procedure on the subject of alien affairs which culminates, in any case, in a decision on the actual substance of the matter. However, it makes it clear that the guarantees stemming from Article 106 EC are met if the interested parties are entitled to submit to the review of the Courts the legality of what they consider to be a violation on the part of the Administration of the obligations born out of the law, this being an aspect which is assured by means of the obligation of stating reasoning and the non-appealable nature of the administrative decision, thus preventing there being cases of conduct on the part of the public Administration which are immune to judicial control.

Procedures Directive 2013/32/EU sets forth, in turn, that the prime guarantees which must be taken into account in carrying out the procedure with a view to guaranteeing effective access to the case examination procedure include a suitable training of the first-contact civil service staff members who deal with the persons seeking international protection, in particular those carrying out border guard duties along the land or sea borders or who perform border control checks. In addition thereto, the Member States must make an effort to identify those applicants who are in need of special procedural guarantees (for reasons including their age, gender, sexual orientation, gender identity, disability, serious illness, mental illness or consequences of torture, rape or other severe forms of psychological, physical or sexual violence).

One must bear in mind that the principle of non-refoulement prevents a State from turning over an individual to another State in which serious risks exist to their life

or physical integrity due to their race, nationality, religion, etc. International law not only prohibits this direct form of return, but also prohibits a person being turned over to a State which might turn this same person over, in turn, to a third State where this same risk exists (Article 33 of the United Nations Convention on Refugee Status and Article 3 of the ECHR).

In addition to the above, collective expulsions do not allow the State to examine the particular situation of each individual, it therefore not being possible to assess whether the person in question is at risk of serious harm in the sense of the principle of non-refoulement. Therefore, this type of expulsion is prohibited and is so stipulated by numerous international treaties, one example being that of Article 19.1 of Charter of Fundamental Rights of the European Union. This is also recognized under Article 4 of the ECHR Fourth Protocol.

The first of the Recommendations put forth had to do with the need of urgently expanding, by way of regulatory provision, upon the procedure set forth under Additional Provision Ten of Organic Law 4/2000 of January 11<sup>th</sup> governing the rights and freedoms of third-country nationals and the social integration thereof. It was recommended that the aforesaid procedure make provision for the need of an administrative decision, with the aid of a lawyer and interpreter and indication as to the appeals which may be filed against the same. All thereof in accordance with the interpretation made of the scope of Article 106 of Spain's Constitution for the alien affairs procedures by way of Constitutional Court Judgment 17/2013 of January 31<sup>st</sup>.

The second Recommendation was focused on the need a written record being made in the procedure as to the third-country national having been furnished with information on international protection and as to the needs of international protection, the person in question not being a minor or the concurrence of indications of the person in question possibly being a victim of trafficking in human beings having been verified by means of a suitable identification and referral mechanism. All of the foregoing, in accordance with that for which provision is made under Procedures Directive 2013/32/EU.

The recommendations have not met with acceptance, and this Institution has stated its difference of opinion with the position of the Ministry of the Interior<sup>95</sup>.

In the opinion of the Ombudsman Institution, in addition to the protection of asylum seekers being an obligation undertaken on signing the international agreements, it must be a priority, and therefore the objective of the state policies must be to facilitate access to the procedure on the part of the persons who are in need of international protection. There is an urgent need for changes to be made in the criteria for taking action on the part of the border control officers so that they will turn over the person they detect attempting to irregularly enter national territory to the National

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<sup>95</sup> <https://www.defensordelpueblo.es/wp-content/uploads/2016/02/Informe2015.pdf>, pages 258-262 (Link consulted on June 23, 2016).

Police in order for this Police to be able to carry out the processes stipulated under the laws and regulations governing aliens and can inform the interested parties concerning the possibility of applying for international protection.

### 4.3 PROCEDURE-RELATED LEGAL AID

Article 16 of Law 12/2009 sets forth that the applicants for international protection are entitled to free legal aid. Article 18 also makes reference to this entitlement. This aid is mandatory solely when the applications are formalized at border posts and at detention centres.

However, when an applicant requests an appointment for formalizing their application for international protection at the OAR, the applicant is not provided with this information. The applicant declines the offer of legal aid in many cases because accepting legal aid involves the postponement of lodging the application until a lawyer is available and a new appointment is made. According to data furnished by the Ministry of the Interior, within the January 1, 2016–June 6, 2016 period, a total of 584 interviews were held, solely 33 of which were held with legal aid. At the Provincial Alien Affairs Brigade in Madrid, a total of 1,060 interviews were held up to June 6, 2016, solely 67 thereof having been held with legal counsel<sup>96</sup>.

A legal opinion was issued by Spain's General Council of the Judiciary concerning the draft regulation for Law 12/2009. The aforesaid opinion stated: "The regulation given to the right to legal aid seems insufficient insomuch as it does not deal with substantial aspects of this legal aid, the Royal Decree having to incorporate substantial aspects such as that of whatever appointment is made shall encompass, save waiver on the part of the applicant (which would have to be express, in writing and made in the presence of a lawyer, after having been informed in detail as to what this waiver entails and the possible future consequences thereof) both the initial application as well as the petition for re-examination and any possible subsequent future administrative and jurisdictional appeals, as well as recognizing the right of the lawyer to meet with the applicant in private prior to the formalization of the application, the right of the lawyer to speak with the applicant at any point in time in the course of the procedure and the authority of the lawyer to pose questions in the course of the interview and to put forth whatever remarks and objections may be deemed necessary thereby at any point in time in the procedure".

Considering the important work done by the specialized bar association services and the possibility of having access to the benefit of free justice, the foregoing opinion also states that in the informative pamphlets concerning asylum, a reference should be made to the bar associations of the locality where the application is being lodged, in addition to mentioning the specialized non-governmental organisations.

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<sup>96</sup> Ombudsman Institution Files. Case File 16002948.

THE UNHCR has also expressed its disagreement with the regulation of the legal aid for which provision was made is the aforesaid draft regulation, given that it set out aspects such as that of the applicant being able to waive this right by means of a simple declaration which would be incorporated into the case file.

The importance of this legal aid precisely served as a basis for the preparation of a Guidebook prepared by the UNHCR and the Madrid Bar Association for the purpose of contributing to the quality of the legal aid and facilitating the detection and the access to the procedure on the part of the potential refugees and beneficiaries of subsidiary protection<sup>97</sup>.

Legal aid is quite necessary for providing a person applying for international protection with a detailed explanation as to the procedure and the subsequent processing steps to be taken. Legal aid also helps to guide the interview, seeking, via the applicant, to clarify those points which may seem unclear. The lawyer can make remarks in writing concerning aspects which can have a bearing on the normal course of the interview: state of the applicant, communicating problems, conditions of the room, etc.

The Ombudsman Institution deems it essential to guarantee legal aid for asylum seekers on this being a highly important aspect in the asylum procedure. This same opinion is also shared by the Supreme Court, which states that a flawed process of informing applicants as to their rights and, more specifically, the lack of information as to the possibility of requesting legal aid by way of a lawyer provided under the legal aid scheme may lead to a true situation of actual defencelessness, which is made yet worse in the cases of aliens who are not familiar with the language or Spanish Law, this being a situation of defencelessness which may be of such far-reaching importance as to invalidate the administrative measures<sup>98</sup>.

It is necessary that whoever is providing the legal aid does so correctly, for which purpose it is indispensable that they be provided with specialized training. The UNHCR has stated its concern regarding the quality of the legal aid provided to the asylum seekers in different countries, one of the countries mentioned thereby being Spain, given that the legal aid provided varies tremendously depending on the individual lawyer in question. It also points out that not all aliens can avail of advisors specialized in alien affairs laws and refugee Law and expresses particular concern regarding the

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<sup>97</sup> *Guidebook on Legal Aid for Applicants for International Protection*. Within the context of Law 12/2009 of October 30th, governing the right of asylum and subsidiary protection. UNHCR. Madrid Bar Association. [http://www.acnur.es/PDF/acnur\\_quia\\_abogados2011\\_20120216095526\\_20120511131338.pdf](http://www.acnur.es/PDF/acnur_quia_abogados2011_20120216095526_20120511131338.pdf) (Link consulted on June 23, 2016).

<sup>98</sup> Supreme Court Ruling of June 17, 2013 (RJ 2013, 5078) citing those of the same Court of the 31st (RJ 2006,8896) and 6th of October, 2006 (RJ 2006, 10068).

asylum seekers in a situation of detention or those whose needs are of a specific nature<sup>99</sup>.

The importance of legal aid has been the grounds for the Recommendation put forth by this Institution to the Office of the Commissioner General for Alien Affairs and Borders as to the applicants for international protection not being transferred from one detention centre to another, so that they will continue being aided by their lawyer. In one of the cases dealt with, the asylum seeker who availed of legal aid at the Migrant Detention Centre in Madrid had been transferred to the Migrant Detention Centre in Algeciras. This Institution was of the opinion that transferring asylum seekers is a hindrance to the right to legal aid on preventing the lawyer providing the aid from continuing, in practice, to counsel and represent the person he or she is defending. The possibility that a new lawyer be assigned and that he or she commence proceeding under the same conditions as the previous lawyer within such short time frames is purely theoretical, on problems of all types being involved: subjective problems (the asylum seeker becoming accustomed to the new lawyer rapidly) and objective (problems even for finding a legal aid lawyer or one from an organisation specializing in this area). A reminder was set out as to Directive 2013/32/EU of June 26<sup>th</sup> devoting several precepts to the right to legal aid and legal counsel and to the scope of this legal aid and legal representation, and as to Article 23 thereof setting forth that the Member States shall establish national procedures guaranteeing respect for the applicant's right to be defended. This Recommendation met with acceptance<sup>100</sup>.

#### 4.4 APPLICATION APPOINTMENT SCHEDULING DELAYS

The delays for officially lodging the applications for asylum were frequent, especially as of the last part of 2014 and throughout 2015, these delays having occurred in Madrid, Valencia, Malaga and Alicante.

For some time now, the OAR has not been staffed with enough personnel to adequately manage the matters over which it has authority. Therefore, in this case, as in others, to deal with the management involved in the arrival of a large number of asylum seekers to Spain, the collaboration of the National Police had to be requested. One must bear in mind that up to the point of officially lodging the application, the interested parties could not access the benefits granted thereto under the regulations as a result of their status as applicants for asylum, which include accommodations, food, healthcare, etc. Additionally, up to the actual lodging of the application, they were running the risk of expulsion orders, given their situation of being in the country irregularly.

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<sup>99</sup> EASO, *Annual Report Situation of Asylum in the European Union 2013*, Luxembourg: Publications Office of the European Union, 2014 <https://www.easo.europa.eu/sites/default/files/public/EASO-AR-final.pdf>, page 78 (Footnote page 252) (Link consulted on June 23, 2016).

<sup>100</sup> Ombudsman Institution. *Annual Report 2013*, page 218.

The action plan which was set into motion to provide a solution to this problem involved having brought in a major number of police officers coming mainly from the Alien Affairs Brigade in Madrid. For the formalization of the applications and holding the first interviews, facilities were fitted out at the headquarters of said brigade, which is located on the same grounds where the Madrid Migrant Detention Centre, a Police Station and other police facilities are also located. Due to the spaces available in that area being used, the persons who came to visit the migrants detained at the Migrant Detention Facility were mingled, while waiting, with the applicants for asylum. The aforesaid situation has meant that some persons did not come in to formalize their application due to being wary of coming to this place. The inappropriateness of the place chosen for lodging the applications must be stated for the record, taking into account the vulnerability and fears concerning their safety that asylum seekers usually have<sup>101</sup>.

The appointments were delayed up to five months, which was the reason why this Institution urged the Administration to provide a swift solution to this matter. In parallel, suggestions were put forth as to cancelling expulsion orders issued for applicants who were not able to provide proof of their status as such due the fact of their appointment having been granted over the phone and would be taking place months later.

As previously mentioned, the Procedures Directive of 2013 stipulates a time frame of three business days for registering the application if lodged before a competent authority. In the event that the application is lodged before a non-competent authority, said authority must take the measures necessary for the registration to be carried out within six business days. The delays in the registration of the application may give rise to a delay in the applicant's details being entered into different information systems, including Eurodac, which may have repercussions, in turn, on the Dublin procedures and on the procedure to be used in each case, given that the information furnished by the interested party may determine whether his or her application must be processed by way of a standard procedure or an emergency procedure<sup>102</sup>.

In the report on legal aid for aliens prepared by this Institution in 2005, it was explained at that time that, in the judgment of the Ombudsman Institution, the persons who have stated their intention of applying for asylum must be protected as of that very point in time against any possible future expulsion or return to the country from which they have fled. It was indicated in the aforesaid report that the UNHCR considered this

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<sup>101</sup> Several complaints are still as yet pending a final solution at the point in time of the closing of this study on this matter.

<sup>102</sup> Annual report on the situation of asylum in the European Union 2013. European Asylum Support Office. July 2014, págs. 80-81.

principle to comprise part of international common law and to be binding for all of the States, whether or not they be party to the Convention<sup>103</sup>.

The Ombudsman Institution is of the opinion that this guarantee should include what are referred to as the “indirect returns”, that is to say, the expulsions to countries which take foreigners who are non-nationals by virtue of readmission agreements and which provide no guarantees regarding those readmitted not being transferred to the country from which they have fled.

The justification alleged by the Administration in view of the delays caused has been that of a shortage of human resources and the complexity of the applications. As far as the first of these two issues is concerned, following the visits to the OAR, the conclusion has been reached that, in fact, the number of civil service staff members assigned to examining the case files is clearly insufficient.

The fact of having found this to be true implies that the slow pace at which measures are taken to request reinforcements of personnel has caused serious dysfunctions and has hence been detrimental to the applicants. The complexity of the applications requires availing of a sufficient number of trained civil service officials who can devote the amount of time necessary to these complex case files. On the contrary, customarily resorting to police officers in situation in which the competent administrative body finds itself overwhelmed by the circumstances is not considered appropriate, and it being obvious that the quality of the procedure may be affected.

