

Input by civil society to the EASO Annual Report 2018

Fields marked with * are mandatory.

Input by civil society to the EASO Annual Report on the Situation of Asylum in the EU+ 2018

EASO has started the production of the 2018 Annual Report on the Situation of Asylum in the European Union, in line with Article 12 (1) of the EASO Regulation. The report aims to provide a comprehensive overview of important asylum-related developments at EU+ and national level, and the functioning of all key aspects of the Common European Asylum System (CEAS). [Previous reports are available at EASO's website](#)

While the final product comes out of an analytical and synthetic process that takes place in-house, a critical part of information is elicited through valuable contributions by a multiplicity of stakeholders from EU+ countries, civil society organizations, UNHCR, and other actors possessing in-depth knowledge on main developments in asylum policies and practices in EU+ countries.

We would like to kindly invite you to take part in this process, by sharing your observations on developments in asylum law, policy or practice in 2018 (and early 2019) in the areas listed on the online survey. The topics listed there reflect the structure of Chapter 4 of the EASO Annual Report, which focuses on the 'Functioning of the CEAS'. To this end, your observations may concern national practices of specific EU+ countries or the EU as a whole. You can fill in all or only some of the points. Overall, the EASO Annual Report is not meant to describe the national asylum systems in detail, but present key developments in 2018, including improvements and new/remaining concerns. In terms of format, your contributions would be preferably offered in the form of bullet points, which would facilitate further processing of your input.

Please, bear in mind that the EASO Annual Report is a public document. Accordingly, it would be desirable that your contributions, whenever possible, be supported by references to relevant sources. Providing links to materials such as analytical studies, articles, reports, websites, press releases, position papers/statements, and press releases, would allow for maintaining transparency. For your reference, you may review the [contributions offered by civil society actors for the 2017 Annual Report](#). If you do not consent on EASO making your submission available, please indicate so in the relevant part of the online survey.

In our effort to provide an inclusive overview of all relevant developments, we strive to incorporate as

many contributions as possible. At the same time, the final content of the EASO Annual Report is subject to its set terms of reference and volume limitations. To this end, your submissions, which are gratefully received and acknowledged, may be edited for length and clarity so that the final product concisely serves the objectives of the Annual Report: to improve the quality, consistency, and effectiveness of CEAS. From our side, we can assure you that the valuable insights you offer feed into EASO's work in multiple ways and inform reports and analyses beyond the production of the Annual Report.

Please, kindly provide your input completing the online survey by **Thursday, 28 February 2019**.

Instructions

Within each area, please highlight the following **type of information**:

- **NEW positive developments; improvements and NEW or remaining matters of concern;**
- **Changes in policies or practices; transposition of legislation; institutional changes; relevant national jurisprudence.**

You are kindly requested to make sure that your input falls within each section's scope. Please, refrain from including information that goes beyond the thematic focus of each section or is not related to recent developments. Feel free to use Section 16 to share information on developments you consider important that may have not been covered in previous sections.

Prior to completing the survey, please take a moment to review the list of areas and the types of information that needs to be included in each area.

Please contribute your feedback online or copy and paste your answers from an editable type document

Questions

1. Access to territory and access to asylum procedure (including first arrival to territory and registration)

Regarding access to the border crossing points in Ceuta and Melilla:

- The Government has decided to maintain the appeal lodged by the previous Administration before the ECtHR against a sentence (N.D. and N.T. v. Spain – Link 1) which found that Spain had carried out collective expulsions.
- In Ceuta and Melilla, asylum seekers are identified with a document which states “only valid in Melilla /Ceuta”, undermining their freedom of movement.

In regards to the access to the international protection procedure:

- In numerous provinces, it is necessary to request an appointment to ask for another appointment to lodge an asylum claim (in Madrid, as of November 22nd, the appointments were being given for December 2020). In many places, between 50 to 100 numbers are assigned on a daily basis to deal with potential asylum claimants, something which causes long lines at police stations and forces people to sleep rough in order to get a number in the early morning. The situation in Madrid is improving in late January 2019, since the authorities are advancing the appointments to lodge applications (from December 2020 to February 2019). They are even tackling the issues relating to the renewal of applicants’ documentation.
- In that sense, possible situations of extreme vulnerability (families with minors, sick people, pregnant women, etc.) are not taken into account.
- In the provinces of Teruel, Zaragoza, Girona, Ciudad Real, Valencia and Murcia, a city registration certificate is required to ask for an appointment to lodge an asylum application. That document is not legally mandated and is an insurmountable barrier for asylum seekers, since in order to get that document people need a passport and a lease agreement.
- The delay in the lodging of the asylum claims causes asylum seekers to lack a foreigner’s ID (NIE) and a city registration certificate, something which prevents them from accessing the Reception System for asylum seekers, as well as different services, such as healthcare, education, banking, etc.

