

Country factsheet Spain

Based on its 2010 Work Programme, the European Union Agency for Fundamental Rights (FRA) carried out a study on access to justice for asylum seekers. This study illustrates the perspective of asylum seekers on two specific issues relating to the asylum procedure, namely information on the procedure itself and access to remedies against a negative decision.

The FRA interviewed almost 900 asylum seekers throughout the European Union. The information received has been analysed taking into account the relevant national legal provisions and the responses to a questionnaire on information received from national asylum authorities. The research has resulted in two comparative reports, the first on the duty to inform and the second on access to effective remedies.

This factsheet complements these two comparative studies by providing some basic background information, including statistics and relevant domestic legal provisions relating to the issues covered in the two reports.

1. Statistics

Statistics on asylum applications (Total and top 10 nationalities)

| 2009 Top 10 Nationalities | | 2008 Top 10 Nationalities | |
|---------------------------------------|-------|---------------------------------------|-------|
| Total | 3,005 | Total | 4,515 |
| Nigeria | 460 | Nigeria | 810 |
| Ivory Coast | 305 | Colombia | 750 |
| Colombia | 255 | Ivory Coast | 500 |
| Algeria | 180 | Somalia | 195 |
| Guinea | 130 | Algeria | 150 |
| Congo, the Democratic Republic of the | 115 | Sudan | 125 |
| Cameroon | 110 | Morocco | 120 |
| Somalia | 105 | Cuba | 120 |
| Cuba | 85 | Congo, the Democratic Republic of the | 105 |
| Morocco | 70 | Guinea | 100 |

Statistics on first instance asylum decisions (Total positive decisions - top five nationalities)

| 2009 | | | | | | | |
|----------|--------------------------|------------------------------|---------------------------|----------|---------------------------|--------------------------|---------------------------------|
| | Geneva Convention Status | Subsidiary protection status | Humanitarian ¹ | Rejected | Total number of decisions | Total positive decisions | Recognition rate ² % |
| Total | 180 | 160 | 10 | 4,140 | 4,490 | 350 | 7.8 |
| Cuba | 5 | 40 | 0 | 90 | 135 | 45 | 33.3 |
| Unknown | 30 | 5 | 0 | 10 | 45 | 35 | 77.8 |
| Iraq | 15 | 20 | 0 | 10 | 45 | 35 | 77.8 |
| Congo | 20 | 10 | 0 | 100 | 125 | 25 | 20.0 |
| Colombia | 15 | 10 | 0 | 1,005 | 1,030 | 25 | 2.4 |

Statistics on final decisions (Total positive decisions - top five nationalities)

| 2009 | | | | | | | |
|-------------------|--------------------------|------------------------------|---------------------------|----------|---------------------------|--------------------------|---------------------------------|
| | Geneva Convention Status | Subsidiary protection status | Humanitarian ¹ | Rejected | Total number of decisions | Total positive decisions | Recognition rate ² % |
| Total | 25 | 5 | n.a. | 1,685 | n.a. | n.a. | |
| Colombia | 15 | 0 | n.a. | 470 | n.a. | n.a. | |
| Equatorial Guinea | 5 | 0 | n.a. | 10 | n.a. | n.a. | |

Notes: These tables are based on categories used by Eurostat. The way Eurostat presents its data may not necessarily correspond to categories used at national level. This can particularly be the case with statistics provided under 'humanitarian status'. For a more detailed understanding of the data, the reader is invited to consult national statistics at:

<http://www.mir.es/MIR/PublicacionesArchivo/publicaciones/catalogo/Asilo.html>.

Data has been rounded to the nearest 5. Due to the rounding, the sum of individuals may not necessarily match the given total. 0 means less than 3; n.a. = not available. The Democratic Republic of the Congo.

¹ Covering persons granted authorisation to stay for **humanitarian reasons** under national law by administrative or judicial bodies. It includes persons who are not eligible for international protection as currently defined in the first stage legal instruments but are nonetheless protected against removal under the obligations that are imposed on all Member States by international refugee or human rights instruments or on the basis of principles flowing from such instruments.

² The **recognition rate** corresponds to the proportion of positive first instance or final on appeal decisions out of the total number of decisions in 2009. Positive decisions include the provision of refugee status, subsidiary protection and humanitarian protection (where data is available).

Source: [Eurostat](#), Data extracted on 01 September 2010.

2. Background Information

Asylum act¹

[Law 12/2009 regulating the Right to Asylum and to Subsidiary Protection](#)

Asylum authorities

First instance authority

[Ministry of Interior](#) - Asylum and Refugee Office (OAR), which takes decisions upon proposals made by the Interministerial Commission on Asylum

Second instance authority

Administrative judges of the National High Court (in charge of appeals against decisions on inadmissibility)

Administrative Chamber of the National High Court (in charge of appeals against decisions issued in the regular procedure)

3. Duty to inform asylum seekers

Article 17(3) of the Asylum Law states that the asylum seeker will be informed, upon presentation of his/her asylum application, in a language the asylum seeker understands, of the procedure to be followed, the rights and obligations throughout the procedure as well as of the possible consequences in case of breach of the obligations or lack of cooperation with the authorities. Applicants are also informed of their right to contact UNHCR or other legally recognized NGOs.

In August 2010, the Asylum and Refugee Office provided the following information to the FRA as regards written information materials.

| | |
|---|---|
| Written information materials | Information leaflet translated into 11 languages. |
| Provided when? | Before or at the time of lodging the application. |
| Provided by whom? | By the body where the application is lodged. |
| Has an evaluation of information tools been carried out? | No. |

¹ The legal information in this factsheets has been updated to reflect the situation on 1 September 2010.