#### 4.5 DECISION-MAKING DELAYS

Article 31 of Directive 2013/32/EU of June 26<sup>th</sup> sets forth under Paragraph 3 thereof that the Member States shall ensure that the case examination procedure reaches an end within the six-month period commencing as of the lodging of the application and stipulates a maximum nine-month postponement under certain circumstances.

Exceptionally, in order to guarantee an adequate and complete, proper examination of the application, the time frame may be extended for a maximum of three months. Paragraph 4 of said precept of law sets forth that the Member States may postpone the conclusion of the examination procedure when the determining authority cannot reasonably be expected to adopt a decision within the stipulated time limit due to an uncertain situation in the country of origin which is expected to be temporary.

The precept of law in question stipulates that, were this case to arise, the Member States shall have the following obligations: a) They shall proceed to conduct reviews of the situation in that country of origin at least every six months b) They shall inform the applicants concerned within a reasonable time frame as to the reasons for the postponement c) They shall inform the Commission within a reasonable time frame

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<sup>103</sup> Ombudsman Institution, Report on Legal Aid to Aliens in Spain, Madrid, 2005, page 195.



as to the postponement of the procedures having to do with that country of origin. Paragraph 5 of the aforesaid Article stipulates that “in any case, the Member Nation shall conclude the case examination procedure within a maximum twenty-one-month time period commencing as of the point in time at which the application is lodged”<sup>104</sup>.

In Spain, Asylum Law 12/2009 sets forth under Article 19.7 thereof that if the processing of an application were to exceed six months, this time frame being extendable in accordance with that for which provision is made under Article 49 of Law 30/1992 of November 26<sup>th</sup> governing the Legal Regime of the Public Administrations and Common Administrative Procedure, for the issuing of a decision and notification, the interested party shall be informed as to the reason for the delay.

The Ombudsman Institution has found delays to be occurring during the period throughout which this study was being prepared and has detected specific problems in applications lodged by citizens of certain specific nationalities, such as the Ivory Coast, Mali, the Central African Republic of the Congo, the Ukraine and Iraq.

Regarding the applications lodged by Malian nationals, the Assistant Directorate General of Asylum informed that the decision-making delay was related to the evaluation of the situation of the country of origin, and that the situation thereof required a reasonable margin of caution for analysing the information from that country, which would make it possible to determine and set out the criteria for raising a specific proposal concerning the Mali nationals. The Administration informed this Institution that this position was shared within the European space. However, the review of the Eurostat data revealed that some European Member States had indeed adopted decisions on the applications lodged by Malian nationals and that Italy in particular had recognized the protection of these citizens.

In January 2014, the UNHCR advised that the applications of persons from southern Mali who were still seeking international protection for individual reasons be evaluated in accordance with the established asylum procedures, taking into account the individual circumstances of each case. The UNHCR considered that the conditions of public order in many areas of northern Mali continued to be unstable and that a risk of aggressions and reprisals might exist for all those who were to return from abroad and for the internal displaced persons who returned. Additionally, it was indicated that the social and economic conditions had not gotten back to being the same as those of the situation prior to the conflict and continued requesting the suspension of the forced returns to the northern area of the country, as a result of being of the opinion that, in general, the alternative of fleeing internally or resettling in the southern part of the country was not reasonable for the persons originally from the north of that country, due to the fact that many of these persons might end up in a situation of being internal displaced persons. It also considered that the situation of Mali did not guarantee the

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<sup>104</sup> Article 51 of Directive 2013/32/EU of June 26th sets forth under Paragraph 2 thereof that: “Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with Article 31(3), (4) and (5) by 20 July 2018...”

cessation of refugee status in accordance with Article 1C (5) of the Convention of 1951<sup>105</sup>.

The Procedures Directive of 2013 still as yet not having been incorporated into Spanish Law, the OAR has adopted decisions for the postponement of case file proceedings without meeting the obligations set forth under the norm, at least as far as providing the applicants with notification and explanations thereof is concerned. The aforementioned practice is continuing, delays recently having been noted regarding applications lodged by nationals of the Ukraine, the Central African Republic of the Congo and Iraq.

In the opinion of the Ombudsman Institution, a decision to postpone adopting a decision concerning the case files for international protection must be the exception to the rule and, in the event that it be deemed a suitable option, the decision must be adopted by strictly abiding by that which is set forth under Article 31.5 of the Procedures Directive.

The delays in concluding the case file proceedings also contribute toward discouraging applications for asylum being lodged. On the other hand, the refusal of asylum applications after residing in Spain for many years is remarkably detrimental to the applicants involved, who are usually integrated into Spanish society by the time the final decision is issued. One must bear in mind that a refusal entails mandatorily leaving the country, and the alternatives offered by the alien affairs legislation for preventing oneself from being in a situation of irregularity are, in practice, quite difficult to fulfil. Social integration could be one way for the interested party to put his or her situation in proper legal order. Nevertheless, the requirement of submitting a one-year employment contract makes this way practically impossible, even when the interested party meets all of the other requirements.

It must also be stated for the record that Article 46.3 of the Asylum Law is being applied only minimally, which the Administration justifies by the lack of further regulatory expansion upon this Law. The aforesaid precept states that for humanitarian reasons other than those stipulated under subsidiary protection status, a person applying for international protection in Spain may be authorized to remain in the country in the terms for which provision is made under the laws and regulations in force on the subject of alien affairs and immigration. Authorisations being granted for humanitarian reasons is being restricted to the utmost and are being granted practically only through judicial proceedings.

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<sup>105</sup> UNHCR *Position on Returns to Mali-Update I.* <http://www.refworld.org/cgi-bin/texis/vtx/rwmain?docid=52cc405a4> (Link consulted on June 23, 2016).

TABLE 9			
AUTHORISATIONS FOR TEMPORARY STAYS OR RESIDENCE IN SPAIN FOR HUMANITARIAN REASONS, BY CONTINENT, COUNTRY OF ORIGIN AND GENDER			
Country of origin	Males	Females	Total
<b>AFRICA</b>	<b>1</b>	<b>1</b>	<b>2</b>
Morocco	1	0	1
Nigeria	0	1	1
<b>AMERICA</b>	<b>2</b>	<b>0</b>	<b>2</b>
El Salvador	1	0	1
Haiti	1	0	1
<b>TOTAL</b>	<b>3</b>	<b>1</b>	<b>4</b>

Source : Asylum in Figures 2013, p. 64  
Prepared by: Ombudsman Institution

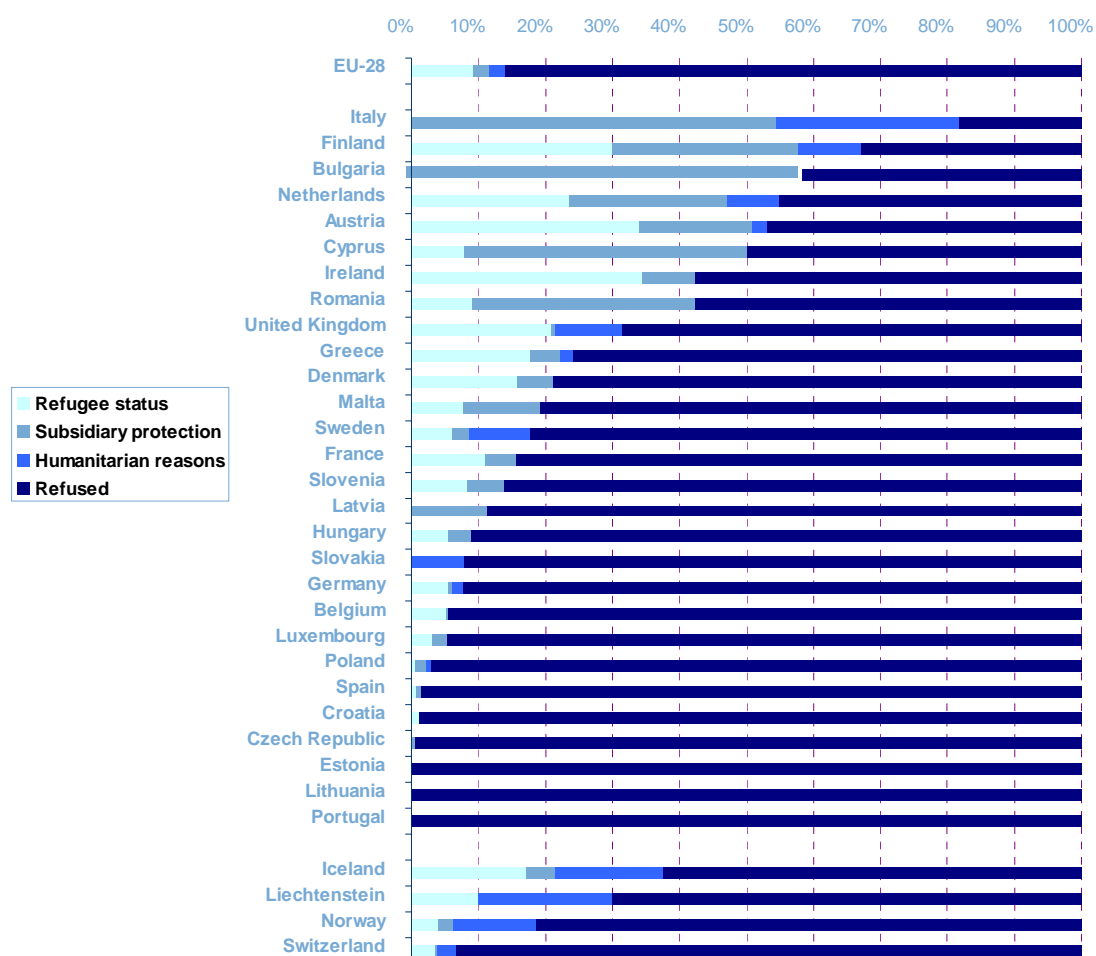
TABLE 10			
AUTHORISATIONS FOR TEMPORARY STAYS OR RESIDENCE IN SPAIN FOR HUMANITARIAN REASONS, BY CONTINENT, COUNTRY OF ORIGIN AND GENDER			
Country of origin	Males	Females	Total
<b>AFRICA</b>	<b>1</b>	<b>1</b>	<b>2</b>
Algeria	1	1	2
<b>TOTAL</b>	<b>1</b>	<b>1</b>	<b>2</b>

Source: Asylum in Figures 2014, p. 62  
Prepared by: Ombudsman Institution

TABLE 11	
SPREAD OF THE FINAL DECISIONS ON THE ASYLUM APPLICATIONS (NON-EU) 2015	
	Humanitarian reasons
EU-28	2.4
Italy	27.3
Finland	9.4
Bulgaria	0.0
Netherlands	7.7
Austria	2.3
Cyprus	0.0
Ireland	0.0
Romania	0.0
United Kingdom	10.1
Greece	1.8
Denmark	0.0
Malta	0.0
Sweden	9.0
France	0.0
Slovenia	0.0
Latvia	0.0
Hungary	0.0

**TABLE11**  
**SPREAD OF THE FINAL DECISIONS ON THE ASYLUM APPLICATIONS (NON-EU) 2015**

	Humanitarian reasons
Slovakia	8.0
Germany	1.7
Belgium	0.0
Luxembourg	0.0
Poland	0.7
Spain	0.2
Croatia	0.0
Czech Republic	0.0
Estonia	0.0
Lithuania	0.0
Portugal	0.0
Iceland	16.1
Liechtenstein	20.0
Norway	12.3
Switzerland	2.7



Source: Eurostat. Based on the original unrounded figures  
 Prepared by: Ombudsman Institution

As matters stand today, despite the OAR personnel having been reinforced, complaints are still being lodged concerning delays, these being delays involving awaiting a pending decision for longer than two years in some cases. The Administration has adopted measures so as to issue decisions regarding the case files of Syrian nationals as soon as possible, but on setting this priority, it has delayed the decisions being made concerning the case files of other nationalities, regarding which no specific measures have been taken to prevent their coming to a complete standstill.

#### 4.6 FAMILY EXTENSION AND FAMILY REUNIFICATION

The family situation of the persons who have been granted refugee status involves a personal and social dimension in need of being dealt with specifically.

Title III “On the family unity of the persons who are beneficiaries of international protection” of Law 12/2009 of October 30<sup>th</sup> includes three Articles devoted to regulating the principle of family unity, the guarantee being set forth of maintaining family unity, the granting of temporary residence for the persons in the applicant’s family who are already in Spain and who have not lodged application for asylum, family extension and family reunification. The latter, governed under Article 41 of the law, involves a legal innovation, as previously mentioned.

The difference between family extension and family reunification revolves around the fact that, in the first of these two cases, the family member is granted refugee status; and in the second, refugee status proper is not granted, but rather authorisation for residence which is valid in a manner similar to that of the sponsor (the person granted the international protection). Family extension, governed under Article 40, is solely possible when the persons comprising the family are all of one same nationality. For the case in which they are of different nationalities, the possibility exists of family reunification.

The lack of further regulatory expansion upon this law entails a problem with regard to applying Article 41 and has given rise to the intervention of this Institution, just as the Administration’s failure to provide a response to the applications for family extension lodged by beneficiaries of international protection for the reunification of their spouses in cases in which the marriage had taken place subsequent to said status having been granted. A family extension encompasses the spouses or person connected by a similar emotional bond and cohabitation, save the cases of divorce, legal separation, de facto separation, different nationality or granting of the refugee status for reasons of gender.

The Ombudsman Institution managed to ascertain that when the marriage takes place subsequent to the granting of the status, the Administration was refusing the request, although Law 12/2009 makes no express mention of this limitation. The Administration is of the opinion that, in these cases, Article 35 of Royal Decree 203/1995 of February 10<sup>th</sup> is applicable, which sets forth that when the marriage or

stable cohabitation is constituted subsequently to the recognition of refugee status, the interest party shall not be entitled to request the extension of the asylum for his or her dependents, but rather the most favourable treatment in accordance with the alien affairs regulations in force.