2. Access to information and legal assistance (including counselling and representation)

In Ceuta and Melilla, pro bono lawyers are often the ones who offer legal assistance during the lodging of the asylum claim, but the large amount of asylum seekers and the lack of appropriate human and material resources causes interviews to be vague and imprecise, as the asylum seeker feels lost and confused due to the lack of information on how an interview is conducted and which key points they should include in their account of the events that forced their flight from their country of origin: for example, they often ignore simple instructions such as relating their story in a chronological order, and giving precise details and names if they are known to them.

4. Providing interpretation services

On numerous occasions, the interpretation services provided do not meet the needs of the applicants, and not translating literally the statements made by them, either because the interpreters do not speak the language or the dialect, or due to the lack of appropriate qualification in the field of translation and interpretation, or experience in it.

4. Dublin procedure (including the organisational framework, practical development and suspension of transfers to selected countries, detention in the framework of Dublin procedures)

According to a recent Order of the Directorate General of Integration and Humanitarian Assistance (Dirección General de Integración y Atención Humanitaria, in Spanish), from 19 December 2018 (no web link available; organizations have been notified by email – Link 6), an asylum seeker who has been returned to Spain in accordance to the Dublin Regulation is entitled to re-enter the Reception System if they meet the requirements set forth in the Management Handbook (Manual de Gestión – Link 6). Previously, a person who had abandoned its place at a reception center in order to go to another European country was automatically excluded from re-entering the System. Prior to this Order, on 7 December 2018, the High Court of Justice from Madrid ruled in favor of granting the applicant access to the Reception System after having been returned pursuant to the Dublin Regulation (Link 6).

5. Specific procedures (including border procedures, procedures in transit zones, accelerated procedures, admissibility procedures, prioritised procedures or any special procedure for selected caseloads)

Asylum claims are deemed admissible on a regular basis, something which creates a bottleneck effect that causes asylum files to last much longer than the legally mandated six months.

6. Reception of applicants for international protection (including information on reception capacities – rise/fall/stable, material reception conditions, i.e. housing, food and clothing and financial support, contingency planning in reception, access to labour market and vocational training, medical care, schooling and education, residence and freedom of movement)

Currently, and due to the lack of an enabling regulation of the Asylum Law, we are concerned about the fact that the Reception System may be being developed by a Management Handbook, which is being changed constantly (since 2016, there have been four versions, the last of them from November 2018, which has already been modified in January 2019), and is being adopted as if it were law, when it does not have the status of such a norm.

Due to the recent increase in asylum claims and the lack of resources, there is now a large amount of accommodation requests that cannot be coped with by the System. Firstly, the Ministry of Labor requires asylum seekers to have, at least, a document that states that they have requested asylum to be identified in order to access the Reception System. But, due to the aforementioned delays and hindrances faced by applicants, that document is not easy to obtain in different provinces. Secondly, asylum seekers are not referred to reception centers until their applications have been lodged: the Social Services Unit (Unidad de Trabajo Social, in Spanish) from Madrid, which is responsible for allocating reception places, has canceled appointments since August 2018, leaving applicants in the streets; they are sometimes left to the solidarity of different social actors (such as SAMUR Social in Madrid).

Also, and owing to the delays in the lodging of applications, the Reception System does not follow hand-in-hand the asylum procedure that is supposed to be linked to. Asylum seekers often enter the second phase of the System (after a first phase of six months), which is designed for an applicant who is entitled to work in the country (the authorization is given six months after the lodging of the application), without even having their claim lodged.

7. Detention of applicants for international protection (including detention capacity – rise/fall /stable, practices regarding detention, grounds for detention, alternatives to detention, time limit for detention)

The Spanish Ombudsman published a set of recommendations (Link 2) regarding the detention of migrants in Foreigner Detention Centers (Centros de Internamiento de Extranjeros, or CIE). It heard complains about migrants who wish to seek asylum and face obstacles when doing so; detainees must submit their claims in an inbox and they must wait for it to be opened in order for the asylum procedure to start. There have been cases in which the application of the inbox was revealed after the detainee has been deported. The Ombudsman concluded that such a system did not comply with the current legislation, prevented detainees from accessing the asylum procedure with appropriate guarantees, and placed potential refugees' lives and physical and psychological integrity at risk if returned to their home countries.

8. Procedures at First Instance (including relevant changes in: the authority in charge, organisation of the process, interviews, evidence assessment, international protection status determination, decision making, timeframes, case management, including backlog management)

Although asylum seekers are entitled to legal assistance, it is not mandatory, except for those applications lodged in border crossing points.