4. Effective Remedy (Art. 39 APD)

Type of procedures

The legislation introduces, besides a regular procedure, a special admissibility procedure, and an accelerated border and an accelerated in-country procedure.

An asylum application may be declared inadmissible within a special admissibility procedure if, *inter alia*, Spanish authorities are not responsible for examining the application pursuant to the Dublin II Regulation; or in accordance with the International Agreements to which Spain is a party; when the applicant is a national of a Member State of the European Union; when the applicant has been recognised as a refugee and has the right to reside in or to obtain international protection in a third State; the asylum seeker comes from a safe third country, or in *res judicata* cases. The decision on inadmissibility shall be notified to the applicant within a month of the submission of his/her application (Article 20).

An application lodged at the border (or in detention) will be examined in an accelerated procedure and will either be admitted for further examination in the regular procedure, or declared inadmissible (e.g. in case of Dublin, Article 21), or rejected (Article 21(2)). A decision in the accelerated border procedure must be adopted within four days of the submission of the application (Article 21(1)). This period may exceptionally be extended by order of the Minister of Interior to a maximum of 10 days upon the reasoned request submitted by the UNHCR (Article 21(3)) in those cases in which exclusion considerations arise.

An accelerated procedure in-country (or urgent procedure) may be initiated *ex officio* or upon the applicant's request, and shall be completed within the time period envisaged for the regular procedure reduced by half (Article 25). This procedure may be used in cases of, for example, well-founded applications; applications submitted by persons with specific needs (e.g. unaccompanied minors); applicants coming from a safe country of origin; when the applicant without reasonable cause files the application after the time period of one month; when the applicant is subject to any of the grounds for exclusion, or in cases when the asylum seeker does not manifestly qualify for international protection. A decision in the regular procedure should be taken within six months of the application being lodged (Article 24(3)).

Duty to state reasons for rejection and procedure to appeal

Article 54(1) of the Administrative Procedural Law (APL) requires that the reasons in fact and law for the adoption of administrative acts shall always be briefly stated. Moreover, Article 58(2) of the APL requires the decision to indicate if an appeal may be lodged and, if so, to whom and within what deadline. The asylum legislation contains a special provision on the duty to provide a reasoned decision, issued in the border procedure, to the applicant who should be notified within four days from the date of its issuance (Article 21(1)). The same duty applies to the decisions on inadmissibility of the asylum application (Article 20(1)).

Time limits for appeal

Applicants can request an administrative review of the decision before the same authority or a judicial review (Article 29(1)). The latter has to be lodged within two months (Article 29 of

the Asylum Law and Article 46 of the Law 29/1998 on the Contentious Administrative Jurisdiction). In the accelerated border procedure, applicants have first to request a re-examination of the decision taken within two days of the notification of a decision (Article 21(4)). After exhausting the possibility of re-examination, the asylum seeker may either request an administrative review or a judicial review.

| Type of procedure | Time limits | Right to remain |
|---|---|---|
| Regular procedure as well as accelerated in-country procedure | 2 months | Suspensive effect may be granted upon the submission of the application on suspension. |
| Admissibility procedure | 2 months | Suspensive effect may be granted upon the submission of the application on suspension. |
| Accelerated border procedure | 2 days for reexamination/2 months for judicial review | Automatic suspensive effect during the re-examination application for suspension has to be lodged in case of judicial review. |

Right to remain in the country during appeal

Article 18(1)(d) guarantees the right to the asylum seeker to have any process of removal, expulsion or extradition suspended which could affect him/her. Article 19 similarly provides for the suspension of the removal of an alien once he/she submits the asylum application, until the issuance of the final decision, except in certain circumstances defined by law. In this sense, Article 19(3) establishes that an applicant may be handed over or extradited, when appropriate, to another member state of the EU by virtue of the obligations pursuant to a European arrest and delivery warrant or to a non-EU member country before International Criminal Court entities. However, Article 29(2) envisages a request for suspensive effect to be lodged together with the appeal. Such request will automatically be dealt with as a request for an urgent precautionary measure (under Article 135 of the Law on the Contentious Administrative Jurisdiction). This implies automatic provisional suspensive effect until a decision is taken on the urgent precautionary measure within three days. The re-examination of the negative decision issued in the accelerated border procedure does have automatic suspensive effect (Article 21(4)).

Legal Aid

Article 16(2) of the Asylum Law entitles the asylum seekers to legal aid, which extends to the formalisation of the application and all the proceedings. Legal assistance is mandatory when the applications are examined in the accelerated border procedure. Furthermore, Article 18(1) on the rights and obligations of the asylum seekers similarly guarantees the right to legal aid. Article 22 of the Law No. 4/2000 (Aliens Law) states that foreigners who lack sufficient economic resources shall have a right to free legal assistance in all procedures regarding asylum.

Article 18(1)(e) guarantees the asylum seeker the right to know the content of the personal file at any time.

Language assistance

The right to an interpreter is guaranteed by Article 18(1). Any applicant has the right to an interpreter under the terms of Article 22 of the Aliens Law if he/she does not speak or understand the official language.

Hearing

The administrative judges of the National High Court always conduct a hearing in appeals against a decision of inadmissibility (Article 78(19) of the Law on the Contentious Administrative Jurisdiction). However, the Chamber of the National High Court, which hears appeals against negative decisions taken in the regular procedure, has discretion to grant a request for an oral hearing by either of the parties (Article 62 of the Law on the Contentious Administrative Jurisdiction).