The Office of the Secretary General for Immigration and Emigration informed this Institution that in order to facilitate family reunification in these cases, a motion had been put forth for the amendment of the Alien Affairs Regulation for the purpose of including an article which would regulate the authorisation of residence by way of family reunification of beneficiaries of international protection. Such an inclusion would be made by means of the Asylum Regulation and would involve the transposition of the precepts included under Article 12 of EU Council Directive 2003/86/EC of September 22, 2003 on the right of family reunification.

One case of marriage subsequent to status having been granted gave rise to this Institution having put forth a Suggestion and a Reminder of legal duties. The case in point involved a Somalian national who had been granted subsidiary protection and who filed application in 2012 requesting a family extension for his wife, who was also a Somalian national located in Cairo (Egypt). The Suggestion put forth in February 2014 as to a decision being immediately issued was taken by the Office of the Assistant Director General of Asylum in August 2015. It was indicated that alternatives were going to be sought to provide a solution to this case<sup>106</sup>. Recently, the Administration has informed that “within the intention of finding a way of reunifying this family, the different alternatives permitted under the legal system are being evaluated in order to make an eventual transfer, if applicable, to Spain”.

Fleeing, being received and protected by the country granting the protection must not prevent or exceedingly hinder the possibility of the interested party carrying out his or her family plans which may be made before or after the status was granted. The requirement of prior cohabitation or marriage prior to the status being granted is too rigid, comprises an obstacle for reunification and is not in keeping with what is set out under laws and regulations of the European Union.

One must bear in mind that, although Directive 2011/95/EU of December 13<sup>th</sup> refers to the family members who were to have already existed as such in the country of origin (Article 2j), Article 3 of the Directive sets forth that the Member States may introduce or maintain more favourable rules for determining who meets the requirements to be recognized as a refugee or a person entitled to subsidiary protection and for determining the content of the international protection, provided that such norms be compatible with the present Directive.

The Ombudsman Institution’s annual report for 2015 states this Institution’s concern due to the lack of access to the procedure on the part of family members of refugees who are already living in Spain and warns of the rigidity of the family

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<sup>106</sup> Ombudsman Institution Files: Case File 13031694.

reunification system which has not be amended to favour family reunification in cases of armed conflict such as that of Syria.

In one of the complaints lodged, it was stated that two minors, who are daughters of a refugee who is living in Spain, had fled Syria along with another family member due to their having found themselves to be in jeopardy, and after reaching Turkey had crossed into Greece by sea, risking their lives. The Spanish Administration required, for granting visas, that the family extension case file that had been formalized a few days before had to be concluded first. A Recommendation was put forth to the Directorate General of Spanish Citizens Abroad and of Consular and Migratory Affairs in order for a protocol for taking action to be urgently prepared in coordination with the Ministry of the Interior so as to facilitate the entry into Spain of the family members of citizens who are already beneficiaries of international protection, without awaiting the decision on the application for family extension. In addition thereto, information was requested from the Directorate General of Internal Policy in order to find out whether the possibility had been assessed of calling the meetings with the IARC as an extraordinary meeting in order to expedite the applications for family extension or whether any case file proceedings are known in which the family is in a situation of risk or regarding which there is a pressing need for a decision to be issued. The Recommendation has been rejected by the aforesaid directorate general as a result of considering that it falls to the Ministry of the Interior to expedite the processing of the formalities so that there will be no delays in the procedure<sup>107</sup>.

The Ombudsman reiterates the need of availing of expeditious ways of entry for family members of the beneficiaries of international protection who are already in Spain. The enforcement of the laws and regulations on the subject of visas on the part of Spain's diplomatic missions abroad regarding refugees is not suitable, as is also the case of the requirement of furnishing certain documentation for family extension or reunification case file procedures to which it is not possible to gain access in situations of armed conflict

The circumstances of another case which came to the knowledge of the Ombudsman Institution reveal that the administrative action taken is sometimes governed by exceedingly rigid criteria. In the case file proceedings of a woman refugee from Sudan, family reunification status was granted to two of her three children, that of the third child having been refused due to the fact that by the time the applicant was in a position to able to lodge the application, her oldest child had reached legal age. The situation of vulnerability in which this woman requesting this status found herself was obvious, after having witnessed the murder of her husband, two of her children and her mother, she herself having suffered a brutal aggression. During such events, she lost track of the three children who survived and, after locating them with the help of

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<sup>107</sup> <https://www.defensordelpueblo.es/wp-content/uploads/2016/02/Informe2015.pdf>, page 292 (Link consulted on June 23, 2016).

international organisations such as the International Organisation for Migration (IOM), she lodged the application for family extension.

The Ombudsman Institution is of the opinion that the concurring dramatic events involved stand as a guarantee a favourable decision regarding the application for family extension with the inclusion of the oldest child under the protection of Article 40.1.d) of Law 12/2009 of October 30th<sup>108</sup>. The Administration did not accept the Suggestion put forth, which was put forth once again and subsequently once again rejected, despite the fact that, in the opinion of this Institution, the possibility existed of granting the protection under the protection of Article 40.1.d) of Law 12/2009. It is considered, in relation to family reunifications, that the child of full legal age of a beneficiary of international protection cannot be less entitled than another member of the family, information therefore having been requested concerning the interpretation-related criteria employed by the Administration in these cases. A reply has recently been received in which it is stated that it is not possible for him to be a beneficiary by way of family extension of the asylum granted to his mother, because none of the circumstances concur for this to be so, that is to say, the circumstances of being a dependent minor and there having been previous cohabitation in the country of origin. From the account set out hereinabove, it clearly follows that the dependence and cohabitation existed prior to the family having been torn apart for the reasons which have led to the status having been granted to the mother<sup>109</sup>.

On analysing a similar case, the ECtHR has set forth the reminder in its ruling of July 10, 2014, that family unity is an essential right of a refugee, and family reunification is a fundamental element for allowing persons who have suffered persecutions to resume a normal life.

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<sup>108</sup> Article 40.1.d) of Law 12/2009: "Asylum or subsidiary protection by way of family extension may also be granted to the members of the family of a refugee or beneficiary of subsidiary protection provided that the dependency with regard to the former and the existence of prior cohabitation in the country of origin be sufficiently substantiated".

<sup>109</sup> Source: Ombudsman Institution Files. Case File: 14021973



## 5. ESPECIALLY VULNERABLE GROUPS

Directive 2013/32/EU devotes Article 24 thereof to the applicants for international protection who are in need of special procedural guarantees, stipulating that the Member States shall assure that they are provided with the suitable support. If the interested party were to have been subjected to torture, rape or other severe forms of psychological, physical or sexual violence, the guarantees for which provision is made under this standard proper must be provided, and these special procedural needs must be met if they become evident in a later phase of the procedure, without the need of commencing the procedure over again from the very beginning.

The vulnerable persons set forth under Law 12/2009, include the following:

- Minors
- Persons with disabilities
- Elderly persons
- Pregnant women
- Single-parent families with dependent minors
- Persons who have suffered torture, rape or other severe forms of psychological, physical or sexual violence
- Victims of trafficking in human beings

The aforesaid standard sets forth that “whenever necessary” the applications for protection lodged by the aforementioned persons shall be given a differentiated treatment. It also stipulates a specific treatment for those who have suffered persecution for several of the reasons for which provision is made under the present law, although the general wording employed therein does not make it possible to know what type of assistance or care is to be granted in these cases. Solely in the case of minors who are victims of abuse, negligence, exploitation, torture, etc. does Article 46 set forth that they shall be provided with whatever qualified psychological care and healthcare they need.

This Institution must state its concern on having found that the situation of vulnerability which may concur in applicants who are inmates in detention centres or detainees at border posts does not entitle them to any special intervention or action, as a result of which they are treated the same as persons who do not pertain to vulnerable groups, and their application is processed by means of accelerated procedures. Such a way of proceeding must be revised. This type of applications require an in-depth evaluation, and neither a border post nor a detention centre are a suitable place affording the possibility of correctly identifying whether a person is in need of international protection.

## 5.1 MINORS

The specific circumstances with which the children who are asylum seekers are confronted as individuals lodging independent applications for refugee status are not generally well-comprehended, as the tendency is to think of them as part of a family and not as persons having their own rights and interests. The UNHCR considers that the explanation for this lies, in part, in the subordinated role, the positions and the status which children still have in many societies in the world<sup>110</sup>.

A minor's right to be heard in an asylum procedure entails complex aspects with which the authorities in charge of taking the application do not always manage to deal successfully. The accounts given by the children are more highly likely to be examined individually when the child is an unaccompanied minor. In those cases in which a minor is with his or her family members, the tendency is to consider the minor as just another family member and not process an individualized application on considering that the parent is the one who must complete the application formalities for applying on behalf of the family.

The Procedures Directive of 2013 devotes Article 25 thereof to the guarantees of the applications lodged by unaccompanied minors and sets out the rules governing the duties of the Member States. These duties include appointing a representative and the duties thereof, to counsel the minor regarding the interview, the presence of a lawyer at the interview and the competence of the interviewer and the civil service staff member who prepares the proposed decision.

**TABLE 12**  
APPLICATIONS LODGED BY UNACCOMPANIED MINORS IN THE MEMBER STATES. 2015.

	Total in 2015	of which	
		Males	Minors under age 14
EU	88,265	91%	13%
Belgium	2,650	92%	15%
Bulgaria	1 815	94%	14%
Czech Republic	15	71%	29%
Denmark	2,125	90%	14%
Germany	14,440	89%	9%
Estonia	-	-	-
Ireland	35	88%	3%
Greece	420	87%	10%
Spain	25	85%	4%
France	320	70%	7%
Croatia	5	100%	40%
Italy	4,070	97%	1%
Cyprus	105	62%	7%
Latvia	10	92%	0%
Lithuania	5	100%	0%
Luxembourg	105	95%	5%
Hungary	8,805	86%	33%
Malta	35	94%	3%
Netherlands	3,855	82%	12%
Austria	8,275	95%	9%

<sup>110</sup> UNHCR, Guidelines for determining the best interests of the child. Available online at: [http://www.acnur.es/PDF/7126\\_20120417163205.pdf](http://www.acnur.es/PDF/7126_20120417163205.pdf) (Link consulted on June 23, 2016).

**TABLE 12**  
**APPLICATIONS LODGED BY UNACCOMPANIED MINORS IN THE MEMBER STATES. 2015.**

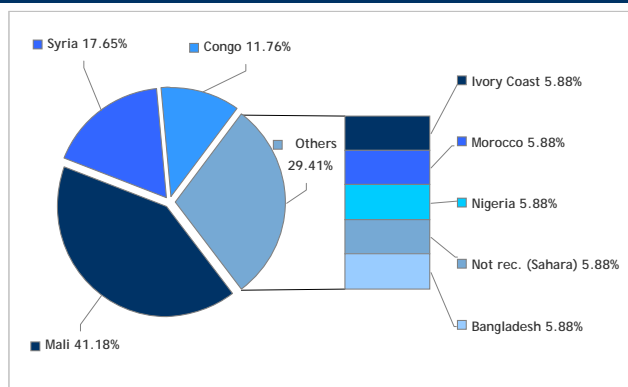
	Total in 2015	Males	of which	
			Minors under age 14	
Poland	150		55%	72%
Portugal	75		62%	4%
Romania	55		93%	13%
Slovenia	40		100%	14%
Slovakia	5		33%	0%
Finland	2,535		95%	5%
Sweden	35,250		92%	14%
United Kingdom	3,045		91%	8%
Iceland	5		100%	0%
Liechtenstein	5		100%	17%
Norway	5,050		93%	10%
Switzerland	2,670		87%	7%

Source: Eurostat  
 Prepared by: Ombudsman Institution

The small number of applications lodged for international protection by unaccompanied minors speaks for itself. A total of 17 applications for international protection lodged by unaccompanied third-country minors in Spain in 2014, a total of 25 having been lodged in 2015<sup>111</sup>.

**TABLE 13**  
**APPLICATIONS FOR INTERNATIONAL PROTECTION LODGED BY UNACCOMPANIED MINORS IN SPAIN, BY CONTINENT AND COUNTRY OF ORIGIN. 2014.**

Country of origin	Applicants	
	N. O.	%
<b>ÁFRICA</b>	<b>13</b>	<b>76.47%</b>
Congo	2	11.76%
Ivory Coast	1	5.88%
Mali	7	41.18%
Morocco	1	5.88%
Nigeria	1	5.88%
Not rec. (Sahara)	1	5.88%
<b>ASIA</b>	<b>4</b>	<b>23.53%</b>
Bangladesh	1	5.88%
Syria	3	17.65%
<b>Total</b>	<b>17</b>	<b>100.00%</b>



Source: Ministry of the Interior. Asylum in Figures 2014. Page 58  
 Prepared by: Ombudsman Institution

Prior to the current Asylum Law having entered into effect, the Ombudsman Institution delved into the defects detected in the applications for asylum lodged by the unaccompanied minors from third countries<sup>112</sup>.

<sup>111</sup> Ministry of the Interior. Asylum in Figures. 2014. Available online at: [http://www.interior.gob.es/documents/642317/1201562/Asilo\\_en\\_cifras\\_2014\\_126150899.pdf/6e403416-82aa-482f-bcda-9a38e5a3a65c](http://www.interior.gob.es/documents/642317/1201562/Asilo_en_cifras_2014_126150899.pdf/6e403416-82aa-482f-bcda-9a38e5a3a65c) (Link consulted on June 23, 2016).

<sup>112</sup> In 2006, it was recommended that the pertinent instructions be given in order for the minors under guardianship who are seeking asylum to have legal aid in the procedure. It was indicated that, even when

Following a review of the guidelines of the Children's Rights Committee and the UNHCR in regard to the special guarantees which must be in place encompassing the applications for international protection lodged by minors, one must come to the conclusion that there some major shortcomings in the specific procedure for detecting specific needs for international protection and determining the best interest of the child<sup>113</sup>.

In Title V of the Asylum Law, under the heading "minors and other vulnerable persons", a procedure is set forth for dealing with these applications differently for the purpose of providing them with greater guarantees and, in the case of minors, for affording the possibility of more clearly determining their best interests.