The facilities where the asylum interviews are conducted are not adequate for that purpose, as they often lack premises in which applicants' privacy can be preserved.

The staff responsible for carrying out the interviews is not properly trained.

On numerous occasions, asylum seekers are not provided with a copy of their interviews, so they do not have the chance to verify the veracity of what is written in the application, or to check the reliability of the interpretation provided by the translator.

According to the Asylum Law, the procedure should be over within six months, but in practice, it lasts, in some cases, more than two years. Applicants who have their claim deemed admissible are documented with an identification card known as red card, which is valid for six months. Upon its renewal, applicants are given a work authorization. Since the summer of 2018, appointments to renew the red card are given in a few months' time, which causes applicants to have an expired document as their only official identification card for reasons not attributable to them. That places applicants in a difficult spot, as having an expired identification card prevents organizations in the Reception System from requesting extensions of the applicant's stay at the centers; those who are working see their contracts terminated for that reason; their bank accounts are suspended; and all applicants in general stop receiving the grants and benefits linked to the Reception System as asylum seekers.

9. Procedures at Second Instance (including organisation of the process, hearings, written procedures, timeframes, case management, including backlog management)

The judicial remedy against a decision denying asylum does not have a suspensive effect.

The National High Court (Audiencia Nacional) often takes into account UNCHR's notes and reports when reviewing a case. However, the Court has recently shown a different approach when studying appeals by Venezuelan nationals: Section Two of the Administrative Chamber has ruled in favor of recognizing some type of protection to Venezuelans since its sentence from 26 June 2018 in its rulings from 9 July, 27 August, 4 October, 11 October, 18 October, and 31 October (Link 6), whereas Section Eight of the same Chamber

has ruled out that possibility, except for its decisions from 1 October and 8 October (Link 6). The lack of a uniform criterion leaves the fate of applicants to chance on appeal.

10. Availability and use of Country of Origin Information (including organisation, methodology, products, databases, fact-finding missions, cooperation between stakeholders)

There are different websites (refworld, EASO, ecoi.net, and different organizations' own webpages) which display COI reports, but they often lack updated reports on a number of countries, and very few of them are published in Spanish, which makes it difficult for professionals who do not have a good command of the English language.

11. Vulnerable applicants (including definition, special reception facilities, identification mechanisms/referral, applicable procedural standards, provision of information, age assessment, legal guardianship and foster care for unaccompanied and separated children).

The Committee on the Rights of the Child (CRC) adopted a decision (Link 3) on 27 September 2018 regarding the age assessment procedure of an unaccompanied minor in Spain. It observed that the best interests of the child were not considered, as he had no access to a guardian during the process, and due to the fact that the radiological evidence based on the Greulich and Pyle Atlas cannot be deemed to be reliable, since there is a wide margin of error. Also, the CRC found that Spain had not sent the unaccompanied minor to a juvenile facility. The CRC finally noted that Spain has the obligation to prevent similar violations in the future.

Continuing with unaccompanied minors, and regarding their accommodation in Melilla, they are often kept in the center called La Purísima, the biggest of the three facilities available for them. This place is an old military building which is prepared for housing up to 180 minors, but it always accommodates more than double that figure (more than 300 minors were hosted in August 2017). Minors have to sleep with a mattress on the floor or sharing a bed with people of different ages. The overcrowding of La Purísima violates the rights of the minors inside it, as they cannot be offered an individualized intervention, such as schooling, healthcare, legal assistance, leisure and cultural activities, and so on, which meets their needs and takes into account their story, despite the legal obligation to offer those services.

Vulnerable applicants face significant grievances in the CETI reception facilities from Ceuta and Melilla apart from the lack of adequate conditions that every intern has to cope with. The CETI do not provide an appropriate attention to people who may be victims of human rights violations, such as gender-based violence or human trafficking. According to the staff at the CETI facilities, being considered a vulnerable person is not taken into account as a criterion to transfer them to mainland Spain. In that regard, there is a positive-discrimination measure in place which favors Syrian nationals: they are a priority when deciding who to send to mainland Spain, whereas people from regions south of the Sahara are kept in the CETI for longer periods of time.

12. Content of protection – situation of beneficiaries of protection (including access to social security, social assistance, healthcare, housing and other basic services; Integration into the labour market; Measures to enhance language skills; Measures to improve attainment in schooling and/or the education system and/or vocational training)

The Asylum Law was passed in 2009, but there has been no regulatory development of its legal provisions. Also, it followed past EU Directives on asylum, but Spain has yet to transpose the current Directives that were enacted afterwards.

Taking into account that the EU is willing to implement a new Common European Asylum System, the Spanish government is not expected to address this issue.

13. Return of former applicants for international protection

Our organization implements a program on return for migrants, which is funded by the Ministry of Labor, Migration and Social Security and co-funded by the Asylum, Migration and Integration Fund from the European Union. In the case of former asylum seekers who are accommodated in our reception centers, we organize interviews to discuss their reasons and to check whether their return is safe; we provide them with different alternatives and give them time to reflect on that information. If they decide to be included in the return program, they are kept in the international protection project (at reception centers) while their application for return is pending. Once the authorities give their approval, we proceed with the effective return of the applicant.

There are problems with families in which the partners are from different nationalities: in these cases, each of them must return to their respective home country. There are also issues regarding stateless people such as Palestinians; a Palestinian wanting to go to any of the occupied Palestinian territories cannot enter them, as Israel does not accept documents issued by authorities the country does not recognize (i.e. Palestinian passport from the Palestinian Authority).

14. Resettlement and humanitarian admission programmes including EU Joint Resettlement Programmes; national resettlement programme (UNHCR); National Humanitarian Admission Programme; Private sponsorship programme/scheme and Ad-hoc special programmes)

In December 2018, Spain's Council of Ministers adopted (Link 4) a Resettlement National Program which is expected to resettle 1200 refugees in 2019.

15. Relocation (any relevant developments concerning persons transferred under the EU relocation programme and relocation activities organised under national schemes/on bilateral basis)

Up until 24 October, Spain had relocated 2892 asylum seekers, which roughly amounts to a 16.66% of the total number (17337) of applicants that Spain was supposed to host according to commitments made in 2015.

In July, The Supreme Court (Tribunal Supremo) condemned Spain for not complying with those commitments, which the Court deemed "binding and compulsory". It also urged the Government to fulfill the agreed quota.

*** 16. Other relevant developments**

1 character(s) minimum

According to the Asylum Law (art. 38), Embassies and Consulates can transfer asylum seekers to Spain in order to lodge their claims when they are not nationals of the country in which those institutions are located. However, it is not possible, in practice, to access Spain's territory to lodge an asylum application in that way.

Also, although the Law provides for humanitarian grounds to be applied in case the persecuted person does not meet the criteria to be granted the refugee status or subsidiary protection, that provision is not implemented in practice. On a case-by-case basis, those who have been denied asylum or subsidiary protection would be issued a residence permit on humanitarian grounds.

On 29 January 2019, Isabel Goicoechea, deputy Secretary of Interior, announced that Venezuelans will be granted legal status in Spain according to the “humanitarian assistance” provision of the Asylum Law (Link 5).

References and Sources

* 17. Please provide links to references and sources and/or upload the related material in pdf format using the following box

Link 1 – ECtHR: N.D. and N.T. V. Spain (<https://www.ohchr.org/Documents/Issues/Migration/ThirdPartyIntervention.pdf>)

Link 2 – Recommendations by the Spanish Ombudsman (<https://www.defensordelpueblo.es/noticias/proteccion-internacional-cie/>)

Link 3 – Decision by the Committee on the Rights of the Child (CRC) (https://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/ESP/CRC_C_79_D_11_2017_27827_S.docx)

Link 4 – Resettlement Program (Spain’s Council of Ministers) (<http://www.lamoncloa.gob.es/consejodeministros/referencias/Paginas/2018/refc20181221.aspx#REASENTAMIENTO>)

Link 5 – Residency on humanitarian grounds for Venezuelans (<https://www.europapress.es/epsocial/migracion/noticia-espana-no-concedera-permiso-refugio-venezolanos-si-ayuda-humanitaria-permite-estancia-legal-20190129183103.html>)

Link 6 – Dropbox folder (<https://www.dropbox.com/sh/z9etqssemkpx1jz/AAA5nM0m0ByWIWEhG0XuTNJia?dl=0>). It includes:

- Order of the Directorate General of Integration and Humanitarian Assistance (Dirección General de Integración y Atención Humanitaria, in Spanish), from 19 December 2018.
- Reception System Management Handbook (November 2018)
- High Court of Justice from Madrid: ruling on Dublin returnee, from 7 December 2018.
- National High Court’s decisions granting residency permits on humanitarian grounds to Venezuelan nationals.

Please upload your file

The maximum file size is 1 MB

Consent for making the input publicly available

* Do you consent on making your input available on the EASO website?

- Yes
- No

Case law

Please include relevant case law and/or submit cases to [EASO Portal IDS on Caselaw](#)

Included in the Dropbox folder (field 17).

Contact details

* Name of the contributing stakeholder

Fundación Cepaim

Contact person, Role

* Email

* I accept the provisions of EASO [Legal and Privacy Statements](#)

Contact

Consultative-Forum@easo.europa.eu