However, it is the Administration that decides when it is necessary to commence this differentiated treatment in the procedure in which the vulnerability of the applicant is detected. In the opinion of the Ombudsman Institution, this system is not right. The indeterminate juridical concepts technique does not imply a free choice between two or among several possibilities, but rather a problem of applying the law which essentially boils down to submitting the legal problem to one sole fair solution.

Therefore, a Recommendation was put forth on considering that the fact of treating all of the applications for international protection lodged by minors differently by taking into account the nature of the institution of international protection and those for whom this protection is to be provided to whom reference is made under Article 46 of the Asylum Law should be a *sine qua non* principle.

The approach to be implemented regarding the applications for international protection lodged by minors is totally different from that which must be employed concerning the applications lodged by an adult, hence the only way of evaluating whether or not it is befitting to grant the protection is to deal differently with the

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this was a matter of a relinquishable right, great importance was placed on legal aid in the procedure by both doctrine and jurisprudence, to the point that if the applicant accepts the offer of legal aid and a lawyer is not provided thereto, the decision is usually voided under the judicial jurisdiction. Ombudsman Institution. Recommendations and Suggestions 2006. Recommendation 41/2006 of April 21st in order for "instructions be given so that the minors who are third-country nationals, under the guardianship of the administration, have legal aid in the procedures for applying for asylum". Ombudsman Institution. Madrid, 2007, Page 357.

<sup>113</sup> As an illustration of this situation, an account is given of a case which gave rise to the intervention of this Institution, which has to do with the situation of two minors whose mother was already in Spain and had lodged an application for international protection. The minors attempted to enter Spain along with their grandmother. The grandmother lodged an application for international protection at the border post, and the applications of the two children were added to those of their grandmother. The application lodged by the grandmother was not accepted for processing as well as those of the two minors. The Ombudsman Institution was of the opinion that the action taken by the administration had been incorrect, given that one fact of major importance already existed which should have led to having provided the minors with different treatment. The aspect of importance was the fact that the mother of these minors was already in Spain, and that a decision regarding her application for asylum had not as yet been issued. In short, when the application for asylum was lodged by the grandmother and the minors, the course of the actions to which whatever administrative decision were to be issued concerning the application lodged by the mother were to possibly lead was still as yet unknown. That which is set out hereinabove in conjunction with the principle of family unity would have required a differentiated treatment of the applications lodged by the minors in this case, which was not carried out, the intervention of this Institution not having come in time to put a hold on the return of the minors to their country of origin along with their grandmother.

applications lodged by minors. It will obviously only be possible to determine the situation of the minor if one listens to what the minor has to say by employing the suitable methodology for this purpose and by making the respective assessment, which must take into account not only what the minor has to say, but also his or her non-verbal language and degree of maturity.

It was recommended that an evaluation be made of the procedure of including a provision in the Asylum Regulation which were to expressly determine the right of the persons included under the aforesaid Article, particularly the right of the minors to lodge independent applications for asylum, a specific procedure being set out for this purpose taking into account the degree of maturity of the minor in question<sup>114</sup>.

The Administration replied that the contents of the recommendation would be taken into account in the process of further expanding upon the regulations in question, which, as previously mentioned, has as yet to have officially entered into effect at this point in time. A review of the subsequent annual Ombudsman Institution reports reveals that a solution is still as yet far from having been provided to this issue, and that the failure to process individual case files for minors may put their physical integrity into serious jeopardy and leave minors who have come accompanied by adults to whom they are supposedly related by family ties in the hands of potential traffickers in human beings relación<sup>115</sup>.

Another question of vital importance in regard to this group of persons is the need of creating awareness on the part of the legal practitioners for the purpose of improving the age assessment procedures. All of the persons who take part in these processes recognize that these processes are not sufficiently reliable, no significant

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<sup>114</sup> OMBUDSMAN INSTITUTION, *Recommendations and Suggestions 2011*. Recommendation 74/2011 of September 7<sup>th</sup> on the adoption of measures in relation to certain applications for international protection. Parliamentary Journal. Parliament Section , 10<sup>th</sup> Legislature, Series A, No. 35, p. 503.

<sup>115</sup> In illustration of the aforesaid statement, one fine example is another case regarding which an account was given in the annual report of the Ombudsman Institution in 2011. An urgent suggestion was put forth to the Assistant Directorate General of Asylum in order for it to be permitted for an individual application to be lodged by an alleged Congolese minor (in whom the UNHCR and an NGO had detected indications of trafficking) who arrived at the Barajas airport along with an adult who declared to be her uncle and then later stated that he was her father. The OAR had included the alleged minor in the application for asylum lodged by the adult, even though there was no conclusive data regarding the family ties between these two travellers. The interested party was finally able to lodge an individual application after having undergone age assessment testing having revealed that she was of legal age. The UNHCR maintained that the application should be accepted in order to adequately evaluate the need for international protection of the alleged minor and repeatedly stated that she had an extremely vulnerable profile which could include a situation of trafficking in human beings or trafficking in children, urging the Assistant Directorate General to enforce the Framework Protocol for the Protection of Victims of Human Trafficking. The decision as to having decreed the party in question to be of full legal age was also questioned. The application for asylum was rejected, and the aforementioned Protocol was not set into motion on the part of the OAR. The association which was taking care of the interested party contacted this Institution putting forth their disagreement with the action taken by the State Attorney's Office with regard to decreeing the party in question to be of full legal age. The State Attorney decreed her full legal age on the basis of the forged Passport the alleged minor was carrying, in which she was stated as being of full legal age. Finally, following the intervention of the Ombudsman Institution, the Office of the Commissioner of Alien Affairs and Borders set the procedure in motion and issued an opinion in favour of granting the period for recovery and reflexion. The interested party was transferred to a specialized resource for victims of trafficking in human beings who are of full legal age, given that the State attorney had already decreed her to be of full legal age, from which she vanished days later.

headway nevertheless having been made regarding this aspect. In the annual reports of this Institution for 2014 and 2015, reference is made to the case-law doctrine of the Supreme Court Civil Chamber, which sets forth that the third-country national whose situation of being a minor is inferred from his or her passport or identification document cannot be considered an undocumented third-country national and put through additional age assessment tests. Why such tests are conducted cannot be questioned without reasonable justification when one avails of a valid passport. Precisely as was stated in the annual report, it was learned in 2015 that the aforesaid court had issued at least nine rulings in this same regard, complaints however continuing to be received in which it was made evident that the Administration is not heeding by the aforesaid case-law doctrine<sup>116</sup>.

The UNHCR has also warned of the situation of vulnerability in which these persons may find themselves. One must bear in mind that the fact that unaccompanied third-party nationals being minors involves their being treated differently, on their being referred to juvenile protection centres instead of being referred to reception resources.

In conclusion to this section, reference must be made to the situation and the problems affecting accompanied and unaccompanied third-country nationals who are minors in need of international protection who have come to the Beni Enzar (Melilla) border post.

Since the Beni Enzar (Melilla) border post was originally opened, the major number of families with children and the growing number of unaccompanied minors who were coming to the aforesaid border post to apply for asylum were seen as a cause for concern, as well as the inappropriateness of the facilities set up for the waiting period until the time came to officially lodge the application.

Although an attempt was made to make up for such a shortcoming by way of the actions taken by the police officers, this Institution requested the Office of the Secretary General for Immigration and Emigration to have a humanitarian organisation there to support the work being done by the police from the very start, although the aforesaid agency was of the opinion that such support was not necessary, since, in its judgment, the assistance being provided by the Centre for Temporary Stay of Migrants sufficed in itself. Another visit was made by this Institution to the facilities, in which a very large number of women and minors were found to be located there, it also having been found that the process of lodging the applications was not being carried out under proper circumstances. In some cases, the minors were left alone by themselves whilst the parent lodged his or her application or, in other cases, they did not want to be separated, and the applicant found himself or herself forced to hold the interview with the minor present, although the account being given were to be absolutely inappropriate to be heard by a minor.

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<sup>116</sup> <https://www.defensordelpueblo.es/wp-content/uploads/2016/02/Informe2015.pdf> pages 265-266 (Link consulted on June 23, 2016).

A Recommendation was put forth to the Office of the Secretary General for Immigration and Emigration as to it providing a social protection service to the asylum seekers at the border post, which was rejected and once again repeated due to this Institution considering it to be necessary. The aforesaid agency once again rejected the recommendation, stating that, on facilities of the Ministry of the Interior being involved, said body has no authorities. The aforesaid response is not deemed adequate, given that the social protection being called for by this Institution has been being provided for years at border control facilities located at airports, which are also managed by the Ministry of the Interior.

Minors arriving at border posts alone by themselves or accompanied by adults determines different measures being taken. Depending on their individual situation, the minors were referred to the Fuerte de la Purísima juvenile protection centre; or, if they arrived accompanied by adults regarding whom indications existed as to their being relatives, the group was referred to the Centre for Temporary Stay of Migrants, DNA tests later being conducted in search of proof as to the existence of family ties. In many cases, the minors lodged at the protection centre were transferred to the CETI if it was proven that family ties existed with residents arriving before or after the same in Melilla<sup>117</sup>.

In the course of the visits made to the aforesaid juvenile protection centre, it was possible to see that the arrival of unaccompanied minors in need of international protection, mainly Syrian nationals, was worsening the already complicated situation at the centre, and that the accommodation and assistance provided to this group at said resource, which Directive 2013/33/EU terms as vulnerable, with special reception needs, was not meeting the necessary conditions. The aforesaid standard sets forth that the Member States shall commence the search for the members of their family as soon as possible, with the assistance, wherever applicable, of the international organisations and other competent organisations, guaranteeing that the reception, treatment and communication of the information regarding these persons is carried out confidentially for the purpose of not putting their safety in jeopardy. The aforesaid standard also sets forth that the unaccompanied minors who have an application for international protection in the processing stage or who have been granted refugee status need specific assistance on the part of highly-qualified personnel.

Bearing in mind the foregoing and the geographical location of the city of Melilla, as well as the systematic overcrowding at the juvenile protection centre, a Recommendation has been put forth in order for an evaluation to be made as to getting projects under way, in coordination with the Autonomous Communities and with the support of the UNHCR, for the social and employment-related integration of the unaccompanied minors who are third-country nationals in need of international protection who are located in the city of Melilla, taking in the possibility of transferring

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<sup>117</sup> According to the data furnished by the administration, a total of 456 DNA tests were conducted in Melilla in 2015, the average length of time for obtaining the results being two weeks.

these minors to the Spanish mainland. One of the administrative bodies has stated its agreement with this recommendation and has proposed to promote these measures at an upcoming coordination meeting with the Autonomous Communities.

A total of 3,728 accompanied minors lodged applications for international protection in 2015, a total of 1,777 of whom were girls and 1,951 were boys.

## 5.2 VICTIMS OF TRAFFICKING IN HUMAN BEINGS

The possibility of refuge being granted to the victims of trafficking in humans has been put to a study in the monographic report prepared by the Ombudsman Institution in 2012: *Trafficking in Human Beings in Spain: Invisible Victims*. The Spanish Administration is of the opinion that trafficking in human beings should not be included under international protection, this being an opinion to which this Institution and the UNHCR take exception. As it has been possible to ascertain in 2015, there have been no decisions issued during the first quarter of 2016 in favour of refugee status or subsidiary protection for victims of trafficking in human beings.

In the procedures for identifying victims of trafficking in human beings, especially those put into practice at the borders, the UNHCR quite customarily deems it fitting to accept the application for asylum for processing for the purpose of conducting an in-depth evaluation of the case. Regrettably, setting the protocol on trafficking in human beings into motion gives rise not only to the situation of the person being examined in light of the protocol but to the focus being expanded to consider whether the person is in need of international protection<sup>118</sup>.

In the aforementioned report, this Institution made reference to the interaction between international protection and trafficking in human beings. The need for a specific procedure for the referral of victims of trafficking in human beings to international protection and vice versa is quite obvious, however is non-existent to date. The Framework Protocol for the Protection of the Victims of Trafficking in Human Beings sets forth guidelines for taking action which are insufficient. However, to date, the Administration has not deemed it necessary to set out a specific procedure when both of these procedures concur; and what usually happens is that, if indications exist of trafficking in human beings, the procedure governed under the alien affairs regime is applied. In the opinion of the Ombudsman Institution, the only thing providing real, true

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<sup>118</sup> In 2013, a measure was gotten under way after a pregnant woman who reported having been the victim of a rape and showing indications of trafficking in human beings according to the specialized entities who assisted her at the Madrid-Barajas border control post, was turned away at the border. A Recommendation was put forth to the Office of the General Commission of Alien Affairs and Borders as to measures being taken for the purpose of facilitating communication with the UNHCR which would make it possible to assess the risk which may be involved in the expulsion or return of a third-country national to his or her country of origin. It was also recommended that a record be made of such an assessment on the case file prior to carrying through on the return or expulsion measure.



guarantees of the person being provided with the assistance he or she needs is for a specific protocol to be in place.<sup>119</sup>

The differentiated treatment for which provision is made under Article 46, Paragraph 2 of the Asylum Law in Spain “Concerning minors and other vulnerable persons” is not guaranteed. As previously mentioned, this norm employs the phrase “if applicable” and so the Administration is therefore free to make the decision. The fact of having found that this differentiated treatment is being provided in cases which it would have been required in the opinion of this Institution gave rise to a Recommendation having been put forth to the Assistant Directorate General of Asylum in order for said differentiated treatment to be guaranteed and in order for a specific provision to be included under the Asylum Regulation. The Recommendation was not taken<sup>120</sup>.

The organisations of the Council of Europe has expressed their concern regarding the lack of procedures adapted to persecution for reasons of gender and the specific situation of women in the institution of asylum. In Recommendation 1940 (2010) and Resolution 1765 (2010) on the applications for asylum for reasons of gender, the Parliamentary Assembly called attention to the situation of women and girls who had suffered different forms of gender violence and persecution, such a female genital mutilation, trafficking in human beings, the so-called “honour crimes” or sexual violence as a method of warfare<sup>121</sup>. The Assembly considered that efforts should be increased in compiling, analysing and publishing statistics and information on these victims and appropriately adapting the entire asylum procedure, from the recognition stage to the end of the reception, to particular needs of the victims of gender violence and persecution for reasons of gender.

One further step forward in adopting measures so that a gender focus will exist is the publication of the Instrument for the ratification of the Council of Europe Convention on prevention and fight against the violence against women and domestic violence made in Istanbul on May 11, 2011<sup>122</sup>.

Article 60 related to the gender-based applications for asylum and Article 61 related to non-refoulement set forth the obligation of adopting legislative and other sorts of measures so as to make it possible for gender-based violence against women to be recognized as a form of persecution giving rise to refugee status or subsidiary or complementary protection being granted and to the measures guaranteeing non-refoulement.

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<sup>119</sup> <https://www.defensordelpueblo.es/wp-content/uploads/2015/06/Informe2014.pdf> , page 239 (Link consulted on June 23, 2016).

<sup>120</sup> Recommendation No. 74/2011 of September 7th on adopting measures in relation to certain applications for international protection. Official Parliamentary Journal (BOCG). Parliament Section. 10th Legislative Session. Series A. No. 35, page 503.

<sup>121</sup> Resolution 1765 (2010) and Recommendation 1940 (2010) on Gender-related claims for asylum, <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=17915&lang=en> (Link consulted on June 23, 2016).

<sup>122</sup> Spanish Official Gazette (BOE) of June 6, 2014, pages 42946-42976.

### 5.3 LGTB PERSONS

The Council of Europe has advised as to the need for common instructions to be adopted in all of the countries for the treatment of asylum and refuge seekers related to gay and lesbian people and their families. Recommendation 1470 (2000) on the situation of gay and lesbian people and their family members concerning the subject of immigration and asylum in the Member States of the Council of Europe, the Parliamentary Assembly upheld the need of adopting common instructions in all of the countries for the treatment of asylum and refuge seekers pertaining to this community<sup>123</sup>.

The EASO has included a guide within its series of Practical Guides titled “Researching the situation of lesbian, gay and bisexual (LGB) persons in the countries of origin”. This guide is aimed at providing information on the context as well as useful advice and sources for researching the situation of LGTB persons in the countries of origin and meeting the needs of the professionals in charge of processing these applications<sup>124</sup>.

One essential aspect is that of appropriate guidance being provided to the person who is being interviewed, informing him or her as to their entitlement to apply for asylum for reasons of their sexual orientation and gender identity.

The European Office taught a training course in January 2016 for the case examination personnel on the subject of gender, gender identity and sexual orientation. The UNHCR also gave a course on applications lodged by the LGTB community, which was attended by part of the case examination personnel with the commitment of conveying the conclusions to all the rest. The Asylum Office held training sessions in turn in 2015 concerning international protection and sexual diversity, cultural contexts in the approaches of the LGTB community and gender violence: challenges and problems involved in detection, assistance and redress.

It is essential that the interviewers dealing with cases of applications for international protection for reasons of sexual orientation or gender-based issues be well-trained, given the difficulty involved in the assessment thereof. The Netherlands submitted a petition for a preliminary ruling on this issue, the State Attorney having come to the conclusion that neither the Recognition Directive nor the Procedures Directive includes any specific provision regarding how an applicant’s credibility must be assessed. Therefore, as is explained, the internal legal system must be the one competent for regulating the procedural modalities of the appeals through the judicial jurisdiction which are to achieve the protection granted under European Union Law. Also included are the types of questions which cannot be asked, either due to their impinging upon the right of privacy or as a result of their being inadmissible. In

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<sup>123</sup> Recommendation 1470 (2000) Situation of gay and lesbian people and their partners in respect of asylum and immigration in the member states of the Council of Europe.

<sup>124</sup> Researching the situation of lesbian, gay and bisexual (LGB) persons in the countries of origin, European Asylum Support Office (EASO), April 2015. Page 10.

conclusion, it is stated that given that it is not possible to definitively determine a person's sexual orientation, the practices which are for the purpose of doing so should not be employed in the assessment process in accordance with Article 4 of the Recognition Directive. Such practices are in violation of Article 3 and Article 7 of the Charter. Depending upon the circumstances of the case in point, other rights guaranteed under the Charter may be violated. The assessment for the purpose of determining whether asylum must be granted should be focused, on the other hand, on whether the applicant is credible. This entails considering whether his or her version is believable and coherent<sup>125</sup>.

The decision handed down by the Court of Justice of the European Union stated that the European directives concerning refugees must be interpreted in the sense of their being against those applications which are lodged for reasons of sexual orientation being put to assessment by the authorities by means of interrogations based solely on stereotyped concepts regarding homosexuals, against the competent national authorities conducting detailed interrogations as to the sexual practices of the asylum seeker in question, the asylum seeker being subjected to "examinations" to demonstrate their homosexuality or the submittal on the part of the applicant of video recordings of such acts, and against the competent national authorities concluding that the declarations made by the asylum seeker lack credibility for the sole reason that he or she did not invoke his or her sexual orientation the first time he or she was given the opportunity to explain the reasons for persecution<sup>126</sup>.

The credibility assessment still continues to be an issue as yet pending a solution in the review of the applications for international protection<sup>127</sup>. In any case, the OAR should promote the creation of a group of specialists, precisely as has been done in other countries, for dispensing a homogeneous, appropriate treatment for this type of petitions<sup>128</sup>.

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<sup>125</sup> Conclusions of Attorney General Eleanor Sharpston presented on July 17, 2014. Joined cases C-148/13, C-149/13 and C-150/13. Petition for preliminary ruling filed by the Raad van State (Netherlands), page 69.

<sup>126</sup> Court of Justice Judgment (Grand Chamber) of December 2, 2014, Joined cases C-148/13 to C-150/13.

<sup>127</sup> José Díaz Lafuente, Asylum and Refugee Status for reasons of sexual orientation and gender identity. Madrid, Congress of Deputies Notebook No. 14, 2016.

<sup>128</sup> France and Sweden have set up a working group of specialists in LGBT who are providing their support to those in charge of processing the matters and of making the decisions in the management and processing of the applications for asylum when they are lodged by members of the LGBT community LGBT. EASO, *Annual Report Situation of Asylum in the European Union 2013*, Luxembourg: Publications Office of the European Union, 2014 <https://www.easo.europa.eu/sites/default/files/public/EASO-AR-final.pdf>. Page. 99 (Footnote No. 364) (Link consulted on June 23, 2016).

## 6. INTERNATIONAL PROTECTION APPLICANT RECEPTION PROCESS

Directive 2013/33/EU of June 26<sup>th</sup>, approving standards for the reception of applicants for international protection, was published in the Official Journal of the European Union on June 29, 2013. The deadline for the incorporation thereof into Spanish Law expired on July 21, 2015. Not aiming to enter into a thorough analysis here of said norm, it is essential to make reference to certain aspects thereof, given that it makes substantial changes regarding the prior directive. One of the most outstanding of these changes is the extension of the right of reception of the applicants to the entire procedure, in other words, from the lodging of the application for international protection to the issuing of the final decision<sup>129</sup>.

Also of importance is the scope of application thereof being extended to the applicants for subsidiary protection in order to guarantee equal treatment for all applicants for international protection and the coherence with the current European Union aquis on the subject of asylum, particularly Directive 2011/95/EU of the European Parliament and of the Council of December 13, 2011 (Whereas No. 13). It is for this reason that the norm refers to “applicants for international protection” instead of “asylum seekers”, the term employed in the preceding directive.

This Directive is comprised of seven chapters and, in addition to the changes previously mentioned hereinabove, includes matters of major importance, such as the regulation of the detention of the applicants for international protection as well as other questions expanding the protection of the applicants.

Regarding the school enrolment and education of minors, this Directive sets forth that, if necessary, they will be offered preparatory classes, including language courses, in order to facilitate their access to the education system and their participation in the same. On the subject of employment, it places the Member States under the obligation of assuring that the applicants, under certain circumstances, have access to the employment market nine months immediately following the date on which the application is lodged. It also stipulates that the Member States shall see to the protection of the physical and mental health of the applicants. Concerning this aspect, reference is expressly made to the basic treatment of severe mental disorders or diseases; it being stipulated and with regard to the victims of torture and violence that the Member States are to assure their access the appropriate medical or mental health care or treatment.

Regarding the applicants housed in reception facilities or centres, the Directive places the Member States under the obligation of taking specific factors of gender and age and the situation of the vulnerable persons into consideration, as well as adopting

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<sup>129</sup> Whereas No. 8 thereof stipulates that “In order to ensure equal treatment of applicants throughout the Union, this Directive should apply during all stages and types of procedures concerning applications for international protection, in all locations and facilities hosting applicants and for as long as they are allowed to remain on the territory of the Member States as applicants.”

the suitable measures for preventing harassment and the acts of gender violence, including sexual harassment and violence, at the reception centres and facilities.

As far as the persons in a situation of vulnerability are concerned, it includes the victims of trafficking in human beings, persons with serious diseases, with mental disorders and persons who have suffered torture, rape or other severe forms of psychological, physical or sexual violence, such as the victims of female genital mutilation. It also sets forth standards for the assessment of applicants with special reception needs due to their situation of vulnerability, it however specifying that it is not necessary that the assessment be made in the form of an administrative procedure.

In the opinion of this Institution, the incorporation of the Directive must include the procedure to be followed for making these assessments and assigning the authority to grant said qualification.

## 6.1 SPAIN'S RECEPTION SYSTEM

Asylum Law 12/2009 devotes Chapter III to setting the standards concerning the social rights of the applicants for asylum, their reception and the possibility of being granted authorisation to work, as well as the curtailment or withdrawal of these rights. Once again here, the law makes reference to a future regulation for setting out the specifics of the social and accommodation services specifically provided for the applicants for international protection.

Article 31 stipulates that the reception shall be made mainly through the centres proper of the competent Ministry and those which are subsidized to non-governmental organisations. The Spanish system for the reception of persons who apply for or are beneficiaries of international protection distinguishes, on one hand, between a network of migration centres of a public nature and, on the other, reception mechanisms and assistance programs managed by NGOs and subsidized by the Ministry for Employment and Social Security.

Additional Provision One of the aforesaid law states that the framework of protection for which provision is made under said standard shall be applicable to the persons received in Spain by virtue of resettlement programs prepared by the Government in collaboration with the UNHCR and, were the case to be, other relevant organisations.

Resettlement means the transfer of third-country nationals or stateless persons on the basis of an assessment of their need for international protection and a durable solution, to a Member State, where they are permitted to reside with a secure legal status<sup>130</sup>. Relocation, which consists of moving applicants for asylum from one European Union Member State to another, is covered in Article 78, Paragraph 3, of the Treaty on the Functioning of the European Union, which sets forth that "In the event of

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<sup>130</sup> Article 2. Definitions. Regulation (EU) No. 862/2007 of July 11th.

one or more Member States being confronted by an emergency situation characterised by a sudden influx of third-country nationals, the Council, on a proposal from the Commission, may adopt provisional measures for the benefit of the Member State(s) concerned. It shall act after consulting the European Parliament”<sup>131</sup>.

In application of the aforesaid Additional Provision One, approval was rendered of the resettlement programme for 2015 by means of a resolution passed by the Council of Ministers, incorporating the commitment undertaken by Spain within the extraordinary Council of Europe meeting held on July 20, 2015, at which a resolution was passed in favour of the resettlement of 22,504 refugees within a two-year period, the commitment undertaken by Spain having been to host 1,449 persons. In 2016, it is anticipated for 854 persons to be resettled, a total of 724 of whom are from the quota undertaken by Spain in its European commitments to which the 130 places for which provision is made under the 2014 programme currently pending being carried out have been added.

According to the anticipated plans, during the first stage, a total of 285 persons would first be settled to then later be followed by a further 285 persons in the second stage (September–October 2016), a third resettlement stage then being for 284 refugees, which would take place in the December 2016-January 2017 period. As far as the profile of the persons who are going to be resettled is concerned, the Administration has asked the UNHCR to take into account their capabilities for integration. In addition thereto, following the meeting which has been held in the European Union, the resettlements are going to be carried out preferentially from the refugee camps in Turkey<sup>132</sup>.

On the date on which the writing of this report was completed, 150 asylum seekers from Greece were anticipated to imminently be arriving.

The flow of applicants for international protection continued growing throughout 2015, mainly as a result of the Syrian conflict and there being a tremendous number of displaced persons of Syrian nationality. All this gave rise to the reception system having progressively collapsed up to the point of many applicants having found themselves in a situation of being unprotected, without being furnished with lodging on arrival or any of the other benefits to which they were entitled. In some cases, they were not even able to gain access to the reception system circuit due to their not being able to officially lodge their application for protection either, given the existing backlog in the appointment-scheduling process.

The increase in economic resources did not take place until well into 2015. As a result of the slow pace at which measures were adopted on the part of the Administration, complaints were habitually lodged all year long in which the interested

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<sup>131</sup> Treaty of March 25, 1957. Treaty on the Functioning of the European Union, signed in Rome on March 25, 1957.

<sup>132</sup> Source: Ministry for the Interior. April 2016.

parties claimed the rights to which they were entitled as a result of their status as asylum seekers.

In some cases, the complaints had to do with the inadequate resources where they had been lodged. In one of the measures taken by this Institution, it was made possible for two family groups who were related to one another and who had small children and one of the mothers in the final stages of pregnancy to be transferred to appropriate resources<sup>133</sup>. In other cases, the interested parties complained as to their not having been assigned any lodgings whatsoever and having found themselves forced to spend the night outdoors or in shelters for the homeless. Complaints were also received telling of the searching done by these persons for places to spend the night and the response that they received on the part of the Administration. In one case, a bed for one night was offered. A chair was even offered in view of the lack of resources for asylum seekers and the total overcrowding of the shelters for homeless persons. The foregoing led to information being requested from the Office of the Secretary General for Immigration and Emigration in order to know the measures in place to be carried out for providing a solution to the problem detected, which entailed, in short, failure to comply with the regulations related to asylum.

Asylum seekers have also been habitually forced to abandon the resources without any means for covering their basic needs. Although the laws and regulations allow the applicants to carry out gainful employment activities as of the lapse of a six-month period, such a possibility is usually not feasible in most cases, given the problems involved in finding employment.

The aforesaid circumstance in conjunction with others such as the conditions of temporary reception and it being mandatory to abandon the resources before the processing of the application has reached an end, family in other countries, etc. contribute to the applicants wanting to leave Spain as soon as possible, turning our country into a transit point. It being mandatory to move out of the centres also affects the persons who are waiting to be transferred in enforcement of the Dublin III Regulation, and the persons who have been refused protection under the administrative jurisdiction but have taken exception to and appealed such a decision and are awaiting the final decision of the court. In these cases, the interested party is not allowed to return to the protection system whilst awaiting a judicial ruling<sup>134</sup>.

The shortage of resources for accommodating the asylum seekers was notorious during 2015, having meant a detriment to the persons who suffered from this situation,

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<sup>133</sup> Suggestion put forth to the Office of the Secretary General for Immigration and Emigration of July 9, 2015 in the following terms: Relocate the families mentioned in an appeal suited to their needs and, in the event that there are no openings at residential accommodation centres, facilitate accommodations of the characteristics stipulated under Article 18, Paragraph 1 of Directive 2013/33/EU and assure that their basic needs are met under decent conditions in accordance with Article 30 of Law 12/2009 of October 31st. Case File15009533 <https://www.defensordelpueblo.es/resoluciones/acogida-de-familia-solicitante-de-asilo/> (Link consulted on June 23, 2016).

<sup>134</sup> Impugnments of the administrative decision do not determine that the appellant be protected once again nor does it entitle the same to collect benefits.

in addition to being a failure to comply with the laws and regulations on the subject of reception.

The actions taken by this Institution have revealed that, in many cases, it has taken longer than one month's time to accommodate the asylum seekers in resources, this being the length of time throughout which the interested parties had no place to stay. The dwindling subsidies granted to the non-governmental organisation for the management of reception places for applicants for international protection as a result of the crisis jointly contributed to the system having collapsed, given that they were not able to continue taking care of the reception services of which they had been taking charge until that time.

The Reception Directive is fully applicable even when it has not been incorporated into the internal legal system. The Administration is under the obligation to take care of the asylum seekers' needs until the applications lodged thereby have been completely processed.

#### 6.1.1 Refugee Reception Centre (CAR)

The public network has four Refugee Reception Centres (CARs), managed directly by the Administration and assigned to the Ministry for Employment and Social Security. These centres are specialised in assisting applicants for asylum, two of these centres being located in Madrid (Alcobendas and Vallecas) and another two in Seville and Valencia. These centres were created by way of the Order of January 13, 1989 on Reception Centres for Asylum Seekers and Refugees of the Ministry for Social Services

The CARs are establishments intended for the purpose of providing lodgings, upkeep and urgent and primary psychosocial assistance, as well as other social services aimed at facilitating the social coexistence and integration into the community to the persons who apply for asylum or refugee status in Spain and who lack economic means for meeting their own needs and those of their family<sup>135</sup>.

There are a total of 416 places at these centres. All of the CARs have been visited by this Institution for the preparation of this report<sup>136</sup>.

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<sup>135</sup> Article 1 of the Order of January 13, 1989, on Reception Centres for Asylum Seekers and Refugees of the Ministry for Social Services. <https://www.boe.es/boe/dias/1989/02/02/pdfs/A03187-03187.pdf> (Link consulted on June 23, 2016).

<sup>136</sup> On the date of the visit to the Alcobendas Centre (May 20, 2014), there were 81 residents, this centre having an 80-place capacity. The nationalities most numerous represented were Syrians, Palestinians and Somalians. On the date of the visit to the Seville Centre (May 27, 2014), there were 103 residents, six more being expected to arrive that same day, the total capacity being 120 places. The nationalities most numerous represented were Cameroonian, Malian, Guinean, Palestinian and Syrian. On the date of the visit to the Centre in Valencia (June 2, 2014), there were 111 places occupied. The capacity of this centre is 120 places. During these visits, several of them with the present of the Ombudsman, the centres were found to be functioning well. According to the information obtained, the civil service personnel take training courses regularly and furnish the residents with information and help them with the steps they must take



The increase in the number of applications for international protection has not given rise to measures being taken on the order of building or refurbishing buildings for their direct management by the Administration, the option rather having been taken to increase the number of places at the reception mechanisms managed by the non-governmental organisations.

Generally speaking, the reception programme for the applicants for and beneficiaries of international protection are structured into three phases (reception, integration and autonomy). In practice, the programme lasts up to eighteen months, although not all of the persons fully complete all of the phases or stay at the centres or resources throughout that entire length of time.

**The first phase** consists of the reception at a reception centre or mechanism and is aimed at covering the basic needs of the person for whom provided from the point in time of their arrival in Spain, as well as to help him or her acquire the skills to facilitate their living independently on leaving the centre. Besides lodgings and upkeep, there are interventions in other areas: psychological care, training, social aspects, legal advisory and translation and interpreting, if necessary.

**The integration phase** begins once the interested parties end their stay at the reception mechanism but are still in need of support. In this phase, economic aid can be granted to meet basic needs including those such as renting a place to live.

In the third phase, referred to as the phase of **autonomy**, the person for whom the programme is provided may need assistance or possible future or sporadic support in certain areas.

According to the information furnished by the Office of the Secretary General for Immigration and Emigration, the methodology explained is for the purpose of harmonising the specific procedures of intervention with the beneficiaries, assuring access to the aid and benefits under conditions of equality and at the same time making it possible to detect factors of vulnerability, as well as facilitating individualized integration, although, as is explained, the processes of acquiring autonomy are conditioned by numerous factors, meaning that one does not automatically progress from one phase to the next.

The reception programme also includes measures aimed at raising awareness of the hosting society, training the NGO personnel and reinforcing asylum policies (resettlement and documental information).

As a result of the delays in decisions being issued concerning case files due, in turn, to the increase in the number of applications for protection lodged and other factors, the length of time the applicants are staying at the CARs has had to be adapted taking into account the individual circumstances of each resident. In many

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regarding their documents, even when they have moved out of the centre. On the date of the visit to the Centre in Vallecas (September 14, 2015), there were 92 residents. The especial situation of vulnerability of several Afghani families who had been residing at the centre for 18 months was brought up.

cases, the applicants have found themselves forced to move out of the centres without a decision as yet having been issued concerning their case file. Article 5.1 of the Order on Reception Centres for Refugees and Asylum Seekers sets forth that the length of stay shall be six months, unless a decision is issued regarding the application proceedings in question prior to that time. Paragraph 2 of the aforesaid Article sets forth that, exceptionally, for reasons of proven need, the extension of the stay of the beneficiaries residing at the Refugee Reception Centres may be authorised, for one single time, it not being possible for such an extension to be any longer than that taken for processing the case file.

During the visits which this Institution made to the CARs, it was learned that it was being attempted to lengthen the stay at the centre of family groups or persons in a situation of vulnerability by placing higher priority on their remaining at the centre than on that of other groups such as young people travelling by themselves.

The Administration recognized that due to the increase in the number of applicants for international protection, there had been an increase in the number of beneficiaries of the aforesaid resources and instructions had therefore been given to the Asylum Office Social Work Division, in charge of evaluating the applications and assigning the persons who are beneficiaries to a centre, in order for priority to be placed on access to the reception mechanisms for the most vulnerable persons. It was nevertheless specifically stated that those families comprised of a large number of members required a longer waiting time up to the point of time of their referral. Some families found themselves forced to move out of the resources before a decision had been issued regarding their applications.

On moving out of the centres, these persons have sometimes not availed of support networks or other help. The amount of money which they are given when moving out under the heading of help for facilitating the autonomy of the beneficiaries on leaving the centre is insufficient for surviving if one has no other resources or does not find a job.

The budget cutbacks resulting from the financial crisis had a negative impact on the situation of the applicants when it came to moving out of the centres, due to the limitations of the social protection benefits of the municipalities and Autonomous Communities. In some cases, persons whose application for protection had already been rejected were allowed to stay on at the centres for a short length of time, given their situation of vulnerability.

### 6.1.2 NGO-Managed Reception Mechanisms

The reception places managed by the non-governmental organisations are awarded by way of specific administrative procedures, the supervision and control of the actions

taken by these entities falling to the Administration<sup>137</sup>. The functioning thereof is set out in the “Asylum, Migration and Integration Fund and European Social Fund Management Manual”.

The itinerary and aid for the applicants to which reference is made in the immediately preceding paragraph hereinabove also applies to the resources managed by the non-governmental organisations.

According to the information furnished by the Administration, in 2015, the non-governmental organisations were managing a total of 502 places. This figure may be broken down as follows: Accem: 132 places; Spanish Commission for Refugee Care (CEAR) 181 places; Spanish Red Cross (SRC): 176 places; La Merced Foundation for Migrants 13 places.

The major increase in the number of applicants for asylum gave rise to the Administration having decided to grant a direct subsidy to the Spanish Red Cross, the Spanish Commission for Refugee Care and Accem in the amount of 13 million euros, which has made it possible for there to have been a larger number of reception places managed by these organisations, the places managed thereby currently nearing 2,000 in number<sup>138</sup>. The measures for the accommodation and integration of the applicants for and the beneficiaries of international protection have also been increased.

As will be set out in the following section, in 2015 the overcrowding of the Temporary Immigrant Holding Centre in Melilla gave rise to the constant transfer of asylum seekers to mainland Spain for accommodating them in more appropriate resources, mainly at mechanisms managed by the non-governmental organisations. The system employed consisted of transferring the asylum seekers to Malaga, where the different organisation collected them in buses to take them to the different reception resources.

However, the reception places were occupied for only a short time or were not occupied at all, because the asylum seekers decided to continue on their journey to other European countries. A major number of them gathered at the Méndez Álvaro bus station in Madrid, where they found themselves forced to wait and spend the night, without any resources, in order to continue their journey. The activity of non-governmental organisations, which voluntarily took charge of this situation, in coordination with the Municipal Government of Madrid, made it possible for these persons to be transferred to locations for spending the night and having a meal. The Municipal Government outfitted a Youth Hostel to provide a response to this situation.

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<sup>137</sup> The Spanish Official Gazette of July 2, 2016 published the resolution of January 22, 2016 passed by the Directorate General for Migration, by virtue of which the subsidies and aids granted in the fourth quarter of 2015 allocated to the areas of asylum and refugees and migrant integration are published. <https://www.boe.es/boe/dias/2016/07/02/pdfs/BOE-A-2016-6423.pdf>

<sup>138</sup> Royal Decree 816/2015 of September 11th, by virtue of which the direct granting of a subsidy to the Spanish Red Cross, the Spanish Commission for Refugee Care and the Accem for the extraordinary broadening of the resources of the system for the reception and integration of asylum seekers and beneficiaries of international protection was governed. Spanish Official Gazette (BOE) No. 219 of September 12, 2015, page 80575.

In 2015, the Spanish Red Cross provided assistance to 18,000 persons in need of international protection, a total of 85 % of whom did not remain in Spain and 60 % of whom were Syrian nationals. A total of 75 % of the persons who came to this organisation for help stayed for 1-10 days<sup>139</sup>.

### 6.1.3 Centres for Temporary Stay of Migrants in Ceuta and Melilla (CETI)

These centres are also open to asylum seekers. However, the residents do not avail of the integral assistance that the applicants for asylum have at the centres discussed in the preceding section. One must bear in mind that these centres were not created for providing assistance for this group.

Prior to the arrival of the group of Syrian nationals crossing the border with Morocco, the CETIs had been accommodating asylum seekers, although, as previously been explained, they are clearly in the minority. In 2015, a radical change took place in the profile of the residents, the CETI in Melilla having been turned into a refugee centre in practice on accommodating mostly asylum seekers.

The Administration has maintained that the CSTMs were resources similar to the Refugee Reception Centres (CARs) and has said that the assistance at said centres is the same. However, the residents of the CARs and those who are accommodated in mechanisms managed by the non-governmental organisations are provided with specialized care, have greater possibilities of finding work as a result of being located on the Spanish mainland, and the family groups stay together, unlike at the CARs, where the mothers with children are located on one side and the fathers are on the other.

The Ombudsman has reiterated that the situation of these centres does not allow them to be considered as being an adequate resource for housing and providing assistance for asylum seekers. Attention has been called to the lack of specialized assistance for the group of asylum seekers, particularly for those persons who are especially vulnerable.

On one of the visits made to the CETI on the part of Ombudsman Institution personnel, after seeing the major degree of crowding at the centre and the large number of minors living there, two Recommendations were put forth to the Office of the Secretary General of Immigration and Emigration urging that it proceed to urgently transfer those families with minors and the persons with physical disabilities<sup>140</sup>. It was also recommended that a plan be designed for scheduling and meeting the specific

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<sup>139</sup> Data furnished by the Red Cross.

<sup>140</sup> The visit was made on September 30, 2015. There were 1,700 residents, 500 of whom were minors.

educational needs, in coordination with the Ministry for Education, Culture and Sports, of the minors who come to the CETI<sup>141</sup>.

Recently, it has come to our knowledge that Belgium decided not to transfer a Syrian family who had a three-year-old child to Spain in enforcement of the Dublin III Regulation. The minor in question had been born in Belgium, and when they were informed of the transfer to Spain, they decided to file an appeal. They alleged that the transfer to Spain could mean a real risk of harm, which was prohibited under Article 3 European Charter of Human Rights and information on the insufficient conditions of reception in Spain, particularly that the minor's mother, in the final stages of pregnancy, be forced to be separated from her husband, who had to spend three nights sleeping in a tent.

The determining body noted the need of taking the best interests of the child into account, for which provision is made under Article 6 of the Dublin Regulation and considered that, in view of the opinions presented, one of which was that of the UNHCR, that doubts were entertained as to whether the reception-related conditions in Spain fully complied with Article 3 of the European Convention. The conclusion was reached that a sufficiently strict review had not been made of the reception-related situation in Spain, and that the existence of a real risk (Article 3 of the European Convention) could be inferred from the study of the case in point, as a result of which, taking into account all thereof and the age of the minor, the transfer to Spain was suspended<sup>142</sup>.

The situation at the CETI in Melilla has noticeably improved since the first part of 2016. The Office of the Secretary General for Immigration and Emigration has furnished occupancy details for this CETI in March 2016, on the length of stay and the priorities for transfer, as well as the measures taken concerning the subject of school enrolment for the minors who are within the compulsory secondary education age range. Information has also been furnished on the measures carried out by the CETI for the adaptation of the minors to the school environment with personnel from the centre and from the Accem, and concerning the measures which are being carried out by the Save the Children organisation focus mainly on children within the 0-3 age range and the 15-18 age range. According to this data, there were a total of 504 persons residing at the CETI in Melilla on March 4, 2016, the capacity of this centre following the construction work done in 2015, amounting to 700 places. The average length of stay was shortened to two months in 2015<sup>143</sup>.

As previously mentioned, for years, more specifically as of the entry into effect of the Asylum Law of 2009, it was standard practice for the Administration to put off

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<sup>141</sup> <https://www.defensordelpueblo.es/resoluciones/diseno-un-programa-educativo-especifico-para-los-menores-que-se-encuentran-en-el-centro-de-estancia-temporal-ceti-de-melilla/> (Link consulted on June 23, 2016).

<sup>142</sup> [http://www.interior.gob.es/documents/642317/1201562/Asilo\\_en\\_cifras\\_2014\\_126150899.pdf/6e403416-82aa-482f-bcda-9a38e5a3a65c](http://www.interior.gob.es/documents/642317/1201562/Asilo_en_cifras_2014_126150899.pdf/6e403416-82aa-482f-bcda-9a38e5a3a65c), pages 70-72 (Link consulted on June 23, 2016).

<sup>143</sup> Data furnished by the Ministry for Employment and Social Security. March 2016.

transfer to the Spanish mainland of the asylum seekers who were residing at the CETIs. However, the major number of Syrians who arrived at the CETI in Melilla as a result of the conflict in their homeland posed the urgent need of placing priority on this group and of postponing the transfers of non-Syrians. Therefore, in 2015, numerous transfers of asylum seekers were made to the Spanish mainland, as has previously been discussed in the immediately preceding section hereinabove. However, a major number of Syrians residing at the CETI decided not to apply for international protection due to their being under the impression that lodging their application in Spain placed them under the obligation of remaining in our country, they wanting, for different reasons, to continue their journey to other countries in the European Union.

The information furnished to these persons concerning the systems imposed by the Dublin system for assuming responsibilities did not initially suffice to make any change regarding their wishes, some having begun a hunger strike for force their departure from Melilla, which they finally abandoned.

The evolution in the situation of the refugees as a result of the decisions adopted by the countries through which these refugees have to travel to reach Europe has given rise to the number of Syrian nationals entering Melilla having noticeably dropped off by the point of time that this study was being finally completed. However, different sources are advising as to the EU-Turkey Agreement possibly making some changes in this situation.

#### 6.1.4 Dublin System

In 2014, some major movements of asylum seekers began to take place and continued in 2015 as a result of Dublin III being implemented.

Spain received a total of 5,052 requests from other Member States to take charge of asylum seekers, a total of 3,708 of which were accepted. The Spanish Administration sent requests to other Member States for a total of 134 asylum seekers, a total of 106 of which were accepted<sup>144</sup>.

From the complaints received, it is inferred that there is no specific procedure in place for receiving persons coming to Spain from other Member States in enforcement of the Dublin Regulation, the interested parties therefore having suffered the same vicissitudes as all of the other asylum seekers if they arrived at a point in time at which the reception resources were completely full.

Upon arrival, they were referred to the OAR, where they were given an appointment for formally lodging their application and were furnished with information from the Social Work Unit which referred them to some resource exactly as it did for all of the other asylum seekers. In one of the cases, a married couple lodged a complaint with this Institution given that at the Adolfo Suárez Madrid-Barajas Airport on July 9,

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<sup>144</sup> Data furnished by the Ministry for the Interior. July 2015.

2015, they were furnished solely with a transportation ticket valid for 10 trips and were referred to the OAR, where they were informed that they would be assigned a resource for lodgings whenever they had their first interview, for which they were given an appointment for the following July 30<sup>th</sup>. The parties in question were finally provided with lodging at a centre in Malaga on August 25, 2015.

According to the information gathered by this Institution, the OAR solely has the obligation of informing the Office of the Secretary General for Immigration and Emigration as to the arrival of large-sized groups or of asylum seekers in need of medical care. In these cases, the aforesaid agency sends a notice to the Spanish Red Cross.

In another case, the interested party arrived on August 25, 2015 and, at the Madrid-Barajas Airport, was referred to the SOCIAL SAMUR where they gave him a place to stay for one night. At the OAR, they gave him an appointment for officially lodging his application on September 3, 2015, and the Social Work Unit referred him to the shelter for homeless persons in Simancas, where he was put on a waiting list. The complaint was lodged due to the interested party not having had anywhere to spend the night. The Administration finally informed that he had been put into a reception centre, but he entered that centre two weeks after his arrival.

The Ombudsman Institution considers it indispensable that a plan for action protocol be prepared for appropriately managing the outgoing and incoming flows of asylum seekers and for preventing situations of their being left unprotected such as those which have occurred. In addition thereto, the enforcement of the Dublin III Regulation has led to a situation in which residents at the CETI in Melilla clearly of a profile of being in need of international protection either not applying for or relinquishing their international protection.

## 6.2 COLLABORATION BY OTHER ADMINISTRATIVE BODIES. CIVIL SOCIETY

The announced arrival of Syrian nationals to Spain gave rise, in 2015, to various administrations, numerous private citizens and social entities having offered aid within the scope of their authorities, one of which, most especially, was the municipal Administration.

The Office of the Secretary General for Immigration and Emigration has recently informed this Institution that, for the purpose of channelling the solidarity on the part of both institutions and citizens, a Resource Centre of the National Accommodation System for Applicants for and Beneficiaries of International Protection (CRAI) has been created for the purpose of managing, through the contact points designated by the Autonomous Communities and by the State Federation of Municipalities and Provinces (FEMP), the accommodation-related and non-accommodation related resources placed at the disposal of the reception system voluntarily and free of charge, on the part of

both the Autonomous Community and local Administration and by the private citizens<sup>145</sup>.

This Institution has had the opportunity to see for itself that the reception system does not always find ways of coordinating the help from private citizens with the protection which the Administration is under the obligation of providing to those persons seeking international protection.

In one of the cases dealt with, the help provided by a Spanish family to a family of applicants for asylum who were Syrian nationals comprised of the father, mother and several children led to their being left out of the reception system and not having received any benefits. The reason for this is that the assistance to the applicants is linked to the fact of their going to live in resources managed by the Administration or by the non-governmental organisations. In the case in point, the family did not follow the planned itinerary given that when a place was finally managed to be found in a resource, the family was already residing in housing loaned by private citizens, and the resource assigned was located in a different province. At that time, the family was integrated into the place where they were living, and the children were enrolled in school.

Defects have also been detected in those cases in which applicants having left Spain to go to other countries in the European Union and then, on returning, once again request to be included in the reception system.

### 6.3 FUNDING

Regulation (EU) No. 516/2014 of the European Parliament and of the Council created the Asylum, Migration and Integration Fund (AMIF)<sup>146</sup>. As is stated in the whereas clauses of this regulation, the object of this fund is to contribute to carrying out the common European Union policy on the subject of asylum and immigration and to reinforce the space of freedom, security and justice in the light of the application of the principles of solidarity and the sharing of responsibilities among the Member States and of cooperation with third-countries.

This rule of law stipulates aspects including that the effectiveness of the measures and the quality of the spending constitute the governing principles for the execution of the fund and that, for the purpose of assuring a uniform, high-quality asylum policy and applying more stringent norms of international protection, this instrument should contribute to the effective functioning of the common European asylum system. It also stipulated that it should provide suitable support to the combined

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<sup>145</sup> Information furnished by the Office of the Secretary General for Immigration and Emigration in March 2016.

<sup>146</sup> The Regulation amended Decision 2008/381/EC (LCEur 2008\790) of the Council and repealed Decisions No. 573/2007/EC (LCEur 2007\957) and No. 575/2007/EC (LCEur 2007\959) of the European Parliament and of the Council and Decision 2007/435/EC (LCEur 2007\1111) of the Council.



efforts of the Member States aimed at setting out, sharing and promoting the best practices and setting up effective cooperating structures which will make it possible to reinforce the quality of the decision-making process within the framework of the common European asylum system and should complement and reinforce the activities of the European Asylum Support Office. This Regulation sets forth that the Member States be assigned an amount calculated on the basis of the average allocations granted to the Member States in 2011, 2012 and 2013 in accordance with the European Refugee Fund (ERF) set up by way of Decision No. 573/2007/EC of the European Parliament and of the Council<sup>147</sup>.

From the information furnished by the Ministry for Employment and Social Security, it follows that the AMIF co-finances the projects up to 75 % of their total cost. In turn, the European Social Fund (ESF) co-financing rate varies within a 50 %-80 % range depending on the location of the project in question.

The global refugee assistance program has been co-financed by the ESF and the ERF, which came to an end in 2014. The ESF funds are for purposes of employment promotion for the beneficiaries of the CARs and those granted by NGOs for promoting employability and entry into the workforce. The ERF has funded programs of the ONGs related to the conditions of reception and the asylum procedure, integration of beneficiaries and reinforcement of the capacity for development, supervision and evaluation of the asylum policies. THE AMIF can fund measures which are previously included under the ERF.

The first version of the National AMIF Program for the 2014-20 period was approved by the Commission Decision of July 31, 2015 and subsequently, as a result of other Decisions, the national Programme was modified to include the commitments undertaken by Spain within the framework of the aforesaid decisions<sup>148</sup>.

Although Annex I of Regulation (EU) 516/2014 assigned Spain 257,101,877 euros for the 2014-20 period, the maximum contribution to Spain's National Programme on the part of the AMIF has been set at 300,129,877 euros for the aforesaid period<sup>149</sup>. The National Programme was modified to include the commitments

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<sup>147</sup> The Regulation stipulates some basic amounts being assigned to the Member States. These basic amounts are comprised of a minimum amount in addition to an amount calculated on the basis of averaging together the amounts assigned to the Member States in 2011, 2012 and 2013 in accordance with European Refugee Fund (ERF) Decision No. 573/2007 EC amended by Decision No. 258/2013/EU of the European Parliament and of the Council. <https://www.boe.es/doue/2014/150/L00168-00194.pdf> (Link consulted on June 23, 2016).

<sup>148</sup> European Council Decisions 2015/1523 <https://www.boe.es/doue/2015/239/L00146-00156.pdf> and 2015/1601, of September 2015 <http://eur-lex.europa.eu/legal-content/ES/TXT/?uri=CELEX%3A32015D1601> governing an exceptional temporary relocation mechanism from Italy and Greece to other Member States of persons clearly in need of international protection. (Link consulted on June 23, 2016).

<sup>149</sup> The revised version of the AMIF National Programme was approved by means of Commission Implementation Decision (2015) 9392 final, of December 14, 2015. <http://www.interior.gob.es/documents/642012/4985075/DECISI%C3%93N+DE+EJECUCI%C3%93N+DE+LA+COMISI%C3%93N+14-12-2015.pdf/8f1d5a20-e818-468b-8a26-02a79a9e0a0e> (Link consulted on June 23, 2016).

undertaken by Spain. In addition to the initial basic amount, a total of 17,090,000 euros was added, allocated to the European Union Resettlement Programme, plus an additional 55,938,000 euro, allocated to the EU Relocation Programs<sup>150</sup>.

The Administration also notified receipt of emergency aid from the EU in the amount of nearly five million euros in January 2015 for reinforcing the asylum seeker reception capacity<sup>151</sup>.

As of 2016, the Responsible Authority must present the annual accounts regarding the implementation of the fund to the European Commission in the month of February every year, including the actions and amounts already implemented and verified during the preceding financial years<sup>152</sup>. In compliance with this provision, the first annual accounts have already been presented in the amount of 26,361,634 euros as a contribution from the European Union, meaning an overall implementation of projects in the amount of more than 34 million euros. In 2016, it is estimated that the amount mentioned in the preceding paragraph hereinabove may triple (this taking into account the increase of the items of the 2016 National Budget allocated to policies eligible for AMIF co-funding, the measures already in the process of being implemented, and the sums which Spain has already collected from the Commission under the heading of preliminary funding)<sup>153</sup>.

Regulation (EU) No. 514/2014 of April 16<sup>th</sup> laying down general provision regarding the AMIF and on the instrument for financial support for police cooperation, preventing and combating crime, and crisis management, sets forth under Article 53.1 thereof that the Member States and Responsible Authorities shall be responsible for:

- a) Creating a website or a web portal providing information on and access to the national programmes in that Member State;
- b) Informing potential beneficiaries concerning funding opportunities under the national programmes;
- c) Publicising to Union citizens the role and achievements of the Specific Regulations, through information and communication actions on the results and impact of the national programmes<sup>154</sup>.

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<sup>150</sup> In accordance with Article 10 of EU Decision 2015/1523 and Article 10, Paragraph 1, Sub-paragraph a) of EU Decision.

<sup>151</sup> Source: Directorate General of International Relations and Alien Affairs. Ministry of the Interior. Madrid, February 27, 2015.

<sup>152</sup> On December 29, 2015, the Directorate General of Migrations of the Office of the Secretary General for Immigration and Emigration pertaining to the Ministry of Employment and Social Security received its definitive appointment from the Commission as a Responsible Authority (RA) of the fund. This was in addition to the appointment of a Delegated Authority (DA) of the fund in relation to the scope of authorities of the Ministry for the Interior, which is the Assistant Directorate General of Planning and Management of Infrastructures and Means for Security of the Office of the Secretary of State for Security.

<sup>153</sup> In addition to the responsible authority, a delegated authority and an auditing authority have been appointed, the last-named of which reports to Spain's General Intervention Board of the State Administration.

<sup>154</sup> <https://www.boe.es/doue/2014/150/L00112-00142.pdf> (Link consulted on June 23, 2016).

In this regard, the European Ombudsman requested information from the European Commission concerning the measures planned for publicising the content of these programmes and contacted the Spanish Ombudsman requesting collaboration for the purpose of knowing the content of these national programs funded through the AMIF<sup>155</sup>. This Institution set an ex-officio measure into motion (which is currently still in the processing phase) through the Office of the Secretary General for Immigration and Emigration for the purpose of knowing measures including the respect for human rights in the use of the aforesaid fund.

The Administration has notified the creation of a website providing information on the national Programme at the following web address:

[http://extranjeros.empleo.gob.es/es/Fondos\\_comunitarios/fami/index.html](http://extranjeros.empleo.gob.es/es/Fondos_comunitarios/fami/index.html)<sup>156</sup>

Several informative meetings have been organised over the course of 2014 and 2015 for potential beneficiaries concerning the opportunities for funding within the framework of the AMIF fund.

In 2015, as previously mentioned, the pressing need of reinforcing the reception system gave rise to extraordinary subsidies having been granted to the non-governmental organisations. In addition to the aforementioned direct subsidy granted by way of Royal Decree 816/2015 of September 11, the Resolution of November 12, 2015 making the subsidies granted during the first quarter of 2015 public can be consulted online<sup>157</sup>.

For the area of asylum and refugees, vulnerable migrants, social services and healthcare at the CTSHs, a total of 159,651,050 euros has been granted, the entities being the beneficiaries thereof being the Spanish Commission for Refugee Care, the Spanish Red Cross, Accem and the Andalusian Hosting Federation.

For 2016, the budget allocated to the national system for reception and integration of applicants for/beneficiaries of international protection by Spain's Ministry for Employment and Social Security amounts to 273,075,000 euros, which is in addition to the budget increases of the other budget items of other departments. This amount has meant a 2.552 % increase in comparison to the 2015 budget<sup>158</sup>.

Despite all of the foregoing, complaints are still as yet being lodged with this Institution concerning the defects in the reception of asylum seekers, given that the applicants for asylum are still not being provided with protection throughout the entire length of time it is taking for their applications for asylum officially lodged with the Administration to be processed.

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<sup>155</sup> <http://www.ombudsman.europa.eu/resources/otherdocument.faces/en/61742/html.bookmark> (Link consulted on June 23, 2016).

<sup>156</sup> Link consulted on June 23, 2016.

<sup>157</sup> <https://www.boe.es/boe/dias/2015/12/10/pdfs/BOE-A-2015-13419.pdf> (Link consulted on June 23, 2016).

<sup>158</sup> Source: Ministry for Employment and Social Security. March 7, 2016.

## 6.4 INTER-ADMINISTRATION COORDINATION

The visits which this Institution has made to the centres have revealed the need for improvements to be made in the coordination among the Directorate General of Interior Policy (Ministry of the Interior) and the Office of the Secretary General for Immigration and Emigration (Ministry for Employment and Social Security). These shortcomings have a negative impact on the process of managing and issuing of the final decisions regarding the procedures for being granted international protection.

The economic cost of the extensions of stays at the centres due to no decision having as yet been provided to an asylum case file or due to delays in notification are assumed by the Ministry for Employment and Social Security, which is that which has authority over the subject of asylum. However, the reason for such extensions is due mainly to the delay in issuing decisions concerning the applications for international protection, which comes under the authority of the Ministry of the Interior.

The delay in issuing the decision and in the notification thereof has a negative impact on the management of the resources and poses the problem of there being shortcomings in the rotation of places. The consequences thereof are not solely monetary, but also have repercussions on the living situation at the centres where tensions are caused by the uncertain situation of the residents.

Coordinating mechanisms should be implemented so that the personnel of both of these ministerial departments will avail of updated information on the status of the case file and the personal and family circumstances of each applicant.

The EASO has stated that the connection between the length of the international protection procedure and the costs of accommodating the applicants is obvious, having also pointed out that the principle of efficiency must be applied to the conditions of accommodation so as not to allocate major resources over a long period of time to persons whose allegations are unjustifiable at the cost of those who are really in need of protection<sup>159</sup>. A better comprehension of the consequences which the delay in issuing a decision regarding protection would mean a major improvement in the assistance system with which the Administration provides applicants.

The complaints regarding the shortcomings in this coordination also have a bearing on such basic issues as medical care. Our attention has been drawn to the difficulty which residents have regarding being provided with medical care, even for emergencies, under certain circumstances (during the period in which the applicants for asylum avail of temporary documentation prior to being given the identification card issued by the Office of the General Commissioner for Alien Affairs and Borders or

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<sup>159</sup> EASO, *Annual Report Situation of Asylum in the European Union 2013*, Luxembourg: Publications Office of the European Union, 2014 <https://www.easo.europa.eu/sites/default/files/public/EASO-AR-final.pdf> page 68 (Link consulted on June 23, 2016).

during the period when said card is being renewed)<sup>160</sup>. Being seen by a medical specialist also involves difficulties, given that the health card is granted for a temporary period, and if the person is in need of that medical care at the end of the period stipulated on the card, he or she is not given an appointment. In that case, the applicant must wait for renewal in order to make a new request, which is not noted whether the card is in the process of being renewed but has not been delivered.

Also needing to be stated for the record are the difficulties which are being noted in those cases in which the applicant for asylum decides to request authorisation on the basis of their social integration in view of the delay in the decision being issued concerning their application for asylum. It has come to the knowledge of this Institution, by way of the complaints received, as to the fact that, in some cases, applicants are erroneously informed that they must relinquish the right to asylum. In those cases in which this irregularity has been brought to the attention of this Institution, it has been remedied. Nevertheless, on this being a recurring issue, it seems necessary for precise instructions to be given for expressly clearing up the compatibility of these two pathways.

The applicants have problems regarding collecting aid on moving out of the Asylum and Refugee Centres, even in those cases in which a favourable decision has been issued regarding the application lodged. This situation is due to different causes, which include the increased amount of red tape and the delays concerning collecting the insertion rent (around 18 months). The delay in making the payments also affects the rental contracts to be paid by the centre.

They also encounter problems regarding gaining access to other public aid due to the fact of their not being adapted for this type of profile, such as is the case of scholarships, on it being required to submit documentation standing as proof of the income of the family unit. This Institution is of the opinion that whatever adaptations may be fitting must be made in order for these persons to be able to benefit from the different types of public aid.

It is essential that an asylum reception procedure quality control system be set out for detecting problems in day-to-day operations and for suggesting measures for improvement, including those making it possible to supervise the measures carried out by the organisations and to rely upon interlocutors to whom the applicants can have access when their complaints go exceed the bounds of the organisations that are providing them with assistance.

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<sup>160</sup> The Ombudsman Institution personnel were even informed as to an invoice having been written to the Asylum and Refugee Centre service by the health service for medical attention rendered, although following different steps having been taken, payment on said invoice had finally not been collected.

## 7. CONCLUSIONS

1. At the time the present study drew to a close, neither Asylum Procedures Directive 2013/32/EU nor Reception Conditions Directive 2013/33/EU had yet been incorporated into the Spanish legal system.
2. The lack of further regulatory expansion upon Law 12/2009 of October 30<sup>th</sup> governing the right of asylum and subsidiary protection seriously hinders the management of the international protection-related obligations undertaken by Spain.
3. The aforesaid Regulation must incorporate standards clarifying the compatibility of the asylum procedures with those of the Aliens Law, including those related to minors and trafficking in human beings.
4. The limitation set forth under the Asylum Law for lodging applications for protection at the diplomatic missions abroad hinders access to the procedure on the part of potential applicants for asylum and may be detrimental to the international commitments undertaken by Spain on signing the Geneva Convention. It is indispensable to recover this option or, alternatively, to regulate the granting of humanitarian visas.
5. The increase in the number of applications lodged for international protection is causing major delays in the process of scheduling appointments for officially lodging these applications, resulting in detriments to the applicants.
6. The functioning of the Asylum and Refugee Office shows deficiencies affecting the processing of the case files and having an impact on the quality of the procedure. Some of these deficiencies, such as the delays in decisions being issued concerning the applications for international protection and the notification thereof, affect the management of the reception-related resources.
7. Deficiencies exist in the information on international protection, especially the non-existence of a gender focus in the information furnished and the language employed not be adapted to persons with very little formal education.
8. A very small number of applications for international protection are lodged in Spain by unaccompanied minors who are third-country nationals. The need has been detected for improving the training of the personnel manning the juvenile protection centres so that they will provide appropriate information.
9. The Management Manual used by the non-governmental organisations needs to be adapted to the needs currently involved in receiving asylum seekers. This same need has been noted in the requirements which must be met for being granted public aid.

10. The need of improving the coordination among executive centres and bodies of different ministerial departments for the management of the applications for international protection and asylum lodged by applicants makes it advisable for their organic and functional dependence to be reviewed.

## 8. RECOMMENDATIONS

### To the Minister of the Interior

1. To incorporate into the Spanish legal system the directives shaping the common European asylum system (on procedures, reception and definition) currently pending in full or in part for transposition and to urgently set out the Regulation of Law 12/2009 of October 30<sup>th</sup> governing the right of asylum and subsidiary protection.
2. To amend Law 12/2009 of October 30<sup>th</sup> for the purpose of introducing the possibility of lodging applications for international protection at the diplomatic missions abroad. In the event that the foregoing were not to be possible, to urgently implement a humanitarian visa allowing a potential applicant to enter the national territory to request asylum within the country.
3. To amend Law 12/2009 of October 30<sup>th</sup> for the purpose of introducing a procedure making it possible to expeditiously process the family extension of asylum in those cases in which the family members of the person lodging the application are in situations of risk.

### To the Undersecretary of the Interior

1. To inform asylum seekers of their entitlement to legal aid on appointments being scheduled by telephone and to inform them of the actions to take to be provided with the legal counsel requested.
2. To prepare a best practices manual for case examiners which will make it possible to improve the interviewing techniques, credibility assessment and gender and human rights-related issues.
3. To incorporate personnel into the Asylum and Refugee Office staff who meet the necessary qualification to fill interpreter positions.
4. Not to bring the processing of the applications for international protection to a standstill for an indefinite length of time or depending on the evolution of the conflict in the country of the applicant. In any case, adapt the administrative action taken to abide by that for which provision is made under Article 31, Paragraph 5 of Directive 2013/32/EU of June 26<sup>th</sup>.
5. To grant the minors the same protection as the parent lodging the application, although there be no proof as to the agreement of the other parent due to it not being possible to locate the same, or whenever the mother has been granted protection due to gender violence. If the absent parent were to express disagreement, it will be possible to assess whether or not to cancel the protection.



6. To prepare a protocol for taking action for situations of psychological blocking which an applicant for protection may experience as a result of remembering his ordeal.
7. To make a record of the reasons to refuse the asylum requested, when the UNHCR is in favour of the application being approved, stating the position thereof in the decision which is notified to the applicant.
8. To expedite the notifications of the decisions made and to telematically furnish the outcome of the case file to the management of the reception centres for the purpose of facilitating the management and living situation at the centre.
9. To state the pro or con position taken by the UNHCR in the Minutes of the meetings of the Inter-Ministerial Asylum and Refugee Commission and to call the UNHCR in to take part whenever it falls to Spain to review an application.
10. To improve the information which is furnished to the asylum seekers, by adapting it to persons with little schooling and introducing a gender perspective.
11. To renew the data processing system of the Asylum and Refugee Office in order to improve the management and publication of the statistics on international protection. To differentiate the data by gender or by persons belonging to vulnerable groups and to include the average length of time involved in order for a decision to be issued concerning the case files.
12. To expedite the transfers to Spain of applicants for international protection being carried out within the framework of the relocation process and of the refugees included in the resettlement programme.
13. To clarify the compatibility of the asylum procedures with those governed under the Aliens Law, particularly those procedures related to minors and trafficking in human beings.
14. To prepare a protocol in coordination with the Ministry of Employment and Social Security for the cases of reception and transfer of asylum seekers in enforcement of the Dublin Regulation.

#### **To the Office of the Secretary General for Immigration and Emigration**

1. To adopt the measures necessary in the reception system for granting the protection to the applicants throughout the full length of the time it takes for their applications to be processed, in compliance of the reception directive.
2. To draft a protocol in coordination with the Ministry of the Interior concerning the measures to be taken in cases of reception and transfer of applicants for international protection in application of the Dublin Regulation.

3. To give instructions for situations in which the reception system is completely saturated for the purpose of avoiding the applicants being left unprotected and to draft protocols for taking action for the purpose of channelling the aid from administrations and private citizens.
4. To provide the refugees with the same financial help, regardless of whether they are residing at resources managed directly by the Administration or indirectly (non-governmental organisations).
5. To revise the Asylum Fund Management Manual for the purpose of modifying requirements, such as the aid to the refugees being linked to the obligation of residing at a certain centre, if the applicant furnishes proof of having a suitable living accommodation, and training and integration resources suited to their needs being offered thereto.
6. To set out procedures for evaluating the reception system making it possible to assess whether the itineraries' structure that is currently being applied is in keeping with the integration-related needs of the refugees. Similarly, to set up an effective system for supervising the measures carried out by the non-governmental organisations which are collaborating in the reception system.

### **To the Autonomous Communities**

1. To give instructions so that the personnel dealing with unaccompanied minors who are third-country nationals explain in simple language what the rights of an applicant for asylum are and the cases falling under the protection thereof.
2. To arbitrate solutions so that the applicants for international protection can collect public aid. Sometimes, these persons are unable to meet the requirements demanded by the financial institutions in order to open bank accounts, and the Administration imposes the obligation of collecting this aid by way of bank accounts.
3. To give instructions to the healthcare services so that the applicants for asylum can be seen by medical specialists, even outside of the period for which the temporary card is valid and the asylum procedure is still in the processing stage.